judgment no. 7, 1974

IN THE PRIVY COUNCIL

(7)

No. 35 of 1972

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS — Appellant

- and -

LEARY WALKER — Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No. 35 of 1972

ON APPEAL
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BETWEEN :-

THE DIRECTOR OF PUBLIC PROSECUTIONS — APPELLANT

- and -

LEARY WALKER — RESPONDENT

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No. 35 of 1972

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS Appellant

- and -

LEARY WALKER Respondent

RECORD OF PROCEEDINGS

In the Supreme Court

No.1

Indictment
20th July 1970

No. 1

INDICTMENT

THE QUEEN V. LEARY WALKER

IN THE SUPREME COURT FOR JAMAICA

IN THE CIRCUIT COURT FOR THE PARISH OF KINGSTON

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

Leary Walker is charged with the following offence:

STATEMENT OF OFFENCE

Murder.

PARTICULARS OF OFFENCE

Leary Walker, on the 17th day of March, 1970, in the parish of Saint Andrew, murdered Ruby Walker.

(Sgd.)

for Director of Public Prosecutions
2nd July, 1970

In the Supreme Court

No. 2

Proceedings 23rd March 1971

No. 2

PROCEEDINGS

CROWN COUNSEL: May it please you, M'lord, the accused before the court is Leary Walker charged with murder. He is representated by Mr. Frank Phipps, Queen's Counsel and Mr. Richard Small. I appear for the Crown.

REGISTRAR: Leary Walker you are charged with the offence of murder, the particulars being that you Leary Walker on the 17th of March 1970 in the parish of St. Andrew murdered Ruby Walker. How say you, guilty or not guilty?

ACCUSED: Not guilty.

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

No. 73 - Aston L. Taylor
52 - Donovan Silvera
91 - Myrnell Wright - Challenged by defence
67 - Allan Thames
16 - Robert M. Berry
79 - Eric Thompson
61 - Clifford Gowe -- Foreman
85 - Etha Vassal , - Challenged by defence
44 - Francis Graham - No answer
53 - Joseph Simmonds- No answer
74 - Michael Taylor - Challenged by Crown Counsel
23 - Ludlow L. Brown
29 - Derrick O'Gilvie
89 - Dawn Woodstock - Challenged by Crown Counsel
17 - Edna Beckett
62 - Jewell Schmidt
8 - Pearl Allen - Challenged by Crown Counsel
38 - Joseph Richards- Challenged by defence
92 - Eulalee Whyte - Challenged by defence
83 - Donald Thomas
11 - Leonard Abrahams

REGISTRAR: Members of the Jury, the prisoner at the bar is charged with the offence of murder, the particulars being that he Leary Walker on the 17th of March 1970 in the parish of St. Andrew murdered Ruby Walker. To this indictment he has pleaded not guilty and it is your charge, therefore, having heard the evidence to say whether he be guilty or not guilty.

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

Crown Counsel opens - 10.31 to 10.51 a.m.

No. 3

VINE RICKETTS

VINE RICKETTS, SWORN. EXAMINATION IN CHIEF BY CROWN COUNSEL

TUESDAY, 23rd MARCH, 1971

Q. Is your name Vine Ricketts? A. Yes, Sir.

Q. Mrs. Ricketts?
A. Mrs. Vine Ricketts.

Q. What work do you do?
A. I'm a house-wife.

Q. Where do you live?
A. I live at 6 Dorsetshire Avenue, Whitehall Gardens in the parish of St. Andrew.

Q. Did you know the deceased Ruby Walker?
A. Yes. My youngest daughter.

Q. Was your daughter? A. Yes, Sir.

Q. And do you know the accused Leary Walker?
A. Yes I know him. He married her.

Q. Pardon?
A. Yes I know him. He married her.

Q. Married who?
A. Married Ruby.

Q. He was Ruby's husband?
A. Yes.

In the Supreme Court

Prosecution Evidence

No. 3

Vine Ricketts Examination 23rd March 1971 (continued)

Q. At the time when Ruby died where was she living?
A. She lived with me at 6 Dorsetshire Avenue.

Q. Did Ruby have any children?
A. Yes. She had two boys, one eight and the other gone five.

Q. Were any of those boys living with her and with you?
A. Yes. They stayed with me and her automatically. She had also a bigger son that she adopt. He stayed with us at the time.

Q. One of her sons name Karyl?
A. Yes. That is the little boy.

Q. And Karyl was living the same place?
A. Same place.

Q. Now do you know where the accused man her husband was at the time when she was living with you?
A. Yes. He is supposed to have been living at Pembroke Hall with his step-mother.

Q. Yes, thank you. How long had Ruby been living with you?
A. She came from America in July 1969 and she came straight to me.

Q. She came straight to you?
A. And she was living there to the time of her death in 1970, in March.

Q. When she started living with you in July 1969 where was her husband the accused man?
A. He lived in New York and it was she told me.

Q. Just a moment! At that time you say he was in..
A. They were both living in New York and she came home.

Q. Do you know whether the accused man came home after Ruby came to live with you from New York?
A. Yes. He came on a Wednesday afternoon - evening, and he came on a Friday afternoon from America, and ...

HIS LORDSHIP: You saw him?
A. Yes. He stayed in the house a couple of days and went back to America.

Q. You say he stayed in the house a couple of days and then went back to America?
A. And went back to New York.

Q. And did he come back after he went?
A. Yes. He went back and then he came back in November and he stayed a little time and he went back and came back in January 1970.

Q. When he came back in January, 1970, do you know where he lived?
A. He lived with us for a couple of days or a couple of weeks, but it wasn't convenient for permanent residence for she had got a small room and so she told him that ....

Q. Just a moment! Did he eventually leave your home?
A. Yes. He left and went to Pembroke Hall.

Q. What time?
A. Some time about February.

Q. February of 1970?
A. Yes.

Q. After that time did he ever come back to live with you?
A. He never came to live.

Q. Now do you remember the 17th of March last year?
A. I do.

Q. Some time in the evening?
A. I do.

Q. Where were you?
A. I was home.

Q. Did you see your daughter Ruby while you were at home?
A. Yes. She came home from work.

Q. Yes, just a moment!
A. Came home from work and she met a friend who was visiting us.

Q. Just a moment. You say she came home. About what time was that?
A. She came home after 5. Near 6.00.

In the Supreme Court

Prosecution Evidence

No.3

Vine Ricketss Examination
23rd March 1971
(continued)

Q. Yes! After she came home did she leave home?
A. Yes. She sat down, she changed.

Q. Just a moment! Did she leave home?
A. Yes. She got a telephone call.

Q. About what time?
A. I believe it was near 7.00.

Q. Having left home, did she return?
A. No. She told me that ...

Q. Just a moment! When you say she left home at about 7.00, how did she leave?
A. Well she left in the car.

Q. Whose car?
A. Her car, because he borrowed it and she said ...

Q. Just a moment! Just answer my question, you see. You say she left in her car?
A. Yes.

Q. Where was Karyl her son at that time?
A. He was playing on the verandah with his puppy, and she said ...

Q. Just a moment! Did Karyl go with her at any time that evening?
A. Yes. She took him.

Q. What time was this?
A. That was shortly after 7.00, or thereabout. It was not yet dark.

Q. Before she left with Karyl in the car, where was she?
A. She sat down to her dinner.

Q. She sat down to her dinner?
A. Having her dinner.

Q. Did anything happen ...
A. Yes.

Q. Just before she left?
A. She got a telephone call.

Q. And having got the telephone call, you say she left in the car with Karyl?
A. Yes. Before she left ...

Q. When she left in the car with Karyl, in what condition was she?
A. She had changed into a ...

Q. Well, was she healthy?
A. Yes, normal, healthy. She had just come from work.

Q. After she left in the car with Karyl, did Karyl return home?
A. Yes about 35 to 40 minutes after that.

Q. When Karyl returned home, did he tell you something?
A. Yes.

Q. As a result of what he told you, did you go to Sunrise Drive?
A. Yes.

Q. Did you see anything there?
A. Yes. I saw my daughter, stretched out in a pool of her own blood.

HIS LORDSHIP: You saw your daughter lying ...
Q. In a pool of her own blood, Sir.

HIS LORDSHIP: Lying?
A. Lying, Sir. Stretched out or dead in a pool of her own blood.

HIS LORDSHIP: Stretched out in a pool of her own blood? A. Yes, Sir.

Q. Do you know what kind of car she left in that evening?
A. She left in a car, a Singer Vogue.

Q. Now can you tell us what sort of relationship existed between Ruby your daughter and the accused while they were married?
A. For quite a while after she was married ...

HIS LORDSHIP: Could you tell the Jury first of all if you remember; when were they married?
A. They were married in July 1959, M'lord.

Q. And you were saying ...
A. Yes. For quite a while, was very unkind to her.

In the Supreme Court

Prosecution Evidence

No. 3

Vine Ricketts Examination (continued)

Q. He was very ...
A. Very cruel to her.

Q. Very unkind and cruel? Why do you say he was unkind and cruel to her?
A. Because he would beat her with the buckle of his belt.

Q. Can you tell us when?

DEFENCE COUNSEL: I am not attempting to object, but if the Crown had evidence in its possession and did not lead it at the preliminary inquiry we of the defence should have been informed of their intention to lead it. And if there is anything further that is of this nature I am asking that the Prosecution brings it to our attention.

CROWN COUNSEL: M'lord I only wish to say that the authorities governing this procedure are well-known and where a witness who has deposed at the preliminary examination gives evidence at the trial which is additional to the evidence which that witness gave at the preliminary examination, there is ...

HIS LORDSHIP: Yes. But Mr. Phipps is not objecting to this evidence as led. All he is saying: if you have anything further which was not led before tell him about it so that he will be prepared.

CROWN COUNSEL: That's a matter of courtesy.

HIS LORDSHIP: What is that?

CROWN COUNSEL: That's a matter of courtesy.

HIS LORDSHIP: Mr.Phipps is always courteous, I take it. He is certainly not asking it out of this witness.

CROWN COUNSEL: Well as Your Lordship pleases. I will inform Mr. Phipps of the general nature of the evidence which I hope to adduce.

DEFENCE COUNSEL: The position seems to be that my learned friend has a document in which he claims this evidence is recorded. I have made a request to see the document, which has been denied. If

he wishes to tell me what the evidence is I shall accept, if he refuses to show me. But I certainly don't propose to have Your Lordship and the Jury sit down while he tells me. If he wishes to adopt the course of telling me rather than showing me the document then I am asking that the court adjourn while we have a short conversation.

CROWN COUNSEL: I have indicated to my learned friend what I am prepared to tell him of the general nature of the evidence which I propose to lead. I don't see why that is not sufficient. There is no duty on me to tell him, as I understand the authorities, but I am prepared to do so, as a matter of courtesy. I don't see that there can be any further requirement.

HIS LORDSHIP: How long will it take to impart to him the information which you want to impart?

CROWN COUNSEL: A minute or two, M'lord, or less than a minute. If Your Lordship remembers the opening, in my opening remarks I said certain things in relation to circumstantial evidence and certain factors which will help the Jury to assess the evidence.

HIS LORDSHIP: Yes, Mr. Phipps, are you prepared to listen to Crown Counsel for a minute?

DEFENCE COUNSEL: If that is the only way I can get it I will accept it.

(CROWN COUNSEL AND DEFENCE COUNSEL CONFER.)

HIS LORDSHIP: Yes!

CROWN COUNSEL: What does Your Lordship have as the last question?

HIS LORDSHIP: He used to beat her with the buckle of his belt.

Q. When was the last occasion that you know of that he, that the accused beat the ...
A. Well that happened some time before she came from America, but her back bear the scars and the wounds. Her back showed them.

In the Supreme Court

Prosecution Evidence

No. 3

Vine Ricketts Examination 23rd March 1971 (continued)

Q. And that said same time before she came from America?
A. Yes.

Q. Now do you know, Mrs. Ricketts, do you know why the accused used to beat ...

HIS LORDSHIP: No! How could she possibly answer?

CROWN COUNSEL: I am certain, from her personal ...

HIS LORDSHIP: She cannot know why a man beats a woman! She may, if she knows.

A. Always trying to hide it. She wouldn't say.

CROWN COUNSEL: That is all.

Cross-Examination

VINE RICKETTS, CROSS-EXAMINATION BY DEFENCE COUNSEL

Q. Madam, would you describe yourself as a Christian?
A. Yes.

Q. As a matter of fact, your husband is alive?
A. No. I am a widow 5 years now.

Q. He was an officer in the Salvation Army?
A. Yes. And I.

Q. You were or you are?
A. Well I am a retired officer.

Q. What rank?
A. Major.

Q. When did you retire?
A. 1943, October.

Q. Tell me, your daughter was born on the 19th of January 1934? A. Yes.

HIS LORDSHIP: Is this Ruby? A. Yes, Sir.

Q. You first knew the accused when you lived - you and your family lived opposite to where the accused man was living in Jones Town.
A. No. I know him when I was at Hagley Park Road. I used to see him pass going to school, but I didn't know who he was.

Q. You mean when you were living in Jones Town?
A. Yes.

Q. You used to see him passing to school while you lived in Jones Town, but you did not know who he was.
A. We never met.

Q. That would have been in the early 50's?
A. '40's to 50's.

Q. You saw him going to school, but you knew he lived opposite to you?
A. Not exactly opposite. A couple of doors above.

Q. On the other side of the road, a couple of doors above?
A. Yes.

Q. Didn't you know him - well isn't that when you first knew him, Madam?
A. I didn't know him. My boy and him used to go to school together, b t he was never a visitor that I know him, in our house.

Q. You never accepted him, but you knew who he was!
A. He didn't come to visit us. I saw him passing, but I didn't know him to talk to.

Q. And at that time Ruby lived with you? A. Yes.

Q. Let me see if I understand. The early '50's, late '40's, early '50's Ruby and Leary the accused both lived on the same road? A. Yes.

Q. Your boy and Leary went to the same school?
A. Yes.

Q. As far as you know, did Ruby speak to Leary during that period?
A. Well I don't know because he has never been in the house that I can remember.

Q. In 1954 Ruby went to the Salvation Army Training School? A. Yes.

Q. And in 1956 after graduating from the College she was assigned to duties in British Honduras?
A. Yes, Sir.

In the Supreme Court

No. 3

Prosecution Evidence

Vine Ricketts Cross-Examination 23rd March 1971 (continued)

Q. She returned to Jamaica in about 1959?
A. Yes, after three years.

Q. Still was she then an officer in the Salvation Army?
A. Yes, she was.

Q. What was her rank?
A. A lieutenant.

Q. And she was then living with you at Aldington Avenue, that's an avenue that runs off the Hagley Park Road?
A. Yes. Our address was on Hagley Park Road.

Q. That's in '59? A. Yes.

Q. And while you lived there, Leary visited the home?
A. The day when she came back from British Honduras he visited the home and she introduced him to me, say: Mama, this is Leary.

Q. After the introduction he visited the home from time to time?
A. Yes, now and again. He was not very regular. Now and again he would drop in.

Q. They got engaged in January of 1960? A. Yes.

Q. And they were married in July of 1960, not 59. Isn't that correct?
A. I think it is '59.

Q. You agree they must have been married after the engagement. You will accept that the marriage was in 1960? A. Yes.

Q. When they got married, Ruby left the Salvation Army?
A. She received before she got married.

Q. What's the answer to my question? A. Yes.

Q. And she was then teaching at St. Mary's College, Above Rocks? A. Yes.

Q. When they got married the accused Leary was working with the Public Works?
A. Yes.

Q. And shortly after marriage Ruby got a scholarship to the University of the West Indies? A. Yes.

Q. While she was a student at the University Leary would take her up the campus in the mornings, fetch her in the afternoons.
A. She was his wife then!!

Q. I appreciate that, she was his wife then. But he took her up the campus in the mornings and fetched her in the afternoons.
A. When he was at home. Sometimes he is in the country.

Q. She eventually graduated in 1963 from the University. A. Yes.

Q. And in 1968 Leary went to the United States of America to further his studies? A. Yes.

Q. That is after Ruby had graduated he went to America to further his studies? A. Yes.

Q. And some time after Ruby joined him there?
A. Yes. He made her come up.

Q. So what's the answer to my question? She joined him? Did she go?
A. Yes she went.

Q. With the children? A. Yes.

Q. And she returned to Jamaica, as you said, in July of 1969?
A. Very much so.

Q. You never saw them in the United States?
A. No, I have never been there.

Q. And as far as you know, Ruby was a well behaved young lady. Am I right?
A. Of course!

Q. Did she write to you when she was in the United States?
A. Yes, once or twice, but this was very seldom.

Q. Would this be her hand-writing? Just tell me if it is her hand-writing. I will deal with the contents later. A. Yes.

In the Supreme Court

Prosecution Evidence

No. 3

Vine Ricketts Cross-Examination 23rd March 1971 (continued)

DEFENCE COUNSEL: May it be marked for identity?

CROWN COUNSEL: What's being done?!

DEFENCE COUNSEL: Document shown to the witness. (To witness) Now the first time you knew about this beating with belt buckle was after her return from the United States?

A. Yes. When she came she related to me.

Q. So what you tell us about the beating is what Ruby told you.

A. I saw the signs on her body.

Q. No, what caused it is what Ruby told you - what caused the signs is what Ruby told you.

A. Yes, she told me.

Q. And as a matter of fact, Madam, you gave a statement to the police in this matter, didn't you?

A. Well at the time of the murder you mean?

Q. After your daughter died. You probably know it is murder already, the rest of us are here to find out if it is. You gave a statement to the police?

A. Yes.

Q. And you gave evidence at Halfway Tree, at the preliminary enquiry?

A. Yes.

Q. Were you questioned that far when you were giving a statement to the police?

A. Yes.

Q. Did you say one word to the police about Leary beating Ruby with belt buckle? Did you tell the police that?

A. Well I didn't tell the police because she was already dead.

Q. But for whatever reason you kept it in your heart locked away until today, eh?

A. Well yes. The marks are there to show.

Q. Coming to something else. You have identified Ruby's hand-writing. I am showing you a letter dated 24th June, 1969 which is in Ruby's hand-writing, your well behaved Christian daughter -

well sorry, let me show my learned friend first.

HIS LORDSHIP: What's the date of that?

DEFENCE COUNSEL: May I just check to be quite sure. 24th June, 1969. That's the month before she returned.

CROWN COUNSEL: M'lord, I think before any further use is made of this letter I think we should know what purpose it serves to justify its relevance to these proceedings. So far we have heard that the witness recognizes the hand-writing as being that of the deceased, but obviously, M'lord the contents of the letter shouldn't become evidence - well Your Lordship hasn't seen it. Perhaps Your Lordship should see it. I am just a bit wary of the purpose which is going to be made of this letter because there are certain strict rules of evidence which have to be observed.

HIS LORDSHIP: Well I have no idea what's in the document. The lady has identified the signature as being that of somebody she knows, and she is being asked to look at the back-ground. I didn't stop it.

CROWN COUNSEL: But there is an obvious limit to the use, to the utility of this letter, M'lord. And this is what I am adverting Your Lordship's attention to.

HIS LORDSHIP: You have seen the letter, I have not. If you wish to make an objection or to take an objection to it and you wish that objection to be heard in the absence of the Jury since you are acquainting me with the contents you can make an application and I will send the Jury out and we will then hear what you have to say about the contents of the letter.

CROWN COUNSEL: Perhaps I am slightly premature, M'lord. I am going to wait and see what purpose my learned friend proposes to make use of the letter.

HIS LORDSHIP: Yes, Mr. Phipps?

Q. Do you know Colonel Morris? A. Yes.

In the Supreme Court

Prosecution Evidence

No. 3

Vine Ricketts Cross-Examination 23rd March 1971 (continued)

Q. Of the Salvation Army? A. Yes.

Q. Was he the person who officiated at the wedding between Leary and Ruby?
A. Yes.

Q. Do you know that there was correspondence between the Colonel, Leary and Ruby in 1969?
A. I wouldn't know of that.

Q. You didn't know?
A. I didn't know. They were then abroad.

Q. Tell me if this is Colonel Morris' signature.

CROWN COUNSEL: May I see it?

DEFENCE COUNSEL: Just a minute. I am asking the witness to identify the hand-writing. If she doesn't, that's the end of it.

A. It seems looks like it.

Q. It looks like Colonel Morris' signature?
A. Yes.

Q. I propose at this stage to ask the witness to read the document dated the 29th June, 1969, or 24th June, 1969.

CROWN COUNSEL: And I propose, M'lord, to object!

DEFENCE COUNSEL: May I conclude my statement? I request Your Lordship to admit it in evidence before the Jury on the basis of ...

A. Unfortunately ...

DEFENCE COUNSEL: Just a minute, Madam! On the basis that my learned friend saw fit to lead in evidence now matter at this stage which related to the relationship between the accused and the deceased and to actions of a specific allegation of physical cruelty, albeit hearsay evidence, and not admissible, on the basis that he led evidence as to this relationship I am entitled to show that out of the mouth, or from the pen of the deceased herself, what was the true relationship between them. That is the basis on which I am leading this evidence.

CROWN COUNSEL: M'lord perhaps at this stage this is a legal issue. Perhaps at this stage Your Lordship might consider whether the objections and my submissions might not be better dealt with in the absence of the Jury.

HIS LORDSHIP: Yes. If you want the Jury out you have only to ask for it. What is wrong to my mind is that we seem to have lost our electrical power once again and things are getting very uncomfortable in this court. Could you make an enquiry for me, usher or Sergeant as to when we might reasonably expect the electrical power to return, so that this may be a convenient time at which to, perhaps, let the Jury not only go outside for a little while but go outside until I hear from you.

DEFENCE COUNSEL: Just before Your Lordship rules on that, I entertain reservations as to whether the procedure that is being adopted is the correct one.

HIS LORDSHIP: About sending the Jury out?

DEFENCE COUNSEL: At this stage, at the request of the Crown.

CROWN COUNSEL: I have not requested anything?

DEFENCE COUNSEL: Or at the suggestion of my friend.

HIS LORDSHIP: This is a matter that is always ultimately in my discretion.

DEFENCE COUNSEL: There are several tested cases on the point. The Queen against Maitland and others on appeal where this matter was reviewed ...

HIS LORDSHIP: I don't think that - as a matter of fact I go as far as saying there is no case that has ever removed it from the ultimate discretion of the trial Judge as to whether the Jury stays or not.

DEFENCE COUNSEL: I am not in a position to make a final pronouncement on that, but I know that it caused a lot of argument in the Court of Appeal. I just bring it to Your Lordship's attention. Up to the moment I haven't made

In the Supreme Court

Prosecution Evidence

No. 3

Vine Ricketts Cross-Examination 23rd March 1971 (continued)

any such request, my learned friend hasn't made any such, nor Your Lordship up to now hasn't seen the document and one must be very careful at any part of the proceedings to take place in the absence of the Jury. I think that is the reason for the primary rule that they must not be sent out lightly. Basically when one fears prejudice to the accused man and the Prosecution attempts to put in evidence and the defence objects to it and the defence would like to keep something out that might prejudice the accused man, in those circumstances the request usually comes from defence Counsel asking the Jury to go out and in most cases the trial Judge grants the request.

CROWN COUNSEL: M'lord, I think the more proper test is not whether anything might come out which will prejudice the accused, but whether anything will come out which ultimately Your Lordship might decide that the Jury ought not to hear because the admissibility of the document is essentially a question of law for Your Lordship and it is entirely in Your Lordship's discretion.

HIS LORDSHIP: Are you asking that the Jury be - that this argument - your submission be heard in the absence of the Jury?

CROWN COUNSEL: Yes, M'lord, I would ask that ...

HIS LORDSHIP: Do you have any objection to that, Mr. Phipps?

DEFENCE COUNSEL: As I am at present advised without having researched the matter my objection is that it should not be done, this part of the trial taking place in the absence of the Jury. It is different when a document goes in and this confusion arises - entirely different state of affairs and I object to it.

HIS LORDSHIP: I will exercise my discretion on the application of learned Counsel for the Crown and ask the Jury to go out. Just go out of hearing for a little while. Don't go too far. Just one moment, Mr. Foreman and Members of the Jury, and Mr. Phipps, and Mr. Robinson. I have just heard from the Sergeant of the Court here

and I will use his exact words. He says that he understands that this is one of the scheduled black-outs and is likely to last at least until 3.00 o'clock. I am not sitting here and endure this torture, nor will I ask the Jury to do that. I will therefore take this opportunity of adjourning the court until tomorrow morning when we can continue this - well I can hear your submissions.

DEFENCE COUNSEL: Just before Your Lordship, may the Jury return?

HIS LORDSHIP: The Jury are back.

DEFENCE COUNSEL: May they just sit because I propose to detain them for 5 mins. Your Lordship recollects that I stated I had reservations at this point and having had the opportunity of researching it, coming from Archbold, para. 1381, the 36th Edition. This is what is written there. It supports my recollection of the legal point:

> If the presiding Judge thinks that an argument as to the admissibility of certain evidence may unfairly prejudice the prisoner if heard in the presence of the Jury, the proper course is to direct them to retire to their room and then to hear the argument in open court that it may appear on the short-hand note directed to be taken by the Criminal Appeal Court.

and Thompson's case is quoted. The point I emphasize there: prejudice to the prisoner. But the Jury should not be asked to leave court except or with the consent of the defence. That is the point I was making.

HIS LORDSHIP: Yes. You seem to have a valid point. In any event we will pursue the matter tomorrow morning at lo o'clock. Mr. Foreman and Members of the Jury you realize the reason why I am adjourning. It is getting very uncomfortable for me and I am sure it applies to you. I am told this condition is likely to remain as a matter of schedule until at least 3.00 o'clock I am sending you away now until 10.00 o'clock tomorrow morning. In the meantime do not

In the Supreme Court

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No. 3

Vine Ricketts Cross-Examination 23rd March 1971 (continued)

discuss this case with anybody and do not allow anyone to discuss this case with you.

Madam while you are under cross-examination don't talk about the case to anybody and don't let anybody talk to you about it.

ADJOURNMENT TAKEN. TIME 11.52 a.m.

24th MARCH, 1971

24th March 1971

VINE RICKETTS: SWORN: CONTINUATION OF CROSS-EXAMINATION BY MR. PHIPPS:

MR. PHIPPS: Just before my learned friend makes his submission as to the admission of this evidence, you will recall that yesterday this witness gave evidence that the accused man had beaten the deceased with a belt buckle. She did not see this happen of herself, but she was told.

HIS LORDSHIP: She said she saw marks.

MR. PHIPPS: Yes, m'lud, but that would be hearsay because it was told to her by somebody, and that would not be admissible. In the circumstances, m'lud, I am asking your Lordship to tell the Jury at this stage that it is not evidence in this court. Further I am asking that your Lordship tell the Jury that the accused did not use any belt buckle to beat the deceased. My reason for asking your Lordship to so advise the Jury at this stage is that the members of the Jury may forget, and another aspect, m'lud, it is in the Press. So, mi lud, I am asking you to tell the Jury to disregard this bit of evidence - they should not consider it in the trial.

HIS LORDSHIP: Mr. Phipps, I will direct the Jury to disregard anything they may have heard about this case, or read in the newspapers, but that they are to try the case on the evidence that they have heard in this court, and on that evidence alone. I will also tell the Jury, that they are to come to their verdict on the facts they find proved to their

satisfaction. If this witness, as in fact she has said, that she saw marks on the deceased's body, and if the Jury accept that those marks were caused by the use of a belt buckle, then the Jury would draw what reasonable inference they want, and if there is any doubt, then the accused would be entitled to the benefit of that doubt. You say it is in the Gleaner; I have not seen it and do not even know that it is there or whether it is there. I personally have had experience with the Gleaner where I find that sometimes what I see in it is accurate and sometimes it is not accurate - completely fictitious or premature. I certainly am not going to tell the Jury everything I have not seen and read in the Gleaner myself.

MR. PHIPPS: M'Lud, the Gleaner is perfectly correct, I saw it. At this stage it is fresh in the mind of the Jury - the Gleaner is perfectly correct, so I am asking your Lordship to tell the Jury that they cannot act on this bit of evidence as it is hearsay, and if the Jury heard so yesterday, they should be asked to remove it from their mind. The Gleaner is perfectly correct, mi Lud, and my complaint is that it should not have been said.

HIS LORDSHIP: Mr. Phipps, are you asking me to say to the Jury that the testimony of this witness when she says she saw marks on her daughter's body is inadmissible?

MR. PHIPPS: No, sir, I will deal with that later. What I am saying, mi Lud, is that it is said that the accused beat her with a belt buckle and it is not evidence in this court. If she wants to say she saw injuries on her daughter's body she could, but those marks could have been caused by her daughter falling from the motor car.

HIS LORDSHIP: Mrs. Ricketts, you have said after your daughter was married to the accused he was unkind and cruel to her?

A. Yes, sir.

Q. And you went on to say he used to beat her with a belt buckle; have you ever witnessed this yourself? A. No, sir.

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Vine Ricketts Cross-Examination 24th March 1971 (continued)

Q. The marks you said were on her body, did you see those marks yourself? A. Yes, sir.

Q. You saw the marks? A. Yes, sir.

Q. The only way in which you know of those marks that they came from beating by a belt buckle was what your daughter told you or what you heard otherwise?

A. That is what my daughter said, sir, and she said that is the only instrument he used.

MR. PHIPPS: Mi Lud, we are getting more of it, and I must protest.

HIS LORDSHIP: If you wish to explore other avenues in the absence of the Jury, you can say so.

MR. PHIPPS: No, mi Lud, it was only to tie it in.

HIS LORDSHIP: Well, I will certainly not tell the Jury to leave the Jury Box, I will direct the Jury properly.

MR. PHIPPS: This is a case of murder, mi Lud, and that is why I want it to be completely clear in the mind of the Jury, all the evidence in this case that is heard in this court.

HIS LORDSHIP: Are you taking the view now that what is said is prejudicial to your client?

MR. PHIPPS: Yes, mi Lud.

HIS LORDSHIP: Well, are you saying that this Jury should be discharged and a new trial ordered?

MR. PHIPPS: I am not suggesting that, mi Lud, but if the Court requests it I will consult with my colleague.

HIS LORDSHIP: And you know the sort of thing that can flow from this accidental divulgence?

MR. PHIPPS: Yes, mi Lud. With your Lordship's permission, I will consult with my client and inform him of the legal implications that have taken place, and whether he wishes this Jury to try his case.

HIS LORDSHIP: All right, Mr. Phipps. Mr. Foreman

and Members of the Jury, you can now leave the Jury Box and go and refresh yourselves in the corridor or if you wish to remain where you are you may do so, but I will adjourn the court for ten minutes, so that Counsel can consult with his client.

COURT ADJOURNED: 10.43 A.M. RESUMPTION: 11.00 (Jury roll-call)

(COUNSEL CONSULT WITH ACCUSED)

HIS LORDSHIP: Mr. Foreman and Members of the Jury, I will in due course direct you regarding this case, but I will at this moment just tell you that you are not trying the case on hearsay evidence. You will remember Mrs. Ricketts told you her daughter told her that the accused had beaten her with a belt buckle which caused the marks on her body. So, Members of the Jury, this woman, Mrs. Ricketts, did not know of any beating with belt buckle of her own perception, she was told by someone else which would be hearsay, and you are not to try this case on hearsay evidence. You are to try the case on the facts you find proved to your satisfaction. If from a certain set of proved facts you find that the reasonable inferences you draw there are two interpretations, one in favour of the accused and one against him, you will draw the inference that is in favour of the accused person.

CROWN COUNSEL: With your Lordship's permission, I will just briefly make one or two comments as regards the document that was written by the accused. Mi Lud, the document is dated the 24th June, 1969, and in no way related to the conduct of the accused on the 17th of March, 1970. It is being said that the mind of the accused was affected. As far as I see, mi Lud, this document is clearly admissible.

HIS LORDSHIP: Is there anything further, Mr. Phipps?

MR. PHIPPS: No, Mi Lud.

HIS LORDSHIP: I am admitting this document, for the reasons I will now give: (1) the Prosecution has raised the point of the relationship between

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Vine Ricketts Cross-Examination 24th March 1971 (continued)

the accused and the deceased, and that relationship was unfavourable to the accused as expressed by the Prosecution: (2), the Crown in opening their case have alleged a possible motive of jealousy. The accused is entitled to justice, and fairplay should be employed. For these reasons I will admit this document, and which document the witness said was written by her daughter, the deceased.

MR. PHIPPS: Madam, I think you told us yesterday that you cannot see very well?
A. I cannot see very well.

Q. Well, in spite of that will you see how far you can get with the address that is written on the top righthand corner? Well, any address is there? A. Yes, sir.

Q. Will you kindly tell us what address you see written there by your daughter?
A. 209-27 Bardwell Ave., Queens Village, New York 11429.

Q. What is the date? A. 24th June, 1969.

Q. So that was your daughter's address in the United States, and the letter she wrote, as well as the date of the 24th June, 1969?
A. Yes, sir.

Q. Do you see "Dear Colonel" there? A. Yes, please.

Q. Now, will you please read that letter loudly and clearly?
A. I cannot read all of it.

HIS LORDSHIP: Mr. Phipps, I do not think you should insist on the witness to read that letter seeing her condition.

MR. PHIPPS: All right, mi Lud.

HIS LORDSHIP: Having lost her daughter, it would have some effect on her, and as I said, seeing her condition, I do not think you should insist on her to read the letter.

MR. PHIPPS: With your Lordship's permission, may the Registrar read the letter?

HIS LORDSHIP: All right.

(Registrar reads letter)

209-27 Bardwell Ave.,
Queens Village,
N.Y. 11429,
June 24th, 1969.

Dear Colonel,

I am writing as you requested although I am thoroughly ashamed that there is need for us to correspond on such a subject.

I was involved in an unsavoury association with one of my co-workers and while there are no extenuating circumstances to be quoted, nor are there any excuses for my behaviour, I have been unable to convince Leary that it was not as intense as it would seem to have been. Also, I never used any church occasion to meet this man.

As to the letter which I wrote, this was to a young man who had been very helpful in the last weeks when I was trying to sell my furniture, car, etc. There was absolutely no intimacy between us, but I wrote to him in such a friendly tone that I cannot blame Leary for believing, as he does, that he was a close associate.

I have done my best to show Leary how much I regret all this and to ask him to forgive me. I recognise how hurt he is and am truly sorry that any lack of discretion has led to all this unhappiness.

My consolation lies in my firm belief that God has not abandoned me and I have earnestly asked forgiveness for my sins of deed and thought.

Thank you for your kindness and prayers.

HIS LORDSHIP: Let it be marked exhibit 1.

MR. PHIPPS: Yes, mi Lud, exhibit 1.

Q. Now, Mrs. Ricketts, do you have any idea at all as to when your daughter returned from the States to Jamaica if she had any unsavoury

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Vine Ricketts Cross-Examination 24th March 1971 (continued)

relationship or was she involved in some unsavoury situation with a man? A. No.

Q. Can you say what she decided to do when she returned, what sort of work?
A. She wanted to teach.

Q. After your daughter returned from the United States has she ever told you that there was any unpleasantness between herself and the accused?
A. Yes, sir.

Q. Did she tell you what caused it?
A. She said it was jealousy.

Q. So she told you that Leary's conduct was due to jealousy?
A. Yes, sir.

Q. Was your daughter's Birthday the 19th June?
A. Yes, sir.

Q. Did Leary give your daughter a present on her Birthday? A. Yes.

Q. What time of day was ... well was Leary home on the 19th, that is the - on your daughter's Birthday? A. Yes, sir.

Q. What time was he home?
A. About 7.00 p.m., sir.

Q. He had the Birthday present waiting for her?
A. Yes, sir.

Q. A gentleman drove your daughter home that evening?
A. Yes, one of her co-workers.

Q. When your daughter got home did you hear Leary and her quarrelling?
A. No, they were only grumbling.

Q. When your daughter arrived home, just as she came home, what happened between herself and the accused? A. He greeted her.

Q. Tell us just what sort of greeting.
A. She said: "hello", and he said "hello".

Q. And that was all? A. Yes, no quarrelling.

Q. Did she say she was coming from Harbour View?
A. I don't remember.

Q. At the time your daughter was working at the Ministry of Education?
A. Yes, sir.

Q. You told us that the accused and your daughter had no quarrel on your daughter's Birthday, that was the 19th of June? A. No.

Q. Was there any grumbling at all on that evening?
A. Yes.

Q. Could you hear anything that was being said whilst this grumbling was going on?
A. My daughter told him to leave.

Q. Do you know if the reason why she told him to leave was because the bedroom was too small for both of them? A. Yes.

Q. Was Leary always kind to you?
A. Not unusually kind.

Q. While your daughter Ruby was abroad did Leary write to you about the relationship between Ruby and himself? A. Yes.

Q. When Ruby returned from the United States was there a family conversation representing Leary, the accused, your daughter Ruby and yourself?
A. Yes, sir.

Q. And in that conference or conversation, did Ruby admit her misconduct?
A. No, we only spoke about her coming back to Jamaica.

Q. Did the accused and Ruby agree to live together again? A. No.

Q. Did she say why she returned home from the United States?
A. She said she had had enough of New York.

Q. Did you see the man that dropped her home in the car that night?

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Vine Ricketts Cross-Examination 24th March 1971 (continued)

A. No, I didn't. I did not see his face, but I know it was a man.

Q. You didn't see the person?
A. No, I saw it was a man in the car.

Q. After she came home that night in the car did she speak over the telephone? A. Yes.

Q. Did she go out again? A. Yes.

Q. Did you go along with her? A. No.

Q. Do you know whether she went in the Constant Spring area? A. Yes.

Q. On her return the second time, that was the time the 'phone rang?
A. Yes, sir.

Q. You answered the 'phone? A. No.

Q. Who answered it? A. Karyl.

Q. Do you know a man who works at the Ministry of Health? A. Yes.

Q. Do you know his full name? A. No.

Q. Has he ever visited your home? A. Yes.

Q. Did he come to your daughter Ruby? A. No.

Q. Try and remember, when your daughter Ruby was leaving your home for Harbour View if she went there with a man or if a man drove the car in which she went? A. Yes.

Q. What is his name?
A. I really don't remember, but I know he is a mechanic, and he fixed my stove.

Q. This man I asked you about earlier on that works at the Ministry of Health and you say he visited your home, his name is Hicks.
A. Yes, but I don't know his other name.

Q. As far as you know, Hicks had nothing to do in this matter of the relationship between your daughter Ruby and the accused? He had nothing to do with it? A. No.

Q. At any time, have you ever heard the accused and your daughter Ruby quarrel about this same young man Ruby mentioned in the letter to the Colonel that helped her to sell her furniture and her car?

A. No.

Q. You never at any time hear accused and Ruby quarrelled?

A. I only always hear them grumbling.

Q. At any stage of this grumbling, did you get to find out what they were grumbling about?

A. I tried to find out but she kept everything to herself, she never told me. I don't know what was going on, as she has never told me.

Q. Am I to understand that Ruby was a lady who kept things to herself?

A. Yes, sir.

MR. PHIPPS: Thank you, Mrs. Ricketts.

CROWN COUNSEL: No re-examination, Mi Lud.

KARYL WALKER: (CALLED IN COURT-ROOM):

HIS LORDSHIP: You really want to call this witness, Mr. Robinson?

MR. ROBINSON: Yes, mi Lud.

HIS LORDSHIP: Very well, let him come and sit here.

MR. PHIPPS: With your Lordship's comment, and in my view, my client has to give or would like to give further instructions. I wonder if your Lordship would grant an adjournment now? Mi learned friend and myself would like to be with your Lordship in Chambers.

HIS LORDSHIP: I am willing to let this little boy sit in court, but before that, have you any other witnesses?

MR. ROBINSON: Only the doctors, mi lud.

HIS LORDSHIP: How many doctors?

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Prosecution Evidence

Karyl Walker

24th March 1971 (continued)

MR. ROBINSON: Two mi lud.

HIS LORDSHIP: Well try and get them here at 10.00 o o'clock tomorrow morning.

MR. ROBINSON: I have done so already, mi Lud.

HIS LORDSHIP: Very well, I will take the adjournment until 10.00 o'clock tomorrow morning. This little boy may have to return here tomorrow?

CROWN COUNSEL: Yes, mi lud.

COURT ADJOURNED: 3.25 p.m.

No. 4

Urcel Facey Examination 24th March 1971

No. 4

URCEL FACEY

URCEL FACEY: SWORN: EXAMINED BY CROWN COUNSEL

WEDNESDAY - 24TH MARCH, 1971

Q. Is your name Urcel Facey? A. Yes, sir.

Q. Where do you live?
A. 22 Sunrise Drive, sir, Hillview Gardens, Kingston 10.

Q. What work do you do?
A. I have a property.

Q. Can you tell us what side of the road it runs?
A. The northern side of Red Hills Road.

Q. And that is where your house is? A. Yes, sir.

Q. Now, do you remember the 17th of March, 1970?
A. Yes, sir.

Q. Some time in the night, where were you?
A. On my verandah, sir.

Q. While you were on your verandah did you notice anything?
A. Yes, sir.

Q. What?
A. I saw a car drove slowly, sir, from West to East.

Q. About what time was this?
A. About 7.40, sir.

Q. What happened after this car drove slowly by?
A. I heard a screach sound like somebody draw brakes then I heard a screaming from the car.

Q. Did you then do anything?
A. Yes, sir, I ran to my gate and I saw a body slump from the side of the car.

Q. Where did it fall?
A. On the right hand side in the street, sir.

Q. Where did this body fall from?
A. From the driver's seat, sir.

Q. Did you notice anything about this body you saw fall on the street?
A. I noticed the body was wriggled in blood.

Q. While you were there did anything else happen?
A. Yes, sir.

Q. Well, did you see anybody else there?
A. Yes, sir.

Q. Who? A. A man, sir.

Q. The body you saw fell from the car, was it the body of a male or a female? A. Female, sir.

Q. This man you say you saw on the spot where was he in relation to the body that slumped in the street beside the car?
A. At the head, sir.

Q. And that man you saw standing at the head of this woman whose body you saw slumped on the ground, do you see him here today?
A. Yes, sir.

Q. Where?
A. See him sitting over there, sir.

Q. In the dock? A. Yes, sir.

Q. You mean the accused man? A. Yes, sir.

Q. Was anybody else there?

In the Supreme Court

Prosecution Evidence

No. 4

Urcel Facey
Examination
24th March 1971
(continued)

A. A little boy, sir, was left in the car, and he asked the accused why he did that?

Q. Did accused reply? A. Yes, sir.

Q. What was his reply to the little boy?
A. "There was nothing left for me to do".

Q. At that time where were you?
A. I was standing actually at the foot of the dead woman, sir.

Q. While you were standing there did anything happen? A. Yes, sir.

Q. What? A. I saw the accused made a step.

Q. In whose direction?
A. In my direction, sir, and I heard a click.

Q. From what direction did you hear this click?
A. From the direction of the accused, sir.

Q. Did the accused make any movement towards the deceased?
A. Yes, sir.

Q. Was it then that you heard the click?
A. Yes, sir.

Q. What you did?
A. I retreated and went into my gate, sir.

Q. Did you return to the car? A. Yes, sir.

Q. When did you return to the car?
A. After I returned from my gate, sir. I went inside my gate and then returned to the car.

Q. How long after you retreated to your gate did you return to the car?
A. About two minutes, sir.

Q. Yes, and what happened?
A. When I returned to where I had left the car it had gone leaving the dead woman in the street, sir.

Q. What about the little boy?
A. The little boy was also taken away in the car, sir.

Q. Did you then contact the police?
A. Yes, sir, I phoned the police from my house.

Q. Can you tell us what kind of car it was that you saw that night?
A. It looked to be a cream coloured car, sir.

Q. At the time you heard the car did you see or hear any other car pass? A. No, sir.

Q. You said the accused made a forward move in your direction? A. Yes.

Q. Yes, and did either of you speak?
A. I was speaking but I stopped.

Q. Why did you stop speaking?
A. Because I don't know what he was coming with in his hands, and I was afraid.

Q. Would you be able to recognize that car again if you saw it? I mean the car the dead woman slumped against in the street?
A. Yes, sir.

Q. Perhaps I could ask the witness to look at something outside.

HIS LORDSHIP: Well, he will have to do it in the presence of the jury.

CROWN COUNSEL: Yes, mi Lord.

HIS LORDSHIP: Is it in the street outside?

CROWN COUNSEL: I have asked a constable to look, mi Lord. Yes, mi Lord, it is out there.

HIS LORDSHIP: Mr. Foreman and Members of the Jury, please go along with this witness escorted by a couple of police officers and look at something outside in the street.

HIS LORDSHIP (TO WITNESS): Facey, you would like to go too? A. Yes, sir.

MR. PHIPPS: As well as Defence Counsel, mi Lord.

HIS LORDSHIP: Certainly, Mr. Phipps, and I will go too.

In the Supreme Court

Prosecution Evidence

No. 4

Urcel Facey Examination 24th March 1971 (continued)

(Court proceeded into Temple Lane where witness Urcel Facey pointed out a Singer Vogue motor car Licence Number BU-390. Court returns to courtroom)

CROWN COUNSEL: The motor car you showed to the court a while ago is the same motor car which you saw the body of a woman slumped on the night in question? A. Yes, sir.

CROWN COUNSEL: Mi Lord, may the motor car be admitted as Exhibit 2?

HIS LORDSHIP: Yes.

MR. PHIPPS: Show us the accused. A. This man, sir.

MR. PHIPPS: May it please your Lord, may the man pointed out stand?

HIS LORDSHIP: Vincent Silvera stands.

HIS LORDSHIP: Is this the man you saw the night?
A. No, sir.

Q. Is there anything wrong with your hearing?
A. No, sir.

Q. Well, Mr. Phipps is asking you to point out the man or person you saw come from the car the night.

MR. PHIPPS: May it please you, mi Lord, I would like to know the purpose of your Lordship's question.

HIS LORDSHIP: I just want to remove any ridicule that might be existing.

HIS LORDSHIP (TO WITNESS): Can you see propertly, Mr. Facey?
A. Yes, sir, I have to use my glasses.

Q. Well, Mr. Phipps has asked you to point out the man you saw come from the car the night.
A. Yes, sir, see him over there sitting.

Q. But two minutes ago Mr. Phipps asked you to point out the accused and you pointed out a different man? A. Yes, sir.

Q. Why did you do that?
A. Because I didn't use my glasses, sir.

Q. In future please use your glasses if you have to look at anything.

Q. Are you now telling the court that this man in front here that you pointed out is not the man you saw come from the car the night?
A. Yes, sir.

(Witness pointed out Det.Sgt. of Police, Vincent Silvera, sitting in court as accused)

CROWN COUNSEL: Now, are you telling us that that man sitting in the dock, that is the accused, he was the man you saw come from the car that night?
A. Yes, sir, it is him sitting in the dock over there.

HIS LORDSHIP: Any questions out of that, Mr. Phipps?

MR. PHIPPS: No thank you, mi Lord.

HIS LORDSHIP: Any re-examination?

CROWN COUNSEL: No, mi Lord.

HIS LORDSHIP: Would you be able to recognize that man if you saw him?
A. Yes, your Honour.

Q. Is that the man you saw come from the car the night when you saw the woman slumped?
A. Yes, sir.

Q. Now, leave the witness box and go over the courtroom and see if you see the man, and if you do, put your hand on him.

MR. PHIPPS: Gently.

HIS LORDSHIP: Well, yes, if you see him, just touch him gently.

Witness leaves witness-box, goes to dock, touches accused and said, "this is the man, sir."

In the Supreme Court

Prosecution Evidence

No. 4

Urcel Facey Examination 24th March 1971 (continued)

HIS LORDSHIP: You say that is the man you saw come from the car the night when you saw the body of this woman slumped by the car in the street?
A. Yes, sir.

HIS LORDSHIP: Who is the next witness, Mr. Robinson?

Mr. Robinson (CROWN COUNSEL): I am wondering if we could take the adjournment now, mi Lord.

HIS LORDSHIP: If you have a short witness, I would not mind if we take him.

CROWN COUNSEL: Let me see - yes, mi Lord, Franklin Ricketts.

HIS LORDSHIP: Well, let us have his evidence.

CROWN COUNSEL: Your Lordship pleases.

No. 5

Urcel Facey (Recalled) Examination 24th March 1971

No. 5

URCEL FACEY (Recalled and sworn)

DIRECT EXAMINATION BY MR. SMALL

Q. Mr. Facey, on the night you did not see the accused do anything to the deceased, did you?
A. No, sir.

Q. And when you saw her she had already received her injuries?
A. O yes, sir.

Q. In other words you did not see any injuries inflicted on her?
A. No sir, I did not see when they were inflicted.

HIS LORDSHIP: Any cross-examination?
MR. ROBINSON: No m'lord.

HIS LORDSHIP: Thank you Mr. Facey.

MR. ROBINSON: That may it please you m'lord, Mr. Foreman and members of the jury, constitutes the case for the crown.

REGISTRAR: Leary Walker, you have heard the evidence against you. Now is the time for you

to make your defence. You may do one of three things. You may either give evidence on oath in the witness box where you can be cross-examined or you may make an unsworn statement from where you stand where you may not be cross-examined or you may say nothing at all. You are so entitled to do in your defence. What do you prefer to do?

ACCUSED WALKER: I would like my counsel to speak for me please.

MR. PHIPPS: May it please you m'lord, Mr. Foreman and members of the jury, we propose to call evidence for the defence.

No. 6

FRANKLIN RICKETTS

FRANKLIN RICKETTS: SWORN: EXAMINED BY CROWN COUNSEL:

Q. Is your name Frahklin Ricketts? A. Yes, sir.

Q. What is your occupation?
A. Boiler operator, sir.

Q. Where do you live?
A. 6 Dorchester Avenue, sir.

Q. Did you know the deceased, Ruby Walker?
A. Yes, sir.

Q. Was she related to you?
A. My sister, sir.

Q. Do you know if up to the time of her death whether she owned a motor car? A. Yes, sir.

Q. What kind?
A. A Singer Vogue, licence BU-390.

Q. On the 18th March did you attend the Kingston Morgue? That is the Public Morgue? A. Yes, sir.

Q. Did you see Dr. carry out a Post Mortem Examination on her body? A. Yes, sir.

Q. Did you identify the body to the doctor?
A. Yes, sir.

In the Supreme Court

Prosecution Evidence

No. 6

Franklin Ricketts Examination 24th March 1971 (continued)

Q. As the body of Ruby Walker?
A. Yes, sir.

CROWN COUNSEL: May the witness just quickly look outside, mi Lord?

HIS LORDSHIP: For what reason, Mr. Robinson?

CROWN COUNSEL: TO look at something, mi Lord.

HIS LORDSHIP: All right.

NOTE: Witness goes on corridor of courtroom, looks in the street, and returns to witness-box.

CROWN COUNSEL: Did you see aSinger Vogue motor car outside? A. Yes, sir.

Q. Were you able to see the licence? A. Yes, sir.

Q. What is it? A. BU-390.

Q. Is that the car owned by the deceased, Ruby Walker, your sister?
A. Yes, sir.

CROWN COUNSEL: Exhibit 2, mi Lord.

MR. PHIPPS: No questions, mi Lord.

HIS LORDSHIP: After seeing your sister's dead body at the Morgue, did you see it anywhere else? A. Yes, sir.

Q. Where? A. Sunrise Drive, sir.

Q. When was that?
A. The same night of the 18th March, sir.

HIS LORDSHIP: Any questions arising out of that, Mr. Phipps?

MR. PHIPPS: No, Mi Lord.

HIS LORDSHIP: Any questions, Mr. Robinson?

MR. ROBINSON: No, sir.

Q. Have you another short witness, Mr. Robinson.
A. No, sir.

Q. Well, a long one then?

MR. ROBINSON: Yes, Mi Lord.

HIS LORDSHIP: Let us see how far we can go with that witness before we take the adjournment.

No. 7

WILBERT WATSON

WILBERT WATSON: SWORN: EXAMINED BY CROWN COUNSEL:

Q. Is your name Wilbert Watson?
A. Yes, sir, Det. Acting Corporal, of Police Station at Golden Grove, Saint Thomas.

Q. On the 20th March, last year, where were you stationed?
A. At Red Hills in Saint Andrew, sir.

Q. On the 20th March, last year, in the morning, where were you?
A. I was on a wild patrol in the Cooper's Hill area in a Land Rover, marked "Police" on it.

Q. About what time that was?
A. I think it was about 10.30 in the morning, sir.

Q. While you were driving did you notice anything?
A. Yes, sir.

Q. What?
A. Whilst driving along the Cooper's Hill Heights, I saw a Singer Vogue motor car lettered BU-390.

Q. Where was this car?
A. Parked under a tree, sir.

Q. Where was the tree in relation to the road?
A. Just where the road ends there was a cul-de-sac.

Q. The car was in the road? A. Yes, sir.

Q. Did you notice anything about this car?
A. I noticed that a man was sitting around the steering wheel, sir.

Q. Did you do anything when you saw this man sitting around the wheel?

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Wilbert Watson
Examination
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(continued)

A. I went up to the man and identified myself to him.

Q. Do you see that man here today? A. Yes, sir.

Q. Where? A. In the dock.

Q. When you went up to him had you made up your mind to arrest him?
A. No, sir.

Q. Did you say anything to the accused?
A. Yes, sir.

Q. What did you say to him? A. I asked him if his name was Leary Walker, and he said yes.

Q. Did you notice anything about this car?
A. I noticed that the Registration Number of the car and the make was the one the Police was searching for.

Q. Did you search the car? A. I did, sir.

Q. Did you find anything as a result of this search?
A. I found aknife in the course of the search, sir.

Q. Was it opened or closed when you saw it?
A. It was open, sir.

Q. Did you notice anything about the knife?
A. The knife appeared to be blood-stained, sir.

Q. Didkyou then do anything?
A. I took Leary Walker, the car, also the knife to the Red Hills Police Station.

Q. Did you hand over anything to anyone?
A. Yes, sir, I spoke to Det. Acting Corporal Lumley who attended the station, and I handed the knife to him and told him something.

CROWN COUNSEL: Please show the knife to the witness (knife shown to witness).

Q. Is that the knife you saw the accused with and took from him and handed to Det. Acting Corporal Lumley?
A. Yes, sir, this is the knife I took from the accused, sir.

HIS LORDSHIP: Let me see it, please (knife shown to His Lordship). Show it to the Jury as well (knife shown to the Jury).

CROWN COUNSEL: Mi Lord, may I tender the knife as Exhibit 3?

HIS LORDSHIP Yes. I think this is a convenient time for us to take the adjournment. Mr. Foreman and members of the Jury please do not discuss the case with anyone.

Court adjourned 12.15 p.m.

COURT RESUMED: 2.20 p.m. - JURY ROLL-CALL TAKEN - ALL PRESENT.

WILBERT WATSON: STILL ON OATH: EXAMINED BY CROWN COUNSEL:

Q. You told us before the luncheon adjournment that having taken the accused man to the Red Hills Police Station you contaced Det. Acting Corporal Lumley? A. Yes, sir.

Q. You said Lumley came to the Red Hills Police Station?
A. Yes, sir, he came there.

Q. When Det. Lumley came to the Red Hills Police Station did he do anything?
A. Yes, sir, he identified himself.

Q. He identified himself?
A. Yes, sir, to the accused.

Q. Where was this?
A. In the C.I.D. Office at the Red Hills Police Station, sir.

Q, Did the accused say anything?
A. The accused said, "I would eventually give up myself" and he was then cautioned by Det. Lumley. Accused said "I want to tell you something because forty years have been wasted".

Q. Did Det. Lumley then do anything?
A. Det. Lumley told him he could make a verbal statement, and he could also make a written statement, and in the case of the written

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(continued)

statement someone would write what he has to say or he could write it himself.

Q. Before Det. Lumley told him that he could make a verbal statement, Det. Lumley cautioned him.

Q. Det. Lumley cautioned him?
A. Yes, sir, he was cautioned by Det. Lumley.

Q. What statement after Det. Lumley told him he could either write the statement himself or ask anyone to write it for him?
A. He said he would write what he has to say.

Q. Yes, what happened next?
A. Well, I gave the accused a chair and a sheet of foolscap paper and a ball-point pen.

Q. Well what was done?
A. I read the caution accused at dictation speed, sir.

Q. Did the accused man do anything?
A. He wrote it down on paper, signed it, and I witnessed it, sir.

Q. Where was Det. Lumley at that time?
A. Det. Lumley was present in the office, sir.
Q.
Q. After you witnessed the caution what was done if anything?
A. He started to write a statement, sir.

Q. Before he started to write this statement, did you threaten him? A. I did not, sir.

Q. Did you hold out any promise of favour to him?
A. No, sir.

Q. Did you offer any form of violence to him?
A. No, sir, none whatsoever.

Q. Or any kind of inducement?
A. None whatever, sir.

Q. Did the accused complete the statement you said he started to write?
A. He did, sir, and on completion he signed it, and I signed it also.

CROWN COUNSEL: Please show the statement to the witness. (Statement shown to witness).

Q. Is that the statement?
A. This is the statement, sir.

Q. That is the statement the accused wrote and signed and you witnessed? A. Yes, sir.

CROWN COUNSEL: Mi Lord, may the statement be tendered as Exhibit 4?

HIS LORDSHIP: Any objection, Mr. Phipps?

MR. PHIPPS: None at all, mi Lord.

HIS LORDSHIP: Exhibit 4 is it?

CROWN COUNSEL: Exhibit 4, mi Lord, and may this statement be read, mi Lord?

HIS LORDSHIP: Have you got the statement there?

CROWN COUNSEL: Yes, sir.

HIS LORDSHIP: Yes, permission is granted for the Registrar to read the statement to the Jury.

Registrar reads Cautioned Statement of Accused - Exhibit 1 to Jury

"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so, and that whatever I say may be given in evidence.

(Sgd.) L. Walker,
20. 3.70. 12.15 p.m.

Witnessed: W. Watson, Det.A/Cpl.#2381"

"On Tuesday 17th March, 1970, I was at Constant Spring at about 6.00 p.m., when I saw my wife Ruby Walker being driven by a man in her motor car north through the Square and into Norbrook. My car was just then broken down so I left it at the gas station and went to the bus stop.

A friend, Frank Smith, saw me and picked me up and dropped me off at Half Way Tree. I took a taxi

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(continued)

into Pembroke Hall to my step-mother's house, 22 Pantespant Avenue. I ate then, at about 7.30 p.m. I called my wife on the telephone. I asked her to lend me her car as I was stranded in Pembroke Hall. She asked how I would get it and I said I would walk up to her place as usual. She offered to pick me up which she did at about 20 minutes to 8.00. While driving along Sunrise Crescent an argument ensue as to her whereabouts that evening. She was driving, she stopped and raised an alarm and rushed out of the car, then something happened.

Then Karyle said to me, "Daddy, why did you kill mummy?" A man was in the vicinity. Karyle was crying, I took him into the car, and drove to 6 Dorsetshire Avenue, and left him at the gate, then I drove into Havendale/Meadowbrook area until I found myself on the Red Hills/Cooper's Hill Roads. I drove to the top of a hill which Ruby and I frequented in long off years, and parked the car. I had been there until the Police came, except for one period on Thursday when I went to the Village about 12.00 or 1.00 and bought some food - bread, milk, aerated water and cheese.

I had on the same clothes I left work in on Tuesday until this time of making this statement. I handed over a knife to the police. The police took possession of the car and its contents.

I had no intention of hiding or evading the police, but the shock of the incident did not, and even now at writing has not worn off. I began to think of going to the Constant Spring Police Station to surrender to the authorities there, as I was not aware that there was a Police Station at Red Hills.

Sgd. Leary Walker.

20. 3.70 - 12.45 p.m.

Wit. W. Watson, Det.A/C.Cpl.# 2381."

CROWN COUNSEL CONTINUES EXAMINATION IN CHIEF OF WILBERT WATSON:

Q. You spoke earlier of seeing accused in a car, which car?
A. The one I saw outside, sir.

CROWN COUNSEL: Exhibit 2, mi Lord.

HIS LORDSHIP: Any questions, Mr. Phipps?

MR. PHIPPS: No questions, mi Lord.

No. 7

Wilbert Watson
Examination
24th March 1971
(continued)

No. 8

ZAMORA LUMLEY

Zamora Lumley
Examination
24th March 1971

ZAMORA LUMLEY: SWORN: EXAMINED BY CROWN COUNSEL:

Q. Is your name Zamora Lumley?
A. Yes, sir, Det. Corporal of Police, stationed at Elletson Road Police Station, in this parish.

Q. In March, last year, where were you stationed?
A. I was stationed at the Maverley Police Station, sir.

Q. On the 17th March, last year, did you receive a report?
A. Yes, sir.

Q. From where?
A. Sunrise Drive in the same parish, sir.

Q. About what time was that?
A. About 7.40 p.m., sir.

Q. Did you go to Sunrise Drive. A. Yes, sir.

Q. On arrival at Sunrise Drive did you see anything?
A. Yes, sir.

Q. What?
A. There I saw the deceased, Ruby Walker, sir.

Q. Where did you see her?
A. Lying on her back in the street in a pool of blood, sir.

Q. Did Dr. Lawson come on the scene?
A. Yes, sir, and the body was removed to the Kingston Public Morgue.

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Prosecution Evidence

No. 8

Zamora Lumley Examination 24th March 1971 (continued)

Q. Now, on the following day, the 18th March, did you attend a Post Mortem Examination?
A. Yes, I did, sir.

Q. Carried out by Dr. Lawson?
A. Yes, sir, on the body of the deceased, Ruby Walker, at the Kingston Public Morgue.

Q. Did you take anything away with you?
A. I did, sir.

Q. What?
A. I took a dress, a brassierre and a panty, sir.

Q. Where did you get these things?
A. They were taken off the body of the deceased, sir.

Q. On the 20th of March, did you receive another report?
A. I did, sir.

Q. As a result, did you do anything?
A. Yes, sir, I went to the Police Station at Red Hills.

Q. There did you see anybody? A. Yes, sir.

Q. Who?
A. There I saw the accused, Leary Walker, sir.

Q. Anybody else?
A. I also saw Det. Acting Corporal Watson, sir.

Q. Yes? Well, did Det. Watson give you anything?
A. Yes, sir.

Q. What? A. He gave me a knife, sir.

CROWN COUNSEL: Please show the witness the knife (knife shown to witness).

Q. Is that the knife?
A. Yes, sir, this is the knife.

CROWN COUNSEL: Exhibit 3, mi Lord.

Q. Was anything else at the Red Hills Police Station
A. Yes, sir, a Singer Vogue motor car lettered and numbered BU-390.

Q. Did you then do anything or say anything?
A. Yes, sir, I told .....

Q. Did you speak to the accused? A. Yes, sir.

Q. At that time did you make up your mind to arrest anyone?
A. Yes, sir.

Q. Did you hear my question?

MR. PHIPPS: He heard the question.

HIS LORDSHIP: He is an experienced policeman.

CROWN COUNSEL: At that time did you have any information on which you could arrest the accused? A. Oh yes, sir.

Q. What did you say to the accused?
A. I was in plain clothes, and I told him I was Det. Acting Corporal Lumley from the Maverley Police Station.

Q. Yes?
A. He said, "Officer, I would freely give up myself because forty years have been wasted".

Q. Yes? A. I cautioned him, sir.

Q. You cautioned him? A. Yes, sir.

Q. After you cautioned him, did he say anything?
A. Yes, sir.

Q. What?
A. I would like to give a statement as to how it happened.

Q. Was anybody else there at the time?
A. Det. Acting Cpl. Watson was there, sir.

Q. What happened after that?
A. I told him he could write it himself or he could request someone to write it for him.

Q. Yes?
A. He elected to write it himself, sir.

Q. Yes, what happened after that?
A. He was given a sheet of foolscap paper and a ball-point pen, a table and a chair to sit on.

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No. 8

Zamora Lumley Examination 24th March 1971 (continued)

Q. Yes?
A. Det. Acting Cpl. Watson read the caution to the accused, sir, which he took down. The caution was read to the accused at dictation speed, which the accused took down.

Q. Yes?
A. When he was through writing he signed it which was witnessed by Det. Acting Corporal Watson. When the accused started to write the statement he, accused, signed it, and it was witnessed by Det. Acting Cpl. Watson, and when accused was through writing the statement and signed it, it was again witnessed by Det. Acting Corporal Watson.

Q. Before accused gave the statement did you threaten him?
A. No, sir.

Q. Or hold out any inducement to him? A. No, sir.

CROWN COUNSEL: Please show the statement to the witness (statement shown to witness).

Q. Is that the statement?
A. Yes, sir, this is the statement the accused wrote. Exhibit 4, mi Lord.

Q. After the statement was written by the accused, did you then do anything? A. Yes, sir.

Q. What?
A. I told him of a warrant I had for his arrest. I arrested and cautioned him for the murder of Ruby Walker.

Q. Did he say anything?
A. He made no statement, sir.

CROWN COUNSEL: Please show warrant to the witness (warrant shown to witness).

Q. Is that the warrant?
A. This is the warrant, sir.

CROWN COUNSEL: May that be tendered as Exhibit 5, mi Lord.

Q. Did you then take the accused man anywhere else?
A. Yes, sir, I took him to the Constant Spring Police Station.

Q. At the station did you do anything?
A. Yes, sir.

Q. What?
A. I further cautioned him, sir, and asked him for the clothes he was wearing on Tuesday morning the 17th March, and he told me the clothes he was wearing were those he had on. He then lifted his hand and showed me what appeared to be blood-stains on one of his shirt sleeves.

HIS LORDSHIP: He lifted his hand? A. Yes, sir.

CROWN COUNSEL: Yes?
A. I took possession of the clothes, sir.

Q. What clothes did you take possession?
A. Shirt, merino, a pair of pants, a pair of underpants, socks and shoes, and a waist belt.

Q. Yes?
A. I made sealed parcels of those exhibits, sir.

Q. When you say exhibits, what do you mean?
A. The clothing taken from the accused also the clothing taken from the body of the deceased.

Q. Did you do anything with them?
A. On the 21st I took the exhibits to the Forensic Lab, sir, in Kingston, and handed them over for examination.

Q. Did you do anything with the knife when it was handed to you?
A. The knife was also sealed and taken to the Forensic Laboratory in Kingston, sir, for examination.

Q. Did you do anything with the car?
A. The car, licence number BU-390, was also taken to the Lab for examination, sir.

CROWN COUNSEL: Show the witness the dress, please (dress shown to witness).

Q. What dress is that?
A. This is the dress taken from the body of the deceased, sir.

In the Supreme Court

Prosecution Evidence

No. 8

Zamora Lumley Examination 24th March 1971 (continued)

Q. Did you hand that dress over to the Lab, the Forensic Lab?
A. This was the dress I handed over to the Forensic Lab, sir.

CROWN COUNSEL: Exhibit 6, mi Lord.

Q. Please show him the striped shirt (striped shirt shown to witness).

Q. Is that the shirt you took from the accused?
A. Yes, sir, this is the shirt I took from the accused, the shirt he was wearing, and here, this mark, is what appears to be blood-stains.

Q. Did you hand it over to the Forensic Lab?
A. Yes, sir.

CROWN COUNSEL: Exhibit 7, mi Lord.

Q. Show him the trousers (trousers shown to witness).
A. Yes, this is the pair of pants accused handed over to me which he had on and stated he was wearing on Tuesday, the 17th March.

Q. Did you hand that over to the Forensic Lab?
A. Yes, sir.

CROWN COUNSEL: May that be tendered as Exhibit 8, mi Lord.

HIS LORDSHIP: Yes, Exhibit 8.

CROSS-EXAMINED BY MR. PHIPPS:

Cross-Examination

Q. These were not the only articles you took from the accused?
A. No, sir.

Q. There are other articles which you have not tendered? A. Yes, sir.

Q. For example there was a tie? A. Yes, sir.

Q. Did you take it to the Forensic Lab?
A. Yes, sir.

Q. Now, let us be accurate.
A. I don't remember, sir.

Q. Did you make a list of the things you took from him? A. Yes, sir.

Q. You have it there? A. No answer.

MR. PHIPPS: This is a serious charge, you know?

Q. One time you say you didn't take the tie, and another time you say you don't remember, still another time you said yes.

Q. Was the tie among the articles you took from the accused?
A. Yes, sir.

Q. Where is the tie?
A. I think it is among the exhibits, sir.

Q. Will you please come and find it with your Lordship's permission?
A. This is the tie, sir.

Q. May I see it, please? (Tie shown to Mr. Phipps).

Q. You told us you took the tie to the Forensic Lab? A. Yes, sir.

Q. You told us that the accused man at the Red Hills Police Station ...

Q. Let me put it this way: did you tell the court that the accused man at the Red Hills Police Station said he would like to make a statement as to what happened? A. Yes, sir.

Q. Let us be accurate, what did you tell the court the accused man said?
A. "I would like to give up myself for forty years have been wasted".

Q. And there is something else you told the court I think about accused said about time wasted?
A. He said, "Officer, I would eventually give up myself" and then I cautioned him. That is what he said after he was cautioned, sir.

Q. I am not talking about that he said, "Officer, I would eventually give up myself". You said he said, "I would eventually give up myself 40 years have been wasted". I am suggesting that he said, "Officer, I would eventually give up myself" and then you cautioned him?

In the Supreme Court

Prosecution Evidence

No. 8

Zamora Lumley Cross-Examination 24th March 1971 (continued)

A. He might have said so, sir.

Q. I want to get the exact words the accused used, because sometimes words are misconstrued.

A. He said, "I want to tell you something, Officer, I would eventually give up myself for forty years have been wasted".

Q. After you cautioned him in fact, this is what he said? A. Yes, sir.

Q. So it is untrue, he did not say "I want to give a statement"? 10

HIS LORDSHIP: Mr. Phipps, you have just got from this witness that the accused said after caution, "I want to tell you something, I would eventually give up myself, forty years have been wasted".

HIS LORDSHIP: Witness, that is what you say he said? A. Yes, sir.

MR. PHIPPS: Did you make a note of it? A. Yes, sir.

Q. Where is it? A. I have it in my note book, sir.

Q. May I see it, please? (Note book shown to Mr. Phipps). 20

MR. PHIPPS: These are not the words you told the court.

A. The words he used at the time are the words I wrote down there, sir.

Q. Well, that is what I am suggesting to you.

A. Well I think those are the words, sir.

HIS LORDSHIP: (To witness): You made a note of what the accused said at the time? A. Yes, sir.

Q. Would you like to refresh your memory? 30

A. Yes, sir.

Q. Well, tell the Jury exactly what the accused said?

A. "I want to tell you something because forty years have wasted".

MR. PHIPPS: So I was right that you made a mistake?

A. Yes, sir.

MR. PHIPPS: Thank you.

RE-EXAMINATION BY MR. ROBINSON

Q. You said the accused man also said "I would like to give a statement as to what happened"
A. He said that to me, sir.

Q. At what stage?
A. After he told me that 40 years have wasted.

MR. PHIPPS: Mi Lord I am seeking permission to ask further questions because when I sat down and thought, the only words the witness said accused used were the only words I put to him.

HIS LORDSHIP: Yes, Mr. Phipps.

MR. PHIPPS: FURTHER CROSS-EXAMINATION:

Q. May I see your note book, Officer, as I am certain categorically that the accused never said what you said there?
A. As far as I remember, he said so, sir.

Q. Did you make a note of it? A. No, sir.

Q. But you were making notes of things said by this accused at this interview, didn't you?
A. Yes, sir.

Q. Why then did you omit this remark - why didn't you write that one down too? A. (No answer).

Q. Isn't the reason because the accused never said so?
A. No, sir.

Q. Well, will you tell the Jury what the accused said?
A. Because a statement was not in fact written.

Q. Now, this remark of what accused said, I would like you to give an explanation as to how it happened" A. Each case is not.

Q. "How it happened at all?" If you cannot give me an explanation I will pass it on.

Q. Is it that you wrote a part of the statement and didn't write all?

In the Supreme Court

Prosecution Evidence

No. 8

Zamora Lumley Further Cross-Examination 24th March 1971 (continued)

A. The reason why I didn't write it is because in truth and in fact the accused wrote the statement himself.

Q. At the Preliminary Examination did you give a statement on oath?
A. Yes, sir.

Q. That statement you gave is the one you recorded in the book?
A. Yes, sir.

Q. Did you give it at the Preliminary Examination?
A. I don't remember, sir.

Q. Would you like to see your deposition?
A. (No answer).

Q. Will you accept it from me that you never gave it there?
A. Yes, sir.

Q. So in point of fact, do you agree that when you say accused said he would like to tell how it happened, this is the first time you are making any such statement? A. (No answer).

Q. What is the answer?
A. I might have said it sir.

Q. You didn't say it at the Preliminary Examination and it is the first you are saying it here?
A. I might have told Watson, sir.

Q. Tell me this: when accused said "I want to tell you something because forty years have wasted", was Watson there?
A. He could have been there, sir.

Q. When accused said, "I want to give a statement as to how it happened" was Watson there?
A. Yes, sir.

Q. Could he have heard?
A. As far as I saw, sir.

MR. PHIPPS: Thank you, Officer.

HIS LORDSHIP: Any re-examination on that?

CROWN COUNSEL: No, mi Lord.

No. 9

In the Supreme Court

Prosecution Evidence

No. 9

Zamora Lumley (Recalled) Examination 24th March 1971

CORPORAL ZAMORA LUMLEY CALLED BY LEAVE AND SWORN

EXAMINATION-IN-CHIEF BY MR. ROBINSON

Zamora Lumley, detective corporal of police stationed at Elletson Road station in the parish of Kingston.

Q. Earlier in this case detective, you told us about taking a car to the government Forensic Laboratory? A. O yes.

Q. Do you know Mr. Phillips who works at that lab?
A. O yes.

HIS LORDSHIP: Took the car itself or the scrapings?
A. I took the car at that Forensic Laboratory, sir.

Q. Did you see Mr. Phillips do anything in relation to this car?
A. Yes, sir.

Q. What?
A. He looked in the inner side of the car and the door then he took scrapings from the side of the car.

Q. Did you see what he did with the scrapings?
A. He took them inside the Forensic Laboratory office.

MR. PHIPPS: No questions.

HIS LORDSHIP: Thank you.

MR. PHIPPS: M'lord, my learned friend has intimated that he proposes at this stage to close the case of the crown. Just before that your lordship recalls that the little boy couldn't give evidence. In the light of that we would like to have recalled Mr. Facey, that is the gentleman who sees better with his spectacles.

HIS LORDSHIP: Any objection?

MR. ROBINSON: No objection.

In the Supreme Court

Prosecution Evidence

No.10

Karyl Walker Examination 24th March 1971

No. 10

KARYL WALKER

KARYL WALKER: SWORN: EXAMINED BY CROWN COUNSEL:

HIS LORDSHIP: You really want to call this witness, Mr. Robinson?

CROWN COUNSEL: Yes, Mi Lord.

HIS LORDSHIP: Very well, let him come and sit here.

MR. PHIPPS: With your Lordship's comment and in my view, my client would like to give further instructions. I am wondering if mi Lord would grant an adjournment now. Mi Lord, my learned friend and myself would like to be with you in Chambers.

HIS LORDSHIP: Yes, Mr. Phipps.

HIS LORDSHIP: I am willing to let this little boy sit down, but before that, have you any other witnesses?

CROWN COUNSEL: No, mi Lord, only the doctors.

HIS LORDSHIP: How many doctors?

CROWN COUNSEL: Two mi Lord.

HIS LORDSHIP: Well try and get them here at 10.00 o'clock tomorrow morning.

CROWN COUNSEL: I have done so already, mi Lord.

HIS LORDSHIP: Very well, I will take the adjournment now until tomorrow morning at 10.00 o'clock. The little boy, Karyl Walker, may have to come back here tomorrow morning.

CROWN COUNSEL: Yes, mi Lord.

HIS LORDSHIP: Mr. Foreman and Members of the Jury, we will now take the adjournment until 10.00 o'clock tomorrow morning, and in the meantime, please do not discuss the case.

COURT ADJOURNED: 3.25 P.M.

10.16 a.m.

HIS LORDSHIP: Listen Karyl, I want you to speak as loudly as you can. You see, these fans make a lot of noise and there is a lot of noise outside. I wonder if you could speak up so that we can hear, so that everybody can hear what you want to say.

HIS LORDSHIP: What is your full name?
A. Karyl Walker.

Q. How old are you? A. Five.

Q. What day is your birthday? Do you know what day you were born? A. No.

Q. Do you go to school? A. Yes sir.

Q. What is the name of the school?
A. Wolmer's Prep school.

Q. What class are you in? A. One.

Q. How many children are there in your class?
A. 21.

Q. Boys and girls? A. Yes sir.

Q. Do you go to church? A. Yes sir.

Q. What is the name of the church?
A. I don't know the name.

Q. Do you know where it is? A. Yes sir.

Q. Where?
A. You have to go that way and then that way.

Q. Do you have any idea where the church is or what is the name of the church or what kind of church? (Witness mutters).

HIS LORDSHIP: I can't hear. Do you learn about God in church and in school? A. Yes sir.

Q. What do you call God? A. I don't know.

Q. But you learn that there is a God? A. Yes sir.

Q. And that God looks after your world and everybody in it? A. Yes sir.

In the Supreme Court

Prosecution Evidence

No.10

Karyl Walker Examination 25th March 1971 (continued)

Q. Do you know the name of God's book?
A. The bible.

Q. Let me see, what is this? A. A bible.

Q. That is God's book. Do you know what it means to speak the truth; to tell the truth?
A. No sir.

Q. You know the difference between a truth and a lie? A. No sir.

Q. If something happens and you are asked to tell about it, do you know the difference between telling it as it happened and not telling it as it happened? A. No sir.

HIS LORDSHIP: Yes, he will have to give his evidence unsworn, Mr. Robinson.

MR. ROBINSON: Yes m'lord.

HIS LORDSHIP: Now, this gentleman is going to ask you some questions you see, now listen to what he asks you and try to answer the best way you can.

EXAMINATION-IN-CHIEF BY MR. ROBINSON

Q. Karyl, can you tell me, do you know your father, Karyl? A. Yes sir.

Q. Do you see him here today? A. Yes sir.

Q. Where is he?
A. Down there, sir. (Pointing to accused).

Q. You remember your mother? A. No sir.

HIS LORDSHIP: Did you hear what the gentleman asked you, if you remember your mummy; you remember her? A. Yes sir.

Q. You remember she had a car? A. Yes sir.

Q. And you used to drive in the car with her?
A. Yes sir.

Q. Do you remember one day last year in the night?
A. Yes sir.

Q. You were in your mother's car? A. Yes sir.

Q. Was your father in the car, too? A. Yes sir.

Q. And was your mother in the car, too?
A. Yes sir.

Q. You remember who was driving the car?
A. Yes sir.

Q. Who was driving the car? A. My mother, sir.

Q. Where were you sitting in the car, do you remember? A. The back sir.

Q. Where was your father sitting in the car?
A. In the front, sir.

Q. Now, while you were in the car and your mother was driving the car you remember if an ything happened? A. What you say, sir?

Q. Do you remember if anything happened while your mummy was driving the car? A. Yes sir.

Q. What happened; tell us what happened?
A. Daddy push her out of the car, sir.

HIS LORDSHIP: Just one moment, Mr. Robinson, I just want to ask this little boy once again,. one or two questions. Karyl, do you know what it means to talk the truth, to tell the truth about something? A. No sir.

Mr. Robinson, what is going through my mind, the position with regard to the discretion that I have to exercise as to the admissibility of what this little boy says. As I understand the legal position, I have to be satisfied, even before I allow this evidence to be given unsworn or allow his statement to be given by him unsworn, I must be satisfied that he is possessed of sufficient intelligence to justify his evidence and in addition under the duty of speaking the truth.

MR. ROBINSON: That is so my lord. I am aware of that principle.

HIS LORDSHIP: Well, this little boy has said more than once that he does not understand what speaking

In the Supreme Court

Prosecution Evidence

No.10

Karyl Walker Examination 25th March 1971 (continued)

the truth means. I find him quite a reasonably intelligent little fellow for his age but I am concerned about the requirement that he should know the duty of speaking the truth and the meaning of speaking the truth.

MR. ROBINSON: I don't know, probably the term truth as your lordship puts it to him ...

HIS LORDSHIP: Well, I have tried to put it to him in different ways. Supposing something happens here now, like I am talking to you and that fan is blowing and those gentlemen are sitting down there, some of them have wigs on their head you see, suppose somebody ask you to tell them about it, do you understand what it would mean to tell us what it is? A. No sir.

MR. ROBINSON: I think the term 'lie' may be more appropriate.

HIS LORDSHIP: Would you like to ask him one or two questions on that particular aspect of admissibility of his statement.

MR. ROBINSON: Very well, m'lord, I will just ask him one or two questions.

Q. Karyl, do you know what it is to tell a lie?
A. No sir.

Q. Do you know whether it is wrong for you to tell a lie? A. No sir.

HIS LORDSHIP: Do you know what a lie is at all?
A. I know, sir.

HIS LORDSHIP: Well, do you know the difference between an untruth and truth? A. No sir.

HIS LORDSHIP: Mr. Robinson, how do you propose to deal with this matter. I have a duty in regard to it?

MR. ROBINSON: I am abiding by anything which your lordship makes governing the question as to whether he can give evidence.

HIS LORDSHIP: I am satisfied that this little boy does not understand the nature of an oath although

I think he may be possessed of sufficient intelligence. He has himself said repeatedly that he does not understand the duty of speaking the truth and as I understand it those are the only circumstances which could justify his making any sort of statement at all relevant to this case.

MR. ROBINSON: One of the difficulties - in the Juvenile Section something that has always bothered me m'lord is what is the precise distinction between the principles governing sworn evidence and unsworn evidence.

HIS LORDSHIP: Just a moment. Yes, Mr. Robinson.

MR. ROBINSON: The only area we haven't investigated is whether your lordship would consider any useful purpose might be served in having this little boy instructed now as to the nature of an oath. It is entirely left to your lordship. I am not pressing.

HIS LORDSHIP: What is concerning me more than any other thing is this little boy's statement that he does not understand what it means to speak the truth and he does not appreciate the difference between a truth and an untruth.

MR. ROBINSON: I appreciate your lordship's concern.

HIS LORDSHIP: Just let me try once again.

Q. Karyl, do you understand that God can punish you for certain things? A. Yes sir.

Q. Do you understand that one of the things that God can punish you for is if you say something that is not true, do you understand that?
A. Yes sir.

Q. Well, now do you understand what it is to speak the truth? A. No sir.

HIS LORDSHIP: Mr. Robinson, I am afraid unless you can persuade me to the contrary, I won't as I previously advised, propose taking any statement with regard to this case in court here.

MR. ROBINSON: As I said before, I will abide by your lordship's discretion. I am not pressing any point in this regard at all.

In the Supreme Court

Prosecution Evidence

No.10

Karyl Walker Examination 25th March 1971 (continued)

HIS LORDSHIP: Yes, now, who is looking after this little boy?

MR. PHIPPS: Before your lordship releases him, could you assist me with the very last thing this little boy said.

HIS LORDSHIP: One day while sitting I was sitting in the back and my father was sitting in front, that is the very last note that I have but the direction that I have is that he went on to say something about 'pushing'. (Shorthand writer reads notes)

Court Reporter: Push her out of the car, sir.

MR. PHIPPS: What is going to happen to that part of the statement, because that was told to the jury. That is the position; here is something that has been said by this little boy which suggests an act of violence on the part of the accused man toward the deceased which we deny. Now it is discovered as a part of the case, we never wanted him to give evidence but they can't go half way and leave prejudicial evidence which we haven't challenged and we have no opportunity of challening.

HIS LORDSHIP: But he has said that he does not understand the difference between truth and untruth, therefore why should you assume that the jury is going to draw an unfavourable inference against your client.

MR. PHIPPS: I am not making any such assumption.

HIS LORDSHIP: The jury have heard him say he does not understand what truth is and what a lie is, so when he says something it must mean absolutely nothing; I would advise them, if necessary.

MR. PHIPPS: Could he be released from the court immediately? May I apply that he be released?

(Karyl Walker leaves witness box).

A simple point that I wish to make, that for whatever reason, the jury have been told, evidence has been given, evidence that is prejudicial to our client, no doubt about that, in circumstances where the defence has no opportunity of challenging, that

is the simple point I am bringing to your lordship's attention. We have tried from the beginning of this case to avoid these circumstances. I just bring it to your lordship's attention at this stage for what it is worth. I am not in a position to say more.

HIS LORDSHIP: Well, you wish to say anything, Mr. Robinson?

MR. ROBINSON: I wish to say nothing on that m'lord.

(Time: 10.54 a.m.)

No. 11

LOUIS DAWSON

LOUIS DAWSON: SWORN: EXAMINATION BY CROWN COUNSEL: 25th MARCH 1971:

Q. Your name is Louis Dawson? A. Yes sir.

Q. And you are a registered medical practitioner?
A. Yes sir.

Q. And district Medical Officer in lower St.Andrew?
A. Yes sir.

Q. On the 17th of March last year, doctor, sometime in the night you received a report? A. Yes I did.

Q. And did you go to Sunrise Drive? A. I did.

Q. When you arrived at Sunrise Drive did you see anything? A. Yes sir.

Q. What?
A. A body in the street and crowd surrounding it.

Q. What body? A. Female.

Q. You examined the body at that time? A. Yes sir.

Q. Was the body alive or dead? A. Was dead.

Q. Do you remember about what time was that you went to Sunrise Drive? A. No, I don't know.

Q. Now, on the 18th of March last year did you perform a post mortem examination on that same body? A. I did.

In the Supreme Court

Prosecution Evidence

No.11

Louis Dawson Examination 25th March 1971 (continued)

Q. And was that body identified to you by Franklyn Ricketts as being the body of Ruby Walker?
A. Yes sir.

Q. Did you make notes at the time of your examination? A. I did.

Q. For the purpose of giving evidence here today, would you like to refresh your memory from those notes? A. I would.

CROWN COUNSEL: M'lord, may the witness be permitted to refresh his memory?

HIS LORDSHIP: Yes sir.

CROWN COUNSEL: On external examination of the body what did you find?
A. I found the following injuries: (1) a stab wound in the middle of the chest, three-quarters of an inch long; (2) a stab wound two inches below the inner third of the left clavicle or collar-bone, three-quarters of an inch long.

Q. When you say three-quarters of an inch what you mean?
A. The length of the wound itself was three-quarter inch.

Q. What else did you find?
A. Injury number three, a stab wound two inches below the outer third of the left clavicle three-quarters of an inch long.

Q. Would you show us where that is doctor?
A. The left clavicle, right here; the inner third like the first third from the midline and the outer third in that area; stab wound number four, half an inch long on the right side at the level of the ninth rib 7½ inches from the midline in front.

Q. Where would that be?
A. In this area, 7½ inches from the midline in the region of the ninth rib. Wound number five, a stab wound one inch long, 5½ inches below the left breast and 4½ inches from the midline, that would be about this area. Injury number six, a stab wound three-quarters of an inch long, two inches from the midline in front on the right side at the level of the eighth rib,

two inches from the midline in front that would be about here, the level of the eighth rib. Injury number 7, stab wound three quarters of an inch long just above and to the right of the navel. Injury number 8, stab wound three-quarters of an inch long in the left side at the level of the 11th rib.

Q. That would be here?
A. In the left side, the area of the 11th rib. Injury number 9, stab wound one inch long at the back of the right shoulder four inches from the top and four inches down. Injuries number 10 and all; stab wound three-quarters of an inch long at the back, three inches from the angle of the left shoulder blade and separated from each other by only a thin layer of skin.

Q. Did you dissect the body, doctor? A. Yes sir.

Q. What did you find after dissection?
A. These wounds were traced and I will go through these individually as they were done. Injury number one was traced through the thickness of the chest wall passing through the breastplate between the second and third rib through the great artery leading from the heart.

Q. How deep was that wound, doctor?
A. This wound was one and a half inches in depth. Injury number two passed through the entire thickness of the chest wall between ribs two and three and in the left lung a measured distance of a depth of one and a half inches. Injuries numbers three, four and five and indeed eight and nine penetrated only the muscle. Injury number six penetrated a muscle and rib and passed through the liver. Injury number seven passed through the thickness of the abdominal wall into the abdominal cavity at the level of the navel. Injury number ten and eleven both passed through the thickness of the muscle, penetrating into the chest wall close to the spine.

HIS LORDSHIP: Thickness of the muscle?

DR. DAWSON: Yes, penetrating into the chest wall close to the spine between the 7th and 8th ribs, cutting across the large descending artery.

In the Supreme Court

Prosecution Evidence

No.11

Louis Dawson Examination 25th March 1971 (continued)

Q. Did you form an opinion, doctor, as to the cause of death?
A. Yes sir, death was due to shock from the haemorrhage resulting from stab wounds of the chest.

Q. Were these injuries, doctor, consistent with infliction by a sharp pointed instrument such as a knife? A. Yes sir.

Q. (Witness shown knife) Would a knife like that inflict the injuries you saw?
A. It could have.

Q. Exhibit three m'lord. And assuming that such a knife was used what degree of force would it require to inflict those injuries?
A. These injuries were of varying depths, some penetrating bone others mere skin - there was varied degrees of force.

Q. Let us deal with those which penetrated into the cavities?
A. Moderate degree of force.

Q. These injuries that you found, doctor, were they distinct and separate wounds?
A. They were.

Q. Can you estimate how long after receipt of these wounds would death ensue?
A. In terms of minutes.

Q. Doctor, when you say eleven distinct wounds, would each wound be caused by a separate blow?
A. A separate thrust for each wound.

DR. DAWSON CROSS-EXAMINED BY MR. PHIPPS

Cross-Examination

Q. Doctor, you told my learned friend that there would have been a separate thrust for each wound? A. Yes sir.

Q. Total amount of wounds, eleven? A. Yes sir.

Q. You have listed them starting as number one with the wound in the middle of the chest?
A. Yes sir.

Q. Right down to number eight inclusive indicating wounds to the front of the body? (Doctor looks

through papers).
A. I would think I should qualify eight as being in the side.

Q. Just touch the spot where eight was, please? (Witness touches spot). Then the 7th inclusive would be to the front of the body, eight to the side, nine, ten and eleven were dealt to the back?
A. Yes sir.

Q. Now, the order in which you have stated, the injuries you found would not necessarily be the order in which they were inflicted?
A. By no means, sir.

Q. And am I correct doctor, that there are many relative positions between the assailant and his victim and those wounds inflicted that is the position in which the deceased might have been, the person stabbed, there are many possibilities? A. Yes sir.

Q. For example, it is quite possible, assuming that the accused did it, that the accused could have been seated when he inflicted the injuries? A. Possibly.

Q. And it is quite possible, doctor, that the victim, the deceased might have been stretched across the lap of the accused when the injuries to the back were inflicted?
A. That is possible.

Q. That is, stretched across face down?
A. Yes sir.

Q. And from a medical point of view doctor, there would be nothing to prevent the victim, the deceased after the infliction of injuries to the back from turning over and then receiving the injuries to the front, from a medical point of view? A. It is most likely.

HIS LORDSHIP: Most likely that what?
A. That having received injuries to the back it shifted position.

Q. Exposing the front to attack? A. Yes sir.

In the Supreme Court

Prosecution Evidence

No.11

Louis Dawson Cross-Examination 25th March 1971 (continued)

Q. Now, injury number one, that is the one that you traced through the thickness, stab wound in the middle of the chest, three-quarters of an inch long. First of all the length of these wounds, three-quarter of an inch long, two inches, half inch, etc., you have seen the knife suggested that could have caused the injuries, the length of the wounds could have been caused by the width of the instrument itself?

A. The length of the wound?

Q. Externally?

A. Varied, between two to three-quarters of an inch and inch from a point.

Q. But when you give the length it could be caused by the width of the instrument itself?

A. Yes sir.

Q. Either a direct blow or thrust? A. Yes sir.

Q. Now, injury number one that you described as the stab wound in the middle of the chest, three-quarters of an inch long, you say that that one when you traced it through the thickness of the chest plate between the second rib and great artery leading to the heart, the depth was one and a half? A. Yes sir.

Q. Would you agree doctor, that depth could have been, well that wound could be a fatal wound by itself without the accumulation of the others? A. Yes sir.

HIS LORDSHIP: Which wound?

MR. PHIPPS: The one that went through the great artery leading from the heart? Could any of the other injuries by itself, anyone, have been fatal? A. Yes sir.

Q. Which ones? A. Ten and eleven.

Q. What about two?

A. Yes, ten and eleven, less likely than the others, one, ten and eleven.

Q. So the injuries which could have been fatal by itself were one, ten and eleven, anyone of those three? A. Yes sir.

Q. In 10 and 11 the vital organ damaged was the descending artery? A. Yes sir.

Q. What artery was that?
A. The descending aorta.

Q. And the great artery, injury number one?
A. The ascending aorta.

Q. Just this I want to hear, which of those injuries, one, ten and eleven from the back, which one in your opinion, which injury is fatal assuming one took place and nothing else, and assuming ten and eleven took place and nothing else, which one could have caused death earlier? Assuming injury one had taken place and nothing more, on the other hand assuming ten and eleven had taken place and nothing more, the time of death between one, ten and eleven?
A. I think possibly little difference and if there is, number one.

Q. Now, you have told us doctor, of the injuries you saw you were doing a post mortem examination and you knew at the time that there was an allegation of murder? A. Yes sir.

Q. And I take it, doctor, that you were as usual careful on your examination? A. Yes sir.

Q. Doctor, did you see anything to suggest any old injuries on the body of this girl at all?
A. No sir.

Q. She was apparently from your examination, the body was that of a healthy person for her age?
A. Yes sir.

Q. No signs of any illtreatment? A. No sir.

Q. Just the recent injuries that you have described?
A. Yes sir.

MR. PHIPPS: That will be all. Thank you m'lord.

MR. ROBINSON: No re-examination.

HIS LORDSHIP: Thank you doctor, you may go. Thank you for coming.

In the Supreme Court

Prosecution Evidence

No.12

Noel March

Examination 25th March 1971

No. 12

NOEL MARCH

NOEL MARCH: SWORN: EXAMINATION IN CHIEF BY CROWN COUNSEL: 25th MARCH 1971:

Noel March, registered Medical Practitioner and Pathologist in charge of the Forensic Laboratory.

Q. On the 21st of March 1970, Dr. March, did you receive anything from Acting Corporal Lumley?
A. I received from Mr. Phillips, technician at the laboratory. I was not in office then.

Q. What did you receive?
A. A sealed parcel and sealed envelope, about thirteen parcels in one of them.

Q. Did you carry out an examination of the contents of these parcels? A. Yes, I did.

Q. Did you make notes at the time? A. I did.

Q. Did you receive a parcel marked "A" doctor?
A. Yes sir.

Q. Containing what?
A. Contained one pink dress received with eight cuts on the front and four on the upper part of the back.

Q. Before you go further doctor, show him that. (Exhibit shown to doctor) Is that the dress?
A. Yes sir.

Q. Exhibit 6 m'lord. Would you show us where the cuts are on that dress?
A. These surrounded by yellow; these ranging from half an inch to three-quarters of an inch in length but there was also a button detached from the front on examination, blood was present in clots, red, brown, pale brown stains on the back and front with the greatest concentration on the front - upper front and back - that was of group "A".

Q. Did you also receive doctor, a parcel marked "E"?
A. Yes sir.

Q. Contained of what? A. One black handled knife.

Q. Is that the knife, doctor? A. Yes sir.

MR. ROBINSON: Exhibit three m'lord.

HIS LORDSHIP: Is this parcel "B"?

A. No sir, "E". That had a slight accumulation of rust on the handle and blade. On examination human blood group "A" was present in the form of brown stains on the blade and handle.

Q. This was group "A" you say, doctor?

A. Yes sir.

Q. That is the same blue thing that you found on the pink dress? A. Yes sir.

Q. Did you also receive, doctor, a parcel marked "F"?

A. Yes, contained one cream coloured stripe shirt. (Exhibit shown to witness) Yes, sir.

Q. Exhibit 7 m'lord.

A. Human blood was present in the form of drops and brown stains on the front and on the sleeves with greatest concentration on the sleeves - these areas surrounded by marks. It was not possible to get a conclusive grouping on that.

Q. Did you also receive and examine parcel marked "I"?

A. Yes sir, contained a pair of brown stripe trousers.

Q. Exhibit 8.

A. On examination human blood group "A" was present in the form of brown stains on both legs; these areas surrounded by yellow pencil.

Q. Group "A" you say doctor? A. Group "A".

Q. Similar to the group you found on the pink dress and the knife? A. Yes sir.

Q. Did you also receive doctor and examine a motor car?

A. Yes, I got scrapings from a Singer Vogue car showing human blood. These were taken from small brown smudges on the inner facing of the

In the Supreme Court

Prosecution Evidence

No.12

Noel March
Examination
25th March 1971
(continued)

right front door and also from the left front seat. The amount wasn't sufficient for grouping.

MR. ROBINSON: M'lord, may the witness be permitted to look at the car downstairs? Yes.
A. I didn't take the scrapings from the car; scrapings were brought to me.

Q. I merely want you - you saw the car?
A. I did not see the car.

MR. PHIPPS: Could your lordship assist me here. Did the witness give evidence of what was found on the car?

HIS LORDSHIP: He said he examined scrapings from a Singer Vogue car and the scrapings showed human blood but it was insufficient for grouping.

MR. PHIPPS: And he himself did not take the scraping?

WITNESS: No, they were taken by one of my senior technicians, Mr. Phillips.

MR. ROBINSON: You said the scrapings were taken by one of your senior technicians?
A. Yes sir.

Q. Doctor, how common is group "A"?
A. In Jamaica its the second commonest of four groups.

Q. What is the most common? A. "O".

CROSS-EXAMINATION BY MR. PHIPPS

Cross-Examination

Q. On the pants, doctor, the trousers, the blood you found was from the knee downwards?
A. Yes sir, the lower half.

Q. On the front, the yellow marks, those on the front - I think you also received a pair of hush puppy shoes? A. Yes sir.

Q. Marked "H"? (Witness looks through papers)
A. The shoes marked "M".

MR. PHIPPS: I am so sorry. There was blood on

that, wasn't there?
A. Yes, sir, human blood on the uppers.

Q. And you received a tie marked "H", brown tie?
A. Yes sir, brown tie.

Q. And there is no blood on the tie?
A. No blood.

Q. Am I correct that the blood on the shirt that you said it was inconclusive for grouping, am I correct that you are unable to give an opinion, form an opinion as to the grouping because of the insufficiency?
A. It wasn't so much the insufficiency but I think there was contamination.

Q. It is not a question of quantity?
A. No sir, we had sufficient quantity.

MR. PHIPPS: That is all.

HIS LORDSHIP: Any re-examination?

MR. ROBINSON: Just a moment. M'lord, may I crave your leave to ask something which I do not think arises out of cross-examination?

HIS LORDSHIP: What is it?

MR. ROBINSON: In relation to the technician who handed Dr. March the scrapings.

HIS LORDSHIP: Any objection, Mr. Phipps?

MR. PHIPPS: I don't know what the question is.

HIS LORDSHIP: I am allowing it, if Mr. Phipps wishes to object he may object. Ask the question.

MR. ROBINSON: Dr. March, what is the name of the technician who handed you .... A. Mr. Phillips.

HIS LORDSHIP: Handed you what?
A. An envelope containing some powder, brown powder which was examined and found to be human blood.

HIS LORDSHIP: These are what are described as the scrapings from the car? A. Yes sir.

Q. And is this part of his duty? A. Yes sir.

In the Supreme Court

Prosecution Evidence

No.12

Noel March Cross-Examination 25th March 1971 (continued)

HIS LORDSHIP: Any questions on that, Mr. Phipps?

MR. PHIPPS: Mr. Phillips is employed to take scrapings from car?
A. Yes, sir, any of the technicians may.

MR. PHIPPS: Paid by government? A. Yes sir.

HIS LORDSHIP: Yes, do you wish to keep Dr. March here? Thank you very much for coming Dr. March. You may go.

Time: 11.46 a.m.

MR. ROBINSON: M'lord, I wish to apply to be called, Detective Acting Corporal Lumley.

HIS LORDSHIP: To do what?

MR. ROBINSON: In relation to the evidence dealing with the taking of the scrapings from the car.

HIS LORDSHIP: Any objections, Mr. Phipps.

MR. PHIPPS: No sir.

No. 13

UNSWORN STATEMENT OF LEARY WALKER

Defence Evidence

No.13

Unsworn Statement of Leary Walker 25th March 1971

Time: 2.09 p.m.

We were married in 1960.

HIS LORDSHIP: You see, this is your defence. Now, the jury must hear what you have to say because they have to judge your case. Speak up and let everybody hear what you have to say.

ACCUSED: We were married in 1960, Eula and I. She went to the University 1960 and subsequently graduated ....

HIS LORDSHIP: No, no, that is not good enough.

ACCUSED WALKER: She went to university in 1960 after our marriage and subsequently she graduated. We had two children after. In 1968 by agreement I went to New York to further my studies. She

followed with the children. We lived happily until the middle of 1969. One day on getting home, collected the letters and saw her behave peculiarly, furtively, with a letter that had returned in the mail. This letter she had written to a man in Jamaica and we had a quarrel over it. She admitted that she had been having improper relations with a man. We wrote to Colonel Morris at the Salvation Army and asked his advice on the matter. We tried but it didn't help us very much. She returned to Jamaica in July 1969. I followed shortly. She came home to live with her mother and I came to her mother's place. We had a family conference. We were reconciled and it was decided that I should go back to New York, tidy up our business, abandon the studies and come home. I returned the end of 1969, lived with her at her mother's house.

In January 1970 on her birthday, 19th of January, I was waiting on her at home with a present and card, and she didn't get home until about nine o'clock the night and she was dropped. She was brought home by a man whom I saw. Well, I protested and we had a quarrel on this. The following day I was asked to leave the home. Well, I left. The statement I gave to the police on the 17th of March is true.

While we travelled in the car we quarrelled about the man whom I saw driving her that evening, the same man who had dropped her home on January 19. Well, she flew into temper and said well, is me damn man and if you don't like it you can go and kill your blasted self. Well, I was shocked.

HIS LORDSHIP: It is my damn man and what .....

ACCUSED WALKER: If you don't like it you can go and kill your blasted self. I was surprised because strong language was never used in our family, never. After saying that she stopped the car and rushed out. I went at her, held her and pulled her back into the car. Now, I was over in the driver's seat. She fell across my lap and in the course of the struggle to get her inside the car she had grabbed and held on to my testicles, squeezed me. I felt a severe pain, cramp - I felt I was going to faint or something. I remember having seen a knife in the centre tray trough of the car, along with a

In the Supreme Court

Defence Evidence

No.13

Unsworn Statement of Leary Walker 25th March 1971 (continued)

cigarette lighter. I reached for the knife. Beyond that I don't recall anything until I heard Karyl say, "dada, why you kill mummy?"

HIS LORDSHIP: I can't hear.

ACCUSED WALKER: I heard Karyl the baby say, "dada why you kill mummy", then I knew something had happened. The rest is explained to the police.

HIS LORDSHIP: Don't address anybody else in the court, is that all?

ACCUSED WALKER: Yes.

(Time: 2.26 p.m.)

ADJOURNMENT AT 2.30 P.M.

No.14

Vincent Williams Examination 26th March 1971

No. 14

VINCENT WILLIAMS

DR. VINCENT WILLIAMS: SWORN: EXAMINED BY MR. RICHARD SMALL: 26th MARCH 1971

Q. Is your name Vincent Williams?
A. Yes, sir.

Q. Doctor, where are you stationed?
A. I am at Bellevue.

HIS LORDSHIP: Mr. Small, would you keep your voice up please, the accoustics here are so bad.

MR. SMALL: What are your qualifications, doctor?
A. I am a doctor of medicine and I have a diploma in psychological medicine.

Q. And are you the senior medical officer at Bellevue? A. Yes, sir.

Q. Would you tell the court and jury what is your experience in psychiatric medicine?
A. Well, I have been doing psychiatry from about 1949. I have been a consultant at Bellevue Hospital since 1957 and I have been senior medical officer since 1965.

Q. And that is a total of about twenty-two years?
A. About that, sir, a little less, I think it is about 20 years.

Q. Doctor, on the 23rd September, last year, 1970, did you examine the accused Leary Walker?
A. May I refer to my notes?

HIS LORDSHIP: Yes.

A. Yes, I examined Leary Walker on the 23rd September, 1970.

Q. This was at the hospital?
A. Yes, sir.

Q. After your examination, did you form an opinion of the psychiatric state of the accused, on what it was likely to have been at the time of the incident in March, 1970?
A. After I examined the accused I formed an opinion of his mental state at the time of the examination. I read the depositions.

HIS LORDSHIP: At what time. Could we proceed in some form or order? We have got so far the doctor examining the patient. It is entirely a matter for you but wouldn't it be more convenient to go through the doctor's examination, then get his opinion after that examination and then deal with the condition or mental condition of the patient at the time of the incident. If it is not convenient don't follow that but you seem to be going up and down.

MR. SMALL: It is convenient Your Lordship.

HIS LORDSHIP: If you take the patient or the accused man from the time he is sitting in the doctor's chair and the doctor is experienced he will tell you what he found.

MR. SMALL: Doctor, what were your observations of the accused during the examination?

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Vincent Williams Examination 26th March 1971 (continued)

A. Well, physically, his pulse was seventy-six beats per minute.

Q. What?

A. Beats per minute, his hands were cold on palpation and there were tremors of the fingers, fine tremors of the fingers. His pupils were dilated, they were rounded, regular and equal and they reacted to light accommodation.

In the psychiatric examination I observed that he sat quietly in the chair with smiling, alert, mobile facial expression. Mobile facial expression means that his countenance changed appropriately to questions asked. If they were pleasant, his face was pleasant, if unpleasant, his countenance would reflect it. He became fidgety and gesticulated freely as he moved his arms about and spoke copiously at times. There was no other unusual motor activity. He was cooperative and attentive with good rapport, that is, he related well to examination, he was not resentful or restless or suspicious. There was no spontaneous speech, he did not speak without being spoken to. He answered questions relevantly and rationally. His affect was appropriate, meaning his emotional reactions were appropriate to the situation in which he was, but he was excitable, he was excited. He appeared worried but attempted to display an attitude of resignation, tried to put the best face forward. No specific preoccupation or thought was elicited - by that was meant he had no fantasies or any disorder in his thought processes. His sensoria was clear and he appeared to be of average intelligence clinically. By that is meant he was correctly orientated in his environment at the time - knew what time of day it was, where he was, who he was and that sort of thing. His emotional tone interfered with his judgment. He showed some impairment of his judgment due to his emotional state at the time of the examination.

MR. ROBINSON: Would you say that again, I did not get the last part of it.

HIS LORDSHIP: Yes?

MR. SMALL: His emotional tone was of such that it interfered with his judgment, that is at the

time of the examination, his emotional state.

HIS LORDSHIP: What does that mean, does that mean that when he got excited he raised his voice?

A. No, sir, it means that he was excited, as I told you, in the examination and he became excitable - this is an increase in his emotional tone and his responses to questions showed that his judgment was not as good as it ought to be. If he were in a state in which he was not as excited his judgment would be nearer to what would be expected from an individual of his intelligence.

MR. SMALL: You formed an opinion as to his psychiatric health?

A. Yes, from his physical and psychiatric examination I came to the opinion that he was not mentally ill at the time of the examination, but was of a neurotic personality type. By that is meant that he was an unstable, emotionally unstable individual with a maladjustment possibility.

Q. Doctor, would you accept as a layman's definition of neurosis - it is a functional derangement due to a defect of the nervous system?

A. That is the general definition.

HIS LORDSHIP: Please repeat that for me.

A. A functional derangement due to disorders of the nervous system.

HIS LORDSHIP: You would say that he had a functional derangement due to what?

A. Disorders of the nervous system.

MR. SMALL: You said you read the depositions, doctor, in this case?

A. Yes, I read them - after examining the individual I read the depositions.

Q. From your examination and from the history he had given you and from reading the depositions, did you form an opinion as to his mental state at the time of the incident?

A. Yes, I did.

Q. What was it?

A. I formed the opinion that he was not psychotic at the time of the incident.

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Vincent Williams Examination 26th March 1971 (continued)

HIS LORDSHIP: Just a minute. Could you explain to the jury what you mean by 'psychotic'?

A. Well, a psychoses is a condition in which there is a disorganisation or deterioration of the personality .....

HIS LORDSHIP: Are you saying you came to the conclusion after reading the depositions, taking his history into account, examining the patient, that he was at the time of the alleged occurrence not disorganised?

A. His personality was not disorganised or deteriorating. In other words, a closer definition is that he was not insane at the time of the incident, but that his judgment may have been substantially impaired at the time of the incident.

MR. SMALL: Doctor, this neurosis that you describe, would you call it inherent? Would you describe it as an inherent cause?

A. Yes, it is an inherent condition.

Q. Of the patient?

A. Of the individual.

HIS LORDSHIP: An inherent what? A. Condition.

MR. SMALL: Doctor, from reading the depositions and hearing the history you would be familiar with the circumstances of the death of the deceased. I would like to ask you whether bearing in mind the kind of personality you called it of the patient and assuming that there was marital stress, that the patient had to abandon his studies - would you agree that ... ?

HIS LORDSHIP: Wait a minute. Assuming that there was marital stress .... ?

MR. SMALL: And the patient had to abandon his studies and that medically around the time of the incident there was a question of marital infidelity, would you agree that this ....?

MR. ROBINSON: M'lord, before the doctor answers, I don't think there is any evidence that the accused man had to abandon his studies.

MR. SMALL: May I remind my friend .....

HIS LORDSHIP: I think learned counsel is putting to him a hypothetical case.

MR. ROBINSON: M'lord, learned counsel prefaced his remarks by reminding the doctor of the history and also the depositions. I assume from that that what he is putting to the doctor is not a mere hypothesis but based on the evidence, and there is no evidence in this case that the accused man had to abandon his studies.

HIS LORDSHIP: I will allow the question to be put for what it is worth, the jury are sensible men and women and reasonable men and women and they will make what they can of all this.

Yes, doctor, assuming he had to abandon his studies, assuming he was not happy with his wife, assuming that he was under some sort of marital stress - what is the question now?

MR. SMALL: The question is: the combination of these factors plus the personality which you saw, wouldn't this stress bring on a situation where he could snap, that is to say that he could go to pieces?

A. Yes.

HIS LORDSHIP: But I am not quite sure I understand this. Doctor the same thing could happen to you, couldn't it?

A. That is correct, but the amount of stress .....

HIS LORDSHIP: If you had marital stress and if you had to break into your studies, and if you had a number of emotional upsets, you could snap, anyone could snap, I could snap or any one of the members of the jury could snap.

A. But depending on your basic personality the degree to which you would snap would be affected.

HIS LORDSHIP: Yes.

A. And then the stress is peculiar to the individual, the reactions to stress are always peculiar to the personality type of the individual.

MR. SMALL: And this personality you refer to is the neurotic personality?

A. Yes.

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MR. SMALL: Doctor, I would like to add to that a few more circumstances. Suppose that such a personality on the same day had observed his wife with another man and that she used abusive language and in addition to that there was physical injury, in particular the squeezing of his testicles also, all these factors plus the symbolism of the injury to his testicles, isn't it more likely to have brought on this case?

A. These added things would make the stress greater and would be more likely to cause more impairment of judgment.

HIS LORDSHIP: Just let me get that. If this man had .... what was it Mr. Small ...? Received a letter?

MR. SMALL: No, m'lord.

HIS LORDSHIP: Just repeat that for me.

MR. SMALL: Including the circumstances of the particular day, that is one, seen his wife ...

HIS LORDSHIP: If this man, this accused man ...

MR. SMALL: Seeing his wife with another man.

HIS LORDSHIP: Had seen his wife with another man.

MR. SMALL: That he had questioned her about it and for the first time she admitted that it was her man and abused him and there was physical injury ...

HIS LORDSHIP: And that his testicles were squeezed?

MR. SMALL: Yes, m'lord. If all this would not make it more likely, and I think the doctor said it would make it more likely that the mental state described, the stress would have brought it on.

HIS LORDSHIP: This would increase his stress?

DR. WILLIAMS: Well if the stress is increased it would increase the likelihood of his judgment being further impaired.

MR. SMALL: I want to ask you also, doctor, bearing in mind the situation which I have just asked you about, isn't it possible for a person in such a circumstance to act in an involuntary way?

A. Yes, it is possible, it depends on the behaviour pattern that is peculiar to the individual. In other words it is difficult to predict how, the means by which a person would act, the method he would employ, he or she would employ in such a circumstance, but they could act in an involuntary way.

Q. In fact, the way in which a person acted could vary, it could either be in a violent or it could be in a passive way?

A. Yes, and it may vary in the same individual at different times depending upon his assessment of the threat to his own security.

Q. Doctor, for instance, I believe in psychiatry the phenomina of act of heroism ...

HIS LORDSHIP: Act of what?

MR. SMALL: Heroism ... have been studied. Can you describe if there is any similar pattern in the automatism you just described?

HIS LORDSHIP: You are using a number of words and I want to be clear about what the suggestion is so that I can eventually put it to the jury. This is the first time you are using the word 'automatism', which is not a term in law but which the courts have heard about and expressed some views on.

MR. SMALL: I will alter the phrase, m'lord.

HIS LORDSHIP: You have used the word 'reflex' and you have used the word 'involuntary' movement'. Now which one of these or are you asking me to put all three to the jury?

MR. SMALL: M'lord, I will rephrase the question to the doctor. As an example of the involuntary behaviour, doctor, does it show itself in acts of heroism. Does it show itself in acts of heroism?

A. Would you repeat the whole thing, I did not get it.

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Vincent Williams Examination 26th March 1971 (continued)

MR. SMALL: The acts of an involuntary nature you refer to, does it show itself sometimes in acts of heroism?
A. In acts of ....?

MR. SMALL: Heroism.
A. Oh, yes, it has been shown that some acts of heroism are really what is known in psychiatry as a fugue state.

HIS LORDSHIP: As a what?
A. Fugue state or state of automatism, that is, an individual is behaving ...

HIS LORDSHIP: Sometimes a heroic act is a ... ?
A. Involuntary ....

HIS LORDSHIP: Is an automaton?
A. Without his own control.

HIS LORDSHIP: Sometimes a hero acts as an automaton and in this case this man may have been acting as a hero?

MR. PHIPPS: No, m'lord, may I interrupt here. Really I protest any such suggestion.

HIS LORDSHIP: What is the question?

MR. PHIPPS: I think this is reducing a serious point to the realm of the ridiculous and I do protest.

HIS LORDSHIP: I hear your protest but what are you protesting about?

MR. PHIPPS: I am protesting about any suggestion that the defence is trying to say that in this case, as it appears Your Lordship means to make it, the accused man may have been acting as a hero and I do resent it.

HIS LORDSHIP: I am not taking any view, I am trying to understand (a) what questions the learned counsel is asking, and (b) what answers the doctor, the witness is giving.

MR. PHIPPS: At no stage did learned counsel suggest that the acts of heroism are attributable to the accused man. What he did say is that the

type of reaction, the involuntary reaction that might have taken place in the accused man also manifests itself on occasions of heroism - an illustration of involuntary acts which are called automatism. That is the point he is making, he is giving illustrations, in one case it can be violent, in another case an act of heroism, and it has been involuntary all along.

HIS LORDSHIP: This is exactly what I am grateful to you for, for if I am in doubt about the question that is being asked and the answer given it is a clarification such as the one you have just given that I am delighted to have.

MR. PHIPPS: For the moment I became over anxious Your Lordship was seeking from the doctor if there is a suggestion that this man may have been a hero.

HIS LORDSHIP: No.

MR. PHIPPS: I hope I have clarified.

HIS LORDSHIP: In the end I will be telling the jury they must make of the doctor's evidence what they think is the right thing or the reasonable thing.

MR. PHIPPS: I hope my intervention has clarified it.

HIS LORDSHIP: I just wanted to understand what was meant by the introduction of the word 'heroism'..

MR. PHIPPS: I thought my learned friend made it quite clear.

HIS LORDSHIP: ... and an example of an act of automatism as it related to heroism and I wanted to know whether the doctor would say that it applied in this particular case, to this particular patient.

MR. PHIPPS: No, the question of heroism, the question of involuntary act similar to involuntary acts as are sometimes commendable - that is the point.

MR. SMALL: Doctor, I hope it is clear to you that

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at no time I asked you that the patient acted in heroism, acted as if he was a hero. I at no time asked you that question. I am just asking you if in such a state a person can do an act which appears to other people to be a heroic act when in fact he did not have any actual control over his acts.

A. That is what I understood from your question and hence I answered.

Q. I am very grateful to you doctor. Equally, a person under such a condition could do an act which appears to be reprehensible to other people when in fact he had no such control over his acts.

HIS LORDSHIP: Just one minute. A person under such circumstances might commit an act which would appear or might appear reprehensible to other people - is that right?

A. Yes, sir, but would have been done involuntarily and these are the two extremes of the type of behaviour. You may have any variation in between the two extremes - it is not so heroic and not so reprehensible sort of thing.

MR. SMALL: I just want to ask you one other question in relation to that: that automatism, to use your word, doctor, can be an spect of the neurosis?

A. Yes, it is one of the signs, it does not occur only in neurosis but it is one of the signs of neurosis or mental illness.

MR. SMALL: May I just ask this also, under such a state of automatism, a person can perform well integrated acts?

A. Yes, that is where the reflex comes into it.

HIS LORDSHIP: Well integrated?

MR. SMALL: Well integrated acts.

A. Or perform reflexes - it is the same word.

MR. SMALL: Doctor, is it correct to say that this state can come to an end when you have a state which I describe as the period of awareness, there is a moment of awareness?

A. Yes, all these states do have an end, they are usually sudden in this type of illness - in a

neurotic condition usually a sudden break and a sudden return.

HIS LORDSHIP: There could be a sudden return to awareness?

A. Complete awareness. I would like to just clarify that if I may - in a case of a neurotic person, in the case of a person who is sort of in a state of automatism because of another condition there may be a gradual return.

MR. SMALL: In fact, doctor, assuming that person's son had said to him: "Daddy, why did you kill mummy"? Could something like that bring on a state of awareness?

A. That could bring it on, for to kill someone we love, to most of us is a reprehensible act, against our moral principles and we respond to that in a dramatic way.

Q. That could jerk you up?

A. Yes, sir, like throwing cold water on someone, ice water.

Q. And, doctor, aren't there states or features, after this period of awareness, which can assist you in diagnosing the earlier state?

A. I don't quite follow that question.

Q. The subsequent conduct being in keeping, is there any pattern in keeping with the earlier state of automatism?

A. I am not really sure I understand.

Q. Do you suppose after awareness, doctor, if the patient had been asked: 'daddy, why did you kill mummy' and his reply was 'there was nothing left for me to do' - is that consistent with the condition which you have described?

A. Yes, that is consistent with the condition I would expect, assuming the other stressful conditions are there.

Q. And if the patient then drove away from the scene and eventually spent two days up in the hills, would that be consistent with the condition?

A. Yes, I would expect from his personality. He has now been jerked back into, shall we say, the realm of reality and now realises the

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Vincent Williams Examination 26th March 1971

(continued)

Cross-Examination

enormity of the offence he has committed and I would imagine immediately going into a panic state which is another form of or another complexion of neurotic condition.

MR. SMALL: Thank you very much, doctor.

DR. VINCENT WILLIAMS: CROSS-EXAMINED BY MR. ROBINSON, CROWN COUNSEL:

Q. Doctor, is it your evidence that the accused man whom you examined acted in an involuntary way on the night of the incident?

A. During, about the time of the incident?

Q. Yes. Do I gather from what you have been saying that the accused man acted in an involuntary, automatic way on the night of the incident?

A. Assuming that the facts that have been put to me are correct, then it is my opinion that it is likely that he behaved in this way.

HIS LORDSHIP: Just a minute: it is likely ....?

A. That his behaviour could be explained by his judgment being impaired as a result of the facts that were put to me.

MR. ROBINSON: I am not asking about impairment of his judgment at this stage, I am dealing specifically with the question of automatic behaviour. What is your factual basis, doctor, for giving that as your opinion?

A. Well, the factual basis for giving it as likely that this could occur is that he is of a neurotic personality type, and a neurotic personality type when faced with stress - in fact all people when faced with stress are likely to behave in a way that is not their usual pattern of behaviour ....

Q. But I am not talking about their usual pattern.

MR. SMALL: He is not finished, let the doctor finish.

DR. WILLIAMS: ... and if such a person is of a neurotic personality type it is likely that his behaviour can proceed through all forms of disturbed patterns, finally reaching automatism and further collapse.

Q. Tell us what you mean precisely by 'automatism'?
A. Automatism is a state in which a person carries out well integrated acts without being consciously aware of carrying out these acts.

Q. And do I understand ....

HIS LORDSHIP: Just a minute.

MR. ROBINSON: Do I understand that your only reason for saying that it was likely that the accused acted in this automatic state is the fact he is of a neurotic personality?

MR. PHIPPS: The doctor is quite clear. Assuming that certain facts related to him are correct - that, in addition to the neurotic personality. The questioner suggests that the doctor said something he has not said at all.

MR. ROBINSON: The doctor can answer, let the doctor answer.
A. Yes, I said a person with this personality and having the stress that I am informed he had, then it is likely - I am not saying he was in a state of automatism, I am saying these facts may produce - it is likely.

Q. You are not saying he was.
A. I cannot say this, I can only say it is likely from the facts related to me, bearing in mind his personality, it is not inconsistent.

HIS LORDSHIP: Just a minute ... I am not saying that he was in a state of automatism but I am saying ..."
A. That given his personality and the stresses at the time ...

HIS LORDSHIP: As related to you?
A. As related to me, yes, then it is likely ...

MR. ROBINSON: So you have given two factors now - the neurotic personality and the stress.
A. The stress, that precipitates the behaviour; it is the stimulus that precipitates the behaviour.

Q. Am I correct in saying that there are two factors which conduce to your opinion that he

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Vincent Williams Cross-Examination 26th March 1971 (continued)

may have been acting in this automatic state, one, his neurotic personality type, and two, the stres that he was undergoing?

A. Yes, the stress at the time.

Q. By stress you mean emotional stress?

A. Yes, emotional stress.

Q. And this neurosis, would that be a disease of the mind?

A. Yes, it is a disease of the mind.

Q. And the stress, would that also be related to a disease of the mind?

A. No, stress is the stimulus, much the same way as if you had pneumonia the bacteria invades your lung, is the stress or stimulus - the condition you develop is the result of your inherent constitutional state - it is similar to neurosis.

Q. Now, doctor, I think you said that in this state, the state of automatic behaviour comes on suddenly?

A. Yes, it does.

Q. And then the person snaps out of this state?

A. Yes, but I would ...

Q. If the evidence is, doctor, that the testicles of the accused was being squeezed and he suffered a severe cramping pain which brought on a faint feeling, and then the accused remembers having seen a knife and then he reaches for this knife and the evidence is that after reaching for the knife he remembers nothing until his son says to him, "Daddy, why did you kill Mummy"? Are the factors which I have described to you, leading up to the loss of memory conducive with this state which you have described?

A. It is not conducive to the state 100% but I would say that would ...

Q. It is not conducive to the state 100%?

MR. SMALL: May the doctor be permitted to finish his answer .. 'but I would say' ...?

A. It lessens the conclusion, lessens the likelihood that the state of automatism explains the forgotten period, the amnesia.

Q. Now, doctor ...

HIS LORDSHIP: Just a minute, I am getting to the stage where I almost need the assistance of the psychiatrist myself.

MR. SMALL: It means Your Lordship is quite normal.

HIS LORDSHIP: I am not quite sure I understand your question Mr. Robinson, it was such a long and involved question and contains so many different sets of hypotheses that I wonder whether you would be good enough, if you can, to condense the question and then let me get some sort of condensed answer from the doctor that I can understand. What it is you are asking and what it is he is saying and I would prefer if the doctor would refrain from expressions like '100%' and so on because I cannot put this case to the jury on the basis of percentages of maladjustment.

MR. ROBINSON: If that is his evidence I see no objection to that at all.

HIS LORDSHIP: Just try and condense your question a little bit. Instead of fifteen hypothetical propositions if you could reduce them to about five.

MR. ROBINSON: What I did, m'lord, was to put the evidence in its entirety to the doctor. Now what I propose to do is to isolate specific instances from that evidence, put them to the doctor and ask him whether that particular factor could conduce to the state he described.

HIS LORDSHIP: The circumstances that you have just related, because it is evidence I must get from the doctor, the circumstances you have just related might lessen the likelihood that the ...?

A. ... accused was in a state of automatism during the period of forgetfulness which I have been informed and asked about.

MR. ROBINSON: Doctor, perhaps you could tell us which of the circumstances would lessen the probability of your conclusion.

A. Well, before I do this I would like to be

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understood that this is a continuing state of a person losing his judgment. What I said was that the state of automatism started suddenly - you see an individual in a state of automatism is a more severe state than having lost your judgment. As I understood your question, you said that the accused knew he saw a knife, knew he reached for it, he remembers all this and then he does not remember what happens afterwards. What I am saying is that the period between his seeing the knife - the period when he does not forget - you have told me that he says he remembers this period, so if he remembers then he is not in a state of automatism. That was the question I was answering and that is why I said it cannot be 100% for during this period his judgment is being progressively impaired and I cannot give the identical point at which, if he was in a state of automatism, the physical point at which he actually lost his break.

Q. You see, doctor, I am going to deal later with impairment of judgment and I suppose to be fair to you it may be necessary in your answers to me to mention impairment of judgment, but right now I am dealing with the question of automatism, and do I understand you to say that the act of the accused, of remembering the location of the knife and his reaching for the knife are acts which would make it less likely that he was in an automatic state?

A. That is correct.

MR. ROBINSON: Is that clear to Your Lordship?

HIS LORDSHIP: Thank you, Mr. Robinson.

MR. ROBINSON: Because those are voluntary and deliberate acts?

A. No, not because of that but because he remembers them.

Q. Doctor, in your examination of the accused did you test him as to his powers of recollection, his memory?

A. Yes, we test powers of recollection. I have stated that his intelligence is average.

Q. Dealing specifically with his memory, what were

your findings in this regard to his memory?
A. In relation to what?

Q. His recollection of events.
A. At the time of the incident? I never ask patients these questions, they are of no relevance to the doctor. My job is to find out if he is ill at the time I am examining him and when one asks an accused person about incidents that are emotionally charged you get all sorts of unreliable answers and I would have no way of checking this, so I have to use objective methods of testing.

Q. So you carried out no tests as to his memory?
A. I did but they were not emotionally charged.

HIS LORDSHIP: This is where I am going to lose you again, Mr. Robinson. You asked this question, the doctor said, yes, at the time of my examination I tested his recollection and his powers of memory and I think he went on to say he found him to be of average intelligence with regard to recollection and memory at the time of the examination.
A. That is so.

MR. ROBINSON: I did not understand that.

HIS LORDSHIP: And you went on to the time of the alleged occurrence.

MR. ROBINSON: So you found him to be of average intelligence at the time of your examination with regard to his powers of recollection?
A. Yes, attributable ...

Q. Would you expect the accused at this stage - well let me ask this first: Did you find out at the time of your examination from the accused any details as to the occurrence in March of last year?
A. No, sir, as I intimated before, in examining patients we don't ask emotionally charged material, we try to be objective, we ask neutral questions. If they volunteer it is a different matter.

MR. ROBINSON: I accept that.

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HIS LORDSHIP: You did not ask any questions relating to what had happened?
A. At the time of the ...

HIS LORDSHIP: ... alleged occurrence.
A. This usually causes a great deal of confusion and it is a most unreliable method and it may cause the individual to be mute.

MR. ROBINSON: Doctor, you also gave evidence that the state of awareness could have been brought on by the words: "Daddy, why did you kill Mummy?" Now this awareness that you described, what would it be an awareness of?
A. An awareness of his present situation at that time, like an individual who is conscious or ..

Q. Awareness of having done something. Would it be an awareness of his having done something?
A. Yes.

Q. And his subsequent journey to Coopers Hill and his spending two or three days there is also consistent with this awareness of his having done something?
A. It is more consistent in my mind that he became aware at the moment when his son made the comment to him, that this is a new stressful situation created for him, this is a new stimulus, the basic personality remains the same. Faced with the enormity of his deed or the allegation made to him by his son, it is likely that he now went into a state of panic and ran away - fugue state or automatic state at first then fugue state or ordered consciousness, but in fact there was another stressful situation created than can explain his behaviour quite successfully.

Q. From your examination of the accused would you expect that the details of the actual event would be lost to his memory?
A. No, sir. From my examination of the individual there are periods in which it is likely that he would not know what was going on, there are periods in which he would be in a state of ordered consciousness, that is, you are not completely aware of your surrounding or what is going on, you are vague. There may be periods in which you are in complete awareness

of what is going on, so these different states of awareness I am in no position to state if it stopped here and began there, unless great detail is gone into, but the whole picture, and this is the usual pattern, is that we human beings when faced with stress of this nature and break down, that they go through all these periods, in other words many combinations.

MR. ROBINSON: I think your first answer was 'No'. To be quite fair to you you are saying there are periods he would remember in detail and periods he would not remember in detail?

A. Yes, that is so, there are periods when he is in complete awareness or not severe disturbance of awareness in which he would remember in details, may be not correctly too, but there are periods in which he is in a state of altered consciousness, remembers some but not all the details. But when in a state of automatism he will remember no details during this period.

Q. When he is in a state of automatism he would recollect no details you say?

A. During that period.

Q. That is after the incident he would recollect nothing of the incident if he were in an automatic state. Is that what you are saying?

A. I did not hear you.

Q. Are you saying that if he were in an automatic state all of the incidents he would recollect nothing of the details of the incidents?

A. No, during the period of automatism.

Q. During the incident he would not recollect anything?

A. I am not sure I follow your question. Can you repeat it for me?

Q. During the automatic state he would not know what he is doing?

A. During this period he would not know what he was doing and he would not remember what he was doing during this period.

Q. That is not what I asked you.

A. I am sorry.

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Q. I was not asking you about the knowledge of the accused of what he was doing during this state, I am talking about the period after the incident - would you expect him to recollect anything?

A. Yes, he would recollect all the incidents in varying degrees of clarity depending on his state of awareness to the moment when he lost complete break - when he went into a state of automatism.

Q. And would you expect, doctor, that his recollection of this incident would increase the further in time he was away from the incident?

A. I really don't follow you.

Q. Well, let me put it to you, doctor, three days after the incident the accused man gave a stateement in which he gave details as to the immediate circumstances leading up to the killing of the deceased.

HIS LORDSHIP: Yes, Mr. Foreman?

FOREMAN: One of the jurors would like to go to the lavatory.

HIS LORDSHIP: Yes, certainly. Would any other member of the jury like to go out at the same time? This would be a convenient time.

Time: 11.25 a.m.

Juror returns: 11.28 a.m.

HIS LORDSHIP: Dr. Williams, you know that you always have my cooperation in the counts so far as your comfort is concerned. Would you like to sit down?

DR. WILLIAMS: Thank you, sir.

MR. ROBINSON: Yes, doctor, I was asking whether it was likely that the accused man would recollect more of the incident at a time which was further away from the incident than the first occasion on which he spoke about this incident, which was some three days later?

A. The pattern is that with time there is an increase in the remembering of what occurs - this is the usual pattern in all forms of amnesia, forgetfulness. You see to a point then you start to forget, but there is also the possibility in real life that with hearing different versions, reading and so on, one may be stimulated to remember or may take it as part of their own memory. I don't know if I make myself clear.

MR. ROBINSON: I understand you doctor. You told my learned friend that the words uttered by the accused - 'there was nothing left for me to do' - were consistent with the condition of automatism?

A. No, sir, I never said that, I said when he was confronted with this, this would bring him back to life, make him completely aware and, of course, this is usual to most people, murder is a reprehensible thing.

Q. Wouldn't those words indicate to you doctor, that there was in the mind of the accused some consciousness of what he had done?

A. Not necessarily; a person tells you you have done something, the normal reaction is to try and give an explanation.

Q. But first of all it implies an acceptance on his part?

A. Yes, he accepts that he had done it.

HIS LORDSHIP: The facts, relate this to the facts here for I think that is what counsel is trying to do - the fact that the boy said to his father "Daddy .... " whatever it is he did say - you said that would not necessarily do what?

A. That is likely to bring him back to conscious awareness, assuming he was in a state of automatism, just that, as I think you remember I gave an example like you are in a faint and someone poured iced cold water on you, you would immediately jump up.

MR. ROBINSON: Those were the words: "Daddy, why you kill Mummy"? but I am asking you about the words, "there was nothing left for me to do", and I was asking whether they would not be indicative of a mind which saw itself

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presented with a problem and seized upon a specific course of action to solve that problem - the words: "there was nothing left for me to do".

A. That is correct, but a person's judgment, we do things all the time if we decide to do them - it means our judgment is impaired.

Q. I agree his judgment may have been impaired and I am going to deal with that later. At a later stage I will deal with that fully.

A. I am trying to give a full answer ...

Q. But you agree that those words would be indicative of a mind that saw itself presented with a problem and seized upon a specific course of action to solve that problem?

A. The answer is 'yes'.

HIS LORDSHIP: You are referring now to the words that are alleged to have been used: "there was nothing left for me to do"?

A. Yes, sir.

HIS LORDSHIP: And you are saying those words would tend to indicate that the man had some awareness when he uttered those words?

A. Yes and also he had some - I think Counsel used the word.

MR. ROBINSON: M'lord, I am afraid I don't know if the question you just put to the doctor fully reflects all the nuances of the question I asked him.

HIS LORDSHIP: They don't?

MR. ROBINSON: I am not sure, m'lord.

HIS LORDSHIP: But the jury are here listening to you all the time they can take into account every nuance of yours.

MR. ROBINSON: Very well, m'lord, I will proceed.

HIS LORDSHIP: But if there is any particular nuance you want to stress, you are on your feet, the choice is yours.

MR. ROBINSON: Doctor, if the evidence is that after the deceased had received what turned out

to be stab wounds?

A. Received what?

Q. What turned out to be stab wounds and the accused man is standing at her head and an onlooker is standing at her feet and that onlooker observes a movement on the part of the accused in his direction, having heard the click of what sounded to him like a ratchet knife, and the evidence further is that that onlooker became afraid and retreated ...

HIS LORDSHIP: Mr. Robinson, quite honestly I really don't know -- I know that Psychiatrists are sometimes described as rather wonderful people but I don't see how Doctor Williams could possibly express any views as to all these various happenings and possible reactions of the people to them.

MR. ROBINSON: I don't see why not. This is something which happened within seconds after the incident and I want to find out whether it is consistent with the state of mind described. I want to find out, what is the psychiatric significance of that.

HIS LORDSHIP: Psychiatric significance of a man standing at the foot of a body and hearing the click of a knife?

MR. ROBINSON: ... Of the accused man moving towards this bystander with a knife.

MR. PHIPPS: I propose to object to it. I was waiting until the sentence was finished, for one of the corner stones of the question is the fear in the bystander's mind. The question is - could that be related to the accused man? It is something subjective to the bystander, that he sees a man move towards him, hears a knife click and is afraid and has nothing to do with the man whose mind we are questioning. The basic legal ground is that it would be irrelevant to any opinion the doctor can give in this case.

HIS LORDSHIP: I cannot see the relevance of this question.

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MR. ROBINSON: M'lord, the relevance of the question is that it relates to - certainly it must be relevant if the behaviour of the accused man three days after at Coopers Hill is relevant and was put to the doctor by my learned friend, how much more is his behaviour within seconds of the incident.

HIS LORDSHIP: You must put something more specific to the doctor. You must say to the doctor: Now, doctor, assuming that the accused man had a ratchet knife, assuming he made a move towards so and so, would you say such and such a reaction is consistent or inconsistent with some psychological situation?

MR. ROBINSON: This is precisely what I am doing.

HIS LORDSHIP: But you are putting some fear in the mind of, I think, the witness Mr. Facey.

MR. ROBINSON: I was not dealing with that specifically, m'lord. The substance of the question related to the movement by the accused within seconds after the incident.

MR. SMALL: I would have objected, m'lord, if I understood that the question is assuming that the accused man moved towards a bystander, because it is the act of the accused man and assuming he had a knife and assuming he clicked the knife, is that consistent with the state of mind, because that would be the factual behaviour on the accused part.

HIS LORDSHIP: That is admissible.

MR. ROBINSON: But this is all I was asking from the very beginning.

HIS LORDSHIP: With great respect, that is not what you were asking. What you were asking and putting to the doctor was a hypothesis, about the state of mind of Mr. Facey.

MR. ROBINSON: Not at all, m'lord, I was not putting any question regarding the state of mind of Mr. Facey at all. I don't wish to exclude Mr. Facey's reaction from the question for what he did is relevant.

(To doctor): Yes, doctor, assuming that immediately after this incident happened the accused man had a knife and a bystander, an onlooker comes on the scene and is within a few feet of the accused, and the accused moves towards this onlooker with a knife in his hand, what would that behaviour on the part of the accused indicate to you, bearing in mind your view of the likelihood that he was in an automatic state?

A. Bearing in mind ...

Q. Your view of the likelihood of his being in an automatic state?

MR. PHIPPS: Please relate bearing in mind to the doctor's opinion that he had been in an automatic state prior to this walking towards and clicking the knife - not in an automatic state when he walked towards him for the child had already said: "Why did you kill Mummy", and the point of awareness had been realised. You leave the question to the doctor about being in an automatic state, with the factual basis that he walked towards the bystander and with the factual basis that he clicked a knife and you have not told the doctor in point of time, the child had already spoken, and the doctor said it is likely that he would have returned prior to this motor activity, to consciousness. The question is he has been previous to this behaviour in a state of automatism.

MR. ROBINSON: That is not the evidence.

HIS LORDSHIP: I will allow you to put the question in the form you are putting it now.

MR. ROBINSON: Did you get the question, doctor?

A. Please repeat it, sir, I will follow you more accurately.

Q. The question was, doctor, - if the evidence is that immediately after this incident the accused man moved towards an onlooker who had by that time come on the scene and was standing within a few feet of the accused, having in his hand what appeared to the onlooker to be a knife ...

MR. PHIPPS: I am really objecting, m'lord. I am

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objecting because the evidence in the case is that before there was any question of a clikc of a knife the child had said: "Daddy why did you do that" and the accused had replied, so if the doctor is to get the evidence he must get it in proper sequence.

HIS LORDSHIP: But you, doctor, already admitted that state of fact and accepted that state of fact, and what Mr. Robinson is doing is moving on from there. The doctor already said the words of the boy, if they were uttered would have been in the particular circumstances or might have been enough to bring him back to a state of awareness. He is now in a state of awareness and Mr. Robinson is putting to the doctor further the hypothesis in regard to the accused man moving towards a bystander with what appeared to be a knife ...

MR. PHIPPS: I don't object but in the question there is no suggestion that the doctor is to answer that this movement was made after the point of awareness had been arrived at. That is the only point of objection. It must be made clear to the doctor, for he said after the incident he moved towards a bystander, he must say after the incident and the point of awareness arrived at ...

HIS LORDSHIP: I think Mr. Robinson is including in the incident the words of the boy.

MR. PHIPPS: As long as it is clear to the witness and the question is clear I have no objection.

MR. ROBINSON: You cannot tell me how to ask my questions.
(To doctor): Doctor did you get my question?

A. I will repeat it so you can say if it is clear: That after he had come back to a state of awareness, complete awareness, he approached a bystander with an implement and you are asking me in that state of mind, what would be my opinion, what would that state of mind indicate to me.

MR. ROBINSON: Yes.

A. If that is the question it would tend to strengthen the opinion I have that this individual after recognizing the act he had

done, the alleged act, is now going into a new state of panic, new state of consciousness because he is now trying to attack, assuming that this is his intention, he is now trying to attack a neutral person who was not emotionally involved with the act mentioned.

Q. Would that be also explicable on the ground that he was attempting to do something wild to prevent his apprehension, having become aware?

A. I am unable to state what an individual has in his mind at a particular moment. All I can do is explain his behaviour and what one can or does infer from such behaviour. I would say an individual who is in this situation, with his personality, seeing a bystander, if he is in a state of ordered consciousness it is my opinion that he would behave in any number of ways. He could embrace the individual, depending on his interpretation of the threat to himself.

MR. ROBINSON: Thank you doctor.

A. It may have been a friend of his whom he attacked, it may have been his enemy whom he embraced, I am unable to give an answer, all I can say is his behaviour is consistent with the circumstances at the time for an individual of his personality type.

Q. In the state of automatism, doctor, you would not expect deliberate conscious behaviour. By definition 'automatism' is involuntary, unconscious action.

A. (No answer).

Q. Doctor, how long would a person remain in this state, a person of the personality of the accused?

A. You mean how long would an individual remain in that state, automatism?

Q. Yes.

A. It varies. There have been records of people being in this state for weeks or it may be brief, it varies with many factors and I am in no position to state how long it can remain in any particular person. On treatment we can stop it immediately, I hope you know that.

Q. On treatment, yes. Doctor, would eleven

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distinct and separate stab wounds not indicate some conscious behaviour on the part of the person inflicting those wounds - 11 distinct and separate wounds?

A. There is normally no measure by which one can equate the number of repeated acts to the state of mind of the individual at the time, but generally the higher the emotional tone the more upset the individual, it is usually more wounds you receive or more shots they fire from a gun or more violent their behaviour, but it does not explain it in a particular individual this is just a sort of general trend but it does explain it in an individual in general on this general principle.

Q. I understand, doctor, in your physical examination of the accused you found his pulse rate was 76 per minute, what is that? Is that normal or what?

A. Well it is within the normal range but it could be high, the fact is that all of these taken together does tend to show that he was a little anxious at the examination, when it was done because as you can see later when I did the psychiatric examination he became excited. I did not take his pulse at this time, I would not be surprised to find it much higher at this time.

Q. You found, doctor, that his affect was appropriate and by that I understood you to mean that his emotional reaction was appropriate to the particular situation in which he found himself. Is that so?

A. No, sir, his affect - we determine a person's emotional reaction by putting him in several different types of emotional situations.

Q. And if he reacts?

A. Appropriately to the thoughts he expresses in his reactions then it is appropriate.

Q. And you say his affect is appropriate?

A. Yes.

Q. I thought that is what I put to you. I misunderstood you if that is what you intend to mean, that his behaviour in the whole examination was towards the whole thing completely appropriate, depending on the type of situation?

A. That is right, it was within normal range.

Q. And you also found, doctor, that his emotional tone interfered with his judgment?

A. Yes, when he was placed in difficulty to exclude some matters that have emotional tone for any matter that had any emotional tone for the individual would tend to make him show a little more emotion.

Q. The question, doctor, which I would like to put to you is this: if in fact his emotional reaction was appropriate to the particular situation in which he found himself?

A. You mean if confronted by the doctor or with the incident, this accusation against him.

Q. Well, generally if his emotional reaction is appropriate to the particular situation in which he finds himself, how would his emotional tone interfere with his judgment?

A. His emotional tone is related as described. It is not a generality, it is related to the incident put to him at the time. These are specific examinations. He may be emotionally appropriate and of even emotional tone to discussions of something that has very little emotional tone for him, emotional stimulation for him, emotional effect on him, but if something else has more emotional effect he would discuss it excitably and if that has more emotional effect his judgment may become impaired by association with the disturbed emotion. So that this is not a description of a generality. As a matter of fact the report may seem contradictory when I say he sat quietly in a chair, smiling, and I said he is cooperative and of good rapport. These are specific statements about responses to objective examination. When it has an emotional meaning to him he becomes upset.

Q. But not more emotional than a normal person

A. It went so far in some instances that his judgment became impaired.

Q. I don't think I am following you, doctor, because didn't you say ...

A. Your emotional tone interferes with your judgment. If of heightened emotional tone your judgment progresses.

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Vincent Williams Cross-Examination 26th March 1971 (continued)

Q. If he is reacting appropriately to a particular emotional situation, that is to say if it is sad I presume he reacts in a sad way.
A. If it is a sad situation that has no emotional meaning to him he will behave in a normal sad way which we call objective sympathy. Maybe I could make it clearer - if somebody dies in China, far away from Jamaica, Jamaicans have objective sympathy. If it happens in Kingston we are more emotionally disturbed. This means if an individual has something closer to his heart and he is asked, he would respond more emotionally about it than if you mentioned the same thing that has not got that emotional effect on him.

Q. But that would apply to anybody whose affect is appropriate?
A. It applies to anybody but the degree with which you respond is an indication of your personality.

Q. In what way did you find his emotional tone interfere with his judgment?
A. You mean the details of it, I really don't understand.

Q. You find the question too wide?
A, No, it is just that I am not clear as to what you want.

Q. Well, you have stated that his emotional tone interfered with his judgment, how was his judgment affected as a result of this interference with his emotional tone?
A. It got worse, it became impaired.

Q. I think you stated earlier that neurosis is a disease of the mind?
A. Yes, it is.

Q. Would you say it is abnormality of the mind?
A. Yes, it is an abnormality of the mind.

Q. And you gave the cause of that neurosis, something inherent?
A. Not the cause, I am stating it is an inherent condition - causes - why it is inherent we don't know.

Q. Could an abnormality of the mind such as neurosis

which you found in the accused also arise from a condition of arrested or retarded development of the mind?

A. It is not arrested nor is it retarded.

Q. I am asking whether an abnormality of the mind such as neurosis, could arise from a condition of arrested or retarded development of the mind?

A. Yes, a neurotic condition may also arise.

Q. Did you examine the accused with a view to finding out whether he had any condition of arrested or retarded development of the mind?

A. I stated that he appeared to be of average intelligence clinically.

Q. Well, what does that mean in terms of the question?

A. It means he is not retarded or arrested in his mind. He is of average intelligence.

Q. So you did not find any condition of arrested or retarded development of the mind.

A. I did not.

Q. And could the condition, doctor, of neurosis also be induced by disease or injury?

A. No, sir, it is an inherent thing but may accompany, those who have disease of the mind or injury of the mind.

Q. Assuming it is not inherent?

A. That is the definition of it, it is an inherent cause.

Q. Neurosis is an inherent condition?

A. That is the definition of neurosis that I know of, it is an inherent condition.

Q. Would you tell us what you mean precisely about inherent condition?

A. It is the individual himself, it is a result of his genes and his habits which he forms, his stimuli, training, his experiences in life: this formative period usually is fairly well complete by the time you are about six years of age.

Q. So do I gather you are saying it is a combination of hereditary and environmental factors?

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Vincent Williams Cross-Examination 26th March 1971 (continued)

A. Yes, but the proposition nobody is able to say.

Q. Did you elicit anything from the accused in relation to his history which would have led you to believe that there was something of a hereditary or environmental nature which would explain this inherent condition?

A. I don't know of any method to do that, so we are faced with a complex named neurosis, we know that the sympton complex is caused by this condition, we know it is inherent and we exclude other forms of illnesses and are left with this diagnosis.

Q. You cannot isolate any specific factors to explain this inherent condition?

A. I am afraid I am not following you.

Q. II am asking you whether you are in a position to isolate any specific factors which would explain this inherency of this condition because you have already said that it is a combination of hereditary and environmental factors. I am asking whether you found anything in relation to those two factors which would conduce to this opinion?

A. I found him to be of a neurotic personality when I examined him. I really was not doing a research on how much is due to heredity and how much to environment. If I saw a person with appendicitis I was not going to find out the different things I would treat it as appendicitis. I would not like you to feel I am being rude, I just don't really know what you are driving at. Here is an individual with certain signs, certain condition which medical research states is due to these facts - I am not quite clear ..

Q. What I am driving at is the basis for your opinion.

A. My basis is the objective findings I have here - he is of a neurotic personality type. You see, I really don't understand.

Q. Did you find anything about his family history?

A. No, I did not bother to enquire into that. I had already come to a diagnosis.

Q. That would not be of any assistance?

A. It would be of assistance if I felt he may be psychotic, that is insane, then I would go into that sort of thing. If a person comes to a doctor with a broken leg, he is interested in a broken leg, he would not examine his heart.

Q. But you have certain symptoms, you see certain things which make you come to the opinion?
A. When I took his pulse I felt it irregular, I did not examine his heart but talking to him I did not see anything of psychotic behaviour.

Q. This is all I am asking - why you came to the opinion that he was neurotic?
A. I did not understand you, I thought you were asking whether I knew it was hereditary or environmental factors - I beg your pardon.

Q. The reasons?
A. The reasons: first of all he had the physical condition - his pulse - in total, his hands being cold, on palpation and tremors of fingers, his pupils dilated in a normally lit room, he was fidgety, he gesticulated freely, he spoke copiously at times, he answered questions, he was excitable, he was worried.

Q. That is the psychiatric part of the examination.
A. And taken together with the physical and the absence of any other indications that there are any other forms of illness, this is how we come to a diagnosis. We exclude other conditions and we fit a diagnosis according to the definition.

Q. Yes, doctor.
A. I am sorry to keep you so long but I did not understand what you were driving at.

Q. You also gave as your opinion that his judgment may have been substantially, it is likely that his judgment may have been substantially impaired at the time of the alleged incident. Now, what is the evidence that you found for this substantial impairment, the probability of the substantial impairment?

HIS LORDSHIP: Now you see you are using words that the doctor has not used. Did you say it was probable, doctor, I don't remember?
A. I said 'likely'.

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No.14

Vincent Williams Cross-Examination 26th March 1971 (continued)

HIS LORDSHIP: Does that mean it is possible?
A. More than possible, it is probable.

MR. ROBINSON: In fact 'likely' means probable. I was asking you doctor for you to tell us of the factual basis for coming to this conclusion?
A. The factual basis is from the history, the examination and the depositions. I would have to read through the depositions now, pick out all the details and so on, I really have not got them in my mind at the present time. As you see this was written on the 9th October, 1970, but what happens is that I examined the individual and I have come to the conclusion that he is a neurotic personality type. I have read the depositions subsequently and I see situations in there that from experience and training, are likely to produce impairment of judgment.

Q. Likely to produce impairment?
A. That is an inference, I can only draw an inference from the facts at my disposal.

Q. I accept that, doctor, but you appreciate that I am interested in the reasons for your being able to draw this inference.

Q. Why do you say 'substantial impairment' as distinct from slight impairment? Do you have any particular reason for saying that his judgment may have been substantially impaired as distinct from say slightly impaired?
A. Yes, the type of stress and the behaviour of the individual, assuming he is a neurotic personality type, these are not inconsistent. If, for example, an individual went into a doctor's office and his pulse rate is high and trembles a bit, it is normal you ask him questions, you assess him. His judgment may not be as clear as when you see him on the fifth occasion - the fact is that his judgment would be slightly impaired but when he behaves in a way that is grossly inconsistent with the behaviour for such a stimulus, his behaviour is consistent but is gross, then it is an indication that his judgment is more impaired, to a greater degree.

Q. There are degrees of impairment?
A. And this is my assessment of the situation.

Q. And, doctor, would you have expected this substantial impairment to reveal itself another occasion when the accused was faced with a stressful situation, the behaviour resulting from the substantial impairment?

A. An individual behaves in a way that is consistent and is peculiar to himself. There is no way that an individual's behaviour can be predicted. He may have collapsed on another situation, he may have been arrested, he may have done a lot of things, all of these behaviours are still consitent with his personality stress and I am in no position to say that he would behave in a different way on a different day for example. There is no way I can predict, all we can say is, here is a person's behaviour, this was the stimulus. It is clear that he appeared to behave with an impaired judgment, which appears to me to be substantial.

Q. Now this neurotic personality is inherent and I think you said that personality takes shape by the time a person is about six years old?

A. No, it takes shape before that because what I said is that your personality is fairly well developed by six years of age but since it has hereditary characteristics as its basis, from the moment, I presume, the brain begins to form in the foetus, it forms there, from the genes you carry from mother or father determines this to some degree.

Q. What I want to put to you, doctor, is the situation where the accused on a previous occasion discovers or rather receives an admission from his wife, the deceased, that she had been having improper relations with a man and in the face of that admission he effects a reconciliation with his wife - well, first of all, let me put it this way: the admission of improper relation with another man, would that be a stressful situation for him?

A. Yes, it is a stressful situation.

Q. And for the type of person you found the accused, you would have expected him to react in an equally neurotic pattern?

A. Yes, he would react in a neurotic fashion.

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(continued)

Q. Is a reconciliation consistent with the neurotic personality as you found the accused?
A. Quite consistent. The neurotic illness, the neurotic condition, does not exist all the time, from the moment you have it to the end. It comes on like a common cold.

Q. What you are saying is that he may not have been in a neurotic condition at the time?
A. At which time?

Q. That he may not have been in a neurotic condition at that time, the time when he received this admission of improper relations from his wife.
A. I don't think that follows. As I understand your question, you asked if he was informed of this, would this be a stressful condition ...

Q. Informed by his wife.
A. ... and may precipitate a neurotic condition, and I said that was possible.

Q. And I further asked whether a reconcilation would be inconsistent.
A. And I said no.

Q. Did you gather from your examination, doctor, anything relating to the attitude of the accused to his family?
A. I have indicated earlier that I did not go into his family background, I was not being asked to treat the symptom. If I were being asked to treat him I would go into all this. I was just asked what was his illness.

Q. Doctor, I don't know if you understood me. I was not dealing with the father and mother of the accused, but his immediate family.
A. You mean like his wife and children? He did mention that they were not having --

HIS LORDSHIP: What?
A. That his marital life was not happy as he would have liked it to be and there were periods when it was bad, and periods when it was better and not so bad. I inferred from his discussion of it that it was a little bit outside of what we regard as normal marital relations.

Q. And you did say, did you not, doctor, in

relation to the question of automatism, that the recollection on the part of the accused of the place of the knife --

A. I can hardly hear you.

Q. I was asking, doctor, if you did say that the accused's recollection of the place of the knife and his reaching for it would lessen the likelihood of his being in an automatic state?

A. At that time, yes, I did say that.

MR. ROBINSON: That is all.

MR. SMALL: No re-examination, m'lord.

HIS LORDSHIP: Doctor, just one question. I just want to clear this completely out of the way so that the jury will understand this much at least. You are not by any means saying that this man is insane?

A. He is not insane.

HIS LORDSHIP: But you are saying that he is of a neurotic personality?

A. Yes.

HIS LORDSHIP: Any questions?

MR. SMALL: No questions, m'lord.

MR. ROBINSON: None, m'Lord.

HIS LORDSHIP: Thank you very much for coming, doctor, you may go now.

MR. PHIPPS: That is the case for the defence, m'Lord.

Adjournment taken at 12.30

In the Supreme Court

No.15

Summing-up
29th March 1971

No. 15

SUMMING-UP

Mr. Foreman and Members of the Jury the accused Leary Walker is before you on an indictment for murder, the particulars being that he on the 17th of March 1970 in the parish of St. Andrew murdered Ruby Walker. Some of you may know or think you know something about the facts of this case. You may have read about it in the newspapers or you may have heard it discussed. You may have formed certain feelings about it. If any of you have any such feelings I must ask you as I know you will to cast any such feelings entirely from your minds. As you know you are sworn to try this man according to our law and upon the evidence alone. It is of the utmost importance that you should try this man according to the law without any fear or favour, without any affection or ill will, on the evidence unprejudiced by any sort of preconceived notion. You will try the case on the evidence and on that alone. You are the sole judges of the facts in this case. You must decide whom you accept as witnesses of truth and from what you accept as true you will find what facts, if any are proved to your satisfaction. And from what you find proved you will say whether or not the accused man is guilty or not guilty of any charge.

It is not my duty to decide on the facts of this case. My duty is to direct you on the law which is applicable to the facts and circumstances in this case and to try to help you, if I can, in coming to a correct decision on the facts. If I express any views on the facts with which you agree you may, of course, use my views in your deliberations, if you think it can help you. But you must discard any view of the facts which I express and with which you do not agree. It is not everything that has to be proved that can be proved by direct evidence, that is by the evidence of some person who says: I saw this happen or I heard this happen. Certain matters can only be proved by inference from other proved facts so you are entitled to draw reasonable inferences from any fact or facts which you find proved. But you must not draw an inference unless it is a reasonable inference and if more than one inference can be drawn from the same set of facts you must always draw the inference which

is in favour of the accused man. That is just another way of saying: if on any particular issue where you have to draw an inference from a fact you must always, if you have any genuine doubt, you must always give the benefit of that doubt to the accused man.

This charge has been brought against the accused by the Prosecution and the duty of proving his guilt rests on the Prosecution from first to last in this case. There is no duty on the accused man to prove his innocence. He is presumed to be innocent until you by your verdict say that he is guilty. And you cannot say that he is guilty unless in relation to the particular charge you are considering you are satisfied by the evidence in the case so that you feel sure about it.

The first thing that you have to be satisfied about and feel sure about is the identity of the accused man. You have to be sure that it was the accused man who was in the car with the dead woman that night and that it was the accused man of whom the various witnesses are speaking and eventually that it was the accused man - it was at the hands of the accused man that the deceased woman met her death. If you have any doubt about that issue you must acquit the accused. You have heard mention in this case of motive. Now there is no obligation whatever, legally on the Prosecution to prove any motive. But if there is evidence of a motive or an inference of a motive it may cause you to understand the case better, or probably might strengthen the case for the Prosecution, and then in the absence of any motive you may find that the Prosecution's case is weaker. But the Prosecution do not have any legal duty to prove any motive.

The evidence in this case is, to a very large extent, if not entirely circumstantial evidence. The reason why that is so is because the one person in the whole world who was in the motorcar that night and who saw what happened was the little boy that you saw sitting beside me earlier in the case. I came to the conclusion, and it is entirely my responsibility that that little boy could not make any statement about the case either sworn or unsworn because he to my mind did not understand the nature and the difference between a truth and an untruth. And he said himself

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that he did not even appreciate what it was to tell a story as it were, or to relate something as it happened. Therefore I decided that nothing should come from him that should affect your minds. So that in the absence of that little boy the evidence to an almost complete extent becomes circumstantial.

Let me try to explain to you what circumstantial evidence is. Where direct and positive testimony of an eye witness is not available you are permitted to infer from the facts which are proved, other facts necessary to complete the elements of guilt or to establish innocence. This sort of evidence is called circumstantial evidence and it always must be very narrowly scrutinized and narrowly examined. Circumstantial evidence ought to lead you to the conviction as on no other rational hypothesis can the facts be accounted for. It should lead you to the conclusion not only that the facts are consistent with the guilt of the accused man but also that the facts are inconsistent with any other rational conclusion. You look at the questions of interest and opportunity and you must bear in mind that circumstantial evidence must be of such strength and such cogency that the logic of the circumstances and all the facts lead you to only one conclusion and that is a conclusion that the accused man is the man and that he is guilty.

You are permitted by law to infer from the facts which are proved other facts necessary to complete the elements of guilt or to establish innocence. As I have said, there is nothing against circumstantial evidence. It is as good as any other evidence. The nature of circumstantial evidence is like this: one witness says one thing, another witness says another, and so on, until you get a complete chain. Neither one of the things that are said by itself can convict the accused. But if you take the whole chain together and you find that the whole chain leads you to one inevitable conclusion then that might be sufficient. When you look at all the surrounding circumstances you find such a series of undesigned, unexpected circumstances that as a reasonable person you can only say your judgment is compelled towards one conclusion. If the circumstantial evidence falls short of that standard, if the

evidence has gaps in it, then it is of no use at all. Circumstances may point to one conclusion but if one circumstance is not consistent with guilt then it breaks the whole chain of the circumstantial evidence. If you have all the circumstances consistent with guilt but also consistent with something else then that is not sufficient and that does not prove the case. You must exercise the utmost caution in this case, Mr. Foreman and Members of the Jury, in deciding whether there is a chain of co-incidences in the evidence and also whether that chain has a connecting link that completely satisfies you about the guilt of the accused man.

(Time 2.35 p.m. Miss Pantry continues)

About one thing you will have, I think, little doubt, and that is, that on the night of the 17th of March, 1970, Ruby Walker's body, dead, full of stab wounds - eleven to be exact - was found or seen lying in the road at Sunset Drive in a pool of blood. You may have little doubt, I think, that that body was at one time in the Singer car, which it is said she was driving. What is of particular interest in this case and what is a matter for you to decide is, what are the circumstances in which this woman met her death? The first thing, that I should do is define for you what the law says is murder.

Murder is the unprovoked killing of another person without lawful justification or excuse with the intention of killing or causing serious bodily harm likely to cause death and from which death results. In other words, in order to establish the offence of murder the prosecution must satisfy you so as to make you feel sure as to all these factors:

(1) that the accused man dealt the blows or caused the injury to the deceased;

(2) that the deceased died as a result of those injuries or blows;

(3) that the accused dealt those blows or inflicted those injuries voluntarily, deliberately, that is to say, consciously and under no form of duress or compulsion;

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(4) that the accused did so with the intention of killing or causing serious bodily harm from which death was likely to result.

(5) that the killing was unprovoked; and

(6) that the killing was without lawful justification or excuse, that is to say, that the killing was neither the result of an accident nor was it the result of the accused person acting in self-defence.

First of all, you must be satisfied that the accused man was the man who stabbed this woman and that the woman died from those stab wounds; that is a question of fact for you. If you believe that he did not do that, then you must acquit him. If you have any doubt as to whether or not he did that, then you must acquit him. If you are satisfied that it was the accused man and that it was his hand that dealt the blows to the deceased woman, then you proceed to consider whether the killing was intentional, unprovoked and without any lawful justification or excuse.

The first matter that you must direct your attention to when you consider the question of murder is intention. There is no scientific means of analysing the state of a person's mind at any particular moment of time. So you may think as a matter of common-sense that one usually looks at a man's actions and all the surrounding circumstances, you look at the conduct which proceeds the action and very often the conduct which follows the action and you look at the particular way in which the killing was carried out, the nature of the injury, the number and quality of the injuries, the nature and the kind of weapon that was used, and then you ask yourselves whether you are satisfied that at the time of the killing there must at least have been an intention, if not to kill, at least to inflict serious physical harm. It is only if you are satisfied that that intention exists that you can convict of murder.

The burden of proving intention remains throughout the case on the prosecution. If the prosecution prove an act, the natural consequences of which would be a certain result and no evidence or explanation is given, then you may find that

the accused man is guilty of doing that act with the intent alleged, but if on the totality of the evidence there is room for more than one view of what the accused man's intention was, if indeed he had intention, I have to direct you that it is for the prosecution to prove to your satisfaction that he had that intention, and if on the whole of the evidence you are left in any doubt as to what his intention was or if you think the intention did not exist, then the accused is entitled to be acquitted of murder. If, for instance, you believe that the accused man only had the intention to harm or to injure the deceased woman but not to the extent of causing serious bodily harm or killing her, then the crime is not murder but it would be manslaughter if you were satisfied about the other ingredients of the offence and if the prosecution proves those ingredients.

The prosecution must satisfy you that this killing was unprovoked in the legal sense of the word. If the killing is provoked it doesn't make the homicide justifiable, it merely reduces the crime from murder to manslaughter. Provocation is defined as some act or series of acts done by the deceased to the accused which would cause in any reasonable person and did cause in the accused a sudden and temporary loss of self control thus rendering the accused man so subject to passion as to make him for the moment not master of his mind. The law recognises that there may be provocation which causes a sudden and a temporary loss of self control whereby malice which is an essential ingredient in the crime of murder is negatived. Malice is merely the formation of an intention to kill or to cause serious bodily harm. Provocation must be such as to deprive a reasonable man of his self control not merely a quick-tempered man or a highly excitable man or a person who is defective in control or a person who is lacking in mental balance. The test to be applied is the effect of provocation on a reasonable man. So that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would make a reasonable person act as he did and would in fact cause the accused to lose his self control. Provocation can be caused by things done or things said or by a combination of things done and said. The law goes on to say that where on a charge of murder there is evidence on which you can find

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that the person charged was provoked whether by things said or things done or both together, to lose his self control, the question whether this provocation was enough to make a reasonable man do as he did, is to be determined by you, the jury, and in determining that question you shall take into account everything both said and done according to the effect which, in your opinion, it would have on a reasonable man. The test is whether the provocation was sufficient to deprive a reasonable man of his self control and whether this accused man did, in fact, lose his self control.

The test of provocation, Mr. Foreman and members of the jury, is really a two-fold test. The first is a question of fact for you, assuming that there is any evidence upon which you can so find, namely, was this accused man provoked into losing his self control? The second part of the test is: Would a reasonable man have reacted to the same provocation in the same way as this accused man did? If you once reach the conclusion that the accused man was in fact provoked to lose his self control, then you must consider not merely whether in your opinion the provocation would have made a reasonable man lose his self control but also whether having lost his self control he would have retaliated in the same way as the accused man did. Just to take a little point out of the facts of this case - and as I have told you, and I repeat, the facts are entirely for you, if I make any comment on the facts and you don't agree with them, you can ignore the fact altogether - you might think, Mr. Foreman and members of the jury, that if a man was driving in a motor car with his wife, they had had altercations and they had had marital stresses and matrimonial difficulties and had even got to the unfortunate stage where the man suspected or was actually told by his wife that she had another man, that a sort of reasonable, rational reaction might be a couple of slaps in the face or something of that nature; but you have to consider in this particular case and you have to take into account all the facts, which I will try to put before you as I go along, that there is an almighty difference between a couple of slaps in the fact and eleven thrusts with a knife into the body of this woman who has hurt your feelings.

(Mrs.Panton continues) (2.50 p.m.)

It's a matter as I say, for you. You may think that the mode of retaliation should bear some sort of resemblance to the provocation that has been offered to the accused person, but I have to make this quite clear to you that it is not a rule of law which you are bound to follow. It's merely a consideration that you may or may not agree with. It's merely a consideration which may or may not commend itself to you. It is for you to form your own opinion as to whether the provocation, if you find that the provocation was enough to make a reasonable man do as this accused man is alleged to have done. There must not be a lapse of time for passion to cool or for reason to regain dominion over the mind of the accused. It is for you to consider the nature and the duration of the provocation and whether the accused man continued to be deprived of the power of self control at the time he stabbed this woman; if you find that he did stab her. Although there may be an interval of time between the beginning of an incident and the stabbing which caused death, you will be entitled to consider whether the deceased's conduct, or the series of incidents or the whole circumstances were such as to heat this man's blood to such a degree of resentment and keep it boiling right up to the time when he stabbed the woman. You should also consider the type of retaliation that has been offered and the instrument that has been used. If the instrument that has been used, as in this case, a deadly weapon, the provocation must be great indeed to reduce the offence to manslaughter. That is, if some other sort of weapon like a belt or even a belt buckle, the intention to do really serious bodily harm or to kill might not have been there, these are matters for you to decide. You should also consider, Mr. Foreman and Members of the jury, that that accused person may intend to kill or to inflict serious bodily harm on somebody, but that intention may arise from some sudden passion involving loss of self-control by reason of his provocation in which case the offence is not murder but mansalughter. Burden of proof is on the prosecution throughout this case to prove the absence of provocation. It is not for the accused to do so and if you are left in any doubt as to whether or not the facts show sufficient provocation, that is sufficient to reduce the crime to manslaughter, you must determine that issue in favour of the accused and in such a case return a

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verdict of not guilty of murder but guilty of manslaughter. And throughout the whole of your deliberations if you come to the conclusion that this man is guilty of some offence and you are considering the question of whether it is murder of manslaughter, if you have any reasonable doubt as to which it is between those two then you must return a lesser verdict, that is the verdict of manslaughter. But if you are satisfied so that you feel sure that the crown have proved all the elements that go to make a deliberate murder, then it is open to you and it is indeed your duty to return the verdict that you are sworn to return, that is a verdict according to the evidence.

Manslaughter is the unlawful and felonious killing of another person without any malice either expressed or implied. In other words, it is the intention which makes the difference between murder and manslaughter. And if you are satisfied as to the act of killing but you are also satisfied that that act was only intended to cause some harm to the deceased but not to the extent of killing her or causing her serious bodily harm, then in those circumstances you will be justified in returning a verdict of not guilty of murder but guilty of manslaughter. In a case like this in which provocation arises as a defence to a charge of murder, I must tell you that murder is not established unless an intention to kill or to cause really serious bodily harm is proved, but the converse proposition, namely that the accused is guilty of murder, if such an intention is proved, is not necessarily correct because where the intention to kill or to cause serious bodily harm results not from premeditation but solely from the loss of self-control, then the accused man is not guilty of murder but of manslaughter. If upon review of all the evidence you are left in any reasonable doubt as to whether, even if the prisoner's explanation is not accepted by you, his act were unintentional or provoked, then he is entitled to be acquitted of the charge of murder.

And now, Mr. Foreman and members of the jury, I am going to come to what is a most important aspect of this case and I am going to deal with it in two separate compartments, that is first of all, tje question of whether or not if you find the accused did inflict these stab wounds on the dead

woman and if you are satisfied as to the other ingredient of the charge, whether or not the accused man was a man who was suffering from a diminished responsibility, then I am going to deal with the question of automatism which is the word that has been used as one aspect of the defence.. Now, although you have been told and it is conceded to all sides and I am telling you now again, the question of insanity does not arise at all in this case. You don't have to consider the question of insanity. In order for you to appreciate the background of some of the principles that I am going to put before you, I think it is necessary for me to start with insanity so that you can understand what is meant by diminished responsibility. The law says that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crime until the contrary is proved to the satisfaction of the jury. To establish a defence on the grounds of insanity it must be clearly proved that at the time of the committing of the act the person accused was labouring under such a defect of reason from disease of the mind so as not to know the nature and quality of the act he was doing or if he did know, that he did not know what he was doing was wrong. That is insanity. The defence of diminished responsibility is a defence which is given to an accused person by the law of our country. It is a statutory defence and the matter which the defence have to establish under this statutory defence are first of all abnormality of mind induced by certain causes which I will tell you are set out and secondly, mental responsibility substantially impaired.

(Time - 3.05 p.m.)

(Mrs. Glasgow takes over)

In this sort of defence, Mr. Foreman and Members of the Jury, medical evidence is of the greatest importance, particularly with regard to the abnormality or alleged abnormality of the accused man's mind and the cause by which that abnormality was induced. Medical evidence is also important in regard to substantial impairment, but in both these cases, and more particularly in the case of the degree of impairment, it is a matter for you, the jury, to decide taking into account

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all the evidence which has been presented in the case. The defence of diminished responsibility is, as I say, part of our law and that law provides that where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of the mind whether arising from a condition of arrested development or retarded development of the mind or any inherent causes or induced by disease or injury as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

On a charge of murder it shall be for the defence to prove that the person charged is by virtue of this law not liable to be convicted of murder. A person who but for this law would be liable - whether as principal or accessory - to be convicted of murder shall be liable instead to be convicted of manslaughter. In the offence of murder the state of mind of the person who kills must be an intention to kill or to cause grievous bodily harm or serious bodily harm. The law of diminished responsibility modifies the existing law as to the state of mind of the person who kills or is a party to the killing. Before the passing of this law, a person who killed could escape liability for murder if he showed that at the time of the killing he was insane, that is, labouring under such a defect of reason from a disease of the mind as not to know the nature and quality of the act he was doing, or that he did not know that what he was doing was wrong. But as you may well appreciate, that test is a very rigid one because it relates solely to the persons intellectual capacity to appreciate, (a) the physical act he was doing, and (b) whether it is wrong. If he has such an intellectual ability his power to control his physical act by the exercise of his will was only relevant in one case before this law of diminished responsibility was passed, and that was the case of provocation.

In provocation what is relevant is loss of self-control and that has always been recognised as being capable of reducing murder to manslaughter. In speaking of self-control we have always been dealing, prior to the law of diminished responsibility, with self-control which would be exercised by a reasonable man. There used to be

no law which could help a person who was abnormal in mind to such an extent as not to be insane according to the law of real insanity. It is against this background that the law of diminished responsibility has to be considered.

To satisfy the requirements of the law of diminished responsibility, the accused man must show - and I am using the word advisedly for there is now a burden on the accused man to show something, but that burden is by no means as heavy as the burden on the crown to make you satisfied on the overall picture that the accused man is guilty - and that burden can be satisfied by merely proving on a balance of probability that the case for the defence is more likely than not. But he has to prove that he was suffering from an abnormality of the mind, and secondly, that such abnormality arose from a condition of arrested or retarded development of the mind or any inherent cause or was induced by disease or injury. Thirdly, he has to prove that it was such as substantially impaired his mental responsibility for his actions in doing what he did.

Abnormality of the mind means a state of mind so different from that of the ordinary human being that the reasonable man would term it abnormal. It appears to be enough to cover the mind's activity in all its aspects, not only in the perception of the physical act but the ability to know whether an act is right or wrong and also the ability to exercise will-power, to control his physical act in accordance with a rational judgment.

The burden of proof on the accused in a defence of diminished responsibility is not as heavy, I repeat 'not', as the burden of proof on the prosecution and it consists in the burden of showing a preponderance of probability. And if you are of the opinion that the balance of probability is in favour of the defence, then you should return a verdict of guilty of manslaughter.

One of the most important things that you have to consider under this heading of diminished responsibility is whether or not his mental responsibility was substantially impaired. The word 'substantially' does not mean 'total', and the mental responsibility need not be totally

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impaired. It is for you, the jury, to say on the evidence whether this accused man's mental responsibility was impaired and if it was, you are to say whether it was substantially impaired. If you find that his mental responsibility was substantially impaired you should return a verdict of guilty of manslaughter and not a verdict according to the charge as laid in the indictment.

You are the judges and your own commonsense will tell you what this means. It does not mean that a man's mental responsibility or irresponsibility must be total, that is destroyed altogether. At the other end of the scale, substantially does not mean trivial or minimal, it is something in between and the Parliament of our country has left it for you to say what it is. You decide on the whole of the evidence, you don't only consider what the doctor has said, you may think that of great importance to take into consideration what the doctor has said but that is not binding on you. It is a question of degree and it is essentially one for you, as the jurors in the case. Assuming that you are satisfied on the balance of probability that the accused man was suffering from some abnormality of the mind, from one of the specified causes, the crucial question, nevertheless, remains for you: was that abnormality such as substantially impaired his mental responsibility for his acts? The real thing you may think here, members of the jury, is the word 'substantial'. There is no scientific or precise test, there never is any such test in a matter of human conduct, but you should look at it in a broad commonsense way and ask yourselves, having heard what the doctor has said, knowing the whole story and the history and the relationship of these two people - the dead woman and the accused man - knowing what this man did, if you accept as proved that he did stab this woman eleven times, you must ask yourselves: do we think as commonsense people that there was a substantial impairment of his mental responsibility in what he did? If the answer to that question is 'yes', then you find him not guilty of murder but guilty of manslaughter. If the answer is 'no', if you say to yourselves, well there was some impairment in this man's mind but we do not think that it was substantial, we don't think that it was something which really made any great difference although it may have been harder for the man to control, harder

for him to refrain from committing some crime - if you think that, then it would be open to you to find him guilty of murder as charged in the indictment.

Later on I will review for you in detail the evidence of the doctor, but you will remember the doctor said in essence - I am not saying that this man is insane, no question of insanity, what he is saying, the doctor, is that he is a neurotic person and 'I am saying that if what has been told me or put to me is correct, assuming that that is correct, then I am saying that it is likely or even probable that this man's mental responsibility was substantially impaired at the time.'

But I repeat, it is for you, the jury, to decide whether you feel the probabilities are that this man's mental responsibility was substantially impaired.

(Mr. Simpson continued)

And now I am going to deal with the other head of the defence here. And it is an entirely different consideration altogether from the one of diminished responsibility and that is the defence that has been described to you here with the word or by the word automatism. You must understand clearly, Mr. Foreman and Members of the Jury, that with this aspect of the defence if you are satisfied on a balance of probability on this defence having been raised by the accused man is something which is more likely than not or more probably than not, in other words if you are satisfied on a balance of probability then there is no question here of murder or manslaughter, there is a question of a verdict of not guilty of an offence at all. Our law does not allow any man or woman to be punished where they perform an act and their mind does not go with the act.

I have to tell you first of all that it is not every facile mouthing (as one of the Judges have put it), it is not every facile mouthing of some easy phrase of excuse that can amount to the explanation that is sufficient to support this defence of automatism. A man cannot do something terrible as in this case and then just turn to you and say: well I cannot remember what happened, I

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had a "black-out" "I cannot remember". It is for me the Judge to decide whether there is any evidence which is fit to be left to you which could be the basis of automatism and then it is for you to consider the evidence. Well in this case I am saying that there is some evidence for you to consider. But you must consider it and decide as you think proper.

Automatism really means unconscious or involuntary actions. It means some involuntary movement of the body or the limbs of a person. The defence of automatism may be available to a person where the accused has received some blow or some injury after which he acted without being conscious of what he was doing. It applies, for instance where a person, well say received a blow of that nature or if a person is walking in their sleep. The defence must be able to point to some evidence either from their own or from the Crown's witnesses from which you the Jury can reasonably infer that the accused man acted in a state of automatism. If you are left in any state of doubt as to whether the accused acted in a state of automatism then you should acquit. The ultimate burden of making you feel sure that the accused man was not acting in a state of automatism lies on the Prosecution. You have to ask yourselves, Mr. Foreman and Members of the Jury, was this accused man kowingly stabbing his wife or was he acting as learned Counsel for the defence put to you, as a robot, was he acting as an automatant without any control or knowledge of his acts at all. If you are left in any doubt about the matter and if you think that he may well have been acting as an automatant without any real knowledge of what he was doing then the proper verdict would be a verdict of not guilty. And when I say "not guilty" I mean not guilty of any offence whatsoever. The Prosecution has that onus of proving all the elements of the crime includijg the fact that it was consciously perpetrated.

The Prosecution must prove that it was a voluntary act. The onus which is really on the Prosecution throughout this case would not be discharged unless you the Jury having considered the explanation given by the accused man are sure about his guilt, so that you are not left in any reasonable doubt about it at all. In this

particular case, Members of the Jury, the defence of automatism has been raised and offered in this sort of way: it is said that the man was a neurotic individual that he had all these marital strains and stresses with his wife, that she was in the car but somehow or other in the car she abused him, told him that she had another man and then squeezed his testicles. And he says that at that point he just cannot remember what happened. He says if he did stab this woman eleven times, eleven thrusts into the body that he didn't know what he was doing, that for that particular period of time he had what we call colloquially "a black-out". You may think it, Mr. Foreman and Members of the Jury, particularly strange - it is a matter entirely for you, but you may think it very strange that this man when he spoke to the police did not mention a word to them about his wife saying "It is my damn man and if you don't like it you can go and kill your blasted self", or something like that. You may think it passing strange that he didn't say to the police that this woman at the time, the last thing I remember she was squeezing my testicles. Didn't say a word about it!

Then you have to consider, too, Mr. Foreman and Members of the Jury as you have been very properly invited to do by learned Counsel for the Crown, you have to consider the whole situation of the possibility of this man having his testicles squeezed in the small confines of a Singer Vogue motorcar in such a way as to cause him not to slap away the hand that is squeezing his testicles, not to hold the hand that is squeezing him but to remember that there is a knife in the centre-piece of this motorcar.

Let me see exhibit - the knife, please.

(Time 3.35 p.m. Miss Pantry continues).

You may ask yourselves, Mr. Foreman and members of the jury, the accused man says he remembered seeing this knife in the - I think he said the ashtray or the centre tray of the car. You may ask yourselves, Mr. Foreman and members of the jury, what are the probabilities of a woman travelling around in a motor car carrying a knife like this? How many times in your lives have you seen it? How reasonable do you think it is? How

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probable? Would you ask anybody to believe it? Those are the sort of questions that you must ask yourselves. This man says that whilst his testicle was being squeezed he remembered that this knife - that he had seen the knife there and he took this knife and plunged it eleven times into his wife's body. Now the probabilities are for you; these are matters entirely for you. Wherever you have a doubt you must give the benefit of that doubt to the accused man.

While I am on this aspect of the defence of automatism, it may be interesting to look at the statement made by the accused man himself if you accept that he did make this statement. Now, bear in mind that one of the things that is being said in this case is that this man was so incensed with and about his wife and her conduct that when the final moment came of her holding him by his private part in addition to telling him that he could go and hang himself, kill himself, and so on, you must try to look at that against the background of what he says happened. After he related what his early recollection was of Tuesday, the 17th of March - and I will remind you of the whole of his statement later on - he said that on that evening his car had broken down. Members of the Jury, in order to get a picture of what is reasonable and what is not and what you can feel sure about and what you may have doubt about, you must try to put yourselves into the picture that evening. There is this man; his car has broken down; he has awful suspicions about his wife; they have not been getting on, but what is the first thing that he does? According to his own statement the first thing that he does when he finds himself in difficulty with his car broken down, "I called my wife on the telephone". Do you think, Mr. Foreman and members of the jury, that it is reasonable to expect that at that stage he was an angry man, regarding his wife as an awful person? But more important than that, if you or anybody wanted to tell a man to go to hell, a man who was your husband and whom you subsequently told more or less 'go and kill yourself', do you not think, Mr. Foreman and members of the jury, that that would have been a much more adequate time at which to do it? Your car has broken down, you call your wife from her home to help you. Would it not be reasonable, then, don't you think,

members of the jury, for her to say to him "go and hang yourself" over the telephone "I am not coming to get you"? But what does the wife do? She jumps into her car, he having said to her - "I asked her to lend me her car as I was stranded in Pembroke Hall". Is that a man or the mind of a man who thinks his wife is treating him unkindly? "She offered to pick me up which she did at twenty minutes to eight." The prosecution are asking you to say that these words "it is my dam man and you can do what you like about it. If you don't like it go and kill yourself" are after-thoughts. It is for you to decide whether they are after-thoughts; If you have any doubt about it, you must give the benefit of the doubt to the accused man, but if you accept what is said in this statement by the accused man, when he got into difficulty with his motorcar the first person he rang was his wife and the person who came to pick him up and give him help was his wife, you have to ask yourselves what could have happened from that time to the time when her body was floating about in its blood with eleven stab wounds in it.

Another question that you will have to consider as a matter of fact and it is entirely for you, Mr. Foreman and members of the jury, is the action of the accused man on the issue of automatism, the action of the accused man immediately after, as he put it, "something happened". Now we know the something that had happened, the something that had happened was that this (knife) had been thrust into that woman's body eleven times. We know that that is what had happened. He says he doesn't remember anything but after this he says he heard the little boy say to him, "Daddy, why you kill Mummy", and he also remembers that a man was in the vicinity. You may have no doubt that that man was Mr. Facey. Now, what does the automaton do then? Remember that Dr. Williams has said this is a sort of condition that can snap in and snap out like that but what does the automaton do then? He puts the little boy or he drives the little boy to his mother-in-law's house. He doesn't stay there to speak to the mother-in-law. He puts the little boy there and the little boy goes into the house. The prosecution are asking you to say that here was a man who realised that he had done something terrible and was taking an evasive action.

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Summing-up 29th March 1971 (continued)

One of the things that the prosecution have the onus of negativing in this case is the question of self-defence, that is that the accused man - the prosecution has the burden of making you feel sure that the accused man was not acting in any self defence. Now, as far as that issue is concerned, I am saying that it does not arise in this case at all in any way and I am not going to bother to leave the issue of self-defence to you at all.

(Mrs. Panten continues) £3.50 p.m.)

Out of an abundance of caution I will tell you this so that you will understand why I am not leaving the issue of self-defence to you. In order to raise the issue of self-defence in a murder trial there must be some evidence that the accused man had some reason to fear death or bodily harm from some action or word of the deceased; that he had no opportunity to retreat or retreated as far as he could and that he struck whatever blows he did strike with the intention of defending himself from death or serious bodily injury. You may know, there was no evidence in this case that can support any of those propositions and therefore, I withdraw from you the issue of self-defence.

The last little bit that I will mention to you tonight is on the question of discrepancies in the evidence which you have been referred to. The way that I suggest you approach this is to look at any particular discrepancies. For instance I think the most important discrepancy or the one on which Mr. Phipps relied most was the question of what the accused man said to the police officer. Did he say, "I want to tell you something," or did he say, "I want to tell you how it happened" or words to that effect. You will look at the particular discrepancy, that is where one witness says something and does it tally with what another witness has said or different witnesses don't agree with what they said and you ask yourselves, well, is this important to the jury. If you think it is important then you will say I will not act on the evidence which has created such an important discrepancy in this case. If you think it is trivial then it does not affect the case one way or the other. You look at all the circumstances in the case and the evidence to

see if there is any explanation for any alleged discrepancies and if you cannot find the explanation for it then you disregard that part of the evidence. Of course, if you think it is a lie, then you will not act on any evidence which you consider to be a lie. That is as far as we will go this afternoon, members of the jury. We are getting very close to the end of this case. I am going to repeat to you now only as a formality because I am quite sure that you are an intelligent, careful jury, you will not allow anything at this stage to interfere with this trial, but don't discuss this case with anybody and don't allow anybody to discuss it with you.

ADJOURNMENT AT 3.55 p.m.

ON RESUMPTION AT 10.08 a.m. 30th March 1971

JURY ROLL CALL ANSWERED.

Members of the jury, when we adjourned last night I was dealing with the question of the way in which you should approach any discrepancies or any inconsistencies such as the ones that have been pointed out to you and emphasized to you during the course of this case and during the addresses. I shall tell you now the way in which you should regard the statement made by the accused man or the statement alleged to have been made by the accused man and this applies to both the statement in writing and anything he may have said to any of the witnesses. It is for me to rule whether any such statement is admissible but once that statement is in, as it is in this case, then it is for you to attach such importance and weight and probative value to any such statement. You must, first of all, come to a decision as to whether that statement was in fact made by the accused man and then attach such weight to it as you think proper, taking into account all the circumstances in which the statement or admissions was made or taken. I will review for you now the evidence as led by the prosecution in this case.

The first witness you heard was Vine Ricketts, a housewife living at 6 Dorchester Avenue in St. Andrew and she told you that Ruby Walker, the deceased woman, was her youngest daughter. The accused was her husband and she said Ruby was

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Summing-up 30th March 1971 (continued)

living with her, that is with the witness, at the time of her death. She had two children, one eight and one five years old and they were also living with her as well as an adopted son. The accused, she said, was living at Pembroke Hall with his step-mother. Ruby came to live with her in 1969 and the accused came for a couple of days from the United States and then went back to New York. He came again and returned in January of 1970. He lived with them for a couple of weeks and then he left in about February 1970. On the 17th of March 1970 she said she was at home in the evening. Ruby came home from work at about five to six o'clock. She got a phone call and then she left somewhere close to about seven. She left in her car taking the young boy Karyl with her. Later about forty minutes after that Karyl returned home and said something to her. She then went to Sunrise Drive and there she saw her daughter lying in a pool of her own blood. She told you that the daughter had left in a Singer Vogue motor car. In answer to further questions she said the daughter and her husband, the accused man, were married in July of 1959. She then said that the accused man was very unkind and cruel to Ruby for quite a while. Now, objection was taken to this and so part of the objection was properly taken because the only evidence with which you are concerned is direct evidence, any hearsay evidence is not admissible at all. But if a mother-in-law is having daily contact with her daughter and her husband she is entitled, you may think that is a matter of common sense to say how those people were getting on. Whether you believe her or not it is a matter for you. But she is quite entitled to be asked well they were living with you on and off, how did they get on as man and wife? Well she said he was cruel. She went on to say that he used to treat her in a certain way, beating her with a buckle on his belt. Now that, Mr. Foreman, you must exclude as a fact entirely from your minds. I will tell you and try to explain to you why. She said in answer to questions put to her that she never witnessed any of these beatings .. What she did say was that she saw marks on the body. Now that, if you believe, is essential evidence or is admissible evidence, whether you accept it is, is for you, but if a woman takes her eyes, after she has been spoken to and looks upon the body of her daughter

and sees marks there she is perfectly entitled and that is perfectly admissible evidence for her to come and say I saw marks on her body. Remember, this is strongly disputed by Mr. Phipps, learned counsel for the defence, and you must take into consideration all the objections that have been raised to this and the fact also that the doctor who performed the post mortem examination has told you that he didn't see any marks on the body. Now, that again is a matter that you must approach with a certain amount of common sense. A woman has been found lying in a pool of blood in the street somewhere with eleven stab wounds in it. Somebody is being investigated with regard to a murder charge and a doctor performs a post mortem examination mainly to try to determine the cause of death and to describe the injuries which caused the death. You may think, members of the jury, it is entirely a matter for you, that a doctor in those circumstances might not be concerned to look for marks, if there were small marks of a beating with a belt or belt buckle. It's a matter entirely for you. This woman said, "I saw the marks on her body". You must draw such inferences as you think proper from that and you must also give the benefit of any doubt to the accused man and you must bear in mind that the accused man has strenuously denied any such suggestion. But you certainly must put out of your mind entirely anything that this woman Vine Ricketts heard.

(Time 10.20 a.m.)

(Mrs. Glasgow takes over)

She was cross-examined and she said that Ruby was born in 1934; she used to see the accused when he was a young man going to school. She went to the Salvation Army school and went to British Honduras, returning in '59 as a Lieutenant in the Salvation Army. They were engaged in '60 and married later. You may think that the date she gave of '59 must be wrong and that they were married about '60. Ruby was then teaching at Above Rocks and then she became a student of the University. She graduated and then the accused went to America to study and Ruby joined him there with the children. She identified the hand-writing on a certain document as being her daughter's and she was questioned about it. That document was

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Summing-up 30th March 1971 (continued)

put in and read to you and the contents of that letter must be still fresh in your mind. This was a letter written in June - 24th June, 1969, and it sets out certain things purporting to relate to some unsavoury association with one of her co-workers, that she is relating to the Colonel in the Salvation Army. Now, Mr. Foreman and Members of the Jury, as commonsense people you must know from your experience that married couples sometimes have differences, sometimes they quarrel, sometimes one makes a mistake, sometimes it is a serious mistake, sometimes it is not. But as Shakespeare said in one of his works: the course of true love does not always run smooth - those are not Shakespeare's words, he said "never did run smooth", but you will take into account, in your experience with human beings - and here is a letter written in '69 and you may think that although it supports what the defence are suggesting that there were marital differences between these two people and that in this particular case at least the wife was wrong - you may think that this letter and these incidents before June of '69 have little to do with the question of provocation in the following year, at the time of the killing - of course you will take it into account when you consider the whole of the relationship between these people and the whole of the circumstances which, according to the defence, caused the accused man to snap. When you come to consider your verdict if you wish you may take this letter with you into the jury room so that you may have once again what it purports to say and also you will give very careful consideration to the arguments that were advanced in relation to this letter by learned counsel for the defence.

In answer to further questions put to her by Mr. Phipps, she said that she first knew about the beatings from Ruby, so that to the extent that it involves some conversation with Ruby, that is hear-say and you must rule that out of your mind completely. But she went on to say: "I saw the marks on her body, I did not tell the police anything about the beatings." She was then shown the letter and she said that Colonel Morrison to whom the letter was written, officiated at the wedding ceremony and she said that the signature looked like his signature - I beg you pardon, that is not his signature - she said that the signature looks

like her - that is her daughter's - signature. In other words she was identifhing this document which is Exhibit 1.

DEFENCE COUNSEL: M'lord, I think what happened is that different documents were shown to the witness and she identified the signature. That document was never put in evidence. She was shown a different document and identified the signature as resembling, I think, Colonel Morrison's signature, but that was never put in evidence.

HIS LORDSHIP: That document was never put in evidence, I see. She positively identified the hand-writing of her daughter in this letter - Exhibit 1.

Vine Ricketts continued under cross-examination and said that she did not know of her daughter being involved in any unsavoury relation with a co-worker. She said that her daughter resigned because she wanted to teach. The daughter indicated that there were differences between her husband and herself and she, this witness, said that she was led to believe that the husband was unkind to her. She did not know that the daughter was misbehaving. A gentleman did drive her home in his car on her birthday; she did not hear any quarrel. She, the daughter, said she was coming home with a co-worker. She denied that she had asked the daughter to tell the accused to leave the home. The accused undertook, she said, the reconstruction of her home and while he was away he wrote to her complaining of Ruby's conduct. They had a family conference. She said that Ruby did not speak of her misconduct that evening. She left and came back again but she said she did not know any Mr. Day and so far as she knew Hicks was not having anything to do with Ruby. She always heard what she called grumblings going on between Ruby and the accused man. She did not find out what they were about. She would not tell me, that is Ruby would not tell me what she was doing and she said that Ruby was a girl who did not use strong language.

The next witness was Urcell Facey of 24 Sunrise Drive, Kingston 8, a haulage contractor, and he described where he was living on that road, on the right coming from the eastern side. On the 17th March, 1970, he said he was on his verandah and

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saw a car drive slowly up the drive, about 7.40 p.m. He heard a screeching sound of brakes and screams coming from the car. He ran to the gate and saw a body fall out of the side of the car into the road, on the right-hand side from the front driver's seat. The body, he said was riddled with blood. The body struggled and then gave up the struggle and appeared to die. He told you that he saw a man standing at the head of the woman who was lying there and it was the accused who was standing there. A little boy came out of the car and said: Daddy why you do that, or why you did that, and the man replied, "there was nothing left for me to do."

Mr. Foreman and Members of the Jury, this is a part of the evidence that the prosecution is relying upon as indicating that here was a deliberate act of murder, a deliberate act of killing, voluntarily done, no question of acting under automatism like a sleep walker, but this is what the prosecution is saying - give the most careful consideration you can to this - when this man was asked - if you believe this part of the evidence - when he was asked by the little boy "Daddy why did you do that" in the presence of Mr. Facey he said "there was nothing left for me to do". Are those the words of a man who does not know what he has done? Are those the words of a man who is in a sort of trance? This is what the prosecution are asking you to consider. On the other hand, you must bear in mind that the doctor has said - the Psychiatrist has said that the black-out or temporary losses of judgment can go and come like a snap. But you must use your own common sense about all this.

Mr. Facey went on and told you that he observed the accused make a step towards him and he heard the click of a ratchet knife coming from the direction of the accused and he retreated into his gate. About two minutes later he returned and the car was gone.

Here, again, the prosecution are asking you to infer that this was a man who did something, knew what he had done and then took evasive action. You may think, members of the jury, that is one of the matters for you to take into consideration in considering whether or not the balance of probability with regard to the defence of diminished responsibility is in favour of the accused or not.

(Mr. Simpson continues)

You may think one of the matters that you can properly take into consideration is what this man did immediately after the occurrence, bearing well in mind the psychiatrist's evidence that these things can come and go with the snap of a finger. In other words one minute you can be lucid the next minute you can be black-out, and so on. But if you think as commonsense men and women of the community that Mr. Facey says that after about 2 minutes he came back out of his gate and that the car was gone. Now cars do not drive themselves. We have not been told whether this was an automatic car or whether it operates with ordinary gears but the fact that that car was driven away so shortly after the alleged occurrence, after the occurrence, after this woman was dead with the little boy might lead you to think well the accused man must have driven that car. Was he then still in his state of trance when he drove the car or was he not. These are matters for you. But of one thing you must be certain is that the car did not drive by itself. What the Prosecution are asking you to infer on this aspect of the case is that here was a man who had done something which he knew was vicious and cruel and wrong and that he was taking evasive action. The defence - pay more care to what the defence have raised, especially as there is no onus on them to establish anything ultimately. The defence say: No, this incident was such a traumatic shock, the whole thing was such a shock to this poor man, this sick man, this man who needs help that he is completely unable to explain what his movements were.

In any event that car had gone leaving only the dead woman in the street. Mr. Facey said he then phoned for the police from his home. He described, the car as a cream coloured car. He left his verandah in a matter of seconds after he heard the scream and there was no other car passing at that time and he identified the car here, a Singer motorcar which was outside the court, registered No. BU-390, and told you that that was the car from which he saw the body of the woman slumped, that car is now Exhibit 2. Then he was asked to identify the accused man, that is the man whom he saw standing by the dead body and he identified a police officer who was sitting here and then he put on his glasses to make the matter abundantly clear. You will remember that I asked

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him to go around the Court and put his hand on the person that he saw and he identified the accused.

The next witness was Franklin Ricketts, a boiler operator who told you that Ruby Walker was his sister. She owned a Singer motor-car BU-390. On the 18th of March 1970 he attended the morgue and saw Dr. Dawson perform a post-mortem on the body of his dead sister. On the 18th of March he saw her body lying on the street at Sunset Drive.

Then you heard Wilbert Watson, aCorporal of Police. On the 20th of March 1970 he was stationed at Red Hills. On that day he was on mobile patrol in Coopers Hill, driving a Land Rover. That Land Rover was marked clearly with "POLICE" signs and that about 10.30 in the morning he saw on Coopers Hills heights a white Singer Vogue motorcar, BU-390. It was parked under a tree at the end of the road. He saw a man sitting around the steering wheel. He the policeman was in plain clothes at the time. He went up to the man and identified himself and he said the man was the accused. He had not then made up his mind to arrest the accused. He asked him if his name was Leary Walker and he said yes. And he noticed that the registration number of the car was that of one wanted by the police. He searched the car and found in the left pocket of the car a knife. It was open and it had what looked like bloodstains on it. He took Walker to the Police Station at Red Hills along with the knife and the car and spoke to Det. Corp. Lumley and handed him the knife. And he identified the knife, which is Exhibit 3 in the case. Det. Lumley came to Red Hills Police Station, idenfied himself to Walker the accused in the C.I.D. Office. The accused said, according to this witness, and it is a matter for you whether you accept this as the truth or not. Once again I repeat: if you have any doubt at all about it you must give the benefit of the doubt to the accused man. He said: "I would eventually give myself up". He said he then cautioned the accused and the accused said: "I want to tell you something, because 40 years have been wasted." Lumley told him that he could make a verbal statement or a written statement in which case someone would write down what he had to say or he could write it himself. And Lumley cautioned him and the accused man said that he would write himself what he had to say. He gave him a chair,

paper and a ball point pen, read over the caution to the accused. The accused man wrote it down and signed it in the presence of Lumley. The accused then started to write a statement and the officer said that he didn't threaten him or hold out any form of inducement to the accused man. On completion the accused signed the statement and he the officer witnessed it. And he produced the statement which was tendered as Exhibit 4 in this case and it was read to you.

This is another exhibit, Mr. Foreman and Members of the Jury, that you may think it proper to have with you as was indeed suggested by learned leading Counsel for the defence, Mr. Phipps, when you go to consider your verdict in this case. I made reference yesterday afternoon, Members of the Jury, to certain portions of this statement because I told you that it might assist you in trying to arrive at the atmosphere in which these two people were living, the dead woman and this accused man, because here was something coming from his own pen if you accept that it was made and you will follow the directions that I gave you on that. And this is what the statement said: I am now going to read for you the full statement that was made by the accused man Leary Walker.

> "I make this statement of my own free-will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence".

He then signed that caution and it was witnessed and dated 20th March 1970. The statement continues:

> "On Tuesday the 17th of March 1970 I was at Constant Spring at about 6 p.m. when I saw my wife Ruby Walker being driven by a man in her motor-car north through the square into Norbrook. My car was just then broken down, so I left it at the gas station and went to the bus stop. A friend Mr. Frank Smith saw me and picked me up and dropped me off at Half-way Tree. I took a taxi to Pembroke Hall to my step-mother's house 22 Pantrepant Avenue. I ate, then at about 7.30 p.m. I called my wife on the telephone. I asked her to lend me her car as I was stranded in Pembroke Hall. She asked how I would get it and I said I would walk up to her place, as usual.

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She offered to pick me up which she did, at about 20 minutes to 8. While driving along Sunrise Crescent an argument ensued as to her whereabouts that evening. She was driving. She stopped and raised an alarm and rushed out of the car. Then something happened".

(Time 10.50 a.m. Miss Pantry continues)

"Then Karyl said to me, "Daddy why did you kill Mummy?" A man was in the vicinity; Karyl was crying. I took him into the car and drove to 6 Dorsetshire Avenue and left him at the gate. Then I drove into Heavendale/ Meadowbrook area until I found myself on the Red Hills/Coopers Hill Road. I drove to the top of a hill which Ruby and I frequented in long-off years and parked the car. I had been there until the police came except for one period on Thursday when I went to the Village at about twelve or one p.m. and bought some food; bread, milk, aerated water and cheese.

I had on the same clothes I left work in on Tuesday until this time of making the statement. I handed over a knife to the police. The police took possession of the car and its contents.

I had no intention of hiding nor evading the police but the shock of the incident did not, and even now at writing has not worn off. I began to think of going to the Constant Spring Police Station to surrender to the authorities there, as I was not aware that there is a Police Station at Red Hills.

He signed that statement "Leary Walker" and dated it the "20th of March, 1969, at 12.45 p.m." and it was witnessed by W. Watson, detective acting corporal.

Members of the Jury, the prosecution are asking you to look at that statement, as indeed you must, and notice that there is not one single word in that statement about this man having his testicles squeezed by his wife. You may think that that was something that could be important if he remembered it. It may very well be that he was

still in a state of trance but if he was not in a state of trance do you think that that is an important matter that the accused would have remembered to put into the statement? Do you think it would have been important for him to put into this statement what he said later, that this wife of his had told him that "it is my dam man and if you don't like it you can go and kill your blasted self".

The prosecution are also asking you to take into account the fact that nowhere in this statement does he say anything about remember seeing the knife in the car. Do you think that that is something that he would have remembered to put into the statement? The prosecution are asking you to draw the inference, Mr. Foreman and members of the jury, that this statement was a cleverly-worded statement to support a theory about having a blackout, not being able to remember because in truth and in fact apart from relating the details of his going to get his wife - I am talking now before the killing - all that the accused man says in this statement on the 20th of March, 1970, is: "then something happened". Of course, he goes on to say what Karyl said to him. As I have said to you, Mr. Foreman and members of the jury, you must take into account all the circumstances in which this statement was made. You will certainly give the most careful consideration to the fact that this man at that stage must have been still very much disturbed by what had happened, if indeed he knew what had happened. But after you take all those circumstances into account, then as common sense people you must attach to this statement the importance and the probative value that you think it should bear.

Then you heard Zamora Lumley, detective corporal of police at Elletson Road. In March, 1970, he told you he was at Maverley station. On the 17th of March he got a report, went to Sunrise Drive at about 7.40 in the evening. There he saw the deceased Ruby Walker lying on her back in the street in a pool of blood. Dr. Dawson came and ordered the removal of the body. On the 18th of March, 1970, he told you that he attended the post mortem examination and took a dress, a brassiere and panty from the body of the deceased. On the 20th of March, 1970, he received another report and went to the Red Hills police station. There

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(continued)

he saw the accused and detective corporal Watson. Watson handed him a knife, exhibit 2 in this case. There was also a Singer motor car BU 390 at the station. He told you that he then had information on which he could arrest the accused and he told the accused who he was and the accused man said: "Officer, I would eventually give myself up because forty years have wasted". He cautioned him and he said the accused man then said: "I would like to give a statement as to how it happened".

Now, that is a piece of evidence that has been very severely challenged by the defence because the inference must appear obvious to you, that if those words were said - so the defence are saying - if those words were said, then you might be asked to draw the inference, well if a man said "I would like to give a statement as to how it happened" the implication obviously is 'I know how it happened' and that does not fit in with a blackout. So that you must once again give the most careful and serious consideration that your minds can muster to the objections which learned leading counsel for the defence made to that statement and make up your minds whether you accept what Detective Corporal Lumley said or not. If you have any doubt at all about it, you must give the benefit of the doubt to the accused man. The prosecution are asking you to say what possible reason could Corporal Lumley have for not speaking the truth? The defence are saying, 'Well, it is not just a question of not speaking the truth, it could also be an inaccuracy and since we are all human we can all make mistakes and it must be a mistake - certainly the defence say it is not accurate, the man did not say "I would like to give you a statement as to how it happened". Corporal Watson was present at the time. He said he told the accused that he could write the statement himself or someone would write it for him and he, the accused, elected to write it himself. He was given paper and pen. Corporal Watson read the caution to him, he wrote this down and signed it and he then wrote the statement and signed it. He also told you that he did not threaten or hold out any inducement to the accused and he identified the statement. He told the accused of a warrant that he had and he arrested and cautioned him and charged him with the murder of Ruby Walker, and the

accused, as he was perfectly entitled to do, said nothing. This warrant is exhibit 5 in this case. He told you that he took him to the Constant Spring Police station and he further cautioned him and asked him for his clothes, that is the clothes which he was wearing on the 17th of March, and he told you that the accused said that they were the same clothes that he had on. He, the accused, lifted his hand and showed him what appeared to be blood-stains on the shirt sleeve and he took possession of a shirt, merino, pants, underpants, socks, shoes, belt, made sealed parcels of all these articles and on the 21st he took them to the forensic laboratory along with the knife. The car was also taken to the laboratory, but this was later. He identified the articles - dress, shirt, pants.

(Mrs. Panton continues)

He was cross-examined and said those were not the only articles he took from the accused. There was a tie, he did not take the tie to the laboratory but he produced the tie later. He cautioned him. The accused said, "I want to tell you something because forty years have been wasted. He was asked to refresh his memory from a note he made at the time and he did so and he said, "I want to tell you something, because forty years have wasted."

MR. PHIPPS: I think he eventually did admit that the tie was taken to the laboratory. Your Lordship said that it was not taken. At first he said no and then he admitted that it was.

HIS LORDSHIP: That must be right. My note says: "I did not take it to the laboratory'. My recollection says that he did take it afterwards to the laboratory and he produced it in court. He was re-examined by counsel for the crown and he said that the accused man also said "I would like to give a statement as to how it happened," and when Mr. Phipps was given leave to ask further questions he said he did not make a note of that. As far as he remembered he said those words but he agreed that he never said that the accused man had said those words at the preliminary enquiry.

Now, there is another inconsistency or contradiction in the evidence which you must approach in

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the ways which I have suggested. But you must remember that it is the evidence which is given here that you are concerned with and not the evidence that was given anywhere else. But if you think that the contradiction, the fact that it was not said elsewhere when it might have been said and it was said here supports the argument that is put forward on behalf of the defence or if you have any doubt about it, then you must always resolve that doubt in favour of the accused man. Then the little boy Karyl Walker was called and you saw him and he started, he was asked a few questions by me as is my duty. I have to satisfy myself that he possesses sufficient intelligence, he understands the duty of speaking the truth and he understands the nature of an oath and the sanction of an oath and certain things like that, and after giving careful consideration to the whole situation I excluded this little boy from giving any evidence at all mainly on the ground that the little boy himself had repeatedly said that he did not understand what it was either to speak the truth as against an untruth or to relate something as it happened. Therefore, as far as you are concerned although the little boy did say something as far as you are concerned you are to regard the situation as though that little boy was never here at all and put out of your minds completely anything that he said, because I took the responsibility of preventing him and excluding him from making any statement with regard to this case. That is not to say, Mr. Foreman and members of the jury, that you must exclude from your minds what other witnesses have said about the little boy being present and the little boy saying something. What I will tell you to do is to put out of your mind all together the fact that the little boy was here in this court at all. But on no account must you regard anything that you heard fall from the lips of that little boy to affect adversely the accused man.

The next witness you heard was Dr. Dawson, Medical Officer, of St. Andrew. On the 17th of March 1970 he received a report, went to Sunrise Drive, there he saw a body lying in a street surrounded by a crowd. It was a female. She was dead. On the 18th of March he performed a post mortem examination. The body was identified to

him by a brother, Franklin Ricketts and was identified as the body of Ruby Walker, and he found, he told you, eleven injuries on this body when he examined it. The first injury was a stab wound in the middle of the chest, three quarters of an inch long. Number two, a stab wound two inches below the inner third of the left clavicle, three quarters of an inch long. Number three, a stab wound two inches below the outer third of the left collar bone, three quarters of an inch long; the fourth stab wound, one and one-half inches long on the right side at the level of the ninth rib, seven and one-half inches from the mid-line. Number five, a stab wound one inch long, five inches below the left breast. Six, a stab wound three quarters of an inch long, two inches from the mid-line in front of the right side of the level of the eighth rib. Number 7, a stab wound three quarters of an inch long, just about and to the right of the navel. Eight, a stab wound three quarters of an inch long on the left side at the level of the 11th rib. Number nine, a stab wound one inch long at the back of the right shoulder, four inches from the top. The injuries ten and eleven were two stab wounds three quarters of an inch long at the back and three inches from the angle of the left shoulder blade and separated only by a thin layer of skin. On dissection the wounds were traced and he said number one was traced through the chest wall and through the greater artery leading from the heart, one and one-half inches deep. Wound number two passed through the centre thickness of the chest wall into the left lung. Three, four, five, eight and nine penetrated only muscle. Number six penetrated muscle and ribs and passed through the liver. Number 7 passed through the abdominal wall in the cavity of the abdomen and numbers ten and eleven passed through the thickness of the muscle, penetrated into the chest wall close to the spine, cutting across the large descending artery. In the doctor's opinion death was due to shock from haemorrhage, resulting from stab wounds of the chest and he said it was consistent with, being caused by a knife like exhibit three. He told you that there was, in his opinion, varying degrees of force used and death would occur in a matter of minutes. You may think that is one fortunate aspect of this case that this poor woman, in the doctor's opinion, did not suffer for any great length of time. The doctor also told you that

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from his examination he could say that there were eleven distinct thrusts of this knife into the body. He was cross-examined and he said wound number eight, nine and ten and eleven were in fact to the back and he said the order in which it appeared were not necessarily the order in which they were delivered. There were many different positions possible in which the wounds were dealt or received and it is possible that the deceased was stretched across the lap of the assailant face down. This is, he said, most likely that having received the entries to the back the victim turned over, exposing her chest. The lengths of the wound could have been caused by the width of the knife. Number one wound by itself could have been fatal. The tenth and eleventh could have been fatal but he thought that number one would have caused death quicker. He did not see anything to suggest any old injuries on her body and that supports one of the contentions of the defence that Mrs. Ricketts either is mistaken or inaccurate or telling an untruth when she says that she saw marks of beating on the body of her daughter.

(Mrs. Glasgow takes over)

The next witness was Dr. Noel March of the Forensic Laboratory, Kingston. On the 21st March, 1970, he received at the laboratory thirteen parcels and one envelope. He examined the contents and issued a certificate.

He gave his evidence and told you of a pink dress, exhibit 6, in this case, that there were eight cuts in the front and four in the back, which showed blood of group 'A'. 'E' contained a black handled knife with blood on the blade and the handle. That blood group was group A, same as on the dress. 'F' was a cream coloured strip shirt, blood was present mainly on the sleeves. There was no conclusion as to the grouping of the blood. Parcel No. 1 - a brown stripe trousers, blood of group A present. He examined scrapings from a Singer motor car which shoed human blood but was insufficient for grouping. He said he did not take the scrapings himself but they were handed to him. Group A is the second commonest of all blood groups in Jamaica. I think, members of the jury, when I referred to the parcel marked 1 -

it was really a parcel marked with the letter 'I', that is the one containing one pair of brown stripe trousers; that was the one on which blood was present in brown stains on both legs, that is human blood group A.

Hw was cross-examined and he said that the blood was on the lower half of the pants. He received a pair of shoes marked 'M'. There was human blood on the uppers and he also received a tie but there was no blood on that.

Re-examined, he said a gentleman called Mr. Phillips handed him the envelope with scrapings from the car and he did this as part of his duty at the laboratory.

Detective Lumley was recalled by leave and he said he took the car to the laboratory and saw Mr. Phillips take the scrapings from inside the car and he took them inside to the laboratory.

Mr. Facey, the elderly gentleman was recalled by leave and he said that he did not see the accused do anything to the deceased. That was all the evidence led by the prosecution in this case.

The case for the prosecution, if I might attempt to summarise it or deal with some of the main aspects of it - the prosecution are saying that this is a deliberate atrocious murder. They point to the fact that the accused did not say anything to the police about his wife abusing him and telling him "he is my dam man, if you don't like it you can kill yourself" - that he did not say a word to the police about his wife squeezing his testicles. And they ask you to consider the probability or likelihood of this being done at all. They are saying that no such thing happened; that in order for a woman in the confined space of a small motor car to squeeze a man's testicles, would be a much more difficult accomplishment or performance than is related by the defence, and the prosecution suggest that all these things are fabrications to assist the defence. They ask you to pay particular attention to the fact that this accused man put that knife there himself, it was his knife. You are asked by the prosecution to put to yourself the question: why should a woman like the deceased has been described to you, been

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carrying a knife like this in her car, opened; a woman who is a member of the Salvation Army, a woman about whom it is expressed as a matter of surprise that she utters a word like 'blasted' or 'damn'. Why should she be carrying a knife like this, a woman about whom it is said that she did not say much, she was a rather quiet woman, she kept things to herself. The prosecution are asking you to say that there is no question of his seeing this knife in the woman's car and then going berserk or blacking out. Their suggestion is that it was his knife, he put it there, he used it, he knew he was using it.

Another inference that the prosecution are asking you to draw is that this woman was stabbed in the back while she was trying to make an attempt to get out of the car, having been stabbed in her chest. They are asking you to say that that is much more likely than any story about lying across a lap, squeezing testicles, getting stabbed on one side, turning over to present the other side. In any event you must consider that at some time or the other if this woman was squeezing this man's testicles, with the stab blows from one to eleven at some time or other she must have let go. The case for the prosecution is that the accused man saw himself presented with a problem and he decided on a particular course of action, and that he cannot now be heard to say, or should not be believed when he says that he did not know what was happening. They point to the evidence of Detective Lumley, when he says that the accused man told him: "I am going to tell you how it happened". With regard to the letter you are asked by the prosecution to say that this does not assist the case one way or the other, certainly not on the issue of provocation because it is said that - the accused man himself said that he and his wife were reconciled after that letter was written, so that whatever had occurred between the man with whom she had had her indiscretion in 1969, was something which was long forgotten and forgiven by the husband. And you may well think, members of the jury, that there is a certain amount of reasonable inference in that from the circumstances that I suggested to you while I was summing up the evidence, that whatever the circumstances were between this man and his wife, when his car broke down that evening the first person that he thought

of was his wife to come and help him, and his wife did not tell him to go to hell, the wife came to help him - this is according to his statement.

(Mr. Simpson continues)

So that is the crux of the case for the Prosecution, and you must remember that in the end it is the Prosecution that has to satisfy you so as to make you feel sure about all those things. There is only one part of this case in which any sort of proof is required from the defence and that is on the question of diminished responsibility. I think I told you yesterday that this was not, in my view, a case in which an issue of self-defence had any relevance at all. You must remember that this is still an element that the Prosecution has the burden of negativing. The Prosecution must make you feel sure that this man was not acting in necessary self-defence.

With regard to the defence of automatism the position as I explained to you yesterday is that the defence must point to some particular fact or some particular aspect of the evidence that I think is sufficient for you to consider. But when once they have done that then the burden lies squarely on the Prosecution to make you feel sure that this man was not acting as a robot or an automatant. That is, not acting involuntarily. They have that ultimate onus. And in this case I have ruled that there is some evidence for you to consider. What you make of it is entirely a matter for you and if you are left in any real doubt that this man was acting without knowing what he was doing at all, then you must give the benefit of the doubt to the accused man and return a verdict of not guilty - not guilty of anything. The Prosecution are asking you to say in this case that this whole suggestion of automatism or black-out or acting involuntarily is a complete fabrication to bolster a defence that does not exist at all. That being the case for the Prosecution it is necessary, of course, that you should consider with equal care the case that has been put forward on behalf of the accused man.

The accused man might have been content with saying: I am not guilty, it is for you the Prosecution to prove if you can that I am guilty.

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He is not called upon to say anything. What he has done, Mr. Foreman and Members of the Jury, is made an unsworn statement from the dock. This he is perfectly entitled to do. It is my duty to remind you of what he said and to tell you that although it is not sworn evidence which could be subject to cross-examination, never-the-less you can attach such weight to it as you think fit and you must take it into account in deciding whether or not the Prosecution have established their case before you here. Before I remind you of what the accused said, let me tell you this: if you believe what the accused man has told you you must find him not guilty. That is, if you believe what he has told you, then he knows nothing at all about the killing of his wife. And if you are not sure whether to believe him or not, you must also acquit him because in those circumstances the Prosecution would have failed to prove the case so as to make you feel sure that he is guilty. But even if you do not believe what the accused man has told you you cannot on that account alone convict him. You have to look at all the circumstances of the case including what he has said and then ask yourselves whether the Prosecution has satisfied you so as to make you feel sure that he is guilty. What he has told you you must test and be sure by the same standard and scale, in the same scale as any other statement in this case. Not because his statement comes from the dock should you employ any different standard or test.

Now this is what the accused said: We were married in 1960. She went to University in 1960 and graduated. We had 2 children. In 1968 by agreement, I went to New York to further my studies. She followed with the children. We lived happily until the middle of 1969. One day I got home I collected the letters and saw her behaving peculiarly with a letter that had been returned air-mailed. This letter she had written to a man in Jamaica. We had a quarrel over it, and she admitted that she had been having improper relations with a man. We wrote to Colonel Morris of the Salvation Army and asked his advice on the matter. He could not help us very much. She returned to Jamaica in July 69 and I followed. And I came to her mother's place. We had a family conference and were reconciled. And it was decided that I should go back to New York, tidy up

ends andcome home. I returned at the end of 1969 and lived with her at her mother's house. In Jany. 1970 on her birthday I was waiting on her at home with a present and card. She did not get home until 9 p.m. and she brought home by a man, whom I saw. I protested and we had a quarrel on this. The following day I was asked to leave the home. I left. The statement I gave to the police concerning the marriage is true. While we were travelling in the car we quarrelled about the same man who I saw driving her that evening. She flew into a temper and said: 'Is my damn man, if you don't like it you can go and kill your blasted self'. I was surprised because strong language was never used in our family. After saying that she stopped the car and rushed out. I went to her, held her and pulled her back. I was over into the driving seat. She fell across my lap and in struggling to get her inside the car she grabbed and held on to my testicles and squeezed me. I felt a cramping pain. I felt I was going to faint. I remember seeing the knife in the centre tray.
I remember reaching for the knife.
Beyond that I don't remember anything. I heard Karyl saying: "Daddy why you kill Mummy"? Then I knew something had happened. The rest is as I stated to the Police".

DEFENCE COUNSEL: May I apologise for interrupting you, Sir. Just when you were dealing with the statement of the accused, there are three points: when he remembers seeing the knife in the tray. He said he remembered seeing the knife and a lighter .....

HIS LORDSHIP: "And a lighter"?

DEFENCE COUNSEL: Yes, along with a cigarette lighter.

CROWN COUNSEL: Yes, M'lord. What I have is: I remember having seen the knife in the centre tray of the car along with a cigarette lighter.

HIS LORDSHIP: Along with a cigarette light. Yes, I am obliged to you, Mr. Phipps.

DEFENCE COUNSEL: The other point, M'lord, is that he says that - Your Lordship says they had a quarrel about a man whom I saw that evening. The same man - what he said is: the same man who had dropped her home on January 19th.

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HIS LORDSHIP: We quarrelled about the same man who I saw driving her that evening?

DEFENCE COUNSEL: Who had dropped her home on January 19th, M'lord. My learned friend shares my view.

HIS LORDSHIP: Yes, that is the same man that he saw driving her home on January 19th, or the same man he saw on the fatal evening.

DEFENCE COUNSEL: This is so, M'lord. The third which is a very small one, M'lord that after the reconciliation it was decided that I should go back to New York, tidy up our business, abandon studies and come home.

HIS LORDSHIP: Just one minute. We agreed I went back to New York ...

DEFENCE COUNSEL: Decided that I should go back to New York, tidy up our business ..

HIS LORDSHIP: Go back to New York, tidy up ends ...

DEFENCE COUNSEL: ... to abandon studies and come back.

HIS LORDSHIP: ... and come back home. Abandon studies and come back home.

DEFENCE COUNSEL: I apologise again for interrupting.

HIS LORDSHIP: Not at all! Helps me a lot and the Jury. And these amendments to the statement that the accused made Mr. Phipps has pointed out are completely correct.

Now, the next witness you heard, and indeed a most important witness in the case to whom you must pay the greatest consideration, is Dr. Vincent Williams, the psychiatrist. As I have told you, although you will not by any means ignore lightly the evidence of a medical practitioner especially one of long-standing or an expert in his field, the matter is still for you to decide, particularly the matter of the substantial impairment of this man's mind if you find that it was so - I mean the substantial impairment of his mental responsibility.

Now, what Dr. Williams said was that he was

the senior medical officer at Bellevue with a diploma in psychological medicine. He had experience of psychiatry since 1949, and was consultant for twenty-two years. On the 23rd of September, 1970, he examined the accused Leary Walker and he found that physically his pulse was seventy-six beats per minute. His hands were cold and he showed tremors of the fingers. His pupils were dilated, reacted to light. He sat quietly in the chair with a smiling, alert, mobile facial expression. He became fidgety, gesticulating freely as he moved his arms, and he spoke copiously at times. There was no other unusual motor activity. He was co-operative and attentive with good rapport; that is, he was not resentful or suspicious but he did not make any spontaneous speech. He answered questions relevantly and coherently and rationally. His emotional reactions were appropriate to the situation. He was excitable. He appeared worried but he displayed an attitude of resignation. He tried to put the best face forward. He had no fantasies or any disorder in thought process. His sensoria was clear and he appeared to be of average intelligence. His emotional tone interfered with his judgment due to his emotional state from his examination. The doctor said he came to the opinion that he was not mentally ill at the time of his examination but he was of a neurotic personality type, that is, emotionally unstable with mal-adjustment possibility. He would say that he had a functional derangement due to a disorder of the nervous system.

After examining him, he said he read the depositions in this case, and from the examination and from the history of the case he formed the opinion that he was not psychotic at the time of the incident, that is he was not disorganised in personality at the time of the occurrence. The doctor said he was not insane but his judgment may have been substantially impaired at the time of the incident. Neurosis is an inherent condition of the individual. Assuming that there was marital stress and that the patient had to abandon his studies plus the personality that he, the doctor, saw, he said that the accused man could snap, that is, go to pieces. He told you that reactions to stress are always peculiar to individual people, and this may seem to be commonsense. He said if this man had seen his wife with another man and

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had questioned her about it and she had admitted that it was her man and had abused him, and that in addition his testicles were squeezed, all these factors plus the symbolism of the injury to his testicles, would increase the likelihood of his judgment being further impaired. The stress on the individual would be greater. It would be possible for such a person to behave in a reflex way and an involuntary way. Such involuntary action would be called automatism. His reaction would vary according to the circumstances. Sometimes this sort of reaction manifests itself in acts of heroism, which is only an illustration of the type of reflex or involuntary or automatic action that the doctor was explaining to you. He said that a person under such circumstances may do an action which will appear reprehensible to other people and not be responsible for his acts. That is, he would have no control over his acts. It was one of the signs.

Automatism, he said, can be an aspect of neurosis or mental illness. Under such a state of automatism a person could have mental illness. Under such a state of automatis a person could perform well-integrated acts; there could be a sudden return of awareness, a sudden break and a sudden return. He said his son's speaking to him might bring him back. The awareness and his reply to the son, namely, that 'there was nothing left for me to do' would be consistent with his condition assuming that the other stresses were present. His going away into the hills for two days would also be consistent.

He was cross-examined by counsel for the Crown, and he said, assuming that the facts that have been put to me are correct, then it is likely that his behaviour could be explained by his judgment being impaired. My basis is that he is of a neurotic type and when faced with stress would behave in an unusual way. Automatism is a state where a person carries out well-integrated acts without being aware of it at the time. He said he was not saying that he was in a state of automatism, he was saying that given his personality and the facts related and the stresses at the time, then it is likely that he may have been acting in an automatic state. This neurosis, he said, is a disease of the mind and he said that this state

comes on suddenly and the person could snap out of it suddenly also. The circumstances that he related - that is when learned counsel for the Crown put to him certain circumstances - he said that lessens the likelihood that the accused man was in a state of automatism. He said if the accused man remembers that he saw the knife and remembers reaching for the knife, then he, the doctor, would say that he was not in a state of automatism. He said it lessens the likelihood that the accused was in a state of automatism during the period of forgetfulness. The doctor told you that he could not give any exact time at which the man would lose his judgment or did lose his judgment. His remembering that he saw the knife and his reaching for the knife are acts which would make it less likely that he was in a state of automatism and the reason why the doctor said he told you that was because of the remembering.

He went on and told you that he tested the accused man's power of recollection and his memory, and at his examination he found him to be of average intelligence. He didn't ask him any questions about what had happened at the time of the occurrence. He told you that it was more consistent that he became aware when his son spoke to him, and that he had a new awareness of his deed, and he went into a state of panic. There would be periods when he would not be completely aware and he would remember something; if he is in a state of automatism he would recollect no detail. The pattern is that with time there is a greater remembering of what happened.

(Mrs. Panton continues) (12.05 p.m.)

The fact that the boy has said that the accused has done something would tend to bring him back to awareness. If he said "there was nothing left for me to do," that would implicate some awareness. If the accused had a knife in his hand after the incident and moved toward a by-stander that would tend to strengthen the doctor's opinion, he said that the accused was then going into a state of panic in attacking an unusual person. The length of a state of automatism varies from person to person. There is no measure by which anyone can equate the number of repeated acts to the state of mind. The more upset the individual is, the more

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violence he exhibits, the more wounds or the more chops he would inflict and he would say that neurosis is a disease of the mind and it is inherent. He found the accused man was of the basic neurotic type. He said that it was likely that, it was possible that his judgment may have been substantially impaired. He did not go into his family background. He did mention his marital life was not happy sometimes, and in answer to a question put to him by me he said "I am saying that the accused is not insane, I am saying that he is of a neurotic ...

MR. ROBINSON: M'lord, I don't think your lordship put to the jury that the doctor agreed with me that the words, 'there was nothing left for me to do' indicated a mind which saw itself presented with a problem and saw itself having a specific course of mind to solve that problem. What your lordship said in relation to that was that it indicated that there was some awareness at the time.

HIS LORDSHIP: Just a moment. If he said "there was nothing left for me to do", that would indicate some awareness?

MR. ROBINSON: Prior to that I had put to the doctor that those words indicated a mind that saw itself faced with a problem and a mind with a specific course of action to solve that problem.

MR. PHIPPS: I must confess, my learned friend addressed the jury on it and I looked at my notes because at that point I was not satisfied that my own notes were accurate but between my junior and myself we have no clear notes on that.

HIS LORDSHIP: The doctor has said that the mere fact that the man said something would indicate a certain amount of awareness. It is awareness as against blackout that you have to consider, that you have to make up your mind on. And that Mr. Foreman and members of the jury was all the evidence in the case. The main point taken and made by the defence is that the defence is not so much denying the allegations as explaining the circumstances in which this woman met her death, and the real defence is that this man was not responsible for his act, that he acted involuntarily. The defence is asking you, have the Crown satisfied you so

that you can feel sure that whatever caused Ruby Walker's death was a voluntary act on the part of the accused and they say that the onus is on the prosecution to establish his guilt. They ask you to consider the evidence specially which shows the type of personality the accused has and the sort of stress he was under. The insistence was that he was a man who needed help. Mr. Phipps was at pains to repeat that there was no question of insanity in this case. The defence was not saying that the accused man was insane. What the defence is saying is that he was a man of diminished responsibility and/or that he acted under provocation. And I think I will remind you that Dr. Williams has said that there was an abnormality of mind which was in error and that that was what the statute provided for. Strenuous and strong challenge was made to the alleged statement that the accused man said "I want to tell you how it happened" when it was insisted what the accused man said was, "I want to tell you something, how it happened." The defence should really be considered Mr. Foreman and members of the jury, under these heads. First of all, the defence is saying the onus is on the prosecution to make you feel sure and they have fallen short of that burden. Therefore they are saying on that basis alone, you must find the accused man not guilty, that is not guilty of any offence at all. Secondly, the defence is relying on what is known in our law as a defence of automatism, that is that man may have done something but his mind did not go with the act, that he was in a sort of trance or blackout or any words like that, that you can think of. Thirdly, the defence has to be considered on the basis of diminished responsibility, and I have explained to you what diminished responsibility means and I have told you that it is for you the jury to say, when you consider the question of diminished responsibility, whether there was a substantial impairment of the accused man's mind. To repeat to you what I have told you before, it has some importance to this issue, you have to look at it in a broad common sense way and ask yourselves, having heard what the doctor has said and knowing the whole of the story and knowing what this man has done and seeing him here, do we think, as common sense people, that there was a substantial impairment of his mental responsibility in what he did. If the answer to that is yes, then you find him not guilty of murder but guilty of manslaughter. If the answer is no,

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if you think for instance that this man was a bit upset, was there some impairment in his nervous make-up, but we do not think that it was substantial, we do not think that it was something which would really make any great difference, then it would be open to you to find him guilty as is charged in this indictment, that is guilty of murder and then defence are saying that if you are not satisfied about any of these other things, then you should find that the accused was acting under provocation, not provocation as we understand it in ordinary layman's language, but provocation in law as I have explained it to you, provocation by things done or things said or combination of the two, such as to make a man lose his reason. There is one thing further that I want to say to you, members of the jury and it is this. I am going to put to you the possible verdicts that are open to you in this case: Number one, you can find the accused not guilty; that is you can acquit the accused of any and everything, find him completely innocent in this case. If you find that the accused was acting in a state of automatism, that is that the act that he did was an involuntary act and that he had no idea of what he was doing at all, then you must find him not guilty. If you are to find the accused man guilty, then you must consider first, the indictment as it is made, that is the charge of murder. If you are satisfied so that you feel sure about it that he is guilty of murder, then that is an end of the matter, and you return your verdict. If you are not satisfied about murder then you must consider the verdict of manslaughter. That manslaughter verdict can be based in this case on either diminished responsibility or provocation or both and I want to tell you this. When you back from your deliberations I am going to ask you to announce through your foreman a special finding as to whether you find the accused was a man of diminished responsibility, that is if you find him guilty, I want to know specifically whether you arrived at this finding on the basis of diminished responsibility. It is important that I should know that, or provocation or both.

Now, is there anything further that you would like me to put more fully or in greater detail to the jury Mr. Phipps? (Time: 12.20 p.m.)

(Mrs. Glasgow takes over).

HIS LORDSHIP: Is there anything you would like me to put or put more fully or in greater detail to the jury, Mr. Phipps?

MR. PHIPPS: Not in the actual directions, m'lord, but Your Lordship indicated that they might have the letter and the statement given to the police on the 20th. Would Your Lordship indicate to them that they might look at the motor car again in light of the statement by the accused man as your lordship put it to them - that he remembers seeing a knife and a cigarette lighter - look at the physical features of the car and see if there is a possibility ...

HIS LORDSHIP: ... to see if there is any lighter?

MR. PHIPPS: Any fixture in the car like a cigarette lighter. They looked at it before, but now the emphasis is on the fact of the knife when, in fact, he said he remembers seeing a knife and a cigarette lighter - just to inform them that they may look at the car again.

HIS LORDSHIP: How is that likely to assist them at this stage?

MR. PHIPPS: All I am saying is that they may look at the car again if they wish.

HIS LORDSHIP: Yes, if they wish.

MR. PHIPPS: If they wish, that is the only point I wish to make.

HIS LORDSHIP: Do you have the original statement?

REGISTRAR: Yes, m'lord.

HIS LORDSHIP: Original statement by the accused.

I should have told you, members of the jury - I may have done it but out of an abundance of caution I must tell you this finally, that if when you come to your final considerations and deliberations you are in genuine doubt as to the verdict of murder or manslaughter, you must always return - you must return the lesser verdict of manslaughter. I should also tell you, when I said a while ago that if you are satisfied that the

In the Supreme Court

No.15

Summing-up 30th March 1971

(continued)

accused man was acting in a state of automatism, you must acquit, I should also tell you that if the case leaves you in any doubt on that issue of automatism you must also acquit.

So is there anything further Mr. Crown Counsel?

CROWN COUNSEL: Nothing, m'lord.

HIS LORDSHIP: So I am leaving with you, Mr. Foreman and Members of the Jury, the statement made by the accused man, the letter which was put in evidence by the defence and, if you wish to see the car perhaps you could tell me that now. Do you wish to see the car again?

FOREMAN: No, sir, we do not.

HIS LORDSHIP: But if you wish to see the car by all means do so. And now, will you consider your verdict and let me know how you find. Do you wish to leave the room?

FOREMAN: Yes, sir.

Time: 12.25 p.m.

HIS LORDSHIP: There is just one more thing that I think will assist you, members of the jury, that you may not know about and this is a matter you must pay attention to and follow. As I said, you can find the accused man completely innocent and that is an end of the case. Now if you are to find him guilty of anything you must all consider the question of murder first and you must all be in agreement, that is it must be a unanimous verdict - 'yes, murder', 'no, murder'. It is only then that you go on to consider anything like manslaughter. You consider murder first and be unanimous on that - yes or no - and it is only then that you go on to consider manslaughter - that is provocation or diminished responsibility or both.

Time: 12.28 p.m.

JURY RETIRE UNDER SWORN GUARD: 12.29 p.m.

JURY RETURN: 2.06 p.m.

JURY ROLL CALL

No. 16

In the Supreme Court

No.16

Verdict
30th March 1971

V E R D I C T

REGISTRAR: Mr. Foreman, please stand. Members of the jury, have you arrived at your verdict?

A. Yes, we have.

Q. Is your verdict unanimous, that is to say are you all agreed?
A. Yes, sir.

Q. Do you find the accused, Leary Walker, guilty or not guilty of murder?
A. Not guilty.

HIS LORDSHIP: Just a minute. Mr. Foreman will you keep your voice up a little bit so we can all hear you. And you try and keep your voice up. (To Registrar). Unanimous verdict, not guilty of murder?

FOREMAN: Not guilty of murder.

REGISTRAR: Do you find him guilty or not guilty of manslaughter?

FOREMAN: Guilty of manslaughter - diminished responsibility.

HIS LORDSHIP: Guilty of manslaughter on the basis of diminished responsibility?

FOREMAN: Diminished responsibility.

REGISTRAR: You say the accused Leary Walker is guilty of manslaughter, that is your verdict and so say you all?

FOREMAN: Unanimous.

HIS LORDSHIP: And that is the verdict of you all?

FOREMAN: Of us all.

HIS LORDSHIP: Mr. Phipps and Mr. Robinson, in view of the verdict of the jury, and having regard to the time that they have spent out deliberating, I would prefer, if it is not

In the Supreme Court

No.16

Verdict
30th March 1971
(continued)

too inconvenient to you both, to deal with the whole matter of antecedent and sentence tomorrow morning.

MR. PHIPPS: M'lord, it seems to be agreeable and acceptable for my learned friend the crown counsel, and so far as I am concerned, personally, the indications are that I will be out of town tomorrow and this is a matter that can adequately be dealt with by my learned and able junior who will make himself available.

HIS LORDSHIP: I will therefore adjourn the court until 10.00 o'clock tomorrow morning when I will deal with the question of sentence. It only remains for me to thank you on my own behalf and on behalf of the Corporation for coming here and doing your civic duty in the way you have. I am going to release you from further jury service for the next two years. Adjourn the court.

ADJOURNMENT TAKEN.

No.17

Evidence of Character

31st March 1971

No. 17

EVIDENCE OF CHARACTER

ZAMBORA LUMLEY: SWORN: 31st March, 1971

Zambora Lumley, Detective Corporal of Police, stationed at Elleston Road Police Station in the parish of Kingston.

Enquiries were made into the antecedents of Leary Leslie Walker indicted in the Home Circuit Court, Kingston, for murder.

The accused, Leary Walker, was born on the 7th of August, 1930 at 57 King Street, Kingston. Father, Joseph Walker, tailor, of 57 Slipe Road; mother, Doris Smith, a dressmaker residing in the United States of America; foster or adopted mother, Evelyn Green of 22, Pantrepant Avenue, Pembroke Hall, Saint Andrew, who adopted him when he was about two years of age.

Education: At the age of four years he went to the Shortwood Infant School where he spent about

three years, then to Mico School for two years, then to Providence all age school where he stayed until he was about sixteen years of age. He then sat for the Jamaica Local Examination, then reaching third year. He then went to Technical where he studied and later became an electrical engineer. He continued his studies.

Employment: He worked with Kaiser Bauxite in St. Elizabeth as an electrician, starting at £9 or $18.00 per week. This he did for about one year and was then getting £10 to £12 or $20.00 to $24.00 per week. He next worked at Alcan, starting at £12 or $24.00 per week. This he did for about one year. He later worked at several places in Kingston and did jobs in that field. He worked Greys Inn for over a period and returned to Kingston where he worked with the Public Service Company, receiving about £32 or $64.00 per month. He left and worked at the Public Works Department, Kingston, with salary £660 or $1320.00 per year. He later migrated to the U.S.A. in 1967.

Marital Status: He was married to the deceased, Ruby Walker, an education officer attached to the Ministry of Education about 1960. There were two children from the marriage, ages 8 years and 5 years.

Previous convictions: The accused has no previous convictions.

General: He neither drinks nor smokes and is very reserved. He doesn't talk much. He likes to study and pays much interest in his work. He was still employed up to the time of his arrest at Ruthoski Bradford and Partners as an electrical engineer, with salary $7,000 per annum.

CROSS-EXAMINATION BY MR. SMALL:

Detective, just a few questions in relation to his last employment. This you say, was where? The Public Service Company?

A. Oh, yes, sir.

Q. You in fact gathered he joined that company sometime about 1958?

A. I didn't have the time.

Q. You do understand, though, that before he went

In the Supreme Court

No.17

Evidence of Character 31st March 1971 (continued)

to the United States he spent a considerable time with the Public Service Company - about ten years?

A. I don't know the amount of time but I know it was some time before.

MR. SMALL: Thank you.

(Mr. Small sits)

REGISTRAR: Leary Walker, do you wish to call any witnesses?

ACCUSED: No, please.

REGISTRAR: The jury having found you guilty of manslaughter, do you wish to say anything why the sentence of the court should not be passed upon you?

MR. SMALL: May it please your Lordship.

HIS LORDSHIP: Yes, Mr. Small?

MR. SMALL: It is always a difficult task for someone appearing for an accused to attempt to advise the court as to the considerations which should be borne in mind before the sentence of the court is passed and, particularly, in this case where both the circumstances surrounding the incident and the personal history of the accused person has been thoroughly aired in court by way of evidence. In particular, your Lordship must have heard the evidence of the doctor as to his mental history, and in this case the jury, after considering all the evidence, have returned their verdict and accepted the opinion of the doctor and accepted those facts which the doctor considered went towards the state of mind which he described in this accused man.

Your Lordship, I am sure, is appreciative of the fact that although on the face of it the circumstances in which Mrs. Walker met her death appeared to be perhaps gruesome, there are circumstances before your Lordship which show that, as regards the man who is before your Lordship - who is the person this court has to be concerned with at this moment - he

is a man who is not responsible, fully responsible, for those circumstances. Also, your Lordship will have to consider, in determining the sentence which this court should pass, the likelihood of its repetition and the opportunity that this accused man should be offered to be integrated into society.

The particular illness, which the doctor described, of neurosis, I don't know if he went so far as to say so but I venture to suggest to your Lordship that it is not an illness which is likely to arise continually, but that it is an illness brought on by very unusual circumstances and because of that there can be no sure method of treatment, except, I venture to say, that as in the case of the common cold, although you cannot take precautions against it beforehand, you cannot treat it beforehand, it can only be treated when the signs of it arises.

I am sure that because this matter has been as fully aired as it has been, wherever this accused man is both himself and those close to him would be aware of the importance of taking whatever preventative steps beed to be taken if and when any of these signs were to occur. I therefore ask your Lordship to bear in mind what is always a difficult balance that has to be maintained in these circumstances, the balance between the interests of the accused man and also, on the other hand, the interests of society at large, with the hope that your Lordship can find that combination which identifies both these interests in one.

May it please your Lordship.

HIS LORDSHIP: Yes, thank you, Mr. Small.

No. 18

S E N T E N C E

HIS LORDSHIP: Leary Walker, you have been convicted of killing your wife, Ruby Walker, on the 17th of March, 1970. Everyone who has followed this case must shudder at the thought

In the Supreme Court

No.18

Sentence
31st March 1971
(continued)

of the brutal and cruel manner in which you slew this woman, your wife, by plunging a knife into the vital parts of her body eleven times and then throwing her dying body out into the open street. For my own part, I am satisfied that you did this in a jealous rage. It will never be known what thoughts passed through the mind of this unfortunate defenceless woman in her agony of death as you repeatedly thrust this knife into her body in the presence of your little son, aged four years. She had left her home that night at your request to give you a helping hand because you had telephoned her and told her that your car had broken down. The jury, in my view, completely rejected any suggestion made on your behalf that at the time you did these acts you were in a state of unconsciousness or subject to any involuntary movement, but they have found that your mental responsibility was substantially impaired because they must have accepted the evidence of the doctor that you are a person with a neurotic personality.

I have decided, in all the circumstances of this case, taking into account your character, your mental and physical condition, that I myself will not take the responsibility of setting you anywhere near liberty for a very long time. It would not, in my view, be in the public interest.

The sentence of this court is that you be kept in imprisonment for life.

(Prisoner escorted from the dock)

Time: 10.20 a.m.

No. 19

In the Court of Appeal

No.19

Notice and Grounds of Appeal 13th April 1971

NOTICE AND GROUNDS OF APPEAL

IN THE COURT OF APPEAL

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION OR SENTENCE

Criminal Appeal No. 42 of 1971

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of Appellant: Leary Walker

Convicted at the Circuit Court held at: Kingston

Offence of which convicted: Manslaughter

Sentence: Life Imprisonment

Date when convicted: 30/3/71

Date when sentence passed: 31/3/71

Name of Prison: General Penitentiary

I, the abovenamed Appellant hereby give you notice that I desire to appeal to the Court of Appeal against my Conviction and sentence on the grounds hereinafter set forth on page 3 of this notice.

Signed: Leary Walker
Appellant

Signature and address of witness attesting mark...

.....

Dated this 13th day of April, 1971.

QUESTIONS	ANSWERS
1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal?	No
2. Do you desire the Court of Appeal to assign you legal aid?	No

In the Court of Appeal

No.19

Notice and Grounds of Appeal 13th April 1971 (continued)

If your answer to this question is "Yes" then answer the following questions:-

(a) What was your occupation and what wages, salary or income were you receiving before your conviction?

(b) Have you any means to enable you to obtain legal aid for yourself? 10

3. Is any Solicitor now acting for you? If so, give his name and address: No

4. Do you desire to be present when the Court considers your appeal? Yes

5. Do you desire to apply for leave to call any witnesses on your appeal? No

If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice.

GROUNDS OF APPEAL 20

1. MISDIRECTION

(a) The Learned trial Judge wrongly withdrew the issue of self-defence from the jury's consideration thereby depriving the applicant of a real chance of a complete acquittal.

(b) The trial Judge wrongly directed the jury that there was an onus on the applicant to prove that he acted involuntarily at the time of the killing. It is submitted that a later correct statement of the law on this point could only serve to confuse the jury unless they were clearly told that the original statement that the onus was on the applicant was wrong. 30

(c) The accused defence was not adequately put to the jury and the jury were invited to draw inferences adverse to the applicant without proper foundation therefor e.g.

(i) inference that the applicant had armed

himself with a knife before the killing.

(ii) Inference of cruel conduct by the applicant towards the deceased.

(iii) A direction that evidence of marriage relationship in 1969 had nothing to do with incidents in 1970.

(iv) The applicant's unsworn statement was mutiliated in the summing up.

(v) The evidence of Dr. V. O.Williams on automatism was not adequately put to the jury.

(vi) The Learned trial Judge failed to direct the jury as to the law if it was found that the accused was provoked and was also suffering from dininished responsibility.

2. INADMISSIBLE EVIDENCE

The evidence of Karyl Walker ought not to have been heard by the jury. The trial Judge was neglectful in his duty when he permitted this little boy to start his testimony before it was decided whether or not he was competent to give evidence. The effect was to leave with the jury prejudicial evidence which could not be challenged. This evidence affected the consideration of the case by the Judge himself and must have affected the jury.

3. THE SENTENCE WAS MANIFESTLY EXCESSIVE.

GROUNDS OF APPEAL OR APPLICATION

(1) Mis-direction

(2) Inadmissible evidence

(3) Sentence excessive.

In the Court of Appeal

No.20

Judgment 21st June, 1972

No. 20

JUDGMENT

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 42 of 1971

BEFORE: The Hon. President
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Graham-Perkins

R. v. LEARY WALKER

21st JUNE, 1972

Mr. F.M.G. Phipps, Q.C., with Richard Small for appellant.
Mr. C. A. Harris for the Crown.

Edun, J.A.

EDUN, J.A.:

The appellant was charged with the murder of his wife Ruby Walker and he was convicted of manslaughter on the ground of diminished responsibility. The main ground of appeal which in our view warranted consideration was whether or not the trial judge was correct in not leaving to the jury the defence of self-defence.

The facts were that the appellant and his wife were separated because of matrimonial difficulties. The witness Urcell Facey for the Crown deposed that about 7.40 p.m. on March 17, 1970, he heard a screeching sound of car brakes and screams coming from a car. He ran to his gate and saw the body of a woman (later identified as Ruby Walker) fall out of the side of the car into the road, from the driver's seat. The body he said was riddled with blood, it struggled and then appeared to him dead. He then saw the accused standing at the head of the woman and a little boy (their son of about five years old) came out of the car and said, "Daddy why you do that?" and the appellant replied "there was nothing left for me to do." The witness said he observed the appellant advance towards him, he heard the click of a ratchet knife coming from his direction and with that he retreated into his yard. About ten minutes later, he returned to the spot and

observed that the car was gone but the deceased's body was still in the road. Police came later. Dr. Dawson who performed a post mortem examination on the body found eleven stab wounds on both the front and back of the upper part of her body in the area of her shoulders and chest. He was of the opinion that the injuries were caused by varying degrees of force, that death could have occurred in minutes and that there were many different positions possible in which the wounds were dealt or received. He concluded that it was possible that the deceased was stretched across the lap of the assailant face downward.

There can be no doubt that it was the appellant who stabbed his wife Ruby Walker and as the result of which, she died. The appellant was taken in custody on March 20, from his car and in the left pocket of that car a black handled knife with human blood stains of the same blood group as that of the deceased, was found. When arrested and cautioned, the appellant in a voluntary statement said among other things ... "While driving along Sunrise Crescent an argument ensued as to her whereabouts that evening. She was driving. She stopped and raised an alarm and rushed out of the car, then something happened. Then Karyl (the son) said to me "Daddy why did you kill Mummy? A man was in the vicinity. Karyl was crying ... I handed over the knife to the police ... I had no intention of hiding nor evading the police but the shock of the incident did not, and even now at writing has not, worn off ..."

The prosecution led in evidence that statement of the appellant as part of their case. There was at the close of the crown's case no evidence as to the circumstances in which the deceased came to be stabbed. In an unsworn statement at the trial, the appellant said (among other things):

> "... The following day I was asked to leave the home. I left. The statement I gave to the police concerning the marriage is true. While we were travelling in the car we quarrelled about the same man who I saw driving her that evening. She flew in a temper and said 'Is my damn man, if you don't like it you can go and kill your blasted self'. I was surprised because

In the Court of Appeal

No.20

Judgment Edun, J.A. 21st June, 1972 (continued)

strong language was never used in our family. After saying that she stopped the car and rushed out. I went to her, held her and pulled her back. I was over into the driving seat. She fell across my lap and in struggling to get her inside the car she grabbed and held on to my testicles and squeezedme. I felt a cramping pain. I felt as if I was going to faint. I remember seeing the knife in the centre tray of the car along with a cigarette lighter. I remember reaching for the knife. Beyond that I don't remember anything. I heard Karyl saying "Daddy why you kill Mummy"? Then I knew something had happened. The rest is as I stated."

The learned trial judge told the jury that there was no evidence warranting his leaving the defence of self-defence. Attorney for the appellant submitted that there wassufficient evidence for the jury to decide. Attorney for the Crown submitted that there was no such evidence establishing self-defence and if he was wrong, he invited the Court to apply the proviso. We were unanimously of the opinion that the learned trial judge was wrong and that this was not a case for applying the proviso.

In Lashley v. R.(1958-59) 1 W.I.R. p.100, it was held that in order to raise the defence of self-defence, there must be some evidence, that -

1 the appellant had reason to fear death or bodily injury from some action or words of the deceased or of a person or persons acting in complicity with him;

2 the appellant had no opportunity to retreat or retreated as far as he could; and

3 the appellant struck the blows causing the injuries which resulted in the deceased's death with the intention of defending himself from death or injury, that is, that he considered his life or limb in actual danger.

The facts in the instant case disclosed that:-

1 there was no evidence on the case for the Crown proving in what circumstances the deceased came to be stabbed, apart from the appellant's unsworn statement at the trial. It must be remembered that the onus is on the Crown to negative self-defence;

2 Though it is true that in his unsworn statement, the appellant said he remembered reaching for the knife, he did not remember stabbing his wife. However, Urcell Facey an independent witness relied upon the Crown as credible, stated that when the child asked "Daddy why you do that?", the appellant said "there was nothing left for me to do." The appellant's reply was not inconsistent with a reasonable inference that he was conscious and that he had killed his wife because he was acting in self-defence;

3 in the appellant's statement at the trial, he said he was over into the driving seat when he held his wife and pulled her back. Urcell Facey supports that fact when he said that he saw the body of the woman fall out of the side of the car into the road from the driver's seat;

4 the appellant claimed that his wife fell across his lap when he pulled her back into the car, and in that position, she grabbed on to his testicles and squeezed them. The doctor gave as his opinion that there were many different positions possible in which the wounds were dealt or received and it was possible that the deceased was stretched across the lap of the assailant face downward.

In those circumstances, if what the appellant said was true, (a) it was utterly unreasonable to expect the appellant to retreat when he was within the confines of a car and under the weight of his wife, and (b) the silent testimony as to the distribution of the injuries coupled with the doctor's opinion is not inconsistent with those injuries being inflicted in self-defence. The evidence disclosed a credible narrative constituting the appellant's cardinal line of defence. We cannot, therefore, understand why the learned trial judge took it upon himself to decide a question of fact. He was in fact deciding that in comparison with an

In the Court of Appeal

No.20

Judgment Edun, J.A. 21st June, 1972

(continued)

excruciating pain, there were eleven stab wounds, and as a matter of law, the appellant had no reasonable grounds to believe he was in fear of serious bodily injury to himself. We are not prepared to stipulate that excruciating pain, however caused, must conform to a set standard of behaviour in reaction; each case must depend and be decided upon its own facts.

In R. v. Dinnick (1910) C.A.R. p.72, Lord Darling C.J. at p.79 said:

> "But there is a principle of our criminal law which we think has been violated in this case - namely, that when a defence, however weak it may be, is raised by a person charged, it should be fairly put before the jury ..."

As regards the invitation to apply the proviso, we took the view which coincides with the reasons for decision in R. v. Badjan (1966) 50 C.A.R. p.141. It was there held that where a cardinal line of defence (e.g. self-defence) has been placed before the jury, but has not been referred at all in the summing-up, it is in general impossible for the Court of Criminal Appeal to apply the proviso, and refrain from quashing the conviction. In that case there was evidence in the Crown's case which negatived the defence of self-defence. Yet, Edmund Davies J. (as he then was) said at P.143:-

> "In the course of his direction to the jury, the learned Commissioner said nothing about the defence of self-defence which the appellant had raised. It was a defence, which in the light of the evidence, might have been regarded as of tenuous worth, but it was a defence which the appellant was entitled to have left to the jury for their assessment. Unhappily and unfortunately, the learned Commissioner did not advert to that defence."

In the instant case, except for an inference, there was no evidence in the Crown's case which would go to negative self-defence and the learned trial judge definitely withdrew that defence from the jury. The defence was of a kind which, however weak or tenuous, might, if believed by the jury or if it caused them to entertain a reasonable doubt, have resulted in a complete acquittal. In other

words, the withdrawal of that defence, of itself, in the light of the evidence amounts to a denial of justice to the appellant and it is tantamount to condemning him without his being heard; a substantial miscarriage of justice.

For the reasons given, we allowed the appeal, quashed the conviction, set aside the sentence and in the interests of justice ordered a retrial at the present sitting of the Home Circuit Court. In the meantime, the appellant is to remain in custody.

In the Court of Appeal

No.20

Judgment Edun, J.A. 21st June, 1972 (continued)

No. 21

NOTICE OF MOTION FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

No.21

Notice of Motion for Leave to Appeal to Her Majesty in Council 12th July, 1972

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 42 of 1971

B E T W E E N: THE DIRECTOR OF PUBLIC PROSECUTIONS — APPLICANT

AND LEARY WALKER — RESPONDENT

TAKE NOTICE that the Court of Appeal will be moved on the 26th day of July, 1972, at 9.30 o'clock in the forenoon or as soon thereafter as Counsel can be heard on behalf of the abovenamed Applicant on the hearing of an application for an order that the applicant may be granted leave to appeal to Her Majesty in Council from a Judgment of the Court of Appeal dated the 21st day of June, 1972, in the case of the Queen against Leary Walker for Manslaughter.

DATED this 12th day of July, 1972.

/s/
Crown Solicitor
Solicitof for the Applicant

To the abovenamed
and/or his Attorney,
Mr. F. M. G. Phipps, Q.C.

Filed by the Crown Solicitor, Crown Solicitor's Office, 134-140 Tower Street, Kingston, for and on behalf of the abovenamed Applicant.

In the Court of Appeal

No.22

Reasons for granting leave to appeal to Her Majesty in Council 29th September 1972

No. 22

REASONS FOR GRANTING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 42 of 1971

BEFORE: The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Robinson, J.A. (Ag.)

R. v. LEARY WALKER

J.S. Kerr, Q.C., Director of Public Prosectuions and Courtenay Orr for the Applicant.

F.M.G. Phipps, Q.C. with Richard Small for the Respondent.

26th, 27th, 28th July
29th September, 1972

Fox, J.A.

FOX, J.A.:

The point of law

This is an application by the Director of Public Prosecutions for leave to appeal to Her Majesty in Council from a decision of this court whereby an appeal by the respondent from his conviction in the Home Circuit Court for manslaughter on the ground of diminished responsibility, was allowed and a retrial was ordered. The authority for this application is contained in the provisions of section 7 of the Judicature (Appellate Jurisdiction) (Amendment) Act, 1970, Act 12 of 1970. These provisions enable an appeal to Her Majesty in Council by the Director of Public Prosecutions, the prosecutor or the defendant "where in the opinion of the Court, the decision involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought." This is the first application pursuant to those provisions which has come before this Court. Mr. Phipps suggested that the application should have been made when the decision of the court was

handed down, and that an application to a completely different panel of the court was not competent. No such procedural restriction is imposed by law or practice and in our view, the suggestion is without merit.

In substance, the point of law which the Crown is seeking to question is the sufficiency of the evidence in the case to raise up the issue of self-defence. The learned judge determined that point of law adversely to the respondent. He ruled that self-defence did not arise on the evidence and withdrew that issue from the consideration of the jury. This Court thought that he was wrong, and in a written judgment delivered on the 21st June, 1972 concluded that "the evidence disclosed a credible narrative constituting the appellant's cardinal line of defence." The Crown desires to have the opinion of the Privy Council on the correctness of this conclusion. The facts must be stated.

The facts in the Crown's case.

The respondent was tried on an indictment charging him with the murder of his wife on 17th March, 1970. The evidence in support of the Crown's case disclosed that from 1969 the respondent and his wife commenced living apart. There were matrimonial differences. These resulted in the wife and the two children of the marriage going to live with her mother at 6 Dorchester Avenue, St.Andrew. The respondent lived at Pembroke Hall, St. Andrew. On the 17th March, 1970, the wife returned home from work at some time between 5 p.m. and 6 p.m. She received a telephone call which, as the respondent subsequently stated, was made by him. At about 7 p.m. she left home driving her motor car and accompanied by her son Karyl aged 5 years. At about 7.40 p.m. this car was seen by a witness being driven slowly up Sunrise Drive in Kingston 8. The witness heard the screeching sound of brakes and screams coming from the car. He ran to his gate and saw the body of a woman, subsequently identified as the deceased, fall out of the right side of the car from the driver's seat into the road. The body, he said, was riddled with blood. It struggled and expired. The witness saw the respondent standing at the head of the woman. He also saw a little boy come from the car. The boy asked, "Daddy why you do that?". He heard the

In the Court of Appeal

No.22

Reasons for granting leave to appeal to Her Majesty in Council

Fox J.A.

29th September 1972

(continued)

respondent reply "There was nothing left for me to do " The witness said further that the respondent stepped towards him. He retreated when he heard the click of a ratchet knife coming from the direction of the respondent. When he returned to the scene about two minutes later, the car, the boy and the respondent had disappeared. The body of the deceased was lying in the street.

The respondent was accosted by the police on 20th March. He was sitting in the deceased's car which was parked on a road at Cooper's Hill. The police searched and found a blood stained knife in the pocket of the car. The respondent was taken to the Red Hills police station. Under caution he said "I would like to give a statement as to how it happened." He then wrote and signed a statement in which he said that at about 6 p.m. on 17th March, he had seen his wife driving her car through the square at Constant Spring. A man was with her. At about 7.30 p.m. he spoke with his wife by telephone from his home at Pembroke Hall asking her to lend him her car. "She offered to pick me up which she did, at about 20 minutes to 8. While driving along Sunrise Crescent an argument ensued as to her whereabouts that evening. She was driving. She stopped and raised an alarm and rushed out of the car. Then something happened. Then Karyl said to me, "Daddy why did you kill Mummy?" A man was in the vicinity; Karyl was crying. I took him into the car and drove to 6 Dorchester Avenue and left him at the gate. Then I drove into Havendale/Meadowbrook area until I found myself on the Red Hills/Coopers Hill Road." The statement concluded, "I had no intention of hiding nor evading the police but the shock of the incident did not, and even now at writing has not, worn off. I began to think of going to the Constant Spring Police Station to surrender to the authorities there, as I was not aware that there is a Police Station at Red Hills."

Medical evidence adduced by the Crown established that the deceased received eleven stab sounds by a knife seven in the front and four in the back of the upper trunk. Most of these had penetrated vital organs and vessels. Death was due to shock and haemorrhage resulting from these wounds.

The facts in the defence.

Sworn evidence of the manner in which the deceased came by her death was not given by the defence. In an unsworn statement the respondent said that as a result of quarrels over a man he had left his wife, and continued; "while we were travelling in the car we quarrelled about the same man who I saw driving her that evening. She flew into a temper and said: 'Is my damn man, if you don't like it you can go and kill your blasted self.' I was surprised because strong language was never used in our family. After saying that she stopped the car and rushed out. I went to her, hold her and pulled her back. I was over into the driving seat. She fell across my lap and in struggling to ger her inside the car she grabbed and hold on to my testicles and squeezed me. I felt a cramping pain. I felt I was going to faint. I remember seeing the knife in the centre tray along with a cigarette lighter. I remember reaching for the knife. Beyond that I don't remember anything. I heard Karyl saying "Daddy why you kill Mommy?" Then I knew something had happened. The rest is as I stated to the Police."

A doctor who examined the respondent on 23rd September, 1970 was called by the defence. He gave an opinion based upon intelligence gathered from that examination, and from reading the depositions in the case, that the respondent was not insane at the time of the killing, but that he was a neurotic personality whose judgment may have been impaired and that this impairment may have been increased if his wife had admitted being with another man, had abused him, and had squeezed his testicles.

The significance of the jury's verdict

The verdicts which were left open to the jury by the learned trial judge were:

(1) guilty of murder;

(2) guilty of manslaughter -

(a) on the basis of provocation,
(b) on the basis of diminished responsibility
or

In the Court of Appeal

No.22

Reasons for granting leave to appeal to Her Majesty in Council

Fox J.A.

29th September 1972

(continued)

(3) not guilty of any offence, on the ground that the Respondent was in a state of automatism when he struck the fatal blows.

In his directions, the learned trial judge made it overwhelmingly clear to the jury that if they decided to acquit of murder, and were considering whether to convict of manslaughter, they could so convict either on the basis of provocation, or diminished responsibility, or both, and that they would be asked to indicate their findings in this precise manner if they should decide to convict of manslaughter. The jury returned a verdict of guilty of manslaughter on the basis of diminished responsibility only. They must therefore have found that the fatal blows were struck by the respondent consciously, without provocation, and with an intention to kill, but whilst the responsibility for his actions was impaired as provided by the statute. It is on the evidence as a whole and in the context of this finding that the proportions of the Director's complaint which he desires to make before the Privy Council must be ascertained.

Is the point of law of exceptional public importance?

In a murder case, the suffiency or otherwise of evidence to raise up the issue of self-defence is obviously a matter of public importance. The critical question in this application is whether this public importance is, in addition, exceptional. In considering this question the first point to notice is the absence of direct evidence that the respondent struck the blows,

(a) under the apprehension of death or serious bodily injury as a consequence of the squeezing of his testicles;

(b) with the intention of averting that death or injury, and

(c) because no other avoiding action was open to him.

In other words, there was no direct evidence of self-defence. As to whether that defence arose as an issue to be considered by the jury, would

therefore depend upon the capability of the relevant circumstantial evidence to support legitimate inferences of the three essential elements in self-defence which have been indicated above. In allowing the respondent's appeal, this court has concluded that that circumstantial evidence was so capable. At the same time, it must be recognized that a contrary conclusion is possible. This is not a case in which the learned trial judge forgot to leave self-defence to the jury. In his considered and expressed opinion, that defence did not arise on the evidence. Such also must have been the view at the trial by learned Counsel on both sides. In seeking to discharge its burden of proof, the prosecution was content to rely upon evidence, the totality of which seemed sufficiently to negative self-defence. The defence accepted that position. Self-defence was raised neither by distinct evidence to that effect, nor by suggestions or submissions to that end. Learned and experienced Counsel who appeared for the respondent at the trial could never have considered it to have been his duty to suppress a defence which in his considered opinion then, fairly arose on the evidence, in order that, if that defence was not left to the jury and in the event of an adverse verdict, the point could subsequently be taken on appeal. A considered opinion by Counsel of the validity of the particular defence which was successfully argued on appeal must have been arrived at after the trial. This view of the evidence by the judge and by Counsel at the trial, shows that the conclusions in relation to the three elements of self-defence of which the circumstantial evidence in the case must be capable, are not clear cut and precise. In fact it is fair to say of these conclusions that they could as well be judged legitimate inferences from the facts as conjectures concerning those facts. It is this obvious difficulty in applying the test relevant to determine the sufficiency or otherwise of evidence, which emphasises the public importance of the point of law in this case. It is the potential significance of the decision as a guide in future cases where the evidence is of a like quality which makes that public importance exceptional.

Is it desirable in the public interest that a further appeal should be brought?

We answer this question in the affirmative

In the Court of Appeal

No.22

Reasons for granting leave to appeal to Her Majesty in Council

Fox J.A.

29th September 1972

(continued)

for the reason that as the supreme court in this jurisdiction, the Privy Council is in a position to give decisive answers to two controversial points which arise in this application. The first is the point of law which has already been discussed. Involved in an answer to that point could be a judgment as to the objective evidential value of an unsworn statement by an accused at his trial which is in addition, materially inconsistent with a previous voluntary statement given by him to the police three days after the events it purported to describe. In this country where, even though it is not yet universal, it has nevertheless become the standard practice to keep the accused out of the witness box, it would be highly in the public interest to have a pronouncement of the Privy Council on the evidential consequence of that practice in this particular case. This consideration goes also to the extent of the public importance in Jamaica of the case.

The second point requires an answer to the question whether even if self-defence did arise on the evidence it was correct for this court to have declined to apply the proviso. In determining this question the Privy Council will be able to give further consideration to the implications in the order of this court for a retrial, and to make such finally authoritative ruling on a difficult point as the justice of the case requires. For these reasons, we grant the application.

This is a majority decision of the court.

No.23

Order on Motion for leave to appeal to Her Majesty in Council 9th October 1972

No. 23

ORDER ON MOTION FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO.42 OF 1971

Before: The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Robinson, J.A. (Ag.)

In the Court of Appeal

No.23

Order on Motion for leave to appeal to Her Majesty in Council 9th October 1972

(continued)

BETWEEN: THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

AND LEARY WALKER RESPONDENT

The 9th day of October 1972.

UPON THIS MOTION for Leave to Appeal from the Judgment of the Court of Appeal dated the 21st day of June, 1972, to Her Majesty in Council coming on for hearing this day before the Court of Appeal and upon hearing Mr. J.S.Kerr, Queen's Counsel and Mr. Courtenay Orr on behalf of the Applicant and Mr. Frank Phipps, Queen's Counsel and Mr. Richard Small on behalf of the Respondent

IT IS HEREBY ORDERED as follows:

1. That leave be granted to the Applicant herein to appeal to Her Majesty in Council from the decision of the Court handed down on the 21st day of June, 1972.

2. That the Applicant shall, within eight weeks from the date hereof, procure the preparation of the record herein for despatch to England.

AND IT IS FURTHER ORDERED that all further proceedings in the Supreme Court of Judicature of Jamaica be stayed pending the determination of the Appeal by Her Majesty in Council and in the meantime that the Respondent be kept in Custody.

BY THE COURT.

/s/ C. A. Patterson
REGISTRAR.

In the Court of Appeal

No.24

Order granting final leave to appeal to Her Majesty in Council 18th January 1973

No. 24

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 42 OF 1971

Before: The Hon. Mr. Justice Luckhoo, J.A.
The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Edun, J.A.

BETWEEN THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

AND LEARY WALKER RESPONDENT

The 18th day of January, 1973

UPON THIS MOTION for Final Leave to Appeal from the Judgment of the Court of Appeal dated the 21st day of June, 1972, to Her Majesty in Council coming on for hearing this day before the Court of Appeal and upon hearing Mr. Courtenay Orr on behalf of the Applicant and Mr. Richard Small on behalf of the Respondent.

IT IS HEREBY ORDERED as follows:

That Final Leave be granted to the Applicant herein to appeal to Her Majesty in Council from the decision of the Court handed down on the 21st day of June, 1972.

BY THE COURT.

(Sgd.) CECIL JAMES MITCHELL

C.J. Mitchell
Deputy Registrar,
Court of Appeal.

EXHIBITS

Exhibits

Exhibit 1 - Letter from Ruby Walker to Colonel Morris

Exhibit 1
Letter from
Ruby Walker
to Colonel
Morris
24th June 1969

COPY

209-27 Bardwell Avenue,
Queens Village,
N.Y. 11429
June 24th, 1969.

Dear Colonel,

I am writing as you requested although I am thoroughly ashamed that there is need for us to correspond on such a subject.

I was involved in an unsavoury association with one of my co-workers and while there are no extenuating circumstances to be quoted, nor are there any excuses for my behaviour. I have been unable to convince Leary that it was not as intense as it would seem to have been. Also I never used any church occasion to meet this man.

As to the letter which I wrote, this was to a young man who had been very helpful in the last weeks when I was trying to sell my furniture car etc. There was absolutely no intimacy between us but I wrote to him in such a friendly tone that I cannot blame Leary for believing, as he does, that he was a close associate.

I have done my best to show Leary how much I regret all this and to ask him to forgive me. I recognise how hurt he is and am truly sorry that my lack of discretion has led to all this unhappiness.

My consolation lies in my firm belief that God has not abandoned me and I have earnestly asked forgiveness for my sins of deed and thought.

Thank you for your kindness and prayers.

RUBY.

Exhibits

Exhibit 4
Statement by
Leary Walker
20th March 1970

Exhibit 4 - Statement by Leary Walker

I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so, and that whatever I say may be given in evidence.

(Sgd) LEARY WALKER
20.3.70

Wit. W. WATSON Det. A/Cpl. # 2381

On Tuesday 17th March, 1970, I was at Constant Spring at about 6 p.m. when I saw my wife, Ruby Walker being driven by a man in her motor car, north through the square and into Norbrook. My car was just then broken down so I left it at the gas station and went to the bus stop. A friend Mr. Jack Smith saw me and picked me up and dropped me off at Half Way Tree. I took a taxi into Pembroke Hall to my step-mother's house 22 Pentrepant Avenue. I ate there at about 7.30. I called my wife on the telephone. I asked her to lend me her car as I was stranded in Pembroke Hall. She asked how I would get it, and I said I would walk up to her place as usual.

She offered to pick me up which she did at about 20 minutes to 8. While driving along Sunrise Crescent an argument ensued as to her whereabouts that evening. She was driving. She stopped and raised an alarm and rushed out of the car then something happened. Then Karyl said to me, "Daddy why did you kill mummy?" A man was in the vicinity Karyl was crying. I took him into the car and drove to 6 Dorsetshire Avenue and left him at the gate. Then I drove into Heavendale, Meadowbrook area until I found myself on the Red Hills Coopers Hill Road. I drove to the top of a Hill which Ruby and I frequented in long off years and parked the car. I had been there until the police came except for one period on Thursday when I went to the Village at about 12 or 1 p.m. and bought some food. Bread, milk, aerated water and cheese.

I had on the same clothes I left work in on Tuesday until this time of making the statement. I handed over a knife to the police. The police took possession of the car and its contents.

Exhibits

Exhibit 4
Statement by
Leary Walker
20th March 1970
(continued)

I had no intention of hiding nor evading the police but the shock of the incident did not, and even now at writing has not worn off. I began to think of going to the Constant Spring Police Station to surrender to the authorities there, as I was not aware that there is a Police station at Red Hills.

(Sgd.) LEARY WALKER,

20. 3.70. 12.45 p.m.

Wit. W.W.WATSON DET A/CPL.
#2381.

IN THE PRIVY COUNCIL No. 35 of 1972

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS — Appellant

- and -

LEARY WALKER — Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL.

Solicitors for the Appellant

WILSON FREEMAN
6/8 Westminster Palace Gardens,
LONDON, SW1P 1RL
Solicitors for the Respondent

In the Court of Appeal

No.23

Order on Motion for leave to appeal to Her Majesty in Council 9th October 1972

(continued)

BETWEEN: THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

AND LEARY WALKER RESPONDENT

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IT IS HEREBY ORDERED as follows:

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BY THE COURT.

/s/ C. A. Patterson
REGISTRAR.

In the Court of Appeal

No.24

Order granting final leave to appeal to Her Majesty in Council 18th January 1973

No. 24

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 42 OF 1971

Before: The Hon. Mr. Justice Luckhoo, J.A.
The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Edun, J.A.

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C.J. Mitchell
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(Sgd.) LEARY WALKER,

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Wit. W.W.WATSON DET A/CPL.
#2381.

IN THE PRIVY COUNCIL No. 35 of 1972

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

B E T W E E N :

THE DIRECTOR OF PUBLIC PROSECUTIONS — Appellant

- and -

LEARY WALKER — Respondent

RECORD OF PROCEEDINGS

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Solicitors for the Appellant

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6/8 Westminster Palace Gardens,
LONDON, SW1P 1RL
Solicitors for the Respondent