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IN THE PRIVY COUNCIL

10, 1961

No.61 of 1960

ON APPEAL
FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N:

ELVAN ROSE ... Appellant
 - and -
THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
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INSTITUTE OF CHURCH
LEGAL STUDIES

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RECORD OF PROCEEDINGSINDEX OF DOCUMENTS

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1.

IN THE PRIVY COUNCIL

No.61 of 1960

ON APPEAL
FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N:

ELVAN ROSE ... Appellant
 - and -
THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

No. 1

C H A R G E

IN THE SUPREME COURT OF
THE BAHAMA ISLANDS

Tuesday,
10th May 1960.

In the Supreme
Court of the
Bahama Islands

No. 1
Charge,
10th May 1960.

R E G I N A

vs.

ELVAN ROSE
and
JAMES INGRAHAM

MURDER, Contrary to section 337 as read with
section 86 of the Penal Code (Ch. 69).

20 Particulars: That they at New Providence, did
murder Samuel Otis King on the 17th February 1960,
contrary to section 337 as read with section 86
of the Penal Code (Ch. 69).

Before His Lordship Sir Guy Henderson, Q.C.
The Solicitor General appears for the Crown.
Mrs. Patricia Cozzi appears for Elvan Rose.
Mr. Paul H. Bethel appears for James Ingraham.

Jury empanelled: Louis E. Sands - Foreman.
Robert R. Albury
Leonard Bowe
Kasin Mackey

30

In the Supreme
Court of the
Bahama Islands

No. 1

Charge,
10th May 1960
- continued.

Wilbur Cartwright
Hartman Carey
Donald Huyler
Thomas Ferguson
Herbert A. Deal
J. Woodrow Barnett
Norman Aranha
Charles Virgil.

SOLICITOR GENERAL OPENS CASE:

Prosecution
Evidence

No. 2

Frank Duck,
Examination,
10th May 1960.

PROSECUTION EVIDENCE

10

No. 2

EVIDENCE OF FRANK DUCK

DR. FRANK DUCK - sworn.

Q. You are Dr. Frank Ernest Duck? A. I am.

Q. I think you are the pathologist at the Princess Margaret Hospital? A. Yes.

Q. Do you remember performing an autopsy on the 18th of February, on the body of a man who was identified to you as Overseer King? A. Yes.

Q. Will you tell us what your findings were externally, Doctor? A. I found externally that much blood was present on the clothing. The toe of the right boot was muddy. Two stab wounds were present. One on the upper part of the back on the right side, 1" x 1/2". One at the lower part of the back on the left side, near the mid line, 3/4" x 1/4". Internally I found the upper wound in the back contained a broken off knife blade, 5" long, wedged between the ribs and penetrating the right lung. Much blood and blood clot were present in the right chest cavity. From the lower wound in the back the left kidney had been cut, and there was blood around the kidney in that region. The knife blade was handed to Supt. Moir. 20 30

Q. In your opinion what was the cause of death? A. The cause of death was stab wounds of the back causing internal haemorrhage.

Q. Do these look like the boots that you saw with mud on the toe? A. Yes. 40

- Q. Would you have a look at this blade, will you tell us whether that is the blade that you removed from King's back? A. This appears to be the blade.
- Q. Now do you remember receiving the handle of a knife from Supt. Moir? A. Yes.
- Q. You were later shown the handle of a knife, did you examine this handle for anything? A. Yes.
- 10 Q. What did you find? A. I examined it for the presence of blood stains.
- Q. Did you find any? A. Yes. I found stains of human blood.
- Q. Have a look at this knife and if that is the one, or resembles the one you examined? A. Yes, it appears to be the one.
- Q. And you got it from Supt. Moir? A. Yes.
- Q. Did you hand it back to him? A. Yes.
- Q. I think you were also given wrapping paper and some Prison clothing? A. Yes.
- 20 Q. And what about a brass valve wrapped in brown paper? A. No, I received only the wrapping paper.
- Q. Do you remember how many pieces of paper - A. Two. I think.
- Q. And what did you find on the paper? A. I found what appeared to be bloodstains, and I examined them and found that the stains were human blood.
- Q. On both pieces? A. Yes.
- 30 Q. And what about the clothing? A. I examined the clothing of Elvan Rose and found human blood stains present on that. And I examined the clothing from James Ingraham and found human blood stains on that also.
- Q. Will you have a look at these two pieces of paper and tell me whether you still see signs of blood stains on them? A. Yes.
- Q. Have a look at this suit. Do you see stains on it? A. Yes.
- Q. Is there a number on that suit? A. 10.
- 40 Q. There are blood stains on that? A. Yes.
- Q. Have a look at the other suit, please? A. There are stains on this.

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No. 2

Frank Duck,

Examination,
10th May 1960
- continued.

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No. 2

Frank Duck,
Examination,
10th May 1960
- continued.

Cross-
Examination
by Mrs. Cozzi.

- Q. Is there a number as well? A. Yes. No.6 G.
Q. That was all you examined, was it, doctor?
A. Yes.

Cross-examined by Mrs. Cozzi.

- Q. Doctor, were you able to determine whether death would have been caused from the lower stab wound and not the higher stab wound? The wound that you found, would you be able to say whether the first wound, the one that must have been before the one that had the knife handle in it, would you be able to say whether the first wound, in itself, could have caused death? Or would have caused death? A. Well, it's difficult to say, I don't think it would have. I couldn't be certain. There was haemorrhage around the kidney, and it's possible that he might have recovered from that. 10
- Q. Would you be able to say whether the degree of force used in making the first wound would have been greater or less than that used in making the second? A. I should say it was less. 20
- Q. But you think it must have been a pretty heavy blow to reach the kidney? A. I should think so, quite a blow.
- Q. The only clothing which was handed to you was the clothing that you have referred to in your evidence, King's clothing? A. Yes.
- Q. From the state of King's clothing and the amount of bleeding that you have described, would you expect that anyone who had assisted in getting him to the Hospital would have blood stains on them? A. Probably. It depends on how they handled him. 30

Re-examination. Re-examined by Solicitor General.

- Q. I suppose you also saw King's clothing, did you? A. Yes.

Cross-examined by Mr. Bethel.

Q. That there was just one point, doctor, in respect of the clothing of the two accused, in respect of the clothing of Ingraham, you said there were blood stains on them and there are blood stains now. Was the clothing drenched in blood, or was it a little bit? A. Ingraham's clothes were not drenched in blood. He had blood on his shoe, and on his tunic, and on his vest.

10

In the Supreme Court of the Bahama Islands

Prosecution Evidence

No. 2

Frank Duck, Cross-Examination by Mr. Bethel.

Re-examined by Solicitor General.

Q. You also saw King's clothing, didn't you? A. Yes.

Q. I suppose his clothing was drenched in blood? A. Yes. He was clothed when I first saw him.

Q. That looks like his clothing? A. Yes, this could have been it.

Q. I wasn't sure what you said, doctor, did you say that the first blow required a certain amount of force? Or was it the second? A. The first one would require a fair amount of force, not as much, in my estimation, as the second one.

20

Re-examination, 10th May 1960

No. 3

EVIDENCE OF DR. HENRY PODLEWSKI

DR. HENRY PODLEWSKI - sworn

Q. Your full name doctor? A. Henry Podlewski.

Q. On the 17th February you were the prison medical officer, were you? A. That is correct.

Q. While we are on this I had better have your medical qualifications. You are also licensed as a Psychiatrist, are you? A. That is correct.

Q. Will you tell us the experience you have had in psychiatric medicine and analysis, Doctor?

A. I have qualified from 1947 - after one year of general medicine from 1948 I have been engaged only in psychiatry over a period of about 11½ years.

30

No. 3

Dr. Henry Podlewski,

Examination, 10th May 1960

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Examination,
10th May 1960

- continued.

- Q. When did you come to the Bahamas? A. I came in 1953.
- Q. Between 1948 and 1953 would you tell us what hospitals, not the names but the types of hospitals you worked in? A. I worked in mental hospitals which were approved for training in psychiatry.
- Q. Since coming here in 1953 you have been in charge of the mental hospital? A. Yes.
- Q. On the 17th of February, you were the Prison Medical Officer? A. Yes. 10
- Q. You remember seeing two Prison Overseers about 3.30 to 3.45 p.m. on 17th February? A. Yes, I do.
- Q. Do you remember who they were? A. They were King and Gay.
- Q. Tell us which one did you see first? A. They were brought in a car to Sandilands Hospital. I saw first Gay. His face was covered with blood. I started to examine him and he told me ... 20
- Q. He told you something? A. Yes.
- Q. Then what did you do? A. I then went to examine the other man, King.
- Q. When they were brought in you did not know what had taken place? A. No, I didn't. King was lying on the floor of the car, face downwards, his shirt and trousers were covered with blood, his pulse hardly perceptible, he appeared to be dying. On his back were two stab wounds about 1" wide from which blood was still oozing. In the upper wound I could feel some metallic object inside. I saw that he required immediate surgery so I made immediate arrangements for him to be transferred to the surgical department of the hospital and notified the hospital to make arrangements to receive him, and I sent him along. 30
- Q. Was that the last time you saw King? A. The last time I saw King alive. 40
- Q. Did you treat Gay? A. I didn't treat Gay. As I said he was covered with blood and his condition seemed to be quite alright and I sent him along with King to the hospital.

- Q. Now on the 18th of February I think you examined Rose? A. That is so.
- Q. Tell us your findings? A. I found that there were no external injuries on his body and that his general physical condition appeared to be very good.
- Q. Did you also examine James Ingraham? A. I did, sir. Ingraham had a few bruises and abrasions on his elbows, otherwise his general physical condition was quite good.
- 10 Q. Now how severe or serious were these bruises? A. They were very superficial.
- Q. Could you say whether they would have bled or not? A. They were not bleeding at the time that I saw them.
- Q. Did they appear as though they had been bleeding at any time? A. They did not give me that impression at the time I saw them. They were merely scratches.
- 20 Q. In your opinion from those injuries would you expect to find blood on his shoes and his vest? A. No, I would not.

Cross-Examined by Mrs. Cozzi.

- Q. Doctor, do you have with you the medical history of Rose? A. Yes, I have it with me.
- Q. May I see it please? I understand Doctor that the accused Rose would have come under your observation sometime in 1957, is that correct? A. That is so.
- 30 Q. You mentioned that when you examined him on the 18th February you found his general physical condition good. A. Yes.
- Q. Have you at any time formed an opinion of his mental state? A. I not only formed an opinion but I was asked to express my opinion and did express my opinion as to his mental state.
- Q. What time was that, Doctor, I am speaking of the first time that you have ever formed any opinion as to his mental state? A. I would have to look at the date. (Refers to note). I made my report on the 9th August, 1957.
- 40 Q. And what were your findings at that time, Doctor? A. My findings at the time were that he was in excellent physical health, that his

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Examination,
10th May 1960
- continued.

Cross-
Examination
by Mrs. Cozzi.

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,
Cross-
Examination
by Mrs. Cozzi
- continued.

intelligence was a good average that he showed no evidence of mental illness except for one belief that could be delusional. He believed at that time that he was subject to annoyance and molestation by some people who since a quarrel at a dice game in 1954 had been following and threatening to kill him. I was not in a position to ascertain whether his belief was delusional or not, that is to say I could not say whether it was true or whether it was a figment of his imagination. I stated at the time that the structure of such a belief if it were a delusion it could be consistent with the existence of a mental illness known as paranoia. At the same time I stated it was my opinion that even if he was suffering from paranoia that he would know the nature and quality of the act at the time of the commission of the alleged crime.

10

- Q. That is some offence that he had committed prior to this examination by you? A. That is correct. 20
- Q. Now Doctor, prior to your making that report was the accused under sentence of death? A. Yes, he was.
- Q. Subsequent to your making that report, was his sentence altered in any way? A. Death sentence was commuted to life imprisonment on 22nd August, 1957.
- Q. Now you spoke Doctor of not having been able at that time to come to any conclusion as to whether the belief at that time had any factual basis? A. Factually no. 30
- Q. Would it be in keeping with paranoid behaviour if in fact there had been some factual basis but the delusion of which you speak might have been not as to the fact that he was followed around but his own conclusion that there was the probability that these people were after him and might harm him. In other words, could it be that the delusion would not exclude whether he was followed? 40

CHIEF JUSTICE: Would it be in keeping with paranoid behaviour if there had been some factual basis but the delusion is not as to the following around but the delusion was as to the wrong conclusion? A. As I said I was not in a position to say whether it was a delusion or not.

Q. He could have been followed and ...

CHIEF JUSTICE: And maintained the delusion?

A. Yes.

Q. Doctor would you tell us some of the symptoms of paranoia apart from delusion? A. Hardly any apart from the delusions in the case of paranoia which is characterised by delusions and absence of personality changes or intellectual impairment.

10 Q. It is considered a mental illness? A. Paranoia, yes.

Q. Doctor just following through this report there appear to be continuous consistent complaints of headaches, headache and back-ache here we have from 24 - 27th June and we have a number of days where there is only visited, visited. On 10th August headache, 29th August headache and the remedy prescribed is aspirins. It continues on nearly every page. On 3rd March, 16th March headache, 24th March pain in back. May insomnia. This continues almost down to the present day, Doctor, on the report of your visits as Medical Officer of the prison. The continuous complaints of headaches is that ...
A. May I see my notes (Notes handed) and I will tell you how many times there were reports of headaches.

30 Q. Well did you form an opinion that he was suffering from headaches frequently? A. Looking at the references here there are only 3 times in 3 years and I never prescribed aspirins. There were complaints of back-ache.

Q. So you did not get the impression that he was suffering frequently or continually from headaches? A. I just said that he complained of headaches about 3 times. I would not say it was a frequent complaint.

Q. Have you ever discovered any external injury to his head, Doctor? A. (No answer).

40 Q. Any scars? A. Oh yes he has a number of them.

Q. Would you tell us where they are or how serious they are? A. These are very old scars. There is one situated on left temple, there is a scar as far as I remember it in frontal region and one on the back of his head.

Q. Are they noted on his chart, Doctor? A. Where?

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Cross-
Examination
by Mrs. Cozzi
- continued.

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Court of the
Bahama Islands

Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Cross-
Examination
by Mrs. Cozzi
- continued.

Q. His medical history? A. No, I have not noted them.

Q. Were they not noted Doctor because you felt that they were not of sufficient importance?
A. Yes.

Q. Doctor, could any one of those scars have been the result of a blow which might have caused more internal damage? A. Yes, it could have been.

Q. Would you expect such damage if any had been caused to show up on X-Rays? A. If there was injury to the bone it probably would. 10

Q. If there was injury to the bone Doctor, would certain types of injury to the bone be indicative of underlying damage to the brain?
A. Damage to the brain would manifest itself by itself. All I can say is that injury to the skull may or may not be co-existent with injury to the brain.

Q. Do I understand by that that there might appear to be damage to the skull which might not necessarily indicate damage to the brain and conversely that there might be damage to the brain which would not necessarily be indicated by corresponding damage to the skull?
A. Quite so. 20

Q. Doctor, would you give us the benefit of your knowledge of what is meant by post-traumatic constitution? A. Trauma means injury. I don't know what you are referring to. 30

Q. Are you familiar with the classification of Adolph Meyer of post-traumatic constitution of the skull indicative of underlying brain injury?
A. I can't say that I am familiar with the Adolph Meyer classification; there are very many classifications.

Q. Well, would you tell us according to some of the other classifications what one would expect to see in the skull resulting from underlying brain damage? A. You mean from X-ray? 40

Q. What changes from normal would you expect to see in an X-ray of the skull where there had been underlying brain damage - injury - for instance, amnesia, an aneurism something like that? A. There is no such thing as an aneurism of the skull. I'm afraid you are using technical terms which you do not understand.

- Q. No, to the brain, Doctor. A. I thought you said something about the skull.
- Q. I am asking what changes from normal you would expect to see on X-ray of the skull where there had been underlying brain injury. For instance, take a man you know has had brain injury - you know, perhaps from clinical observation, that he has had brain injury ... A. Yes ...
- 10 Q. Now, what changes from normal would you expect to see in X-rays of such a person's skull?
A. I would expect to see a fracture of the skull.
- Q. Are there any other signs which would be indicative of underlying damage to the brain? A. Here again X-ray or clinical picture.
- Q. I want to know what changes one would find in an X-ray? A. (No answer).
- 20 Q. What in an X-ray would be indicative of underlying brain injury? A. Well to begin with, there are very many techniques of taking an X-ray of the skull and of the investigative possibilities. There is a whole range of tests. These tests are very highly specialized and the interpretation of these X-rays is left to the radiologist - people specialized in their field who report their findings.
- 30 Q. Doctor, would you say that in a straight lateral view, a true lateral view, you would note such changes from normal as would indicate underlying brain damage? Would you expect to find a widening or separation of the sutures? Would the X-ray show such widening or separation?
A. Well, to my mind the widening of the sutures would not be caused by injury.
- Q. What would you say it would be caused by?
A. (No answer).
- Q. Would you normally see a separation of the sutures? A. It depends on the age of the individual.
- 40 Q. Would you normally see it in a man of 26? A. I would expect to see the outline of the sutures.
- Q. If they were more or less widely separated, would that indicate one sign of underlying injury? A. I will tell you what is a suture. It is a space where two flat bones are linked

In the Supreme
Court of the
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Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Cross-
Examination
by Mrs. Cozzi
- continued.

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Court of the
Bahama Islands

Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Cross-
Examination
by Mrs. Cozzi
- continued.

together in an intricate pattern. I can't believe that separation in this very intricate pattern could be caused by an injury. Injury, to my mind, would cause a fracture, but not a separation.

- Q. Well, if that was accompanied with other things, for instance a deepening of the paccionian depressions and dilation of diploic channels and of the venous grooves if you had a combination of these things showing up in an X-ray, would you expect that there would be underlying brain injury? A. (No answer). 10
- Q. Would you suspect that there would be underlying brain injury? A. I have just said that I didn't think that the widening of sutures ...
- Q. No, I said what would you think it would be? A. You said indentation and widening of what?
- Q. I said dilation of the diploic channels. A. What do you mean by diploic channels?
- Q. Are not the diploic channels the grooves through which the veins run, Doctor? A. The veins - you mean the indentation in the skull, yes. 20
- Q. Doctor, you spoke of the widening of the sutures not being caused by injury; would you say that it might be caused by hyper-calcification in the skull? A. I would say that it could be co-existent with hyper-calcification of the skull.
- Q. And what are some of the causes of hyper-calcification? A. There are several causes. One of them could be the process of healing of a fracture. 30
- Q. Doctor, would you tell us what is meant by cranio-stenosis? A. Cranio pertains to the skull, stenosis is the narrowing - the narrowing of the skull.
- Q. What would cause such a narrowing of the skull? A. It is not a specific condition. I cannot answer this question.
- Q. Would you tell us Doctor what is the basilar plate or clivus? A. I don't know what you mean. 40
- Q. Doctor you say that you had noticed the scars on Rose's head above his temple and the back of the head and so forth, but you did not consider

them of sufficient importance to note them on his medical sheet? A. I said that I have seen these. Other doctors have seen them and did not note them. There was nothing to indicate serious significance.

- Q. Doctor, you are in charge of Sandilands, are you? A. I am.
- Q. How many persons have you under your care? A. Probably 200.
- 10 Q. And how many prisoners you see in the course of your visit? A. No set number, it depends on the number of sick.
- Q. During the three years or so that Rose has been more or less under your observation as the prison doctor, were you doing both jobs as doctor to prisoners and Sandilands hospital? A. Yes.
- 20 Q. In the course of a regular visit to the prison do you see a special number of patients? A.No, not a special number; it depends on how many prisoners are sick.
- Q. Doctor, is paranoia one of the possible developments of brain injury? A. I have never known paranoia being caused by a brain injury.
- Q. Do I understand by that then that the only evidence of paranoia as shown in clinical observation would be with regard to mental behaviour? A. Paranoia is an island of insanity or malfunctioning in the midst of otherwise good brain functioning. Brain injury would suggest to me mental signs which are not present in this case although I would not expect changes in paranoia.
- 30 Q. Would you tell me what signs, Doctor, brain injury would suggest, what mental signs? Would brain injury suggest some mental signs that you would not expect ... A. Yes, they would suggest mental signs according to the size and location of the injury. They are various.
- 40 Q. Could you just tell us a few things you might expect? A. The most common would be epilepsy. You might expect intellectual impairment.
- Q. That would depend upon where the injury was, I take it?

CHIEF JUSTICE: That's what he said.

In the Supreme
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Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Cross-
Examination
by Mrs. Cozzi
- continued.

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Prosecution
Evidence

No. 3

Dr. Henry
Podlewski,

Cross-
Examination
by Mrs. Cozzi
- continued.

A. I would expect impairment of memory, a state of confusion, a state of drowsiness, headaches, those depending upon the size and location of the injuries and the loss of consciousness.

Q. So you would expect possible epilepsy as a result of those brain injuries; you say you have never heard of paranoia following upon brain injury? A. Paranoia is expressly different from epilepsy.

Q. Now, Doctor, have you at any time made any clinical observations which might be indicative of anything wrong in his mental state apart from this possible delusion, have you observed anything else clinically which might indicate that there was paranoia or contrarily that there was not? A. I did not expect that he had any other delusions apart from the one I have mentioned; and since then he has not presented to me any additional signs which would support the view that he was suffering from paranoia. 10

Q. If this possible delusion were the only evidence of possible paranoia and he were taken out of the circumstances in which he could be thinking that those people were following him - if in fact they were following him - taken out of the condition in which he was being followed, would you expect some sort of continuity of that same delusion in another environment? A. Not necessarily. But paranoia is a consistent illness and I would expect the delusion to fade. But if he were in a different environment which did not express the situation associated with the delusion probably it might not show. 20

Q. And he might not talk about it, he probably would not talk about it. Is that so? A. (No answer). 30

Cross-Examined by Mr. Bethel.

Cross-
Examination
by Mr. Bethel

Q. Doctor, there are just one or two questions I would like to ask you about the examination of these persons when they were brought to you. There was the question of Mr. Gay, and I think you said that you did not examine him but you examined King. Why did you not examine Gay? A. First of all I saw Mr. Gay and as I said his face was covered with blood and I didn't know about the other man at the time and I went to Mr. Gay first because he was the one I saw but 40

he tells me that he was all right and requested me to examine the other man because he was more serious.

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Q. And after you examined King you didn't go into any examination of Gay? You made no further examination of Gay? A. I saw Gay a few days later, but not immediately.

Prosecution Evidence

No. 3

Q. But would you say that he was not seriously injured? A. He said that I should go to the other man because he was not seriously injured and he did not seem to be seriously injured but I did not see the extent of the wounds because the whole of his face was covered with blood.

Dr. Henry Podlewski,

Cross-Examination by Mr. Bethel - continued.

Q. Now, the bruises that you found on Ingraham, would you say that Ingraham could have bled at all from these bruises? A. There were some scratches which could have caused a little bleeding but very insignificant. There were no cuts, only bruises and scratches.

20 (Mrs. Cozzi asks that the medical history of Rose be put in as an Exhibit for the Defence - Exhibit 1. There is no objection).

Re-examination by Solicitor General.

Re-examination.

Q. Have you noticed anything about that sheet? Has it been slightly interfered with in any way? Can you point out certain marks on it that were not made by you or to your knowledge by any other prison officer or doctor? A. Yes. There are dates that have been underlined and there are certain parts.

Q. Could you tell us what particular date and the notation attached that is underlined and then the date and the notation that has question marks on it. A. I see underlined the date of 29/12/58.

Q. What is underlined there? A. Insomnia - medication.

Q. That is underlined? A. Yes.

Q. Did you underline it? A. No, I did not. Next is the date 9/2/59 again medication is underlined.

CHIEF JUSTICE: The medication is underlined, is it? A. Then the date of 18/2/60 is underlined, the medication is underlined. Then again on the next day 19/2/60 there are two question marks.

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No. 3

Dr. Henry Podlewski, Re-examination - continued.

Q. How does that entry read? A. "Today he is subdued and obviously realises what he has done".

Q. And you did not put the question marks on them? A. I didn't.

Q. Is that all? A. There is another entry on the same day - "complained of head being dizzy". "Dizzy" is underlined.

Q. That is the 19th of February of this year as well? A. Yes, sir. There is another one but it is not very clear. 10

Q. Is it underlined? A. It is not very distinct.

SOLICITOR GENERAL: My Lord, I would like to reserve my examination of Dr. Podlewski as to the Defence until the end of the case.

With Your Lordship's permission I would like to read these two depositions, one is by Irving Harry Bowen who drew the plans, and the other by Carlton King, the brother of Samuel Otis King, who identified his body to the doctor. 20

CHIEF JUSTICE: You've no objections?

Mrs. Cozzi and Mr. Bethel reply "No objection".

No. 4

Irving Harry Bowen, Deposition, 10th May 1960.

No. 4

DEPOSITION OF IRVING HARRY BOWEN

Solicitor General reads:

"Irving Harry Bowen sworn states:

I live at Cunningham Lane. Assistant Civil Engineer Public Works Department.

I was assistant at the Public Works Department drawing office when plans of Her Majesty's Prison being prepared back in 1946. 30

Identifies original tracing Ex.A. and prints from original Ex.B."

These are the exhibits, this is the original Ex. A1 and the prints that we all have from that Ex. A2.

No. 5

DEPOSITION OF CARLTON KING

In the Supreme
Court of the
Bahama Islands

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Evidence

No. 5

Carlton King,
Deposition,
10th May 1960.

"Carlton King, sworn states:

I live at Wulff Road - Mason.

I knew deceased Samuel Otis King - my brother.

11.30 a.m. 18th February, I went to Mortuary at Princess Margaret Hospital.

I identified my brother's body in presence of a doctor.

10 I recognize photograph Exhibit L as my brother."

No. 6

EVIDENCE OF SUPERINTENDENT MOIR

No. 6

Superintendent
Moir,

Examination,

10th May 1960.

SUPERINTENDENT MOIR - sworn.

Q. Deputy Superintendent, C.I.D.? A. That's correct.

20 In consequence of a report made by Superintendent of Prisons, Mr. Pinder, I went to the Fox Hill Prison accompanied by Detective Inspector Smith. On arrival there at the southern gate I saw spots of blood, the spots of blood became progressively more pronounced going in the direction of the Turnkey's office. I next visited G block and outside the cell G.10 and near the eastern gate, corridor, I saw a pool of blood. I also saw a piece of brown paper which I took possession of. The paper had stains on it. In consequence of certain information I looked at G block, at the top, and there I saw a brown paper package. I had a photograph taken of this package. I examined the package and saw that the paper had stains thereon, and it contained a heavy brass valve. In G corridor I also saw a blanket and a cot. At about 8.25 that evening I saw the accused Ingraham, and I told him that at about 4 p.m. the same day Overseer King had been stabbed and that he had died. That he and Rose had been seen at the southern gate trying to get out. That they had been placed back in their cells and that they had got out again. The Superintendent Ogilvy had

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In the Supreme
Court of the
Bahama Islands

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Evidence

No. 6

Superintendent
Moir,

Examination,

10th May 1960

- continued.

been attacked, and that he, Ingraham, had escaped over the wall. I also told him that Mr. Gay, the Turnkey, had been struck on the head. I told him that I suspected that he knew something of these matters and I cautioned him. He said "In 1958 I told you something and when I heard it in Court it was different." "I have nothing to say." Shortly afterwards I interviewed Elvan Rose. I told him the same as I had told Ingraham. He was cautioned and I asked him if he wished to make a statement and he said "I ain't telling Jesus Christ nothing." The same evening I received from Mr. Duncombe articles of clothing belonging to Rose and Ingraham. The following day, Thursday, My Lord, about 11.30 I went to the Prison and there in consequence of what Overseer Storr told me, I went to the eastern side of the Prison and there about 70 feet from the compound wall I saw a knife handle. I took possession of this. At about midday I attended the post mortem on the deceased King and I was present when Dr. Duck removed from King a broken knife blade. I took possession of the blade. The following day, 19th February, I handed to Dr. Duck the articles of clothing and the valve and papers for examination. I received them from Dr. Duck on the 24th February.

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SOLICITOR GENERAL: Did you hand him the knife then? A. I handed the knife to him on the 18th.

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Q. You got it back from him? A. I got it back from him on the 24th. On Saturday the 20th of February I charged Rose with this offence. After being charged and cautioned he said "I have nothing to say." "Face death like a mother-fucking man. I don't give a mother-fuck." I then charged Ingraham, after being charged and cautioned he said "I've told you once before."

40

Q. Now, you said you found a brass valve wrapped in brown paper, have a look at this see if that is the one you found? A. Yes.

Q. Exhibit E, brass valve, My Lord. The piece of paper, where did you find that? A. This was found in G corridor, outside of No.10 cell.

Q. Exhibit F, My Lord. Now, you say you got bloodstained clothing from Rose?

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CHIEF JUSTICE: What I want to be sure is, this was wrapped in brown paper? A. Yes, My Lord.

CHIEF JUSTICE: That is the brown paper? A. Yes, My Lord.

CHIEF JUSTICE: It was and still is wrapped in brown paper. Exhibit F.

Q. Exhibit G, the clothing of Rose. All this clothing. Exhibit H, the clothing of Ingraham. Is that the knife handle? A. This is the knife handle.

Q. Exhibit I.1, My Lord. And this is the blade that was given to you by Dr. Duck? A. Yes.

Q. I.2, My Lord. Could you say whether they match? A. I have tried these and they are a perfect match.

(Jury examine exhibits).

Q. Would you look at photograph No.5 please? You know that there were blood stains on the floor would you point out in that photograph where you saw them? A. I have the spots circled with chalk, did that before picture was taken.

Q. Have a look at photograph No.8, is that the cot and blanket that you spoke of that you saw in G corridor? A. Yes, sir.

Q. Look at photograph No.9, could you describe that scene to us? A. Ingraham's cell which is G.10 is right at the eastern end of G corridor, and next to the corridor gate, which you can see in the right hand corner of the picture. Anyone entering the corridor from the east would have to come through that gate.

Q. What's on the left hand side? A. The gate in Ingraham's cell.

Q. On the floor by the eastern gate of the corridor, is anything shown there? A. Yes, there is a piece of brown paper. There are blood stains in the right hand corner.

Q. Will you look at photograph No.10. Would you describe that? A. Yes. The valve wrapped in brown, this is actually on top of the cell block.

CHIEF JUSTICE: This is the top of the cell here? A. Yes, sir. That was found on the other side of the cell.

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No. 6

Superintendent
Moir,

Examination,

10th May 1960

- continued.

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No. 6

Superintendent
Moir,
Examination,
10th May 1960
- continued.

- Q. This photograph is actually as you saw it?
A. I had it put back by the warden, that's the position it was found in.
- Q. Will you look at photograph No.14, does that scene look familiar to you? A. I believe I can be seen in the right hand corner pointing to the position that the knife handle was found?
- Q. Now, look at photograph No.6. What area of the Prison is shown in that photograph? A. That is the garden after coming out of the southern block. That's the northern side of G block. Outside the southern gate. 10
- Q. Did you carry out any tests at all with regard to the throwing of this knife handle? A. Yes, I did. Having found the knife handle I got an identical one and threw the knife handle from that position and this was accomplished quite easily, it sailed over the top of the building, into the female compound.
- Q. Where is that shown in photograph 14 the female compound? A. On the right. 20
- Q. The one that was thrown in the test went further than the spot where you found the handle?
A. Yes.
- Q. Where did you throw it from? A. We threw it from the courtyard.
- Q. The scene shown in photograph No.6? A. Yes.

Cross-
Examination
by Mrs. Cozzi.

- Cross-Examination by Mrs. Cozzi.
- Q. Inspector, I'd like some clarification about this eastern gate? of G block, is there also a western gate? A. That is correct. 30
- Q. Do I understand that No.6 cell toward the western gate? A. No.6 would be about half way.
- Q. Are they not both consecutively? A. Yes.
- Q. To enter this eastern gate where would the photograph show in photograph No.6? No.9, I'm sorry. If one came from downstairs from the ground floor what course would one have to take to enter the eastern gate? A. Do you mean the southern gate? 40
- Q. Well, suppose one is in the vicinity of A corridor on the ground floor, the course between A corridor on the ground floor, and this eastern gate, would you describe it for me? A. Yes,

there are different ways you can get up there, you can enter by the stairs, you can enter by the north side or by the southern side.

Q. Are there cells on both sides of G block?

A. There are.

Q. Are you able to say what number the cell was shown on the other side of door in photograph 9. The number of the cell and by whom it was occupied? A. No, I can't say.

10 CHIEF JUSTICE: Do you mean the cell door? or the door into the passage?

Q. I mean the door into the passage. I refer to that as the eastern gate.

CHIEF JUSTICE: This door itself leads onto the corridor.

Q. What I have understood from the previous answer was that there was a cell on this side and that there would be a cell over here, not shown in the picture.

20 CHIEF JUSTICE: I think that door leads to the corridor. Therefore you would have to go across the corridor to reach another gate.

Q. I understand then that there would be no other gate facing, say, G.10.

CHIEF JUSTICE: See the map here. Look at the previous photograph No.8.

Q. That shows clearly what I wanted to find out. There is just wall over here, I thought there might be more cells over here. I'm very grateful to Your Lordship, that shows very clearly what I wanted to find out.

20 Inspector, you mentioned the valve having been put in the position in which it was found by one of the wardens, can you tell us which warden it was? A. I think his name is Deveaux. He drew my attention to it immediately, I had it put back and photographed it at once.

Q. So your attention would have been drawn to it shortly after Deveaux found it? A. Yes.

30 Q. Which cell did you say this was? A. Approximately directly behind Ingraham's cell, on the northern side of the cell.

Q. Did you make enquiries as to whether there were blood stains on any other clothing? A. Who?

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Evidence

No. 6

Superintendent
Moir,

Cross-
Examination
by Mrs. Cozzi
- continued.

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Evidence

No. 6

Superintendent
Moir,

Cross-
Examination
by Mrs. Cozzi
- continued.

Cross-
Examination
by Mr. Bethel.

Q. Such as any other prisoners besides Rose and Ingraham? A. No, I had certain information which implicated Rose and Ingraham, and I took their clothing.

Cross-Examined by Mr. Bethel.

- Q. I'd just like to ask you about this valve and where it was found. I understand from the previous cross-examination that the valve was found on the top of the cell block - G block - but not in the corridor which gave the entrance to each cell, but in the corridor opposite on the other side? A. Yes. 10
- Q. Now, in respect of the knife handle in the prison yard you say you made some tests throwing a knife handle, did you make any similar tests in respect of the valve? A. No.
- Q. From the picture it seems to be right on the edge here and it seems to me that quite some markmanship would be required to throw it right there. Was there any signs of anything on the floor like blood marks in the corridor? where this valve was found? A. No signs at all. 20
- Q. When you charged Rose and he used this obscene language and then you cautioned and charged Ingraham and he said "I have told you that once before", had Ingraham told you these things before? A. Not particular me, he was referring to my Department which dealt with him in 1958.
- Q. What did you think it to mean when he said "I have told you that once before."? I'm not speaking of the time when you cautioned him and he said "In 1958 I told you something and when I heard it in Court it was different," but further down in your evidence when you actually charged him - Rose - with murder and he said "I have nothing to say - face death like a 30

mother-fucking man. I don't give a mother-fuck." then we have Ingraham being cautioned and he said "I have told you that once before", did he tell you that once before? A. He obviously meant when I had my interview with him on the evening of the 17th when I had asked him if he wished to make a statement. That was when he said that.

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Prosecution Evidence

No. 6

Superintendent Moir, Cross-Examination by Mr. Bethel - continued.

10

Q. Now, this paper that was found on the floor did you find a bit of paper on the floor of G corridor in addition to the paper in which the valve was wrapped? A. Yes.

Q. Were both these bits of paper given to Dr. Duck for examination? A. They were.

Re-examined by Solicitor General.

Re-examination.

20

Q. Can you tell us whether or not it would have been an easy or a difficult feat to throw the valve so that it would fall where it was found from the corridor where you saw the blood stains? A. It would be quite simple to lift hand and drop it on top.

By Court.

Q. Have you seen this plan? A. Yes.

Q. I wonder if you'd mind - where is block G on this? A. This Rose's cell here. Ingraham had No.10.

(Witness and Chief Justice discuss, then Chief Justice explains to Jury).

No. 7

No. 7

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EVIDENCE OF MAURICE TRAVERS SMITH

Maurice Travers Smith, Examination, 10th May 1960.

INSPECTOR SMITH - sworn.

Q. Your name? A. Maurice Travers Smith.

Q. You are the police photographer, are you? A. I am.

Q. Will you carry on from there and tell us what happened on the 17th of February of this year? A. Yes. On the 17th of February upon information received I accompanied A.S.P. Moir and Sgt. Johnson to the Fox Hill Prison. At the prison I accompanied Mr. Duncombe to the cells of Rose

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In the Supreme
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Bahama Islands

Prosecution
Evidence

No. 7

Maurice
Travers Smith,
Examination,
10th May 1960
- continued.

and Ingraham. While Mr. Duncombe was with Rose I went to Ingraham's cell. I asked him what had happened. He replied "They'd better hang me this time, because I have two more to kill." I asked him why? He replied "If all the other Overseers was like Mr. Duncombe this would never happen." I then made photographs; 8, 9 and 10. No.8, general view of G. block, looking in an easterly direction, showing Rose's cell and Ingraham's cell, doors open. 9, photograph of Ingraham's cell, showing keys alleged to have been taken from Asst. Turnkey Gay in the cell lock. Also spot where Gay was alleged to have been attacked. 10, photograph showing the brown paper package containing a brass valve, bloodstained alleged to have been found on the northern side of G block. The following morning I returned to Fox Hill Prison where I made photographs 3, 4, 5, 6, 7, 11, 12, 13, 14.

10

No.3 - General view of Southern gate showing stairs to G block.

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Q. G block is on the right hand side? A. Yes, sir.

No.4 - close up of southern gate showing locks in triple locked position.

No.5 - photograph showing blood spots on the floor near the southern gate.

No.6 - photograph showing alleged position of King when he was stabbed.

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No.7 - southern gate keys allegedly taken from Elvin Rose by Chief Turnkey Duncombe.

No.11 - photograph showing position where Asst. Supt. Ogilvy when he was allegedly attacked by Rose.

No.12 - photograph showing the escape route allegedly used by Ingraham to get out of prison compound, looking in an easterly direction.

No.13 - photograph showing the spot where Ingraham allegedly escaped from the compound looking in a westerly direction.

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No.14 - photograph showing the position where bloodstained knife handle was alleged to have been found on eastern side of prison.

At 11.30 on the same day I attended the post mortem at the Princess Margaret Hospital, on the body of Samuel Otis King. The post mortem was performed by Dr. Duck. The body was identified by King's brother. At the Hospital I made photographs 1, 2 & 15.

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1 - photograph of deceased, Samuel Otis King.
 2 - photograph of wounds inflicted on Samuel Otis King.
 15 - photograph of knife blade removed from the body of Samuel Otis King matched against the handle found outside the eastern side of Fox Hill Prison. I developed these negatives 15 in all, and made enlargements.

In the Supreme Court of the Bahama Islands

Prosecution Evidence

No. 7

10 Q. My Lord, I put the exhibits in as B.1 to B.15, and the actual enlarged photographs as C.1 to 15. A. I collected the clothing of the deceased, King.

Maurice Travers Smith, Examination,

10th May 1960
 - continued.

Q. Exhibit D, My Lord.

CHIEF JUSTICE: Yes.

Cross-examined by Mrs. Cozzi.

Cross-Examination by Mrs. Cozzi.

Q. Photo. No.6. Would you tell us in a little more detail how that was taken? A. That photograph was taken looking in a southerly direction.

20 Q. Who is the figure in this photo? A. That position was demonstrated to us by Hubert Johnson one of the prisoners.

Q. So as far as you're concerned it is purely hearsay, is that correct? A. Yes.

Cross-examined by Mr. Bethel.

Cross-Examination by Mr. Bethel.

30 Q. Photograph No.9. There is a bunch of keys in one of the cell doors - I think it's Ingraham's cell. Were those keys put there just to mark Ingraham's cell or have they any special significance? A. If I remember correctly those keys were put there for demonstrative purposes.

Q. And these photographs showing the route alleged to have been taken by Ingraham, No. 12, and No. 13, are they hearsay also as far as you are concerned? A. Yes. These positions were demonstrated to me by the Asst. Supt.

Q. How many preliminary inquiries have you attended in respect of Ingraham? A. Two.

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Bahama Islands

No. 8

EVIDENCE OF CHARLES CLINTON THOMAS

Prosecution
Evidence

DR. CHARLES CLINTON THOMAS - sworn (Examined by
Solicitor General).

No. 8

Charles Clinton
Thomas,
Examination,
10th May 1960.

Q. Your name please, Doctor? A. Charles Clinton
Thomas.

Q. You are an F.R.C.S.? A. Yes, I am.

Q. And you are attached to the Princess Margaret
Hospital? A. I am.

Q. I think on the 17th February you saw a man - 10
you saw two men - two overseers from the prison?
A. I did.

Q. One of them was dead when you saw him? A. Yes.

Q. Have a look at the first picture. Do you
recognise ... A. I do.

Q. Is that the man you saw? A. Yes.

Q. That's the man you saw who was dead when he
arrived at the Princess Margaret Hospital?
A. Dead on arrival.

Q. You saw the other man, did you? A. I did. 20

Q. Can you tell us what was wrong with him and
what treatment you gave him? A. He had a
head injury and lacerations of the scalp which
I sutured.

Q. Can you tell us whether or not you considered...

CHIEF JUSTICE: You saw the other man; you say he
had lacerations of the skull which you sutured?
A. Yes.

Q. Did you consider that wound serious or not?
A. No. 30

Cross-
Examination
by Mrs. Cozzi.

Cross-examined by Mrs. Cozzi.

Q. Doctor, did you come to any conclusion as to
what might have caused the wound? Had he
suffered a blow? A. I was told that he suf-
fered a blow, but I couldn't tell from the
head injury.

Q. Would you be able to say whether whatever caused
such an injury might have resulted in the person
struck having faulty memory as to the events
which caused such a blow? A. I would say that 40
it was improbable.

Q. Probable? A. Improbable.

No questions by Jury.

No re-examination.

CHIEF JUSTICE:

Q. Doctor, it may seem a silly question to you, but did the actual wounds - had they got a clean cut entrance, cut across the skin, on the skull, I mean? A. It was an incised wound.

Q. A clean cut? A. A clean cut.

10 Q. There were no ragged edges? A. No, not particularly.

Q. Was it one cut or were there several? A. There was one cut.

Q. One big cut? A. Yes.

Q. You would call it an incised wound, would you? A. Yes.

In the Supreme Court of the Bahama Islands

Prosecution Evidence

No. 8

Charles Clinton Thomas,

Cross-Examination by Mrs. Cozzi - continued.

No. 9

EVIDENCE OF ARTHUR HUBERT DUNCOMBE

No. 9

Arthur Hubert Duncombe, Examination, 10th May 1960.

20 A.S.P. ARTHUR HUBERT DUNCOMBE - sworn (Examined by Solicitor General).

Q. Your name please? A. Arthur Hubert Duncombe.

Q. You are now the Assistant Superintendent of the Prison? A. I am, sir.

Q. And on the 17th of February I think you were Chief Turnkey? A. I was, sir.

Q. Congratulations. A. Thank you, sir.

Q. Do you know King? A. Yes, sir, I knew King.

Q. He was an overseer? A. Yes.

30 Q. And do you know James Ingraham? A. I know James Ingraham.

Q. You know Elvan Rose? A. Yes.

Q. They were inmates of the Prison in February? A. Correct, sir.

Q. On the 17th, I think you were on duty in the turnkey's office around 3.30/3.45? A. Yes, I was, sir.

In the Supreme
Court of the
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Prosecution
Evidence

No. 9

Arthur Hubert
Duncombe,

Examination,
10th May 1960
- continued.

- Q. Tell us what happened when you were on duty around that time? A. I heard a shout, somebody calling "Mr. Duncombe" and I rushed out of the turnkey's office. I looked towards the south gate and I saw two persons trying to get out of the south gate.
- Q. Did you recognise them when you first saw them? A. I didn't until I reached there.
- Q. You went towards the south gate? A. Yes.
- Q. Carry on. A. I saw Rose, prisoner Rose, with the keys trying to get out and Ingraham standing on the side, and I told him to drop the keys, which he did. 10
- Q. Now, on your way to the south gate did you pass anybody that you knew? A. Yes, sir, I passed Asst. Turnkey Gay by the tank and King lying on the ground covered with blood. I rounded up the two men and took away the keys and took them towards the turnkey's office. In the course I met overseer Johnson and turned Ingraham over to Johnson and I held Rose and took them to the cells. 20
- Q. Where were their cells? A. Ingraham's was in G-10 and Rose's cell was in G-6.
- Q. On the same floor, is it? A. Yes, sir.
- Q. You have two floors? A. Yes.
- Q. And did you see anything peculiar about Ingraham's cell door when you got there? A. Ingraham's cell door had a bunch of keys hanging there. I collected those keys and locked them up in the cells. 30
- Q. After they were locked up what did you do then? A. I went to collect a few overseers to help search the property after sending Mr. Gay and King to the hospital.
- Q. You did send them to the hospital. You collected some overseers to search the property and then? A. I proceeded to their cells. On reaching their cells, somebody called to me again and said that they were out of their cells again. 40
- Q. What did you do then? A. I rushed from south to north and I saw Rose on the tank running up and down.
- Q. That tank is just to the north of the prison? A. To the north, yes.

Q. And you saw Rose? A. I saw Rose.

Q. In photographs 11 and 12 there is a tank shown in those photographs. Just show the jury where?

(Witness points out tank to jury.)

The tank is shown to the left, is it? A. Yes.

Q. And it is shown also on 12? A. Yes, sir.

CHIEF JUSTICE: And Rose was on the tank? And where was Ingraham? A. Ingraham was on the flat roof between the Supt's office and the mess hall.

Q. Is the Supt's office shown in the photographs? A. Yes, in photograph No.12.

Q. What did you do then? A. I told Rose to come off the tank.

Q. Did he? A. He came down. I took him to the turnkey's office where I handcuffed him and searched him. I found, in searching him, a master key between his underpants and his skin and I took that key.

Q. What did you with Rose then? A. I put a pair of leg irons on him and took him downstairs for punishment, sir.

Q. What about Ingraham? You saw him again? A. Yes, I saw him at the same time I was taking Rose away. Caught his hands and handcuffed him, searched him and put a pair of leg irons on him and put him in the punishment cell.

Q. What about their clothing at the time that you saw them? A. I collected their clothes along with Inspector Smith and turned them over to Deputy Supt, Moir.

CHIEF JUSTICE: You say you collected their clothing and handed it over to whom? A. I went along with Inspector Smith, Inspector Maurice Smith, went to their cells and collected their clothes and turned them over to Deputy Supt. Moir.

Q. Did these suits have numbers on them? A. Yes, sir, they had numbers.

Q. What was Rose's number? A. G-6.

Q. And Ingraham? A. G-10.

(Witness identifies both Rose's and Ingraham's clothes.)

In the Supreme Court of the Bahama Islands

Prosecution Evidence

No. 9

Arthur Hubert Duncombe,

Examination,

10th May 1960

- continued.

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Prosecution
Evidence

No. 9

Arthur Hubert
Duncombe,

Examination,
10th May 1960
- continued.

Q. Now, after you had apprehended both these men do you remember them saying anything in your presence? A. Rose said he wanted to catch or kill Mr. Pinder, the Asst. Superintendent.

Q. Did he say why? A. Because he didn't give him his cot.

Q. And Ingraham, did he say anything? A. Ingraham says that he was hit by an overseer or beaten by an overseer and that he would seek his own revenge.

Q. Now, did you examine the southern gate? You remember? A. Yes, I did.

Q. How did you find it? A. I found it triple locked.

Q. Could you describe what is meant by triple locked? A. Well, you see, it's a push up and you lock the first lock then the lever will push the first lock up.

CHIEF JUSTICE: Works with a lever? A. With a lever.

CHIEF JUSTICE: You push it up once? A. Yes, then you put on two additional locks.

CHIEF JUSTICE: You say you push it up once and that locks it. A. You take the keys and put on two additional locks.

Q. Then you say a triple lock is well locked as it could be? A. Yes, sir.

Q. Now, the keys you told us of. You told us on three occasions of finding keys. You took a set when you found them at the southern gate. Do you know what set that was? A. Yes.

Q. The Superintendent's? A. Yes.

(Witness is shown said keys.)

A. These are the south gate keys.

CHIEF JUSTICE: Those are the ones found on the ground? A. Yes, sir.

Q. That would be Exhibit "K", My Lord. That's not the set that was found on Ingraham's cell door, is it? A. No, sir.

Q. And that other set that was found on Ingraham's door Exhibit "J", My Lord.

(Witness is shown another key and identifies it.)

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A. This is an additional master key I found on Rose.

Q. Exhibit "L", My Lord.

Going back ... Before you heard this shout when you were in your office do you remember seeing either of these two men any time before that? A. I saw Rose. He came to the office and told me that his head was hurting him and if I could give him a few aspirins. I gave him the aspirins and he said his head was hurting him severely and if he could go to his cell. Just at that time the telephone rang and I told him to wait on the side by the turnkey door. I didn't see him any more until I saw him at the south gate.

Q. Now, you know then, the northern or north-eastern portion of the compound and do you make concrete blocks in that portion? or anywhere in that vicinity? A. Yes, sir, in the north-western section.

Q. Is there any wall to the east of that section? A. No. No wall.

Q. Do you have a dumping ground or any place outside the prison itself in the compound near the blocks where you dump things? A. Yes, sir, we throw things in the old thatch shed outside the compound - it's out in the yard behind the blocks.

Q. Do you mean where the blocks are? A. Yes, sir, the blocks are south.

Q. How far from where the blocks are kept? A. About 50 - 100 feet.

Q. Do you know what sort of things could be found in that dump heap? A. Odds and ends, bits of iron, old valves and that kind of stuff.

Q. Could you tell us whether or not one could expect to find something like that?

(Witness is shown brass valve.)

A. Yes, sir, we did put some of these out there, yes, sir.

Cross-examined by Mrs. Cozzi.

Q. Mr. Duncombe did you give Rose an aspirin any-time earlier that day? A. No, I didn't.

Q. I think he has been given aspirins from time to

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No. 9

Arthur Hubert
Duncombe,

Examination,

10th May 1960

- continued.

Cross-
Examination
by Mrs. Cozzi.

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Court of the
Bahama Islands

Prosecution
Evidence

No. 9

Arthur Hubert
Duncombe,

Cross-
Examination
by Mrs. Cozzi
- continued.

time according to his medical sheet. How is that given to him, is it given by the doctor or by one of the Overseers? A. By the Turnkey. Any time any one says he has a headache you give him an aspirin.

- Q. Was it an unusual complaint from Rose? A. No he always complains of a headache. Every time he comes to the doctor he complains. 10
- Q. Can you give me any idea about what sort or quantity of aspirins he was taking, say in the course of a week? A. I am afraid I can't judge how many he took in the course of a week. 10
- Q. At the time you were on the telephone - how long were you on the telephone? A. I was on the telephone about 4 or 5 minutes.
- Q. You spoke at the time you began your telephone conversation or just before you began? A. Just before.
- Q. It would take you 4 or 5 minutes to get to the South gate or was it 6 minutes that you took to get to the South gate from the Turnkey's Office and you found that Gay had been injured and King had been stabbed? A. I would take a little bit more than 6 minutes for that. 20
- Q. Do you think it would be much more? A. It would be say about 10 minutes.
- Q. Mr. Duncombe, do I understand that there were no other prisoners in their cells in 'G' Block at the time? A. The only prisoner what was supposed to have been in 'G' Block would be Ingraham, he was locked in there. 30
- Q. Now when prisoners are out of their cells are all the doors left locked? A. No when the prisoners are out the doors are open.
- Q. So that when this photograph was taken showing Ingraham and Rose's cell the doors were opened and all the other doors were closed, either they were closed for the purpose of taking the photograph or prisoners were in them, is that correct? A. They had to be closed for some reason or other. 40
- Q. Well do you think that the prisoners would have been back in by the time this photograph was taken sometime after 4.00 or 4.30 p.m.? A. They could have been.

- Q. Have you ever seen Rose walking around with a knife on him? A. No, I never saw him.
- Q. When he came to you and asked for an aspirin did you notice any knife at that time? A. No, I did not notice any knife at that time.
- Q. How did he appear at that time beside asking for an aspirin, I realise you were busy and on the telephone and what not but can you recall what he looked like? A. He looked as usual.
- 10 Q. Did he have anything in his hand? A. He did not have anything in his hand but he spoke to me.
- Q. Do you know where he had been working before he came to you? A. He was working outside helping to make blocks.
- Q. Is there a North gate through which he would have to come to you? A. Not to me.
- Q. Would he have been searched at that time? A. He should have been searched before coming to me.
- 20 Q. Who would have been responsible for searching him? A. Overseer McCartney at that time.
- Q. You are sure that the time you collected the keys you saw blood stains around the South gate? A. I don't recall seeing blood stains around the South gate.
- Q. If they had been there do you think you would recall having seen them? A. I was busy trying to apprehend the two men.
- 30 Q. Yes, I understand. You told Rose to drop the key? A. Yes and he dropped them.
- Q. And you picked them up? A. Yes, I picked them up.
- Q. When the prisoners are out the doors leading into the corridors of blocks are kept locked? A. That is correct.
- Q. The doors leading into the cells would be open and doors leading into corridors would be locked, is that correct? A. Quite correct.
- 40 Q. So that Ingraham's cell door, he being the only prisoner in, would have been locked and Rose's cell door would have been opened and the corridor door would have been locked? A. Correct.

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No. 9

Arthur Hubert
Duncombe,

Cross-
Examination
by Mrs. Cozzi
- continued.

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Arthur Hubert
Duncombe,

Cross-
Examination
by Mrs. Cozzi
- continued.

- Q. Now do you know anything about a blanket having been ordered for 'G' 9? A. Blankets had been washed that day and never put around that afternoon by Overseer in charge of cleaning gang.
- Q. And who was that? A. Overseer Sands.
- Q. Would that mean that anyone taking that blanket into 'G' Block should have been under the charge of Overseer Sands? A. Entirely so.
- Q. Mr. Duncombe do you know about prisoners being allowed to kill hogs up at the prison? A. Only first offenders deal with pigs. Hogs are supposed to be shot. 10
- Q. Is there a process by which the hogs are bled after they are shot? A. I am not in a position to say that I am not there when they are shot.
- Q. How long have you been up there Duncombe? A. 20 years.
- Q. Apart from Rose's complaints about headaches and being given aspirins from time to time have you ever observed anything peculiar about his health or his state of mind or anything like that? A. No, he always appeared normal. 20
- Q. Have you ever heard him stammer? A. At times he stammers, yes.
- Q. Have you noticed any particular time of excitement or anything? A. When making my rounds I have seen him and if he says something to me he stammers then.
- Q. Can you say where the key might have come from, could it have been on one of those rings? A.No. 30
- Q. Are you able to throw any light on that? A. Those master keys are kept behind the door each one separately. They are kept in the lock. The master is only handed over by the Asst. Turnkey. The other keys would be given to someone else who was going outside to work would turn it over at the gate but he did not put it back in the lock he had them on him at the same time. 40
- Q. So Mr. Gay still had on him a single master key with a bunch of keys, he hadn't handed it in? A. Yes.
- Q. Did you see any sign of Mr. Gay at all when Rose was waiting for you to finish your telephone

conversation? A. No, I did not see Mr. Gay.

Q. And you say you saw nothing in Rose's hand?

A. No, I saw nothing in Rose's hand.

Q. You, yourself did not see the stabbing? A. No.

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Evidence

No. 9

Arthur Hubert
Duncombe,

Cross-
Examination
by Mrs. Cozzi
- continued.

Cross-examined by Mr. Bethel.

Q. Asst. Supt. you said that when you collected the clothing of both accused you said they had blood stains on them about how much blood stains did you find on the clothing of Ingraham?

10 A. There were blood stains but I cannot determine how much there were.

Q. A lot of blood or just a little? A. I would not say it was a lot of blood but he had blood stains on his clothing.

Q. Do you know if any of the other prisoners who helped to lift King into the car or assisted him in any way in getting him into the car do you know if they had blood on their clothing?

A. Naturally they would have.

20 Q. Mr. Gay, you said that you did not see him when Rose came to your office. Did you see him at any other time when you went downstairs?

A. When I saw Mr. Gay he was by the tank covered in blood calling out to me.

Q. Did he say anything to you? A. Yes. He said, "That man attacked me."

Q. Which man was he referring to? A. He pointed towards the 2 men that were trying to get out of the gate.

30 Q. You didn't know which he was referring to?

A. I don't know which one he was referring to.

Q. Is it a strange thing for a prisoner to be carrying a knife around? A. Very strange.

Q. How many times a day prisoners are searched?

A. Well we will search them every minute if we

Cross-
Examined
by Mr. Bethel.

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Arthur Hubert
Duncombe,

Cross-
Examination
by Mr. Bethel
- continued.

have to do it.

- Q. No --- A. There is definitely no specified times laid down for prisoners to be searched but we do it as often as we think it necessary sir.
- Q. What I mean is aren't they searched when they are going out and coming in the prison compound?
A. They are searched at that time.
- Q. When prisoners are out on the Eastern side making concrete blocks are they allowed to wander around 50 feet away from where they are making or stacking blocks? A. No they don't wander around. 10
- Q. So it would be a strange thing for one of them to get to where this dump heap was? A. Sometimes they are sent there for something.
- Q. Taken there not sent? A. Not sent, taken.
- Q. They are never allowed to go there alone?
A. No. If they do they put over the Overseer who is in charge. 20
- Q. Wouldn't you say it is strange if a prisoner was seen where they were making concrete blocks sharpening a knife? A. There is no need for a knife to be sharpened out there.
- Q. What I mean is it wouldn't be allowed, the sharpening of a knife, would it? A. Certainly not, sir.
- Q. So then for a prisoner to have a knife either out by the concrete block or inside the prison compound or anywhere there he had to I would say put it over one of the Overseers and have it quite concealed that they know nothing of it?
A. That would be so. 30
- Q. Would you let him see the knife? Have you ever seen that knife before? A. I have never seen the knife before. I've seen the handle.
- Q. Where did you see that before? A. I saw that on the eastern side of the main prison between the female and male prisons.
- Q. After the 17th February? A. That was on the 18th February. 40
- Q. In order to get to 'G' corridor from the northern or north-east side of the prison what is the route that you have to take? A. A straight line.

Q. How many corridor doors have you got to go through before you come to door leading into the corridor of 'G' 10, the door that is nearest to 'G' 10? A. One door (corridor).

Q. Yes but speaking of the Eastern corridor which runs down South don't you have to go through that. A. That is a straight line leading down to the Turnkey's Office.

10 Q. Yes but the Turnkey's Office is on the ground floor? A. That is not the ground floor.

Q. Well how would you get up to 'G' 10? A. Somebody had to let him through there to get into the corridor because the corridor was locked. You had to go through the corridor to get into 'G' block.

Q. Yes? A. There's only one door.

20 Q. Well on the plan I see here there are 2 doors one on the Western side and one on the Eastern side. On the Eastern side is 'G' 10 which Ingraham occupied. A. Cell door you are talking about?

Q. No, no I am talking about the door to the corridor on the Eastern side? A. The door of the corridor on the Eastern side he could never reach that side unless somebody had let him through from the Western door.

30 Q. So then he could not have come from the corridor that runs north and south but is on the eastern side of the Prison? A. No corridor running north and south.

Q. Not in the block I'm talking about the corridor that runs - A. Walkway.

Q. Walkway, yes? A. There's no gate in between the walkway.

CHIEF JUSTICE: Mr. Bethel, I find it difficult to understand what you're talking about. You say you don't mean the corridor at all, what you mean is the walkway, where, on the ground floor?

Q. No, this is on the first floor.

40 CHIEF JUSTICE: Do you mean the corridor or what do you mean because he has definitely said there is no corridor in G block running north and south.

(Look at plan of ground floor).

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No. 9

Arthur Hubert
Duncombe,

Cross-
Examination
by Mr. Bethel
- continued.

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Arthur Hubert
Duncombe,

Cross-
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by Mr. Bethel
- continued.

Q. Now, if you look at the plan of the ground floor to start with, you see where the Turnkey's office is, to the north on the right hand side. Now, what I was asking you the route from there to cell No.10 - Ingraham's cell - how was one get from one place to the other? A. That's a straight line no doors in between, you go straight along to the stairs?

Q. Which stairs? A. Below G block, and up the stairs. Someone has to let you in there. 10

Q. Now, you see that door to the corridor of G block right at the foot of the plan there? Is that kept locked? A. Yes, kept locked.

Q. Then nobody comes along this corridor that's at the bottom of the plan running this way? A. There is the main thoroughfare for prisoners coming to or going from cells.

Q. But is that route used rather than coming from the south gate downstairs and up those stairs then to the other side? A. That's used by prisoners coming to and from their cells, up or down. 20

Q. So that to get into the corridor of G block you've got to come either through this door that's right at the foot of the plan, do you follow what I mean?

CHIEF JUSTICE: You've got to go straight across the compound or up that corridor? A. Yes.

CHIEF JUSTICE: What Mr. Bethel is pointing out is that big main corridor, could he have gone along that corridor? A. He could not. 30

CHIEF JUSTICE: Why? A. There's only one way out. He had to go to the -

CHIEF JUSTICE: (Show witness plan). Here's the main corridor here, could he have gone along there? A. No. He has to go to the stairs and go up there.

Re-examination. Re-examined by Solicitor General.

Q. Isn't it a strange thing for an Overseer to be stabbed to death in the Prison? A. Yes. 40

Q. Could you say whether it is possible for a prisoner to get to the dump heap without being caught by an Overseer? A. It's not impossible.

Q. Have you a rock-crushing machine at the Prison? A. We have, yes, sir.

Q. Do you know whether Rose has ever worked on the rock-crushing machine? A. He used to work on the rock-crusher 2 or 3 years ago.

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Q. You have seen him in Prison now for about 3 years? A. 3 years.

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Q. I know you are not a doctor but can you tell us whether or not you have noticed any signs of his not being "all there" to put it - A. The only thing he complained about was headaches, now and then.

No. 9

Arthur Hubert Duncombe,

10

Q. Now and then.

Re-examination - continued.

BY COURT:

CHIEF JUSTICE: Duncombe, there's just one thing I'm not sure about, you say that he came in and complained to you of a headache and asked for an aspirin, was he accompanied? A. No, they buzz me from the north gate and tell me he is coming in.

20

CHIEF JUSTICE: Is he supposed to walk around the place unaccompanied? A. He walked from the north gate to my office, and they buzz me and tell me to look out for him. I was expecting him I saw him coming through the gate.

CHIEF JUSTICE: That was a proper procedure? A. Yes.

CHIEF JUSTICE: Was it proper or improper for him to have left you while you were phoning? A. Improper.

30

CHIEF JUSTICE: Did that alarm you at all? To see that he wasn't there, or didn't you see that he wasn't there? A. When I came out to look for him he wasn't there.

CHIEF JUSTICE: You trusted him to remain there while you were doing the telephoning? A. Yes, My Lord.

No.10

No.10

EVIDENCE OF JOSEPH RIGBY

Joseph Rigby, Examination, 10th May 1960.

Q. Tell us your full name please? A. Joseph Rigby.

40

Q. In February of this year I believe you were an inmate of the prison? A. Yes, sir.

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Evidence

No.10

Joseph Rigby,
Examination,
10th May 1960
- continued.

- Q. Do you know Elvan Rose? A. Yes, sir.
- Q. James Ingraham? A. Yes, sir.
- Q. Did you know Mr. Otis King the Overseer?
A. Yes, sir.
- Q. I think you also know Asst. Turnkey Gay?
A. Yes, sir.
- Q. Now on the 17th February around 3.00 p.m. can
you tell us where you were? A. I was in the
bathroom of the prison, that is where I work.
- Q. That is where the showers are? A. Yes, sir. 10
- Q. That is on the ground floor? A. Yes.
- Q. I think that is, looking from the South gate,
just beyond the Courtyard? A. Yes, sir.
- Q. What were you doing there? A. I was sitting
down at the time on the South side of the bath-
room.
- Q. Did you have a particular job to do? A. Yes,
sir.
- Q. What were you doing? A. At that particular
time I was sitting down with a book in my hand 20
reading.
- Q. Earlier on weren't you doing something? A. Yes,
sir.
- Q. What were you doing around about 3.00 p.m.?
A. I was delivering blankets.
- Q. Do you remember seeing either of the accused
when you were doing this job? A. Yes, sir.
- Q. Which one? A. Elvan Rose.
- Q. Where did you see him and what was he doing?
A. He was coming from North in the passage way 30
going South with a cot (a bed). I assisted
him with the cot.
- Q. Where did you help him take it? A. Upstairs
to 'G' block.
- Q. How far did you help him take it (how far did you
get)? A. From between the two bathrooms out-
side 'G' Block upstairs on the balcony.
- Q. Did you go into 'G' Block? A. No, sir.
- Q. Why? A. The corridor was locked.
- Q. Now did you have anything for anybody in 'G'
Block? A. Yes, sir, 'G' 9. 40

- Q. Did you and Rose have any conversation? A. I told him that if he found his bed too hard I would bring him some more blankets to put on it.
- Q. What did he say? A. He said that would be alright.
- Q. How did he appear to you at this time? A. He appeared vexed.
- 10 Q. What happened to the blanket that you had for 'G' 9? A. Well he asked me who it was for and I told him 'G' 9 and he asked me to give it to him.
- Q. And did you give it to him? A. Yes, sir, I gave it to him.
- Q. What did you do then? A. I retraced my steps down stairs.
- Q. You went back where you came from? A. Yes, sir.
- 20 Q. Now it was when you were reading that you heard certain noises? A. Yes, sir.
- Q. Now did you hear anything while you were reading? A. I heard a scream coming from the South.
- Q. Did you see anything after you heard the scream? A. When I heard the scream another prisoner came running and he and I talked.
- Q. Did you see anything? A. Yes, sir, I saw Mr. Gay all bloody up walking between the two gardens coming down.
- 30 Q. He was in the gardens or in the courtyard just to the North of the South gate? A. Yes, sir.
- Q. Now did you see Mr. Gay in that vicinity? A. Yes, sir.
- Q. Where did you see him? A. Going North.
- Q. Away from the South gate and hollering you said? A. Yes.
- Q. After that did you see anybody else? A. Yes, I saw Rose and Ingraham at the South gate.
- Q. Did you see what they were doing? A. I could not hear what they were saying.
- 40 Q. Did they look as though they were doing anything? A. Yes, sir, they seemed to be trying to get something from Overseer King.

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No.10

Joseph Rigby,
Examination,
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No.10

Joseph Rigby,

Examination,
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- continued.

Q. How were they trying to get something from him what were they doing? A. Making signs with their hands like this. (Witness demonstrates). This was Ingraham.

Q. What was Rose doing? A. He was standing at the gate at that time. All of a sudden I saw King put a key in the gate and it seemed as though he put on more locks. Then Ingraham struck him in the face.

Q. After Ingraham struck him did anything else happen? A. I saw King leave the South gate and coming towards the garden and Rose coming behind and Rose took him by the shoulder blade and dashed him down to the ground and King said, "Oh Rose you are going to kill me," and Rose said, "Yes, I am going to kill you" and he pushed the knife in King's back. 10

Q. After that did you see anything else? A. Rose then pushed his hand in King's pocket and took out a bunch of keys. 20

Q. Think carefully, did you see Rose do anything else? A. Rose put his hand in his pocket and then threw something toward the female prison.

Q. After Rose did that what else did he do? Did he stay there? A. He went towards the South gate and Ingraham was trying to get through the South gate, trying to unlock the gate.

Q. Rose gave Ingraham the keys? A. He seemed to be standing body guard for him.

Q. Do you know whether they got the gate open? A. No. 30

Q. What happened to Mr. King? A. Mr. King got up and began to holler, "Oh, Lord I am going to die." And two other prisoners and myself kept running up and down.

Q. What happened next? A. Asst. Supt. Duncombe along with another Overseer came and apprehended Ingraham and Rose.

Q. Let's go back to when you saw Ingraham slap King, can you tell whether or not Rose did anything to King at the South gate? A. No. 40

Cross-
Examination
by Mrs. Cozzi.

Cross-examined by Mrs. Cozzi.

Q. You said you wear those shades because you have to? A. I only wear them when I want to.

- Q. How long have you had that injury, was it a blow? A. One year ago.
- Q. I want you to tell us the main point where you first met Rose with his cot? A. Between the two bathrooms. (Witness demonstrates.)
- Q. You were near the Eastern bathroom or the Western bathroom? A. I was near the East bathroom.
- 10 Q. That would be before you come to the stairs going up to 'G' Block? A. Yes.
- Q. North of the stairs? A. Yes.
- Q. The Turnkey's office side? A. (Witness demonstrates.)
- Q. How do you get up to 'G' Block. Is it somewhere in the vicinity of the stairs going up to 'G' Block that is the stairs just North of the South gate is that correct? A. (No answer).
- 20 Q. Were you and Rose at this stage were somewhere near the stairs going up to 'G' Block? A. No. The space from the bathroom was about 20 to 25 feet.
- Q. Well what route did you take to get to 'G' Block? A. (Witness shows where he and Rose were in relation to the stairs).
- CHIEF JUSTICE: You were facing South and you were between the two bathrooms and there you met Rose coming along with his cot and you assisted him.
- 30 Q. (Photograph is shown to witness - No.3) Are those the stairs that you went up? A. Yes, sir.
- Q. Now when you come to the top of those stairs you turn right or left? A. Turn east.
- Q. That would be right would it? A. Left.
- 40 Q. You turn left at the top of the stairs and how far do you walk before you come to a locked gate? A. I didn't go towards the gate at all. As you come out of the bathroom here you go up stairs here. He was at the head of the cot and I was at the tail end here so he reached the top of the stairs before I did. Rose would have to wait for someone to open the door of the corridor for him to get in and as I gave him the blanket which I had for 'G' 9 I turned and went back where I came from.

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No.10

Joseph Rigby,
Cross-
Examination
by Mrs. Cozzi
- continued.

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No. 10

Joseph Rigby,
Cross-
Examination
by Mrs. Cozzi
- continued.

- Q. How far was 'G' 9 from the point at which you stopped? A. There are 12 cells in that block and that was 9.
- Q. You did not at any time see Mr. Gay at this point? A. No.
- Q. Was Rose supposed to be walking around along like that to this block? A. He was not.
- Q. Well was it not improper for you to assist him? A. No, ma'am.
- Q. There was nothing wrong with your assisting him? 10
A. I am privileged to assist any prisoner that has something heavy to carry.
- Q. Was it only one blanket that you had at this time? A. I was supposed to give the man three but I only gave him two there was one more that I had to take for him so I went back for the other blanket.
- Q. Who told you to bring him another blanket?
A. I said I was carrying him one. I suppose to give him two blankets and if I want to give him 20
three I can because I give them out.
- Q. You were giving 'G' 9 three blankets? A. Yes, he asked me for it.
- Q. But he did not ask for it at this time that you were delivering it? A. Yes he asked me for it.
- Q. At the time that you were delivering it? A. Yes.
- Q. Where did you see him? A. He was by the door with the overseer opening the door.
- Q. Whereabouts was that? A. Up at 'G' 9.
- Q. So that you had been up to 'G' 9 come down and gone back to the 'G' Block? A. Yes, I went back. 30
- Q. When you had been up the first time did you put blankets in 'G' 9? A. Yes.
- Q. You said you left this cot and Rose almost to the top of the stairs? A. On the top of the stairs, on the balcony.
- Q. So if you were going to 'G' 9 you would have to pass cells 'G' 1-9? A. Cells 1-8.
- Q. You would have to pass 8 cells. A. Yes. 40
- Q. You came back down stairs and you say you went back where you were in the bathroom? A. I went back where I was sitting.

- Q. Sitting outside the bathroom, reading book?
 A. Yes, called 'Goose Feathers'.
- Q. You were reading 'Goose Feathers' and just after that through there was a wild goose chase, is that right? A. Yes, that's right.
- Q. Who was chasing what? A. Nobody was chasing anybody I was running for what I was seeing.
- 10 Q. You said like everybody else you were running back and forth? A. Running up and down. After Mr. Duncombe took Rose back to his cell.
- Q. You knew that Overseer King was dead? A. Everybody thought at first it was just a fight but after they lifted him up and he fell back then they thought he was dead. Then I saw Rose in the kitchen after Mr. Duncombe took him back to his cell and everybody began to run.
- Q. Rose was in the kitchen this is the first time I am hearing this?

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No.10

Joseph Rigby,
 Cross-
 Examination
 by Mrs. Cozzi
 - continued.

20 SOLICITOR GENERAL: This is the first witness we have had My Lord that saw what happened.

CHIEF JUSTICE: What about Mrs. Cozzi?

MRS. COZZI: Well My Lord I have not read it in the depositions as far as I am aware. A. They didn't ask me that.

CHIEF JUSTICE: They answer according to what they are asked.

Q. Rose was in the kitchen. Were you in the kitchen at the same time? A. Yes, I met him in the kitchen.

30 Q. Did you meet him in the kitchen or going in because it might be very important? A. (No answer).

Q. You went into the kitchen to get away from Rose? A. This was the second time I rushed to the kitchen, I was running up and down.

Q. Let's take the first time first. You came down and you were reading 'Goose Feathers' somewhere near the bathroom and what happened then. A. I heard a scream then I saw Mr. Gay.

40 Q. Did you see Mr. Gay? A. I did not see him at the time I heard the scream.

Q. Well what did you see? People running about back and forth? A. After I went into the

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Joseph Rigby,

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- continued.

kitchen - everybody was asking what happened, when I came back out and I saw them at the gate.

Q. Who was screaming out? A. Emmett McNeil.

Q. Where were you running to or from? A. I was running from the direction of the garden.

CHIEF JUSTICE: Where was he running to?

A. Towards me.

Q. Where was Mr. Gay then? A. Mr. Gay was between the two gardens hollering. 10

Q. Did you see Rose and Ingraham or Rose or Ingraham? A. I saw Rose and Ingraham at the gate.

Q. And you saw King? A. Yes, I saw King at the gate too.

Q. Did you see anything in Rose's hand at that time? A. No.

Q. When was the first time that you saw anything in Rose's hand? A. I saw it when he took King on the ground? 20

Q. You saw that did you? A. Yes.

Q. Were you standing between the two gardens then when you saw him? A. I was on this walkway (Points out how walkways lie).

Q. Did you see other persons around? A. Yes, Emmett McNeil, Hubert Johnson, Basil Sweeting, Conrad Balfour, myself and a fellow named Poitier and Stowaway.

Q. Who is Stowaway? A. Poitier.

Q. Anybody else? A. No. 30

Q. You did not see Errol Roberts? A. That is Stowaway now.

Q. You know that the person that you call Errol Roberts is Stowaway? A. Yes.

Q. Are you quite sure of that? A. Yes, I am quite sure.

Q. Did you see Mr. Henry Sands at any time? A. Not as far as I can remember.

Q. Well he is an overseer. Were you in the cleaning gang? A. No. 40

Q. You were not in the cleaning gang? A. No, I am attached to the cleaning gang.

Cross-examined by Mr. Bethel.

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by Mr. Bethel.

Q. When King was stabbed in the gardens, you said he said to Rose, "Rose are you going to kill me?" and Rose said, "Yes I am going to kill you". Could Ingraham have heard that where he was? A. Ingraham was at the gate.

Q. Yes, do you think he could have heard it?
A. Yes, he could have heard it if he wanted to.

10 Q. Was he speaking very loud? A. I don't know what you call loud - sometimes I talk hard and sometimes I talk ---

Q. Did you know before that Rose had a knife before you saw him and King between the gardens?
A. We are not allowed to have a pin in there.

Q. Will you answer my question. Do you know?
A. I never knew that he had a knife.

Q. When you saw Rose taking his cot upstairs did he appear to be angry? A. He was not so pleased, he looked mad.

20 Q. Do you know what he was displeased about?
A. I heard him say something about his cot did not have a mattress on it and they would not give it to him.

Q. You know that he had a grudge about his cot?
A. Yes.

Re-examined by Solicitor General.

Re-examination.

Q. When you saw them in the gardens would you say that King was putting up such a fight that Rose needed assistance? A. No.

30

No.11

No.11

EVIDENCE OF THOMAS AUDLEY GAY

Thomas Audley
Gay,

ASST. TURNKEY THOMAS AUDLEY GAY - sworn (Examined by Solicitor General).

Examination,
10th May 1960.

Q. Tell us your full name please? A. James Audley Gay.

Q. Assistant Turnkey at H.M. Prison? A. Yes, sir.

Q. Do you known Elvan Rose? A. Yes, sir.

Q. James Ingraham? A. Yes, sir.

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Evidence

No. 11

Thomas Audley
Gay,

Examination,
10th May 1960
- continued.

Q. Do you remember the 17th February of this year?
A. Yes, sir.

Q. You were on duty or not? A. Yes, sir, at 1.00 p.m.

Q. Now, around 3.00 p.m. you remember what you were doing? A. Yes, sir.

Q. Tell us? A. I were exercising a prisoner by the name of George Brisbois.

Q. Yes, and after exercising him what did you do?
A. I took him to the western end of the prison to the north of D-Block. 10

Q. Was that on the ground floor or what? A. That was on the ground floor.

Q. Yes? A. I locked him into his cell.

Q. Then what did you do then? A. After which I went on the other floor and I came by the western end of the prison chapel and I then took the following route: I went south through I-block.

Q. To help you Mr. Gay the top is west. 20
(Chief Justice explains map to witness. Witness does not understand.)

Q. You started in D-Block after you locked Brisbois in his cell. Right? A. Yes, sir.

Q. And you went to the upper floor and then where did you go from there? A. I came by the western end of the prison chapel then I went south through I-Block and I took the following route:

CHIEF JUSTICE: You were going south and you went by the western end? A. I went south through I-Block and entered H-Block on the northern side. 30

Q. The north side of H-Block? A. The north side of H-Block. I continued East along H-Block.

CHIEF JUSTICE: May we interrupt him there a moment, Mr. Solicitor. Going through these blocks I take it that you have to unlock the doors into each block and lock them back after? A. Yes, sir. 40

Q. Carry on. A. As I got to the end of H-Block there is a place there with a flight of steps.

- Q. Where do those steps lead? A. That leads to the bottom floor, nearby the south gate.
- Q. I see. You have two flights of steps coming down? A. Yes, sir. One on the south side and one on the north side.
- Q. And the one on the southern side leads ...
A. Down to the bottom floor ...
- Q. From where? A. From the southern side.
- 10 Q. No, what block? A. From between H and G - on the south side of H and the south side of G.
- Q. And you were going by those stairs? A. Not on that side; I was on the north side of H-Block.
- Q. Where did you go from there? A. I saw the deceased, Samuel King sitting to his desk at the south gate. From there I remember I did not see the accused, James Ingraham, who was locked in his cell. I continued east along G-Block, on the north side of G-Block.
- 20 Q. On the north side of G-Block? A. On the north side of G-Block.
- Q. And Ingraham's cell was on the south side?
A. Yes. I then entered into L-Block from G-Block. I went south through L-Block and I opened the corridor that opens to G-Block on the south side. As I opened that corridor ...
- Q. Would you say that G-Block runs from east to west? A. In G-Block from east to west, yes.
- 30 Q. Was that the eastern side or western side?
A. No, that would be the southern side of G-Block that I was going to enter from L.
- Q. That you were entering from where? A. That I was entering from L, the south-end of L-Block into G-Block.
- Q. The south-end into G-Block? A. That's right. On entering G-Block on the southern side I was hit on the head.
- 40 Q. Just a minute, just stop there. These stairs, at the bottom of which floor King is to the west of G-Block? A. It's to the west of the southern side of G-Block.
- Q. Now, from where you were entering the block was on the other side? A. On the eastern end, yes.
- Q. I see. Was there a door or a gate there?
A. Yes, sir.

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Thomas Audley
Gay,

Examination,
10th May 1960
- continued.

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Thomas Audley
Gay,

Examination,
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- continued.

- Q. Did you open it? A. Yes, sir.
- Q. You opened the gate and what happened? A. As I opened the corridor door I was hit on the head.
- Q. Did you see who hit you? A. No, sir.
- Q. Did you remember seeing anything before you were hit? A. I imagined seeing a shadow; that's all I can remember. I was knocked out.
- Q. What keys did you have on you before you were knocked out? A. I had a master key with a number of other small keys attached to it and another master key that I got from one of the overseers who was going on other duty. The key that I got from the overseer were in my pocket. 10
- Q. Have a look at these keys and tell us which ones you had on you. A. Those are the keys I had in my pocket (Exhibit "L"), and this was the key I was going around with opening corridors (Exhibit "J"). 20
- Q. My Lord, he had Exhibit "J", opening doors and Exhibit "L". You were knocked unconscious and what is the next thing you knew? A. I don't know how long I was out there, but when I came I made several attempts to get up through the aid of the corridor, the bars that were in the door caused me to get on my feet.
- Q. Were you wearing glasses at the time? A. Yes, sir.
- Q. They were smashed but I didn't know anything about that then? A. I see; I just continued walking that's all. 30
- Q. Were you bleeding from your knowledge? A. I don't know; I could not comprehend that, sir.
- Q. I see. Did you find that you were bleeding at any time or ... A. Yes.
- Q. Where did you go? A. I went to the end of the corridor, I just continued walking south. I continued walking until I got to the end of G-Block and met that corridor open. At the end of that corridor there is a concrete railing up there. Well, that railing served as my support. I felt as though I was going to fall, and I leaned across that for help. After I gained strength I walked down the steps. 40

- Q. What steps are these? A. That is the steps on the southern side of G-Block, that takes you down to the south gate.
- Q. When you say the southern side, wasn't the southern side of G-Block a wall? A. Yes.
- Q. Are those steps to the west of G-Block? A. On the west of G-Block.
- Q. West of G-Block? A. Near it, not far, just a couple of steps.
- 10 Q. And you went down the steps to the ground floor? A. Yes, sir.
Before I got down the steps, when I got about mid-way I heard cries coming from the bottom floor "Look what Rose did to Mr. Gay." Then two prisoners came to my rescue. I didn't know the names of these prisoners.
- 20 Q. What next do you remember? A. They came and they helped me down the steps. When I got on the bottom floor my nurses left me then I started walking in a northerly direction. I got between the bathroom. I felt dizzy again and I leaned against the bathroom wall for support and I started walking again towards the north and I got between the two water tanks. Well, then I felt as though I couldn't go any further so I leaned across the eastern water tank. I don't know how long I was resting there but someone came to my rescue. It was a very strong person and they led me down past the turnkey's office to the station wagon that was waiting to take me to the Princess Margaret Hospital.
- 30 Q. You remember going to Sandilands Hospital first? A. Yes, sir.
- Q. Was anyone else in the station wagon with you? A. Yes, sir, the deceased Samuel King. He was in the back of the station wagon and I was carried to the Princess Margaret Hospital.
- 40 Q. You were treated there, were you? A. Yes, I was treated there, sir, and discharged.
- Q. May we see where you were hit? Does it show? A. It's right on the side here. You have to stand close to see the scars, Dr. Clinton Thomas did a very good job.
- Q. You know how many stitches you got in it? A. No, sir, I don't know how many stitches.

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Thomas Audley
Gay,

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Thomas Audley
Gay, -

Examination
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- continued.

Q. You don't know?

You didn't see what went on at the southern gate if anything at all? A. No, sir, I only see - I don't know how many people were out there - but it looked to me like it was plenty people out there, up to the southern gate. I was just covered with blood.

Q. Look at Photograph No. 3. You see a staircase, you see a gate straight ahead and a staircase on your right. Does that look familiar to you? 10

A. Yes, sir.

Q. Did you use that staircase at all that day, to your knowledge? A. Now, let's see, this is ... the position that I am standing here wouldn't be the position that I ...

Q. No, no, no, did you use the staircase? A. The southern staircase to come down. That is on the southern side near to the gate, yes, sir.

Q. You see, that's the southern gate just ahead of you. 20

CHIEF JUSTICE: Here is the southern gate just ahead of the stairway, and we're looking from the north towards the south gate, so that you've got stairway coming towards you where you have got your hand is shown on the western side, isn't it? A. The western side. That's the staircase that I came down on.

CHIEF JUSTICE: After you were hit? A. After I was hit.

CHIEF JUSTICE: I see. 30

Q. Now, have a look at photograph No. 8. Does that look familiar to you, that's this one. You remember being anywhere in that vicinity? Do you know what gate you're looking at ahead of you? A. It could be the north gate.

CHIEF JUSTICE: No, no, photograph No. 8.

Q. Hold it up. Do you recognise that scene? Look at it.

CHIEF JUSTICE: Could you say what corridor that is? A. It looks to me like the ... from the picture here I have trouble to describe it. 40

Q. I don't want you to describe it I want you to tell me if you recognise it. A. Yes, sir, I recognise it. But now I can't ...

Q. You recognise it as a part of H.M. Prison? A. As part of H.M. Prison.

Q. I see.

Cross-examined by Mrs. Cozzi.

Q. Mr. Gay, do you remember seeing Elvan Rose at any time during the course of the day? A. Yes. I detailed Rose to the rock crusher gang under the supervision of overseer Johnson, at 1.00 p.m.

Q. At 1.00 p.m. A. Yes.

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No.11

Thomas Audley
Gay,

Cross-
Examination
by Mrs. Cozzi.

Cross-examined by Mr. Bethel.

10 Q. Mr. Gay, did you see Ingraham any time that day before you were hit? A. No, sir.

Q. When you went to G-Block, Ingraham was supposed to be in his cell then? A. Supposed to be locked in his cell, yes sir.

Q. Was he supposed to be there all day? A. All day.

Q. And both the corridor doors in G-Block were supposed to be closed? A. Locked.

20 Q. So you don't know who opened the one near the stairs you went down after you were hit? A.No, sir.

Q. Thank you.

No re-examination.

No questions by jury.

CHIEF JUSTICE:

Q. Just one question, Mr. Gay. G-Block - you say that that was all locked up. Who else would have been in their cells at that time in the afternoon? Anybody? A. In that block it only would be Ingraham, sir.

30 Q. Only Ingraham and nobody else? A. Nobody else.

Q. And when the cells are empty, would the doors be open or just closed to? The doors of the cells I mean? A. When the cells are empty some of the cells be locked and some be just closed to. We have what we call a cleaning gang that would open the building and clean it and dust it.

Cross-
Examination
by Mr. Bethel.

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Thomas Audley
Gay,

Cross-
Examination
- continued.

Q. Supposing - say you've got in G-Block this time - there is only one person supposed to be there locked in and that was Ingraham? A. Yes, sir.

Q. The remainder of the cell doors - would they have been closed or would they have been open, do you know? A. As I aforesaid, sir, some are locked and the rest of them are open on request if the prisoner ask the overseer to lock their doors. They miss things that they have in their cells.

10

Q. I see. The only thing I had in my mind, you see Gay, was that - do you say you saw a shadow, or you thought you saw a shadow just before you were hit? A. Yes, sir, I ---

Q. The question was immediately before you were hit by the door had you turned round to close the door, after you opened the door - do you remember - unlocked it, came inside, you turned your back, so as to lock it again, I suppose, did you? A. I didn't remember what I did after ... I can't remember, sir.

20

Q. You were hit after you had opened it on the inside? A. On the inside, just as my head get in, I felt this blow.

Q. I see. That was immediately by Ingraham's cell? A. Yes, sir, just about.

MR. BETHEL: As to the questions you have been asking. Would you put to the witness this other question that I put to him about being struck. He said as he put his head in the door he was struck and that this was just outside of Ingraham's cell. What I will like to know, sir, if Ingraham's cell door was closed, would it be possible for somebody inside that cell to deliver that blow.

30

CHIEF JUSTICE: I take it that that's obvious from the photos. I'm going on to that. (Witness is referred to photograph). That would be a fairly reasonable picture of the gate near the cell door? A. Yes, sir.

40

CHIEF JUSTICE: And you had just come inside the entrance, just put your head in? A. Yes, sir.

CHIEF JUSTICE: About how far would that be, roughly speaking, Gay, from the cell door? From me to you or a little less? A. Approximately 2 feet, sir.

CHIEF JUSTICE: 2 feet or 2 or 3 feet? A. It could be two or more.

CHIEF JUSTICE: I see. It looks to me a little more. A. I would like to explain the situation of that gate, My Lord. In the corridor there is a wall partition coming from the southern wall of prison and there is another partition coming from the north on the eastern side of the cell and the corridor sets in the centre.

10

CHIEF JUSTICE: That's shown in photograph 8? A. Yes, sir. The corridor sets in the centre of these two partitions. Then you have another wall from that partition that leads to Ingraham's cell.

CHIEF JUSTICE: That's shown in this photograph? A. Yes, sir.

CHIEF JUSTICE: You couldn't tell us anything about Ingraham's cell door or you didn't have time to see? A. No, sir, not at that round.

20

MR. BETHEL: My Lord, Ingraham, I understand, wants to have a word with me about some further question to Mr. Gay.

CHIEF JUSTICE: Mr. Foreman, while that's going on - you were able to follow his route around the prison were you; because I have it marked here. Mrs. Cozzi, I think you have got it.

(Jury mark on their maps route of Mr. Gay around the prison.)

30

MR. BETHEL: My Lord, I would just like to find out if the witness can say whether he saw this shadow.

CHIEF JUSTICE: He said he imagined he saw it.

Court adjourned.

No.12

EVIDENCE OF ERROL ROBERTS

ERROL ROBERTS - sworn (Examined by Solicitor General).

Q. Tell us your full name, please? A. Errol Roberts.

40

In the Supreme Court of the Bahama Islands

Prosecution Evidence

No.11

Thomas Audley Gay,

Cross-Examination - continued.

No.12

Errol Roberts, Examination, 11th May 1960.

In the Supreme
Court of the
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Prosecution
Evidence

No.12

Errol Roberts,

Examination,
11th May 1960
- continued.

- Q. You know Elvan Rose? A. Yes, sir.
- Q. You know Ingraham? A. Yes, sir.
- Q. I think you are an inmate of the prison?
A. Yes, sir.
- Q. Did you know overseer King? A. Yes, sir.
- Q. Do you remember 17th February of this year
around about 3.00 p.m. you were on some sort of
detail? A. Yes, sir.
- Q. What were you doing? A. I was detailed to go
on a rounds picking up night pails. 10
- Q. Did you go anywhere to get these pails? A. Yes,
sir.
- Q. Where did you go? A. Went north in the com-
pound.
- Q. Out of the compound? A. In the compound.
- Q. Do you remember seeing anybody when you went
out there? A. If I see anybody? Yes, sir.
- Q. Whom did you see? A. Elvan Rose.
- Q. Did he have anything with him? A. Yes, sir.
- Q. What did he have? A. He had a bag and a 20
canvas cot.
- Q. What kind of bag? A. A bag that he keeps his
things in, a hand bag.
- Q. And where was he going or was he standing still?
A. He was coming south.
- Q. Do you remember whom you were with? A. Yes,
sir, I was along with the overseer Zaccheus
Thompson.
- Q. And do you remember the names of any of the 30
prisoners who were with you? A. I, Conrad
Balfour, Bertram Lord, Jenkin Williams and
several others, I don't remember the names.
- Q. Did you ever go back to the south gate? A. Yes,
sir.
- Q. And where did you go to when you went towards
the south gate? A. I went towards A-Block.
- Q. Do you live in A-Block? A. I live in A-Block.
- Q. Is that the block that's under G-Block? A. Yes,
sir, under G.
- Q. And as you look at the south gate from north 40
it's to the left of the south gate? A. Yes,
sir.

- Q. Does Balfour live in that block, too? A. Yes, sir,
- Q. Now, when you went towards the south gate did you get into A-Block? A. Yes, sir, we stopped on the way and the overseer Thompson told us ...
- Q. Don't tell us what he said. Did anyone meet you in A-Block? A. Yes, sir.
- Q. Who did? A. Mr. King.
- 10 Q. While you were in A-Block was the corridor gate open or was that closed? Did King close it back, or leave open? A. It was closed but it wasn't locked, because we had to come back out again.
- Q. I see. And where was Thompson? Did he stay there or did he go? A. He went with the rest of the men.
- Q. Now, after you got into A-Block do you remember anything happening? A. Yes, sir.
- 20 Q. Tell us? A. I went in A-Block and rest my pans down. Afterwards I heard a racket downstairs, from upstairs coming downstairs, so I came back out in the corridor and I saw Rose and James Ingraham at the gate.
- Q. When you saw them at the gate where were you? A. I was to the entry to the corridor just as you come out one door and go in the next door.
- Q. Were you in, just inside or just outside? A. Just outside.
- 30 Q. Describe in detail what you saw at the time? You saw someone at the gate? A. I saw Ingraham went to the western part of the gate. Rose was on the eastern side. King was between both of them. I saw Ingraham put his hand in his shirt pocket.
- CHIEF JUSTICE: In his own? A. His own shirt pocket, yes, sir.
- 40 CHIEF JUSTICE: Then what? A. He take out a key and he put it into the lock and he tried to open the gate. So Rose said to King that he must open the gate and King tell him he can't open the gate, he say "Where you want to go." Then I came between Mr. King and Rose and I tell Rose why don't he behave himself. So Rose push me off and I knock against the corridor.

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Prosecution
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No.12

Errol Roberts,

Examination,
11th May 1960
- continued.

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No. 12

Errol Roberts,
Examination,
11th May 1960
- continued.

CHIEF JUSTICE: You went back to the corridor?

A. Yes, he push me back and I went against the door.

Q. He was a much bigger man than you were? A. Yes, sir. He told me I must stay inside the corridor, so I stood in the corridor and I shut the door tight and stay there.

Q. Now, how far was this gate to the corridor you were in from the south gate? A. Oh, I should say, just about 3 feet, I suppose. This is the corridor that I was in here and this is the gate. I say it's about 3 feet. 10

Q. Look at that set of photographs, at No. 3. You see that gate there? Whereabouts were you standing? Were you to the right or the left? A. I was over here (points to the east).

Q. And just behind the stairway there, that's the entrance to A-Block. A. Yes, sir.

Q. That's the gate where they were? A. Yes, sir.

Q. Now you were in the corridor and he told you to stay there and you closed the door to? A. Yes, sir. 20

Q. Now carry on from there. A. I told Mr. King don't give him the key and Rose punched Mr. King up towards the gate again.

Q. He did what? A. Punched him up to the gate again and tell him he must open the gate. Mr. King wouldn't open the gate so Rose run his hand on the right side of his trousers and took off his shirt because his shirt was open. 30

Q. His shirt was open? A. Yes, sir, his shirt was open, it wasn't button up. He ran his hand on his right side, and took out a knife.

Q. Now before he put his hand there his shirt was open - could you see anything there? A. No, sir, I couldn't see, I suppose because his shirt was open.

Q. And you saw what he took from his belt? A. Yes, sir.

Q. What was it? A. He took out a brown paper bag with the knife in it, and he put the knife in King back and tell him he must open the gate. At that time King was still back on to him. 40

- Q. Was Ingraham doing anything at the time? You remember Ingraham doing anything? A. All the time he was trying to open the gate all the time he had this stuck here in his back.
- Q. Did he at any time do anything to King? A. Yes, sir.
- Q. Was it before this? A. This is at the time I telling you now.
- 10 Q. Carry on? A. Rose tell King again to open up the gate and he push him up to the gate again. Then Ingraham said "You hear what he said, he say open the gate." Ingraham exchange the key from his right hand in his left hand and slap Mr. King on the right cheek. Then Rose put the knife in his back and told him to open the gate again. So I tell Mr. King to pass me the key and he didn't pass me the key because he left for the door. I believe and was putting some more locks on the door because the locks carry
- 20 three on it.

CHIEF JUSTICE: You say he didn't pass the key and he went up to the gate? A. Yes, sir, up to the gate. Then Rose catch him around the waist and put the knife in his back again. Then fortunately Mr. King get away and Rose ran ...

- Q. He got away and ran where? A. He ran north, and Rose went behind him. And he catch him right by the northern porch.
- 30 Q. Could you see this? A. Yes, I open the corridor right behind them and I try to make an escape to get out and I see when he struck him down by the northern porch. Then Rose came back with a bunch of keys in his hand.
- Q. Did you see anything happen? A. Yes, sir.
- Q. Tell us what you saw? A. He chased King down and stick him in the back with the knife again and King fell again and they was wrassling over keys.

40 CHIEF JUSTICE: When he struck King he fell down? A. Yes, then afterward Rose come back with the key, with the bunch of keys in his hand.

- Q. Where was Ingraham then? A. Ingraham was still at the gate trying to open the gate.
- Q. Now could you tell us if during this struggle of Rose and King, King was defending himself or if Rose had the better of him? A. Rose had the better of him.

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No.12

Errol Roberts,

Examination,
11th May 1960
- continued.

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No.12

Errol Roberts,
Examination,
11th May 1960
- continued.

- Q. Can you say whether or not Rose needed any assistance? Did it appear to you that Rose needed any help in dealing with King? A. I wouldn't say that he needed help, he probably would have been able to do a better job by himself. Ingraham was still over at the gate trying to unlock it. Both of them had been in it together.
- Q. Now, after Rose returned from the gate with the key, what happened next? A. I pull back in the corridor and I shut the corridor behind me again. Then Rose try to open the gate and exchange the keys. He never get the gate open because he was trying the keys but he never open the gate, he never get the gate open. 10
- Q. Did anything happen while they were trying? A. Yes, sir.
- Q. What happened? A. Shortly after that I saw the Turnkey, Mr. Duncombe, came to the south gate and ask them what they doing, and say they must hold it. 20
- Q. He told them to hold it? A. Yes, sir.
- Q. Yes? A. Then they turn around from facing south and face north and Mr. Duncombe hold either one on either shoulder and he took them north going down by the turnkey office. I and Balfour was walking behind Mr. Duncombe and Rose and Ingraham.
- Q. Did you see Mr. King? A. Yes, sir.
- Q. Where was he? A. He was lying down about 10 to 15 feet north of the bathroom with his face down. 30
- Q. Was that where you saw him fall? A. No, sir.
- Q. Was that where you saw King stabbed? A. No, sir.
- Q. He moved away then? A. He moved away from where he was and gone north, sir, and that's where he fell.
- Q. You rendered any assistance? A. Yes, sir, of Mr. King. 40
- Q. What did you do? A. I and Balfour and two other prisoners and an Officer Mr. Farrington and Fisher took up Mr. King and walked him out into the compound and put him in bus No.12 and brought him down town.

Q. Do you remember seeing any blood at the south gate? A. No, sir, I don't.

Q. Do you remember whether or not King received any wound at the south gate? A. He could have but I don't remember seeing any blood. He might have get stick with the knife but it might not have been that hard.

Q. You saw Rose with the knife then? A. Yes, sir.

10 Q. Would you say it resembled this or not (witness is shown and identifies knife). A. Yes, sir, it is the same knife.

Q. That looks like the knife? A. Yes, sir.

Cross-Examined by Mrs. Cozzi.

Q. You said that Rose appeared to have the better part of the struggle with King when he ran behind him and when he caught him? A. Yes.

Q. He had the better part. How many feet away you think you were from where King was stabbed? A. Stabbed? I should say about 20 feet.

20 Q. About 20 feet? A. I should say about 20.

Q. Did you see him stab more than once? A. If I saw Rose stab him more than once? I see the knife put in his back about two or three times but I saw him once ...

Q. I just want to know what you mean when you say placed in his back. You mean he threatened him by putting the knife? He didn't stab him? A. Yes ... No, he didn't stab him.

30 Q. At the gate? A. No, he didn't stab him at the gate he put the knife in his back.

Q. When you say punched him up it was at the gate? That's what you mean? A. Yes, that's what I mean.

Q. It was not a stab? What size man was overseer King? A. King is a bit short. Me and him the same size but he's a bit thinner than me.

Q. About your height? A. About, only he's a bit thinner than me.

40 Q. How was King at the gate when he had the keys which he was refusing to give up? Was he holding them in his hand or did he have them in his pocket or what? Do you know how he was carrying the keys? A. He had the keys in his

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Errol Roberts,
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Examination
by Mrs. Cozzi
- continued.

pocket, and he took them out of his pocket and hold them in his hand.

- Q. I'm talking about overseer King? A. Yes, ma'am.
- Q. At the gate he took the keys out of his pocket?
A. Yes, because he opened the corridor for me to get in the corridor and push it back in his pocket.
- Q. After that at the time that Rose was asking for the key? A. He had the key in his hand, yes.
- Q. King had the key in his hand? A. Yes. 10
- Q. Would you say it was difficult or not difficult for Rose and Ingraham together to take them from him? A. It was a possibility that they could have hold him and take them from him but they didn't do it.
- Q. They didn't do it? A. They didn't do it.
- Q. And at the time that Rose ran behind King did you see King on the ground? A. Yes, he was on the ground face down.
- Q. Was he on the ground before he was stabbed or after he was stabbed? A. After he was stabbed he fell, yes. 20
- Q. He fell on the ground after he was stabbed?
A. Yes.
- Q. He was not chased and stabbed while he was on the ground? A. Yes, Rose ran behind and he catch him around the waist and he stick him the same time.
- Q. While they were both standing in a standing position? A. Yes, Rose was in the rear and he was in front. He was back on to Rose. 30
- Q. Both in a standing position? A. Pardon?
- Q. They were both standing? A. Yes.
- Q. It wasn't as though one man was on the ground and another on top of him and stabbed him?
A. Yes, Rose jump on him after he fell, you see. Rose trip him must be - but I never see Rose trip him - and he was down on the ground.
- Q. I want to know whether King was standing in a standing position at the time he was stabbed or was he on the ground? A. He was stabbed when he fell to the ground. 40

CHIEF JUSTICE: Stabbed on his way down? A. Yes, sir.

Q. I see. Did you see two stabs or one stab? I mean, you saw one stab? A. I saw one stab.

Q. Now, at that point up to the time of the stabbing, do you think that Rose would have had any difficulty in taking the keys from King without ... A. It was not difficult. After he stab King and King was lying on the ground it was no difficulty for him to get the keys because he took the keys from Mr. King.

Q. No, I don't mean after the stabbing. Suppose he had no knife to stab, would it have been difficult for him to take the keys? A. I should say yes it would have been difficult because he didn't took it.

Q. He didn't take it? A. He didn't take it; but after King refused to give him the key I suggest he went and take it be reinforcement.

Q. So you think that the only power that he had over King was the power of the knife that he had with him? A. I should say yes.

Q. He didn't have any power over him with regard to build and ability to force King? A. I should say no because he didn't do it.

Cross-Examined by Mr. Bethel.

Q. Had you seen this knife before? A. If I have seen it before? Apart from seeing it here?

Q. No, I'm speaking of when you saw Rose with it when there was this struggle at the south gate? A. That's the first time I had ever seen it, yes.

Q. That's the firsttime you had ever seen it? A. Ever seen it, yes.

Q. Did you run away or call for anybody to help when Rose was struggling with King at the gate? A. It was impossible.

Q. Why was it impossible? A. Because he gave me direct orders to stay in the corridor and after I had seen the knife I was afraid and I wasn't going to come out of the corridor because I don't know what he had intention to do.

Q. You said that Rose with this knife, that he used it to threaten a lot before he actually

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Cross-
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Errol Roberts,
Cross-
Examination
by Mr. Bethel
- continued.

stabbed with it? A. Yes, I would say that he was threatening with the knife before he tried to.

- Q. How many times was he stabbed, and where? A. I should say I saw him stabbed once. I saw one stab, after that I pull back in the corridor I saw one stab but he was poke in his back two or three times to open the gate but I have never seen any sign of blood so I believe he was just poking it in his back just to scare him. 10
- Q. Do you remember telling the magistrate, Magistrate Mr. Liddell, that King was stabbed twice by Rose - the first time after Ingraham slapped him and the second time at the gate. A. I don't remember saying he was stabbed, I say the knife was poke in his back. I never notice saying stabbed. I say the knife was poke in his back two or three times.
- Q. But you were specially asked about this point in the Magistrate's Court so then if you didn't say it the magistrate recorded incorrectly? 20
A. Perhaps, no. It could have been a mistake because I never remember telling him that he was stabbed two or three times. I said the knife was poke in his back as I'm telling you now.
- Q. I see. Now, did Ingraham assist Rose in any way with the struggle with King at the gate? A. Only one thing I see Ingraham did, when Ingraham slapped him when Rose told him to open the gate and he didn't open it, then Ingraham slap him. 30
- Q. When he was struggling, did he help? A. No, he was trying to open the western part of the gate. He didn't put his hand on him.
- Q. Were there any other persons at the gate? A. It was I, myself and Balfour.
- Q. At the gate or in the corridor? A. In the corridor. It was nobody else but King alone and the two other men.
- Q. Did you at any time ask King to pass you the key? A. I already said that a while ago. 40
- Q. You were asked the same question in the Magistrate's Court and you said "No." First of all you were asked in the Magistrate's Court before Mr. St. George and you said that you did ask him to pass you the key and then before Mr. Liddell at the second preliminary investigation

you were asked about that and you said, no you didn't ask for the key? A. You asked me in Magistrate's Court before Liddell if I have any knowledge of telling Rose which key to open the gate with and I explained in Magistrate's Court before Liddell that I did ask Mr. King to pass me the key. That's what you asked me in cross-examination.

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- 10 Q. Did you tell Rose which key to use? A. It was impossible because I don't know which one of the keys is the right key to open the gate with.
- Q. You never suggested to Rose at all ... A. No, not at all.
- Q. ... which key to use? A. No, because I don't know which key to use.

Errol Roberts,
Cross-
Examination
by Mr. Bethel
- continued.

20 MR. BETHEL: My Lord, the witness here differs here from what he says in the Magistrate's Court before Mr. St. George, and I was thinking of putting his deposition in - what he says there - that he did say to Rose, that he tell Rose which key he should use and in that instance he said he only said that so that Rose would use the wrong key because he knew that he had the right one all the time. My learned friend here says that that may be attacking the witness's character - I don't think it is - and warning me of the consequences there. I would like direction from you, sir, if I put in this deposition would it be attacking the character of this witness?

30

CHIEF JUSTICE: It probably will, Mr. Bethel, if you're seeking to discredit him.

MR. BETHEL: Yes, but discrediting his evidence, sir, I submit, is not attacking his character.

CHIEF JUSTICE: If you are seeking to prove a man a liar doesn't that have something to do with his character, Mr. Bethel?

MR. BETHEL: It does but I'm merely discrediting the evidence in this particular case.

40 CHIEF JUSTICE: Mr. Bethel, isn't that the whole point?

MR. BETHEL: If you're saying that he is telling a lie in this particular case it doesn't mean that he is altogether a liar.

CHIEF JUSTICE: You can't have your cake and eat it, Mr. Bethel, can you?

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MR. BETHEL: Well, sir, it may be an error. What I would like to ...

CHIEF JUSTICE: Why don't you, if you can very definitely say of him whether he did say that or whether it was an error or whether he thought, perhaps or something like that, as I say, otherwise I think you may lay yourself open. Would you like me to put it for you?

MR. BETHEL: Well, I'll put it to him. 10

Q. You don't remember ever telling Rose which key to use? A. I don't remember telling him which key to use.

Q. And this quoted in first deposition was a mistake? A. It could have been a mistake, sure. I feel it's a mistake. I could have never tell Rose which key to use because I don't have no contact with no key. It should be a mistake.

Re-examination. Re-examined.

Q. You knew King and you know Rose. Which one the bigger man? A. Rose is the bigger one. 20

Q. Would you say not very much bigger or by far the bigger man? A. Far bigger than King.

Q. Could you tell us how long Rose was menacing King with the knife, pushing it in his back, how long was that going on before Ingraham slapped King? A. Not long after; shortly after.

Q. Would you say, in your opinion, whether Ingraham would have seen the knife? Was it imposing? A. Yes, it was in full view because Ingraham saw the knife. Yes, he saw it. 30

Q. It was after that that Ingraham slapped him? A. It was right after Ingraham saw Rose pull the knife that he slapped him. Then he said, "Open the gate," then Ingraham slapped him then after he slapped him Rose poke him in the back with the knife.

Q. And you're sure that the knife was in full view before Ingraham slapped King? A. That's right. 40

Q. I think you were asked as to whether you thought yourself that Rose might have used the knife unnecessarily. Is that your opinion? A. Yes, sir.

Q. Would you say that anybody watching that scene would have got that impression? A. Anybody who was standing there, yes.

No.13

EVIDENCE OF TREVOR ALBURYTREVOR ALBURY - sworn.In the Supreme
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EvidenceNo.13Trevor Albury,
Examination,
11th May 1960.

- Q. Tell us your full name please? A. Trevor L. Albury.
- Q. You are an inmate of the prison? A. Yes, sir.
- Q. Did you know Overseer King? A. Yes, sir.
- Q. Do you know Elvan Rose? A. Yes, sir.
- Q. James Ingraham? A. Yes, sir.
- 10 Q. On the 17th February sometime after mid-day between 12.00 noon and 1.00 p.m. do you remember where you were? A. Yes.
- Q. Where were you? A. We were in the back with the rock gang.
- Q. At what side of the prison? A. The north side.
- Q. Did you see anybody doing anything while you were there? A. Yes, sir.
- Q. Tell us what you saw? A. On my way hauling the stones from the North to the South where some prisoners were cracking stones when I came with the first load I saw Rose with 'H'7 number, John Johnson Alex Jones and Conliff another prisoner with sticks in their hands singing dunga, dunga, playing they had a ball. When I came back from dumping the stones I came on back down I asked, "What's going on here, you all have a dance. When boys are so happy they get typically nice."
- 20 Q. Did you see Rose at any time after that? A. Yes, on the 2nd trip going back, I met him in the shed where they kill hogs and he had a knife on the grindstone sharpening.
- Q. Do you think you would recognise that knife if you saw it again? A. Yes, I'll know it sir.
- Q. That looks like the knife? A. That is the knife I saw I know it because I saw him rubbing it.
- Q. About what time was this, do you remember? A. That was sometime around when I carried the load but I know when he did sharpen the knife and finish the knife he went to the rest room and when he reached inside the rest room I went behind him.
- 40 Q. Where is the rest room is that far? A. The rest room is on the north side of the prison compound entrance.
- Q. That is not the bathroom in the prison near South gate? A. No, sir.
- Q. Did you see what he did with the knife after he sharpened it? A. He took the knife and he wrapped it up in a piece of brown paper and put it in between his pants and his shirt.
- 50

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Trevor Albury,

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- continued.

- Q. Now you followed him to the rest room? A. Yes, sir.
- Q. Did any conversation take place there? A. When I went in the rest room I met him setting on the second bowl and I was on the third one facing South.
- Q. Did he say anything or did you say anything? A. He said he wanted to go inside because his head was hurting. I said, "Rose you and I are working in one gang why don't you hold on for another hour and some more minutes the whistle soon blow." 10
- Q. What happened then? A. Then he said he wanted to go his head was hurting him and he walked out of the rest room and went towards the Turnkey Office then turned back from the Turnkey's Office and walked South to the carpenter's shop and from the carpenter's shop and back in the rest room again.
- Q. Do you know if he went into the Turnkey's Office? 20
A. No he did not go in.
- Q. He returned to the rest room again. Did anything happen then? A. He asked the Overseer, Mr. Pen what time it was.
- Q. Was this the first time that he asked the time? A. He asked me the time second time.
- Q. Do you remember what time it was the first time that he asked? A. The first time he asked Mr. Pen the time Mr. Pen said it was 3.14 p.m.
- Q. The second time he asked the time did Mr. Pen tell him? A. Mr. Pen told him the time was then 3.19 p.m. 30
- Q. Did he say anything to that? A. He said he wanted to go inside but he did not want to go in his cell until 3.30 p.m.
- Q. Did he say why he wanted to go? A. His head was hurting him.
- Q. But he wanted to go inside 3.30 p.m. A. 3.30 p.m.
- Q. What happened then? A. After that I came out the rest room and turned back to my work and when I took the wheelbarrow to haul the next load of stones between the block I saw him standing with a black bag in his hand so I reported to Overseer Newton who was in charge of us. I said "Mr. Newton Rose inside the rest room he has a knife in his bosom and he looks wraught and you all sending the man inside." The reply back to me was that I should shut my damn mouth I talk too much. 40
- SOLICITOR GENERAL: I would tell you the same thing. 50
- Q. Did you see either Rose or Ingraham later that day? A. I saw Ingraham and Rose after they were caught when they ran.

Q. Where did you see them run? A. I saw them run through the building to the South gate.

Q. You saw them running towards the South gate?
A. Yes.

Q. Did you see what happened at the South gate?
A. No, sir.

Q. Did you see them after that? A. After that I saw them after they ran through the South gate they ran through the corridor where I live.

10 Q. Where do you live? A. 'B' Block, West.

Q. Where were you when you saw them running? A. At the North gate, the main entrance where they called the gang coming towards so they could don't come inside.

Q. Did you see them when they were caught? A. No, sir, I didn't see them when they were caught.

Cross-Examined by Mrs. Cozzi.

Q. Trevor how long have you known Rose? A. I know him about 5 or 6 years personally.

20 Q. What kind of fellow you find him? A. He seems to be a desperate fellow.

Q. You heard him complain about headaches often?
A. No ma'am.

Q. You and he were working on the same job? A. Yes.

Q. And the Overseer in charge of you say was Mr. Newton? A. Mr. Newton.

Q. Was Mr. McCartney in charge at any time that day? A. Mr. McCartney is the boss of the gang but Mr. Newton is in charge of us we are a gang separate.

30 Q. Would it be customary for anyone going in from the North side of the prison to have their arrival at the Turnkey's Office notified?
A. What is that?

Q. If you were outside and you wanted to go in what would you have to do to go in? A. Apply to the overseer in charge of me.

Q. Who would that be Mr. Newton or Mr. McCartney?
A. Mr. Newton.

40 Q. Suppose Mr. Newton had agreed to let you go in would he take any further steps. A. Sure enough.

Q. He would not ask you anything? A. No.

Q. You said at first that Rose seemed to be anxious to go in right away and you asked him to stay a while because it was nearly time to finish up out there anyway? A. He was anxious to go in his cell.

Q. Do you think he was anxious to go to his cell and he didn't want to go then? A. He was anxious to go but he said he didn't want to go until 3.30.

50 Q. Now do I understand that Mr. Newton did not believe you when you made the report to him about the knife? A. He didn't believe me.

Q. Would he have any cause not to believe you?
A. I don't know.

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Trevor Albury,

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Cross-
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No.13

Trevor Albury,
Cross-
Examination
by Mrs. Cozzi
- continued.

- Q. You said sometime later you saw Rose and Ingraham at the South gate were you then outside the North gate? A. When I saw them at the South gate the gang was standing up at the North gate and we could look through the North bound to the South gate.
- Q. There were no people standing around between you and --- A. No gang. Only the gang that was being brought in were those in the rock gang.
- Q. Did you see any other people around besides Rose and Ingraham at the South gate? A. They were the only two that I saw. 10
- Q. You never saw Errol Roberts standing between Rose and Ingraham? A. No, ma'am, Errol Roberts works inside I work out.
- Q. You saw Rose and Ingraham at the South gate? A. Yes, ma'am.
- Q. And you were outside the North gate? A. Yes.
- Q. And all I asked is, "Did you see Errol Roberts?" and you said no he worked inside? A. I did not see Errol Roberts. 20
- Q. I know he works inside but why should that prevent you from seeing him? A. I didn't see him.
- Q. If you had been standing there you could have seen him? A. I say I didn't saw Errol Roberts.
- Q. If he was standing at the South gate while you were looking through from the North gate could you help seeing him? A. Maybe he could have been but I didn't see him.
- Q. Did you say something about a hog shed, where is that? A. The hog shed is in the back of the block - where you stack the blocks. 30
- Q. Where is that in relation to the dump heap? A. That is where you burn the lime.
- Q. Now you said you saw Rose take this knife from the hog shed? A. Yes, that's right.
- Q. You saw him sharpening the knife? A. Yes, I saw him sharpening the knife on the grindstone in the shed.
- Q. Why do they keep a grindstone in the hog shed? A. (No answer). 40
- Q. Why do they keep a grindstone in the hog shed? A. They keep the grindstone in the shed because when they kill hogs, they kill hogs plenty, twice a week and it would be handy instead of walking up and down inside to get the knife sharpened.
- Q. How is the hog killed? A. The hog is shot by the overseer and ---
- Q. Did you see when King was stabbed? A. No, ma'am. 50
- Q. Did you see any trouble between King and Rose and Ingraham? A. No ma'am.

No. 14

EVIDENCE OF HENRY ARMBRISTERIn the Supreme
Court of the
Bahama IslandsHENRY ARMBRISTER - SwornProsecution
Evidence

No.14

Henry
Armbrister
Examination
11th May 1960

- Q. Tell us your full name please? A. Henry Armbrister.
- Q. I think you are an inmate of the prison?
A. Yes, I am.
- Q. Did you know Samuel Otis King the Overseer?
A. Yes.
- 10 Q. Do you know James Ingraham? A. Yes, Sir.
- Q. Elvan Rose? A. Yes, sir.
- Q. On the 17th February this year around 3.00p.m. I believe you on some kind of detail weren't you? A. Yes, sir.
- Q. What kind. A. Night pan parade.
- Q. Did you see Rose or Ingraham anywhere while you were on this detail? A. On our way out from night pan I met Rose coming in with his cot in his hand.
- 20 Q. Coming in where? A. Into the building. I hailed Rose and he hailed me. On our way in with the night pan I left the first block and went upstairs to the second floor to 'G' section where my cell is located at.
- C.J. You went up to 'G' Block?
A. Yes, sir. I saw Rose and Ingraham run back into the corridor toward the Asst. Turnkey, Mr. Gay who was sitting on the floor with his back leaning against the corridor gate.
- 30 Q. 'G' corridor runs from East to West? A. Yes.
- Q. At what end was he? A. He was at the East end.
- Q. Is that any where near Ingraham's cell?
A. Yes, 'G' 10 cell.
- Q. What did you see Rose and Ingraham doing?
A. Ingraham was on his right and Rose on his left. It appeared as though they were searching him.
- Q. Did you see whether anything was wrong with

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Henry
Armbrister
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11th May 1960
continued

Mr. Gay or not? A. His head was bleeding. I saw blood on his left shoulder and I saw blood on his shirt. It appeared as though he was bleeding from his forehead.

Q. What happened then? A. I came down stairs and Rose and Ingraham came behind me and they headed for the South main gate where Overseer King was in charge.

Q. Up to this time do you remember seeing anything in either of the hands of any of these two men? A. I saw Rose with something black in his hand. 10

Q. What did it look like? A. It was black, I could not see it all - it was just something dark in his hand.

Q. You saw them head for the South gate and what did you do? A. I headed for the Turnkey's Office. I got abreast the bathhouse and I looked behind and I saw wrestling going on.

Q. Who was that? A. I saw Rose had King in front of him. Rose was facing the South gate and Ingraham was standing on the West. 20

Q. Was he and Ingraham doing anything?
A. Ingraham was fighting trying to shift the gate a section of the gate was already locked down for a couple of days.

Q. What did you do then? A. I headed for the Turnkey's Office and I told Mr. Duncombe.

Q. What did Mr. Duncombe do after you spoke to him? A. He took up his cap and put it on. 30

Q. What did he do? A. I didn't follow him. After he left I headed for the main gate at the North where Overseer Penn was in charge.

CROSS-EXAMINATION By Mrs. Cozzi

Cross-
examination
by Mrs.
Cozzi.

Q. Armbrister do you recall having seen anything of Joseph Rigby? A. On my way down I saw Joseph Rigby on the peak end of the bathhouse sitting on the corner.

Q. Do you recall having seen Overseer Sands with a group of the cleaning gang? A. If I saw who passed? 40

Q. Yes. A. He was upstairs with a cleaning gang, I haven't seen him at no time.

Q. How did you happen to know where he was.
 A. Overseer Thompson was in charge of my group on first floor.

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Q. You knew where Sands was supposed to be.

A. As the detail goes.

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 Evidence

Q. You said you walked down the stairs or did you run down, was there excitement.

A. I walked down the stairs and they caught me up coming down the stairs.

No.14

10 Q. Did they pass you? A. No, I was near down the end of the flight of stairs.

Q. Were they running? A. They had a little speed.

Q. These are the steps are they (Photograph No.3).

C.J. Were those the steps? A. Yes.

Q. Now will you tell us the exact point (Photograph No.8) A. (Witness points to spot.)

Q. You think it might be 'G' Block?

20 A. 'G' Block.

Q. Let us suppose that this gate is locked and you are looking from the West towards the East. Can you tell me the point at which you saw Mr.Gay.

C.J. By that corridor? A. Yes, sir.

Q. Was that corridor gate opened or closed?

A. I couldn't say.

C.J. He was sitting by the far gate.

30 Q. Can you say whether the door to Ingraham's cell was opened or closed? A. No I couldn't say that.

Q. But you saw Ingraham out on the corridor?

A. Yes.

Q. You remember seeing the cot there?

A. Yes, I saw a cot there.

Q. Do you remember seeing the cot there at the time you saw Mr.Gay with his head leaning on the side. A. I never noticed.

CROSS-EXAMINATION By Mr.Paul Bethel

40 Q. When you saw Rose at the South gate was Ingraham assisting in any way? A. He was

Cross-
 examination by
 Mr. Bethel

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not assisting at all he was standing on the
West side of the gate - West side of Rose in
front of the West section of the gate.

Prosecution
Evidence

Adjourned - 2.30.

No.14

Henry
Armbrister
Cross-
examination
by Mr. Bethel
continued

No.15

Conrad Balfour
Examination
11th May 1960

No.15

EVIDENCE OF CONRAD BALFOUR

CONRAD BALFOUR - Sworn

Q. Tell us your full name please?

A. Conrad Balfour.

Q. You are an inmate of the prison? A. Yes. 10

Q. You know Elvan Rose. A. Yes, sir.

Q. Do you know James Ingraham? A. Yes, sir.

Q. Did you know Overseer King? A. Not as
good as them but I know him.

Q. You remember the 17th February of this year
around about 3.30 you were on some detail or
other? A. Yes, sir.

Q. Tell us about it. A. At 3.30 p.m. the
officer in charge, Thompson, called us to-
gether to go into the other compound to col-
lect lavatory pails. On our way out I met
Rose coming in with a cot and a black bag in
his hand? 20

Q. Where was that? A. We left from the
Southern part of the prison going towards the
North and he was coming South.

Q. Was Errol Roberts in your gang? A. Yes, sir.

Q. You collected the pails and then you returned
to the South side of the prison did you?

A. Yes, sir. 30

Q. Did you go to 'A' Block. A. After we got in the middle between the Bathhouse the overseer detailed some of the fellows to go West and we proceeded on South, Roberts, Lloyd and a fellow by the name of Williams.

Q. Where did you and Roberts and Lloyd go?

A. We came direct South and Roberts and I stopped in 'A' Block.

10 Q. Did you go into the block? A. No we couldn't go into the block because Overseer King was sentry at the gate we asked him to let us in Block 'A'

Q. Did he let you in? A. He opened the gate and let us in.

Q. Where was Overseer Thompson then? A. He was supposed to be in the Western part of the prison.

20 Q. He was not in 'A' Block at the time? A. No he just gave the signal to King and turned us over to him.

Q. When you got into 'A' Block I think you went to your cell didn't you? A. I proceeded Roberts and I started from about 6. This time Roberts from 1 he was behind me and when I got up to 'A' 10 which was my cell I heard a scream. After I heard the scream I couldn't actually distinguish the voice but it continued and Roberts and I looked at each other. It seemed to me like it was coming from over my head.

30

Q. What is over your head? What block is that?

A. I have never been up there it was between 'G' and 'H', the Eastern part of the part of the prison.

Q. Did anything happen then? A. After I heard the scream Roberts was closer to the gate than I I turned around proceeded on South towards the gate. After coming towards the gate when I almost reached the gate on the stairway on the Western side I saw Ingraham proceeding and Rose behind him.

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Q. Yes, where were they going? A. They came down the stairs and went south towards the gate. After Ingraham got to the gate he started to fool with the mechanism of the gate.

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Prosecution
Evidence

No.15

Conrad Balfour
Examination
11th May 1960
continued

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Evidence

No.15

Conrad Balfour
Examination
11th May 1960
continued

Q. What happened to King? A. King was at the gate. After he went there and started fooling with the gate King knocked his hand away from the gate and they had some talk about you can't do this and that. Roberts was closer than me but the gate that we went through was open.

Q. That was the gate leading into the corridor?

A. Yes, sir.

Q. What did Roberts say. A. Roberts told them why they don't behave themselves if don't they know the man can't do that. It seemed as though King tried to secure the gate. Ingraham said to him (Rose) he seemed to have a key or something. I could not see what it was in his hand, "I can't get the gate open".

10

Q. Who said this? A. Ingraham said that. Then Rose said give him the key.

Q. Whom did Rose say that to? A. Rose told King to give him the key. King hesitated and Ingraham slapped King. After he slapped King, King started to duck and Rose cornered him and they started to tussle. Before he and King actually tussled Roberts went there and Rose pushed Roberts back through the gate and we left them out there.

20

Q. Where were you when they began to tussle?

A. We were inside the corridor?

Q. In 'A'? A. In 'A' corridor.

Q. Could you see any of their hands at that time apart from King? A. I did not see him with a key in his hand, I saw him fooling with the mechanism of the gate.

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Q. Did you see anything in the hands of either of them later on? A. Yes, but I saw when Rose knock him.

Q. Knock whom? A. King, and then King ducked and kind of got away from him and King started to head North and we came out of the corridor. There is the Western and Eastern stairs, we came out the corridor and Ingraham was standing on the Western part of the gate towards 'B' Block. King turned into the telephone booth which is to 'B' corridor.

40

Q. This wasn't in the garden or courtyard?

A. No that was before you reached the courtyard.

Rose was so hot on him when he ducked out again he and Rose scruffled out on the small porch until they reach almost in the garden and then Rose cornered him there.

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Q. You didn't see what happened in the courtyard? A. Yes. After he came further down towards the Western side of the stairs Rose stood up like to straddle him.

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Evidence

No.15

10 Q. What do you mean when you say to straddle him was he standing? A. No, King was more on the cross way on the ground and Rose had the better part of him. It seemed to me that he cleared King's right pocket I would say where he had the keys in. He cleared that and the pants and everything then he still held King and I saw his hand went up and he stab King.

Conrad Balfour
Examination
11th May 1960
continued

20 Q. Did you see anything in his hand or you just saw the stabbing motion? A. I saw him knock but in the interval I saw the knife flash. He turned loose but the knife was still in his hand and he started coming back towards the Southern gate and King got up and started going further North. After we saw him coming back towards the South gate we went back inside the corridor and then we heard footsteps come running. When we looked through the back of the corridor, the gate to the corridor, we saw Asst. Turnkey
30 Duncombe. After Duncombe got there so far they were still trying to open the gate, and Duncombe told them, "Hold it". After they hesitated, Duncombe put his hand in his pocket. I was under the impression that he had a gun in his pocket so we backed back and we saw when the keys dropped out of
40 Rose's hand. Duncombe came towards them and stuck out his left foot and pulled the keys into him and picked the keys up and put them in his pocket and grabbed the two of them one on each shoulder. We then came out of the corridor. Mr. Gay was then all bloody up.

Q. Where was Mr. Gay then? A. Mr. Gay was then outside of the porch way towards the garden on the Western side. All the left side of his head and all his shirt was bloody up. I told him that King got hurt and he

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No.15

Conrad Balfour
Examination
11th May 1960
continued

said we must go up there and see what we could do for him. When I went further beyond the bathroom going towards the tailor shop and the kitchen - the kitchen on the East, the tailor shop on the West, they have two tanks almost to the end of the Northern part of the tank I saw King - person lying down on his face and the whole of the back of his shirt was saturated with blood. When we got there, Roberts and myself and some of the other fellows who were around the bathroom and the garden --

Q. You helped King up did you? A. No, I tried to turn his face but he started to tremble so I felt his hand and I pushed my hand down towards his belt and after I saw the blood soaking his shirt I put my hand down in the belt and pull up his shirt and undershirt and when I pulled them on the left side - he was lying North on the left side, it seemed to me to be almost under the shoulder blade towards the centre of the back way was a wound and the blood was just oozing out. I then told the fellows we could not do anything for him. It seemed that every time he breathed air and blood seemed to bubble out. After Duncombe put them Rose and Ingraham under arrest and Johnson went and assisted Duncombe --

Q. Rose and Ingraham were put under arrest.
A. Then Duncombe told us to lift King up and we took him towards the bathroom they have there.

Q. And then King and Gay were taken away?
A. Yes.

Q. After this did you see Rose and Ingraham again?
A. No, after everybody seemed excited they huddled us all together and told us to go to their individual blocks, and I went to the Southern back door where I live. I heard something but --

Q. You heard something else happened afterwards but you did not see that?
A. No, I didn't see them at all.

CROSS-EXAMINATION By Mrs. Cozzi

Cross-
Examination by
Mrs. Cozzi.

Q. How many times did you see Rose stab King?
A. I saw Rose stab King once on the grass.
Q. What side of the corridor was that is that the

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Evidence

No.15

Conrad Balfour
Cross-
examination by
Mrs. Cozzi
11th May 1960
continued

- Eastern side or the Western side?
A. Not the corridor at all the walkway
- Q. What side of the walkway? A. On the Eastern side.
- Q. Were you standing on the Eastern side?
A. No, I was between the stairs under the Southern portion of the building on the Western stairs, Roberts and I.
- 10 Q. You had come out of corridor 'A'
A. Corridor 'A'.
- Q. You were standing over by the stairs?
A. We came out of the corridor and went a little further north.
- Q. You were standing about (Photograph No.3) --
A. This is the Southern gate. We came out of the corridor here on the East and proceeded on towards this stairway on the left that means we were facing North from this angle towards this block here. The foot of the stairs here would be 'B', and we could have seen direct towards the North-east.
- 20 Q. You said it was you and Errol Roberts?
A. Yes.
- Q. Just the two of you or more of you?
A. The other two fellows after they saw Rose and Ingraham come down the annex they jumped over the next annex and fled.
- Q. Who were they? A. They were Lloyd and a fellow I think by the name of Williams.
- 30 Q. You said that when you saw King stabbed he was on the grass, prostrated? A. Rose had the better part of him straddling him.
- Q. Did you hear any conversation between King and Rose? A. When he came to the gate.
- Q. Was that all you heard? A. Yes, when they were forcing him to open the gate.
- Q. I am talking about the time of the stabbing you didn't hear any talk between them?
A. No, I didn't.
- 40 Q. Was King still facing North when he was almost on the grass as you say in a sprawling condition is that it? A. I would say a portion of him was on the ground but I would

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Conrad Balfour
Cross-
examination by
Mrs. Cozzi
11th May 1960
continued

- not say that he was actually horizontal with the ground.
- Q. Well what portion was on the ground? A. King had a small head and Rose had him over that head.
- Q. Well which way was his face turned? Was it turned North? A. I would say it was turned more North-easterly. It seemed to me that he was trying to run across the grass.
- Q. Did you see George Johnson anywhere near by? A. I saw him. I glimpsed a person there that I would say was him. 10
- Q. And you say that at the time that King was stabbed he was facing North. A. I would not say directly. He was facing in a more north-easterly direction.
- Q. Can you say whether that picture is facing north or south? A. The picture look to me like it is facing South but that don't say that is the way King was. 20
- Q. You don't think that is the way that King was? A. Not to me.
- Q. I think before you said you saw any stabbing that you saw Rose tear King's shirt pocket was that before the stabbing? A. I said that he tore his pants pocket, the right side of his pants pocket.
- Q. That would be the right back pocket. A. The right side pocket.
- Q. Was that when he was trying to catch him, hold on to him that that was torn? A. That is how it seemed to be or that he was trying to get something from him. 30
- Q. Did you at any time see him tear his shirt pocket? A. No.
- Q. How much time would you say elapsed between the moment when you saw Rose walking towards the South and you were going North with the cleaning gang? A. No answer.
- Q. You said that when you first saw him you were going North with the cleaning gang and he was coming in with his cot is that correct? A. Yes. 40
- Q. Between that moment and the time when you saw Rose stab King how much time would you say had elapsed? A. I would say between 10 and 15 minutes.

Q. Did you see Joseph Rigby around anywhere?

A. No.

Q. Did you see Henry Armbrister anywhere?

A. No.

Q. Were you standing near by the kitchen? Where is the kitchen in relating to the stairs?

A. The kitchen is out there on the northern side of the building as you go North. The only building north of the kitchen is the Turnkey's Office.

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You mean in the building proper, you see they have a carpenter' shop.

Q. Yes, well I am talking about in the building.

A. Yes.

Q. And the kitchen is on the Western side or the Eastern side? A. The kitchen is on the Eastern side.

Q. Did you at any time see Rose go into the kitchen? A. No.

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Q. What was the first point at which you noticed he had something in his hand? A. only when he raised it.

Q. You did not see it at the gate? A. No, when he was scruffling I can't say I saw him with the knife.

Q. Were there people standing in front of you?

A. There was --

Q. You were in the corridor at the time were you? A. Yes. King was more to the East and Roberts was East of King and I was East of Roberts.

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Q. Did you see Roberts at any time go out of 'A' corridor and go between King and Rose?

A. He didn't actually go between them. I would say that if you go between a person that means - he went where King was and King was more to the gate and Rose was standing in the corner, King had a table there and Rose was standing almost to the Western part of the table. It seemed as though he wanted to pin him up in there and Roberts came out the gate and started trying to hold him down and he pushed Roberts and he pushed Roberts away.

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Q. You say you saw a knife flash?

A. No answer.

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Evidence

No.15

Conrad Balfour
Cross-
examination by
Mrs. Cozzi
11th May 1960
continued

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Evidence

No.15

Conrad Balfour
Cross-
examination by
Mrs. Cozzi
11th May 1960
continued

Q. You mean you saw the blade flash in the sun?
A. I didn't say I saw the blade flash I saw the knife.

Q. You saw the knife? A. When I said I saw it flash I mean I saw the blade proper. As he threw up his hand I saw the knife. I still would recognise the knife if I see it.

Q. Is that the knife you saw? A. I am not prepared to say this is the same identical knife.

C.J. That is like the knife? A. Yes.

Q. How long have you known Rose? A. I know Rose a number of years.

Q. Have you ever heard him stammer? A. Yes, I heard him stammer.

Q. All the time or sometimes? A. No answer.

Q. When I say sometimes some people stammer but not all the time. Is it a frequent thing or he only stammers some times. A. He stammers when he is getting kind of worked up.

Q. Have you seen him worked up often? A. No, I have not seen him worked up often but one night.

Q. You saw him worked up one night?
A. Yes, he was mad.

CROSS-EXAMINATION by Mr. Paul Bethel

Cross-
examination by
Mr. Bethel

Q. Did Ingraham assist Rose in any way when Rose was scuffling with King. A. It seemed to me that both came to the gate with the intention of going through the gate and I saw Ingraham slap King.

Q. I am not talking about that time. After the slap you say you saw Rose and King struggling?
A. Yes, I said that.

Q. Was Ingraham helping Rose at all? A. No.

Q. When you saw Rose with his cot earlier did he appear to be angry at all? A. Probably if you pass him and you speak and he does not reply automatically you think that something is wrong, he isn't feeling so good. I spoke to him when he was going out and he did not reply.

Q. What did you take that to mean? A. That he

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was not feeling good, it was unusual for him to be coming in around about 3.30 to 3.32 p.m. and see him bringing in a cot with boards and things. It is the first time I ever saw a cot like that with 5 pieces of board and some big rods and a bag in his hand. Just about everybody that was passing joked with him but whether he spoke to them or not I don't know.

- 10 Q. You said after the stabbing you went and looked at King and you saw him bleeding on the ground and that you went and you saw what happened to him by raising his shirt up and so on. Did you have blood on your clothes after that? A. Yes, through handling the shirt blood came on my hand I tried to turn his head when he was put inside the jeep and I lost my cap.

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Prosecution
Evidence

No.15

Conrad Balfour
Cross-
examination by
Mr. Bethel
11th May 1960
continued

No.16

20

EVIDENCE OF GEORGE HUBERT JOHNSON

GEORGE HUBERT JOHNSON - Sworn

Q. Your full name is George Hubert Johnson?
A. Yes.

Q. You are an inmate of the prison are you?
A. Yes, sir.

Q. You know James Ingraham? A. Yes, sir.

Q. Elvan Rose? A. Yes, sir.

Q. Did you know Overseer King? A. Yes, sir.

30 Q. Now on the 17th of February this year around about 3.00 p.m. to 3.30 p.m. were you working anywhere? A. Yes, sir.

Q. Where? A. On the lawn between the church and the bathroom and the South gate.

Q. While you were there did you see or hear anything? A. While I was working up there I heard a hollering upstairs.

Q. In what direction? A. Well I can't tell you exactly what direction, sir.

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George Hubert
Johnson
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No.16

George Hubert
Johnson
Examination
11th May 1960
continued

- Q. After you heard the hollering did anything else happen? A. When I looked I saw Mr. Gay come down and he stood up on the porch and was calling for Sgt. that is the Supt. now, Mr. Duncombe.
- Q. What happened then? A. He continued towards the office way.
- Q. He went North? A. Yes, sir. About 30 seconds after that I saw King come running up.
- Q. King came running up from where? A. From the South gate and Rose was behind him. 10
- Q. What happened? A. Then Rose caught him and dashed him down and stabbed him.
- Q. About where did he catch him? A. He caught him about two trees on the lawn right from the porch and dashed him down and turned him over on his back and stabbed him.
- Q. Look at this picture (No.6) Was that the position that you saw King in when he was stabbed?
A. Yes, sir.
- Q. Did you hear either King or Rose say anything? 20
A. I heard King say, "Rose are you going to kill me?"
- Q. Did Rose reply?
A. Rose said, "Yes, I am going to kill you because you wouldn't give me the keys."
- Q. Could you describe how Rose stabbed him?
A. After he dashed him down and turned him over he stabbed and break the knife off in him.
- Q. You saw him break the knife off? A. Yes, sir.
- Q. What happened to the handle do you know? 30
A. No, when he held up his head and saw me, when he did so, then I ran.
- Q. Did you see him do anything else to King?
A. He ran his hand in his pocket and took out the key.
- Q. Rose took the keys from King's body and what did he do then? A. He went towards the South Gate.
- Q. And what did you do? A. I started on my way up to Mr. Duncombe and I met Mr. Duncombe coming down. 40
- Q. Where did Mr. Duncombe go? A. He went to the South gate and apprehended Rose and Ingraham.

- Q. You saw him apprehend Rose and Ingraham?
 A. Yes and took the keys.
 Q. Did you see anything else after that?
 A. Nothing else.

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 Bahama Islands

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 Evidence

CROSS-EXAMINATION By Mrs. Cozzi

No.16

George Hubert
 Johnson
 Examination
 11th May 1960
 continued

- Q. Johnson, in that picture are you facing North or South? A. That is facing the road. There is the road between this and the two bathrooms.
 10 Q. Yes but I mean in the picture is that the North or the South? A. This to towards the South.
 Q. Then do I understand that King who had been running North at the time of the stabbing was facing South. A. Rose dragged King, King was facing Rose when he got stabbed.
 Q. Is that where King was at the time that he was stabbed or after he was stabbed.
 20 A. That is the position he was in at the time when he got stabbed.
 Q. If Rose was in that picture where would he be? A. He would be in the street.
 Q. Out here? A. Yes.
 Q. In front of King's face? A. Yes.
 Q. So you mean Rose leaned over King's head to stab him? A. He dashed him down and turned him over and then stabbed him.
 Q. Would you say that Rose was straddling King at any time? A. No, only when he came out
 30 of the building he caught him and pulled him in between the street and the lawn.
 Q. Rose caught King here on the road way and pulled him over on the lawn? A. Rose caught King and dragged King to him so that King's head was in the street and his feet were on the lawn.
 Q. Now you say that this picture is facing South. King had been running from the South gate you are sure about that? A. Yes.
 40 Q. Well this would be the East side of the roadway in which you are lying. Now King was

Cross-
 Examination by
 Mrs. Cozzi

In the Supreme Court of the Bahama Islands

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No.16

George Hubert Johnson
Cross-examination by Mrs. Cozzi
11th May 1960
continued

running from the South gate to the and Rose caught him sometime before he got into this position? A. Yes.

Q. Rose swung him around? A. He caught him running and he put his head back South and then stabbed him.

STANLEY HINSEY - Sworn

No Examination
No Cross-examination.

No.17

Emmett Leon McNeil

No.17

EVIDENCE OF EMMETT LEON MCNEIL

10

EMMETT LEON MCNEIL - Sworn

No Examination

No Examination

CROSS-EXAMINATION By Mrs. Cozzi.

Cross-examination by Mrs. Cozzi
11th May 1960

Q. McNeil on the 17th February were you at the Fox Hill Prison? A. Yes.

Q. You know Mr. Gay? A. Yes.

Q. Do you know the prisoners Rose and Ingraham? A. Yes.

Q. Around 3.00 p.m. or 3.30 p.m. you saw some incident involving those persons? A. Yes.

20

Q. Will you tell us just what you saw involving these 4 persons, Rose, King, Ingraham and Mr. Gay. A. I saw Rose and Ingraham were coming from upstairs, between 'G' & 'H' They went to the South gate.

In a little while I saw Mr. Gay coming behind them, bleeding from his head. Then I saw King and Rose wrestling. At the time Rose was about 12 feet from me. At the time Rose had the best of King, he put his knee on him and he swung King around in the direction of the South gate. He had a knife in his hand after that. King

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said, "You are going to kill me?" Rose said, "Yes I am going to kill you", and Rose took the knife and he took him and broke it off in him. At the time I ran and got the Turnkey, Duncombe. The Turnkey met Rose on the gate and Ingraham was in front about a foot from the gate. As the Turnkey drew closer to them both of them got on the gate and were trying to open it. The Turnkey took both of them from the gate. That's all I saw.

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Evidence

No.17

Emmett
Leon McNeil
Cross-
examination
by Mrs. Cozzi
11th May 1960
continued

10

Q. Did you see Henry Armbrister? A. No ma'am things were going so fast I couldn't?

Q. Were people running all over the place?

A. Well I tell you at the time I was so frightened. I was sick at the time I had a bad hip but I ran for the Turnkey.

Q. You said you were so confused that you did not know what was happening and you told us a very clear story of what happened.

20

A. I said I don't know what happened after that.

Q. You did not see Johnson around, Hubert Johnson? A. Hubert and I work at the same place.

Q. Work in the garden? A. Yes.

Q. Were you working on this day? A. Yes.

Q. How many times did you see King stabbed?

A. I saw King stabbed once.

Q. I think I understood you to say that you saw Rose throw the keys towards the South gate?

30

A. Yes.

Q. Did you see him throw anything else? A. No.

Q. Did you see anybody pick up the keys from where they landed? A. In the position I was standing in I couldn't see anyone pick them up, I couldn't see where the keys landed.

Q. But Rose was in your full view you could see him clearly couldn't you. A. Yes, ma'am.

40

Q. But you couldn't see him throw anything else but keys? A. No ma'am.

Q. Did you get a full view of the knife?

A. The knife seems to look like a butcher knife.

Q. It looks like this knife? (Witness is shown

In the Supreme
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Prosecution
Evidence

No.17

Emmett
Leon McNeil
Cross-
examination
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11th May 1960
continued

exhibit). A. It looks similar.

Q. It looks like that. Would you look at photo-
graph No.6. You recognise the person in that
photograph? It doesn't matter. Is that the
position in which King was when he was stabbed?

A. I'm not sure.

Q. I'm not sure either that's why I want you to
tell me. Do you think that picture is facing
south or north? Does that look anything like
what you saw when you saw King stabbed. Well,
now, if it looks similar, do you remember
whether King was facing south when he was stabb-
ed, when you saw him stabbed? A. I don't
remember.

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Q. You don't know? A. I can't remember.

No questions by Jury.

No Re-examination.

CHIEF JUSTICE:

Q. Did you know Rose at all well at the prison?

A. Yes, sir.

20

Q. Do you know if he often had headaches?

A. Well, I don't know that, sir, we wasn't that
much friendly.

Q. That's what I wanted.

No.18

Henry Sands

No.18

EVIDENCE OF HENRY SANDS

HENRY SANDS SWORN

No examination by Solicitor General.

Examination
11th May 1960

C.J. You are an overseer, are you?

A. Yes, sir.

30

CROSS-EXAMINATION (By Mrs. Cozzi)

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.18

Henry Sands
Cross-
examination
by Mrs. Cozzi
11th May 1960
continued

Q. Mr. Sands, were you in charge of the cleaning gang on the 17th of February? A. I was.

Q. Now, about 3, 3.30 p.m. where were your gang working? A. The upper floor corner of G-Block.

Q. Could you tell us what happened around that time? A. At that time my gang was cleaning up I saw prisoner Ingraham locked in his cell, between 3.30 and 3.35. I saw Rose with a cot.

10

C.J. Did you see Rose with a cot? A. With a cot, yes.

C.J. Where was he? A. In the dock.

C.J. I know he's there now, but where was he with the cot. A. At the bottom of the stairway, by the south entrance. About 14 or 15 feet behind him I saw Mr. Gay. I went outside and pick up the night pails.

20

C.J. Went where? A. In the yard.

C.J. I see.

A. I returned and went to the western section of the building. I took around the night pails. When I got around to the south I saw blood stains on the stairway. I went up the stairs and saw Mr. Duncombe putting Rose and Ingraham in their cells.

C.J. What does that mean? A. They were in their cells when I reached there.

30

C.J. I went upstairs and saw Mr. Duncombe who had put them in their cells. A. Duncombe and I came down. I saw overseer King lying on the walkway bleeding from his nose and mouth. We got to the Turnkey's office I saw Mr. Gay bleeding from his head. Two other overseers and I took Mr. Gay and King to the hospital.

C.J. Was it in a car? A. Station Wagon. On reaching the hospital ...

40

Q. Was Rigby in your gang? A. No ma'am.

Q. You say you saw Rose with a cot. Wasn't there also a blanket on the cot? A. I never noticed.

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.18

Henry Sands
Cross-
examination
by Mrs. Cozzi
11th May 1960
continued

- Q. Did you see Mr. Gay with a blanket?
A. No, ma'am.
- Q. You had been up in G-Block just before you saw them going towards the stairs to go up, is that correct?
You said you had seen Ingraham, you had actually gone and checked to see that Ingraham was in his cell, had you? A. Yes.
- Q. You had.
Do you recall whether the other cells were open or not or whether there were some locked? 10
A. Both of them were open.
- Q. When you were in G-Block did you enter by the ...Would you look at photograph No.8 there. Did you go through the gate at the end there when you were going down or when you were coming up or what time? A. I was going down.
- Q. After you had checked to see if Ingraham was in his cell? A. I was working along that way and after I came down to pick up the night pails I went again in the corridor. 20
- Q. Everything appeared to be in order at that time? A. Yes.
- A. You say that when you went at the bottom of the stairs you saw Mr. Gay in the corridor and Rose and Ingraham some 14 or 15 feet behind him?
A. Yes, sir.
- Q. Did you watch the direction in which they went?
A. Both were heading south.
- Q. Did you see whether they went up the stairs? 30
A. I could not.
- Q. Mr. Sands, do you know whether Rose suffers from headaches? A. I don't know.
- No cross-examination by Mr. Bethel.
No questions by Jury.
No re-examination.

CHIEF JUSTICE:

- Q. Did you have very much to do with Rose while he was in the prison or was he not in any of your gang. A. Once or twice. 40
- Q. Once or twice only during the time he has been there. Did you notice anything peculiar about him as opposed to any other prisoner?
A. No, sir.

- Q. At 3.30 in the afternoon at the prison, Mr. Sands, are there people taking over from other people or what happens particularly at 3.30? Anything? A. At 3.30 they usually pick up night pails and take them around to the cells.
- Q. That's what happens then? I see. And are you the person entirely in charge of that or is there another overseer at another part of the prison? A. They have two shifts, one come on in the morning and one in the afternoons.
- Q. No, I mean you are in the afternoon at 3.30. There's only you yourself and your gang dealing with these pails at 3.30 in the afternoon? A. Two gangs: a bottom stairs gang and an upstairs gang.
- Q. And when you're putting these pails around, Mr. Sands, I suppose you go round with the gang with the pails and you go along through each block and then put the pails outside each cell, is that it? A. Yes, sir.
- Q. So that during the course of that time all these doors in the blocks are open? A. No, the doors are locked.
- Q. You go in, put the pails in and then go on the outside and you're opening and closing them each time? A. Yes, sir.
- Q. There's nothing else which takes place at that time in the prison? A. No, sir.

In the Supreme Court of the Bahama Islands

Prosecution Evidence

No.18

Henry Sands
Cross-examination
by Mrs. Cozzi
11th May 1960
continued

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20

30

No.19

No.19

EVIDENCE OF CLARENCE HOLLINGHAM

CLARENCE HOLLINGHAM SWORN (Examined by Solicitor General)

Clarence Hollingham Examination 11th May 1960

- Q. Your full name?
A. Clarence Hollingham.
- Q. And you're an overseer at H.M. Prison?
A. Yes, sir.
- Q. You know James Ingraham and Elvan Rose?
A. I do.

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.19

Clarence
Hollingham
Examination
11th May 1960
continued

- Q. You knew overseer King, did you? A. I did.
- Q. Now, do you remember the 17th of February of this year sometime after three o'clock, were you on duty or not. A. No, I was off duty. I was in the prison compound.
- Q. Now, while there do you remember anything happening, anybody getting in touch with you?
- A. Yes, I got the news that there was trouble.
- Q. You heard some news? A. Yes.
- Q. And as a result of this did you go anywhere? 10
- A. I went to the south gate of the prison.
- Q. And what happened when you got there?
- A. I tried to speak to overseer Deveaux but he told me he had no time.
- Q. Deveaux was there at the time? A. Yes, sir.
- Q. And you spoke to anyone else? A. Errol Roberts and Emmet McNeil.
- Q. As a result of that did you do anything?
- A. I could not get in the prison and so I returned to the compound. 20
- Q. Were you outside the south gate or on the inside? A. Outside of the prison.
- Q. Deveaux was on the inside of the south gate?
- A. Yes.
- Q. You couldn't get in? A. No.
- Q. What happened next? A. I returned back to the compound after I could not get in.
- Q. When you say the compound where is that?
- A. Where I live.
- Q. Where you live. I see. 30
- And what happened next?
- A. About twenty minutes after I heard an uproar again when I returned back to the south gate. After returning to the south gate I was told by..
- Q. You were told something? A. Yes.
- Q. And did you do anything as a result of this?
- A. I proceeded to the south of the prison, to the east of the prison, and proceeding there I saw Ingraham and I held him. 40
- Q. Were you alone or were there others?
- A. I was accompanied by overseer Bradshaw, Small and Williams.

- Q. And where did you see Ingraham? A. In the east of the prison in the bush.
- Q. What was he doing? A. Laying down. I held him and took him back to the inside of the prison.
- Q. Where did you take him? A. To the Turnkey's office.
- Q. Did you meet anybody in the Turnkey's office?
 10 A. The Turnkey was there accompanied by the Superintendent, Mr. Ogilvie.
- Q. Anyone else? A. There were a few other people around but I don't remember who they were.
- Q. Was Rose there? A. Yes, he was.
- Q. Tell us what happened in the Turnkey's office? A. In the Turnkey's office, after turning over Ingraham to the Turnkey, he was crying and Rose remarks was, What are you crying for? You got to dead any f ----
 20 how; the quicker the better."
- Q. Did he say "f"? A. He said "You got to dead any fucking how; the quicker the better."
- Q. Did he say anything else? A. Rose remarks was, "I am sorry I killed King when cocksuckers like Pinder and Ogilvie still living."
- C.J. Ogilvie and who? A. Pinder.
- Q. Did Ingraham say anything to that? A. He said he was going to get even with me and
 30 Small if it's the last thing he did by killing us.
- Q. I think where you saw Ingraham, where you captured him was over a wall, was it?
 A. Yes, sir. It was entirely out of the prison.
- Q. Outside? A. Yes, sir.

CROSS-EXAMINATION (By Mrs. Cozzi)

- Q. Mr. Hollingham, I imagine there was quite a bit of going and coming and excitement at that time, is that correct?
 40 A. I would not be able to say that owing to the fact that I was not in the prison at that time.

In the Supreme Court of the Bahama Islands

Prosecution Evidence

No.19

Clarence Hollingham Examination 11th May 1960 continued

Cross-examination by Mrs. Cozzi

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.19

Clarence
Hollingham
Cross-
examination
by Mrs.Cozzi
continued

Cross-
examination
by Mr.Bethel

Q. I was speaking of the time that you were in the Turnkey's office. A. No, I would not say it was. I think everything was under control then.

Q. You think that you have used the precise words that were spoken? A. I'm not thinking I'm certain.

Q. You're certain? A. Yes.

Q. It's not possible that Rose might have said, I'm sorry King got killed etc. etc."

A. I'm quite definite.

10

CROSS-EXAMINATION (By Mr. Bethel)

Q. You said that in the Turnkey's office, Ingraham was crying. Would you describe that a bit more? How was he crying? A. Like any other ordinary person would cry.

Q. And you said that Rose said, "What are you crying for?" and then Ingraham said that he would get even with every one of you by killing you. A. He did not say "every".

Q. I see. But did he say that at all? What did he say? A. He said he would get even with Small and I, if it is the last thing he did, by killing us.

20

Q. You remember telling the magistrate in the Lower Court that Ingraham said nothing in the Lower Court before Mr. Liddell?

C.J. Have you had Rose on any of the gangs you've been in charge of? A. No.

C.J. You don't know him at all?

A. Yes, I know him, I haven't had him in charge, I'm in charge of the cookhouse.

30

C.J. You wouldn't have an opportunity to observe him?

A. I really do, I see him to and fro.

C.J. Do you know anything about his habits, and that sort of thing?

A. He seemed to get on quite well.

C.J. Do you know if he suffers from headaches or has troubles like that?

A. Really I do not know that.

40

No.20

EVIDENCE OF JAMES OGILVYIn the Supreme
Court of the
Bahama IslandsASST. SUPT. OGILVY - Sworn.Prosecution
Evidence

No.20

James Ogilvy
Examination
11th May 1960

Q. Tell us your full name, please?

A. James Ogilvy.

Q. You are the Asst. Supt. at Her Majesty's
Prison, Fox Hill? A. I am.

Q. You knew Overseer King? A. I did.

Q. You know James Ingraham and Elvan Rose?

A. I do.

Q. Sometime just before the 17th of February
of this year do you remember Rose having
trouble with a bed? Cot? A. I do.Q. Tell us about it. A. Well, Rose complain-
ed that his bed was sagging so we reinforced
it with extra canvas, he came up some time
later and said that that wasn't enough so it
was reinforced again with wooden slats. But
he again complained about it and asked for a
hospital bed, which was refused because the
cots were considered sufficient.Q. Do you know whether he was pleased or not
about this? A. He wasn't pleased at all.Q. Now, on the 17th of February will you tell
us what you know of what went on around
3.30 - 4 o'clock? A. Well, I was making
my rounds of the Prison when an Overseer
called me very urgently. When I went in I
saw Asst. Turnkey Gay with blood streaming
from his head.Q. Where did you see him? A. I saw him just
outside the Turnkey's Office. Upon enquir-
ies as to what happened I was shown Overseer
King lying down on his face just beyond the
kitchen door.

Q. Is that near the tank? or some of the tanks?

A. Just this side of the tanks.

I had the doctor phoned at Sandilands Hos-
pital. I gave him certain information and
we sent the two injured men over to Sandi-
lands Hospital. A little later I was told

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.20

James Ogilvy
Examination
11th May 1960
continued

- something which caused me to go into the yard and I saw Ingraham and Rose jumping up on the tank.
- Q. Is that near the kitchen or not?
A. Outside the kitchen.
- Q. North or south? A. North.
- Q. Have a look at those pictures, look at numbers 11 and 12. Now does that show a part of the prison?
A. Yes.
- Q. What part? A. Outside the Turnkey's office. 10
- Q. Did you see Rose and Ingraham standing anywhere shown in that photograph?
A. Standing where that form is.
- Q. The bench? A. Bench, yes.
- Q. What happened next? A. I saw them there and when they saw me they jumped down off the tank and Rose grappled with me. We both struggled and fell to the ground. While this was going on Rose shouted to Ingraham, "Stab him, stab him." Then Rose broke off the fight, and jumped back on the tank again. 20
- Q. Did you see what Ingraham was doing at this time? A. I could see Ingraham behind Rose, but he did not join in the fight.
- Q. Rose broke off the fight? A. Yes, then he jumped back on the tank again.
- Q. Where was Ingraham then? A. Ingraham was back on the tank. I went for assistance and Turnkey Mr. Duncombe came along and we apprehended Rose. 30
- Q. Do you know what happened to Ingraham in the meantime? A. I saw Ingraham climbing over the roof at the Superintendent's office.
- Q. Where you saw him climb over is that shown on the photograph No.11 or 12? A. Yes, and 12.
- Q. Let's look at 12, is it easy to point out there where you saw him climbing over?
A. Yes, where the figure of the man is, that's where Ingraham climbed over.
- Q. What happened to Rose? A. Rose was apprehended and taken back to the cell. A little later on Ingraham was brought back by other overseers, and he too was sent to the cell. 40

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.20

James Ogilvy
Examination
11th May 1960
continued

Q. Have you ever seen anything like that before in the Prison? A. Yes, it's a valve similar to the type used in the Prison.

Q. Do you have a dump somewhere in the Prison compound? A. Yes, on the north part of the Prison there is a dump and these discarded valves are thrown on that dump.

Q. What about the place where the blocks are stacked, is that anywhere in the Prison?

10 A. It's about 25 yards from the dump.

Q. Now, where the blocks are stacked, is there a wall to the north-east or east?

A. There's a very small wall on the very east of the Prison. I beg your pardon, the very west of the Prison. East there is no wall at all.

Q. Now you know G block don't you? A. Yes.

Q. And you know where the kitchen is? A. Yes.

20 Q. Now, is it possible - or put it this way, is there more than one way that a person can get from G block to the kitchen and then to the water tank where you were having this struggle with Rose? A. There are 2 ways.

Q. Would you describe these 2 ways? A. One, if he comes downstairs at the south gate straight along the main corridor.

Q. That is past the Turnkey's office? A. Yes.

Q. Between the two latrines? A. Yes.

30 Q. Now what is the other way? A. The other method is through the other corridor you come to E block - downstairs where E block is - through E block and to the kitchen.

Q. Now G block runs from east to west, has an eastern gate and a west one. Now if one were taking this second route from E block to the kitchen, would one go out of the eastern gate or the western gate?

A. Eastern gate.

Cross-examined by Mrs. Cozzi

40 Q. How long have you been Assistant Superintendent? A. Approximately 19 months.

Q. In that time have you had to listen to complaints from Rose about headaches?

Cross-
examination
by Mrs. Cozzi

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.20

James Ogilvy
Cross-
examination
by Mrs.Cozzi
11th May 1960
continued

- A. I don't listen to any complaints, the Superintendent does that.
- Q. I think that you said that when he was refused a hospital bed he was not very well pleased, or words to that effect, are you in a position to say whether or not the doctor said he should have a particular bed?
- A. No, I am afraid I'm not.
I know the doctor said he should have a proper cot. 10
- Q. Was this said more than once? do you know?
- A. I think it was only said once.
- Q. Is it possible, Mr. Ogilvy, that when Rose said "Stab him, stab him", he might have said "Grab him, grab him." A. No, that's not possible. He definitely stated "Stab him, stab him."
- Q. Did it appear to you at the time that Ingraham might be armed? A. Yes, I thought he might be and I tried to pull Rose to keep him between Ingraham and I, because at that time I did not know who was armed, if they were armed. 20

Cross-examined by Mr. Bethel.

Cross-
examination
by Mr.Bethel

- Q. When Rose said to Ingraham, while he was struggling with you, "Stab him, stab him," did Ingraham assist him in any which way?
- A. No.
- Q. Now, did Ingraham stay down off the tank during the struggle or did he go on the tank before Rose did? A. He went up on the tank before Rose. 30
- Q. Did he stay there or did he immediately run off the tank towards the roof? A. I couldn't tell you, I was struggling with Rose at the time, I didn't see where he went, but he was on the tank when Rose went to go up there, so I take it he must have been up there first.
- Q. But it was later that you saw him up on the roof? A. Yes.
- Q. After the struggle? A. Yes.
- Q. Now, would you look at photograph No.12. I think you said that the position where the person is there is where you saw Ingraham? A. Yes. 40
- Q. Would he have to go over that barbed wire to get there? A. That barbed wire wasn't over there at that time.

No.21

EVIDENCE OF JAMES STORRIn the Supreme
Court of the
Bahama IslandsJAMES STORR - SwornProsecution
Evidence

No.21

James Storr
Examination
11th May 1960

Q. Tell us your full name, please?

A. James Wellington Storr.

Q. You are an Overseer at Her Majesty's Prison
at Fox Hill? A. Yes.Q. You remember the 18th of February of this
year? being a member of a search party?

10 A. Yes.

Q. Where were you searching? A. Searching
the prison grounds.Q. Did you search in that area between the main
prison and the women's wing? A. Exactly so.Q. Did you find anything? A. I found a knife
handle.Q. Look at photograph No.14. Tell me if you
recognise that scene, and if you do, approx-
imately where you found the knife handle?
Hold it up and show us about where you found
it. A. Between the tank and the building,
female building.

20

Q. Was it near the building or the tank?

A. I would say in the middle.

Q. And when you found it what did you do?

A. I stood guard over it, see that it didn't
get touched until Inspector Moir arrived.Q. Did you point it out to Mr. Moir? A. Yes,
I point it out.

30

Q. Does that look like the handle that you
found? A. This is the identical handle I
found.

Q. You gave it to Mr. Moir? or he picked it up?

A. He took it up.

Cross-examined by Mrs. CozziQ. Was it in the same condition or was it muddy
or bloodstained? A. It had some mud on it.

Q. No bloodstains?

A. No bloodstains, only mud.

Cross-
examination
by Mrs. Cozzi

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.21

James Storr
Re-examination
11th May 1960

Re-examined by Solicitor General.

Q. When you saw that knife handle did you handle it at all? A. Never touched it.

Q. You left it on the ground where you saw it?
A. Yes.

No.22

George Albert
Johnson
Examination
11th May 1960

No.22

EVIDENCE OF GEORGE ALBERT JOHNSON

GEORGE ALBERT JOHNSON - sworn

Q. Tell us your full name, please?

A. George Albert Johnson.

10

Q. You are an Overseer at Her Majesty's Prison, Fox Hill? A. Yes.

Q. Did you know Overseer King? A. Yes.

Q. Do you know Rose and Ingraham? A. Yes.

Q. Now on the 17th of February of this year, about 3.30, do you know where you were?

A. Yes. Kitchen.

Q. While in the kitchen did you see anybody - either Rose or Ingraham walking?

A. I saw King coming from the south going towards the north, he fell. I came outside. Further north of King - further south of King I saw Asst. Supt. Duncombe holding Rose and Ingraham. Then Duncombe turned Ingraham over to me, Sir. I carried him back upstairs to his cell.

20

Q. Now, while going up the steps did anything happen? A. Ingraham put his hand inside his trousers like this, and I told him to take it out. He replied - shall I use cuss words?

30

C.J. Yes, you must.

A. "You mother-fucker, I will kill you."

Q. You are sure those are the words he used?

A. Quite sure.

Q. Did he take his hands out? A. Yes, he did.

Q. Anything in it? A. No, sir.

Q. And you locked him in his cell?

A. I didn't have the key, Duncombe locked him in. I put him in.

C.J. Was Duncombe with you when these words were used? A. He was in front of me, I don't know if he heard or not.

C.J. There were 4 of you going up? A. Yes.

10 C.J. Mr. Duncombe with Rose had gone ahead?

A. Yes.

Cross-examined by Mrs. Cozzi.

Q. Have you had any opportunity of observing Rose? A. I went to his cell once or twice, he was on 24 hour watch by Overseers.

Q. You never had cause to come much into contact with him to know if he behaved normally or not. A. No. I was in the kitchen.

Cross-examined by Mr. Bethel.

20 Q. How far ahead of you were Mr. Duncombe and Rose? When they were going to the cell?
A. A couple of feet ahead, I can't say directly.

C.J. Just ahead.

A. Just ahead.

Q. So that Mr. Duncombe ought to have heard those words that were used to you?

A. I can't say definitely.

Q. How loud was he speaking?

30 A. Speaking loud enough for me to hear. Spoke it to me.

Q. You are sure he said "I will kill you too."

A. Yes, that's his words.

Q. Had Ingraham killed anybody that day? He said "I will kill you too."

A. That was his words.

Q. But to your knowledge he hadn't killed anybody? A. I saw King on the ground I don't know who killed him, but I saw King laying on the ground.

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.22

George Albert
Johnson
Examination
11th May 1960
continued

Cross-
examination
by Mrs.Cozzi

Cross-
examination
by Mr.Bethel

In the Supreme
Court of the
Bahama Islands

No.23

EVIDENCE OF BESTAL SIMMONS

Prosecution
Evidence

BESTAL SIMMONS - sworn

No.23

Bestal Simmons
Examination
11th May 1960

- Q. Tell us your full name?
A. Bestal Simmons.
- Q. You are an Overseer at Her Majesty's Prison?
A. Yes.
- Q. Do you know Elvan Rose? A. Yes.
- Q. James Ingraham? A. Yes.
- Q. Now, on the 20th of February, I think you were
on duty watching those two prisoners in their
punishment cells? A. Yes. 10
- Q. Were they next to each other? A. Yes, cell
to cell.
- Q. Do you remember hearing any conversation?
A. Yes.
- Q. Tell us what conversation you heard?
A. We had just returned from Court, Ingraham was
standing by the south door.
- Q. I think he made some obscene remarks about
Moss, did he? A. Yes. 20
- Q. Now did either of them say anything about King?
A. Yes. Ingraham did.
- Q. What did he say? A. He said that Overseer
King could have been alive had he not tried to
play a hero.
- Q. Did he say anything else? A. Yes. He contin-
ue on. He further said that he already f up
4 years time.
- Q. He didn't say "f" though, did he? A. No, sir. 30
- Q. That's alright, don't be bashful.
- C.J. He said he had already fucked up 4 years?
A. Yes. He don't know what to do, and if he were
given a chance to live he would kill somebody
so that they can get rid of him. He also said
that he would not spend 10 years in Prison
under no condition.

Mrs. Cozzi : No questions.

Cross-examined by Mr. Bethel

In the Supreme
Court of the
Bahama Islands

Prosecution
Evidence

No.23

Bestal Simmons
Cross-
examination
by Mr. Bethel
11th May 1960

- 10 Q. Now, where was Ingraham and where was Rose when you heard this conversation?
A. They were both in their cells.
- Q. And were they side by side? A. Yes, partition between them.
- Q. And where were you? A. I was in the gaol room just in front of them.
- Q. Is that in the corridor? A. Yes.
- 10 Q. Could they see you? A. Yes.
- Q. When did you record this conversation?
A. I record that there and then, in a book.
- Q. While he was speaking you had a book recording it? A. I just wrote down what they say.
- Q. They knew you were writing it down? A. Yes, they knew.

Re-examined by Solicitor General

- 20 Q. Can you tell us whether or not it is customary to keep such a book? when men are kept in punishment cells? A. Yes.
- Q. Was it part of your duty or were you just taking it upon yourself? A. It is.

Re-examination

No.24

No.24

EVIDENCE OF WINFRED SMALL

Winfred Small
Examination
11th May 1960

WINFRED SMALL - sworn.

- Q. Your full name? A. Winfred Small.
- Q. You are an Overseer at Her Majesty's Prison?
A. Yes.
- 30 Q. Now on Thursday the 19th of March, you remember being on duty at the punishment cells where Rose and Ingraham were kept? A. Yes.
- Q. What hours were you on duty? A. Between the hours of 7 and 9 p.m.

In the Supreme
Court of the
Bahama Islands

Procesution
Evidence

No.24

Winfred Small
Examination
11th May 1960
continued

- Q. Do you remember hearing any conversation between them? A. Yes.
- Q. Tell us what you heard? A. Rose told Ingraham that Mr. Gay is the most stupid man in the world because Mr. Gay unlocked the cell to let Ingraham out. Rose then went on to say that he couldn't see a man passing No.6 cell and going to No.10. Rose said that he was still standing in front of his cell when Mr. Gay opened Ingraham's cell and the next thing he saw was blood. Rose said he didn't hit Mr. Gay. Ingraham then said that he is going to kill me if it is the last thing he did because I caught him when he tried to escape and threatened to beat him up. Ingraham also said that he slapped Overseer King, the next time he starts anything which will be pretty soon he will be armed and will kill quite a few people. Ingraham said that Mr. St. George was an ass to let him go.

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- Q. Rose said something? A. Rose said he just wanted to get outside to get on the roof to raise some hell, so that the people would know how he was being treated by the administration.
- Q. Could they see you when they were talking?
A. Yes.

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Cross-examined by Mrs. Cozzi:

Cross-
examination
by Mrs.Cozzi

- Q. How long have you been at the Prison?
A. About 8 months.
- Q. Have you had any opportunity of observing Rose apart from during this conversation? Has he worked with you, or under you? or have you guarded him on any other occasions? A. Yes, Rose worked with me in a gang.
- Q. Which gang? A. The rock crusher gang.
- Q. What did you find about him, what -
A. He never gave me any trouble.
- Q. Do you know why he left the rock crusher gang?
A. I was off duty at that time.
- Q. Rock crushing and stacking blocks are they both the same jobs? A. The prisoners are detailed in the rock crushing gang, then they stack the blocks.

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Q. Have you ever heard him complain of head aches? A. He goes asking for tablets. The Turnkey brings him tablets, he would say that his head was aching.

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Q. That happened usually or on one occasion?
A. I did duty down there about 3 or 4 times each time he would say his head was hurting. He wasn't in the punishment cell then.

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10 Q. That would be subsequent to the 17th of February? A. Yes.

Winfred Small
Cross-examination
by Mrs. Cozzi
11th May 1960
continued

Cross-examined by Mr. Bethel.

Q. When Rose said these words describing how Gay was hit after he was through did Ingraham say that that was correct? Did he admit it? A. No, he didn't.

Q. Now was it immediately afterwards that he then told you that he was going to kill you?
A. Yes.

Cross-examination
by Mr. Bethel

20 Q. You say "because I caught him trying to escape, and I tried to beat him up? Is that true? A. No.

Q. You never caught him trying to escape?
A. Yes, I actually did.

Q. And you beat him up? A. No.

Q. Who was Ingraham talking to after he said that he was going to kill you? and then he said that he slapped Overseer King and that he hadn't started anything yet, who was he talking to then? A. To Rose.

30 Q. So the conversation between Rose and Ingraham stopped for him to tell you that he was going to kill you? is that right?

A. Before that Ingraham came to the bar and said "I'm going to kill you".

Q. Did you record this conversation right there?

A. No, but immediately after I was relieved I recorded it.

Q. How long was that? A. 2 minutes.

40 Q. How long was it from the time the conversation started to the time it finished?

A. Say about 15 minutes.

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Winfred Small
Cross-
examination
by Mr. Bethel
11th May 1960
continued

Q. Did you tell him that this might be given in evidence? A. No, sir.

Q. Was this the whole conversation or just parts of it? A. The whole of it.

Q. How long were you outside of their cells?
A. From 7 until 9.

Q. Is that in the morning or the evening?
A. The evening.

Q. This was all that you heard during that period?
A. That's right. 10

Q. So this conversation had to be heard beginning 15 minutes before 9 o'clock? A. I never had a watch on, I don't know.

Q. You say it lasted about 15 minutes? A. The conversation did.

Q. 2 minutes after the conversation you were relieved and you went downstairs and recorded it?
A. Well, you don't go downstairs to record a conversation, you walk on the flat from the punishment cells to the Turnkey's office. 20

Q. Was this right after the conversation you went to the Turnkey's office? A. No, right after I was relieved I went.

Q. How long was it after the conversation that's what I was trying to get from you?

A. I don't know for sure because I never had a watch on me.

Q. You were there for 2 hours from 7 to 9, did the conversation start when you first went there? A. No, not directly. 30

Q. How long after you first went there?

A. Anywhere around 8 or a little after.

Q. It's not possible that you might have forgotten something about this conversation?

A. No.

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Anthony
MacDonald Fields
Examination
12th May 1960

No.25

EVIDENCE OF ANTHONY MACDONALD FIELDS

SGT. ANTHONY MACDONALD FIELDS SWORN (Examined by S.G.)

Anthony MacDonald Fields, Sgt. 185.

Q. You remember being on duty on the 19th March 40

of this year? A. Yes, sir.

Q. Tell us what duty you were doing and carry on from there. A. I was placed in charge of the prisoners, the accused Rose and Ingraham at Central Police Station. My duties were to escort them to the Fox Hill Prison after the Preliminary Inquiry in this matter. On our way up the prisoners spoke freely and Ingraham said to Rose, and I quote:

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"Now I know that they will try to get you to tell them how I got out of my cells but you must keep it a secret. They do not know and that is good for me."

Rose replied:

"You must not worry, they'll never get that from me."

Rose then said:

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"I am glad about one thing and that is they were not able to swing the both of us."

C.J. Not able to...?

A. Swing. Ingraham replied: "That is what they wanted me to get.

Another part of the conversation went on in this manner:

Rose said to Ingraham, "I can say that I am lucky that they are going to hang my black ass, but they are going to f---- you up for good..."

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Q. Did he say "f----"?

A. "they are going to fuck you up for good but you must take it easy and when the time comes you will be doing all the fucking up."

Q. That's on the 19th March?

A. On the morning of the 19th March.

Q. Thank you.

CROSS-EXAMINATION (By Mrs. Cozzi)

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Q. Sgt. Fields, was this the whole of the conversation? A. No, ma'am.

Q. Can you remember other portions of the conversation? A. Yes. They spoke about not having, not being given cigarettes by the prison overseers, they spoke of the food, they spoke of not getting hung.

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Anthony MacDonald Fields Examination 12th May 1960 continued

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Evidence

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Anthony
MacDonald Fields
Cross-
examination
by Mrs.Cozzi
12th May 1960
continued

Q. Not getting...?
A. Not getting hung, and about witnesses - prisoners who were witnesses who had given evidence in the Preliminaries not speaking the truth.

Q. They said that the witnesses who had given evidence...? A. The prisoners who were witnesses in the Preliminaries did not speak the truth.

Q. Do you remember any particulars about that conversation? A. I remember Rose saying that Uncle Bud - his name is ...

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Q. Is that Trevor Albury? A. Trevor Albury. He said to Trevor Albury who was also in the truck, "Man, you know you didn't see me sharpening no knife." He spoke of Mr.Hollingham, I think the name is, one of the overseers, he spoke of him and said, "Oh, I going to get his ass, "and a number of obscenities in adverse to what had gone on that morning.

Q. Was it Rose who said that about Hollingham, or Ingraham? A. I remember Rose saying that.

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Q. Rose said it? A. Rose saying that.

CROSS-EXAMINATION (By Mr. Bethel)

Cross-
examination
by Mr.Bethel

Q. About the rest of this conversation: Did Ingraham say very much? A. They were both speaking freely, chatting on the way up in connection with the matter that had gone on that morning.

Q. And the only exact record of this conversation you could give us was what you gave in your examination-in-chief? A. Those I thought were important that I gave.

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Q. Didn't you think the part about saying that the witnesses were not speaking the truth, didn't you think that was important?

A. That is the allegation most accused people use so it did not worry me in the least.

Q. Thank you.

RE-EXAMINATION

Q. About Rose's conversation, Sgt., can you tell us whether or not you got the impression that he could not remember what had happened on the

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occasion of the stabbing of King? A. No, sir, I didn't get that impression at all.

Q. What impression did you get? A. The impression I got was that they knew exactly what they had done.

No questions by Jury.

S.G. That's the case for the Crown, My Lord.

Mrs. Cozzi: I propose to call the accused, Elvan Rose, My Lord. I understand that my learned friend may be making some submission at this stage, My Lord, in which case I'm not sure whether you prefer to entertain that submission at this stage or not.

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Anthony MacDonal Fields Re-examination 12th May 1960 continued

DEFENCE EVIDENCE

No.26

EVIDENCE OF ELVAN ROSE

Defence Evidence

No.26

ELVAN ROSE - sworn. (Examined by Mrs. Cozzi).

Elvan Rose Examination 12th May 1960

My Lord, before beginning the examination of this witness I would like to ask the indulgence of the court if his delivery is slow because I feel that there are certain things about him that should be observed by the Jury.

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C.J. Yes.

Q. Now, Rose, what is your full name?

A. Elvan Rose.

Q. How old are you? A. 26 years.

Q. Do you know what date you were born?

A. 27th July 1933.

Q. Where were you born? A. Acklins.

Q. Did you live at Acklins? A. Between Long Cay and New Providence.

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Q. Where did you go to school? A. Between Long Cay and New Providence.

C.J. You couldn't go to school between the two, where did you go to school? A. I was to school in Nassau and Long Cay, home.

Q. Which place do you consider home? A. Long Cay.

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Elvan Rose
Examination
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continued

Q. At what age did you finish school? A. 14.

Q. What have you been doing since you finished school? Jobs? A. Carpenter and machine operator.

Q. How long were you doing carpentry?

A. I don't know exactly.

Q. Where were you operating machinery? A. New Providence and Andros.

Q. What kind of machinery did you operate?

A. Tractors. 10

Q. You have a scar here? What caused that?

A. I suppose to have 2 scars here, one when I was small and one in '56.

Q. Are there any other scars on your head?

A. Yes.

Q. Where are they? A. One here. (Points). One here, one behind here, one over here. (Points).

Q. Can you tell us how you got any of those scars?

A. The first one of these on my nose, my sister told me about this. This last one I fell off a tractor. 20

Q. When was that? A. At Andros.

Q. When was it you were at Andros? A. '54 and '57.

Q. Have you done any other work other than carpentry and machinery? A. I work along with my brother truck, other different works, I wouldn't remember exactly. I work different places.

Q. Do you remember how long you worked at any of these places? A. Not exactly I worked to Andros 2 years and 3 months. 30

Q. Are you married. A. No.

Q. Now, Rose, you remember something about having been in this Court in 1957? A. Yes.

Q. What was that for? A. I was charged with murder.

Q. Did you kill someone in 1957? A. I believe so that what the Jury say.

Q. Do you remember the name of the man? 40

A. Samuel Williams.

Q. Do you remember anything about the circumstances in which he was killed?

A. I don't understand.

C.J. How did it happen, that's what she wants to know? A. Me and a fellow had some argument. I can remember him threatening to shoot me.

Q. You knew Overseer King? A. Yes, a little bit.

10 Q. Now, I want you to tell me what you were doing on the 17th of February? A. I were working outside stacking blocks; and I had some head trouble time and time, and this particular day I asked the Overseer to allow me to go and get some aspirin.

20 Q. Who was the Overseer? A. John McCartney. He turned me over to the gate Overseer, this was Mr. Penn, he told Mr. Penn to send me to the Turnkey office. He watched me till I get to the Turnkey office. There I asked Sgt. Duncombe for some aspirin, he give me the aspirin and I went back to work. I tried to make it -

Q. Just a minute. You took aspirin and you went back to work. Where did you go back to work, the same place you came from?

A. Same place.

30 Q. What time was this? A. That should be a little after 2, and I stayed up there working and I tried to make the day but my head was giving me so much trouble I couldn't make the day, so I went back to Mr. McCartney and told him "Mr. McCartney, I don't feel like I could make it, I don't feel like I could make it, I want to see Sarge", and I went back in to Sarge again. I told him "Sarge, I don't feel like I could make it. I'd like to go to my cell."

Q. Sarge is Mr. Duncombe? A. Yes.

40 Q. So he told me O.K. So I went back outside again and told Mr. McCartney say "Sarge say it's alright for me to go to my cell." So I say "I'm going in to my cell." He say "Alright". He call me in, search me and turn me over to Mr. Penn again. He told me to let me go to Mr. Duncombe, I went inside

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continued

and my head give me trouble. He told me O.K., and the telephone ring the same time. They tell me to stand outside, and wait till someone come to carry me to my cell. He was talking the same time and Asst. Turnkey Gay came and asked me what I was doing there. I told him Sgt. Duncombe told me to stand there till someone comes to carry me to my cell. Mr. Gay say "Alright, let's go." On the way in he saw my cot on the tank inside from the kitchen and he said "Rose, you better carry this, as you going." So I start carrying it and I get by the bathroom, where I met Joseph Rigby and he told Mr. Gay that he have a blanket for G.9 for the prisoner who live in the same block that I live in. So he say "O.K. let's go." So Joseph Rigby told me that if I want him to help me with this cot. So I tell him I ain't too particular but if he want to he could. So he held one end, with him, me and Mr. Gay going towards the south. We get to the south, went upstairs, wait and let Mr. Gay get in front of us open the corridor and we went in. When I get by my cell, my cell is No.6, I stopped by my cell and Mr. Gay went to leave this blanket to G.9 cell. So on my time waiting there I saw him went and open G.10 cell, when I look round again I saw Bud and Joseph Rigby run pass by me. That's all I could remember, I know it was some running up and down round about there, I saw blood, that's the first time I see something like that happen in the Prison.

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- Q. Were you running up and down? A. I were running up and down, I ain't quite sure of that.
- Q. Do you remember anything about Overseer King?
A. No, I don't remember.
- Q. Do you know whether at any time you had a knife in your hand? A. No, I don't remember.
- Q. Now you say that you saw blood and there was a lot of running up and down? A. Yes.
- Q. When do you remember - when do you remember anything happening next? A. About next week Tuesday.
- Q. When was that? Anything special happen Tuesday? A. First thing I can remember Tuesday I had some giddiness and I wanted to

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see the Doctor, the Doctor came. A little later - I believe the same - I don't know -

C.J. You said a little later.

A. A little later, I told the Asst. Turnkey again that I still have giddiness and that I still like to see the doctor.

Q. Now you say from the time you saw blood on Gay you don't remember anything until the following Tuesday? A. Yes.

10 Q. About this cot of yours. What has been happening about your cot? A. Well, I was to the doctor quite a few times he say that he recommend me for a mattress. I never did get the mattress.

Q. Now you have headaches frequently? A. I don't know what you mean by frequently.

Q. Often? Much of the time? A. All of the time.

Q. All of the time? A. Most of the time.

20 Q. Now would you describe what kind of a headache it is? A. It start with a pain from the back of my neck - over on this side coming far as here and then it be knocking.

Q. You feel a knocking? A. Yes, something in and out.

Q. Is there anything else? A. No, I don't feel nothing else. I always have a pain in my back. Just my head and back I have trouble.

30 Q. Have you ever had any trouble with your hearing? A. No.

Q. Ever have any trouble seeing? A. I does have little trouble seeing sometimes, sometimes I see things double.

Q. Tell us about it? A. Sometime if I look at any one straight thing like that it appears to be double, to have a big shadow side of it. In the night time - sometime at night I see some funny things.

40 Q. You see what? A. I see things that go on in a different place. I see things that other people don't see.

Q. What kind of things? A. Sometimes it will be something like an electric wire, you know

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continued

- an electric stove those small coils. Then like it be twinkling, sometime it appear like some part of the house tear open.
- Q. You see wires like the wires in an electric stove? A. Yes, twinkling. I ask if anyone else see, and no one else don't see.
- Q. When did you see these? How long have you been seeing things like that? A. The last 9 years.
- Q. Did you see things like that at Andros? 10
A. Yes.
- Q. Do you see it often or only sometimes?
A. Wait now, when you say I saw things you mean the same -
- Q. The things that you say you see that other people don't see? A. I see these lights and things at Andros, and I hear stuff at Andros.
- Q. What kind of stuff? A. I hear what appear to be a big tin on the side of the house knocking, and it don't be no one and it don't be no tin. 20
- Q. You heard that in other places besides Andros?
A. Nassau and Andros. In Prison I hear some walking and I went to the doctor bout it and he say maybe it might be someone walking through the gaol but I never see no one. I only hear, I don't see no one.
- Q. Did you also speak to him about things that you saw? A. Yes.
- Q. What? A. I told him not very long ago that I was laying down - in big day - I saw a white woman come and bent over me, I told the Overseer what was in charge. 30
- Q. Did you speak to the doctor about it? A. Yes. He prescribe some small pills, because I told him I'd like for my hearing to be good and clear when I enter Court, and he give me some small pills, and I was supposed to take them day and night.
- Q. Do you remember Ada Colebrook? A. Yes. 40
- Q. Who is she? A. She was one of my girl friends.
- Q. Do you remember - you started to tell us some of the things about Williams? Samuel Williams. You think at the time he was trying to shoot

you? Do you remember anything else about that? A. Well, I had been followed, just before then, not just before that, a good while because that cause me to went away. I had been followed round by people and stuff.

Q. Did you ever talk to anybody about this?

A. Yes, I went to the Station five times about it.

Q. Do you know who was following you? --A.--No.

10 Q. Can you say whether it was the same people as always or were they different people that you didn't know the names of, or what?

A. I didn't know the names of any of them. If I had known the names I could have tell the policeman it was a certain person, but I didn't know the names.

20 Q. What happened when you went to the police about these things? A. One time at the Eastern Station the Corporal take a note of it. One time again I went to the Central Station and I forgot what Sgt. Levarity told me. One time I was to the Western Station and at the Western Station I decide to leave the Island.

30 Q. Now, you say when you spoke to the doctor about hearing footsteps, that nobody else would do anything about, do you think may be there was somebody there? A. Excuse me. I was to the police station at two additional times, but that was after I came from Andros. I was chase round with people and I hire a taxi to bring me to Central Station, the taxi driver tell me "Now, it ain't no use you going to Central Station, because they going to tell you you should go to the Grants Town Station or Farm Road Station." I told him "No, I want to go to Central Station." He brought me to Central Station. The Cpl. what was in charge told me that I'll have to go back to Farm Road Station, and he carry me to Farm Road Station, and I went inside the Station to complain about the people. The Cpl. what was in charge told me that I crazy why I don't stop drinking and different things. I told him I don't mind -

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Q. Do you know what Cpl. that was? A. No, I

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can't remember. I said I don't mind if the police don't believe me I will pay their way there and back, they won't have to ride bicycle or walk, I will pay their way, that was supposed to be by the Teenage place, and he further say that he ain't got no one to go. The taxi driver came out and he carry me home and I get the money.

Q. Now, this was sometime before Williams was killed? A. Yes. 10

Q. You say you don't recall having a knife on the 17th of February? A. I don't remember.

Q. Can you say that you didn't have a knife?
A. Well, when I leave outside, I didn't have a knife when I leave outside, but I can't say whether I got a knife afterward or not. But I know I was searched before I came in.

Q. With regard to the places you have worked, you can't say how long you have worked in any place? A. No, I can't say how long I work no place. 20

Q. You say - can you say whether you have worked in any places other than operating machinery at Andros and carpentry in Nassau? A. Yes, I used to work on the dock as a stevedore.

Q. Yes, anything else? A. I can't remember.

Cross-examined by Solicitor General.

Cross-
examination
by Solicitor
General

Q. Do you remember giving evidence in that box in 1957? A. Yes.

Q. I believe on that occasion you admitted that when you gave your statement to the police, that you had told a deliberate lie?
A. To who? 30

Q. To the police. A. Bout what?

Q. About what happened. You had told the police that Williams had pulled the knife on you first? That was your first statement to the police? A. Now, look I didn't give no statement to no police. They say that is the statement I give them in the jeep but that is not the statement. I was saying that in the jeep going to the Hospital, I could remember that. 40

Q. Let me read this to you? A. I didn't give no statement to the police. That's something the Asst. Superintendent say I say while I was in the jeep, I ain't give no statement I ain't sign to that.

Q. You gave a statement in the box and I'll read it to you.

"Rose, you say that when you first told Sgt. Miller that it was Williams who had the knife you were telling a lie.

Answer: "Yes, sir."

"You had thought this out before you actually told Miller that? What I told him sir. Yes, that is that Williams pulled the knife first.

Yes, I told him that, sir."

A. I can't remember nothing bout that, that wasn't no statement I give.

Q. You remember giving evidence in the box admitting that you told him a lie?

A. You say told him a lie?

Q. You told Miller it was Williams who pulled the knife on you first? Then you admitted afterwards that it was not Williams who pulled the knife on you first, Williams didn't pull anything on you? A. The knife was my own knife, he screw me up and shove his hand in his pocket.

Q. You see in the last case you also couldn't remember what happened? That is what you said in Court. You could remember to tell a deliberate lie to Sgt. Miller? A. What you say.

Q. When you gave evidence in the last case in this box you said that you couldn't remember what had happened? A. Couldn't remember what happened?

Q. Yes. A. Didn't I tell you all in this box that I could remember dodging under and I could remember firing this knife twice at Williams.

Q. How many times was Williams stabbed?

A. I don't know.

Q. Wasn't it put to you that he was stabbed six times? A. I can't remember how much

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continued

- time the doctor say but I told you how much time I remember.
- Q. Now, at that time you also said, in fact you called evidence, that these people had been following you around? A. That's right.
- Q. Ada Colebrook came in Court and said she knew that these men were following you around, do you remember? A. I told her that beside what she see herself.
- Q. She saw something herself? A. Yes. 10
- Q. Your mother also saw something, didn't she?
A. Well, I can't remember.
- Q. And one of your friends saw something? Wasn't it the captain of the boat that you went to Andros on? A. Yes.
- Q. Do you remember calling him as a witness in that case? A. Yes.
- Q. Did he remember seeing some men around?
A. Yes.
- Q. So it looks like you weren't suffering from a delusion on that case? It looks as if some of these men may have been following you around? 20
A. Maybe they was. I ain't telling you or no one that I suffers from anything.
- Q. You're quite sane - A. More than head and back.
- Q. I'm putting it to you that you're quite sane?
A. I wouldn't know, I'm not a doctor.
- Q. Now, let's put it this way. When you were in Prison between 1957 and the 17th of February did you ever feel that anyone was persecuting you? Anybody was out to get you? 30
A. Anyone was out to get -
- Q. Yes, these men were out to get you before you committed this murder? Did you have that delusion when you were in Prison? A. When I was in Prison - well, different things happened there. When I was in Nassau different things happened in Nassau, when I was away to Andros different things happen. Every different place I go something different happen. 40
- Q. I want to talk about first of all the 3 years between '57 and this year. Did you have a belief that anyone was following you around or

- that anyone was trying to harm you?
- A. Yes, I had the belief that someone was trying to harm me, I still have that belief - I still have that belief to now.
- Q. That somebody is trying to harm you?
- A. That's right.
- Q. How many times did you tell the doctor that you had this belief that somebody was trying to harm you? A. Well, I never told the doctor much about - I never told the doctor at any time - the doctor actually wonder if I believed anybody was behind me. I told him "Yes. I believe it." Then he turn round and ask me what's 97 and 3, and I tell him it's 100.
- Q. What's that? A. He ask me 97 and 3, I tell him it 100. He ask me where I was from, then he ask me if I could write or read and I told him.
- Q. Now, how many times did you tell the doctor, if at all, that you had the belief that people wanted to trouble you and bother you when you were in prison?
- A. I'd rather you make it clear to me. You mean that anyone in Prison was trying to harm me or on the outside - during my time on the outside? Which was it?
- Q. While you were in Prison, did you have the belief that anyone was behind you trying to harm you? A. Now, while I was in Prison I don't believe that no one in prison was trying to harm me, but I still believe, according to what happened outside that someone was trying to harm me.
- Q. The whole time you were in Prison?
- A. I have that belief up to now.
- Q. I'm putting it to you that you didn't have that belief because you never mentioned that to the doctor up to the 17th of February of this year? A. It's plenty things that I never tell the doctor, except he ask me.
- Q. How many times did you complain to him of having a headache? between 1957 and the 17th of February? A. I don't know, sir.
- Q. I'm putting it to you that it was only on

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Elvan Rose
Cross-
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by Solicitor
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continued

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continued

about 3 occasions? A. Oh, it's more than that. Three! Oh, no. Let him get my medical sheet and check down, and he'll find there is more than 12 - more than 20. He had to check down every time I was there.

- Q. We have your medical sheet. A. Well, it ain't no three times, he wasn't checking them. It ain't no 3 times, because it's over and over. That's the only complain I have, only head and back, once I had a boil on my lip and one on my eye, and I think the rest of that sheet is head and back. 10
- Q. Let's go back to this injury you had at Andros, in 1956. What happened to you after you had the injury? What was the effect of it?
- A. I went to the nurse and get -
- Q. No, is that all - you had the injury, did you become unconscious? How severe was the injury, what happened to you? A. I was cut.
- Q. What happened, did you become unconscious, how severe was it? A. I can't tell you exactly, because when I find myself I was home. Now, I don't know what happened when I was unconscious because - 20
- Q. Now, wait a moment you say you went to the nurse? A. Yes.
- Q. Tell us in your own words about the injury?
- A. When I had the injury I don't know what happen, after I recover I went to the nurse and get it dressed. 30
- Q. You are still being vague. You had the injury, when is the next time you knew, was it a minute later, a day later? a week later?
- A. Well, it was the next morning, I only know I fall down.
- Q. Then you went to the nurse? A. I went straight there, I don't know what happened, how I get from there.
- Q. What did the nurse do to you? A. She dress it. 40
- Q. Stitched it? A. It needed stitches but she didn't put no stitches say it could lay open.
- Q. You fell from the tractor, did you?
- A. Yes, I fell.

- Q. Now, had you been seeing these things and hearing these things before that fall?
 A. I was seeing and hearing these things from I had this fall, in 1951 I was seeing different from anyone else and hearing different things.
- Q. Now, since 1951 up to the 17th of February, apart from the time when you say you became unconscious, had you ever become unconscious for no reason at all? to your knowledge?
 10 A. Yes, I could remember I was knocked down, one time.
- Q. No, no, I am not talking about being knocked down: I mean for no reason at all as far as you know. For instance, the way you say you blacked out on the 17th of February, has that ever happened to you before?
 A. I always have giddiness. Up to this morning I had gidiness.
- 20 Q. What about between 1956 and the 17th of February? did you ever black out - did you ever black out for about 2 or 3 hours?
 A. Well, no.
 I can't remember whether I blacked out any time or not.
- Q. Did you ever have any blackouts in Prison, from 1957 to this year? A. Well, I wouldn't know exactly, more than this last occasion.
- 30 Q. This is the first occasion that it's ever happened to you, isn't it? A. I had giddiness. I was never violent people asked me about different things already, and I had to move from different jobs and stuff like that.
- Q. Are you saying - I'm not sure - but are you saying that this is the first time you have blacked out while you were in Prison?
 A. Yes.
- 40 Q. This is the first time? A. Yes.
- Q. Were you excited at this time? just before you blacked out? A. I can't say I was excited, I don't know what really happened.
- Q. Were you angry? A. No, I wasn't angry.
- Q. Can you give any reason then why you should

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- have blacked out on this occasion?
- A. Well, I don't know I told you already that I saw blood, and -
- Q. This wasn't the first time you'd seen blood, do you black out when you see blood?
- A. It seemed different blood and the way that you know it suppose to be blood, it's something different. Now, I saw Overseer bleeding but I never see that in gaol, but I don't know what happen after that, you see? 10
- Q. All those other prisoners didn't black out when they saw the Overseer bleeding?
- A. Well, everyone of them come and tell you their name and none of them tell you "Elvan Rose", now I'se Elvan Rose, see.
- Q. You mean you've got another Rose in Prison?
- A. No. I telling you bout myself I can't tell you bout no other man.
- Q. I see.
Now, after this event, do you remember being taken into custody? A. No., I don't remember. 20
- Q. You don't remember being put into a cell and escaping the second time? A. No. I don't remember.
- Q. You don't remember attacking Supt. Ogilvy?
- A. No, I have no reason to attack Supt. Ogilvy.
- Q. You have no reason to say that it should be cock-suckers like Ogilvy and Pinder that should be dead instead of King? A. No, sir. I don't remember that.
- Q. Is that your feeling? A. My feeling? 30
- Q. Yes, do you feel that way? A. Like what?
- Q. That Ogilvy and Pinder should be the ones?
- A. Oh, no, I got no feeling that no one should get hurt at no time.
- Q. Do you remember being brought down? First of all do you remember being interviewed by Mr. Moir? A. I don't remember being interviewed by Mr. Moir - this is Mr. Moir there?
- Q. Yes. A. I don't remember being interviewed by him no time. 40
- Q. You don't remember being brought down to the Police Station and being charged? A. No, sir.

Q. And saying "I have nothing to say. Face death like a mother-fucking man. I don't give a mother fuck." A. I don't remember saying that at all. I could only remember being to the Magistrates Court about twice.

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Q. You don't remember then, on your way back up to Prison - the 19th of March I think it was - Sgt. Fields was telling us about a conversation between you and Ingraham, do you remember that? A. Well, I don't remember no conversation between me and Ingraham because me and Ingraham ain't that much friends.

Q. You don't remember having a conversation with Ingraham on the way up from Court? to the Prison? A. No, sir.

20

Q. When Ingraham said you mustn't tell them what happened how he got out of his cell, because that is good for him. And you said you wouldn't tell? A. Good for him?

Q. Yes, he having got out of his cell?

A. Well, I tell you I don't remember.

Q. But that's the 19th of March? A. I don't remember telling them that. There's a statement they take from me and I sign it, well maybe I know what I was doing. Anybody could say anything, I could say I'se a millionaire now.

30

Q. In other words you don't remember any conversation in Sgt. Fields' presence when you were being taken up to Prison? A. No, I don't remember.

Q. What about your conversation with Ingraham in the punishment cell? A. We always talking but we never be talking about different things that happen. I don't know nothing about it.

40

Q. You don't remember - "Rose told Ingraham what a stupid man Mr. Gay was because he opened the door and let Ingraham out." Do you remember saying that when you were in the punishment cell? A. I don't remember saying that, but I tell you I'd like for you if he can find the next officer, or two more, along with him who was present at that

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- time, well, then I can't run from it but if it's only him alone I don't know nothing about it.
- Q. Do you remember telling Ingraham this in front of Small that you didn't want to run away you just wanted to get on the roof of the gaol and raise hell? A. No, I never - run away - if I want to run away I working outside -
- Q. I know that. A. If I want to run away, I go. We ain't no brothers and we ain't no friends, he is Ingraham and me is Rose. 10
- Q. You will admit though that if you did say you didn't mean to run away you only wanted to get on the roof of gaol and raise hell, if you did say that then you must have remembered what had happened? A. I tell you I didn't say that, or I don't remember saying that.
- Q. Now, you probably wouldn't remember, but on the 18th of February you were seen by Dr. Podlewski? That is the day after the stabbing? "During the examination was tense, agitated and truculent would not give an account of the incident of the previous day. On the 19th was subdued and obviously realised what he had done." Do you say that is so. 20
- A. No, I didn't say that.
- Q. No, - A. That is my medical history?
- Q. Yes. A. Will you pass it to me I know it quite well. I know my medical history quite well.
- Q. What's the matter? A. This 31st of the 10th month '57, ask the doctor if he will look at that? 30
- Q. Your lawyer can do that. She will have an opportunity to do this. I'm asking you about the 18th and 19th of February?
- A. I don't remember being interviewed.
- Q. You don't remember being truculent?
- A. I don't remember being interviewed by the Doctor, at all.
- Q. You don't remember being subdued, or using bad language or anything? A. No, sir, when? 40
- Q. On the 18th. A. No, I don't remember.
- Q. Now, when was it again that you found that your

memory came back to you you knew where you were? A. That was the next week, Tuesday.

Q. What date would that have been?

A. Well, I wouldn't know what date it was.

Q. A week from what - the 17th? A. I wouldn't know.

Q. I want you to tell me? A. Well, I tell you already that I tell Mrs. Cozzi already that it was the next week Tuesday, now the date of that I don't know.

10

Q. Now, didn't you see the doctor on a number of occasions after that? A. Doctor?

Q. Yes, Dr. Podlewski? A. Yes, I remember seeing the doctor.

Q. Do you remember having talked with him?

A. I told him what I notice and my feelings, he ask me my feelings. I talk to the doctor sometime after that, sometime.

20

Q. Did you know then, when you were talking to the doctor, about your feelings and the rest of it that you were charged with murdering King? A. After Tuesday I understand that.

Q. You understood that? A. Yes.

Q. Would you say it was peculiar that you at no time, until a few days ago, decided to mention anything about forgetting about this incident? Isn't it peculiar that you didn't say to the doctor, "They say I murdered King but I don't remember a thing about it." Why didn't you do that?

30

A. Why didn't I tell the doctor?

Q. Why didn't you tell anybody? that you couldn't remember what had happened?

A. Nobody asked if I remembered anything because I must go round telling everybody I remember something when I don't remember something. Just go and say "I remember this, I remember that or the next thing." I answer questions.

40

Q. You had an opportunity, more than one opportunity of talking to the doctor but you never thought fit to tell him "Look what I got myself in to and I don't know a thing

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continued

about it."

A. I had no reason of telling the doctor anything. He only examine prisoners and give them medicine, he ain't there for me to give no statement to, nor nothing like that.

Q. You don't think it peculiar that you suddenly realised that you had committed this horrible crime, at least you were accused of committing this horrible crime and you couldn't remember anything about it and yet you kept that all to yourself? 10

A. Kept it all to myself?

Q. You kept it all to yourself although you knew you couldn't remember it? A. I couldn't remember it? I don't know a thing about what you all talking about, and I ain't got to go round telling people what I remember and what I don't remember. If I remember I'll say "Solicitor General, I remember so and so" and if I don't remember I don't remember. 20

Q. Do you remember while you were in the punishment cell? You were deprived of cigarettes, weren't you? Why were you deprived of cigarettes?

A. Because -

Q. Because you were misbehaving, cursing and swearing, weren't you?

A. Right now -

Q. Is that true? 30

A. Right now I'm not cursing and swearing I don't know what take place first. Not cursing and swearing, I ain't hear the first one yet.

Q. Yes, but isn't it because you were behaving so badly?

A. Well -

Q. Answer the question, yes or no?

A. Well, I don't know why I was deprived out of my cigarettes. Unless I was misbehaving then. I behaving now and I ain't got the first one yet.

10

Q. You haven't been smoking while you were in punishment cell?

A. No. You could go up there and look at the sheet and see when I get cigarettes. No I wasn't smoking.

Q. Now, let's go back further from the time you passed out. Trevor Albury says he saw you sharpening a knife. You weren't unconscious then were you?

20

A. Look, now you believe a man like Uncle Bud, you believe I going to sharpen a knife to do something bad and let Uncle Bud see me?

Q. According to this evidence you killed King with the same knife all sorts of people saw it?

30

A. Now, you know what I understand. I understand for Trevor Albury to get into this gate he was charged in Prison sometime after for pulling scissors on an overseer, and for him to get out of this charge he just go and blow his top and say he see Rose doing this and Rose doing that.

Q. Did you tell Mrs. Cozzi that? about the scissors? Isn't it strange she didn't put it to Trevor? Probably didn't believe

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you then.

A. Maybe. Maybe she just didn't feel like putting it to him.

Q. We also have it Rose that you were very interested in the time, you asked overseer Penn on two occasions what time it was, first it was 14 past 3, then it was 19 past 3. Do you remember that?

A. There's a big clock inside there, if I was in the lavatory I had no need to ask no one the time. I don't need to ask no time. 10

Q. You weren't interested in the time, in other words?

A. I wasn't interested in no time. No time at all.

Q. Do you remember hearing Mr. Duncombe say that he came to his office just around 3.30 or in that vicinity and he asked you to wait outside?

A. If I remember that?

Q. Yes. 20

A. Yes, I remember that.

Q. You told us you went in his office on two occasions, that day.

A. Well, it would be on four occasions.

Q. Why wasn't Mr. Duncombe asked about that?

A. I wouldn't know why he wasn't asked about how much time I was there.

Q. Now, let's go to where you saw Mr. Gay open Ingraham's cell? Let's go over that incident in detail. Tell us where you saw Mr. Gay and where was Rigby when Mr. Gay was opening the cell. 30

A. Rigby was on the side of Gay, standing by Gay, Gay opened the cell. I wasn't there -

Q. You were there.

A. Now just a moment I wasn't watching Mr. Gay because I went down by No.6 and I stay there. I wasn't watching who hit him or what.

Q. You saw Gay open the cell you saw Rigby standing on the side? 40

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continued

A. Yes.

Q. That's all you saw?

A. That's all I saw and Rigby run past me.

Q. Where was Ingraham when Rigby was running past you?

A. I didn't see Ingraham at all. No time.

Q. Where was Gay the last time you remember seeing him?

10 A. The last time I could remember seeing him he was leaning to the eastern corridor, and bleeding.

Q. And you didn't see Ingraham? A. No, Sir.

Q. Do you remember telling the doctor, after the 17th, that you saw a white woman in your cell?

A. Yes, I remember telling him that.

Q. After the 17th of February?

A. That was long after the 17th.

20 Q. You didn't omit to tell him those things?

A. No.

Q. Why didn't you tell him about the electric wire and coil? and hearing tins and things?

A. Look, I ain't see no electric things while I in gaol. Down to Andros.

Q. What about electric coils? You said you saw them?

30 A. I tell you I saw lights in gaol I ain't tell you I saw nothing different, but it look like electricity anyhow. That wasn't no time near by this case. The only time near by this case is - I told him about this white woman.

Q. According to what you said in the box there: "Sometimes at night I see double at night I see things that no one in the same place don't see. I see electric wires. Electric coils." Do you remember saying that?

40 A. Yes, but I told the doctor about this woman and I told him about glare and I told him about footsteps.

Q. I'm putting it to you that between 1957 and 1960 you never told him anything about seeing or hearing things? A. Yes.

Q. It was only after the 17th that you suddenly -

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A. No, no. I told him that I heard footsteps.

Q. Have you ever suffered from fits?

A. No.

Q. You are sure of that?

A. But I can't remember suffering from no fits,
no time. I don't know about when I was small.

Q. You never suffered from anything since you
had the head injuries?

A. No.

Q. I'm putting it to you Rose that you, in attempt- 10
ing to escape, from the Prison, stabbed Over-
seer King twice?

A. You putting it to me.

Q. I'm suggesting it to you?

A. Oh, you suggesting? I said already if I
wanted to escape I was working outside, if I
wanted to escape I just go.

Q. I'm suggesting to you that you remember very
well what you did?

A. I don't remember nothing about nothing that 20
you all talking bout.

Q. It's very convenient for you, and that's why
you're forgetting it now?

A. Convenient.

Re-examined by Mrs. Cozzi

Q. Rose, you were asked how it is that you did not
speak to the doctor about things that you saw
and heard before this case but you did speak to
him about things after this case. Now had you
been questioned by the doctor after this case 30
as to things you see and hear?

A. No, he never questioned me.

Q. When you spoke to him about the footsteps, when
was that? That was before this case, long be-
fore this case. I can't remember what time or
year it was but I know it was long before this
case.

Q. Did you speak to him more than once? Did you
ever speak to him more than once about these 40
footsteps or only once? A. He never gave me
no treatment but some capsule pills for me to
sleep or something like that and I complained
to him about jumping and some pain in my feet
but he only give me those capsules and I never
complained to him about it no more.

Q. I see.

EVIDENCE OF CLARICE SANDSIn the Supreme
Court of the
Bahama IslandsCLARICE SANDS SWORN (Examined by Mrs. Cozzi.)Defence
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Clarice Sands.

Examination.

12th May 1960.

Q. Miss Sands, you are the radiographer at Princess Margaret Hospital? A. Yes.

Q. You are a qualified radiographer? A. Yes.

Q. Would you please tell us your qualifications? (accepted by prosecution.)

10 Miss Sands, did you take X-Rays of Elvan Rose's head recently? A. Yes, I did.

Q. Do you have those X-Rays with you? A. Yes, they're here.

Q. Would you hold them up please?

CHIEF JUSTICE: When were they taken?

Q. A week ago; last Tuesday. Isn't the date on there? A. Yes, the 3rd May.

Q. Do you consider those clear pictures? A. Yes.

20 Q. Would you say that there is any rotation at all in either of those pictures? A. No, there's no rotation. In the lateral view there's a shadow on the bottom but that is due to the fact that the patient was handcuffed and we were doing them on a portable at the prison and therefore we didn't do just a little portion there. But the doctor wasn't interested in that portion so the other part was quite clear.

Q. I see. And that is on the lateral view that there is a slight portion which has been shadowed? A. The lateral view, yes.

30 Q. Would you just point out the portion which is in shadow? A. Just this area here. (Witness points out shadow area on X-Ray.)

Q. What part of the skull would that be? A. The face, the part just be there.

Q. And the other one, would you say is a true posterial anterior view? A. Yes, I would say that.

40 CHIEF JUSTICE: In plain English just what does that mean? A. While the patient is lying on his stomach, the posterial part to the anterior part.

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- continued.

CHIEF JUSTICE: Shows on the plate? A. Shows on the plate, yes.

CHIEF JUSTICE: While the patient is lying down with his head on the plate the back of his head to anterior is to the lens? A. Yes, sir.

CHIEF JUSTICE: The other one is sideways on, isn't it? A. The other one is the patient with his head on the left; left side is on to the plate.

CHIEF JUSTICE: The one is the left side of the head on to the plate? A. Yes, sir.

10

CHIEF JUSTICE: On to the right side.

CHIEF JUSTICE: You want to put those in now, Mrs. Cozzi?

MRS. COZZI: Yes, My Lord.

(Photographs put in as Exhibits 2 and 3.)

No cross-examination by Solicitor General.
No questions by Jury.

CHIEF JUSTICE:

Q. Do you know anything about the head bone structure yourself or you are just an expert in radiology? A. I know different parts of the head, sir, but a radiographer is supposed to take X-rays and supposed to know what kind of view to take.

20

Q. Otherwise you're just an expert? A. Yes.

Q. I see; thank you very much.

(X-Rays are examined by Jury.)

No.28

No. 28

Errington
Hepburn.

EVIDENCE OF ERRINGTON HEPBURN

Examination.

CPL. ERRINGTON HEPBURN SWORN (Examined by Mrs. Cozzi.)

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12th May 1960.

No. 156 Cpl. Errington Hepburn, at present stationed at Abaco.

Q. Cpl., do you know the accused, Elvan Rose?

A. I remember seeing him in 1957.

Q. Can you point him out now? A. Yes.

Q. Which one is Elvan Rose? A. The second on the left.

Q. Do you recall having given evidence at his trial in 1957? A. I do.

Q. What evidence did you give of him at that time? What evidence did you give at that time? A. I stated of his coming into the station during the night of 1957. I don't remember the month.

10

Q. And what was peculiar about his coming into the station in 1957? A. On the night in question he came into the station and requested a police escort home. I asked him what was his reason for wanting police escort and he told me some people were following him and I asked him where the people were. He pointed out in Market Street just outside of the station. As he pointed I went out in the street and I looked up and down and I saw no one. During this time, Rose kept pacing at the back of the counter. I returned into the station and asked Rose who these people were, what were their names and addresses so in case he wanted to file a complaint against them I could investigate it. Rose never answered. A few minutes after Rose said to me, "Cpl, I wouldn't bother anymore, I'll take a cab home."

20

30

Q. Were you struck by anything else in his appearance? You said he kept pacing. Were you struck by anything else in his appearance? A. He seemed to be excited.

Q. He seemed to be excited? A. Yes.

Q. I know it's a long time ago but would you try to recall the facial expressions that you might have noticed? A. I would say that he was excited. That's about all.

Q. He was excited? A. That's about all.

40

Q. How long do you think he was in the station? A. I would say about five minutes.

Q. Would that be the only time in which he came to you? A. The only time.

Q. And you say he asked to be escorted home? A. He asked that he have a policeman to escort him home.

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Errington
Hepburn.

Examination.

12th May 1960
- continued.

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- continued.

Q. Did you make any record of this? A. I made a diary entry. An entry was made in the station diary.

Q. Do you remember what that entry was? A. I don't recall the words now but I entered it in the station diary where the accused came in, his actions, and what he said.

Q. Do you recall whether you commented in any way as to his mental state in your entry? A. I made no comment.

Q. You made no comment. A. The only comment was, I said apparently the man seemed to me to be mentally unbalanced.

Q. That was in your notes? A. That was in my notes.

Q. You said he appeared to you to be mentally unbalanced? A. Yes.

Q. Have you seen anything of Rose since then? A. Not until today.

Q. Thank you.

10

20

Cross-
Examination.

Cross-Examination (by Solicitor General)

Q. Could you tell us whether he appeared to be drunk as well? A. I could not say, I didn't smell no liquor on his breath.

No questions by Jury.

No cross-examination by Mr. Bethel.

No re-examination.

No.29

No. 29

Dr. Mary
Augusta
Josephine
Etheridge.

Examination.

12th May 1960.

EVIDENCE OF DR. MARY AUGUSTA JOSEPHINE ETHERIDGE

DR. MARY AUGUSTA JOSEPHINE ETHERIDGE SWORN (Examined by Mrs. Cozzi).

Q. Would you tell us your full name please, doctor?
A. Mary Augusta Josephine Etheridge.

Q. Would you tell us your qualifications in medicine and in psychiatry and any other qualifications in medicine. A. I qualified in Paris as a

30

Doctor of Medicine. I am a licentiate of the Royal College of Physicians in London and a member of the Royal College of Surgeons in England. I became specialised in neuro surgery and neuro psychiatry in Paris and served as a specialist in the Royal Army Medical Corps during the war, in India - as a specialist in neuro surgery and neuro psychiatry.

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No.29

- 10 Q. Have you had any experience in hospitals in London? A. Indeed, yes.
- Q. Which hospital? A. You mean from a specialised point of view?
- Q. Yes, well any point of view. A. In general surgery at Hammersmith Hospital and in specialised hospitals at the National Hospital for Nervous Diseases in London. I also taught anatomy at the Royal College of Surgeons for three years.
- 20 Q. You are licensed as a specialist in the Bahamas? A. Yes. When I came here originally, yes.
- Q. And in what speciality? A. Neurology, neuro surgery and neuro psychiatry.
- Q. And you have acted as consultant in these capacities? A. Yes at the Princess Margaret Hospital, then the Bahamas General Hospital prior to Dr Podlewski.
- Q. Doctor, have you examined and observed the prisoner, Elvan Rose? A. With a limitation of time at my disposal.
- 30 Q. Would you tell us what examinations you made and what you are prepared to report.
- A. On my first examination of him which was limited to a mere interrogation to get his case history he appeared to be coherent, lucid and very cooperative. He told the story very well. He appeared to be under very great stress which was understandable at the time. He told his history which led me to suppose that he had been having delusions at some time or other.
- 40 He'd also been having hallucinations. His was quite a clear cut story and if you wish the details of them I could go into them but, perhaps, for the moment would limit myself to saying that they were clear cut history of delusions and hallucinations. My physical examination was limited

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because he was behind bars, but I could see that he had several scars about his head and I asked him about any possible head injuries he had. He related that he had had at least three or four which I subsequently verified. In at least three of these histories there was the question of amnesia.

CHIEF JUSTICE: Had three or four which were verified? A. Yes. In each case these injuries causing these scars had been accompanied by periods of unconsciousness after the injury and by amnesia following the event. I questioned him about this episode for which he is now being tried.

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CHIEF JUSTICE: Doctor, before we go any further, for the sake of the Jury would you define "amnesia"? A. Amnesia is a loss of memory of events immediately following his injury. He said that he can remember nothing after the time he saw Rigby running and Gay with blood on him. I'm trying to give you his own words, sir. He doesn't remember anything from that moment up until the following Tuesday when he was told that he had been tried.....accused of - is that the correct term -

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CHIEF JUSTICE: Charged with. A. Charged with, whatever it was he was charged with.

CHIEF JUSTICE: Murder.

Q. Would you continue your report and findings, Doctor? A. Well following this we went a little bit more into the physical examination as much as we could because he was behind bars; and having noted that he had these scars I thought we might have some X-ray evidence of possible underlying bone or even brain damage. Consequently we had the technician come up to the prison and make the classical postero anterior and lateral view of this man's skull. In one he had his forehead on the plate and in the other one he had his ear on the plate. These are the two customary views that one takes in these cases.

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Q. Were you present at the time that the pictures were taken, Doctor? A. I was.

Q. Do you consider that they are clear pictures? A. I do, within the facilities of whatever we had at our disposal, but they were clear enough to come to some conclusion.

Q. What do you conclude from this?

CHIEF JUSTICE: Would you care to look at the photographs? A. I know them by heart, but I can point them out as I go along if you wish me to, sir. On the postero anterior view, face down, yes - Note: Witness points out on face down view - one notices the calcification of the coronal suture which is that a hyper calcification of it - I don't know whether it's visible from that end.

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CHIEF JUSTICE: I see - it goes down the centre does it? A. Well on this one it goes down the centre but on the next one I shall show you it laterally. One notices a widening of the venous grooves that you will see here. This is the suture line that I was talking about. That is the calcification frontally. That is the occipital articulation where the sutures are - I won't say immoderately widened, but widened. Here are your Venous channels and your diploic channels which are rather more marked than they ought to be. There is a deepening of the pachionian depressions. Can you see a round circle there? Well, that's very much more marked than it ought to be. And we have here something with which I have taken issue with somebody else. But in my opinion the falx cerebri which is a sagittal lamina, a membranous sort of structure -

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30 CHIEF JUSTICE: Inside or outside the skull?
A. You know the kind of partition you have in a walnut?

CHIEF JUSTICE: Yes. A. Well, it's exactly that something between the two halves of the brain. We call it a falx cerebri. We have a slight but noticeable deviation of the falx cerebri which should be vertical. It's tipped over to one side, yes. Coming now to the lateral view. This shows a certain number of features which are really interesting but only one which I would pick out as being diagnostic. We have talked about the venous channels, the sutures, the calcification and the widening. There is another thing besides the feature which I spoke about just now and there is the evidence of an old fracture an angulation. If I point it out to you you can see it quite clearly - just behind the frontal bone - just where the man has a scar.

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CHIEF JUSTICE: More or less on the brow, is it?

A. Just above the bridge of the nose. There is also the evidence, suggestive evidence, of an old depressed fracture - I'm not stressing it too much - but there is an indentation. I don't know whether you could see that, but at the top instead of being a smooth line you have a distinct depression.

CHIEF JUSTICE: Yes I see. A. But I think by far the most characteristic feature of this lateral view is the appearance of what we call the clivus or the basilar plate. Now, this structure, sir, lies right bang in the middle of the skull, it's a junction between the sphenoid bone and the occipital bone. I can point it out here. That is what we call the posterior clinoid which is above the sphenoid bone and it follows right down to a thing we call the Foramen magnum which is the hole through which the brain stem comes. Normally speaking -

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CHIEF JUSTICE: Just back of the right temple is it?

A. Well it's right in the middle. If you drew a line going from here to here and a line going from here to here (pointing) the intersection of the two lines would be on it. It's not a point it's an inclined plane. Normally speaking, this presents an absolutely characteristic appearance straight up and down but slightly inclined. In other words its a smooth outline with no indentation in it. One of the diagnostic features of a space-occupying lesion of the posterior (part of the brain) fossa which is the back part of the cranium is an erosion of this plate and an erosion which shows a curve on the clivus which is turned upwards and backwards. If you look at this I don't think you can have any doubt in your mind at all that there is such an erosion on this plate.

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CHIEF JUSTICE: What would be the result of this erosion? A. It is not so much the result of the erosion as what causes the erosion that is important to us. This erosion might be caused by a tumour, it might be caused by what we call arachnoiditis which is an inflammation of the covering of the brain or it might be produced by an aneurism either of the basilar artery which runs along that clivus or alternatively of the posterior cerebral artery, in other words, one of the basilar group which runs along the clivus,

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an aneurism in that region in fact. One of the causes of aneurism in that region is trauma to the base of the skull, injury to the base of the skull. Some of the signs and symptoms of such an aneurism might include pain in the back of the neck, ringing in the ears or auditory hallucinations such as some of the things that Rose has complained about. When we had these X-rays done, the first time we'd had Rose out of the cell, we took the opportunity to take his blood pressure. We had already noted on his medical sheet that he had had a moderately raised pressure. Checking up on this we found that in fact it was so, in fact it was slightly higher when we saw him the first time than the pressure noted on his medical case sheet. It subsequently reverted to the one which we had originally seen, which was nevertheless in the upper limits for a young man. I'm now giving you the more conservative figure and not the one we found 160.

We saw Rose on one or two more occasions after⁹⁰ that and continued observing him and probed him further about his visual acuity because we noticed that his pupils were unduly dilated. They did respond, they did give the characteristic reaction but they were unduly dilated. It might have been caused by the fact that he was in a dark cell. Nevertheless, in view of what he said about his vision - and I give you Rose's words: "I don't see things double but I see them blurred kind of." we made an examination of his optic nerves - we do this examination by looking into his eye with an ophthalmoscope - and we noted that Rose for a person with his dark coloured skin had an extremely pale papilla. We expect to find in persons of that pigmentation a faded grey colour, bluey but not dead white like what we saw. Furthermore the vessels on this papilla were moderately dilated and this would be in keeping with his slightly raised pressure, we couldn't make any further tests which we would normally have made because of the situation. With the material at our disposal we were forced to certain conclusions, and these were: That we had a man who had given evidence or at least who had suggested to at least one observer - and I'm talking now about Cpl. Hepburn - that he was mentally unbalanced, who had suggested to another observer - and I'm referring now to Dr. Podlewski - that his condition might be delusional, it might

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have suggested a delusional state as he said and had given to myself evidence of injury to his skull with the possibility - and in view of his history I would say the probability - of underlying brain damage as evidenced by his delusional state, his hallucinations and on at least two occasions, his extremely brutal and violent behaviour. His extremely brutal and violent behaviour - maniacal behaviour - I would say. If I had to put a name on it I would call it with Mr. Adolph Meyer, Post Traumatic Constitution, with paranoid developments the thing which we call today the punch drunk syndrome.

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CHIEF JUSTICE: Punch drunk what? A. Punch drunk syndrome. I expect you've heard of that, sir. It occurs in professional boxers and professional divers. It occurs because of repeated small traumas - or large.

CHIEF JUSTICE: Small or large...? A. Injury to the brain substance which eventually in brains of a certain quality produce these mental disorders. I would just like to add if I may, sir, I would say that no one of these things by themselves, neither his delusional state, nor his hallucinations, nor his long history of funny feelings in the head and noises and sights which nobody else sees - hallucination covers that so we needn't have to take that again - nor the X-ray findings, nor his slightly raised blood pressure, nor the evidence as to his optic nerve - none of these things, I should say, by themselves, would necessarily mean underlying brain damage. But, taken altogether, the overall clinical picture is overwhelmingly indicative of such damage.

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Q. Doctor, you have, of course - I take it from what you have said - familiarised yourself with and followed the history of the previous trial? That is correct? A. Yes, indeed.

Q. You have. A. Well, only very briefly, I may say. 40

Q. You have referred to a typescript report of that trial, or parts. A. Oh, have I? To parts of it perhaps.

Q. You knew that he had been convicted of murder? A. Yes, indeed.

Q. And you have referred to some circumstances of the stabbing in the previous case? A. I referred

to the particularly brutal and violent way in which both murders were committed. In fact I think I recognise them.

- Q. You have seen this, doctor, before? (Shown medical sheet). A. I think I have.
- Q. Did you make any marks on that? A. I wouldn't be at all surprised. Where are the marks?
- Q. I think there are some pencil marks at one or two of the entries. A. I don't know if they are some of my markings but they might well be, I would not dispute that.

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Q. Dr. would you say that all this adds up to being insane? A. I didn't say such a thing.

Q. No, I am asking you? A. Then I would say no. Not insane in the way which I imagine you mean.

Q. Well you don't think he is insane in any way? A. I didn't say such a thing.

Q. No I am asking you? A. I showed that he showed mental trouble, mental disorders, disorders of the intellect, he has periods of insanity.

Q. Well you are saying that he had periods of insanity? A. Insane in the way that in general people understand it.

Q. You would say that he knows right and wrong? A. Periodically, Yes.

Q. More often than not? A. I would say more often than not.

Q. Would you say that he is a homicidal maniac? A. Well in view of what happened I am forced to say that. But you know this expression has a particular connotation to the minds of the public perhaps you would like to clarify what you mean by homicidal maniac.

Q. I would ask you what you meant? A. A homicidal maniac is somebody who in a moment of mania kills a man. That is what homicidal maniac is.

Q. Is that a technical expression, medical expression or is it not a popular one? A. We don't use it, no.

Q. Would you say that he is a person who in a sort of frenzy or mania might be inclined to kill.

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- A. I did not say that he would be inclined to I said he had.
- Q. You agreed that you might call him a homicidal maniac and then you defined what the popular meaning of homicidal maniac is. A. very well. If the situation occurred again -
- Q. You said he might get into a frenzy and kill people. A. I didn't say any such thing, Mr. Isaacs I said mania. Mania is more of a temper. It is something quite special. 10
- Q. Would you define mania for us? A. Mania is the state of the mind in which the man is completely incapable or the individual is completely incapable of knowing what he is doing when he is doing it. I don't say two minutes before or two minutes after he must not be aware of what he has done. Certainly not two minutes before but two minutes after he might be aware of what he has done but during his commission of the act I would say he was completely incapable of knowing what he was doing. 20
- Q. That is what mania is? A. That is.
- Q. Is that the medical definition of mania? A. There is no medical definition of mania in that sense.
- Q. Psychiatric or psychological then? A. Mania if you like is a state of mind by which people have persistent belief about certain things. We have religious mania, we have sexual mania, homicidal mania.
- Q. What are those beliefs Doctor? A. Various things.
- Q. In mania I mean? A. Delusions, sometimes hallucinations. 30
- Q. I was always under the impression that there was an act which distinguished mania from other types of illnesses or derangement - state of excitement? A. Is that the legal definition for mania?
- Q. I am asking you if that is so or not? A. Well it is not a medical definition.
- Q. Not even a heightened state of excitement enters into the picture? A. I did not say such a thing. 40
- Q. Does a heightened state of excitement? A. It may or may not be.
- Q. You can have it without any excitement at all? A. You certainly can, I am not talking about

homicidal mania at this moment. Suppose we had religious mania as I just said you wouldn't have very much excitement about that you know - a fairly calm and quiet thing religious mania.

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CHIEF JUSTICE: Not very exciting -----

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A. I am trying to distinguish between excitement and mania.

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10 Q. Would you accept this definition of mania? "A frame of mental disorder characterised by fatuous emotions in relation to hyper instability, over talkativeness, or flight of ideas, increased activity"? A. I would accept that definition.

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Q. You wouldn't a little bit earlier. A. I was accepting it with reservations which I am entitled to do I am a doctor not a lawyer.

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20 Q. Well do you now agree that when you speak of mania you have to have some form of excitement? A. In certain forms of mania, yes. You know the French have a form of expression they speak of "La manie douce" which means "sweet mania". There is no excitement about a "sweet mania".

Q. I am wondering if "sweet mania" is a psychiatric term? A. Yes.

Q. It is? A. Well if one is sufficiently intelligent to accept the broader definitions in psychiatry one would accept la manie douce as well because it does describe a state of mind.

30 Q. If Rose suffered from paranoia - First of all you had better tell us so that we'd all be sure what paranoia is - symptoms of paranoia. A. The principal symptom of paranoia is delusion.

Q. Any type of delusion? A. Delusions are so varied - Delusion of persecution particularly, delusions of grandeur as well but delusions of persecution more particularly.

40 Q. If Rose was suffering from paranoia as it was alleged that Rose was in 1957 would you expect the symptoms to disappear almost over night? A. Yes, I might. It is also one of the characteristics of paranoia. You can be sitting and talking with a person who might appear to be completely normal unless you talk with that person long enough to realize.

Q. You have no personality change? A. You certainly do.

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Q. You have intellectual impairment? A. You have.

CHIEF JUSTICE: You said if you were talking with someone who had paranoia he might appear to be quite normal? A. That's right.

CHIEF JUSTICE: Well then what happens - what would happen to show that they have got this paranoia. A. A long and careful and painstaking observation which is the only thing. If you have nothing else to go on that is what you have to do but when you have heard, it is usually the family to come and tell you these things and you are forced to listen to what the family tells you about the behaviour of these people. 10

CHIEF JUSTICE: You may think they are perfectly normal until you have had some dealing with them? A. Yes.

CHIEF JUSTICE: Then it is that it is the other way around? A. Possibly? Possibly or possibly not.

CHIEF JUSTICE: Do I understand that you might never know? A. You might never know. 20

Q. Now I think you can have paranoia alone and paranoia impairment? A. Yes.

Q. I suggest that you may have delusions without any impairment of mental ability. You say that you could be talking for hours and not realise that anything is wrong. A. The intellectual change would not be manifest as I said until after a long observation. The casual observer might not notice any intellectual change. You may notice a person that has been a fairly easy going person suddenly becoming irritable, cranky, normally they could take half dozen bottles of beer, suddenly they take half a glass of beer and they go piping mad. 30

Q. They are suffering from paranoia? A. No, don't make me say what I'm not saying.

Q. No, no. We were talking about paranoia. A. I was talking about personality changes which I thought was where we were.

Q. Just another point Doctor. Where a person is said to be suffering from paranoia there is no evidence of paranoia for three years. A person makes no mention of delusions would you say that that could probably arise in 3 or 4 days and disappear? A. I was going to ask you why you were 40

talking about paranoia because I never said that Rose had paranoia.

Q. I thought you said he had paranoia? A. I did not, I said that he had paranoid developments.

Q. What does that mean? A. He had the thing you were talking about in the middle of an overall picture of brain injury. To come back to what you were saying.

10 Q. Do you now say that he has paranoia? A. I said that Rose has had repeated injury to his brain which showed that his intellect had been impaired, which showed that he at many times and he has given you evidence of it has had completely not only diminished but absent moral responsibility.

Q. Moral? A. Any other responsibility you might like to mention. I said it is impossible to judge if none or merely diminished. His actions would seem to show no responsibility at all.

20 Q. No responsibility at all, at no time? A. No at the moment that we are referring to.

Q. Which moment? A. The moment that he commits these particularly brutal and vicious things.

Q. So that in other words when he commits a brutal crime you say that at that moment he has no responsibility? A. I would say that he shows clinical evidence that he has none.

30 Q. Suppose he showed no clinical evidence of any form of insanity up to the time that he committed one of these offences, what would you say?
A. If he showed no clinical evidence of any form of insanity up to the time that he committed these offences I would not be here Mr. Isaacs. The reason why I came here was because he had shown some evidence of it. He had shown to Cpl. Hepburn that he was a mentally unbalanced man. He had shown to Dr. Podlewski that he was in a delusional state.

40 Q. We are not talking about the double murder now we are talking about this clinical test. A. I am talking about what he has done. I am talking about my patient, I am not talking about Rose, a convict. I am talking about the patient I was called to see. I am talking as a doctor now.

Q. But you were also talking about something in 1957.

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Now are you so familiar with his condition leading up to 3.30 p.m. on the 17th February.

A. It seems to me that I am at least as familiar with his condition as his own prison doctor was, if not slightly more.

- Q. Are you saying that you were more familiar with his condition on the 17th February at 3.30 p.m. than the prison doctor? A. I certainly am. I am prepared to say anything you like to if you bring up. For one thing you said that this man did not complain of delusions. He told the prison doctor that he saw a white woman dressed in white bending over him in his cell and he did not know how she got in there and how she got out is that not a hallucination for you? 10
- Q. Who told you this? A. I saw it in his ----- prison medical sheet.
- Q. What date was that? A. I cannot go around remembering dates. I took the trouble to ascertain whether it was before or after the advent of Mrs. Cozzi in the case. I took that trouble. 20
- Q. I'm not suggesting that Mrs. Cozzi has acted improperly in any way. A. I wasn't suggesting that she had either. Nor that the woman in his hallucination had either. He merely said she was bending over him. But I don't see what difference the date makes. (Witness handed Rose's prison medical sheet). Well would you please point out --- I cannot go through all these. If you find the date I would be glad to read it out to you. 30
- Q. Sorry if I am offending you? A. You are not offending me at all you are just raising my blood pressure that's all.
- Q. On 19th February 1960, complained about his head being dizzy later said he saw a white woman in his cell bending over him. A. May I be very rude and say so what? He had an hallucination on the 19th February, period. It was during the time when he had amnesia. 40
- Q. But he seems to have remembered having a hallucination on this date? A. Dr. Podlewski will tell you that that is one of the things you don't remember, a hallucination. It is very present in your mind haunting you, you are not remembering something. You are not remembering it for the simple reason that it did not occur.

Q. Rose also told us about this. A. Yes and who worried about it.

Q. Did he tell you? A. He certainly did.

Q. He told you he had a delusion on -- A. He didn't tell me what date he had it.

Q. And you don't know if the doctor made a proper entry? A. I know that the doctor noticed and that he did not pursue it to its logical conclusion. Don't make me say the things I don't want to say.

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Q. May be you can answer this question for us. If Rose was able to tell you that he had an hallucination on a particular day that would be the 19th February and he has told us that he had no memory of anything until the week after the 17th February then somebody is not telling the truth. A. If you put it like that I will tell you that Rose did not tell me on what date he had it but the doctor noted it on that date. There is no proof that it happened on that date.

20

Q. Oh I agree, I agree. That is a question we have to decide. A. A question for you to decide too. In any case Rose made no mention of the date he had seen it and this was not the only hallucination.

Q. But he did tell you that he had this hallucination? A. He certainly did.

Q. And we take it from the medical sheet that he also told the doctor about it? A. Yes, but I did something about it and Dr. Podlewski did not. That is what I didn't want you to make me say.

30

Q. It would be then that Rose was not telling the truth or the doctor hasn't been telling the truth? A. Well why should he tell it to the doctor and why should Dr. Podlewski's statement be a lie?

Q. Quite. A. Why should Rose not be telling the truth if he told it to the doctor and he told it to me. I don't see how you make that out to be a lie.

40

Q. Because he said he can't remember anything that happened on the 18th, 19th, 20th or 21st. A. And I have told you you don't remember having hallucinations for the simple reason that there is nothing to remember, a hallucination is

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- something that hasn't happened. A hallucination is something firmly anchored in your poor **disordered mind** - I don't mean yours of course.
- Q. You would like to think so no doubt. A. Sorry.
- Q. I take it you are emotionally involved in this case aren't you Doctor? A. I am always emotionally involved in all my cases.
- Q. Wouldn't you say that that is a bad attitude for a Doctor to take? A. Are you in a position to judge? 10
- Q. I am asking you? A. You are asking me?
- Q. Yes, Is that the proper attitude for a Doctor, especially a psychiatrist in a capital case, to be emotionally involved? A. Well I'll tell you something, Mr. Isaacs.
- Q. Will you please answer my question? A. I am answering it. I soon wouldn't have any patients left if I wasn't emotionally involved in all my patients who have been worried. One of the reasons why I have such a large practice is because I am involved emotionally. I know when they are hurt and I am hurt in the same way. 20
- Q. Is it the opinion of the majority of eminent psychiatrists that they should become emotionally involved? A. I am not an eminent psychiatrist so I wouldn't know.
- Q. You must know the opinion of eminent psychiatrists? A. Ask Dr. Podlewski.
- Q. He is not up in the box now; I can't ask him. I am afraid you are there now. A. Well I know many eminent psychiatrists who are emotionally involved. 30
- Q. You think that is the proper attitude? A. I think for a doctor it is. For a lawyer it might not be.
- Q. For a psychiatrist, not an ordinary doctor? A. I am talking about a doctor who is a psychiatrist not a psychiatrist who is not a doctor, although he might also be emotionally involved because there are such entities as you know. 40
- Q. Can you tell us what particular type of brain injury would cause amnesia? A. A variety of them.

- Q. Well you came to conclusions about Rose's brain as a result of the X-ray and so on. Would you tell us what particular injury is suspected that led to the amnesia? A. There are two types of injury that might lead to amnesia. You may have physical injury such as a blow that would produce a sign that you could see if you open the brain or through X-ray. You might have a psychological injury...
- 10 Q. No, No.....
A. Don't say "No, no, no". It's very important. You can have amnesia from psychological effects - it's part of it as well.
- Q. I never heard about psychological injuries before. A. But you asked me about amnesia.
- Q. Well, let us come to Rose's case? A. Well, be very definite so I can know what you are driving at. You must say when you want me to talk about Rose and when you want me to give you a classical definition and then I'd be glad to comply.
- 20 Q. Now let us talk about Rose. A. All right.
- Q. You saw certain abnormalities on the skull of Rose and you came to certain conclusions that his brain was injured? A. Yes.
- Q. Well, what particular brain injury that you saw would cause amnesia in Rose? A. There are many types of brain injuries that cause amnesia and I in my opinion about Rose have given my conclusions.
- 30 Q. What brain injuries did you find in Rose that would have caused amnesia? A. Let me tell you and if you interrupt me again I will never be able to answer your question. I didn't suspect one injury in Rose; I suspected a variety of injuries. When you get a thing that I am talking about now, so called punch drunk syndrome, you have a number of small repeated injuries. I would not say small, they just look small. I say small because they don't look too important but
- 40 if you get a certain number of these things occurring in a brain which is already defective and in my case history of Rose, if you listened to it, I showed that he had every occasion to have a defective brain. These things I would say are many times more important than they might appear to be, they are not in any way commensurate with the damage. In other words the result of

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- the damage might be much much graver than you would expect to find by the - to some people - minimal size of the injury.
- Q. In other words, in Rose's case you must be very indefinite? A. I am not indefinite at all.
- Q. You are not sure? A. I cannot be more definite that I have been. I have been categorical, not merely definite.
- Q. But you haven't pointed out any brain injuries yet. You only suspect. A. I pointed out earlier on the means at my disposal and the time. If Rose were an ordinary patient I should do an electro-encephalogram, a pneumo-encephalogram and I might even do a ventriculargram. But I am enough of a physician, I trust, to make use of the signs at my disposal to come to some conclusion. And in view of the fact that he has shown not only to myself but to other people definite evidence of brain damage I am forced to conclude that his brain must be damaged. I have X-ray evidence to prove that it has been damaged. 10
- Q. Was that the brain, I thought you were showing us the skull? Does that X-ray show Rose's brain? A. I told you, Mr. Isaacs, that at the base of this brain - at the base of this skull there is a very definite mark of erosion on the basilar plate which shows that Rose, to my way of thinking, and not only to my way of thinking but in the thinking of people who know about these things, had something at the base of his brain. I am not prepared to say what that something is until I can do further test. My opinion is that it might possibly be an aneurism. 30
- Q. Why? A. Because of the other clinical findings.
- Q. You have found an injury at the base of the brain? A. I have not found an injury; I've found the radiological evidence of it.
- Q. Are you telling me now that there is an injury there or there is not? A. I am telling you that I have radiological evidence of damage at the base of his brain. 40
- Q. Was there injury? A. You can't find an injury; there is evidence of an injury.
- Q. Is there damage to Rose's brain? A. Perhaps you can understand me if I say yes.

Q. There is? A. Yes, indeed.

Q. There is damage to Rose's brain somewhere down here? A. Yes.

Q. What symptoms would result from such damage to a person's brain? A. A variety of symptoms, according to where the injury is.

10 Q. But you said you found it? A. The posterior fossa may appear to you to be a very small thing but to me it contains some of the most vital structures. Rose has given evidence of ringing of bells in his ear. May I finish? Don't interrupt if you want to hear what I have to say, otherwise again I shall lose the thread. If you want me to pin-point where he has got the damage I will pin-point it to a region which we call the *ponta cerebellar* region. Does that mean anything to you?

20 CHIEF JUSTICE: The point is, Doctor, from that damage you suspect is there from the radiological evidence, now having come to that conclusion, what symptoms would you expect to find if such damage was incurred? A. One of the symptoms I would expect to flow from that would be the ordinance of the feeling of his head, either the headaches or the heaviness or the dizziness or the ringing of bells and other sounds, all that he has complained of. These symptoms are confined to one particular region. The complaint of them has been always on the right side of the head. He says it is not always a pain - in fact most of the time he says it is a sort of heaviness.

30 CHIEF JUSTICE: Apart from Rose, now Doctor ... A. Yes, in general I am saying that he suffered from the things I would expect to find - the heaviness in his head, dizziness, ringing of bells, starting of pain in the back of the neck. He volunteered the information that it started immediately at the back of his neck here. Those, small as they might seem to some, are fairly localizing signs.

40 CHIEF JUSTICE: You think that all those would follow from this suspected injury? A. Injury in that area. I am basing myself chiefly on the involvement, the apparent involvement of the 8th nerve which runs in that particular angle; and it's the only way in which we can pin-point a brain lesion.

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CHIEF JUSTICE: I think it possibly follows from that, Doctor, that you say that the symptoms you would expect to happen would be headaches, dizziness, ringing of bells and other odd stuff?
A. (These) Hallucination. Auditory hallucinations.

CHIEF JUSTICE: Would you expect to follow from that brain injury hysterical amnesia?

A. Hysterical amnesia is a very

CHIEF JUSTICE: Or indeed amnesia? A. Indeed, yes. 10
I would expect amnesia to follow upon any. I wouldn't discount amnesia following upon any head injury. In fact, it is one of the signs and symptoms of internal brain damage when nothing else is visible, not even on X-ray.

CHIEF JUSTICE: Amnesia? A. Amnesia.

CHIEF JUSTICE: At any time? A. At any time - generally preceding the event and for a short time after - a shorter or longer time after.

CHIEF JUSTICE: After what? A. Whatever event produces the amnesia. 20

CHIEF JUSTICE: That is just the point that I am coming to. What do you think could possibly cause the amnesia because we already have the situation in his brain, you see? A. Yes.

CHIEF JUSTICE: And now you say it may follow upon whatever happened before or after. Now what would cause it, that is the point? A. I said earlier on when the Solicitor General asked me what were the causes of amnesia, I said they might be physical or they might be mental. Now he is not prepared to admit the existence of mental trauma in this case and I am prepared to waive it because we have ample evidence of the physical causes of his amnesia. And I may say that amnesia can result from injury in any part of the brain. 30

CHIEF JUSTICE: Well now, what you told is that the principal damage that you say you have found, or the suspected damage, is the one at the back here, you see? A. I said that is the one that I am certain about, but there are several other things that are very suggestive. 40

CHIEF JUSTICE: Ah, that is possible, yes, but what I am after is this question of amnesia because we have a history here of a man who says, as you

know, from a particular moment he suddenly suffered amnesia which lasted for a matter of six days or more, I don't remember and it doesn't matter, so much so that he tells us the last thing that he had seen happen and then he said he knew absolutely nothing which he did for some considerable time after. The point is that you said, as I understood it, that something caused the amnesia - would that be the suspected damage to the back of his brain or something else, the sight of something or what? A. It might indeed. That was what I was talking about when I referred to psychological as well as physical injury - trauma, if you like. In this case I must use the word trauma.

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CHIEF JUSTICE: Is there something magic about it; are trauma and injury not synonymous? A. Well, I cannot show psychological injury on a picture as I might and this word would, as you say, seem to have a magical force now. The point is that this is not the only instance on which Rose has given evidence of amnesia.

CHIEF JUSTICE: No, but this is the one in which we are vitally interested. Because on this occasion he has told us that he does not remember a thing after he saw Rigby and Assistant Turnkey Gay with his head all covered in blood and Rigby running out. Now what would you say would cause that amnesia that quite shortly is the question? A. Quite shortly, sir. The answer is, I would say, that the shock of the sight of Rigby running and Gay covered with blood would be quite enough to blot out of the man's memory succeeding events up to a point.

CHIEF JUSTICE: Well would that be caused by the state of his brain as you now know it to be? A. I wouldn't say that that was the immediate cause of it but it would certainly go hand in hand with it.

CHIEF JUSTICE: That, I think, is what you want.

SOLICITOR GENERAL: Yes, My Lord.

CHIEF JUSTICE: Doctor, I am not suggesting because I have seen it so often myself and I think I can take judicial knowledge of it, that somebody who suddenly sees blood such as he saw then, is upset and he passes out - that would be a more or less

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normal thing to do? That does not necessarily mean that anything was particularly wrong with his brain? A. Not necessarily, no.

CHIEF JUSTICE: But here you see we have a man who said he suffered amnesia and seemed to know nothing for a matter of ten days and you have told me that it is not necessarily because of the state in which you found his brain - That it just happened. You mean that that could happen to anybody? A. No, sir. 10

CHIEF JUSTICE: Do you think that it would happen to somebody who had the medical history of Rose? A. That is exactly what I mean, sir.

CHIEF JUSTICE: What? A. I'll come back to your example of a normal person seeing blood and fainting. And I will now come to the kind of person who, shall we say, is mentally abnormal, not going into details for the moment, mentally suffering from the kind of thing that I think Rose is suffering from - they don't react in a general way like a normal person would, but they react in a peculiarly mental fashion which is because of their condition. 20

CHIEF JUSTICE: Because of their mental condition? A. Yes, sir.

CHIEF JUSTICE: That is exactly what I wanted to know. Then it is really because of the state in which his brain was that he suffered the amnesia? A. Precisely, sir.

SOLICITOR GENERAL: If I may come now to this injury of Rose's brain, was that punch drunk syndrome? 30

A. That would be involved in it. The punch drunk syndrome isn't just one thing - it is a lot of blows over a period of time.

SOLICITOR GENERAL: What are the symptoms of punch drunk syndrome? A. The symptoms that I described earlier on.

SOLICITOR GENERAL: Are there more? A. I have given you a whole list of them. I don't know if you remember the whole list - it's quite long. 40

Q. I have it here (reading) "The Syndrome of punch drunkenness seen in boxers is a special form of chronic....." something or other. A. Chronic what, sir?

SOLICITOR GENERAL: It's a long word.

A. Well, it's very important that we hear it.

SOLICITOR GENERAL: You read it for us (passing book). A. Certainly. (Reading) "The syndrome of punch drunkenness seen in boxers is a special form of chronic enccephalopathy due to repeated small injuries to the brain which are cumulative in their effect. It begins with unsteadiness of the lower limbs, leading soon to a reeling, drunken gait...." (this is in the ring, don't forget!)

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10 Q. Is this punch drunkenness? A. He does not run around like that. This happens when he is in the ring and when he's coming out of the ring. This is not five years after he's had it. Five years after he's had it what we are talking about is the word you don't like - chronic encephalopathy - a pathological condition of the brain. The rest of it are the immediate symptoms following the blow which is causing punch drunkenness, but the syndrome itself....

20 Q. Will you read what it says? A. With pleasure: "leading soon to a reeling, drunken gait, followed by slurring of speech and deterioration of memory and intelligence. On examination the patient is dull, retarded and fatuous; the upper limbs show a characteristic coarse tremor. The brain is said to have greater power of recovery in children than in adults." Those, as I said, are the symptoms when they are staggering from the ring.

30 Q. When the effects of the blows wear off they lose these physical symptoms? A. Yes, they do wear off.

40 Q. But they don't lose the other symptoms? A. No, because that is irremediable. That's irrevocable. You know when you have a cut and you get a scar, the cut heals, you get no more pain, no more inflammation, but you have a scar there still and that's how the scar is right in the brain.

Q. I would have thought, Doctor, if anyone had this permanent injury right at the base of the brain it would affect one's physical body as it says in the book, as well as..... A. No, because those physical symptoms that you see are not due to that injury in the brain.

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- Q. Those physical symptoms are not due to the injury to the brain? A. Those are due to repeated ones, multiple repeated ones.
- Q. I understood that you said Rose had had repeated injuries? A. Yes, and he does show things which would follow upon that kind of injury in a given region.
- Q. Now, let's go back to amnesia, Doctor. A. Pity you don't want to pursue this.
- Q. Rose had told us that this was the first occasion on which he said he had blacked out or suffered from amnesia, not the result of a blow. But you say that he had amnesia a number of times? A. Because I am talking about physical amnesia. May I just cite the occasions of his amnesia, of his previous amnesia. The first time Rose received a blow on his head, he was two years old. A log fell on his head. 10
- Q. I don't usually insist on the hearsay rule. Who told you about this? A. I am obliged when I have a patient to consult the family. I talked to Rose's mother about it. If his mother can't say what happened when he was two years old, who can? 20
- Q. But she isn't here, that's the thing. You say that one may suffer amnesia immediately after a blow but this is the first time he has suffered amnesia when he has not just received a blow. A. Well, you know there's a first time for everything. 30
- Q. I want to know whether that is consistent with your findings? A. In every way.
- Q. Suppose a man had no intention of doing anything except going to his cell and putting his cot in - he was not angry, he was not annoyed - he suffers a shock and amnesia. What would you expect....? A. I beg your pardon, the amnesia is not then, amnesia is afterwards. You say he suffered a shock and amnesia. That's not when he was suffering amnesia. 40
- Q. But if you remember he remembers seeing blood, then he doesn't remember. A. That's amnesia after it has all happened, but he doesn't suffer amnesia; amnesia is something that happens to him.

- 10 Q. All right, if a person had only the intention of going to his cell to place his cot in - he's not angry, he's not annoyed, he's not made any previous plans, then that person sees blood, takes part in a daring jail break, stabs an overseer, is put back in his cell, breaks out again, attacks another prison officer and is later captured - do you feel that that conduct is consistent with not having had any previous intention at all? A. Absolutely.
- Q. Yes? A. Absolutely.
- Q. You mean all of that can suddenly happen as a result of blacking out? A. You've heard of epileptic fugue?
- Q. This is the first time we're hearing of epilepsy. A. I'm not talking about it. I'm not saying that Rose has it. You're asking me if this is what happened suddenly, out of the blue as though you had never heard it had happened in many cases.
- 20 Q. I will grant you, Doctor, that it might happen in certain types of epilepsy or as the after-effects of epilepsy. A. This is the after-effects of head injury and the after-effects of epilepsy are very similar to the after-effects of head injuries.
- Q. Are you going to tell me then that the after-effects....not head injuries.... A. But I'm talking about the after-effects of shock in a person who has had repeated head injuries. I'm
- 30 not talking about the shock occurring to Tom, Dick or Harry. I said in the statement I made that the smallest trauma could cause the most phenomenal consequences in a brain which is already pre-disposed by its own quality, and I think the background shows amply that this was such a brain.
- Q. You say that Rose had no previous intention; let's assume he had none - that he was on his way to his cell, just waiting to get in and then
- 40 would suddenly black out and do all these things, and you say that it would be consistent with his suffering from amnesia and not being responsible? A. I didn't say that, Mr. Isaacs, I'm not saying that at all. What I'm saying is that it is possible.
- Q. Would you go further with me and say vaguely possible? A. I didn't say vaguely possible, I said it is possible.

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- Q. No, no, I'm asking you. I think it's vaguely possible. A. I said possible and I mean possible.
- Q. Improbable? A. I wouldn't say so. Are you talking about Rose or generally?
- Q. I'm talking about Rose. A. I wouldn't say it's improbable. On the contrary I would say that there is the likelihood that it might at any moment occur.
- Q. I see. Well, let's take the other set of circumstances. Rose was preparing for a jail break. He had been sharpening a knife. He is interested in the time and he had come there and then suddenly blacked out, then carried through with all of this? A. And you think that's not possible? 10
- Q. I'm asking you. A. I tell you it is.
- Q. Is it plausible? A. That's not what I'm talking about now. I'm not talking about plausible; I'm talking about possible. We're not discussing the plausibility of it, we're talking about the possibility of it. 20
- Q. Well, be a little more particular. A. I am being particular indeed.
- Q. You said possible, you see..... A. What more can I say?
- Q. Improbable. A. In view of his background I might even commit myself and say probably that...
- Q. You might even commit yourself but you're not sure, are you? A. I would commit myself that given the opportunity to be bedazzled by the sight of blood, to be irritated by an extra dose of alcohol, be.... 30
- Q. No, wait a minute - leave out alcohol. A. I am giving you the possibilities all the possibilities in which he might probably have a maniacal attack.
- Q. Leave out alcohol. A. I'll leave out anything you like, Mr. Isaacs. If you want me to use the word probable, I will. 40
- Q. No, I want you to tell us whether it's possible or probable? A. What do you think I am, a witch?
- CHIEF JUSTICE: Do you think it's possible or probable? A. I have said it's possible and given

the circumstances, given the kind of individual we have, there is the probability that he might, in fact there was the probability since the whole thing occurred. It should have been borne in mind that it might have occurred.

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Q. All right; after all this, would you have expected him to be in a truculent mood, to be using obscene language and abusing people for a week after that? A. I would definitely expect that.

10 Q. And after he recovered, after he was again behind bars and he regained consciousness, what sort of attitude would you expect to find when he had been told what he had done? What would you expect his attitude to be? A. It might have been just as usual. I would say that I would expect it to be as usual, once he had got up again.

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Q. What is usual? A. I can't tell you what anybody's usual attitude is because I don't know.

20 Q. We're talking about Rose - what Rose's usual attitude is. You said you know more about Rose's usual attitude than his doctor. Will you tell us what his usual attitude is? A. If I should judge from what I know about Rose, he was co-operative, he was co-herent and lucid. He told his story in clear words.

Q. And if he were not co-operative, not co-herent and not lucid, just the opposite, would you say that he knew whathappened, what had gone on?
30 A. No, I didn't say that. I'm not saying that at all.

Q. I'm putting it to you? A. Well, I'm putting it back to you that I wouldn't. I didn't say that and I'm not saying it.

Q. You say that you found him co-operative, lucid and co-herent - that is the way you would expect him? A. I would expect it since that was the way I found him. I assumed that that was his normal behaviour when I saw him and I questioned
40 the people around him and found that that was his normal behaviour except when he had these moments in which he became violent, irrational, intractable and uncontrollable.

Q. But after he recovered, after he came back to normal, you would expect him to be co-operative, coherent and lucid? A. Yes.

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- Q. Now, suppose that he had not been co-operative, coherent and lucid, but just the opposite? A. I would say that his symptoms were still continuing.
- Q. Symptoms of what? A. Whatever he was showing at that moment. You know what I'm talking about.
- Q. He was suffering from amnesia? A. No, amnesia is something which he talks about afterwards; that's nothing to do with what he was suffering from and what he was showing. The symptoms that he was showing were truculence and abusive language and obscenities and shouting and hollering and carrying on. 10
- Q. You say that you'd expect one thing but if you found the other? A. But it doesn't shut off just like that, you know. It tails off.
- Q. After he returned to normal, you expect him to be in a certain state? A. After he became normal. And I said that if he was not in the state in which we habitually found him then his condition had not finally ceased. It was tailing off, as they say. 20
- Q. Would you expect that after he had gained consciousness and he had been told what he had done, would you have expected him to be a little horrified at what he had done? A. Not necessarily.
- Q. But if he were in his normal state? A. Isn't that what we've been saying? Isn't that what I've been saying all the afternoon?
- Q. No, no, you say that when he is in his normal state, he was as good as any of us. A. I did not say he was as good as any of us; I said that he was co-operative, coherent and lucid. You can be all of those things and not be as good as any of us. 30
- Q. As far as one's mental responsibility is concerned? A. Even as far as your mental responsibility is concerned?
- Q. Would you say that he was mentally responsible when he is normal? A. When is he normal? As far as I am concerned he has been abnormal for many years. 40
- Q. When he is as normal as he can be... A. I would still say...
- Q. He was not mentally responsible? A. Not entirely; I can't say clearer than that.

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Q. Would you say he's on the borderline of insanity?
A. If you wish.

Q. No, no, not if I wish, Doctor, Would you say that even when he is as normal as he can be, he's a borderline case, on the borderline of insanity?
A. What is insanity?

Q. Doctor, you must not ask me that. A. Why not? You've been asking me questions all afternoon.

CHIEF JUSTICE: Go on and answer him, Doctor.

10 A. I'm sorry, sir, but I've told you all I can about it. I've told you quite clearly.

CHIEF JUSTICE: The point we're really after here, Doctor, is that - having seen this man, have you come to the conclusion that when he is as normal as you would expect him to be, he is even then what we might call a border-line case of intellectual capacity? A. The question coming from you makes it sound so much clearer but that's exactly what I mean.

20 SOLICITOR GENERAL: I'm afraid I seem to make you see red. A. Well, if you want to make me see red I don't think it's a very fair thing to do.

CHIEF JUSTICE: When he's in a normal state he's a borderline case as far as I know.

Q. And you think that that is consistent with your saying at the beginning of my cross-examination that more often than not he is a normal person?
A. It's entirely consistent.

30 Q. You mean that he's both normal, he's a borderline case, but yet more often than not he is normal?
A. I said to the casual observer, if you remember.

Q. I'm putting it to you, Doctor, that the man is quite sane, nowhere near the borderline. A. Well, Mr. Solicitor General I'm sorry to disagree with you.

RE-EXAMINATION (By Mrs. Cozzi)

Re-Examination.

40 Q. Doctor, you said that the symptoms of epilepsy and the symptoms of brain injury are very similar?
A. Well, it wasn't exactly like that that I put it, Mrs. Cozzi. Certain symptoms of brain injury, in fact, epilepsy is a symptom of brain injury; let's put it like that.

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Q. Doctor, is it correct that one of the common symptoms of both epilepsy and brain injury is what is known as increased vaso-motor activity?
A. In fact they say some forms of, shall we say, idiopathic epilepsy are due to that.

CHIEF JUSTICE: It sounds frightful. A. I agree, sir, it sounds horrible, but it is called idiopathic because they can find no cause for it in general.

CHIEF JUSTICE: What is it? A. It's epilepsy without previous injury. 10

CHIEF JUSTICE: I see, yes.

Q. Now doctor, would you enlarge on this increased vaso-motor activity for us? because I think that may be what the Solicitor General at some point was trying to get at? increased excitement and what might cause amnesia. Would increased vaso-motor activity be followed generally or usually or sometimes by amnesia? A. No, not necessarily.

Q. You also spoke about the distinction between paranoia and paranoid developments and you said that paranoid developments are one of the symptoms of brain injury. A. No, but they can be. Paranoid developments can result. 20

Q. Would you agree, doctor, with the definition that has been given of paranoia? that it is an island of insanity or malfunctioning in an otherwise good brain where there is good brain functioning?
A. It's a very poetic definition. I take it it's original. But I think I would agree with that. It does cover the facts. 30

Q. Now, doctor, would you tell us again what symptoms do follow on brain injury? A. Well, there's a whole range of symptoms. You might be paralysed on one side, or you might have loss of speech, or you might go blind, or you might go deaf. And you might have mental symptoms - impaired mental functioning.

Q. Could one of the symptoms be some sort of epileptic type of development? A. Indeed, yes. 40

Q. Could one of the symptoms be one of paranoid development? A. Yes, indeed. This is what we've been talking about this afternoon. I said that sometimes brain injury of the type we have in mind produces a certain type of personality, which can at any moment show these paranoid developments.

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Q. If you have a man like Rose who lives in a certain environment, has what may or may not be a delusion, a belief in a set of circumstances which may have some basis in fact - we're not sure whether it has a basis in fact or not - in the type of brain such as you believe Rose's to be, do you think that delusion might be not as to the existence of a fact but as to his interpretation of the facts? A. Yes, that's right.

10 Q. Now, if he were lifted out of that environment and put in another environment, would you expect him to continue in the belief that the same circumstances were around him? A. Well, he might but I think the chances are that he wouldn't. He'd probably fabricate, if I may use the word, a new set of delusions.

Q. Could you enlarge on that? A. He might or he might not. It's not the correct word to use - "fabricate"; it's not the word I should use.

20 CHIEF JUSTICE: Develop? A. Thank you, sir, a much better word. He may develop another set of delusions, or then again he might not, or he might persist with the same.

Q. He might have a not highly systematized set of delusions? Is that correct? A. That is correct.

Q. He might have intermittent hallucinations? A. He might indeed.

30 Q. Without any systematized delusions? A. Precisely. Very much so.

BY COURT

Q. We have been bordering on this epilepsy question; it is a fact, is it not, that quite often either coming out of a fit or indeed just before going into a fit a person might have homicidal tendencies? A. Indeed so, sir.

40 Q. That being so, is it possible that with the brain injury such as you say the accused had, that homicidal tendencies might be there in amnesia which he is suffering from? A. Indeed, yes.

Q. That is, it could have rather the same effect as epilepsy? A. Yes.

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Q. Well, you see in this particular case it couldn't have been at the coming out of it because if you believe his story at all he came out of it on the following Tuesday or some number of days later. A. Well the post traumatic - the term persists for a very long time, sir.

Q. Yes, but what we know happened was almost immediately, doctor. That was why I asked the question. A. Yes, yes, I agree.

Q. I could understand it if we said - just coming out of an epileptic fit. A. Just after, I misunderstood your question, I beg your pardon, sir. 10

Q. Going down into an epileptic fit the man might have homicidal tendencies; in his fit he can do nothing; well now, coming out of the fit there are cases which I think show that he might have those tendencies again. A. Yes, indeed. I had misunderstood you.

Q. Now, you've got this man, such as Rose, with some form of brain injury which I think we might say, or rather you have said that that injury, coupled with the immediate circumstances with which he was faced, very probably caused amnesia. A. Yes indeed, sir. 20

Q. Now, we know for a fact - I don't think there's any doubt about this - that Rose did do acts of extreme violence within a very short time after he says he suffered this amnesia. A. Yes, sir.

Q. Then the difference I'm asking between epilepsy and this form of amnesia which you think it probable the accused suffered is that he would suffer his homicidal tendencies while in his amnesia - not coming out or going in to it - while under his amnesia - that's the point I'm making? 30
A. It's during the period covered by his amnesia.

Q. Well, that would be a very far drift, wouldn't it, between epilepsy and amnesia? A. Indeed, yes. Well I don't think there was a suggestion that they were similar - we have an epileptic....

Q. Ah, but that's the point, you see, because I have a note a little time ago that the symptoms were rather similar, you see? A. Yes.... 40

Q. Perhaps I didn't understand. A. No, no. It was a mis-statement, shall we say.

Q. Yes. So that you're prepared to say, in point of

fact, that in the particular circumstances of this case you think it probable that this man might suffer homicidal tendencies of which he's not aware at all during his amnesia - if he had one? A. Yes, sir.

Q. That's what I wanted, thank you, doctor. I have that on the record. I haven't written it down.

Mrs. Cozzi closes the case for Rose.

10 Mr. Bethel: The accused Ingraham wishes to make a statement.

No. 30

STATEMENT OF INGRAHAM

20 On February 17th this year about 3.30 p.m. I was locked in my cell, which was located on the second floor, G block. Round about the same time I was sleep. I had then been awoken by noise on the outside of the corridor. I then took the blanket off my head, got up and reaching my cell door from the inside I saw Asst. Turnkey Gay on the floor with his back against the south-east corridor. I then opened my cell and came outside into the corridor. I then saw the accused Rose standing opposite his cell in the corridor. Also at the same time I saw another prisoner running from the south-east corner towards the west inside the corridor. The same prisoner - I don't know his name but he has been a witness in this case. I do here say that I did not hit Mr. Gay nor did I took any part in the actual killing. Neither did I knew the accused Rose was carrying a knife or any such weapons. At the 30 time my one motive through the entire case is shown as escape. I the accused now rest.

In the Supreme Court of the Bahama Islands

Defence Evidence

No. 29

Dr. Mary Augusta Josephine Etheridge.

Re-Examination - continued.

No. 30

Statement of Ingraham.

12th May 1960.

In the Supreme
Court of the
Bahama Islands

No. 31

EVIDENCE OF DR. HENRY PODLEWSKI (RECALLED)

Prosecution
Evidence

DR. PODLEWSKI - sworn (recalled)

No. 31

Dr. Henry
Podlewski
(recalled).

Examination.

12th May 1960.

Q. You'd better tell us your name again? A. Henry Podlewski.

Q. I think we have it on record that you are in charge of the Mental Hospital at Sandilands?
A. That is right.

Q. You are licensed to practice as a psychiatrist in the Bahamas? A. Yes. 10

Q. You've also had 5 years in approved mental hospitals in England? A. Yes.

Q. You've been in your present job here for 6½ years? A. Yes.

Q. Now before we go on to your knowledge of this particular case, I'd like one or two definitions from you, doctor, first of all, does the word "mania" have a particular meaning in psychology or in psychiatry? A. The word "mania" in psychiatry has a very definite meaning. It is a definite clinical entity, that is to say is a form of a very definite mental illness with very definite signs and symptoms. 20

Q. What signs and symptoms would you expect to find?
A. This illness is characterised by pressure of activity, by a state of elation and euphoria.

Q. When you say euphoria, what do you mean? A. A sense of undue well-being which is not warranted by circumstances. It is characterised by what we know as flight of ideas, jumping from one subject to another, very quickly, and there are usually delusions of a grandiose type. In short mania in psychiatry is an illness which is the very opposite of depression. 30

Q. Now, the expression was used yesterday "punch drunkenness" or "punch drunk syndrome", would you like to tell us what is meant by that? A. Yes, punch drunkenness syndrome is a very definite symptom consisting of a number of signs which are progressive impairment of the intellect, and memory, tremor, that is to say, shakiness of - usually of the upper limbs. Very unsteady gait. It is a chronic condition, and a continuous con- 40

dition, in which there are no lucid periods. It is a continuous chronic condition - usually a progressive one.

Q. Could you say whether or not with a boxer he might be punch drunk in the ring and then when he comes out he's alright? A. No, sir.

Q. Would you tell us whether or not once a person has suffered injury to the brain that causes punch drunkenness that he recovers from it?

10 A. He wouldn't recover from it and, in fact, boxers are examined for their fitness before they can box. No such a man could possibly be passed as fit to box if he was suffering from punch drunkenness.

Q. You say it gets progressively worse? A. Yes.

Q. Is that only your opinion doctor, or is it the opinion of eminent psychiatrists? A. That is the opinion of all the psychiatrists that I know and the description of it given in all the books that I know.

20

Q. Would you refer to "Diseases of the Nervous System" 4th Edition, by W. Russell Brain, page 345? A. "Punch-drunkenness is a chronic traumatic encephalopathy which may occur in professional boxers. It leads to deterioration of the personality, impairment of memory, dysarthria, tremor, and ataxia."

Q. Would you tell us what those last three words mean? A. "Dysarthria" means slowing of speech. "Tremor" means shakiness, and "ataxia" means unsteady gait.

30

Q. Would you also look at "Clinical Psychiatry" by Mayer-Gross, Slater and Roth, at p.403. A. "The syndrome of punch-drunkenness seen in boxers, is a special form of chronic encephalopathy due to repeated small injuries to the brain which are cumulative in their effects. It begins with unsteadiness of the lower limbs, leading soon to a reeling, drunken gait, followed by slurring of speech and deterioration of memory and intelligence. On examination the patient is dull, retarded and fatuous; the upper limbs show a characteristic coarse tremor."

40

Q. Now, does the word "chronic" in that definition, mean anything, doctor? A. Yes, it means that it is a continuous condition which lasts over a very

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Dr. Henry
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Examination.

12th May 1960

- continued.

long period of time, and of which there is no hope of recovery.

- Q. Now, would you give us your opinion as a psychiatrist, about psychiatrists becoming emotionally involved with their patients? A. In my opinion, it is a most undesirable state to become emotionally involved in the patient because one then becomes biased, and one's judgment is not clear. In fact all the doctors that I know never treat their close relatives for this very fact, because there is a risk of being emotionally involved in a case and not having a clear judgment in the case. 10
- Q. Now, is this just your opinion or the opinion of eminent psychiatrists as well? A. As far as I know that is the opinion of eminent psychiatrists.
- Q. Now, let us get to Rose, I think you told us that when you first examined him, it was 1957? A. Yes.
- Q. And you made an examination and you made a report on him? A. Yes. 20
- Q. And I think at that time you said that there was a possibility of his suffering from paranoia from the story that he told you. A. Yes.
- Q. Now, I think from 1957 until May of this year you have had him under your care at the Prison? A. Yes, with the exception of a brief period when I was away and when other doctors looked after him but for most of the time.
- Q. Now, in those 3 years could you venture how often, or how many times, you saw him? A. I would say between 30 and 40 occasions. 30
- Q. During that time would you tell us whether he displayed any symptoms at all of mental illness? and if so what symptoms? A. During that time he did not display any signs of any serious mental illness.
- Q. What about the paranoia that you suspected? A. He gave no additional indication of there being any paranoia element, and also he did not refer to any of his previous delusions which were in question at the time. 40
- Q. Now, up to the 17th of February of this year, do you remember his telling you about any hallucinations or delusion that he had in Prison? A. Never.

- Q. What was your relationship with him, doctor?
 A. I think it was a proper doctor-patient relationship. I never found him to be antagonistic towards me. In fact he was always pleasant and my impression was that I had his confidence.
- Q. Were you antagonistic towards him? A. Never.
- Q. About this bed problem, did you play any part in that? A. Yes. I did my best to try and get him a comfortable bed and I made repeated requests to this effect, of which he was aware.
- 10 Q. He was aware that you were trying to get him a bed? A. Yes.
- Q. Now there was much talk about numerous headaches, doctor, can you recall how many times you remember him complaining of headaches? during the period 1957 to the 17th February of this year?
 A. It was on about 2 or 3 occasions he complained to me of headaches.
- 20 Q. Did you investigate the circumstances in which he might have - in which these headaches might have been caused? Do you have any idea what might have been causing the headaches? A. Well, there was a time when he was working on the rock-crushing machine, a machine which causes vibration and I rather thought that that would probably cause him to have headaches.
- Q. Did you do anything about that? A. Yes, I asked for him to be relieved from this type of work, and to be given a different form of occupation.
- 30 Q. After that was done do you know whether or not he still complained of the headaches? A. Not to my knowledge, no.
- Q. On how many occasions did you recommend that he not be detailed to operate this rock-crushing machine? A. I think it was on 2 occasions.
- Q. Your instructions weren't carried out? A. Yes, I think for a time they were.
- Q. Just before the 17th of February - you may want to refer to your notes - can you tell us when you saw him, the last time you saw him just before the 17th of February of this year? A. Last time I saw him was on the 13th of February of this year.
- 40 Q. Can you remember how you found him on the 13th?

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Dr. Henry
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 (recalled).

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12th May 1960
 - continued.

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Dr. Henry
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(recalled).

Examination.

12th May 1960
- continued.

- A. I found him exactly the same as he usually was and this time his complaint was the usual complaint about pain in the back. This was his usual complaint.
- Q. Do you know - did he say what he thought was causing the pain? in his back? A. He didn't say what he thought, but I had an idea what it was.
- Q. What was it? In your opinion? A. Rose is a heavy man, he weighs 220 lbs. The type of bed used in Prison is a canvas cot, his cot was sagging in the middle, now that I come to think of it, he did tell us that his cot was sagging in the middle. And my assumption was that the pain was due to the sagging of the cot, it was an uncomfortable cot, and I made the request for him to have either a proper cot or a bedstead which would not cause him pain. 10
- Q. Now, on the 13th of February or any time during the period from 1957 to that time was it your opinion that he was suffering from punch drunkenness? A. No, sir. 20
- Q. Did he display any of the symptoms of punch drunkenness? A. He didn't display any symptoms that would suggest to me that he was suffering from punch drunkenness syndrome.
- Q. On the 13th of February did he display any symptoms of mental illness? A. I did not find any indication of any serious mental illness at that time.
- Q. After the 13th of February when was the next time you saw him? A. Saw him on the 18th February. 30
- Q. That was the day after King was stabbed? A. Yes.
- Q. How did you find him on that day? A. Rose was excited, he was truculent, when I asked him what happened the day before he told me he's not going to talk about it. He used foul language, and he did say something to the effect that if he had his way more blood would flow.
- Q. You saw him again on the 19th? A. I did.
- Q. Would you tell us how you found him then? A. He was quite different. He was quiet, subdued, and my impression was that he realised the consequences of whatever he did previously. 40
- Q. Do you know roughly how many times you saw him up to, say, the 6th of May, that is after the 19th?

A. I saw him on the 18th, 19th, between 19th and 29th I saw him daily everyday, that would be 12 occasions. About 17 occasions in all.

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(recalled).

Examination

12th May 1960
- continued.

Q. Now up until the 6th of May, well up until now, would you say what impression did you get as far as amnesia with regard to a part of the events of the 17th? A. This time he never told me that he didn't remember. He wouldn't discuss it with me and he gave me the impression that he wouldn't discuss it because he was involved in this case and I was a Prison official. Prison doctor. I did not ask him any leading questions about it and I didn't investigate the facts.

10

Q. You weren't acting as an investigator, were you?
A. No.

Q. Can you tell us whether his conduct between the 17th and the last time you saw him was consistent with him remembering what had happened or not remembering what had happened? A. I would say that his conduct was to my mind consistent with remembering what had happened.

20

Q. Now, when was the first time to your knowledge that he made a statement that he didn't know anything that had happened on the 17th February?
A. 6th May.

Q. If you prefer not you needn't tell us, doctor, but would you give your opinion whether a person who did not remember what had happened but who was later told that he had done a very horrible thing, whether his conduct was consistent with such a person? A. Could I hear the question again?

30

Q. Was his conduct consistent with a person who could not remember what had happened but was told he had committed a horrible crime? Would you expect such a person to act as he did. A. It could be. I could not be definite.

Q. Is it your opinion that this man is sane or insane? That is was he sane or insane on the 17th of February? A. My opinion is that there is nothing in what I have seen of him to indicate that he was suffering from any serious mental illness at this time.

40

Q. Could you say whether or not he was on the borderline of insanity? A. I could definitely say he was not on the borderline.

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Dr. Henry
Podlewski
(recalled).

Examination.

12th May 1960
- continued.

Cross-
Examination.

- Q. I notice you keep saying, doctor, "any serious mental illness" would you like to explain that to us? A. Well, in the legal sense when I say "serious mental illness" I mean the type of mental illness which would substantially diminish his responsibility for his actions.
- Q. I see. A doctor might think that there might be something wrong with him? is that what you mean? A. It is a possibility.

CROSS EXAMINATION (by Mrs. Cozzi)

10

- Q. Doctor you said that between the 17th February and the last time that you saw him on the 6th May his conduct to your mind was consistent with his remembering what he had done? A. I think I did say so, yes.

- Q. Can you suggest any reason for the difference in his attitude towards you on the 18th and 19th February? A. No answer.

- Q. You said that on the 18th he was truculent and would not give an account of the incident of the previous day then on the 19th he was subdued and co-operative - I don't know if you used the word co-operative. Can you suggest reasons for his difference. A. As I said I think he came to a full appreciation of the consequences of what he had done.

20

- Q. I understand by that answer that you are of the opinion that he always had an appreciation of what he had done but he did not always have an appreciation of the consequences of those things? A. Well having an appreciation of what he did and having an appreciation of the consequences of what he did are different things.

30

- Q. Yes, I know that they are different but I want you to say whether that is your opinion. A. Yes.

- Q. I think he was examined for a short period while you were away at some time by someone else. A. While I was away two other doctors were visiting the prison.

40

- Q. I see an entry on the 9th May 1959 "multitude of complaints" which appears to be in some writing other than yours, I take it, would you say it is possible that "multitude of complaints" might have consisted of complaints of headaches?

A. I think you will have to ask that question of the person who made the notes.

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Q. Doctor, will you please look at the entries on the dates 31/10/57, 7/11/57 and 29/12/58. I am picking out these because I would like to refer to them. I don't know whether they are your entries or not? A. The entry made on 31/10/57 was not made by myself it was made by Dr. Morgan.

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10 Q. I am not sure what that entry means Doctor, can you tell us what it means. A. I can read it to you: C.O. - which means complained of - diet no change. On 7/11/57 is the same made by the same doctor.

Dr. Henry
Podlewski
(recalled).

Q. On the 29/12/58 is that in your writing? A. Yes it is.

Cross-
Examination -
continued.

Q. Would you read that out please Doctor.
A. "Insomnia - gets frightened prescribing Tuinal 3 grains every night for 14 days."

20 Q. Do you recall that particular visit Doctor?
A. Not vividly, no I had seen so many people during that period.

Q. During your visits to the prison you were not visiting in your capacity as head of Sandilands Hospital? A. No, I was visiting in the capacity of prison medical officer.

Q. You would not necessarily be particularly concerned with multitude of complaints, Doctor?
A. I would be very concerned with any complaints that were made to me.

30 Q. You say you don't recall vividly the visit on which Rose reported that he could not sleep and that he was getting frightened? A. No.

40 Q. I just want to be sure that this is what you told us the other day Doctor, I think you gave us to understand that with the type of belief that in 1957 you believe that Rose at that time believed - if he were lifted out of that environment in which that belief were possible or plausible and placed into some different environment in which it would not be plausible, then that belief would not necessarily continue? A. Yes. It would lose its intensity because there would be no association with the original problem.

Q. Would he necessarily build up or fabricate other delusions? A. I don't understand.

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Podlewski
(recalled).

Cross-
Examination -
continued.

- Q. I just wanted to be sure whether you would say that build up and fabricate are the same things, I might ask it in that way. Would you say Doctor, that in speaking of delusions fabricate and build up are the same thing? A. Well, I don't know what you mean by the word fabricate. But to my mind I would say build up and fabricate are two different things. Fabricate connotes to me malingering.
- Q. Fabricate would denote to you malingering. It would not denote systematization? A. No, it would not connote to me systematization. 10
- Q. If I may go on to what I was going to ask you if this belief as you say lost its intensity would the person who had been suffering from this belief be likely to talk about it? A. If it had lost its intensity or it is absent I would not expect him to talk about it, no. If the delusion were absent I would not expect him to talk about it because there would be nothing to talk about but if it were not intense he could or he could not talk about it. 20
- Q. Now would you also agree, Doctor, that supposing such a belief that you apparently thought that he held in 1957 - supposing such a belief had some partial basis in fact, could he be suffering from delusion not as to the facts but as to his interpretation of the facts? A. Delusion - if you happen to know what you are talking about - is a false belief which cannot be corrected by reasoning. In other words somebody may say something which might be quite absurd and you may point out the absurdity of this, he would still entertain it. That is a delusion. 30
- Q. Would you say, doctor, that it would be a simple matter - Delusions do they follow a sort of clinical pattern or not? A. What do you mean by clinical pattern?
- Q. What I'm trying to get at is, is it an easy matter to make a psychiatrist think that a person holds a delusion when he does not or vice versa to induce a psychiatrist to think that he does not hold a delusion when he does? A. Well, it depends on the nature of the delusion. If somebody would tell me that he's Napoleon, obviously I would have no doubt that it is a delusion. But on the other hand if somebody expressed some belief which may not be true then I would have some doubt as to whether it is a delusion or not. 40

Q. So, if there could be some factual basis you would suspect that it might not be a delusion. If there could be some factual basis for the belief, you would suspect that it might not be a delusion? A. I wouldn't be in a position to say definitely whether it was a delusion or not.

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(recalled).

Cross-
Examination -
continued.

10 Q. On the other hand, if Rose came and told you now that he is Napoleon, you would think that he is having a delusion. Is that correct? A. If he told me that he was Napoleon now, I would have to take into account his present predicament, because there is always a possibility if there is anything to gain from something to present a picture which would help him.

20 Q. And that would be so with regard to anything that you might be observing clinically, is that correct? You would have to take into account his whole history as far as you knew it? A. I would have the whole history. For instance, my report was instrumental in some degree in having his death sentence commuted and therefore I would say that the relationship between us would be such that he would have confidence in me and he would tell me what is wrong with him; he wouldn't hide any signs and symptoms because after all I was the one who helped him and he had no reason to believe that I wouldn't help him again.

30 Q. Is it not correct, doctor, that persons suffering from one form or another of mental illness, any sort of mental abnormality, do in fact lose confidence in or ignore the help of the person who has helped them in the past - the persons closest to them or might be closest to them? A. The question is so vague that I could only be equally vague in answering it.

40 Q.(Witness is handed the two X-ray pictures of head of accused Rose).

Doctor, would you kindly look at those and tell us what, if any, changes from normal you would note on those X-rays? A. I am a psychiatrist and not a radiologist, and I am not prepared to give you an opinion on those X-ray photos.

Re-Examination

Re-Examination.

Q. Talking about delusions and hallucinations, doctor, did he ever tell you of having delusions while he was in prison? A. No, sir.

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Dr. Henry
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(recalled).

Re-Examination
- continued.

Q. Did he ever tell you of having hallucinations when he was in prison? Maybe you should tell us the difference first of all. Define delusion and hallucination. A. Delusion, as I have said, is a false belief while hallucination is a false sense of perception, that is to say, you either see something that is not there or hear something of which there is no knowledge or taste something or smell something which is not there. These are aberrations of the senses.

10

Q. Did he tell you of any hallucinations that he had in prison? A. He did tell me on the 19th that he saw a white woman in his cell bending over him.

Q. That was what date? 19th of February, 1960.

Q. Before that he had not told you of any hallucinations? A. No.

Q. Can you tell us, doctor, in 1957, I think you rendered a report to the Chief Medical Officer on Rose. Did you recommend his reprieve or not?

A. I did not recommend his reprieve, I only stated that he may have been suffering from paranoia or may have not. The diagnosis was based on this one belief which I had no means of ascertaining whether it was true or false.

20

Q. How did your report end? A. I stated that if indeed he was suffering from paranoia it was my opinion that at the time of the commission of the crime he knew the nature and quality of the act.

Q. Is that your opinion about the events of the 17th February or not? A. I have nothing to indicate that he was suffering from paranoia on the 19th of February, 1960.

30

Q. Or any other mental disease that might have impaired his mental responsibility? A. No.

(Court adjourned to visit scene - Fox Hill
Prison).

No. 32

SUMMING UP

Saturday, 14th May, 1960.

In the Supreme
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No. 32

Summing Up.

14th May 1960.

CHIEF JUSTICE SUMS UP CASE TO JURY:

10 Mr. Foreman and Gentlemen: You have been listening extremely patiently and with great attention to this extremely serious case in which both of these men are charged with murder. I must now, it is my duty to, sum up to you as clearly and as carefully as I can not only the law but also the facts as I understand them. They have admittedly been reviewed to you by both learned counsel for the Defence and also the learned Solicitor General; and it must seem to you to be a little unnecessary for me again to go over them to you but, the point is, that so far as you and I are concerned, you are the judges of fact; I am here to help you remember those facts and to instruct you with regard to the law. I am here to try and put to you as coldly and dispassionately as I possibly can the facts of the case for the defence in each case, and the case for the prosecution. As you know, there is no appeal from a criminal case in this Colony and it is again for that reason that it behooves me - and I'm very conscious of the responsibility - it behooves me to endeavour not to overlook anything which can possibly be said or should be said to you - either in the law or on behalf of either of the accused. That is my responsibility. Your responsibility is to consider all the facts and come to your conclusion, on what you believe to be the right and proper conclusion, on those facts.

20

30

40 Now, gentlemen, both the accused are charged, as you know, with murder. Murder is intentionally causing the death of another person by any unlawful harm. There are, therefore, two elements which must be - and I emphasize - must be shown to your complete satisfaction before you find anybody guilty of murder. The first one is - that that was intentionally caused. The second one is - that it was caused by unlawful harm. I'll dispose of the second matter first because, in a case of this description, it is quite simple. Unlawful harm means any other harm than that which may be justified. Justifiable harm is where, for example, you hit somebody or even kill somebody in self-defence or in the defence of

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- continued.

somebody else or to stop yourself from being severely damaged - and all that is laid down in our law. In this case, gentlemen, there is no question of justifiable harm - none whatsoever - so that you have no need to worry, no need to think about whether it was unlawful harm or not. It was unlawful harm. No question of justifiable harm comes into the picture at all. So therefore, gentlemen you are left with intention - and this is extremely important in this particular case. Intention we have defined in our Code here and I will read it to you -

10

"If a person does an act of such a kind or in such a manner as that, if he used reasonable caution and observation, it would appear to him that the act would probably cause or contribute to cause an event, or that there would be great risk of the act causing or contributing to cause an event, he shall be presumed to have intended to cause that event."

20

That, gentlemen, is our definition here of intent. My usual illustration, gentlemen, is of the man with the hammer and the nail. He puts the nail on a piece of wood, he puts the hammer in his right hand and he hits the nail on the head with the hammer. What is his intent? What are the probable and natural causes of hitting that nail with the hammer? Driving the nail into the wood - it is perfectly obvious that that is his intent. And therefore, we can say that if he does that he can be presumed to have intended to cause that event. In the same way a man has a gun, he points his gun at somebody and pulls the trigger and the man is killed. What would you say his intention was? Couldn't it be the natural and probable causes of pointing that gun at the man he knew that he was liable to kill him and therefore you say he intended to do it. Now here, gentlemen, we have got - and we will come to it later in detail in the evidence - here we have got someone killed; we know he was killed with a knife. There is a great preponderance of evidence that the accused, Rose, did it. Do you think that he intended to cause that blow with the knife? Do you think that he caused that death? That is the intention which you have got to find when you are dealing with the case of Rose who did, and is alleged to have done - and I think the evidence goes to prove that he did do - the actual stabbing.

30

40

There is the intention. Now, that covers the question of Rose. Now with regard to Ingraham the case is somewhat different.

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- continued.

10 He is what we call a principal in the second degree. Here we say, the prosecution says, that he abetted and aided and encouraged the commission of that offence by Rose. If a person does that and who is shown to have done that he is called a principal in the second degree and he is guilty of whatever the principal in the first degree did.
What the law says on that is :-

20 "Whoever directly or indirectly, instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourages or promotes, whether by his act or presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of an offence by any other person.....is guilty of abetting that offence, and of abetting the other person in respect of that offence."

30 That, gentlemen, is what the prosecution allege is Ingraham's offence. We have got to see here whether that can be said to have been proved to your satisfaction. Now, supposing, as a simple example. Jones encourages Smith to commit a murder. Jones is obviously guilty of abetting Smith in committing that murder; he's encouraging him to do it. That, in point of view in this case, is again what the prosecution say Ingraham has done. But there is another point which you have to take into consideration with regard to this: Do you think that unlawful violence was intended by these two men? Do you think that they had common design between them to use violence if necessary? Do you think that, in their common design - or do you think first of all that there was a common design to escape from the prison? Do you think there was a common design that in this escape they were going to escape despite everything? Do you think that they had that in mind when they started or do you think, again, that they had common design to escape and that, during the course of that common design, they were both implicated in using force to effect their design? By force I mean unlimited force. If you do, it seems to me that if you think that there was that common design, then you can consider the ques-

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tion against Ingraham properly and clearly. If you don't think - if you don't find on that evidence - that there was such an idea between them, such a joint venture, a terrible venture gentlemen, then it may be you will think that Ingraham was not concerned. If you will remember, it was submitted to me - and submitted very ably - that there was no case for Ingraham to answer. You will remember listening to that, gentlemen. And I ruled - and I still am of the opinion, otherwise I wouldn't be talking to you now about Ingraham's case - that there is evidence upon which you may come to a conclusion, if you believe it, that these men were not only in a common design to escape but in a common design to overcome any form of resistance and to take any form of violence which they thought fit to take in order to accomplish what they had set out to do. And there is one thing which has occurred to me, gentlemen, which I think that I should put to you and that is this: Do you think that it was a sensible proposition by anybody - not only by these two, by anybody - that you can design an escape from a prison without expecting to have opposition to that design? And do you think that anybody having that design - if there is one - had not taken that into consideration when they made that design? Because I think that it must be quite inconceivable that if two people planned to escape from a prison, they don't plan also with regard to any trouble that they may come to, any opposition that they may find, in doing what they set out to do. And what was the idea, what was the scheme to overcome that opposition? It might quite easily be, gentlemen, - and I'm not saying that it isn't - it might quite easily be - that they both thought, "well, if we're going to try and do this," if, indeed you think that that was their idea, "if we're going to try to do this but we're not going to resort to any extreme violence; we're merely going to try and do it and if somebody approaches us why we'll do the best we can but nothing violent." That's possible. That is exactly what has been put to you on behalf of the defence. Do you think that? It has been laid down that it is not sufficient, as I have tried to tell you, that the common purpose be merely unlawful - this is where death results from the common purpose - that it must be either to commit a felony or if it is to commit a misdemeanour, there must be evidence to show that the parties engaged intended to carry it out at all hazards. If you think that

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Rose caused the death of King in carrying out the common endeavour of these two men, there is no answer as far as Ingraham is concerned. Because it was a common endeavour between them. Now, again, gentlemen, I have been asked to warn you, and I shall do so - although with respect I don't quite see how it fits in with the present case, I have been asked to warn you - with regard to various conversations and statements which have been made; and I'm very happy to do so. In regard to accomplices, where you have accomplices, two accused charged together - the one may be said to be the accomplice of the other - and where one of them gives evidence against the other then you must be very, very careful and it is most unwise to convict on that evidence unless there is some corroboration of what that other accomplice has said. Well now here, gentlemen, we have got only one of the accused who has given evidence, and he has not suggested - his co-accused - in anything at all so that with respect again, I don't think that applies to this case. It is said again that with regard to statements which have been made by the accused together, that it is dangerous and you must not accept those statements unless the other person has accepted them as part of the whole case. Alright. But, at the same time gentlemen, there's nothing to stop you accepting those statements as implicating the man who says them. And that is what the prosecution wish us to do today. They are not particularly bothered, I don't think, about the implicating one with the other. What they are saying is, these conversations, these statements, show great implication in the persons making the remarks themselves - not the other fellow, but himself. And I can see no harm in your looking at it from that point of view at all. What a man says himself about himself is surely evidence that you can take. It is only when it implicates somebody else that you have got to be extremely careful about it, and to insist and think that you should have corroboration of all that which is said against the other man. It is very dangerous then; but not if the man implicates himself and you are satisfied that he was what we know as compos mentis - that's of sound mind - when he said it. So that I think you are perfectly entitled to look at what was said and what has been given in evidence - if you are believing it at all that it was said - you are perfectly entitled to look to what was said when you are thinking about each

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particular man's case and relating that to that particular case; not to the other man. Now, I have dealt, to a certain extent, with what I believe to be Ingraham's defence and that is - he says, "I didn't do this; I wasn't implicated in this - I didn't mean to have anything to do with any killing; all I meant to do was to try and escape. The other man who did the killing had nothing to do with me. All that I can be guilty of is attempting to escape or indeed, perhaps, slapping an officer of the prison." As I said, you have to be satisfied as to the common design. Now, let us look briefly - because this is again most important let us look briefly - at Rose's case. He is pleading and, as you have heard, very ably argued he is pleading what is now called diminished responsibility. In diminished responsibility we have now enacted that --

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"Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of 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."

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That, gentlemen, is a matter which you must decide yourselves. I will go briefly through the medical evidence which has been produced before you. That defence, gentlemen, is for the defence to show, not for the prosecution. It is for the defence to show it. What we call the onus of that defence is upon the accused; but I must point out to you this difference. With the prosecution they have to prove their case to you strictly, completely, to your satisfaction; but where the defence have to prove such a thing as this diminished responsibility it may be discharged by proving what would be good enough to support a verdict in a civil action, that is to say, the preponderance of probability may constitute sufficient grounds. Do you think - you ask yourselves when you are considering this intention - do you think there is a preponderance of probability that this man suffered from this disease or injury as substantially impaired his mental responsibility. It is not beyond doubt, beyond all doubt, to your satisfaction, if he establishes this preponderance

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of probability. If you're satisfied about that, then you may think that he is, he was, suffering from such an abnormality of mind as substantially impaired his mental responsibility. Now, while we're thinking of that, there are two ways in which one can deal with this particular section. I can leave it to you with a copy of the section, for you to puzzle out in your own minds what is meant by those long words in the section. But, in England, a learned judge summed up to his jury in that case and it was questioned and finally decided that it was a perfectly good summing up where he endeavoured to show you what he thought was meant by that section. He said:-

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"There are some cases you may think where a man has nearly got to that condition but not quite; where he is wandering on the borderline between being sane and insane where you can say to yourself, 'Well, really, it may be he is not insane, but he is on the borderline He is not fully responsible for what he has done.' Now you may think, and it is entirely a matter for you, that that is what is meant by these words in the act....'such abnormalityas substantially impairs his mental responsibility.' In other words, he is not really responsible for what he is doing. His responsibility, if not wholly gone, has been impaired."

That, I think, might help you when you are considering this question of impaired responsibility. And, since that is supposed to be, or is said to be a borderline case of sanity or insanity, then it seems to me that I should explain very briefly what we understand by insanity in law. And that is that the person is so deranged that he doesn't know what he was doing and he doesn't know if what he was doing is right or wrong - he's unable to distinguish.

"It must be clearly proved that the time of his insanity" -

not this case, but I want you to see what insanity is so that you can see whether it is borderline or not.

"To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of

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reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it he did not know he was doing what was wrong."

"Wrong" means legally wrong. Do you think here, therefore, that there was this question of border-line? That's what you've got to look at. Do you think that Rose was suffering from this abnormality? A Case has been quoted to you with regard to the effect of medical evidence in a case of this description. That case, gentlemen, was one where the Court of Appeal in a case of this diminished responsibility the jury found on the face of unchallenged, uncontradictory evidence, of responsibility, that the person concerned was guilty of murder. And the Court there said, in the face of that unchallenged medical evidence, that the jury were wrong. And they overruled the case, they quashed the conviction because there was this unchallenged medical evidence of diminished responsibility. Now here, gentlemen, don't bother yourselves about that because as you've heard evidence these nearly two days there is a direct contradiction between the medical experts in this matter. There is no unchallenged medical evidence upon which you can go. There is a contest, if you like it, between both doctors; and it is your somewhat difficult position, perhaps, to say what you believe, having the testimony of both those medical experts. Don't be led away with the idea that you don't have to consider it, because you do. There is no unchallenged medical testimony on diminished responsibility. As I say, it is very contested and you have to solve it as best you can. Again, gentlemen, we have got this plea of amnesia - that's what it comes to - that is a forgetfulness, a loss of memory a word almost from the word it comes. That is what Rose is saying, what he said in the box. And that, also, we have authority to say doesn't mean that the person is insane so as not to be able to plead, not to be able to deal with his case; but it is a matter for you to decide - whether you think that is so. Because, if a person does a thing in an unconscious state you can't blame them. There is one further matter and that is - and I don't think that it has yet occurred - it is I think a novel point. That is, that Ingraham is charged with murder because of the aiding and encouraging Rose in this murder. Now, supposing you find that Rose was suffering from diminished respon-

sibility so as to reduce his crime to man-slaughter then, I think it must follow that, that if you find that Ingraham was still in concert with Rose, that he was encouraging him to do what was done, then you must find Ingraham guilty of manslaughter, and not murder. Because, he couldn't encourage something which isn't. If you find it's manslaughter then Ingraham must have encouraged manslaughter as far as I can see. I don't think that that has been laid down - I am subject to contradiction by my learned friends here - but I think that that must follow. Now, gentlemen, I don't think that there is anything else from the legal point of view about which I can help you. Let us start with the facts, which I think are beyond dispute, that is, King's death. We know that; there is no answer about that, no dispute. He died from a stab wound. In fact, Dr. Duck tells us he had two stab wounds - one not fatal, one fatal. He tells us that there was the blade of a knife in the wound which was fatal. Then there seemed to be a preponderance of evidence, if I may say so, that that stab wound was struck by Rose. There has been some cross-examination of witnesses as to how this fatal struggle took place but I hadn't thought - and I still don't think - that it is suggested that Rose did not use the knife on that occasion. So those, gentlemen, are I think, practically speaking, central facts upon which we can base the rest of them. Dr. Duck was also interesting, if you will remember, in that he was shown the various garments, paper, articles wrapped in paper on which he tells us there was blood - human blood. That valve wrapped up in paper and also that piece of brown paper was shown to him. He said there was human blood on them. He was shown the clothing of both the accused. He said there was blood on both lots of clothing. You will remember that Ingraham was found to have some bruises, scratches on his elbow. It was thought to show that those scratches could have caused the blood that was found on the prison fence, on his boot, on his trousers, on his bed. The doctor was asked about that and he said - this is Dr. Podlewski - that in his view those bruises and scratches would not have bled, if at all, to any such extent as to put splashes of blood on a man's shoe or his clothes. Therefore, the prosecution's case on that ground is that those splashes of blood on Ingraham's boot and his clothing must have been caused either, I think, when Gay was struck down in the corridor or at the

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gate when there was this altercating struggle at the gate. That, I think, is the important and interesting point to bear in mind. The paper and the valve - the valve itself if you will remember was found at the top of the cell; how it got there we don't know. We only know that it was found there the day after; we don't know when it got there; we don't know whether anybody was up there having a look to see Mr. Moir tells us that the person found it up there and he told him to put it back and he took a photograph of it at once and we saw it. If you look at that photograph it looks reasonably fresh; it doesn't look as though it has been there for any length of time. Maybe you will think that that is the instrument that was used on Gay. That is the case for the prosecution. There is no reason why you shouldn't accept that if you think fit. Now, I think what one had better do - because one has got to consider the evidence in regard to both these people - is go through briefly the whole of the evidence. So far as Rose is concerned he is interested apparently only up to the time when he says that he saw Rigby running the corridor and he saw Gay come down. After that he says, "I don't know anything at all". So I think we might start briefly from Mr. Gay and that concerns what is said to have occurred outside the prison on that particular day, the 17th February. On that day if you will remember Rose was working outside the prison altogether. You will remember that you went through that red gate, the North one and there outside the prison altogether there was stone cracking going on and stacking of blocks. Well now it is suggested by one of the witnesses for the prosecution, another prisoner, and while I am on this question of the evidence of the prisoner, they are all prisoners, Gentlemen. Quite often you might feel that there is some difficulty or doubt in your minds as to whether you should accept the evidence of a convict, a prisoner in the cell, I don't blame you in the ordinary course of events, but here there are all prisoners, practically speaking, except the Overseers who have given evidence. You might be inclined to think that neither one nor the other or any of them have any more reason for lying than anybody else. Therefore you may be prepared to accept their evidence as being what they saw on this particular occasion. It is not suggested that any of them had any axe to grind with regard to what they saw or what they didn't see. Indeed it was

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10 suggested by the Solicitor General that in the one case a man who was actually in the corridor was due for his release very shortly and that he would be a lot better to prejudice his release by getting into any trouble, as indeed it might be suggested that he did. However, there it is. We have got evidence which again I might say was disbelieved very abruptly by an Overseer of Trevor Albury who tells us that while outside the prison altogether he saw Rose sharpening a knife on the grindstone which was under the shed where they killed hogs. You also saw a dump heap of rubbish where it is suggested that this valve came from. While I am on this, Gentlemen, we are not concerned at this point with what should have been done, what might have been done, what you think ought to have been done by anybody in the prison. Leave that out of your minds while you are considering the case of these two men. I know that it might be in your minds but don't

20 bother with that now. We are dealing as they have them or as it is suggested they have them. We are not dealing with what should or ought to have been done by anybody. Having said that I won't refer to it again until much later. Now Trevor Albury speaks about the sharpening of a knife. He is an interesting witness because if you remember he speaks of sitting with Rose on these toilets which you will remember were just inside the North gate by that office of the Overseer. He says that he and

30 Rose were there and Rose was apparently complaining of trouble with his head and he was also apparently anxious, very anxious that he should go to his cell but for some reason or other he apparently did not wish to go to his cell before 3.30 p.m. Now what happened normally at 3.30 p.m. in the prison was that the night pails were distributed around to various cells and again by other prisoners, so that there would be a certain amount of walking to and fro, gate opening, gate closing, corridor gates opening, corridor gates closing. Do you think

40 that that adds any significance? If it does that is a matter for you. I am raising these points as they occur to me. That is what he was discussing if you believe Trevor Albury. One wonders why he was worried about this 3.30. Trevor Albury also speaks of other things which he saw. He says, "I saw him standing with a black bag". Other evidence goes to show that he did have a black bag and he did have the cot later on when he was going South along the walkway from the latrine towards 'G'

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Block. He said, "I saw Ingraham and Rose after they were caught when they ran. I saw them run through the building to the South gate", but he didn't see what happened at the South gate. He didn't see Errol Roberts because he said, "Errol Roberts works inside I work outside". Trevor Albury is merely of assistance because of what he says happened outside and he also is of assistance because he says that this man Rose was complaining of headache, his trouble on that day, and that he wanted to go back to his cell and to see the Turnkey to get something for his head. Now let us turn to a more difficult portion of this evidence; and that is what happened in 'G' Block. We have got a certain amount of evidence here which is contradictory. You must analyse that and say what you think happened, because there seems to be a hiatus somewhere. Gay, if you will remember, the Prison Turnkey tells us that afternoon he had been exercising another convict or another inmate and that at the conclusion of that he locked him up in his cell in 'D' Block which is you remember is West of the latrine and the Chapel. After doing that he came upstairs because he said that he had to see Ingraham in his cell, and Ingraham if you remember was locked in his cell during the whole day in 'G' Block. So Gay tells us that he went up the stairs on to the corridor and he walked around, if you will remember, on the South side turned left, came past the entrance to the Southern gate where he said he saw King on duty and then he went through the Northern part of 'G' Block unlocking and locking doors, he turned to his right and he went through the south-eastern door going into 'G' Block. He said he opened that and he put his head inside to go in, he imagined he saw a shadow and then he was hit on his head and he doesn't know anything more for quite some time. He dragged himself along the corridor of 'G' Block to an apparent open door down the stairs and out towards the latrines to clean himself. That is Gay's story. We have other evidence that that was sometime before this Rose came along from North to South passed the latrines carrying this bag and carrying a cot (a bed). We have the evidence of a man who was distributing blankets - Rigby he saw Rose coming along and if you will remember and gave him a hand with his cot - they took it upstairs together. Rigby says, "I just went as far as the stairs", nothing more. He dropped the cot, gave Rose the blanket and he went on down the steps. Well

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apparently at that time the door was shut, I don't know, perhaps he had to wait for someone to open it. That is the difficult point in this particular evidence. On the other hand one of the Overseers you will remember spoke of seeing Rose and also seeing Mr. Gay fifteen yards behind him. Now all this is perfectly possible because it may be, it could quite possibly be that due to the blow on his head Gay doesn't know what happened, he has forgotten, it's gone out of his head exactly what he did; we don't know. All we do know, Gentlemen, is this that these two men got out of that corridor and they got out of that corridor going East because the other gate was not open, the Northern gate only the Southern gate was open which is a very interesting point. That they got out there is no shadow of a doubt whatsoever. If you remember the back of the building they could not have got out and come around to the North unless they shut all the doors, the gates were found open, the West gate and the East gate of 'G' Corridor; so indeed was the cell door No. 10 which was occupied by Ingraham. Now we don't exactly know how they got in, Rose doesn't tell us anything. What do you think happened in that corridor? We have got Rigby who says that he didn't see, he took blankets up and came down. We have got what Rose says up to the time when he blacked out as he said and we have got what Ingraham said in his statement to us, that's all we know actually or that's all that anybody has said about what happened. Ingraham says, "About 3.30 I was locked in my cell located on the second floor. About the same time I was asleep. I was awakened by a noise outside the corridor. I took off the blanket from my head and reaching the cell door inside I saw Gay on the floor with his back against the South-east corridor. I then opened my cell and came out into the corridor. I then saw Rose standing opposite his cell in the corridor. Also I saw another prisoner running from the South-east corner to the West inside the corridor. The same prisoner has been a witness in this case. I do say that I didn't hit Gay nor did I take part in the actual killing, neither did I know that Rose was carrying a knife or any such weapon. At the time my one motive through the entire case is shown as escape. I the accused now rest." That is his statement which is interesting to you, he says, "I saw Gay outside, he was then already on the floor with his back against the corridor and I opened my cell". How, when he was

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locked in? What does Rose say, " I was working outsidestacking blocks." He has had head trouble from time to time and this particular day, "I asked the Overseer to let me go to get some aspirins", the Overseer was John McCartney. "He turned me over to the gate Turnkey which was Mr. Sands he told Mr. Sands to send me to the Turnkey's office. He watched me until I got to the Turnkey's office. There I asked Sgt. Duncombe for some aspirins and he gave me the aspirins and I went back to work and I tried to make it." That would be a little after 2.00 p.m. "I stayed out there working and I tried to make the day but my head was giving me so much trouble I couldn't make the day so I went back to Mr. McCartney and I told him that I didn't feel like I could make it I want to see Sgt. and I went back in to Sgt. again and I told him, 'Sgt. I don't think I could make it, I would like to go to my cell.'" Sgt. is Mr. Duncombe. He told me O.K. so I went back outside again and told Mr. McCartney, Sgt. told me it is alright for me to go to my cell, so I said I'm going to my cell', he said, 'Alright'. He searched me and turned me over to Mr. Penn and told me to go to Mr. Duncombe. I went to Sgt., I hadn't given him any trouble he told me O.K. the telephone rang and he told me to stand outside and wait until somebody come to carry me to my cell. He was talking for sometime and Asst. Turnkey Gay came and asked me what I was doing there. I told him Sgt. Duncombe told me to stand there until someone come to carry me to my cell. Mr. Gay said, 'Alright let's go'. On the way in he saw my cot on the side of the kitchen and he said Rose you better carry this and I started to carry it and as I got to the bathroom I met Joseph Rigby. He told Mr. Gay he had a blanket for 'G'9 the prisoner who lived in the same block as I lived. So Mr. Gay said O.K. let's go to Joseph Rigby. Joseph Rigby said, 'You want me to help with the cot?' I said I am not particular but you can help me if you wish, so he held one end with him and him and me and Mr. Gay going toward the South. We got to the South, went upstairs and waited to let Mr. Gay get in front of us to open the corridor and we went in. When I get to my cell, my cell is number 6 and I stopped by myself Mr. Gay went to leave this blanket for 'G'9. So all my time waiting there I saw him went and open 'G'10 cell when I looked round again I saw Joseph Rigby run pass me. That is all I could remember. I know it was running up and down

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round there, I saw blood. That's the first time I saw something like that in the prison." So that is his account of what happened, and Gentlemen, I presume there it is that it was not Ingraham perhaps but that it was Rigby who hit Gay over the head. But let's go on from there. We know that Mr. Gay was struck on his head and the case for the prosecution is that it was not Rigby at all, it could not be Rigby if you believe Rigby's evidence. He said he was not there at all, and in any case it is suggested by the prosecution it is improbable that Rigby would do a thing like that when he was due out. It is the suggestion of the prosecution that these two men were concerned in this endeavour to escape on that day and that it was a part and parcel of this endeavour that they hit Gay over the head with this particular weapon which you held and weighed in your hands. They did that with a view to getting the key. We know, if we believe the other evidence which we have heard that in point of fact they did get the key. You will remember the evidence of the prisoner who was delivering night pails that was the function of a number of these prisoners at 3.30 p.m. delivering night pails around to the various blocks. And if you will remember the evidence of the night pail man who as we know says, "I went up there", Henry Armbrister, "and I saw at the end of the corridor Rose and Ingraham searching Gay after which they came down with the key", if you believe Armbrister that he saw them searching Gay, that he was rendered unconscious in order for them to obtain the key. Now let's go downstairs. There is ample evidence, five witnesses I think who tell us about these two men coming down the stairs; one of them came down making some speed because he was just ahead of him. Overseer King was at the Southern gate. There was a table if you will remember to the left of the gate and inside 'A' Block which is immediately below 'G' Block. We have Errol Roberts and Conrad Balfour, those prisoners had been let into 'A' Block by King to deliver these night pails. While they were doing that they heard all this commotion and they have told us fairly vividly what they saw happening at the gate. I will read it to you because it is of great importance. Here it is again, Errol saw Rose with his canvas cot (bed) and he was on this night pail duty. "After that I heard a racket from upstairs coming down stairs so I came back out of the corridor and I saw Rose and James Ingraham

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at the gate. I was to the entry to the corridor just as you come out one door and go in the next door. I saw Ingraham went to the western side of the gate, Rose on the eastern side, King was between both of them. I saw Ingraham put his hand in his shirt pocket, his own shirt pocket. He took out a key, he put it into the lock, he tried to open the gate. So Rose said to King that he must open the gate, King tell him he can't open the gate, he say "Where you want to go?" Then I come between Mr. King and Rose and I tell Rose why he don't behave himself, so Rose pushed me off and I knocked against the corridor. He was a much bigger man than you were? Yes. He told me I must stay inside the corridor, so I stood in the corridor, I shut the door tight and stay there." Then he identified it on the photograph, you will remember. "I told Mr. King "Don't give him the key." Rose punched Mr. King up towards the gate again, and told him he must open the gate. Mr. King wouldn't open the gate, so Rose run his hand on the right side of his trousers, took off his shirt because his shirt was open, and it wasn't buttoned up, and he ran his hand on his right side and took out a knife. You saw what he took from his belt? Yes. What was it? He took out a brown paper bag with a knife in it, and he put the knife in King's back and tell him he must open the gate. At that time King was still back on to me. Was Ingraham doing anything at the time, do you remember him doing anything? All the time he was trying to open the gate. Did he at any time do anything to King? Yes, sir. Was it before this? This is the time I'm telling you now. Rose tell King again to open the gate and he push him up to the gate again. Then Ingraham said "You hear what he say, open the gate." Ingraham exchanged the keys from his right hand to his left hand, slapped Mr. King on the right cheek. Then Rose put the knife in his back and told him to open the gate again. I told Mr. King to pass me the key, but he didn't pass me the key. Then Rose caught him round the waist and put the knife in his back again. Then Mr. King got away. He ran north and Rose went behind him. He catch him by the north porch." He was asked "Did you see this?" He said "Yes, I opened the corridor right behind him, I tried to make an escape to get out. I see when he struck him down by the north porch. Then Rose came back with a bunch of keys in his hand. He chased King down and stick him in the back with the knife

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again. King fell down, they were wrestling over keys. Then afterwards Rose came back with the keys, a bunch of keys in his hand. Ingraham was still at the gate trying to open the gate. I pulled back in the corridor and shut the door again. Then Rose tried to open the gate and exchanged the keys. He never got the gate open, he was trying the keys, but he never opened the gate. Shortly after that I saw the Turnkey Mr. Duncombe come to the southern gate and asked what they were doing." You will remember what happened there. Now, that is a perfectly lucid story which was not shaken, under cross-examination. The other person who was in the cell was the other prisoner, Conrad Balfour "I preceded Roberts I started at about 6 - this is A block. This time Roberts was in 1, and he was behind me. When I got to A.10, which was my cell, I heard a scream. After I heard the scream I couldn't actually distinguish the voice but it continued. Roberts and I looked at one another. It seemed to me like it was coming from over my head. I've never been up there, between G and H. After I heard the scream I went towards the gate. After coming towards the gate, when I almost reached the gate on the stairway on the western side, I saw Ingraham preceding and Rose behind him. They came down the stairs and went south of the gate. After Ingraham got to the gate he started to fool with the mechanism of the gate. King was at the gate, after they got there and started fooling with the gate. King knocked his hands away from the gate and they had some talk about you can't do this and that. Roberts had spoken to me and the gate we went through was open. Roberts told them why don't they behave themselves they know the man can't do that. Mr. King tried to secure the gate. Ingraham then said to him, Rose, he seemed to have a key or something, I couldn't see what it was in his hand - "I can't get the gate open", Ingraham said that, then Rose gave him the key. Whom did Rose say that to? Rose told King to give him the key. King hesitated and Ingraham slapped King. After he slapped King, King started to duck, Rose collared him and they started to tussle. Before they actually started to tussle Roberts went there and Rose pushed Roberts back through the gate. We left them out there. Did you see any of their hands at the time? I saw Ingraham fooling with the mechanism, I didn't see a key. I saw when Rose knocked him - King - then King ducked and kind of got away from

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him, and King started to head north. We came out of the corridor and Ingraham was standing on the western side of the gate towards B block. King turned into the telephone booth to B corridor. This wasn't in the garden nor the yard? No, this was before you reached the court-yard. Rose was so hot on him when he ducked out again he and Rose scuffled out on to the small porch until they reached almost to the garden when Rose followed him there." Then he speaks of the knife and the stabbing, and Dun-
come coming down and turning them in.

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Then there was the question of tearing King's pocket to get the other key after he was stabbed. He said Roberts didn't actually go between them, I would say that if you go between a person - I mean he went where King was, Rose was more to the gate and Rose was standing on the corner. King had a table there, and Rose was standing almost west of the table. It seemed that he wanted to pin him in there. Roberts came out and tried to hold him down and he pushed Roberts away. Under cross-examination by Mr. Bethel he said "It seems to me that both came to the gate with the intention of going through the gate, and I saw Ingraham slap King". And the question was "I'm not talking about that time after the slap you say that you saw Rose and King struggling?" "Yes, I said that." "Was Ingraham helping Rose at all?" "No." Then we go on to whether Rose was angry or not. That was all the cross-examination on this question of what occurred at the gate.

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Now, you've heard those witnesses, what do you consider happened at the gate? That is most important. You see the suggestion is, and a very serious suggestion by Ingraham, that he didn't know of this knife. He was no party to this using of this knife at all; this is the second part of his defence. From the Prosecution's point of view it is this, that this knife was all part of the business, that even if it wasn't all part of the business that it is fairly clear that Rose was using this knife - punching up King - pushing the knife in his back - in an endeavour to get him to open the gate. Did Ingraham see that? Did Ingraham adopt that method of using a weapon? Did he agree with Rose that that was part of the thing that should be done? or do you think that he disassociated himself altogether with this: and had nothing to do with it?

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The suggestion of the Prosecution is that evidence would tend to show that it was after Rose had punched up King, and threatened him with a knife, that Ingraham slapped King. He slapped him to try and get the keys from him, or to get him to open the gate. That is very important, because if you think that then it goes to follow the usual design, the usual idea, that willy nilly they were going to get out. And they were going to overcome any form of opposition, it doesn't matter what, even to the extent of killing. So there is that for you to consider. As I said, you've heard the evidence, it is for you to say what you think happened, and to fit that into the picture of the whole thing. Do you think that that is evidence of common design between them? to overcome all resistance, or do you think that it was merely a matter that Rose did it, and that all Ingraham was doing was trying to escape, to get out, he had nothing to do with what Rose did. He had nothing to do with the killing, one knows, but if he had to do with the rest of it, if it was all part of a common design to overcome resistance at all costs, to get out, then you may think that he is a principal in the second degree and is guilty as Rose. If indeed you find Rose guilty. Now, I don't think I'm going any more into this question of what happened at the gate, or of the killing.

Now, let us turn to the question of this diminished responsibility on the part of Rose. Rose, as you know has told us, and we've heard evidence that he has suffered for some time from these hallucinations, these delusions. There is some evidence from the medical history sheet of this man that he has suffered from headaches, and such like. It is suggested that he had had a number of head injuries. It is suggested that those head injuries caused amnesia, apparently on each occasion. How we know that, I don't know. It is again suggested that the whole of Rose's trouble has been these hallucinations, these delusions. We know, Gentlemen, and it has been given in evidence that he was before this Court on another capital charge, of which he was convicted. It is suggested, I think, that that should not have been either, because of possible brain injuries. Gentlemen, that was gone into at that time, I think, as far as I can remember. There was no question of amnesia then, there was apparently no question of brain trouble. He did say that he thought that people were following him, that he was being perse-

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cuted. And indeed, Gentlemen, those are facts which did happen, people did follow him, and it was because of that fact that he stabbed Williams in the previous case. No delusions about that, no hallucination about it. Williams was there, he was killed. But let us go on. He did complain to the police at the Southern Station that he was being followed, that he was having trouble with people, they were annoying him. The Cpl. who was there put him down as not quite "all there". That's not medical evidence, it's not legal evidence, it's just the opinion of the Corporal who was having to deal with someone who was making astonishing allegations. How many times they get that sort of thing, I don't know, but that's what happened in this case. You may think it consider it as being some evidence that this man is suffering from sort of brain injury. 10

Now, we have heard from the defence, Dr. Etheridge, a very long and protracted evidence, where she has produced evidence to show, or what she says shows, brain injuries to the base of the skull, and a number of other odd things about this man's skull. On the photographs she pointed them out, she said that the skull of this man was peculiar and that she thought that there was something definitely wrong, probably with his brain by reason of those indentations and continuous injuries to his head. She was questioned about amnesia and I personally formed no definite conclusions as to her conclusions on the question of amnesia. She agreed that, as I understood it, that although epilepsy might give before and after effects of homicidal tendencies that this was not so with amnesia, or not necessarily so, with amnesia. The conclusion which I came to on the evidence was that she thought that there was some paranoid development. Paranoid development, she told us, was the fact that he suffered from delusions, or hallucinations. And again, she said that she thought he had got what she called "punch drunkenness". Punch drunk syndrome to be correct, or post traumatic constitution. When we look at the substance of syndrome of punch drunkenness we are told that it is seen in boxers and it is a special form of chronic encephalopathy due to repeated small injuries to the brain which are cumulative in their effects. It begins with unsteadiness of the lower limbs, leading soon to a reeling, drunken gait. Those are the results of this punch drunk syndrome, which she says quite definitely she 20 30 40

10 thought this man was suffering from. Have we got here, Gentlemen, those characteristics in Rose? That's the point. She has said that she thinks besides this question of punch-drunk syndrome that this man apparently does have some form of brain injury, so as to bring him within the section which I have shown. But to be quite frank, Gentlemen, it doesn't seem to me that the definite conclusions to which she came lead one inevitably to that conclusion. We were, if you remember, talking about the question of the man, Rose, going to the doctor on the following day, and speaking of hallucinations where he says there was a white woman in his cell. Asked about that Dr. Etheridge said "Ah, yes, that's no sign of there not being amnesia, these delusions, hallucinations are figments of the brain and whether you remember what's going on outside doesn't matter - whether you remember what's gone on before or not doesn't matter because these never did occur.

20 They're in your head. Therefore it's no reply to the question of amnesia to say that the man complained of these matters almost immediately after the killing." Well, now she points to all these headaches, all these symptoms about which he complained, as being systematic of brain injury.

Let us look, I think briefly, because you heard it as much as I did, you were able to form your opinion just as easily as I can, on that evidence. Let us turn, shall we, to that of Dr. Podlewski.

30 Now Dr. Podlewski is the doctor who attended him, and knew him, at the time of his previous trouble that he was in before. You have heard Dr. Podlewski's evidence as to what he thinks is wrong with Rose. You have heard how he prescribed for Rose's headaches, on a number of occasions. I would let you have, with the greatest of pleasure, this medical sheet. The doctor tells us on this medical sheet that during the period from 1957 he could only find that he himself had prescribed for headaches

40 3 times. We are shown other entries of numerous complaints - they are not classified - they are not looked in to by Dr. Podlewski. But Dr. Podlewski's evidence, in short, Gentlemen, is that there is nothing wrong with this man at all. I'm not going all through the evidence, you only heard it yesterday, and, I think, it's fresh in your minds. You contrast those two medical experts. It's for you to say who you believe, and on that belief for you to say do you think that he comes within this

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section, or doesn't he? That is his defence, that he is suffering from diminished responsibility. It's not a question of insanity it's a question of this borderline. Do you think he is a borderline case? Do you think he comes within that section or within the description that I read to you, a borderline case of insanity? If you do, then don't hesitate. If you think that he has established this preponderance of probability that he was suffering from that, then you must take that and come to the conclusion that he has got this diminished responsibility.

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On the other hand, Gentlemen, if you come to the conclusion that Dr. Etheridge is mistaken and that Dr. Podlewski's ideas, that his findings, are the most probable on the evidence that we've got, then you must remember the whole of the sequence of events of which Dr. Podlewski tells us so very clearly, that there is no evidence of diminished responsibility. You will remember the emphatic words in which Dr. Podlewski spoke about the question of punch drunkenness, this post traumatic constitution, and the rest of it.

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Finally, Gentlemen, we've got the statements which are alleged to have been made by the two accused when they were in the cells, and when they were going back to gaol. I have warned you about those. They, to my mind, if they are to be taken as evidence at all, they're evidence against the person making them. The interesting part of the amnesia is the behaviour, for example, of Rose between the time when the offence was committed and when he said himself, that he came to himself, the next week Tuesday, it's a long time. You will remember the doctor's evidence about all that, how the following day he was truculent, swearing, he was unpleasant; the next day he was quite different, as though he realised exactly what he'd done. You'll remember his reply to Mr. Moir - something about Jesus Christ. Do you think that is the reply of a man in amnesia? Do you think that his conduct throughout is suggestive of not knowing anything even in the face of the medical evidence? If you do, Gentlemen, as I said, don't hesitate, but if you don't equally, don't hesitate. I don't think that you can have much doubt that it was his hand that struck the fatal blow with the knife, and that was the knife that he had at the gate, broken

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off, the handle thrown away, it doesn't matter really about the throwing away of the handle, what we're concerned with is the death - the killing. Do you think that he did that under the influence of this diminished responsibility, or do you think that he knew just exactly what he was doing? Did he intend to do it? If so, murder; if not, manslaughter.

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10 Going back again to Ingraham, do you think it was all part of a common design to get out of the Prison at all costs? and that Ingraham adopted the whole - or if that was not the original design, and there is evidence to that - do you think that he adopted the measures taken by Rose. Or do you think that he had no intention at all of doing anything but escape, he knew nothing at all about the question of the hitting and wounding Gay, or if he did he merely took advantage of it, with no intention of doing more than escape? Do you think that he had no intention really of assisting Rose, beyond getting away? Do you think that he had no intention of assisting or encouraging Rose to kill King? If you think that then you should acquit him of murder, or indeed, manslaughter, and he would remain to be charged with something different.

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30 Now, Gentlemen, I don't think there is anything more I can help you with in this case, save this that in no case is it for the accused to prove their innocence, except as I have warned you with regard to the defence of diminished responsibility, you have to be satisfied with the preponderance of probabilities on that, and so far as Ingraham's concerned it's for the Prosecution to prove their case to your satisfaction.

40 If after considering all the evidence you come to the conclusion that either, or both, of these men are guilty, then you must be quite sure, all of you, in your minds, that that is the right and proper verdict on the evidence that you've heard. You must be quite sure of that. And in a capital case you must be unanimous. If you are prepared to reduce this to manslaughter, then, indeed, you can come to what I call a majority opinion, that is you may be divided in your opinion 8 to 4, no greater, it can be less 9 to 3, 10 to 2 or 11 to 1. All those are perfectly good verdicts for and against on any finding, other than that of murder. That

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must be unanimous.

Now, Mr. Foreman, is there anything in law or in fact about which you're uncertain and concerning which you would like me to assist you?

FOREMAN: No, My Lord.

CHIEF JUSTICE: You would like to retire to consider your verdict?

FOREMAN: Yes, My Lord.

The Jury retire to consider their verdict at midday.

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The Jury resume at 12.45 p.m.

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Verdict of Jury and Sentence.

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VERDICT OF JURY AND SENTENCE

Verdict: (1) Guilty as charged.

(2) Guilty as charged.

CHIEF JUSTICE: Rose and Ingraham, you have heard the verdict of the Jury, they find you both guilty as charged, and I now sentence you to suffer death in the manner authorised by law.

No. 34

In the Privy
Council

ORDER OF HER MAJESTY IN COUNCIL
GRANTING SPECIAL LEAVE TO APPEAL

No. 34

(L. S.)

Order of Her
Majesty in
Council grant-
ing special
leave to
Appeal.

AT THE COURT AT BUCKINGHAM PALACE

The 3rd day of August, 1960

3rd August
1960.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY

Earl of Perth Mr. Secretary Ward
10 Mr. Secretary Macleod Sir Michael Adeane
 (acting as Lord
 President)

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of July 1960 in the words following, viz.:-

20 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Elvan Rose in the matter of an Appeal from the Supreme Court of the Bahama Islands between the Petitioner and Your Majesty Respondent setting forth that the Petitioner was tried together with one James Ingraham before the said Supreme Court for the murder of Samuel Otis King on the 17th day of February 1960 and on the 14th May 1960 both the accused were convicted and sentenced to death: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal in forma pauperis against his conviction by the said Supreme Court of the said Islands on the 14th day of May 1960:

30 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof

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and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the conviction by the Supreme Court of the Bahama Islands dated the 14th day of May 1960:

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Bahama Islands for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

20

W.G. AGNEW.
