

IN THE PRIVY COUNCIL

No. 4 of 1971

ON APPEAL
FROM THE SUPREME COURT OF THE
STATE OF VICTORIA

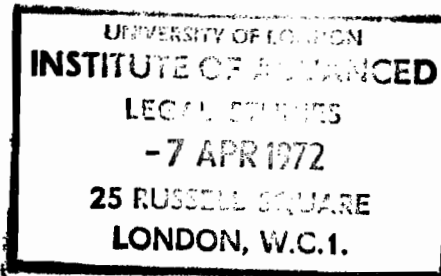
B E T W E E N :

LEITH McDONALD RATTEN Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS



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Respondent.

IN THE PRIVY COUNCIL

No. 4 of 1971

ON APPEAL
FROM THE SUPREME COURT OF THE
STATE OF VICTORIA

B E T W E E N :

LEITH McDONALD RATTEN

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 4 of 1971

O N A P P E A L
FROM THE SUPREME COURT OF THE
STATE OF VICTORIA

B E T W E E N :

LEITH McDONALD RATTEN Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

10

No. 1

PRESENTMENT
dated 10th August 1970

In the Supreme
Court of the
State of
Victoria

No.1

PARTICULARS OF OFFENCE

SUPREME COURT)
STATE OF VICTORIA,)
TO WIT

Presentment

10th August
1970

20

THE Attorney-General of our Lady the Queen presents
that LEITH McDONALD RATTEN at Echuca in the said
State on the 7th day of May One thousand nine hundred
and seventy murdered BEVERLEY JOAN RATTEN.

(signed) JOHN HOWSE

Prosecutor for the Queen.

2.

In the Supreme
Court of the
State of
Victoria

No.1

Presentment

10th August
1970
(continued)

At what Court -
Supreme Court

Where holden -
Shepperton

When begun -
August 10th 1970.

Before whom -
The Chief Justice

Plea -
Not Guilty

Verdict -
Guilty of murder.

Judgment -
Sentence of death

10th August, 1970

SUPREME COURT
SHEPPERTON

THE QUEEN

against

LEITH McDONALD RATTEN

P R E S E N T M E N T

STATEMENT OF OFFENCE

Murder;

Common Law

10

WITNESSES

Colin David Edward Moysey

David William Richardson

Eric John Montgomery

Brian Thomas Hayes

William John Madden

Janet Lucille Bennett

Ernest John Holley

Warwick Sydney Shaw

Lawrence Henry Bickerton

John William Moxham

Kevin James Devereaux

Kevin Wellard

Ralph Edward Young

Betty Winifred Trinham

Robert Ewing Scott Charlton

John Lovell Stiles

Ethel May Smith

Gwenda Frances Linder

Josephine Mary Phelan

Stanley Gordon Thompson

Peter Charles Kemp

Jennifer Anne Kemp

Denise Mary Webb

Michael Ludlow Trinham

Norman Wilde

Brian George Thompson

(Continued)

JOHN DOWNEY

Crown Solicitor.

40

WITNESSES - (Continued)

Francis Kevin Coates
Adrian Ross Donehue

Additional Witnesses

Stanley Rupert Ratten
Beverley Faye Bush
Roy James Wilson

In the Supreme
Court of the
State of
Victoria

No.1

Presentment

10th August
1970
(continued)

No. 2

No.2

TRANSCRIPT OF EVIDENCE

Transcript of
Evidence

10 B E T W E E N :

THE QUEEN

- and -

LEITH McDONALD RATTEN

BEFORE THE HONOURABLE THE CHIEF JUSTICE
AND A JURY OF TWELVE

AT SHEPPARTON ON MONDAY 10th AUGUST 1970, AT 11.30 A.M.

APPEARANCES:

MR. J. HOWSE (instructed by the Crown Solicitor)
appeared on behalf of the Crown.

20 MR. J. LAZARUS with MR. J.C. WALKER (instructed by
Messrs. Stewart & Sons) appeared on behalf of
the Accused.

* * * * *

Transcription by:

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In the Supreme
Court of the
State of
Victoria

No.2

Transcript of
Evidence

Submission

10th August
1970

ACCUSED ARRAIGNED

ACCUSED PLEADED NOT GUILTY

APPLICATION BY MR. LAZARUS FOR ACCUSED TO HAVE
ASSISTANCE WITH CHALLENGES - LEAVE GRANTED

JURY EMPANELLED

JURY RETIRED AT 12.21 P.M. TO SELECT FOREMAN

JURY RETURNED AT 12.23 P.M.

KEEPERS SWORN

JURY RETIRED AT 12.38 P.M.

MR. LAZARUS: Your Honour, there are a number of matters which were led by the prosecution at the inquest in this matter, which it is submitted should be excluded from the trial of the accused man in these proceedings. Perhaps it might be convenient, sir, if I refer at the outset to those matters to which objection is taken and then perhaps if necessary put in further detail the basis on which the objection is made.

10

Your Honour, to keep this matter in some sort of order perhaps I should indicate that the objectionable material falls into some three classes. One is the evidence of certain police interviews in which for convenience I may simply describe it as interviews in which the accused man, having been warned, has answered to the effect, "I'm not answering your questions or I'm not discussing the matter" to a series of allegations which on the face of them could be prejudicial, and the general submission is that in accordance with Twist's case such evidence is irrelevant and should not be admitted. This occurs, sir, in regard to a record of interview which appears as Exhibit "X", and is an interview which occurs between the accused and the police on 14th May 1970 at 12.10 p.m., at p.183 in the depositions.

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This interview, sir, I think, in general simply consists, as I have indicated, of a series of allegations put by the police in regard to certain aspects of this matter, to which the

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accused has uniformly replied, "I don't wish to answer" or words similar to that. And this interview, sir, is introduced at pp.138-139 of the depositions.

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No.2

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Evidence

Submission

10th August
1970

HIS HONOUR: Do you want to pursue that, Mr.Howse?
I do not see much point in that.

MR. HOWSE: No, Your Honour.

HIS HONOUR: The accused has simply said he did not
wish to answer. I think that ought not to go
in.

MR. HOWSE: Yes. I have been looking at Christie's
case, Your Honour, and I do not see how I can
argue the admissibility of that.

HIS HONOUR: It is very similar to the case we had
some years ago. What was its name? The man
kept on saying, "I don't want to answer".

MR. LAZARUS: I might indicate, your Honour, I have
discussed these matters with my learned friend
and I am putting it up after those discussions.

HIS HONOUR: Well, we will exclude that Mr. Howse,
the evidence relating to that and the record.

MR. LAZARUS: Your Honour, on a fairly similar
basis there is an interview at p.137 of the
transcript, starting 4 lines from the bottom of
p.137, in which there were several questions
directed to the contents. I do not know if
they are of any real significance (p.138),
questions directed to the contents of the garage
relating to the shotgun, cartridges, belt and so
on. He is asked questions as to the cartridges
and belt and so on found in the garage - "Are
they your property?" A: "I won't answer that".
"The police found them in the boat in the garage?"
A: (No answer). "Do you agree these blue car-
tridges resemble the two which were recovered
from your double-barrelled shotgun by the police
yesterday?" A: (No answer). Q: "Do you recall
telling Mr. Donoghue and myself after you had
seen your children this morning that Wendy was
outside when your wife was killed?" He said,
"Yes". Q: "Do you further recall telling us
that she wanted to come in .. and so on....?",
to which he replies "Yes". "Wendy still doesn't

In the Supreme
Court of the
State of
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No.2

Transcript of
Evidence

Submission

10th August
1970
(continued)

know what has happened? He said "That's right."
Then he goes on about "She was screaming".

"What was she crying for?" He said "I don't
know." I said, "I put to you that she was
upset because both your wife and yourself were
having an argument before your wife was shot?"
He said, "No answer." I said, "Can you count
for when you are being upset?" He said, "No
answer." It is submitted, Your Honour, that

here again is a matter which comes within the
claim of principles, with perhaps the exception
of the two questions to which answers were made,
but you come - it becomes of some importance

here, sir, because in my submission it is fairly
clear that the accused is generally availing
himself of the caution that is given, except for
an occasion when he is asked as to telling Mr.
Donohue, "and myself" as it is put, that Wendy
was outside and he agreed he did so tell them.

"Do you further recall telling us" and so on, and
he agreed that he did so tell them. Then

answers a question specifically about Wendy to
the effect that he agreed that she did not know
what had happened, screaming her head off. "What
was she crying for?" He said, "I don't know."

Then he put again the question which could
involve an answer of an incriminating nature,
and it is submitted again he immediately takes
advantage of the protection and declines to
answer it. It is submitted, sir, that all that

has happened here is that in regard to questions
which could be deemed to be matters which could
involve an answer that could tend to incriminate
him, he has clearly consistently taken a view.

"I am not going to answer", but in regard to
questions which were obviously related to matters
which were not in issue, he has as a matter of
convenience agreed.

HIS HONOUR: What do you say about these, Mr. Howse?

MR. HOWSE: As to the first part in relation to the
property found in the garage I do not think I
can take any attitude to the one I have already
taken, Your Honour. But as to the balance of
the conversation from the point where he commenced
to answer questions, I submit that it should all
be admitted. In particular the questions to
which he did give answers, in my submission are
clearly admissible, and the remainder of the

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questioning is in my submission material which should go in, not on the basis that it can be used against him but it is explanatory of that part of the interview.

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Court of the
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No.2

Transcript of
Evidence

Submission
10th August
1970
(continued)

HIS HONOUR: Yes, I think I will admit that, Mr. Lazarus. The first part I think should not go in, that is about the shot gun cartridges and the belt.

10 MR. LAZARUS: The matter that concerns me is the question, "I put it to you that she was upset because both your wife and yourself were having an argument before your wife was shot?" He said, "No answer". It is submitted that that could well have the implication that he is not answering that because the allegation is correct. It is submitted, sir, that on the normal principles, when one looks at the whole of this interview, and the fact that he has got his caution and has taken a certain attitude in regard to it, that this is really a dangerous kind of question and answer to allow the jury -

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HIS HONOUR: I do not know, I think that is all a matter for the jury when it comes to that, Mr. Lazarus.

30 MR. LAZARUS: Your Honour, if it is admitted it is, sir, but it is submitted that the question is quite irrelevant if the answer does not in some way or other implicate the accused one way or the other. It is submitted here, sir, that this is such an answer, that it is taken at a stage when he has been declining to answer questions, he answers that question and the next question by saying "No answer", and clearly following out a policy, in my submission, where he is, in accordance with the earlier attitude he has taken, declining to answer questions. Now if Your Honour takes the view that the first part of the interview should be excluded on the basis it is irrelevant and allows this particular part in, all the jury hear of course is this

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particular aspect of the -

HIS HONOUR: Yes, that is true, as a matter of fact I was misreading one of those questions. I thought he had answered the next question you see. "Can you account for Wendy being upset?" I thought he had said the answer was "No." I see it is "No answer".

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Transcript of
Evidence

Submission

10th August
1970
(continued)

MR. LAZARUS: "No answer."

HIS HONOUR: On each of these occasions he was answering "No answer". I think that is right, Mr. Howse, I do not think - consistently with Twist's case, I do not think this - he has just been warned, he is not bound to answer. I do not see any real reasons for allowing that. I thought he had been answering some questions later but I see he has given the same answer. Very well, yes.

10

MR. LAZARUS: Your Honour, the next group of matters are matters perhaps of not great materiality one way or the other, but it is submitted that on the face of them they are fairly inadmissible, and these are passages which appear at p.26 of the transcript. It is the evidence of First Constable Holley, and the matters which it is submitted are not admissible appear some eight lines from the top of the page, which relates a conversation with the -

20

HIS HONOUR: About the telephone exchange?

MR. LAZARUS: Yes, "The woman on the exchange said to me" -

HIS HONOUR: I have thought about this, I think this is admissible. You see there is later evidence here that only the two of them were in the house and the accused himself says the telephone call was made, he says he made it. Now I would have thought it was a question for the jury.

30

MR. LAZARUS: It is proposed to raise a question of the admissibility of the evidence of the telephonist on the basis - on several bases, sir. Perhaps this matter could be determined after Your Honour has made a decision in regard to that particular aspect of the Crown case, because the evidence of Miss Flowers is one of the matters which it is proposed to submit to Your Honour should not be admitted on the basis that it is not admissible evidence.

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HIS HONOUR: Not relevant.

MR. LAZARUS: Not relevant, sir, not part of resgestae and in any event it is submitted its probative

value in all the circumstances is such that Your Honour should in the exercise of your discretion reject it.

HIS HONOUR: She is the girl who said that she answered the phone?

MR. LAZARUS: Yes, sir.

HIS HONOUR: The voice said "Get the police" or something like that.

10 MR. LAZARUS: It is a woman's voice she said. That is a significant part of the -

HIS HONOUR: Yes, that is right, it is.

MR. LAZARUS: It is submitted in any event, Your Honour, that this particular part of the evidence is of course - at a stage after this particular conversation at the home, it reports - or purports to say what a woman at the exchange said.

HIS HONOUR: Yes, I do not think that is admissible. I do not think the constable can say what the woman on the exchange tells him.

20 MR. HOWSE: Before we go onto that, Your Honour, there is one matter I am not clear about in relation to Your Honour's last ruling.

HIS HONOUR: 137?

30 MR. HOWSE: On p. 138, is the question, "The police have told us that when they arrived at 59 Mitchell Street this afternoon that Wendy was outside the front fence screaming her head off, what was she crying for?" He said "I don't know." I am not clear whether Your Honour said that was to be excluded or not?

HIS HONOUR: Yes, I have ruled all that ought to be excluded, Mr. Howse.

MR. HOWSE: The whole conversation.

HIS HONOUR: Well all this business from the top, is it not? Where he says "Are they your property?" He said "I won't answer that."

MR. HOWSE: Yes, Your Honour.

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No.2

Transcript of
Evidence

Submission
10th August
1970
(continued)

In the Supreme
Court of the
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No.2

Transcript of
Evidence

Submission

10th August
1970
(continued)

HIS HONOUR: "Do you deny?" "No answer." See, they come and say to him, "These shot gun cartridges and belt were found in the boat in the garage at your house."

MR. HOWSE: I am not challenging that, Your Honour, it is the middle part of the questioning.

HIS HONOUR: "Do you agree that these blue cartridges resemble?" "No answer".

MR. HOWSE: No, no, "Do you recall telling Mr. Donohue and myself after you had seen your children this morning that Wendy was outside when your wife was killed?" He said "Yes." I said "Do you further recall telling us that she went to come in the bathroom door but you stopped her from coming inside?" He replied "Yes." I said "From what you say Wendy still does not know what has happened?" He said "That's right." I said "The police have told us that when they arrived at 59 Mitchell Street this afternoon Wendy was outside the front fence screaming her head off. What was she crying for?" He said "I don't know".

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HIS HONOUR: That is right, now that I have excluded, where he has refused to answer.

MR. HOWSE: Yes, Your Honour, perhaps I am being obtuse, Your Honour, is Your Honour saying that the questions and answers that I have just read out have been excluded or only the other ones?

HIS HONOUR: You mean the questions he answered?

MR. HOWSE: Yes.

30

HIS HONOUR: No, I was not excluding those, you were not asking for those to be excluded?

MR. HOWSE: No, it was one of those that I was not certain about.

HIS HONOUR: No, not the ones where the accused answers them, the ones where he says he refused to answer.

MR. HOWES: And the other one I think, Your Honour, at p.26.

HIS HONOUR: Where Mr. Holley said "It looks like a hearsay conversation. The conversation which took place I believe was the Echuca Telephone Exchange... The woman on the exchange said to me" - that is hearsay I think

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MR. HOWSE: I do not desire to argue that one,
Your Honour.

Transcript of
Evidence

MR. LAZARUS: Your Honour, I do not know whether perhaps I could save Your Honour's and the Court's time by now taking these other matters up with Mr. Howse. When we went through them this morning his attitude was that he wanted them argued, but in view of Your Honour's view here, perhaps it would be a convenient matter to discuss between ourselves.

Submission
10th August
1970
(continued)

MR. HOWSE: Your Honour, my attitude in relation to the others will be different, Your Honour, on the basis that the evidence will be tendered not to prove the truth of it, but to prove the fact of it.

HIS HONOUR: To prove the fact of what?

MR. HOWSE: The fact of these things having been said at that time.

HIS HONOUR: I am not sure what you are talking about.

MR. HOWSE: Perhaps we could look at them after lunch, Your Honour.

HIS HONOUR: My present disposition, Mr. Lazarus, about the girl on the telephone exchange is I would regard that evidence as relevant and admissible, on the basis that that is what in fact happened. It may be she is wrong in saying it was a woman's voice and not a man's, but of course that would be a question of fact. Then on questioning, your client subsequently admitted - somewhere, I read - that there was only he and his wife in the house at the time. He admitted a call had been made to that exchange, but said he made it himself. I would have thought that is all relevant as part of the history, and indeed if the jury took the fact that it was a woman's voice, then they accepted the fact that the only people in the house were the accused and

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Transcript of
Evidence

Submission

10th August
1970
(continued)

his wife, then it would be open to them to find that it was she that had made the call. What significance they give to it is another matter.

MR. LAZARUS: Yes, well, this is one of the problems, of course.

HIS HONOUR: I realise that. That is my view at the moment.

MR. LAZARUS: Perhaps we could consider it and take the matter up after the adjournment..

COURT ADJOURNED FOR LUNCHEON AT 12.55 P.M.

10

COURT RESUMED AT 2.03 P.M.
(IN THE ABSENCE OF THE JURY)

MR. LAZARUS: Your Honour, I have been talking with my learned friend Mr. Howse, which I think has shortened the proceedings to some extent insofar as we both have made, I hope, sensible concessions. Although we have not had time to precisely sort out our problems, I feel, Your Honour, that if the matter were generally left to us, if we could have a few moments at a convenient time, perhaps before my learned friend opens, that the discussion can be considerably shortened.

20

HIS HONOUR: Do you want to do that now?

MR. LAZARUS: I think it might be as well, sir, if that were convenient.

COURT ADJOURNED AT 2.04 P.M.

COURT RESUMED AT 2.25 P.M.
(IN THE ABSENCE OF THE JURY)

MR. LAZARUS: There is one other aspect I wish to deal with, sir, and that is in regard to the photographs which are to be put in evidence, and the only matter I desire to raise, Your Honour, is in regard to photograph No. 3 of the set which was produced at the inquest. This is a photograph of the deceased, as Your Honour can see, after the body had been obviously moved from the position it had been in. And it is, in my submission, sir, a somewhat ugly photograph which can have no real probative

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effect, except to indicate that at some stage, which was obviously after the shooting, when the body is moved there was a fair bit of blood. And in my submission, sir, it is a prejudicial photograph, and unless it has some ...

HIS HONOUR: Is there any particular significance about that, Mr. Howse?

10 MR. HOWSE: Your Honour, yes, it shows the wound closer to the real setting in which it was inflicted. The only other photograph is photograph 4, which was taken at the mortuary, and just looking at the two of them and comparing them, there is what appears to be a difference. It is perhaps the fault of the photographs, but in my submission there is some real use in the third photograph and it should give the jury a clearer idea of the place in which the deceased received the wound that led to her death.

20 HIS HONOUR: Well, it does not show it as clearly as in 4, does it?

MR. HOWSE: It is obscured to a certain extent by blood, Your Honour.

HIS HONOUR: Yes, it is very difficult to see it, I think.

MR. HOWSE: It is certainly clearly enough around to the side.

HIS HONOUR: I think 4 ought to be good enough, Mr. Howse.

30 MR. HOWSE: Left out, Your Honour?

HIS HONOUR: Leave out 3, I think.

MR. LAZARUS: Your Honour, the final matter, sir, and of course the very important matter, the evidence of the witness Flowers. With Your Honour's permission, sir, I would ask Your Honour to allow my learned junior to argue this matter, sir. It had been arranged, subject to Your Honour's view, that he should make submissions in regard to this aspect, sir.

40 HIS HONOUR: Yes, Mr. Walker.

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MR. WALKER: May it please Your Honour, the argument basically, sir, is this, that the evidence of the witness Flowers, which appears at p.14 in the transcript of the inquest, is inadmissible, firstly, because it is hearsay. Now Your Honour, the answer to that, I anticipate, from the learned Crown prosecutor, will be that it forms part of the res gestae, or part of the transaction, as it is perhaps better put.

HIS HONOUR: I do not know about res gestae, but it may be said to be part of the whole history of the events, on the lines of the O'Leary case. 10

MR. WALKER: It is my submission, sir, that the decision in O'Leary in fact amounts to a decision on res gestae, it in fact extends the principle somewhat, and if one reads the judgments there is, in fact, of course, as Your Honour will recall, considerable confusion in that some of the judges admit the evidence on one ground, some admit it on the ground that it is part of the res gestae, and others reject it altogether. But Your Honour, the term "part of the transaction" has crept into the Australian authorities, but has crept in in the context of discussion about res gestae. 20

What I propose to put is this, Your Honour, that if one assumes for the moment that it does not form - this evidence of Mrs. Flowers - that it does not form part of the transaction, part of the circumstances or part of the res gestae, whichever term one feels is appropriate, if it does not fall within that category, then it is inadmissible as hearsay; and I would submit at this stage that that proposition is incontrovertable. There is no other head, under which in my submission this evidence could possibly be admitted, other than that head if I could lump the three descriptions of it together, either be it part of the transaction, part of the res gestae or part of the circumstances. Under that head and under that head only could this evidence be admitted, if it is to be admitted at all. If it does not fall within that category then it is inadmissible as hearsay. Now Your Honour the authorities dealing with the subject of res gestae have been rather difficult to resolve over the years, they have been - it is often said of course that this is a head which the Courts fall back on - 30 40

HIS HONOUR: When you say that it could not otherwise be admissible, it might be admissible as evidence of the relationship between the two parties. Supposing there was evidence that somebody was walking past the door - I know there is not - and heard a woman screaming and shouting and calling for help and so forth, that would plainly be admissible.

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MR. WALKER: Yes.

10 HIS HONOUR: Supposing you get the situation, - this is all of a question of fact - supposing the jury took the view, well there are only two people in this house, the accused and his wife, and supposing they took the view that what Miss Flowers says was right, namely, a woman was calling up and asking for police assistance, why would not the same principle apply.

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20 MR. WALKER: There are two factors about this, firstly the admissibility of statements said to accompany a series of acts, which is the principle that applies to res gestae situations, the principle depends - the application of the principle depends upon what is said. The authorities make one thing clear, and that is, statements which are admitted under this head of evidence, as part of the res gestae, must accompany a fact or situation in issue.

HIS HONOUR: Not necessarily.

30 MR. WALKER: I think - submit the authorities clearly indicate it.

HIS HONOUR: I do not know, we have just dealt with the case of Wilson a couple of months ago, two or three months ago, where evidence of arguments and rows between the husband and wife had taken two years before.

MR. WALKER: Yes, Your Honour. No, that evidence is tendered on a different ground.

HIS HONOUR: That is what I am saying, to show the relationship between the parties.

40 MR. WALKER: Yes.

HIS HONOUR: Supposing you took that situation here, that

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a woman was singing out for some help, whether from the police or from anybody else, why would that not equally go on the same principle. That is what I was putting to you a moment ago, somebody was walking past the door and heard an unholy row going on.

MR. WALKER: Yes, I appreciate that, Your Honour, the - Your Honour is putting aside the question of res gestae and asking on this other head?

HIS HONOUR: That is right, yes. I only did that because of what you were saying a moment ago. 10

MR. WALKER: Yes, of course, I did invite Your Honour to do just that. The first answer to that in my submission, Your Honour, is that the evidence of Mrs. Flowers does not in fact go to that question at all. All that she is called upon to say is that a voice came on the telephone and said "Get me the police please, it is 59" whatever the street was. She then goes on to give an opinion as to the sex of the person who spoke. Now I would submit that that cannot be said in any way to go to the relationship between these parties. 20

HIS HONOUR: Well except this, if there was evidence, as I gather there is from the depositions, on which the jury could find that nobody else but the accused and his wife were in the house at the time and only one or the other could have made the call, well then if the girl on the other end says it was a woman's voice, that must be a question of fact for the jury. 30

MR. WALKER: Yes, Your Honour, but dealing only with the head that Your Honour has raised that is the question of the relationship. There are a thousand reasons why somebody might say "Get me the police please?" In other words, it does not go to that point.

HIS HONOUR: Well I do not know.

MR. WALKER: It does not go necessarily by any means to their relationship, again excluding the res gestae argument. It was obviously in the context of the res gestae argument that the situation becomes somewhat more limited, because it is said to accompany a different situation. But of 40

itself it cannot be said in my submission to go to the relationship between the parties. Now to this extent of course the words are significant. Had Mrs. Flowers heard the words "Get me the police, he is going to shoot me" it would be a different question altogether.

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HIS HONOUR: Yes, that would be a plain case.

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10 MR. WALKER: And of course the authorities have indicated that the words are of considerable significance, the actual form of the words. This of course is quite common in civil cases where we have expressions of feeling and opinions of persons as to what caused their ailments. Well Your Honour I may have to come back to the point that Your Honour has raised, but that is my initial response to it. Other than that matter, Your Honour I cannot think of any other head under which this evidence could be possibly
20 tendered, except as part of the res gestae - or part of the transaction. Your Honour, as I was about to say, the other proposition which clearly emerges from the authorities is that a statement which is tendered as part of the res gestae must be directed to a fact or fact situation in issue, and every authority that I have been able to read concerns a situation where there is a fact situation which is capable of some explanations and the words are admitted as tending to explain
30 that fact situation. This situation is entirely different in that these words are sought to be tendered by the Crown so that the jury may speculate that there was a fact situation. In other words, there is no fact situation until these words are put before the jury, and on the strength of these words, and especially on the strength of an opinion by the witness, not the fact, but on the opinion this was a female voice, on that ground is the jury invited to speculate that there was some fact situation preceding the
40 subsequent shooting of the deceased, some fact situation from which they can then infer that the deceased was in some state of apprehension. So that different from the cases that have been decided upon - in both the English courts and the Victorian Courts, different from those this case does not have a fact situation for the statement to accompany. Rather, it seeks to create its own fact situation, be that what it may, and of course the Crown can not say, "Because

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of these words you may say the deceased was being threatened." They can say, "You might think that" but they cannot actually point to any evidence of it. They cannot say "Because of these words you can say the deceased had just been struck by her husband" or "Her husband had just pointed the gun at her", or any other thing. They simply say "You can infer that there was some fact situation, be whatever it was, from which the deceased gained a feeling of apprehension sufficient to induce her to go and call the police. Now that is the first ground in my submission, upon which this evidence is inadmissible as part of the res gestae, part of the circumstances.

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The second point, Your Honour, is this. That there is no situation I know of in the reported cases where the probative value of evidence admissible as part of the res gestae depends upon the opinion of a witness. All the situations that have been dealt with in my submission indicate quite clearly that they are reported statements of fact which are definite in some way or another, whether they be definite as to their content or definite as to who said them. But there is no case that I know of where the probative effect of the evidence depends upon the opinion of a witness, and that certainly is so here, because were the evidence simply a voice, a voice called on the phone "Get me the police please?" that is a situation - that is an assertion of fact by Mrs. Flowers or Miss Flowers, whoever she is, and it may be that I would be in some difficulty in arguing that that ought not by itself to be admissible. But when she goes on to add the words "This was a female voice" she is expressing an opinion, and on that opinion, which could so easily be very wrong, will swing some very, very significant factors from the point of view of the accused. And I couple that proposition, therefore, Your Honour, with the proposition which has also emerged from the authorities, and that is that first and foremost the admissibility of evidence under the doctrine of res gestae depends upon initially the discretion of the trial judge, which discretion is of course always open to review. But it is fairly clear that an initial value judgment has to be made by the Court as to the probative value of the evidence, the certainty which it

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bears, the relevance which it has and to contrast this against the possible dangers that can ensue from deciding that such evidence is admissible.

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10 Now, Your Honour, there is one authority of
the Privy Council, the case of Teper -v- R. It
is reported in 1952 A.C. at p.480, and it is the
only case which I can find which approximates in
any way towards the situation that we have here
in these proceedings. I will read the headnote
initially, Your Honour, and then I will read
what I will submit are the relevant parts of
the judgment. The headnote reads: "The trial
of the appellant on a charge of maliciously
and with intent to defraud the con-
viction was set aside". I do not think the
rest of it relates to this, Your Honour, so I
will not waste the Court's time in reading it.
20 But in this case, R. v. Beddingfield, which is
perhaps the best known case on res gestae, Your
Honour will recall this was the case where the
deceased ran from a room with her throat
apparently cut and called out, "Look what
Beddingfield has done to me". Your Honour may
also recall that that evidence was excluded.
R. v. Beddingfield was considered in this case
that I am citing from; also O'Hara v. The
Central S.M.T. Company, and also R. v. Christie
30 and R. v. Gibson. All were considered in this
decision.

40 The relevant passages, Your Honour, I seek
to read are these: The judgment was delivered
by Lord Normand, and at - I will cite the A.E.
page notes, Your Honour. Lord Normand said,
"It is essential that the words sought to be
proved by hearsay should be, if not absolutely
contemporaneous with the action or event, at
least so clearly associated with it that they
are part of the thing being done and so an item
or part of the real evidence and not merely a
reported statement". His Honour went on to say
at p.451: "The circumstantial evidence falls
short of conclusiveness and a properly instructed
jury having it alone before it would have had a
more than usually difficult decision to make".
What His Honour was saying in this case, Your
Honour, was this: unlike the usual situation
where evidence of a declaration is admitted
under the heading of res gestae, in this case
we had a statement which was unrelated to a

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specific act, and it amounted to evidence of opinion insofar as the police officer relied upon it to connect the accused with the scene of the fire, and as Lord Normand said, given that evidence alone, there being no other accompanying act which placed the accused there, a jury would have had a much more than usually difficult decision to make. In other words His Lordship was saying this evidence did not accompany a relevant act of which there was independent evidence. This was a statement made from which the police constable drew an inference insofar - formed an opinion insofar as he thought he identified somebody, but there being no other evidence the statement could not be said to form part of the *res gestae* because it did not comply with that fundamental requirement of evidence that is part of the *res gestae*, and that is it must accompany a relevant fact in issue.

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In Brown v. R. Your Honour, which is reported in 1913 17 C.L.R. at p.570, Acting Chief Justice Barton says at p.581 in dealing with the problem of *res gestae*: "The law on *res gestae* is concisely stated.....well known cases." His Honour then goes on to deal with Beddingfield,(?) a statement of Coburn C.J. I think the learned Chief Justice wrote a pamphlet after the decision in Beddingfield, there was some controversy about it and the pamphlet which he wrote is often cited and His Honour then also went on to consider the dictum of Denman C.J. in Rouch v. The Great Western Railway Co. That passage having been adopted by the High Court in Brown, and not, as I understand it, ever diverged from in any of the authorities, it makes it clear, Your Honour, that there must be some fact in issue, some relevant fact in issue, which the statement sought to be adduced as part of the *res gestae* to which it relates, and again I reiterate that in this situation one in fact has a statement which does not relate to any fact in issue, cannot be said to relate at this stage to any fact in issue, because there is no evidence of such a fact. But it is from the statement itself, coupled with the opinion of the telephonist, that one is invited to speculate that there was in fact some act, and to draw inferences accordingly, and that that is not therefore in my submission, admissible evidence. And the leading case, Your Honour,

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in Australia is I think I can say without hesitation, The Adelaide Chemical & Fertilizer Co. Ltd. v. Parille (?) reported in 1940 64 C.L.R. at p.514. This case, Your Honour, concerned a worker who was handling earthenware jars of sulphuric acid, and whilst handling one of such jars it appeared to break in his hands, the acid fell on him, he raced into the nearest ablutions block and commenced to wash himself down, and his wife who was sitting in a van nearby came in to see him and he said "When I tilted it the jar must have broken", words to that effect, and the appeal was dealt with to some extent at any rate upon the admissibility of that statement. There are two judges who deal with the problem of *res gestae* in that case, Dixon J. as he then was, and His Honour Starke J. At p. 524 in the judgment of Starke J. His Honour says, "The husband's statement was admitted as part of the *res gestae* of the past event." His Honour quotes from Phipson, "The rule says to give an account." Now each one of these passages in my submission, Your Honour, supports that initial proposition that I am putting, that there must be an accompanying fact situation which the statement is tendered to clarify or to complete. It has been said in many of these authorities that one frequently has a fact situation which is perhaps ambiguous, unclear, uncertain and the absence of the statements which were made accompanying it leave it in that uncertain state, whereas the tendering of those statements makes the situation whole and it can therefore be viewed fairly. But all the authorities indicate that the statement does not become evidence of the facts it asserts. It is only admissible to explain the fact situation to which it relates, and I know of no authority which goes from, in any way, that basic and fundamental proposition. The only case that I have been able to find that deals with a situation other than that was Teper and in Teper's case the evidence was rejected on that very point. Indeed, I should say, Your Honour, that in Teper - I am sure it was in Teper, Lord Norman went so far as to say that - my recollection is, Your Honour, that Lord Norman went so far as to say that one should not widen in any way the doctrine of *res geste* because of the dangers that can arise therefrom. If I can just find the passage. I did advert to this earlier, Your Honour, but I

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think it does incorporate what I was saying.
"The special danger of allowing hearsay evidence place and circumstances." Of course in that paragraph I would substitute the word 'opinion' for that of 'identification', because in my submission in this case the principle is identical. It is just that here they were concerned with identification, here we are concerned with the opinion of a person upon which the whole case swings so to speak. 10
In Christie's case Lord Milton said, "Identification is an act of the mind had identified him." Of course at that state it gets a little away from the case in point, but nevertheless the whole tenor of the judgment is to lead one to the conclusion that where there is in fact no accompanying fact situation, and the statements which appear at first glance perhaps to fall within the doctrine of res gestae and to be part of a transaction or part of a chain of circumstances, cease to fall within that category when they cannot be said to relate to any fact in issue or fact situation in issue. 20
I should say at this stage, Your Honour, it may be said that this statement relates specifically to the one fact in issue, that is the shooting, but I would submit that that quite clearly could not be so, and cannot be put by the Crown on that basis, it stretches the imagination much too much to imagine that this phone call was 30
being made at the time - just seconds before the shot was fired. I would submit that that would be an unreal proposition if the Crown sought to put it. As I see it the only way on which the Crown seeks to put this evidence is to be able to invite the jury that some sort of row was going on, some sort of threats were being held out, perhaps even some sort of violence being applied from which the deceased managed to escape long enough to get to the phone, pick it up and call for the police, and of course subsequent to that the Crown would say - 40

HIS HONOUR: Well that was what I was saying to you a little earlier, that it would bear on the relationship between the parties.

MR. WALKER: Well, I anticipated I would have to come back to that, Your Honour, but if I could

just confine the argument at this stage to whether or not it does conform with the rules, such as they can be extracted from the authorities, which apply to the doctrine of res gestae, because if Your Honour does in fact find that it does not fall within the res gestae, than I may have to deal a little more fully, of course, with the question of whether it can be said to go to the relationship existing between the parties.

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Now, Dixon J., in dealing with the question of res gestae in the Adelaide Chemical and Fertiliser Company Ltd., held that this statement was not admissible, he said the event was complete when the jar broke and the acid spilt on the legs, and consequently the statement was simply an explanation of something which had occurred and was then over. It is fairly apparent, Your Honour, that the question of time, when one is considering the rule requiring that the statement be contemporaneous with an act is an exceedingly flexible one and must depend upon the given situation, so that where in Beddingfield what I anticipate must have only been a matter of a minute was held to be too long, in other cases 10 minutes has been held not to be too long. It depends entirely upon the situation, and indeed it has been said in some of the authorities that one does not gain much assistance from looking at decided cases on what closeness in time is necessary to forward in the rule requiring that they be contemporaneous, because it is a matter that depends on each given situation. But quite clearly it can be a very short time, as in Brown v. R., which I referred Your Honour to a moment ago, where a policeman had been struggling with the father of a person whom he sought to question, a gun went off, the policeman may have fallen or may not have fallen, but he left the house - the evidence was conflicting, and as he walked to the front gate - and this again only a very short time after the actual incident, he said something to a person standing nearby and this was held not to be contemporaneous. Again, a very short time involved. The ruling was simply that the event had been completed when the bullet entered him in the house and that on his leaving the house that event had concluded and the statement made was not admissible.

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Dixon J. went on to say this, Your Honour, that - "What the deceased said could not be made admissible unless constitutes one of the matters in issue". And at p.530:

"Unfortunately the scope and application of the doctrine the circumstance that it is admissible under the first head makes it no proof of that fact or occurrence". This is a very danger in this case, in my submission.

"To return to the same example, if as the cars drew near it would afford proof of every relevant fact it stated". That, as I understand it, Your Honour, is in fact the leading case - regarded as the leading case in Australia on the doctrine of res gestae, and once again we find this requirement that the statement accompanies some fact.

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It was said, Your Honour - Starke J. in the same case, when dealing with this very question, said this: "According to Taylor and Phipson the declarations and statements as evidence of the truth of any of the facts stated". Once again, this requirement that the fact be proved independently of the statement.

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Now, Your Honour, there are other authorities. Of those I have looked at they seemed to be the only important ones - or the only ones applicable to this situation and the only important ones. I have, of course, adverted to McGregor's case, a case which Your Honour may recall, McGregor v. Stokes, 1952 V.L.R., a case concerning the admissibility into evidence of statements made by police officers as to telephone conversations that they had with persons unknown, in which they were raiding a gaming house; and the principle to be extracted there again, Your Honour, is that in that situation the evidence of police officers as to receiving a number of telephone calls, the evidence of the police officers was admissible, even to the content of the calls, to prove the fact, because

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HIS HONOUR: Did that turn to some extent on the terms of the section - using a place for the purpose of betting?

MR. WALKER: That is so, Your Honour. And it was

made clear that there was no question of identity involved, because this has always been the problem with the admissibility of telephone conversations.

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HIS HONOUR: That had a purpose of element about it, yes.

10 MR. WALKER: But I thought I had better turn to that, because it is the best decision I know of dealing with the admissibility of telephone conversation of evidence. It is my submission that fundamentally the evidence of what people have said over telephones is prima facie not admissible, and this, as I understand it, has always been so because of the dangers associated with guessing at identification, and this is the very danger that we apprehend occurring in this case.

20 Now Your Honour, if I could turn now to the more general question of the discretion that I mentioned earlier. I have not actually cited those passages, Your Honour, but I will endeavour to find them, that make it fairly clear that there is a discretion in the Court.

HIS HONOUR: What is that, to exclude evidence otherwise relevant and admissible?

MR. WALKER: That may appear to be relevant and admissible. That is true generally, of course.

HIS HONOUR: There is no doubt about that.

30 MR. WALKER: No. In this context especially it is my submission, sir, that it has been adverted to that even though at first glance such evidence may appear to be part of the circumstances, that it is so equivocal or so uncertain that it ought to be rejected anyway as a matter of discretion because of the dangers that can flow from it. And I would submit that in this sort of situation that principle becomes fairly highlighted, because in this case we do have a great deal of uncertainty: we have firstly the receipt by the witness Flowers of the words,
40 "Get me the police quickly", and then it becomes narrative at that stage by Mrs. Flowers, "the address is 59 Echuca Street" is all she is able to say. Now, that evidence is, in fact, of

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course equivocal; if taken by itself it could relate to absolutely anything. The Crown says, "Ah, but it is not by itself, it is followed by a visit to a house where the deceased was found, having been shot, and that makes it unequivocal". But of course it still remains very uncertain, because it depends for any probative value at all upon the opinion of Mrs. Flowers that it was a female voice. If she had no opinion about that whatsoever, then it is equally consistent with one proposition or the other - that is, that the deceased made the phone call or alternatively the accused himself made the phone call. So everything hinges, in so far as the Crown seeks to tender this evidence to prove a fact of which there is no other evidence, upon the evidence of the witness Flowers - upon the opinion of the witness Flowers. And in those circumstances I submit this Court ought to say the dangers are so great that her opinion in these circumstances could be wrong, that it would be unsafe to let in this equivocal statement and allow the jury to speculate as to events, which speculation would be based solely upon evidence of opinion as to the sex of a caller over a telephone. And on that ground, Your Honour, I would submit even if there were some concern in Your Honour's mind about the applicability of the principle which I have endeavoured to extract from the authorities, that is that the statement should accompany a fact of which there is independent evidence. If Your Honour even felt some doubt about that, then it is submission that the evidence ought to be rejected on that second basis, that the dangers, if the witness is in fact wrong in her opinion, are so great that that opinion ought not to be given. And I again rely on this, Your Honour, as I said earlier, that in none of the cases that I know of or that I have read or read of, has it ever been suggested that opinion evidence could be given in this way as part of the res gestae. Of course, the texts deal with what they call under

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HIS HONOUR: Do they say how far you can put this opinion business, though? Sometimes these days when you are looking at a person you might not know whether he is a man or a woman.

MR. WALKER: Unfortunately that is very true, but on the other hand

HIS HONOUR: Well, what is a witness to say?

MR. WALKER: At least in that situation a witness is able to say, "I saw that person", be it a man or woman.

10 HIS HONOUR: Yes, but surely he is entitled to say "It was a man, I heard his voice" or "Certainly by his hair and the ribbon at the back I mightn't have understood until I heard his voice that I was talking to a man", you must be able to say that, Mr. Walker.

MR. WALKER: Well, Your Honour, at least you are identifying who it is. It becomes quite different when it is on the other end of a telephone.

HIS HONOUR: Yes, but you are giving your opinion as to whether it is a man or a woman, in the same way.

20 MR. WALKER: It would not be really much in issue at that stage, would it? It could not be if in fact the person was confronted with whoever was making the statement, that is the difficulty here. You see, the normal situation, as Your Honour said, if someone were walking past and saw ...

HIS HONOUR: Or heard.

30 MR. WALKER: Well, if we take it first that someone walking past saw the deceased at the window and heard a voice calling "help".

HIS HONOUR: But surely if somebody was walking past and heard an unholy row going on between two people

MR. WALKER: Oh yes, then I agree that would

HIS HONOUR: And said "one was a woman's voice and the other was a man's voice, certainly I didn't see either of them", you could not really exclude that, I do not think.

MR. WALKER: No, because it becomes much more certain,

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and it becomes much more certain because the witness is saying, "I heard two people and I heard an argument between two people", then the question of who was in the house, and there is independent proof there were only two people in the house...

HIS HONOUR: Well, that may be a matter of other evidence.

MR. WALKER: It becomes quite clear, there is certainty then. You see, in this case, as I say, if the witness Flowers were to say, "I answered a phone and a voice said 'Help, get me the police, he's going to shoot me'" or "Get me the police, he's belting me up", something which takes it out of this equivocal situation where it can equally apply to one or the other, subject to Mrs. Flowers' opinion, then there would be no difficulty about it because the words themselves would be certain, and this has emerged in the authorities, that the words themselves must determine whether or not the declaration or statement is admissible as part of the res gestae. Certain words and phrases have been excluded because they go into opinion evidence. The classic is the expression of bodily feelings. The person who goes into opinions about his health -

HIS HONOUR: Yes, I think I understand what you are saying.

MR. WALKER: Not allowed to put it.

HIS HONOUR: There is no need to repeat it I think, Mr. Walker, I understand what -

MR. WALKER: I am labouring that point, sir. I think that just about sums up what I have to say at this stage.

HIS HONOUR: It is an unusual business, is it not?

MR. WALKER: It is most unusual, there is nothing that I have been able to discover that approximates it except Teper's case, approximates this sort of thing. But although initially one's reaction is - this is part of the circumstances.

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HIS HONOUR: Yes, well if that is your initial reaction, goodness me, depending on the facts as they are found by a jury, goodness me, if this were not admissible what a funny business the law is.

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MR. WALKER: Yes, that is the initial reaction. Your Honour, as you look into it further and start to ask yourself, to what is it direct, what is it attempting to prove, what have the authorities allowed to be tendered under this sort of heading, it becomes far less clear.

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HIS HONOUR: I follow what you are putting.

MR. WALKER: And it is exceedingly uncertain and it is of course exceedingly dangerous if the jury - the jury could be very, very much misled by this evidence, simply because of its uncertainty, simply because it is not clear in what it says and it depends upon the evidence.

HIS HONOUR: That is an argument that goes really to the discretion argument I think.

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MR. WALKER: I think it does, Your Honour, although Teper's case -

HIS HONOUR: I do not see how it can go to the principle of admissibility.

MR. WALKER: The uncertainty does to some extent, Your Honour.

HIS HONOUR: I think it really goes to discretion.

MR. WALKER: Well I think it goes more to discretion, Your Honour, but I do think uncertainty goes to admissibility. I think that the authorities have indicated that for instance in civil cases the man who says to his doctor or to his wife -

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HIS HONOUR: If you acted on a principle, well look, it is really part and parcel of the circumstances leading up to this thing, and in several...part of the history of the transaction, well it would not matter whether it was uncertain or not, it would be admissible. That would still leave open an argument to say 'Oh yes, but in view of its equivocal nature and its uncertainty and

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what not, may be strictly speaking it is admissible in that way, but you ought to exclude it'.

MR. WALKER: Subject only to the first point I was making, that is that this one is doubly uncertain in that it does not relate to a fact which is -

HIS HONOUR: I follow that.

MR. WALKER: I think that sums it up, Your Honour.

HIS HONOUR: What do you say, Mr. Howse?

MR. HOWSE: Your Honour, I seek to justify the admission of this evidence on three bases. First of all, bearing in mind the timetable, which in my submission the evidence is capable of establishing, which is this, that at nine minutes past one there was a trunk telephone call between the accused's father and the accused to the house, which the accused himself describes in the first record of interview, which the father will be called to describe, and which so far as the father is concerned he says that so far as he could judge there was nothing untowards, the daughter-in-law being brought into the conversation as it were, in the background, to his hearing. At about a quarter past one Miss Flowers swears that she received the phone call in question at the exchange, certainly before twenty past one, because after having received it and spoken with the police station she looked at the clock and saw that it was then twenty past one. The police having received the call from Miss Flowers immediately set off for the premises in 59 Mitchell Street, getting there, as I call the depositions, according to them within about three minutes, during which time a call had been made through the exchange from the police station to the house, when a voice was heard to say "Oh God, get me help" or "Come quickly" or words to that effect. Then a request was received as a result of police action at the premises for an ambulance at about twenty past one, certainly no later than twenty-five past. It is vital to determine whether it was a man or a woman who made the call that Miss Flowers received, because quite clearly it happened within very close proximity in point of time to the death of the deceased. Now the accused man says that

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it was he who made the phone call, and he gives a different account. He says that he rang and he asked for an ambulance, he did not ask for the police. So that the first point and first important matter that this evidence is directed to, Your Honour, is determining whether or not it was a man or a woman. If it was a woman then it means that the accused's account of how his wife met her death is wrong. It also means that shortly before her death a woman, who could only have been Mrs. Ratten, on the available evidence and on his account, made a call seeking police assistance. Thirdly, if in fact it was a woman, who for the reasons I have suggested could only have been Mrs. Ratten, or even if it was - I do not suppose I need go that far - if in fact it was a woman then it proves that the accused was telling lies to the police, and in that way provides other evidence -

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20 HIS HONOUR: What, by saying he rang up?

MR. HOWSE: Yes.

HIS HONOUR: That was the first way you were putting it, was it not?

MR. HOWSE: I think they are all intertwined, Your Honour.

HIS HONOUR: Were you not saying, 'Well the accused has given an account to the police that he rang for assistance'.

MR. HOWSE: Yes.

30 HIS HONOUR: Now this is evidence to rebut that.

MR. HOWSE: It rebuts that. It operates in two ways, it puts a woman there very shortly before the killing, who is seeking police assistance -

HIS HONOUR: What does that prove?

MR. HOWSE: Your Honour, it certainly proves that shortly before her death the deceased was sufficiently moved by what was happening or likely to happen, to go to the phone and summon police assistance. But perhaps more importantly than that is the fact that she ever went to the phone at all, at a time when according to the accused's

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account she simply did not do that. Because he says he was the one who rang, and this evidence is capable of showing that it was not he who rang. Now if she rang, and at a time so closely connected with her death then it means that his explanation of an accidental death just is not acceptable.

HIS HONOUR: But he says that he rang to summon assistance, the accident having occurred, that is the effect of it, he says, "Well, I had this accident and my wife had this unfortunate accident, and I rang up, I didn't ask for the police, I wanted the ambulance". That is his explanation of the phone call; there is no doubt about it, as far as I can see, between both sides that both sides agree a phone call was made. You say, "Well, it was made by a woman", they say it was made by the accused himself, after the event presumably, he was summoning assistance. That is it, is it not?

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MR. HOWSE: Yes, Your Honour. The importance of determining whether or not it was a man or a woman, of course, is this, it determines whether or not it was made before or after the death.

HIS HONOUR: Yes, that is right.

MR. HOWSE: That is perhaps the vital importance of it. And on that basis alone, in my submission, it is quite clearly admissible as a fact, it has got nothing to do with hearsay. So therefore the first thing is was it a man or was it a woman? And secondly, in order to explain the call on the basis - and here with perhaps some hesitation, in view of what Your Honour has already said, I rely upon McGregor v. Stokes, the principle enunciated there, that for the purpose of explaining the nature of the calls so that it can be placed in its proper position in the context, then it is open to the party leading the evidence to obtain the content of the call as well. His Honour, the then Chief Justice - I have the report in Court, it is reported in 1952 V.L.R. at p.347. I will hand that up, Your Honour, I have a photostat copy of it. Your Honour is familiar with the facts. At p.349, about halfway down the page, His Honour, the Chief Justice, said: "At the conclusion of the argument I intimated that I

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considered the evidence of the telephone to formulate my reasons." Then he goes on to refer to what was said in Davidson v. Quirk, and perhaps I need not go into that Your Honour, and pass to p.350: "What Salmond J. had to say as to the second branch of the question..... their admissibility must be determined apart altogether from that rule". Now the point here, Your Honour, is that it is necessary to establish the sex of the caller, it is necessary also to relate the establishing of that fact with the summoning of some assistance, and therefore this evidence, in my submission, is put before the Court, or is sought to be put before the Court on an assertive basis rather than a testimonial basis. So that not only is the Crown entitled to prove the sex of the person calling, but also to have the content of the call in order that the jury knows "This is the call that we are concerned with, there was a call made seeking assistance and the witness swears that it was a woman who made it". His Honour went on: "What the caller had to say in each case was an utterance are partly conduct and partly utterance..", and this, I suggest, provides - although it is here being used by His Honour, the Chief Justice, as ancillary to the proposition that he was developing, in my submission it supplies another justification for the admission of this evidence in this case. "And so it is in the case of so many things we do that our acts in the common phrase a verbal act." In other words, Your Honour, it is important for the jury to be able to determine whether this was in fact a call for help or whether it was a call to discuss the state of the weather. "Evidence of verbal acts in this sense is admissible to the issue." Your Honour, a lot of time was spent by my learned friend in saying that there must be independent evidence of a fact as to which there is a material issue. I think that is fairly quoting what he said, Your Honour. There is independent evidence here that there was a telephone call at a vital point in the timetable of the events surrounding this occurrence, surrounding this death, and it is therefore a situation to which upon the basis of the application of the *res gestae* rule, that this evidence can be admitted, and for that purpose, if I can diverge from what I am saying for the moment, I adopt all that he said, Your Honour -

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HIS HONOUR: I cannot see it has got anything to do with res gestae.

MR. HOWSE: If it does all I say is that - all that he says supports the admission of this evidence -

HIS HONOUR: I do not think the res gestae principle has got any application.

MR. HOWSE: No, Your Honour. Two, the conduct must be equivocal, three, the words must aid in giving legal significance to the conduct, four, the words must accompany the conduct. In my submission all those conditions are satisfied here.

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HIS HONOUR: What is the conduct we are talking about?

MR. HOWSE: The making of the telephone call.

HIS HONOUR: The conduct of whom?

MR. HOWSE: The conduct of the person making it.

HIS HONOUR: What is the relevance of it?

MR. HOWSE: Because if it is a man seeking assistance after the event it has one significance for the jury -

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HIS HONOUR: That all goes back to that first point you made.

MR. HOWSE: Yes, Your Honour. If it is a woman making the call for assistance then it has an entirely different significance because it must have happened before the event. Now the other basis on which I seek to justify this is the basis foreshadowed by Your Honour, in other words the basis referred to in R. v. Wilson which the Court of Criminal Appeal, presided over by Your Honour, dealt with recently, with which matter the High Court has also recently dealt. In other words this is evidence that goes to the relationship between the parties at that time. It is a situation of husband and wife, it is a situation where having regard to the ordinary bonds of affection between them, one would not expect that there would be a call

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for police assistance in circumstances where they are the only two people there, and that if there is then it is a matter that can be looked at in explanation of what happened, namely, the killing. I am in a position if Your Honour desires me to, to refer Your Honour to the transcript both of Your Honour's judgment and also of the Judgment of the High Court, Your Honour.

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10 HIS HONOUR: I do not need that, Mr. Howse, I am only too familiar with them, one at any rate.

MR. HOWSE: For all those reasons, Your Honour, I submit that it is admissible. The only other thing before I sit down, as to exercise of discretion in my submission the probative value of this is so great it necessarily has a prejudicial effect, of course it does, but it is not a situation in which the discretion should be exercised so as to exclude it, Your Honour. I do not think I can add anything to that.

20 HIS HONOUR: Do you want to say any more, Mr. Walker?

MR. WALKER: If Your Honour in fact finds that this does concern *res gestae*, then am I correct in assuming that Your Honour would consider the admissibility of this evidence only in the context of whether or not it goes to the relationship between the parties?

30 HIS HONOUR: Partly that and partly the other point Mr. Howse raised, as to whether it does not tend to rebut your client's account of how he came to ring up for the assistance.

MR. WALKER: Insofar as the timetable is concerned, Your Honour, I do not quibble, as I heard it, my learned friend's outline of the timetable, I think he stated that pretty accurately.

HIS HONOUR: When I say *res gestae*, I am not including the O'Leary principle in that at all, Mr. Walker. I do not think O'Leary's case was a *res gestae* case at all.

40 MR. WALKER: As I recall it, Your Honour, in O'Leary His Honour the Chief Justice said "It is evidence of facts and matters which form the constituent part or ingredients of the transaction itself or explain or make intelligible the course of conduct pursued".

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HIS HONOUR: Well, that is right. It went on the whole afternoon and night in O'Leary's case. It was not a res geste case in the classical way.

MR. WALKER: Not in the classical way, but all these expressions indicate that the judges were concerned about whether or not it fitted within the res geste principle.

HIS HONOUR: I have never regarded it as a res geste case.

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MR. WALKER: Well, Your Honour, they used the words - Ridge J. said "It forms part of the circumstances". Starke J. said, "It was not so closely connected as to form part of the ..."

HIS HONOUR: I do not think they meant by that that it was part of the act of shooting, as it were, or part of an act of stabbing or something like that.

MR. WALKER: I am inclined to agree with that, Your Honour. They use the words "res geste", but I think that they were looking at something a little broader. But they were nevertheless concerned with the intelligibility that could be put upon a chain of circumstances, and that still remains something that I am concerned about here.

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Insofar as McGregor's case was cited, Your Honour - firstly, of course, at p.349, where my learned friend was reading and skipped over the question in Davidson v. Quirk, one cannot when dealing with McGregor.

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HIS HONOUR: I do not think McGregor's case really comes ...

MR. WALKER: You cannot get away from the fact that this concerned - "with any person in person or by messenger, agent, post, telegraph, telephone or otherwise", and to that extent McGregor's case stands upon the definition of the section.

HIS HONOUR: McGregor's case is a very special case, it was dealing with a section which made of a purpose an essential ingredient as part of the offence charged.

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MR. WALKER: That is so, Your Honour, and I would therefore say that one cannot really draw much assistance from it.

One is therefore forced to fall back upon whether or not this statement can be said to go to the relationship between the parties. Now, of itself it cannot.

HIS HONOUR: Why not?

10 MR. WALKER: Because as the statement "Help, get me the police", it could relate to absolutely anything, it could relate - even assuming it was a woman making the phone call, it could relate to an attempt to get rid of the magpie which has been mentioned here as causing Mrs. Ratten so much concern and distress that very morning. It could be Mr. Ratten.

HIS HONOUR: Oh, but it was not a magpie that was found shot 3 minutes later when the police arrived.

20 MR. WALKER: No, Your Honour, but the statement itself "Help, get the police"

HIS HONOUR: I mean, we have got to use some common-sense in this

30 MR. WALKER: Well, Your Honour, I said "viewing it alone". Where the statement is said to go to a relationship it must have something in itself that goes to the relationship surely. One cannot simply extract a statement which means nothing except, "Get me the police" and then juxtapose it to something else and then put an opinion as to whether the sex of the person making the statement was male or female.

40 HIS HONOUR: Mr. Walker, supposing that there is evidence that my wife and I are the only two of us in the house, and that the night before or the same morning I told her I was going to leave her, and she was very upset, and then whilst only the two of us are there she makes a telephone call to the Kew police station, and they run round and they are round in the kitchen within about 3 minutes and she is lying on her back on the floor. Surely, it is open to a jury there to draw an inference and say, in those

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circumstances she was the one that called for the police and she asked them to come and that was because of the relationship existing between her husband and herself, it was not an amicable relationship between them. It is only to that extent, I mean.

MR. WALKER: I would agree with that, Your Honour, but the difficulty here, and this is what we are so concerned about, that there is no evidence that she made such a phone call.

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HIS HONOUR: I follow that, that is a different point, though.

MR. WALKER: It is very much wrapped up in it, Your Honour, because if one is going to say

HIS HONOUR: That is more a factual question rather than a question of admissibility, a question of law.

MR. WALKER: It is borderline, Your Honour.

HIS HONOUR: Oh, I do not know.

MR. WALKER: I would submit it goes to admissibility, sir, because - for this reason. You see if the statement itself consisted of words which removed that uncertainty, then it would not be so critical, but it becomes critical, because if one is going to say 'This statement goes to the relationship between the parties' and taking Your Honour's analogy, which of course is very directly concerned with the Crown case here, except that Your Honour said "And there is evidence that the wife made a phone call."

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HIS HONOUR: That is right.

MR. WALKER: Given that situation I could not quarrel with what Your Honour says, but it does depend upon it.

HIS HONOUR: Supposing my son was a policeman at the station and he answered the call, and he said "Oh yes, that was my mother's voice" you would be uphill then, would you not?

MR. WALKER: It would be doubtful whether that evidence would be admissible, identification of voice.

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HIS HONOUR: That is the first thing you ever prove when you are going to make a telephone call admissible from a witness, "Did you know the voice of the person?" "Yes, of course I did, been my best friend for 20 years or my worst enemy, of course I knew his voice." That is the first thing you prove.

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10 MR. WALKER: Yes, I think that would be admissible, Your Honour. But one must bear in mind in this case that the evidence of the constable -

HIS HONOUR: That is not this case, I agree with that, no.

MR. WALKER: One must bear in mind here further that the evidence of the constable later - and this is a question that would go to Your Honour's discretion of course - the evidence of the constable later...

HIS HONOUR: Yes.

20 MR. WALKER: It is the danger of misunderstanding that concerns us, Your Honour, the words themselves are taken by themselves uncertain and equivocal, and to admit this evidence on the opinion basis, where there is such a grave danger it could be wrong, removes from it the certainty that the examples Your Honour has cited to me would otherwise have. If in fact there had been someone else visiting the house who stood outside and saw through the window a woman making a phone call, one would be a little
30 less concerned about it.

HIS HONOUR: I understand that.

40 Mr. Lazarus and Mr. Walker who appear for the accused have challenged the admissibility of certain evidence contained in the depositions given by Miss Flowers, or a Mrs. Flowers who was a telephone operator at the Echuca Exchange. Mr. Walker who has argued the point very ably, has contended that there is no principle of evidence on which this evidence would be admissible. In fact he contends that any principle there is, such as res geste or the principle of the exclusion of hearsay evidence, tends to show that the evidence is inadmissible. Secondly he contends that even if the evidence is strictly

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admissible, having regard to its nature and the particular circumstances of the case, the prejudicial effect of it would be so great as compared with any probative value it might have, and indeed that it is of such an uncertain value, that the Court should in the exercise of its discretion exclude it. There is I think no doubt these days that there is a general power in the Court to exclude evidence which is otherwise strictly admissible in accordance with the rules of evidence.

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Mr. Howse for the Crown, however, has contended in substance that this evidence is admissible, I think on three possible bases. He firstly contends that it is part and parcel of an interconnected series of events which occurred over an exceedingly short period of time on the day in question, and that to exclude this portion of the evidence would tend to make the series of events unintelligible in the eyes of an intelligent jury, broadly speaking that the evidence is admissible along the lines of the High Court decision in R. v. O'Leary.

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Secondly, he submits that the evidence is admissible, if it is accepted by the jury, to rebut an account given by the accused to the interrogating detectives, as to how he came to make a phone call for the purpose of summoning assistance for his wife after the accident occurred. There is, according to the depositions, the evidence that the accused told the police that he had made a telephone call about this time, it was he who made the call, not his wife. The inference is that that call was made after this unfortunate shooting occurred, and that it was conduct on his part completely inconsistent with criminal conduct of the kind now charged against him by the Crown. Mr. Howse contends that if the jury accept the evidence that it was a woman who made the call, it was not the accused, then that evidence is highly relevant to rebut that aspect of the explanation given by the accused. Thirdly, he contended that the evidence was admissible in order to show the relations existing between the accused and his wife at the relevant time, and he relied upon the recent decision of the Full Court of Victoria in R. v. Wilson which was subsequently upheld by the High Court.

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There is no doubt that evidence which is capable of explaining the conduct of the accused as charged in the presentment is admissible for that purpose.

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10 Having considered the matter and weighed up the arguments one against the other my opinion is the evidence is admissible and it is admissible on any one or all of the three bases contended for by Mr. Howse. The only other problem therefore for me is whether I should exclude it in the exercise of discretion, on the basis that Mr. Walker has contended for. But having regard to the bases on which it is in my opinion relevant and admissible, I feel quite unable to say that it is so lacking in probative values compared with any prejudicial effect it may have, that it ought to be excluded. In my view if the jury is properly directed, and they must be assumed always to follow directions that are given to them, I think that it is quite impossible to say that the prejudicial effect in this case outweighs the probative value in the relevant sense for this purpose. In my opinion, therefore, the evidence objected to is admissible, it is relevant and admissible and should not be excluded.

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JURY RETURNED AT 3.38

ALL WITNESSES ORDERED OUT OF COURT

MR. HOWSE WAS HEARD TO OPEN HIS CASE TO THE JURY

30 JURY WARNED RE DISCUSSING CASE

COURT ADJOURNED AT 4.32 P.M. UNTIL TUESDAY 11th AUGUST AT 10.00 A.M.

COURT COMMENCED AT 10.00 A.M. ON TUESDAY 11th AUGUST 1970

MR. HOWSE CONTINUED TO OPEN HIS CASE

ERIC JOHN MONTGOMERY, sworn and examined

WITNESS TO MR. HOWSE: My full name is Eric John Montgomery. I am a First Constable of Police attached to the Highway Patrol at Shepparton.

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MR. HOWSE: Do you also perform duties as a police photographer? --- I do.

At half-past two on the afternoon of 7th May of this year did you go to a house at 59 Mitchell Street, Echuca and there take certain photographs? --- I did.

Will you have a look at the bundle of photographs I hand up to you, and in particular at photographs Nos. 2 and 8? --- Yes.

Did you take those two photographs? --- Yes, I did. 10

Does each of them accurately depict its subject matter? --- Yes, they are as I photographed them.

EXHIBIT EXHIBIT "A.2" Photograph

EXHIBIT EXHIBIT "A.8" Photograph

MR. HOWSE: Does No.2 show the deceased, Mrs.Ratten, lying on the kitchen floor? --- Yes.

And does No.8 show in the foreground - well, what is it, actually? --- That's a sponge, like a Wettex or Cleenex sponge, and a shotgun.

And the shotgun is lying on the floor of the den or study, is it? --- That's correct, yes. 20

MR. LAZARUS DID NOT WISH TO CROSS-EXAMINE
WITNESS WITHDREW - EXCUSED

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DAVID WILLIAM RICHARDSON sworn and examined

WITNESS TO MR. HOWSE: My full name is David William Richardson. I am a First Constable of Police attached to the photograph section of the Forensic Science Laboratory at Spring Street, Melbourne.

MR. HOWSE: At 20 past 7 on the night of Thursday 7th May of this year did you go to the Bendigo Hospital, arriving at that time and there take certain photographs? --- Yes, I did. 30

Would you look at the bundle of photographs handed to you, and at the hospital did you take photographs 1 and 4? --- I did.

What do they show? --- Photograph No. 1 shows the face of the deceased Ratten.

Four? --- Photograph No. 4 shows a wound to the left side of the deceased.

At 5 to 10 on the same night did you go to the premises at 59 Mitchell Street, Echuca and there take some photographs? --- Yes, I did.

10 And are they photographs Nos. 6 and 7? --- Yes, they were the two photographs I took at that time.

What do they show? --- Photograph No. 6 shows the - which was taken just inside the side door which leads into the kitchen, shows the kitchen in the premises.

And 7? --- And photograph No. 7 also shows a further view of the kitchen. This was taken around a little bit further from photograph No. 6.

20 At 5 to 5 on the morning of Friday 8th May of this year did you go back to the same premises at 59 Mitchell Street and there take two other photographs? --- Yes I did.

And are they photographs Nos. 12 and 13? --- Those are the two, yes.

What do they show? --- Photo No. 12 and 13 shows the man before the Court in a certain position.

That is the accused? --- Yes.

Are the other two men Senior Detective Coates with his back towards us? --- Yes.

30 And Detective Donohue? --- He is the one holding the book, yes.

At 11 o'clock on the morning of Friday 8th May did you again go to the same premises at 59 Mitchell Street and take four more photographs? --- Yes.

And are they photographs Nos. 5, 9, 10 and 11? --- They are.

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Examination

Well, does 5 show - that is obviously the front view of the house from the street, is it? --- It is, yes.

And No. 9? --- Photograph No. 9 shows a room in the house which was next to the kitchen. It shows a phone on a type of cupboard on the left hand side of the photograph, and the doorway on the right is the one that leads into the kitchen.

No.10? --- Photograph No. 10 shows a shed in the premises.

10

That is the garage, is it not? --- Well, it possibly could have been a garage, yes.

Photograph 11? --- Photograph No. 11 shows a close-up of some shelves which were found in the front of the boat which can be seen in photograph No.10.

And do all these photographs accurately depict their subject matter? --- Yes.

EXHIBIT

EXHIBIT "A. 1,4,5,6,7,
9, 10, 11,
12, 13."

Photographs

20

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: Mr. Richardson, it may be an inconsequential matter, but what you describe as the front of a canoe in photographs 10 and 11, is in fact the rear or back of the canoe, is it not? --- Well, as it is seen in photograph No.10 it is the only end that is shown, the furthest end - but I thought that would have been the front of the boat.

30

You have no photograph, of course, of the other end of the canoe? --- No.

Perhaps you could tell me this - in photograph 12 you have indicated it shows the accused in a certain position and photo 13 was obviously taken shortly afterwards, that is so, is it? --- Yes.

Have you any idea what, in terms of a second or fraction of a second, the time interval that

elapsed between the two photographs? --- Yes, well after I took photograph No.12 I told everyone in the room that I would like to take a second photo and then I had to wait for the flash to charge up, I'd say it would have been approximately 20 seconds.

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10 And before taking photograph 13 you asked I suppose everyone to resume the same positions as best they could did you? --- No, the only thing I said was that I would like to take a second photograph.

Transcript of
Evidence

It appears, and I think it is the fact is it not, that the position of the accused man has slightly altered in that interval? --- I'd say the only thing that has altered is possibly the angle of the gun.

Evidence
for the
Prosecution

David William
Richardson

Yes, well that is what has altered? --- Yes.

Cross-
Examination

20 At this time, which I think you have described as 4.55 a.m., the chalk mark which is shown on photograph 7 had been placed on the floor in the position shown on photograph 7 had it not? --- Yes, well photograph 7 was taken earlier.

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I appreciate that, yes. The chalk mark was still on the floor at 4.55 a.m. when you took photographs 12 and 13? --- That I can't remember.

Can you not see it in photograph 12 slightly, just past the chair? --- Yes, it's just on the edge of the table, yes, well it would have still been there.

30 Obviously you agree do you not it would have been visible to the accused man standing at the sink? --- Yes.

40 And in fact he directed Coates did he not to the position where his feet were approximately level with the feet shown in the chalk marks? --- Well from the position I was standing in, from the doorway that leads into the kitchen I couldn't actually see the chalk marks on the floor but he did move Detective Coates into position approximately three times.

Asked him to come forward on each occasion, he asked him to move did he not? --- Up closer, yes.

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Re-
Examination

And he would would he not - Coates did, did he not,
finish up pretty well where you had observed
the chalk marks? --- Yes.

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: Looking at photographs 12 and 13 and
comparing the two do you notice any difference
in the way the accused is holding the gun? ---
Yes, well obviously the thumb on the right hand
is not in the same position.

What about the index finger? Of the right hand?
--- It would appear from the photographs - on
photograph No. 12 it is on the trigger, photo-
graph No. 13 it looks as though it is on the
outside of the guard that goes round the
trigger.

10

WITNESS WITHDREW - EXCUSED

Brian Thomas
Hayes
Examination

BRIAN THOMAS HAYES sworn and examined

WITNESS TO MR. HOWSE: My full name is Brian Thomas
Hayes. I am a licensed surveyor employed by
the Department of Crown Lands & Survey.

20

MR. HOWSE: On Friday 15th May this year did you go
to premises at 59 Mitchell Street in Echuca? ---
I did.

And there did you make a survey of the dwelling house at that address and also the garage there? --- I did.

And as a result of that survey did you make a plan of survey in respect of those parts of the property? --- I did.

10 Do you produce the original plan of survey made by you and does that contain what it is entitled a floor plan of the house, laundry and garage?
--- I do.

Is that floor plan an accurate plan to the scale of 8' to 1"? --- It is.

Did you also down on the right hand side in the corner make a locality plan showing the house and garage on the block of land? --- I did.

Is that locality plan an accurate plan to the scale of 40' to 1"? --- It is.

EXHIBIT Exhibit 'B' Plan of survey.

20 HIS HONOUR: Looking at this plan as it is, with regard to the house ground plan, does Mitchell Street run along the bottom here? --- It does, Your Honour.

The same as is shown in the locality? --- The same relationship to the locality plan.

MR. LAZARUS DID NOT WISH TO CROSS-EXAMINE WITNESS
WITNESS WITHDREW - EXCUSED.

COLIN DAVID EDWARDS MOYSEY, sworn and examined

30 WITNESS TO MR. HOWSE: My full name is Colin David Edwards Moysey. I am a legally qualified medical practitioner conducting my practice now and in May of this year in Echuca.

MR. HOWSE: On 8th May, Thursday 7th May of this year did you go to a house at 59 Mitchell Street, Echuca? --- Yes, I did.

And what caused you go go there? --- At about 10 to 2 on that day I received a phone call from the police station.

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That was in the afternoon, was it? --- Yes.

And as a result of that phone call did you then go to the premises? --- I did.

What did you find when you got there? --- In the kitchen of the house I found Mrs. Ratten lying on the floor.

And was she lying on the floor in the position shown in photograph 2 of Exhibit "A"? --- Yes, that's the position that she was in.

How did it come about that you knew her? --- She was a patient of mine. I had been attending her in her antenatal treatment.

10

Over what period roughly had you known her? --- About 5 years.

And was she Beverley Joan Ratten? --- Yes.

And had resided at 59 Mitchell Street? --- Yes.

Do you know her age, by any chance? --- I can't remember offhand.

Approximately? --- 35.

And her occupation was that of housewife? --- Yes.

20

And is she the lady whose face you see in photograph No. 1 of Exhibit "A"? --- Yes, it is.

When had you last seen her prior to 7th May? --- On the 6th May.

That is the Wednesday? --- Yes.

And was that in the course of attending her for the expected child? --- Yes.

When was it due? --- It was due approximately a week later.

And what was the situation in relation to the child when you got to the house on the 7th May? --- There was no evidence that the child was still alive.

30

I do not think I asked you this, what was Mrs. Ratten's condition? --- She was dead.

Well, I take it you based that conclusion on some examination that you made of her? --- Yes.

Did you make a sufficient examination to come to any conclusion as to roughly how long she had been dead? --- No.

And when you got there did you ascertain for yourself what it was that had caused her death? --- I didn't examine the body any further than to ascertain that she was dead. I had been told when the police rang ...

10

You cannot tell us what you were told, only tell us what you observed for yourself? --- There was no evidence of the actual cause of death from my examination.

Well, did you disturb the body from its supine position on its back? --- No.

Was there any blood evident when you were there? --- There was a small amount of blood coming from beneath the body on the lefthand side.

20 Would you look again at photograph No. 2 of Exhibit "A"? Can you see what looks like a bloodstain up near the left armpit? --- That's the ...

Was it in that area that you saw it? --- That's where I saw the blood, yes.

I take it that when you saw her on the 6th everything about her was normal and healthy? --- Yes, it was.

So was the expected child? --- Yes.

30 Did you know the accused man Ratten at that stage? --- Yes.

Was he also a patient of yours? --- He was, yes.

Did you see him at all on that Thursday? --- I saw him on the Thursday, yes, at the police station.

Do you recall when you first saw him there? --- About 10 past 2, I would think; it was after I left the house.

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Did you notice anything about him? --- He was in a highly emotional state.

Did you do anything about it? --- I gave him a sedative.

Did you see him again that day? --- Yes, I saw him again three times on that day.

When was the last of those three times - that is the fourth occasion? --- At about 6.30.

That is that night, is it? --- Yes.

Talking about night and day, I do not think I asked you - you said 10 to 2, you mean in the afternoon, that is when you got the call that took you down to the place? --- Yes.

10

Well, the fourth and last time that you saw him was at about 6.30 p.m.? --- Yes.

What was he like then? --- He was in a much more settled state of mind than he was on the first occasion.

How would you describe his condition generally? --- His condition appeared consistent with what I would have expected it to be under the circumstances.

20

What about his fitness to be interviewed and things like that? --- I would have thought he was fit to be interviewed, perhaps not on the first occasion, but on the later occasions.

Occasions? --- Yes.

And that is by the police, of course? --- Yes.

Do you remember roughly the times of these - you told us the first one and the last one, roughly the times of the middle two? --- At about 20 past 3 again, and again at about half-past 4 p.m.

30

Cross-
Examination

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: Doctor, the deceased in fact was 31 years, was she not? --- Yes, I think that is correct.

Were you present with Dr. Jones later that morning,
on 8th May, when he went to the police station?
--- No.

Had you arranged for another doctor to see him?
--- I hadn't, no.

Doctor, tell me this, so far as the visit you made
to the police station was concerned - the first
visit, which I think you place at about 10 past
2, you went down there, did you not, on your
own initiative? --- I did.

And went down, did you not, to see if there was
anything you could do for the accused man, is
that right? --- That's correct.

You were in fact, were you not, on first name
terms with him? --- Yes.

And you were with him on that occasion, were you
not, for some 20 minutes? --- Yes.

And you would agree, I think, as you have described,
he was very upset? --- Yes.

And in a very highly emotional state? --- Yes.

So far as this condition of the accused man was
concerned on that occasion doctor, he was,
was he not, at times incoherent, not coherent?
--- Slightly.

He was, for instance, repeating himself over and
over? --- Yes.

Saying such things as "Help me, help me", things of
that description? --- Yes.

As you have indicated you had known him as a patient
and as a person, I suppose, for some time? ---
Yes.

And from your observation, I take it it was clear
to you, was it not, that his apparent emotional
state was a very genuine one? --- I thought it
was.

And he is a man, is he not, from your own observa-
tion of him, who could be described as normally
not subject to showing emotion? --- Not to my
knowledge.

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That outwardly normally he had a fairly calm unemotional exterior? --- Yes.

When you were there, he was, was he not, appeared to be very concerned about the children? --- Yes.

He wanted did he not to get his statement over and get back to the children? --- Yes, he did say that.

He was particularly concerned about the little girl Wendy? --- Yes. 10

I think you have indicated to the Prosecutor here that he was showing the sort of condition you would expect in the circumstances, someone in his position to show? --- Yes.

You would agree would you not that this type of experience as you understand it could normally lead to some sort of slight mental block as to what happened? --- Yes.

And bring about something in the nature of a traumatic shock to the person? --- Yes. 20

His left eye has no sight in it to your knowledge, is that correct?--- Yes, that is correct.

HIS HONOUR: Left eye?

MR. LAZARUS: Left eye, sir. (To witness) That has been the case for a long time to your own knowledge, is that right? --- Yes.

Since about the age of 13, since he was 13 years of age? --- Yes.

The result of that is it not that as far as the vision of the left eye is concerned it would be restricted - the vision of his eyes would be restricted to some 45 degrees, would you agree with that, his vision? --- Yes. 30

I mean assuming he is looking straight ahead? --- Yes.

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: I take it that you have been in general practice in Echuca? --- Yes.

Do you hold any qualifications in the field of psychiatry? --- No.

Have you made any special study of that subject?
--- Only to the extent that we meet with it in general practice.

10 What, as part of the normal medical course at the university? --- We have lectures in psychiatry.

It is for you to tell us. Is that what you are referring to or is it something more than that?
--- Well that is a set course during the medical course, but we continue our learning of the subject since that time in various lectures and reading.

How long roughly have you known the accused? ---
About 5 years.

20 Was your meeting with him on a social basis or purely a professional basis? --- Professional and social.

We do not want them all, but just what would be the type of social occasion? --- We both attended Rotary meetings every Tuesday night.

HIS HONOUR: What was that? --- We are both members of Rotary Club.

You were the family doctor were you to the Rattens?
--- Yes. Dr. Jones had also treated Mr. Ratten.

30 MR. HOWSE: I know you cannot give the exact number, but about how many times over the period of the 5 years would you have treated him professionally?
--- Perhaps half a dozen times.

WITNESS WITHDREW - EXCUSED

JENNIFER ANNE KEMP sworn and examined

WITNESS TO MR. HOWSE: My full name is Jennifer Anne Kemp. I reside at Frankston. I am engaged in domestic duties.

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Jennifer Anne
Kemp

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MR. HOWSE: Were you formerly the wife of Peter Charles Kemp? --- Yes.

Did you and he together with your children come to live in Echuca in 1964? --- Yes.

And there first of all did you live at an address in Barry Street, Echuca? --- Yes.

And after being there a short while did you find you had some new neighbours and did you meet them? --- Yes.

Were these Mr. and Mrs. Ratten and their family? --- Yes.

10

And that is the accused man and his wife Beverley? --- Yes.

Shortly after their arrival - you have told us that you met them - did something of a friendship develop between the families? --- Yes.

Was it on your part or your husband's part or both? --- Both.

Did your husband and the accused have any common interest which they proceeded to share? --- Yes.

20

And what was that? --- They were very keen on shooting.

And thereafter did they go shooting together? --- Yes.

Very often over the years? --- Very often.

And over that time did you see much of Mrs. Ratten? --- Yes.

Well, at some stage did they move from Barry Street to 59 Mitchell Street in Echuca? --- Yes.

And did you and your husband and family move from Echuca out to Barmah? --- Yes.

30

HIS HONOUR: How far is it from Echuca to Barmah? --- About 20 miles.

MR. HOWSE: Shortly prior to 1969 was there some break in the association between your husband

and the accused? --- There was a bit of a break, yes.

The accused had some studies and he went away for a while? --- Yes.

And then came back. And then on his return was the association between them taken up again? --- Yes.

Roughly when was that, do you recall, Mrs. Kemp? --- Just prior to Christmas '68.

10 Well, just prior to last Christmas 12 months? --- Yes.

What were the respective family situations at that point of time? In other words, what did you people have and what did the Rattens have? --- What do you mean ...?

Children? --- Three children each.

And over what age range? --- At that period?

Yes? Or now if that is easier for you? --- 8, 6 and 4.

20 This is now, is it? --- Yes, my children.

And theirs? --- Theirs would be 8, 7 and 5.

And the 5-year-old would be Wendy? --- That's right.

As at the time when the accused took up his friendship again - if that is the way of putting it, with your husband, what was your husband's occupation? --- He was a commercial salesman.

And was he dealing in any particular type of commodity? --- Yes, camping and fishing equipment.

30 And did that have any effect on his home life, as to the amount of time he spent at home and so on? --- Not really, he was away as much before he got this job in the evenings after work as he was being away with his work when he got the job.

Well, his occupation for some time, then, had required him to be away from home, had it? --- No, but he just used to be down at the hotel a

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lot prior to this, before he had this particular job, or out shooting or something with friends. So to the actual time he spent at home the job made no difference at all.

Did the job that he had at the time we are speaking about, shortly before last Christmas 12 months onwards, did that entail him in being away from home overnight? --- Yes.

For what periods roughly? --- About 3 or 4 days every two weeks. For 3 or 4 days of every two weeks out of the four, if you follow. 2 weeks of 4 he would be away. 10

2 weeks of the 4 he would be away? --- Yes. He'd be away from Monday till about Thursday two weeks out of every four.

You have told us that the accused renewed or revived his friendship with your husband at about this time. Did that involve the accused visiting your home? --- Yes.

And was there any particular time of the year that bore some relation to his visits? When they either increased or otherwise? --- During the duck season they increased. 20

When was that? --- February, March, depending on the length of the particular season for the year.

And what year is this that you are talking about? --- Well, both this last season and the one before.

So that the frequency of the accused's visits to your home increased in the duck seasons of both years, but in event in February of 1969? --- Yes. 30

Up to that point of time how had your own marriage situation been? --- Not very good.

You have told us that the frequency of the accused's visits increased, did that have any effect so far as you yourself were concerned? Did it bring about anything? --- Not really - in what respect?

Well, did anything happen between you? --- Yes. 40

I am not asking for all the detail of it, Mrs. Kemp, but can you tell us in your own words how it started and what happened? --- I enjoyed his company. My husband had agreed for him to teach me to learn to drive a car, so I was having driving lessons.

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From whom? --- Mr. Ratten. In the course of driving lessons we went out a few times and an association developed from that.

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10 Can you tell us in your own words what happened?
--- That we had a relationship together.

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Of what nature? --- I committed adultery.

With whom? --- Mr. Ratten.

Jennifer Anne
Kemp

The accused? --- Yes.

Examination

And roughly when did this first occur? --- The end of March or the beginning of April of 1969.

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Did this come about as the result of advances by either party in particular? --- No, I think it would have been mutual.

20 Did that happen again? --- Yes.

And roughly how often and over what period? --- I'm afraid I couldn't tell you how often.

Roughly? --- I wouldn't know, but the period of time would have been until May this year.

HIS HONOUR: Well did it happen on many occasions?
--- On quite a few, yes.

Between the time when your association first began?
--- Yes.

Until May of this year? --- Yes.

30 MR. HOWSE: Can you specify the frequency with relation to any periods of time, weeks? --- No, I couldn't specify the frequency.

HIS HONOUR: Perhaps you could tell us in a general way where this occurred? Was it at your home, in a car or where? --- At my home and when we were out together.

In the car? --- In the car.

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MR. HOWSE: Did it happen at any particular times of the day or night? --- No particular time.

Did it happen during the day? --- Yes.

What about night? --- Evenings.

Evenings? Were there any occasions on week days during the day? --- Yes.

Was there ever any discussion between you and the accused about the future? --- We did discuss the possibility of living together.

Was there anything said about divorce? --- As far as I knew he would never obtain a divorce from his wife. 10

HIS HONOUR: What is that? --- As far as I knew his wife would have never given him a divorce. Mr. Ratten's wife would never have divorced him.

How do you know? --- Well as far as I knew. My husband always said he wouldn't divorce me.

He what? --- He always told me that he wouldn't divorce me.

He would not? --- That he would not. 20

MR. HOWSE: Did the accused ever say anything to you about the subject of divorce in relation to his wife? --- That she would never give him one.

He said that did he? --- Yes.

Did he say that just the once or on more than one occasion? --- I can't remember I'm afraid, just the once I think.

Are you able to tell us roughly when it was he said that? --- About last Christmas.

Christmas '69? --- Yes. 30

You have told us about the relationship between the two of you. Was there anything that might be described as a progression in this relationship between you? --- Yes.

And what was the nature of that? --- Well I definitely wanted to leave home, break up my marriage and leave.

Did this result in any discussion with the accused?

--- Yes, he knew of my feelings.

HIS HONOUR: He what? --- He knew of my feelings regarding my own marriage.

MR. HOWSE: How did he know? --- I'd told him.

10 What was the position in relation to your relationship with him as at about June or July of last year, 1969? --- Well I suppose I felt more intense about things by this year.

Pardon? --- I felt - I was more involved by this time this year than I was last year.

No, I am asking you about June or July of last year, what was the situation between the two of you then? --- My husband and myself?

20 No, no, the accused and yourself? --- We just talked about may be one day in the future we might be able to live together.

You spoke about intensity yourself before, was there any change in that after June or July of last year? --- Well I wanted to leave home.

But from what you could tell, based upon what he had told you, what was the accused's position in this regard? --- I believe -

HIS HONOUR: Only from what you were told? --- Yes, well I believed that his feelings coincided with mine.

30 You wanted to leave home? --- I wanted to leave - break up my marriage and leave home.

And are you saying that you understood from him that he would like to do the same? --- I felt that he - no, but I felt that his emotion for me was the same as mine was for him.

MR. HOWSE: Did your husband do anything about this as far as you were concerned, say as at Christmas 1969? --- We had a few arguments. He --

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I am not asking you to say what he said to you, but as a result of anything he said to you did you speak with the accused? --- At about April this year, yes, March or April I think.

And what did you tell the accused? --- My husband asked me to pass on to him that he considered he was visiting our house too frequently and that he was giving me a bad name in the district in so doing, and not to call out as regularly.

10

What was the result of that? --- Mr. Ratten didn't call out as regularly.

Did you continue to see him? --- Yes.

As at February or March of this year had this relationship between the accused and yourself changed in any way as regards its intensity? --- Well, I certainly felt more intense.

Perhaps you might explain what you mean by "intense", Mrs. Kemp? --- Well, because of what I felt for Mr. Ratten I found that my marriage was extremely distasteful to me and I wanted to be free of it at all costs.

20

And did you communicate any of this to the accused? --- I believe he - yes, I spoke of it to him.

What did you tell him? --- I told him I wanted to leave my husband, and that I hoped to gain custody of my children.

And what did the accused have to say to this? If anything? --- He asked me on a couple of occasions to stay with my husband.

30

For any particular period or what? --- Until after his wife had had their fourth child.

Did he say anything about the situation to apply after that event happened? This is as at February and March of this year when you are talking about it? --- I believed that after .. I'm not sure ...

No, I am asking you to tell us what he told you, Mrs. Kemp.

MR. LAZARUS: I thought my learned friend had indicated the period as May originally in regard to these particular matters, sir.

HIS HONOUR: When was this kind of discussion going on? What part of this year? --- Mainly from April/May - it would have been March/April/May.

You were telling him that you wanted to leave your Husband? --- Yes.

10 And he was saying to you, "Stay there until after my fourth baby is born", is that it? --- Yes.

That is, in effect, what ..? --- Yes.

MR. HOWSE: Did he say anything about what was to happen then? --- I believed that we would be going away together.

20 Is this what he told you? --- Well, nothing was definitely ever said. He said he'd like to go away with me, but he never definitely said he would, not to dates or actual plans, nothing was - it was just left until after the baby was born.

Well, you made mention about the custody of your children. Did there occur any discussion between the accused and you on that topic? --- He knew I was going to claim custody of my children if I ever left my husband, and if he left his wife she would naturally have had custody of his children.

30 Did he ever tell you about doing anything himself in relation to the custody of your children? --- In what...?

In relation to legal advice? --- He did obtain legal advice for me.

40 What I want you to tell the jury, if you would, is what he told you about this, what did he tell you he did? --- He told me he had seen his solicitor and made some enquiries on my behalf. He told me that legally I had a very good chance of being granted custody of my children, even though I had committed the adultery. That I would never be able to obtain maintenance for myself from my husband if I left him, that

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I would be able to put in an order for maintenance for my children, and that financially I was entitled to half our home, which was in joint names.

Do you recollect approximately when it was that he told you this? --- I'm not sure now.

Are you able to give us the month? --- I'm not even sure of the month.

HIS HONOUR: Was it this year or last year? --- It would have been this year.

10

Some time this year? --- Yes.

MR. HOWSE: Was anything further done in connection with legal advice about such matters as divorce and the like? --- Yes, we visited a solicitor...

HIS HONOUR: Who did? --- Mr. Ratten and myself.

When was this? --- The Tuesday before the accident.

That would be the 5th - the Tuesday before? --- Yes.

MR. HOWSE: 5th May of this year? --- Yes.

HIS HONOUR: That is you and Mr. Ratten? --- Yes.

A solicitor in ...? --- In Shepparton.

20

MR. HOWSE: Do you recall who it was? --- I can't recall the name of the actual solicitor we saw, but I was able to point out - I know where the building was.

And you say that you and the accused saw this solicitor in Shepparton on 5th May. Can you tell us what the two of you found out from him? --- Only much the same that he had already told me on a previous occasion. We found out that we would not be entitled to a divorce on the grounds of separation because our respective partners could always turn round and say they never agreed to the separation in the first place. I was told that ...

30

This is in the presence of the accused, is it? --- Yes. That if I took my children, until I

obtained a custody order my husband was equally entitled just to come and take them back from me.

Was anything said to you about either of you getting a divorce yourself? --- No, because my husband always said he would never divorce me at this time, and as far as I knew his wife would never divorce Mr. Ratten.

10 Perhaps we are at cross purposes. Were you told anything on this occasion about your own rights, if any, to get a divorce, get a divorce from your respective spouses? --- Well we asked about the grounds of separation, we were told it would be impossible. If we went away together it would still be impossible - you know for so many years you have to get a divorce, because our respective wives and husbands could turn round and say they never agreed to us separating.

Did you -

20 HIS HONOUR: Are you sure you were told that? --- Yes, it was implied that if we separated - if I left my husband -

I was just thinking I must have done an awful lot of wrong divorces? --- Well this is what I gathered anyway, that if I left my husband after the three - is it three years - that if I went for a divorce there was a good chance that I wouldn't get one because my husband could stand up and say he never agreed to the separation.

30

I was wondering whether you were getting mixed up between separation and desertion. See separation is after five years, it does not matter whether you agree or you do not, if you live separately. But desertion requires two years and if there is no agreement to separate and no desertion - are you sure you are not getting mixed up with that? --- I don't know, but that was the impression I gained that it would be impossible in Australia to obtain a divorce unless my husband was agreeable.

40

MR. HOWSE: Was this based upon what the solicitor told you in the presence of the accused? --- Yes.

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Subsequently did you return to Echuca that day?
--- Yes.

Did you go with the accused? --- Back to Echuca,
yes.

How did you travel? --- In his car.

Was the topic of the solicitor's advice discussed
in the car? --- Yes.

On that night, that is Tuesday 5th May, did you see
and have some discussion with your husband? ---
Yes.

10

Was he actually sleeping at home at the time? ---
He was away on a fishing holiday, camped in the
Barmah Forest.

This is the area around about where you were living
is it? --- That's correct.

Did he come back to the house that night and did
you then have a discussion with him? --- Yes.

And following upon that discussion did you have a
conversation with the accused? --- Yes.

And what did you tell the accused? --- The proposi-
tions my husband had put to me.

20

Can you tell us what you told the accused? --- I
told him that my husband had agreed for us to
separate and he had given me permission to put
our house on the market, that he had said I
could have custody of the children, I could have
the furniture, the utility and my half of any
moneys in joint account.

Did you tell the accused anything in relation to
maintenance? --- Well, if I had custody he
would have had to pay maintenance for my children.

30

You did not get my question. Did you tell the
accused anything on the subject of maintenance
during this discussion? --- Not that I remember.

Was there anything said in relation to what should
happen as a result of you receiving half the
sale proceeds - half the price of the house?

---Well I naturally wanted to receive as much money as I could out of my marriage, I had put a fair bit of money into the marriage over the years.

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Did you say anything to the accused on this particular aspect? The relationship of maintenance to you getting a half share of the proceeds of sale of the house? --- I am sorry, but I still don't quite follow your question.

10 MR. HOWSE: In your conversation with -

HIS HONOUR: Was the house in the joint names of your husband and yourself? --- Yes.

Did you tell the accused, Mr. Ratten? --- Yes.

Did you tell him about what was to happen to the proceeds of the house if it were sold? --- That we had half each.

You and your husband? --- Yes.

You told that to the accused? --- Yes.

20 Did you tell the accused anything about your husband paying you maintenance? --- No, he would never pay maintenance for me myself.

That is what I am talking about? --- No.

Did you say anything to the accused? --- I am not sure, I might have done, probably, yes, probably.

What? --- I probably told him that my husband had said he would never pay me maintenance.

You would get half the proceeds of the house of course? --- Yes.

30 MR. HOWSE: By the way I should have asked you this, was this a telephone conversation or face to face or what? --- It was a telephone conversation and he drove out and we discussed it further.

That is on the Tuesday night? --- Yes.

Whereabouts, at your home? --- At my home.

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What did the accused have to say to all this? ---
He wasn't very happy about it.

Did he say why? --- Because he was afraid his wife
might realise what was between us if the house
went on the market and I left my husband.

Did he give any other reasons? --- He just didn't
want her to know anything about our relationship
until after the baby was born.

Was there anything said about income tax? --- Not
on this occasion.

Was there some occasion on which it was mentioned?
--- He mentioned it to my husband.

When was this? --- I wouldn't know any date, but a
lot of topics were discussed, he knew whenever
we got a loan from the bank.

On the night of Tuesday 5th May was there anything
said between you and the accused about the
subject of income tax? --- No.

Was there anything said about ready cash? --- Not
on that night, no.

Well, was there anything said between you about
ready cash on any other occasion? --- With
regards to my leaving my husband, I didn't have
much ready cash of my own to support myself
until I could get maintenance for the children,
or until the house was sold. I needed the
house really and truly to be sold so I could
support myself.

Was there anything said about ready cash in relation
to his own position? --- He didn't have a
terrific amount, I don't think, but he wasn't
scraping either.

Well, did he say anything to you about this during
this conversation on 5th May? --- No.

Did he make any reference to his house or business?
--- Not on the night of 5th May.

Did he on any other occasion to you? --- He had
said if we went away together he would have to

10

20

30

give at least 3 months' notice to his partners because it was in his contract, before he could wind up his business.

Was anything said about supporting two families?
 --- Not on the night of 5th May.

Was it said any other time, between you and the accused? --- Yes.

When? --- A couple of months prior to this.

10 And can you tell us what he said to you? --- That if we went away together he would first have to wind up his business and sell his house, because without the proceeds from those two things he wouldn't have money to support two families, and we were discussing the reason why he would not tell his wife until after the baby was born, he didn't want to cause her any upset by putting the house on the market or anything.

20 Going back to the discussion on 5th May, you have told us that the accused said he wasn't too happy in the light of what you had told him. Did you have any further conversation about selling your own house? --- I asked his opinion on it and he asked me to give him a couple of days to think it over.

Was anything said about reasons for the sale of your own house? --- He felt that if my house was put on the market his wife would realise the relationship between us.

30 Did you yourself express any reason as to why your own house should or should not be sold? --- I wanted to put it on the market while my husband had given the permission, because I felt the next time I saw him he could have reversed his attitude altogether.

Was anything said about that by you to the accused on this occasion? --- Yes.

What did you tell him - that? --- I told him that.

40 On what note did you part on that night? What was the situation between you? --- That he would think over the situation and let me know what the best thing would be for me to do.

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When did you next hear from him? --- On the
Wednesday.

HIS HONOUR: What happened? Did he come and see
you or ring you up or what? --- I don't know
whether he rang me up or I rang him up and we
met in the afternoon.

After a phone discussion? --- Yes.

And where did you meet? --- Just outside Barmah.

MR. HOWSE: And what was said on that occasion?

HIS HONOUR: Just before you go to that - did you
walk there or drive there? --- I walked there
on this occasion. 10

And he met you in his car? --- With his car, yes.

MR. HOWSE: What happened? --- We went for a drive
and I said I very strongly felt that the house
ought to go on the market, and I told him I
wanted to go and start making arrangements with
different estate agents, because it could take
a fair while for the place to sell, anyway.

Did he have anything to say to this? --- I think
it was agreed that I should go ahead then and
put the place on the market. 20

And did anything happen between you? --- Yes.

What? --- Intercourse took place.

Was there any talk about you leaving home? --- Not
on that afternoon.

Was there any at all on that day? --- Yes, I rang
up some friends in Nathalia and asked if I
could stay with them...

I should have prefaced that with this question -
was there any talk between you and the accused? 30

HIS HONOUR: Before you separated on that day, was
there any discussion between you as to?
--- No, not of leaving then.

MR. HOWSE: Well, was there any discussion between
you at all that day? About either you leaving

home or him leaving home? --- Yes, I told him I'd made arrangements to go and stay with friends in Nathalia.

HIS HONOUR: This was on this afternoon when you had met? --- No, I think it was - I'm not sure now whether I rang these friends up on the Tuesday night or whether it was the Wednesday night. It could have been the Wednesday night, and asked them if ...

10 Well, you cannot tell us what you said to your friends. --- I asked if I could stay with them while the house was on the market.

Did you have any discussion with Mr. Ratten about this? --- Yes, I told him about this, but I'm not sure when it was.

MR. HOWSE: What did he say to that? --- He pointed out that I would be much better off staying at the house rather than putting someone out by living with them until the house was sold.

20 Was there anything else said on the occasion of this discussion on the Wednesday? Wednesday, 6th May? --- Not to my recollection.

Anything said in relation to Mrs. Ratten? --- No.

I suggested that if he was going to leave and go away with me that she ought to be told.

HIS HONOUR: You told Mr. Ratten that if he was going to go away with you his wife ought to be told? --- Yes.

30 What did he say about that? --- That he didn't want her to be upset until after the baby was born.

MR. HOWSE: Was anything else said about that? --- I suggested that he tell her but not the reasons, just sort of said that after she'd had the baby that he'd be going away and not give any - not tell her about the relationship between us.

Was anything else said on that topic during this discussion by either you or the accused? --- He said he might bring it up that night if the opportunity arose.

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Pardon, I am sorry? --- He said he might bring the matter up with his wife that night if the opportunity arose.

Was any reference made during that discussion to the sex of the forthcoming baby? --- I strongly felt that his wife -

We are bound by rules of evidence, you can only tell us what was said. It may sound artificial to you but that is all you can do. Can you tell us what was said please? --- I don't think anything else was actually said. 10

Perhaps I can direct your mind to it again. Was there anything said during this discussion on the Wednesday about the sex of the forthcoming child?

HIS HONOUR: Between you and Mr. Ratten? --- I don't think so.

MR. HOWSE: You have told us about seeing the accused out in the forest at Barmah on the Wednesday, did you see him - I am sorry, did you communicate with him again on that day? --- There was a phone call that evening I believe. 20

(sic) Was this from the accused? --- No. I can't remember now whether I rang her he (sic) rang that evening.

HIS HONOUR: What you are saying is "That evening we spoke on the phone"? --- Correct.

MR. HOWSE: What was said? --- Nothing.

Was there any reference made to Mrs. Ratten? --- Not that I recollect.

Was there anything said about the accused's plans for the future? --- No, not that I recollect. 30

When did you next hear from him? --- I rang him the following morning.

HIS HONOUR: That is Thursday the 7th? --- Yes.

You rang him did you? --- Yes.

What happened? --- I told him - it must have been the Wednesday night that I rang friends, I told him that I was moving out.

Are you talking about the Thursday morning or the Wednesday night? --- The Thursday morning phone call I told him I was going to pack up and move out that afternoon and leave the house, put it on the market.

And move out that afternoon? --- Yes.

And put the house on the market? --- Yes.

MR. HOWSE: What did he say? --- He said he would come out and help me pack.

10 What happened? --- He came out.

HIS HONOUR: He drove out did he? --- Yes.

About what time would this be? --- About nine in the morning.

MR. HOWSE: What happened when he got out to your place? --- He talked me into staying.

HIS HONOUR: He what? --- Talked me into staying at the house.

MR. HOWSE: Was there anything else said? --- Yes.

20 Can you tell us what was said and by whom? --- I remarked that he looked tired and asked whether he'd said anything to his wife. And he said that he had told her that he would leave her after the baby was born but had given no reasons.

HIS HONOUR: Did he say anything else? --- That she was upset.

30 MR. HOWSE: Did he say anything about how she demonstrated her upset? --- That she had cried, and that she had suggested that may be he would be better off, before he made any sort of decisions, having a trip away somewhere.

HIS HONOUR: She said that? --- She had suggested to him, yes.

That is what he told you his wife had said? --- Yes.

MR. HOWSE: Did he say anything about how long she had cried? --- That she had been upset - she was still upset that morning.

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Did he say anything about their relationship that night? Where they slept and so on? --- He had slept out in the lounge room.

Where had she slept, according to what he told you that is? --- In the bedroom.

Did you say anything to the accused when he told you this, about your own plans? --- No, he talked me into staying with my husband, or staying at the house. He said, rather than moving out and putting other people out, having to put up you know four extra people.

10

Apart from your intentions in relation to accommodation was anything said about your own home? --- No.

Was there any discussion on this occasion about the future between the two of you, what was to happen? --- The only thing he said, that if I found life extremely difficult with my husband he would prefer if it I went to him and he would put me in a motel until he could find me a flat somewhere.

20

Was there any discussion about whether or not you should continue with your plans to form some permanent relationship? --- It was left that after the baby was born and his wife was settled down again then we would go away together.

How long was he at your place on the Thursday 7th May? --- About an hour and a half.

I think you said he got there about nine and he left about 10.30 did he? --- That's right, between 10.30 and 11, I wouldn't know, it was shortly before the library bus came anyway.

30

Did he then return in the direction of Echuca? --- Yes.

And how was he travelling? --- As usual - what, by car. What the speed?

No, no, was he travelling by car? --- By car.

Did he say anything to you before finally parting from you that day? --- No, I said I would give him a ring that afternoon when I got back from

putting the house on the market, to let him know how I had gone.

HIS HONOUR: Well you did not tell us anything about that? --- This was just prior to him leaving on the Thursday morning. I said that I was going to put the house on the market.

You told him that? --- Yes.

Did you tell him when you were going to do it? --- Yes.

10 What did you say to him? --- On the Thursday afternoon I had a lift in. I had been able to arrange a lift into Nathalia with a girl friend and I intended to put the house on the market in Nathalia on the Thursday.

That is the same afternoon? --- Yes.

20 You told that to Mr. Ratten, you told him you had put the house on the market that afternoon? --- Yes. And I told him I would give him a ring when I returned back to Barmah to let him know how I had gone about it.

You would ring and let him know what? --- When I return to Barmah - I told him I would give him a phone when I returned to Barmah that afternoon, to let him know, you know, how I had got on, who I had put it on with and so forth.

MR. HOWSE: Did he say anything to you as he left? --- Just "See you later" or "Goodbye".

30 Did he say anything to indicate any reason for going? --- He had his daughter to pick up from kindergarten later that morning.

What time? --- 12 o'clock I think.

What did you do that afternoon, if anything? --- I went to Nathalia.

Whom did you see there? --- I went to Dalgety's and put the house on the market at Dalgety's.

Did you there see a Mr. Styles? --- Yes.

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One thing I omitted to put to you, was there ever any mention made of a de facto relationship? --- Yes, if we went away together we would live de facto.

Can you recall roughly when that was first mentioned and tell us what was said? --- Well because we both - as far as I knew neither of our partners would give us a divorce it was the only relationship there was if we lived together.

Can you tell us roughly when this was first mentioned between you, you and the accused? --- About going away together? 10

And living de facto? --- The first time I suppose would have been about a year previous. We talked about what it would be like to live together.

HIS HONOUR: About the middle of '69? --- Yes.

MR. HOWSE: Was the fact that you would have to live de facto discussed again? -

MR. LAZARUS: I do not think the fact that they had to live de facto was ever discussed, sir. I think the witness' evidence was they had discussed what it would be like to live together. 20

HIS HONOUR: Live together about June of '69? --- Yes.

Was there anything said about living together in a de facto relationship at that time? When you were discussing living together? --- But surely if neither of us were divorced it would be -

I was asking you was anything said between you? --- I don't think so. 30

Well that is the question Mr. Howse was asking you. You do not think anything was said between you about the relationship being a de facto one? --- No, not that early, it was mentioned earlier this year.

MR. HOWSE: Could you tell us what was said? --- I think Mr. Ratten was a bit concerned about what my parents would have to say.

Well, what was said, that is what I am asking you to tell the Court, if you can? --- I can't remember the exact words.

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Well, the substance of it? --- That if we went away together we would live de facto, and that's about all.

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There is a matter that I desire to discuss in the absence of the jury, Your Honour.

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10 MR. LAZARUS: Your Honour, before my friend makes the application he envisaged, sir, I was wondering if it is necessary for the witness to stay in Court.

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HIS HONOUR: If what?

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MR. LAZARUS: I would ask that the witness leave the Court, sir, during the application.

HIS HONOUR: Yes, well, I think perhaps that is advisable.

WITNESS STOOD DOWN AND LEFT THE COURT

20 MR. HOWSE: Your Honour, my application at this stage is that the witness be shown a statement which it is alleged that she made to the police for the purpose of refreshing her memory, as there are several topics that I have asked her about and in relation to which I have certain instructions, and I would desire then, that having been done, that I then put these matters to her again to see if her memory is refreshed. This is a course that I have followed in this
30 sort of situation before.

Submission by
Counsel for
Prosecution

HIS HONOUR: That is an unusual kind of thing, is it not? You are really saying, "May I please treat her as an adverse witness, but I do not want to put it in that way?" I do not see anything adverse about this witness, unless she has been making statements inconsistent with some

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earlier statement. I do not know whether she has or not. Has she? Or is it just that she cannot remember something?

MR. HOWSE: Well, I do not know which it is, Your Honour. My instructions are that she has said something that is inconsistent with a previous statement on the basis of the document that I have here.

HIS HONOUR: Is it in the depositions?

MR. HOWSE: No Your Honour, it is not in the depositions. I am content to hand it up to Your Honour.

10

HIS HONOUR: What is the inconsistency?

MR. HOWSE: Your Honour, the first one relates to her evidence about what happened - or what was said during the conversation on the Tuesday night, 5th May, and according to my instructions - does Your Honour desire me to hand this up?

HIS HONOUR: Yes, perhaps you might.

DOCUMENT HANDED TO HIS HONOUR.

20

HIS HONOUR: You are talking about the Tuesday night?

MR. HOWSE: Yes, Your Honour, there is a paragraph - "I rang Leith Tuesday night and told him of what Peter had told me. Peter had gone back into the bush and Leith came out and saw me. Leith and I discussed what Peter had said to me earlier. Leith had to pay a lot of money to the income tax. He had money tied up in his house and business and he didn't have much ready cash, not enough to support two families." Now, I have quite plainly put that to the witness, Your Honour, and received so far a denial that income tax was mentioned during this discussion.

30

HIS HONOUR: I do not know whether it was a denial, I think she rather gave the impression she could not recollect anything about income tax, did she not?

MR. HOWSE: Well, she might have, Your Honour. I was on my feet, I did not note her answer.

40

HIS HONOUR: That is the impression I got. I do not know that there is much in that though is there? I have a note here that in the end she did say that "Some time earlier he'd told me he'd have to wind up his business and sell the house, otherwise not have enough to keep two families".

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10 MR. HOWSE: Yes, that is true, Your Honour, but the way in which I seek to put this is that it is part of what might be called the building up, as it were, of the situation between the two parties that led to what happened on the following day. There are several other matters, Your Honour.

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HIS HONOUR: I do not know how you can legitimately follow this procedure though. This is not her document - I mean it is a statement she signed, no doubt, but it is a statement that was prepared by the police, I suppose.

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20 MR. HOWSE: Yes.

HIS HONOUR: Well, surely she cannot refresh her memory from that, can she? How do you go about that? I could understand it if you could satisfy me she was a hostile witness or an adverse witness and then you could cross-examine her about it. But short of that I do not know.

30 MR. HOWSE: It may be, Your Honour, that I would have to ask her or prove otherwise that she had read it before signing it, Your Honour. But in R. v. Neal, Regos and Morgan, 1947 A.L.R. in the current notes at p.616, Dixon J., as he then was, I think, permitted this to be done, Your Honour. It is only shortly reported in a current note. I have sent for it, Your Honour, I think the report is here. And this is a procedure that I have followed on a number of occasions, and if I recall correctly, in the Supreme Court, I have certainly done it in the County Court. I was trying to recall the last occasion when I did it.
40 I think it was up here, Your Honour, before McInerney J. in March of this year.

HIS HONOUR: Was the accused represented?

MR. HOWSE: Yes, the accused was represented.
The note appears at p.616 of the 1947 volume of

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the Argus Law Reports. It is quite short, I will read it all, Your Honour. It is Note No. 4 under the heading "Evidence .. Adverse Witness. Use of previous statement and leading questions thereon to revive own witness' memory: At the trial of persons accused of an indictable offence any passages to the witness nor to let the witness read any passage aloud".

HIS HONOUR: Well I think that was treating him as an adverse witness.

10

MR. HOWSE: Your Honour, the interpretation sometimes put on it is that it is an intermediate stage.

HIS HONOUR: I do not know about an intermediate stage.

MR. HOWSE: I have certainly done it before His Honour Nelson J. when he was then His Honour Judge Nelson.

HIS HONOUR: No, I do not think I would follow that practice, Mr. Howse.

20

MR. HOWSE: If Your Honour was not prepared to do that then I would make an application on the basis of the material that I have before me that the witness be ruled adverse.

HIS HONOUR: On what basis.

MR. HOWSE: On the basis that she has made a prior inconsistent statement, Your Honour.

HIS HONOUR: In what respect?

MR. HOWSE: In respect to the matters that I have already mentioned.

30

HIS HONOUR: The only one I have seen is this one about - on the Tuesday night on the telephone?--

MR. HOWSE: Yes, Your Honour.

HIS HONOUR: "I discussed what Peter had said to me earlier, Leith had to pay a lot of money to the income tax, he had money tied up with his house and his business and he did not have much ready cash, not enough to support two families."

That is one. Now what did she say about that here?

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10 MR. HOWSE: My recollection, Your Honour, and it is subject to correction on the first part, that she said there was no reference to income tax. Your Honour is of the view that she was not able to remember. My recollection as to the others is that she said there was not any discussion on this occasion about money tied up in his house and business or about his house and business at any rate. There was not anything said about not having much ready cash and nothing said about -

HIS HONOUR: Did she not say that she did not have much ready cash? She said she did not. She did say something about him not having too much and that he wound up his business and so on.

20 MR. HOWSE: Yes. And nothing is said about enough to support two families. At the end of the paragraph, Your Honour, the sentence, "Leith said if I went he wanted to come with me, he had made up his mind" that covers it.

HIS HONOUR: Well she has not denied that that was said. I do not recollect her saying it was said, but she has not denied it.

MR. HOWSE: No, Your Honour, but I attempted to get it from her. I forget the precise questions I put, Your Honour.

HIS HONOUR: Yes, so do I, I know.

30 MR. HOWSE: But short of putting leading questions to her now, Your Honour -

HIS HONOUR: Yes, of course, I quite agree with that. Then of course you are often in that difficulty when you are trying to lead evidence out of your own witness, you try and exhaust their memories as much as you can and even in all good faith very often a witness cannot - lets you down, you cannot - he cannot remember it and says "No, I do not think there is anything else."

40 MR. HOWSE: That is true enough, Your Honour, but bearing in mind the nature of the particular passages, my submission is the proper inference

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to be drawn is that this proceeds from hostility and adverseness. The next passage is in the next paragraph. There is a passage "He rang me Wednesday night and told me that he was going home to tell Bev. He was going to try and bring up the subject that he was going to definitely leave her. He said that he loved me very much, that he missed me and wanted to be with me." Without being able to recall the precise questions that I asked my submission is that she would not say that those things happened or were said. She did say at some stage, as my learned friend Mr. Walker points out -

10

HIS HONOUR: She said that during the afternoon before they left, when they had the Wednesday afternoon meeting, that he told her that he might bring it up that night if the opportunity arose. She said that a couple of times.

MR. HOWSE: The next passage is in the same paragraph, Your Honour, about 15 lines further on. "I asked him if he was sure that he wanted to go through with it."

20

HIS HONOUR: I cannot see that, wait a minute.

MR. HOWSE: "I asked him if he was sure -"

HIS HONOUR: Where have they got to now?

MR. HOWSE: This is the Thursday morning, earlier on in that paragraph. "I asked him if he was sure that he wanted to go through with it. Leith asked me if I wanted to too. He said that he loved me and that if I left Peter he would come too." The account she gives of this is that he was busy trying to persuade her not to go, and she certainly - I put to her a non leading question directed to that and my recollection is that she said there was nothing said about it, as to what they were going to do.

30

HIS HONOUR: I think what she said was - the substance of it was that it was left that they would go away together after the baby was born.

40

MR. HOWSE: Yes.

HIS HONOUR: That is the essence of what she said, is that what she said, gentlemen?

MR. WALKER: Yes, it is.what she has said in the witness box emerges in this same paragraph.

HIS HONOUR: Where is that?

MR. WALKER: Just a few lines further down she says - he said "I would rather you come to me and I will arrange accommodation in a motel rather than involve other people."

10 HIS HONOUR: He said "I would rather you come to me." Well she said that in the box.

MR. WALKER: Yes, but this is in accord with what she had said. I understood my learned friend to be saying that this paragraph did not include what she has said about persuading her - in persuading her not to leave and so forth. If you read the paragraph as a whole that seems to me to be in accordance with her evidence.

20 MR. HOWSE: The final matter is a little later in the same paragraph, your Honour. "I said to Leith, 'I am going to Nathalia to put the house on the market'". Leith said, "Go ahead".

HIS HONOUR: She has said all that except that Leith said "Go ahead", has she not?

MR. HOWSE: Yes.

30 HIS HONOUR: I do not think I am prepared to treat this witness as adverse, Mr. Howse, I do not think she has shown hostility in the relevant sense, I think she is placed in a very awkward situation and I cannot help feeling that on the whole rather than any direct inconsistencies between her evidence today and what is in the statement, insofar as omissions have occurred I rather feel they are probably genuine enough omissions rather than direct inconsistencies, and I do not think in the circumstances there is sufficient justification for me to regard her as an adverse witness.

40 MR. HOWSE: Your Honour, it is not necessary of course that she should demonstrate her actual hostility in the witness box.

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HIS HONOUR: No, I realise that, but that is a factor, and I would be very much more impressed if I thought that there were deliberate and clear inconsistencies between what she had said in her police statement and what she said here. But I do not really think there are in this case. There may be omissions, but I think they are more rather due to - at least I am left with the impression that they may be rather due to - just as much due to lack of memory on a particular occasion than to direct inconsistencies. No, I do not think I will declare her adverse.

10

MR. HOWSE: If Your Honour pleases.

COURT ADJOURNED AT 12.37 P.M. FOR LUNCHEON

COURT RESUMED AT 2.02 P.M.

MR. HOWSE: Your Honour, before proceeding with the witness, Your Honour might recall that I suggested in opening to the jury that they might like to see these premises. I have discussed the matter with my learned friend, and it is suggested that if the jury do desire to do that, that tomorrow afternoon would be a convenient time.

20

HIS HONOUR: Have you given any thought to that, Mr. Foreman and members of the jury?

FOREMAN: No, Your Honour.

HIS HONOUR: Perhaps you might like to retire and discuss that? If you want to go and have a look at these premises, I understand they have been leased since, and we would have to make arrangements, I suppose, to get you over there to Echuca and make arrangements with the people in the house, I suppose, if we are going to troop through their house. They may have something to say about that I do not know. It is suggested that if it would help you to look at the premises then we could make arrangements to see if we could do it tomorrow afternoon. I will just tell you this before you do discuss it, that I want to make it plain to you that if you do go to have a look at these premises, you cannot regard anything you see there as evidence

30

40

in the case. A view is only permitted in cases of this kind, if the Court or jury think it desirable, to help you to interpret or better understand the evidence that is given to you in the witness box, it does not take the place of evidence, it is not evidence at all. Do you follow that?

FOREMAN: Yes, sir.

10 HIS HONOUR: Well, perhaps you might retire and have a talk amongst yourselves and let us know whether you think you feel you would be assisted by having a look at the house.

JURY RETIRED AT 2.04 P.M.

COURT ADJOURNED AT 2.04 P.M.

COURT RESUMED AT 2.14 P.M.

HIS HONOUR: Well, Mr. Foreman, have you discussed it?

20 FOREMAN: Yes, Your Honour, and we feel that we would like to have a look at the house, whenever it can be arranged.

HIS HONOUR: Yes, very well. You think tomorrow afternoon?

MR. HOWSE: Yes, Your Honour.

HIS HONOUR: Can you make arrangements?

MR. HOWSE: Yes, Your Honour.

HIS HONOUR: The people in the house and the transport?

30 MR. HOWSE: So far as the people in the house are concerned, I am instructed that that is in order, not necessarily for tomorrow afternoon on the basis of present information, but they indicated that with reasonable notice they would be prepared to make the place available, so there should not be any problem there, Your Honour. As to the transport the Crown will see that that is arranged, Your Honour.

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JENNIFER ANNE KEMP, recalled and warned

MR. HOWSE CONTINUED EXAMINATION-IN-CHIEF

MR. HOWSE: Mrs. Kemp, you told the Court before lunch about coming to Shepparton on 5th May with the accused, seeing a solicitor and obtaining some advice, and also that in the car on the way home to Echuca the topic of that advice was discussed between you. You have also told the Court what I suppose I should properly put as your belief as to the advice that you had received? --- Yes.

10

When you discussed this on the way back to Echuca in the car with the accused did you discuss with him the belief that you entertained as to the solicitor's advice? --- Yes.

Did he suggest to you any different view of what the solicitor had told you? --- No.

You have told us that from some time early in 1969 up until May of this year intercourse did take place between you and the accused. Did it occur regularly during that period? --- Yes.

20

As from the beginning of 1970 can you give the Court any idea of the frequency with which you either saw one another or communicated with one another by the telephone? --- It would have been very regular. Mr. Ratten did a lot of work around the house for my husband and myself - he helped my husband paint the house at the beginning of the year.

Well, can you relate it to terms of weeks or days, was it once a week or what? --- It would probably be - well, during the duck season, each day, otherwise 3 or 4 times a week, or more.

30

And on the Tuesday night when he came and saw you as you have told us, did he say anything about what he would do if you left your husband at that time? --- On the Tuesday night?

Yes, this is 5th May? --- No.

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: You have told us your husband was employed selling fishing gear. He was I suppose what could be generally described as a sporting goods salesman, would that be correct?
 --- That is correct.

And his main sporting gear sales concerned fishing equipment, would that be right? --- Fishing and camping.

10 He also did he not sell air rifles? --- Yes.

But did not generally sell other types of guns?
 --- No.

His stock - that is the stock he sold, whatever it was, samples and so on were always kept in his car were they not? --- As a rule most of them were, some were sometimes left at home.

20 If they were home where would they be kept? ---
 Well before we had additions they were stacked in the bedroom. After we had a garage put up they were kept in the garage.

So far as the garage or shed is concerned were his own guns kept in there normally? --- No.

Where were they kept? --- Hanging on the wall in the lounge room.

And what about ammunition for the guns that he had himself. Where was the ammunition kept? ---
 That was in the shed.

30 And was this shed subject to getting rain in at times do you know? --- Well only if the window was left open, the rain came from that particular direction.

So far as - we have not had the gun formally tendered yet, but you gave evidence at the inquest, is that correct? --- Yes.

MR. HOWSE: Perhaps it might be marked for identification, Your Honour. It might be more convenient and quicker.

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MR. LAZARUS: So far as that gun is concerned you recollect do you not that that gun was at one stage taken to a gunsmith by your husband? --- Yes.

And that was somewhere round about the February of this year, would that be correct? --- Yes.

About how long was it in your husband's control in the sense of from the time he got it to take it to the gunsmith and to the time it got back to Mr. Ratten? --- I think it would have been about March or April. 10

The circumstances in which the gun was returned to Mr. Ratten, were, were they not, that in fact the gun was handed back by you to him? --- Yes.

And it was, was it not, handed back after pretty heavy rainfall, would that be correct? --- Yes.

As a result of that rainfall did you yourself notice that anything had happened to the gun? --- Yes, it was rusty, it had been left - I forgot to shut the shed windows. 20

And a fair bit of rain came in in fact did it not? --- Yes, it got on several other things ...

What else did it get on? --- I think it got on some of his reloading equipment.

I am sorry, I do not know what that is, what is it? --- He reloaded his own shells.

Did it get on any of the ammunition do you know? --- I wouldn't know.

HIS HONOUR: Where did you see the rust on the gun? --- It was all on the barrels of it. 30

Which part, could you just indicate? Along the top of the barrels? --- Yes.

MR. LAZARUS: Was there any particular reason why you handed the gun back to Ratten on that occasion, how did it come about, do you remember? --- No, I think I had been out to the shed for something and I saw it and just said "Here you had better take this home with you."

This you place somewhere about March or April, is that correct? --- Yes.

And do you know how long the gun had been in the shed up till that time? --- From the time my husband brought it back from having it looked at.

Brought it back from a gunsmith anyway? --- Yes.

How long had elapsed do you know? --- I'm not sure of the time.

10 I take it that the reason you handed it to him on that occasion was to avoid it rusting further was it? --- No, I just saw it and thought oh well it is his, he had better take it home.

I may perhaps come to this general relationship you had with Mr. Ratten. Firstly at the outset it is quite clear is it not that you had problems with your husband quite apart from Mr. Ratten? --- Yes.

20 And problems which in fact had nothing at all to do with him? --- Yes.

You had, had you not - I think you have indicated this already - you had brought a fair bit of money into the marriage? --- Yes.

And most of the money you brought in had been in fact put into the home? --- Yes.

It was in your joint names as you have told us? --- Yes.

30 The position so far as Mr. Ratten was concerned, you knew did you not, or he had told you that he had made application to join the Antarctic Expedition which was due to leave some time in August, or certainly his application would have been granted or not in August - about August of this year, would that be so? --- I knew he had made application.

And he was waiting, was he not, for a reply to this application? --- Yes.

And you knew, did you not, that if granted, it would normally mean that he would have been

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away from Australia for a period of approximately 12 months? --- Yes.

He had, had he not, right from the outset made it quite clear to you that he felt a very - I do not want to use the word "intense", but a very clear responsibility to his wife and children? --- Yes.

Both moral and financial? --- Yes.

And I suppose, Mrs. Kemp, it had occurred to you from time to time - I suggest it must have occurred to you from time to time that it might turn out that he would not come with you, when it came to a showdown? --- Yes.

10

I suppose, Mrs. Kemp, especially from your own experience, but you would have no doubt, would you, that from time to time men that are going to bed with women often say things they do not mean? Is that right? --- I suppose so, yes.

And make all sorts of protestations about feelings which perhaps are not firmly held? You have heard of that, I suppose, have you? --- Yes.

20

And it is quite beyond any argument, is it not, from your own observation and knowledge, that Mr. Ratten as far as you were concerned was generally kind of saying, "Well, we'll have to wait till the child is born before we can do anything", is that right? --- That's right.

Or so far as the general situation was concerned, I think he also from time to time, did he not, indicate that it would be better if you waited and saw what happened and that sort of thing? --- He always said wait until after the child was born.

30

And he was at all times, was he not, expressing great concern and obviously very concerned that his wife might find out about the relationship between you two? --- Yes.

He clearly believed, from your own knowledge of the matter, that she did not know anything about it, did he not? --- Yes.

40

And so far as you were generally concerned, Mrs. Kemp, I suppose you believed that if he did in fact go on this trip to the Antarctic it might result in a change of his attitude towards you? After 12 months? --- Yes.

I think you have also told us that he had made it clear to you, or told you anyway, that his wife would not give him a divorce? --- Yes.

10 He never, of course, told you, I suppose, that his wife had ever told him that she would never give him a divorce, had he? --- He implied that his wife had said she would not ...

He implied that, did he? --- Yes.

What, that was an assumption you made from the way he put it? --- Yes.

I suppose you have heard that has been a pretty strong standby so far as married men having affairs are concerned for quite a considerable period of time, is it not? --- Yes.

20 And this was something he apparently told you on several occasions, was it not? --- Yes.

In regard to the situation that you found yourself in round about 5th May, you told us, I think, that on that date you went with Mr. Ratten to a solicitor in Shepparton, is that correct? --- That's correct.

And you have indicated - and I do not want to go over it again, what advice you believed you received from him? --- Yes.

30 And the reason, I suppose, you had come to Shepparton was, was it, that you wanted to see a solicitor from a town other than Echuca? --- Yes.

Where you were not known? --- That's right.

And after leaving the solicitor's office, Mrs. Kemp, the fact was, was it not, that Mr. Ratten told you - said something to the effect, did he not, pointing out to you that the whole thing was pretty hopeless. Did he say that to you? --- Yes.

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Did he suggest to you that you should both settle down and return to your own lives? Or words to that effect? --- Yes, he could have done, yes.

But you, of course, still insisted, did you not, that you were going to separate from your husband no matter what? --- Yes.

And indeed, just to follow the history from then on, on the Tuesday evening you rang him, told him that you had had it out with Peter and that he had in effect given you the O.K. to leave or get out? --- Yes. 10

And he said to you, did he not, the position as far as he was concerned was that he could not go with you, that his wife was only days off giving birth to the child and he would not leave her at that time? --- He said he wouldn't leave her until after the baby was born.

And on that occasion he clearly, did he not, tried to dissuade you from making any move at all? --- He talked me into staying at the house, anyway. 20

The next day he again, did he not, tried to persuade you not to make any moves for a separation? --- Yes.

I mean, you understand I am truncating the conversations, but I am suggesting this is what he was trying to do? --- Yes.

And on the Thursday, when either he rang you or you rang him, you told him that you had made arrangements to move that day, to stay with friends and so on, and that you were in fact preparing to leave home? --- Yes. 30

And he was out, was he not, within a very short period of time indeed? --- Yes.

And again, did he not - I think you said he persuaded you not to leave, but he pointed out, did he not, the foolishness of you leaving home? --- Yes.

He told you, or persuaded you, as I think you put it yourself, not to leave home? --- Correct.

But your attitude was, as I think you have told the Prosecutor, that you still wanted the opportunity 40

to place the house on the market? --- Yes.

Because of the reasons you have told us, that your husband might change his mind? --- Yes.

And as you have told us, he again indicated - he, I suggest, made it very clear - well, you would just have to wait as far as he was concerned? --- That's right.

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MR. HOWSE COMMENCED RE-EXAMINATION

Re-
Examination

10 MR. HOWSE: When did you first learn, Mrs. Kemp,
that the accused had made an application to join
the Antarctic expedition? --- He told me he had
made it - it was about the time I told him my
husband requested him not to come out so regularly.
It would be in about April, I think.

Of this year? --- Yes.

20 You have told us the accused man implied to you
that his wife had told him that she would not
give him a divorce. Can you tell us what he
said when he spoke to you on that occasion or
occasions? --- As far as I can remember he just
said that Bev, because of religious beliefs, did
not believe in divorce, and therefore he would
never be able to obtain one.

HIS HONOUR: Mrs. Kemp, on this last morning that
Ratten came over to see you, on the morning of
the 7th, you say that he left you under no mis-
understanding that he would certainly not join

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you until after the baby was born? --- As far as I understood, that after the baby was born then we might go away together.

But he would not leave home nor his wife and family until that event occurred? --- That's right.

Did you understand how long it would be before the baby would be likely to be born? --- About another 2 weeks.

And did you - had you made it plain to him that you at any rate on your side, were determined to put the house - to leave and put the house up for sale? --- Yes. Well, that I would wait until after the baby was born, but I still was going to put the house up for sale then.

10

You would remain in the house? --- Yes.

But you would put the house up for sale straight away? --- Yes.

Further Cross-
Examination

MR. LAZARUS COMMENCED FURTHER CROSS-EXAMINATION

MR. LAZARUS: Just one matter, Your Honour, I do not know quite what the significance of it is. (To witness): Mrs. Kemp, you told us that you gave evidence at the inquest in this matter, is that correct? --- Yes.

20

And you said there, did you not amongst other things, that at this time - that is at the time of the inquest, which I suggest was 26th June of this year, you were residing at Barmah township with your husband Peter, the previous witness, and three children? --- Yes.

And that was true, was it? --- Yes.

30

Further Re-
Examination

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: What is the present position between yourself and your husband? --- We have since been divorced.

And that happened in July of this year at Bendigo did it not? --- Yes.

HIS HONOUR: Was that on your husband's petition? --- Yes.

He sued for divorce? --- Yes.

Un defended was it? --- Un defended.

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DENISE MARY WEBB sworn and examined

Denise Mary
Webb

10 WITNESS TO MR. HOWSE: My full name is Denise Mary Webb. I reside at Barmah. I am engaged in home duties.

Examination

MR. HOWSE: Do you know the previous witness, Jennifer Kemp, seated here in Court? --- Yes, I do.

Have you known her and Mr. Peter Kemp for some time? --- Yes.

Approximately how long? --- About 2½ years.

And do you also know the accused man Ratten? --- Yes.

20 How did you come to meet him in the first place? --- Mr. Ratten?

Yes? --- Over at the Kemp's residence, he was visiting the Kemp's residence previous to going shooting with Mr. Kemp.

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Do you recollect roughly when that was? --- 12 months ago last February.

Did you yourself observe him at the Kemp place on any other occasion? --- He would call there before he went shooting with Mr. Kemp.

HIS HONOUR: What is that? --- He would call at the Kemp's residence before he would go shooting out in the forest with Mr. Kemp.

MR. HOWSE: How close was your place to the Kemp house? --- Approximately 50 yards away.

10

To your observation were there occasions when he called at the Kemp house when Mr. Kemp was not there? --- Yes, there were.

Did you notice anything about that sort of visit as time passed? --- Only that the visits at the house were -

WITNESS INSTRUCTED TO SPEAK UP

HIS HONOUR: What were you saying? --- That the visits progressively got longer at the house.

MR. HOWSE: And are you able to say how frequently he visited the Kemp household during the duck season last year? --- Oh two or three times a week.

20

And at any particular time of the day or night? --- No not at any particular time.

Was there any particular part of the 24 hours that seemed to be more usual than others? --- Possibly early in the afternoon.

And what was the situation after the duck season closed? --- Mr. Ratten still continued to call.

30

With the same frequency or what? --- No, not with the same frequency.

Roughly how often to your observation? --- It would be once a week.

And this I take it was whilst Mr. Kemp was not at the house is it? --- Sometimes Mr. Kemp was home, sometimes he was away.

Do you recollect - for how long did that continue to your observation, him visiting the place when Mr. Kemp was not there that is --- Well to the beginning of the next duck season, it would be 12 month.

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10 Did you notice anything in particular on an occasion in February of this year? --- Yes, I went over to Mrs. Kemp's residence and I was running and I ran past the back of the house and called out and I could see Mr. Ratten's shoulders and I kept going.

Whereabouts was he? --- In the back bedroom of the house.

So far as you could see how was he clothed, you could only see his shoulders I appreciate ? --- His shoulders were bare and I knocked at the back door and called out again and went into the kitchen and Mrs. Kemp was in the kitchen and she was doing up a button on her blouse.

20 HIS HONOUR: Was she in the kitchen when you went in there? --- Yes, she was in the kitchen.

MR. HOWSE: Did you observe if she had come from any other part of the house to get into the kitchen? --- No, I didn't see which door she came out of.

What day of the week was this? --- I think it was a Monday, a Monday or a Tuesday.

Was there anybody else home? --- No, only Mrs.Kemp and Mr. Ratten.

30 Was there an occasion in April of this year when you came down to Melbourne with the accused? --- Yes, there was.

Was he going down to his mother's funeral? --- Yes, he was.

And you were going down to collect a horse? --- Yes.

Did anybody else go with you? --- Yes, Mrs. Kemp came.

That is the previous witness? --- Yes.

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Was there some discussion in the car on the way down to Melbourne concerning Mrs. Kemp and the accused? --- Yes, there was.

Can you tell us what was said? --- They planned to go away together, there was no dates -

I am sorry, can you tell us as well as you can remember what the particular person said, do you follow?

HIS HONOUR: What did Mr. Ratten say? --- That he was going to leave Mrs. Ratten after the baby was born and after he could make adequate provisions for her financially then he would go away with Mrs. Kemp, and Mrs. Kemp said that she hoped to divorce her husband and go with Mr. Ratten.

10

What did Mrs. Kemp say? --- She hoped to divorce her own husband and go with Mr. Ratten.

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: There was no question was there from this time in February when you walked into the house that Mrs. Kemp and Ratten were having intercourse? --- I did not see any evidence of it.

20

No, but you had no doubt about it did you? --- Mrs. Kemp admitted to me that that is what had been going on.

I am not concerned about the details but you have no doubt that they were intimate? --- It wasn't until after Mrs. Kemp -

At some stage after this you had no doubt did you that they were intimate? --- No.

30

And it was quite clear to everyone that you had this belief was it not? --- Yes, it was.

And the discussions that went of ^(sic) - on for instance in this car, obviously were they not based on the understanding that you knew what was going on? --- Yes, they were.

I suppose you would agree that the actual phraseology of what was said in the car, either by you or by Ratten or by Mrs. Kemp would not be necessarily accurately remembered by you? --- No, it is not.

And what you are doing is doing your best to paraphrase what you can recollect of the conversation, would that be right? --- Yes, that's right.

10 MR. HOWSE: I object to the word 'paraphrase', Your Honour, if my learned friend means substance then of course I cannot object, but 'paraphrase' might connote something else.

HIS HONOUR: I do not know, what does it mean?

MR. LAZARUS: I suppose put in a way other than in the first person to give a summary of what was said.

HIS HONOUR: Giving a summary of what you can recollect?

20 MR. LAZARUS: Yes. (To witness) And you are not suggesting are you, that you are necessarily by any means 100% accurate in that recollection are you? --- No.

I suggest that the thing that was made quite clear by him was, was it not, that he would not be leaving, would not be doing anything until the child was born? --- Yes, that's right.

30 He made it quite clear, did he not, that nothing would be done by him until his own family were properly looked after, financially and otherwise? --- Yes, that's right.

And made it clear, did he not, that this was the position irrespective of what happened between Mr. and Mrs. Kemp? --- Yes, that's correct.

Mrs. Webb, at no stage was there, to your knowledge, any definite date or place fixed when any relationship or any setting up of home between Mr. Ratten and Mrs. Kemp was going to take place? --- No, there was no date.

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It was all pretty vague, was it not? --- Yes.

And indeed, you were, were you not, aware of his application to go to the Antarctic? --- Yes, I'd been told about that.

And on one occasion you did, did you not, call in to Ratten's office and brought up the subject of him going to the Antarctic? --- Yes, I did.

And you expressed the view, did you not, that it was a good idea because it would give both Jenny and him time to make sure of their respective feelings? --- Yes, That's right.

10

MR. HOWSE DID NOT WISH TO RE-EXAMINE

WITNESS WITHDREW - EXCUSED

JOHN LOVELL STILES, sworn and examined

WITNESS TO MR. HOWSE: My full name is John Lovell Stiles. I reside at Harcourt Street, Nathalia. I am a stock and station agent by occupation.

MR. HOWSE: And are you and were you in May of this year the manager for Dalgety & New Zealand Loan at their Nathalia branch? --- Yes.

20

On the afternoon of Thursday, 7th May of this year were you at your office at Dalgety's in Blake Street, Nathalia? --- Yes.

And during the course of that afternoon did a woman come and see you? --- Yes.

Do you see her in Court today? --- Yes.

And is it Mrs. Kemp back here in the Court? --- Yes.

Do you recollect approximately the time of day it was? --- Somewhere about 2 to half-past 2.

30

And what happened when she came to your office, did she see you? --- Yes.

What happened? --- She said she wanted to put her house on the market.

HIS HONOUR: It was a house at Barmah, was it? --- That's right.

MR. HOWSE: What else was said? --- I said I would go down and have a look at it one day.

Was there any discussion about price? --- Yes.

10 What was that? --- I think she wanted \$12,000 for it.

Was there some discussion about the amenities of the property? --- We just briefed over the amenities and I said I would go down and have a look at it one day and go into it further.

Did you do anything about it? --- I sent my man down next day but there was no-one home.

MR. WALKER COMMENCED CROSS-EXAMINATION

20 MR. WALKER: Mr. Stiles, you say that you told her that you would go and have a look at it one day, is that what you said to her? --- Yes.

I take it there was nothing in the course of your transaction with Mrs. Kemp to indicate that there was any urgency about this sale? --- No.

MR. HOWSE DID NOT WISH TO RE-EXAMINE

WITNESS WITHDREW - EXCUSED

PETER CHARLES KEMP, sworn and examined

30 WITNESS TO MR. HOWSE: My full name is Peter Charles Kemp. I reside at Barmah. I am a sales representative by occupation.

MR. HOWSE: Were you formerly married to the previous witness Jennifer Kemp, who is in Court? --- Yes.

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And prior to living in Barmah did you live in Echuca? --- Yes.

And whilst living in Echuca did you become friendly with the accused and his wife? --- Yes.

And indeed, did some particular sort of friendship develop between you and the accused? --- Yes.

What was that? --- A mutual friendship as far as shooting was concerned.

How often did you go shooting together? --- When it was convenient for both of us. By this I mean there was no set ..

10

No, but how often would it work out, roughly? --- Once a week, once a fortnight.

As from the beginning of last year did you notice anything so far as concerns the accused man in relation to your home? --- At the beginning of last year was it?

As from the beginning of last year? --- No.

What was the situation. During last year was he a visitor at your home or not to your knowledge? --- Yes, he was a visitor to my home.

20

And was there -

HIS HONOUR: Perhaps you might tell me this. How long had you been living in Barmah, Mr. Kemp before all this trouble came to a head in May? --- Approximately 2½ years, your Honour.

How long had you been living in Echuca before that, friendly with the Rattens? --- I would say about two to three years.

MR. HOWSE: In the early part of last year was the accused man doing anything so far as concerns your wife, I do not mean anything improper? --- Could you repeat that please?

30

Was there anything to do with driving lessons? --- Yes, there was.

What happened? --- The accused offered to teach my wife how to drive a motor car and this is what they did.

Over what period did the lessons extend? --- I would say over a period of two months, three months.

You have told us that you are a sales representative in what field have you been a sales representative? --- Sporting goods.

And for how long roughly? --- Over two years.

And what type of sporting goods? --- Golf, tennis, fishing, general.

10 What about guns? --- No.

You say that over the time that you have known the accused you had been going shooting with him. From what you observed of him in relation to firearms what do you say about his working knowledge of firearms? --- Very good.

And what about his approach to the matter of safety precautions with firearms? --- I've never known him to do anything foolhardy with a gun.

20 Would you have a look please at the gun which is Exhibit 'C' for identification? Do you recognise that gun? --- I do.

Is that a gun that to you knowledge belonged to the accused? --- It does.

EXHIBIT

EXHIBIT 'C'
(absolutely)

Shotgun.

Have you ever used that gun yourself? --- I could have on one occasion.

Have you ever seen the accused man using it? --- Yes, I have.

30 You say that you could have used it, are you able to be any more definite than that? --- I think it was a year ago last June we went quail shooting and we swapped firearms just for him to try mine and I had the gun and I can't remember whether I fired a shot or not that particular day.

So far as concerns the times when you saw him using it did there appear to be anything wrong with it? --- No.

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In your field of being a representative in relation to sporting goods was it your practice to supply cartridges to people who wanted to buy them? --- Yes.

And did you in fact supply a quantity of cartridges to the accused either late last year or early this year? --- Yes.

Would you have a look at these cartridges, there is - perhaps if you would look at the ones in the belt also, and this quantity in boxes. There are two more to come, Your Honour, I realise they are outside, but they are on their way. Now taking the plastic bag containing cartridges, are they similar to cartridges supplied by you to the accused? --- Yes.

10

Do you recollect the quantity that you supplied? --- 500.

Well they are blue I.C.I. plastic cartridges are they not? --- Blue Star.

HIS HONOUR: They are the blue I.C.I.s? --- Yes, sir.

20

EXHIBIT

EXHIBIT 'D'
(for
identification)

Plastic bag
containing blue
star I.C.I.
cartridges.

MR. HOWSE: Some of the cartridges contained in the cartridge belt are blue star I.C.I. are they not? --- Yes.

And what are the others, the red ones? --- They would be Russian shells, U.S.S.R.

30

EXHIBIT

EXHIBIT 'E'
(for
identification)

Cartridge belt
of cartridges.

The box of pink cartridges, do you recognise them? --- Yes.

Are they similar to cartridges supplied by you to the accused? --- Yes, but prior to last Christmas, these were purchased by the accused independently, not from me.

HIS HONOUR: Not from you? --- Not these two specific boxes.

MR. HOWSE: I will withdraw those, Your Honour.
(To witness): Would you look, please, at these two cartridges, one being a case and one being a full cartridge. Once again, they are Blue Star, I.C.I. cartridges, are they not? --- Yes.

Similar to cartridges supplied by you to the accused? --- Yes.

10 Do you remember when it was - I said to you either late last year or early this year - are you able to be any more precise than that? --- November last year.

<u>EXHIBIT</u>	EXHIBIT 'F'	Plastic bag
	(for	containing
	identification)	cartridge and
		cartridge case.

HIS HONOUR: What is the witness saying about these?

20 MR. HOWSE: They are similar to cartridges that he supplied to the accused, Your Honour. There will be other evidence to prove where they came from.

HIS HONOUR: Those are the cartridges from the gun, are they?

MR. HOWSE: Yes, Your Honour, those two are, yes.
(To witness): Now in February of this year did you do something in relation to the shotgun (Exhibit 'C')? --- Yes, in February or March this year, I'm not too sure of the date, I took it to Shepparton Sports Depot.

30 How did it come about that you did that? --- I asked the accused - I suggested to the accused that the gun in question is an ideal quail gun, but could be in need of some repair, and I also suggested to the accused that I take it to an expert gunsmith and get his assessment on the cost of repairs.

Did you do that? --- Yes.

40 To whom did you take it? --- Stanley Thompson, Shepparton Sports Depot, Shepparton.

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And did he make an examination of it? --- He did.

And did he express to you an opinion about it? ---
Yes.

What did he tell you? --- He told me that the gun
was beyond repair, that the value of the firearm
would not exceed \$5 and that he didn't recommend
it to be repaired, to be worth it.

Did he give any explanation of why it was beyond
repair? --- Two main points - three main points
....

Perhaps if you would take the gun (Exhibit 'C') so
that you can explain this to the jury.

EXHIBIT 'C' HANDED TO WITNESS.

WITNESS: 21½" barrels - 21½" chambers, Damascus
barrels and loose action.

MR. HOWSE: What does that mean - 21½" ...? --- This
means that it can only take 21½" shells.

Shells come in different sizes, do they? --- That's
right, 21½" to 3".

And what was the other feature of it? --- Damascus
barrels, which are a twisted steel barrel, not
to be recommended with modern day ammunition.
And a loose action, or loose locking mechanism.

Having ascertained this from Mr. Thompson, what did
you do with the gun? --- I took the gun home and
I'm not sure whether Mr. Ratten picked the gun
up at a later date from my home or I delivered
it personally.

At all events, whichever way it came about, was
there some discussion between you and the
accused? --- Yes, there was. I informed Mr.
Ratten ..

Well, first of all, whereabouts did it take place?
--- In Mr. Ratten's kitchen.

And secondly, whereabouts was the gun (Exhibit
'C')? --- In the kitchen also, with us.

10

20

30

What did you tell the accused? --- I told the accused exactly what Stan Thompson told me.

That is what you have told us here today, is it?
--- Yes.

At the time when you showed it to Mr. Thompson, what was the position about the gun, was it loaded or not? --- Unloaded.

And at the time when you spoke about it to the accused, what was the position then? --- Unloaded.

10 Do you recall roughly how long you had the gun in your possession for this purpose? --- Possibly a week.

And how long it was after you showed it to Mr. Thompson that you spoke to the accused and told him what Thompson's opinion was? --- I'd say a week to 10 days.

On the 2nd May this year did you go to the Ratten home at 59 Mitchell Street? --- I couldn't remember.

20 Do you recall subsequently finding out that Mrs. Ratten had died? --- I found - I first heard of Mrs. Ratten's death on 7th May about 6 o'clock in the evening.

HIS HONOUR: That is the day it happened? --- This is the day it happened.

MR. HOWSE: When was the last occasion prior to that that you visited the Ratten home? --- It could have possibly been the Friday before.

Who went there? --- I think it was just myself.

30 Did you see the accused there? --- I couldn't say to that.

Shortly before Mrs. Ratten's death was there some conversation between the accused man and yourself? --- I think you would be referring to the Sunday week prior.

The Sunday week prior to what? --- Mrs. Ratten's death.

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What were the circumstances relating to this conversation? Where did it happen and who was there? --- It happened in Mr. Ratten's backyard. His wife was present, his children were present, my wife was present, two friends of mine and their children were present from Geelong.

Does this relate to something concerning your wife? --- You mean Mr. Ratten and myself had a talk about my wife on this particular afternoon, yes.

10

And apart from the two of you was there anybody else in a position to hear what was being said? --- No.

Can you tell us what was said and by whom? --- Mr. Ratten asked me if there was anything upsetting as far as our marriage was concerned between my wife and I. I said "Yes, there is." He said "Do you think it could be another man?" I said, "Possibly." And he informed me, he said he didn't think so, she was not the type.

20

You have told us that the first you heard about Mrs. Ratten's death was 6 o'clock on the afternoon of Thursday 7th May? --- Yes.

And where had you been just prior to that? --- I was out camping.

Whereabouts? --- Moira Forest.

Where is that? --- The New South Wales side of the Murray River.

How far is that from Barmah? --- I'd say car miles it would be 12.

30

How long had you been camping out there? --- The Sunday afternoon prior.

Did you return from where you were camping to your home at any stage during that time? --- I did, Tuesday afternoon.

Did you see your wife when you returned home then? --- I did.

Did you have a discussion with her concerning the situation between yourselves? --- I did.

And what happened after that? --- I went back to the spot where I was camping.

40

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: The accused man had, had he not, apart from the double barrel shotgun, he had an automatic rifle? --- Yes, he did, sir.

And an under and over? --- Yes, sir.

And those two latter guns, the under and over and the automatic you in fact had bought them had you not from dealers? --- I did.

HIS HONOUR: What was that, Mr. Lazarus?

10 MR. LAZARUS: The witness had purchased the guns on Ratten's behalf from dealers, that is right, Mr. Kemp, is it? --- Yes.

I think it is fairly clear from what you have told us, but you did purchase ammunition from time to time for the accused and other men who went shooting, is that right? --- Yes, sir.

20 And in fact you had given the accused man some two packets of the blue star I.C.I. cartridges about a fortnight before, 7th May, had you not? --- Yes, sir.

You, I am instructed, had quite a number of cartridges at this time and you swapped some for cartridges more suitable for quail, is that right? --- Could you repeat that?

You swapped these for some cartridges that the accused man had for the purpose of quail shooting? --- Yes, sir.

30 And there were about five of you were there not who clubbed together and bought a case of cartridges at the beginning of the last duck season? --- Three of us.

And these also were, were they not, the similar sort of cartridges to the ones exhibited here, the blue star I.C.I. cartridges? --- Yes, sir.

And of course this cartridge is quite a common cartridge is it not? --- Yes, sir.

And one which of course you yourself do use? --- Yes, sir.

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The actual details of this history of this gun that you took to Mr. Thompson are not very clear in your mind are they? --- Could you rephrase that please?

Yes, certainly. Your own recollection of the details of your taking the gun to Mr. Thompson, bringing it back and how it got back to the accused are not very clear in your mind is it? --- The only part that is not clear in my mind, sir, is whether I delivered the gun to Mr. Ratten at his house or he picked it up out of my garage. This is the only part I am not sure of.

10

Well that is not clear in your mind at all is it, you just don't recollect? --- This is just what I said, that's the only part that's not clear in my mind.

You do not in fact recollect how the gun was returned to him do you? --- No, sir.

So far as this particular aspect is concerned I think it is true to say is it not that you do not recall any of the circumstances about returning? --- True, sir.

20

And I suppose it follows from that surely, Mr.Kemp, that your belief is that you did not in fact return it personally to him at all, is it not? --- As I said, sir, I'm not sure whether I returned it personally or he picked it up from my home.

All I am suggesting to you is, that you are assuming that either of those two things happened are you not? --- Yes.

30

You have no actual recollection at all of any of the circumstances of how the gun was returned? --- Yes.

Just perhaps one or two details about your own habits in regard to guns. You have told us that you are a sporting goods salesman and have been for some two years? --- Yes, sir.

You I suppose would not have a great number of guns in your shed at your home at any particular time would you? --- No, sir.

40

Would you have any? --- Yes, sir.

What guns have you ever had in your shed, can you recollect now? --- I can recollect a small co-automatic, double barrel, over and under, another automatic, Browning automatic, SKB over and under.

Were these your own guns or guns you were using yourself? --- These are guns that I have acquired for various people and guns of my own.

10 And kept them pending their transfer to the people in question? --- Yes.

And you keep your own guns I take it inside do you normally? --- In the home.

You also do you not keep your ammunition in the shed? --- I do.

20 Do you know or have you any recollection one way or the other whether the shot gun in question here was in fact put by you in the shed after you got it back from Thompson? --- It possibly could, sir.

And I take it your belief is that that is where it would have been put, or was put, by you? On that occasion? --- It possibly could have.

Well, you have no recollection of it being put inside, have you? --- Not in the house. It would have either, as I said previously, been put in the shed or it would have been dropped round at Mr. Ratten's home.

30 And if you took it to your home, I take it from what you say, it certainly was kept in your shed? --- Yes.

Now Mr. Kemp, on the subject of this gun I think you now say, do you, that you have no recollection whether you have ever fired it or not? --- True, sir.

You gave evidence at the inquest? --- Yes, sir.

And that, I suggest, was on 26th June 1970? --- Yes.

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Did you say there that about 2 years ago you fired it a couple of times? --- I possibly could have fired it a couple of times.

Well, was that answer correct? --- Well, this is two years ago, I couldn't swear - I fire a lot of firearms over a period of time.

You might, but did you say this in June of this year on your oath? --- I possibly could have, sir.

Well, was it true? --- As I say it possibly could be true. I was trying to recollect at the time whether I did fire the gun or not, at that specific ..

10

Well, you have said here, Mr. Kemp - correct me if I am wrong, but you said, did you not, that in fact it was you who suggested that the gun might need some repairs? --- Yes, sir.

Well, that is not correct, is it? --- I beg your pardon, could you rephrase it?

Yes. Did you in the course of your evidence here today that it was your suggestion that the shotgun should perhaps get some attention, that it would need some repairs? --- It was my suggestion that an expert have a look at it, yes.

20

Was it? I suggest at the inquest I refer you to you swore, did you not, that "In February of this year Mr. Ratten asked me to make some enquiries about the shotgun", did you not? --- Well, as I say, I can't recollect the exact wording of it, but I do know that it was my impression that the gun - how can I explain it, the design of the gun was very shootable for quail shooting, consequently if it could be at all repaired it might be worthwhile doing.

30

But Mr. Kemp, if you had never used it, or have very little recollection of using it or handling it, why would you come to the view that it would need repairs? --- I have handled it, sir, but I possibly might not have fired it.

Look, did you say in the course of your evidence at the inquest, Mr. Kemp, that in February of this year Mr. Ratten asked you to make some enquiries about the shotgun? --- As I say, sir, I can't be - this is what I could have said at the inquest.

40

Well, was it true what you swore at the inquest about this matter? --- As I say, all I know is that the gun in question, it was just the gun in question was in need of repair and I think that at the inquest I could have possibly made a mistake.

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10 Well, that is all you did say about it as far as the reason it went to the gunsmith, was it not? That Mr. Ratten had asked you to make enquiries about it? --- As I say, sir, since then I have thought about the situation and I think it was I that suggested that due to the design of the gun, that it be inspected to see if it was worth doing up.

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20 But had there been any discussion between you that it needed doing up, between you and Ratten, or any discussion you had heard to the effect it might need doing up? --- Well, the gun, is as far as the action is concerned, and the locking mechanism, it appears pretty obvious that it did need some attention, or it needed some professional inspection.

Peter Charles
Kemp

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Did you inspect it yourself before you took it to the gunsmith? --- I had a look at the gun, sir, yes.

And what did you believe, if anything, was wrong with it? --- That the action was very, very loose.

30 And when you say that the action was very, very loose, what do you mean precisely by that? What effect would it have, in otherwords? --- It could possibly be dangerous to the user inasmuch as the locking mechanism might fail after the cartridge has been ignited - discharged.

Did you try the safety device at all, the safety catch? --- No, sir.

40 But Mr. Thompson said something about that to you, did he not? In the three matters you mentioned he did not, but surely Mr. Thompson mentioned the safety catch problem to you, did he not? --- He possibly could have done, sir.

Would not that strike you as being a significant fault in the gun? --- As I say, he possibly could have, but I'm not swearing to the fact that he did.

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You do not recollect one way or the other? --- Yes, sir. The thing that stood out - the obvious point - the obvious weakness of that firearm was the locking mechanism.

And you simply do not recollect anything being said by Thompson to you about the safety catch? Is that what you say? --- I can't recollect anything.

Mr. Kemp, you told the prosecutor about a conversation you say you had with the accused man in the kitchen about the gun? --- Yes, sir.

10

I suggest to you that you never at any time had a conversation with the accused man about the gun at his house? --- As I say, sir, we could have been talking about the gun numerous times, but I feel sure that I had a conversation with that firearm in Mr. Ratten's kitchen.

Do you know what it was? --- I wouldn't be able to say the exact date, but I would say ..

Approximately? --- Some time in March.

20

Some time in March? --- M'mm.

You do not know the day of the week, I suppose, do you? --- No.

Was anyone else present when you had this conversation? --- I couldn't swear to it, I think Mrs. Ratten would have been present, and ..

Where was the gun exactly when you say you had this conversation? --- I think that we were handling it at the time in the kitchen.

Where did it come from, do you know - sitting up on the kitchen table, or where was it, when you first saw it? --- I couldn't recollect offhand, sir.

30

Did somebody go out and get it and bring it in, or did you go out and get it and bring it in? --- I couldn't recollect offhand, sir.

Well, did you handle it, do you think? --- I'd say I possibly would have done to demonstrate the faults of the gun.

You would not have to demonstrate to Mr. Ratten the faults of a gun, would you, he would know what you were talking about, surely, would he not, when you told him what Thompson had told you? --- Possibly I could have needed the firearm to emphasise the weak points made.

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10 It is possible, but you have no doubt, have you, Mr. Kemp, that you would not need a firearm to illustrate to him what was wrong with it, would you? --- What I am saying, sir, is that I might have needed the firearm to show him to what extent the gun was in need of repair.

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Well, you may have. The fact was, was it not, Mr. Kemp, that the effective thing from Mr. Thompson's point of view and your point of view was that he said it was not worth repairing? --- This is true.

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20 When he said it was not worth repairing to you, I suppose that in itself aroused your curiosity to some extent did it? as to why it was not? --- Yes, that's right.

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Because it is a fact is it not that when you saw the gun in action it appeared to be working quite efficiently did it not? --- Yes.

And in fact you said at the inquest, did you not, that on the occasion you fired that gun it was working officially, (sic) did you not? --- As I say I possibly could've fired that gun, sir.

30 You said at the inquest did you not that "on the occasion I fired that gun it was working efficiently"? --- No, sir, not those words.

Are you prepared to say you did not say those words? --- Could you repeat those for me?

Yes, certainly. "On the occasion I fired that gun it was working efficiently"? --- I am sorry, sir, I don't remember saying those words.

40 But in any event your impression was it was quite an efficient gun was it not at the time you saw it in action? --- What is your definition of efficient?

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It does not matter, but really you believed did you not that it was quite an efficient gun? --- It shot well, it shot accurately, yes, sir.

Without any apparent defect would you agree? Damascus barrel or no Damascus barrel it handled the ammunition all right, did it not? --- Yes, sir.

So that when you got Mr. Thompson's report I suppose you would agree that the easiest way to satisfy your own curiosity or check it would be to put a couple of cartridges in, would it not? --- No, sir.

10

Well firing a gun I suppose is one way in which you can check its efficiency is it not? --- Yes, sir.

Did you tell Mr. Ratten, the accused man, that Thompson had said that it was an old gun and worn out? --- Yes, sir.

That it was not worth fixing? --- Yes, sir.

And I suppose one thing is pretty clear, is it not, it it would be pretty hard to distinguish your blue gauge plastic cartridges from those the accused man had? --- Yes, sir.

20

I take it you had a boat or went out with him in his canoe did you? --- Yes, sir.

And he would be in the back of it I suppose and you would be in the front or vice versa? --- Yes, sir.

You would take your cartridges out on your boat? --- Yes, sir.

Where did you keep them incidentally in the boat, in a shoulder bag was it not? --- Yes, sir.

30

What canvas material was it or plastic? --- Yes, canvas.

And you had a dog of your own did you not which you took with you? --- Yes, sir.

And he would be leaping in and out of the boat would he not? --- Yes, sir.

And the cartridges from time to time would get a little bit of water on them I take it? --- Yes, sir.

I just want to ask you one or two matters about the problem between yourself and your wife. You stated did you not in the course of your evidence at the inquest that you attributed the original problems between yourself and your wife to what you described as her obsession of wanting a fourth child? --- Yes.

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At the time of this conversation with the accused man, you have described to the Prosecutor as being the Sunday before Mrs. Ratten's death, it was, was it not, pretty obvious you were having trouble with your wife? --- Yes.

And I take it you would agree would you not that it was your view that Ratten was pretty anxious to divert attention from himself as the possible cause of the trouble between yourself and your wife? --- It appeared that way.

And in fact you had, had you not, previously tackled your wife on at least two occasions of having an affair - about having an affair with Ratten? --- Yes, sir.

And on each occasion she had denied it had she not? --- Yes.

And one of these occasions was quite close to this day, 2nd May, was it not, not far from it? --- From 7th May was it?

No, 2nd May. Sorry, it may not be the 2nd May, but this particular Sunday it was fairly shortly before then, was it not, one of these occasions you tackled your wife about it? --- It possibly could have been, sir.

Incidentally you were, were you not - or perhaps still are - under the impression that these particular cartridges had brass casings, is that right? --- Yes, sir.

You still believe that do you, that they had brass casings?

HIS HONOUR: Which cartridges?

MR. LAZARUS: The I.C.I., the blue star cartridges? --- They are a brass type of case, yes.

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They look like brass? --- They look like brass, yes.

Just one final matter, it may or may not be able to assist His Honour and the jury. Your wife has given evidence - Mrs. Kemp gave evidence that at some stage or other you told her to pass on to Ratten a message to the effect that you wanted him to keep away or not come so often, something to that effect? --- Yes.

You in fact saw Ratten after this, did you not? --- Yes, sir.

10

And he broached this question of the message that he had got from Mrs. Kemp with you, did he not? Or the subject came up? --- The subject came up, yes.

And you told him in fact to forget about it, that you had given a message but the neighbours would talk anyway and so on, is that right? --- Yes.

Re-Examination

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: You spoke about a Sport Co. automatic under and over shot gun that you said either was or may have been left in your shed? --- A Sport Co. rifle, sir.

20

What would the value of that gun have been roughly? --- \$60.

Did I misunderstand you to make a reference to an under and over shotgun? --- Yes, sir, S.K.B.

You did in fact refer to one did you? --- Yes, I did, sir, the make was an S.K.B.

And was this also a gun that was left in your shed? --- Only for a short while, sir.

30

And what was it worth roughly? --- \$150.

HIS HONOUR: Whose guns were there? --- The S.K.B. sir, was a friend of mine's, he wanted to exchange it for an automatic shotgun which I did for him.

These were guns that were left to you for disposal?
 --- This is right, yes.

MR. HOWSE: On your hunting expeditions with the accused whereabouts did he normally keep his supply of cartridges? --- In the back of his Land Rover, sir, and in the back of his car, sir, and in his canoe, sir. Excuse me, in a bag, gladstone bag.

Whereabouts in the canoe did he keep them? ---

10 Usually in a little compartment in the back, sir.

And would you have a look please at photograph 10 of Exhibit 'A'? Is that the canoe that you are talking about? --- Yes, sir.

And whereabouts is the compartment that you refer to? --- Just at the back of the front seat, sir - just at the back of the back seat, sir.

Will you hold it round so that we can see? --- In the tail end.

20 Is that the compartment shown in photograph 11? --- Yes, Sir. There is also a compartment like this up the front.

At all events it was his custom to keep a supply in that compartment in the canoe? --- Yes, sir.

Did you ever notice whether or not whether cartridges kept in that compartment got wet whilst you were out on your hunting expeditions? --- Cartridges quite frequently got wet, sir, due to the dog getting in and so forth.

30 I think you went on to say something about a dog, did you? --- I think I've answered this question before, sir, inasmuch as when the dog gets in and out he brings in a certain quantity of water which spills up and down the bottom of the canoe and gets everything wet at times.

HIS HONOUR: Mr. Kemp, when you took that gun along to the gunsmith did it have any cartridges in it?
 --- No, sir.

Did you collect it back from Thompson the gunsmith?
 --- Yes, sir.

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Did it have any cartridges in it then? --- No, sir.

Did you ever subsequently insert any cartridges
into that gun? --- No, sir.

You are sure of that? --- Yes, sir.

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MR. LAZARUS COMMENCED FURTHER CROSS-EXAMINATION

MR. LAZARUS: Mr. Kemp, apart from anything else,
what age were your children at this time? ---
My children were 3, 6 and 7.

WITNESS WITHDREW - EXCUSED.

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WILLIAM JOHN MADDEN, sworn and examined

10

WITNESS TO MR. HOWSE: My full name is William John
Madden. I reside at 71 Curtin (?) Street,
Flora Hill, Bendigo. I am the district telephone
manager of the P.M.G. Department at Bendigo.

MR. HOWSE: And as such does the Echuca telephone
exchange come under your supervision? --- Yes,
sir.

Can you describe to the jury the nature of the
Echuca exchange? --- The Echuca telephone exchange
is a manual telephone exchange, with a capacity
of approximately 2000 .. 20

10 You need not tell us how many lines you have got, will you tell us more particularly how the local manual service works? --- Yes, it is known as a central battery exchange, and that means that each line, or each subscriber service, is connected to the exchange - it terminates in the exchange on a lamp. This lamp has a designation plate or number next to it indicating the actual number of the service, for instance, if your service was Echuca 20, you would see where this lamp came up, and there is only one lamp for each particular line, it would have 20 next to it. That is how the line terminates. Would you like to know from an operating point of view how a telephonist would answer a call?

20 Yes? --- When a subscriber lifts the receiver of his telephone this actuates a relay which brings up the lamp, and below this lamp is a jack, a hold. The telephonist has a number of cord circuits, or pairs of cords, on the face of the switchboard, on more or less the table-top of the switchboard, and she picks up one of these cords - one is known as an answering cord and the other is a calling cord - I will handle the answering cord firstly. She picks this up, she plugs into the jack where this lamp is glowing - we'll assume it is Echuca 20, she throws a key which is associated with this pair of cords, and she says, "Number please". On being advised what number is required she then plugs into we will say Echuca 56. We have what we call a multiple above this, where the number of jacks - actually the whole group of jacks, the whole exchange, is located. She plugs into this area into 56. She then pulls back a ringing key and that causes the bell to ring at the distant end. At that point she will ensure that the call is progressing, and about every 30 thirty ..

40 How does she do that? --- She throws the key and listens across the line.

Is this the first key or the second key? --- In this case there is only one key. It is known as a speak-answer key. At this point, shg supervises according to the volume of traffic, approximately once every thirty seconds to a minute to ensure that the calls are progressing. On the completion of the call, when the subscriber has finished

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the conversation, they normally restore their telephone, or put the receiver back on the instrument. Now each one of these cords that I mentioned earlier has in association with it a lamp on the desk part or table-part of the switchboard, completely in line with the pair of cords. Then we have got two lamps, one for each cord, and we have got the speak/answer and ring key behind it. When the subscriber replaces the instrument on the telephone, the hand converse on the telephone, the lamp will glow, which indicates that that person has hung up. Now, when the second person, the call party, also restores the instrument on the telephone, that lamp will glow. When she has two lamps glowing she realises the whole conversation is completed. She then goes across the line and says, "Have you finished?" and we will assume she gets no response and therefore she would disconnect the pair of cords and the call is finished. Just one moment, before that she does meter the call, she has a device in which she presses this key and that causes a meter associated with the calling subscriber's service to be actuated and that caller is then charged one more call.

10

20

So we have got this clear, you have confronting the telephonist, apparently, a board and on that board you have a jack or hold, and alongside each jack or hold you have a number which designates the subscriber's number for that particular jack which connects with the subscriber's phone? --- That's correct.

30

And above the jack you have a light? --- Yes.

What colour is that, by the way? --- An amber light.

And then on the table beneath this you have your pairs of cords? --- Correct.

One of which you poke into the calling jack? --- That's right.

And the other of which you insert into the jack for the subscriber at the other end whom the person is calling? --- Correct.

40

And you have the key on the table in relation to

this pair of cords which enables the telephonist on the exchange being called by the subscriber to speak to the subscriber making the call, find out the person wanted, so that she can put in the corresponding plug into the other jack? --- Correct.

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And also by means of that key speak to either party, presumably, whilst the conversation is in progress? --- At any time, yes.

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10 And in association with the pair of cords and the key on the table you have another lamp - how many? --- Two lamps, one for each cord.

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And upon the person at either end hanging up then that lamp comes on? --- This is a visual signal of clearance.

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Madden

And when you get the two lamps on it indicates that the call is finished? --- That's right. You can get the situation where one caller hangs up and the other will not, he may want to make a second call. But the first call has in fact been completed.

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20 In that event would you have the orange light coming on for the caller who had hung up and no light coming on for the caller who had not hung up and who wanted to make a further call? --- That's right, until that pair of cords is disconnected the lamp associated with the line of say the second - the party called initially, will not glow because it is blocked out by the fact that there is a plug in the line jack.

30

I hope your Honour follows that, I hope more particularly the jury follows it.

HIS HONOUR: Do you think you have got a general idea of that, gentlemen, I do not know that you need to know all the technician's details about it. But what it comes to Mr. Madden, as I understand it is this. I'm the subscriber and I pick up my phone, a lamp on my jack in your board will glow, is that right? --- Yes.

40 And the girl sees that or she should, so she grabs the plug and she puts it in and she says "Hello, who do you want" and you give her the number and she shoves it in the other jack, is that right? --- Correct.

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And then you connect it? --- That's right.

And when we both hang up there are a couple of
lights that glow? --- This is taken -

Is that right, that is the general idea? --- This
is correct, and in the meantime she has got a
switch where she can cut in any time she wants
to and see if they are finished? --- Right, and
this is taking the simple call, one subscriber
calling another.

So that for every subscriber's number there is a
jack on your board? --- That is true.

10

And the number of the subscriber associated with
that jack? --- That's right.

And the jacks are these holes you see in the
switchboards? --- Yes, sir.

MR. HOWSE: There is just one other aspect. I think
you were speaking about where you would plug in
the cord into the jack for the person being
called, is that the same board that would be
facing the telephonist or is that some different
board? --- This is a little difficult to
explain... I have already mentioned that each
line has one lamp associated and under that lamp
is the jack in which the telephonist will plug
into when she is answering the call. Now each
of these lines are multiplied through what we
call a multiple field above this lamp section.
We have got the lamp section about so high in
the front of the girl, and we have got another
section. This means that you have a multiple
number of points which you can connect into a
line but there is only one signal received on
the exchange line itself. There is only one
point where that lamp will glow, but throughout
the operating positions, both the local operat-
ing positions and there are six of them at
Echuca, and seven trunk line operating positions -

20

30

Well forget about the trunk line, we do not want to
get into that complication. This multiple goes
right through so it gives complete flexibility
to any operator right throughout the entire
exchange to call any subscriber.

40

Does that mean that you have got on top of the board where you register the incoming calls, a sort of master board which contains jacks? --- Well you could describe it as that.

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Does it contain jacks for each subscriber in Echuca? --- That's right.

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10 So that the operator having received a call on the board immediately in front of her and wanting say Echuca 500, can reach across to this master board and plug in there? --- She has complete flexibilities over the whole group of subscribers.

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Perhaps you might explain the significance of this. You have said that there are six operators at Echuca. As far as incoming calls are concerned would any one of the six operators get any call at all or only one out of the particular batch of calls. Do you follow the question? --- This is in the case of answering an incoming call, a subscriber wanting service?

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20 Yes? --- It is practicable for any telephonist to be directed to plug into we will say Echuca 20 and answer the call, but she does not answer it at that point where the lamp is blowing, it is possible for any telephonist on that local position to answer it by direction.

HIS HONOUR: By the supervisor? --- By the supervisor.

30 MR. HOWSE: Yes, but ordinarily when she is sitting there performing her -? --- The girl who is sitting directly in front of this lamp is normally the one who answers it.

HIS HONOUR: You have a group of lamps in other words? --- Yes.

Each girl has a group of numbers? --- That is right.

Of subscribers' incoming - of people wanting service? --- That's right.

About how many to each girl? --- Roughly 300.

MR. HOWSE: She has got her 300 incoming jacks and then flexibility to go to a greater number of

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jacks on this board that I have been calling a master board above, is that the position? --- Correct, sir.

I hope I have not confused the issue with that, Your Honour. I want to ask you something about the particular service designated as Echuca 1494. This is at 7th May of this year at any rate. Can you tell us who the subscriber was and where the premises were or the number of the premises? --- It was R. Veitch & Partners of 114 Hare (?) Street, Echuca. That was where the main unit was provided. And from that point we had an outdoor extension to 59 Mitchell Street.

10

HIS HONOUR: What do you call them? --- An outdoor extension to 59 Mitchell Street. This was handled or connected to a unit known as a 1 bar 3, meaning a one exchange line and two extensions, but in this particular case we had only used one of the extensions, that meant that we had the main telephone in the office at Hare Street and we had the extension in the residence at 59 Mitchell Street. The facility provides communication between the residence and the shop, they can communicate between each other, they can signal each other.

20

MR. HOWSE: How would they go about doing that? --- On the main unit there is a key which the operator there or the person using it would press and this sends a signal down the line to the home phone. At the home phone - incidentally it was an ordinary grey telephone similar to the automatic telephone you will see, but on that was a little white button which is provided for this facility which meant that the person at the residence wanting to call the main - I mean the main, the phone in the shop itself, the main instrument, they would depress this button and this would cause a signal to be received at that end. This is working on the basis of calls between these two points.

30

40

What is the position if you want to make a call direct from the exchange to the extension or vice versa. This is the Echuca Exchange itself? --- The Echuca Exchange will - if I might use a hypothetical situation - Echuca 20 again is calling 1494, he orders his call with the telephonist, that telephonist would ring and the

phone at 1494 will - the bell will be actuated there and the signal received. But it would depend greatly on how the intercommunication unit had been set up at the time, as to whether the call went through to the house or was trapped at the shop, because it has the facility for after hours use mainly to throw a key which says 'extension to exchange'. And this means that when that is done the service is actually running from the house -

10

HIS HONOUR: Extension to the exchange? --- Yes, straight through to the exchange.

What really happens, it has got a key on it in the main unit? --- Yes.

So that if you want to at any time you can depress the key or whatever you do with the key, and that opens the extension line to the house and as long as that key is in position you have got then a direct connection between the house and the exchange? --- The exchange, that's right.

20

Then if you throw that switch again then your connections between the shop and the exchange? --- And the house, yes. If Your Honour desired I have one of these units in my car, I could show it to you.

I do not think so thank you, Mr. Madden.

MR. HOWSE: The key at the main set in the office having been operated so that the call goes directly from the extension to the exchange, is it then possible to ring from the extension to the exchange and then to any other subscriber directly? --- Yes, once the key is depressed.

30

And vice versa? --- And vice versa, yes.

And I suppose it would follow from the fact that a call is made to the number and received at the extension that the appropriate key has in fact been operated so that you get the direct line between the exchange and the extension unit? --- It would be essential to operate that key for that call to go through to the house.

40

HIS HONOUR: Well, if you did not the call would only come to the shop? --- Would only go to the shop, yes.

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MR. HOWSE: And when you do where do you get the signal?

HIS HONOUR: In the shop, if it is only through to the shop.

MR. HOWSE: I am sorry, I was a jump ahead, Your Honour. (To witness): When you do operate the key so as to get the exchange extension connection, where do you get the signal when the phone rings? --- At the house.

MR. LAZARUS COMMENCED CROSS-EXAMINATION

10

MR. LAZARUS: Mr. Madden, you told us there are some 300 numbers which any one girl normally looks after? --- Approximately.

And there are six girls, I think you said, at this exchange? --- As a maximum during the peak period, yes.

And what, they vary from six to what? --- Well, in very slack periods you can get down to one, Sunday afternoon for instance, there would be one girl.

20

And if the business gets a bit brisk, well, subscribers just wait, is that right? --- Well, we plan our staffing accordingly, we make quite sure we have got adequate staff on at all times.

In regard to the numbers, say the 300, they are in numerical order, are they? --- In banks of 100. No, they are spread, they are staggered over the switchboard.

Normally a girl always attends to her particular group, would that be correct? --- Yes, in a general way.

For instance, she does not go to one board one day and another board the other day, she normally would keep on the one board, would that be so?
--- I'm not quite sure of your question.

Well, ...? --- You said one board one day and another board another day.

10 Well, she would normally keep to the board that she is familiar with, would that be right? --- Oh no, they are trained to handle the whole exchange. They can be on one position, say, for half an hour and be moved to somewhere else.

It does not make any difference to their efficiency if they are shifted from board to board? ---
Oh no.

20 And I take it the fact is that the girls get pretty automatic in putting the jack in and so on? It is like being a touch typist or something of that description? --- Well, there is a certain manual dexterity in the whole thing, yes.

But they are pretty fast? --- Yes.

30 And I take it that a girl, for instance, who has had some experience in this particular work, seeing the light, does not have to solemnly look and see what number it is and make sure she gets the jack in that number, she would do this very, very rapidly indeed, would she not? --- Oh very rapidly, yes.

And indeed, she would not even, I suppose, really have to look at the number, would she? She would be able to put it in...? --- I think she would mentally identify it, but she does not have to record it ...

And this would be almost a completely automatic action in most cases, would it not? --- Yes.

40 And a thing which the girl normally would not give any thought to at all, just a sort of reflex action? --- No, not in a normal circumstance, they have got quite a lot of traffic to handle.

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I just can't tell you the number per hour, but it runs into quite a number.

And that is all they do all day, simply handle these calls, is it not? --- Well, there are other duties they can be put on, but in this situation, yes, in this particular situation of handling the local calls, whatever girl is there that is her prime task.

You would regard a girl who has had, say, 2½ years in the exchange, as a pretty experienced girl, would you not? --- Yes, she is quite efficient.

10

There is perhaps just one thing you might be good enough to tell me, in regard to a trunk call how are they timed, is there an automatic device? --- It is a synchronous timing device, it depends which exchange we are looking at.

I am taking the Echuca exchange? --- A trunk line call - once the call is connected ..

Take a trunk line call from Melbourne? --- From Melbourne to Echuca?

20

Yes? --- At the time the conversation commences - I might just describe this a little more - at Melbourne we have a different type of exchange again, there are no cords and plugs. At the Melbourne trunk exchange it is a different type of exchange to Echuca, it is a much more modern one, there are no cords and plugs, there are no jacks. The calls are received from the Melbourne subscriber when he dials 011 to get into the Melbourne trunk exchange on a light queuing system. The lass there presses a key and the next call in the queue comes through into a cord circuit. We term it a cord circuit again, although there are no true cords there. We retain this name for this particular part of the equipment. But it means that we have got an answering side and a calling side, the same as we have in this manual situation at Echuca, and we have our visual signals - clearing signals, lamps, as I have described in the case of the Echuca exchange. We also have a timing device, which is operated by the telephonist by pressing a key, once she finds the call is in progress. Now it does not tell the time of day, it tells

30

40

the period of the call, and it goes to 9 minutes and at 2.8, 5.8 and so on you get your three pips - you may have heard these pip signals.

That is a sort of warning? --- That is a warning that your three-minute speech period is nearing its completion.

And that goes about 2.8? --- About 2.8, yes, and 5.8 for the 6 minute.

10 I think most people think the 3 minutes has elapsed on hearing the pips, do they not? --- Yes, I think they do. We've tried to educate them the other way, but they do accept this. Now, this timing device, as I said, only records the period of the time, it doesn't show the hour of the day. But the hour of the day is recorded on the trunk line docket.

It is a device the girl uses and presses, and at the expiration of 2.8 minutes she gives the three pips? --- Yes, she ...

20 HIS HONOUR: How does it all tie up with the docket, that is the important thing from the subscriber's point of view? --- Well, when a subscriber books his call, you are normally asked for your number. The telephonist has a trunk line docket.

She does this manually? --- Yes, she records, say Melbourne 34-6890, whatever it might be, calling Echuca 20, and she gets the calling subscriber's number against whom the debit will be made ...

30 That is how you sometimes get bills for wrong number of trunk calls? --- I can't answer that one, sir.

MR. LAZARUS: Mr. Madden, in contradistinction from the trunk line position as to the importance of timing, local calls at Echuca have not got this disadvantage, have they, you can speak as long as you like? --- Yes, this is so in all local calls.

40 But at Echuca you could speak for any length of time? --- Oh yes. There is no time limit on a local call, with one exception, in certain areas - I do not think it is really important to this, but I might mention it, in certain areas where we

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have got few lines serving an exchange, we do restrict local calls to 6 minutes on occasions, but in a general sense yes, they are untimed.

So that unless there is some special occasion as far as the operator is concerned the time factor is of no importance to her, she does not have to record time in any way? --- No.

Perhaps just one final thing while you are there. As far as this particular extension apparatus is concerned, the operator herself cannot tell whether the call is from the extension or the main? --- She would have no idea whatsoever, all she knows it is coming from this case at 1494.

10

Re-Examination MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: In the event of the key being thrown so as to connect the extention with the exchange, from which point can you raise the exchange? --- Extension to exchange you would raise it from the house. If you wanted to raise it from the shop in this instance you would have to re-arrange the key on the master unit.

20

So once the key is thrown you can only do it from the house? --- That's true. You can only call, that's right, you can at the shop lift up and could hear a conversation going on but you couldn't signal to the exchange until you restored the key.

HIS HONOUR: You said that the number of girls on duty varies according to the volume of business? --- That's right, sir.

30

That means that broadly speaking you know as it were broadly when your peak hours are on do you? --- Very definitely.

Which part of the day? --- Usually between 9 and 11.

That is on week days? --- Week days, yes. I speak only of week days, sir.

9 and 11 a.m.? --- 9 and 11 a.m. then between 2 and 4.30 in the afternoon and 7 and 8.30. This does, however - there is a certain variable ... in country areas depending on the seasons. But in a general way they are the main -

These are from home numbers? --- Homes and businesses and so on.

9 to 11, 2 till 4? --- 2 till 4..

That is interesting is it not? --- Well it's the normal business hours. The ordinary time a husband goes to work I suppose.

WITNESS WITHDREW - EXCUSED

MR. HOWSE: Before Your Honour rises there is one witness that the Crown would appreciate being able to dispose of. She is quite short.

HIS HONOUR: Who is that?

MR. HOWSE: A Mrs. Lindner, Your Honour, but I think there is something in fairness that I should mention in the absence of the jury.

HIS HONOUR: How long will she be likely to be?

MR. HOWSE: I would think no more than five minutes once she gets into the box, Your Honour.

HIS HONOUR: Is she on the evidence?

MR. HOWSE: Yes, at p. 87.

JURY RETIRED AT 4.25 P.M.

MR. HOWSE: Your Honour, the only problem about it is this, she gave evidence at the inquest of course but I have been supplied with a medical certificate to the effect that she ought not to be called. It does not seem to me, having regard to the nature of her evidence, that there

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should be any undue strain involved, Your Honour. I understand that my learned friends desire her to be called, but I thought perhaps I should take the precaution of at least informing Your Honour of the position and showing Your Honour the certificate. But her evidence is quite short, Your Honour.

MR. LAZARUS: I was told of this by Mr. Howse this morning, sir, and I then indicated as far as we were concerned he could read her evidence to her. I cannot anticipate any questions at all.

10

MR. HOWSE: Perhaps I should ask in the presence of the jury for Mr. Madden's excuse, Your Honour.

JURY RETURNED AT 4.28 P.M.

WITNESS MADDEN - EXCUSED

Gwenda Frances
Lindner

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GWENDA FRANCES LINDNER, sworn and examined

WITNESS TO MR. HOWSE: My full name is Gwenda Francis Lindner. I reside at 58 Mitchell Street, Echuca. I am a housewife.

MR. HOWSE: And living at 58 Mitchell Street did you live over the road to the Ratten family who lived at 59 Mitchell Street? --- Yes.

20

And had you known them for something like 3½ years? --- Yes.

Did Mrs. Ratten occasionally visit your home for coffee and did you do likewise and go over to her place? --- Yes.

And had you heard of any domestic problems between the late Mrs. Ratten and her husband, the accused, at any time? --- No, never.

30

And on 7th May, the day that Mrs. Ratten died, were you at home? --- Yes.

Between the hours of 1 o'clock and half-past 1 in the afternoon, did you hear any noises of any sort coming from the Ratten home? --- No.

Anything such as a shotgun blast? --- No.

Later on, however, did you hear the little girl,
Wendy Ratten, crying? --- Yes.

And did you then see that she was with a policeman,
Constable Holly? --- Yes.

And that there was a police car parked outside?
--- Yes.

And did you see Constable Holly take the child and
hand her over to the next door neighbour to the
Rattens, Mrs. Phelan? --- That's right.

10 Perhaps I should ask you this, when you observed
this, whereabouts were you? --- On my way down
the street.

You were out in the street? --- Going past their
house.

MR. LAZARUS DID NOT WISH TO CROSS-EXAMINE

WITNESS WITHDREW - EXCUSED

HIS HONOUR: What about this view, gentlemen,
tomorrow, we will do that after the mid-day
adjournment?

20 MR. HOWSE: If Your Honour pleases, yes.

HIS HONOUR: Would you like the accused to go on that?

MR. LAZARUS: I think so, sir, yes. I would like
him to go, sir.

HIS HONOUR: Do you want any showers appointed or
anything like that?

MR. LAZARUS: I think there are two already, I
suppose, sir, which should be adequate - we have
already got three, sir.

30 MR. HOWSE: This would have to be confirmed, your
Honour, but I would suggest round about a quarter
to two. It will probably take about an hour to
get there, some little time there, and then an
hour to get back, which would cut out the after-
noon, I think.

HIS HONOUR: All right.

COURT ADJOURNED AT 4.33 P.M. UNTIL 10.00 A.M. ON
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COURT COMMENCED AT 10.01 A.M. ON WEDNESDAY, 12th
AUGUST 1970 (IN THE ABSENCE OF THE JURY)

MR. HOWSE: Your Honour, I ask that the jury be kept out of Court so that this matter could be mentioned. It seems to me that at least in fairness to the accused it should at this stage be mentioned in the absence of the jury. Yesterday the police were able to discover for the first time the identity of the solicitor whom it is alleged that the accused and Mrs. Kemp consulted on the Tuesday before the death of the late Mrs. Ratten, and the situation now arises, of course, as to whether or not he should be called. However, he is in Court, and I understand from him that he will be claiming privilege on the grounds that anything that passed between them on the day in question is within legal professional privilege, as established by the authorities. That privilege, I understand from my learned friend Mr. Lazarus, will not be waived, so therefore unless it can be shown that the matter is outside privilege, then it would seem - well, the evidence cannot be led. I have looked at the authorities, Your Honour, there are numerous authorities dealing with legal professional privilege and exceptions from that, and the one in particular is "communications in furtherance of a crime or fraud", and there is ample authority for the proposition that any communication passing between a solicitor and a client which contemplates the commission of a crime or fraud, notwithstanding the fact that the solicitor is quite innocent, he is quite an innocent party, and that of course would be the position here, that such a communication is outside the privilege. The leading case on that is ...

HIS HONOUR: I am familiar with the case.

MR. HOWSE: The only way that I could submit to Your Honour here that it is outside the privilege is on this basis, that at the time either the accused contemplated doing what he did on the Thursday - this is on the Crown case, and this was merely a step which reinforced his plan and his motive, but I must concede that the alternative situation could also exist that it may be that he formulated his plan only after

getting this advice and the confirmation of the difficulties of the position in which he found himself, which would mean that I would have to persuade Your Honour that as to the second aspect, having committed the crime, the crime as it were related back to the advice so as to make the communication still something in the furtherance of a crime or fraud. Now I have not been able to find any authority that deals with this sort of situation, so therefore all I can do is put that argument to Your Honour. If it does not appeal to Your Honour -

HIS HONOUR: No, I do not think that appeals much Mr. Howse.

MR. HOWSE: Well Your Honour the -

HIS HONOUR: No, I think on the evidence that has been given in this case I would certainly not be prepared to admit this on the basis that at that stage at any rate there was any .. and this was a step in the preparation or the - for the purpose of committing a crime of this kind.

MR. HOWSE: I of course so far as the Crown is concerned do not want to be faced with the situation where any comment is made. I have no doubt that no comment will be made about the fact that the Crown has not called the solicitor, nor for that matter do I want the Crown case to be in the situation where it is any worse off in the jury's minds for not having called the solicitor. One way of overcoming that I suppose would be if the solicitor was called in the presence of the jury and he claimed privilege, then of course that is the end of it. On the other hand it might be said that that is prejudicial to the accused.

HIS HONOUR: I do not know, I think that could be prejudicial to the accused. No, I would not be prepared to say that there is any basis here on which the evidence could be called in ... of the privilege, and in view of that ruling I presume the defence will not attempt to make any comment on it.

MR. LAZARUS: We do not know what the solicitor in question would say. I understand the Crown are

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in a similar position because he has taken this stand from the time attempts were made to interview him by the police. But as a matter, as Your Honour can understand, of a simple caution the accused's view of this matter has not been the subject of any attempt by us to either reinforce or discourage and that is where it stands. But I certainly would be rather surprised if the evidence could advance the Crown case, it would actually advance the defence for that matter, and I certainly would not be attempting any event to make anything of the failure ...

10

HIS HONOUR: I think this is a plain case where the privilege attaches and that is the end of it.

MR. LAZARUS: Just one other matter, sir, while the jury is out. My learned friend also advised me this morning -

MR. HOWSE: Your Honour, before my learned friend goes on to deal with another matter, it may be that I will desire in my address to refer to the fact that he has not been called and that he could not be called. This might be a convenient time for Your Honour to give me any direction if Your Honour takes the view that I should not do that.

20

HIS HONOUR: I think it ought to be left altogether, unless something arises further that makes it in some way fitting to make such a comment. I think it is just completely negative, that is all, I do not think any reference ought to be made to it.

30

MR. LAZARUS: Your Honour, just a matter which was mentioned this morning, sir. In regard to a proposal by Mr. Howse to tender the - what appears in the photograph to be a sweater is it?

MR. HOWSE: It consists of the cardigan, dress, slip and brassiere, Your Honour, it is for the purpose of showing the hole.

MR. LAZARUS: I understand the articles of clothing, Your Honour, are not particularly attractive, from the point of view of their appearance. I was wondering - my view is - perhaps I should put this, I would object to them being tendered, sir, on the basis that they really have no probative effect.

40

HIS HONOUR: I do not think I can say that, Mr. Lazarus.

MR. LAZARUS: If Your Honour pleases. I felt I should raise it.

HIS HONOUR: Oh no, I think that is admissible.

MR. HOWSE: One other thing, Your Honour, Mrs. Kemp has asked that she be excused. She has young children to look after, she is employing someone to look after them at the moment.

10 HIS HONOUR: What do you think about that, Mr. Lazarus, is she likely to be needed again?

MR. LAZARUS: I am certainly raising no objection to her going, sir. I take it that if an emergency did arise she could be brought back again.

HIS HONOUR: You could get her back again, I suppose?

20 MR. HOWSE: Yes, Your Honour. If that is made clear to her on her being excused. It might take some 2 or 3 hours to get her here, but she could be got here.

HIS HONOUR: I should think it unlikely she will be wanted again, but you had better make that plain to her.

JENNIFER ANNE KEMP EXCUSED (TO BE AVAILABLE FOR RECALL IF REQUIRED)

JURY RETURNED AT 10.15 A.M.

STANLEY GORDON THOMPSON, sworn and examined

30 WITNESS TO MR. HOWSE: My full name is Stanley Gordon Thompson. I reside at 106 Swallow Street, Shepparton. I am a licensed gun dealer and conduct the Shepparton Sports Depot situated at the corner of High Street and Maude Streets in Shepparton.

MR. HOWSE: Do you know a Mr. Peter Charles Kemp of Barmah? --- Yes.

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Did he come and see you at your sports depot in relation to a double barrelled shotgun? --- Yes.

Do you recollect when it was? --- To the best of my knowledge it was mid-March to late in March this year.

By the way how long have you been a gun dealer and dealing in firearms roughly? --- 25 to 30 years.

Would you have a look at the gun produced, Exhibit 'C', and tell us whether or not that is the gun that Mr. Kemp brought to you? --- It's behaving in a slightly different manner to what it did the last time I saw this gun in another place.

10

Is that the gun, that is what I wanted to know? --- Yes, I think it is the gun, to the best of my knowledge it is.

For what purpose did he bring it to you as he stated? --- It was offered to me with a view to purchasing, he wanted to sell it to me.

Did you make an examination of it? --- Yes, I did.

And what did you find. Perhaps if you would keep the gun. What did you find upon your examination of it? --- I found that the gun was in a state that it would require too much repairing to make it available for sale so we rejected the purchase of it along those lines.

20

What were the features about it that required repair? --- Oh the jointing, it would need to be re-jointed.

Will you hold it up and just indicate to the jury, so that they can follow what it is that you are talking about? --- That looseness there would have to be removed.

30

What is this, this is the looseness between the stock part and the barrel? --- No, the barrel and the frame, barrels and the frame of the gun. It is not at a dangerous stage at the moment but for resale that looseness would have to be taken out, have to be removed with a new inch (?) pin and the bolt would have to be built up to make it staunch.

40

Is that the pin upon which the barrel hinges when you open it? --- That is one part of it, but the locking arrangement is beneath the bumps they are called and there is an under bolt ... those bumps and locks the gun into position.

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Both those features then would require repair? ---
I beg your pardon?

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Both those features you say would require repair?
--- Yes.

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10 Anything else that you found on your examination in March? --- The locks would have to be overhauled and sears set to a safe release pressure.

What does all this mean? --- When a gun is opened a hammerless gun, it automatically cocks itself. It means that it compresses the main spring which actuates the hammer in the firing pin. In other words, sears are engaged and these become a little worn and they have to be reset back to a safe release.

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20 Is this something to do with the safety catch is it?
--- Not actually, no, it is remote from the safety catch.

What was the effect of this aspect of the gun in the condition in which you saw it? --- I examined the gun along all these lines and tested for - bump test it for discharge.

We are at cross purposes. The last matter you told us about, what was the effect of that so far as the gun itself was concerned in its operation.

30 What would it mean, is it safe to fire or what?
--- Oh it would probably be safe to fire but it would not be reasonable to resell it in the present condition.

How did you find what I call in layman's terms at any rate the safety catch aspect of the gun? --- Well when I examined this gun originally this has what we call an automatic safety to put to firing position. The gun is fired and then opened, the safety returns to the safe position. I mean to the bar operated from the back of the locks. Now this gun when I originally tested it in the safe position with a hard pressure

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on the front trigger the safety would move off and the gun could be fired with a fair amount of pressure.

HIS HONOUR: You mean when you opened the gun and then closed it again so that it had cocked --? --- Without touching the safety, the safety could be driven forward by a strong pressure on the trigger and the gun would then discharge. This would mean the safety would have to be completely refitted.

10

MR. HOWSE: Do you say there is something different about the gun now to what it was when you saw it in March? --- Well this operation that I have just described will not happen to the gun now.

Perhaps if you might try it and see? --- I've tried - that is it there.

It still does it does it? --- Yes, it still does it.

Well is the position apparently from what you have found in Court today, it sometimes does it and it sometimes does not? --- I beg your pardon?

20

Based upon what you have found in Court today is the situation that it sometimes does operate and it sometimes does not? --- I may have inadvertently forced the safety back further than the gun would normally force it back.

You told us that this gun was offered to you for purchase? --- The only reason we would purchase it would be to dismantle it and use the spare parts. It would not be suitable for resale.

I am told I can lead on this, Your Honour.
(To witness): Are you quite sure it was offered to you for the purpose of prospective purchase or simply for prospective repair? --- No, it was offered to buy, for me to purchase.

30

Did you test it by firing it? --- No.

So far as you could observe from what you saw of the gun what would you say about whether it was safe to fire it or not? --- Oh I think it would be safe to fire, it didn't discharge on what we term the bump test.

40

What is that? --- That means that if the sears have not sufficient engagement a shock may release them.

Did you perform such a test? --- Yes.

With what result? --- The gun did not discharge, the sears did not release.

10 Could you just show the jury how you performed that test? --- Yes, we used a piece of the gun as cocked in the normal manner, closed, safety taken off and then the gun is bumped on a hard surface.

HIS HONOUR: You have the gun loaded do you? --- No ammunition, no, just the firearm.

MR. HOWSE: And that was performed with the safety button off was it? --- That's right, that's correct.

HIS HONOUR: How many times did you bump it? --- Probably three or four times.

20 And what sort of bump do you give it? --- This would be difficult to indicate the actual poundage but quite a sturdy bump.

MR. HOWSE: Having made these examinations of the gun and these observations what did you do about it, did you say anything to Mr. Kemp? --- Yes, I just indicated that I wasn't interested in purchasing the gun.

Did you tell him what was wrong with it? --- Yes.

And is that what you have told the Court today? --- That is correct.

30 HIS HONOUR: What type of gun is it, Mr. Thompson? --- It has no name, Your Honour, it is obviously of Belgian origin because it has Belgian proof marks. This happened a lot in the years gone by, the Belgians made a lot of guns and didn't label them with any particular name.

MR. HOWSE: When you examined the gun was it loaded or unloaded? --- We can't put shells in a gun in a shop.

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Perhaps you cannot, but was it loaded or unloaded?
--- Oh, was the gun unloaded?

Yes? --- Oh yes, the gun was empty, there were no
shells in the gun when I first saw it in the
shop. That's the first thing we do.

Would you have a look, please, at Exhibit "F" (for
identification)? Do you recognise the cartridge
and the cartridge case, as far as type is
concerned of course? Are they I.C.I. Blue Star
plastic cartridges? --- They are.

10

Or cartridge in one case and a cartridge case in
the other instance? --- That is right.

Do you sell them? --- Yes.

Have you sold many of them? --- Tens of thousands
of them probably.

Have you had experience with them yourself? --- Yes.

What effect is water likely to have on them, if
water is splashed on them, for example? --- In
my opinion it would have no effect at all. I
personally have put these cartridges in water
for a period of 2 weeks and removed them and
they have fired instantly.

20

You immersed them in water, did you? --- Immersed
them in water for 2 weeks.

Cross-
Examination

MR. WALKER COMMENCED CROSS-EXAMINATION

MR. WALKER: After you had examined that gun at
the request of Mr. Kemp, you next saw it at the
(sic) coronial enquiry, did you, in June of this
year? --- Yes.

And when you were shown the gun on that occasion
you made a similar test to that which you made
here in Court, is that right? --- Yes.

30

And after making that test, when you were asked if
that was the same gun that you had examined at
Mr. Kemp's request, you said, did you not, "I
just made that test to establish that that was
the gun, because with the safety normally on
the "safe" position it should be safe. But

pressure on the trigger moves the safety off "safe" and will fire the gun. That's how I know that that is the gun". You said that, did you not? --- Yes.

And you went on to say that it required just a little extra pressure, is that correct? --- Yes.

And that was the position then, was it? -- Yes.

10 So that when you first examined the gun it required a little extra pressure to move the safety off the "safe" position? --- Correct.

And when you next saw it in June, on 25th June, at the coroner's enquiry, it was in the same condition? --- That's correct.

But it now, do you say, it requires hard pressure? --- No, I must have inadvertently moved it back a little bit, because if the gun is opened in the normal way and then the pressure applied it does exactly the same.

20 And it is just a little extra pressure required? --- Yes.

That in itself, of course, is a fairly unsafe feature, is it not? --- Not really. If one is relying on the safety it is, but any gun with the safety in the "off" position is more lethal than it is with any degree of safety.

The trigger pull on the right barrel trigger, that is the front trigger, is very light on this gun, is it not? --- Fairly light.

30 What do you say about the trigger pull on the left barrel or the rear trigger? --- It seems to be about normal.

Would the normal pressure required on triggers of guns of this type be within the range of 4 to 6 lbs? --- It depends, of course, where they are originally set, but it is usually $3\frac{1}{2}$ to 4 to 6 lbs, that's correct, yes.

And a heavy pull, of course, can get as high as 12 lbs., can it not? --- Yes.

And that is regarded as pretty heavy? --- Excessive, yes.

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Well, you like to keep the pressures within that range of somewhere near 4 to 6 lbs? --- Yes.

Well, the gun is a very old gun, is it? --- It's very difficult to tell its age, but I'd say it was made during the 1930s.

And it is in fact worn generally, is it not? --- It is.

The features that you have pointed to as being faults in the gun are all due to the fact that it has been much used and is just generally worn? --- Yes.

10

Are you able to say as a result of your examination whether that gun would be apt to misfire? --- It's difficult to say. It could, but it can't be said with any degree of certainty.

If a gun, in fact, misfires it is more likely, is it not, to be the fault of the gun rather than the cartridge, in your experience? --- Yes.

And of course the older the gun the more likely the possibility of a misfire, is that the position? --- Yes.

20

And this is because - well, it could be for a number of reasons, would you agree with that? --- Yes.

Firstly, the springs lose their compression over the years, do they not? --- Yes.

And secondly, the fact that the sears are out will affect the possibility of a misfire? --- No, ...

Well, what is it that affects the firing pin? --- The firing pin is being struck from the rear by the hammer, and it is a metal to metal contact there and gradually there is a little flattening and wear, which is foreshortening the firing pin. On the front end where the firing pin strikes the percussion cap of the cartridge is another metal to metal contact and you get a slight foreshortening there. And over the period of years the firing pin shortens and fails to reach the cap with sufficient pressure to ignite it.

30

The firing pins on this weapon are in fact a little loose, are they not? --- I haven't dismantled the action of this gun.

What about the possibility of dampness causing a misfire with I.C.I. Blue Star cartridges, Mr. Thompson, do you have any comments to make about that? --- Dampness?

Dampness causing a misfire with I.C.I. Blue Star cartridges? --- I couldn't credit it.

10 You just could not believe that could ever happen?
--- No.

So if in fact it appeared that this gun misfired, you would believe, would you, that it would be the result of the faulty weapon? --- Yes.

Mr. Thompson, I have just opened that gun and closed it, which causes it to cock, is that so?
--- Yes.

20 And you notice that the safety catch on that occasion appears not to have gone back as far as it is able, is that so? --- It has moved, yes.

It has not moved right back, though, has it? --- No, that's right.

Did you notice at the time you examined the gun that that was another feature of it? --- No, to be quite truthful I did not, I merely opened the gun ...

Well would you just test that a few times yourself and see if that is likely to happen very frequently? (Witness tested gun).

30 HIS HONOUR: Not go right back?

MR. WALKER: Yes. That does seem to happen quite a number of times, does it? --- Yes. The safety catch is worn and would have to be repaired too.

40 And would that fault be allied to the comments you have already made about the safety catch, or is that due to some other feature - for instance, the bar that pushes it back having worn? --- No, the bar merely pushes it back. The bar could be worn or the safety catch mechanism could be worn, resulting in a lack of traverse to the rear. But I didn't examine ...

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But at any rate one of those reasons would cause this fault in the gun? --- Yes.

In that the safety does not go right back? --- That is true.

HIS HONOUR: Mr. Thompson, if you pull the safety catch right back, if you manually force it back, will the gun then discharge by pressing on the trigger? --- No, Your Honour.

Just try that. --- (Witness tested gun). Safe.

Now try the rear trigger, keep on a few times, jiggling it backwards and forwards? --- Safe.

10

It will not go off? --- No. If it is allowed to be manually operated?

Yes, if it manually operated? --- (Witness tested gun).

If you pull the safety catch right back manually it will not discharge? --- That's true.

MR. WALKER: So the real fault seems to be that the safety catch is not going right back when you operate it by breaking the gun and closing it? --- That's right.

20

That - at any rate when you examine it and when - on the first occasion and when you saw it at the coroner's enquiry, that seems to be the position all the time? --- No. I was merely making the gun operate to safety then. Now we have to manually operate it.

No, you misunderstand me. At any rate when you examined the gun in March and when you saw it at the coroner's enquiry you tested it by breaking it, closing it and pulling the triggers, is that correct? --- Yes.

30

On each of those occasions it fired? --- That is correct.

Whereas now if you manually apply the safety catch it appears that it does prevent the triggers from operating? --- That is right ...

HIS HONOUR: What did you say then?

MR. WALKER: "I had manually operated it on the previous two tests." (To witness): The most obvious fault on looking at that gun is the looseness between the barrels or chambers and the action, is that so? --- The whole gun is in a state of wear and disrepair, the whole gun would have to be completely overhauled to make it safe and that would involve too much outlay and it wouldn't be worth it.

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- 10 However, on picking the gun up and applying some movement to the stock and to the barrels you are conscious of the fact that there is a looseness, is there not? --- Yes.

Is that looseness at a stage that puts this gun anywhere near the blow out stage? --- No.

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HIS HONOUR: What do you mean by the blow out stage? --- When a gun gets excessive clearance between the barrel and the stand in breach it is possible for a cartridge to actually fire out backwards.

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20

MR. WALKER: The possibility of a cartridge jamming in a gun would have I suppose many possible explanations, is that so? --- Yes.

If a cartridge had been left in a gun for some weeks and it had perhaps been exposed to the weather could that cause the cartridge to be somewhat difficult to remove? --- I shouldn't think so, not contained within a gun, it's isolated from the weather actually.

- 30 What sort of things would you say would make it difficult for a -? --- If a cartridge is exposed to the weather direct corrosion may occur on the shell head which today is made of steel and brass plated as compared with solid brass of years back. Apparently the brass platings are very thin and it's easy to penetrate by moisture and the thing becomes sort of corroded and it ... the diameter a little, could possibly cause it to be jammed a fraction, but not excessive I wouldn't think.
- 40

It is because of the fact that these cartridges are now made with a steel end that you find that they rust, is that so? --- Not unless they are exposed to actual moisture.

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But of course the original brass ones would not rust? --- No.

Well what about swelling, is there any likelihood of swelling with the -? --- Not in a plastic tube, no, only with excessive pressure from inside and firing they swell a fraction but not standing in ...

Would you recommend firing that gun without the forend in position? --- I wouldn't recommend it, no, I wouldn't recommend any gun to be fired with any part missing. 10

HIS HONOUR: What do you call the forend? --- This is the forend (indicates). It is designed to lock the gun and the barrel into position so there is no ... to fire without it.

MR. WALKER: And without that you increase the dangers that are associated with firing a gun in that condition, in that worn condition, would that be true? --- Yes.

HIS HONOUR: What was that, Mr. Walker? 20

MR. WALKER: One increases the danger, Your Honour, associated with firing a gun in that worn condition if one removes the forend. (To witness): You did not actually fire that gun as I understand your evidence with a cartridge in it? --- No.

But you did test it with your bump test about half a dozen times do you think? --- Yes, at least.

Four to six bumps? --- Yes.

And were they the sort of bumps that you demonstrated here in the Court? --- Yes. 30

Of about that pressure? --- Yes.

What is the position, it is your opinion that you think this gun could only be discharged by pressing the trigger? --- That's correct.

HIS HONOUR: When you say that, in your opinion is there any other way that gun could go off except by pressure on the trigger? --- Not to my knowledge, sir, no.

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: Mr. Thompson, did you actually measure the trigger pulls on the gun, Exhibit 'C'? --- No.

Would you look again at the cartridge and cartridge case, Exhibit 'F'? Now that type of cartridge, is the metal part at the back of the materials that you have told us made of steel with brass plating? --- Yes, I don't know the actual date of their changeover, but these look as if they are steel with brass plating because there is a slight amount of rust evident.

Returning to the gun, Exhibit 'C' for a moment, if the forend that you have just shown to the jury was off the gun would you be able to fire the gun or not? --- Yes, it isn't good practice but it's quite possible to fire the gun.

Why do you say it is not good practice? --- Well again it was designed to have a forend to lock up the - further lock up the mechanism and it rather foolhardy to fire it without it because it was designed to have it, and also accentuate the amount of looseness in a gun by removing certain pressure. The gun now has got quite an amount more looseness than it has with the forend fitted.

HIS HONOUR: What could happen without the forend on, you mean the gun might break? --- No, Your Honour, the gun is locked by two metal pieces fitting into those two slots there on the bottom side of the action. Now they are in place just the same now as they would be with the forend on, there is no danger there. But this looseness is accentuated and there is more in a worn gun, more liability to have a blow out without the forend than with it.

That is what you mean by saying that it would be foolhardy to perhaps fire it without the forend on? --- Yes.

More chance of a blow out? --- If the gun were new and there is no human visible at all there would be no danger at all.

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MR. HOWSE: Just one other thing. So far as concerns the - I will withdraw that. Is there any difference according to your observation of the gun between the trigger pull on the right hand barrel and the trigger pull on the left hand barrel? --- Yes, there is quite a difference in the pressure required to release the front trigger or right barrel is a lot lighter than the left trigger - back trigger or left barrel.

HIS HONOUR: Which is the lighter one? --- The light one is the front trigger, the right barrel.

10

MR. HOWSE: So far as misfiring is concerned, would firing the left hand barrel with the heavier trigger pull have any effect on the likelihood of the right hand barrel misfiring? --- No, no connection whatever. It's two separate mechanical functions, two separate springs, thoroughly out of relation with each other. One operates the right barrel, its own trigger, hammer, firing pin, the other operates the other barrel with its own trigger, hammer, spring, firing pin.

20

HIS HONOUR: Yes, but would the lightness of the pressure on the front trigger would that tend to accentuate the possibility of a misfire? --- No.

MR. WALKER COMMENCED FURTHER CROSS-EXAMINATION

MR. WALKER: When that forend is removed if one then breaks the gun the barrel virtually comes off in your hands, does it not? --- Yes.

30

So that if in fact the forend is removed and you do not want the gun to come apart you have got to keep it in the locked position, is that so? --- That is true.

Just harking back to the questions that you were just asked by the Prosecutor. If the first trigger has pressure applied to it and the firing pin goes forward it makes a clicking noise does it? --- The hammer is the - the spring is the actuating mechanism and connected to the hammer. The hammer moves forward and then strikes the firing pin.

40

And it makes a quick -

HIS HONOUR: You would have to fire it would you to do that? --- Yes.

MR. WALKER: At that stage the safety catch moves into the unsafe position or the off position does it not? --- You can't fire it unless the safety is in

10 No, no, after that operation is completed - after the right hand barrel has been fired in effect the safety moves forward does it not? --- No, the safety - there is no relationship between the movement of the safety and the trigger.

Would you just cock the gun again, now close it. Now pull the right hand - no, no that is what I do not want you to do. Pull the right hand barrel, now the safety is in the off position is it not? --- Yes.

20 So that if you then apply pressure to the left hand barrel rear trigger the gun is not in a safe position? --- That's right.

HIS HONOUR: In that exercise you have just performed.

HIS HONOUR: Before you pulled the front trigger, was the safety catch in the "safe" or "unsafe" position? --- It was moved back towards the "safe" position, but it hadn't gone far enough to be completely safe.

When you discharged the first trigger...? --- It moves forward, into ..

30 It moves forward again? --- Into the "unsafe" position.

MR. WALKER: It goes fully forward into the "unsafe" position, does it not? --- Yes, that's right.

And on that occasion when you demonstrated that you did not touch the safety catch yourself, you simply relied upon the gun to take it into whatever position it did? --- That's correct.

I just want to hark back to this repairing business again, Mr. Thompson. When you gave evidence at

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the coronial enquiry, did you say that Mr. Kemp
had brought the gun in to have it repaired? ---
No.

Did you say to Mr. Kemp after you had examined the
gun that it was not worth repairing? --- That's
right, economically unrepairable.

MR. HOWSE DID NOT WISH TO FURTHER RE-EXAMINE

WITNESS WITHDREW - EXCUSED

BRIAN GEORGE THOMPSON, sworn and examined

WITNESS TO MR. HOWSE: My full name is Brian George
Thompson. I am a first constable of police
attached to the Firearm Identification Division
of the Forensic Science Laboratory at 193 Spring
Street, Melbourne.

10

MR. HOWSE: Have you had experience in the identi-
fication of firearms and also in their examina-
tion and safety testing? --- Yes, sir.

Will you tell us about your experience, please?

--- I've been attached to this laboratory now
for a little over 9½ years. During that time
I have studied the manufacture of firearms and
ammunition in Australia. I've studied the
literature available to the Police Department
on the subject of firearm identification. I've
been trained in the use of the comparison
microscope for the examination and comparison of
fired bullets and cartridge cases. I've made
myself familiar with the operation and charac-
teristics of the weapons in our firearm reference
library, which consists of approximately 1500

20

30

different firearms. I've examined many hundreds of exhibit firearms, fired bullets and cartridge cases. I've conducted a large number of tests with these and other firearms, and I have been giving evidence now for a little over 8 years in matters related to firearm identification.

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10 MR. HOWSE: On 7th May of this year did you go to the Bendigo Base Hospital and there in the mortuary did you examine a body which you came to know as that of the late Beverley Ratten?
--- Yes, sir.

And were you present during some of the time when the post mortem examination was conducted by Dr. Charlton? --- Yes, sir.

Would you have a look at the photographs Exhibit "A", and in particular at photographs Nos. 1 and 4? Is 1 the face of the deceased? --- Yes, sir.

20 And what about 4? --- 4 shows the wound in the left side of the body.

Did you observe that wound yourself? --- Yes, sir.

After the completion of the post-mortem examination did you receive from Dr. Charlton a quantity of shot and also part of a plastic shotgun wad, is it? At all events, are those the articles that you received? --- Yes, sir.

30 What are they? --- That is a plastic shotgun cartridge wad, and there are 10 pellets - or 10 pieces of shot in that jar.

EXHIBIT EXHIBIT "G" Cartridge wad and
(For identification) 10 pellets

MR. HOWSE: Dr. Charlton will give evidence that he recovered them from the body, Your Honour, the 10 pellets. (To witness): Did you actually see where he got them from? --- Not the exact position, no, sir they were removed from the body in my presence, though.

40 HIS HONOUR: Both the wad and the pellets? --- Yes, sir.

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MR. HOWSE: In those circumstances I tender them absolutely, Your Honour.

EXHIBIT EXHIBIT "G" Cartridge wad and
(Admitted absolutely) 10 pellets.

MR. HOWSE: Also from the body did you obtain the clothing of the deceased? --- Yes, sir.

Do you produce that clothing, and would you look, please, at the cardigan, frock, blouse, slip and brassiere? Are they articles of the deceased's clothing removed from the body in your presence? --- Yes, sir.

10

EXHIBIT EXHIBIT "H" Cardigan, frock,
blouse, slip and
brassiere.

MR. HOWSE: If you would start with the cardigan, would you hold it up and show us the hole in it? By the way, did you notice holes in these garments? --- Yes, there are holes in each of these garments in positions corresponding to the wound in the deceased's chest as shown in photograph No. 4 of Exhibit "A".

20

Would you just take them one by one and show us the hole? --- The cardigan - the hole is in that position there (indicated).

HIS HONOUR: What are those stains on the clothing? --- It is a stain to me, sir, which appears to be blood.

MR. HOWSE: Next the dress? --- In that position there (indicated).

Next the blouse? --- There (indicated).

30

The slip? --- At the upper edge of it, there, sir (indicated).

The bra? --- Through the side of it (indicated), there.

Each of one of those bears stains, and was that apparently blood staining? --- Yes, sir.

The hole that you observed in each of these garments, can you tell us whether or not that was consistent

with the entry of shot? --- Consistent with the entry of shot, yes.

So far as concerns the shot pellets that you received at the post-mortem, part of Exhibit "G", did you make an examination of them? --- Yes, sir, I weighed that shot and found that the weight of it approximates that of No. 5 shot.

10 And was it similar to shot used in any particular form of cartridge commercially available? --- The shot itself no, sir, but the plastic wad is similar to those used by I.C.I. in plastic cartridges.

Is there any way of telling one shot from another? --- Not of manufacture, no, sir.

And the plastic wad is the other article contained in Exhibit 'G' is it? --- Yes, sir.

20 After leaving the Bendigo Hospital did you then proceed to Echuca and there at the police station did you make an examination of a shot gun? --- I did, sir.

Would you have a look please at Exhibit 'C', the shotgun? Is that the gun that you examined? --- Yes, sir.

And did you also there at the police station make an examination of a blue star plastic cartridge case and a blue star plastic cartridge. Would you have a look please at Exhibit 'F'? ---- I did, sir, and these are the two items.

30 So far as concerns the two items in Exhibit 'F' what did you find? --- I found there was a light firing pin impression on the primer of the cartridge contained in this - part of Exhibit 'F'. Both the cartridge and the cartridge case are slightly rusted and there was a - that is the cap of them is slightly rusted and each is stained with what appeared to be dried mud.

40 Was there any impression on the primer of the cartridge case...? --- Yes, sir, there is a firing pin impression on the primer of the fired cartridge case.

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HIS HONOUR: One is a discharged cartridge is it?
--- Yes, sir.

Cartridge case rather? --- Yes, sir.

And the other one is not discharged? --- That is
correct, sir.

MR. HOWSE: And the primer, is that the bit in the
middle that normally causes it to go off? ---
When struck, yes, sir.

HIS HONOUR: What were you saying about that? ---
There is a deep impression in the primer of the
fired cartridge case, sir, and a light impression
in the primer of the unfired cartridge. 10

What does that indicate? --- That it had been struck
by a firing pin but had not discharged.

Would the jury like to have a look at those?

MR. HOWSE: Your Honour, I was going to ask that
they see them, but there is another exhibit that
they might like to see as well.

HIS HONOUR: Perhaps they might have a look at that
while we have just been talking about it. 20

MR. HOWSE: Your Honour, the articles that the jury
are looking at, there will be evidence that they
were extracted from the shotgun, Exhibit 'C'.
(To witness): Having examined the cartridge and
cartridge case, Exhibit 'F', did you then make
an examination of the gun, Exhibit 'C'? --- I
did, sir.

And what did you find? --- At the time the gun was
handed to me, the forend, that is the wooden
part under the barrels, was not fitted to the
gun. 30

Well hold it up. Is that the -? --- This piece
here (indicates).

What else did you find about the gun? --- I found
a deposit of partly burned grains of powder in
the left bore.

That is the left barrel is it? --- Inside the left
barrel, yes, sir.

What did that indicate? --- That it had not been cleaned since it was last fired. There was a small quantity of what appeared to be water between the top rib and the barrels, that is in this region here where there is still a slight mark inside the gun, that is on the right hand side of that top rib, and there was what I would describe as a recent rust mark between the under-
 10 side of the barrels and the bar, that was down in this region here (indicates) but that has since disappeared through handling. I later measured the trigger pulls of this gun to be right barrel $3\frac{1}{2}$ pound and left barrel 7 pound.

So far as concerns the right barrel $3\frac{1}{2}$ pound trigger pull, what do you say about that in relation to the normal trigger pull? --- It would be a little below normal.

20 HIS HONOUR: What about the left barrel? --- It would be within normal limits, sir, the normal range for a gun of this type would be between four and eight pound.

MR. HOWSE: Did you make any test of the gun to see how it could be discharged? --- I did, sir, and found that the only method by which I was able to discharge this gun was by applying pressure to the triggers after it had been loaded and cocked.

30 Show us how? --- This gun is not fitted with external hammers, there are in fact hammers inside the action of the gun and these are cocked by the downward movement of the barrels, provided the forend is fitted to the gun. Once the gun is closed and the safety catch pushed forward the front trigger discharges the right barrel and the rear trigger discharges the left barrel.

40 HIS HONOUR: When you say the only method that you were able to discharge the gun was by applying pressure to the triggers after it was loaded and cocked as you have shown, did you try any other methods? --- Yes, sir, I struck the barrels and action with a hammer and I dropped the gun on various parts of it in an attempt to discharge it, cause it to discharge.

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MR. HOWSE: What sort of blows did you deliver with the hammer? --- It is a hammer of approximately 1 pound weight and they'd be a relatively hard sharp blow with a hammer.

And where did you deliver them to? --- Around the action, that is this portion of the gun here and along the barrels.

Upon what substance did you drop the gun? --- Onto the floor, sir.

Would you just show us how? --- Onto the butt and by dropping it in various positions.

10

HIS HONOUR: I wonder if you could perhaps go down onto the floor and indicate how you bumped the bump would you? --- It would be bumped, sir, by dropping it in that manner.

You just dropped it from what height?

MR. HOWSE: Perhaps if the witness did go onto the floor, Your Honour.

HIS HONOUR: Yes, it might be easier to demonstrate just the sort of test you applied to it. Could you come round here for -

20

WITNESS DEMONSTRATES

HIS HONOUR: How many times did you try that? --- In all, sir, over a period of several days it would have been at least a dozen times.

And when you say you dropped the gun how do you mean you dropped it? --- (Witness demonstrates) So that it landed on that surface and either side.

MR. HOWSE: Having made your examination of the gun and the cartridge and cartridge case did you then leave them with Senior Detective Coates?--- I did, sir.

30

After that did you go with other police to the premises at 59 Mitchell Street, Echuca? --- Yes, Sir.

And what did you find when you got there? What time was this roughly do you remember? It was some time in the night at any rate? --- Yes, sir,

I didn't note the time, about 11 p.m. or shortly after, approximately the time.

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Perhaps I could lead on this - and when you got there did you find two guns, gun cases and cleaning materials in the positions as shown in photographs 6 and 7 of Exhibit 'A'? --- Yes, sir.

And did they consist of a 12-gauge over and under shotgun - is that the shotgun? --- Yes.

Also a rifle with a telescopic sight? --- Yes.

10 The two gun cases? --- Yes, Sir.

The cleaning rod? --- Yes, sir.

And the Gladstone bag? --- Yes.

And what is in there generally - perhaps if you would take the bag so you can just tell the jury what is in it? --- There is a mixture of some ammunition, some cleaning material, cloths, oil and the like.

Also were these two belts? --- Yes, sir.

20 EXHIBIT EXHIBIT 'J' Guns, gun cases,
cleaning materials
and gladstone bag
containing ammunition,
cleaning materials etc.

MR. HOWSE: The only thing the photograph does not show, I think, Mr. Thompson - photographs 6 and 7, is the Gladstone bag. Perhaps if you would be good enough to look at photograph No. 2? --- Yes, photograph No. 2 shows that Gladstone bag near the left hand of the deceased.

30 Did you take possession of all these articles? ---
I did.

So far as concerns, first of all, the rifle, that is a Jev-Arm rifle, is it not? --- Yes, sir.

Perhaps if you would just take that and tell us what you found about it when you took possession of it? --- The condition of it is the same as it is now, that is, the breach block was closed and the magazine was removed.

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What does that mean with the gun in that condition?

--- It's what I would call a safe or proved condition. A rifle of this type fires from the open breach position, that is with the breach block pulled back (indicated). That would be the cocked position.

How was it? --- The weapon was not cocked and the magazine was removed, or not fitted to the weapon.

Does that mean that there were no bullets in it?
--- That is correct.

10

Would you take now the under and over shotgun which is also part of the same exhibit, 'J'? What did you find about it? --- That was lying on the chair with the action opened, as it now is.

Would you look at photograph 2 again, was it in that position on the chair? --- No, sir, it was in the position as shown in photograph No. 7.

That is obviously the one on the chair, is it? ---
Yes, sir.

20

What do you say about the shotgun in that opened position? --- It was again in the safe or proved condition.

The following morning....

HIS HONOUR: As to that under and over shotgun, were there any cartridges in it? --- No, sir.

MR. HOWSE: The following morning, the 8th May, did you return to the premises and go to the garage?
--- Yes, sir.

30

And did you get some articles from the garage? --- Yes. From the box in the canoe - that is the canoe shown in photograph No. 10, I removed a plastic ice-cream container, as shown in photograph No. 11.

Would you have a look at this Buttercup ice-cream container? --- That is the container I removed from the canoe, yes.

And what about the contents? --- It contained 14 I.C.I. Blue Star plastic cartridges of No.5 shot, 3 Russian cartridges ..

They are the red ones, are they? --- The red ones, yes, sir, of No. 5 shot, and a duck lure.

Do those appear to be the articles that it contained? --- Yes, sir.

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EXHIBIT

EXHIBIT 'K'

Ice-cream container
and contents

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10 MR. HOWSE: Before you part with that, Mr. Thompson, did you notice anything about any of the cartridges in that container? --- Yes, sir, some of these cartridges are rust and mud-stained in a manner similar to those cartridges - or the cartridge and cartridge case which I had examined the previous evening.

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20 HIS HONOUR: Where does that appear? Round the base of them? --- Round what appears to be a brass cap, and in the folded star-crimped end of the cartridge.

MR. HOWSE: I was going to ask that the jury see the first two in relation to this, Your Honour, but perhaps if they could just see these now.

HIS HONOUR: Have they all got rust on them or mud or only some of them? --- Some more than others, sir.

CARTRIDGES SHOWN TO JURY

30 HIS HONOUR: Does that apply only to the ICI cartridges or to the Russian as well? --- The Russian cartridges, although not rust-marked, sir, appeared to have been damp also. They are a paper cartridge and they are slightly swollen. Although that appears to be a brass cap on these cartridges, they are in fact steel with an imitation brass plating, this being the reason for the rusting.

MR. HOWSE: Would you have a look, please, at Exhibit 'E'? --- I removed that cartridge belt from the canoe also.

40 Was it from the box at the front or back of the canoe, whatever you call it? --- Yes, sir.

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And were those cartridges apparently in it? --- Yes.

And did you also remove a quantity of loose Blue Star plastic cartridges, No. 5 shot? --- I did, sir.

Where did you get them from? --- They were in that box in the canoe also.

And would you have a look at Exhibit 'D'? --- Those cartridges, the torn packet and the cartridge case contained in that bag were also removed from the canoe by me.

10

Were there 24 of the cartridges? --- Yes.

<u>EXHIBIT</u>	EXHIBIT 'D'	Cartridge belt
	(Admitted absolutely)	

<u>EXHIBIT</u>	EXHIBIT 'E'	Plastic bag containing Blue Star ICI cartridges.
	(Admitted absolutely)	

MR. HOWSE: Just to preserve the continuity of these exhibits, on 12th May did you receive from Senior Detective Coates the shotgun (Exhibit 'C'), the one you had already examined? --- Yes, sir.

20

The cartridge case and the cartridge contained in Exhibit 'F'? --- Yes, sir.

That is the ones said to come out of the shotgun that fired the fatal shot. And did you also receive from him a Wettex cloth and a Scotchbrite scouring pad? There will be evidence, Your Honour, that the Wettex came off the sink and the Scotchbrite scouring pad is the one that was found on the floor in the position shown in the photograph. Are those the two articles that you received? --- Yes, sir.

30

<u>EXHIBIT</u>	EXHIBIT 'L'	Wettex Cloth
	(For identification)	

<u>EXHIBIT</u>	EXHIBIT 'M'	Scouring pad
	(For identification)	

MR. HOWSE: I do not know whether the jury would like to see them now, Your Honour, it is immaterial to me.

HIS HONOUR: Perhaps you could leave that for the moment.

MR. HOWSE: Did you make some further tests in relation to the shotgun (Exhibit 'C')? --- I did, sir.

Did those tests relate also to the under and over shotgun which is part of Exhibit 'J'? --- Yes, using suitable cartridges I fired each of these shotguns.

10 What do you mean by suitable cartridges? --- In this case it was I.C.I. Blue Star plastic cartridges of No.5 shot.

You say that you fired each of the guns? --- And I recovered the fired cartridge cases which I compared with the exhibit cartridge cases, that is the one that is part of Exhibit 'F'.

EXHIBIT 'F' HANDED TO WITNESS

20 HIS HONOUR: That is the plastic bag with one discharged cartridge case and the undischarged? --- Yes, sir. And also with the cartridge case contained in the plastic bag that I took from the canoe.

Is that Exhibit 'D'? --- Yes, sir.

With what result? --- As a result of that comparison I say that the cartridge case contained in this bag, that is Exhibit 'D', was fired in the under barrel of the Winchester shotgun.

30 That is the under and over is it, part of Exhibit 'J'? --- Yes, sir. The cartridge case contained in Exhibit 'F' was fired in the left barrel of the side by side shot gun.

That is Exhibit 'C'? --- Yes, sir.

That is this one here that we have been talking about? --- Yes, sir, and the light firing pin impression on the cartridge contained in Exhibit 'F' was made by the firing pin that is fitted to the right hand lock of that shotgun, Exhibit 'C'.

When you say right hand lock do you mean right hand barrel? --- Yes, sir. Exhibit 'C'.

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HIS HONOUR: That is Exhibit 'C'? --- Yes, sir.

Just hold those cartridges up you were speaking about? Those were the two you examined originally, do you remember that. What you are saying is this is it, that as a result of your comparison after your firing tests, that the discharge cartridge case was fired from the left barrel of that shotgun? --- Yes, sir.

And that the impression on the cap of the undischarged cartridge was made by the firing pin of the right barrel of that gun? --- Yes, sir.

10

MR. HOWSE: Subsequently did you make some further tests in relation to the left barrel of the Belgian shotgun, Exhibit 'C'? --- Yes, using I.C.I. blue star plastic cartridges, again of No.5 shot, I fired the shotgun at various distances from pieces of cardboard.

HIS HONOUR: That is the Belgian shotgun? --- Yes, sir.

MR. HOWSE: That is the one that you had performed tests on in relation to the left barrel? --- Yes, sir.

20

What did you find? --- Well I can produce the resultant patterns, sir.

Would you be good enough to produce them? --- This envelope contains seven cards. In the top left hand corner of each there is a distance marked, that distance being the distance between that card and the muzzle of the gun at the time each shot was fired.

30

Just hold the gun up will you so that we are perfectly clear what you are talking about when you say the muzzle? --- Well the distance on those cards is the distance between the muzzle of the gun, that is that point there, and the card at the time the shot was fired. There are seven cards in all.

Will you just deal with each one and hold it up so that the jury can see it. What is the first one, 2'? --- 2' - putting it from there to 8', 3'.

40

You put into this? --- Yes, sir, 4', 5', 6', 7' and 8'.

MR. HOWSE: Did your Honour see all those?

HIS HONOUR: Yes.

EXHIBIT

EXHIBIT 'N'

Seven cards.

MR. HOWSE: Did you make some comparison with the wound that you had observed and examined in the deceased's chest as shown in photograph 4 of Exhibit 'A'? --- Yes, sir.

10 And with what result? --- As a result of that examination I say that if the deceased was shot with the left barrel of this shotgun, using similar ammunition, then the muzzle of the gun was approximately 5 feet from her left side at the time the shot was fired.

That means, therefore, does it, that the actual front end of the barrels that you indicated before as the muzzle was approximately 5 feet from her side at the time when the shot was fired? --- Yes, sir.

20

And how did you come to that conclusion? --- By a comparison of the size of the spread of shot.

With what? --- With measurements I made of the wound at the mortuary and also using as reference a photograph which was taken at that time.

30

So far as concerns the gun (Exhibit 'C'), did you come to any other conclusion about the recency with which it had been fired or had not been fired when you examined it on 7th May? This is at the time of your first examination? --- No, sir, other than that there was an odour of discharge from the left barrel.

What about the right barrel? --- There was no such deposit of partly burnt grains of powder in that barrel or an odour emitting from it.

Well, how would you describe the condition of the right barrel? --- It had not been fired since it had been cleaned.

Does that mean that it was clean? --- Yes, sir.

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HIS HONOUR: What did you say about the left barrel?
--- That there was an odour of discharge emitting
from it.

What does that indicate? --- That it had been
relatively recently fired.

Did you go to the premises at 59 Mitchell Street
and make certain measurements? --- I have, sir.

When did you do that? --- It would be the day
before the inquest, sir.

Would you have a look, please, at photograph No.12
of Exhibit 'A'? Were you present when that was
taken? --- Yes, sir. 10

Did you hear what was said between the accused and
the police before the respective positions were
taken up? In the photograph? --- The exact
wording, no, sir.

MR. HOWSE: I want to put to you - if it is estab-
lished that the shotgun pellets having penetrated
the body of the deceased, they then followed a
path at an angle downwards of 45 degrees to the
horizontal plane and were slightly - this down-
wards path was also slightly forward and slightly
to the righthand side when you face the
deceased's body, do you follow? --- Yes, sir. 20

Having regard to the measurements that you made in
the kitchen of the house at 59 Mitchell Street
and to the positions which are shown in photo-
graph 12 of Exhibit 'A' of the accused standing
holding the gun in a particular way and Senior
Detective Coates standing over beside the bench,
what do you say as to whether or not the deceased,
being in the position of Senior Coates, could
have received the wound from the gun discharged
by the accused in that position? 30

MR. WALKER: Your Honour, I do not wish to object
to my learned friend's question outright, but I
do feel he ought to make it subject to qualifi-
cations concerning the possibility of deflection
of the shot, because obviously there could be in
the medical evidence something to indicate that
the 45 degree angle is not as simple as it
sounds. 40

HIS HONOUR: This is the difficulty of getting the evidence out of order.

MR. WALKER: I think if it is made, Your Honour, subject to the qualification that the 45 degree - so the jury understand that the 45 degree angle is in fact measured in a human body where there could be deflection problems and distortion problems, according to the position of the

10 HIS HONOUR: Assuming there were no

MR. WALKER: Assuming there were none of those factors, yes.

HIS HONOUR: Well, that is what you are asking the witness, are you not?

MR. HOWSE: Yes, Your Honour, that is so.

HIS HONOUR: You understand what the question is? It has got pretty complex, Mr. Thompson, but what the prosecutor is asking you is this: that if you assume that medical evidence will be given as to the angle of the shot from the wound in the deceased's body and that it was an angle of something like 45 degrees, assuming that, and assuming that there was no movement in the deceased, then the question is in your opinion what do you say about the position shown in photograph No. 12 as having produced that wound? Do you follow what I am putting? --- Yes, sir. It is my opinion that such a wound could not have been inflicted with the deceased standing in the position as shown in photograph No. 12 with Mr. Ratten standing in that position.

MR. HOWSE: Why not? --- There would be insufficient distance between the muzzle of the firearm and the left side of the chest and the downward angle would not, in my opinion, result from a shot having been fired at right angles to a body.

HIS HONOUR: In that photograph No. 12 the angle of the barrel, or the muzzle, there is almost at right angles to a vertical body, is it not? --- Yes, sir.

As shown in the photograph? --- Yes, sir.

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MR. HOWSE: And again, by the muzzle you mean the front end of the barrels, as you pointed before, do you? --- Yes, sir.

Just indicate that? --- This end of the barrels here (indicated).

Did you yourself make any measurement of the actual distance between the muzzle of the gun as shown in photograph 12 and the side of Senior Detective Coates? --- No, sir.

HIS HONOUR: While you are talking about that subject matter, if you assume the angle of the wound as mentioned previously, a downward angle of about 45 degrees, and assuming that the deceased was in an upright position at the time the shot entered the body, can you express any opinion as to how the gun would have had to have been held to inflict that wound? --- Assuming that the deceased was standing vertically ... implying that she would have been, the gun would have to have been in my opinion about 40 inches above the wound and pointing downwards at an angle.

10

20

MR. HOWSE: If it was held at shoulder height in the ordinary firing positions would that achieve the necessary degree of height and angle which you speak of? --- With the deceased standing vertically, no, sir.

There are just one or two other matters in relation to the gun, Exhibit 'C'. Did you find any defect or deficiency in the safety operation of the gun? --- Yes, sir.

30

Can you just tell the jury what you found? --- This gun is fitted with a safety catch. It is this small piece of metal here behind the opening lever. If in its normal working condition each time that top lever is pushed across to open the gun the safety catch should have passed back into the safe position. The safety catch itself is effective provided it is pulled to the rear manually. Once it has been pulled to the rear the triggers cannot be pulled. However, when the gun is opened, as the top lever is moved across to open the gun the safety catch only moves half way back, that is not fully back

40

into the safe position. When the gun is then closed the triggers can be pulled and you will notice that the safety catch moves forward as the triggers are pulled. This slightly increases the trigger pull from what I previously mentioned.

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Can you tell us to what extent it increases it, taking the right hand barrel first you told us that that was $3\frac{1}{2}$ pounds? --- From memory I think it increased to 5 pounds.

10 And the left trigger? --- Increased to 9 I think from memory.

What do you say about this gun from the safety point of view having regard to the fact that you examined it and fired it? --- From a safety point of view, sir, it is in a safe condition.

What does that mean? --- Well I would deem any firearm that can be discharged by any means other than by applying pressure to the trigger, to be unsafe. I did not find this condition
20 in this shotgun.

And was there anything about it that would make it dangerous to actually fire? --- Well the actual age of the gun I was not able to establish. It's one that was possibly made prior to the start of the first world war and its barrel construction as such could be dangerous with high powered ammunition. It could - the barrels could fracture or a piece of metal be blown from the side of them.

30 HIS HONOUR: Is that due simply to the age of the gun or because at the time you would be of opinion it was built, the ammunition or some of it was not so high powered? --- The ammunition used at that time, sir, was not as high powered as the - or didn't create as much pressure in the firing chamber as does the modern ammunition, the type of construction of course was suitable for that period but not necessarily for the modern cartridge.

40 MR. HOWSE: Are you familiar with the blue star plastic I.C.I. cartridges? --- Yes, sir.

And are you able to say anything about the effect of dampness on them? --- Although when purchased

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the packets are marked 'waterproof' it is my opinion that they are not absolutely waterproof. If immersed in water there is sufficient clearance between the sides of the plastic wad, that is the item that is contained in that plastic jar which I received from Doctor Charlton, there is sufficient clearance between that and the inside of the cartridge case and also between the metal cap and the side of the tube for water to enter that cartridge and affect the powder.

10

What about if it was merely splashed with water?

--- They would be waterproof from a point of view that if they were immersed in water and immediately removed they would not take in any water.

So far as concerns the gun, Exhibit 'C', can it be fired with the fore part off? --- Yes, sir.

And would the absence of the forepart make any difference to the firing? --- Not to the firing of it, no, sir.

20

Did you fire it with the fore part on or off? --- I have fired it with the fore part off, sir, but most of the shots fired by me would have been fired with the forend attached.

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MR. WALKER COMMENCED CROSS-EXAMINATION

MR. WALKER: Mr. Thompson, removing the forepart would be a logical step in cleaning the outside of this weapon would it not? --- Yes, sir.

And you increase the danger by firing this weapon without the forend on do you not? --- No, sir.

30

This gun has a looseness between the breech and the action or the locks has it not? --- Yes, sir.

I just want to advert to one thing you said about the safety catch just before I stood up. You said that the operation of the safety catch by opening the gun was incomplete. Is that a fair summary of what you were saying? --- It does not fully move to the safe position by opening the gun.

If you have done that you are then able to fire the front trigger and you say with a slight increase

40

moving the pressure up to about 5 pounds? ---
Yes, sir.

Once that is done the safety catch is then in the
off position is it not? --- Yes, sir.

So that the pressure on the left trigger remains
what it was as you first tested it, that is
7 pounds approximately? --- Yes, sir.

Which is within the normal limits? --- Yes, sir.

10 If I can just turn again to this fore end part. You
would not normally take off the fore end would
you if you are going to fire the gun? --- Would
not take it off to fire the gun, not normally,
no, sir.

There is no reason for taking it off for that
purpose is there? --- No, sir.

20 The cartridges which you were shown, Exhibit 'D',
you have told us that those cartridges were
loose, together with that opened packet, is
that correct? --- At the time I first saw them
they were lying in that canoe as if they had
been placed in there in that packet and the
packet had separated and they were lying there
on the torn or open packet.

Now those cartridges, some of those are somewhat
rust spotted also, is that so? --- Yes, sir,
very slightly.

Very slightly, they are not in as bad a condition
as though in the icecream container? --- No, sir.

30 I want to take you to the question of the distances
that you have given evidence about. That is
the distance of the - from the muzzle of the gun
to the deceased. Firstly, you measured I think
you have told us the wound when you were at the
post-mortem, is that correct? --- I did, sir.
I also caused a photograph to be taken of that
wound with the tape measure in position.

What was the measurement? --- 2" across.

40 And as a result of the tests that you have made on
the pieces of cardboard you have concluded as an
opinion, have you, that the muzzle of the gun

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was approximately 5 feet away from the position of the wound when it occurred? --- Yes, sir.

Now you have been present in the kitchen, is that so, at 59 Mitchell Street, Echuca? --- I have visited that kitchen, yes.

And you have seen a plan, have you, of the house? --- Yes, sir.

EXHIBIT 'B' HANDED TO WITNESS

MR. WALKER: That plan is drawn to a scale of 1" to 8' or 8' to 1". Would you just make a few measurements, Mr. Thompson: if you measure from a position - I have handed the witness a ruler, for the purpose of this, Your Honour, I just assumed he would not have one of his own - but if you have one of your own, Mr. Thompson, and would rather use it, go ahead. Would you make the measurement from a position slightly to the right of the sink as shown in that plan ...? --- To the right of the sink as one would see it?

10

As one is facing it? --- As facing the sink, yes, sir.

20

EXHIBIT 'A' HANDED TO WITNESS

MR. WALKER: What I want you to do, Mr. Thompson, is have a look at photograph No. 12 and would you measure on the plan from the point between the cupboard and the drawers - do you see what I am referring to in photograph No. 12? --- That would be the righthand side of the sink bowl?

That is right, it is just slightly beyond the right-hand end of the sink bowl is it not, the join between the cupboards and the shelves? --- Yes, sir.

30

Well, on the plan, from about that point to the equivalent point where Mr. Coates' feet are in the photograph.

HIS HONOUR: His left foot, do you mean?

MR. WALKER: Perhaps, I think, for the purpose of this test if we take it to the end of the shelf as shown above the bench on the plan...? --- And if it is this shelf - the power point.

40

Oh no, the end of the shelf, Mr. Thompson, it is closer, really, to the end of the bench, you see. Do you see the shelf drawn in on that plan? --- Yes.

Above the bench. Now the end of that shelf is approximately above the join between the two end cupboard doors, is it not? --- That is the end closer to the sink?

10 Yes, the end closer to the sink, is not that about the point where Mr. Coates' left foot would be in that photograph? --- Approximately that point, yes.

Now if you were to measure that - would you measure that and convert that measurement to feet and inches on this plan?

MR. HOWSE: Is he being asked to measure the corner point ...?

20 HIS HONOUR: Ask Mr. Walker to point it out to you. You might show Mr. Howse on the plan, Mr. Walker. You had better make sure Mr. Thompson is talking about the same thing. Perhaps you might indicate to him.

MR. HOWSE: Perhaps if the jury might also be told, Your Honour. As I follow it, it is from the corner point of the shelf itself....

HIS HONOUR: Which shelf?

30 MR. HOWSE: Well, it is not designated, Your Honour, but it is above the bench. Does Your Honour see "Bench"? As I follow it, the point the witness is being asked to measure from is the corner point of the shelf.

HIS HONOUR: Mr. Walker, could you not put a cross on your copy of the plan, put two crosses just to show us where you are talking about.

MR. WALKER: Yes. And I will express it again, Your Honour - from the point on the bench where the shelves end above the bench? --- This is to the corner of the shelf itself?

40 The point on the bench level with where the shelves end above the bench - you can see the shelves above the bench, can you not? --- Yes, sir.

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And you see where they end short of the full length of the bench, do they not? --- Yes, sir.

Well, the point at the front of the bench level with that end of the shelf? --- Yes, sir.

To a point at the sink where the cupboard door and the drawers meet? --- Yes, sir.

Would you agree that that distance is about 5 feet?
--- It is putting - the two points between which I am measuring here - that is 11/16ths", converting that back using the scale would be 5'6".

10

HIS HONOUR (To jury): Are you clear about this, gentlemen? Very well.

MR. WALKER: Now from that same point on the bench, if you now measure to about the midpoint of the sink? --- It increases to 6'6".

And if you now go to the other side of the sink, that is the lefthand side of the sink as you face it, it increases to 7'6", is that so?

HIS HONOUR: To where?

MR. WALKER: That is to the left of the sink instead of the right of the sink, which was our starting point.

20

HIS HONOUR: Yes, but to where?

MR. WALKER: To the same point on the front of the bench.

HIS HONOUR: Yes, but you have mentioned two points on the front of the bench.

MR. WALKER: No, Your Honour, all these measurements are taken from the same point on the front of the bench.

30

HIS HONOUR: I thought you said to the midpoint of the bench at one stage.

MR. WALKER: Midpoint of the sink was the last one, sir.

HIS HONOUR: I beg your pardon. Yes.

MR. WALKER: Is that correct, Mr. Thompson? --- I measured that at 7/8th", which would be 7', sir.

It is quite apparent, then, that any movement - any variation in the point along either the sink or, indeed, along the bench, has a significant effect upon the distance separating those two points, is that so? --- Yes, sir.

10 Now I want you to have a look at one of the cards that you have tendered in evidence, and it is the one labelled 5 feet. Would you indicate to the jury with the ruler how you measure that particular hole? (Exhibit 'N') --- I had measured the maximum spread of the pellets in that direction as 2" and also in that direction, at right angles to the previous measurement, as also 2" (indicated).

20 What is the narrowest distance across the ...? --- At right angles to the card, or which would have been a plane horizontal as I fired it - 1 3/4".

Did you test any of these cards, or any other cards for that matter, in any position other than the horizontal position for the gun? --- No, I measured the maximum spread of the pellets in each case on the cards.

30 Yes, but Mr. Thompson, at all times that you were testing this distance did you test with the gun in the horizontal position? --- In what one may call a normal firing position, these were fired from the shoulder, and that is the only method that I fired the gun.

Well, the gun was horizontal, was it? --- Well, the barrels were horizontal, yes.

And the cards were vertical? --- Yes, sir.

You would agree, would you not, that it is a variable, the outer spread of this shot? At any distance? --- What, from each card or ...

At any distance, yes? --- I'm not quite sure of your question.

40 Are these the only tests you did? Just these cards that you have tendered? --- No, there would have

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been a couple of other cards included amongst those, which I have not brought with me.

Did you do any others at any of the distances with which these cards are marked? --- No, they would have only been fired at the distances as marked on those cards.

One shot for each of the distances marked on those cards. You have told this Court that you were given a Wettex and a Scotch-Brite which you identified here, is that correct? --- Yes, sir. 10

And you also collected clothing when you attended the post-mortem? --- Yes, sir.

Did you send any of those items to the Forensic Science Laboratory for examination? --- Well they were taken to the Forensic Science Laboratory where I am employed, but they were not examined by anybody other than by myself as far as I am aware.

The Scotch-Brite shows clear brown marks which appear to be rust marks, is that so? --- They could be rust marks, yes. 20

As a matter of fact it is quite clearly dirty with this sort of mark on it is it not? --- Yes, sir.

The question of the misfire, from your examination of the gun are you able to ascribe any reason for the misfire that apparently occurred? --- No, sir.

Did you examine the firing pins? --- I have not stripped this gun or opened its action, no, sir.

Did you examine the firing pins at all? --- Only as can be seen through the breech face and I find that each of them is a little loose. 30

That could cause a misfire could it not? --- It could attribute to a misfire, yes.

It was something that you at one stage considered to be a probable reason for a misfire, was that not so? --- It could be one of the reasons for a misfire, yes.

You held that belief did you not? --- Yes, sir.

By the way the Forensic Science Laboratories I referred to a moment ago have extensive facilities for examining items such as the Wettex, the Scotch-Brite or the clothing, is that so? --- Apart from members of the Police Force we have five chemists attached to the Forensic Science Laboratory, yes.

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10 Would you answer the question, you do have extensive facilities for examining items of this nature, do you not? --- Yes, sir.

Transcript of
Evidence

Full examinations? --- Yes, sir, I believe that.

Evidence
for the
Prosecution

How many times did you fire the gun, Exhibit 'C'? --- I wouldn't know off hand, sir, I fired the left barrel of course more than the right barrel. I'd have fired the right hand barrel perhaps half a dozen times and the left hand barrel perhaps 16 or 18 times.

Brian George
Thompson

Cross-
Examination

At any of the times you fired that gun was there any misfire? --- No, sir.

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(continued)

20 You have given some evidence about the other two weapons produced being in a proved condition. As a term of art that really applies to the activities of a person does it not proving a gun? --- To prove a gun would mean that you have examined it to your satisfaction and that it is not loaded.

30 Yes, but finding a gun in what you call a proved condition does not necessarily mean that anyone has actually proved it does it. It could be in that condition simply as a result of not being used since the last shooting escapade, is that so? --- Well the Gevarm, perhaps that could apply but the under and over shotgun I would not say that that would necessarily apply there.

But even finding a gun in the position of the shot gun simply means it has been broken and it has no cartridges in it, is that not so? --- That's all I mean by proved position.

40 The guns, the cleaning equipment and the gladstone bag in the positions in which you saw them were all consistent with the cleaning of weapons, is that so, in that kitchen? --- That appeared to be so, yes.

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Brian George
Thompson

Cross-
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(continued)

And - there is just one other matter, Mr. Thompson. I want to hark back to this misfire again. The - on everything that you have seen, including the condition of the cartridges and the condition of the gun, it is - there is simply no reason for the misfire in your mind, is that so? --- I can't explain why that cartridge misfired, no.

But you believe it must be due to the gun rather than the cartridge? --- I would think that perhaps the gun rather than the cartridge, sir. 10

And of course that misfire would produce a very audible click would it not? --- It would, sir, yes.

Exactly the same as if the trigger is pulled with no cartridge in the weapon? --- Well there would be a very slight difference in sound, but it would take a lot of experience to tell the difference.

HIS HONOUR: What was that? --- The sound caused by such a cartridge - or the click resulting from such a cartridge misfiring, it was put to me that it would sound the same as if the gun was empty, I agree that it would be a similar type of sound, sir, slightly duller sound. 20

What you are saying is, you would need to have a lot of experience to appreciate the difference? --- Yes, sir.

When you are speaking about the misfire do you mean by that that the firing pin came forward and hit the cap of the cartridge but the cartridge did not explode? --- That is correct, sir. 30

That is what you mean by misfire? --- Yes, sir.

From what you saw of this weapon, in your opinion is there any way that it could have misfired without pressure being on the trigger- put on the trigger? --- No, sir, I considered that possibility when firing the gun, firing the left hand barrel to produce these test cards, at that time having the right hand barrel loaded to see if such an impression was impressed on the primer. 40

Well that is what I was wondering? --- And I found that none of these test shots so fired produced a mark of that type. It is my opinion that the mark on the cartridge that has misfired has resulted from it being struck by the firing pin of that right hand barrel.

In your opinion would that be due to - would it be necessary for that event to occur to put pressure on the front trigger? --- Yes, sir.

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Brian George
Thompson

Cross-
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10 MR. HOWSE COMMENCED RE-EXAMINATION

Re-Examination

MR. HOWSE: You told my learned friend that not only did you measure the wound but you had a photograph taken with the tape measure over the wound, did - do you have the photograph with you? --- I do, sir.

20 Would you produce it? --- It was a photograph taken immediately after photograph No. 4, the difference being that a tape measure was included in the photograph and is enlarged a little greater than the one in photograph No. 4.

How close to the wound was the tape measure held, how close to the body that is, the flesh? --- My fingers there are touching the body and the tape measure is against the skin just under the wound.

Does it accurately depict its subject matter? --- Yes, sir, the scale - it is not returned to full size, it's about a little over half original size.

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Brian George
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Re-
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At all events it shows the wound and the tape measure at the same scale? --- Yes, sir.

EXHIBIT

EXHIBIT 'O'

Photograph of
wound and tape
measure.

In determining the distance of 5' that you spoke about as being the approximate distance necessary between the muzzle or end of the gun and the side of the body standing upright, what did you take into account in looking at the spread of shot. In other words, what were you looking for? --- Not the resultant hole but the maximum spread of the pellets.

10

Does that mean therefore that in comparing the wound with the test card, the 5' test card, you found in each case the maximum spread was what, 2"? --- 2", yes sir.

If you were going to set out to clean the gun, Exhibit 'C', what would you do? --- If I was going to clean that gun, sir, particularly if I was going to use water on the barrels I would remove the wooden fore end then remove the barrels from the action.

20

Show us what you would do? --- Having removed that wooden fore end, sir, I would then open the actions and remove the barrels from the gun like that.

And you said particularly when using water on the barrels, what significance would the water have? --- Well the water running around the barrels could enter the action here and affect the springs and internal mechanism of that gun.

30

Now you were asked to make some measurements from the survey plan taking a point on the bench above the cupboards and then going across to three points on the sink, and you gave us three measurements? --- Yes, sir.

Do those measurements take into account the distance out of a person standing in front of the cupboard or the length of the barrel of the gun of a person standing with his back to the sink? --- No, sir, the three measurements that I gave were the distances as I measured them on that plan between the edges of the sink and the bench that I assumed were the two points being described by the defence counsel.

40

MR. WALKER COMMENCED FURTHER CROSS-EXAMINATION

MR. WALKER: You were asked some questions when you gave evidence at the Coroner's Inquiry, about the stages you would adopt in cleaning a weapon in this way, were you not? --- Yes, sir.

Did you not agree that the stage you get to depends firstly on who is doing it, you agree with that do you? --- Yes, sir.

10 And secondly on the stage that you have reached in the cleaning process? --- This would be so, yes, sir.

So that if in fact you had removed the fore end and you decided to clean rust off the barrels then you just would not have got to the stage of breaking the barrels and removing them, is that not so? --- Well, it is possible that such a person would not have removed the barrels, I said that I would remove the barrels.

20 Well when it was put to you initially at the - was this question asked of you: "You may just be cleaning the barrels and the general external parts first?" Do you recall if that question was asked of you? --- Yes, sir.

And did you reply "Yes, sir"? --- Yes, sir.

HIS HONOUR: What do you use water for in cleaning a gun? --- Well I wouldn't use water, sir.

30 Some people do I suppose. What is the idea, to get the rust off using water? --- Well an abrasive cloth such as a Scotch-Brite scouring pad would possibly work better if damp, sir.

WITNESS WITHDREW

DISCUSSION RE ARRANGEMENTS FOR VIEW

JURY WARNED RE VIEW

COURT ADJOURNED AT 12.31 P.M. UNTIL THURSDAY 13th AUGUST, 1970 AT 10 A.M.

COURT COMMENCED AT 10.00 A.M. ON THURSDAY 13th AUGUST, 1970

HIS HONOUR: Mr. Foreman, I understand there is a question you want to ask?

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FOREMAN: Yes, Your Honour, the jury are not very clear on the last witness yesterday and what he said in respect to the undischarged shell, whether the firing mark on it was tested to be out of the same gun?

HIS HONOUR: Whether?

FOREMAN: Whether the firing pin mark on the undischarged was made by the same gun?

HIS HONOUR: He said that, yes.

FOREMAN: He did say that?

10

HIS HONOUR: Yes, he did. You agree with that, gentlemen?

MR. LAZARUS: Yes, Your Honour.

Michael Ludlow
Trinham

Examination

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1970

MICHAEL LUDLOW TRINHAM, affirmed and examined

WITNESS TO MR. HOWSE: My full name is Michael Ludlow Trinham. I am a window dresser by occupation. I reside at 74 Hume Street, Echuca.

MR. HOWSE: Do you know the accused man Ratten?
--- Yes, I do.

For approximately how long have you known him? ---
3 to 4 years.

20

During what period did you occupy some position in the community? --- In what capacity?

In relation to a particular church? --- Yes, I was the then pastor of the Moama Bible Church.

Did the accused have any connection with that church? --- At the time yes, he was a member.

And for about how long? --- About 2 to 3 years, I think. I'm not exactly sure of the time, but a considerable time.

30

And more particularly was he a member of the church in May of this year? --- Yes, he was.

Did he then occupy any particular position in the church? --- For some time he was an elder.

MR. HOWSE: And was that the situation in May of this year? --- I think it was in May of this year that we had our annual business meeting and that time - or before that time he was an elder; after that time he declined to stand for re-election.

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When was that? --- I can't remember the exact date, but I think it was in May of that year, but it was some weeks before the 7th.

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Evidence

10 That is May of 1970? --- That's right.

Evidence
for the
Prosecution

What about his late wife? --- She was a member also.

Michael Ludlow
Trinham

Examination

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(continued)

MR. WALKER COMMENCED CROSS-EXAMINATION

Cross-
Examination

MR. WALKER: Mr. Leith Ratten had an excellent reputation in the community, is that so? --- Yes.

WITNESS WITHDREW - EXCUSED

BETTY WINIFRED TRINHAM affirmed and examined

Betty Winifred
Trinham

20 WITNESS TO MR. HOWSE: My full name is Betty Winifred Trinham. I reside at 74 Hume Street, Echuca. I am engaged in home duties. I am the wife of the previous witness, Michael Ludlow Trinham.

Examination

MR. HOWSE: Did you know the late Mrs. Beverley Ratten? --- Yes, sir.

And for how long approximately did you know her?
--- About 4 to 4½ years.

And would you describe her as being a close personal friend of yours? --- Yes, sir.

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Betty Winifred
Trinham

Examination

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(continued)

And she was also a fellow member of the same church, the Moama Bible Church? --- Yes, sir.

Did you and do you also know the accused man? --- Yes, sir.

Did you have occasion to visit the Ratten home at all during the time that you knew them? --- Yes, quite often.

And roughly how often would you say? --- Oh about once a week.

And so far as you could observe from outward appearances what was the situation between them? --- Always happy.

10

The day that Mrs. Ratten met her death, Thursday 7th May, did you see her? --- Yes, sir.

Whereabouts? --- At her home.

And under what circumstances, how did it come about? --- I was delivering Avon.

Pardon? --- I was delivering her Avon.

Were you a representative for Avon were you? --- Yes.

They are cosmetics are they not? --- That's right.

20

You went to her home I take it, that is the house at 59 Mitchell Street? --- Yes.

What time did you get there? --- Oh round about 11, I'm not too sure of the time.

And what did you do there? --- Talked with her and had a cup of coffee.

Did you notice anything about Mrs. Ratten when you got there? --- Yes, she appeared upset.

And what did you observe that indicated that to you? --- She had been crying.

30

She looked as if she had been crying did she? --- Yes.

Did you notice anything about her speech? --- It seemed a little slower than usual.

And how would you describe the appearance of her face? --- It looked very tired and drawn.

And did you notice anything about her to indicate to you whether or not she had had a good sleep the previous night?

MR. WALKER: If Your Honour pleases I object to that question.

HIS HONOUR: I do not know how she can say that.

10 MR. HOWSE: I asked her if she noticed anything to indicate to her.

HIS HONOUR: She has said that, she said she seemed to be tired and her face was drawn and tired. I do not know whether she can say that she indicated anything as to whether she had slept or not. How do you find that out?

MR. HOWSE: I am trying to get at something without leading, Your Honour.

HIS HONOUR: It is up to you.

20 MR. HOWSE: How would you describe her appearance generally? --- Tired and worn looking.

Had there been any previous occasions when you had seen her in a distressed condition? --- I had seen her crying at other times when I had called.

How did her appearance on this occasion compare with previous occasions of that sort? --- Oh she seemed a lot more upset.

WITNESS INSTRUCTED TO SPEAK UP

30 MR. HOWSE: Perhaps if you could face straight across the Court? --- She seemed a lot more upset this time than at previous times.

What was her general disposition towards life as you observed it? --- Always very happy.

Was she inclined to get flustered? --- No, not at all.

Approximately how long did you stay at the Ratten house on this day? --- About an hour - hour and a half.

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(continued)

And did you see the accused there at all? --- Yes,
he came in just as we had finished coffee.

And what happened? --- He walked in and Bev said,
"I'll make you a cup of coffee" and he said,
"I'll be back in a moment."

What happened then? --- He got in the heavy vehicle
- I can't think what it's called.

The Land Rover? --- The Land Rover, and drove away
for a while.

Did he return while you were still there? --- Yes,
just as I was leaving.

10

Whereabouts were you when he returned? --- Standing
out the front gate in the sun.

Where was Mrs. Ratten? --- Talking with me.

Did she do anything at about the time when he
returned? --- Yes, ran back inside to switch the
Birko off.

HIS HONOUR: When was that? --- Just as Leith came
back again.

MR. HOWSE: What is the Birko? --- What she boils
the water in to make the coffee.

20

Would you have a look, please, at photograph No.6
of Exhibit 'A'? Do you see the Birko referred
to in that photograph? --- Yes, lying down near
the frypan.

Would you hold the photograph around and point it
out, please? --- (Witness indicated on photograph).

The thing lying on its side, is it? --- Yes.

Cross-
Examination

MR. WALKER COMMENCED CROSS-EXAMINATION

MR. WALKER: Mrs. Trinham, during the course of
your - during the time of your visit there, Mrs.
Ratten volunteered to you what was upsetting her,
did she not? --- Yes.

30

She told you that she was worried about the children
in respect to the magpie? --- That's right.

Was it the position that she indicated to you that she was terribly worried that she would be going into hospital soon and there was a magpie which was apparently biting and upsetting very much the children? --- That's right.

And it had got to the stage where the youngest child wouldn't even go outside, is that so? --- That's right.

10 And could not play with her friends? --- That's right.

And it was upsetting her very much? --- Yes.

You have told the Court that on some previous occasions you had seen Mrs. Ratten crying or in an apparently distressed condition? --- Yes.

Was that during the previous 3 months? --- Yes.

And that was during the latter stages of her pregnancy? --- Yes.

20 Mrs. Trinham, would you have a look again at Exhibit 'A', photograph No. 6? Could you indicate to the members of the jury and the Court where the Birko is normally kept? --- In the space near the fruit bowl.

That is up on the lower of the two shelves above the bench, is it? --- Yes.

And you say next to the fruit bowl? --- Yes.

30 And looking at that photograph still, can you indicate where, firstly, the coffee cups or tea cups were kept? --- The coffee cups were kept in the middle one and the teacups were kept on circular revolving hooks in the end one.

And what about the ingredients, coffee, sugar, biscuits and things, are you able to say? --- Biscuits were kept in the centre cupboard and coffee and sugar were kept in the first one on the bottom shelf.

When Mr. Ratten arrived home was there any indication of a strained relationship between them? --- None whatsoever that I could see.

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Betty Winifred
Trinham

Cross-
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Betty Winifred
Trinham

Cross-
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The reaction of both Mr. Ratten and his wife to each other was perfectly normal? --- Yes.

That morning he was apparently engaged in repairing a washing machine, is that right? --- I don't know anything about that.

Did you see him with a length of hose in his hands? --- No.

Well Mrs. Trinham, Mr. Ratten bore an excellent reputation in the community in which you mixed, is that so? --- Yes.

10

Re-Examination

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: Mrs. Trinham, you told my learned friend that Mrs. Ratten volunteered to you what was upsetting her on the morning of 7th May. Would you tell the jury what it was she said to you? --- Would you like the beginning of the conversation, how it started?

Yes, tell us what was said? --- Well, I excused myself because I went to the front door instead of the back door as I normally would have, because of the magpie up the drive, and Bev came to the door looking very upset, and I told her I was sorry I'd come to the front door, seeing how distressed she was, I didn't know why, and I said, "I'm sorry I've come to the front door but I didn't want to get bitten by the bird", and so we went in. She said, "That's all right, come in". We went into the kitchen and sat down and were talking and she said, "Yes, I don't know what I'm going to do about this bird, Leith likes it but I'm very upset because it worries the children so much". And we just went on and

20

30

talked about - we were discussing what we could do about it to get rid of it.

When you say you just went on and talked about it, it may not convey very much to the jury. What was said? --- She told me how it had been annoying the children, how they couldn't go out and play because it bit them or chased them, and then she went on to tell me how Leith had frightened the children with it - with the bird.

10 WITNESS WITHDREW - EXCUSED

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Betty Winifred
Trinham

Re-Examination

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(continued)

ETHEL MAY SMITH sworn and examined

WITNESS TO MR. HOWSE: My full name is Ethel May Smith. I reside at 52 Denver Street, East Bentleigh. I am a married woman and a pensioner.

MR. HOWSE: Beverley Joan Ratten was your daughter?
--- That's correct.

And she was married to the accused man? --- That's right, yes.

20 Do you recollect how long ago they were married roughly? --- 10 years.

And they of course were living up here in Echuca and you in Melbourne, how often did you see them roughly? --- Round about three times a year we might go up there but they've come down in between odd days.

And did you -

HIS HONOUR: How old was your daughter? --- 31.

MR. HOWSE: Did you visit their home in Echuca on Sunday 3rd May of this year? --- Yes.

Ethel May
Smith
Examination

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Ethel May
Smith

Examination

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(continued)

Cross-
Examination

Re-Examination

And how did things appear to be between them, that is your daughter and her husband on that occasion? --- Well everything was all right, we were all together. There was a few of us up there and of course on a day visit there is nothing much really you could tell because we were all bright and breezy and there was nothing I could see wrong.

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: So far as this relationship was concerned I think you have indicated on the last occasion you were there everything appeared completely normal, is that right? --- Yes.

10

And your daughter on all occasions indicated to you that everything as far as her husband was concerned was quite all right did she? --- Yes, well I mean as far as we could see ...

WITNESS INSTRUCTED TO SPEAK UP

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: It was suggested to you that on all occasions your daughter did not indicate to you that anything was wrong between herself and her husband, is that entirely accurate? --- Only in October when we were up there last year - we were there for about a week - and she was washing up her dishes and she turned to me and she said "I feel mum that somehow Jenny is going to come between Leith and I" and I said to her "That seems a strange thing to say" and she said "Oh well that is what I feel" and she said "But perhaps I'm only jealous."

20

30

Did you know who Jenny was? --- Yes, I'd met her a few times, I'd been to her home for afternoon tea with my daughter.

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Did you see her on that particular occasion in October last year? --- Yes, she was there to lunch and we were having lunch and Leith said to her "Well come on Jenny, we'll go out for a driving lesson" and that was when they'd gone that my daughter said what she did about Jenny coming between them.

10

What was Jenny's surname? --- Kemp.

WITNESS WITHDREW - EXCUSED

Ethel May
Smith

Re-Examination

13th August
1970
(continued)

STANLEY RUPERT RATTEN affirmed and examined

Stanley Rupert
Ratten

WITNESS TO MR. HOWSE: My full name is Stanley Rupert Ratten. I reside at 7 Eddies Grove, Bentleigh. I am a company secretary by occupation. I am the father of the accused.

Examination

MR. HOWSE: On Thursday 7th May of this year did you communicate with him? --- I did, yes.

20 Was that by means of a trunk telephone call from your office in Melbourne to his home in Echuca?
--- Yes.

Perhaps you might be good enough to tell us the phone number of your office? --- Well the number has since been changed.

No, at the time? --- At that time it was 34 3153.

Would you tell us the time when you made this call to him, that is when your call actually commenced? --- Sometime after one o'clock.

30 Did you have any particular reason for calling on that day? --- Yes, I had two reasons. My first

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Stanley Rupert
Ratten

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(continued)

reason was to enquire how my daughter-in-law was in her health, because of the close proximity of her confinement, and the second question was if she required any nappies because I could procure them from one of our tenants of our building.

You would get them from a warehouse? --- Yes.

When you got the phone connection at the Echuca end to whom did you speak? --- I spoke to my son Leith.

10

Can you carry on from there and tell us what happened, what was said? --- Yes, my first question was how Bev was, and his reply, she was well. I then enquired if she required any nappies, as I could procure them for her at this warehouse. He then called his wife who was in another room.

HIS HONOUR: You could hear him call her, could you?
--- Yes. And he said to her...

You could hear this, could you? --- Yes, Your Honour. 20

And he said? --- He then said to Bev, "Dad's on the phone and wants to know if you require any nappies". I heard her voice, although I could not hear the words she said, but he conveyed to me that she said she intended buying another dozen. I then said, "Well, leave them to me and I'll purchase them and will bring them up when my daughter Jennifer and I visited her when she was in hospital, or if she required them earlier I'd send them by Ansett's bus". He then spoke to her and her reply was ...

30

You heard this, did you, you could hear what she said? --- No, I could only hear her voice.

He spoke to her and then said something to you? --- Yes.

What did he say? --- That she said when we came up to see her would be quite satisfactory, she would not require them earlier. I then carried on a general conversation with my son, as to how the children were, and as far as I can remember that was the conclusion of the telephone conversation.

40

MR. HOWSE: Was there anything that you could detect of an unusual nature about the conversation? --- Nothing whatsoever. I had phoned them just 2 or 3 days earlier, as was my custom, because of her close proximity to her confinement, and the conversation was just as normal as at any other time.

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Stanley Rupert
Ratten

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MR. WALKER COMMENCED CROSS-EXAMINATION

10 MR. WALKER: Mr. Ratten, I am not sure if I heard you say this, but you hung up on hearing the three pips go, did you? --- Yes.

Well you both hung up at that stage and terminated the conversation? --- Yes.

Cross-
Examination

And as you have said there was nothing about this call that was any different in any way at all from many previous calls that you have made?
---None whatsoever, not the slightest difference.

You have been a fairly frequent visitor to your son and his wife's place? --- Yes, quite regularly.

20 And they have visited you frequently? --- Yes.

And especially during these last few months you were constantly ringing up, is that so? --- Yes, constantly.

And you have got a close relationship with your son, you know him very well? --- Very close, yes.

And you have continued to see him this unfortunate thing? --- Yes, regularly.

MR. HOWSE DID NOT WISH TO RE-EXAMINE

WITNESS WITHDREW

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Beverley Faye
Bush

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BEVERLEY FAYE BUSH, sworn and examined

WITNESS TO MR. HOWSE: My full name is Beverley Faye Bush. I reside at 88 Rathdowne Street, Carlton. I am a telephonist employed by the Post Master General's Department at the main trunk exchange in Little Bourke Street, Melbourne.

MR. HOWSE: On Thursday, 7th May of this year were your duties at the telephone exchange to handle trunk line calls? --- Yes.

10

In other words, you receive the order for the call in Melbourne, arrange the call and then supervise it, do you? --- Yes.

In relation to any such call, at the time when it takes place do you - and did you then, make any record of the call? --- Yes, I do, I write everything on a docket.

I suppose you handle a fair few calls during the course of any one day? --- Yes.

Without looking at the particular docket are you able to remember any details about a call to Echuca 1494? --- No.

20

Did you make the docket out yourself? --- Yes, I did.

Was it made at the time? --- Yes, it was made at the time.

Do you desire to refer to the docket in order to refresh your memory about the particulars of the call? --- Yes.

WITNESS GIVEN LEAVE TO REFER TO DOCUMENT

MR. HOWSE: Did you in fact on that Thursday receive an order for a trunk line call to Echuca 1494? --- Yes.

30

From what telephone number in Melbourne was that call to be made? --- It was made from 34-3153.

Did that call in fact take place? --- Yes.

Can you tell us what time the call actually commenced? --- At 9 minutes past 1.

Is that p.m.? --- P.m.

Can you tell us for how long the call lasted? --- 2.9 minutes.

MR. LAZARUS DID NOT WISH TO CROSS-EXAMINE

WITNESS WITHDREW - EXCUSED

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Beverley Faye
Bush

Examination

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JANET LUCILE FLOWERS, sworn and examined

Janet Lucile
Flowers

10 WITNESS TO MR. HOWSE: My full name is Janet
Lucile Flowers. I am a telephonist employed
at the Postmaster General's Department and a
telephonist at the Echuca Exchange.

Examination

MR. HOWSE: How long have you been a telephonist
there? --- For 2½ years.

Do you live at 2 Law Courts Place, Echuca? --- Yes.

On Thursday 7th May of this year were you on duty
at the Echuca Exchange? --- I was.

20 On that particular day in the early afternoon what
position were you occupying? --- A5, a local
position.

A5, a local position.

HIS HONOUR: That means for local calls does it?
--- That does.

MR. HOWSE: Is there more than one local position
of this sort? --- There's six local positions.

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Who was next to you? --- Miss Bennet was on A4.

Did you receive a particular call in the early part
of that afternoon, Thursday 7th May this year?
--- I did.

Will you tell us in your own words what happened?

HIS HONOUR: What time was this? --- Well it was
shortly after one o'clock, I should say it would
have been about a quarter past one. I plugged
into a number at Echuca, 1494 and I said - I
opened the speak key and I said to the person
"Number please" and the reply I got was "Get me
the police please?" I kept the speak key open
as the person was hysterical.

10

You what? --- I kept the speak key open as the
person was in an hysterical state and I connected
the Call to Echuca 41 which is the police
station. As I was connecting the call the
person gave her address as 59 Mitchell Street.

Then what happened? --- As she hung up the police
station answered their phone. I didn't speak
to the police, I closed the key and referred to
the officer in charge, Mrs. McCullum, and said
that I had been given certain information, was
I allowed to give this information to the police,
and she replied "Yes". So then I said to the
police they were wanted at 59 Mitchell Street.
The policeman said "Right" and then hung up.

20

MR. HOWSE: You say that you plugged into the number
Echuca 1494, what caused you to plug into that
number? --- Well the light is right in front of
position A5 and you usually answer the numbers
as they come up in front of you.

30

Do you say some light -? --- A light glows on the
exchange and the number is designated beside
this lamp.

What else do you have at that precise point, you
have got a light and you have got a number? ---
Well we have a set of cords and a set of keys
all go together. You plug in with the back
cord, which we call the answering cord, and
then you connect with the front cord.

40

What do you plug the answering cord into? --- Into a jack, we plug it into the jack and the number is designated beside this jack, and when you plug in it puts out the lamp.

Is that what happened on this occasion? --- Yes.

So that you had there a lamp that came on, a jack underneath it and the number 1494 beside it?
--- Yes.

10 What sort of a voice was this that spoke to you and said "Get me the police please" and then gave you the address of 59 Mitchell Street? --- The person was a little bit calmer at first but the voice changed as she kept on speaking and it went into an hysterical state.

What was the sex of the person speaking? --- A female voice.

You said that at some stage the caller hung up?
--- Yes.

20 How did you ascertain that? --- We have supervisory lamps. When you plug into the number the lamp goes out. When the person hangs up the lamp glows a bright orange.

And did that happen on this occasion? --- That did happen.

Is this the same lamp as the one above the jack that has the number beside it? --- No, it's connected with the set of cords and the speak keys.

30 Shortly after that did you notice Miss Bennet who was sitting alongside of you do anything? --- I noticed her plug into Echuca 41, I saw the lamp came up and she plugged into the number.

Echuca 41? --- Which is the police station.

You know that? --- Yes, I know that, we have to know all emergency numbers.

About how long after you had done it? --- It would have been approximately two minutes.

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MR. HOWSE: Did you see her plug into any other number? --- After a second I'd say she plugged into Echuca 1494 and rang on the number.

About this time were there any other calls in relation to either of these two numbers, Echuca 41 or Echuca 1494 that you either answered or spoke to? --- No.

Did you have clocks in the room at the exchange where you were working at this time? --- Yes, we have two clocks situated in the exchange and they are both at the one end of the room.

10

Did you make any observation of the time on these clocks? --- After I'd connected the call and the call was finished with I happened to look up at the clock just as a matter of course and I noticed the time was 1.20.

In this call that you have told us about that came to you from Echuca 1494 was there anything else said other than what you have told us? --- No, there wasn't.

20

Was any mention made of an ambulance? --- No.

Cross-
Examination

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: I take it you have prepared yourself pretty well to give this evidence, have you? --- Yes, I'm just ...

Just what? --- Just here doing my duty as a telephonist, as far as I am concerned.

Miss Flowers, you have been a telephonist how long? --- 2½ years.

And I suppose you are pretty familiar with the workings of the Echuca exchange, are you? --- Yes, I've qualified as a monitor to take over an officer-in-charge position.

30

And you know the boards pretty well? --- Yes, I do.

And I take it you would agree that in the course of time a girl becomes pretty automatic in the handling of these boards for local calls? --- You do become automatic, but in a busier period you work a lot quicker.

For instance - do you type at all? --- No, I don't type.

And I take it you begin to handle the boards something like the touch typist, do you? --- No, we are trained to handle the board, but we have to handle each individual call ...

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Yes, I follow that, but you would know, for instance, generally without looking at the number where - you could plug in the jack, could you not, without looking at the number in most cases, could you not? --- If you are trying to get a number, the boards are multiplied, and sometimes you can pick a number up from a different position.

If the signal light goes up, say, just above the board you are working on, one of the 300-odd numbers on that board, you could almost automatically put the jack in to the right hole without looking at it, could you not? --- I always look at the jack when I plug into the jack.

Well, you may in fact make some sort of movement towards it, but it is a pretty automatic reaction after 2½ years, surely, is it not? --- Yes.

How many boards did you control at this particular time, Miss Flowers? --- One position.

I understand that in that position you can also answer other calls on other boards, is that correct? --- The boards are multiplied and we can answer any number from any position.

Yes, I follow that, but this particular number was on the board you were sitting at, is that correct? --- It was right in front of me.

That is the A4 position? --- A5.

I take it so far as this particular type of call, the local call, is concerned, time is of no significance to you, you do not record it or anything like that, do you? --- No, we don't

And there is no point in you normally trying to establish a time? --- No.

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So far as this particular call is concerned, Miss Flowers, I suppose what happens is, is it not, that as soon as the receiver is lifted your light goes on - the corresponding light goes on on the board? --- When the receiver is lifted by the subscriber the lamp glows at the exchange.

And of course until you plug in, you cannot hear if anything is being said by the person that has lifted the receiver, can you? --- You have to plug in and open the speak key before you can hear anything that is said.

10

And I suppose this is quite obvious, but you concede, do you not, that someone in an hysterical condition could, for instance, be saying things before you actually got to the stage of putting the jack in the plug, is that right? --- They could have been.

But what you say is this is all you heard? --- Yes.

And I think you said that when the voice - when you first heard the voice it was a little bit calm and changed as it went on speaking? --- That is correct.

20

Is that right? --- Yes.

And I take it you mean by that, do you, that it would be pretty hard to tell what sort of voice it was at the stage it changed, but? --- No, you could definitely tell what the voice was right from the beginning.

Well, you did not hear very much, did you? --- No, I didn't.

30

Because all you heard was how many words - "Get me the police.."? --- "Please", and "59 Mitchell Street".

Well, just take the first phrase, "Get me the police please". That would not take very long to say, would it? --- No, it didn't.

And I suppose your first reaction is that "There's something wrong here", is that right? --- Yes, it was.

And then as the voice was speaking you could determine it was hysterical, could you? --- Yes, as the person spoke on you could.

At what stage could you determine the voice was hysterical, Miss Flowers - or did you determine the voice was hysterical? --- After the person had said, "Get me", she went into an hysterical state from then on.

10 Well, the "police please" was in an hysterical state, was it? --- Yes, it was.

Could you understand what was said? --- I could understand what was said.

And what made you describe it as hysterical, Miss Flowers? --- Well, ...

The "police please"? --- The person was very calm at first, although I could tell she was crying.

Could you? --- Yes.

20 Now perhaps we can start with that. That is on the words "Get me", is that right? --- Yes, she was crying, but she wasn't hysterical until after she said - "the police please", she started to get hysterical then.

Let us just take it in order - "Get me", you could tell at that stage the voice was crying, is that right? --- That is correct.

Now how could you determine that, were there noticeable sobs? --- Yes, there were.

What, there was a sob before the "get" or after? --- Well, it was in the conversation.

30 Well, you have only got "get me", you see? --- In the "get me" she was sobbing, the person was sobbing.

Well, it was a sort of -(sob), "get" (sob) "me" (sob), is that right? --- No, I think she'd only sobbed once, she'd only sobbed.

Had she sobbed before she said "get"? --- No, she didn't.

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Or after? --- After.

So it was "get", then a sob, and then "me", is that right? --- Yes.

And was it a long sob or a short sob, how would you describe this? --- I'd describe it as a short sob.

All right, well we have got "get" - this is calm, the word "get" is calm, is it? --- Yes.

All right, "get" is calm, then sob. "me is calm"? --- Yes. 10

And then hysteria? --- Yes.

Now the hysteria, I take it, started at the "the", did it? --- That is correct.

How did the hysteria sound to you, Miss Flowers? --- Well, as the person kept on speaking it became very high-pitched.

At what stage did it become very high-pitched, at the "the", at the start of the "the"? --- At the start of the "the", and by the time she got to giving the address it was a yell. 20

I see, well, we will perhaps come to the yell in a moment. But the hysteria started at the "the" and became very high-pitched, did it? --- Yes, it did.

And "the police" was even more hysterical still, I suppose, was it? The word "police"? --- Yes, but it was quite clear.

Oh yes, quite clear, but quite hysterical? --- Yes.

And even more hysterical than the "the", was it? --- Yes. 30

Was it the high-pitch that made you determine it was hysterical? --- Yes, it was.

It was just a very high pitch was it? --- Yes.

Not a tone, a pitch? --- A high pitch.

Tell me, Miss Flowers, there were - was a considerable change in her voice in that phrase would you agree? --- Yes, there was.

And you could build - discern actually the build up of an hysterical state on the words "The police" could you not? --- Yes.

From a relatively mild hysteria to a rather frenzied hysteria, is that right? --- That is correct.

10 And I suppose the frenzied hysteria was at the stage the voice got to the word 'police'? --- Yes.

I suppose by the time they got the address frenzied hysteria is rather an understatement is it not? --- Yes, it was a yell.

Was it a high pitched yell or -? --- Yes, it was.

What was the - the '59' I suppose was not quite as high pitched a yell as the 'Mitchell' was it? --- No, it was all the same.

20 Just a yell '59 Mitchell Street'? --- Yes.

Incidentally was the word 'please' mentioned after 'police'? --- Yes, it was.

And that was even more hysterical I suppose than the word 'police' was it? --- It was.

Miss Flowers, would you agree that the voice was a little unnatural because of the hysterical state? --- Towards the end of the conversation it was.

30 Well it was a little unnatural at the stage the word 'police' was mentioned, was it not? --- Yes, but it was quite clear.

Yes, of course it was quite clear but it was a little unnatural? --- A little.

Would you describe the voice as speaking quickly or slowly? --- Medium.

The same pace all through was it? --- Yes.

And certainly it would be wrong to describe her voice as speaking quickly would it? --- It would be wrong.

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HIS HONOUR: It would what?

MR. LAZARUS: Describe the voice as speaking quickly.
I do not suppose it took very long did it? ---
No, it didn't take very long.

A second? --- It would've taken at least three or
four seconds by the time the person had finished
speaking.

Well your - in spite of the hysteria and the yell
you then asked the monitor whether it was all
right to convey to the police the message? ---
That is correct.

10

Did you regard the message in your own mind, rightly
or wrongly, as urgent when you heard it? ---
I did.

You gave evidence at the inquest did you not? ---
I did.

And you were there cross-examined were you not by
Mr. Hampel, do you recollect that? --- I was.

In the course of the cross-examination there-
perhaps before I put this to you: You say that
when you first heard the voice, the "Get me"
was calm, is that right? --- That is correct.

20

Did you say to Mr. Hampel that when the person rang
up she sounded upset? --- I did.

And as she kept on talking she went into an
hysterical state? --- I did.

So that it was true to say was it that right from
the start she sounded upset as you put it? ---
Yes.

The voice sounded upset? --- Yes.

30

Calm but upset? --- Yes.

Is that right? --- It was calm.

But upset? --- It was slightly upset.

Well you did not qualify it at the inquest did you?
--- I didn't.

How did you determine it was upset, after the first word was it? --- No, it was after I heard the sob.

You did not think the voice was upset? --- Not on the first word.

Tell me, Miss Flowers, Mr. - in answer to Mr. Hampel did you tell him that prior to the morning - you were called in the morning at the inquest were you? --- I can't remember now.

10 You cannot remember whether it was in the morning or the afternoon? --- Yes, it was in the morning.

You have no doubt it was the morning have you? --- It was the morning.

Did you tell Mr. Hampel that prior to the morning - that is the morning you were called at the inquest - that you had never considered that the voice you heard may have been a male voice in an hysterical state. Did you tell him that? ---
20 That's definite, because it was definitely a female voice.

You do not mind answering my questions do you? --- No, I don't.

Well could you just answer that question. --- What was it again please?

What you cannot remember? --- I did not hear it clearly.

Did you not, I am sorry. I will put it to you again. Did you tell Mr. Hampel in the course of your evidence at the inquest that prior to the morning - that is the morning you were called - prior to this morning you had never considered that it may have been a male voice in an hysterical state? --- I had no reason to consider that.
30

Perhaps you did not, but did you tell Mr. Hampel that? --- No, I did not.

Let me put this to you. Did Mr. Hampel ask you this question? "Prior to this morning have you ever considered that it may have been a male voice in an hysterical state?" --- Yes, he did.
40

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Did you answer that question by saying "No"? ---
I did.

Did Mr. Hampel say to you at the inquest "Just
think about it, Miss Flowers, has anyone ever
suggested to you 'Look, could it have been a
male voice in an hysterical state or in an
upset state'"? --- He did suggest this to me.

And did you say "Not that I can remember"? --- It
was only suggested to me by Mr. Hampel.

Miss Flowers, did you say in answer to that
question "Not that I can remember"? --- That is
correct. 10

You were interviewed or told the police - told
Detective Sergeant Harry Morrison - at 12.15 a.m.
you discussed the matter with him did you? ---
I did.

You were fairly convinced were you not that this
call was shortly after 1 o'clock on 7th May?
--- That is true.

And the expression "Shortly after one o'clock" was
your own way of expressing the time was it not?
--- That is correct. 20

And do you consider it quite an accurate way to
express "Shortly after one o'clock" to say 1.15
do you? --- Yes, I do.

You consider 1.15 is properly described as being
shortly after one? --- Yes.

Miss Flowers, you said to Mr. Howse, the prosecutor
here, you will recollect, that you happened to
look at the clock as a matter of course and saw
the time was 1.20 or something to that effect?
--- Yes. 30

But happened to look at the clock as a matter of
course? --- Yes.

Do you look at the clock as a matter of course?
--- Yes, I do.

What, after every call? --- Not after every call,
but I glance at the clock now and again to see

if the time is going fast or slow, because sometimes it does go a bit slower than what you think it is.

And you were checking on this occasion whether the time was going slow were you? --- Yes, I was.

Well time must have been going pretty fast in this particular period for you was it not? --- It was quite so.

10 I suppose you do not get many calls of this nature, do you, at the Echuca exchange? --- We do handle quite a few of emergency calls.

Emergency calls? --- Yes.

So they are quite commonplace, are they, to you?
--- I've handled a few.

And there is nothing particularly unusual about them as far as you are concerned? --- Yes, they are an emergency call, this is what we ...

20 Yes, but apart from being emergency calls, there is nothing particularly unusual about emergency calls to you, is there? --- No.

It is part of the normal day's work, is that correct? --- That is correct.

I suppose it would be true to say, would it not, that this estimate of 2 minutes from the time you first had the call to the time you got on to the police, having asked the monitor, that could be out, could it? Or would that be dead right?
--- That could be out a little bit.

30 What would be the most extreme time, in your opinion, it could be out? --- Well, it wouldn't have been any more than 2 minutes.

What would be, say, the least time it could have been, in your view? --- At least a minute.

So you give yourself 1 minute to 2 minutes on that period, do you? --- I do.

Tell me, it is correct to say, is it, that - or is it, that the first time you were questioned about this phone call in any detail was at the inquest?
--- That is correct.

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And the inquest was, I suggest, the time you gave your evidence, or the day, was 25th June 1970, would you agree with that? --- Yes, that is correct.

You remember the day, do you? --- Yes, I do.

Did you actually remember it was 25th June, Miss Flowers? --- Yes, it was.

Yes, but did you actually remember it? --- The day?

Yes, the date? --- Yes, I did.

What, you kept it in mind from having given evidence on 25th June, did you? --- I did. 10

So that having given evidence on 25th June of this year, if I had asked you the date you gave your evidence you could have told me, could you? --- Yes, it was on a Thursday and a Friday, the two days of the inquest.

But you only gave your evidence on one day, surely, did you not, Miss Flowers? --- I did.

Was it the Thursday or the Friday? --- The Thursday morning. 20

What date was that? --- I think it was 25th June.

Do you, are you sure? --- I'm not quite sure, because I went away on holidays and I'd only been back three days when the inquest was heard.

Would it be an accurate description in your mind, Miss Flowers, of a voice that you heard on this occasion to say that it was - the voice was urgent? --- Yes.

Sounded urgent? --- Yes. 30

Was hysterically spoken? Or hysterical? --- Yes.

Contained a high inflexion? --- Yes.

And that would be pretty well bung on, would it? As far as a description of the voice you heard is concerned? --- How do you mean "bung on"?

Well, a clear and correct description? --- Yes.

From your point of view? --- Yes.

Miss Flowers, as a telephonist of some 2½ years standing, I take it - again, I suppose it is pretty obvious, but you would agree, would you not, that you do not consciously note voices, do you? --- Yes, you do.

What, when you get a phone call? --- Yes, unless you are very busy, when you don't have time, but in a quieter period you do, you can tell and notice the voices.

But do you consciously do it? --- Yes, I do.

Do you? --- Yes.

And I suppose you would regard yourself as a normal telephonist, would you? --- I do.

And despite the fact I think you have agreed you are pretty automatic in these matters, you really note voices, do you, if you are not busy? --- I beg your pardon?

You note voices if you are not busy, do you? --- You do.

Tell me, - of course you rarely, I suppose, have occasion to be able to check on the accuracy of your noting of a voice, do you? --- You do.

You cannot go and see the person, can you? --- No, you can't.

And I suppose you, with your means of hearing at that exchange, hear no better than a person normally hears on another telephone receiver, a voice on that telephone, do you? --- That is correct.

You have no extrasensory sort of sounds in that telephone exchange, have you? --- No, we don't.

And I take it the position is that you get a number and your job is to connect that number as quickly as you can, is it not? --- That is correct.

And get on to the next one? --- Yes.

And that is done, as you have told us, by plugging in a series of jacks to corresponding holes, is that right? --- That is right.

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You at this time would have been responsible for the board you were at, generally speaking, were you?
--- I was.

And about how many other boards? --- Only the one position.

Well, how many girls were working at this particular time on boards? --- There were 5 girls on in the "A" positions and there would have been 3 on the trunk position.

That is 5 girls on the what position? --- 5 on the local position, which we call "A" position. 10

And what is the maximum - 6, is it? --- The maximum is 6 on local position and 7 on trunk position.

I am only concerned about the local. You had almost a maximum number of girls, did you? --- We did.

This is normal, is it? --- This is normal.

And I suppose what, one was missing, that should have been there? --- How do you mean missing?

Well, there are 6 boards, I think you told us? --- Yes, there were 6 boards. 20

And normally at this time there would be 6 girls, would there? --- No, there wouldn't be.

5? --- Yes.

Who handles the 6th board, whose job is to handle the 6th board, Miss Flowers? --- You don't need to handle the 6th board in this period of the day.

What, cannot a number come up on that 6th board?
--- It can come up on that board, but any girl in any position can pick up the numbers that come up. 30

Were you near the unmanned board yourself? --- I was next to it, it was on my righthand side.

So that normally it would be your job, I suppose, to handle the unmanned board? --- Oh no, I'm not expected to handle it, I only am appointed to handle one board.

But what happens, if somebody rings on the unmanned board it is just too bad, is it? --- No, you pick it up on your board. 40

I follow that, but if somebody rang on the unmanned board it would be part of your job on this occasion to pick the number up on your board, would it? --- Yes, or we do have a buzzer on one of the positions and the other girls can pick it up from the other end of the boards.

I see, but it would normally be your job, would it not, sitting next to it? --- Providing I can keep up with the traffic.

And if not, what, the buzzer - do you sound the buzzer to get somebody else to pick it up? --- No, the monitor is walking the floor and she checks to see that we are not overloaded.

Well, if you are overloaded she would get somebody else to handle the 6th board, would she? --- She would.

Well, it is correct to say, is it not, that you would have regarded it as your initial responsibility anyway to attend to the 6th board, is that right? --- Not to attend to the 6th board, only ...

But take numbers from it? --- Take numbers from it, that would be right.

How old are you, Miss Flowers? --- I am 24.

Miss Bennett, the girl next to you, is a fairly experienced telephonist, is she? --- She's been a telephonist for 8 years.

Well, you would regard her as a very experienced telephonist, would you not? --- I would.

Perhaps there is just one matter I should put to you. You have told me you have given evidence at the inquest and before Mr. Hampel asked you a few questions you were asked questions by Mr. Morrison, is that correct, Detective Sergeant Morrison? --- I was question by Sergeant Morrison.

And in the course of answering questions by Detective Sergeant Morrison, you said did you not that "As to the fixing of the time, at that time we had an overseer on duty and he was on his lunch break, which is between 1 and 2 p.m. and this is sort of one of the ways I thought that would be the time I accepted the call"? --- Yes.

And that is correct is it? --- That is correct.

And that the only way you established the time was 1.15 was by reference to this lunch break of the overseer, is that so? --- And also I had just recommenced duty after a lunch break myself. I recommenced at 1 o'clock.

Did Mr. Hampel ask you "The only way you can establish the time as 1.15 is by reference to this lunch break of your overseer, is that so"? Did he ask you that? --- Yes.

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Evidence

Evidence
for the
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Janet Lucile
Flowers

Cross-
Examination

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(continued)

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Transcript of
Evidence

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Prosecution

Janet Lucile
Flowers

Cross-
Examination

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(continued)

And you replied to that "Yes" did you not? --- Yes.

The overseer always goes out on time does he? ---
He does.

Right on the dot? --- Yes.

And I think you further said at the inquest that
it was "shortly after the overseer had left us",
ceased duty for the lunch break that you received
the call? --- Yes.

Had you looked at the clock between 1 and 1.15
incidentally, this clock that you say you look
at to see if the time is going a bit slowly or
fast? --- Not that I can recall.

10

Re-Examination

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: Is there any particular reason why you
remembered this voice? --- It was upsetting to
me at the time.

And what sort of a voice do you say it was, this
one that rang you from Echuca 1494 and which
you answered? --- It was "Come" at first and
then it went into an hysterical state and by the
end of the call the person was yelling.

20

And what do you say was the sex of the caller? ---
A female sex.

You have told us about the number of girls actually
manning the local positions at this time, what
is the situation, is it a quiet time or a busy
time or what is the case? --- I class it as the
quieter period of the day.

WITNESS WITHDREW - EXCUSED

JUDITH MARY BENNETT sworn and examined

WITNESS TO MR. HOWSE: My full name is Judith Mary Bennett. I am a telephonist employed by the Postmaster General's Department. I reside at 96 Sutton Street, Echuca.

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State of
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No.2

MR. HOWSE: On Thursday 7th May of this year were you on duty as a telephonist at the Echuca Telephone Exchange? --- Yes.

Transcript of
Evidence

10 In the early afternoon were you manning one of the local positions? --- Yes, that is right.

Which one was that? --- A4.

Evidence
for the
Prosecution

Who was next to you on A5? --- Miss Flowers.

She is the previous witness? --- That's right.

Judith Mary
Bennett

HIS HONOUR: Which side of you was she on? --- On the right hand side.

Examination

MR. HOWSE: Early on that afternoon did you answer a call from the police station? --- Yes.

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1970

20 Can you tell us approximately what time it was? --- I'm not sure of the time, it was about 20 past 1.

What was that number, what is the number of the police station that you answered? --- Echuca 41.

What happened when you answered the call? --- The caller asked me what number was calling here and I told him Echuca 1494.

What happened then? --- I asked him did he want me to connect him to that number and he said "Yes" and I did so.

30 You say you asked him if he wanted you to connect him to that number, Echuca 1494, he said "Yes" and then what did you do? --- I connected him to the number.

That is Echuca 1494? --- Yes.

MR. HOWSE: Did something happen that brought to your attention the fact that a call

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Judith Mary
Bennett

Examination

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(continued)

Cross-
examination

had apparently come in from Echuca 1494? ---
Yes, Miss Flowers handled that call and she
asked the monitor about it, sitting next to
her and heard her.

HIS HONOUR: Miss Flowers had received the call
from 1494? --- Yes.

And spoken to the monitor, is that what you
said? --- Yes, she spoke to the monitor about
it.

MR. HOWSE: About how long after that happened was
it that you received the incoming call from the
police station? --- It was only a couple of
minutes.

10

Apart from this call that you have told us
about receiving from the police station and
then connecting that with Echuca 1494 did you
handle any other calls on that day relating
either to Echuca 41 or to Echuca 1494? --- No,
I didn't.

MR. LAZARUS COMMENCED CROSS-EXAMINATION

20

MR. LAZARUS: You have been on the exchange there
for some numbers of years, is that correct? ---
Eight years.

And it follows of course you have had a great
deal of experience as a telephonist? --- Yes.

You would agree would you not that if someone
rings up on a local call you do not
consciously decide whether it is a male or
female do you? --- No.

And you just do not sort of consciously think
about it? --- No.

30

I take it in the course of time, like a touch
typist, you become fairly automatic in that
exchange, would you agree? --- Yes.

I suppose - tell me this. Have you ever heard
a voice on that exchange which you would
describe as hysterical ever? --- No, not that I
can remember.

MR. HOWSE DID NOT WISH TO RE-EXAMINE WITNESS

WITNESS WITHDREW - EXCUSED

40

JOSPHINE MARY PHELAN sworn and examined

In the Supreme
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WITNESS TO MR. HOWSE: My full name is Josephine Mary Phelan. I reside at 57 Mitchell Street, Echuca. I am engaged in home duties.

No.2

MR. HOWSE: You were a next door neighbour to Mr. and Mrs. Ratten at 59? --- That's right.

Transcript of
Evidence

MR. HOWSE: On Thursday 7th May of this year did you go out somewhere around about midday? --- Yes, I did.

10 Would you tell us what time? --- Oh about 10 to 12.

Evidence
for the
Prosecution

And what time did you return home? --- I came back home again about quarter to one, just for a few minutes to pick up some clothes for my boy and then I left again to pick him up and take him to kinder.

Josephine
Mary Phelan

Examination

When did you return from taking him to kinder? --- Oh it would have been about 10 past 1 I think.

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20 That is on the afternoon of that day? --- Yes.

Did you notice anything when you got home at that time, 10 past 1. --- No.

Did you see anybody? --- No. I just went inside.

Did you see any children? --- No.

Did you hear any sound coming from the Ratten house at all? --- No, I only heard the little girl after I had gone inside.

Who is this? --- Wendy.

30 You say you heard her after you had gone inside? --- Yes.

MR. HOWSE: Did you see her before you went inside? --- No.

What was it you heard? --- I heard her crying.

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for the
Prosecution

Josephine
Mary Phelan

Examination

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(continued)

What did you do? --- I looked up. I was in the
loungeroom, I looked up and I saw her at Ratten's
driveway, and I heard her crying so I went out
and I said, "What's the matter, Wendy?" and she
just ran away from me.

Whereabouts was she when you spoke to her? ---
She was just at the end of their driveway.

Which end is this? --- The footpath end.

And where did she run off to? --- She ran
towards the front of their house, I think. So 10
I went back inside then.

Perhaps if you would be good enough to take the
photograph 5 of Exhibit "A", are you able to
point out on the photograph where she was when
you spoke to her? --- Round about there some-
where (indicated).

HIS HONOUR: Just by the front entrance gate? ---
Yes.

MR. HOWSE: Where did she go to - you told us that
she went off, you thought, towards the front of 20
the house. Where was she when you last saw her?
--- She was about, I'd say, at about - just
outside their bedroom there.

Still on the drive or on the garden or what? ---
No, she'd left the drive and was in there
(indicated), between the front fence and the
front of the house.

I think you told us you said, "What's wrong", did
she make any reply? --- No.

Did you see her again after that? --- I went 30
back inside and sat down and a few seconds later
I heard her again, and when I looked up a
policeman had her in his arms.

What happened then? --- Well, I went out and he
asked me if I was friendly with them ...

All right, did he hand her over to you? --- Yes.

At any stage while you were at home did you hear
anything like the sound of a firearm going
off? --- No.

MR. LAZARUS COMMENCED CROSS-EXAMINATION

In the Supreme
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—

MR. LAZARUS: Mrs. Phelan, I do not know whether you have told us or not, but you heard no argument or sounds of domestic trouble? --- No.

No.2

And had no knowledge at all of any difficulties in the marriage? --- No.

Transcript of
Evidence
—

And I think the position is, is it not, that normally in the summer you sleep out in the bungalow, is that correct? --- Yes.

Evidence
for the
Prosecution
—

10

And that is a position from which you could expect to hear any quarrels or rows that came from next door, is it not? --- That's right.

Both had a very excellent reputation, both the accused and the deceased? --- Yes.

Josephine
Mary Phelan

I think it is pretty obvious, but your times on this day are pretty approximate, I take it, are they? --- Yes.

Cross-
examination

MR. HOWSE COMMENCED RE-EXAMINATION

13th August
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(continued)

20

MR. HOWSE: Mrs. Phelan, the time when you heard Wendy from the inside of your house, in what part of your house were you? --- In the lounge room.

Re-examination

And whereabouts is that in relation to the street? --- It's the room the closest to the street.

And on which side of the property is it, in relation to the Ratten house? --- On the furthest side.

WITNESS WITHDREW - EXCUSED

30

ERNEST JOHN HOLLY sworn and examined

Ernest John
Holly

WITNESS TO MR. HOWSE: My full name is Ernest John Holly. I am a first constable of police stationed at Echuca.

Examination

MR. HOWSE: On Thursday afternoon, 7th May 1970 shortly after 1 o'clock were you on duty at the Echuca police station and did you receive a telephone call? --- Yes, I did.

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—
Ernest John
Holly

Examination

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(continued)

And as a result of that telephone call did you have a conversation with Senior Constable Shaw? --- Yes.

And as a result did you immediately set out in a police divisional van and go to 59 Mitchell Street, Echuca? --- Yes, that's correct.

Who drove the van? --- Senior Constable Shaw.

MR. HOWSE: Whilst you were en route to this address did you do something? --- Yes, I used the radio to call the man on duty at the station to try and ascertain who lived at 59 Mitchell Street.

10

Whereabouts roughly would you have been when you did that? --- On the town side of the railway line.

The police station is on one side and this house is on the other? --- Yes, on the police station side of the railway line.

Roughly what is the distance between the two? --- A mile to a mile and a half.

20

Will you carry on from there and tell us what happened? You arrived at 59 Mitchell Street, did you not? --- Yes, and as we were approaching I saw - or heard a child screaming.

HIS HONOUR: How long did it take you to get to Mitchell Street from the time you got the telephone call? --- In the vicinity of 3 minutes. And I looked around and saw a small child, whom I have since learned was Wendy Ratten. Her face was pressed up against the fence at the small gate and she was crying in a loud voice.

30

MR. HOWSE: Would you have a look at photograph 5 of Exhibit "A", please? Can you indicate on the photograph, if you can, roughly where she was? --- I think it's back behind the tree on the righthand side of the photo.

Hold the photograph round and indicate where, would you? --- In that vicinity (indicated).

What happened after that? --- We pulled up out front and walked down the driveway to a door at

40

the side of the house. I could hear someone moving round inside. Senior Constable Shaw and I knocked a couple of times on the door, but got no response. He opened the door and inside the door was Leith McDonald Ratten.

In the Supreme
Court of the
State of
Victoria

That is the accused? --- That's the accused, yes.

No.2

What was his position when you opened the door - when Mr. Shaw opened the door? --- Directly inside the door, facing the door.

Transcript of
Evidence

Was he standing or what? --- He was standing up just inside the door.

Evidence
for the
Prosecution

MR. HOWSE: What happened then? --- He said, "In the kitchen, quick". We went past him - this door opened into the bathroom, we went through the bathroom and across a passage into the kitchen. We saw the deceased lying on the floor at the end of the table.

Ernest John
Holly

Examination

Have a look at photograph 2 of Exhibit "A"? What do you say about the body that you see there?

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(continued)

WITNESS: That is the position the body was in when we came in but the door we came in through is over behind the No.2 on the top corner, we came in from the other way.

WITNESS INSTRUCTED TO SPEAK UP.

MR. HOWSE: Will you carry on from there? --- On the table there was a 22 rifle with a telescopic side, a gun case, a rifle case, ammunition and cleaning gear. There was an under and over shot-gun broken at the breech on the chair at the end of the table and beside the table there was a gladstone bag with ammunition and other miscellaneous items in it.

HIS HONOUR: Where was that? --- On the floor beside the table.

The gladstone bag? --- Yes.

MR. HOWSE: Would you look again at photograph No.2 and tell us whether or not the articles that you have just described are the ones that we can see there, and also whether or not they were

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Ernest John
Holly

Examination

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(continued)

then in those positions? --- Yes, they were - the articles on the table were the same and the gun and the bag was in that position.

What about the shotgun on the chair? Yes, it was in that position.

Would you be good enough to look at the -

HIS HONOUR: Just while you are looking at that, there appears to be a dark stain under the - under Mrs. Ratten's armpit there on the floor, as shown in photograph No.2. Was that there when you first went in? --- I did not see it at that stage, I did not see it until later, until after the ambulance had attended.

10

MR. HOWSE: You have told His Honour that you did not see it, did you make any particular observations about the body when you first got there? --- When I first got there I attempted to feel - to see if there was a pulse, I couldn't find any and I did look around to see if there was any blood there, but I couldn't see any.

20

Was there any blood in the position that is shown in the photograph at that time? --- Not that I could see. I did look all around as I was looking for a wound but I couldn't see any blood at that time.

MR. HOWSE: Would you have a look please at Exhibit 'J'. There is the under and over shot gun, the Gevarm rifle, the two carrying cases, the gladstone bag, the cleaning rod, are those the articles that you have referred to? --- Yes, that is correct.

30

As being in the position shown in photograph 2 of Exhibit 'A'? --- Yes.

So far as concerns the over and under shotgun was that in the broken condition that it is shown in in the photograph? --- Yes, it was broken.

Other than the - making an examination of the deceased did you touch any of these articles? --- No, no, I didn't touch anything at all at that stage.

40

Did you then have a conversation with Senior Constable Shaw and as a result did you do something? --- Yes, I looked around and could not see the accused. I went out through the - across the passage and through the bathroom and he was outside in the driveway leaning against a Land Rover, it was stationary.

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No.2

Where was that? --- Just outside the door in the driveway. At my request he accompanied me back into the house, through the bathroom, along the passageway up into the front bedroom. I left him there ..

Transcript of
Evidence

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for the
Prosecution

Did that involve passing through the kitchen?
--- No, no.

I think you said you left him there? --- Yes, I left him there with Senior Constable Shaw and then I again returned to the kitchen and again attempted to feel the pulse of the deceased.

Ernest John
Holly

Examination

Did you detect any? --- I was unable to detect any pulse whatsoever.

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(continued)

And what about blood? --- I still did not see any blood.

Did you look for it? --- I did look for it but the only part I touched of the deceased was her right arm, right wrist.

What happened then? --- I went back to the kitchen and then I went out to the front to the police vehicle to call the ambulance, but on arrival there First Constable Vickerton had arrived and had already called for an ambulance. I then went to where Wendy was, she was still pressed against the fence. I picked her up and tried to quieten her but I wasn't successful.

MR. HOWSE: Was she still in the same position that you have described already? --- Yes, she was still in the same position, she had not moved. I picked her up and tried to quieten her down without success. Mrs. Phelan came out of No.57 Mitchell Street, next door and I asked her would she ...

You gave Wendy to her did you? --- I gave her to Wendy.

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Ernest John
Holly

Examination

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(continued)

How old did Wendy appear to be? --- About 4, 5.

What happened after that? --- I went back into the kitchen and whilst in there I was looking around and I noticed a strong movement in the abdomen of the deceased, it was obvious she was in a very advanced stage of pregnancy. I ran out to the police van again and made an urgent request for a doctor. I then returned into the house to the front window where I heard the deceased (sic.) saying "I killed her, I killed her". Senior Constable Shaw then -

10

I am sorry, who did you hear saying that? --- The accused. The accused said "I killed her, I killed her."

Who was there? --- Senior Constable Shaw, I think Detective Moxham was there, I'm not sure of that. Senior Constable Shaw then said to him "Try and understand, Mr. Ratten, you are not obliged to say anything, answer any questions or make any statement, do you understand?" He then nodded his head - Mr. Ratten that is - and said "Yes, yes." I remained in the room until Senior Constable Shaw and Detective Moxham left the room and I remained in the room with the accused for several minutes until they returned, then I left the room and went back into the kitchen. The ambulance and the doctor had arrived by this stage and that was when I first noticed the blood.

20

30

Have you any idea what time this was? --- It would be in the vicinity of 1.30 I would think. I am not sure of that. I didn't look at the time at any stage.

By the way, I did not ask you this, did you make any note of the time when you received the first call from the exchange to go to this address? --- No, I did not.

MR. HOWSE: Yes, all right? --- I went back into the kitchen and that was when I first noticed the blood. I bent down to smell the barrels of the under and over shotgun.

40

Is that the gun shown on the chair in the photograph "A2"? --- Yes, that is the one.

Part of Exhibit 'J' that you have just looked at? --- Yes, I bent down and smelt the barrels but I could not detect anything to indicate that it had been recently fired. At no time did the accused, from when I first arrived at the house until he was escorted - taken to the police station, did I see him in the kitchen.

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Court of the
State of
Victoria

No.2

10 I do not quite follow that. Was he in the kitchen at any stage at all? --- Not that I saw him at any time after I arrived. He was not taken into the kitchen, he was taken through the bathroom when he went in, up the passage to the front bedroom and out the same way when we left.

Transcript of
Evidence

Evidence
for the
Prosecution

MR. HOWSE: Did you make any other observations at the scene? --- I saw a shotgun in the den, a side-by-side double barrel, lying on the floor.

Ernest John
Holly

Is the den the room adjoining the kitchen? --- Yes.

Examination

20 Would you have a look at the plan, Exhibit "B" is that the room designated as "Den" on the plan? --- Yes, that is correct.

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(continued)

I think you were going on to say that you saw something in the den? --- Yes, a side-by-side double barrel shotgun laying on the floor in approximately the centre of the den.

Would you have a look at photograph "A.8"? --- Yes, that is how I saw it.

Was it in that position? --- Yes.

30 Did you ever look at the gun? --- I didn't handle the gun. I was present when Senior Shaw picked it up and broke it.

Would you have a look at Exhibit "C", is that the gun that you are referring to that you saw on the floor of the den? --- Yes, similar to that one, anyway.

Well, you say you did not handle it yourself? --- I didn't handle it at any time.

40 Is there anything different about it to the one you saw? --- Yes, the small piece of wood in front of the triggers was missing - that piece, yes.

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Ernest John
Holly

Examination

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(continued)

The fore-piece that His Honour's Associate indicated? --- That was missing, it wasn't on the gun.

Did you make any further observations? --- Yes, I saw Senior Constable Shaw pick it up, he broke it open, it came to pieces in his hands, a cartridge fell out of the lefthand barrel. It had been fired.

How did you determine that? --- By seeing the end of the cartridge, it was open and empty. He tried to get the cartridge out of the righthand barrel but he was unable to. Detective Moxham then took the gun from him, put it back together and again broke it and the ejector worked and the cartridge came out. It had not been fired.

10

MR. HOWSE: Did you make any examination of these two articles? --- Yes, after a comment by Senior Constable Shaw I had a look at them and there were firing pin impressions in both the caps of these cartridges.

20

Would you have a look, please, at Exhibit "F" for identification? Do you recognise those items? --- Yes, they are the ones that came out of the gun.

And which came out of which part? --- The fired one came out of the left barrel and the unfired one came out of the right barrel.

EXHIBIT

EXHIBIT "F"

Plastic bag containing
cartridge and cartridge
case.

30

MR. HOWSE: Subsequently did you assist the undertaker to take the body from the house and put it in his vehicle? --- Yes.

Cross-
examination

MR. WALKER COMMENCED CROSS-EXAMINATION

MR. WALKER: Mr. Holly, I think you said it took approximately 3 minutes to get from the police station to the house from the time you received the call? --- Yes.

And if anything, the time was shorter than 3 minutes rather than longer, would you agree with that? --- Yes.

40

On your arrival at the house at 59 Mitchell Street it was apparent to you that Ratten was in an upset and hysterical state, is that so? --- He was in an upset state.

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You gave evidence at the inquest into this matter, did you not? --- Yes.

No.2

And you were asked some questions there, were you not, about this matter? --- Yes.

Transcript of Evidence

10

Were you asked this question - "He was obviously in an agitated, hysterical state"? --- Yes.

Evidence for the Prosecution

And did you say "yes"? --- Yes.

Well, that is true, is it not? --- He was in an agitated condition, but I'm not qualified to say if he was hysterical or not.

Ernest John Holly

You did not give that answer at the inquest, did you? --- No, no, I realise that.

Cross-examination

That was your impression? --- Yes.

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(continued)

20

MR. WALKER: And he repeated himself whenever he spoke, continually, did he not? --- No, well, I only heard him the one time, actually speaking, other than when he said, "Into the kitchen quick", he only said that once.

"Come into the kitchen quick"? --- No, just "Into the kitchen quick", or "In the kitchen quick". But he didn't repeat himself then.

You at that stage did not introduce yourselves, did you, you just got to the door and knocked - is that correct? --- Yes.

30

And then you opened the door, or Mr. Shaw opened the door? --- Yes.

Ratten was there at the door, is that correct? --- That's correct.

And he said, "In the kitchen quick"? --- M'mm.

And you and Mr. Shaw went straight into the kitchen? --- Yes.

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for the
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Ernest John
Holly

Cross-
examination

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(continued)

You later heard him say, "I killed her, I killed her", did you hear that? --- Yes.

And he repeated that several times, did he not?
--- Yes.

And you heard him saying, "No, no", a couple of times, did you not? --- I can't recall it.

Now would you have a look at Exhibit "A", have a look at photograph 6, please. Apart from the cupboard door on the bench nearest the two doors being more open, was the room as it is depicted there when you entered it? --- Other than the body of the deceased being removed, and you will see a bit of chalk around the leg of the table on the ground. Apart from that, it is the same, I'd say.

10

MR. WALKER: If you look at the items on the bench and the two shelves above the bench, were the items as shown in that photograph when you entered the kitchen?--- Yes.

There is a Birko is there next to the frypan?
Yes, the Birko is laying down.

20

And that was on its side in that position? ---
Yes.

But the left hand cupboard door below the frypan was in a more open position, is that not so?
--- Yes.

And was in fact caught against the foot of the deceased? --- Yes.

If you look at photograph 8. Would you have a look at photograph 8, there is no chalk mark around the object in the lower foreground of that picture is there? --- There was a chalk mark drawn around it but it does not show up here.

30

The chalk marks show up in both photographs 6 and 7 very clearly, do they not? --- Yes.

Do you say there was a chalk mark drawn around this object? --- Yes, there was.

At what stage? --- Before it was touched in any way.

Who drew that? --- Detective Moxham or Detective Wild, I'm not too sure which.

Photograph 8 was taken much earlier in point of time than the other two photographs 6 and 7, was it not? --- Yes, yes.

It was taken in fact at about 2.30? --- Yes.

Whereas the others were not taken until night time? --- I don't know what time they were taken.

10 Between the time that you arrived at the time that photograph 8 was taken, both that object to which we have been referring, and the gun, also shown in that photograph, were moved were they not? --- Yes.

And they were replaced for the purpose of this photograph being taken? --- Yes.

20 Were you present when the other chalk marks to which we have been referring in photographs 6 and 7, were made? --- I drew the one in photograph 6 and I was present when the second was drawn.

MR. WALKER: Each object was in fact encircled with a chalk mark, is that so? --- Yes.

And this was so the objects could be replaced in their position for the purpose of the photograph being taken? --- Yes.

Were you present when 6 and 7 were taken? --- No.

30 If you look at 7 the shotgun on the chair is not in the position that you saw it when you arrived at the kitchen for the first time that day? --- No, it is not.

Shortly after your arrival at 59 Mitchell Street, Mr. Vickerton and Mr. Moxham arrived, is that so? --- Yes.

Are you able to say how long after your arrival that was? --- No, I'm not able to say how long, all I know is they were there when I went out to call the ambulance.

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Holly

Cross-
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You on entering the house when into the kitchen,
is that correct? --- Yes.

You then went outside and took Mr. Ratten into
the bedroom? --- Yes.

You then went out to call for an ambulance. ---
No, I went back into the kitchen.

You then went out to call for an ambulance? ---
Yes.

And saw Vickerton and Moxham who had then
arrived? --- I saw Vickerton beside the car but
I don't know where Moxham was at that stage.

10

Well Moxham spoke to you did he not? --- He
could've, he could've.

And Moxham then went into the house? --- Yes.

You did not follow him in? --- I didn't follow
him in, no.

That was within a very, very short time of your
arrival was it not? --- Yes.

Did you accompany the accused man, Mr. Ratten,
to the police station? --- Yes.

20

And prior to that he had been seen had he by his
doctor? --- I couldn't say.

At the police station he was seen by his doctor?
--- I believe so, but I wasn't there.

Were you present in his company at all at the
police station? --- No.

During the time that you were in his company did
he ask you to contact his brother and did he ask
about Wendy? --- I think when we first arrived
there he did ask about contacting his brother,
not his father.

30

MR. WALKER: And he was asking after Wendy too was
he not during the time? --- Yes.

And in your company or whilst you were present
did Mr. Shaw say to him that there was no hope for
his wife? --- Yes, I think he did.

MR. HOWSE COMMENCED RE-EXAMINATION

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MR. HOWSE: What do you say was the condition of the accused man when you first saw him? --- He was very upset.

And on that occasion were you and Shaw in uniform or plain clothes? --- In uniform.

No.2

Did you notice the article on the floor in photograph "A8", the one in the foreground? --- Yes.

Transcript of
Evidence

10 What was that? --- A pot cleaner, a wettex type pot cleaner.

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Would you have a look at Exhibit 'M'? Do you recognise that? --- Yes, that is what was on the floor.

Ernest John
Holly

In the position shown in photograph 8? --- Yes.

Re-examination

EXHIBIT

EXHIBIT 'M'
(absolutely)

A wettex

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20 MR. HOWSE: You were asked about the position of the under and over shotgun which is part of Exhibit 'J' as respectively shown in photographs 2 and 7? I think you said there was some difference, what is the difference? --- The gun has been turned over from one side to the other, the breech is towards the front of the chair in No.2 and it is towards the back of the chair in No.7.

WITNESS WITHDREW - EXCUSED

WARWICK SIDNEY SHAW sworn and examined

Warwick Sidney
Shaw

30 WITNESS TO MR. HOWSE: My full name is Warwick Sidney Shaw. I am a senior constable of police stationed at Echuca.

Examination

MR. HOWSE: Shortly after 1 o'clock in the afternoon of Thursday 7th May this year were you on duty at the watchhouse at the Echuca Police Station when a certain telephone call was received? --- I was.

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Did First Constable Holly answer it, and after speaking did he have a conversation with you? --- That's correct.

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And as a result of what he said did you and he set out in a police divisional van to go to 59 Mitchell Street, Echuca? --- We did.

MR. HOWSE: You drove the van did you? --- I did.

And did something happen on the way? --- Yes, a radio message was sent by Holly to the station.

What happened when you got to 59 Mitchell Street? --- I pulled into the driveway, Holly and I left the police van, we walked up the driveway to a side entrance. As we did I heard a child crying. 10

Did you see the child at that stage? --- No, I didn't see the child at all, it sounded like a girl crying. I went to the side door and knocked on the door and got no response. I knocked again, I got no response, so I tried the handle and opened the door and was face to face with the defendant who was just inside the door.

It was the accused was it? --- The accused. This led us into a bathroom. The accused said "In the kitchen quick". Holly and I went straight past him into the kitchen where I saw the deceased lying on the floor. 20

MR. HOWSE: Would you have a look at photograph "A.2", please? --- Yes, this is the scene as we saw it on arriving in the kitchen.

It shows the deceased and also other things such as guns and cleaning equipment and a Gladstone bag. Did you notice all them? --- Yes, I did.

Were they in the various positions shown in the photograph when you arrived? --- Yes, similar positions to what they are there. I checked for ... 30

I do not propose to ask him to identify them, Your Honour, there does not seem to be any point.

WITNESS: I checked the deceased for pulse, but could detect none. I looked around and found the accused had not followed us into the kitchen. I then returned to the bathroom. As I did he said to me .. 40

Where was he? --- In the bathroom. He said, "The baby too, the baby too, oh my God". I then hurried through the house looking for a baby before I realised the deceased had been in an advanced state of pregnancy.

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You went through the house, what, looking for one?
--- Yes, I thought there may have been a baby in the house.

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Transcript of
Evidence

There was not one? --- That's correct. I then returned to the bathroom. The accused was not there. I spoke to Holly. He walked into the driveway and walked in with the accused, who accompanied me to a bedroom near the front of the house.

Evidence
for the
Prosecution

Is that the front bedroom? Perhaps you might have a look at the plan Exhibit "B", please. If it is not, tell us which one it was? --- It would be bedroom 1.

Warwick Sidney
Shaw

Examination

That is the one at the very front? --- That's correct.

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In doing that did you go through the kitchen?
--- No, I went straight along a passage from the bathroom, passed the front of bedroom 2, into bedroom 1, avoiding the kitchen. In the front bedroom I said to the accused, "What happened?" He said, "The gun went off". I said, "Who had the gun?" He said, "I did, I did, I killed her, I killed her". I said, "Try to understand, Mr. Ratten, that you are not obliged to answer any questions or say anything further or make any statement. Do you understand that?" He nodded his head up and down and said, "Yes, yes". Detective Moxham then entered the room - the bedroom. I said to Moxham, "This man has just killed his wife, I have just cautioned him". Moxham then ascertained the accused's name and address and left the bedroom. The accused said to me, "Save her quickly". I said, "She is dead". He said "She is not dead, she can't be." He hesitated and said, "I could see it draining out of her face, please help me". Detective Moxham at the time returned to the bedroom. I said to the accused, "How did it happen?"

MR. HOWSE: From this stage on was Detective Moxham present while you - either you or he had a

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conversation? --- Moxham was present. I asked the defendant a couple of questions then and then I left the room, leaving Moxham with the accused.

Go on and tell us what happened?

HIS HONOUR: (sic) You said, "I said to Ratten, 'How did it happen'?" --- He said, "I was cleaning the guns in there. She was making a cup of coffee". I said, "Which gun went off?" He said, "The shotgun". At this stage I left the bedroom and went to the kitchen where I saw the under and over shotgun shown in photograph 2 on the kitchen chair. I examined it, saw there was no cartridge in or near it. I returned to the bedroom and said to the accused, "There are no shells there. Do you mean the under and over that is on the kitchen chair?" He said, "The old one. I don't keep shells in it, it just went off, I was just taking the rust off the outside." I said, "Where is the cartridge now?" He said, "I don't know, I haven't touched it." At this stage Moxham took over the interview and he said to the accused, "Where were you cleaning the gun?" He said, "By the sink. Bev had just filled the Birko to make a cup of coffee". Moxham said, "What were you cleaning the gun with?" He said, "The green coloured cloth". Moxham said, "Were you standing right by the sink?" He replied, "Yes". Moxham said, "When was the last time you used the old shotgun?" He said, "About 6 months ago". Moxham said, "Where do you normally keep the shotgun?" He said, "In the garage on the bench". Moxham said, "What made it go off?" He replied, "It just went off". Moxham said, "The little girl, who is she?" He replied, "That's Wendy, she tried to come in". Moxham said, "Do you normally keep cartridges in the gun?" He said, "No, I don't know how it came to be loaded". I then left the bedroom and the accused and went through the kitchen where I saw a green coloured Wettex on the floor.

MR. HOWSE: Would you have a look at Exhibit "M"? While we are finding it would you have a look at photograph 8 of Exhibit "A"? --- That is the position in which I saw the Wettex.

That is the object lying on the floor in the foreground of the picture, is it? --- That's correct.

Would you now have a look at Exhibit "M", please? I am sorry, Your Honour, these names seem to be interchangeable, it is a Scotchbrite scouring pad, but some people seem to refer to it as a Wettex scouring pad.

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HIS HONOUR: Which one was on the floor? --- This one, sir, Exhibit "M".

No.2

That is the green thing? --- Yes. Perhaps its not a Wettex, I'm not too sure.

Transcript of
Evidence

10 MR. HOWSE: Is it what is commonly called in kitchen circles a scouring pad? --- That may be so. That is the type of cloth I refer to.

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HIS HONOUR: That is the one that was on the floor in the position shown in photograph 8? --- That's correct, Your Honour.

Warwick Sidney
Shaw

And that is Exhibit "M"? --- Yes. I also observed the old side by side shotgun on the floor as shown in the same photograph.

Examination

20 MR. HOWSE: Would you have a look, please, at Exhibit "C"? Is that it? --- That is the gun.

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(continued)

Was it in that condition? --- No, it did not have the fore-piece attached. This fore-piece here (indicated) was not attached to the gun at that stage.

HIS HONOUR: Where was it lying? --- On the floor in the small room between the kitchen and the lounge, as shown in photograph 8.

30 MR. HOWSE: That is the room marked on the plan (Exhibit "B"), is it? Would you look at Exhibit "B"? --- Yes, that's the room. I picked up the gun, broke it open and it came apart in my hands. I had part of the gun in each hand at this stage, as it came into two pieces, the fore-piece not being attached. I then noticed that there was a cartridge in each barrel, that each cartridge bore what appeared to be the indentation of a firing pin. I commented on this discovery.

HIS HONOUR: Perhaps you had better have a look at this.

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EXHIBIT "F" HANDED TO WITNESS

HIS HONOUR: Just look at those and say whether or not those are the ones you are talking about?
--- Yes, sir, they are the ones I am talking about. I commented on this discovery to Detectives Wilde and Moxham and First Constable Holly who had joined me. I then tilted the barrels and the discharge cartridge -

MR. HOWSE: Before you did that did Moxham and Holly examine the cartridges as they were? --- Yes, I commented on it and they were in a position to make the same observation as I had made.

10

What did you do then? --- I tilted the barrels and the discharged cartridge fell from the left hand barrel.

That is the cartridge, part of Exhibit 'F'?
--- Yes. The other one didn't fall out of the right barrel and I could not get a grip on it to pull it out because it had not ejected, it was in a squashed position. Detective Moxham then recovered the fore piece

20

Did you see where he got that from? --- He went to the kitchen and took it from the sink in the kitchen. He fitted that to the gun and put the two pieces back together and made it as it is now, with the cartridge still in the right barrel. He then broke it open and this ejected the cartridge slightly in the right hand barrel enabling him to pull it from the barrel. I saw that it was an undischarged - a full live cartridge.

30

That is the cartridge contained in Exhibit 'F' is it? --- That's correct.

WITNESS: Moxham then after taking this cartridge from the gun put the gun together again and returned it in the approximate position from which I had picked it up originally.

MR. HOWSE: Was he there when you picked it up? --- He was. We left the gun in that position. At about this time ambulance officer Wellard arrived and examined the deceased.

40

Did he make some remark as a result of which you

took steps to get a doctor? --- He did, he made some remark and I took steps to get a doctor but was informed that this had already been organised and the service had been called for. Shortly after that Doctor Moysey arrived and made an examination and pronounced life extinct. I then left the house and went with the two Detectives Moxham and Wilde and shortly afterwards returned to the Echuca Police Station. Later that evening after I had made other enquiries and returned to the station I went into the muster room where the accused was seated -

What time approximately was this? --- I made no note of the time, Your Honour, but it would be after 5 p.m. possibly even as late as 6 p.m. The accused was seated in the muster room and I walked in and sat in another chair and he said, "I was just cleaning the gun and it went off, I was just getting the rust off it." I said, "Where were you?" He said "Near the sink, she was making coffee." We had no further discussion. At a later stage the same evening - I again made no note of the time, Your Honour - it would be later in the evening I walked into the muster room again.

Have you any idea of the time? --- Not really, but it would be at least an hour later, possibly 7 o'clock, or even a little bit later. I said "Who rang here?" He said "I did, I rang the exchange and asked them to send an ambulance". There was no further discussion with the accused, Your Honour.

Would you have a look at photograph 6 of Exhibit 'A'? You have told us that the various articles that can be seen in photograph 2 were in the respective positions shown there when you first got to the scene? --- Yes, sir.

Did you touch any of them or move them? --- No, not - the only weapon I touched was the shotgun which I have spoken of.

That is the shot gun, Exhibit 'C' that was in the den is it? --- Yes, that is the only thing I had cause to shift at all at the scene.

Looking at photograph 6 it shows another view of

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some of the articles in photograph 2. In relation to them does that show the scene as you saw it when you first arrived? --- To the best of my recollection, yes, sir.

MR. HOWSE: Would you have a look at the bench over on the far wall extending down from the refrigerator? --- Yes.

Do you see an article on its side there? --- Yes, there's a Birko tipped on its side.

Did you notice anything in relation to that? --- I noticed a small amount of water on the bench top and a small amount of water on the floor beneath this position.

10

When did you notice that first? --- I don't think on my first trip to the kitchen, I think probably the - probably about the time that the ambulance officer arrived, after I examined the shotgun.

Are you able to give us any approximate idea of the quantity of water that you saw there? --- Very little.

20

HIS HONOUR: You mean very little water? --- Very little water, Your Honour, it is very hard to approximate the amount when it's spilt on the bench and on the floor, but there was very little.

MR. HOWSE: Are you familiar with these Birko heaters? --- We have one at home, sir, yes.

Are you able to give us any idea at all in relation to the quantity that you would normally use to fill one? --- They are various sizes but to fill this one, no, I don't know its capacity but to fill it would take at least four or five cups I imagine.

30

Was there anything like a cup of water spilt? --- There wouldn't be a cup of water in my estimation.

What was the situation in relation to the Birko. I suppose we all know it is an electrical piece of equipment, was it plugged in or what? --- No, it was as it is in photograph 6, the cord separate, the eggs between that and the Birko.

40

You say the cord is separated from the Birko by the eggs? --- Yes, sir.

That is the cord actually reposing on the bench top? --- Yes.

There is a frypan on the other side of the Birko? --- That also has a cord.

What do you say about that? --- I have no knowledge of it except that is the position it was in.

10 What when you first observed it? --- Yes.

HIS HONOUR: When you were referring to the Birko cord is that the cord which is on the right of the eggs? --- I assume so, Your Honour, because the other one appears to be part of the frying pan.

That is the one you are talking about? --- Yes, the one on the right of the eggs.

On the right side of the eggs? --- Yes, Your Honour.

20 Was there any cord attached to the Birko? --- No, it was exactly as it is in the photograph, Your Honour.

MR. HOWSE: To complete this, was there any cord plugged into that power point? --- No.

COURT ADJOURNED FOR LUNCHEON AT 12.34 P.M.

COURT COMMENCED AT 2.00 P.M.

WARWICK SIDNEY SHAW, recalled and warned

MR. HOWSE: I have finished evidence-in-chief, Your Honour.

30 MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. HOWSE: Mr. Shaw, so far as your observation about the Birko was concerned, I take it you at no stage asked the accused man how the Birko got in the upturned position that you saw it in? --- No, I did not ask him.

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Did you, for instance, ask him where it was normally kept? --- No.

Or ever put to him the observation about the water on the floor or on the shelf? --- No, I never put that to him.

I suppose you would agree, would you not, Mr. Shaw, that it is pretty hard to estimate the quantity of water when it is just lying on the floor or a bench? It is pretty difficult?
--- Yes.

10

When Mr. Ratten was at the house he was asking you, was he not, to contact his brother at one stage? --- No, I don't think that was the way it went. I think I asked him who we could contact and I think then he gave me a phone number to contact his brother.

Well, did he say it was his brother Roger or say anything about it or just give you a phone number? --- He gave me a business card at the house, and I don't recall whose card that was, but he then gave me a phone number which I wrote on the back of the business card, and I think this was to contact his brother.

20

That is your recollection anyway, is it? --- Yes, that's my recollection, but whether the phone number was for his brother or ..

You do not remember? --- I'm not sure, no.

And you did tell him at one stage, did you not, quite early in the proceedings, that there was no hope for his wife? --- I told him reasonably early in the proceedings that his wife was dead.

30

Did you use the expression, "There's no hope for his wife" or something like that, do you think?
--- No, I think the expression I used was "She's dead".

MR. LAZARUS: Well, he was protesting against the reality of that fact, was he not, saying, "She couldn't be, she couldn't have died"? --- He said, "She's not dead, she can't be", and then he hesitated and he seemed to give it more thought, and then I think realised that she was.

40

Then he was, was he not, for some time calling out, yelling out, "No, no", going on like that?
--- "No, no"?

Yes? Just using the expression, "No, no"? ---
No, I don't recall that.

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Not at any time? --- No, I don't recall him
yelling out "No, no" at all.

Did you take him to the police station? --- No.

No.2

You do not know who did? --- Only from what I've
been told, I never saw him go to the police
station.

Transcript of
Evidence

10

Who was it? --- I think he was taken - he was
taken by other members of the Force, but I'm
not sure - I think Mr. Holly and Mr. Bickerton,
but I'm not too sure, I never saw him taken to
the police station.

Evidence
for the
Prosecution

And as he was at the police station, you went in,
I suppose, to the muster room from time to time
simply to ...? --- I made sure that there was
somebody with him in the muster room all the
time.

Warwick Sidney
Shaw

Cross-
examination

20

That may be so, but you also went in yourself
simply for the purpose of talking to him, I
suppose, in a conversational way, did you? ---
No, only once did I do this, this is the time
I asked him about the phone.

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(continued)

He was asking, was he not, to make a statement,
going on like that? --- Asking to make a statement?

Yes, wanted to make a statement? --- No, he never
asked me could he make a statement.

30

Well, you were hardly there, I suppose, were you,
while he was at the police station you did not
spend much time with him at all? --- I saw him on
several occasions at the police station.

Over what period? --- Over a period of 6-8 hours.

How many times would you have seen him? --- 5 or
6 times.

Were you present when Dr. Moysey turned up? ---
Dr. Moysey was there when I got back to the
station.

Were you there on the other occasions he was there?
--- I only saw Dr. Moysey - Dr. Moysey was at the

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station when I first went back there. I think I did see him in the passage at a later stage in the evening.

And did you have a talk to Moysey at all? --- No, no more than saying, "Good evening, doctor", I had no conversation with him, no.

You did not ask him what he was doing there or anything like that? --- No.

Or ask him what he thought of the condition of the accused? --- No.

Well, I do not know what the situation was at this stage at the Echuca police station. Were you in charge? --- For a time I would have been the senior officer present, yes.

And you saw the doctor there and said nothing at all to him on the lines I have suggested? --- Nothing more than what I've said.

You just said "Hullo, how are you"? --- That's all.

Mr. Shaw, you did apparently ask on at least two occasions - ask the accused man what had happened? In effect, is that right? --- I only asked him on one occasion, I think, what happened. That was the first thing I asked him.

But did you not ask him a couple of questions at the police station? --- I asked him one question in relation to the telephone. I asked another question in relation to the incident itself.

Well, that was the second time, was it not? --- That's right.

And on each occasion his account was - not word for word, but substantially similar? --- Yes, when I spoke to him about the incident at the station.

On each time his account was substantially similar, was it not? --- Yes. That's right.

Re-examination MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: Mr. Shaw, you said that you did not ask

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20

30

Dr. Moysey when you saw him at the police station why he was there or what was the condition of the accused at the time. Did you have any reason present to your mind why you should ask Dr. Moysey either of these questions? --- I had no reason to ask Dr. Moysey these questions. Dr. Moysey did speak to other officers who were present and I knew what he was doing there, anyway.

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WITNESS WITHDREW - EXCUSED

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(continued)

LAWRENCE HENRY BICKERTON sworn and examined

Lawrence Henry
Bickerton

WITNESS TO MR. HOWSE: My full name is Lawrence Henry Bickerton. I am a first constable of police stationed at Echuca.

Examination

MR. HOWSE: At about a quarter past 1 on the afternoon of Thursday, 7th May this year, were you on duty at the Echuca police station? --- Yes, I was.

20

And were you working in the muster room at the police station at that time and did you hear a call come over the police radio apparently from 1st constable Holly? --- Yes, I did.

Did you hear what Holly said? --- Yes, he asked who lived at 59 Mitchell Street.

Who was actually on duty at the radio? --- First Constable Wilson.

Having heard that enquiry did you go into the watch-house? --- Yes.

Did you observe Wilson doing something? --- Yes,

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Lawrence Henry
Bickerton

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he was looking at the electoral roll.

Did you do something? --- Yes, I picked up the phone.

And what did you do? --- I spoke to the girl on the exchange. I asked her where the last call came from and who lived there. She told me the number, 1494, and that she didn't know who lived there. She also asked did I want to be connected, I replied, "Yes", and she connected me through to that number. Almost immediately the phone was picked up and a voice said to me, "Help me, help me, for God's sake come quick, for God's sake come quick". I then said, "What address?" The voice said, "59 Mitchell Street". I then hung up, verified the address to First-Constable Holly on the radio, got Detective Moxham and left the station and went straight round there.

10

How would you describe that voice, the one that said "Help me, help me, etc."? Well, it was urgent, it was hysterical, very quickly spoken, with a high inflection.

20

Did you eventually arrive at 59 Mitchell Street?
--- Yes, I did.

Did it take you long to get there? --- No, it did not.

How long? --- It's approximately a mile and a half to a mile and threequarters, and I was going as fast as I could safely.

And when you arrived there who did you see? ---
I saw First Constable Holly standing at the back door, the one that leads into the bathroom.

30

Did you then go inside the house through the bathroom? --- Yes.

And did you look into the kitchen? --- Yes, I saw the head and shoulders of a woman that was laying on the floor and the kitchen, between the kitchen table and the bench. I then looked to my right to what would be the main bedroom, I saw Senior Constable Shaw with the man that I know now as Mr. Ratten.

40

That is the accused? --- That's correct.

What did you do then? --- I then left the house, went back to the car which was parked out the front, I radioed the Echuca police station and got them to ring for an ambulance. Shortly after I again radioed and asked them to contact Dr. Moysey.

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10 What happened next? --- Prior to the ambulance arriving I saw First Constable Holly come from the back of the house. At this time I was still out the front of the house. He came from the back of the house with a small child in his arms. She was screaming and thrashing about in his arms and also crying. He then came up towards me and gave the small child to the woman next door to mind. Then the ambulance arrived and shortly after that Dr. Moysey arrived.

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Subsequently did you receive some instructions from Detective Moxham? --- Yes.

Examination

20 And what did you do as a result? --- I conveyed Mr. Ratten back to the police station in company with First Constable Holly. I sat - I drove the vehicle and First Constable Holly sat in the back with Mr. Rattan.

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MR. LAZARUS COMMENCED CROSS-EXAMINATION

Cross-
examination

30 MR. LAZARUS: Mr. Bickerton, on the way to the police station with the accused man, he was, was he not, asking for Wendy? --- No, he didn't say anything.

He had his head down, did he not, in the back seat? --- That I'm not sure.

MR. LAZARUS: Did you have anything to do with any interview at the police station between the police and the accused? --- No, I did not.

You were simply part of the police crew directed to take him to the police station? --- That's correct, yes.

40 You were in the front? --- I drove the vehicle, yes.

Where was Moxham, in the front too? --- No, he was still back at the house.

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I am sorry, I thought you said you went with Moxham? --- No, First Constable Holly.

Holly was in the front? --- No, he was in the back seat with Mr. Ratten.

Just one matter about this phone call, Mr. Bickerton, you could help us on, perhaps. You told us that you got through to the number through the exchange? --- That's correct.

And can you recollect whether you said anything at all - that is you yourself said anything before this voice said, "Help me, help me", and so on? --- No, I didn't say anything.

10

As soon as the number was connected the voice immediately said "Help me, help me," and so on? --- Yes, that's correct.

It is probably pretty clear what you have said on this, Mr. Bickerton, but you gave evidence at the inquest, is that correct? --- That's correct.

The reason you did not say anything at all, that there was not time - that is on the phone, there was not time before the voice started to speak? --- That's right, the voice started to speak immediately.

20

MR. HOWSE DID NOT WISH TO RE-EXAMINE

WITNESS WITHDREW - EXCUSED

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Examination

JOHN WILLIAM MOXHAM sworn and examined

WITNESS TO MR. HOWSE: My full name is John William Moxham. I am a Detective First Constable attached to the Russell Street C.I.B.

MR. HOWSE: In May of this year were you on temporary duty at the Echuca C.I.B.? --- I was.

On Thursday 7th May this year were you on duty at the Echuca C.I.B. office, the Echuca Police Station, with Detective Wilde when First Constable Bickerton from the uniform branch at that station came into your office and told you something? --- That is correct.

Do you recall what time that was? --- This would be approximately 1.15 p.m.

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As a result of what he told you did you then leave the police station immediately and proceed by police car to 59 Mitchell Street?
--- I did.

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10 And what did you find when you got there? ---
As I alighted from the police car I walked past a divisional van and into the driveway of 59 Mitchell Street. I saw a Land Rover parked in the driveway. As I walked down the driveway I noticed a young girl standing on the left hand side of the garage door. She was crying. I went to a doorway which was opened and I was met by First Constable Holly. He told me certain things and I then entered in through the bathroom and walked straight down the passage into the front bedroom of this house. I saw Shaw and the accused. After the
20 conversation Shaw gave in the witness box here this morning had taken place, I then left and walked -

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Is that the conversation in which Shaw said "This man has just killed his wife, I have just given him a full caution" introduced you and you got the accused man's name and address? ---
That's correct. I also got his date of birth and when he was born.

30 What did you do then? --- I then left and walked down the passage.

HIS HONOUR: What age did he give you? --- He gave me - he was 31 years old born on 18/1/39. I left and went down the passage and I entered the kitchen from the passage doorway. As I entered I saw the body of a woman lying on the floor.

40 Was this as in photograph 2 of Exhibit 'A'? --- Yes, that's correct. I went over to her and I knelt down beside her and I felt for her pulse, couldn't find one. Then I put my ear to her chest, I couldn't hear one. I saw that she was in a late stage of pregnancy.

At that stage did you see any sign of blood? --- No, I couldn't see any blood at all. I did lift her dress and put my ear to her stomach, I could

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hear a slight beat, I did see movement and feel it. I then put her dress back, and pulled her cardigan by the left arm pit there, I pulled that across her body and I could see a small amount of blood.

Do you see something in photograph 2? Near the left arm pit? --- When I saw her that blood wasn't there, that blood has come since I arrived.

Subsequently did you observe what we can see in photograph 2 and did that appear to be blood? ---
Yes, I was present when this photo was taken and that is blood there. I then went over to the sink. I saw the fore piece of a shotgun on the sink underneath a - partly covered by a tea towel.

10

Would you have a look please at the gun, Exhibit 'C'? Do you see the fore piece that you are speaking about? This is the fore piece, sir.

The piece of wood towards the front part of the gun? --- This pulls off here and there is the fore piece there.

20

And whereabouts do you say that was. Perhaps if you would take one of the photographs, photograph 6 or photograph 7? --- If you have a look at the row of handles on the drawers, immediately above that -

HIS HONOUR: What photograph are you looking at? ---
No.7.

MR. HOWSE: Will you hold the photograph round so that His Honour can see it and so that the jury can see it? --- If you take a straight line up the door handles the fore piece was here (indicates) with the back of the fore piece coming up this way (indicates).

30

Perhaps you had better take the fore piece, it might be easier to explain it that way? --- The back of the fore piece was on the sink like this (indicates). I call - this is the back of it. This is facing you looking at the photograph and it is partly covered by the tea towel.

I still do not know if we have got it clear? If you are looking at the photograph 7 do you see something on top of the sink at the right hand side

40

as you look at the photograph? --- That is the tea towel there?

That is the tea towel? --- Beside the tea towel there is a blue wettex sponge. As I said, if you take a direct line straight up the handles and if you are looking straight at it from the photograph you are looking at it like this.

That was sticking out from under the tea towel? --- That is so, yes. I then looked into the den and I saw a shotgun lying on the floor. The fore piece of this shotgun was missing. I then went - I gave Holly certain instructions whilst I was in the kitchen. I then went straight back to the bedroom and Shaw and the accused were seated on the double bed.

Perhaps before we go on to that. You say that you looked in the den. Would you have a look at photograph 8 please? Do you see something there that you recognise? --- The green pad as you are going into the den, that is as how I saw it.

Would you have a look please at Exhibit 'M'? Is that the pad? --- Yes, that's the pad.

And what about the gun on the floor? --- In this photo - this is where I put the gun as near as I could remember - after the gun had been broken I put it back in approximately the position I thought it had been picked up from.

And is that the gun, Exhibit 'O'? --- That is the gun, yes.

The one from which you took the fore piece a minute ago? --- That is it, yes.

Looking around the kitchen did you otherwise see the guns and cleaning equipment and the gladstone bag as shown in photograph 2? --- Yes, I saw all the guns and equipment. There was a packet of bullets with some bullets on the table, cleaning equipment, the gladstone bag, they were round about the kitchen table and on the chairs.

MR. HOWSE: And in particular was the under and over shotgun in the position shown in photograph 2 and in that condition? --- Yes, that's exactly how it was,

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it hasn't been touched.

Was the Gevarm rifle in the position shown in photograph 6, on top of the table? --- Yes, that's the position.

Did you then go back to the bedroom where Senior Constable Shaw and the accused were? --- I did.

And what happened there? --- Shaw asked him a number of questions which Shaw gave in evidence here this morning, and then Shaw left the room.

So that we follow all this, did Shaw ask him "How did it happen?" Did he reply, "I was cleaning the guns in there, she was making a cup of coffee." Shaw asked him "Which gun went off?" Did he reply "The shot gun" and was it at that stage that Shaw left the room? --- This is so, yes. 10

What happened then? --- I said to him, "There are two guns in there, which one?" He replied, "The old one." I said "Was it loaded?" He said "I don't keep shells in there." I said "How did it go off." He said "It just went off." I said "What were you doing." He said he was cleaning the rust off the outside. 20

At that stage did Senior Constable Shaw return into the bedroom and then was there a further conversation with the accused between Senior Constable Shaw and yourself? --- There was, Shaw gave this conversation in evidence this morning.

And were you present in Court today when Senior Constable Shaw gave his evidence-in-chief, did you hear his account of that conversation? --- I did. 30

What do you say about his account of it? --- It is correct.

After that conversation had concluded what did you then do? --- I then left the accused in the front bedroom and I went back to the kitchen. By this time Detective Wilde had arrived. I made a closer examination of the kitchen and I was over at the sink when I saw Shaw pick up the double barrel shotgun off the ground. I saw him break it in two and it came apart in his hands, he made a comment. I picked up the fore piece as I could see that Shaw could not get the other cartridge out of the gun. 40

MR. HOWSE:

Had one come out of it? --- One had come out of it. He had tipped the barrel piece down and the shell had come out into his hand. As I went over he gave me this shell -

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Which barrel did it come out of? --- The left hand side barrel. I took the two pieces of the shot gun off shore (sic) and I reassembled the gun, by breaking the gun I was able to use the ejection on the right hand barrel and this pulled the right hand cartridge out a short way, and I then pulled the cartridge out and put it in my pocket.

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You may have said this and I may have been speaking at the time, but in order to do this did you put the fore piece from the sink back onto the gun? --- Yes, this is right.

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What happened - did you make any observation of the ends of the two cartridges that you are speaking about, or cartridge case and cartridge? --- One had been discharged and one was still a live cartridge.

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And did you see anything on the end of them, the other end? --- The brass primer cap, they had both been - what I assumed to have been hit by the hammer of the gun, firing pins and the indentations were in both cartridges.

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What happened to the cartridge case out of the left hand barrel? --- I took possession of this.

You got it from Shaw did you? --- Yes.

Would you have a look at Exhibit 'F', and does that exhibit contain or consist of the cartridge case that you are now speaking about, and also the live cartridge that came out of Exhibit 'C'? --- Yes, they are the two shells.

Did you make any other examination of the shotgun, Exhibit 'C', the side by side shotgun? --- I smelt it.

And what did you find? --- It smelt as though it had been discharged recently.

From which barrel? --- I took it to be the left hand barrel.

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Did you find out where the smell was coming from? --- This is from the left hand barrel.

Did you then take possession of the gun, Exhibit 'C', take the fore piece off it and place it in the position that you have already described to us, which is shown in photograph 8 of Exhibit 'A'? --- That is correct.

Previous to this had you made any observations of the condition of the sink or of anything there?

--- Yes, I went to the sink and had a close look at it. I saw the yellow - rather the blue wettex pad there and the tea towel. 10

Would you have a look at Exhibit 'L', the wettex? --- This is the blue wettex that is shown in photograph 7, you can just see it there. That is in exactly the same position as I first saw it.

Did Your Honour notice the position of the wettex?

HIS HONOUR: 7.

MR. HOWSE: On the sink just to the right of the bowl? 20

HIS HONOUR: Yes.

EXHIBIT

EXHIBIT 'L'
(absolutely)

A blue wettex

WITNESS: I saw that the sink was very clean, there wasn't any water on the top of the sink at all, the only water in the sink was around the actual vicinity of the taps in the bottom of the sink and this was only a very small amount. I went over to the kitchen sideboard. I noticed a Birko on its side. 30

MR. HOWSE: Would you have a look at photograph 6 of Exhibit 'A'? --- That is the Birko there on its side.

Was it in that position? --- It was exactly in the same position. There was water on the side of the sideboard there and down onto the floor.

How much? --- A small amount of water, I would say approximately - it wouldn't be more than half a cup of water.

What happened after that? --- I continued to make an observation in the room. The - at this stage the ambulance person had arrived and a short time later Doctor Moysey arrived.

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Subsequently did the photographer come and were some photographs taken in your presence? --- That is correct, yes.

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10 Later on did you take possession of the shot-gun, Exhibit 'C' from the den of the house? --- After the taking of the photo of the shotgun I took possession of it.

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What did you do with it? --- Later on in the evening - I would say approximately between about 9, 10 o'clock that evening I handed a shot gun and the two shells to the Forensic Science member, First Constable Thompson.

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That is Exhibit 'C' and the two shells Exhibit 'F'? --- That is so, yes.

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20 What about the - after completing your observations at the house in the afternoon did you then go back to the Echuca Police Station? --- I did.

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And roughly what time did you get back there? --- It would have been approximately between about 2.30, 3 o'clock.

What or whom did you find there? --- When I arrived there I found two solicitors were present at the station, Mr. Appleyard and Mr. McDonald. They were present with the accused.

30 Is one of them in Court today? --- No, one of them is not in Court today.

Did you see anyone else there at the police station during the course of the day or night? Connected with the accused? --- Yes, I did see two other solicitors did come into the station a short time after this.

Anyone else? --- Dr. Moysey, Dr. Jones. Mr. Trinham was there.

40 HIS HONOUR: What were the doctors doing there, Mr. Moxham? Dr. Moysey and Dr. Jones? --- Dr. Moysey..

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Did they come at various times? --- Yes, they had attended to the accused at various times during the evening.

And they saw the accused there? --- Yes.

MR. HOWSE: One thing I want to ask you, Mr. Moxham, when the cartridge case and the loaded cartridge in Exhibit 'F' were removed from the gun Exhibit "C", whereabouts was the accused? --- The accused at this time was in the front bedroom.

So that he was not present? --- No, the accused did not go to the kitchen after I had been there.

10

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: Mr. Moxham, the doctors were checking the condition of the accused, were they not? --- That is correct.

The Wettex shown in photograph No.7 is in a position you would describe, would you not, as being on the right side of the sink? --- That is so.

20

You gave evidence, Mr. Moxham, at the inquest? --- I did.

Did you say there that on the left hand side of the sink was a Wettex sponge? --- I can't recall saying whether I said it was on the left hand side.

Well, there had been a few things moved before photographs were taken in the case, had there not, to your knowledge? --- The Wettex hasn't been moved.

Was it not? --- No.

30

You said you closely examined the sink? --- I did, yes.

And I think you described what you saw there as far as the water was concerned as, what, a small amount of water? --- Yes.

What, a few drops? --- A bit more than a few drops.

Well, would you describe it as a small pool of water in a bowl under the tap? --- This would be correct, yes.

That is certainly more than a few drops, is it not? --- That's so, yes.

Now Mr. Moxham, you at no stage in the course of your evidence at the inquest made any mention, did you, of the presence or otherwise of water near the upturned Birko, did you? --- I cannot say whether I did or not, I cannot remember whether I mentioned water, on the Birko.

Mr. Moxham, you refreshed your memory before giving evidence here today, did you not? --- I haven't seen the transcript of my evidence at the ..

I did not ask you whether you had or had not, I asked you had you refreshed your memory of your evidence before coming into the witness box here? --- I have.

And you refreshed it, I take it, by reference to some writing that you had in your possession or had given to you, did you? --- That is so.

And at the inquest you - how did you give your evidence at the inquest, do you recollect? The form it took? --- Off a prepared statement.

Now I am going to ask you again, Mr. Moxham, put to you that at no stage in the course of your evidence at the inquest did you mention anything about water being the upturned Birko, what do you say? --- Unless I refer to that statement I would not be able to say whether I did or not.

Mr. Moxham, did you say anything to the accused about what you say now you observed in regard to the

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quantity of water near the upturned Birko, or small quantity of water? --- No, I never mentioned anything to the accused about ...

Nothing at all? --- No.

And I suppose you would agree, would you, - or would you, that to have a look at water on the floor or on a shelf, it is pretty hard to estimate a quantity, is it not? --- I feel you could give some estimation.

What from the height of it or the area or what? --- The quantity. 10

Well, tell me this, what area approximately was the water that you observed near the Birko? --- It was a very small area.

All right, well tell me what it was? --- Approximately 2 to 3 inches.

What, oblong or square or one direction or what? --- Well, you could say that it was a small puddle.

2 to 3 inches square, was it? --- No, just as a small puddle. 20

Well, you mentioned the length 2 to 3 inches, what was that referring to? --- I suppose you could say diameter.

Was it circular? --- I'd say it was just as I said, a puddle.

A circular puddle? --- I could not say - not perfectly circular, it's just a puddle.

Did you notice it at all? --- I did.

What about the water on the shelf near the Birko, did you have a good look at that? --- Yes. 30

Have you ever mentioned in your evidence previously seeing the water on the shelf near the Birko? --- I cannot recall whether I did or not.

Well, tell me a little bit about that, what shape was that, do you recollect? --- It was going

towards - the shape of the water was going towards the edge of the sideboard.

That does not convey much as to shape. Was it circular or square or oblong or what? --- I would say it would be an oblong shape going towards the side.

And about how from the side did it start? --- I didn't measure it.

10

How far in - I am not suggesting you did, Mr. Moxham, but can you give us any estimate? --- I'd only be guessing.

Well, as a guess what do you say? --- Anything between - I suppose you could say 4" to 8".

Well, that would make a bit of difference to the quantity, would it not? --- If it was 4" as against 8"? --- As I said, it's only a guess.

20

Mr. Moxham, you told Mr. Howse that when you moved the - or pulled the cardigan across from the deceased you noticed a small pool of blood? --- That is so.

And that was, was it not, on the floor coming from the left armpit? --- Yes.

That is where you noticed the small pool of blood, was it, on the floor coming from the left armpit? --- That's when I pulled the cardigan back, yes.

30

And it was quite clear, was it not, that the cardigan had imprisoned or retained blood which had obviously been flowing from the wound? Would you not agree? --- I could not agree with that.

Why, what seems so illogical about that to you? --- Oh well I didn't know where the wound was at this stage.

I beg your pardon? --- I did not know where the wound was at this stage.

Knowing now where the wound was would you agree that is obviously what happened? --- Oh I was under the impression that the cardigan just covered the small pool of blood, it didn't add to it.

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I am not suggesting it did but it stopped it seeping out, did it not, in your view, the cardigan and the other clothing that - ? --- To me the cardigan just hid the pool of blood from my view.

Were you present when the ambulance driver Mr. Deveraux turned up? --- For a short time I was.

Sorry, Mr. Wellard? Were you present when he arrived at the scene? --- For a short time, I can remember him being there.

10

He got there I would suggest a little before half past one, did he not? --- It was round about that time.

Did you see him lift the deceased's left shoulder? --- I can't remember him doing this, no.

What, not at all? --- He could've but I wasn't present during his whole course in the kitchen.

Had you made the discovery you had made in regard to the pool of blood on the floor coming from the left arm pit before or after Wellard arrived? --- This is well before Wellard arrived, I did this when I first observed the deceased.

20

And after of course you had done this the pool of blood was quite obvious was it not on the floor? --- No, it was not.

Well it was actually there on the floor, was it not? --- There was a pool of blood there, yes.

So this would be present of course when Mr. Wellard arrived would it not? --- Yes, the pool of blood would be present there.

30

You examined of course the Exhibit 'C', the shotgun, did you not when you got to the scene? --- Yes, I did. This is it side by side?

Yes. And you observed that there was water - moisture - water actually on the barrel. --- I observed this after I had taken possession of it, this is after photographs were taken.

What actually did you observe? --- Moisture along the rib. I took it to be moisture.

It was still present was it not when Mr. Thompson from Forensic was examining it? --- Yes, the water was there.

Because you were present were you not when Mr. Thompson examined it, were you not? --- At one stage I was present with him, I thought - I think I brought it to his notice or he mentioned it and I said yes I had seen it too.

10 You had some conversation anyway with Thompson about this moisture on the barrel? --- Yes.

And I take it you observed the water marks or whatever they were in between the ribs of the barrel, would that be right or rib of a barrel? --- This is where I saw the water was along the rib.

And you of course were inspecting it were you not, closely, inspecting the gun closely following the accused's statement to you that he had been cleaning the gun? --- That is so.

20 And had been cleaning the gun when it went off, that is what he told you, did he not? --- That's right.

It is correct to say is it not that what you observed as to the removal of the fore piece of the barrel or the fact it was removed, would, would it not, be consistent with a process of cleaning, cleaning the barrel on the outside? --- This would be correct, yes.

30 You were present at least at some stage when the accused was at the Echuca Police Station? --- I was.

Were you present when Doctor Moysey gave him a sedative? --- No, I was not present.

Did you tell him at any stage that you would get a statement from him as soon as he was a bit calmer? --- The accused?

Yes. --- No.

Were you present when any other plain clothes detective said something to that effect to him? --- No.

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Did he ask you from time to time "What about getting this statement and letting me go home"?
--- No.

How many police approximately were at the Echuca police station when the accused was there from say half past two to six, would you have any idea? --- There was myself and Detective Wilde, there would have been First Constable Holly, Bickerton, First Constable Wilson, Inspector Stott and I am not sure of this, I am not sure of a First Constable Young, I think he came later on during the night. 10

Perhaps you might just have a look at photograph 2 would you please? Can you see from that photograph - can you indicate from that photograph the portion of the cardigan you pulled across? --- I can't remember exactly where I took hold of the cardigan. I would've, I'm only going roughly on memory but I think I was on the opposite side to the cardigan and I more or less - 20 as I was listening I leant down and bent over and just moved the - put my hand down and just moved it back. Whether I lifted the cardigan or just moved or aside like this just to see the blood, I can't say, but in effect I did shift the cardigan a little way.

Just perhaps one thing I should formally put to you. You have described the various gear, the gladstone bag and wettex and so on on the sink and table and so on, and other places, this of course was quite consistent was it not with somebody cleaning the gun? --- It is consistent with someone cleaning guns, yes. 30

Re-examination MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: Would you look at photograph No.6? Do you see the Gevarm rifle on the top of the table? --- Yes.

Did you touch that at all? --- I did not touch the rifle at all.

Was that touched by anybody that you observed at any stage? --- Not to my knowledge. 40

You told the Court that before giving your evidence you refreshed your memory from a document,

from what did you refresh your memory? --- This was the prepared statement that I had given in the inquest.

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What is this, the statement for the police brief? --- That is correct.

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Did that contain anything other than the contents of the statement you made for the brief in the first place?

Transcript of Evidence

Perhaps I could put it another way, Your Honour.

Evidence for the Prosecution

10 TO WITNESS): So that we are clear about this, was that a copy of the statement for the police brief, or was it a copy of the statement for the police brief, or was it a copy of your deposition at the inquest, that is all I want to know? --- It was a copy of the statement for the police brief.

John William Moxham

MR. LAZARUS: He said he read that at the inquest.

Re-examination

WITNESS WITHDREW

13th August 1970 (continued)

ROY JAMES WILSON, called

Roy James Wilson

20 MR. HOWSE: Your Honour, this witness's name is not on the presentment, Your Honour, and I would apply for leave to add it. Notice has been given.

Examination

NO OBJECTION BY MR. LAZARUS.

LEAVE GRANTED

ROY JAMES WILSON sworn and examined

WITNESS TO MR. HOWSE: My full name is Roy James Wilson. I am a first constable of police stationed at Echuca.

30 MR. HOWSE: On Thursday, 7th May this year, were you on duty at the Echuca police station? --- That is correct.

And in the early part of the afternoon did you receive a call on the police radio? --- That's correct.

Can you tell us what time it was? --- In the vicinity of 1.23 p.m.

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Evidence
for the
Prosecution

Roy James
Wilson

Examination

13th August
1970
(continued)

Kevin James
Devereaux

Examination

And was that a call which came from a police vehicle? --- That is correct.

As a result of receiving that call did you then make a telephone call? --- I did.

To whom? --- The Echuca Ambulance Service.

Did you ask for an ambulance for 59 Mitchell Street? --- I did.

Do you know who it was that you spoke to you there? --- I'm pretty certain it was Mr. Kevin Devereaux.

10

MR. LAZARUS DID NOT WISH TO CROSS-EXAMINE

WITNESS WITHDREW - EXCUSED

KEVIN JAMES DEVEREAUX sworn and examined

WITNESS TO MR. HOWSE: My full name is Kevin James Devereaux. I am an ambulance officer attached to the Echuca Ambulance Service. I reside at 131 Goulbourn Road, Echuca.

MR. HOWSE: On Thursday, 7th May of this year did you receive a phone call requesting an ambulance? --- I did.

20

Well, I suppose you received a number, but did you receive the one that we are concerned here today? --- I did, yes.

Can you tell us what time that call was received by you? --- 1.25 p.m.

And as a result of that call for an ambulance what did you do? --- I despatched the only officer I had available to the scene.

And who was that? --- Ambulance Officer Kevin Wellard.

30

Was he at the station on duty that day? At that time? --- No, he was at home.

And how did you get in touch with him, by phone? --- By telephone.

And where did you send him to? --- 59 Mitchell Street, Echuca.

What were your duties on that day? --- Controlling officer on the switchboard.

10 Were you the one who received calls for ambulances and despatched them? --- I was.

And over what period did you perform that duty that day? --- From 7.30 a.m. until 2.30 p.m.

On that day did you receive any other call for an ambulance to 59 Mitchell Street, Echuca? --- I did not.

MR. LAZARUS DID NOT WISH TO CROSS-EXAMINE

WITNESS WITHDREW - EXCUSED

KEVIN ANTHONY WELLARD sworn and examined

20 WITNESS TO MR. HOWSE: My full name is Kevin Anthony Wellard. I am an ambulance officer by occupation. I reside at 254 Ogilvie Avenue, Echuca. I am attached to the Echuca Ambulance Service.

MR. HOWSE: On Thursday 7th May of this year, in the early afternoon were you at home? --- I was.

And there did you receive a phone call from the previous witness, Mr. Devereaux? --- I did.

At what time did you receive it? --- 1325 hours. 25 minutes past 1 in the afternoon.

30 Were you directed to attend a case at 59 Mitchell Street? --- I was.

As a result of that phone call did you then go to 59 Mitchell Street? --- I did.

On arrival did you go into the house and did you see the body of the deceased as in photograph 2 of Exhibit "A"? --- Yes, I did.

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Transcript of Evidence

Evidence for the Prosecution

Kevin James Devereaux

Examination

13th August 1970 (continued)

Kevin Anthony Wellard

Examination

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Evidence

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for the
Prosecution

Kevin Anthony
Wellard

Examination

13th August
1970
(continued)

Cross-
Examination

Re-
examination

Did you make any examination of her to see whether there was any sign of life? --- I did.

Was there? --- I found no sign of life, whatsoever

And did you make a similar examination in respect of the expected child? --- I felt the woman's abdomen for signs of any movement. But there was none.

I do not want to ask you about all your examination, but at some stage did you find some blood? --- Yes, as I lifted the woman's shoulder and upper portion of her body I found an amount of blood under the upper part of her body. 10

And having done that did you then return the body to the position in which it was when you got there? --- Exactly the same position.

Were you present when Dr. Moysey arrived? --- Yes, I was.

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: It was only after lifting the deceased's left shoulder and upper portion of her body that you noticed any blood there at all was it? --- That is correct, I didn't see any blood by standing over the person's body. 20

MR. HOWSE COMMENCED RE-EXAMINATION

MR. HOWSE: In the position in which you were standing when you say you did not observe any blood, can you just tell the jury exactly where you were in relation to the body? --- I was standing almost adjacent to the woman's right hand side, right hand arm, in the area of her arm and her head.

Would you have a look at photograph 2 again, perhaps you might indicate there roughly whereabouts you are telling us? --- Yes, just prior to the examination I would have been standing beside the woman's right arm, right shoulder. 30

Would you just hold the photograph round and indicate where so that His Honour can see it and the jury can see it? --- Beside the refrigerator

WITNESS WITHDREW - EXCUSED

NORMAN MELROSE COHEN WILDE sworn and examined

In the Supreme
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WITNESS TO MR. HOWSE: My full name is Norman Melrose Cohen Wilde. I am a Detective First Constable attached to the Criminal Investigation Branch at Echuca.

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MR. HOWSE: About half past one on the afternoon of Thursday 7th May this year from information received did you go to a house at 59 Mitchell Street, Echuca? --- I did.

Transcript of
Evidence

10 Did you enter through the bathroom and there did you see the body of the deceased as in photograph 2 of Exhibit 'A'? --- That's correct.

Evidence
for the
Prosecution

Did you also see the guns and cleaning materials and gladstone bag in the situation shown in that photograph? --- I did.

Norman Melrose
Cohen Wilde

Did you notice something over on the bench? --- Yes, there was a Birko heater.

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1970

20 And what was its situation or condition? --- It was tumbled over and there was a small amount of water and a little bit of water on the bench.

Examination

Would you have a look at photograph 6 of Exhibit 'A'? --- Yes.

Does that show the Birko on the bench in the position in which you saw it? --- Yes.

It is next to the frypan, is it not? --- That's correct, yes.

30 What about the lead - the connecting flex that is? --- As far as I can recall that is exactly the position it was in.

That is on the other side of the egg containers is it? --- That's correct, yes.

And the frypan was in the condition shown in the photograph? --- Yes.

Did you see the accused there? --- I heard some voices in the - another part of the house and I went to the front bedroom. I there saw the accused and Senior Constable Shaw and Detective Moxham. The accused appeared to be in a distressed

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—
Norman Melrose
Cohen Wilde

Examination

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1970
(continued)

condition.

Did you return to the kitchen and go to the den?
--- I did.

What did you see there? --- I saw a shotgun there.

Is that the gun as shown in photograph 8, and is it
Exhibit 'C'? --- It is shown in the photograph
there.

Did you notice anything on the floor of the
kitchen? --- Yes, there was a small cloth, green
abrasive cloth. 10

And did you notice anything on the kitchen sink?
--- Yes, there was a blue wettex pad on the
kitchen sink.

Whereabouts on the sink? --- Somewhere near the
sink itself from memory.

Would you have a look at photograph 7 of
Exhibit 'A'? Can you see it there? --- Yes.

Was that its position? --- As far as I can recall,
yes.

Subsequently did something happen in connection 20
with the shotgun, Exhibit 'C', the one that was in
the den? --- Yes, Senior Shaw came into the room
and he more or less undid the shotgun, and I saw
that there were two cartridges in it. He tilted
it and the one in the left barrel fell out. Both
of these cartridges had indentations on the - on or
about the pin at the back there.

What about the one in the right hand barrel? ---
It had an indentation as well.

Did it come out? --- No, it didn't come out. 30

Subsequently was the gun reassembled at that
cartridge extracted? --- It was.

Did you look at the - what came out of the gun? ---
How do you mean, the cartridges?

Did you make any examination of them other than
what you have already told us? --- No, I know very
little about shotguns.

Subsequently were you present when some photographs were taken? --- Yes, by First Constable Montgomery, about 2.20 p.m. he arrived, and I also outlined the body with chalk and then left.

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When you got back to the Echuca Police Station did you see anyone? --- Yes, I saw a Mr. Appleyard and a Mr. McDonald who were solicitors for the accused person. They informed me that -

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Transcript of Evidence

Did they see him? --- They did, yes.

10 For how long? --- For about approximately 20 minutes.

Evidence for the Prosecution

What time was this? --- This would be roughly about 2.40, 2.50 p.m.

Did you see anyone else there in connection with the accused? --- Doctor Moysey visited there on a few occasions.

Norman Melrose
Cohen Wilde

Examination

Did the accused have anything to eat at the police station? --- No, I purchased a meal and I gave it to him but he declined to eat it.

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1970
(continued)

20 MR. LAZARUS COMMENCED CROSS-EXAMINATION

Cross-examination

MR. LAZARUS: Mr. Wilde, it is just on this question of the Birko and the water. You I think told us here that there was an overturned Birko on the bench in the kitchen. There was a small amount of water I think you said or water on the floor and on the bench, is that right? --- That's right, yes.

You gave evidence at the inquest, did you not? --- I did, yes.

30 In reference to this particular incident you made no reference I suggest to any water being on the bench. What do you say about that? --- I can't recall whether I did or didn't.

But you did really see water on the bench did you? --- Yes, there was a little bit of water on the bench.

A little bit of water on the floor? --- And there was some on the floor, yes.

MR. HOWSE DID NOT WISH TO RE-EXAMINE WITNESS

40 WITNESS WITHDREW - EXCUSED

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Evidence
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Prosecution

Ralph Edward
Young

Examination

13th August
1970

RALPH EDWARD YOUNG sworn and examined

WITNESS TO MR. HOWSE: My full name is Ralph Edward Young. I am a Senior Constable of Police stationed at Echuca.

MR. HOWSE: At about half past three in the afternoon of Thursday 7th May of this year did you go to 59 Mitchell Street, Echuca? --- No, I was present at the Echuca Police Station.

From there did you convey the body of the deceased to the mortuary at the Bendigo & District Hospital? 10
--- Yes, that is so.

And did you wait there till the pathologist arrived? --- Yes, I remained there until Doctor Charlton arrived.

Would you have a look at photograph 1 of Exhibit 'A'? --- Yes, that is the deceased person, Beverley Ratten.

Whom you conveyed on this occasion? --- Yes, that is so.

MR. LAZARUS DID NOT WISH TO CROSS-EXAMINE WITNESS 20

WITNESS WITHDREW - EXCUSED

Robert Ewing
Scott
Charlton

Examination

ROBERT EWING SCOTT CHARLTON sworn and examined

WITNESS TO MR. HOWSE: My full name is Robert Ewing Scott Charlton. I am a legally qualified medical practitioner.

MR. HOWSE: For some time past have you been working as a pathologist? --- Yes.

Perhaps you might outline your experience as a pathologist, doctor? --- After being in practice when I returned from the war for 16 years I returned to hospital practice at St. Vincent's Hospital in Melbourne to train as a morbid anatomist. I completed that 5-year period of training in various hospitals in Melbourne, sponsored by that hospital and under the control of the Hospitals and Charities Commission of Victoria. 30

What is morbid anatomy? --- Tissue pathology. Then I applied to the College of Pathologists of

Australia to sit for membership and I passed my written papers at the General and Specialist level as a morbid anatomist, but I was failed in the practical section in Brisbane in 1967, and the College asked me to continue to get more practical experience, which I have continued to do, and they asked me to - they put some importance on me getting a charge position as a pathologist in charge of a laboratory, which I have done over the past year as the medical officer in charge of the Commonwealth Health Laboratory at Bendigo, and there I do the tissue pathology for that laboratory and the coronial work for that area.

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Did you work for some time as a pathologist in Melbourne? Connected with the Coroner's Court?
--- Yes, I think for a period of about 6½ years - it would be from 1962 up to the early part of 1968 when I went to Bendigo, I worked as a coroner's pathologist at Melbourne.

Robert Ewing
Scott
Charlton

Examination

How many post-mortems do you think you would have had the unfortunate pleasure of having to do? --- I've never added them up, except I've got a round figure. I should think I've probably done about 3500 to 4000 autopsies in that time.

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(continued)

On the night of Thursday 7th May of this year, between a quarter past 6 and 20 to 9, did you carry out an autopsy examination on the body of a woman whom you believe to have been the late Beverley Joan Ratten? --- Yes.

Would you have a look at photographs 1 and - 1 will do at the moment? Is that the face of the body?
--- Yes.

During the period of the autopsy were members of the police force present? --- Yes.

Did they include First Constable Thompson of the Forensic Science Laboratory? --- Yes.

And at some stages members of the Homicide Squad?
- Yes, they would be - they were there, I didn't know them on that basis.

Was there also a police photographer there? --- Yes.

What did you find upon your examination, doctor?
--- I found the woman ..

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Robert Ewing
Scott
Charlton

Examination

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HIS HONOUR: Can you give this without reference to notes or have you got some notes you want to refer to? --- I have a copy of my report.

Have you any objection, Mr. Lazarus?

MR. LAZARUS: I would prefer the witness to go ahead without a report if this is not any great inconvenience to him. If he finds it impossible, well, I will waive any objections I might have.

HIS HONOUR: You follow that, doctor, go ahead as far as you can and if your memory is exhausted, then Mr. Lazarus will have no objection to your refreshing it from notes. --- What I found was that the appearance was that she had died recently, within a matter, as far as I could estimate, of several hours, and that she was in a late stage of pregnancy, which I estimated to be at about 7½ months from the appearance of her abdomen. And she was dressed .. 10

MR. HOWSE: She was clothed when you first saw her, was she? --- Yes. 20

Were those clothes subsequently removed and handed to one of the police? --- They were. And after they were removed it was apparent that she had a recent wound on the left side of her chest.

Can you indicate approximately where, on yourself? Is that possible, or can you not reach? --- It was -- the wound was below the armpit approximately mid-way between the front fold of the armpit and the back fold, in what is described as the mid-axillary line, in the side of the chest, in the region of the 7th, 8th and 9th ribs, and it was a circular opening. As far as I recall I gave the measurement in centimetres, but it would be, from recollection, somewhere about 2", 2¼" diameter, 1 diameter a little bit longer than the other, but essentially a circular opening. 30

Without referring to your notes can you give us the actual measurements of the wound? --- I can't remember them, without referring to my notes. 40

Do you desire to refer to your notes in order to refresh your memory? -- If you wish those measurements to be precise, because I did measure them at the time, yes.

I do not know whether this is sufficient, Your Honour, or whether I need to go through all the other steps.

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HIS HONOUR: You have got no objection, Mr. Lazarus?

MR. LAZARUS: No.

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HIS HONOUR: Well, have a look at your notes to get that particular? --- What I described as the anteroposterior diameter, that is the diameter going from the front to the back, 5 centimetres; and from above down, the superoinferior, a little less, 4.5 centimetres.

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MR. HOWSE: What would 5 centimetres be in inches? --- I haven't got a table with me, but I think in terms of somewhere about $2\frac{1}{2}$ " to $2\frac{3}{4}$ ", and the other one a little bit less, about $2\frac{1}{2}$ ".

Robert Ewing
Scott
Charlton

Where was this wound? --- I have described it - it was centred on a point 15 cm. posterior to the tip of the left nipple, and about half this distance from the surface of the autopsy table on which the body lay on its back, and this point was $9\frac{1}{2}$ cm. below the upper end of the armpit.

Examination

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1970
(continued)

Does that place the wound right on the side or ...? --- It places it on the side and in a subsequent part of the report I've described it as being, as far as I recollect, in the mid-axillary line.

Would you have a look at photograph Exhibit "O", did you see that photograph being taken? --- I did.

And does that relate to the wound that you are speaking about? --- It does.

Can you tell us from that in terms of inches these measurements that you have spoken about? You see the tape being held ...? --- I see the tape there, as held.

Which of these two directions is that? --- The superoinferior, the one from above down, which I think I described just now as something a little over 2" and this is described as 2", running from 2" to 4".

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Robert Ewing
Scott
Charlton

Examination

13th August
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Well, that is apparently the equivalent of 4.5 cm.? --- Presumably, yes. They were measured with different scales, this is measured on a tape measure, mine was recorded on a rigid scale.

What did you notice about this wound? --- That the edges were sharply defined and they were not inturned or everted, that it was a very recent wound, and that protruding from it there was part of the spleen and part of a piece of abdominal tissue.

10

The fact that the margins of the wound were sharp, they were not inverted and they were not inturned, what does "everted" mean? --- pouting out, rolled outwards so that the inner surface - so that the under-surface of the skin is exposed.

What do those matters signify? Do they hold any particular significance? --- Well, in conjunction with other factors, such as absence of marks and material around the wound, it suggested to me that the charge had passed into the body en masse.

20

Other than the injuries constituting this wound did you notice anything in the way of marks on the flesh surrounding the wound? --- I noticed nothing. I looked for it.

Nothing in the way of powder marks or burning marks? --- Nothing at all.

I take it that you proceed to conduct an internal examination of the body? --- Yes.

30

What did you find when you made this examination, doctor? --- I found gross injuries to the heart and to the diaphragm, and lesser injuries in the upper abdomen and the inner aspect of the lower part of the left lung.

What was the nature of these injuries so far as seriousness is concerned? --- They were fatal in respect of the heart.

What was the injury to the heart? Well, can you recall this without looking at your notes? --- I can recall the essential features of it, and that was that a large portion of the left ventricle of the heart, which is the main pumping

40

place for arterial blood, had been shot away, torn away by shot, so that it presented as a ragged perforating area, impregnated with pieces of shot.

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You said that these injuries would prove fatal. Within what time would death ensue from the receipt of them? --- The heart injury would prove fatal, the others of themselves not necessarily. I would feel that it is fair to say that from an essential point of view death would be instantaneous after such an injury.

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HIS HONOUR: For all practical purposes? --- Yes.

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Prosecution

MR. HOWSE: You made a complete examination of this body, did you not? --- Well, in the ordinary meaning of an autopsy, a complete examination, yes.

—
Robert Ewing
Scott
Charlton

What do you say was the cause of death? --- Gunshot wound with gross laceration of the heart, producing gross haemorrhage.

Examination

Is this the wound that you have just been telling us about? --- The injuries were caused through this wounding, yes.

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Would you have a look at photograph 4 of Exhibit A? Does that show externally - does it show the wound that you have been speaking about to the Court? --- Yes.

Did you find any shot pellets inside the body? --- Yes.

And can you explain to the jury whereabouts you found them? --- I found them over an area of conical shape.

HIS HONOUR: What shape? --- Conical shape, extending from that wound on the surface of the body downwards, slightly forwards and slightly inwards, that is where the axis of the cone - the long axis of the cone passed.

Where is it, downwards? --- Downwards.

Outwards did you say? --- Slightly forwards and slightly inwards, that's the direction of the central axis, the long axis of the cone. And over that area the shot were distributed fairly symetrically with

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Robert Ewing
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this exception, that in the lower outer part of the cone, that is on the inside of the chest wall, there was more shot there than in other parts.

MR. HOWSE: You said that you found this shot so as to indicate a path downwards. At one (sic) angle downwards in relation to the horizontal plane do you say you found this shot? --- I estimated it at 45 degrees to the horizontal.

HIS HONOUR: Have you any idea what the length of this conical area would be in inches from the point of entry? --- To the furthest limits of the conical - 10

Yes? --- I did not measure it as a specific measurement but I can say this that a point on the circumference of the furthest part of the cone, the base of the cone, with the upper pole of the kidney and the inner part of the lower lobe of the left lung, so that I would feel that it is fair to say that it was - it's an estimate and it's from memory, but I would think it is something in the position of 5 to 6 inches. 20

When you say 45 degrees to the horizontal plane does that presuppose that the body that you are speaking about in those terms would be vertical and the horizontal plane is cutting straight through the body, do you follow what I mean? --- Yes. By my reference position in describing these things is the so called anatomical position which is a person standing vertically with her hands turned forwards. That is my reference position, so that when I say the line of this passage of shot was at 45 degrees I mean that it is at 45 degrees to horizontal planes cut through such a body. 30

MR. HOWSE: I wonder if you would -

HIS HONOUR: There is one thing I am not clear about. When you said that this wound from the point of entry travelled downwards, I gather you meant downwards this way (indicated)? --- Oh yes. 40

From the - ? --- Entrance point, slightly forwards.

What do you mean by forwards. Could you indicate that on your own body?

MR. HOWSE: Your Honour, if I may interrupt with respect. I was just going to ask if he could, taking another person, and taking a ruler, perhaps give a demonstration? --- Yes well I would be glad if you would do that? I do not know about you gentlemen, whether you are understanding this, but I want to make sure I understand what you are saying, Doctor, that is all. Would you mind demonstrating on somebody. I was looking at the words you used 'downwards, forwards and inwards you see, Doctor.

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Evidence

WITNESS LEFT BOX TO DEMONSTRATE

Evidence
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WITNESS: I am referring to a wound coming into the left side of the chest and I say it passed downwards - I think I used in my report the term 'steeply downwards, slightly forward and slightly inwards. When I say it comes downwards I mean it is coming downwards, from above down, slightly forwards, that means that it is tilted slightly forwards like that in that plane and slightly inwards, so that it is coming down obliquely like that.

Robert Ewing
Scott
Charlton

Examination

13th August
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(continued)

MR. HOWSE: Perhaps before we part with the ruler you might have a look at the ruler and tell us what 4.5 centimetres is and 5 centimetres respectively, in terms of inches that is? --- 5 centimetres is 2 inches and 4.5 is $1\frac{3}{4}$.

In the course of the shot passing through the body from the outer skin was there anything that you observed on your examination of the injured parts of the body that would interrupt the progress of the shot or be likely to deflect it? --- Well any tissue is capable of deflecting a moving object I suppose. It is something in its path, but these structures in the path of this shot which have greater chance of resisting it are the ribs. I have described them as the 7th, 8th and 9th ribs.

Did you find any injuries to those ribs themselves? --- Yes, I described them as - each of those ribs immediately beneath this wound, each had approximately two inches of its length punched out quite sharply, and -

Did you ascertain what happened to the parts of the ribs that were punched out as you put it? --- Indirectly, yes, because in opening the chest cavity

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I found the pieces of ribs in the lower part of the chest, resting on the marginal part of the diaphragm. It is true that I didn't specially identify these pieces of rib as coming from each of these that had been injured, but I did examine the chest carefully and found that there was no other rib broken except the 10th rib and no part of its bone was missing it was just cracked.

You found some rib fragments and the only ribs found to be missing any part were the - what are the three? --- Those behind the wound.

10

7th, 8th and 9th? --- So I concluded they came from there.

And whereabouts did you find these rib fragments in relation to this downwards angle of 45 degrees? --- I found them at the - just on the inner side of the chest wall between the lining of the chest cavity and the diaphragm, in that gutter, they had dropped down there, or that is where they had gone, and in respect - so far as the conical area of shot distribution goes they were within it but not at its furthest point because the diaphragm prevented them from going further down.

20

Were those fragments nevertheless consistent with the downwards angle of 45 degrees that you have spoken about? --- Yes.

Those fragments and their situation that is? Is that correct? --- Yes.

30

Apart from the 7th, 8th and 9th ribs what was the nature of the parts of the body through which the shot passed? --- The nature of them, the skin and underlying fat and muscle, and between the ribs there is muscle and behind that there is a thin membrane, about a millimetre thick which is the pleura just lining the chest cavity. And then there is the heart which is a fairly firm piece of muscle tissue, a little bit more breakable than ordinary meat tissue, and the lung tissue alongside it is soft and spongy and beneath these at a lower level is the diaphragm which is a thin sheet of muscle, and below that are these softer organs such as the stomach, which is a hollow sack with a wall about half a centimetre thick.

40

Was there anything else other than the ribs of a bony structure in the path of the shot? --- Nothing.

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Doctor, did you come to any conclusion as to whether any part of the body had deflected the shot in its course from the time that it first entered the body through the skin? --- I felt that no deflection had occurred, or if any had occurred it was of no significance in degree, and I reached that decision because all injuries were below the level of the entrance shot with the exception of one small area in the upper part of the left lung where there was a little bit of haemorrhage but no shot was demonstrated there.

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What is the explanation for that? --- It could come from a number of things. It could come for a small area of terminal haemorrhage in a person dying from haemorrhage, but I find apart from that very, very small spot of bleeding - when I say a small spot, a thing which would be about the size of a grain of wheat in the lung tissue. I found no other injury or any haemorrhage above the level, and that made me feel that there had been no deflection, and also the distribution of shot after it had entered the body impressed me as being conical and symmetrical, and also the ribs, which were the only what you might say solid material of any hardness, in the path of the shot, are ordinarily not very hard bones, and in a woman in late pregnancy, where her - the lime content of her bone is almost certainly to be less than average, they would be even softer, so that I felt there had been no deflection and no evidence of it, and that the shot had just entered en masse and gone in and expanded within the body in a conical shape.

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Did the actual nature of the injuries to those three ribs have any bearing on the conclusion that you have just expressed? --- The fact that they were neatly punched out instead of just being fragmented ends, made me feel that the charge had gone in, as I say, en masse, just ploughed through them.

Did you make an examination of the foetus? --- I opened the uterus and confirmed that the foetus was of normal development, male, and appeared to have developed normally and was living normally

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up to the time the mother died. It may have died shortly after she died, presumably it did, but up to the time she died it was living normally and developing normally.

Did you make a measurement of the body of the deceased? --- Of the mother?

Yes? --- Yes, but I can't recall it, it was measured, just her height - the length of her body.

Can you not recall it without referring to your notes? --- My recollection of it, it was something a bit of 5 feet, but I don't recall much else. 10

I ask that the witness to refer to his notes, Your Honour.

HIS HONOUR: Did you make a note? --- I did make a note, I did it for identification purposes, really. The length of the mother's body, heel to vertex, the top of the head, was measured by a tape measure, at 5'6". 20

MR. HOWSE: Did you collect some pieces of shot from inside the wound and also a piece of plastic cartridge pad? --- Yes.

Do you recall where the cartridge pad was? --- Yes, it was in the lower part of the pleural sac on the left side, that is the chest cavity where, along with the rib fragments and the more concentrated distribution of shot.

Whereabouts did you get the pieces of shot from that you collected? --- From various places. 30
Some from the heart, some from the stomach wall, some from the diaphragm, some from this concentrated area where they were lying loosely.

And did you hand those to one of the police?
--- Yes.

Would you have a look, please, at the container of shot and the plastic wad (Exhibit "G")? --- Yes, this is the container and these appear to be the same things as I handed over.

They are the shot and the plastic cartridge wad, are they? --- They impress me as the same, but I couldn't identify them as absolutely the same. 40

Is that the container into which you put them?
 --- Yes.

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What flow of blood would you expect to result from the infliction of a wound of this sort, doctor? --- Well, there would be a great haemorrhage from the lacerated heart, but it would run into the pleural sac, and I found a large haemorrhage in the left side of the chest. What would escape would depend on the position in which the body fell after the injury, and also it would depend on the fact that it would be limited by the fact that some of the abdominal organs came up and partly plugged the wound as a whole, from the inside - spleen and abdominal mesentery came up, and that would limit the amount of bleeding. So that I could only feel that it would come fairly promptly, but that while some of it would be revealed, a lot of it would be concealed inside.

What would be the situation if a body having received such a wound fell onto its back? What would you expect in relation to the visible outpouring of blood?

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MR. LAZARUS: I do not know whether my learned friend is putting to the doctor a hypothetical case that the body fell immediately onto the back or onto the side and then rolled to the back or precisely how he is putting it.

HIS HONOUR: Supposing - take this woman, supposing Mrs. Ratten was shot as you indicated by this wound, and she fell flat on her back, what would be the position with regard to escape of blood from this wound? --- I would expect - I think it would depend very much on how rapidly these organs - you see, she was pregnant and therefore or inter abdominal pressure is high. Her diaphragm is torn by the shot, so that with her very enlarged uterus these organs such as spleen and pieces of mesentery are going to sort of pop out quickly under the pressure. Therefore, they may come up and plug this hole pretty promptly. If they do then the amount of blood will be slight. If they don't come up promptly, then I would expect blood to come out pretty freely.

MR. HOWSE: Would you have a look at the photograph No.2 of Exhibit 'A'? --- Yes, I am looking at that.

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Can you see what we have been told is blood under the left arm pit? --- Yes.

Would you expect with the body supine in a position like that to see that amount or less or more within a short period after death? --- Well firstly I must point out the body is clothed and therefore I may not be looking at all the amount of blood that has come out. And also I remember that the clothing on the body that I examined had a fair amount of blood in it, in that part of the clothing. But I can only say that I wouldn't have any precise expectations one way or the other. All I can say is that the amount of blood which I see there is not surprising to me one way or the other.

10

HIS HONOUR: A person wounded in that way, would that person be able to move after receiving a wound of that kind? Able to walk, walk from one room, move from one room to another? --- I would think not. My answer is based on the very gross damage to her heart where it is - just half of it or nearly half of it is just shot away. With all the terrific haemorrhage and shock that that would occasion I think it would be impossible for me to imagine that she could walk from one room to another. On the other hand it is common knowledge that people who have had injuries to their heart have moved surprising distances, but in this case this is just not a perforating injury, this is a large part of the heart just being ripped away and I feel that it would be beyond belief to think that she could move and get around.

30

HIS HONOUR: Would a person be able to take or call out after a wound of that kind? --- I can't answer, I do not know.

Am I right in assuming that for our purposes, for our practical purposes it is apt to describe this wound to the heart as having about half the heart shot away? --- May I refer to my notes?

40

Yes? --- It is on the second part of the autopsy report, it is under Item 4. Under Item 3 I said "A grossly lacerated pericardium" that is the sac of membrane around the heart and haemorrhage inside that and then Item 4, a grossly lacerated left ventricle of the heart where the apex and the apical half or so of that chamber is shot away.

The remains of the left ventricular and parts of the left showing many small pieces of shot in the tissue of the heart.

What proportion of the heart does that represent? --- About one third of it.

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10 MR. HOWSE: I did ask you before how soon after the receipt of such a wound death would follow. I will ask you again, what do you say about that? --- I think I would say the same as I did, I said for practical purposes I would feel that death would be instantaneous.

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COURT ADJOURNED AT 4.01 P.M. UNTIL FRIDAY
14TH AUGUST, 1970 AT 10.00 A.M.

COURT COMMENCED AT 10.05 A.M. ON FRIDAY
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MR. HOWSE: Dr. Charlton was in the box, Your Honour. There are two further matters that I would like to put to him, if I may, before he is cross-examined.

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20 HIS HONOUR: Yes.

FIRST CONSTABLE THOMPSON AND DETECTIVE MOXHAM
EXCUSED

ROBERT EWING SCOTT CHARLTON recalled and warned

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MR. HOWSE CONTINUED EXAMINATION-IN-CHIEF

30 MR. HOWSE: Doctor, having regard to the situation of the wound that you observed on the body of Mrs. Ratten, what do you say as to the likelihood of there being any injury to the left arm if the left arm was hanging in a normal carrying position? Do you follow the question? --- Yes, I follow it.

In other words, if she had her arm just hanging normally by her side? --- I would expect the left arm to be injured, but I couldn't say with certainty. My reason for saying I would expect it injured is that I identified the wound as being centred on the mid-axillary line, and in the normal carrying position of the arm the arm is covering that area.

Doctor, so far as concerns bleeding from such a wound

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if the organs you spoke about - the spleen and pieces of mesentery, did not, as you put it yesterday, pop out quickly under the pressure so as to plug the hole, if that did not happen and the body had fallen straight onto its back, as shown in photograph 2 of Exhibit "A", what sort of a flow of blood would you expect to take place out of the wound? --- A pretty free flow of blood.

Within what period of time after the infliction of the wound would you expect such a free flow of blood to emerge? --- I would expect it to emerge promptly. I suppose I could be more specific, I would expect it to appear within a minute. 10

Would you be good enough to have a look at the clothes of the deceased, Exhibit 'H'. That is if you would take them in this order if you would not mind, if you would start with the brassiere, then the slip, then the blouse, then the frock and then the cardigan? --- Yes.

Now all those stains that you see there what do they appear to be? --- These appear to be blood stains. 20

Having observed the degree of staining on the deceased's clothes, are you able to express any opinion as to how soon after the infliction of the wound blood would have started to emerge from the wound and in what quantity? --- Well obviously there is a large quantity of blood on the clothing and I have stated my opinion yesterday that I felt that death was essentially instantaneous. Therefore, this blood would have come out as a result of the injury to the heart and not as a result of subsequent pumping of the heart. I found within the left side of the chest, as far as I can recall, something about two pints of blood which was retained in the body. I don't know whether those facts lead me very far but once again I am up against the position as to the position in which the body lay and in which this blood could have trickled out afterwards, but assuming that the organs plugged the hole fairly promptly, which I think they would, then this must have come out very quickly. 30 40

Cross-
examination

MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: What you are saying is, is it not, that

in your view the - whatever blood came out, came out within - if not instantaneously within a very short period after the wound was inflicted? --- Yes.

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Within a matter I take it you are saying of seconds? --- I think I said within a minute.

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Yes, but you would agree that it probably would be shorter than that, would it not, if the other facts you mentioned are correct? --- I wouldn't have thought seconds.

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Just let me see if I understand what you are saying. There is no doubt in your mind is there that the wound was plugged by the spleen and so on at some stage? --- There must remain some doubt because the body has been moved from the time it was taken from the house until the time I had it on the autopsy table. These organs therefore could have moved in that position, but they were rather firmly in position and I take it that they came up very quickly.

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Presuming - if they did not come up very quickly well of course then the basis of your opinion is no longer valid is it? --- M'mm.

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But assuming they did come up quickly they came up surely within probably a fraction of a second or seconds, would they not? --- I would think so.

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So that if the blood did come out prior to plugging it must have come out within a fraction of a second or seconds, would that not follow? --- Yes, but the plugging was not complete, the hole was not completely plugged.

I do not know whether this is getting us very far at all, but would you have a look at photograph 2, which the evidence indicates is a photograph taken at 2.30, after the body has been moved, some part of the clothing pulled any way to enable some sort of look to be had of the wound, and after certainly the head and shoulders had been moved from their original position and the body replaced. It is clear from that photograph, is it not, that very little blood has in fact escaped at that stage? --- Well as I said yesterday when I looked at this photograph, I can only see part of the clothing, I can't see what blood could have laid behind it.

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MR. LAZARUS: Doctor, the question of the time that elapses, I think you would say, anyway, that within a very short time, in your view, provided the wound was plugged, whatever blood escaped had escaped, would that be correct? Provided the wound was plugged almost instantaneously, whatever blood escaped escaped very promptly? --- No, I must say I couldn't agree with that, because the plugging as I saw it was not complete, therefore some part of the wound is open and blood 10 which runs into the chest could subsequently leak out.

But that would probably take a little time, would it not? --- Yes.

Anything, I suppose, up to 3 to 4 minutes or even longer to complete the bleeding? --- It could even go on longer, because not all the blood would clot.

I appreciate that, but all I am putting to you is that this is a sort of meaningless exercise, is it not, to try and determine how long it would be before that quantity of blood really escaped? 20 --- There are so many factors that I don't think a definite answer can be given.

That is what I would have thought. This was, was it not, your first experience of a gunshot wound as distinct from a bullet wound and so on? --- No, it was my third.

Well, actually at the inquest you were asked, were you not, "Have you had any experience in performing an autopsy where there is a bullet entry?" and you replied, did you not, "Yes, but not of gunshot entries"? --- I think I made it clear - I specifically said that I had had one case in Melbourne and one other case in Bendigo. 30

All right, you may have, but in any event the fact is this was your third experience of a gunshot wound, is that right? --- Yes.

And of course I suppose it follows that a gunshot wound has many different vagaries to an ordinary bullet wound, would that be so, doctor? --- It is so. 40

Because you have the problems of a cartridge which quite often spreads in all directions on entry into the body? --- That is true.

And a bullet wound, particular for checking an angle, there is a simple way of doing that, is there not, simply by putting a probe through - a piece of wire through? --- Yes.

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And this is not possible, is it, with the normal gunshot wound? --- That is so.

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Doctor, as you have told us, you have no actual substantial qualifications as a pathologist - academically, anyway? --- That is so.

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10 In the course of your evidence at the inquest, doctor, you did indicate, did you not, when questioned about this problem of possible deflection - you remember a series of questions was put to you on this particular aspect? --- I do.

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You did, did you not, indicate at one stage that you were not prepared to make an assessment - or were, rather, unhappy about making an assessment because, as you put it, I suggest, "I haven't had sufficient experience to be dogmatic"? --- I said I would be prepared to make an assessment, but not to be dogmatic.

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And you said that, did you not, because you indicated you had not had sufficient experience of this type of wound? --- Partly because of that and partly because I don't think it is wise for anyone to be dogmatic on such a point.

30 So far as this particular wound is concerned, - I just wanted to perhaps complete this question of deflection. You were asked, I suggest, at the inquest, "Would you expect some deflection of a gunshot in the ribs", do you recollect a question to that effect? --- I can recollect a number of questions, but I can't remember that specific one.

40 Did you answer one of these questions in reference to deflection of a gunshot in the ribs - "I don't think I'm competent to answer that, firstly, from lack of knowledge and secondly, I just do not know the strength of the charge applied and how from the chest it was applied"? --- Well, those were my thoughts.

And that, I take it, was also your evidence, was it? --- Well, it would be the gist of it, I can't remember my specific words.

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Doctor, you - also it is correct, is it not, to say that the greatest concentration of the shot was in the lower posterior part of the left pleural sac? --- Yes.

Would you mind, if you have no objection, indicating generally on yourself where the lower posterior part of the left pleural sac is? --- This region here (indicated).

If I may perhaps try and get a little more specifically just where this wound was, the point of entry? --- I've described it as being of certain diameter with its centre in mid-axillary line over the 7th, 8th and 9th ribs. 10

Well, doctor, it is a fairly common starting point of a measurement, is it not, to take the distance from the sole of the feet, where you have a constant? --- It could be, yes, but I feel that what I have taken, the points that I have taken ..

Doctor, this is a pretty common procedure, is it not? --- I don't know. I just know what I did. 20

I suppose at some stage of your practical experience you have worked with Dr. Bowden, have you not, Dr. Keith Bowden? --- No.

And you would agree, would you not, that this is a pretty important observation, determining the entry point of a wound, to determine the distance from the sole of the feet? --- I wouldn't agree with that, provided I take my reference points from other number of points which enabled me to locate it. 30

We will take your reference points here, doctor. Firstly one of reference points you take is it not, is the surface of the autopsy table? --- That is so.

Well would you not agree that that is of very little help unless the configuration of a body is known on that table? --- That is one of the points I took.

Now the other point you took, is, is it not, - and I may just put this matter specifically - the other point I suggest you took was a point 15 centimetres posterior to the tip of the left nipple? --- That is so. 40

And you went on to say, just to complete the matter "About half this distance from the surface of the autopsy table on which the body lay supine? --- That is so. I also took the apex of the axilla.

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We will have a look at that in a moment if we may. Now take this point of reference, the left nipple. This woman of course, the deceased, was pregnant, you agree with that, that is quite clear is it not? --- Yes.

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And the position of the left nipple is obviously variable is it not? --- Yes.

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In a pregnant woman particularly? --- Certainly.

And normally in pregnancy the nipple expands does it not? --- The nipple and the breast, both.

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So you would not regard that as a very helpful point of reference surely would you? --- But I wasn't regarding these points as very fixed points of reference at any stage.

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But there are the points of reference you were giving, were they not? --- They were the points of reference I was giving certainly, but I finished up with a very precise statement as to where the centre of the wound was.

Well now this would be 9.5 centimetre inferior to the apex of the left axilla is it, with the left arm placed in a natural carrying position? --- No, I centred the wound on the mid axillary line over the 7th, 8th and 9th ribs which I feel is a precise position.

Can we take it that you can give any measurement at all from the sole of the feet as far as this wound is concerned, how far from the sole of the feet the wound was? --- Could give any measurement at all?

Yes? --- There is only one measurement.

Can you give any measurement in centimetres or anything you like? --- Oh can I give it?

Yes? --- No, I said to you I haven't measured it.

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Can you give any indication on this particular deceased where the 7th, 8th and 9th rib is, the distance it is from any particular constant, from the top of the head or the sole of the feet? --- No, I can't.

How do you say that this is a specific point of reference to say that it is the mid axillary position over the 7th, 8th and 9th ribs? --- Because that's where it was on this particular body, a very precise position.

10

Is it? --- I think so. There is no other point other than the one where the wound was centred.

The only problem of course is that it is impossible on your points of reference I suggest to ever know for instance how far from the - say the soles of her feet the wound is, is it. This can never be determined? --- It can't be determined, but I must say I think it entirely irrelevant.

Do you? --- I do.

20

Doctor, if one is being precise and wanting to enquire exactly where this point of entry is in relation for instance to the floor, or where a person is standing, it does not help very much does it to know that on a particular person it was over the 7th, 8th and 9th ribs does it? --- Not in reference to the floor.

Now doctor, I think you further stated did you not as your other point of reference, that the point was 9.5 centimetres inferior to the apex of the left axilla? --- That is so.

30

Where is the apex of the left axilla? --- The uppermost part of the armpit, the uppermost point of the armpit. I did describe it with the arm in the carrying position.

But the left arm placed in the natural carrying position. And this amount, does it not, that the point is in fact some six inches below the armpit, would you agree with that? --- The apex of the armpit.

There is no question from what you have told us that this shot entered at a sharp angle downwards, forwards slightly and inwards slightly, would that be correct? --- That is my opinion.

40

And of course the fact is we can never have any other opinion can we in your opinion, because you are the only one doctor that saw this, these injuries, do you not agree? --- I wouldn't say that. You see, the thing is this, in answer to that I would say I undertook this autopsy acknowledging that I had limited experience in forensic pathology, that I was trained in disease pathology. Because of that I have made my autopsy report what I feel is a careful statement of facts I observed, so that anybody else could interpret it.

I am not disputing this for one moment, that you have done your level professional best? --- No, but I am saying to you that these facts are available to anyone else so that you could have another opinion other than mine.

Except that of course the other opinion would not have, what I suggest is the essential advantage of doing a post-mortem on this particular body would it? --- It has that disadvantage.

That you would agree surely is a very grave disadvantage is it not? --- It is some but it is made up by the very detailed report.

It is a fact is it not that the apex of the heart was the part that you described as shot away? --- The apical half of the left ventricle, yes.

And that can be described as being the apex of the heart? --- Well strictly not, but still that doesn't matter, it's essentially so.

This area is, is it not, in a position between the 5th and 6th ribs? --- Not necessarily.

Would you not say that that is where - from the point of view of any anatomical description - you would say where the apex of the heart is? --- No, I would not say that. I would say that is a standard position for a cadaver description but not for a woman late in pregnancy.

What do you suggest, that the heart goes even higher do you? --- Her heart can be displaced.

But it would go higher would it not in pregnancy rather than lower? --- It can go outwards, it is likely to go higher.

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It is very very likely to go higher is it not?
--- Not very much higher.

But if it is displaced at all the probabilities
are, are they not, that the heart would go
higher? --- Certainly.

So that it would be closer to the 5th rib than
the 6th rib, if anything? --- The actual apex?

Yes? --- Yes.

You would describe this angle as I say as a very
steep downwards direction as distinct from the
horizontal, would that be fair to say? --- Yes,
yes.

10

But you believe from your observation of the
wound that the mass - or the shot entered the
body en masse as you put it, without
disintegrating? --- That's what I felt.

And proceeded as you have told us, on this sharp
downward angle? --- Yes.

If I may just before coming back to this have a
look at the other matters you have mentioned as
being affected.

20

In the case of pregnancy, certainly of this
duration in this particular case, the spleen is
fairly high up, is it not, on the left side? ---
It always is high up.

Yes, but particularly so in a fairly late
pregnancy, is not that so? --- Well, you see, the
spleen lies against the diaphragm, so that it is
already up at the upper part of the abdomen.

But it goes even higher in late pregnancy, does
it not? --- Slightly.

30

The left kidney, of course, is higher than the
right kidney, is it not? --- As a rule, yes.

And the top pole of the left kidney could be
described, could it not, as fairly high up? ---
Certainly.

So that to catch the top of the spleen and the
kidney, the left kidney, no great angle would be
necessary, would it, from a point of entry in

this particular case? It could be a relatively, not precisely, horizontal, but a relatively horizontal direction to catch the spleen and kidney? --- I would not think so, for this reason: the spleen and kidney are at the very peripheral part of the base of the conical area that I described as the distribution of the shot; and I have also described the shot as expanding in a conical area. When I refer to the line of the shot I am referring to the axis of the cone, going downwards. So that if these organs - the spleen and upper pole of kidney - are hit, they are hit by expanding shot, not by the direct line of the shot. So I don't think that it can be ..

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Well, you say that whatever part - whether it was the expanding shot or the direct line of the shot that hit the kidney, the fact is that whatever hit it would not have to go at very much of an angle, would it, when you take the point of entry of this wound, to take the top pole of the left kidney and the spleen? --- I'm sorry, I don't follow. Actually, I feel that what I am considering is the line of shot, the axis of the cone going through the centre of the skin wound, down through the diaphragm, virtually the centre of the dome of the diaphragm. Then if these things are shot to the side, go to the posterior retro-abdominal wall, where they hit the kidney, tail of the pancreas and spleen, yes, they are hit, but they are not in the direct line of the shot.

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But it is not at much of an angle, it does not require much of an angle, is all I am putting to you, doctor, from the horizontal to get those particular organs? That is all I am suggesting? --- It doesn't require very much ..

Very much of an angle from the horizontal from the point of entry of this wound to hit those particular organs? --- No, from the horizontal, not.

Let us talk about angles, doctor. You spoke, did you not, originally at the inquest of an angle of 45 degrees to the horizontal? --- Yes.

That is, of course, the downwards line ..? --- The line of the shot in reference to a horizontal plane.

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(continued)

And this conical area you speak of as embracing or encompassing the distribution of shot, I take it you mean that the base of the cone is towards the feet? And the point of the cone towards the point of entry, is that correct? --- That is so, yes.

So the shot is expanding as it goes down within this area of the cone? --- Yes.

As I said you talked about the angle of 45 degrees to the horizontal. You also talked about the sagittal plane, would that be correct? --- I did. And also the coronal plane.

10

We will just try and get these terms defined. The coronal is - the coronal plane is the forward plane, is it? --- No, what I am referring to there as the coronal plane is the plane which is the plane which bisects the body from side to side, or any plane parallel to it. The sagittal is the plane which bisects the body from fore and aft or any plane parallel to it.

20

Firstly, let us look at the sagittal plane - the sagittal plane is, in fact, horizontal to - at right angles to the horizontal, is that correct? --- Both the coronal and the sagittal are vertical to the horizontal.

And right angles to the horizontal, are they not? --- Yes.

Doctor, you described in the inquest, did you not, that the point of entry was, as you have indicated, 45 degrees to the horizontal? Some 30 degrees to the sagittal and about 20 degrees or less to the coronal plane? Doctor, if the sagittal plane is at right angles to the horizontal, and you have got a 45 degree downward angle to the horizontal, would not the sagittal - the angle to the sagittal plane, does it not follow that the angle to the sagittal plane must be 45 degrees? --- No. I think what is fair to say is that those angles do not integrate geometrically, but I would not say that if the line of fire is at 45 degrees to the horizontal it must be at 45 degrees to the sagittal.

30

40

Doctor, surely if the sagittal is at right angles to the horizontal, it must be? --- No.

I thought you conceded that the sagittal plane is at right angles to the horizontal? --- I did.

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And if you have an angle at 45 degrees to the horizontal, does it not follow as a matter of elementary geometry that you must have an angle of 45 degrees to anything which is at right angles to the horizontal? --- No, not when you are dealing with three planes set at a position like that.

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10 In other words, you say, the sagittal is not at right angles to the horizontal? --- No, I'm not saying that at all. I did say to you that the three planes were at right angles. What I did say, and what I have thought about subsequently, is that these angles do not geometrically integrate.

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20 Well, why use them, doctor? --- I used them because they were my measurements, or my estimates, which I made at the time. I don't wish to retract them.

Robert Ewing
Scott
Charlton

Cross-
examination

Well, as you say, they are pretty rough estimates, are they not? --- I wouldn't describe them as rough estimates, I would call them careful estimates.

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I withdraw the word "rough", I meant "approximate"? --- They are estimates, as good as I could make at the time.

30 Or as good as you can make subsequently, are they not? --- I'm not making them subsequently, I made them at the time. When I found ..

What do you say now, that they are incorrect? --- No, I don't.

Well, what estimates do you make now? --- Exactly the same.

I thought you were somewhat indicating that you were not? --- No, when I found, and read my report, and found that they did not integrate geometrically, naturally I wonder why they don't, have I made an error?

40 It is pretty hard to reconcile, really, is it not? --- I don't think so.

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Well, why were you wondering if you had made an error? --- If I go over a report and I see angles which don't integrate geometrically, I wonder if I've made an error. I go over in my mind and consider how I measured them, and I decided that I could think of no error that I made. So then I try to ask myself, why is it that they do not integrate geometrically, and the only thing that I can think which is reasonable is that since I made these estimates carefully at the autopsy, and then I have to consider that the position of these structures and planes is one thing before the shot hits this woman, it is another perhaps at the moment she is struck, it is another at the shot is dispersed, it is another at the time I've got her on the autopsy table. 10

Well, which one are you speaking of, which state? --- I think it is fair to say that in the autopsy report I've said at the time of the autopsy I made these observations and at the time I interpreted them as so and so. 20

What you are saying is that your angles that I have just mentioned could vary from the time of the autopsy and the position of the body at the autopsy from what in fact the angle of entries were? --- What I have to do is to see what I see at the autopsy and estimate the line of fire as it has occurred.

Is that what you were doing? --- I think so. What I had in front of me were the information at the autopsy; what I had to estimate was what had occurred. 30

Doctor, you would agree would you not that the sight of a wound itself gives no clue as to direction of the shot does it? Looking at the wound itself? --- None at all. And except may I say the wound itself, except as I saw it with these organs protruding, it was clear that the shot had gone downwards ... 40

And you base that do you not on the fact that you believe that the pressure I take it of a shot had forced the spleen and so on upwards? --- Yes. There is also one other thing which I have described in the autopsy, and that is that below the lower margin of the skin where there was a fractured rib, the 10th rib, which led me to feel that the force had gone downwards and certainly was no..

That supported your view that the wound had gone downwards? --- Yes. That the shot had gone downwards.

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Just to complete what I want to put to you about these angles, as you have told us you have described the sagittal as - I am sorry - that the angle is 30 degrees to the sagittal plane, 20 degrees or less to the coronal plane, then went on to say "Passing steeply downwards, slightly forwards and slightly inwards". Is that true? --- That's correct.

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Could you describe 30 degrees to the sagittal plane and 20 degrees or less to the coronal plane as slightly forwards and slightly inwards? --- I did, and I do again.

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Does it reconcile do you think with the 30 degree angle and 20 degree or less angle respectively, as an accurate description? --- I think it does, I did it then and I think it still.

Robert Ewing
Scott
Charlton

Cross-
examination

Could you describe a 30 degrees angle as a slight angle? --- A 30 degree angle?

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Yes, to the sagittal plane? --- Oh I would describe it as a 30 degree angle and either slight, large or anything else, it is just what it is, a 30 degree angle. What I am concerned is, not so much with the angle but what that angle means as to the direction of the shot.

But, doctor, whether you would describe it as a 30 degree angle, all I am pointing out to you is that you in fact described it as slightly forwards respectively and slightly inwards, angles of 30 degrees and 20 degrees? --- No, I think that I'm not referring to the angles there, I am saying I describe and state the angles as estimated, and to me that indicates that the line of shot is slightly forward - is steeply downwards, slightly forwards, slightly inwards.

The 45 degrees you said is steeply downwards? 45 degrees for horizontal you described as steeply downwards? --- It is.

And you feel these descriptions are quite adequate and accurate? --- I feel they are adequate because the description of my - of the

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line of shot going downwards steeply does not depend solely on the angle, it depends partly on the distribution of the shot.

We can be clear that it goes downwards anyway?

--- Yes.

And pretty steeply downwards? --- That's my impression.

It is your experience is it not from a great number of autopsies you have participated in that a wound caused by accident is normally in what could be described as a most bizarre direction, would you agree with that, that you get the accidental wound causing all sorts of very extraordinary and unexpected directions of line of travel? --- You mean gunshot wounds? 10

Yes, the accidental shooting? --- Yes, I have seen that.

And you would also agree would you not - I think you have already indicated this, but just to make it clear - that the angle a shot enters the body would to a large extent depend on the body position at the time of entry, whether it is forwards or stooping or leaning or upright and so on? --- Only in relation to the direction of the firearm. 20

Presuming the firearm is pretty well horizontal? --- Yes.

And doctor, I may perhaps illustrate this. Assuming for the purpose of this illustration, doctor, that a woman who is right handed has a Birko in her hand near a 2'6" bench, bench about that height, follow? --- M'mm. 30

And she has also got a cupboard door to her left open and bending down with her left shoulder towards the lower shelf, somewhat in the position I am indicating here? --- Yes.

And to her left is a person with a gun approximately hip height, his height being about 5'7", so that you have, assuming that is the left shoulder and the one nearer the wall the right shoulder, you have a position some what similar to this? --- Yes. 40

Now if you take the horizontal and it comes into this position, follow? --- Yes.

When you examine the body subsequently it is in this position, is it not, from this position to this position? --- Yes.

And you have pretty well the direction you described on the crier yesterday, do you not, as what you considered the approximate angle of shot from the horizontal? --- Yes.

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10 From your experience you would, would you not, regard it as odd for a shot being deliberately fired from a short distance away or perhaps from any distance, but a shot being deliberately fired should be fired at the side of a person?
--- I must say I have no opinion on that at all.

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You have had a lot of experience of autopsies in the case of suicides, have you not, gun shot suicides, is that right? --- I've had some, yes.

Robert Ewing
Scott
Charlton

Cross-
examination

20 It is the invariable situation is it not, that a person so committing suicide puts the muzzle of the gun in front right at the heart? --- Or their mouth.

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Leans over and - leans forward and presses the trigger, is that right? --- Yes.

And the object of that is it not is to try and cause instantaneous death? --- Yes.

And the most - one of the most effective ways of causing instantaneous death is to put a bullet through the heart, is it not? --- Yes.

30 I take it you would agree that a person shooting deliberately normally would, one would have thought, want to cause instantaneous death, would they not? --- Yes.

Because if they do not cause instantaneous death, of course somebody might dash in having heard a shot, and the victim may still be able to say "What happened"? --- Yes.

40 This particular wound has at least this puzzling feature, the arm had to be got out of the road, you would agree with that, would you not, in a forward direction? --- Yes, I would say so.

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It was fired from the left side of the chest - rather to enter the left side of the chest as distinct from the front or back, that is so, is it not? --- Yes.

It was fired so, whether because of the position of her body or the gun, it went at a steep angle downwards in the way you have described? --- Yes.

From what you would agree, would you not, would be a fairly short distance away? --- I can't agree specifically but my feeling is that it is. 10

It is a gunshot wound of approximately 2" hole? --- Yes.

Or probably less. Doctor, a person firing in that position - or a shot fired in that position, to go at that steep downwards angle, hitting the 7th, 8th and 9th ribs, would - you would think, would you not, that it was a bit of a fluke to take the top part of the heart, would you not? Situated nearer the 5th rib and the 6th rib? --- I don't quite follow what you mean by "fluke". 20
Are you implying that it is fired intentionally?

I am suggesting it is a bit unlikely, is it not, that normally a shot fired at that angle, or to enter the body at that angle, which in fact it did enter, should actually blow the top of the heart away at all? --- Not the top of the heart, the apex of the heart, which is the lowest part of the heart.

I am sorry, the apex of the heart, would you agree with that? I mean, it did happen in this case, we know, but it is surprising, is it not, when you look at the mathematics of the angles and so on? --- The angles are estimates. 30

I appreciate that, but I am taking your estimates because they are the only ones we have got, doctor, do you follow, we have no others. But taking your estimates, you would agree it would be a bit unlikely normally that the apex of the heart would have been shot away at all? --- I must say I wouldn't. The reason why is at this point, in the mid-axillary line, where you perhaps have not conceded it is a good point to take, but still I maintain that it is not unreasonable. The 8th, 8th and 9th ribs are (sic) very much higher in the sense that the ribs start 40

relatively high on the spine and come downwards, sloping down, so that in a sense, with the ordinary carrying position of the arms, the tip of your scapula or shoulder-blade, is over the 7th rib. So that gives you a line. Now down here in the mid-axillary line, in the angles I have described ..

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10 But it is still steeply downwards, doctor? ---
It is steeply downwards, but then of course I have said, and I think I want to emphasise again, that when I have talked of the angles I am talking about the line of fire; whereas the heart is not directly in the line of fire, but it is within the conical area of distribution, and therefore it gets chopped off.

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20 Doctor, I agree that this in fact happened, there is no dispute about that in this particular case, that the apex of the heart was shot away, as you described it, I am not disputing that? --- No.

Robert Ewing
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But what I am putting to you is ...? --- Well, I must say I am not surprised that the apex of the heart is shot away over that area of distribution. That is all I am wanting to convey.

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With your anatomical knowledge, with your specialised anatomical knowledge, you say this is a situation which in this particular case does not surprise you? --- It doesn't surprise me.

30 And in fact it happened, of course, did it not?
--- Yes, it appears to have happened.

Well, that would fortify your view, would it not?
--- I beg your pardon?

40 That must fortify your view, obviously. What I am saying is, doctor, that - well, perhaps that is a matter for comment. Doctor, I think you said yesterday - and I just want to make it quite clear, if it is not already quite clear, and it may not be, that one third of the heart was shot away, approximately? --- About that.

There is no question, doctor, when you say one third of a heart was shot away, - I just want to perhaps put it quite clearly, that what was shot away was a large portion of the left ventricle of

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the heart? --- I think I have described it there as the apical half or so of the left ventricle.

What you said yesterday was, "I can recall the essential features of it, and that was that a large portion of the left ventricle of the heart, which is the main pumping place for arterial blood, had been shot away"? --- I did say that, and then I subsequently referred to my notes and read out Item 4, and then His Honour asked me roughly ...

10

Yes, but this is substantially correct, is it not, what I just put to you? --- Yes.

As you say, this is the main pumping place for the blood, is it not? --- Arterial blood.

So that immediately this is shot away blood immediately ceases to be pumped? --- Yes, I said that.

And this must mean surely, doctor, that death is not only instantaneous, but would have occurred before the body reached the floor, would it not? --- It all depends what you mean by death.

20

Perhaps it does, but it is impossible for anyone to move, is it not? --- Yes, I emphasised that yesterday.

It is impossible for anyone to use their brain because there is no blood being pumped, would you agree? --- I gave it my opinion yesterday that death was instantaneous.

And by instantaneous you mean instantaneous, did you not? --- I did.

Did you in the course of your post-mortem examine the clothing for the purpose of determining, for instance, the size of a hole in any part of the clothing? --- Only very briefly, and that was that the body was presented to me on the autopsy table, the police photographer was there, and he wanted to take a picture of the wound. As the mortuary attendant pulled the clothing away, I could see it was covered with blood and torn, but beyond that I made no examination.

30

And you did not examine it to see what hole marks were in the clothing at all? --- No.

40

You did not examine the clothing to determine whether there were any burn marks or absence of burn marks at all? --- No.

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Well, this would normally be - this would be a normal and useful examination, would it not, in doing an autopsy? --- I think it should have been done.

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MR. HOWSE COMMENCED RE-EXAMINATION

Re-examination

10 MR. HOWSE: Doctor, so far as concerns the report that you made at the conclusion of your autopsy examination, did that contain any more detail than you gave here in evidence yesterday? --- No, the report which I produced here and read from and the information that I gave from that is just what I made on the report. This is a complete and full copy of the report.

20 Perhaps so, doctor, but did you provide us with all the information yesterday contained in the report? --- Well, I didn't read the report out, therefore I suppose there is some information in it which I haven't presented. But looking back over yesterday and today I think I've presented all the significant points. But I would read it if you wish.

I am not asking you to do that, doctor. When you gave evidence at the inquest how much of the information contained in your report did you give to the magistrate at the inquest? --- Less than I have given in this Court.

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MR. LAZARUS: Your Honour, I suppose this does arise out of cross-examination.

HIS HONOUR: I was wondering that. What are you putting this to, Mr. Prosecutor?

MR. HOWSE: Your Honour, in relation to the cross-examination directed to whether or not this witness was the only person whose opinion could now be presented to the Court, and in relation to his answer, "I made a full report", which is available for anyone else to examine for the purpose of expressing their opinion.

10

HIS HONOUR: But he already said that, did he not, to Mr. Lazarus.

MR. HOWSE: Yes, Your Honour, I merely wanted to establish that there was on record available to the defence all the information needed for that purpose if needs be.

(TO WITNESS) Doctor, at what angle do you say the shot entered the deceased's body? --- At 45 degrees to the horizontal plane, and at a lesser angle to the sagittal plane and at an even smaller angle to the coronal.

20

In determining the angle of 45 degrees to the horizontal plane what bearing, if any, did the distribution of the shot inside the body have? --- Some, but I think of a secondary nature. I took my points from the centre of the entrance wound and the central area of the distal part of the wound, which was the centre of the dome of the diaphragm. Around that axis I felt that the shot was symetrically distributed over a conical area, with the exception that it was concentrated in the lower part of the pleural sac, which I felt was explicable most likely by the effects of gravity and being swept there by haemorrhage, so that I felt that it was not truly representative of the actual distribution of the shot as inflicted by the gun.

30

Does that mean this, that subject to one qualification the shot found inside the body was symetrically placed around the axis of the cone you have been telling us about? --- That was my judgment

40

And the qualification to that is that you found

more shot at a lower point or side of the cone?
 --- On the outer part of the left pleural sac,
 yes.

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Perhaps I should ask you this to get that clear.
 That concentration of shot, was that on the
 higher side of the axis of the cone or the lower
 side? --- Well really neither because I am
 referring to a cone which is passing obliquely
 into the body, its base oblique and its apex
 here at the entrance wound. This concentration
 of shot I found down here (indicates), if you can
 imagine a cone going into the body, this is shot,
 as it were, sliding down the side of the cone
 and concentrating on a ledge here of residual
 diaphragm, and that is where it was, along with
 the pieces of rib and the pad of cartridge.

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You have told us the part of the heart that was
 destroyed by shot, whereabouts was that part of
 the heart situated in relation to the entrance
 wound on a vertical plane. Do you follow the
 question? Assuming that the subject is standing
 upright, then whereabouts was the part of the
 heart blown away in relation to the entrance
 wound, in a vertical sense, do you follow? ---
 Yes. I would feel approximately about - this is
 just from memory and not measurement, about 3
 inches in and about 3 inches medially and about
 3 inches inferior to the centre of the wound.

Robert Ewing
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Perhaps you might just explain that in terms that
 I can follow and the jury can follow? --- Well
 the entrance wound is in the side of the chest and
 I am referring to a point about three inches in
 from that and three inches down.

Once again, what part of the entrance wound are
 you taking as your basis in giving that? --- The
 centre of it, in other words the 8th rib in the
 mid-axillary line.

At the base of this cone - I am sorry, I will
 withdraw that. Can you give the Court the
 approximate measurement of the base of the cone,
 of the conical distribution of shot that you
 have spoken about? --- The base of the cone I've
 taken it is from the region of the upper pole of
 the left kidney and the tail of the pancreas, where
 I found the most inferior peripheral part of shot
 in that part of the body.

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'Most inferior' does that mean the lowest does it? --- The lowest below the head, and the base of the cone passes obliquely upwards and inwards involving the stomach and through the diaphragm and up to the inner aspect of the lower lobe of the left lung.

What would you say the measurement of that was? --- Well from the lower lobe of the left lung down to the upper pole of the kidney, I think I even said yesterday really, I gave it something of a diameter of about six to seven inches. I may be wrong in thinking that but that was my impression.

10

Does that mean therefore that at the base of the cone there was a spread of shot over this area? --- That is what I found, yes.

Doctor, would you be good enough to have a look at photograph 2 of Exhibit 'A', and in particular if you would look at the right hand of the deceased? --- Yes, I can see that.

20

Are you able to offer any explanation as to how the hand or fist would become clenched or in the position in which it is? --- I take it this picture is taken very shortly after death?

Well the evidence is somewhere around about half past two, that is about an hour and a quarter? --- No, I have no explanation for it.

Would it be brought about or contributed to by the onset of rigor mortis?

MR. LAZARUS: I do not want to unnecessarily interfere with my learned friend, but it is submitted this is clearly leading.

30

HIS HONOUR: Yes, it is, I do not know how it arises out of cross-examination.

MR. HOWSE: I submit that it does with respect, Your Honour, in relation to questions that were asked presumably on a hypothetical basis at this stage, assuming that the deceased was standing holding a Birko in her right hand and bending over towards the cupboard with her left hand.

40

HIS HONOUR: Yes, perhaps so.

MR. HOWSE: In relation to that, your Honour, I want to ask him about the position in which the right hand is.

HIS HONOUR: Well he says he cannot give any explanation?

MR. HOWSE: No, Your Honour.

HIS HONOUR: That is it, is it not?

MR. HOWSE: There is something else I want to put to him on that topic.

10 HIS HONOUR: You cannot cross-examine him?

MR. HOWSE: No, Your Honour.

HIS HONOUR: Your witness.

MR. HOWSE: I realise that, Your Honour. I hope I will not be cross-examining him.

HIS HONOUR: Well if you start putting leading questions to him you are immediately cross-examining him.

MR. HOWSE: Yes, Your Honour.

20 HIS HONOUR: Do you say you have got no explanation for that, doctor, that is what you said, was it not? --- I have got no explanation particularly in reference to rigor mortis, because I do not expect rigor mortis to have started at that stage, therefore I do not think it is due to that and I have no other explanation for it.

MR. HOWSE: You were asked whether or not you had examined the clothes for burn marks, you said that you had not? --- That is so.

30 In those circumstances would you take the clothes again, Exhibit 'H', and make such an examination?

MR. LAZARUS: Again I do not know how this arises and I do not know what its probative value is in any event. This is some months after the death - of clothing which has obviously been handled for some period by...

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HIS HONOUR: This does not arise out of cross-examination, Mr. Howse.

MR. HOWSE: I submit that it does, Your Honour. My learned friend raised it, he asked the witness whether or not he had done it, the witness said he had not.

HIS HONOUR: Well that is right, but how does it arise out of cross-examination to ask him to do it now?

MR. HOWSE: Well in my submission it does, Your Honour, on the basis that this is an issue that has been raised in cross-examination.

10

HIS HONOUR: The only issue raised was whether he had done it and he said "No, probably I should've." You could have got that from him in-chief if you had wanted to.

MR. HOWSE: Yes.

HIS HONOUR: Unless you want to do it by leave, I will give you leave to do it if you want to.

MR. HOWSE: In view of Your Honour's ruling I ask for leave to do it?

20

HIS HONOUR: Yes, very well.

MR. HOWSE: Would you now do it doctor, please. Perhaps this time if you would start with the cardigan. What do you say about that? --- I just see a ragged hole, bloodstained, I don't see any burn mark.

Powder marks? --- None that I can recognise but I think it is fair to say that if there was some powder there it could be there without me being able to recognise it amongst the dark blood.

30

Would you take the frock, the blouse, the slip and the bra? --- On these two garments in the region of the tear there is white powder, that is the brassier and the slip, but I can't - my remarks in reference to the frock and to the blouse are the same as to the jumper.

MR. HOWSE: Any burn marks on any of those garments? --- I can see none.

WITNESS WITHDREW - EXCUSED

40

FRANCIS KEVIN COATES sworn and examined

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DETECTIVE DONEHUE IN COURT DURING EXAMINATION-
IN-CHIEF

WITNESS TO MR. HOWSE: My full name is Francis
Kevin Coates. I am a senior detective attached
to the Homicide Squad at Melbourne.

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10 MR. HOWSE: About a quarter to 7 on the night of
Thursday 8th May this year, in company with
Detective Donehue and Detective Sergeant
Morrison, did you go to the mortuary of the
Bendigo Base Hospital and there were you present
during part of the autopsy conducted by the
previous witness Dr. Charlton on the deceased
Beverley Joan Ratten? --- I was.

Evidence
for the
Prosecution

Following on the autopsy did you proceed to
Echuca? --- I did.

Francis Kevin
Coates

Examination

And after having a conversation with police there
did you go to 59 Mitchell Street, Echuca? ---
I did.

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20 What happened after that? --- After going to 59
Mitchell Street we returned to the Echuca police
station, where I had a discussion with local
police. Whilst this took place the accused man
was speaking to a solicitor, Mr. Cleland. After
having a discussion with police at Echuca, in the
company of Detective Donehue, at 10.40 p.m. I
interviewed the accused. The form of the interview
was that I would type down the question, ask it of
30 him, and on receiving his reply I would type down
his answer. This procedure was adopted throughout
the interview. During the course of the interview
there were several breaks, one of 15 minutes
duration, another one of 25 minutes duration.
During the 25 minute break I had a discussion with
the previous witness, Mrs. Jennifer Kemp. During
the interview with the accused he requested to be
allowed to read a statement being made by Mrs.
Kemp. I made enquiries and learnt that Mrs.
Kemp..

40 Well, you were not able to let him read it at that
stage, were you? --- No, sir. At the conclusion
of the interview the accused read the interview
through aloud, I followed him on a copy, as did
Detective Donehue. At the conclusion of reading
the interview he made several alterations to it,
but declined to sign it without first consulting

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the solicitor. He then consulted Mr. Cleland and after consulting him he signed the interview.

MR. HOWSE: Do you produce the record of that interview? --- I do.

Is that it? --- This is the interview.

EXHIBIT EXHIBIT "P" Record of interview

MR. HOWSE: Before you start reading it, perhaps you might indicate to the jury whereabouts the accused man in fact placed his signature? --- At the foot of each page.

10

There are a number of them, are there not, and is it at the foot of each page? --- And throughout the interview, where there are typing errors or matters which he wanted altered, he put his initials, and on the final page he signed it, Detective Donehue signed it and I signed it.

Now will you read it out, please? --- "Record of interview between Leith McDonald Ratten and Senior Detective Coates at the Echuca police station on Thursday 7th day of May 1970. Senior Detective Coates questioning and typing, Detective First-Constable O'Donohue present. Time of commencement 10.40 p.m."

20

Just pausing, the gentleman you called Detective O'Donohue, that is in fact Detective Donehue in Court? --- That is correct. This is the first time I had worked with Donehue and I was under the impression that his name was O'Donohue at that stage.

WITNESS WAS HEARD TO READ EXHIBIT "P"

30

MR. HOWSE: As you go through this would you mind just indicating any alterations that have been made.

WITNESS: " Q: You were running the Turk's head or about to go through the double barrel shotgun here when it discharged, would that be correct?"....

MR. HOWSE: Perhaps you might pause there. Probably everybody knows what a Turk's head is, but would you have a look at part of Exhibit "J", the cleaning rod? --- This, I understand, is a Turk's head.

40

The thing on the end? --- Yes.

WITNESS IDENTIFIED EXHIBIT "F"

WITNESS CONTINUED TO READ EXHIBIT "P"

WITNESS: "He stood up and held his hands at hip level and said, 'At waist height, that's the way I was working', and he demonstrated with his left hand.

MR. HOWSE: Will you show us what he did? --- He was like this (witness demonstrated).

10 Was he doing it with his left hand or his right hand? --- His left hand was moving horizontally.

WITNESS CONTINUED TO READ EXHIBIT "P"

WITNESS: ... "He then took up the gun and demonstrated with the shotgun held about level with his navel and commented 'About here'".

MR. HOWSE: Perhaps if you would take the gun (Exhibit "C") and show us? --- Witness demonstrated.

20 Are you able to show us standing there in the witness box? --- Yes, he had the gun at about on a level with his navel, pointed roughly horizontal to the ground and he was going like this (demonstrated).

Where you assume his navel was, I suppose? --- Yes, sir. "He commented 'About here'".

HIS HONOUR: Is it "here" or "there", Mr. Coates --- I'm sorry, sir, "there".

WITNESS CONTINUED TO READ EXHIBIT "P"

30 WITNESS: "When the police went to your home this afternoon this bit of wood here .."..

MR. HOWSE: Would you take Exhibit "C" again, please. --- This piece of wood on this part of the gun was not on the gun (indicated).

WITNESS CONTINUED TO READ EXHIBIT "P"

WITNESS: Q. "Do you know how it came to be off the shotgun?" A: Yes I pulled it off"...

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MR. HOWSE: I take it that although the piece of wood, the fore end was not on the shotgun you had it there at the time of the interview and showed it to him, did you? --- Yes, sir.

WITNESS CONTINUED TO READ EXHIBIT "P"

WITNESS: Q. "When did you do that?" A: "During the - or when I was cleaning the barrels".
Q: "You said the words 'During the' and stopped. What was it you were about to say?" A: "Just the way I was going to phrase it. (Pause): I was going to say 'during the process of cleaning the barrels'." 10

MR. HOWSE: Did he in fact stop after saying the words "during the" in the previous question?
--- Yes, there was quite a pause.

And did he in fact pause during the answer to the question? --- That is right.

WITNESS CONTINUED TO READ EXHIBIT "P"

WITNESS: Q: "How long have you had the Winchester under and over?" A: "Less than 12 months". 20

MR. HOWSE: Was that shown to him during the interview? --- No. The only gun in the interview room was Exhibit "C", the side by side.

WITNESS CONTINUED TO READ EXHIBIT "P"

WITNESS: "You told us you had been cleaning rust from the barrels of this shotgun (indicated) when it discharged today. Is that correct?"
A: "Yes".

MR. HOWSE: Did you again indicate Exhibit "C"? --- I did, sir. 30

WITNESS CONTINUED TO READ EXHIBIT "P"

WITNESS: Q. "Did you load that shotgun (indicating Exhibit 'C') and shoot your wife yesterday, that is 7th May?" A. "No". Q. "Can you give any reason as to how this shotgun (indicating Exhibit 'C') came to discharge yesterday?" A. "No."
There was quite a bit of crossing out on the typewriter here, which he altered.

MR. HOWSE: Well the previous one, the alteration of - who actually made the alteration as distinct from the initialling? --- I made the alteration.

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What was the situation in relation to the previous one where "morning" was deleted? --- I also deleted that on the typewriter.

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10 MR. HOWSE: Will you have a look at Exhibit "F" again? Are they the articles that -? --- These are the two articles I was referring to.

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WITNESS CONTINUED READING EXHIBIT 'P'

MR. HOWSE: Would you have a look at Exhibit 'M'? Is that the article? --- Yes, I said to him, "Do you recognise this green pad at all" and indicated Exhibit 'M' to him. He said "Yes."

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WITNESS CONTINUED READING EXHIBIT 'P'

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WITNESS: "At 3.38 a.m. Sergeant Morrison interrupted to bring a Doctor Jones into the room."

20 MR. HOWSE: What did he interrupt? --- At this stage the accused was reading the record of interview.

In what fashion? --- Aloud.

WITNESS CONTINUED READING EXHIBIT 'P'

MR. HOWSE: Page 12 is the one that you are now reading from, is it not? --- 12 is correct, sir. Yes, actually the page number is on the top of the pages and the 13 on the bottom indicates the next page is 13, not that this is 13.

WITNESS CONTINUED READING EXHIBIT 'P'

30 MR. HOWSE: When he was reading over p.11 did that in fact happen as you have described in that question? --- Yes, sir.

WITNESS: Several alterations were then initialled by him and made.

MR. HOWSE: How did that come about, were they pointed out to him or what? --- No, he went over it again from the first page picking out typing

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errors or mis-spellings or anything he wanted included and made them as he read through a second time.

WITNESS CONTINUED READING EXHIBIT 'P'

WITNESS: He signed the record of interview and also signed the foot of each of the 13 pages.

MR. HOWSE: I take it he did that after those last few questions and answers were typed in? --- Yes, sir.

HIS HONOUR: When you completed that did you a copy of it to the accused? --- Yes, Your Honour, on the completion of the signing of the record of interview a carbon copy of this Exhibit was handed to the accused.

10

In the presence of his solicitor? --- Yes, sir.

MR. HOWSE: You say that he read out this document and read it out aloud, did he read it out correctly? --- Yes, sir.

How are you able to say that? --- I was following on a copy of it.

20

What, a carbon copy? --- Yes, sir.

Did something happen at about half past four on the morning of Friday 8th May? --- Yes, I had a short talk with Detective Sergeant Morrison, following which in the company of Detective Donehue I said to the accused, "You have already been told that you are to be charged with murdering your wife. With your permission we desire to go to your house and get you to indicate to us how you were holding the gun and where you were standing when your wife was shot. You are under no obligation to do this unless you desire. Do you understand?" He said "Yes." I also told him photographs of these positions would be taken. I said "Are you prepared to accompany us to the house to enable these photographs to be taken?" He said, "Yes, if my solicitor can come too." He then spoke with Mr. McDonald from a legal firm in Echuca, as a result of which Mr. McDonald, the accused, other police and myself went to the house at 59 Mitchell Street, Echuca. On arrival at the house I said to him, "You have been told your rights, Mr.

30

40

Ratten, with your permission we will ask you to show us what happened." He said "all right." We then entered the kitchen. I said to him "Put me where your wife was standing" and he nodded towards some cupboards.

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10 Would you be good enough to take up the photographs, Exhibit 'A' and perhaps if you would go straight to photograph 12? --- I said to him, "Put me where your wife was standing" and he nodded towards the cupboards which can be seen under the cannisters on the right hand side of the photograph. I said "About here?" He said, "A bit further up."

Where were you at that stage? --- I would be standing more to the right of the photograph, where I am shown there, further back ... I said to him, "About here?"

20 HIS HONOUR: You said Ratten said "A bit further up"? --- Yes, he said "A bit further up" and beckoned me towards him with his left hand. I moved slowly closer towards him. I said "Here?" He again said "A bit further up."

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MR. HOWSE: Well where were you by this time? --- Moving towards him, almost to where I am now shown, but still back to the right. I said "Here?". He said "right." I remained in that position.

30 What is this third position you are telling us about, or is it a third position? --- It is the third position. On two occasions he beckoned me to come closer towards him after I originally took up the first position. I said to him "Standing upright and straight?" He said, "Yes." He was then given the side by side shot gun, Exhibit 'C' here, and he pointed it at me and the photograph was taken.

40 What do you see in photograph 12? --- That is a shot of the photograph which was taken, either that or 13, there were two taken. I said to him, "Hang on a minute, we'll take another." Another photograph was then taken. These two photographs are numbers 12 and 13 in the photo book. I said, "Can you indicate what you did with the gun after it was fired?" He said, "I don't know, it just dropped."

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Before that was there something? --- Oh yes, I am sorry. Shown in photographs 12 and 13, just near his right hip, there is an object. This in fact was a blue sponge type wettex.

Would you have a look please at Exhibit 'L'?
--- That is the wettex I am referring to. He took it up, and whilst holding the shotgun in his right hand with his left hand he moved along the tops of the barrels of the weapon and he said "I was wiping the gun like this" (indicates).

10

I am sorry, I was not watching that, will you just show us what he did with it? --- He was going like this (indicates).

With the wettex in his hand? --- Yes.

What did he say about it? --- "I was wiping the gun with the wettex" and I think he included the words "Like this". Detective Donehue did take notes of this conversation which took place which I am in position of.

20

Did you check those notes? --- I did, sir.

And when did you check them in relation to the time when they were made? --- On our return to the Echuca Police Station.

How long approximately afterwards would that be?
--- Oh shortly afterwards, probably no more than quarter of an hour or so.

Were the events and conversations still fresh in your mind at that stage? --- They were, sir.

And were the notes an accurate record of what had happened and been said? --- Yes, sir.

30

And without referring to the notes are you able to recollect precisely what the accused said about the wettex? --- The words "Like this" I wouldn't be sure of. No, I can't say with certainty that I have correctly said what was said.

Do you desire leave to refer to those notes in order to refresh your recollection about what he said? --- I would.

40

WITNESS GIVEN PERMISSION TO REFER TO NOTES

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MR. HOWSE: Donehue was making the notes at the time in the room as these events took place was he? --- He was.

I said "Hang on a minute, we'll take another". The second photo was taken. The accused then said, "I've been wiping gun with this wettex" and he picked up the blue wettex, which I have indicated, from the sink.

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10 That is the wettex, Exhibit 'L'? --- Yes, sir.

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HIS HONOUR: The words "Like this" do not appear? --- Do not appear, sir, no. I said to him "Can you indicate where you put the gun after it was fired?" He said, "I don't know, it just dropped." We then returned to the - after the taking of these two photographs we returned to the Echuca Police Station where when we arrived at the police station he said -

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20 By the way, when you were out at the house and having these photographs 12 and 13 taken, was Mr. McDonald present at that time, the solicitor? --- Mr. McDonald was present.

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He was there too? --- Yes, sir.

COURT ADJOURNED FOR LUNCHEON AT 12.29 P.M.

COURT RESUMED AT 1.45 P.M.

FRANCIS KEVIN COATES recalled and warned

MR. HOWSE CONTINUED EXAMINATION-IN-CHIEF

30 Mr. Coates, we had reached the stage of having you describe to the Court how the accused, Mr. McDonald, yourself and Detective Donehue and the photographer had gone to 50 Mitchell Street and (sic?) the demonstration had taken place there, together with the photographing, and you then were going on to say that as you returned to the police station and refer to something that happened when you arrived there. Will you tell us what happened and what was said? --- After the taking of the photographs at 59 Mitchell Street we returned to the Echuca Police station, where the accused said to me, "Can I add to my statement?" I said, "If

40

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you desire, but it would be best if we wait till later in the day". He said, "No, I want to do it now, I've just thought of something". I said, "I suggest we wait until later". He said, "Can I see my solicitor?" This request was complied with and he spoke to Mr. McDonald, following which he said to me, "I want to make another statement now". Detective Donehue and myself - well, I interviewed him in the company of Detective Donehue. The procedure adopted was similar to the first record of interview. I would type down a question, ask it of him and on receiving his reply I would type it below the relevant question. This procedure was adopted throughout. At the conclusion of the interview the accused read it aloud, agreed that it was a correct record of the conversation and signed it.

10

Did he read it out correctly? --- He did, I followed on a carbon copy.

20

Do you produce the record of interview? Is that it? --- That is it, I produce it.

EXHIBIT

EXHIBIT "Q"

Second record of
interview

As soon as it is marked would you take it back and read it out, please? --- "Time, 5.10 a.m. 8/5/70, Echuca Police Station. Senior Detective Coates typing and questioning; Detective Donehue present.

Q: We have just been up to 59 Mitchell Street with you where you consented to take part in the taking of some photographs. On pulling up outside the police station on our return you said to me, 'Can I add to my statement?' I told you that it may be best to wait until later in the day. Is that correct?

30

A. Yes.

Q. I understand that you now want to see us now and not wait, is that correct.

A: Yes.

40

Q: I hope you understand that you are going to be charged with the murder of your wife Beverley Joan Ratten. You are not obliged to say anything

at all as it will later be given in evidence in Court. I want you to clearly understand that?

A: Yes, I understand.

Q: And is it also your decision to have this interview now and not later in the day after we have all had some rest?

A: Yes.

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10 Q: "Do you desire to read over aloud what I have typed as being a record of our interview?"

A. "Yes please." The record of interview was still in the typewriter, he then read it aloud.

"You have just read over aloud what is typed down here, are you satisfied that I have correctly recorded this latest interview?"

A: "Yes." Q. "I must again tell you that you are not obliged to sign anything or make any statements unless you wish. Do you desire to sign this latest record of our interview?"

20 A. "Yes." The time was now 5.30 a.m. on 8/5/70 and a copy of the record of interview was handed to Leith McD. Ratten. He signed it.

MR. HOWSE: If the record of interview was still in the typewriter how did you check it as he was reading it out, to see that he read out correctly? --- I would like to correct what I earlier said, I followed on the machine, reading the copy that was in the machine.

Later on that same morning -

30 HIS HONOUR: Was he given a copy of that?

MR. HOWSE: He was, Your Honour, the witness said that, Your Honour.

HIS HONOUR: I beg your pardon, yes.

40 MR. HOWSE: Later on that same morning did you go again to 59 Mitchell Street? --- At 10.45 a.m. the same morning - that is Friday 8th May - Detective Donehue and myself accompanied the accused at his request to the house at 59 Mitchell Street, Echuca as he wanted to get a change of clothing for a court appearance later the same morning. We accompanied him there. I was present in the front

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bedroom of the home when he changed, as also was Donehue. I took particular note of the condition of - he was stripped, to the waist. I took particular note of his upper body. There were no marks or bruises on him. Following his getting changed he made a request to be allowed to see his children who were at the home of a neighbour, or friends in another street. We granted this request and drove him to this house. After seeing the children and driving back to the police station, he said "I'm glad that Wendy was outside when it happened. After it happened she tried to come in the bathroom door but I kept her outside. She doesn't realise what's happened." He later appeared before the Echuca Court.

10

That is what, on a remand on this charge? --- That is correct. At 11.40 a.m. the same morning and again in the company of Donehue and also in the company of Detective Sergeant Morrison and First Constable Thompson I again interviewed the accused at the Echuca Police Station. I took notes of this interview.

20

When did you take them? --- At the time.

Without referring to them are you able to recall the interview that took place? --- Not the exact words.

Or the order in which the questions were asked? --- Not precisely.

And were the notes an accurate record of that interview? --- They were, sir.

30

And do you desire to refer to those notes in order to refresh your recollection? --- If I may please.

WITNESS GIVEN PERMISSION TO REFER TO NOTES

WITNESS: I said to him, "You have already appeared before a court on a charge of murder, you are under no obligation to make any statement or answer any questions which I might ask, but whatever you may say will be written down and may be later used in subsequent court proceedings, do you understand?" He said, "Yes."

40

Did you ask him a question, "Do you recall telling Mr. Donehue and myself, after you had seen your children-?" --- I said, "Do you recall telling Detective Donehue and myself that Wendy was outside at the time when your wife was killed?" He said "Yes." I said "Do you further recall telling us that she went to come in the bathroom door but you stopped her from coming inside?" Ye said "Yes." I said, "From what you say Wendy still does not know what has happened?" He said, "That's right." I said "The police have told us that when they arrived at 59 Mitchell Street yesterday afternoon Wendy was outside the front fence screaming her head off. What was she crying for?" He said, "I don't know."

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Did you say "I have taken notes of the conversation we have just had"? --- Yes, I said to him, "I have taken notes of the conversation we have just had, do you desire to read them over and sign them if you are satisfied they are correct?" He said, "No." I said "If you don't want to sign them do you want to read them?" He said "No."

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Did you say anything about whether or not he was obliged to? --- I did tell him he was under no obligation to either read nor sign it.

Was he fingerprinted that day, the 8th May? --- Yes.

Were you present? --- On the morning of - late in the morning of Friday 8th May the accused was fingerprinted at the Echuca Police Station by Detective Donehue. I was present when this was done. I was present for a particular reason. I took note of the hands of the accused, there were no abrasions on them nor any sign of any skin being off any of the fingers or the hands.

HIS HONOUR: Any what? --- No sign of any abrasions or any skin being off the fingers or the hands.

Any skin? --- That is correct.

Being off? --- No, sir, there wasn't.

MR. HOWSE: Or any sign of any injury at all to the hands? --- No, sir.

You have told us about seeing him stripped to the

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waist on 8th May of this year. Was there any other occasion shortly after that when you saw him in a similar state of undress? --- Yes, on the - at 12.10 p.m. on the following Thursday, 14th May, in the company of Detective Donehue I saw the accused at the Homicide Squad Office at Russell Street. He was cautioned and told of his rights.

You had better tell us what was said to him?
--- It is part of a document.

10

What happened? --- Well the general lines of the caution was that he was in custody, was under no obligation to say anything unless he desired. He appreciated this fact. I requested him to strip to the waist, which he did. I also got him to pull his trousers down over the hips, which he did. I was unable to see any bruise or mark on his upper body.

On either of these occasions when you saw him stripped to the waist did you see any sign at all of any injury? --- No, sir. After we had returned from 59 Mitchell Street, after the taking of the photographs late in the morning of 8th, Friday the 8th, the accused did make a request to me that he be allowed to see Mrs. Jennifer Anne Kemp. She had also made a similar request that he be allowed -

20

Yes, what happened? --- The accused was seated in a chair in the muster room at the Echuca Police Station when Mrs. Kemp came into the room. I was present in the room at the time they were together.

30

What time was this, roughly? --- Well, we went up there at 5.45 - 4.45. It would be shortly after 5 a.m. on the Friday morning, 8th May.

Was this before or after the second record of interview, the short one? --- That was after that, sir. The whole time they were together, which would possibly be of about 5 minutes duration, the accused was seated, Mrs. Kemp was standing in front of him. She had both her arms around him and she was holding his head in her lower chest. On several occasions I heard the accused tell Mrs. Kemp that he loved her, I also heard her say that she loved him. I also heard him say to

40

to Mrs. Kemp, "It looks like you had better forget about me now after this".

Was he simply sitting there or what? --- He had his face in her lower chest, she had her arms around him and he had his left arm around her.

The gun (Exhibit "C"), the gun that you were looking at before lunch, the cartridge and the cartridge case (Exhibit "F"), the Wettex pad (Exhibit "L") and the Scotchbrite scouring pad (Exhibit "M"), did you collect them in Echuca? --- Detective Donehue did.

And subsequently were they handed over to First-Constable Thompson? --- They were handed to him early the following week at the Forensic Science Laboratory at Spring Street, Melbourne.

In your presence? --- That is correct.

By whom? --- Detective Donehue.

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MR. LAZARUS COMMENCED CROSS-EXAMINATION

MR. LAZARUS: Mr. Coates, when did you first make up your mind to charge the accused with murder? --- I couldn't specifically say that, sir.

Well, without being specific can you say it? --- At some stage during the interview.

Beginning or end? --- It was a lengthy interview. I'd say ..

We know that? --- I'd say it would be well into the interview.

Did you? Did you tell him? --- I think the only stage that I told him was getting on to the end of the interview.

You are talking about the first interview, are you? --- I take it that is what you are talking about, sir.

I am asking you the questions, Mr. Coates. Are you talking about the first interview when you are

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talking about the interview you say you made up your mind to charge him? --- This is the interview I am referring to.

I appreciate you only told him, as you put it, at the end of the interview about charging him. Was it before that that you made up your mind to charge him, before that stage was reached when you told him you were going to charge him? --- I would have made up my mind before I told him, yes.

10

Was it minutes before or hours before, or what? --- I couldn't specifically tell you, sir, without referring to the interview, it may assist me.

Well, refer to it. If you are looking for the passage where you say you'll charge him, it is at p.12. But you say it was before that, do you not? You say you made up your mind before that? --- It would be just prior to that.

Just prior to that? --- I would imagine, sir, yes.

20

But you do not tell him there you are going to charge him with murder, do you, Mr. Coates? --- I went on to tell him I was going to charge - he would be charged.

You told him he would be charged with killing his wife? --- That is correct.

Well, you are not suggesting that is informing him that he is going to be charged with murder, do you? --- Well, I would imagine that is probably the only interpretation.

30

Is it yours, Mr. Coates? --- Yes, sir.

This is the expression you would use, is it not, if you are going to charge someone with manslaughter? --- No, sir.

Is it not? Well, how would you say to somebody if they were going to be charged with unlawful killing, Mr. Coates? Or manslaughter? --- I have never charged anyone with manslaughter in my life, sir, I've charged numerous people with murder and I have used that expression.

40

You say you have never charged anyone with manslaughter, ever? --- No, sir.

Well now, you understand - you are a very experienced policeman, are you not, Mr. Coates? --- I have had experience.

Well, do not be modest about it, would you regard yourself as a very experienced policeman? --- In comparison with some, yes; in comparison with others, no.

10

Mr. Coates, tell me, you believe, do you not, that the legal definition of manslaughter is "unlawful killing"? --- This is true.

And I suppose you would normally, in the cases you have charged people with murder, tell them that they are being charged with murder, would you not, Mr. Coates, as distinct from house-breaking or assault? --- Not always, sir.

20

Or killing, would you not? But you do use the expression after you come back from the photographs, do you not, to the accused? --- Use the expression "murder"?

Yes? --- This could well be.

Well, do you not remember, you just gave evidence of it? --- I won't deny that.

30

Well, I am glad to hear it, but do you not remember that after you came back from the demonstration and the photographs were taken, you told the accused man after he said he wanted - well, before you went to the house you said to him, did you not, "You have already been told that you are going to be charged with murdering your wife"? --- This is true, yes.

But you had not told him that at all, had you? --- I had told him he would be charged with killing his wife.

40

Well now, Mr. Coates, are you saying that you regard it as adequately advising someone who is being charged with murder to advise him he is going to be charged with killing? --- I think so, yes.

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Cross-
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The next time you refer to a charge, Mr. Coates, of course, is it not, after he indicates to you that he wants to add to his statement? This is the one round about 5.10 a.m. on 8th May 1970 (Exhibit "Q"), is that right? --- Yes.

And on that occasion you again say to him, do you not, "I hope you understand that you are going to be charged with the murder of your wife Beverly Joan Ratten"? --- This is so.

But you say you could just have easily have told him on each of these occasions you used the word "murder", you could easily have told him - or just as clearly have told him, made yourself just as clear by saying "You are going to be charged with killing?" --- This is so.

Is it? And that is true, is it, Mr. Coates?
--- Yes, sir.

Tell me, Mr. Coates, this interview went on from 10.40 and finished at what time? --- 4.20, I think, sir.

You believed, did you not, that the accused had been in custody from some time round about 2 o'clock that afternoon, did you? --- I knew he had been at the station since then, yes.

And in custody? --- Yes.

So that on any view the interview you had with him was a pretty lengthy interview, was it not? --- Probably about the same length as any murder interview I do.

Do you normally have people waiting from 2 o'clock till 10.40 before you start? --- No, normally we don't have to travel to Echuca to do it.

Perhaps you do not, but you normally do not have people waiting in custody for some hours before you start to interview do you? --- There have been occasions when people have had to wait for us to get to the country.

It adds to the strain does it not, as far as the - ? --- What for the detectives?

To the person who is on the receiving end, the

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person charged, the accused? --- It would possibly depend on the temperament of the person.

Subject to his temperament being pretty balanced you do not think it would have much effect on him, is that what you say? --- Well they would be resting whilst they were waiting.

I am sure they would be resting while they were waiting, resting in the police station somewhere? --- Yes.

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10

Would you agree that this interview would have been in your view a bit of a strain on the accused man? --- I would never deny that any interview wasn't a strain on anybody.

Evidence
for the
Prosecution

We will talk about this one, do you mind. This one, would you agree it was a bit of a strain? --- Yes, sir.

Francis Kevin
Coates

So far as the interview itself is concerned did you take a tape recording of it? --- Of this interview, no, sir.

Cross-
examination

20

Did you take a tape recording of the interview with Mrs. Kemp for instance? --- No, sir.

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(continued)

You have at Homicide of course, a tape recorder at Russell Street, have you not? --- At Russell Street, yes, sir.

Frequently used? --- At Russell Street, yes, sir.

And it is a record which is so situated that people do not know they are being recorded do they, is that the position? --- This is so.

30

Have they got a spare tape recorder at Russell Street do you know that can be carried, or is it portable? --- Not a portable as such but the machines we do have at Russell Street have been taken from Russell Street to the Supreme Court in Melbourne.

Have they ever been taken from Russell Street to a country town for instance where you are about to interview someone on a suspected murder charge? --- The Tandberg machines that we have, no.

Is there some rule you cannot that you know of?

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--- We follow the instructions we get from our superiors.

Is there some rule that you cannot move these machines to use them in an interview unless the interview is at Russell Street or you have got to go to the Supreme Court? --- We have not got permission to take them to the country.

Have you ever asked your superiors? --- Me personally, no, but I know what the rule is.

What is the rule, that you cannot take them to the country? --- We don't take them to the country.

10

Is there a rule to that effect? --- This is my understanding of it.

Are you serious? --- Yes, sir.

Have you ever queried? --- Not specifically.

Do you believe that if you had asked to take one of the Russell Street tape recorders on this afternoon to the country that one of your superiors would have said you could not take it? --- The request was not made so I don't know what the situation would be.

20

Have you got any doubts that permission would have been granted? --- I anticipate it might have been refused.

Although I suppose you would agree that one way perhaps of determining the extent to which a person has been affected by say a long wait or a long interview, is to give the Court an opportunity of hearing the interview, is it not? --- It may be of assistance to the Court.

30

Or even reading the interview out at the end of it? --- This may assist the Court.

You were present, as you have told us, when Doctor Jones came to the police station late in the morning of 8th May? --- This is so.

Would you say that at that stage the accused appeared to be dazed, gave you the impression of being a bit dazed? --- No, sir.

Or that his replies were sluggish and apathetic? --- No, on the contrary he gave deep thought to a lot of questions on numerous occasions.

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You believed it was deep thought did you, could it have been a bit of sluggishness? --- Not in my opinion, sir, cautiousness perhaps.

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Also possibly these deep pauses were due to the fact he found it very hard to concentrate possibly? --- No, I would not concede that.

Evidence
for the
Prosecution

You of course did not talk to Doctor Jones did you? --- Personally, no, only apart from an introduction.

Apart from saying 'hello'? --- Yes.

Francis Kevin
Coates

Tell me, he did not give you the impression that he was in a state of mental shock I suppose did he, apart from being cautious? --- The accused?

Cross-
examination

Yes, the accused? --- No, sir.

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(continued)

So far as this interview was concerned it went on as you have told us for hours? --- Yes, sir.

With really very little interruption? --- Well there was a 25 minute break a 15 minute break, I think there were other breaks which were possibly noted.

Were there any breaks that were not noted? --- I wouldn't think so.

When you asked him to read this - I am talking about the original record of interview which commenced at 20 to 11 on 7th May - when you asked him to read this did you point out any alterations he ought to make? --- No, he said that there were some alterations.

When he said there were some alterations did you go through them with him? --- He read the record of interview out.

When you said were some alterations to be made did you read or go through them with him? --- Could I see the original please, sir?

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Certainly? --- I think you said when I said there were alterations to be made.

All right, when he said there were alterations to be made? --- Yes, well it was him that said it, not me.

Did you go through them with him? --- I was watching what he did.

What, and you did not tell him to alter this and that? --- No, sir.

And I suppose he initialled it of his own initiative too, did he? --- I told him to put his initials where he wanted to make alterations.

10

And you say he made them do you? --- This is so.

You have not got that in your record of interview have you, that he made them? --- I think so, sir.

You added it in your evidence here did you not but you have not got it in your record of interview I suggest. You have simply got "He said, 'There are some alterations to be made' several alterations then initialled"? --- This is so.

20

There is no mention there is there about the accused making them is there? --- No mention that he has specifically made them but I have given this in evidence.

I know you have given it in evidence but you have put down every other comma in the record of interview, have you not, as it took place? --- I believe I correctly recorded what was said.

30

But you did not put here "Several alterations then initialled" and did not add the words "and made here" did you? --- "And made here?"

"And made". You did not add those words to the words "Several alterations then initialled" did you? --- "Several alterations made and initialled".

Have a look at it, you have got in your record of interview that you have just had a look at about a minute ago, "Several alterations then initialled"? --- This is so.

40

You have not got the words "And made" have you?
 --- Not the words "made" no.

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The words "And made" have you? --- No, sir.

This is what you added, the words "And made" in
 your evidence here today, did you not? --- This
 is so, "He made several alterations and
 initialled them."

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 Evidence

You did not take a note of the fact he made them
 did you?---They are in his writing, sir.

 Evidence
 for the
 Prosecution

10 You did not take a note of the fact that he
 made them, did you? --- No, sir, not on type.

Tell me, in the course of this record of inter-
 view at p.11 of that interview, you tell him
 five questions from the top of the page, you make
 this assertion to him, "Am I correct in saying
 that when this gun is broken the safety auto-
 matically comes on and that the safety catch has
 to be pushed forward so as to enable this weapon
 (indicating I presume Exhibit 'C') to be fired?
 --- I see the question.

 Francis Kevin
 Coates

Cross-
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 (continued)

You made this assertion to him, did you? ---
 This is so.

It is not quite right is it? --- As it later
 turns out it is not.

But he agree with it, did he not? --- This is so.

He said, "Yes this is correct?" --- That's so.

Did you subsequently ask him if he knew that the
 gun would fire with the safety catch on? -- No, sir.

30 When did you find out it would first? --- I think -
 I wouldn't like to be certain about this, I would
 say possibly the following week.

Not till then? --- I think so, sir.

Well Mr. Thompson was round and about was he not at
 the time you were taking the photographs at the
 house? -- First Constable Thompson was up at Echuca,
 yes.

He was the gun expert was he not? --- Yes.

And he was - you referred on this very page of the
 interview, p.11, did you not, the next question -

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sorry, the question after the next question.
"This weapon has been examined by a firearms
expert here tonight". You said that did you not
amongst other things? --- This is so, yes.

And the firearms expert was Mr. Thompson was it
not? --- This is so.

And the first time you found out that this gun
would fire with the safety catch on was you say a
week later or thereabouts? --- In the vicinity of
that, yes.

10

And of course that was after you had made up
your mind to charge him with murder, was it not,
when you found out about the safety catch? ---
After I found this out, this is so.

Tell me, when Mrs. Kemp saw the accused did you
regard this as a pretty good opportunity to get a
bit of evidence against him? You know harmful
evidence? --- Showing a certain amount of
affection one for the other.

But you thought did you not, well this is a
pretty good opportunity to set up a little bit of
a trap here did you? --- In allowing them to see
each other?

20

Yes? --- I didn't know what their reaction would
be.

But you did not hesitate did you to arrange the
interview or allow it? --- I would say throughout
the whole dealings we had with the accused and
any persons concerned, we gave them the utmost
consideration.

30

All right, but he had been charged with murder
at this stage according to you, had he not? --- He
hadn't been through the watchhouse.

No, but he had been everything else but had he
not? --- He was to be charged.

And this had been made clear? --- Yes.

I suppose you would agree would you not that you
had to listen pretty intently to hear anything that
went on between them, did you not? --- I didn't
try not to hear what was being said.

40

Well, you can put it a bit more positively than that, can you not, Mr. Coates, you tried your level best to find out what they were saying, did you not? --- This is so.

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And in fact, you said, did you not, at the inquest, they were whispering? --- This is so.

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I suppose it was a bit of job listening to what they were saying, was it not? --- I didn't hear all that was said.

Transcript of
Evidence

10 No, but I am saying hearing what you did was a bit of an effort, was it not? --- I could have quite easily gone over and sat right beside them, I didn't, I remained at a discreet distance.

Evidence
for the
Prosecution

The discreet distance, I suppose, was to give them full play, was it not, surely? --- Not necessarily, sir.

Francis Kevin
Coates

Cross-
examination

20 Well, the discreet distance was not quite far enough for you not to be able to hear the salient features of the conversation, was it? I don't know what the salient features were.

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(continued)

Do you not, Mr. Coates? Well now, tell me, I suggest the first thing that was said when Mr. Ratten saw Mrs. Kemp was, "I didn't do it, I couldn't do it", was it not, Mr. Coates? --- No, sir.

Do you swear that was not said, Mr. Coates? --- I do, sir.

Do you? --- Yes, sir.

30 Not at any time? --- I never heard that said.

Did you not? Mr. Coates, did you hear any of the conversation? --- No, only the part I have related.

Did you hear that, Mr. Coates? Or did you make it up - did you hear it or did you make it up? --- I heard it, sir.

Did you make a note of it? --- Mentally, yes sir.

Mr. Coates, we have been talking about notes and you have been talking about written notes since you started to go in the box there, have you not?

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--- There is quite a bit of evidence I have given which was not committed to original notes.

Not too much. But this is a bit of evidence, is it not, that was not committed to notes? --- One line, sir, yes.

About the conversation between the accused and Mrs. Kemp? --- Apart from the fact that he said several times he loved her and vice versa, the only other evidence I've given was that he said, "It looks like you'd best forget about me now after this".

10

But this was not committed to writing, was it, Mr. Coates? --- At the time, no, sir.

When did you first commit it to writing, Mr. Coates? --- It would be some considerable time later.

Well, could you let us into the secret, how long after? --- I couldn't tell you exactly, it could have been ..

I am not asking you to - how long after? --- A month, possibly.

20

When did you first make a statement for the brief in this matter? --- I think the committal proceedings were on 13th or 14th, were they not, sir?

No, they were on 26th June ...? --- It would be well into ..

I am sorry, the 25th and 26th? --- Well into June, because it was not long after the brief was completed, and we were the last, that the inquest took place.

30

That was when you made your statement for the brief, well into June? --- Well, it would be into June some time, I would imagine.

Was that the first time you committed this particular part of your evidence to writing? Or was it after this? --- No, I think it was subsequent to that.

Subsequent to that you committed this particular evidence to writing, is that right? --- Yes, sir.

40

So that you made your statement for the brief not including this particular aspect of the evidence, is that right? --- Yes, sir.

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Now how long after you made your statement for the brief did you include this particular piece of evidence, Mr. Coates? --- After speaking to the coroner ..

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I am not asking you the mechanics of it, how long after, in fact, did you commit this evidence to writing? --- I said before, a month. It possibly was later than a month.

Transcript of
Evidence

How long after you made your statement for the brief did you commit to writing this particular piece of evidence of a conversation you claim took place between the accused man and Mrs. Kemp? --- It may have been a week or a fortnight.

Evidence
for the
Prosecution

Francis Kevin
Coates

Mr. Coates, at any time during the course of this conversation did the accused man say, "I didn't want to involve you. I didn't do it"? --- To Mrs. Kemp?

Cross-
examination

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(continued)

Yes? --- I didn't hear him say that to her.

How long did these whispers go on? --- They were together approximately 5 minutes.

Just before Mrs. Kemp saw the accused man, Mr. Ratten senior was allowed to see him, was he not, Mr. Coates? --- Yes.

And as soon as Mr. Ratten senior came in, Mr. Ratten collapsed and commenced to cry, did he not? --- The accused collapsed?

Yes, the accused man collapsed and commenced to cry? --- Collapsed?

Well, commenced to cry? --- Well, if you could explain the word "collapse" to me, sir?

Broke down? --- He did cry, yes.

You would not describe that as a collapse, of course, would you? --- Well, a collapse can be falling on the floor.

I see, you thought I meant that he collapsed in a faint, did you? --- Not exactly.

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But he did cry, did he not? ---He did have tears, yes.

He was sobbing, was he not? --- My impression of him was, depending who was present, what his ...

Look, Mr. Coates, would you mind confining yourself to answering my questions - was he at this time sobbing? --- He did, yes.

Was he holding his father tightly? --- They did embrace each other, yes.

Would you describe that embrace as a man holding his father tightly, clinging to him? --- I would think so, yes. 10

And he was, to say the very least, a little emotionally distraught at that time, was he not, as far as one could tell from appearance? --- From appearance, yes sir.

And it was after this, was it not, immediately after this that Mrs. Kemp came into the room, was it not? --- Reflecting on it, he saw his father prior to 10.40 p.m., when he was interviewed, and it was not until 5.0 a.m. that he saw Mrs. Kemp. 20

Mr. Coates, I want to put to you very specifically that the incident I have just described to you between the accused and his father occurred after 5 a.m., immediately before he saw Mrs. Kemp? He might have seen him at 10.40 too, but the incident I am referring to is one just immediately before he saw Mrs. Kemp? --- I won't deny that. He saw his father several times. 30

You at no time during your conversation with Mr. Ratten suggested did you that he had told any other policeman anything inconsistent with what he told you? ... you said 'so and so to constable so and so' or anything like that did you? --- On reflection, no.

And I suppose before you interviewed him you had certain information and had got a run down anyway on what had gone on at the house and at the police station before you turned up? --- We did have a brief run down. 40

MR. HOWSE COMMENCED RE-EXAMINATION

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MR. HOWSE: Is there any reason why you did not make a note of the conversation between Mrs. Kemp and the accused at an earlier time to that at which you made it? --- I spoke to the coroner -

Transcript of
Evidence

10

Is there any reason why you did not make it earlier, that is all I am asking you? --- It was a matter which came to mind later. When I say came to mind, overlooked and then later noted.

Evidence
for the
Prosecution

Did you notice any change in the demeanour of the accused from time to time over the night of 7th May or the early morning of 8th May? --- Yes, sir.

Francis Kevin
Coates

MR. LAZARUS: I do not know how this is put to arise out of cross-examination, the difference in the demeanour of the accused.

Re-examination

14th August
1970

20

HIS HONOUR: What do you say about this, Mr. Howse?

MR. HOWSE: I submit that it does, Your Honour. The witness has been asked whether or not the accused collapsed, whether he cried.

HIS HONOUR: Yes, very well I will allow it.

30

WITNESS: My impression was that whilst all interviews were conducted - on any occasion when I interviewed him he seemed calm, gave great thought to questions asked of him and gave his answers clearly and distinctly. If anything, he seemed cautious in thinking before he answered. On the occasion Mr. Lazarus has referred to when he was in the presence of his father he did have tears. I saw him speaking to several members of his family on the early hours of the morning of Friday the 8th, and when he was in their company he did seem upset.

WITNESS WITHDREW

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Adrian Ross
Donehue

Examination

14th August
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ADRIAN ROSS DONEHUE sworn and examined

WITNESS TO MR. HOWSE: My full name is Adrian Ross Donehue. I am a Detective First Constable attached to the Homicide Squad at Melbourne.

MR. HOWSE: On Thursday 7th May of this year did you go with the previous witness, Senior Detective Coates to Bendigo and there attend the post-mortem examination of the late Beverley Joan Ratten? --- Yes, sir.

And after that did you go to Echuca? --- Yes.

10

And there did you go with Senior Detective Coates to the scene at 59 Mitchell Street? --- I did.

Subsequently were you present when Mr. Coates interviewed the accused back at the Echuca Police Station on the night of 7th May and the early morning of 8th May? --- Yes.

Did you return with them to 59 Mitchell Street, that is Mr. Coates and the accused, on the occasion when the photographs were taken? --- I did.

20

Were you present when a further interview took place between Mr. Coates and the accused at the Echuca Police Station after the photographs? --- Yes.

Later that morning did you accompany Mr. Coates and the accused to the home and were you present when the accused changed his clothes and was stripped to the waist? --- I was.

And subsequently were you present when there was a conversation between the accused and Senior Detective Coates going back to the police station and also an interview at the police station? --- Yes.

30

Did you fingerprint the accused on 8th May? --- I did.

Later were you present when he was stripped to the waist at the Homicide Squad Office at Russel Street on 14th May of this year? --- Yes.

Were you present in Court today and did you hear the evidence-in-chief given by Mr. Coates about those matters? --- I did.

What do you say about his evidence-in-chief in relation to those matters? --- True and correct.

Is there anything that you wish to add? --- No.

On the occasions when you saw the accused stripped to the waist did you notice - you tell us your observations? --- There was no marks or bruises on his body at all.

Any sign of any injury? --- No.

And what about the occasion when you fingerprinted him? --- His hands weren't damaged in any way at all.

Was this just a chance observation that you made?

MR. LAZARUS: Your Honour, we are now in the realms of something that could be described as cross-examination.

MR. HOWSE: Would you look please at Exhibits 'P' and 'Q'? Are they the two records of interview referred to by Senior Detective Coates? --- Yes, sir.

Would you please look at the wettex pad, Exhibit 'L' and the scouring pad, Exhibit 'M'. Did you obtain possession of them? --- Yes, sir.

And were they handed to First Constable Thompson on 12th May? --- They were.

Together with the gun, Exhibit 'C' and the cartridge and the cartridge case, Exhibit 'F'? --- Yes, sir.

Just one other thing, would you have a look please at the photographs, Exhibit 'A.12' and '13'? Are they accurate pictorial representations of what took place? --- They are.

MR. WALKER COMMENCED CROSS-EXAMINATION

MR. WALKER: Mr. Donehue, you took some notes whilst those photographs which you have just looked at were being taken, did you? --- Yes.

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And on any other occasion did you take any notes? --- Not me personally.

You took possession of the wettex, the scotch-brite and some cartridge cases? --- Yes.

And you took those to Forensic? --- Yes.

Other than that you were simply in the role of a bystander, is that so? --- Well, I don't really know what you mean by that.

Well, other than that all you did was to follow round Mr. Coates and be present whenever he did anything, is not that so? --- Not exactly, no.

10

Is it not? You were present during the course of the interview when the record of interview Exhibit "P" was taken, were you not? --- This is right.

You did not ask any questions? --- No.

How long did that interview take? --- Exhibit "P", that is the 13-page one, is it?

It is the first one? --- The first one, yes. That took from 10.40 until 4.20

20

You remember that, do you? --- Yes.

Do you remember it independently of having looked at the documents since? --- No, I don't.

You have refreshed your memory from them? --- Yes.

But throughout that interview you simply sat there as a spectator, did you not? --- For most of the time, yes.

You were there to corroborate the evidence of Senior Detective Coates? --- I was, yes.

And is not that true of the other activities of which you have now given evidence, insofar as you corroborate his evidence? --- Well, part of the time, most of the time, anything that was said between Coates and the accused I was there for the purpose of corroboration.

30

Well, apart from the matters .. Your Honour, could my instructing solicitor speak to the accused for a moment, please?

HIS HONOUR: Yes.

MR. WALKER: Mr. Donehue, apart from those matters that I have mentioned to you as exceptions, that is all you have given evidence about, is it not, corroborating Senior Detective Coates? --- And taking possession of the exhibits.

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I excluded those, did I not? I put to you the matters that you took possession of? --- Yes.

Transcript of
Evidence

10 Apart from those that is all you are giving evidence about, is it not? --- This is so.

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Corroborating Senior Detective Coates? --- Yes.

There was one other thing, however, Mr. Donehue, which I put to you. Have a look at Exhibit "P"? On p.11, a little less than halfway down, do you see the words handwritten in, "I had been cleaning over all the metal of the gun with the pad for some time", do you see those words written in there on p.11? --- Yes.

Adrian Ross
Donehue

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20 Now, those words were written in, were they not, when Ratten was reading over the record of interview? --- Yes.

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Do you remember this? --- He'd read it over first, and then later on he went back and made the necessary alterations.

Do you say that those words were not put in when he was reading over the record of interview?
--- When he read it on the first occasion?

Yes, when he read it through? --- To the best of my recollection, no.

30 Really? I see. Well look, at the time of the questioning when that question was asked by Mr. Coates Ratten used those words, or words meaning the same thing, at the time, did he not? --- No.

And I put it to you that when he was reading over the record of interview he said to Coates when he got to this part, "Look, you haven't put in what I said here about cleaning over the metal of the gun", do you recall that? --- No.

And I put it to you that Coates replied to him,

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"I've typed down everything you said", did Coates say that? --- I can't recall it, no.

And I put it to you that Ratten appealed to you and said, "Look, you remember I said that about cleaning over the metal of the gun", and you agreed with him and said, "Yes, that's right"? --- I can't recall that.

You do not recall it - do you say it did not happen? --- Yes.

Do you? All right. Now, were you present when the accused man Mr. Ratten was fingerprinted? --- Yes.

10

And were you present on an occasion about a week after his finger prints were taken when his right thumb was fingerprinted separately at the City watch-house? --- No.

You know that happened, do you? --- No.

Do you agree that on the occasion when he was fingerprinted that has been given in evidence about by Mr. Coates, that his right thumb was not fingerprinted? --- No.

20

You do not agree? It had a band-aid on it, did it not? --- You may be right.

Well, on reflection now can you answer this, did you investigate that right thumb to see if there was a cut under the band-aid? --- I could have done, yes.

That is a sort of feeling that you have, is it? --- Yes.

I take it, Mr. Donehue, that without reference to that document Exhibit "P" you would be unable really to recall the questions and answers of that night, is that so? --- That's right.

30

I want you to have a look at Exhibit "P" once more, p. 4? This is the first record of interview. And before reading that page would you just look at it for the moment, I am going to put a couple of questions to me (sic) and tell me if you can recall them without reference to the document. Do you recall him being asked this question - "You have told us that you collected

40

the shotgun from Peter Kemp, what did you do with it after getting it from him about late February/early March?" Do you recall that question without reference to this document? --- Yes, I think he said he put it in the garage.

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Well, if the answer recorded is "Brought it home and put it on the bench", you would not disagree with that, would you? --- No, if it is recorded.

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But your recollection is you believe he said he brought it home and put it in the garage? --- Yes.

10

And do you recall this question - "Did you use it at all after getting it from Peter Kemp?" Do you recall that being asked? --- No, I don't.

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Do you recall this question - "Can you explain how this shotgun came to be loaded today?" --- Yes.

Adrian Ross
Donehue

Can you recall his answer? --- "I don't know".

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If the answer is recorded as "No", that is what you would say the answer was, is it? --- That's what I'd say now that you ask, without looking..

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20

Can you recall this question - "Did you place any live cartridges in it after taking possession of it from Peter Kemp?" --- Yes.

Can you recall his answer to that? --- He said, "No, there's children about the house and I don't keep firearms loaded", or something to that effect.

30

Well, if the answer to that is recorded in this way, "Well, I've been thinking about it, trying to think how a cartridge came to be in it. I don't know how it came to be loaded", if that is the answer recorded you would say that was in fact the answer he gave, is that so? --- Yes.

Do you recall this question - "you used the word 'cartridge', do you mean one cartridge"? --- Yes.

Can you remember his answer to that? --- "I don't know how the cartridges came to be in the gun", I think, or "came to be loaded".

What are you saying "the" for, what is the accent on "the" for? --- Well, the cartridges.

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"The", is that what you mean? --- T-h-e.

You do not normally say the cartridges, do you? --- Well, I don't know.

Well, just repeat this sentence for me, "I don't know how the cartridges came to be in the gun", just repeat that, would you? --- "I don't know how the cartridges came to be in the gun".

Is that what you reckon he said? --- Something like that, yes.

Well, if the answer is recorded, "I don't recollect putting the cartridges in the gun", you would say that was his answer, would you? --- If that is the way it is recorded, that's his answer.

10

I put it to you his answer was, "I don't recollect putting a cartridge in the gun"? --- A cartridge?

A cartridge? --- The answer the way it's typed down is the way it was said.

You say the way it is typed down is the way it is said? --- His answers were faithfully recorded.

20

Although you in fact have no recollection of that answer? --- No.

Not in specific word for word? --- No.

MR. HOWSE DID NOT WISH TO RE-EXAMINE

WITNESS WITHDREW

MR. HOWSE: That is the case for the Crown, if Your Honour pleases.

MR. LAZARUS: Your Honour, the accused will give evidence on oath and I desire to call evidence as to reputation. Your Honour, in regard to the evidence as to reputation, I wanted to seek Your Honour's permission to interpose that evidence before I call the accused, for the purely practical reason that I have some 5 men here.

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HIS HONOUR: Yes, I quite agree it is highly desirable. Do you agree with that, Mr. Howse?

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10 MR. HOWSE: It no doubt is from the point of view of their convenience, Your Honour. But perhaps I should remind Your Honour of s.399 Part 8, where it says that - "Where the only witness to the facts of the case.....close of the evidence for the prosecution".

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the Defence

20 HIS HONOUR: How far does that govern where there is evidence as to character? You do not open your case, do you, when you do that? And you do not lose your right of reply either, do you?

MR. HOWSE: No, Your Honour.

MR. LAZARUS: No, sir.

HIS HONOUR: Well, I do not think that a Parliament of our State would be very angry with me even if we did breach that section, do you?

MR. HOWSE: I leave it to Your Honour.

HIS HONOUR: All right, Mr. Lazarus.

MR. LAZARUS: I wonder if perhaps these men could come in, sir, to save them being called?

30 HIS HONOUR: Yes, might as well.

MR. LE COUTEUR, MR. HAZELDENE, MR. CRONIN, MR. ROSENDALE AND MR. FRENCH CALLED.

COLIN WRIDGEWAY LE COUTEUR, affirmed and examined.

WITNESS TO MR. LAZARUS: My full name is Colin Wridgeway Le Couteur. I reside at 132 Nepean Highway, Seaford. I am a case

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manufacturer by occupation.

MR.LAZARUS: Mr.Le Couteur, you have known the
accused man Keith McDonald Ratten for
approximately how long?---Approximately 4
years

And during that period have you seen him from time
to time?---Yes, I have seen him fairly
regularly probably 4 or 5 times a year.

And on those occasions has he stopped with you or
have you stopped with him and his family?---
I have had occasion to stay over a weekend, my
own family with his family, and he has been to
my home as well.

10

You knew his wife and family?---I knew them very
well.

During the time you have known him have you
talked about him to other people and heard
other people talk about him?---Yes, I have had
occasion to discuss matters concerning.

Well, you have talked about him?---I have, yes.

20

And from those discussions can you tell His
Honour and the jury what sort of reputation
he has in the community, as a person?---Well,
he had the highest reputation, in my opinion,
and in the opinion of others that we moved
amongst, I am certain of that.

MR.HOWSE DID NOT WISH TO CROSS-EXAMINE

WITNESS WITHDREW - EXCUSED

James Stewart
Hazeldene

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JAMES STEWART HAZELDENE, sworn and examined.

WITNESS TO MR.LAZARUS: My full name is James
Stewart Hazeldene. I reside at 12 Dixon
Street, Echuca. I am the minister of the
St.Andrew's Presbyterian Church in Echuca,
of which Mr. Ratten was one of the regular
organists.

30

MR.LAZARUS: How long have you known Mr.Ratten?---
For one year. And during that time have you

seen much of him?---Every Sunday.

And during the time you have known him have you talked to him - talked of him to other people and heard other people talk about him?---Yes.

And from those discussions are you able to tell His Honour and the jury what reputation he has?---Mr. Ratten has a good reputation amongst all the people.

MR.HOWSE DID NOT WISH TO CROSS-EXAMINE

10 WITNESS - WITHDREW

ROY KEITH CRONIN, sworn and examined

WITNESS TO MR.LAZARUS: My full name is Roy Keith Cronin. I reside at Mitchell Street, Echuca - 73 Mitchell Street. I am an electrical retailer by occupation.

MR.LAZARUS: Mr. Cronin, you have known the accused man approximately how long?---Six years.

20 And during that period have you seen him frequently?---Regularly, both in business, Rotary and church.

And you lived fairly close to him?---Yes, about six doors away.

And were you on visiting terms with him and he with you?---Yes.

That is your respective families visited each other?---We have at times.

And during the time you have known him you have heard him discussed and talked about it to others have you?---Yes.

30 From those discussions are you able to tell His Honour and the jury what sort of general reputation Mr.Ratten bears in the community?
--- An extremely good reputation.

MR.HOWSE DID NOT WISH TO CROSS-EXAMINE WITNESS

WITNESS WITHDREW - EXCUSED

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Roy Keith
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Arthur Ernest
Rosendale
Examination

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ARTHUR ERNEST ROSENDALE sworn and examined

WITNESS TO MR.LAZARUS: My full name is Arthur Ernest Rosendale. I reside at 15 McKinley (?) Street, Echuca. I am a builder by occupation.

MR.LAZARUS: How long have you known the accused man?---Since he came to Echuca to live.

About how long?---At least six years, I have an idea it was 63/64.

And during the period he has been there have you seen much of him?---I suppose for the first four years I saw him at least once every week when he was attending the Church of Christ in Echuca.

10

And after that?--- After that, well his business is not far from ours, we see each other in the street during the day and any other place.

From discussions you have had of him with people, are you able to tell His Honour and the jury what sort of reputation he has?---Well I would say that you couldn't get a better reputation in a city the size of Echuca.

20

MR.HOWSE DID NOT WISH TO CROSS-EXAMINE WITNESS

WITNESS WITHDREW

William Burton
French

Examination

14th August
1970

WILLIAM BURTON FRENCH sworn and examined

WITNESS TO MR.LAZARUS: My full name is William Burton French. I reside at 8 Dixon Street, Echuca. I am a high school principal by occupation.

You have known the accused man approximately how long?---A little over 4 years.

30

And how have you come to know him?---I came to know him first through Rotary and then through church.

During the time you have known him have you seen him fairly frequently?---Yes, every week

practically at Rotary and in the last two years every week at church.

And during the period you have known him have you talked to people about him and heard him discussed generally?---Oh yes, quite naturally.

And from those discussions and what you have heard what are you able to tell His Honour and the jury about his reputation?---It was there is no doubt about it a very high reputation.

10 MR.HOWSE DID NOT WISH TO CROSS-EXAMINE WITNESS

WITNESS WITHEEDREW - EXCUSED

LEITH McDONALD RATTEN affirmed and examined

WITNESS TO MR.LAZARUS: My full name is Leith McDonald Ratten. I am a surveyor by occupation.

MR.LAZARUS: There are a few general matters I want to ask you. We have been told by Doctor Moysey that you have no sight in your left eye, is that correct?---That is correct.

20 And how long has your eye been in that condition?
---Some 20 years.

How old were you when you lost the sight?---12.

You have, have you not, been interested in guns for a fair period of your formative life anyway?---Yes, that is correct.

From about what age have you taken an interest in shooting and things of that description?---
From my early teens.

30 How did you come to get interested?---Both my older brothers had guns at home and were shooters themselves.

And you started shooting with them did you?---
That is correct.

Could you just very briefly tell His Honour and the jury the guns you have had in your

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possession since you took up shooting as a sport, what sort of guns have they been?--- In my early teens I started shooting with an air rifle and then in later teens I commenced shooting then with a pea rifle, a 22 calibre rifle and then moved on to a single shotgun. A single barrel shotgun. It was our habit for the three boys, that is my two brothers and myself to have duck opening away together where we camped together and we went shooting each duck opening. At this stage my brothers were both married you see. During that period I purchased a 5 shot automatic shotgun, I still had the rifle as well and used that 5 shot automatic shotgun for a number of years. Approximately 4 years ago I sold the automatic shotgun and this left me still with a single barrel shotgun for my own personal use and I took up hunting by archery at this particular period of time. It was I think the following duck shooting season that the side by side shotgun came into my possession.

10

20

HIS HONOUR: When would that have been?---About three years ago.

About 1967?---Yes, that would be correct.

MR.LAZARUS: I think for the record, Your Honour, that is Exhibit 'C'.

HIS HONOUR: That is the one we have been talking about?---Yes, sir. I swapped my old single barrel shotgun for that one. I swapped the single barrel shotgun for the side by side.

30

Swapped it with whom?---My brother, Roger. I used that for one or two duck seasons and then in the meantime I slao bought an automatic rifle, 22 calibre. Then I think it was in last November 1969 I purchased the under and over Winchester shotgun, and was prepared for using it on this coming duck season, that was 1970 duck season.

As at May of this year what guns did you then have in your possession or under your control?--- I had the under and over shotgun, Winchester, I had the side by side shotgun and an automatic

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calibre-22 calibre rifle.

So far as the under and over and automatic rifle was concerned I think we have had evidence from Mr. Kemp that he bought them for you, is that correct?---That is correct.

HIS HONOUR: What?

MR.LAZARUS: He bought the under and over, sir, and the automatic rifle, on his behalf. Perhaps we should just follow the side by side shotgun history or shotgun history, Mr.Ratten. So far as the particular gun in question here is concerned, the side by side shotgun, did you at some stage have a discussion with Kemp, or he with you, as to this particular gun?---Yes, that is so.

Do you remember approximately when the subject came up or the discussion took place?---This discussion often took place when we were talking about shooting. Mr. Kemp was rather always of the opinion that it was of an excellent size for quail shooting, and he impressed upon me that if it was repaired and done up that it would make an excellent second firearm for - especially for quail shooting, and while during this last duck season he suggested more and more often that I should do some thing about having it repaired ready for the oncoming quail season.

Had he to your knowledge used it himself?---I don't remember, sir.

But you, as you have told us, had used it quite frequently, is that correct?---Yes, sir.

And did you find any actual problems or defects in it in its use?---No.

Ultimately you say you had this discussion with Kemp at the last duck season and following that was anything arranged between you as to what you should do about the gun?

HIS HONOUR: Just a moment, Mr.Lazarus. When you say you had used this gun frequently and found

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no defects in it were you aware of the defect in the safety catch action?---No, sir.

MR.LAZARUS: What was the substance of the discussion that you had with Kemp about getting that gun repaired, just what you have told us or -?---Yes, briefly it was a discussion that he suggested that I should have it taken to a gun repairer.

HIS HONOUR: Do you remember when that was?---It would be during the 1970 duck season the last time he suggested it. 10

HIS HONOUR: 1970 or 1969 do you mean?---1970.

MR.LAZARUS: When was the 1970 duck season?---It commenced at the end of February and went through March and April.

HIS HONOUR: It would be sometime during that period would it?---That's right.

MR.LAZARUS: And whose idea was it? Who initiated this discussion about getting it repaired?---Peter Kemp. 20

And did you give him the gun to take it away to get it repaired?---I did.

And did you subsequently get the gun returned to you, get the gun from Kemp's place?---I did.

Where did you get it?---It was handed to me from the bench of his garage or shed.

And who was it handed to you by?---Jenny Kemp.

At the time it was handed to you did you notice anything about its condition which you had not observed before you had given it to Kemp? ---Yes, it had recent rust marks along the barrels. 30

When you say recent rust marks can you describe what they looked like?---It would appear that fresh water had splashed onto the gun and light coloured rust marks were evident along the barrels.

They were light coloured though, were they?---Yes.

What did you do with the gun when you got it from the shed?---I took it home with me and put it onto the bench in the garage as far as I can remember.

HIS HONOUR: Do you remember when it was that you took it back?---It would be very late in the month of March, perhaps April, most probably April.

10 Late March or early April was it?---Yes, sir.

MR.LAZARUS: At the time - subsequent to the time you got the gun back and put it on the bench did you have any discussion with Kemp as to the result of his efforts to have it repaired? ---Yes.

20 What was said by him to you about its condition that you can now recollect?---I could not remember the exact words but the context was that it was not worth repairing, that it was in a state that anybody shooting it was in danger of having a blow back through the looseness of the locks.

HIS HONOUR: A danger of a blow back did you say?---Yes, Your Honour.

And Kemp told you that did he, that it was the report he had got from - ?---Yes, Your Honour.

Did he tell you who he had taken it to?---Yes, Mr. Stanley Thompson.

30 He gave you to understand that this was Thompson's report did he?---Yes, Your Honour.

Did he say anything to you about the condition of the safety catch or anything at all about the safety catch?---No, no mention was made of the safety catch.

Did you yourself make any observation about the safety catch?---No, I didn't hand him the gun at all after that.

At the time that you took it back and put it on

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the bench did you make any observation then at all about it?---No, it was never touched again as far as I know.

Certainly not by you?---No.

HIS HONOUR: Certainly what?

MR.LAZARUS: Not touched again as far as he knows, from the time he put it on the bench, certainly not by him.

What was your practice or habits or procedure in regard to guns at home. Firstly, where did you keep them generally?---I had two plugs in the wall of the den, this is a little room between the kitchen and the lounge room. My shotgun rested on the rack in the den.

10

HIS HONOUR: Which gun?

MR.LAZARUS: The under and over is it?---The under and over rested on the den. The rifle stood in its case also in that room but in the corner of the room, the hunting bow was on a rack on the wall on the other side of the den.

20

And after you got the side by side shotgun back it stayed where?---It was placed on the garage bench and remained there.

Now in regard to loading or unloading guns in the house what was your practice in regard to that?---I never had a loaded gun in the house at all, the guns were unloaded before they came back to the house, and I had little children as you know, and it was a strict rule that no ammunition was left in the guns at all.

30

MR.LAZARUS: At this time how old was your oldest girl?---Eight years old.

Mr.Ratten, so far as Mr. Kemp was concerned did you regard him as an experienced and responsible person as far as guns were concerned?---Yes, I did.

And as far as Mr.Thompson was concerned Stanley Thompson from Shepparton you believed did you not that he was a competent and experienced

repairer of guns?---Yes, I was made to believe that.

WITNESS STOOD DOWN
KEEPER SWORN

COURT ADJOURNED AT 3.24 P.M. UNTIL MONDAY 17TH
AUGUST, 1970 AT 11.00 A.M.

COURT COMMENCED AT 11.01 A.M. ON MONDAY, 17TH
AUGUST 1970.

LEITH McDONALD RATTEN, recalled and warned.

10 MR.LAZARUS CONTINUED EXAMINATION-IN-CHIEF.

MR.LAZARUS: You were telling His Honour and the jury on Friday as to the general places in which you kept your guns. You had mentioned earlier a hunting bow that you had purchased. Where was that kept?---That was kept in the den, on brackets on the wall of the den.

In fact, on 7th May of this year where was the under and over shotgun?---It was in the bathroom alongside the hand basin.

20 How did it come to be there, or get there?---It had been placed in there after the shooting on Saturday when we had been out shooting and just slipped inside the door when I was unloading the Land Rover.

What, through the bathroom entrance?---Yes, just inside the bathroom entrance.

30 You also mentioned on Friday - I think you said your eldest girl was 8. Incidentally, had these girls of yours been with you ever on shooting expeditions?---Yes, quite often they went with me, they had been out with us, the three girls, that Saturday when we went quail shooting, and three or four weeks prior to the accident we'd had a camping trip with the three girls, they'd gone with me for the overnight stay.

Is your garage normally kept locked or open or how was it kept?---It was normally kept open.

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You mentioned about the strict rule that no ammunition was left in the gun at all because of the three children, were they generally pretty responsible, in your view?---Yes, they were.

We have had some evidence that the Kemp children were about the same age as yours, what sex were they incidentally?---The eldest was a boy of eight years and a girl of approximately six years and a young boy of four years.

10

And had these children ever been to your knowledge out shooting?---Yes, they had, I'd taken them out on occasions myself and Peter also.

Took them out?---Yes.

Perhaps I just should also - Peter Kemp gave evidence here that at some stage he had a conversation with you in the kitchen of your house as to the defects of the gun or the report he got from Thompson, at which he told us the gun was actually in the kitchen, what do you say about that?---I can't recollect ever discussing the gun and having it in our possession when we discussed the gun, but we did discuss the gun on several occasions and its condition after it came back, but I'm definite that the gun was placed straight onto my bench when I brought it home, it had rust on it and therefore would not have been handled again because of this condition, and to my knowledge we certainly did not discuss it in our possession - with it in our possession at all.

20

30

So far as the cleaning gear that you had in your house is concerned - I want to come back to this in perhaps more detail later - but could you just outline what in fact you had available to clean your guns?---Yes, the cleaning gear consisted of a collapsible rod and two pieces which screwed together and then several attachments which screwed onto one end, various brushes and pads which were interchangeable onto this end and which are pushed through the barrels of the guns to give the cleaning action. There was oil, both

40

lubricating oil and protecting oil, rags and things of this description all kept together in the gladstone bag.

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And the gladstone bag was normally kept where?---

It was usually kept in the house and at this stage it was in the garage mainly because it was carted out into the field and back each trip that I took.

10 Also perhaps speaking perhaps fairly generally, could you tell His Honour and the jury a little bit about the type of ammunition you used and how you normally purchased it and where you kept it and so on?---When I bought the under and over shotgun, I at the same time purchased a case of cartridges which contained some 20 boxes of 200 - 20 boxes of 25 shells each.

What sort of shells?---These were Blue Star No.5 plastic shells.

20 The I.C.I. cartridges?---I.C.I. This was back in about November of '69. Then we were using these cartridges extensively on trap shooting to gain practice ready for the duck season which depleted our stocks. And then Peter Kemp and myself purchased one case of these same cartridges between us, we split them in half, 10 packets each to replenish our supplies ready for the duck opening. This was purchased in the February just prior to the opening. Later in the season as I again used
30 up these shells - oh at one stage earlier in the season I purchased some Blue Star Icel (sic) plastic cartridges of No.3 shot if I remember correctly for a heavier and longer load for ducks that were flying out further. Then towards the end of the season when my stocks were becoming depleted I exchanged two packets of quail cartridges, the red variety of cardboard case type for two packets of Blue Star No. 5s which Peter gave to me. Then the weekend
40 prior to the close of the season I purchased two packets of the Russian shells. They were a cheaper shell and it was getting very difficult to know just how many shells I would require to last - for the end of the season. If I remember rightly one Friday night I fired off

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a whole packet and didn't drop one bird so I immediately went back on for the remainder of my Blue Stars and the following - during the following week I purchased another two packets of the Blue Star No. 5s to make use of on the last weekend of the duck season.

Where did you get those two packets from do you now remember?---They were purchased from a sports store in Echuca, Graham Arthur's Sports Store.

Did you get any packets of the I.C.I. cartridges from Peter Kemp around about this period you are talking about?--- It would be approximately three weeks prior to the end of April when I last had some cartridges from Peter Kemp. 10

And what were the cartridges you got then?--- They were Blue Star No.5 plastic.

How did it come about that you got them from him? ---Well, he was - he still had plenty of cartridges, he hadn't shot as many as I had, and I mentioned that I was just about out of my duck cartridges and would be purchasing more and he said he'd swap me for quail ones and then he'd be ready for the quail season and be offloading his duck cartridges. 20

Where generally did you keep your cartridges, Mr. Ratten?---Normally when we weren't shooting - when I wasn't shooting constantly they were kept in the den in a cardboard - in the case that they came in, a cardboard I.C.I. case. Then as the shooting season progressed I would carry some half a dozen boxes of cartridges perhaps with me in the Land Rover and I'd have at least two unopened packets loaded into the canoe when I'd set off on the trip, and I'd have an open packet in a plastic ice-cream container where they wouldn't get wet in the bottom of the canoe. 30

So far as these cartridges are concerned, I think it could be said that generally speaking they show signs of rust, or most of them do. How did that come about, do you know?---I could only assume that had rusted because of moisture and dampness from being out in the weather or in use in the canoe. 40

We have heard evidence from Peter Kemp that on expeditions, anyway, duckshooting, he kept his cartridges in almost identical conditions to the way you kept yours, that is in a separate sort of - I think he put it a canvas shoulder bag, which he kept in the bottom of the canoe, and so on. Do you agree with that?---That is correct. We kept cartridges for ready use open on the floor of the canoe, or the boat, whichever we were shooting in, and then as these were depleted we'd replenish them with a full box from under cover.

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I do not think you told us, when dealing with the actual cleaning material you had, what were your habits in regard to cleaning rifles? How often did you do it, and so on, and what caused you to clean them?---Well, when using the guns extensively, during the shooting season, I didn't do very much cleaning. I kept them well lubricated with a spray-on type of moisture prevention pressure pack, which maintained the actions in good working order and kept the moisture out. As far as cleaning out the barrels, thinking back I assume that I only cleaned through the barrels of the under and over perhaps once during the season. Normally when the guns weren't in use very much, then they were kept in a clean condition and with a protective oil coating in the barrels and outside the barrels.

Where was it that you normally cleaned your guns?---Inside the house, either in the kitchen, or if it was a cold day and the fire was going or the television was going, I quite often put the card table up in the lounge room and cleaned the guns in there.

As far as the cleaning of guns was concerned, did you do that always on your own or did other people ever see you do it that you can recollect?---Sometimes on my own and sometimes when other people were there.

Do you remember anyone in particular?---Yes, I can remember, I think two occasions, upon returning from a spotlight shooting expedition of a night when we had relations staying at our home, after cleaning rabbits and game that

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we'd shot, in the kitchen, and I cleaned the guns out. I think my sister and brother-in-law were there at one stage; and at another stage Bev's uncle and nieces were in attendance.

Now I want to bring you to this relationship you had with Mrs. Kemp, and ask you a few general matters in regard to this subject, Mr. Ratten. Firstly, from the start of this relationship you had with her, what was your attitude to leaving your wife and the children - leaving home?---I made it very clear to her right from the start when any discussion arose about our relationship, that I felt very much attached to my wife and children and had a very great moral obligation to them, that I could never abandon them or leave them, and that any affair or any relationship that Jenny and I had together would have to be of an extra-relationship.

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Was this attitude, as far as you believed it, as far as your belief went, accepted by her?---Yes, it was.

And was there any reason, in your belief, why - or, did her attitude change in latter periods to this acceptance of this position?---As our relationship grew over the months there were times when we spoke together of what life would have been like - would be like if we had been able to live together. This was discussed on a few occasions, it was more a dream than anything, it didn't come to very much, although I know that as Jenny's relationship with her husband deteriorated that she would have liked very much for us to have been able to go away together.

30

And did her relationship with her husband deteriorate to your observation a great deal in the latter period?---Yes, it did.

And was your relationship at home deteriorating?---No, it was not.

40

And in fact what was your belief as far as your wife was concerned, as to her having any suspicions at all about this affair?---I'm sure

that Bev didn't know at all that we were having an affair.

As Mrs.Kemp's relationship at home became more and more difficult did you come to any views yourself about this problem of the Kemps and how it might affect you?---Yes, I could see that as time went by Jenny was spending more and more time talking about leaving her husband. She of course wanted to take her children with her. I could see that she was spending more and more time thinking about our relationship together. It did cause me a lot of concern. As far as I know she was heading very fast towards the stage where she was considering leaving her husband and I was afraid that this would have some effect upon my position with her and with my own wife.

What do you mean by that, that you were afraid it might have some effect on your position and the position with your wife?---Well I could see that as time was going by that Jenny was asking me more and more about my feelings towards Bev. and as to whether I would consider leaving Bev. I assured that for various reasons that I couldn't. I also felt anxious in case Jenny might say something to Bev. They were quite close friends and I was a bit afraid that perhaps if I wasn't careful that Jenny might say something to Bev to try and upset our family relationship, so that perhaps then she would be able to take me away or win me over.

And when you say you might say something, did you mean by that worried that you might tactlessly provoke her or something like that ?---Yes.

Did that affect your statements to her from time to time when discussions arose between you as to the future?---Yes, it did.

And what was your object, what did you have in mind as far as keeping her on side or placating her was concerned?---I didn't want to say anything to her that would upset her at all or think that perhaps I was going to let her down at all. I didn't want her to feel that

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perhaps she was going to be scorned. I had made certain plans to - so that I would be able to overcome this problem of letting her down perhaps gently we might say and I was abiding time waiting for these plans to be able to be implemented, and in the meantime I was encouraging her or not giving her any cause to feel that I was going to back out at all.

What were these plans?---I had made applications to do a tour of Antarctic duty for the coming 12 months starting perhaps December, 1970. I had sent these applications in when positions were advertised, late March or April of this year and I was awaiting for notice to come back that the applications were being dealt with.

10

Did you make the one application only or more than one for various positions?---The first application that was requested or advertised in the paper was that for four positions of equal rank as officer in charge of the Antarctic bases, which would - I felt I had the necessary qualifications and experience that was required. This was a position for four bases which gave me a chance of four positions then in a matter of two or three weeks after this position was advertised and I had sent that application in a position for a surveyor at Mawson was advertised and so I immediately replied (sic) for that position also which gave me five - virtually five chances of being selected.

20

30

When did you anticipate or believe you would be notified whether your application or applications would be successful or not?---I was expecting at any moment that the references that I had given or the referees that I had given would have been contacted and that our applications would have been investigated straight away. These positions were to be filled approximately four months before departure. The earliest departure was to be in late November. This brought us back into August or July, so I expected that the positions would be finalised in May or June.

40

Did you anticipate having to do any training period before departure or not?---Yes, this would be a four month training period before

the November departure.

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In addition we have been told that you stated to Mrs. Kemp from time to time, or at least on one occasion, that you would have to give some three months notice to your partners if you intended to leave. Is that correct or what was the position in regard to this?---That is correct, at one stage I had told her that I couldn't do anything quickly. She was at the stage where she was wanting to leave home and I said - she was asking me my feeling, and I said, "Well I can't do anything quickly, I have an obligation to my partnership which I cannot leave without giving three months notice."

MR.LAZARUS: Had you talked over this Antarctic application with your wife?---Yes, I had.

And had you made any plans with her in the event of the application being successful?---Yes.

20 What were they?---We discussed it together when I first applied - or before I applied, and although she wasn't happy about me being away for the 12 months she was quite happy to go along with my application if she would be able to go back to Melbourne to live where she would be close to our relatives and friends. We had discussed this, the new baby was coming along and I knew that she would be well and truly occupied with the new one, the older
30 three girls were well established and looking after themselves, and the discussion centred along this line, that she would have her own car in Melbourne, her home, and be able to get around and see our relatives and friends.

Had you spoken to Mrs.Kemp about this expedition?
---Yes, at one stage I said I had put in an application to the Antarctic.

And did she express any views to you about it?---
40 She was unhappy at the thoughts that I would go away for the 12 months.

And then apparently Mrs.Webb, from what she has told us in the witness box, also knew about it, is that correct?---Yes, apparently Jenny had

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told her at some stage.

And she discussed it, as she has told us, with you?---Yes, she did.

Was that, in your view, a good thing, that she had discussed it in the way she did?---Yes, she came to me one day when we were talking.

HIS HONOUR: Who did?---Mrs.Webb, she was a very close friend of Jenny Kemp's, and we were discussing Jenny's and my relationship together, and she said, "What about your trip to Antarctica?", and I said that I had definitely put an application in to go on the tour, and she said she thought it would be a very good thing for both Jenny and I, as it would give us 12 months to consider our relationship and consider our positions in our own families. I thought this was rather good, as far as my point of view went, because it meant that she would be speaking to Jenny as a friend about it and she might see the good sense of it.

10

20

Act as a bit of a buffer?---Yes.

MR.LAZARUS: Mr. Ratten, we have also been told that from time to time you stated to Mrs.Kemp that nothing could be done until your child was born and your wife on her feet and so on. What was your real viewpoint in putting this sort of proposition to her?---I was stalling for time. There were two reasons why I said this. First of all, it was quite truthful that I wouldn't have left my wife before our baby was born in any case and before the baby was well established; but at the same time this was giving me leeway of time, which I required so that the application from the Antarctica could come in. And secondly, I wonder whether I would have left home once the baby had arrived, it would have given me another reason for telling Jenny that I couldn't have left home, without her feeling that she was being scorned or any need for her being upset.

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40

Tell me if I am paraphrasing this correctly, but what you are really putting is that you did not want to hurt her ego, is that right?---That's right.

10 You also talked about the problems financially and so on, and talked about - according to Mrs.Kemp, that financially you would not be able to support two families. What was your object in putting these sort of propositions to her?---Well, each time that Jenny discussed with me whether we could go away and live together I brought up these things of finance and family relations so that - trying to point out to her that the whole idea was futile and that I couldn't go ahead with it.

FOREMAN: Your Honour, I would like to have him speak up a bit more, please, some of the jury cannot hear.

HIS HONOUR: Yes, I am finding it a little difficult too.

20 MR.LAZARUS: Now Mr.Ratten, apparently at some stage in April or May you saw a solicitor and got some advice which you ferried back to Mrs. Kemp, is that correct?---That is correct.

And on another occasion you both went down to Shepparton to a solicitor here and got advice?---That is correct.

And that was as late as the 5th May, is that right?---That's correct.

30 And what was your impression, anyway, of the advice you got on that occasion when you came down to Shepparton?---The advice that we were given was that if Jenny Kemp left her home that it was doubtful as to whether she could claim custody of the children, and that she would not be able to get a divorce on the grounds of separation.

40 After leaving the solicitor's office did you have any further discussion with her about your position generally?---Yes, we discussed it as we drove back to Echuca. It's very hard to remember exactly what was said, but I do remember pointing out to her again the futility of what she was doing, of leaving from her husband.

That visit to Shepparton, we were told, and I

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think you have agreed, was the 5th May, which was a Tuesday. On the Tuesday evening did you speak to her?---Yes, I did.

And what was the substance of that conversation between you?

HIS HONOUR: Was that by phone, or how, Mr. Ratten?---By phone, Your Honour.

MR.LAZARUS: Did she ring you or did you ring her, what happened?---I think I might have rung her, I'm not sure on that matter.

10

What did she say?---I did go and speak to her also, as I now recollect. She rang on the phone - or I rang on the phone, but we had this telephone conversation and she said that Peter had come out from the forest where he had been camping to get some more supplies, and that she had spoken to him again about them separating and that he had given her the O.K. to go ahead and put their house on the market, and do any other arrangement that she thought fitting. I was most concerned at this, and so I said, "Well, hang on a moment and I'll come out and discuss this with you", so I drove out to Barmah to her home and we discussed this during the evening.

20

And what was the upshot of it, how did you finish up?---I suggested strongly to her and advised her that she was doing a foolish thing in rushing into what she was doing. I could see that she was hoping that I would make similar moves at home or consider leaving my home. I assured her that I would not do so, at this time especially, and that I felt that she was doing the wrong thing if she went ahead and put the house on the market and made any moves towards a separation.

30

Did you come to any sort of understanding on that occasion or not?---I left with the feeling that she would not do anything but she was going to consider over the next few days while Peter was away as to whether she would go ahead and put the house on the market, up for sale.

40

She has told us as you know that she - that you

expressed a view that you were opposed to this, amongst other things, because you felt that your wife would - if she left too perhaps I should put - if she left her husband and put the house on the market that your wife might well believe or suspect that there was a relationship between you. Was that one of the matters you put to her on this occasion or any occasion?---I don't remember putting this thought to her at all.

10

Did you see her the next day, the Wednesday?---
Yes, I did.

What were the circumstances?---I rang her first of all and we made an arrangement for us to meet together out near her home and I picked her up in the car, we went for a drive a little way away from Barmah and we spoke about these same things again, she was still of the opinion that she should put the house on the market because she felt that if she didn't take the opportunity now when her husband had said that she could, that he would then call her bluff and would not allow it at a later date.

20

And what was your attitude to all this on this occasion?---I was still trying to talk her into not making any move but - this was my attitude.

Did you have any discussion about telling your wife about the possibility of your leaving or anything to that effect on this or an earlier occasion?---She - we did discuss this. I'm just trying to think of how it came up, but there was some discussion because when I did leave her that day I left her with the thoughts that I was going home to give it some deep thought at home and if the opportunity arose that I might have even said something to my wife about the relationship.

30

In respect of what you said to her did you in fact intend to speak to your wife about the relationship?---No.

40

The Thursday, the following day, did you see her again?---Yes, I left for work in the morning, that is I left my home and went round to the office at approximately 8 o'clock in the morning

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or a little earlier and I rang through to Mrs. Kemp's home and she told me that that evening prior, that is the Wednesday evening, that she had rung some friends at Nathalia and told them that she wanted to separate from her husband and they offered to give her a room or two rooms for herself and her family. The offer was that this particular chap would come across in his lunch hour and help her shift the furniture and the likes over to his home.

10

I was most concerned again that she was making these moves and I rearranged my day's programme where I sent my staff out to do the particular job that we were going to do and I intimated to Jenny that I would be out there shortly to talk things over with her and help her if she needed any help.

Did you go out?---Yes, I did.

And when you got there what happened and what did you talk about?---When we got there we immediately discussed her plans that she had made for the day. I again advised her that I thought it was most foolish what she was doing, and eventually after I suppose an hour or an hour and a half I had talked her round into not making any moves. The one consolidation or the one thing that I did concede to her was that she could go ahead and put her house on the market if she wanted - so desired.

20

And what influenced you in giving that point away?---Well I felt that I had argued so long about her leaving her husband, about making moves that particular day or in that time, that she was most adamant about the fact that if she didn't at least put the house on the market that she would feel that her husband had won his particular point and would not then allow it at a later date.

30

Again what was your main object in these discussions as far as your relationship with her was concerned?---I was trying to delay her in making any moves at all.

40

But what object?---Well I felt that she was hoping

that I would be forced to come away with her once she separated from her husband. I was particularly worried that my wife did not know of the affair and I didn't want her to know or be hurt at all. I was frightened to say no that I wouldn't go away with her, that I wouldn't leave my wife and family, in case she should say anything to Bev, and I was still playing at these delaying tactics hoping that within a day or two I would hear from the Antarctica and that I would then have this way of saying that I would not be able to go with her, that I was going to take the trip to the Antarctic.

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Did you that evening have a talk to your wife at all about any question of leaving or did any disturbance occur between you and your wife that particular evening before the Thursday?---
Yes, we sat watching television by the fire that evening in the lounge room and during breaks in the T.V. shows we brought up the subject of the - of my application to duty in the Antarctica we discussed this for some length as to how it would affect the family, our children and her self, me being away for the 12 months. We did discuss also the change that had gone on in my life with regard to my spiritual outlook. We had been very close all our married lives and had always been very active in church work, in our devotions together of an evening and over the past few months these had dropped aside. I'd been out constantly duck shooting till late at night during the duck season, which meant that there was not the same personal contact between my wife and myself in the evenings, and we had - I had omitted our joint devotions of an evening and this was discussed and it culminated in the evening when Bev went into shower and got ready for bed I said I thought I might sleep on the lounge in front of the fire for that evening. She asked me whether it was because the baby was keeping me awake, the movement of the new babe and her particular size and I said no, that I had some spiritual things to sort out in my mind and would just like to be alone for the evening.

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You in fact just did not sleep together that

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particular evening, is that the position?---
That is correct, I made up - our divan is one
that makes down into a bed. I brought my
sleeping bag in onto that and she finished her
shower and brought in supper. We had supper
together in front of the fire and went on
talking about this same thing. She then went
off to bed and I slept on the couch that
evening.

Did this upset her?---It was very unusual for both 10
of us. I think in fact she said the next
morning that she expected me up into bed any
moment, she thought I was teasing her. When
we arose in the morning, of course the girls
came rushing into the lounge room and thought
it was a huge joke to see their father sleeping
in the loungeroom. I said to Bev how did she
sleep and she ask me how I slept and we didn't
do very much discussion I don't think that 20
morning.

Did you say anything to Jenny Kemp about this
particular incident on the Thursday morning?---
Yes, I did, I told her that I hadn't slept with
my wife that night.

Did you tell her that you had talked to her about
going away?---Yes, I had.

What did you say to her?---I said to her that we
had had a discussion the previous night about
my going away from home and that I had, you 30
know, told Bev that definitely I would be
leaving. What the discussion really was was
that I told Bev that definitely I would be
going to the Antarctica.

Why did you tell Mrs.Kemp that you had discussed
with your wife the possibility of your leaving
her, in the sense obviously that she would
understand it?---Well she was expecting me to
say something to her when I left her that
previous day and once again I was saying 40
things to her so that she would not get upset
and be likely to say something herself.

And saying things which were in fact untrue?---
That's correct.

And did you at this stage have any intention at all of leaving the family for Mrs. Kemp or with Mrs. Kemp?---No, definitely not.

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HIS HONOUR: Did you tell Jenny Kemp that your wife had been upset and crying all night or anything like that. I think she said something to that effect?---I believe I might have in the morning told her that we had slept separate and that Bev. had been upset in the morning.

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10 What you say is that there was no truth in that, is that so?---In what I told her?

That your wife was crying all night and upset and so forth?---I believe that she had been upset during the evening. It would be unusual if she wasn't. I can't remember - I think we did have a discussion. It was mainly centred around how did we sleep - each of one of us slept. I consider that my wife would have been upset.

20 If in your belief you had at this time determined to leave home with Mrs. Kemp, what was your belief as to what your wife's attitude would have been in these circumstances. Did you have any and if so, what?---Would you repeat that?

Assuming you had decided to leave home with Mrs. Kemp - for Mrs. Kemp or with her, did you have any belief at this time as to what your wife's attitude might have been in such a situation?
30 ---She would have been most upset, very upset. We'd been always so very close together.

Did you believe she would make things impossible for you? To execute such plans?---No. My wife would have - she would have done anything for me if it would make me happy.

And that had always been her attitude?---That is right.

On the morning of the 7th May, you have told us that you saw Mrs. Kemp. You went home then, did you?---Yes, I did.
40

You feel all right, do you?---Yes, I'm right.

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Would you mind telling His Honour and the jury what you did after you got home, what happened there, what you did and so on?--I drove straight home to my home. Mrs. Betty Trinham was at my place when I arrived home, having a cup of tea with Bev, or a cup of coffee. I came in and we exchanged 'good-mornings'. I had it on my mind that I should ring my Deniliquin office for some reason and I went into the phone in the den. When I lifted up the receiver the wires were dead, which meant that the phone was still switched through in the office and hadn't been switched back through to the house. So Bev had said to me to join them for a cup of coffee and I declined, I said, "I'll be back in a few minutes, I'll slip round and switch the phone through to the house in case any calls come in". And I immediately went back to the office, switched the phone through and then journeyed straight back to the home. Bev and Betty were out at Mrs. Trinham's car - at Betty's car saying goodbye when I arrived, and I then went inside and Bev and I had a cup of coffee together, and then I decided as it was so close to lunch hour that I'd do a little bit of work at home, and one of the hoses on the automatic washing machine was leaking and letting water down towards the motor and I'd had a lot of trouble with it, so I decided that it would be an opportune time for me to repair this. I pulled the old hose off the machine and went back down the street to the hardware store and bought a length of plastic hose to replace the worn hose.

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30

What hardware store did you go to, the name of it?---Rosendale Hardware Company. And I purchased - I couldn't get a hose to replace the old one, it was one of two diameters, it had a different diameter at each end, it was apparently a moulded or fabricated and so I had to make one out of plastic hose of different diameters, so I spent some time selecting a plastic hose that could be inserted inside each other to make up a composite hose, and in fact I came back to the house and pushed the hoses together and tried to fit them onto the machine and it didn't fit and I went back to the hardware store again and bought another

40

length of smaller diameter and came back again. That still didn't fit and I went back the third time and eventually, after the third time, I had 3 or 4 pieces of hose that when joined together made up a composite hose that would do the job. Wendy had been with me on each of these journeys, she liked driving in the Land Rover with me when I went down the street.

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10 She did not at that time go to school?---No. Then
I sat down at the table. Bev was preparing
lunch for us and I glued the section of hoses
together. The older two girls came home from
school, the oldest one brought home a playmate
with her to have lunch, and we had lunch
together, and then by this time the glue had
set and I went out to the machine and I fitted
the hose onto the nipples, and then I coated
them with glue so that the whole thing would
20 become bonded together onto the machine; and
instead of then returning to my office and
going on with my work for the afternoon I
waited at home to allow this glue to set so that
then I could try the machine and see that it
was operating all right before Bev did the
washing.

Well, you had lunch, as you have told us, with the
children?---Yes.

30 And waiting for the glue on the hose to set, what
happened while you waited?

HIS HONOUR: When you were working at the office
did you usually go home for lunch?---Yes, I did.
It's only 2 or 3 minutes drive.

40 MR.LAZARUS: Well, while you were waiting for the
glue to dry what did you do?---Well, I wanted
something to fill in a little bit of time while
I waited for the glue to dry, and I thought it
was an opportune time to clean over the guns, and
so I first of all went into the den and got the
rifle out. I noticed that the under and over
shotgun wasn't there. I think I asked Bev
where the under and over gun was.

HIS HONOUR: That was usually hung on the wall, was
it?---That is correct. And she said it was still

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in the bathroom where I had left it on the previous Saturday. So I got that out and laid it on the table too.

On the kitchen table?---That is correct.

MR.LAZARUS: What did you do then?---I took both the guns out of their cases, I think, at that stage, and then I had to get the cleaning gear which was in the kit bag - in the gladstone bag, and so I went out to the garage and got the kitbag which I knew had all the necessary cleaning gear in it, and as I was coming back out through the garage I remember Wendy was playing in there with me at the canoe and then she came out also, and as I came out through the door I noticed ~~the~~ old shotgun lying on the bench, in its rusty condition, so I picked it up also and brought it in to give it a clean over at the same time.

10

As far as the shotgun was concerned, Mr. Ratten, when you decided to fill in time and clean the guns had you contemplated doing the shotgun too?---No, I hadn't.

20

And was it just an afterthought?---That's correct.

All right, then, you got the shotgun, what did you do with the shotgun?---I brought it into the kitchen also with the Gladstone bag, put it down on the table and I got out the cleaning gear and started to scrub through the barrels of the under and over.

HIS HONOUR: You started to rub through the barrels?---Scrub through the barrels.

30

With the rod, you mean?---That's right.

MR.LAZARUS: Just stopping there a moment, at this time, of course, apart from your wife and Wendy, there was no-one home, is that correct?---That is correct.

You mentioned that Wendy was in the garage with you at this stage. Did she normally stay outside and play or what was the position when you were home?---Sometimes she followed me through the house, sometimes she followed Bev

40

through the house, sometimes she stayed out. We were having this trouble with the magpie and if the magpie was on the back lawn at all, near the back door, she would go out through the front door and play in the front. If the magpie was round the front she would play in the rear of the house.

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Did she often follow you round the house?---Yes, always.

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- 10 Perhaps it might be convenient, Your Honour, if the witness could have the respective guns to demonstrate exactly what he was doing.

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HIS HONOUR: Yes.

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MR.LAZARUS: Would you take - what gun do you say you did first, Mr.Ratten?---The under and over.

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Take that - and do you need the Turk's head?---
Yes, please.

- 20 Take that too and would you just demonstrate to the jury exactly what you were doing?---Well, first of all, of course, I took the rods out of the Gladstone bag, and I have a tin full of these various attachments which screw on and off the rod, like so (demonstrated). The first action for cleaning a gun is to scrub through with this very hard Turk's head brush, which scrubs out the accumulated lead that has formed on the inside of the barrels, and to do this I usually break the gun - I don't know whether they will be able to see.

- 30 Could you hold it up a little bit?---Well it's normal for me to rest the barrels on the floor so that I've got a purchase. (Witness demonstrated).

HIS HONOUR: Putting the muzzle on the floor?---

- 40 Yes, and you scrub through like this (demonstrated), each barrel, until you get all the accumulated lead out of the barrels. Then if you were only cleaning one gun, I take off the Turk's head attachment and put on one of the other brass brushes on the pad and push through to get rid of all the little fine pieces that have now been scrubbed off the barrels.

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But as I had two shotguns to do, when I'd got to that stage of scrubbing through the barrels of the under and over, instead of finishing off one gun, meaning taking these attachments off each time, I turned to do the same to the side by side shotgun.

MR.LAZARUS: In the same way?---Exactly the same way.

Then what did you do?---When I turned to do the side by side it had a large quantity of rust..

10

Perhaps you might just illustrate that, too.---
In exactly the same way. You rest the barrel on the floor, hold it by the stock and..

MR.HOWSE: There may be some evidence in that gun that ought to be preserved, Your Honour, unless it is absolutely necessary...

MR.LAZARUS: What, in the side by side?

MR.HOWSE: Well, there is a difference between the condition of the two barrels, Your Honour. One is said...

20

HIS HONOUR: Well, you had better not push it through. But anyhow, that is what you say you did, you put it through the two barrels, did you?---Well, I didn't get round to doing it on this gun.

HIS HONOUR: You did not - I beg your pardon.

MR.LAZARUS: What did you do exactly, Mr.Ratten?
---I noticed when I went to pick the gun up that it had all this rust on it, completely covered on all the metal work. It had deteriorated a lot from when I brought it home from Kemp's place.

30

HIS HONOUR: Where did you notice the rust was?---
It was all down the barrels, over most of the metalwork along the sides, round the trigger, round the safety catch, anywhere where there was metal, it had been left lying in my open garage and left lying in Mr.Kemp's open garage.

MR.LAZARUS: Just stopping there for a moment, Mr.

Ratten. Before you picked up the side by side shotgun had you cleaned the barrel from a rifle?---No.

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So that after you used the Turk's head on the under and over gun you immediately - the next thing you did was to pick up the shotgun (Exhibit "C"), is that correct?---Yes. You can't clean a rifle with with this one. This is a shotgun cleaning rod.

10 And you had not taken up the rifle at this stage at all?---I had, yes. I had lifted it up out of its case earlier and looked through the telescopic sight and I had remarked that it was a while since I'd used it.

20 All right, you were explaining where the rust was. What did you do then?---My wife - Bev was still working in the kitchen, I'm not sure what she was doing. I would think she was most probably cleaning up the dinner dishes, and I remarked to her about the amount of rust that was on the gun, and she suggested that I use the pot cleaner to rub off the rust. She got it out from under the kitchen sink where she had been standing.

HIS HONOUR: She got it out, did she?---Yes, Your Honour. And I walked over to the sink and commenced to rub all the rust off the metalwork of the gun.

30 MR.LAZARUS: How were you doing that, what action were you using, can you recollect?---Well, it's normal to hold the gun and just rub as hard as you can on all these metal pieces, round the trigger. From memory it was rusty wherever there was metal showing.

HIS HONOUR: Do you use your left hand to rub it?
---Yes, Your Honour.

You are left handed, are you?---Yes. It's my normal working hand.

40 MR.LAZARUS: And how did you cradle the gun, just like that?---As far as I remember, I most probably could hold it in various positions, but to get any purchase for rubbing hard I'd be

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holding it in tight to my body like that
(demonstrated).

And up to this stage had you broken the gun?---
No, I had not.

Had you any belief at all as to whether the gun
had any cartridges in it or not?---I believed
that the gun was empty.

While you were engaged in this operation did
anything occur, or did you subsequently recollect
it?---Yes, at one stage when I was rubbing on
the gun, I'm not sure whether I was rubbing
round the triggers or what part, but there was
one stage where I did hear the definite click
of a firing pin going forward. I didn't
recollect this at the time, I didn't even think
about it at the time, but it came back to my
mind later that night.

10

And when you say you heard the click, can you
recollect whether you had or had not pulled
the trigger? Or a trigger?---At the time I
didn't consider it, although it didn't seem
unusual to me, I didn't investigate to see why
the click had come. These guns are
automatically cocked as soon as you open and
close them, so that there is nothing you can
do to stop the gun from being cocked, it's just
always cocked, and any pressure then on the
triggers will release the firing pin. It
didn't register on me at that stage that it was
anything unusual.

20

30

Well, the fact it did not register on you that
there was anything unusual, does that lead you
to a belief as to whether you probably pulled
the trigger or not?---When I consider it now
I would think that because of my attitude, yes,
I would have pulled the trigger.

And you say that because, as you have indicated,
it did not - nothing apparently occurred to
you that there was anything unusual about the
click?---That is correct.

40

And I take it it is quite clear, that if you had
thought there was anything unusual about the
click you certainly would have had a look to

see why?---That is correct.

At this stage, when you heard this click, can you recollect exactly what you were doing and where you were?---In that earlier stage of rubbing the rust from the barrels I was facing out towards the back of the house looking out through the window, facing the sink and the gun would have been cradled somehow like this (indicates), pointing along to the side wall.

10 At this stage have you any idea where Beverley was?---I think she was still in the room. At some stage when I was cleaning the gun I was aware that she had gone into another part of the house and that she was vacuuming.

20 Apart from the - what you have described as the scouring pad, were you using anything else on this gun?---Yes, when - as soon as I rubbed over the rust marks with the pot cleaner this immediately ran the rust into a smear up and down the metal work, and so I picked up the wettex and wiped all the smear marks off with the wettex then, and then that allowed me to see what areas I hadn't got to with the pot cleaner and so then I would go on with the pot cleaner and gradually I was cleaning it in this way.

And this was all being done somewhere in the vicinity of the sink, would that be correct?---That is correct.

30 You told us that at some stage you had a recollection of Beverley leaving the kitchen and going somewhere else in the house, what was she doing do you know?---Yes, she was vacuuming in the passageway or in the girls' bedroom.

40 And shortly after this did you get interrupted in what you were doing?---While I was doing this to the gun the phone rang so I just put the gun down and went in to answer the phone. It was my father ringing from Melbourne. We exchanged conversation together.

Would you tell His Honour and the jury in substance

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what it was?---Well the conversation centred around how Bev was. It was very close to her delivering her next child, and then during the conversation dad asked me how she was off for nappies. Of course I didn't know and he said that he could get them for us if she required any more so I called out and ran through the kitchen to get her.

HIS HONOUR: You went through the kitchen to get her?---Yes, she couldn't hear me over the noise of the vacuum, and then I ran back to the phone so that there would be as little delay as possible on the trunk call, and Bev followed me in, and while I was running back, of course I was telling her what dad wanted to know, or asking her what dad wanted to know, and she followed me back into the den and if I remember rightly she suggested that she was fairly well off for nappies but could do with another dozen and so this message was passed onto dad by me and he said that he would purchase that dozen for us and either bring them up to us himself when he came up to visit Bev in hospital or if she was requiring them straight away he could send them up by bus.

10

20

MR.LAZARUS: At what stage of the conversation - how long had the conversation gone, have you got any way of fixing, before you hung up or your father hung up?---The pips would have gone when we did hang up. That is the pips designate that the three minute call was finished and we have a few seconds then to say goodbye.

30

After this conversation did you check the time at all or have a look at the time?---Yes, we - Bev and I both started to walk away from the den back into the kitchen and it crossed my mind at the time that while I was there at the phone that I could ring my office at Deniliquin, and I glanced up at our kitchen electric clock, which is in sight from the den, and it registered on my mind that it was still too early to ring because they have their lunch hour from half past 12 to half past 1 and I seem to remember that it registered that it was on or about 20 past 1.

40

What clock is that, Mr. Ratten?---It's the kitchen electric clock.

Where was it?---It's on the wall above the stove.

Well it is apparently not there at the moment, do you know yourself what happened to it?---No, I'm not aware of what happened to it.

Whereabouts was it?---Immediately above the stove.

10 And of course being an electric clock it had attachments from the wall and so on to connect it?---Yes, the stove is let into an alcove and the wire come down the back and straight out through the wall.

20 After you had checked the possibility of ringing Deniliquin what did you do then?---Walked back into the kitchen to continue cleaning the guns. Bev at this stage - I am not sure whether it was Bev or whether it was myself, but one of us had mentioned a cup of coffee. I went back to the sink to pick up the gun - picked up the gun and started to work on it again. We were talking about the conversation that I had had with my father and I turned around to speak to her and then it discharged.

What had happened to the fore piece of the gun, do you know?---I was not conscious of where it was or what had happened to it but I realised now that it had been taken off while I was cleaning down the metal of the barrels.

30 What - take it off and just show His Honour and the jury. What was your object in taking it off?---The barrels had rust all around them and as you clean up this way on the underneath side of the gun you come up against this wood and you know that there is metal on right up through the barrels so I pulled it off so that I could continue on cleaning up the rest of the barrels and into this area.

40 And can you recollect when it was that you did take the fore part off, or fore piece off?---Not exactly, I would imagine that it would have been earlier in the cleaning action.

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When you were having the conversation with Bev just before the gun discharged what actually were you doing can you recollect?---I was still scrubbing at the barrels with the pot cleaner.

I know these questions are probably pretty difficult for you, but from the phone conversation until it discharged what time elapsed, have you any idea?---It only seemed like seconds, it just happened so quickly.

10

At the time the barrel discharged were you taking any note of exactly where you were or exactly where your wife was?---No.

Do you remember moving at all just before the gun discharged, making any physical movement apart from the movement of cleaning the barrel that you have indicated?---Only the action of moving around, turning around from facing the sink to facing back into the room.

20

Do you remember which way you turned, to your left or to your right?---No, I do not.

In holding the gun - the jury saw probably how you held it in the witness box there - over the course of years have you adopted any method of holding a gun in your right hand or would you usually - which is the way you normally hold a gun?---When I'm carrying a gun in that position I normally have my finger along the trigger guard ready for instant use.

30

Have you any recollection of having to tighten your right hand at any stage when you were rubbing the gun just before it discharged?---No, I do not.

Or the gun slightly slipping or anything like that in your right hand?---There was no definite thoughts or feelings at all that I can recollect.

Just prior to the gun discharging can you consciously remember where your wife was?---Would you repeat that please?

40

Just immediately prior to the gun discharging have

you any conscious picture of just where your wife was?---No.

Do you know the direction approximately she was?---
I know what she was doing.

What was she doing?---She was making a cup of coffee.

And where was the coffee kept?---In the kitchen in the bench that runs along the side of the kitchen wall.

10 The bench nearest the sink or furthestest away?---
I think it's in the cupboard nearest the sink.

After the gun discharged what did you do, what happened then?---As the gun fired I saw my wife fall to the floor. I saw as she fell what appeared to be a black mark on her side. I knew that she was very badly hurt. I just stood horrified at first and then I ran straight for the phone to get help.

20 What do you believe you did or said at the phone?---
I called for an ambulance.

HIS HONOUR: Who did you ring?---I didn't ring any particular number, we have to ask for a number, but I'm not aware of the number of the ambulance.

HIS HONOUR: You just picked up the phone did you?---I picked up the phone and yelled for - I knew that the girl would answer.

30 And what did you say?---I just yelled for help and an ambulance to be sent to 59 Mitchell Street. I kept repeating this, I wanted to get back to Bev to do what I could. I was aware of somebody answering. I considered that they'd got the message that I was calling out and so I just hung up and ran back to see what I could do.

When you ran back what happened, what did you do?---There was nothing I could do.

What did you see?---I saw the colour run out of her face. She didn't say anything, she didn't

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move. It was about then that Wendy started to come in through the back door.

MR.LAZARUS: Had you noticed her leave at any time?---I beg your pardon?

Had you noticed her go out of the house at any time, Wendy?---No.

What did you do then?---I was calling out all the time, "No, no" and she started to come in the house and so I said "Go away Wendy" and I chased her away and I went to the back door and she was bewildered and I was still yelling and screaming. She wouldn't go away properly so I locked the back door so that she couldn't come back in. It was about then that the phone rang and I ran into answer the phone and I was asked if I need help and I said, "Yes, for goodness sake get here quickly."

10

Did you know who it was that rang on this occasion?---It was the police.

How did you know that?---I thought that they said it was the police. I had no doubts in my mind that it was the police.

20

What were you doing then in the house?---When I finished that phone conversation?

Yes?---I'm not sure, I know I ran from one room to another and I think it was -- I either ran into the loungeroom at that stage or later on. I remember going through the loungeroom at some stage. When I came back into the kitchen Wendy had come in through the bathroom door and was coming in through to the kitchen again, so I had to chase her out again through the bathroom door and I was telling her to go into next door to Mrs. Phelan's and the last I saw of her she was running down the driveway crying.

30

MR.LAZARUS: Do you recollect the police coming?---Yes.

What happened then?---I'm not certain of all the things that happened. I can remember Mr.Shaw coming in. I knew him, he was the father of a

40

friend of my eldest daughter's. The next thing I seem to remember is being asked some questions up on the bed in the bedroom. I can remember Mr. Shaw saying to me that Bev was dead. I was most anxious to get help for - I remember asking them to ring my brother.

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What were you saying yourself, can you recollect at all?---No, not really.

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10 Do you recollect going to the police station?---
Yes, I can remember walking out to the car, I don't remember the drive to the police station at all.

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Do you remember asking for anyone on the way to the police station or saying anything at all?---
No.

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You - we have been told Doctor Moysey came at a fairly early stage, do you recollect him coming?---Yes, I do.

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20 HIS HONOUR: To the house do you mean or the police station?---No, the police station. He came in I remember he comforted me and he told me that he had arrived too late to do anything for my wife or the baby. He said he was sorry, there was nothing he could have done. He held me in his arms for a while I think. He asked me if I would like to go up to the hospital and lie down for a few hours.

30 MR. LAZARUS: What was your attitude?---I didn't want to, I wanted to give my statement of how and what happened so that I could return and comfort my girls.

Did Doctor Moysey give you anything?---I believe he gave me a tablet. Did you make any effort or move to get a statement taken?---Yes.

What did you do?---I wouldn't know to what police officers but I did ask several police officers as they came in and out of the room could I give my statement so that I could return to Wendy and the other two girls.

40 And what was their reaction?---I was told on each

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occasion that shortly as soon as I had calmed down enough to tell them what had happened.

COURT ADJOURNED FOR LUNCHEON AT 12.37 P.M.

COURT RESUMED AT 2.05 P.M.

LEITH McDONALD RATTEN recalled and warned.

MR.LAZARUS CONTINUED EXAMINATION-IN-CHIEF

MR.LAZARUS: You were telling His Honour and the jury that when first at the police station or for some time after you got there you were discussing the possibility of making a statement. Was anything said to you at any time as to the reason for any delay in getting round to getting a statement from you?---When I first asked it was told to me that I could give my statement as soon as I had quietened down and was capable of doing so. Then as the afternoon went by I was told then that they were waiting for police to come up from Melbourne.

10

And you just waited till those police came up, is that right?---That is right.

20

We were told they started to interview you round about half past ten or 20 to 11 that evening. Without going into any detail what was your general condition at the time of that interview? Were you finding it quite simple to answer questions or what was the position?---I was very distressed and tired, however, I still was most anxious to do all I could to answer the questions that were put to me, correctly, and I still was considering that I within an hour or two would be able to go home and comfort my girls.

30

Did you have to take a pretty firm hand in trying to concentrate or what did you do?---Yes, I was thinking very deeply and trying to hold myself together.

When you ultimately went to the demonstration which was apparently some time round about half past four that morning, we are told that you directed Mr. Coates to alter his position,

40

to go closer towards where you were standing near the sink. What were you basing those directions on at the time?---There was a chalk out line on the floor depicting where Bev had fallen and I moved Mr.Coates up to the position showing where her feet were.

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10 He has given evidence that at one stage anyway he asked the question to the effect was she upright and standing or something to that effect to which you replied "Yes." Can you recollect how that came about and how you - why you answered that question in that way?--- No. I considered that he was suggesting to me that this was the position that she was in and I suppose I answered "Yes" to it.

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Did you have any conscious idea what position she was in at that time?---No.

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20 Were you able to say at that time that she was not standing upright any more than you are able to say that she was?---No.

As far as the demonstration was concerned what did you generally understand it to be aimed at, its object?---I thought it was to depict the area of the room in which I was standing and where my wife was.

Would you have a look at photograph 12 of Exhibit 'A'? It appears to show you with your finger on the trigger of the gun, can you see that?--- Yes, I can.

30 How did you come to adopt that position do you know?---No, I was very concerned at having to go back into the room. I was still trying to work out just how the gun did fire. There was a lot of thought in my mind at the time.

40 Perhaps there is just one other matter - two matters in regard to Mrs.Kemp I want to put to you. Firstly, you were asked amongst many other things in the record of interview as to whether you had discussed with her or she had discussed with you going to Sydney together and you indicated that the answer to that question was "Yes". What was that all about, can you tell His Honour and the jury?---Several weeks

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before the accident this topic had come up at one stage. I think I said to Jenny Kemp that there was a good position advertised in Sydney. Not very much was said about it, in fact it was forgotten straight away as far as I was concerned.

Coming back to the record of interview would you tell us just how the initials on it came to be made, what were the circumstances in which you initialled that document?---Would you repeat the question please?

10

Could you tell me what the circumstances were in which - how it came about that you initialled the record of interview, what generally was said to you and what you did and so on?---I was asked to read through the record of interview to see that it was correct, as to what had been said at the interview, and as I read through I think it was Mr.Coates was making any alterations on his copy with a pen or biro and at the end then I was asked to sign each alteration.

20

And were some made by you do you know on any of the copies or the original?---Words were added by me at some stage, yes.

We have been told that Mrs.Kemp came and saw you after the record of interview had been completed, I think indeed after probably the demonstration too. Prior to that - before that had your father come in?---Yes, I'd seen my father.

30

And what length of time elapsed from the time you had seen your father last at this period and the time Mrs. Kemp came in?---I cannot remember.

In any event, we have been told that when Mrs.Kemp came in, either she said to you or you said to her or both of you said it, that you loved each other and so on, and embraced. What actually did happen?---I think I was being led back from the interview room to the muster room and I saw Mrs. Kemp in a room that it was in between, and I was most anxious to be able to tell her that it was an accident and that what I was being charged with was not correct, and so I asked if I could see her.

40

When you did see her what was the discussion between you generally?---I told her that it was an accident, that it was a terrible experience to have gone through and general things along those lines.

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I just want to put this to you formally, Mr. Ratten: At any time had you had any desire to put a cartridge through your wife or unborn child?---No, definitely not.

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10 At any stage did you have any intention to shoot her?---No, sir.

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the Defence

MR. HOWSE COMMENCED CROSS-EXAMINATION

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MR.HOWSE: Witness, you told us about the precautions that you took with your guns to make sure that they were unloaded in the house. Did you take any special precautions with your supply of ammunition whilst it was on the house premises?---No, I did not.

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20 And you have told us about your daughters quite often accompanying you on shooting expeditions, and I suppose it follows from that that there were many times when they saw you putting cartridges in your guns?---Yes.

Cross-
examination

How long had the canoe been in the garage as it is shown in photograph 10 of Exhibit "A" - look at the photographs, please? How long had it been there since the last time you used it?---It had been placed there on the Sunday prior to the accident.

30 HIS HONOUR: That is the canoe?---Yes, Your Honour.

MR. HOWSE: And if you would look at photograph 11, the cartridge belt and the container of cartridges that we see there, they had been in the gun since the previous Sunday, had they, since the Sunday prior to 7th May - been in the canoe, rather? As shown in photograph 11? They had been in that position since the previous Sunday, had they?---Yes, I hadn't touched them since last using the cartridges.

40 Was it your practice to leave part of your supply of cartridges in the canoe?---No.

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It was not?---No, sir.

How old is Wendy, by the way?---Four.

So far as concerns Mrs. Kemp, is the position this, that although you were having an affair with her you did not intend to leave your wife on her account?---That is correct.

And you did not intend to take up a permanent form of relationship with Mrs.Kemp?---That is correct.

So that you did not intend to live with her either de facto or else in a state of marriage?--- That is correct. 10

How long approximately before 7th May did it become apparent to you that Mrs. Kemp wanted to take up a permanent relationship with you?--- It's difficult to answer that, but it would be several weeks.

Several weeks?---It became much more apparent perhaps 4 weeks prior to 7th May. It had been over quite a period of time. 20

What had been over quite a period of time?---That she was showing more interest in being able to start life afresh without her husband.

Was not there some suggestion about June or July 1969 about the prospect of you at some time in the future being able to live together?--- There were occasions when we spoke about this.

It was discussed between you at that stage that when your children grew up you might live together, was it not? This is in June or July 1969? Or thereabouts?---Yes, I believe that would be so. 30

So that approximately 12 months before your wife died there was some discussion between you and Mrs. Kemp about a permanent relationship in the future?---Yes, but they were only very general remarks that were made at times of intimacy.

But I suggest that they were sufficient to make it

apparent to you that she at least wanted permanency at some time in the future?---No, the suggestions weren't along those lines. You see, - do you want me to explain?

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Well, you explain it to the jury, then?---These things were just spoken generally as to - in answer to things that we talked about. I said all along that I could never leave my wife nor my children, and at one stage I can remember Jenny saying, "Do you think you would still want me and love me after the children have grown up and left home?" That is how the discussion arose.

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Was she in love with you in May of this year?---
I don't know that I'd be able to really answer that.

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Did she ever tell you that she was?---Yes.

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Did you believe her?---Yes.

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Were you in love with her?---Once again, it's very difficult to answer. I don't know that I can answer that.

Why not, Mr. Ratten?---Well, there are so many aspects to the word "love" and so many different meanings to it.

Are there any of its aspects in respect of which you would say that you were in love with her?---
In May of this year?---I didn't quite understand your question.

You have told us that there are so many aspects of the word "love". All I want to know is if there were any aspects of that word in respect of which you would describe yourself as being in love with her in May of this year?---
I enjoyed her company.

Well, that could hardly be said to be being in love with her, could it?---As I said before, I don't know that one can say whether - because of the aspect of the word "love", as to just how it affects one's feelings.

Were you in love with your wife?---Yes.

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All right, were you in love with Mrs.Kemp?---No.

You were not?---Not to the extent that I was in love with my wife.

Did you ever tell Mrs.Kemp that you were in love with her?---Yes.

Was that the truth?---It depends what aspects you put on the word "love".

Well look, you explain it to the Jury, then, witness, what did you mean when you said to her that you were in love with her?---That I enjoyed her company, I enjoyed being with her.

10

Well, I suppose you enjoyed the company of her husband too, did you?---Yes.

You enjoyed being with him too, did you not?---Yes.

Well, you would not say you were in love with him, would you?---No.

All right, well you tell the jury what you meant when you said that you were in love with Mrs. Kemp?

20

HIS HONOUR: When he told her he was in love with her.

MR.HOWSE: Yes, I should correct that, Your Honour. (to witness): When you told her that you were in love with her?

HIS HONOUR: Do you follow the question, Mr. Ratten?---Yes, but, Your Honour, I don't know that..

It is relating to what you said a little while ago, that you had told Jenny Kemp you were in love with her. You told her that, apparently, you said?---Yes.

30

And Mr.Howse is asking you about that.

MR.HOWSE: I think he also went on to say that that was the truth.

HIS HONOUR: What he is asking you now is was it true when you told her that you were in love with her, were you in love with her? That is what he is asking you?---If you ask me if I love shooting and hunting I'd say "yes", but that word "love" has a different meaning to what we feel for people. If he says that I love being with Peter Kemp, and his company, I'd say "yes". If he says did I love being with Jenny, I'd say "yes."

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Well you know what you mean by being in love with a woman?---Yes.

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That is what Mr. Howse is asking you about, love in that sense, is that not it?

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MR.HOWSE: Yes, Your Honour.

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HIS HONOUR: What do you say about that. In that sense were you in love with Jenny Kemp in May of this year?---No, not to the extent - it's very hard for me to explain. I enjoyed her company, I liked being with her, but I didn't love her to the extent that I loved my wife and desired to live with her and give her all my affections.

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MR. HOWSE: Who?---Jenny Kemp.

I do not quite follow. Who was it that you desired to be with and give all your affections to?---My wife.

So you demonstrated that by committing adultery with Mrs. Kemp on a number of occasions, is that right?---I don't follow your question really.

You - are you serious that you wanted to give all your affection to your wife?---Yes.

You have told the Court that you have a very great moral obligation to your wife and children as a result of which you would never abandon them and that you conveyed this to Mrs.Kemp, is that correct?---Yes.

And you went on to say that this attitude of yours was accepted by her?---Yes.

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When did you first make this attitude clear to her? To Mrs. Kemp?---Very early in our relationship.

But at all events a month before 7th May it had certainly become apparent to you that she had other desires?---Yes.

When was it that you consulted a solicitor in Echuca about Mrs.Kemp's position?---I'm not certain of the date but it would be a fortnight before the accident, perhaps three weeks.

10

Was that at Mrs.Kemp's request?---Yes.

She asked you if you could find out what the position was in regard to her children and to her home?---No, she told me that she would be seeing a solicitor to find out her position if she separated from her husband and to save her the embarrassment and the expense; as I was in a position through my business of attending solicitors' officers I said I would see if I could find out through a friend.

20

When you came to Shepparton on 5th May of this year did you consult the solicitor whom you saw about your own position in relation to divorce?---No.

Are you telling the court that the only matters discussed related to Mrs.Kemp's position?---No.

Your own position was discussed too was it not?---No, it was a general discussion.

30

Did the general discussion embrace your position?---I felt it did but it wasn't really brought up as such.

Did you come to any conclusion about what your own position was as a result of this discussion?---Yes.

And what conclusion did you come to concerning yourself?---I came into the conclusion that if anybody wanted to leave home or get a divorce on grounds of separation that you could not.

40

You say that this was a general discussion which did embrace your position. You came to Shepparton to find out your own position as well as Mrs. Kemp's did you not?---No.

Are you sure?---Yes, I knew that I would find out but that wasn't the reason we came.

What was the reason for coming?---Mrs. Kemp wanted to know what would be her position.

10 But you had already found that out for her had you not?---Yes, but I was unable to give her very much of what she wanted to know.

20 What was it that she wanted to know that you could not give to her?---Well the discussion that I had with the solicitors originally was very general. I could only tell them certain things that I could remember that she would want to know. Some of this would have been forgotten before I could tell her, so she was still not very clear as to her aspects with regard to maintenance, position of custody of children and so on, so she said that she would like to see a solicitor out of town herself.

Well -

HIS HONOUR: Was that a professional visit you made to Shepparton?---Yes, Your Honour.

Did you pay for the interview?---Yes, I did.

Who paid for it?---I did.

? ?

30 MR. HOWSE: Well it was a Mr. Seager Fredo was it not, whom you saw?---I can't remember his name, it sounds familiar.

40 If the object of this discussion was simply to find out Mrs. Kemp's situation why was the subject discussed on a general basis and not simply confined to her?---We both went into the solicitor's office and of course when he started questioning her with regard to her position he - and she told him of her position in her own home life and he then assumed that I was the co-respondent and so the discussion became general.

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You told Mrs. Kemp that your wife would not divorce you did you not?---That is so.

And I suggest to you that you told her that somewhere round about Christmas of 1969?--- I couldn't say whether that was right or not.

Well you heard her giving evidence in Court the other day did you not?---Yes.

And I suggest that when she was asked this question, "Did the accused ever say anything to you about the subject of divorce in relation to his wife?" She answered that "She would never give him one." She was asked, "He said that did he?" She replied "Yes". She was asked, "Did he say that just the once or on more than one occasion" and she replied in evidence here "I can't remember I'm afraid, just the once I think." She was then asked "Are you able to tell us roughly when it was he said that?" and she replied "About last Christmas", "Christmas '69?" "Yes". Now that is what she swore I suggest?---I can't remember whether it was Christmas '69 or not.

10

20

Well would it have been approximately Christmas '69?---I really wouldn't know.

Do you deny that it was?---No.

You see, I suggest to you that you knew perfectly well by Christmas 1969 that Mrs. Kemp desired a permanent relationship with you?---It was discussed at various times.

About Christmas 1969?---Yes, it could have been.

30

And I suggest to you that it was discussed before then?---I've already said that it was right back in the beginning that we discussed these things.

Well, that means, does it not, that right from the beginning of your association with her you realised that she wanted permanency with you? ---No. What I've said is that we discussed these things occasionally when we were together.

Did she express any desire in that direction in the

40

early part of 1969?---She on occasions intimated that it would be nice for us to live together.

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Well, at any rate from the time when it did become apparent to you that she wanted to live with you permanently, you went on in this association with her without having any intention of ever living permanently with her?---That is correct.

10 HIS HONOUR: I think you ought to clear that up, Mr. Howse. I am not sure whether the witness said that he knew that she wanted a permanent relationship by Christmas 1969 or not. (To witness): Did you know that - perhaps you can tell me in this way - when did you first realise that Jenny Kemp wanted to set up a permanent relationship with you?---I think it became most apparent during the duck season when I was seeing so much of her.

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20 That would be February/March?---That's right.

That means, then, that you continued on with her knowing her feelings, but having no intention of ever living permanently with her?---That is correct.

And that that went on for something like 3 months?---Two or three months.

30 MR. HOWSE: So that at least for that period of time you were deceiving her?---It's very hard to say that there was a definite date or a time in our relationship where suddenly she would say that she desired to live with me.

40 MR. HOWSE: Look witness, from some time in February, I suggest, at the very latest, you knew that she wanted to live with you permanently?---No, I don't think that is correct. This is a gradual transition. There wasn't any special date or time or day where suddenly this came about. I've told you that we spoke about it even right back early in the relationship.

Would you concede that there was any period of time before 7th May during which you were

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deceiving Mrs. Kemp?---Would you repeat the question, please?

Would you concede that there was any period of time before 7th May during which you were deceiving Mrs. Kemp?---Yes.

How long would you say it was?---A month, perhaps 2 months.

Perhaps 3 months?---No, I don't think as long as that.

So that the situation comes down to this, you had been deceiving your wife since March or April 1969, is that correct?---Yes. 10

You had been deceiving your friend Peter Kemp since that time?---Yes.

And certainly for a month or two prior to 7th May you were deceiving Mrs. Kemp?---Yes.

And you are telling the truth here?---Yes.

On the occasion that both Mrs. Kemp and Mrs. Trinham - I am sorry, Mrs. Webb, told us about, when you travelled down to Melbourne in the car, was there some discussion then between the three of you about the situation between yourself and Mrs. Kemp?---Yes. 20

And you said during that discussion that you wanted to take up permanently with Mrs. Kemp, did you not?---Yes.

Was that true or untrue?---Could I add to what was actually said, because you are taking a few words out of a whole lengthy discussion.

Was the statement that you made true or untrue?--- Would you repeat the question, please? 30

During the course of the journey down to Melbourne, when this discussion took place, did you say that you wanted to take up permanently with Mrs. Kemp?---Yes.

When you said that were you telling the truth?--- No.

Well, this was another lie?---Yes.

By the way, did you ever clean your guns in the presence of Peter Kemp?---Not that I can recall, I may have.

Or in the presence of Mrs. Trinham?---I don't think so.

Did you ever clean them out in the garage?---I don't think so.

10 Well, you have conceded to the jury that for a month or two you were deceiving Mrs. Kemp about the future. You have told us today that so far as obtaining a divorce from your wife was concerned your belief was that if you really wanted it she would be prepared to give you one? Is that correct?---What was the question?

20 You have told us that your belief about obtaining a divorce from your wife was that if you really wanted one she would be prepared to give you one, is that correct?---I don't think I told you that.

HIS HONOUR: Do you remember a stage this morning in which you said in answer to Mr. Lazarus that you thought your wife would do anything for you that would make you happy?---Yes.

I think that is the part Mr. Howse is talking about. I do not know whether he actually said that she would give him a divorce, though.

MR. LAZARUS: He did not, Your Honour.

30 HIS HONOUR: No, I do not recollect that Mr. Howse, not in so many terms, at any rate.

MR. HOWSE: Your Honour, I am trying to find the page.

HIS HONOUR: I may be wrong about it.

MR. HOWSE: What was your belief as to whether or not your wife would be prepared to give you a divorce?---I think she would have.

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And you certainly told us this morning that she would have been prepared in effect to give you anything that you wanted?---That is correct.

Perhaps since we are still looking for it you might be good enough to tell us what that was in connection with, that you said that? That your wife would be prepared to give you anything that you wanted?

MR.LAZARUS: I do not think that is what the witness said.

10

HIS HONOUR: I think he said she would do anything that would make him happier.

MR. HOWSE: Yes, Your Honour, I think that is correct. (To witness) If your belief was that your wife would be prepared to do anything to make you happy why did you not go and tell her about the situation between yourself and Mrs. Kemp?---I didn't want to upset her or hurt her in any way at all.

HIS HONOUR: Mr. Howse the note I have got, it is a very contracted note, comes at a stage when Mr. Lazarus was asking the witness as to whether he considered his wife would have been upset during the evening. In my - my very short note is "I didn't think she would have made it impossible, she would have done anything to make me happy." It was words to that effect.

20

MR. HOWSE: Yes, Your Honour, having heard what Your Honour has said that is my recollection of it although I can't find my own note, perhaps I couldn't write quickly enough.

30

Was that your belief that your wife would not have made it impossible for you?---Yes. Well would it not have been simpler to have told her what it was all about rather than continue deceiving Mrs. Kemp?---No, you would have to know my wife to understand why I couldn't tell her or wouldn't tell her.

WITNESS: I didn't want to hurt her emotionally at all.

40

MR. HOWSE: That did not stop you from committing adultery with Mrs. Kemp though did it?---No, but there are occasions we do things that we are not really proud about.

Yes, but it did not only happen once with Mrs. Kemp did it?---Once these things happen it is very hard to stop them.

MR. HOWSE: Well you could have stopped it easily enough could you not by simply not seeing Mrs. Kemp?---I was afraid that she may say something to my wife.

On Thursday morning 7th May what time did you arrive at Mrs. Kemp's place?---It would be approximately 9 o'clock.

And what time did you leave there?---It would be around about half past 10.

And when do you say it was that you went down the street to get the tubing for the washing machine?---Sometime between quarter past eleven and 12 o'clock.

Does this refer to the first time you went to get the tubing?---Are you asking me what time I went for the first piece of tubing are you?

Yes?---Well it would be close I suppose to quarter past eleven, twenty past eleven, I am not sure.

And you made two other trips?---That is correct.

When was the third one?---It must've been getting fairly close to quarter to 12, 12 o'clock.

What time did you say the lunch hour was for your Deniliquin office?---Between half past 12 and half past 1.

Did you make the visits to the shop to get the tubing for the washing machine before or after Mrs. Trinham left?---After Mrs. Trinham left.

So the situation was this, that you came home, Mrs. Trinham was still at the house, is that right?---That's correct.

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Your wife offered you a cup of coffee?---Yes.

You then remembered about the phone?---Yes.

You returned to your office to switch the phone
through to the house?---Yes.

And then came back to the house?---Yes.

By which time Mrs. Trinham was out the front
going?---Yes.

And all that according to what you have now told
us would have taken place somewhere before
about quarter past eleven?---Yes.

10

When you and your wife spent the previous night
sleeping in different rooms was your wife very
upset about that?---Do you mean beforehand
or after?

Either before or after?---She wasn't upset before
hand and afterwards I assumed that she would be
upset. She didn't appear to be any different
in the morning to other mornings, perhaps a
little bit more tired looking.

MR. HOWSE: She did look a bit more tired did
she?---Yes.

20

Did she look as if she had been crying during the
night?---I think that she had but it wasn't
very obvious.

What do you mean that you think that she had, do
you think she had been crying or that she looked
as if she had been crying?---I don't think she
looked as if she had been crying but I assumed
that she would have.

Why did you make that assumption?---Well we were
very close in relationship and as I explained
before we had had this discussion the night
before about our spiritual relationship and
it was something unusual for us to sleep in
separate beds.

30

Had it ever happened before apart from occasions
when you might have been out camping or
something like that. When you were both in

the same house for the night?---There have been times when she was in pregnancy with the other girls that we have slept apart.

Was she upset on those occasions?---I don't think so.

You do not?---No.

Why did you assume that she would be upset on this occasion?---Because of the discussion we had had beforehand.

10 What was it about those discussions that caused you to assume that she was upset?---We had discussed together the change that had been in my life in the past few months, especially with regard to our spiritual activities together, and she asked if there was something more that we could talk over about it and I said no that it was something that I had to battle out in my own mind and that I wanted that time to do so.

20 It is this is it that led you to the assumption that she would have been upset during the night?---There was another thing that I had said to her that we had discussed and that was with regard to the trip to Antarctica. I had put in these applications but it had been discussed generally to see what would happen with regard to the applications and I had said that night before that I would definitely be going if I was granted a passage.

30 Was this the first year that you had ever put in such an application?---Yes.

So that what leads you to assume that she would have been upset is first of all the spiritual problem that you had, is that right?---Yes.

And secondly, because you had told her that if you got a passage and your application to go to the Antarctic was accepted, that you would definitely be going?---Yes.

40 And this was the first time that you had ever said that to her, was it?---It was the first time that it had been very definite.

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So that on the night of Wednesday, 6th May,
you did tell your wife that if you could go
to the Antarctic you were definitely going to
go?---That is correct.

And that, I suggest, is what she would really have
been upset about, the prospect of you leaving?---
Yes.

Well, what really was the necessity for sleeping
in the lounge that night?---I wanted to think
out my own relationships with my - my
spiritual relationships between God and myself.

10

What was the problem there?---I did not consider
that I was doing the right thing in my
adultery.

Was this the first time you had thought about
that?---No.

Did that involve you in having to sleep on your
own?---There are a times when a person wants to
be alone in deep thought, in prayer.

20

I take it you did not make a practice of talking
to your wife all night when you went to bed,
did you?---No.

You would have had plenty of opportunity for
spiritual meditation, I suggest, occupying the
same bed as your wife? Would you not?---I
may have.

I suggest that the real reason why you slept in
separate rooms was because you had told her
that you were going to leave her?---No, that is
not correct.

30

When you saw Mrs. Kemp the next morning, you told
her something about this discussion that you
had had with your wife, did you not?---
Yes, I did.

Did you tell her that your wife had been upset?---
Yes, I did.

Did you tell her that your wife had cried?---I
don't really remember now.

You see, I suggest that you told Mrs. Kemp about speaking to your wife, that she was upset and that she had cried, do you agree with that?--- I told her certain things, I don't remember exactly what I told her.

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10 I suggest to you that you told Mrs. Kemp that your wife was still upset that morning?---I could have.

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10 Was that the truth? That your wife was still upset that morning?---It's once again very hard to explain to you what "upset" means. If you are trying to say was she crying and was she breaking down - no, she wasn't. But she was different to what she normally was; so was I.

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20 In what way did your wife show that she was different to what she normally was? What was different about her?---Well, the first thing we said to each other when we saw each other that morning was, "How did you sleep?", because it had been unusual for us not to sleep together.

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And did you say that to her?---Yes, I did.

And what did she reply?---"Not very well".

Was there anything else that was different about her that morning?---No, I don't think so.

30 HIS HONOUR: Did you get the impression that she said that she had not slept well because you were sleeping apart or because of the condition she was in?---No I would say that it was because we had slept apart. We were very close together in mind and spirit feeling, and because I had said to her, and because she knew that I was having difficulty with my spiritual life, she would be most concerned, and it wouldn't surprise me to know that she even lay awake all night praying for me. This was the type of life we lived together.

40 MR.HOWSE: What, you spent a good deal of time at home praying, did you?---Yes, we did.

The rest of the time out in the bush with Mrs.

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Kemp? Or in bed with her somewhere?---No.

HIS HONOUR: When you said that your wife knew about your spiritual problem, she did not know about your real spiritual problem, you do not mean that?---No.

I do not want there to be any misunderstanding about that, you see. What did she understand your spiritual problem was?---Well, she could see, I suppose, in me that I had lost the interest that I did have in church affairs and spiritual matters. I think I said before, earlier in the Court, that I had stopped reading the Scriptures and praying with her and having devotions with her of an evening, and there were occasions when she would say this to me, and this is what came up on this particular evening again.

10

MR. HOWSE: Now as I follow your evidence today after the phone call with your father you then remembered about the call to the Deniliquin office, is that correct?---That's correct.

20

But you did not make it at that stage because you remembered that it was still their lunch hour? ---That is correct.

The lunch hour being, as you have already told us, 12.30 to 1.30?---That is correct.

But the reason why you returned to your office was in order to switch the phone through so that you could make that call?---That is correct.

30

And for that purpose you returned to your office some time before a quarter past 11?---That is correct.

Then returned home?---Yes.

Why did you not make the phone call then? Why did you not make it before 12.30?---When I journeyed back to the house Bev and Betty Tringham were at the front talking as I drove into my driveway, Bev ran up the driveway and started to put on the cup of coffee, and we sat down and had that cup of coffee, and I

40

just didn't think again to make the call.

10 So that having gone to the trouble of going back to your office for the purpose of making the call, you then forgot about it up until...?---
There were two reasons for going back to the office. One was that no-one was manning the phone at the office and while it was switched through to the office I wouldn't hear any calls, and it had to be manually switched back through to the house so that we could receive calls while I was at the house.

Was there any particular reason for wanting to make the Deniliquin call from the house?---
No.

20 Why did you not make it when you went back to the office to switch the phone through, why did you not make it from there?---When I went in originally to the house Betty Tringham and Bev were having a cup of coffee and I was going to have one then. The phone, I realised, was switched through to the office still, so I hurried straight back and said to Bev that I'd be back in a few minutes. So I didn't delay at the office, I came straight back.

Was there anybody at the office that morning?---
Not in my particular office.

30 What does that mean, nobody in the suite of offices at all or nobody in your particular room?---No, there were others in the suite of offices but no-one in my particular establishment.

In your own particular suite of offices?---That's right.

And indeed I think as you have already told us in order to go out and see Mrs. Kemp that morning you rearranged your work programme?---
That is correct.

Did you have much to do that day?---Yes.

40 Can you tell us what it was briefly?---I had to lay out some - I'm not sure of how many acres but I had to lay out a considerable number of

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acres of land for irrigation purposes.

And in point of time what was likely to be entailed in that?---It would take most of the day for the work.

And this was a job that you had undertaken to do that day is it?---No, it had been prearranged.

For that day?---Yes.

And did it involve having assistants to work with you when you were doing it, this sort of job?---Yes.

10

How many?---Two.

Well the rearrangement of work that you made so that you could go and see Mrs. Kemp, what did that involve?---It involved sending my two assistants out to do the job on their own. I had one senior assistant that was quite capable of doing the contour layouts. It meant that they were slowed down because there would be only one man walking with a staff instead of two.

20

And that would mean therefore that the job that initially would have taken most of the day would have taken what, substantially longer?---Yes.

Without you?---Yes.

Roughly how much longer would you say?---Well I would expect to have done the job with two assistants say finishing by half past two or three o'clock in the afternoon, and I expected the others would take up until 5 o'clock.

30

And the reason why you did this was in order that you could go out and see Mrs. Kemp about the problem that had then become quite pressing?---That is correct.

You did reach some finality with Mrs. Kemp that day did you not?---I don't quite understand.

You persuaded her not to leave home that day did you not?---That is correct.

On the other hand you had, as you have told us, made the concession of saying to her to go ahead with the sale of the house?---I didn't say for her to go ahead with the sale of the house, it's just that I couldn't think of any further arguments to say not to go ahead with it.

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By that time the day's discussion had been finished, it had been finalised had it not?---
Yes.

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10 I do not suppose you intended having any further discussion with Mrs.Kemp about it that day?---
No.

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So that having concluded your talk with her that morning your expectation was to go back to work for the rest of the day?---That is correct.

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20 And indeed, if you had gone straight back to work when you had finished with Mrs. Kemp you would have considerably shortened the period of time the other two men would have needed to do it?---I didn't intend to go out to where they were working, they were working some 80 miles or 90 miles away from my office.

Was it your intention then that having sent them out you would not go there and help them at all?---That is correct.

What time did they leave Echuca that day?---A little after eight, perhaps a quarter past eight.

30 Did you have any other work in mind for the rest of the day?---For myself?

Yes?---Yes, there's always office work to be done.

40 Why did you not go straight back to work when you finished talking to Mrs.Kemp? I do not mean just to call in but go back and do your work?---Well most of the morning had already gone, it was often my practice to come home in the morning when I was working at the office and have a cup of coffee, collect some letters perhaps my wife had been typing for me and I

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was in my work clothes at the time and normally when I stay in the office I dress suitable for the office, in collar and tie, and so I just made my way home to finish off the morning at home and then go back to the office in the afternoon.

What were the office hours in Echuca?---Nine till five.

And what lunch hour?---Whatever I decided to take, it normally went from twelve to one when the girls were home for lunch too.

10

And what time was the lunch hour at the school?--- They came out at varying stages, depending what age, but I think -

The two we are concerned with?---Yes, well one came out earlier than the other because she was in a lower grade. I think one came out about five past twelve, the other about ten past 12.

And what time did they resume?---I would think it would be an hour afterwards.

20

Do you say that on this day, 7th May, both girls came home for lunch?---Yes, that is right.

And one of them brought a play mate?---That is correct.

What did you have for lunch?---I couldn't say now.

Did you have lunch?---Yes.

Was there not an occasion down at the police station when Doctor Jones spoke to you, either on the night of 7th May or the early morning of 8th May?---That is correct.

30

And Sanior Detective Coates was present was he not?---That is correct.

And did you not complain to Doctor Jones that you had not had anything to eat since breakfast?--- I didn't complain.

Did you say that to Doctor Jones?---I don't remember.

Do you deny that you said it?---I cannot deny that I said it.

In any case it would not be true to say would it that you had had nothing since breakfast?---No, that is right.

Because you had in fact had your lunch?---That is correct.

And so had your wife?---That is correct.

10 And what, the three children, the four children, your own three and someone else?---That is correct.

MR. HOWSE: Approximately how long before the gun went off - that is the gun Exhibit "C" - did you bring it from the garage into the house?--- It could be between 20 minutes, half an hour, perhaps a little bit longer. It may not have been quite so long, it's very hard to say now.

What was your intention in the first place in bringing the gun in?---To clean it.

20 What did that involve? What was your intention at that stage, to clean the inside of the barrels or the outside of the gun or what?--- Yes, I would have done over the whole of the gun, inside and out.

Had you then any intention of ever using it again? ---No.

Well, was there any point, therefore, in cleaning out the inside of the barrels?---Yes, it stops any corrosion or eating away inside the barrels.

30 Well, having got all the guns inside the house in the kitchen, you then proceeded to clean the Winchester by pulling the cleaning with the Turk's head on it through the barrels?---That is correct.

And pushing them through. Why did you not then proceed to push the Turk's head through the barrels of the side by side shotgun, Exhibit "G"?---I was going to do so, but then the gun was so dirty on the outside that it was obvious

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the first thing to do would be to clean it where you were going to handle it, on the outside.

You had noticed the condition of the gun when you picked it up in the garage, had you not?---
That is correct.

Well, why did you not make that the first cleaning operation, the outside?---There was no particular reason. I came in with the gun in one hand and the kit-bag in the other hand. 10

You then proceeded to put the rods together and put the Turk's head on the end?---Yes.

You were aware at that stage of the condition of the outside of the gun?---Yes.

And that you made your first operation to take the Winchester, is that right?---That is correct.

And by that time the Winchester was already in the kitchen?---Yes.

In fact, you had got the Winchester from the bathroom and brought it into the kitchen?---
Yes. 20

And it was only after doing that, bringing the Winchester into the kitchen, that you went out to the garage to get the Gladstone bag containing the cleaning materials?---Yes.

And then picked up Exhibit "C" and brought back Exhibit "C" and the kit-bag into the kitchen?---
Yes.

Then you assembled the cleaning rod?---Yes.

Picked up the Winchester?---Yes. 30

Proceeded to clean out the inside of the barrels?
---Yes.

And then transferred your attentions to Exhibit "C"?---Yes.

Whereabouts on Exhibit "C" do you say that the rust was?---I'm only going by memory, but it was most

obvious on the barrels and round most of the metal area.

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Perhaps if you would be good enough to take the gun and just point out to the jury where it was?--- Well, the most obvious parts for the rust would be anywhere along the barrels and along the metal work on the sides. I'm not sure how much rust, if any, would be around the trigger or around the bottom side, but as far as I was concerned, most of the metal area had signs of rust on it.

These were obvious signs?---Yes, you could notice it, especially on the barrels.

So that the greater part of the visible metal surface was showing obvious signs of rust?--- You could see where the rain had splashed onto it and wherever a drop of water had touched it had gone into a rust mark.

And you had cleaned a good deal of this rust off, had you?---Yes.

Would it be correct to say that you had cleaned practically all of the rust off before the gun went off?---I was getting very close to having it cleaned.

Would you have a look at the gun now and see if there is any of the rust that you are speaking about left on it?---There's no obvious rust marks now, you can still see the remains of it down in the edges of the rib.

MR. HOWSE: That is along that part down the middle?---The rib down the middle. And you can still see quite a bit in that little pocket up underneath where the fore-end was.

Was there much rust down the rib in the first place before you started cleaning it?---I really couldn't say.

Do you recall whether you had to clean down in the groove along the rib?---I'm not particularly conscious of anything or any area that I had to do particularly.

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By the way, when you fire guns what hand do you use to pull the trigger?---The right hand.

So that although you are left-handed in some respects, as far as firing guns is concerned you are right-handed?---I had an accident to my left eye.

I appreciate that, but....?---Well, that's correct.

And would you just show us again how it was that you were holding the gun at the time when it went off?---I can't be absolutely certain. I know that I was cradling the gun in this position (demonstrated) as I worked on it. That's about all I can tell you.

10

HIS HONOUR: Did you have your finger on the trigger there or not?---Now?

Yes, did you? How do you ordinarily hold it...?
---No, it is in the guard area.

How do you ordinarily hold it, with your finger on the guard?---Yes, Your Honour.

Not on the trigger?---No.

20

MR. HOWSE: And the reason for having your index finger on the guard like that, when you are carrying it out shooting, is so that you can fire straight away if you want to, is it?---Yes, that is correct.

Would you mind breaking the gun?---(Witness demonstrated as requested).

Now can you just show us how you would carry it in your right hand if you were out shooting?---I don't carry it broken.

30

Well, will you just show us from that position how you would carry it?---(Witness demonstrated as requested). Usually like this.

You have told us that you have not any conscious picture of where your wife was except that she was working in the kitchen just before the gun went off, is that correct?---That is correct.

Do you recollect in what part of the kitchen she

was?---No, but she would have been either in the area near the table or by the kitchen benches.

Was the table in the position in which we see it in photograph - would you look at Exhibit "A", please? Photograph 12? Was the kitchen table in that position at the time when the gun went off?---Yes, that would be right.

Photograph 6 of Exhibit "A", is that the position of the kitchen table?---Yes, that is right.

10 You say then that she was either in the area of the table or else the bench just before the gun went off?---Yes, I followed her back into the room and she went into that area to prepare the cup of coffee.

You had a cup of coffee with her when you returned from the office after switching the phone through had you not?---Yes, that is right.

What time did you have your lunch with her?---It would be about quarter past 12.

20 So she was setting about to make another cup of coffee somewhere round about quarter past or twenty past one?---That is correct.

How are you able to say that she was in fact making a cup of coffee? What did you observe to indicate that?---I didn't observe anything but the remark passed between us as we came away from the phone.

30 You say that you were facing towards the window, is that correct, and you turned round?---That is correct.

And when you turned around were you in the position where you are shown standing in photograph 12 of Exhibit 'A'?---Approximately.

That is close enough is it, what we see there in photograph 12?---Well I was in that area, I would have been close to the sink area, I could've been up further, along anywhere in front of those cupboards.

40 How far along and in which direction?---I don't know.

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Are you suggesting that you might have been more to the left as you look at the photograph?--- Quite easily.

How much?---I really don't know but it could've been anywhere along the front of those cupboards.

When you say anywhere are you going so far as to suggest that you might have been right along to the extreme left of the cupboard?---I would not think so.

10

Well as fairly as you can say where would you place yourself?---If I knew I would be able to tell you but I just don't know, I picked the gun off the bench and started to work and turned round at the same time.

HIS HONOUR: You mean off the bench where the sink is?---Yes, Your Honour.

MR. HOWSE: Whereabouts was it on the bench where the sink is?---That I don't know.

There is a tea towel behind you in the picture is there not, on the sink. Perhaps if you look again at photograph No. 6?---It appears to be a tea towel.

20

Were you using that?---No, I don't think so.

Do you see the wettex on the sink beside the tea towel?---Yes.

Were you using that?---Yes.

Do you consider that you might have been further to the right as you look at photograph No.12 than the position you are occupying?---I could've but I don't think so.

30

Why do you say that?---Well the gun would obviously be resting on a part of the sink bench where it could rest properly.

HIS HONOUR: To the left or the right of the sink? ---That's very hard to say, Your Honour.

Well I asked you that because in photograph No.6 they

look like some milk bottles on the right do they not, of the sink?---Yes.

Would there be room there to have laid your gun?---
Yes, you could still lay it there.

What you are saying is, when your father's call came through you put the gun down on the sink?---
Somewhere on the bench there, yes.

10 MR. HOWSE: And when you say that the gun was resting on the bench do you mean whilst you took the phone call?---That is correct.

That no part of it was resting on the bench while you were working on it after the phone call?
---I don't think so.

Having concluded the phone call you came back to the kitchen bench where the sink is, you then took the gun up again?---Yes.

20 And do I understand you to mean that the gun was down the end of the bench next to the kitchen door, that is the outside door?---As I said before I don't know, it may have been on the right hand edge, I couldn't say one way or the other.

On the right hand edge?---Right hand end of the sink.

Which way do you mean by that, the end of the sink near the back door or the other end, the stove end?---It could've been in either position.

30 Do you mean to say that you might have put the gun down at the stove end of the sink, which is the left hand side as you look at the photograph, in order to go and take telephone call?---Yes, it hasn't anything on that end of the sink so it would be quite an obvious thing to put it there.

40 So you do not think that you could have been any further to the right as you look at the photograph, but you could have been as far over to the left as the left hand end of the sink bench?---I could've been anywhere along the bench. I would think that I wouldn't have got too close to the apparent lefthand end of

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the sink. That is right up hard against it, because I would have been limited with my movements because of the presence of the stove.

I suppose that when you went to the phone you put down whatever it was that you were using on the gun?---That would be correct.

And what was it, the wettex or the scotch-brite, you know what the scotch-brite is, do you not, the scouring pad?---Yes.

Which of the two articles were you using at the time when the phone rang?---I could not say. 10

Whichever one you were using do you recall where you put it down?---No.

Do you recall on which side of the sink bowl you were working before the phone rang?---No.

Had you used the wettex on the gun before the phone rang?---I think so.

And I suppose when you used the wettex on the gun you held it in your left hand?---Yes, that would be right. 20

And when you finished it - finished with it, you replaced it on the sink?---That would be so.

And that, I suggest, is how it comes to be in the position where it is in photograph 12?---That could be so.

Because that is where you put it down out of your left hand when you finished using it?---There had been a considerable amount of time lapse since I'd been using it until when the photo had been taken. 30

Perhaps so, but I suggest that that is where you put it down at the time when you finished using it on the gun? On the righthand side of the sink as you look at the photograph?---I have no way of knowing.

You do not remember?---No.

But you were facing towards the window at that time,

were you not, before the phone rang?---I can remember that, yes.

And if you were working with the Wettex, facing towards the window, if you had it in your left hand and put it down that is the place where you would expect it to be on the sink, is it not?---Somewhere on the sink.

Somewhere on the sink?---Yes.

10 Would you not expect it to be in almost the position that is shown in the photographs - have a look at photograph 7? If you were standing in the position shown in photograph 12 - in which you are shown in photograph 12, facing towards the window, if you put the Wettex down, you would expect it to be in the position where it is shown on the sink, would you not?---Could you repeat that, I am not quite following your question?

20 If you were standing in the position in which you are shown in photograph 12, - do you follow that?---Yes.

And you were facing towards the kitchen window?---Yes.

And you put down the Wettex from your left hand?---Yes.

30 You would expect it to be on the sink in the position in which it is shown in the photographs, would you not?---Photograph 12 or Photograph 7? ---It could be, but it could have easily been down the lefthand end as well.

HIS HONOUR: Where is it?

MR. HOWSE: Just on the right hand side of the bowl, Your Honour.

WITNESS: See, when I turned round..

HIS HONOUR: That is that dark elongated thing, is it?

MR. HOWSE: Yes, immediately next to the teatowel. (To witness) Go on, you were going to say something about turning round?---Well, if I was

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facing the bowl and I had to put the Wettex down it would either go to one side of the bowl or the other, unless I threw it down in the bowl.

Are you able to say just what the position of your wife was at the time when the gun went off?---
No, not definitely.

HIS HONOUR: When the phone called, Mr.Ratten, you put the gun on the sink. Can you remember which way the gun was lying, which way was the butt lying and which way the muzzle was pointing? If you cannot recollect...?---I can't remember, but I could assume.

10

If you cannot recollect?---I can't remember.

Can you remember what position it was in when you came and picked it up after the phone call?---
No, Your Honour.

MR.HOWSE: That means, then, that you cannot say to the jury whether or not your wife was standing upright, is that right?---That is correct.

20

Or whether she was bending over?---That is correct.

Or kneeling?---That is correct.

Or on the floor?---That is correct.

Would you be good enough to have a look at the record of interview, Exhibit "P"? And would you look at p.10? The third question from the bottom, would you read that out, please?---"Is there any possibility that she was on the floor or kneeling?"

I am sorry, I should have said the fourth?---
"Was your wife standing upright or otherwise when the gun discharged?" - "I think she was $\frac{2}{3}$ upright".

30

Firstly, were you asked that question?---That is correct.

Did you give that answer?---That is correct.

Was the answer true?---Yes.

Well, the situation at the time was that you had been facing towards the kitchen window and you turned around?---That is correct.

And did the gun go off immediately upon you turning round?---Yes, immediately.

And you are able to say that you think your wife was standing upright?---That is right.

10 Upon what do you base that?---On what I saw after the gun went off.

What you saw after the gun went off? Well, what did you see?---I saw my wife fall.

And how did she fall?---It's hard to say how she fell, she just fell.

Did she fall sideways or backwards or a combination of both?---As far as I can remember she fell backwards.

Onto her back on the floor?---Onto her side.

20 And then rolled onto her back?---My first impressions were that she fell onto her side and she had her right arm up a little towards her face.

Did she stay on her side or go onto her back?---I don't - my impressions were that she didn't move very much at all. I immediately after that first impression of her falling ran for the phone.

Well she did eventually get on to her back did she not?---Not that I know.

30 You saw her after the phone call did you not?---Yes.

She was on her back then was she not?---Some impressions are clear and some aren't, I - when I say she was on her side it wasn't lying completely up on her side, it was a half position.

Would you have a look at photograph 2 of Exhibit

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'A'? Is that the way she fell onto the floor?---No, I think she had her shoulder up more than that at first.

Which one?---It would be her right shoulder.

What, this shoulder here?---Yes.

So that that is as if her left side went down onto the floor first?---I don't really - I can't really see just how she went down, I know she - I feel that she fell from a standing position and I have this memory in my mind of her lying with her - slightly on her side with her right shoulder up.

10

That is slightly on her left hand side with her right shoulder up?---That is right.

And you say that you feel that she fell from a standing position?---This is the impression I gained.

Is that what you actually saw or some conclusion that you have since come to?---It's difficult to say actually what I did see and what I remember clearly as seeing.

20

When the gun fired was your wife facing you or side on to you?---I don't know.

According to what you have told us you did observe a black mark on her side which led you to the conclusion that she was very badly hurt? ---That is correct, she was side on to me at that stage.

This is after the shot was fired?---That is correct.

30

And was this whilst she was falling to the floor? ---I don't understand your question.

Did you make this observation of the black mark whilst she was in the act of falling to the floor?---Yes, I believe so

Or was it after she fell to the floor?---No, it was during her fall.

What did you do then?---I ran for the phone.

You did not go to help your wife?---No, not until after I'd phoned.

Why was not your first act to go to your wife's help, to see how badly she was hurt?---I don't know, there was just this terrible explosion and I saw my wife fall.

You immediately rushed to the phone?---Yes.

Picked up the receiver?---Yes.

10 And what happened then?---I just kept shouting for help.

Are you able to recall what you said?---Not exactly.

Can you give us the substance of it?---Yes, I asked for help and I asked for an ambulance, I repeated the address several times.

What do you mean by several times?---I just kept repeating, "get me help, get an ambulance to 59 Mitchell Street".

20 And you repeated that at least once?---Well I have the feeling that I said it over and over and over.

Over and over and over again?---M'mm.

A number of times?---Yes.

Did you definitely say it more than once?---As far as I can recollect and in my own mind, yes.

And indeed, as far as you can recollect you said it at least three times?---Yes.

30 And what you said was to get help, send an ambulance and the addresss?---That is correct.

So that whoever was on the other end of the phone would have heard the word 'ambulance' mentioned at least three times?

MR. LAZARUS: Your Honour, I do not know how the witness can answer what the person at the end of the phone would have, it depends on whether

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she was listening.

HIS HONOUR: Yes.

MR. HOWSE: Well assuming that whoever picked up the receiver was listening to what you said that person would have heard the word 'ambulance' mentioned at least three times?

HIS HONOUR: No, no, that is the objectionable form of the question 'would have heard'. The question is what he said.

MR. HOWSE: I am sorry, yes.

10

HIS HONOUR: Did you call for the ambulance three times?---I could've, perhaps more times.

That is the question then, that is right?

MR. HOWSE: Yes, Your Honour. (To witness) You did not ask for the police?---Not as far as I know.

Have you any doubt about that?---Only since what I've heard in evidence since, but at the time I had no doubt that I only mentioned ambulance.

Why did you not ask for a doctor?---No particular reason except that in an emergency you require an ambulance for help.

20

Did it not occur to you that it might have been more to the point to get a doctor or get a doctor and an ambulance?---Well, I'd assume that when an emergency call would come from an ambulance that facilities at the hospital would be adequate. I really didn't think about it, it was just a matter of calling for an emergency, for help.

30

MR. HOWSE: And after completing that call, did you then return to your wife?---Yes.

What did you do after that?---I went to her to see what I could do.

And did you come to any conclusion about her condition?---Yes.

And what was that?---I thought she was dying.

What happened after that?---Little Wendy tried to come in the back door. I ran out and chased her away and told her to go into next door.

What then?---I came back inside the house.

What happened then?---I locked the back door so Wendy couldn't come back in. The phone rang. I went in to answer the phone again.

10 And you answered the phone almost as soon as it rang, did you not?---I believe so.

And I suggest that you started talking as soon as you picked up the receiver?---That probably is so.

Do you say that that was the police ringing?---That is correct.

Did you know it at the time?---Yes.

How?---I don't know, I - my first impressions were that they declared themselves as being the police.

20 Well, you heard First Constable Bickerton's evidence about that, did you not?---Yes.

To the effect that as soon as the phone was picked up at your end the person started talking?---Yes.

HIS HONOUR: And said, "Help me, help me, for God's sake come quick, for God's sake come quick", that is what Mr. Bickerton said?---Yes.

MR. HOWSE: Is that what you said?---I wouldn't know.

30 Did he ask what address and you gave the address?---That would be correct.

Well, there was nothing said in that to indicate that it was the police, was there?---I thought, and still think, because in my mind I knew it was the police, and I can't say now whether the exact words were on my behalf or on the police's

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behalf, but at the time, and still in my mind I have the thoughts that when that phone rang and I answered it, that it was the police.

I suggest to you that the reason why you know it was the police is because you had previously heard your wife ringing up and asking for the police?---No, that is not correct, that is not so.

So that when the phone rang you concluded that it was the police?---I rang the previous time. 10

You deny that what I am putting to you is correct, do you?---Most definitely.

HIS HONOUR: You remain with the impression, do you, that when the phone rang that whoever was there said it was the police calling?---Yes. If I could not be quoted as saying the definite words that were said, in my mind, as I answered the phone - "Echuca police here, do you need help", and I answered "Yes, come quickly, I need help." 20

That is all I was wanting to ask you. That is the impressions you are left with?---That's right.

MR. HOWSE: At all events, you heard Mr. Bickerton the other day say that he did not announce himself at the beginning of the conversation?---That is right.

When you went back to the house on the early Friday morning, you knew the purpose of your going there, did you not?---Yes.

You had been already asked by the police if you would go to the house with them and indicate to them how you were holding the gun and where you were standing when your wife was shot?---That is correct. 30

You understood that quite plainly?---Yes.

And you understand also that you were being asked, or going to be asked, to indicate whereabouts your wife was at the time when she was shot?---Yes.

You were told that you did not have to do it?---Yes. 40

You agreed to do it providing your solicitor,
Mr. McDonald, was present?---Yes.

And he went with you?---Yes.

And in fact he was present?---I believe so.

Well, he was, was he not?---It was a pretty terrible
shock to the system to have to go back into the
room. I don't really remember who was standing..

All right, well, having arrived back at the house
you were then asked to show the police what
happened?---I believe so.

Well, have you any doubt about that?---Well, I
don't remember what was said, I can only
remember doing certain things as directed.

What do you mean "as directed"?---Well, as was
asked of me.

Nobody told you where to stand, did they?---No.

They asked you, in effect, if you would stand in
the position where you were when the gun went
off?---Yes, that would be right.

Well, it is right, is it not?---As I say, I don't
remember what was asked of me.

And you then took up the position shown in
photograph 12?---That would be correct.

And that in fact was the position in which - why
did you take up the position shown in photograph
12?---No particular reason. What I was trying
to do for the police was to show the area in
which I was standing, where I had been working
on the gun.

But you did not mean by placing yourself in that
position to indicate that that was the more or
less precise position where you had been
standing?---No.

All that you were doing was indicating that that
was the general area, and from what you tell us
now it could have been anywhere from the
position where you are shown in the photograph

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to the extreme left of the sink?---That is correct.

It could have even been to the right but you do not think so?---That is correct.

Mr. Coates, the detective, took up a position over alongside the bench did he not?---That is correct.

And you told him to move closer towards you, did you not?---Yes.

And he did that, did he not?---I believe so.

10

What, you remember telling him to move closer but you don't remember whether he did move closer? ---I don't remember any of that specifically but I've heard it in evidence since.

Well you said a moment ago that you did tell him to move closer, was that because it is your recollection of what happened, or are you simply saying that because it is what you have heard in evidence in this trial?---Simply because of what I've heard in evidence at this trial.

20

HIS HONOUR: Did you understand what the purpose of this visit to your home was on this early morning, did you know what they were taking you there for?---To take a photograph of the area of the position of where the accident had occurred.

You understood that?---Yes, Your Honour.

You understood you were going out there to try and show them where you were standing and what your wife's position was at the time of the accident?---That is correct.

30

You understood that was the purpose of the visit?---Yes, Your Honour.

MR. HOWSE: Are you seriously suggesting to the jury that you do not remember accurately what happened in the kitchen at that time?---Yes.

You are?---Yes.

What happened after the demonstration, what happened then?---We went back to the police station.

And what happened on the way back to the police station?---I don't quite understand what you mean, we just travelled back to the police station.

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10 Perhaps I should have put it to you this way,
what happened when you got back to the police
station?---I requested to add to my statement.

You remember that do you?---Yes.

And you remember what ~~that~~ was about I suppose?---
Yes.

20 You had already been asked in this long interview
about the right hand barrel of the - right hand
firing pin going off as it were. I know I am
putting that to you loosely but you had already
been asked about the right hand barrel of the
gun had you not? And how the cartridge cap
came to have the firing pin impression on it?
---Yes, I believe that was one of the questions.

HIS HONOUR: You had been shown the two cartridges
had you not in the course of the lengthy record
of interview?---Yes, Your Honour.

And had you seen for yourself the two impressions
on the caps?---Yes, Your Honour.

MR. HOWSE: And at that time you were unable to
give the police any explanation were you not?
---That is correct.

30 But having been to the house for the demonstration
on your return to the police station you
remember about hearing the click?---Yes, I
remember it when I was at the house.

40 What, during the time the demonstration was taking
place?---Yes, as I picked up the gun and was
standing in that area this came back to my
mind. I was still trying to puzzle over in my
mind just how the horrible thing all came about
and trying to search in my mind as to how the
gun could've gone off and things were slowly

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coming back to me.

And you have a clear recollection of that, of thinking about this during the demonstration?---Do you mean now?

Do you now have a clear recollection of thinking about this during the course of the demonstration?---I remember thinking of it.

But you cannot recall telling Mr. Coates to come further - come closer to you?---No, it didn't impress itself upon my mind at all.

10

Would you have a look at the record of interview, Exhibit 'P' and would you look at p.8. Do you see the question "Did your wife think the reason for you wanting to leave home was because of itchy feet and not over another woman"? Do you see that, p.8, it has the page at the top?---Would you repeat the question please?

Do you see the question, "Did your wife think the reason for your wanting to leave home was because of itchy feet and not over another woman?---Yes, I see that.

20

The answer "Yes"?---Yes.

Would you read out the next two questions and answers, just go on until I tell you to stop. "Did your wife believe the birth of a son would prevent this happening?" "No." "From what Mrs. Kemp has told me I gained the impression that you told her (that is Mrs. Kemp) that these were your wife's thoughts?" "Well (laughed) yes, she has hoped that a son will make me more stable at home." "Had you ever considered leaving home for Mrs. Kemp?" "Yes." "When was this last discussed with Mrs. Kemp?" "This morning."

30

In the answer to the question, "From what Mrs. Kemp has told me I gained the impression that you told her (that is Mrs. Kemp) that these were your wife's thoughts. "Well" (laughed). Did you laugh there?---I don't remember.

30

Do you deny that you did?---I could not deny it if I don't remember it.

Pardon?---I couldn't deny it if I don't remember.

Previously to this, during the interview you had been asked about your association with Mrs. Kemp, had you not?---I'm sorry, I didn't hear what you said.

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Previously during this interview you had been asked about your association with Mrs.Kemp?---I still didn't understand.

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10 All right, we will go about it another way. Will you go to p.6 of the record of interview (Exhibit "P")? Do you see about 2/3rd of the way down a question - "Have you been involved sexually with any woman apart from your late wife since you have been living in Echuca?"
A: "Yes". Do you see that?---Yes.

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20 "Who would that woman be? - "I don't want to answer that question". Q: "Did your association with this other woman have any bearing on your domestic situation with your wife?" A: "No".
Q: "Was your wife aware of your affair with this other woman?" A: "No". Q: "Is there more than one woman involved?" A: "No". Q: "This affair you speak of, is it still current?" A: "No".
You were asked that question, were you not?---Yes.

And the answer you gave was "no"?---Yes.

That was not the truth, was it?---No.

30 Why did you lie to the police?---I'd just had the tragedy of seeing my wife die in front of my eyes. I felt that this was a formal statement that I was giving to the police to tell them of how the accident occurred. I was most concerned to be able to return to my children and comfort them. I didn't like speaking of these domestic matters, I wasn't very proud of the fact, and...

40 Did it occur to you at that time that if the police found out about your affair with Mrs. Kemp they might think that you had a motive for getting rid of your wife? Did that occur to you?---I don't think so, I think I was more concerned about not involving Mrs.Kemp at all in a thing that would be written down, and I

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I thought that perhaps the police would soon stop questioning me along these lines.

HIS HONOUR: Mr.Howse, would this be a convenient time to adjourn?

MR.HOWSE: Yes, Your Honour.

HIS HONOUR: Well, I think he has been a long time in the box. I think, Mr.Ratten, you have had enough for this afternoon, you are a bit tired, I think.---Thank you, sir.

We will adjourn now.

10

MR.LAZARUS: Your Honour, there was something I did omit to ask the witness in his evidence-in-chief. I was wondering if it might be convenient if I interpose the question, with Your Honour's leave at this stage.

HIS HONOUR: I did not want to have him overtired, as long as you are not long, Mr.Lazarus.

MR.LAZARUS COMMENCED FURTHER EXAMINATION
(BY LEAVE)

MR.LAZARUS: Mr.Ratten, I just want to direct your mind to the question of your being finger-printed. Do you recollect - I am not concerned about the days or hours, but do you recollect being finger-printed?---Yes, I do.

20

Were both your hands finger-printed at the one time?---Yes, they were.

And were all your fingers finger-printed at the one time?---No.

What finger or fingers were not included?---I had an injury to my right thumb, which was dressed in a band-aid, and that thumb was not finger-printed.

30

When was that thumb finger-printed?---It was finger-printed on the following Thursday in at Russel Street when I went for remand to the Court.

And as far as you could see was the finger-printing

done on an official document on each occasion?
 ---On the first occasion I even signed - I think I even signed the official document, I'm not certain of the second time, but only the thumb-print was taken, but it was taken several times.

On the second occasion?---Yes.

HIS HONOUR: The first occasion was up at Echuca, was it?---That is correct.

10 MR.LAZARUS: And on that occasion, as you have said, you had a band-aid on your thumb?---Yes, the second time too but the officer took it off.

And on the first occasion was there any discussion between you and the police about inability to finger-print with the band-aid on?---Not that I remember.

Was any attempt made to take the band-aid off on the first occasion?---No.

20 COURT ADJOURNED AT 4.25 P.M. UNTIL 10.00 A.M. ON TUESDAY, 18th AUGUST 1970

COURT COMMENCED AT 10.05 A.M. ON TUESDAY 18TH AUGUST, 1970.

LEITH McDONALD RATTEN recalled and warned.

MR.HOWSE CONTINUED CROSS-EXAMINATION

30 MR.HOWSE: Witness, yesterday afternoon you were telling us about having a bandaid on your right thumb, at the same time that you were finger-printed at the Echuca Police Station, is that correct?---Yes.

What was the reason for having the bandaid on your right thumb?---I had a deep cut on my thumb.

And how did you get the cut?---It was inflicted upon my thumb when I was trimming some plants at my office with a Stanley knife.

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This was how long prior to the 7th May or was it on 7th May?---No, it was prior to 7th May, it was one day earlier in the week.

You described yesterday how the gun went off. What happened to the gun after it went off?---I don't remember.

Well did it - you were holding it, as you showed us yesterday, in your right hand?---Yes.

Did it remain in your right hand?---I don't remember what happened to the gun after it discharged, things were very confused.

10

You do not know whether on discharging the gun recoiled backwards and shot out of your hand or not?---I'm not aware of it being so.

What is your first recollection of where the gun was after the shot?---I don't really know that I can remember the gun from that time on. Things were in a terrifically confused state.

The gun we have been talking about, of course, is the one, Exhibit "C", the one from which the shot was fired?---Yes.

20

You had used that gun on a number of occasions previously, had you not?---Yes.

And I suppose when fired it always produced a substantial recoil?---Yes.

Of course, normally the effect of the recoil would be counter-balanced, as it were, by you holding the gun tightly to your shoulder?---Yes.

And in that position you would be holding the gun with both hands?---Yes.

30

And on this occasion you had it by the right hand only, although as you have told us, you had clasped it into your side?---Yes.

Did you suffer any injury at all as a result of the gun going off?---No.

So therefore you did not get any bruises on your chest or side?---Not that I am aware of.

And you did not receive any injuries of any sort to your right hand?---No.

Or to any of the fingers on your right hand?---No.

Tell me this, was your wife lefthanded or right-handed?---Right-handed.

Would you take the photographs Exhibit "A" and have a look at photograph 6? Do you see the Birko in between the frypan and the eggs on the bench?---Yes.

10 Do you know how it came to be in that position?---No.

We have been told in Court that it was normally kept on the shelf above the bench beside the fruit basket. Is that correct?---I believe so.

Well, Mr. Ratten, have you any doubt about that?
---Well, I don't normally make the coffee or the tea.

No, but I suppose from time to time you had meals in the kitchen, did you?---Regularly.

20 And you would know where your wife normally kept the Birko, would you not?---Yes, it was in that position.

It was normally kept up on the shelf between the fruit basket and the refrigerator, was it?---Yes.

Well, why did you say, "I believe so" a moment ago when I asked you about that?---Well, it was not always in that position.

30 Well, where also was it kept when it was not in use?---I think when it was not in use it was always kept there.

Well, that is what I asked you, was it not, in effect?---No, you asked me whether it was always up on the shelf.

Can you tell the Court where the Birko was at the time when you commenced cleaning your guns in the kitchen?---No.

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Are you able to say whether it was standing in an upright position?---No.

But it was certainly in the position shown in photograph 6, in that place, and knocked over, after the gun went off?---I was not aware of it.

The two packets marked "VEB" which I have been referring to as "eggs", they were full packets of eggs, were they not?---I wouldn't know.

Well, the situation then in relation to the Birko is this, is it, that you cannot tell us how it came to be on the bench, as distinct from the shelf?---I can only assume.

10

Yes, but you cannot tell us of your own knowledge or observation?---No, sir.

And you cannot say how that it came to be in a knocked over position?---No.

What was your wife's practice when she was making coffee, did she boil the water in the Birko?---Yes.

20

And did she add the coffee to the water in the Birko or did she tip the hot water into cups?---Tipped the hot water into cups.

And are you clear that on this occasion according to what she said she was going to make coffee?---No.

Well it could have been tea could it?---Yes.

Do you recollect what she said about what she was going to make?---Not now, no.

Her practice in relation to making tea was much the same I suppose, she heated the water in the Birko and then tipped it into a tea pot?---Yes.

30

Did your wife make any move to fill up the Birko with water before the gun went off?---Not that I can remember.

In which room was she when she indicated her intention of making either a cup of coffee or a

cup of tea, was she in the den or the kitchen?
 ---It was as we walked back from the den, I'm not sure whether we were still in the den or in the opening of the kitchen, but it was in that vicinity of the kitchen doorway, the den doorway.

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Do you say that from there she went to a position either in the area of the kitchen table or else in the area of the bench?---That is correct.

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10 If she was going to make a cup of tea or coffee what reason would she have had for going over to the area of the kitchen table?---I have no knowledge of why she would've.

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You showed us yesterday how you went about cleaning the barrels of your shotguns and according to what you have already told us sometimes you would perform this operation in the kitchen and sometimes in the loungeroom?---Yes.

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20 And when you did it in the loungeroom that involved you in setting up a card table?---
 Yes.

Other than obtaining your cleaning equipment and the gladstone bag did it involve anything else when you performed the operation in the lounge?
 ---I used to put newspaper down on the card table.

And that was for the purpose of keeping oil and other dirt off the surface of the card table was it?---Yes.

30 Did it involve anything else?---No, I don't believe so.

In order to run the turk's head through the barrels of the shotgun you had to place the muzzle of the shotgun on the floor did you not?
 ---That is correct.

What protection did you take in the loungeroom to protect the loungeroom carpet?---I used to place the barrels on the wooden edge between the carpet and the hearth if I remember rightly.

40 What precaution did you take in the kitchen so far

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as concerns the kitchen floor?---None.

Did you ever perform these cleaning operations in the garage?---I don't think so.

So far as concerns the Gevarm rifle when you commenced these cleaning operations that was in a perfectly safe or proved condition was it not?---Apparently.

Witness, was it in a safe condition or not at that time?---I do not know.

You do not know?---No.

Are you serious about that?---Yes.

Do you mean to say that it may be that there was a bullet in the Gevarm rifle?---No.

How otherwise could it have been in an unsafe condition?---You asked me if I was sure that the Gevarm was in a safe condition, I'm not sure.

Well if it did not have a bullet in it it could not be in anything other than a safe condition could it?---No.

And according to what you have told us it did not have a bullet in it?---I felt confident that it didn't have a bullet in it.

Is the position that it did not have a bullet or that you are confident that it did not have a bullet in it?---I'm confident that it did not have a bullet in it.

But the position is still that it may have had a bullet in it?---Yes.

Does it follow that you had not taken any precautions to see that that weapon was in a safe condition?---It was not my practice to keep my guns loaded at all at home.

Does it follow that you had not taken any steps to see that that gun was in a safe condition?---I don't understand your question.

Well, it means this, does it not, that you were

10

20

30

confident that there was no bullet in it?---
Yes.

You are not prepared to swear positively that
there was no bullet in it?---That is correct.

You did not take any steps yourself to make
certain that there was no bullet in it?---
That is correct.

10 By the way, would you have a look again at
photograph No.6 of Exhibit "A"? That is a table-
cloth on the top of the table, is it? On the
kitchen table?---Yes.

And of what material was that table-cloth made?

HIS HONOUR: Where is the table-cloth?

MR. HOWSE: I had better get him to identify that,
Your Honour. (to witness): It is obviously
enough a table-cloth, is it not?

HIS HONOUR: Over the top of the table? Is it?

MR. HOWSE: Over the whole top of the table?

HIS HONOUR: Over the whole top of the table?

20 MR. HOWSE: No, it would seem to cover about
approximately a half of the table. Photograph
6. It is a bit faint.

HIS HONOUR: I am looking at 6, Mr. Howse, I am
not sure that I can make out the table-cloth.

MR. HOWSE: Does Your Honour see it?

HIS HONOUR: Does it cover the top of the table?

30 MR. HOWSE: Not the whole of it, as far as I can
see, Your Honour, it appears to be a relatively
small one. It starts at the left end with the
rifle or shotgun case and extends over...

HIS HONOUR: And goes back diagonally towards the
side of the chair. That is a table-cloth,
is it?

MR. HOWSE: Yes, Your Honour. (to witness): Of what

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was that made?---I'm not certain.

Well, can you tell us whether it was plastic or the ordinary old-fashioned type of table-cloth material?---I think it would be linen.

It certainly was not plastic?---I'm not certain, but I can't remember us having a plastic cloth.

As far as you can recall the cloths that you had were all of a linen type, were they?---That is right.

10

What precautions did you take to prevent the table-cloth from being marked by oil or any other dirty substance that got onto it during the cleaning operation?---No precautions.

Was that usual for you?---I didn't give it any consideration.

I see, this operation involved the use of two types of oil, according to what you have told us?---That is correct.

And it involved pulling some sort of material through the barrel of the gun that you were cleaning?---That is correct.

20

Presumably that material was used for the purpose of getting out the surplus oil, etc.?---That is correct.

Well, some of that material can be seen on the table-cloth, can it not, the dark heap of material? On the top of the lid of the tin, do you see that in photograph 6?---Yes.

And some of that is just sitting on the table-cloth itself, is it not?---Yes.

30

And over near the corner of the table there is a tin of oil, is there not - do you see the tin there near the end of the butt of the GEV-arm rifle?---Yes.

And indeed, if you look at photograph 7 of Exhibit "A" it is clear enough that the tin of oil is sitting on the table-cloth?---Yes.

Now if you went to the trouble of putting newspaper on the card table in the lounge to prevent the top of the card table being soiled, why did you not take similar precautions with the table-cloth?---You can't take a card table top off and wash it.

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It would have been quite simple to have taken the table-cloth off the table and used newspaper there, would it not?---Yes.

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- 10 That would have saved your wife the labour of washing the table-cloth if it got dirty?---Yes.

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And trying to get out oil-stains?---Yes.

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Now would you take the record of interview Exhibit "P"? Do I understand you to be saying to the jury, in effect, that you regarded the taking of this statement as being simply a formal statement about the circumstances relating to your wife's death? Is that the situation?---Yes.

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- 20 Do you mean by that that during the course of this interview you did not regard yourself as being in jeopardy - being charged with any crime concerning your wife's death?---No.

I do not quite follow your answer. Are you saying that you did not consider yourself to be in jeopardy?---That is correct.

- 30 When did it first occur to you that you might be charged with some crime concerning her death?---
When Mr.Coates said that he would be charging me with the killing of my wife.

And when was that, towards the end of the interview was it?---Yes.

But prior to that you treated the interview as being simply for the purpose of giving a formal statement?---Yes.

And you are quite serious about that?---Yes.

And that was despite the fact that you had been at the police station somewhere around about 2 o'clock in the afternoon?---Yes.

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And the interview did not commence until about 20 to 11 that night?---Yes.

Despite the fact that on a number of occasions you had spoken with your solicitors?---Yes.

How many times did you speak to your solicitors before this interview commenced can you tell us?---No.

Several times?---I don't think so.

You knew I suggest - I suggest that you knew this before the interview started, that Senior Detective Coates and Detective Donahue were members of the Homicide Squad?---Could you repeat the question please.

10

You knew I suggest before the interview commenced that Senior Detective Coates and Detective Donehue were members of the Homicide Squad?---Just before.

Who told you that?---I think it was Mr.Shaw.

What about Mr. Cleland, did he tell you?---I don't remember much of the conversation with Mr.Cleland.

20

Did he tell you that he having -

MR.LAZARUS: I think perhaps I should formally object to this question, sir, this I presume goes into the question of actual discussions between the witness and his legal adviser and I think it quite improper and my learned friend should know this.

HIS HONOUR: Yes. I suppose you cannot go into that, Mr.Howse. Was Cleland a solicitor?

30

MR. HOWSE: He is under articles, Your Honour.

HIS HONOUR: A solicitor's representative?

MR. LAZARUS: Yes.

HIS HONOUR: I suppose that would come under professional privilege.

MR. HOWSE: There are two questions I want to put,

Your Honour, Perhaps if I could ask them and they could be ruled on before the witness answers. (To witness) Before the interview commenced were you aware of the fact that Mr. Cleland had formerly been a policeman himself?

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10 MR. LAZARUS: Your Honour, I object to this question on the ground of irrelevancy, sir, what does it matter whether he is aware or not that Mr. Cleland was a policeman, unless something can follow from it. The fact itself, whether the fact be he was or the fact be he wasn't, unless something arises from it, sir, it is completely irrelevant in my submission.

HIS HONOUR: How do you put that, Mr. Howse?

MR. HOWSE: Well the next question I want to put is this, Your Honour. Was he aware before the interview started that Mr. Cleland knew both Mr. Coates and Mr. Donehue.

HIS HONOUR: I don't think you can ask him that.

WITNESS: I could answer that.

20 HIS HONOUR: Yes, you can, but your counsel has objected to it, I think you had better let that go. You follow that, gentlemen, I do not know whether you understand professional privilege, but there is one privilege even that applies to criminal proceedings, that is between a legal adviser and his client. I think it is better to exclude all that. So put that out of your mind.

30 MR. HOWSE: If you would be good enough to take Exhibit 'P'? Do you see the fifth question. It reads as follows does it not, "We desire to interview you in relation to the death of your wife, Beverley Ratten, today. I understand that you have consulted both Mr. Appleyard and Mr. McDonald, who are solicitors, since you have been at the police station this afternoon, is that correct? Was that question asked of you?---I believe so.

Have you any doubt about it?---No.

And you replied "Yes" did you not?---Yes.

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You were then asked, "I take it that they have advised in relation to your being interviewed by the police have they?" Were you asked that? ---I believe so.

Well have you any doubt about it?---No.

Did you reply "Yes"?---Yes.

Then this was said to you I suggest. "It is also my duty to inform that you are not obliged to answer any questions unless you desire, do you understand?" Was that said?---I believe so.

10

Have you any doubt about it being said?---No.

Well if you have not any doubt about it why do you keep saying "I believe so" instead of "Yes"?---Well I believe it was put to me.

You know it was put to you do you not?---I can't remember the questions being put to me individually, I signed the statement as being so.

And before you signed it you read it over out aloud?---Yes.

20

Agreed that it was correct?---Yes.

And then after talking with Mr. Cleland you signed it?---Yes.

And you were given a copy of it?---Yes.

And I suppose at some stage you read the copy did you?---Yes.

Do you recall when it was that you first read it?---No.

Approximately when?---I read parts of it approximately a week later. I don't know when I first read the whole of the interview.

30

At all events I suggest to you that having been told "It is also my duty to inform you that you are not obliged to answer any questions unless you desire, do you understand" to which you replied "Yes", that you then must have been aware that

this was something more than a formal statement?---I don't know that that thought ever came into my mind at that stage. I realised that because of the death that question would be asked and a statement would have to be given.

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Now would you go to the top of p.2? Perhaps I should ask you to start with the last question and answer on p.1. Would you read out that question and answer? And then continue with the next question and the next answer on p.2?
---"How long before your wife was shot did you get the shotgun from the garage?" A: "It could have been a quarter of an hour. Look, can I explain it to you?" Q: "Yes, certainly, you tell it in your own words?" A: "I last used it last duck season - not this one, the one in 1969. Several months ago it was taken by a friend to a gunsmith to see if it could be repaired as it was loose in the locks. The report was that it wasn't worth repairing and never to use it again because of its danger. I collected it from my friend's place and just lay it down on the bench to clean it, but never got around to it, and it laid there ever since until today. I went into the garage to get the cleaning gear for the Winchester, that is the under and over, so as I was coming out of the garage I saw it there and I decided it was an opportune time to clean it, so I brought it in with the cleaning gear."

Stopping there. Those two questions were asked of you, were they not?---Yes.

And the answers that you gave to them are the ones that you have read out?---Yes.

In the answer to the second question, in the sentence, I collected it from my friend's place and just lay it down on the bench to clean it", in that part of that sentence there is an alteration, is there not?---That is correct.

The word typed was "laid"?---Yes.

And that was altered to "lay"?---Yes.

How did that alteration come about?---I'm not sure now. The alterations, to my mind, were

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made as we read through it, by Mr. Coates on his copy, and I think we went quickly back and just altered them on the copy that I was reading from.

Well, what you are suggesting, then, is that the person really responsible for the alteration was Mr. Coates?---I'm not sure.

HIS HONOUR: What is being put to you, Mr. Ratten, is this: as this thing was being read through, was it you who picked up the errors and suggested the alteration, or was it Mr. Coates. Do you follow that? Who picked up the error? ---If I remember rightly, as I read it through some of it didn't read correctly because of wrong spelling or two words being typed in, and as I stumbled over these things Mr. Coates made the alterations on his copy. I don't know that there were any directions either from myself or by him.

10

It may have been a mutual affair, you mean?---That is correct.

20

MR. HOWSE: You see, what I am suggesting is that you were the one who was responsible for these alterations?---I don't believe so.

You see, three questions further on - "Had you cleaned the rifle today?" The answer - "No, I'd run the Turk's head through the Winchester, then I was going to do this (indicating the double-barrel shotgun produced) while I still had the Turk's head on the cleaning rod". Again there is an alteration in that answer, is there not?---Yes.

30

And "ran" is altered to "run"?---Yes.

And I suggest to you that you were responsible for that and not Mr. Coates?---I can't remember that I was responsible for it.

At the top of p.3, will you read out the question at the top and the answer to it?---"You told us earlier about your calling your wife to the phone when your father rang. You just mentioned there was another telephone call before the gun discharged. Did your father

40

telephone you twice today?" A: "No, there was only the one. We got side-tracked - remember I went into more detail about picking up the gun and taking it into the house and how long it had been there".

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Were you asked the question?---Yes.

And did you give that answer?---Yes.

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10 Would you go now to p.4? Do you see the 7th question down, "Can you explain how this shotgun (indicated) came to be loaded today?" A: "No"?
---Yes.

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Would you read on from there?---"Did you place any live cartridges in it after taking possession of it from Peter Kemp?" A: "Well, I've been thinking about it trying to think how a cartridge came to be in it. I don't know how it came to be loaded".

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Pausing there for a moment, were you asked that question?---I believe so.

20 Have you any doubt about it?---No.

Did you give that answer?---Yes.

Will you go on to the next question and answer?---
Q: "You used the word "cartridge", do you mean one cartridge?" A: "I don't recollect putting the cartridge in the gun".

Were you asked that question?---I believe so.

Have you any doubt about it?---No.

Did you give that answer?---Yes.

30 Well, the question was, "You used the word "cartridge", do you mean one cartridge?" and your reply, "I don't recollect putting the cartridges (plural) in the gun", is it not?---
I didn't hear your question.

The question was, "You used the word "cartridge", do you mean one cartridge?" and your reply was, "I don't recollect putting the cartridges in the gun" - "cartridges" being in the plural?---Yes.

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Why did you use the plural?---I don't remember using either the singular or the plural.

At this point of time you did not know how many cartridges had been in the gun, at the time when it went off, did you?---No.

And your account of this answer now is that you do not remember whether you said singular or plural?---That is correct.

Did you notice that answer when you were reading through the record of interview?---I don't remember, I don't think so."

10

At all events you made no attempt yourself to correct it?---Not that I can remember.

Look at p.6, the 6th question. Read out the question and answer?--- "Do you do much shooting?" "Yes, what do you want, in days or hours spent or what?"

Were you asked the question?---I believe so.

Again have you any doubt about it?---No.

Did you give that answer?---I believe so.

20

Have you any doubt about that?---No.

Would you go to the top of p. 7 and read out - I am sorry, if you would start with the question at the bottom of p. 6. "Was this situation with this woman you speak of -?" Would you read on from there?---"Serious enough for you to -."

Perhaps if you would read the whole question so the jury can hear it?--- "Was the situation with this woman you speak of serious enough for you to consider leaving your wife?"

30

Carry on?---"No". "You have declined to mention the woman's name but have you and this other woman discussed the possibility of your leaving your wife?" "No." "Did this affair ever reach the stage where you became really seriously involved with this other woman?" "No, it was just a thing that caught me off balance on one

occasion." "On how many occasions would you think you had sexual relations with this other woman?" "I don't want to answer that one." "Does this other woman live in Echuca?" "No." "How long have you known this other woman you speak of?" "Several years" "Did your wife know this other woman?" "No."

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10 Would you stop there. Here again you were telling the police things that were quite untrue were you not?---Yes.

And indeed you gave the answers that are recorded in the document?---Yes.

And you were asked the questions that you have read out?---I believe so.

You have not any doubt about it have you?---No.

20 So that what you were then telling the police was untruthful insofar as discussions concerning the possibility of your leaving your wife were concerned, is that right?---I would just like to look at the question.

All right, well the question, "You have declined to mention the woman's name but have you and this other woman discussed the possibility of your leaving your wife?" A. "No." Well that was not a truthful answer was it?---No.

30 And then you were asked, "Did this affair ever reach the stage where you became really seriously involved with this other woman?" And your answer was "No, it was just a thing that caught me off balance on one occasion?" Well that was not the truth either was it?---No.

40 Why did you tell that lie to the police?---I still thought that this statement was a formal one to do with the accident and the death of my wife. The relationship that I was having with Jenny Kemp had no bearing at all on what had happened that day. I wasn't proud of the affair and certainly didn't want to be corded (sic) in view of how it would affect Mrs. Kemp and how it would affect my children.

What you were really trying to do was conceal from

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the police that you had a motive for murdering your wife was it not?---No.

Are you sure?---Yes, I'm positive.

A little further down p. 7 this question appears does it not. "I have spoken to Mrs.Kemp, she is in another room in this police station at this moment, she has told me certain things and she is now in the process of making a statement. Do you wish to discuss the matter now? You are under no obligation to do nor need you answer any further questions, do you understand?" That was said to you was it not?---Yes.

10

And when that was said to you did you still regard this as being a formal statement?---Yes.

You replied to that question, did you not, "Yes we were having an affair"?---Yes.

Did you still regard it as being a formal statement?---Yes.

Well things were becoming pretty serious now were they not?---I did not consider that there was anything serious about this.

20

Even though the police were very busy prying into what you regarded as your private life?

MR. LAZARUS: I think Your Honour I should object to these comments. The question was "Even though the police were very busy prying into what you considered your private life". This may be so, but it is my learned friend's comment on the facts as to the interview and it becomes very difficult for a witness to contend with a comment which may or may not be his view and which may or may not be the jury's views as to what the police were doing.

30

HIS HONOUR: Surely it must have been obvious from Mr. Howse's question that he was - when he was talking about private life he was referring to them interviewing Mrs. Kemp, was it not?

MR. LAZARUS: Yes.

HIS HONOUR: Nothing other than that.

40

MR. LAZARUS: No, except to use the expression as I recollect him, sir, "Busy prying into".

HIS HONOUR: Well that was interviewing Mrs. Kemp, I took him to mean. Is that what you meant?

MR. HOWSE: Yes, Your Honour.

HIS HONOUR: Well put it directly to him.

MR. HOWSE: Well it was apparent to you that the police were exploring the details of your private life?---Yes.

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10 Did that not indicate to you that this was becoming something more than a formal statement?
---I didn't know the circumstances of the interview with Mrs. Kemp. I don't think that it really still at that stage was of concern to me with regard to any charges. I was more concerned with - at first I'd been concerned with being able to conceal her name and any comments about our relationship, and when I realised that she had told them certain facts about our relationship I no longer had any reason to deny anything.

20

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So that was what prompted you to say "Yes, we were having an affair"?---Yes.

Will you read out the next question and answer?---
"How long has this affair been going on?"
"Can I look at her statement?"

Well you were asked the question were you not?---
Yes.

And you gave that answer?---Yes.

30 Well what did you want to have a look at her statement for?---I don't really know what went on in my mind at that stage as to why I should answer that way.

You were doing your level best I suggest to tell the police as little as possible about Mrs. Kemp?---That would be correct.

And that was I suggest because you wanted to cover up the fact that you might have had a motive

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for murder?---No, that had not entered my mind.

Would you have a look at p.8, the second-last question - "Mrs. Kemp has discussed this matter with me, she has told me that both you and she - that is Mrs. Kemp - have discussed this matter of your wife's attitude towards divorce and she states that you told her your wife would never divorce you. Is that correct?" Were you asked that question?---Yes.

And did you reply, "Yes. Can I add a proviso there?" - did you say that?---I believe so.

10

Have you any doubt about it?---No.

Did Senior Detective Coates say, "Pardon"?---I can't remember.

Did you go on to say, "Can I add an extra bit there"?---I can't remember that I said this, but I believe so.

Well, you do not deny, do you, that you explained to Coates for his benefit what you meant by a proviso?---I don't understand.

20

Well, do you deny that when you asked "Can I add a proviso?" there, Coates then said, "Pardon", and then you explained to him what you wanted to do?---No.

Did he then say to you, "Certainly"?---I don't remember.

Do you deny it?---No.

Did you say, "My wife had also stated that she would give me a divorce if it was what I really wanted, but that she would never remarry herself"?--- I don't remember saying the words, but I believe so.

30

Well, once again you do not deny it?---That's correct.

HIS HONOUR: Had your wife told you that? In fact?---Yes.

MR. HOWSE: When?---I couldn't remember the exact

date or the month, at some previous time when we'd been having a discussion.

How long before 7th May roughly?---It was a long time back, I would think.

What does that imply - weeks, months, what?---Oh, months.

Was it after the beginning of 1970?---That I can't remember.

10 After the beginning of 1970?---That I can't remember.

How did it come about that your wife said to you that she would give you a divorce if it was what you really wanted?--I think it was one time when we just were having a talk together. It may have come up with the thoughts about an application to the Antarctica or it may have been when other times I had thought of going on another trip or a trip to another place, New Guinea or Western Australia again. If I remember rightly we spoke of such things as if I didn't have the obligation of a wife and family that perhaps I would be off in remote areas on survey work. And I think it came about that I think I said to her, "Well, how about giving me a divorce so that I can be free". If I remember rightly she said, "Oh, no, I can't do that". And then I said, "But if I really wanted it wouldn't you like to do exactly what I'd like?" If I remember correctly she said, "Oh yes, if that's what you wanted. I know I'd never remarry".

20

30

By the way, how long had you spent away in Western Australia?---Some 6 weeks, I think.

Now if you would go to p.10, please? I asked you about this yesterday, and there was something I omitted to put to you. You see the last question from the bottom - "Was your wife standing upright or otherwise when the gun discharged?" A: "I think she was upright."

40 You were asked the question, were you not?---I believe so.

And you gave that answer?---Yes.

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You were then asked, "Is there any possibility she was on the floor or kneeling?", were you not?---Yes.

And you replied, "Definitely not"?---Yes.

Why did you say "Definitely not" to that question?
---From the impressions of what I saw after the gun discharged, I can say that she definitely was not kneeling.

It was not because your wife was down close to the floor and you shot her with the gun at your shoulder, was it?---No, definitely not.

10

And you were trying to conceal that from the police?---No, definitely.

Would you go to p.11, third question from the top, were you asked this question - "Can you explain why you did not break the gun and take the barrels off when you were cleaning it with water? Surely you would realise that water may get into the firing mechanism?", were you asked that?---I believe so.

20

Have you any doubt about it?---No.

Did you answer, "I wasn't particularly concerned about the gun, it was just that it was so old and hadn't been used"?---Yes.

Well, what was your reason for not taking the barrels rightaway, from the mechanism and the stock, taking them apart?---That wasn't my particular way of cleaning guns. I always left the barrels connected to the stock, because it gave me an area to hold on to.

30

Were you not afraid that water might get into the mechanism of the gun?---No.

Even though you were wiping over the metal parts of the gun with a dampened scouring pad?---I didn't put any water on the gun.

No, but you had water on the scouring pad, did you not?---I didn't put any water on the scouring pad.

The scouring pad was dry, was it?---It was as it

came from under the sink.

Was it dry or was it wet?---It was damp.

And it was damp enough to produce a rusty sort of scum on the gun when you had been working on it for a while was it not?---Yes, that is correct.

And you then wiped that off with a wettex?---Yes.

Were you not concerned that some of this liquid or whatever it was might have got into the mechanism of the gun?---No.

10 Did you think it would not or did it not matter?---
I don't know that I really gave it any thought.

But you did intend to clean out the inside of the barrels of that gun?---Yes.

Well now will you go down three questions?

HIS HONOUR: Mr. Ratten, had you regarded that gun so far as you were concerned, as having reached the end of its useful life?---Yes, Your Honour.

20 That was following the report you got through Thompson the gunsmith?---Yes, Your Honour.

MR. HOWSE: Your belief then was that you would not be putting this gun to any further use?---That is correct.

Well why were you bothering to clean out the inside of the barrels?---I was going to clean the gun and put it up on the rack in the den.

30 Would you go three questions further on. Were you asked this question? "Can you explain how this weapon (indicated) came to be in the firing position"? Were you asked that?---Yes.

Did you reply "No, I can't"?---Yes.

And later on did you add something in your own handwriting?---Yes.

Will you read out what you added in your own handwriting?---"I had been cleaning all over the

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metal of the gun with the pad for some time."

Well Coates did not suggest that you put that in
did he?---No.

You put that in of your own accord did you not?---
That is correct.

And this was somewhere round about 4 o'clock in the
morning by now, was it not, when you wrote that
in?---Yes.

Would you look at p.12? Do you see the question,
"When you were reading on the bottom of p.11
you stated that you wanted to add something
further to the second last answer that you gave
on that page." Was that said to you?---I don't
see where you are mentioning.

10

Do you see "Time now 3.42 a.m., Doctor Jones and
Mr.McDonald then left interview room after
Doctor Jones had examined Leith McDonald
Ratten and spoken to him?" Incidentally, that
happened did it not?---I believe so.

Have you any doubt about it?---No.

20

That is the occasion when I suggest you said to
Doctor Jones that you had not had anything to
eat since breakfast?---I don't remember the
conversation.

You were then asked this question were you not when
the interview continued. "When you were reading
on the bottom of p.11 you stated that you wanted
to add something further to the second last
answer you gave on that page, what is it that you
wish to add?" That was said to you was it
not?---Yes.

30

And you replied, "What I meant there was that if you
checked from the P.M.G. you will find that
there was only minutes from the trunk call from
Melbourne to the call to the exchange for an
ambulance, that is my call"?---Yes.

And that all related to something that appeared on
the previous page did it not, the third last
question, "I further put it to you that you were
unaware of your wife telephoning until the police

40

mentioned it to you before our arrival?" Your reply, "No, look, if you check up from town you will find that there was only minutes between the calls". And the question "You claim that you made the telephone call which is under discussion, did you make any other telephone calls after your wife was shot, apart from the one which you claim was for an ambulance." Your answer "No, the police rang". Well it was in relation to the matters raised in those questions and answers that you later said after Doctor Jones had examined you that you wanted to add something to the second last answer on the previous page, is that right?--- I asked if I could add that before when we were reading it through.

Well at all events having previously asked when you were reading through you then added this extra matter in that answer?---That is correct.

20 And this presumably is somewhere again round about quarter to four or four o'clock in the morning? ---Yes.

About this time was Wendy going to Kindergarten? ---Yes.

Did she go to kindergarten on the morning of 7th May?---No, I don't think so.

Pardon?---No.

Are you sure of that?---Yes.

30 About the time when you left Mrs. Kemp that morning did you tell her that you had to pick up your daughter from kindergarten that morning?---I don't remember.

Do you deny that you said that to her?---If I can't remember I can't deny it.

40 Did you hear her say in this Court the other day in answer to a question, "Did he say anything to indicate any reason for going?" Reply, "He had his daughter to pick up from kindergarten later that morning." Did you hear her swear that in relation to 7th May?

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MR. LAZARUS: Your Honour, I think this is a little

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ambiguous. Whether that is Mrs.Kemp's reason for him leaving I do not think she indicated that is what he told her. I do not think in the passages cited by my learned friend that it is indicated that Mrs. Kemp is saying this is what the witness told her.

HIS HONOUR: That was the impression I had of her evidence.

MR.LAZARUS: What she says is that 'he had' 'He had his daughter to pick up from kindergarten', which may well be what reason she ascribed to him leaving. 10

HIS HONOUR: It is a matter for the jury I think.

MR. LAZARUS: It is being put to the witness that this - in fact he told Mrs. Kemp this.

HIS HONOUR: Yes, well that was my impression of what she said.

MR. LAZARUS: It does not appear to be what -

HIS HONOUR: Well we cannot be ruled by these transcripts, I have said this over and over again. It is a question of what the jury heard. 20

MR. LAZARUS: I appreciate that, Your Honour.

HIS HONOUR: We cannot become servants of transcripts.

MR. LAZARUS: Well except my learned friend is purposely reading from it.

MR. HOWSE: I am not - well I may be purporting to read, Your Honour, what I am putting to the witness is what appears at p.74, Your Honour. 30

HIS HONOUR: Yes, what is it?

MR. HOWSE: "Did he say anything to indicate any reason for going?" A. "He had his daughter to pick up from kindergarten later that morning."

HIS HONOUR: Did you hear Mrs. Kemp say that in the box? You may or may not remember?---I

don't remember her saying that.

Well apparently she said something to that effect?
 ---Yes.

Did you in fact tell her on that morning you had to get away to pick up your daughter at kindergarten. That is on the morning of 7th May?---I can't remember saying that to her and I don't think I would have.

10 Why was your daughter not at kindergarten, any particular reason?---Yes, there was no vehicle available to take her down.

Did your wife not drive?---Yes.

How many vehicles did you have at that time?---
 Two.

You had the Land Rover did you?---Yes.

And what was the other one, a Holden?---That is right.

Whereabouts was it?---It had journeyed off with my staff to do the job.

20 When you received the gun, Exhibit 'C', back from Peter Kemp are you able to say whether it was then loaded or unloaded. I am not suggesting he physically gave it back to you, but whether you got it out of the shed as Mrs. Kemp said or whatever is the case, can you tell us whether or not it was then loaded or unloaded?---No.

How long prior to 7th May approximately had you known that your wife was pregnant? She was about 8½ months was she not at that time?---
 30 Yes. Right from the very start, 8½ months or 8 months.

MR. HOWSE: How long before - I will withdraw that. At the 7th May were you trying to break off your relationship with Mrs. Kemp?---Yes.

And roughly for how long prior to 7th May had you been trying to break it off?---I don't know that I was actually trying to break it off but I was preparing so that it could be terminated.

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For how long had you been making those preparations roughly, a month, two months, three months or what?---About two months.

So that something like six months of your wife's pregnancy had passed by without you doing anything about breaking off your relationship with Mrs. Kemp?---That is correct.

MR. LAZARUS COMMENCED RE-EXAMINATION

MR. LAZARUS: Mr. Ratten, you were asked by Mr. Howse as to whether your daughters had seen you putting cartridges into the gun. I think you told him they had, or one of them had. Had your daughters ever loaded cartridges into a gun?---Not as far as I know.

10

And how did you regard them, though they were young, did you regard them as responsible kiddies, or how was their behaviour?---Yes, I considered they were very responsible.

You were also asked about when you got advice from a solicitor in Echuca, why go down to Shepparton. Was there any matter which inhibited you being able to put Mrs. Kemp's position direct to the Echuca solicitors?---Yes, I was unable to disclose details or names. In fact, because it was a discussion between friends, it was quite hard to bring the subject up, really.

20

And why go to Shepparton?---Because it was away from the area where we resided and Mrs. Kemp could disclose her name and it would not be known.

30

So far as the actual realities of the position with Mrs. Kemp were concerned, you were asked several questions as to whether you were in love with her and so on. You were, in fact, having intercourse with her, is that correct?---Yes.

And is it the fact that before or after intercourse certain protestations were made by you to her? And vice versa?---From time to time?---I don't know what you mean by...

Certain remarks about your alleged feelings or her alleged feelings at that particular time?---Yes.

40

In regard to the general situation as to these talks you were asked about and told His Honour and the jury about with Mrs. Kemp, as to going away, is there anything you want to elaborate or explain as to just how those discussions came about and what the actual realities of them were?---We had on many occasions talked in an indefinite way about considerations of what we both would have liked if we had been living together. These were general discussions. I think I told earlier in the Court that right from the start of our involvement together that I had said that I would not be able to leave my wife or children, that the affair could not become of a very serious nature, and at that stage too I believe that Jenny Kemp did not desire to leave home. But as we were together, of course, these things would be discussed, but they were only general, because both of us had in our minds that nothing would ever come of it. Occasionally we would be looking at a magazine on homes or this type of thing, and we might discuss what type of home we would like and enjoy. Occasionally it was mentioned that perhaps I would like to move away from a flat area like we live in at present, we would enjoy living in the hillsides again. It was all very non-committal, because neither of us had the impression then that we would ever get to a stage of where we would actually desire to go away.

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COURT ADJOURNED AT 11.30 A.M.

COURT RESUMED AT 11.48 A.M.

LEITH McDONALD RATTEN, recalled and warned.

MR. LAZARUS CONTINUED RE-EXAMINATION

MR. LAZARUS: Mr. Ratten, you were telling His Honour and the jury as to the general nature of the discussions between yourself and Mrs. Kemp on the question of going away in effect. I think it got to the stage of indicating that they were fairly general and neither of you were serious. Is there anything else you want to add to the matters you have already put on this particular subject matter?---There was mention of a conversation between Mrs. Webb and

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myself and Jenny Kemp in the car as I drove down to Melbourne.

I think that was the stage, I think you indicated, did you not, that something was out of context?---That is correct.

What do you want to add to that? What did you have in mind to put there?---The discussion was a general discussion about my attitude towards Jenny and Jenny's towards mine and the home life that Jenny was experiencing at home with her husband at the time, and the conversation did cover the aspect of how it would affect Jenny if she and I were to live together. But then immediately I brought out to the notice of the girls the fact that I was still of the same mind with regard to my commitments to my family - my wife and my children, and I expressed the view that financially I could not keep two families. I certainly would not leave my wife and children without them being adequately provided for even if I did want to go, and therefore the situation was impossible. I also pointed out that I felt that Jenny's husband was showing her more attention than he had in the past months, and that I felt that I was not doing the right thing in encouraging the relationship, and so immediately, even though that discussion did come up, the thoughts of us going away together were put aside because of these reasons that I presented to them.

In the course of the interview by Coates and Donehue, the position was put to you yesterday that you had told the police in answer to questions - not been either candid with them or told them things that were untrue, and this morning again, part of the same passage was put to you and it was again put to you that these statements were untrue. Did you think you were doing the right thing in not telling the police the actual position at the time these matters were put to you? I do not want to waste time going through them in detail, but the matters that were put to you by the prosecutor in respect of which he claimed you were telling the police lies?---I realise now that I should not have lied about it, but at the time I was most anxious to protect JennY's name. I was

most anxious not to even have to think about such things. I was most upset that my wife had died and to have to dwell on thoughts of a thing that I wasn't proud of in my relationship, it was very abhorrent to me and I tried to make the least of it that I could.

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At any stage did it occur to you that this relationship could be used by anyone - anyone who was normal, anyway, mentally normal, in suggesting that it was a motive for murder?---
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You have told His Honour and the jury in the course of cross-examination about a discussion you had with your wife about divorce. Was this discussion a discussion which was taken seriously, either by you or by her?---No, it wasn't a particularly serious discussion. We often joked about certain things at home; I had a habit of teasing the children and teasing my wife, and if I remember rightly this is how it came about, we were talking about me wanting to be away from home on survey work in remote areas and I think that more jokingly than anything I said to her, "Well, how about giving me a divorce so that I can be free to go into these areas".

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Was anything said at all to do with your affair with Mrs. Kemp?---No.

30 You have been asked about some details about where the Birko was in photograph 7. Would you mind having a look at Exhibit "A.7"? Amongst the articles there on the top left hand corner can you see the clock that you mentioned in your evidence yesterday?---Yes, I can see the lower part of the clock.

And that is the clock, is it, that you were referring to in your evidence yesterday?---Yes, it was.

40 You were asked about the alteration in the record of interview (Exhibit "P") which occurs in your own handwriting at p.12. Would you mind having a look at it, please? P.11 about the middle of the page - "Q: Can you explain how this weapon (indicated) came to be in the

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firing position?" A: "No, I can't", and then in your handwriting appear the words, "I had been cleaning over all the metal.", and so on. How in fact did that alteration - or how in fact did those words come to be used by you?---When I was reading through the statement and I came to that question I put it to Mr. Coates that I had added some words there which he had not typed. If I remember rightly he said that as far as he was concerned that he had typed what I had said and I appealed to Mr. Donehue that I had spoken additionally with regard to that question and they agreed eventually and I was allowed to add that in in my own handwriting.

10

MR. LAZARUS: Just one final matter perhaps while you have got the record of interview there. You were told in the course of that interview apparently that you did not have to answer questions if you did not want to. Did you understand that that - those words indicated that you were going to be charged with any offence or it was likely you would be charged with any offence?---No.

20

Had you ever heard of an expression called 'a caution' or anything to that effect?---No.

WITNESS WITHDREW

MR. LAZARUS: Your Honour, that is the defence. Your Honour, there are one or two matters I desire to put to you, sir, matters of law which will not concern the jury, Your Honour.

30

JURY RETIRED AT 12.00 P.M.

Submission by
Defence

MR. LAZARUS: If Your Honour pleases, it is our submission in this case at the stage it has reached, sir, that the case should be taken away from the jury on the issue of murder, and the basis of this submission, Your Honour, can be put very shortly. Firstly, it is submitted, sir, that it is a dangerous case to go to the jury in the sense that there are issues here which could well lead a jury to decide the actual matters on facts and circumstances which are not relevant to the precise issues they have to determine, and I refer particularly to

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the relationship of Mrs. Kemp and the moralities of it and matters of that description, going on between her and the accused when his wife was pregnant. But apart from that, Your Honour, it is submitted that the only evidence here from which a jury could infer that any intentional act on the part of the accused are the circumstantial matters which without enumerating them I think are fairly clear, the motive in the affair, the so called circumstances of the shooting, perhaps the telephone conversation and matters perhaps arising from that. It is submitted, Your Honour, that whichever way you look at these circumstances the most that could be said about them is that they are consistent, quite consistent - as consistent with one view as with the other. I was consistent in my submission, Your Honour - as consistent with it being an intentional act as they are as consistent with it not being an intentional act. It is submitted in those circumstances, sir, the Crown case could not be said to be one on which a reasonable jury could properly infer from those circumstances that an intentional act on the part of the accused has been established. It is a completely equivocal set of circumstances in my submission, and one which whichever way you look at them can be put no higher. It is true of course that it can be put, oh well, these are matters I suppose for a jury or that they might make inferences from having heard the accused, and of course there is not a set of facts which one can envisage which that cannot be put in some way or other that are matters which a jury can determine. But it is submitted, Your Honour, here the Crown case has not got past the stage of setting out an equivocal set of circumstances which might point to intention but just as equally clearly fail to do so and are consistent with lack of intention. And it is in those circumstances, Your Honour, Your Honour having heard the whole of the evidence now, in the particular circumstances of this case I would ask Your Honour to take the view that the Crown has not established in all the circumstances sufficient to justify the matter proceeding any further. I will ask Your Honour to take the matter away from the jury on this issue of murder.

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HIS HONOUR: No, I do not think so, Mr. Lazarus, I think there is a case to go to the jury here, I think it is a matter for the jury. It would be wrong I think for me to take it out of their hands at this stage. What about manslaughter?

MR. LAZARUS: On the issue of manslaughter, sir, it would be my submission that the facts here do not go to the extent of what could be described as establishing a recklessness or sufficient recklessness to justify the issue of a criminal negligence as being put, sir. It is my submission, Your Honour, that this of course is not the case of a person who as a joke or pretended gesture raises a gun - at least the manslaughter aspect of it cannot be put this way.

10

HIS HONOUR: Not pointing the gun?

MR. LAZARUS: No, sir.

HIS HONOUR: Not one of those cases?

MR. LAZARUS: No, Your Honour.

20

HIS HONOUR: It would have to be an act of omission would it not?

MR. LAZARUS: Yes, sir.

HIS HONOUR: This kind of case. Here is a man perhaps who is accustomed to firearms. It may be open to the jury to say, particularly from his statement, he knew the gun was in a dangerous condition, taking it into a combined space, another person there and failing to make sure it was unloaded.

30

MR. LAZARUS: Yes, sir.

HIS HONOUR: Would that not be a jury question?

MR. LAZARUS: Well my submission, sir, is-

HIS HONOUR: See, these things are so much a jury question are they not? The definition of criminal negligence?

MR. LAZARUS: Yes, true enough. Except that as I

say it seems to vary from the - what one might describe as a classical shotgun, manslaughter or the usual type of case where somebody fires a gun at somebody and - with fatal results. Here quite clearly if the jury have eliminated intention, and we must assume they have of course to have got to the stage of manslaughter, it cannot be suggested that they were thinking in terms other than the accused here has omitted, as Your Honour has put it, to check and see whether there were any cartridges in that gun before bringing it into the kitchen or into the house. Now the facts seem to indicate in my submission, sir, that it was his practice not to have guns loaded and in this particular case he gets the gun back from a person he believes is a responsible knowledgeable shooter who has taken the gun not for the purpose of firing it but for the purpose of having it checked on and is told that it has gone to a gun dealer, who one would reasonably expect the accused to be able to say would be a man who would not let the gun go back in a loaded condition. Now it is submitted that it cannot be said in these circumstances he is unreasonable in making that assumption, and it is submitted that although the gun is then left on the bench for some period of time, although some element of negligence is involved perhaps in him not adverting to the possibility, well it is feasible or conceivable -

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HIS HONOUR: Well I should have thought if in those circumstances the gun had discharged and injured somebody in the kitchen, it would be an obvious case I should have thought of ordinary civil negligence. It would be almost irresistible I should have thought.

MR. LAZARUS: I would concede that.

40 HIS HONOUR: Then the only problem is whether a jury could say that the degree of negligence went so far above that as to amount to wicked negligence, culpable negligence or reckless disregard of the safety.

MR. LAZARUS: Reckless disregard, sir, indifference...

HIS HONOUR: Is that not a question for 12 men to say.

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Can I say for instance, supposing you test it another way, supposing a jury found a verdict of manslaughter here and you are sitting in the Court of Criminal Appeal, you would have to ask yourself, would you not, well now that is the only way I can test this I think, say, 'Do we feel justified in saying that no reasonable body of men could classify this in this way', that would be the test would it not?

MR. LAZARUS: Well that would be the test, Your Honour, but of course at this stage the position arises that there are two pretty obvious practical difficulties in putting this matter to a jury on the question of manslaughter. Firstly of course it - the mere fact that it is perhaps theoretically open to argue that this is a question for a jury to determine in the sense that there is some evidence on which one can certainly say there is civil negligence and then the question whether it can amount to criminal negligence perhaps should be for a jury, is somewhat dampened in my submission, Your Honour, by the fact that of course once this issue is put to a jury there is a tremendous temptation for them to bring in such a verdict. 10 20

HIS HONOUR: I appreciate that. Well Mr.Lazarus if I left it to the jury I would warn them about that straight out and tell them we do not want any compromise business about it at all. You would want me to do that. 30

MR. LAZARUS: Well, I would be doing the same thing, Your Honour.

HIS HONOUR: Yes, I realise that, that there would be temptation for people to compromise.

MR. LAZARUS: Particularly in this particular case.

HIS HONOUR: They might turn round and say "Well he had the gun in his hands after all and he really was responsible for her death, therefore he ought to -

MR. LAZARUS: Yes, that is correct, or even "His morals were not too good and" - 40

HIS HONOUR: I agree with that, there is that danger.

MR. LAZARUS: And that being so, it is submitted Your Honour might perhaps at this stage be in a position where the question has got to be looked at a little more carefully, if I may use that rather loose term.

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HIS HONOUR: Yes, well I have been thinking about that, but on the other hand I must not usurp the function of the jury all the same, I must not do that, otherwise the system breaks down.

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10 MR. LAZARUS: I appreciate that, Your Honour, except that of course the position here is that the Crown has never opened it, has never put it, and as I understand the Crown case they have gone on murder or nothing.

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HIS HONOUR: Well that is true, but that very often is the case is it not?

MR. LAZARUS: Not that often, sir, but however for what that is worth it seems to be the position.

20 HIS HONOUR: The other difficulty of course is this, Mr. Lazarus, that if it is open to the jury it is a mis-direction on my part not to put it.

MR. LAZARUS: Well, I agree, sir.

HIS HONOUR: I am between the Devil and the deep blue sea.

30 MR. LAZARUS: The difficulty I feel about that, Your Honour, is this question of whether it can really be said on all the circumstances here to amount to a reckless disregard - whether there is an element of recklessness.

40 HIS HONOUR: I think that is the only point that is to be considered at this stage - whether it would be open to a jury, having regard to all these circumstances, to say that this amounted to anything more than ordinary civil negligence. If it would be open to them, then I am afraid I must leave it to them, because otherwise, as I say, I would be guilty of a misdirection if I did not. You know the difficulty that cases have got us into over this.

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MR. LAZARUS: I do, Your Honour.

HIS HONOUR: My difficulty, Mr.Lazarus, is that I feel great difficulty where you get to the situation where you are convinced that certainly ordinary negligence is open, then the other part of it is so much a matter of degree.

MR. LAZARUS: It is a high degree, though, Your Honour.

HIS HONOUR: I know, but it is a matter of degree, and as to whether that is not a matter for the 12 good men and true to say. 10

MR. LAZARUS: Well, although it is true, Your Honour, that of course this is very largely a matter of an individual jurist's view on what is gross or reckless, and it is very much left to them. Nevertheless, sir, it is also pretty clear that the Courts have, and do, and Your Honour's direction, of course, would make it very clear to the jury that this is something far beyond any concept of ordinary negligence and that the facts have to really fit into that concept of something which is indeed, not only in theory gross, but in fact gross, and in my submission the facts fall short of what could be properly described as an act of the type of recklessness envisaged in a normal definition of a manslaughter charge. And it is on that basis, sir, it is submitted that the issue should not be put. But I do not think, Your Honour, I can take it any further than that. 20 30

HIS HONOUR: I understand - what do you say about this, Mr. Howse? Do the Crown say that there is a case here of manslaughter to go to the jury?

MR. HOWSE: I must confess, Your Honour, that I find myself in some difficulty too. Even though it is a question of law at this stage, it seems to really boil down to essentially a question of fact.

HIS HONOUR: It does, in the end, that is true, but there is the question of law involved as to whether there is any evidence on which a reasonable jury properly directed could find. That is the difficulty we are in. 40

MR. HOWSE: That is your Honour's problem. Well, Y
Your Honour has heard the facts pretty
extensively canvassed by now.

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HIS HONOUR: Well, what do you say about?

MR. HOWSE: Well, I submit that there is a case, it
just gets to the stage of being a case of
manslaughter on the basis of criminal negligence.
I cannot put it any higher than that, Your
Honour.

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10 HIS HONOUR: No, it is a very difficult one, I
think, a very difficult problem.

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MR. HOWSE: As Your Honour pointed out, it is a
gun that according to what the accused said in
the record of interview he had been told was
dangerous.

MR. LAZARUS: When loaded?

20 MR. HOWSE: Quite so, dangerous when loaded. It
could not be dangerous at any other time,
unless you are going to use it as a club or
something. But nevertheless, having received
it back when it had been out of his possession,
having had it back in his possession for some
time, he took no steps at all to see that the
thing was in a perfectly safe condition to be
dealt with in the circumstances in which he
did deal with it.

30 HIS HONOUR: You see, for this purpose you would
have to assume that it was an entirely accidental
happening, and I should have to tell the jury
that, that this thing would arise only if they
disposed of the other charge in favour of the
accused. Then this would arise, and then only,
and they must start again, they must assume that
this was an accidental occurrence, and then the
whole question would be for them whether they
were prepared as a body to say that his failure
in these particular circumstances, in the
confined space and so on, his failure to make
40 sure the weapon was harmless amounted to such a
gross wicked degree of negligence, far and away
above ordinary negligence, it was a reckless
disregard for the safety of his wife; that
they as a jury were prepared to say that it was

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negligence of that kind. That is what I would have to tell them, is it not?

MR. HOWSE: Yes, Your Honour. Perhaps if I can go to practical examples. Judges concerned in cases where there are firearms generally do not like to see them being pointed at anybody in Court.

HIS HONOUR: Well, that is true, that is the first thing any sensible father tells his son - "Never point a gun at anybody or I'll do something to you if I ever catch you pointing a gun, even a toy gun".

10

MR. HOWSE: Well, whilst there is no suggestion that he went out of his way to point it, nevertheless he was in a situation where moving about with the gun in his hands, turning around, anybody in the room could come within the line of fire if it went off, as indeed did happen. That may be a simple answer to this question, Your Honour, that in those circumstances it does amount to the necessary degree of recklessness to make out criminal negligence. I do not think I can usefully add anything to that, Your Honour.

20

HIS HONOUR: Do you wish to say any more, Mr. Lazarus?

MR. LAZARUS: No, Your Honour, except perhaps in answer to the analogy my learned friend put, sir, it seems to me to be a very dangerous argument that because in fact a person is hit by a gun therefore he must have been careless enough to point it in that direction. It may be the case of - if I may use an analogy, sir, of a parent that runs over a child when backing in a drive, the child running into the car, and therefore to say well, obviously the accident happened, the parent should have seen it. It seems to me, sir, that there is not a great deal of help from looking at what in fact happened here on this particular question, as to the ultimate result anyway, because the facts seem to indicate that the gun was not - no attempt was made at any stage to point the gun or to use it in a way which, even if it went off, would necessarily

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40

hit anyone or cause any injury. In fact, of course, this did happen, but it may have been due to the abnormal circumstances of the victim moving into the line of fire, unanticipatable at the time. But apart from that, sir, there is nothing I desire to put.

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10 HIS HONOUR: Mr.Lazarus has submitted that in this case there is no evidence on which a jury properly instructed could find that the accused had been guilty of criminal negligence that resulted in the death of his wife. Mr. Howse for the Crown says it is a difficult case, perhaps a borderline case, but submits that it is a matter which is open to the jury.

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20 I find this an extremely difficult question, they very often are. I realise that this is not the kind of case that one so often finds, where a weapon has been deliberately pointed in the direction of the subsequent victim, being pointed in the belief that it is unloaded. That, of course, is a highly dangerous thing to do. This is a different class of case; this is a case where an omission would be relied upon effectively as constituting the criminally negligent act, namely the omission when taking the gun into a confined space to make certain that it was not in a lethal state, that it was an unloaded weapon.

30 I take the view that it is a plain case of ordinary negligence, and I think Mr. Lazarus concedes that. But the problem is whether it would be open to a jury to say that the degree of negligence involved, went so far and away above ordinary negligence which would afford an action for compensation as to enable a jury to class it as criminal negligence. Once one reaches the view that it is a plain case of ordinary negligence, then it becomes very much a matter of degree.

40 On the whole, having given the matter a considerable amount of thought, not only at present, but over the last day or two, I think it would be wrong for me to take this issue away from the jury. Criminal negligence almost by definition is a jury question and it would be wrong for me, and indeed a misdirection

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to a jury on my part, not to leave that issue to them, unless I was satisfied that no reasonable body of men could classify this act as one of the degree of negligence that could properly be classed as criminal, within the proper meaning of that.

I think for these reasons therefore that I must refuse the application and leave the issue of manslaughter to the jury as an alternative verdict.

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COURT ADJOURNED FOR LUNCHEON AT 12.24 P.M.

COURT RESUMED AT 1.50 P.M.

FOREMAN: Your Honour, I have a request from one of the jurymen. He would like to know if it would be possible to have an actual demonstration of the gun being fired from the hip with live ammunition, just to get an idea of the recoil of the weapon.

HIS HONOUR: What do you say about that, gentlemen? It is pretty difficult, I think, Mr. Foreman.

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MR. HOWSE: I suppose it could be done, Your Honour, with proper safeguards. In that connection, if it was done, I would have suggested first Constable Thompson, on the basis of his experience in handling guns, but he is not here.

HIS HONOUR: I think perhaps we had better not, Mr. Foreman. The evidence is closed now and I think it is a pretty unusual sort of thing. I can understand that, but I think it is pretty awkward.

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MR. HOWSE WAS HEARD TO ADDRESS THE JURY.

NO. 3TRANSCRIPT OF JUDGE'S CHARGE TO THE JURY
20TH AUGUST 1970In the
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REVISED BY TRIAL JUDGE

No.3

HIS HONOUR'S CHARGE TO THE JURY

IN THE CASE: THE QUEEN

Transcript of
Judge's
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the Jury

-v-

LEITH McDONALD RATTEN

20th August
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10 THE HONOURABLE THE CHIEF JUSTICE
SIR HENRY WINNEKE:

Mr. Foreman and gentlemen, this has been a lengthy trial for you, but it is now reaching its closing stages. It but remains for me to sum up to you, as it is called, and then for you to retire and consider your verdict. You have got all the evidence in front of you, you have heard it all, you have watched it attentively. You have heard two very long addresses, one from the Crown and one on behalf of the accused man. In the course of those addresses the evidence has been exhaustively canvassed, the case has been taken apart point by point, first from the point of view of the Crown and secondly in answer from the point of view of the accused. In those circumstances you will probably be relieved to hear that I do not propose to canvass all this evidence again in great detail. What I propose to do is to try and bring the two cases together, give you the basis of each case and make sure, if I can, that you understand before you retire the way in which the Crown puts its case, what it is and the answer that is made by the accused man.

In the course of a summing up, gentlemen, there are naturally certain questions of law upon which I must direct you. You see the way a jury trial works is that the judge tells the jury what the law is, the jury finds what happened, what the facts were, and by applying the law as told by the judge, to the facts as found by the jury, that is the way in which you arrive at a true verdict according to the evidence and according to law. I am quite sure that

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that is exactly what each and all of you will wish to do.

^ Now the first thing for me to tell you about is to explain what our respective functions are. You will have noticed that the Court for the trial of this matter is, as it were, a composite tribunal, consisting of me as the presiding judge and of you as the jurors. You are just as much a part of the Court as I am, gentlemen, for this purpose. You have a judicial task to perform. You are the judges of the facts and therefore you must perform your task as you would expect judges to perform theirs: that is according to the evidence as you have been sworn to do, impassionately, without prejudice against the accused man, without any undue sympathy so far as the deceased woman is concerned. I know we are not automatons, none of us is, we have all got prejudices and we have all got sympathies, but at least I hope that when it comes to a matter of grave importance such as this, we are all men enough to be able to perform our duty and put prejudice and sympathy right out of the window altogether. Decide the matter according to the evidence and a true verdict give according to it. 10 20

Now my task, gentlemen, as the judge is to preside over the trial, to rule on any questions of law or evidence that might arise during its course, to see that the trial is conducted in accordance with the long established rules of procedure and evidence that govern these matters, and finally to do what I am doing now, that is to sum the case up to you. And that comprises telling you what the applicable rules of law are, and secondly, to sum up the evidence to you, to try and bring it all together, to see that the evidence is related to the rules of law that are applicable to the case, and endeavour as far as I can to see that you go off to your jury room clear minded as to what the real issues in the case are. And so, gentlemen, just as the law is my responsibility, so it is your duty to accept the law as I tell it to you, you take the law from me and you apply that law to the facts as you find them. 30 40

Now your function as jurors is a quite separate function. You have the more important function of the two of us because you are the judges of the facts and the sole judges of the facts. You may say 'What does he mean by telling us we are the judges of the facts, what does that mean'? Well what it means is,

deciding what happened, what happened on the morning of 7th May, how did this gun come to go off, was it deliberately fired or did it go off accidentally? What happened when the police arrived, who made the telephone calls, what happened later on at the police station when the record of interview was being taken? What was the effect of this relationship between the accused man and Mrs. Kemp?

All those things are questions of fact and that is what your function is, to decide what the facts were, what happened. Now in deciding questions of fact, gentlemen, naturally you have to decide those on the evidence that comes before you.

That means according to the witnesses you have heard, and the exhibits that have been put in evidence and which you will be able to take with you to your juryroom if you want to and examine afterwards. In dealing with the witnesses you have got to make up your minds first - "Well, what do we think of this line of witnesses we have seen? What is the importance of their evidence? What sort of men or women were they? Were they honest witnesses? Were they trying to the best of their ability to tell us what they honestly believed they saw or heard or remembered?" Of course, that does not finish it, either, when you are examining witnesses, because even the most honest witnesses, patently honest witnesses, are not always reliable. You see, factors like powers of recollection, powers of observation, how long ago the things happened - all that sort of thing comes into it. You have got to review the witnesses and you have got to say to yourselves, "Was he honest? Was she honest? Not only that, how much can we rely on the evidence they gave, how accurate were they, how reliable do we think they were?"

You are not bound to accept the evidence of the witnesses as all black or all white. This world does not work that way. You are entitled to accept part of the evidence of a witness, and reject other parts of the evidence of a witness. You are entitled to accept all the evidence of a witness or reject the whole of the evidence of a witness if you wish to. And so, you see, when you finally come to your conclusions in this matter, you will have reviewed all the evidence, all those witnesses, and you will probably finish up with a kind of kaleidoscope of evidence - part of this witness, part of that witness and so on. That is the way in which you have to act as judges of the facts.

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I said, gentlemen, that you are the supreme judges of the facts - so you are. And that means this; counsel have the right to make suggestions to you as to how you should find the facts, what inferences you should draw, they have the right to make comments to you. Both of them have freely done it in this case, and properly so, they have both got their duties to perform. But you are not bound in any way by what counsel on either side have said to you about the facts. If you think that the comments they have made appeal to you, the suggestions they have made to you, if they appeal to your common-sense and judgment, well then, use them. But if they do not appeal to you, well then, just brush them on one side, put them away, because you are the judges of the facts, you are the representatives of the community, it is for you to decide, and nobody else, what the facts were.

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And understand this also, the presiding judge has the right to make comments on the facts as well. I have told you that when I tell you what the law is you are bound to accept it. But the judge also has the right to make comments on the facts if he wishes to for the assistance of the jury. Now if the judge does make comments on the facts to you, gentlemen, you treat those comments in exactly the same way as I have told you to treat the comments of counsel. If any comment on fact I make to you, should I do so appeals to your commonsense and judgment, use it. If it does not, brush it aside, forget about it, in exactly the same way as I have told you for counsel. I do not know that I will make comments on the facts to you, I do not very often, because that is the jury's function, that is the way the system is supposed to work, but I am entitled to; and if I do, or if you think I am making comments on the facts - because sometimes when people are looking at you and listening to you they think you are making a comment that perhaps you are not intending to make at all. But if I do make comments in the course of this charge, or if you think I am, well, you use them just in the way I have told you. You are not bound to, not bound by them in any way, as distinct from the situation on the law. Do you follow that now, as to what our respective functions are?

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There is one other thing about the facts I should tell you, I think, and that is that you are entitled to draw what we call inferences. Supposing you find that fact A is proved on the evidence, and then you find

that fact B is proved on the evidence. Now if you are satisfied - satisfied beyond reasonable doubt that from fact A and fact B, taken together, fact C must have happened, then you are entitled to infer that fact C did happen. But you have got to be careful about drawing inferences. It is only if it necessarily follows a matter of logical deduction that you can draw the inference; what you are not entitled to do is to speculate or guess. Do you follow that? And I am sure you would not in a case of this importance to the accused man. Nobody would be wanting to guess or indulge in speculation with an issue of the gravity and importance that you have got before you.

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The accused man in this case has given evidence. Well you treat him when you are dealing with the facts, in the same way as you treat any other witness. It makes no difference that he is sitting in the dock and comes into the witness box, a person is accused, he has got to sit somewhere I suppose in the Court, and when he comes to give evidence he goes into the witness box. He is an ordinary witness in the case, exactly the same as the policeman or any of the neighbours up there or any of these other good people you have heard. And you treat his evidence in exactly the same way as you treat that of any other witness. It is very important you see when you are making up your minds. You have heard these people examined -in-chief, cross, examined, as it is called, re-examined by the counsel who called them, the whole of that is put before you. You are the spectators, you are the lookers on, and do not forget there are twelve of you, twelve pairs of ears and twelve pairs of eyes, and my experience is that there is not much that juries between them miss. It is a collective effort in that way, and you exercise your own good sense, your own common sense, your own experience of the world, your experience of men and woman. That is what you are here for you see, that is the beauty of the jury system. You get twelve men, nowadays we sometimes get ladies amongst them, but you get twelve men, they come from all walks of life, generally of different age groups, different experiences, some younger than others, some older. Young men, you know it is a great age for young men, we older men think, oh yes, but we have got a bit to contribute too you see, there is nothing like a bit of experience. But that is the idea of the whole thing. You

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put your common knowledge of the world and your common judgement together. How do men react, how do women react, what do we know about it from our experience or the world, and that is the great value of the jury system. And just remember once again, that what you are engaging in is an intellectual exercise, that is really what it is, you are to examine the evidence as coldly and impassionately as you can. Put aside all prejudice in one way or all sympathy in the other, this is not the place for those things. Remember also, particularly in a case like this, that this is not a court of morals you know, this is a court of law, a court of justice I hope. We are not here to try an issue for instance as to whether the accused committed adultery with Mrs. Kemp. If that needs to be tried there is another jurisdiction of this court in which that can be tried. We are not here as a court of morals, that is not the issue you are trying. You are trying this man on a charge of murder. Now you go about it, gentlemen, in the way I have been trying to describe to you, taking account of the law as I am about to tell it to you, the rules of law. You act as the supreme judges of the facts in the way in which I have been telling you. You find what the facts are, you find out what happened so far as you can from the evidence before you, you apply the rules of law that I am about to tell you about, to the facts as you find them, and that no doubt will result in a just and true verdict according to the evidence. Now that is so much for our respective functions in the trial.

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Now the next matter of law I must tell you about is what we lawyers call the burden of proof. That is a very important matter of law for you. In any criminal case, gentlemen, it is the Crown that makes the accusation, the Crown that lays the charge through the Attorney General, that is the way it works. The law says that the party who makes the charge must prove it, and no doubt you would think that is not only good law but it is good common sense. And so it is that when the Crown puts a person like Ratten on trial and charges him with something, the Crown undertakes to prove every element that is necessary to make up the crime charged. There is no onus of proof on an accused person at all. He is not required to prove anything, he is not required to disprove anything. Indeed, gentlemen, I think as Mr. Lazarus told that, when an accused man enters the dock he enters it with a presumption, a legal presumption of innocence

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10 in his favour. He takes his seat as an innocent man, and he is deemed to be innocent until a jury comes back and say, 'No, he is guilty'. Do you follow that? The burden of proving the case, every element in the crime charged, rests upon the Crown from start to finish. What is the standard of proof, how high does it have to be? Gentlemen, in a criminal court the standard of proof is the highest known to the law, the highest known to the law. It is proof beyond reasonable doubt, proof beyond reasonable doubt. Now I cannot define to you what beyond reasonable doubt means. They are plain, folksy, English words and you know what that means, 'beyond reasonable doubt'. So the Crown must prove every element in the crime charged beyond reasonable doubt. And if at the end of the case you are left with any reasonable doubt as to the guilt of the accused, with any reasonable doubt as to any one of the elements that goes to make up the crime charged, then he is entitled to a verdict of not guilty. Do you follow that very important principle?

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There is one other thing I think that I should add in this case, because of the nature of the case, about the burden of proof. You see in this case, in the last resort the Crown case depends upon circumstantial evidence. You know what I mean by that. You see there were only two persons present when this tragic and unfortunate event occurred. One is no longer with us, so only the accused is left, is he not? Therefore, the Crown, if it is to prove its case against the accused man must rely upon a whole collection of circumstances. That is what is meant by saying that this is a case which in the last resort, from the Crown's point of view, rests upon circumstantial evidence.

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Now where a case is one of circumstantial evidence, before a jury convicts a man it must be satisfied, on its view of the facts, that there is no reasonable hypothesis or explanation consistent with his innocence. One hypothesis, obviously, in this case is that this was an accidental shooting - that is one hypothesis. There may be others that occur to you, but that is an obvious one, because that is what the defence says. Now if at the end of all your deliberations, once you have made up your minds as to what the facts are, if you cannot say that

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accident is not a reasonable hypothesis, then the Crown has not established the elements of the charge beyond reasonable doubt, and the accused must be acquitted. Do you follow that? I hope I have made that plain to you. Do you follow that, Mr. Foreman?

FOREMAN: Yes, Your Honour.

HIS HONOUR: And that is, as I say, an important consideration in this case. You remember that from first to last the burden of proof in that sense rests upon the Crown.

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I was talking about proof beyond reasonable doubt. It might assist you if I just say this: Some of you may have had experience of sitting on civil juries, and if you have you will find that in the vast majority of cases you have people claiming damages because they have been injured with these motor cars that are running all over the roadway, all the motor car accidents, people getting injured, and they are claiming damages for negligence, as a rule. Negligence occurs when one person owes a duty to another to use reasonable care and fails to use reasonable care, that simply is what negligence is, and if that failure to use reasonable care causes damage and loss to the other person, that other person has got a claim for damages, to bring an action. Now, the person who brings the action is called the plaintiff. There again, as the plaintiff is the person who makes the accusation, saying to the defendant, "You were negligent and your negligence caused my losses", so the law again says, "Very well, you Mr. Smith are making that allegation, you prove it, you must prove that the defendant was negligent." But in a civil case the judge tells the jury that the burden of proof is a much lower one than it is in a criminal case. In a civil case the burden resting on the plaintiff is simply to prove the elements of the claim on the balance of probabilities, making it more probable than not that the defendant was negligent. In other words, if you start off with the scales even, and the plaintiff succeeds in tipping the scale down against the defendant, however little it does not matter, then he makes it more probable than not, does he not? That is sufficient in a civil case. But of course this is not a civil case, we are not sitting in the civil jurisdiction, we are sitting in the criminal jurisdiction, and when you come to the criminal

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jurisdiction the burden of proof is much higher. As I told you, it is the highest degree or standard of proof that is known to the law, it is proof, not on the balance of probabilities, but proof beyond reasonable doubt. I just give you that illustration to show you the difference between the two standards.

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10 So much for the burden of proof. While it is in my mind, Mr. Foreman and gentlemen, if at any time later on during your deliberations you find that I have not explained something to you or that you have not understood what I have been saying or trying to tell you, do not hesitate to come back and ask me and I will try to make myself clearer if I can.

20 The next thing is this, I must tell you what murder is, and that is the crime that is charged against the accused - What is murder? I suppose you have all got a pretty general and popular idea of what murder is, and no doubt it is not far off the mark. But I must tell you that in law murder occurs where one person by his voluntary act, done without lawful justification or excuse, causes the death of another, and at the time when he does the act intends either to kill or to do grievous bodily harm. Just let me say that to you again: murder occurs where one person by his voluntary act, done without lawful justification or excuse, causes the death of another, and at the time when he does the act intends either to kill or to do grievous bodily harm. The latter part of that, the intention, is the mental element in the crime of murder. Most of our major crimes consist of two parts, really, the act that causes the damage and the evil intent, what is called the malice aforethought. In murder, the murderous intent must exist at the time when the act of killing is done and it is an intention to kill or to do grievous bodily harm. You probably knew that, perhaps you did not know about grievous bodily harm. That simply means serious bodily injury, and that is included in the murderous intent, properly when you come to think about it. Because the law would not be much protection, I suppose, for the lives of people if a man could come along and say, "Oh yes, Your Honour and members of the jury, I meant to injure this man, I meant to injure him within an inch of his life, but I meant to stop just that one inch short". That would not be much of a system, would it? And that is why the law says that the intention

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is either a deliberate intention to kill or an intention to do grievous bodily harm.

Now let me break that definition up for you into its component parts. First of all, I said "where a person by his voluntary act". Now in this case, according to the Crown, the act is shooting at the wife, the act of shooting at her. Of course if you are not satisfied he ever shot at her the act was not performed and that is the end of the case. When I say "satisfied", I mean "satisfied beyond reasonable doubt", too, you know. Well, that is what is meant by "the act" - the doing of the act; and it must be a voluntary act. Now, "voluntary act", gentlemen, simply means a conscious act, an act that is the product of the will at the time, as distinct from an unconscious act, an act you might do in your sleep if you were a sleepwalker or something like that. Well, these are all matters for you, but I do not suppose in this case you would have any doubt, if you are satisfied to the degree I have told you that the accused did the actual act of shooting, I do not suppose you would have very much doubt that it was a voluntary act. That is a matter of fact, it is a matter for you, but that is what is meant by "voluntary", and that is what is meant by "voluntary act". It must be a voluntary act. I said "done without lawful justification or excuse". Well, you can forget that element in this case, that is the one thing you can forget. Nobody suggests here that if the accused by his voluntary act shot his wife, that he had any lawful justification or excuse for doing it. That is where self-defence comes into it and that sort of thing, but that is not an issue in this case, so we need not bother about that element any more.

All right, you have a "voluntary act, done without lawful justification or excuse, causing the death of the other person". Well, you follow what that means - "causing the death", you cannot be guilty of the crime unless your act has caused the death. And then finally, "and at the time when the act is done it was done with the intent either to kill or to do grievous bodily harm". I do not suppose you want me to define "intent to kill" for you, you know what that means. And I have told you what "grievous bodily harm" means - "serious bodily injury". Now do you follow me, do you understand what the elements of the crime are? A voluntary act causing death, done without lawful justification or

excuse, and at the time when the act is done the intent either to kill or to do grievous bodily harm. Those are the various constituent elements that go to make up the crime of murder, and as I have told you the Crown must satisfy you, each one of you, beyond reasonable doubt that every one of those elements existed in this case; and if the Crown fails so to satisfy you, either as to all the elements or as to any of those elements, any one of them, then this charge of murder against the accused has failed and he is entitled to your verdict of not guilty. Do you follow that? All right.

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There is another crime which a judge must tell a jury about if it is open on the evidence before them - that is the crime of manslaughter. Where a man is presented on a charge of murder, it is always open to a jury, if the evidence permits it, to find manslaughter if they think that is the proper conclusion, on the facts. The Crown does not have to set out two charges in the presentment, (one) murder, (two) manslaughter. Manslaughter is always wrapped up as an alternative verdict in a count of murder. But it is an alternative charge, gentlemen, it is a truly alternative charge. What it means is this, that when you have determined - if you do - that the accused is not guilty of murder, it is then, and only then, - then and only then - that you will turn your attention and consider "Well, is he guilty or not guilty of the alternative charge of manslaughter". Now gentlemen, you must not - I am sure you will not misunderstand me in this matter, you must not under any circumstances in a case such as this compromise over those verdicts. It would be terribly wrong, not only to the accused, but to the public that you represent, if you went into your juryroom and said, "Oh well, I don't know, this case is too hard for me, but after all, the accused certainly held the gun in his hands and it went off and shot her in the kitchen and he was misbehaving with this other lady, therefore he ought to be punished for something, we'll find him guilty of manslaughter". Now that would be a complete abuse of your functions as jurors. I am sure you would not dream of doing that, but I just mention it, we are all human beings you know, and I just mention it to caution you about it so that you will be conscious of it and put on your guard against it. That would be a complete abuse of the whole system. Do you follow what I mean by that? In other words,

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manslaughter is a truly and completely alternative charge in this case. You will not consider the question of manslaughter until you arrive at a point where you are unanimously satisfied that the accused is not guilty of murder. Do you follow that? Of course if you found him guilty of murder well then you do not worry about manslaughter. But neither do you worry about manslaughter until you reach the stage where you decide that he is not guilty of murder. It is then and only then that you start afresh and say, "Well now let us consider the question of manslaughter in accordance with the rulings that the trial judge gave us". Do you follow that?

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All right, well what is manslaughter? Gentlemen, manslaughter is a lesser degree of homicide than murder. Manslaughter is an unlawful killing. The thing that distinguishes manslaughter from murder is the absence of the murderous intent. If one person by his voluntary act unlawfully causes the death of another but without any intent to kill or do grievous bodily harm, then that is manslaughter. Do you see the difference? In murder it has got to be done with the wicked intent to kill or do grievous bodily harm, but in manslaughter the thing that distinguishes it from murder is that there is no intent to kill or do grievous bodily harm. Now there are various ways in which the crime of manslaughter can arise. There is only one of those that is applicable to this case, and that is what is called killing by criminal negligence, killing by criminal negligence. That is the form of unlawful killing which could amount to manslaughter in a case of this kind. Now I have already mentioned to you what negligence is, have I not? Negligence occurs where two persons are in proximity to one another so that one of them owes a duty of reasonable care not to cause injury to the other. Say when you are driving a motor car along the road. Well you are driving down the street, well I am entitled to drive down the street too, and therefore each of us owes a duty of reasonable care not to go and run into the other one and injure him. Or if you are driving a car and I am walking across the street you owed a duty of reasonable care. Now similarly, the accused is in the kitchen, he has got a gun there, his wife is in close proximity somewhere. Well he would owe a duty of care to her, of reasonable care not to injure her or anybody else who was in the kitchen. And if in breach of that

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duty of reasonable care the gun exploded and another person was injured - supposing you were in the kitchen and injured and it went off through lack of reasonable care, then you would have a civil claim for negligence against the man who was holding the gun, just like an injury with a motor car you see. That would be an ordinary claim for damages for negligence. And you might think in this case for instance - it would be entirely a matter for you, not me - I tell you the accused would owe a duty of care to his wife in law, but whether if the gun went off as he says and injured her accidentally, whether that would amount to a breach of reasonable care on his part in a civil claim that would be a matter for the jury to decide. But a jury might well think of course it was, of course it was, not making sure a gun was unloaded and using it in a place like that and therefore he was negligent. Now that is not manslaughter if the person dies. To constitute criminal negligence, gentlemen, the degree of negligence must be far and away above that which is necessary simply to afford a claim in a civil court for compensation. The degree of negligence must be far and away above it. Now judges from time immemorial have used different words to try and describe what the degree of negligence is. I will use some of them to you, but in the end it is a question for a jury, it is a real human question, a real jury question, for twelve good men and true to decide. I start off by saying the degree of negligence must be far and away above what would be necessary to constitute an ordinary claim for damages for negligence. Various words have been used to describe it. It must be gross negligence, it must be culpable negligence, it must be negligence of a kind that you can say that the accused person has shown a reckless disregard for the life or safety of the other person, perhaps that is as good a way as any other. The circumstances must be such that a jury would say 'Look this thing is so far and away above just ordinary civil negligence, we think, we are satisfied, we think that what this man did or what he failed to do was such that it just showed a reckless disregard for the life or safety of the other person in the room, such a reckless disregard, such a culpable degree of negligence, such a gross degree of negligence that it is deserving of punishment at the hands of the criminal law'. Now have I made that plain to you. Do you think that

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is all right, do you see the difference? Do you see the difference first of all between murder and manslaughter, and the difference between ordinary negligence that would suffice in a claim in a civil court for damages, and negligence of such a high, such a gross, such a culpable, such a reckless degree as to constitute such an order of negligence that is deserving of punishment at the hands of the criminal law. Now that is what criminal negligence is. And there again, gentlemen, 10
you want to remember this in this case, if you come down to consider that, the burden of proving it rests upon the Crown again and to prove it beyond reasonable doubt. And insofar as the case rests upon circumstantial evidence then before you could convict him of manslaughter you would have to take such a view of the facts that you would be able to say "Well there is no reasonable hypothesis which is consistent with anything less than criminal negligence." Do you follow that? There are the 20
two crimes that you are involved with, murder and the various elements in that, and then if you are not satisfied about murder, if you think he is not guilty of that, then you go on to consider this other question of manslaughter that I have just been putting to you.

Now in the circumstances of this case there are two other matters I think I should say something to you about, really as matters of law. The first is the evidence relating to this affair that occurred 30
between the accused and Mrs. Kemp. I want to say a little more about it in the factual situation a little later. At the moment you have got in mind what I am talking about, the relationship between Mrs. Kemp and the accused. Why is that allowed to come into this case? Well gentlemen, I admitted that evidence in this case because it was in my view, as a matter of law, relevant to prove a motive or reason on the part of the accused man for deliberately killing his wife, do you follow that? 40
That is why it was relevant in this case, and that is the only reason that it was relevant. You would have to be satisfied of course to begin with that there was a relationship between them, because if there was not well put it all on one side, forget about it. But I do not suppose having heard the evidence in this case and that of the accused himself - although this is a question of fact I am commenting on, remember it is not for me, if you do not agree with what I am saying here you do not have 50

anything to do with it - but I was about to comment that I suppose in this case you will not have much difficulty in coming to the conclusion that there was an affair going on between these two people. Well now, if there was an affair between them what kind of an affair was it, how deep was it? Can you think that here it was an affair of the kind that would constitute a motive for killing his wife, a wife and child, eight months' pregnant. Was it deep enough for that? These are questions of fact for you, but the only way that it is admissible, gentlemen, is in that way, it is only relevant to this case if finally you are satisfied that it did constitute a motive or a reason for him killing his wife. Let us put it around the other way to perhaps make it a little plainer. A man is charged with killing his wife. Now they are just an ordinary couple living in domestic bliss, as far as any of us live in domestic bliss with our wives, I suppose, on the whole I suppose we do. All right, well let us assume that, the ordinary case of man and wife living together, and a gun goes off and she is killed in some way and somebody says 'oh he killed her'. Well there is no evidence of any history of vast quarrels between them other than the ordinary human husband and wife quarrels, there is no evidence of violence used by the husband against the wife and so on, no evidence of any real bad relationship between them, well obviously the man who is accused says 'oh rot, what reason would I have for killing my wife, what are you talking about'. You see, gentlemen, I suppose the experience of human nature shows us that when men and women are living together under the marriage bond, normally in a happy way, there are certain natural ties, natural bonds of love and affection that exist between a man and his wife, which would make it incredible in ordinary circumstances that a man would kill his wife. What for, unless it could be shown that she was suffering from an incurable cancer, he might have done what is called mercy killing, or unless it was proved plainly that he hated the sight of her or was using violence to her and she provoked him into this or that. In the ordinary case you would simply say 'rubbish a man would not ordinarily kill his wife, a man has got no motive or reason for killing his wife'. Now in this case this evidence was admitted to rebut that kind of argument you see, because you might think in the end 'Oh well we cannot say that in this case, this man - we think this man did have a reason or a motive'. This is going to be a matter

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for you of course. But that is the only way that this evidence is admissible, as motive or reason. One of the circumstances, one of the circumstances, which, according to the view you take of the relationship, and its effect, may in conjunction with other circumstances ultimately lead you to satisfaction beyond reasonable doubt that he did kill his wife, he did it deliberately. But in itself, of course, motive does not really prove anything, in itself. It would be bad luck for the Treasurer, I suppose, if he happened to die. Of many of us it might be said, "You had a motive for shooting Mr. Chifley or Mr. Bury, or whoever he is. I heard you the other night saying 'I hate that man, I'd like to get my hands on him, look what he's done to me'". You see, motive in itself - I suppose you all know that and are reminded of it as you go through life, we would all be pretty lucky if we go through this life without getting the hooks onto somebody, I suppose. We think, I suppose very often without justification that somebody has done us an ill, and say "I don't like that fellow, I wish I could get at him", but it does not mean that because something happens to him and he dies that you are the man who killed him, because you had a motive for doing it. Motive in itself does not really prove anything, but it may be a significant circumstance when taken in conjunction with other circumstances, a chain of circumstances, then it may assist in leading to satisfaction that no other reasonable hypothesis is open. That is the only way, gentlemen, that that evidence of the relationship is usable by you in this case.

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The other thing I want to mention to you at this stage is usable only in a like way. That is the evidence given by Miss Flowers of the telephone call that she says was made from the accused's home at about a quarter past 1 on 7th May, and made by a female voice. Now, you may think, and probably will think, although this again is a question of fact for you and not for me, that at that time there were only two people in that house, the accused and his wife. And a telephone call was made, and Miss Flowers said it was made by a female voice, and the female voice said, "Get me the police, please - (pause) - 59 Mitchell Street", then hung up. Well, it is a question of fact for you. You have to be very satisfied, to begin with, that Miss Flowers was right about that, but I will deal with that a little later on. But suppose you were satisfied about that,

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certain about it, that she was right. How is that admissible, how can you use that in this case? Well gentlemen, it can only be used, really, in one or both of two ways. If you were satisfied that Miss Flowers was right and it was the deceased woman who made the call for the police, then that would falsify or rebut the statement made by the accused man that it was he that made that call. In other words, you would be entitled to say, "Well, he was lying to us when he said he made that call. We find that Miss Flowers was right and the deceased woman made that call, and that showed that he was lying to us when he said that he made the call and asked for the ambulance".

And the other way in which the evidence could be used is to say, "Well, it shows what the relationship was between the accused and his wife at that time". You see, the relations between the victim and the accused person, so far as they may be explanatory of the conduct of the accused, are always admissible. So that if you found as a fact, based on Miss Flowers' evidence, that it was the deceased woman who made that call - Mrs. Ratten who made that call, then you would be entitled to infer, if you so thought fit, "Very well, the relations were not good between the two of them at that moment, otherwise why would she be ringing up for the police to come". That would give a very different picture from that which is presented by the accused man. Those are the only two ways, either to rebut his evidence that he made the call, or to show what the real relationship between these two people were, the husband and the wife, at what must have been a time almost immediately before she was killed. Those are the only ways in which those two pieces of evidence can be used. In each case it would be one of the circumstances, not in itself proving the crime charged, but one of the circumstances which may, when taken in conjunction with other circumstances, lead you to satisfaction to the degree required by the law.

The only other matter of law, I think, gentlemen, that I ought to tell you about is to repeat the warning that I have given to you twice already about the view. You remember you said you would like to go out and have a look at the deceased's home, and you did that one afternoon last week. Now I repeat again the warning that I gave you twice before during the course of the trial.

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The view that you had, what you saw there, what you heard there, anything like that, is not evidence in this case upon which you can act. You are only entitled to use the view of the premises for the purpose of enabling you to interpret the evidence that you heard from this witness box, to enable you to better understand the plan, for instance, and the photographs and so on. You remember that, I have told you that before, bear that in mind.

I think I did mention to you that your verdict must be unanimous. In a criminal trial it must be unanimous for guilty or unanimous for not guilty before you can bring in a verdict at all. Gentlemen, that does not mean that you have all got to reach the conclusion by precisely the same steps. I suppose that it would be pretty difficult to get six men, let alone twelve - it does not mean you have got to be all precisely ad idem on every step. But what it does mean is this, that in the ultimate result, before you can find the accused man guilty of either of the charges, you must be satisfied beyond reasonable doubt, all of you, each of you, unanimously, that he is guilty; and the same with manslaughter. And before you find him not guilty you must be unanimously agreed to that effect.

So much for the law; and that brings me to your province, the facts. Remember what I said about this, this is your business. Finally, you are supreme here, it is your view that counts, not mine, not counsels'. Use our views or comments if you think they help you, but otherwise forget about them, put them on one side. I said a little earlier, gentlemen, that I do not propose to go through this evidence in any detail. You have heard it over the last few days. There are 12 of you there to interpret it; you have heard it fully and exhaustively discussed by both counsel. They have referred you to long passages in the evidence. It would be tiresome for me to endeavour to read large slabs of the evidence to you, it would probably only confuse you if I do that. And therefore what I am going to try and do to the best of my ability is to summarise and give you a summary, the effect, of the way in which the Crown makes its case and of the answer that the defence makes to that case. If at any time in the course of your deliberations you are uncertain as to any evidence that you may think material, you have only got to knock and let me know and I will try and find that passage in the evidence

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and read it to you, if you want it. You may or you may not, it is a matter for you, but if you do want it, do not hesitate, I will give you all the assistance I can. And gentlemen, because of the way I am going to treat this case now, just bear this in mind. If I refer to some aspect of the case or the effect of some of the evidence in the case that you do not think is of any great significance, you do not give it any greater significance because I happen to mention it, because it is your business. And likewise if I happen to fail to mention some aspect of the evidence or some aspect of the case that you think is of significance and importance, well do not for goodness sake give it any less significance or importance because I happen not to mention it. Because I am not a robot you know, I cannot remember it all, I do my best with things I think are important but I am human like everybody else and it may be that if I do not mention something it is because it has gone out of my mind at the moment. So if you think things are important and I have not said anything about them, well you give them the importance you think they deserve.

All right, well now what about the Crown case, what do the Crown say? Well first of all the Crown says you should be satisfied beyond reasonable doubt that this man caused the death of his wife, and that he caused her death by a gun shot wound to the heart. You remember the evidence given by the pathologist, Doctor Charlton. He conducted a post-mortem examination on the body of Mrs. Ratten on the same evening at the Bendigo Mortuary, 7th May, 1970. He told you that when he examined her there was an entry wound in the mid-line I think he kept describing it, do you remember, about two inches in diameter and about six inches I think below the apex of the armpit. It was in the left side of the chest, and he said that as that mass of shot went in it spread out and created a kind of a - what he called a conical area with a base at the bottom. And he said that as the shot went through and it spread out, unfortunately it shot away about a third of the unfortunate woman's heart, and that caused a great haemorrhage into the pleural cavity, and he thought that death would be virtually instantaneous, and we hope he was right. Now all that is a matter for you. He said he found the cartridge wad which the evidence you may think established came from the left hand

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barrel of the side by side shotgun. Doctor Charlton also attempted to describe to you the nature of the wound. He said it was about five to six inches long all told. He said there was a greater concentration of shot at the base of this conical area. And he said, gentlemen, that the wound went in a sharp downwards angle. He said, estimated - did not measure it - 45 degrees would be the axis of the cone, the centre line of the cone, an angle of 45 degrees slightly forwards and slightly inwards. And he said that the cause of Mrs. Ratten's death was that gunshot wound to the heart. But firstly of course the Crown has to establish that. You must be satisfied beyond reasonable doubt that that is the way in which death was caused. I do not know, it is a matter for you, a question of fact. But I do not suppose, gentlemen, you would have very much difficulty about that particular aspect of the case. 10

Now secondly the Crown says that the act that caused that wound which caused the death was a deliberate and intentional act on the part of the accused and not an accidental act. They say it was a deliberate, voluntary act of shooting, done with intent to kill or to do grievous bodily harm. And they say it was done at short range. It may be that if you were satisfied to find that it was a deliberate act of shooting, that you would not have much difficulty in being satisfied about the murderous intent. I suppose if a man deliberately, intentionally puts a shotgun on to a woman at a distance of five or six feet away and pulls the trigger deliberately, well I do not suppose you would have much difficulty in finding that was done not only certainly with intent to do grievous bodily harm but probably with intent to kill. Those are questions of fact and matters on which your judgment would be supreme. But that is what the Crown are saying, that this was a deliberate and intentional and not accidental act. Now how does the Crown seek to convince you about that. I am not saying this you know - that is not right, I am saying it at the moment. I am not putting this forward as my view, I am only trying to put forward to you what the Crown is saying, trying to epitomise the thing for you. What the Crown are saying is this, this is why they say that this was a deliberate and intentional act. They say 'Well first of all this man on the evidence should be found by you to have had the very strongest motive and reason for wanting and desiring and intending to kill his wife'. And in support of 20 30 40 50

that they rely upon this - what the Crown says was a long standing, deep seated and progressive affair or liaison with this woman Mrs. Kemp. Gentlemen, you have heard the evidence about that, you have heard it canvassed by Mr. Howse on the one hand, the nature of that association, and you have heard that argument pulled to pieces by Mr. Lazarus on the other side. Now it is up to you to decide what view you take of that liaison and whether it did constitute a strong reason or motive in these particular circumstances for this man to want to kill his wife and get her out of the way. And what the Crown is saying is that it was long standing in the sense that it had gone on for some 12 or 15 months at least. They say 'Well on the evidence you ought to be satisfied that it was a progressive association'. The Crown say 'Well you saw this woman Mrs. Kemp and you should be satisfied that she was determined to break up her own marriage, as she said, and she was determined to break up Mr. Ratten's'. The Crown says she did all she could to force this man into drastic action and it had reached its climax or its peak over the Tuesday 5th, Wednesday 6th and then the fatal day Thursday 7th May. The 5th May, the Tuesday, was the day the two of them came into Shepparton and consulted some solicitor in Shepparton; and they were given to understand, according to the evidence, that divorce was hopeless, they could not get a divorce, even on the ground of separation. I do not understand that, but that is what the evidence was that they were given to understand. It was the evening of 5th May, the Crown invites you to say, that Peter Kemp, the husband, came out of his camp in the bush, arrived home in Barmah and had a talk with Mrs. Kemp. and it was that night, according to her, that he agreed to separate on the various terms that were mentioned - agreed to her putting the house on the market and so on. That was on the Tuesday night. Then she rang the accused and told him that this had occurred. Then on the Wednesday, 6th May, in the afternoon she left home and went to the outskirts outside Barmah, and he drove over and met her just outside Barmah, on the Wednesday afternoon. They drove off into the bush somewhere, and they discussed the situation again and she told him the arrangement that had been come to between her and her husband. She wanted him to tell his wife that he was going to leave home, but not the reasons for it. And the Crown says there is evidence that he left her on that Wednesday

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in his situation, that if the opportunity arose that night, the Wednesday night, he would mention it to his wife.

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Then you come to the Thursday, the Crown says, "There you are, come to Thursday, 7th May". You have got evidence that he slept apart from his wife that night. There is evidence that on that Thursday morning he drove out again to the Kemp's place at Barmah and spent about an hour or an hour and a half out there with this woman. She told him that she could make arrangements to go and stay with friends at Nathalia. He talked her out of that, urged her to remain where she was, but he was not able to talk her out of, and he had to acquiesce in her putting her house on the market that afternoon, and in fact she did, went into Nathalia to Dalgety's manager and said that she put the house on the market that afternoon. The Crown says, there you are, that is the situation that was existing between them. They say that there was a very close and deep-seated liaison between these two people, and they say that you should take the view, on the evidence, that he had got himself so entangled with this woman - or she had so ensnared him, perhaps if the better way of describing it, that is a matter for you, though, not for me, you saw this lady and you make up your own minds about it, but that is what the Crown are saying, that she had got her hooks into him and she was not going to let him go. In effect, she had got him in a state where he was scared stiff she would go and say something to his own wife, and so on. And the Crown say, well, that is a highly significant kind of relationship, a highly significant circumstance, and that in the circumstances of this case you should say, "Well, we cannot disregard that as being an insignificant factor, this was a liaison of such a kind that it would afford an explanation, a reason, a motive, for a man placed as he was, to get his own wife out of the way, make it look like an accident, get her out of the way, and leave him to fulfil his desires in connection with the other woman". This is what the Crown say, Mr. Howse says, "I suppose it is not the first time you've had these kinds of eternal triangles in this life and I suppose it won't be the last". But all that is a matter for you, what do you think about that? Does it constitute such a motive or reason of that kind. That is the only way in which it is admissible.

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Well, that is the first thing the Crown rely on to prove that this was a deliberate act. Then secondly, gentlemen, the Crown say you should find that the phone call that was made to the Echuca exchange at a quarter past 1, very shortly before this killing occurred on 7th May, was made by the deceased woman, Mrs. Ratten. The Crown say, that is the evidence that was given by Miss Flowers, the telephonist. The Crown says she is not an inexperienced girl, she has been there for some 2 to 2½ years; they say what reason or motive on earth would Miss Flowers have to lie. The Crown says further than that, you should find that she was not making a mistake, that she was accurate, she had been on that board, she saw the light flash, she picked up the thing, the voice said, "Get me the police please, 59 Mitchell Street". And what the Crown is saying is that she says that was a female voice. Well, she was not shaken, says the Crown. In this case, she gave her evidence quite confidently and plainly. Mr. Lazarus cross-examined her up hill and down dale, but he was unable to shake her. That is what the Crown say, and therefore that you should say, "Well, we accept Miss Flowers as a witness not only of the truth, but as an accurate and reliable witness". And if that is so, then the rest of the evidence in the case shows quite plainly, you may think - it is a matter for you, but it shows quite plainly that there were only two people in that house at the relevant time, that is the accused man and his wife, and if it was a female voice that made that call, then the Crown say it follows like night follows day that that was the wife ringing up for police assistance. And they say, well, if you find that, that it was the deceased woman who called, and if she called for police assistance within a few moments or minutes of her ultimate death, then that is absolutely irreconcilable with any accidental shooting. That is what the Crown are saying, that is a matter for you. They say it would give completely the lie to the accused's evidence that it was he that made the call, and why is he lying about it, says the Crown, if that is right? The Crown says it would show, or you should find that it shows that if she made that call for the police to come, then she was in difficulties with her husband, and that is utterly irreconcilable with any accidental act of shooting.

The Crown say further you should find that Miss

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Flowers' account is supported, having regard to the account of that telephone conversation that the accused gave in the witness box. He said, you will recollect, that he went to the phone and he kept repeating, "Get me the ambulance, For God's sake help me, get me the ambulance", and that he said it three times at least, maybe more. And the Crown say 'well, does not that show you, Miss Flowers could not have been all that wrong, says the Crown, and even if there was a possibility that she may have been mistaken as to the voice, male or female, she could not have been mistaken - this is what the Crown say - as to the substance or the nature, so wrong as that, as to the substance or nature of that conversation. The Crown say it certainly was not a conversation of that kind, and that shows that the conversation she was giving you evidence about was not the one that the accused man was talking about at any rate'. Well gentlemen, now all that is a matter for you. But that is the second factor that the Crown rely upon.

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Well then the next thing as I see it that the Crown relies upon and urges upon you, is that they invite you to find that both triggers of this side by side shotgun were pulled, and if they were pulled, they say, well on the evidence in this case they could not have been pulled by anybody other than the accused man, because it was only he in whose hands the gun was at the relevant time. The Crown remind you, they say 'Well the ballistic evidence in this case proves that the cartridge that was fired in the left barrel was fired by the firing pin of that gun, the left firing pin of that gun, and similarly the cartridge that misfired, that had the indentation on its cap in the right barrel was also hit by the right firing pin of that particular weapon.' You remember that was the evidence given by the ballistic - Mr. Thompson, the ballistics expert. However, the Crown says 'Well there is no doubt about it, that both those triggers were pulled, both those cartridges were hit on the top, on the cap by the firing pins of that particular gun, and one exploded, that is the left barrel, and went off and the other one, the right barrel, the front trigger misfired'. Now the Crown say this also, they say 'Well you should be satisfied to find on the evidence in this case that that gun - those barrels could not fire without pressure on the respective triggers'. The Crown say 'Oh it is all very well to come along and say, well there may

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have been some unexplained accidental way in which the gun went off.' The Crown say 'No, you have got evidence in this case from two people, not only a policeman but from Mr. Thompson the gunsmith in Shapparton'. He had that gun some two or three months before and he had a good look at it, says the Crown. He said he was examining with a view to purchase, but Mr. Kemp and the accused I think suggested that they really took it to him for the purpose of seeing whether it was worth repairing as a good gun for quail. But never mind says the Crown, whatever the purpose was, it got into old Mr. Thompson's hands, and in the course of examining it he found that it was a defective gun, it had a looseness in the action, you can try it for yourself later on. And he found the safety catch mechanism was defective, and he formed the view that the gun was not worth repairing and told Kemp that. But what Mr. Thompson did say was that he bump tested the gun, and although he bump tested it could not get either of those barrels to discharge without pressure on the trigger. Now the other expert Mr. Thompson, curiously enough same name, First Constable Thompson, he has had a lot of experience say the Crown, as a firearms man. He told you that he tested the gun. He hit it with a hammer I think he said about the action, he bump tested it on the butt and he actually threw it, as he demonstrated to the Court, on the ground and he was unable to get that gun, either barrel to fire except by pressure on the trigger. And so say the Crown you should be satisfied to find on that evidence that this gun was such that it could only discharge by pressure on the triggers. And then the Crown says 'Well if you are satisfied of that what conclusion does that lead you to? It must satisfy you that this was a deliberate firing.' The Crown says 'Well you might get one trigger to be pulled accidentally, but what about two? According to the knowledge of human experience and so forth that is so improbable and unlikely that it is not worthy of human credence, it's beyond human credibility'. Now all that is a matter for you, what weight you think ought to be given to those kinds of considerations. The Crown then says 'Well the accused has given no explanation, it is not as if he has given you any explanation as to how this gun came to fire or how it came to be loaded, how the triggers came to be pulled. All he says was, he was handling it there and he turned and it exploded'. Of course the accused is not bound to give you any explanation

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anyhow, there is no onus on him, but the Crown says the fact is that he has gone into the box and he has not given any explanation about it, if there was any real explanation, to explain how it came to be loaded or how it came to be - the triggers came to be pulled, having gone into the witness box he would have told you what it was. They say as far as the left barrel was concerned it takes $3\frac{1}{2}$ pounds a little under normal pressure, as far as the right barrel is concerned it requires a pressure of seven pounds, which is about within the normal range.

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The next thing, gentlemen, is the Crown say 'Well we also rely upon the position and the angle of the wound in the side of the deceased as being inconsistent, entirely inconsistent with the account of the shooting given by the accused to the police on the same day or the same evening'. The Crown say - you will remember I have referred to it, Doctor Charlton's evidence, what he says about the angle of the wound - the Crown say 'Well after this interview was taken at the police station on that night they asked the accused man if he would go out to the house and demonstrate to them how the shooting occurred, what position he was standing in, what position his wife was standing in, how he was holding the gun at the time when the shooting occurred'. The Crown say, 'Well you should not have any qualms about this, certainly he had been at the police station a long time, but his solicitors had been there, doctors had been there and examined him, you should not have any hesitation in thinking, in believing and accepting the evidence of the police officers that he may have been upset, of course he would be upset, but he was in a perfectly satisfactory frame of mind to know what he was talking about and that he went out with them quite willingly to the house and went into the kitchen and then took up the positions as you remember which were shown in photographs No. 12 and 13'. You have looked at those and you will have them with you. Now what the Crown is saying, gentlemen, is 'When you bear in mind that that is the explanation he gave as to what the positions were, when you bear in mind Constable Thompson's evidence that the distance of that shot was five feet from the muzzle to the body, when you bear in mind the medical evidence as to the angle of the wound, well then, the account given by the accused to the police as to how the shots were fired and where they were standing, just will not hold water. It is an untrue account and must be, says the Crown, an untrue account; he

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could not have been standing in that position, she could not have been standing in that position, the rifle could not have been held in that position, having regard to the medical evidence as to the nature of the wound and also the expert evidence as to the distance from the muzzle to the entry of the wound. Well, there it is again, it is a matter for you.

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10 Then again, gentlemen, the Crown rely upon the evidence given by Detective Coates as to the conversation that occurred at the police station between Mrs. Kemp and the accused, you remember. She said she wanted to see him or he said he wanted to see her. And they met in the muster room, Coates still being in the room. And Coates said about that the whole of the time they were together she had her arms around him - he had his arms around her. He was seated, she was standing in front of him and cradling his head in some way.

20 They were having a whispered conversation, he could not hear it all, but several times he did hear the accused say to Mrs. Kemp that he loved her, and he also heard her say the same thing to him. And he said he heard the accused say to Mrs. Kemp, "It looks like you'd better forget me now after this".

30 First of all, gentlemen, did that conversation take place, was Mr. Coates honest about that, is his memory reliable about it? You heard Mr. Lazarus' criticisms of Mr. Coates about that, as to why he had not written it down at that time, and so forth. That is all a question of fact for you. But supposing that conversation did take place between them, what is the significance of it? Are you satisfied to infer, as the Crown say you should, that that is a recognition by the accused of a consciousness of guilt on his part that he had intentionally killed his wife.

40 The Crown also refer you to some initial falsehoods which the accused made when he was being interviewed in that long interview at the police station that night, the one that began at 20 minutes to 11. And in the course of that conversation he was asked by Mr. Coates certain questions concerning his own relationship with his wife and the continuance of the affair with another woman. You remember those questions, you will have the record, I will not tire you by reading all those to you again, but in effect

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Coates was asking him at that stage, in the earlier part of the interview, as to whether he was thinking about leaving his wife because of another woman, he said no and various other answers that have been read to you about his association with another woman and was it still going, and he said no, it was something that occurred once and thrown him off his balance, and that sort of thing, you remember the passages I am referring to.

The accused himself admits here that those were false answers, and the Crown say to you here is a man who, at the police station, according to him, at that stage he is not under any belief that he is in danger of being charged, he thinks he is simply making a formal statement in connection with his wife's death, why would he lie to the police about that association with Mrs. Kemp? The Crown says, well, it is open to you to say he lied to them because he did not want it disclosed that he had a motive or reason for killing Mrs. Ratten. Well, supposing that were so, and he did not want to disclose a motive, does it necessarily follow that he did have that motive, or was he thinking, "Well, if I lie to the police about this, they may try and attribute some motive to me, I haven't really got it, and I may be in trouble". All those questions of fact are for you. The Crown say it is another significant link in the chain of circumstances. 10 20

Then, gentlemen, Mr. Howse put before you a whole host of the matters, like the tablecloth and various other matters which he urged you to say indicated that they were all circumstances entirely inconsistent with an accidental shooting. Such things, you remember, as that he was saying the accused made out that he had been told that this side by side gun was a dangerous weapon and that he put that in so that it would be more easily inferred that if it was a dangerous weapon it would be much more likely to go off accidentally than by deliberate discharge; and a number of other matters that Mr. Howse referred to. I am not going to go through those. You heard them all only yesterday or the day before. You bear those in mind. But Mr. Howse on behalf of the Crown said that if you take all those matters into account, together with the major matters that I have just been discussing with you, that that should lead you to conclude that not only did he cause the death of his wife, but that there is no other reasonable hypothesis but that he caused that 30 40

death by a deliberate and intentional application of pressure on the lefthand trigger of that shotgun, and that therefore you should be satisfied that there is no other reasonable hypothesis than that and therefore you should be satisfied beyond reasonable doubt that he killed his wife - murdered his wife.

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10 As to the alternative charge of manslaughter, as far as the Crown case is concerned, it only arises of course if you decide that the accused is not guilty of murder. Mr. Howse says his real case is that of murder, and he did not pursue to any degree this question of manslaughter. But in effect the Crown case, as I see it, so far as manslaughter is concerned is this; here was this gun that was a faulty gun. It had looseness of action, it had a faulty safety catch mechanism. The accused man says he was not aware that the safety catch mechanism was faulty. Well, that is a matter
20 for you, as to whether you accept that or not. You will see the gun, you know how long he had the gun, you know that he was using the gun. He does say in his record of interview, if you accept it and if you believe it is true, that he was told by Kemp that the gun was in a dangerous state and shouldn't be used again. The fact was, therefore, that it was a faulty gun and there is evidence that it was known to the accused to be in a dangerous condition. It had
30 been left lying in an open shed or garage on the bench for some two months or more, and finally, on the 7th May, - we are discussing this now, of course, on the assumption this was an accidental happening, you see, because you have decided, before you come to manslaughter, that he is not guilty of murder, therefore we are assuming it happened accidentally. And if it did, the Crown says, he takes it in from the shed, it had been lying there, took it into a confined space in the kitchen where his wife was and that he made no effort to ascertain that the gun was
40 unloaded. The question therefore is whether that failure on his part, that omission on his part to make sure that the gun was unloaded, in those circumstances knowing what he did about the gun, or what you find he knew about the gun, having regard to the place in which he used it, the question is would you be satisfied that there was no reasonable hypothesis which fell below criminal negligence. Would you be satisfied beyond reasonable doubt in those circumstances that his failure to make sure

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the gun was unloaded was so gross, so wicked, so culpable a degree of negligence, such a degree of reckless indifference, disregard of the life and safety of his wife, negligence so far and away above that which is necessary to constitute an ordinary claim for civil damages, that he is deserving for that failure to be punished at the hands of the criminal law. If you were so satisfied then you would be entitled to find him guilty of manslaughter. If you are not so satisfied you should find him not guilty of manslaughter as well as murder. Well there it is, that is the Crown case and it is for you to say whether on those circumstances - it is a circumstantial case - whether on those main circumstances and on what you have seen from the accused and what you think of him as a witness, does all that put together, the motive, the phone call, the fact that the barrels could only be discharged by pressure on the triggers, if you so find that is the fact, the initial lies to the police, the association with Mrs. Kemp, do these circumstances taken in conjunction lead you to the conclusion that accidental killing on those facts is not a reasonable hypothesis. Are you satisfied beyond reasonable doubt, not only that he caused her death but he did it by a deliberate and intentional act of firing the gun at her. Now that is the Crown case as best as I can summarise it for you. In the broad that is what it is.

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All right, well now what about the answer that is made to all this? These are always two sides to every penny you know, what is the other side of the story? Well gentlemen, the accused says and he has sworn to it, he went into the box and he swore to it, that he did not intentionally wound or kill his wife, nothing was further from his mind, he has sworn to it. This was an accidental happening. Now that is the thing in a nutshell. There is your broad issue, the Crown on the one side saying it is an intentional shooting, the accused on the other side saying 'Nonsense, rubbish, it is nothing of the kind, this was an unfortunate accidental occurrence'. Now there is the central issue. And the first thing from the accused's point of view, is he has gone into the box and he has pledged his word to it, he has sworn that he had no intention to do this. You will remember his account of the events on this day. I am not going to read them to you but broadly remind

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10 you of them. You will remember he said on that morning he had gone over to Mrs. Kemp's place at Farmah, and that he returned home and when he got back Mrs. Trinham was there with his wife, and they were having a cup of tea. He wanted to make a phone call to his Deniliquin office and the phone was not through from his Echuca office so he slipped up to the office and switched the phone through. When he got back he found Mrs. Trinham and his wife at the gate, Mrs. Trinham obviously leaving. He went in and he and his wife had a cup of coffee, I think it was. Then he noticed that it was getting on towards lunch time. It was not unusual for him apparently to have lunch at home, and he decided that there were one or two odd jobs to do and he would stay home and have his lunch. Then he told you, you will remember, about the washing machine. He had three trips up to the local hardware store to get the tubing or whatever it was to fix up the washing machine. Then his two elder daughters came home, brought a school friend with them, they all had lunch together, and then he went on and repaired the washing machine, glued it and it was while he was waiting for the glue to set that he decided that he would clean his guns. Well he got the guns from the den, the automatic rifle and the Winchester shotgun, put those on the table and the chair in the kitchen and then he went out to get his gladstone bag with the cleaning material which was out in the garage. And while he was getting his bag he happened to notice the old gun, the side by side gun on the bench in the garage, and decided that he would take it in and clean that too. Then he said he began the cleaning process with the pull through thing, the rod with the turk's cap on it, the turk's head on it, through the under and over, and then we went to - he turned his attention to the side by side gun and he noticed all this rust over the metal part of that gun. It was on the sink. He said something to his wife about it and she got the scouring pad, scotch-brite, and handed him that and he was standing facing the sink, facing the window, using his left hand to get the rust off it, got into a smear you will remember and he said he wiped that off with a wettex, and then the phone called. He goes to the phone and who is it but his father making a trunk call from Melbourne. Then followed this conversation. Now his father rang up and asked him how Bev was. They knew of course that she was about to be confined. How was Bev, did she want any nappies because the father could

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get them from a warehouse somewhere, and how the accused went away and called his wife. You heard Mr. Ratten Senior, you heard him, I do not suppose you would have any reason to disbelieve what he said, he was a very nice man. He gave his evidence and he said 'Well I heard my daughter-in-law's voice in the background, I could not decipher the words she was saying.' You have all had that experience no doubt of hearing a voice over the phone in the background. And then his son told him, he said yes he would like a dozen, 'It is all right do not send them up especially, wait till you come and see her in hospital and bring up the nappies'. A perfectly normal conversation said Mr. Ratten senior, and then he rang off. Then the accused said the two of them went back into the kitchen, the wife made some mention about coffee or tea, Ratten went back to his job at the sink, he picked up the gun again, still facing the window, and was working on that side by side gun. He does not know precisely where his wife was in the kitchen he says. Anyhow he was still speaking to her about this call with his father and he turned, he does not know whether he turned to the right or left, but he did turn, and as he turned this explosion occurred. He saw his wife fall to the floor. Then he said he rushed to the phone, picked up the phone and called out into the phone 'Get me the ambulance, for God sake help' or something like that, a number of occasions, put the phone back, went back into the kitchen again. Wendy was crying away and so forth outside trying to get in, and then it was in a moment or two the police arrived, Shaw and the other police arrived, Holley. Then he gives you the account later on of how he was taken to the police station, and how he made the interview with the police. But in the broad that is the account of the vital events that happened on that day. I may be wrong as to some details of it, but in the broad I remind you that that is the general effect of what Ratten was saying. Now that is the first thing.

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The next thing that the accused relies upon is this. He says 'Look, this is no after thought on my part, I told this story from the outset' and that is exactly what an innocent man would do. He said 'I have never wavered from it'. He says "From the first time that these - after I made the phone call, plainly it is common ground, it is admitted that from the first time the police questioned me in the bedroom in the house within a few minutes of the shooting occurring, I told them that this was an accidental

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shooting." He said: 'When they took me to the police station, when they had me there all night with this long interview I kept telling them and I never wavered from it'. And if you read the record of interview, as no doubt you will, and as Mr. Lazarus invited you to do, I have no doubt - this is a matter for you, but I have no doubt you will come to that conclusion that he did consistently say that right through. Now you remember that Mr. Shaw gave some evidence, Constable Shaw, he went into the bedroom at the house when they arrived after the shooting, you will remember and he said "In the bedroom I said to the man before the Court 'What happened'." "He replied 'The gun went off'". "I said, 'Who had the gun'?" "He replied, 'I did, I did, I killed her, I killed her'". Well there is no significance in that, he had killed her, I suppose, in that sense at any rate, that he had the gun in his hand. "I said, 'Try to understand, Mr. Ratten, you are not obliged to answer any questions - and so on'. He nodded. Moxham then arrived and I said to him 'This man has killed his wife, I've just given him full caution'. Moxham asked the accused his name, address and age and then left the room, Ratten then said to me, 'Save her quickly'. I said: 'She's dead'. He replied, 'She isn't dead, she can't be. I could see it draining out of her face. Please help me'. Moxham then returned and said to Ratten, 'How did it happen?' - now listen to this gentleman - 'How did it happen?' He replied, 'I was cleaning the guns in there, she was making a cup of coffee.' I said, 'Which gun went off?' He replied, 'The shotgun.' And then Shaw said he went back and had a look at the gun and he was looking at the wrong one, the under and over. "I returned to the bedroom and said, 'There's no shells there. Do you mean the under and over that's on the kitchen chair?'. He said, 'The old one, I don't keep shells in there, it just went off. I was only taking the rust off the outside'". This is within a few minutes of the killing you see, and what Mr. Lazarus is saying can you imagine a man who has had this horrible experience, which-ever way you look at it, the police arrived, the wife lying dead in the kitchen, how would he make up all this at this stage. This is the first thing he virtually tells them, the same thing as he told you now. "I said, 'Where's the cartridge now?' He said, 'I don't know, I haven't touched it'. Detective Moxham then said to Ratten, 'Where were you cleaning the gun?' He replied, 'By the sink. Bev had just filled the Birko to make a cup of coffee'. 'What were you cleaning the

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gun with?' 'The green coloured cloth'. 'Were you standing right at the sink?' 'Yes'. 'When was the last time you used the old shotgun?' 'About 6 months ago'. 'Where do you normally keep it?' 'In the garage on the bench'. 'How did the gun go off?' He replied, 'It just went off'. 'The little girl, who is she?' 'Wendy, she tried to come in'. 'Do you normally keep cartridges in the gun?' 'No, I don't know how it came to be loaded'. That is the account, in effect, he gave for the first time when the police arrived at the house. 10

And then again, gentlemen, in the record of interview, right at the beginning, he was asked, 'Could you tell us what occurred at 59 Mitchell Street, Echuca, this afternoon?' A: I was cleaning my guns in the kitchen.' Coates interrupted and said, 'If you could speak slowly so that I may get everything typed down'. The accused continued, 'and my wife was in one of the bedrooms, I think vacuuming. There was a phone call from Melbourne which I answered. It was my father. He was asking a question something about if my wife wanted extra nappies for the coming baby. So I went and called her to ask her. She came to the phone with me, or she waited there while I finished the conversation. We went back into the kitchen and she went to make a cup of coffee or tea. I went and picked up the gun off the sink and continued cleaning it. Pow! It went off, just a blast, and she fell to the floor'. Well, you can read the other passages in the record of interview for yourselves. There is nothing inconsistent with that. So there you are, he said that as soon as the police arrived, Shaw and Moxham, said it again in the record of interview that night, and he has told exactly the same story to you again in this trial. And so the accused says, 'There you are, that conduct is completely and entirely inconsistent with the conduct of a guilty man who has killed his wife intentionally'. 20 30

Then the accused also says, gentlemen, the whole appearance of this thing, the whole setup of this thing, cries out aloud that this accident happened in the way that the accused said, this shooting occurred as an accidental occurrence. The defence says look at the way the thing was set out when the police arrived. If you walked into that kitchen yourselves, says Mr. Lazarus, in effect, what other view would you have formed? There are guns on the - one on the table and one on the chair, there is a 40

gladstone bag, cleaning oil on the table, and there is a cleaning rod by the thing, there is a scouring pad and there is a Wettex and so on. The whole lay-out, he says, is obviously that of a man who - of somebody, at any rate, engaged in cleaning. That is what the defence says. If the Crown wants circumstantial evidence, have a look at this aspect of it, there it is, it is all laid out, laid on, there it is. The fore-piece of the gun, of the shotgun, that is off it, and it is lying on the sink. Well, why is that off unless it is obviously to enable somebody to get at the cleaning of the rust off the underneath part of the metal of the barrel.

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Well, Mr. Howse for the Crown says, that is all very well, but yes, this was all set up, this was a deliberate, planned killing. There he was, in effect, setting up an alibi for himself when the police arrive, making it look as if he was cleaning the gun. Mr. Lazarus for the accused says, what an incredible suggestion, Mr. Howse has been reading too many thrillers; it is incredible, he says, far-fetched, for a man to do that, and he would be a diabolical killer if that is right, it would be a diabolical murder. The defence says everything in this case is inconsistent with that - you cannot swallow that, they say. Well, those are all matters for you, it is not my view that matters, it is your view. You may think, well, yes, this is pushing us pretty hard to say to go all that length and say, not only this man killed this woman, but he is a diabolical killer, he's a Haigh, he's a real terror this man, he really went at it in a big way, set up the alibi before he did it too. Then says the accused, if you are not convinced by that, good heavens, what else - the phone call from his father, Well, there is no doubt about that. The girl, Miss Bush, she came up from Melbourne, the trunk line operator, and she says, "Yes, I put that call through, a trunk line to Echuca to this number, and it started at 9 minutes past 1 and it went on virtually for 3 minutes". Now, that is the father's call, Mr. Ratten Senior, on the phone. And that is this man's father. Well, I do not know what your relationships with your sons are, but supposing one of them was thinking up a diabolical plot of killing his pregnant wife and you had got on to your son on the phone and you had a three minute call with him, and what does he do, everything sounds normal - "Yes, bring up the nappies when come, Bev's not too bad, going into hospital

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next week" and so on. What does he do? Puts the phone down and shoots her almost immediately. Well, do you think that is human nature, or do you think if a man was thinking, gentlemen, of shooting his wife and he got a call from his father, it might sober him up a bit and have another think or two about things. Or would he have a yarn like that on the phone with his father, a trunk line call, immediately put the phone down and almost immediately go back into the kitchen and deliberately shoot her in her pregnant condition? Is that your experience of human nature, is that your experience of the world? That is what the defence is saying, you may think there is a lot of substance in that, but it is all a matter for you, of course, as to what you think about that. 10

Then says the accused, another thing that is inconsistent with a deliberate killing is the very position and nature of this wound in the body of the deceased. Now you remember where it was, in the midline, under the armpit. And the defence says, look, if this man is the diabolical killer that the Crown would say he is, do you think he would shoot his victim in that position? Do you not think it is much more consistent with an accidental killing? You heard the pathologist's evidence that accidental explosions can cause wounds of a very bizarre kind, and this was on the evidence of a very bizarre kind of wound. And says the defence, goodness gracious me, have you ever heard of a killer a deliberate killer, trying to shoot somebody in the side, where in ordinary circumstances most of the blast would be taken by the arm? And they say, no, this is wrong. You use your experience of the world of deliberate killings, whether in war or in peace, you try and shoot your victim either in the front or from the back, not in the side. And therefore, they say, the very position and the nature of this wound is inconsistent with a deliberate killing. And then says the defence, in any event the time factor alone here, from the father's telephone call, should be sufficient to dissuade you from concluding to the degree required by the criminal law that this was an intentional killing. You should say it is incredible, it is not in accordance with human nature or human experience that a man should have a telephone call from his father - not in the circumstances that you have heard in the evidence here, the nature of the call, put the phone down and go away and shoot his wife, deliberately. They say, no. There again, that 20 30 40 50

is a matter for you, not for me, not for Mr. Lazarus either, although he quite properly put these views to you. And Mr. Howse quite properly put the other view before you, that this is all a setup and a plant. Those are the two views.

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Now gentlemen, the next thing the defence rely on is this. They say, 'Well look, we called before you here a whole body of character evidence, good character. He was a man who had been living for 31 years, he was living in this local community in Echuca, he was a licensed surveyor, he was a good type of man. True it is that he developed unfortunately in this last 12 months or so this liaison with Mrs. Kemp. But you saw Mrs. Kemp and you know he is not the first man and he will not be the last one either to be caught by a woman, not by any means. And what the accused has been saying is, well the fact that he was having a liaison with a woman as he did, of course he is - every time a man is having a liaison with another woman he is deceiving he hopes his own wife and the other woman's husband, they necessarily go hand in hand, it is no good saying to him successively in the box, 'Oh you are a very deceitful man because you are deceiving your wife', 'yes'. You were deceiving the other woman's husband' and he would say if he was truthful, 'My goodness I hope I was' and so on. They are not a series of lies. The whole thing is necessarily involved is it not, you cannot help that if you are going to get caught in one of these things. See, this is what I am trying to tell you, we are in a criminal Court we are not in a court of morals here, we are dealing with human beings, to err is human, you cannot avoid it. I do not know what sort of world it would be if it were otherwise anyhow. That is the whole point, and the accused says, 'Here is a whole body of character evidence'. You have got Pastor Trinham who told you how this man was a member of his church, Mrs. Trinham, the accused's father, a normal relationship, Mrs. Smith, the girls mother, do you think she showed any signs of real enmity or hostility towards the accused. She told you that as far as she could find out as a mother would ordinarily know with her daughter, that as far as she knew they were having a fairly good relationship. Her daughter did say to her at one stage, 'I think Jenny is going to come between us' and her mother said 'Don't be a fool'. She said something like this, 'Go and make sure she does not' I suppose or something to that effect. And

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there it was. Well then you had this other body of witnesses that were called on behalf of the accused man. There was - one of them was the Minister of the Presbyterian Church. This man had been an elder of his church up till one stage when he resigned. Two or three others, the man on crutches, Mr. Le Couteur I think from Seaford and the principal of the high school, Mr. French, and they all said, "well in the community we lived in - certainly I suppose they would say 'you know we found out about this, well you know m'mm well that is that! but in our community this man bore a good reputation". And I do not suppose really you know that a man really ceases to bear a good reputation because he has to admit subsequently he has been indulging in a bit of adultery around the place. There must be an awful lot of men with bad reputations if that is not so, the world being what it is you see. However, there it is. 10

Gentlemen, the importance of it is this. The defence are entitled to give evidence of good character on a man's part, not merely to show he is a good fellow but they are entitled to give it as evidence that he did not commit the crime. Just as the Crown are entitled to give evidence of motive as the reason that he did commit the crime, so the accused is always entitled if he has had a good character and a good reputation to come along and say, 'Here is my reputation, it was a good reputation, it is evidence that I did not commit the crime'. And a jury is entitled to use it in that sense, 'Well he is just not the kind of man who would commit a diabolical crime of this nature.' Do you follow that? That is the way good character evidence can be used on the facts of the case, not merely on sentence or punishment or whatever have you, but in a case like this it is important, he is entitled to say 'Well thank goodness I have had a good reputation, it is in my time, it is in my hour of peril that it will stand me in good stead or I hope it will' and the jury are entitled to use it in that sense. 20 30 40

Then gentlemen, there is the fact that the accused man has gone into the witness box. He was not bound to. There are three courses an accused person can take. He can stand mute in the dock and say nothing, rely on his counsel and rely on the weakness of the Crown case and say 'You should not be satisfied beyond reasonable doubt'. If he does that nobody is entitled to ask him a question about

anything. I am not entitled to comment on the fact that he has not gone into the box and so on. Or he can make an unsworn statement from the dock. That means that what he says will be evidence in the case, material in the case, but he cannot be cross-examined about it. Or the other course he can take is to go into the witness box as an ordinary witness. But if he does, he knows before he goes into the box that he is going to submit himself to cross-examination. And it is a fair comment, and it is said, if a man chooses the third course well what more can an innocent man do. And therefore the accused, the defence say, 'Well we adopted that course in this case'. It does not necessarily follow of course by any means. I suppose there are many men who have gone into the witness box and given their evidence and were subsequently convicted by the jury, of course you know that. But the fact is that he has chosen to follow that course and the accused says to you or his representatives say, well having regard to the spot he is in, having regard to the circumstances in which he is placed, having regard to the admissions that he has got to make about his relationship with Mrs. Kemp, they say that he put on a reasonably satisfactory performance, and that he should have satisfied you that he was a reasonably honest and reliable witness, reliable enough anyhow to satisfy you that you cannot say this was not an accidental killing. Now that is all a matter for you, it is a matter of what view you take.

Then gentlemen, the accused put a number of arguments before you. You have heard Mr. Lazarus putting the case to you. I do not want to weary you with repeating all those, I am sure he would not want me to either. He put them all to you yesterday, some of them again this morning. He took the points made by Mr. Howse point by point and in effect what he was saying to you was 'look, when you really analyse these points that Mr. Howse is trying to make, he is really trying to make bricks without straw, that every one of these points that he makes is equally consistent with an innocent as with a guilty explanation'. Perhaps I should just mention one or two things to you in that regard. First of all about the phone call to the Echuca Exchange. Now who made that call? I put the Crown case to you about that. What the accused is saying is 'Well look, you should not by any means be satisfied to accept Miss Flowers as an accurate

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witness.' They are not suggesting that she is an unholy liar of course, but they say 'Here is something that happens within a very short period of time, here is a girl who is sitting at the desk with a thing in front of her, another one unused beside her.' Remember what Miss Bennett said, the more experienced girl sitting beside her, the girl with the eight years experience. She said, 'Oh yes, this becomes almost automatic, this business, you do not consciously ask yourself is it a male voice or is it a female voice, it is a sort of automatic thing'. The defence say 'Obviously in this case Miss Flowers is incorrect, she was wrong in saying that this was a female voice. It was an emergency, it all happened in a very short period and with an issue of this importance at stake how on earth could you say you were so certain and satisfied that she had not made an error.' Then the defence say 'As a matter of fact the accused's account is borne out about this because Miss Flowers said that the voice that she heard was urgent, hysterical and had a high inflection.' Now that is exactly what Constable Bickerton said of the voice that he heard on the phone when he rang through a few minutes later. He gave exactly the same description, a voice that was urgent, hysterical and high inflection. Now that call was obviously the accused speaking, I do not suppose you would have any doubt about that. It is a matter for you, but it is pretty obvious that when Bickerton rang back he got on to the accused. It is a strange thing says the defence, 'Well the description of the voice Bickerton gave tallied with the description of the voice that Miss Flowers gave.' Then says Mr. Lazarus and it is a matter of course for you, he says, 'Well goodness me surely if Miss Flowers was right and this was Mrs. Ratten putting in a call for police assistance to the police station, well surely to goodness the accused - he was there, it is only a small house, he must have heard what she was doing, surely to goodness he would not turn round and shoot her while the police were coming around, would he? That would be a strange act of madness to indulge in. And the defence says all that sort of consideration should induce you not to act or place any significance upon the telephone call to the exchange as being a call made by the wife. Indeed, says the accused, you should be satisfied that it was a call made by the accused man himself and that corroborates that he was an innocent man, it was an accidental shooting, because immediately it happened he went

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straight off and called for assistance. So far from helping the Crown in the way they put it, on its true view, they say, this is exactly what you would expect an innocent man to do.

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10 Then you will notice that in the record of interview the accused was asked about this call, and that is exactly what he said. He gives the same explanation on that night to Mr. Coates. He said, "No, that was my call, I rang." Coates put it to him, "Your wife rang", he said, "No I called, and I called for an ambulance". And the defence says, well, surely that is still consistent with what he is saying today. And the accused man at the time he was being questioned, he would not have known then what Miss Flowers' version of the thing was, could not have known what her version of it was, and in ignorance of all that he was not trying to save himself or deny what she was saying, that was the answer he gave on that night. So, they say, well, 20 that phone call to the Echuca exchange is of no significance.

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30 Then as to the affair with Mrs. Kemp. Now gentlemen, I am not going to labour that again, goodness me, you have heard it ad nauseam. I am only going to warn you again, do not forget the only way in which you are entitled to use it. I explained that to you, as evidence motive, as a reason that he might have had, or did have, for killing his wife. I have told you what the Crown's view of it is. The defence view of it is entirely opposite. They say, yes of course he was having a liaison with Mrs. Kemp, but in the circumstances you should not find it was anything like a reason for killing his wife. They say, that is right, there is nothing different in this liaison with Mrs. Kemp from thousands of other liaisons that men are having with other women like Mrs. Kemp. True, she was trying to put her hooks into him, true she was trying to break up his marriage. True she was 40 determined to break up her own marriage, as she did. But all the time it is obvious on this evidence, and agreed to by Mrs. Kemp herself, that he was stalling her off, persuading her to remain in the house, "Don't put the house on the market". He only agreed to that on the Wednesday when he could not dissuade her because she was determined to do it in case her husband changed his mind. She had other reasons for wanting to break up her marriage, too. And so the defence say well, this is not a

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real motive in the circumstances; there was no evidence in this case that there was any real bad relationship between this man and his unfortunate wife, there is no evidence, as there is in many cases, that they were having long violent arguments and that the husband was using violence towards his wife, nothing like that in this case. So the defence says, let the Crown have all this illicit relationship and all the rest of it, but it does not constitute any motive for anything else than leaving his wife, certainly not for killing her when she is 8 months pregnant.

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Well there it is, gentlemen, again it is a matter for you.

Then the defence say what about this business about the pressures on the trigger? They say, well, that may be, it may be that he did have to put pressure on the triggers, you may be satisfied with that. On the other hand, says the defence, life is a strange thing, all sorts of unexplained things can happen. The righthand barrel misfired, none of the experts called here can explain why it misfired, they say it was probably due to the gun and not the cartridge. Well, says Mr. Lazarus, the experts, of course, are quite sure here in their opinion, but it is only opinion in the end, that this gun could not discharge without pressure on the triggers, but why not, there may be some explanation that is unknown. The gun was never stripped down, its mechanism was never stripped. But, says Mr. Lazarus, supposing, anyhow, that it was due to pressure on the trigger, the fact that the gun only discharged because the accused put pressure on the trigger does not mean that it did not go off accidentally, it does not necessarily mean that the pressure did not get applied accidentally. That is what they say. True it is that the man cannot remember now any particular gripping of his right hand or any particular jar, all he can remember is turning and the gun going off. But, the defence say, he has been through a traumatic experience at that time, goodness only knows how men confronted with a situation like that, how their recollections were. The fact is, say the defence, that even assuming that the gun could only be discharged, and that the jury is satisfied that it could only be discharged by the pressure on the finger pulling the trigger, nevertheless that is not necessarily inconsistent with an accidental

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happening. True it is, they say, we cannot explain it, and we do not attempt to explain how the gun came to be loaded, we cannot explain how it came to be fired. But the defence say, well, the mere fact that we cannot give an explanation is not evidence of anything else other than that there is no explanation. Because we cannot give an explanation does not prove the contrary, we do not have to prove anything, the burden of proof is on the Crown. And in fact, says the defence, the very fact that we do not attempt to think up some specious explanation of those things, when perhaps many could readily come to mind, indicates that this man is a truthful rather than a deceitful witness. They say true it is we did tell some initial lies to the police in the record of interview. But the defence say, that is understandable, that is human nature, it is the natural thing, perhaps, for a man to do. He had been involved with this other woman, he was rather in the position where he was thinking, 'Well it's a pretty disgraceful kind of episode if it becomes public, unless I have got to I do not want to bring the woman's name into it, and I certainly do not want to involve my family, my wife and my family in the public disgrace of all this coming out about this illicit relationship. And therefore if I can I'll tell them some lies about it and see if it will put them off'. That, is the way the accused says - the defence says, you should not regard it as having any more significance than that. It should not have the significance which the Crown tried to attribute to it, and they say you will find out that very shortly afterwards, when it becomes apparent to him that Mrs. Kemp was at the police station, then he tells the whole story quite freely.

So far as the interview that Mr. Coates referred to between Mrs. Kemp and the accused, the defence say first of all, are you satisfied that Mr. Coates' recollection is right about that. They suggest to you that you should not be satisfied about it. Not necessarily that Mr. Coates is telling lies about it, but that he has got it wrong. He did not put it down, he had no note of it at the time, it was not till some time afterwards; and in any event they say, even if that conversation - or that portion of it that Coates referred to, did occur, that is not conclusive by any means. A man has been mixed up, even accidentally,

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with killing his wife - "Well, look, you'd better forget about me after I'm mixed up in all this, in any event". And so they say it is certainly not the kind of thing that you could use to justify a conviction in a case like this.

You remember also, gentlemen, as I said, that Mr. Lazarus made many other arguments, many other points on the Crown case. They will be fresh in your minds and I do not think I would serve any useful purpose by wanting to go over those again. Bear them in mind when he says you take it point by point, each of the arguments that the Crown has put forward is equally consistent with innocence as with guilt, and taking it by and large, he says, the Crown case fails right from the threshold, it is a case that has been attempted to be made by bricks without straw, it will not stand up. This man, says Mr. Lazarus, is truly a victim of circumstances, and what he is saying is please do not make him a victim of circumstantial evidence. What he is saying is to put it at its lowest, how could you, as a sensible jury, possibly say that accident in this case was not a reasonable hypothesis? And unless you can get to that stage, as I have told you, you cannot say that you are satisfied beyond reasonable doubt, and therefore you would be bound to acquit the accused. If you take the other view, for the reasons that the Crown has advanced, then it is your duty to find him guilty.

Then, gentlemen, so far as manslaughter is concerned, remember what the defence says about that. Remember what I told you - no compromise about this, no compromise about it. Do not consider manslaughter until you have made up your minds about whether he is guilty or not guilty of murder. If you decide he is not guilty of murder, then start afresh to consider whether you are prepared to say that he was negligent and that his failure to make sure in the circumstances that the gun was unloaded was negligent so far and away above that of ordinary civil negligence, so far and above that necessary to call for compensation, so gross, so culpable, so wicked, showing such a reckless disregard for the life and safety of his wife that it deserves to be punished at the hands of the criminal law. And ask yourselves, 'Very well, in these circumstances, knowing what he did with the gun, are we prepared to say we are satisfied beyond reasonable doubt that his failure in those circumstances, to make certain

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that that gun was not loaded, handling it in the kitchen as he was doing, - assuming for this purpose that the whole thing happened accidentally, as he said it did, can we say we are satisfied beyond reasonable doubt there is no reasonable hypothesis which falls short of manslaughter? Are we satisfied that this man was guilty of such wicked negligence that he ought to be punished at the hands of the criminal law? If you are not satisfied beyond reasonable doubt about that then your only course is to find him not guilty of manslaughter also.

Gentlemen, I am going to ask you to retire and consider your verdict. You will remember that you have got to be unanimous, one way or the other. When you return to Court you will be asked by my associate words to this effect, 'How say you, do you find the accused guilty or not guilty of murder?' If you are satisfied to the degree I have told you that he is guilty of murder, then it is your duty to say so: Guilty. If you are not satisfied to the extent that I have told you, then it is your duty to say 'Not Guilty'. If you say 'Not Guilty', you will then be asked, 'How say you, do you find the accused guilty or not guilty of manslaughter?' And you will give your verdict, according to the directions about manslaughter that I have just given to you.

Now Mr. Foreman, what about the exhibits. You have got the plan, you have got the photographs, have you not?

FOREMAN: Yes, sir.

HIS HONOUR: You have got the plan, you have got the photographs, Do you want the shotgun?

FOREMAN: Yes, Your Honour.

HIS HONOUR: Do you want the cartridges?

FOREMAN: I do not think we will.

HIS HONOUR: Do you want Exhibit 'F' the two cartridge cases?

FOREMAN: Yes, they could be taken.

HIS HONOUR: Do you want the other guns? Do you want

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FOREMAN: No, Your Honour.

HIS HONOUR: The two records of interview, you want those?

FOREMAN: Yes, please, Your Honour.

HIS HONOUR: That is Exhibit 'P' and the shorter one - nobody has made any reference to the shorter one, that is where he came back and said he heard the click, when they came back from the house. You had better take that with you too. ('P' and 'Q'). If there is anything else, Mr. Foreman?

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FOREMAN: That will be all, Your Honour.

HIS HONOUR: There it is, gentlemen, now go off and have your lunch now, but I would ask you would you please retire and consider your verdict?

JURY RETIRED TO CONSIDER VERDICT AT 12.54 P.M.

MR. HOWSE: One matter of fact, Your Honour. In describing the measured trigger pulls on the two barrels of Exhibit 'C', Your Honour did say, as I recall what was said, that the left barrel was 3½ lbs and the right barrel 7 lbs, whereas it is the other way around, Your Honour.

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HIS HONOUR: Perhaps I did, but I do not think they would be in any danger of misunderstanding that.

MR. HOWSE: Well, I should hope not. If they tried it for themselves they would soon find out, but it could be important, of course, Your Honour. That is the only matter Your Honour

JURY RETURNED AT 12.55 P.M.

HIS HONOUR: Mr. Foreman and gentlemen, I must beg your pardon. I made a mistake, apparently, at one stage, when I was talking about the pressure on the triggers. Perhaps you noticed it - you did, did you? I got it the wrong way round, 3½ lbs was on the right barrel, that is the forward trigger, and 7 lbs on the left barrel. You had picked that up, had you?

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FOREMAN: Yes, Your Honour.

JURY RETIRED AT 12.56 P.M. TO FURTHER
CONSIDER VERDICT

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JURY RETURNED AT 4.53 P.M.

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FOREMAN: Your Honour, the members of the
jury want to know if there was any
evidence given as to when the last time
the canoe was used prior to these
proceedings?

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10 HIS HONOUR: I cannot remember that, I do not
think there was, was there?

MR. LAZARUS: No sir, I do not think so.

HIS HONOUR: No, I do not think there was,
Mr. Foreman.

20 MR. HOWSE: I think there was, Your Honour.
There was something said about the canoe
in relation to the previous Sunday by
the accused during cross-examination.
It was just at the beginning of the
cross-examination, I think, p.386,
down towards the bottom Your Honour.

30 HIS HONOUR: Yes, Mr. Foreman. Just at
the beginning of Mr. Howse's cross-
examination took place.

Mr. Howse: "Witness, you told us about
the precautions that you took with your
gun to make sure that they were
unloaded in the house. Did you take any
special precautions with your supply of
ammunition whilst it was on the house
premises?"

A. "No, I did not".

Q. "And you have told us about your
daughters quite often accompanying you
on shooting expeditions, and I suppose
it follows from that that there were
many times when they saw you putting
cartridges in your guns?" A: "Yes".

40 Q. How long had the canoe been in the
garage as it is shown in photograph 10
of Exhibit 'S' - look at the photographs

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please? How long had it been there since the last time you used it?"

A. It had been placed there on the Sunday prior to the accident".

I said, "That is the canoe?"

A. "Yes, your Honour".

Next question: "If you look at photograph 11, the cartridge belt and the container of cartridges that we see there, they had been in the gun since the previous Sunday, had they, since the Sunday prior to the 7th May - been in the canoe rather? As shown in photograph 11? They had been in that position since the previous Sunday, had they?"

A. "Yes, I hadn't touched them since last using the cartridges".

Is that what you had in mind?

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FOREMAN: Yes, Your Honour.

HIS HONOUR: Well, Mr. Foreman, your deliberations are still going on?

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FOREMAN: Yes, Your Honour.

HIS HONOUR: I propose to adjourn now and you can have arrangements to have your tea and I will adjourn the Court until half past 8.

COURT ADJOURNED AT 5.00 P.M. UNTIL 8.30 P.M.

JURY RETURNED AT 8.32 P.M.

HIS HONOUR: Mr. Foreman, you asked me a question just before we adjourned relating to was there any evidence as to how long it was since the canoe had been last used, and I read those questions and answers to you. It has been pointed out to me since that there may be some ambiguity in that question and the answer, so I had better read it again to you.

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The question was: "How long had the canoe been in the garage as it is shown in photograph 10 of exhibit 'A' - look at the photographs, please? How long had it been there since the last time you used it?"

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A: "It had been placed there on the Sunday prior to the accident".
 Then I said, "That is the canoe"?
 A: "Yes, Your Honour".
 Do you see the ambiguity in that -
 "How long had it been there?" that is the canoe, "Since the last time you used it?"
 A: "It had been placed there on the Sunday prior to the accident".
 That is a question for you to interpret what that means, but it is open to two meanings, that question, that is it may be "How long it had been in the garage since you last used it", and it does not necessarily mean that it had been used on the Sunday. Or it may mean it the other way. So it is a rather ambiguous question and answer. I thought I had better read that to you and explain it to you in case you had not appreciated that.

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JURY RETIRED AT 8.34 P.M. TO FURTHER
 CONSIDER VERDICT

JURY RETURNED AT 8.35 P.M.

FOREMAN: Your Honour, the members of the jury would like the bag of cartridges etc. that was - the little plastic container that was in the boat. That is the one, yes. Thank you, Your Honour.

JURY HANDED EXHIBIT 'K'

JURY RETIRED AT 8.36 P.M. TO FURTHER
 CONSIDER VERDICT

JURY RETURNED AT 10.40 P.M. WITH VERDICT

JURY RETURNED VERDICT OF GUILTY OF MURDER

HIS HONOUR: Prisoner at the Bar, the sentence of the Court is that you be taken from the place where you now stand to the place whence you came and that you be taken thence at such time and to such place .

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as His Excellency the Governor shall direct and that you then and there be hanged by the neck until you are dead and that your body be buried in the precincts of the gaol in which you shall have been last confined after conviction, and may God have mercy on your soul.

PRISONER REMOVED.

MR. HOWSE: Your Honour, I must make an application under the Firearms Act in relation to the guns. I ask for an order that they be forfeited to the Crown, Your Honour.

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HIS HONOUR: Which gun are you referring to?

MR. HOWSE: Exhibit 'C' Your Honour. And in the circumstances, the other two as well. That is exhibit 'J' - the other two are both part of exhibit 'J'.

HIS HONOUR: There will be an order that the firearm exhibits 'C' and the firearms contained in exhibit 'J' be forfeited to the Crown.

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JURY FINALLY DISCHARGED -

EXCUSED FROM JURY SERVICE FOR 5 YEARS

No. 4

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
AGAINST CONVICTION
21st August 1970.

In the Supreme
Court of
Victoria
~~Court of Criminal~~
Appeal
No. 4

Notice of
Application for
leave to appeal
against
conviction.

21st August
1970.

TO: The Prothonotary

I, LEITH McDONALD RATTEN having been
convicted of the offence of murder and now
being a prisoner in Her Majesty's Prisons at
Coburg in the State of Victoria and being
desirous of appealing against my said
conviction do hereby give you notice that I
hereby apply to the Full Court for leave to
appeal against my said conviction on the
respective grounds hereinafter set forth.

Roy Schilling & Co.

of 330 Little Collins Street,
Melbourne Agents for Stewart & Sons
of 235 Anstruther Street, Echuoa
Applicant's Solicitors.

20 Dated this 21st day of August 1970.

1. Date of Trial The 10th, 11th, 12th, 13th,
14th, 17th, 18th, 19th,
20th, days of August 1970.
2. Date of Sentence The 20th day of August 1970.

Chief Justice

3. Place of Trial The Supreme Court of
Victoria sitting at
Shepparton.
4. Sentence Death.

30 GROUND'S OF APPLICATION

1. THAT the learned Trial Judge should have
directed the Jury as a matter of law that there
was insufficient evidence to support a
conviction.

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Court of Crim-
inal Appeal.

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(continued)

2. THAT the evidence was insufficient to support a conviction insofar as

(a) the circumstances relied on by the Crown to prove intent were equivocal.

(b) the circumstances were only consistent with accident.

(c) the circumstances were as consistent with accident as with a deliberate act.

3. THE Verdict was against the evidence and the weight of evidence.

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4. THE evidence of one JANET LUCILLE FLOWERS was wrongly admitted.

5. THAT subsequent to retiring the Jury were misdirected in relation to a question as to "when the canoe was last used" and subsequent correction was too late to be effective.

The Applicant desires to be present at the hearing of this Application.

No. 5

Order of
Crockett J.
granting leave
to amend
Notice of
Application for
leave to appeal
8th September
1970.

No. 5

ORDER OF CROCKETT J. GRANTING LEAVE TO
AMEND NOTICE OF APPLICATION FOR LEAVE
TO APPEAL.

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8th September 1970

UPON HEARING Mr. Walker of Counsel for the Applicant LEITH McDONALD RATTEN AND UPON READING the Notice of Application dated the 4th day of September 1970 for leave to Amend the Notice of Appeal herein and BY CONSENT I DO ORDER that the grounds of the Notice of Application for leave to appeal and/or Notice of Appeal herein be amended in accordance with the said Notice of Application for Leave to Amend as filed namely

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(1) By adding to ground 3 of the Notice of Appeal herein the words :-

"and was unreasonable or cannot be supported having regard to the evidence."

(2) By adding to ground 4 the words:-

"and in particular her evidence of opinion to the effect that the voice was that of a female."

(3) By adding a ground 4(a) as follows :-

"The learned Trial Judge failed to direct the Jury or to direct the Jury adequately in relation to the statement claimed to have been heard by the witness Flowers and failed to direct the Jury that the said statement was not evidence of the fact."

(4) By adding a ground 6 as follows :-

"That the learned Trial Judge failed to direct the Jury or to adequately direct the Jury as to the inherent dangers or identification evidence as such in relation to the said witness."

In the Supreme
Court of
Victoria

Court of
Criminal Appeal
No. 5

Order of
Crockett J.
granting leave
to amend
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leave to appeal
8th September
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(continued)

A. Crockett J.

No. 6

JUDGMENT

16th September 1970

No. 6

Judgment
16th September
1970.

BEFORE THEIR HONORS MR. JUSTICE GOWANS,
MR. JUSTICE GILLARD AND MR. JUSTICE BARBER

THE QUEEN

v. LEITH McDONALD RATTEN

J U D G M E N T

(Delivered 16th September, 1970)

GOWANS J. The applicant, Leith McDonald Ratten, is seeking leave to appeal against his conviction for murder. He was tried at Shepparton before

In the Supreme
Court of
Victoria

Court of
Criminal Appeal
No. 6

Judgment
16th September
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(continued)

His Honor The Chief Justice and a jury in a hearing which took place between August 10 and August 20 1970. The person killed was his wife, Beverley Joan Ratten. The death took place on May 7 1970 at their home at 59 Mitchell Street, Echuca. Her death was caused by the discharge of a shotgun, which was at the time in the hands of the applicant. The fatal incident took place in the kitchen of the house about 1.15 o'clock in the afternoon. No-one else was present except the applicant and the deceased. The Crown case was that the circumstantial evidence showed that the applicant had deliberately fired the gun at his wife with intent to kill her. The defence case was that the gun had accidentally discharged in the course of its barrel being cleaned by the applicant. 10

In order to understand the background of the events leading up to the fatality, and to appreciate the setting of the grounds of appeal, some statement of events is necessary. 20

In 1964 the applicant and his wife and their young family were living in Echuca. They became friendly with another married couple, Mr. and Mrs. Kemp, who also lived in the town and had a young family. The two husbands were both interested in shooting. Later the Kems moved to Barmah, out of Echuca, but the friendship continued. In March or April 1969 an adulterous connection commenced between the applicant and Mrs. Kemp, and it continued until the fatality. It reached a stage where the two parties were discussing leaving their respective spouses and going off to live together. It had expressed itself in acts of intercourse up to the day before the shooting. It is unnecessary for immediate purposes to go further into the conduct associated with this matter. 30 40

The applicant had for many years been interested in and was the owner of game weapons. About 1967 he acquired the shotgun involved in the fatality. It was an old double-barrelled side by side shotgun. In March or April 1970, as a result of a discussion between Kemp and the applicant, this gun was taken by Kemp to a

gunsmith in Shepparton either for sale or repair (it is not clear which) and in late March or early April it was returned to the applicant. It had not been repaired. It had some looseness in the locking mechanism, and the resistance of the safety catch could be overcome by putting sufficient pressure on the trigger. When it was returned, the gun was in an unloaded condition. The applicant kept it thereafter on a bench in his garage at his home. The garage also provided shelter for a canoe used in the applicant's shooting expeditions. Loose cartridges for ready use were kept in a plastic container on the floor of the canoe. From the time the gun came back from the gunsmith until the day of the fatality, the gun was not removed from the bench in the garage. There was no explanation from the applicant or anyone else as to how it came to be loaded. At some time on the fatal day the gun was brought into the kitchen of the house by the applicant. At the time of its discharge it was loaded in both barrels. After the fatality the cartridge in the right hand barrel was still there and was found to have misfired. The cartridge in the left hand barrel had been fired and had caused the wound which killed the wife. Consideration of the evidence bearing on the cause of the gun discharging and on the position and attitude of the wife at the time may be put aside for the time being and attention directed to certain events at or about the time of the shooting, which featured in the evidence. The times at which these happenings took place are of importance.

At 1.9 p.m. a telephone connection was made from Melbourne to the house in Echuca at the instance of the applicant's father. During the 2.9 minutes that that call between the father and the applicant lasted the father heard the wife's voice in the background. Everything appeared to him to be normal. Shortly afterwards a telephone operator in the Echuca Telephone Exchange, Janet Lucille Flowers, took a call from the house. She says the time was then about 1.15 p.m. Her account was that a woman's voice, at first calm and then punctuated by sobs and becoming hysterical, and finishing in a yell, said to her - "Get me the police, please", and

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later added - "59 Mitchell Street". As the telephonist connected with the police station the caller hung up. This call to the exchange was later claimed by the applicant to have been made by him, but his version was that the shooting had then happened, and that it was an ambulance he had asked the exchange to get, not the police. According to Miss Flowers, as the caller had hung up the police had answered the phone, and after referring to her superior officer, she had then told the police they were wanted at 59 Mitchell Street. She noticed that the time given by the exchange clock was then 1.20 p.m. As a result of the message to the police station, which was confirmed by another witness to have taken place about 1.20 p.m. and as the result of the immediate despatch of a police van to the house, a telephone call was made from the police station to the number from which the call to the exchange had come. 10

According to Miss Flowers she saw this call being made through the exchange mechanism about two minutes after her own call to the police. Constable Bickerton, who made this last call to the house number, described how a voice answered the call, saying, immediately before any enquiry could be made - "Help me, help me, for God's sake come quick, for God's sake come quick." 20

In answer to an enquiry from the police, the address was given as 59 Mitchell Street. The voice was described by Constable Bickerton as urgent, hysterical, very quickly spoken and with a high inflexion. The applicant has said it was his voice, and no challenge was made at the trial. to the contention that it was he who answered the 'phone. Within three minutes or so from the receipt of the first call at the police station the police had covered the journey of a mile or a mile and a half and had arrived at the house, and were there directed by the applicant to the kitchen, where the wife was lying dead on the floor. The gun was on the floor of a small den adjoining the kitchen. In answer to a question as to what had happened, the applicant said that the gun had gone off when he had had it, and he had killed his wife. He explained that he had been cleaning the gun in the kitchen, taking the rust off it. It appeared that his explanation was that he had been standing holding the gun in his right hand 30 40 50

(being left handed) was rubbing the barrel with a steel wool pad in his left hand. His wife was standing at a shelf. Later that night about 7 p.m. in answer to a police enquiry as to who had rung the police station, the applicant claimed that he had, and said that he had rung the Exchange but had asked the operator to send an ambulance. Later again that night in an interview with the police, which was recorded, he repeated that assertion, and said that he had not at any time asked for the police, and was certain he had asked for the ambulance. He said further that for an hour before the shooting, and at the time of its happening, and for a quarter of an hour thereafter, there was no woman in the house other than his wife.

This narrative does not include many incidental matters, but will suffice for immediate purposes.

The grounds of appeal are concerned with three subject matters. They may conveniently be considered in a different order from that in which they were set out in the notice of application and in which they were argued. The first which can be taken concerns an enquiry from the jury after they had retired to consider their verdict with respect to evidence of when the canoe had last been used, and the answer given by the learned trial judge. This is ground 5. The second concerns the evidence given by the telephone operator, Miss Flowers, as to the call from the house asking for the police. Its admissibility as evidence is the subject of ground 4, and the directions of the judge in relation thereto the subject of grounds 4(a) and 6. The third subject matter is the evidence as a whole. Its alleged insufficiency to justify the verdict is dealt with in grounds 1, 2 and 3.

The first of these subject matters can be dealt with shortly. After the jury had been out of court deliberating for four hours, they returned at 4.53 p.m. and, through their foreman, said that they "wanted to know if there was any evidence given as to when the last time the canoe was used prior to these proceedings."

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Prompted by the prosecutor, the learned judge read to them a passage from the cross-examination of the applicant. What he said appears from the transcript at page 57 of the charge.

"His Honour: Yes, Mr. Foreman. Just at the beginning of Mr. Howse's cross-examination it took place. Mr. Howse: 'Witness, you told us about the precautions that you took with your gun to make sure that they were unloaded in the house. Did you take any special precautions with your supply of ammunition whilst it was on the house premises?' A. 'No, I did not.'"

Q. 'And you have told us about your daughters quite often accompanying you on shooting expeditions, and I suppose it follows from that that there were many times when they saw you putting cartridges in your guns?' A. 'Yes.' Q. 'How long had the canoe been in the garage as it is shown in photograph 10 of Exhibit "S" - look at the photographs please? How long had it been there since the last time you used it?' A. 'It had been placed there on the Sunday prior to the accident.' I said, 'That is the canoe?' A. 'Yes, Your Honor.' Next question: 'If you look at photograph 11, the cartridge belt and the container of cartridges that we see there, they had been in the gun since the previous Sunday, had they, since the Sunday prior to the 7th May - been in the canoe, rather? As shown in photograph 11? They had been in that position since the previous Sunday, had they?' A. 'Yes, I hadn't touched them since last using the cartridges.' Is that what you had in mind?" Mr. Foreman: 'Yes, Your Honor'."

The court then adjourned for the dinner break until 8.30 p.m. The jury were brought in by the judge again at 8.32. What then occurred appears in the transcript at page 58 of the charge.

"His Honour: Mr. Foreman, you asked me a question just before we adjourned relating to was there any evidence as to how long it was since the canoe had been last used,

and I read those questions and answers to you. It has been pointed out to me since that there may be some ambiguity in that question and the answer, so I had better read it again to you. The question was: 'How long had the canoe been in the garage as it is shown in photograph 10 of Exhibit "A" - look at the photographs, please? How long had it been there since the last time you used it?' Answer: 'It had been placed there on the Sunday prior to the accident.' Then I said, 'That is the canoe?' A. 'Yes, Your Honour.' Do you see the ambiguity in that - 'How long had it been there?' that is the canoe, 'since the last time you used it?' A. 'It had been placed there on the Sunday prior to the accident.' That is a question for you to interpret what that means, but it is open to two meanings, that question, that is it may be 'How long it had been in the garage since you last used it', and it does not necessarily mean that it had been used on the Sunday. Or it may mean it the other way. So it is a rather ambiguous question and answer. I thought I had better read that to you and explain it to you in case you had not appreciated that."

The jury then retired at 8.34, returning a minute later to ask for an exhibit, "the little plastic container that was in the boat." They were given it. The jury continued their deliberations for a further unbroken period of two hours, and then returned their verdict at 10.40 p.m. No exception was taken in respect of this matter.

The ground in which this incident is relied on is as follows:

"5. That subsequent to retiring the jury were misdirected in relation to a question as to 'when the canoe was last used', and subsequent correction was too late to be effective."

If the original charge to the jury had contained a statement by the judge that the passage in the cross-examination of the applicant contained

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evidence as to when the canoe had been last used, it could at the most have amounted to a misdirection of fact. But in substance the judge would have been expressing an opinion as to what the evidence amounted to. To express such an opinion would have been permissible so long as it was made clear that the jury were not debarred from finding the facts for themselves. That was made clear throughout the charge. The position can be no more favourable for the applicant because the interchange occurred after the charge had been completed, and in response to an enquiry by the jury during their deliberations. The only real result of that circumstances is that if there were any opinion by the judge involved in the reading of the evidence in answer to the jury's question, it could only be taken as an expression of an opinion of the mildest kind. The actual reading of the evidence to the jury put them in a position to interpret the evidence for themselves, and decide whether the construction placed on it was correct or not. Thus, if no review of that matter had ever been made by the judge, it could, according to well established principles, have afforded no ground for a new trial. But the later review of the matter by the judge, pointing out the doubt about the correctness of the earlier interpretation, owing to the ambiguity lurking in the evidence, and emphasising that the interpretation of the evidence was for the jury, makes the objection wholly untenable. If that had never been done at all it would not have provided a ground of appeal. When it was in fact done, and done two hours before the verdict was returned, the objection becomes clearly groundless. Ground 5 therefore must be rejected. 10 20 30

The second subject matter concerns the evidence given by the telephone operator, Janet Lucille Flowers. The points taken with respect to this require a more precise examination. They are the subject of grounds 4, 4(a) and 6. 40

These grounds read as follows :

"4. The evidence of one Janet Lucille Flowers was wrongly admitted, and in particular her evidence of opinion to the

effect that the voice was that of a female.

4a. The learned trial judge failed to direct the jury or to direct the jury adequately in relation to the statement claimed to have been heard by the witness Flowers and failed to direct the jury that the said statement was not evidence of the fact."

10 "6 That the learned trial judge failed to direct the jury or to adequately direct the jury as to the inherent dangers of identification evidence as such in relation to the said witness."

20 No doubt if evidence of the witness had been confined to the facts that, at a specified time, a call had been received at the exchange from the house and it had been connected to the police station, and on the call being discontinued, a conversation had been had by her with the police, without the substance of any of these conversations being set out, or any statement being made as to the sex of the caller, the evidence could not, and would not, have been the subject of objection. The evidence given in that way would have been relevant and necessary to explain how and when the police came to be notified and make their enquiries. The matter that is objected to is the characterisation of the evidence as that of a woman, and the account of the substance of the utterance itself. It is however the former aspect of the evidence that is the more damaging to the applicant's case, for once it appeared that it was the voice of a woman that was heard on the call which led to the message to the police, the intimation would have been conveyed that the wife had made an appeal in some form or other for help or protection. Without identification of the caller as a woman, the subject of the utterance itself might have been given without any harm to the applicant, except perhaps that it did not tally with the account he later gave of a call to the exchange by himself.

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But the evidence, whether in respect to the

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classification of the voice alone, or in relation both to that and to what was said, tended to prove that there had been an appeal for help and that it was an appeal made by the wife. This in turn tended to prove that it was against her husband, the applicant, that she needed help. The evidence necessarily involved at the same time a denial of the applicant's story to the police that it was he who had been seeking help, and that he had made the call for that purpose. 10

The relevance of this material can hardly be denied. That was recognised by the learned trial judge when he was called upon to rule as to its admissibility at the opening of the trial. He admitted it as tending to rebut the account given by the accused to the interrogating police as to how he came to make a 'phone call for the purpose of summoning assistance for his wife after the shooting happened, conduct on his part inconsistent with criminal conduct of the kind charged against him by the Crown. The learned judge admitted the evidence also as tending to show the relations existing between the applicant and his wife at the relevant time. He later directed the jury that these were the two ways in which they could use the material. 20

A third basis on which the evidence was relevant was relied upon by the learned Prosecutor in his submission and accepted by the learned judge. That was that its subject matter was part and parcel of an inter-connected series of events which occurred over an exceedingly short period of time on the day in question, and that to exclude this portion of the evidence would tend to make the series of events unintelligible in the eyes of a jury, so that it was relevant on the basis of the decision in O'Leary v. The King 73 C.L.R. 366. This case was one concerned with an issue as to the identification of the assailant who had caused the death of the victim. In such a case the manner in which the evidence could be used for the purposes of identification would require a direction on the point in the charge to the jury. Thus a decision that the evidence was relevant and admissible in this case on the 30 40

basis thus suggested would, if that were the only basis upon which it was admissible, shift the inquiry from the admissibility of the evidence to the appropriate nature of the direction to the jury. No direction associated with such a basis for admitting the evidence was however in fact given to the jury in the present case, and it may be presumed that the learned trial judge came to the conclusion that the only proper uses to which the material could be put were the two uses which he in fact directed the jury to consider. It is therefore not necessary to consider whether the evidence was relevant when regarded in the light of what was suggested in this third submission, if the evidence was relevant when regarded from the other two aspects. Attention may therefore be directed to them.

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It was clear from what the applicant had told the police that it was part of his case that after the shooting he had telephoned the exchange to have an ambulance despatched, an act which, as has been said, is capable of being regarded as indicative of innocence. It was equally clear that evidence which tended to prove that it was not he who telephoned the exchange but his wife, and that the request was not for an ambulance but for the police, so that the inference was that the call took place before the shooting, would controvert the defence case in that respect. Evidence that it was a woman who rang and that the request was for the police and not the ambulance was therefore relevant.

No question of hearsay evidence would arise if that were the only ground for the admissibility of the evidence. The evidence would relate to "verbal acts" (cf. McGregor v. Stokes, 1952 V.L.R. 347 at p. 350). The facts being proved, and the only facts being proved, would be the sex of the person who spoke, and what was the subject matter of what was said. A direction as to this use of the evidence would be required, but what direction would then be required may be looked at later.

It is necessary to deal first with another

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point; a narrower issue within this wider one first requires consideration. It is whether the fact that it was a woman who made the call could be proved by the statement of the hearer that it was a woman's voice. It is objected that this is opinion evidence which cannot be given by a witness, at all events one who has not been qualified to express an opinion.

It is true that where the subject matter of an inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without assistance from the opinions of witnesses possessing peculiar skill, the opinions of persons so qualified are admissible, and on the other hand, when the inquiry is into a subject matter, the nature of which is not such as to require any peculiar habits or study in order to qualify a man to understand it, the opinions of witnesses cannot be received - see notes to Carter v. Boehm 20 1 Smith L.C. 13th Ed. page 561. But that does not mean that witnesses may not describe what they see or hear, or state their impressions, according to ordinary human experience, of what they see or hear. Nearly all human observations of objects or happenings involve some element of interpretation, opinion or inference. Even to say that a car seen was blue, or that a person seen was a man, or that a woman seen was old, involves some such element. In each case there is a conclusion based on common human experience. 30 As it pointed out by Professor Cross in a section headed "Cases in which non-expert opinion is admissible" contained in his book on Evidence 2nd Ed. page 366 - "there are numerous situations in which evidence of opinion is received as a matter of necessity," and at page 365, "typical instances are provided by questions concerning age, speed, weather, handwriting and identity in general." 40

It is objected that perceptions of hearing stand apart. Why this should be so it is impossible to discern. Identification by voice is familiar evidence - see R. v. Wright No. 2 1968 V.R. 174. It is also contended that any classification of a voice heard on a telephone stands apart. But it is commonplace to admit evidence of a telephone conversation after a voice has been identified as that of a

particular person.

The evidence, therefore, was admissible; and, as has been pointed out, it was relevant, to prove that the call was from a woman, and that what she said was what was set out in that evidence and not what the applicant said was the case.

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10 But if that were the only basis on which the evidence could be admitted, it would have been necessary to warn the jury that the evidence should not be regarded as tending to prove more than that, and that it should not be regarded as tending to prove anything that was happening in the house at the time of the call. Since the jury were told the evidence could be used to show the relations between the wife and the applicant in the house at the time, that is to say that the evidence could be used
20 'testimonially', it is necessary to consider whether it was admissible on that basis.

Insofar as it tended to show the relations existing between the couple at the time it was clearly relevant - Wilson v. The Queen, 44 A.L.JR page 221. The inference open to be drawn from the words uttered was that the speaker was in need of protection from the police, because she was in a state of apprehension in consequence of aggression from some other person, presumably the other person in the house.

30 The question that then arises is not so much as to the relevancy of the evidence so regarded, as to the medium of its proof. It is sought to prove the state of the relations between the couple, not by the evidence of witnesses who were present at quarrels, as was the case in Wilson v. The Queen (supra), or by the confessional statements of the accused himself, as was the case in R. v. Tsingopolous 1964 V.L.R. 676, but by the statement of the other
40 party as related by a third. This is hearsay evidence. Notwithstanding that, it may be admitted if it is part of the res gestae. The statement of one person involved in a relevant event, which is contemporaneous with and directly concerns that event, may be related by another person who hears it. The principle is an

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exception to the hearsay rule - Teper v. The Queen (1952) A.C. 480. The statement of the wife that she was in a state of apprehension from her husband's aggressive conduct could be given in evidence by another who heard it, if the statement was made in a spontaneous utterance which was part of what was happening in the house so immediately before the shooting as to be part of that happening. The statement related by the telephone operator was clearly capable of being construed by the jury as a spontaneous call for help by the wife. If it took place in the manner and at the time related by the witness, it must have taken place within a few minutes before the wife was shot. In those circumstances it is clearly capable of being related to the actions of the applicant in connection with the shooting.

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It was objected that the factor of contemporaneity was not present. But in all the statements of the rule there are included not only declarations made at the time of the act being done, and immediately afterwards, but also declarations made immediately before. Furthermore, it was contended that the implications of the utterance had in some way to be curtailed so as to exclude any reflection on what the applicant might have been doing. But there can be no such artificial limitation imposed on the significance of the statement. If it can fairly import apprehension of the applicant's conduct, it is for the jury to decide what it involves. In the leading case of R. v. Beddingfield (1879) 14 Cox C.C. 341, the circumstances were that the accused man and the deceased woman were in a room together when both had their throats cut. The issue was whether the accused cut the throat of the woman and then his own, or whether the deceased woman cut his throat and then her own. The evidence was that the woman came out of the house with her throat cut and was heard to say "See what Beddingfield has done to me." The statement was excluded as evidence by Cockburn C.J. as something stated after it was all over. However rigorous may have been the application in that case of the condition that the statement must be contemporaneous, it is, however, to be noted that it was remarked by the learned judge in that

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same case that if the woman's statement had been made at the time the act was being done, for example, if she had been heard to say something such as, "Don't, Harry," that would have been admissible. There is no significant difference to be discerned between an expostulation of that kind and a call for help, whether broadcast generally or made over the telephone.

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10 The illustration given in Beddingfield's case shows that the statement may be that of the victim and need not be that of the doer of the act, and this is supported by the dictum of Holt C.J. in Thompson v. Trevanion (1693) Skin. 402, said to be the first case from which the rule stems. It is also supported by R. v. Foster (1834) 6 C. & P. 325, where on a charge of manslaughter by running down the statement of the deceased as to what had knocked him down was held
20 admissible as identifying the kind of vehicle involved.

It is further objected that the statement cannot be admitted as evidence of the fact it relates. This point has been the subject of much controversy in the discussions of textbook writers, and they have the support of a dictum of Lord Atkinson in The King v. Christie, 1914 A.C. 545 at p. 553. But as Starke, J. pointed out in Adelaide Chemical Fertiliser Company v. Carlyle, 64 C.L.R. 514 at p. 526 "unless this be true"
30 (i.e. that the declaration may be used to prove what it imports and to supply new and otherwise unproved or insufficiently proved elements in the res gestae) "the celebrated controversy in connection with Beddingfield's case and the decision of R. v. Foster (supra), R. v. Lunny (1854) 6 Cox C.C. 477, and R. v. Goddard, (1882) 15 Cox C.C. 7 seem almost meaningless." He
40 accordingly treated the declaration of the injured man in the instant case as evidence of the facts it related. Furthermore, if, as is said by the Privy Council in Teper v. R. (supra) the res gestae principle is an exception to the hearsay rule (and this extract from the judgment is repeated by the Privy Council in Sparks v. The Queen 1964 A.C. 964) it must permit of the proof of facts which the hearsay rule would exclude. A recent Australian decision in support of this

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proposition is that of the Full Court of Queensland in R. v. McIntosh, 1968 Q.R. 510. (See also the discussion in Cross on Evidence, 2nd Edition, pp.459 and 464-5.) The facts which the statement tends to prove must include whatever the statement imports.

The evidence given by the witness Flowers was therefore not only relevant but admissible, and it tended to prove the state of the relations existing between the applicant and his wife at or about the time of the gun being discharged. There can be no question of a wrongful exercise of discretion by the judge in declining to exclude the evidence as being more prejudicial than probative. 10

Grounds 4 and 4(a) must therefore be rejected.

Ground 6 complains of the directions given as to what is called "identification evidence" in relation to the voice. In this connection the learned trial judge said this: 20

"The other thing I want to mention to you at this stage is usable only in a like way. That is the evidence given by Miss Flowers of the telephone call that she says was made from the accused's home at about a quarter past one on 7th May, and made by a female voice... Now, you may think, and probably will think, although this again is a question of fact for you and not for me, that at that time there were only two people in that house, the accused and his wife. And a telephone call was made, and Miss Flowers said it was made by a female voice, and the female voice said, "Get me the police please - (pause) - 59 Mitchell Street", then hung up. Well, it is a question of fact for you. You have to be very satisfied, to begin with, that Miss Flowers was right about that, but I will deal with that a little later on. But suppose you were satisfied about that, certain about it, that she was right. How is that admissible, how can you use that in this case? Well, gentlemen, it can only be used, really, in one or both of two ways. If you were satisfied that Miss Flowers was 30 40

right and it was the deceased woman who made the call for the police, then that would falsify or rebut the statement made by the accused man that it was he that made that call. In other words, you would be entitled to say, 'Well, he was lying to us when he said he made that call. We find that Miss Flowers was right and the deceased woman made that call and that showed that he was lying to us when he said that he made the call and asked for the ambulance.'

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Later the learned judge, when dealing with the Crown case, said, at p. 28 :-

"Then secondly, gentlemen, the Crown say you should find that the phone call that was made to the Echuca exchange at a quarter past one, very shortly before this killing occurred on 7th May, was made by the deceased woman, Mrs. Ratten. The Crown say that is the evidence that was given by Miss Flowers, the telephonist. The Crown says she is not an inexperienced girl, she has been there for some two to two and a half years; they say what reason or motive on earth would Miss Flowers have to lie? The Crown says further than that you should find that she was not making a mistake, that she was accurate, she had been on that board, she saw the light flash, she picked up the thing, the voice said, 'Get me the police please, 59 Mitchell Street'. And what the Crown is saying is that she says that was a female voice. Well, she was not shaken, says the Crown. In this case she gave her evidence quite confidently and plainly. Mr. Lazarus cross-examined her up hill and down dale, but he was unable to shake her. That is what the Crown say, and therefore that you should say, 'Well, we accept Miss Flowers as a witness not only of the truth, but as an accurate and reliable witness.' And if that is so, then the rest of the evidence in the case shows quite plainly, you may think - it is a matter for you - but it shows quite plainly that there were only two people in that house at the relevant time, that is the accused man and his wife, and if it was a female

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voice that made that call, then the Crown say it follows like night follows day that that was the wife ringing up for police assistance."

Then at page 29 :-

"The Crown say further you should find that Miss Flowers' account is supported, having regard to the account of that telephone conversation that the accused gave in the witness box. He said, you will recollect, that he went to the phone and he kept repeating, 'Get me the ambulance, for God's sake help me, get me the ambulance', and that he said it three times at least, maybe more. And the Crown say, 'Well, does not that show you Miss Flowers could not have been all that wrong, says the Crown, and even if there was a possibility that she may have been mistaken as to the voice, male or female, she could not have been mistaken - this is what the Crown say - as to the substance or the nature, so wrong as that, as to the substance or nature of that conversation. The Crown say it certainly was not a conversation of that kind, and that shows that the conversation she was giving you evidence about was not the one that the accused man was talking about at any rate.' Well, gentlemen, now all that is a matter for you. But that is the second factor that the Crown rely upon."

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Then, when dealing with the defence case, the learned judge said this - pages 49 to 50:-

"First of all about the phone call to the Echuca Exchange. Now who made that call? I put the Crown case to you about that. What the accused is saying is, 'Well look, you should not by any means be satisfied to accept Miss Flowers as an accurate witness.' They are not suggesting that she is an unholy liar of course, but they say, 'Here is something that happens within a very short period of time, here is a girl who is sitting at the desk with a thing in front of her, another one unused beside her.'"

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Remember what Miss Bennett said, the more experienced girl sitting beside her, the girl with the eight years' experience. She said, 'Oh yes, this becomes almost automatic, this business, you do not consciously ask yourself is it a male voice or is it a female voice, it is a sort of automatic thing.' The defence say, 'Obviously in this case Miss Flowers is incorrect, she was wrong in saying that this was a female voice. It was an emergency, it all happened in a very short period and with an issue of this importance at stake how on earth could you say you were so certain and satisfied that she had not made an error.' Then the defence say, 'As a matter of fact the accused's account is borne out about this because Miss Flowers said that the voice that she heard was urgent, hysterical and had a high inflection.' Now that is exactly what Constable Bickerton said of the voice that he heard on the phone when he rang through a few minutes later. He gave exactly the same description, a voice that was urgent, hysterical and high inflection. Now that call was obviously the accused speaking, I do not suppose you would have any doubt about that, It is a matter for you, but it is pretty obvious that when Bickerton rang back he got on to the accused. It is a strange thing says the defence, 'Well the description of the voice Bickerton gave tallied with the description of the voice that Miss Flowers gave.' Then, says Mr. Lazarus, and it is a matter of course for you, he says, 'Well, goodness me, surely if Miss Flowers was right and this was Mrs. Ratten putting in a call for police assistance to the police station, well surely to goodness the accused - he was there, it is only a small house, he must have heard what she was doing, surely to goodness he would not turn round and shoot her while the police were coming around, would he? That would be a strange act of madness to indulge in.' And the defence says all that sort of consideration should induce you not to act or place any significance upon the telephone

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call to the Exchange as being a call made by the wife. Indeed, says the accused, you should be satisfied that it was a call made by the accused man himself and that corroborates that he was an innocent man, it was an accidental shooting, because immediately it happened he went straight off and called for assistance. So far from helping the Crown in the way they put it, on its true view, they say, this is exactly what you would expect an innocent man to do.

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Then you will notice that in the record of interview the accused was asked about this call, and that is exactly what he said. He gives the same explanation on that night to Mr. Coates. He said, 'No, that was my call, I rang.' Coates put it to him, 'Your wife rang,' he said, 'No, I called, and I called for an ambulance.' And the defence says, well, surely that is still consistent with what he is saying today. And the accused man at the time he was being questioned, he would not have known then what Miss Flowers' version of the thing was, could not have known what her version of it was, and in ignorance of all that he was not trying to save himself or deny what she was saying, that was the answer he gave on that night. So, they say, well, that phone call to the Echuca Exchange is of no significance."

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The evidence which the witness gave was not concerned with a matter of identification in the sense in which that topic was involved in cases like R. v. Preston 1961 V.R. 761, and R. v. Wright (No. 2) 1968 V.R. 174, and the matter discussed in those cases have no application, although the language of the ground seems to have been borrowed from those cases. The considerations the jury would need to take into account in various situations where the identity of the accused with the person involved in the crime is sought to be proved, had no place in the present case. It was a question of whether the witness could be relied upon in purporting to be able to distinguish a female voice from a male voice in the circumstances then existing. The

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considerations to be taken into account by the jury in deciding that question were not susceptible of much elaboration. They were appropriately pointed out by the judge in setting out the respective cases, particularly for the defence - that the operation then performed was one involving automatic reaction; that the time was short; that the occasion was an emergency; that the description of the voice given by the witness was in the same terms as the description accorded to the voice of the accused by another witness; and that the course of events favoured the defence version. All this appears to have followed the submissions already made by counsel in the course of their addresses to the jury, and appropriate emphasis would undoubtedly have been applied in their addresses. It is true that the observations were expressed as coming from counsel, but in effect the jury were being told by the learned judge to bear them in mind; and he told them that they had to be "very satisfied" about it, "certain" about it. No complaint was made about the inadequacy of the direction at the trial. In these circumstances it cannot be said that the attention of the jury was not appropriately drawn to the matters they would need to have in mind. Ground 6 cannot, therefore, be sustained.

That leaves the subject matters referred to in grounds one, two and three. They read as follows :-

"1. That the learned trial judge should have directed the jury as a matter of law that there was insufficient evidence to support a conviction.

2. That the evidence was insufficient to support a conviction insofar as -

- (a) the circumstances relied on by the Crown to prove intent were equivocal;
- (b) the circumstances were only consistent with accident;
- (c) the circumstances were as consistent with accident as with a deliberate act.

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3. The verdict was against the evidence and the weight of the evidence, and was unreasonable or cannot be supported having regard to the evidence."

At the outset it is desirable to have in mind the function of an appellate court on an appeal on the ground of insufficient evidence, in a case such as this depending upon circumstantial evidence. It was laid down by the High Court in Plomp v. The Queen 110 C.L.R. 234 that the question on appeal is not whether the court of appeal thinks that the only rational hypothesis open on the evidence is that the accused is guilty, but whether the court of appeal thinks that upon the evidence it was open to the jury to be satisfied beyond reasonable doubt of the guilt of the accused. There is, of course, too the power to set aside a verdict and conviction on the ground that it is against the weight of the evidence, as explained in Raspor v. The Queen 99 C.L.R. 346. 10 20

The core of the argument is to be found in paragraphs (a) (b) and (c) of ground 2. Thus the primary question for this court on this part of the case is whether in its opinion it was open for the jury to be satisfied on the evidence beyond reasonable doubt that the circumstances were not consistent only with accident or equivocal so as to be as consistent with accident as with a deliberate act, but that they were such that the only inference that could rationally be drawn from them was that the death of the deceased was due to the deliberate act of the accused done with intent to kill and not due to accident. 30

We were given by Mr. Lazarus for the applicant the benefit of an elaborate and detailed examination of the evidence in order to show that it would have been possible to reach a conclusion consistent with accident. But the argument in the main took the form of isolating different sections of the evidence and examining them apart so as to establish the proposition that so regarded each section was capable of an explanation consistent with innocence. 40

Even if the exercise could be regarded as successful within its limits, the matter cannot be looked at in this fragmented way. The jury were entitled to, and, indeed, bound to consider the whole of the circumstances. This indeed was ultimately conceded, but perhaps only verbally.

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10 However the effect of the applicant's case in this connection must be regarded as amounting to this - that when all the circumstances which the jury could have taken to be proved are taken into account, no reasonable jury could have reached the conclusion that the circumstances were more than equivocal.

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It was, of course, not in dispute that the fatal shot came from a gun held in the hand of the applicant.

20 It may be conceded that the evidence to the effect that the applicant and his wife had maintained a reasonably equable relationship, at all events until the day before the death, and that it was not noticeably hostile thereafter - that the wife was due to bear the applicant's child in a week or so; that the illicit relationship between the applicant and Mrs. Kemp did not necessarily demand a solution in the form of the death of the wife; that there were found after the shooting indications in the house, and on the weapon, that the applicant had actually
30 been engaged in cleaning guns in the house; that the shot which killed the wife struck the side of her body and not the vital parts of the chest or the head; that the shooting took place when a child of the parties was at home; that in his very first explanation to the police the applicant contended there had been an accident when cleaning the gun, and that this was repeated later that day in his interview with the police and repeated in evidence in the witness box - all this,
40 combined with the possibility of Miss Flowers making a mistake about the voice on the telephone, afforded some support for the view that the killing was an innocent one.

But these only constitute part of the circumstances which the jury could have found to exist. They could have taken others into account.

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The gun was loaded. It had been unloaded when returned to the control of the applicant in February or March, and at some point of time shortly thereafter, early in March, when there was a discussion between Kemp and the applicant. There was nothing to suggest that the gun had been under anyone else's control, and the suggestion that it might have been loaded by the applicant's children received no support from him. He had no suggestion to make as to who, other than himself, could have loaded the gun. The cartridges found in it were similar in make and appearance to those found in his canoe. According to the evidence of the gunsmith, who was familiar with the gun, and according to the evidence of a police ballistic expert who had tested it, although its locking device was loose so as to present some danger to the firer, it could not be discharged by dropping it or knocking it. It was clearly open to the jury to find, (and this was not contested), that the gun was discharged by a pull of the trigger. The evidence was that it required a pull of 3 lbs. on the trigger for the right hand barrel where the misfire took place, and a pull of 7 lbs. on the trigger for the left hand barrel, where the shot was fired. There was no circumstance related by the applicant to account for the triggers being pulled other than that they were pulled by his hand. The jury were clearly entitled to find, (and this again was not contested) that it was his hand that used the necessary force to release the triggers. In addition, the safety catch was either off or it was forced by pressure additional to that ordinarily required to release the trigger. If the triggers were pulled one after the other, the inference that the second pulling was deliberate would be clearly open, notwithstanding the applicant's after-thought that he had remembered a click which might have accounted for the misfire. If the triggers were pulled simultaneously, involving either two fingers or two distinct movements with one finger, the inference that the effort involved would be the product of a conscious and deliberate act was at least clearly open. The occurrence of a discharge from the gun so as to kill the wife in an accidental manner would appear to require a combination of firstly the fortuitous loading of

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the gun from some unexplained source, secondly the undesigned pulling of both triggers by the applicant's hand in some unexplained way, and thirdly the alignment of the barrel of the gun at that particular moment of time with the body of the victim. The jury were entitled to consider whether this concatenation of circumstances was a likely one, or whether, on the other hand, the loaded condition of the gun, its discharge by the hand of the applicant, and the striking of his wife by the shot, when considered in the light of other circumstances related in the evidence, did not reasonably compel the conclusion that it was not an accident.

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Among the other circumstances they were invited to take into account were those related in the evidence as to the affair with Mrs. Kemp. This was to the effect that in April or May a critical position had been reached in that relationship: that Mrs. Kemp was anxious to leave her husband and had told the applicant that was the case: that the applicant and she had sought legal advice as to obtaining the custody of her children and maintenance for them, and a share of her matrimonial home for herself, and as to the possibility of either obtaining a divorce from the relative spouse: that she had, two days before the fatality, broken with her husband, who was willing to divorce her, and she had informed the applicant of that fact: that she had suggested to the applicant that he should tell his wife that he was going to leave her as soon as the baby was born: that on the very day of the shooting, she, Mrs. Kemp, had placed her home on the market with her husband's concurrence. The effect of this could have been taken to be that the applicant was faced with a situation requiring a decision as to what he was going to do. Both he and Mrs. Kemp were, according to the evidence, under the impression from the legal advice that they had obtained that a divorce could not be obtained by him to resolve his marital problem. There was evidence that the night before the shooting the applicant had spoken to his wife about leaving the home, and, if Mrs. Kemp were to be believed, that the wife had been informed that the applicant would be leaving his wife for her as soon as the baby was born.

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The applicant himself said that, contrary to the usual practice, he had slept apart from his wife that night. There was evidence that next day she appeared to be upset.

These circumstances were such that they might have provided a basis for the view that the life of the wife presented a barrier to the applicant marrying Mrs. Kemp in an aura of some respectability, appealing to the conventions he purported to observe, and that, if marriage were out of the question, it presented him at all events with the prospect of having to carry the burden of supporting a deserted wife. In this situation, and its incidents, the jury might reasonably have found a motive which might have appealed to the applicant for the killing of his wife, whether or not it might have appealed as a solution of the problem to other minds. 10

The jury were also entitled to regard the cleaning of the guns in the kitchen at that time on a working day, and without any precautions being taken to check them for loading by a person as experienced with firearms as the applicant was, as placing some colour on the circumstances. And especially they were entitled, if they chose, to accept the evidence of the telephone operator as reliable, and to find the call to have been made by the wife by way of an appeal for protection from some threat by the applicant. They were entitled to draw the inference from the angle of the wound, showing a course of 45 degrees downwards, that the applicant was not relating the true story when he described the attitude of himself standing at the sink with the gun at his hip, and that of his wife standing in an upright position at the shelf. They were entitled, if they chose, to attach some significance to the false denials made by the accused to the police as to the existence of any connection between his illicit activities and his domestic situation. 30 40

Considering all these matters it was in our opinion open to the jury to be satisfied on the evidence beyond reasonable doubt, notwithstanding the explanations put forward by the applicant that the circumstances were not

consistent only with innocence or consistent equally with accident as with intent, but were such that the only inference that could reasonably be drawn was that it was a deliberate act of the applicant that caused his wife's death, and that his intention was to kill her. That being so, the learned trial judge was under no duty to withdraw the case from the jury when he was asked to do so. In fact he refused to do so. In our opinion the verdict was not unsupported by the evidence, nor was it unreasonable.

We were urged to say that the verdict was against the weight of the evidence, and unsatisfactory for that reason, and that the conviction was therefore unsafe. After a most careful consideration of the evidence we are unable to come to any such conclusion.

This is simply a case where it was the function of the jury to assess the value and significance of circumstantial evidence. In our opinion their verdict was arrived at on evidence and in circumstances which do not enable it to be challenged. Grounds 1, 2 and 3 must therefore be rejected.

For these reasons the application for leave to appeal will be dismissed.

The order of the court is that the application for leave to appeal is dismissed.

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(continued)

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In the Privy
Council

No.7

Order granting
leave to appeal
to the Privy
Council.

10th February
1971.

No. 7

ORDER GRANTING LEAVE TO
APPEAL TO THE PRIVY COUNCIL.

10th February 1971.

AT THE COURT AT BUCKINGHAM PALACE

The 10th day of February 1971.

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President

Mr. Prior

Lord Drumalbyn

Mr. Peyton

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WHEREAS there was this day read at the
Board a Report from the Judicial Committee of
the Privy Council dated the 19th day of
January 1971 in the words following viz:-

"WHEREAS by virtue of His late
Majesty King Edward the Seventh's Order
in Council of the 18th day of October 1909
there was referred unto this Committee a
humble Petition of Leith McDonald Ratten
in the matter of an Appeal from the
Supreme Court of the State of Victoria
between the Petitioner and Your Majesty
Respondent setting forth that the
Petitioner prays for special leave to
appeal to Your Majesty in Council against
a Judgment dated the 16th September 1970
by the Full Court of the Supreme Court of
the State of Victoria sitting as a Court
of Criminal Appeal: that the Petitioner
was tried by the Supreme Court of the
State of Victoria sitting at Shepparton
on a charge of murder and on the 20th
August 1970 was found guilty of murder
and sentenced to death: that the
Petitioner applied on the 11th September
1970 to the Full Court of the Supreme

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10 Court of the State of Victoria sitting as a Court of Criminal Appeal for leave to appeal against the said conviction of the 20th August 1970 and by a Judgment dated the 16th September 1970 the said Full Court of the Supreme Court of Victoria ordered that the said Application for leave to appeal be dismissed: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Judgment of the Full Court of the Supreme Court of the State of Victoria given on the 16th September 1970 to order that his conviction on a charge of murder in the Supreme Court of the State of Victoria on the 20th August 1970 be quashed and for further or other relief:

In the Privy Council

No.7

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10th February 1971.

(continued)

20 "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 leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Full Court of the Supreme Court of the State of Victoria dated the 16th September 1970:

40 "And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court 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

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Order granting
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10th February
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(continued)

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the State of Victoria and its Dependencies in the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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W. G. AGNEW

EXHIBITS

'P'

RECORD OF INTERVIEW
7th May 1970.

EXHIBITS

'P'

Record of
Interview
7th May 1970.

Record of Interview between Leith McDonald
RATTEN and Senior Detective COATES at the
Echuca Police Station on Thursday the 7th day of May
1970. Senior Detective COATES questioning and
typing. Detective First Constable O'DONOHUE
present.

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Time of commencement 10/40pm.

Q. What is your full name. A. Leith
McDonald Ratten.

Q. I am Senior Detective Coates and this is
Detective First Constable O'Donohue.

Q. What is your address. A. 59 Mitchell
Street, Echuca.

Q. How old are you and what is your date of
birth. A. 31. 18th of the first 39.

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Q. We desire to interview you in relation to
the death of your wife Beverley Ratten
today. I understand that you have
consulted both Mr. APPLEBYARD and Mr.
McDONALD, who are solicitors, since you
have been at the Police Station this
afternoon. Is that correct. A. Yes.

Q. I take it that they have advised in
relation to your being interviewed by the
Police, have they. A. Yes.

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Q. It is also my duty to inform you that you
are not obliged to answer any questions
unless you desire. Do you understand.
A. Yes.

Q. Could you tell us what occurred at 59
Mitchell Street, Echuca, this afternoon.
A. I was cleaning my guns in the kitchen
(COATES interrupted and said 'If you
could speak slowly so that I may get everything

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Record of
Interview
7th May 1970
(continued)

typed down) and my wife was in one of the bedrooms I think vacuuming. There was a phone call from Melbourne which I answered it was my father and he was asking a question something about if my wife wanted extra nappies for the coming baby. So I went and called her to ask her, she came to the 'phone with me, she waited there while I finished the conversation, we went back into the kitchen and she went to make a cup of coffee or tea. I went and Picked up the gun off the sink and continued cleaning it, pow, it went off. Just a blast and she fell to the floor. 10

Detective DONOHUE went to another room to get double barrel shotgun. He returned with same.

- Q. Is this the gun you were cleaning at the time of your wife being shot. A. Yes.

(Shown double barrel shot-gun produced) 20

- Q. Whereabouts were you standing at the time the gun discharged. A. Just in front of the kitchen sink.

- Q. Were you close to the sink or standing out from it. A. I think close to the sink.

- Q. Whereabouts was your wife standing. A. At the kitchen bench near the power point.

- Q. Where did you get the shotgun from prior to your cleaning it. A. Off the garage bench.

- Q. Is that the bench along the left hand wall as you enter the garage. A. If you enter from the side door its on your right. It's at the opposite end to the double doors. 30

- Q. How long before your wife was shot did you get the shotgun from the garage. A. Aw. It could have been a quarter of an hour. Look can I explain it to you.

- Q. Yes certainly. You tell it in your own words. A. I last used it last duck season.

EXHIBITS'P'Record of
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(continued)

10 Not this one the one in 69. Several months ago it was taken by a friend to a gunsmith to see if it could be repaired as it was loose in the locks. The report was that it wasn't worth repairing and never to use it again because of its danger. I collected it from my friends place and just laid it down on the bench to clean it but never got around to it and it laid there ever since until today. I went into the garage to get the cleaning gear for the Winchester, that's the under and over, so as I was coming out of the garage I saw it there and decided it was an opportune time to clean it. So I brought it in with the cleaning gear.

20 Q. I have been around to the house at 59 Mitchell Street and I saw the under and over shot gun and the rifle with the telescopic sight in the kitchen, did you also intend cleaning these guns. A. Yes.

Q. Had you in fact cleaned either of them today. A. Yes. I'd only just started to clean the under and over.

30 Q. Had you cleaned the rifle today. A. No. I'd run the turks head through the Winchester, then I was going to do this (indicating the double barrel shotgun produced) while I still had the Turks head on the cleaning rod.

Q. From what you say you were running the Turks head, or about to, through the double barrel shotgun here, when it discharged. Would that be correct. A. No.

40 Q. Could you tell me what the situation was then. A. I turned to pick up the gun and noticed that it was covered in rust on the outside I commented to my wife that it was not worth cleaning and she suggested that I use the steel wool pad which she got out for me from under the sink.

Q. Does you wife use this same steel wool pad to clean pots and such like when she is doing the wash-up. A. That's right.

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Record of
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(continued)

- Q. Did your wife hand you the steel pad.
A. Yes.
- Q. Where was the double barrel shotgun at the time your wife handed you the steel pad.
A. In my hand.
- Q. Which hand did you have the shotgun in.
A. Don't know.
- Q. What happened then. A. I stood at the sink rubbing the barrels with the steel wool.
- Q. Is this steel wool, or pad, as you call it 10
green in colour. A. Yes.
- Q. Where is that green steel wool pad now.
A. It could be on the kitchen floor.
- Q. How did the shotgun come to discharge.
A. There's still a phone call to go yet.
This was prior to that.
- Q. What happened. A. My wife had gone back vacuuming inside and the phone rang and I answered it.
- Q. Who was it that was ringing. A, My father 20
from Melbourne. He asked about the nappies and I went through and got my wife and she came back with me to the phone in the den. At the finish of the call we both went back into the kitchen.
- Q. What happened then. A. She went to make a cup of coffee. I picked up the gun and went on cleaning it with the steel pad, the gun discharged and she fell to the floor.
- Q. You told us earlier about your calling your 30
wife to the phone when your father rang. You just mentioned there was another telephone call before the gun discharged. Did your father telephone you twice today.
A. No. There was only the one. We got sidetracked. Remember I went into more detail about picking up the gun and taking it into the house and how long it had been there.

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Record of
Interview
7th May 1970
(continued)

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- Q. That's correct. Have I incorrectly assumed that your father telephoned you twice. A. Yes.
- Q. What time was it when your wife was shot.
A. It would not be long after one. It would be between one and half past one.
- Q. Did you receive any other telephone calls at your home today, before 1 pm. A. No.
- Q. Who spoke to your father when he telephoned today. A. I did.

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- Q. Did your wife speak to him at all, that is your father. A. No.
- Q. Is that usual, I mean for him to ring from Melbourne and ask if she wanted anything and she's there by the phone and she doesn't speak to him. A. Yes.
- Q. How long is it since your wife has spoken to her father-in-law. A. She talked to him on the phone a few days ago.

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- Q. Does your wife normally get on well with your father. A. Yes.
- Q. How long is it since the barrels of this double barrel shotgun have been cleaned out.
A. Over twelve months.
- Q. That's the inside of the barrels I'm speaking of. Do you understand. A. Can I correct that.
- Q. Yes if you desire. A. There are occasions that I clean it when I'm cleaning the other gun, I couldn't say when it had really been cleaned but I can vaguely remember it being cleaned at some stage.
- Q. Could you tell me when it was last cleaned inside the barrels. I don't want to know exact dates. A. No.
- Q. Would it be as long as a couple of months ago. A. I'm just getting something to mind now on that same issue.

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(continued)

- Q. Yes. What's that. A. That gun was cleaned either by myself or my friend prior to it being taken to the gunsmith.
- Q. From what you told us that would have been some time ago wouldn't it. A. I could just about tell you when. (Long pause) Some time in February, to the best of my knowledge that is.
- Q. How long was the gun at the gunsmiths.
A. I don't know. It was away from my care for two or three weeks. 10
- Q. Can you recall when you got it back. A. Late February or early March.
- Q. Have you cleaned out the barrels since then.
A. No.
- Q. What is the name of this friend who took the double barrel shotgun to the gunsmiths for you. A. Peter KEMP. K-E-M-P (Spelt out)
- Q. Where does Peter Kemp live. A. Barmah.
B-A-R-M-A-H (Spelt out) 20

Time now 11/45pm on 7.5.70.

- Q. Would you like a cup of tea or coffee now.
A. I'm not particular.
- Q. I think we will get one.

COATES left room. Returned at 12/10am on 8/5/70.

- Q. Do you know the name of the gunsmith to whom Peter Kemp took the double barrel shotgun (Indicated). A. I couldn't say yes for sure but I've got a good idea. 30
- Q. Who do you think it was. A. Stan (long pause) Sorry (pause) It might be THOMPSON at Shepparton.
- Q. You have told us that you collected the shotgun from Peter Kemp. What did you do with it after getting it from him about late February or early March. A. Brought it

home and put it on the bench.

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'P'

Record of
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7th May 1970
(continued)

Q. Did you use it at all after getting it from Peter Kemp. A. No.

Q. Can you explain how this shotgun (indicated) came to be loaded today. A. No.

10 Q. Did you place any live cartridges in it after taking possession of it from Peter Kemp. A. Well I've been thinking about it trying to think how a cartridge came to be in it. I don't know how it came to be loaded.

Q. You used the word cartridge. Do you mean one cartridge. A. I don't recollect putting the cartridges in the gun.

Q. Do you think that Peter Kemp may have left both barrels loaded when he gave it to you. A. I wouldn't think so.

20 Q. Would you get the exhibits from Mr. Thompson please Mr. Donohue. (Done) Do you see these two cartridges. A. Yes.

Q. Both those cartridges were removed from this double barrel shotgun by the Police when they went to your house this afternoon. A. Ratten nodded his head in assent.

Q. Did you know that both barrels of that shotgun (indicated) were loaded. A. No.

Q. Did you know if either one of the barrels were loaded. A. No.

30 Q. Can you account for the shotgun discharging. A. No.

Q. What position were you holding the shotgun in when it discharged today. A. I was holding it with one hand and rubbing the steel wool along the barrels with the other.

Q. What hand was the shotgun in and what hand was the steel wool in. A. The shotgun was in my right hand and the steel wool in the other. I'm left handed. Yes that's right.

EXHIBITS'P'Record of
Interview7th May 1970
(continued)

- Q. What way were you facing when the gun discharged. A. Away from the sink.
- Q. Where would your left side be in relation to the door of the den. A. My left side would be to the door of the den.
- Q. Was the barrel of the shotgun facing towards the power point or more in favour of either side. A. I really wouldn't know.
- Q. What was the angle of the barrel at the time it discharged. A. I don't know.
- Q. Was the gun in your hands or on the sink when it discharged. A. In my hands.
- Q. At what height, in relation to your waist were you holding the shotgun when it discharged. A. Ratten stood up and held his hands at hip level, and said. At waist height that's the way I was working. (Demonstrated).
- Q. You have just stood up and indicated with your hands that you were cleaning the shotgun at hip height. Is that correct. A. Yes. As far as I can recollect.
- Q. Is there any possibility that you were cleaning it at knee height. A. No.
- Q. Is there any possibility that you were cleaning it at chest height. A. No.
- Q. Do either of those last two questions assist you in knowing at what height you were cleaning it at. Take up the gun if you want to. A. Took up the gun and demonstrated with the shotgun held about level with his navel, and commented "About there."
- Q. Could you indicate to us at what distance from you your wife was when she was shot. A. Six or seven feet.
- Q. Was your wife facing you, side on to you, or had her back to you. A. She was side on.

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EXHIBITS'P'Record of
Interview
7th May 1970
(continued)

- Q. Could you tell us which side of her was towards you. A. Her left side.
- Q. How tall are you. A. 5 ft 7 and a half.
- Q. How tall was your wife. A. I don't know. Shorter than I.
- Q. I believe that your wife was about 5 ft 5 and a half inches. Would that be approximately right. A. Yes.
- 10 Q. You understand you don't have to answer questions unless you wish. A. Yes.
- Q. Have you had any domestic upsets with your wife of late. A. No.
- Q. When the Police went to your home this afternoon this bit of wood here (indicated) - Ratten said the fore end - was not on the shotgun. Do you know how it came to be off the shotgun. A. Yes. I pulled it off.
- Q. When did you do that. A. During the... or when I was cleaning the barrels.
- 20 Q. You said the words 'During the' and stopped. What was it you were about to say. A. Just the way I was going to phrase it...pause... I was going to say during the process of cleaning the barrels.
- Q. You are conversant with the use of firearms. Am I correct in saying that. A. Yes.
- 30 Q. Is it your custom to prove a firearm before you handle it. A. No. I always handle my own guns and they're never loaded. There are children at home and it's a strict rule that guns are never loaded.
- Q. If somebody were to lend you a firearm would you prove it before handling it. A. Yes.
- Q. Is this your standard practice. A. Yes.
- Q. How long have you had the Winchester under and over. A. Less than 12 months.

EXHIBITS

'P'

Record of
Interview
7th May 1970
(continued)

- Q. How long have you had the rifle with the telescopic sight. A. Less than 12 months also.
- Q. How long have you had this double barrel shotgun (Indicated) A. Mmm. Long pause. Three or four years.
- Q. Do you do much shooting. A. Yes. What do you want. In days or hours spent or what.
- Q. Do you follow the duck seasons. A. Yes.
- Q. How many years have you been duck shooting. A. Ten or eleven years. 10
- Q. Is that every season. A. Yes. I haven't missed one.
- Q. You told us that you were cleaning rust from the barrels of this shotgun (indicated) when it discharged today. Is that correct. A. Yes.
- Q. I think you further told us that you were using the green steel wool, or pad, your wife used for the washing up. Is that right. A. Yes. 20
- Q. Can you tell me why you were cleaning rust from the barrels with a pad which was damp. A. No.
- Q. Have you had any serious domestic differences with your wife. A. No.
- Q. Did the fact of your wife being pregnant, to the extent of expecting a child within a few weeks, affect your domestic life. A. No. 30
- Q. Have you been involved sexually with any woman, apart from your late wife, since you have been living in Echuca. A. Yes.
- Q. Who would that woman be. A. I don't want to answer that question.
- Q. Did your association with this other woman have any bearing on your domestic situation

with your wife. A. No.

EXHIBITS

'P'

Record of
Interview
7th May 1970
(continued)

Q. Was your wife aware of your affair with this other woman. A. No.

Q. Was there more than one woman involved. A. No.

Q. This affair you speak of, is it still current. A. No.

Q. How long is it since you have seen this other woman. A. I don't want to answer that.

10

Q. Was this situation with this woman you speak of serious enough for you to consider leaving your wife. A. No.

Q. You have declined to mention the woman's name. But have you and this other woman discussed the possibility of your leaving your wife. A. No.

Q. Did this affair ever reach the stage where you became really seriously involved with this other woman. A. No. It was just a thing that caught me off balance on one occasion.

20

Q. On how many occasions would you think you had sexual relations with this other woman. A. I don't want to answer that one.

Q. Does this other woman live in Echuca. A. No.

Q. How long have you known this other woman you speak of. A. Several years.

Q. Did your wife know this other woman. A. No.

30

Q. Does this other woman live in any surrounding area to Echuca. A. No.

Q. Is this other woman married. A. Yes.

Q. Is she living with her husband. A. Yes.

Q. I put it to you that this other woman is named Jennifer Anne Kemp and that she is

EXHIBITS

'P'

Record of
Interview

7th May 1970

(continued)

the wife of the man Peter Kemp who you mentioned took your shot gun to a gunsmith. Is that correct. A. Very long pause. After some 15 seconds...

Q. Is that correct. A. I don't want to answer that question.

Q. Do you deny that the woman is Mrs. Kemp
A. I don't want to answer.

Q. I have spoken to Mrs. Kemp. She is in another room in this Police Station at this moment. She has told me certain things and she is now in the process of making a statement. Do you wish to discuss the matter now. You are under no obligation to do so, nor need you answer any further questions. Do you understand. A. Yes. We were having an affair. 10

Q. How long has this affair being going on.
A. Can I look at her statement.

Q. I doubt that she has finished being interviewed yet. But she tells me that it became of a sexual nature some 15 months ago. February 1969. A. That would be right. 20

Time now 1/20am on 8/5/70. Coates left interview to inquire re statement from Mrs. Kemp. Returned 1/23am.

8th May 1970

Q. Mrs. Kemp is still being interviewed. I understand that her solicitor is present with her and that she is telling the full facts about her sexual relationship with you. I am unable to show you her statement at the moment as she is still making it. Do you understand. A. Yes. 30

Q. Mrs. Kemp told me that you called at her home at about 9am this morning and that you left there some time between 10am and ten thirty am. Would that be right. A. Yes.

Q. Mrs. Kemp has also told me that your wife thought that if she bore you a son it might bring both your wife and yourself closer 40

together. Is that correct. A. We were looking forward to a son.

EXHIBITS

'P'

Record of
Interview

8th May 1970

(continued)

Q. But did your wife believe that the birth of a son would help your domestic situation.

A. There wasn't anything wrong with our domestic situation.

Q. Hadn't you discussed with your wife the fact that you were going to leave home for a while and that you told her you were going to Antarctica. A. Yes.

Q. When did this discussion between your wife and yourself take place. A. About every year when the Antarctic expeditions are on. But it really took on when I sent in the applications in March or April, this year.

Q. Did your wife think the reason for your wanting to leave home was because of itchy feet, and not over another woman. A. Yes.

Q. Did your wife believe the birth of a son would prevent this happening. A. No.

Q. From what Mrs. Kemp has told me I gained the impression that you told her, that is Mrs. Kemp, that these were your wife's thoughts. A. Well (laughed) Yes. She had hoped that a son would make me more stable at home.

Q. Had you ever considered leaving home for Mrs. Kemp. A. Yes.

Q. When was this last discussed with Mrs. Kemp. A. This morning.

Q. Were you serious in this discussion with Mrs. Kemp. A. Yes.

Q. Mrs. Kemp has also told me that you contemplated going to Sydney with her. Is that right. A. Yes.

Q. Would your wife give you a divorce so as to leave you free to marry Mrs. Kemp, that is providing she, that is Mrs. Kemp, could be free also. A. That was never discussed.

EXHIBITS'P'

Record of
Interview
8th May 1970
(continued)

- Q. I take it by that that you mean that you did not discuss this matter with your wife.
A. That's right.
- Q. Was your wife aware of your affair with Mrs. Kemp. A. No..
- Q. Did your wife ever say anything to you to indicate that she felt there was another woman involved in your life. A. No.
- Q. From your knowledge of your wife, taking into account her religious belief do you think she would ever give you a divorce. A. Yes. 10
- Q. Mrs. Kemp has discussed this matter with me. She has told me that both you and she, that is Mrs. Kemp, have discussed this matter of your wife's attitude towards divorce and she states that you told her your wife would never divorce you. Is that correct. A. Yes. Can I add a proviso there. (Coates pardon) Can I add an extra bit there. 20
- Q. Certainly. A. My wife had also stated that she would give me a divorce if it was what I really wanted, but that she would never re-marry herself.
- Q. You have told me that you told Mrs. Kemp that your wife would never divorce you. Is that correct. A. Yes.
- Q. The proviso you added was that your wife said she would give you a divorce. Is that right. A. Yes. 30
- Q. I take it from what you now say only your wife and yourself were aware of this. Is that right. A. Yes.
- Q. Well the situation now is that there is only you to prove this point. Is that correct. A. Yes.
- Q. Mrs. Kemp also told me that when both you and she went to Sydney you would take a few months to wind up your business partnership. Is that correct. A. Yes. 40

- Q. Mrs. Kemp also says that you expected to sell your house here in Echuca by that time as you expected that your wife would go back to her parents. Is that correct. A. Yes.
- Q. I put it to you that you had sexual relations with Mrs. Kemp as recently as yesterday afternoon in your car in the forest out of Barmah. A. Yes, that's right.
- 10 Q. I also put it to you that this affair between Mrs. Kemp and yourself has taken place in various places in your car and also at her home. Is that right. A. Yes.
- Q. Did you load that shotgun and shoot your wife yesterday. That is 7th of May. A. No.
- Q. Can you give any reason as to how this shotgun (indicated) came to discharge yesterday. A. No.
- Q. Did you pull the trigger. A. No.
- 20 Q. Was your hand, or any of your fingers near the trigger. A. I don't know.
- Q. Did you knock the shotgun against anything. A. Not as far as I know.
- Q. Would you agree that your back was to the sink. A. Yes. I would.
- Q. Would you agree that the sink and adjoining bench is about 2 ft 10 ins. high. A. Yes. To the best of my knowledge that would be about right.
- 30 Q. If the shotgun was in roughly a horizontal position, as you earlier indicated, would you agree that the butt would be above the sink and therefore clear of it. A. It depends on how high up I was holding it.
- Q. Do you think the angle at which you were holding it was horizontal. A. I'm not sure.
- Q. Will you examine both those shotgun cartridges. One is fired and the other is not. Examine both percussion caps. BOTH EXAMINED.

EXHIBITS'P'Record of
Interview

8th May 1970

(continued)

EXHIBITS

'P'

Record of
Interview

8th May 1970
(continued)

- Q. Do you agree that both of those cartridges have been struck with a firing pin, or similar instrument. A. Yes.
- Q. Can you account for that happening. A. No.
- Q. This is the condition of both of those cartridges as they were removed from that shotgun (indicated) by the Police. A. Ratten spread his hands in an expression of I don't know.
- Q. Would you agree that the front trigger, that is the one nearest the muzzle of the gun, fires the right hand side barrel. A. I don't know. 10
- Q. Would you examine the shotgun and see which is which. Ratten then broke the shotgun removing the barrels, cocked it, and fired both firing pins.
- Q. After examining that shotgun do you agree that the front trigger fires the right hand side barrel. A. Yes. 20
- Q. Would you also agree that the back trigger, that is the one nearest the butt end of the gun fires the left hand barrel of the gun. A. Yes.
- Q. Do you think both barrels are capable of discharging a cartridge. A. Yes.
- Q. From Inquiries we have made we have been informed that a woman rang the telephone exchange at Echuca early yesterday afternoon, that is shortly after 1pm and said, "GET ME THE POLICE PLEASE" this woman then gave the address '59 MITCHELL STREET' the call was disconnected before it could be connected to the Police Station. Who made that telephone call. A. I did. 30
- Q. We have further been told that there was a note of urgency in this voice A. That would be correct. But I didn't ask for the Police, I asked for the ambulance.

EXHIBITS'P'Record of
Interview

8th May 1970

(continued)

Q. Are you certain that you asked for the ambulance, and not the Police. A. Yes. I'm certain.

Q. Did you at any time ring and ask for the Police. A. No.

Q. Was there any woman in your home, other than your wife, at the time of the shooting. A. No.

10 Q. Was there any woman in your home within an hour before the shooting. A. No.

Q. Was there any woman in your home, other than your wife within a quarter of an hour after the shooting. A. No.

Q. I put it to you that your wife made a telephone call requesting Police assistance shortly before she was fatally shot. A. No. It was me. I rang the exchange and called for an ambulance.

20 Q. Was your wife standing upright, or otherwise, when the gun discharged. A. I think she was upright.

Q. Is there any possibility she was on the floor, or kneeling. A. Definitely not.

Q. Would you class yourself as an experienced user of firearms. A. Yes.

Q. Do you regularly attend to the cleaning of your own weapons. A. Yes. But not as regular as I should.

Q. Do you oil your own guns. A. Yes.

30 Q. Can you explain how you, an experienced person in the care of guns, used a pad which was wet with water, to clean the barrel of your shotgun. A. Its easier to get rust off with a wet pad than it is to get it off with a dry pad.

Q. Can you explain why you didn't break the gun and take the barrels off when you were cleaning it with water. Surely you would

EXHIBITS

'P'

Record of
Interview
8th May 1970
(continued)

realize that water may get into the firing mechanism. A. I wasn't particularly concerned about the gun. It was just that it was so old and hadn't been used.

Q. Do you agree that it was in fact water that you were using on the green pad. A. Yes.

Q. Am I correct in saying that when the gun is broken the safety automatically comes on and that the safety catch has to be pushed forward so as to enable this weapon (indicated) to be fired. A. Yes. That's correct. 10

Q. Can you explain how this weapon (indicated) came to be in the firing position. A. No I can't. I had been cleaning over all the metal of the gun with the pad for some time.

Q. This weapon has been examined by a firearms expert here tonight. He states that the only means of activating the firing pins is to pull on the triggers. Have you any comment to make on that statement. A. No. 20

Time now 2/35am.

Q. We will have a short break now.

Time now 2/50am.

Q. Do you recognize this green pad at all. A. Yes.

Q. Could you tell me what it is. A. Its a pad. I don't know what they call them.

Q. Have you seen that pad, or a similar one to that, before. A. Yes.

Q. Could you tell me where and when. A. At my home yesterday. 30

Q. Is that pad similar to the one you were using to clean your double barrel shotgun there (indicated). A. Yes.

Q. I put it to you that you had a domestic argument with your wife yesterday afternoon A. No.

EXHIBITS'P'Record of
Interview
8th May 1970
(continued)

Q. I further put it to you that your wife telephoned for the Police for assistance as she feared for her safety. A. No.

Q. I further put it to you that you were unaware of your wife telephoning until the Police mentioned it to you before our arrival. A. No look. If you check up from town you will find that there was only minutes between the calls.

10 Q. You claim that you made the telephone call which is under discussion. Did you make any other telephone calls after your wife was shot apart from the one which you claimed was for an ambulance. A. No. The Police rang.

Q. How long after the call for the ambulance was made that it was that the Police telephoned the house. A. Just a few minutes.

20 Q. I put it to you that there was a five minute delay between both calls. A. I don't know. It wouldn't be five minutes.

Q. What did you do while you waited for the Police. A. I just ran through the house. The little girl tried to come back into the house.

Q. Why didn't you telephone the Police to tell them what had happened. A. I wanted help for my wife.

30 Q. If you telephoned for an ambulance, and not the Police, as you claim, why didn't you say what the trouble at 59 Mitchell Street was. A. I just wanted to get an ambulance there quick.

Q. You will be charged with killing your wife. You are not obliged to say anything further or make any statement, but I must warn you that anything you may say will be typed down and given in evidence at Court. Do you clearly understand that. A. Yes.

EXHIBITS

'P'

Record of
Interview
8th May 1970
(continued)

Q. Do you desire to make any statement in answer to the charge. A. I never killed her.

Q. You have seen metyping down a record of what conversation has taken place between us here tonight. Do you desire to read over aloud what I have typed down. You are under no obligation to do so unless you wish. A. Yes.

Time now 3/10am on Friday the 8th of May, 1970.

Time now 3/38am. Sergeant MORRISON interrupted to bring a Dr. JONES into room. Sergeant Morrison said, "excuse me. The doctor here wants to see Mr. Ratten a minute." 10

Another man had come into interview room. Coates said, "What is your name please sir?" To which he replied, "Ross McDonald".

Leith McDonald Ratten was asked, "Would you like another cup of tea or coffee. He replied, "No thanks".

Time now 3/42am. Dr. Jones and Mr. McDonald then left interview room after Dr. Jones had examined Leith McDonald Ratten and spoken to him. 20

The reading over of the record of interview then continued. Page 12 still in typewriter when read over. Read over completed to here at 4 am.

Q. When you were reading on the bottom of page eleven you stated that you wanted to add something further to the second last answer you gave on that page. What is it that you wish to add. A. What I meant there was that if you check from the PMG you will find that there was only minutes from the trunk call from Melbourne to the call to the exchange for an ambulance. That is, my call. 30

Last question and answer read aloud from typewriter by Ratten.

Q. After having read over that record of our

conversation here tonight do you desire to sign it as being a correct record of our conversation here tonight. A. There are some alterations to be made.

Several alterations then initialled

Q. Are you satisfied that that is a correct record of our interview here tonight.
A. Yes.

10 Q. Are you prepared to sign the record of interview as being a correct record of our conversation here tonight. A. I'd like to see my solicitor first.

MR. CLEELAND then entered interview room.
A short discussion took place.

MR. CLEELAND said, "You are not obliged to sign the record of interview unless you wish. "

RATTEN said, "What should I do."

CLEELAND, "It's entirely up to yourself."

20 COATES, "Is it a true record of what we have said here tonight."

RATTEN, "Yes."

COATES, "Are you prepared to sign it as such."

RATTEN, "Allright."

Time now 4/20am on 8/5/70.

(sgd) F.K. COATES
Senior Detective 11414.

(sgd) A.R.DONOHUE
Detective First Const. 1335

EXHIBITS

'P'

Record of
Interview
8th May 1970
(continued)

30 Copy of record of interview handed to Leith McDonald RATTEN at 4/26am in the presence of Solicitors Mr. CLEELAND and Mr. McDONALD.

EXHIBITS

'Q'

Second Record
of Interview

8th May 1970.

'Q'

SECOND RECORD OF INTERVIEW

8th May, 1970.

Time 5/10am on 8.5.70. Echuca Police Station.

Senior Detective COATES typing and questioning.
Detective DONOHUE present.

- Q. We have just been up to 59 Mitchell Street with you where you consented to taking part in the taking of some photographs. On pulling up outside the Police Station on our return you said to me 'Can I add to my statement.' I told you that it may be best to wait until later in the day. Is that correct. A. Yes. 10
- Q. I understand that you now want to see us now and not wait. Is that correct. A. Yes.
- Q. I hope you understand that you are going to be charged with the murder of your wife Beverley Joan Ratten. You are not obliged to say anything at all as it will later be given in evidence in Court. I want you to clearly understand that. A. Yes. I understand. 20
- Q. And is it also your decision to have this interview now, and not later in the day after we have all had some rest. A. Yes.
- Q. What is that you wish to tell us. If you speak slowly it will be easier for me typing. A. You asked before if I could throw any light on why the two cartridges had pin marks when I was back at the house I could remember hearing a click in the gun. I'm not sure when it was. That's just about it. I can remember which way I was facing when I heard it. I was facing towards the sink with the gun pointing towards the stove. Bev was still in the room at that stage and I can remember that just after that she went out to do her vacuuming. 30

Q. There is one further point I would like to put to you. Did you go shooting with Peter Kemp recently. A. Yes.

EXHIBITS

'Q'

Q. How long ago was that. A. Last Saturday.

Second Record
of Interview

Q. Did you take the double barrel shotgun we showed to you earlier with you on that shooting expedition. A. No.

8th May 1970
(continued)

10 Q. How long ago is it, to your knowledge, that that particular shotgun had been fired prior to yesterday. A. Twelve months. The sixty nine duck season. No I'd like to make an amendment to that. My brother in law Bill CAMPBELL used it one night spot-lighting.

Q. How long ago was that. A. Six, seven or eight months ago. I'm not sure.

20 Q. I will now invite you to read over this record of our interview. I must warn you that you are under no obligation to do so as anything you may say will be given in evidence at your trial. Do you understand. A. Yes. I understand.

Q. Do you desire to read over aloud what I have typed as being a record of our interview. A. Yes please.

RECORD OF INTERVIEW STILL IN TYPEWRITER.

Q. You have just read over aloud what is typed down here. Are you satisfied that I have correctly recorded this latest interview. A. Yes.

30 Q. I must again tell you that you are not obliged to sign anything or make any statements unless you wish. Do you desire to sign this latest record of our interview. A. Yes.

Time now 5/30am on 8/5/70. Copy of interview handed to Leith McD. Ratten.

IN THE PRIVY COUNCIL

No. 4 of 1971

O N A P P E A L
FROM THE SUPREME COURT OF THE
STATE OF VICTORIA

B E T W E E N :

LEITH McDONALD RATTEN Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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Respondent.