

20/83

O N A P P E A L

FROM THE COURT OF APPEAL OF THE COMMONWEALTH
OF THE BAHAMAS

B E T W E E N :

JAVAN NEWBOLD

Appellant

- AND -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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B E T W E E N :-

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- AND -

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RECORD OF PROCEEDINGS

10

No.1

In the Supreme Court

INFORMATION

In the Supreme Court

No.1
Information
Undated

Criminal Side

The Queen versus

To Wit: JAVAN NEWBOLD

20

JAVAN NEWBOLD is charged with the following offence:

Statement of Offence

Murder, contrary to section 337 of The Penal Code (Chapter 48).

Particulars of Offence

Javan Newbold, on the 28th day of January, 1979, at New Providence, did murder Stellman Brown.

Signed Illegible

SOLICITOR-GENERAL.

In the Supreme
Court

No.2

PROCEEDINGS

No.2
Proceedings
4th July 1979

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Criminal Side

R E G I N A

Vs

10

JAVAN NEWBOLD

PLEA: Not guilty (4/7/79)

Mr. Hilton and Mr. McKinney - Crown

Mr. Thompson - Defence

Told rights of challenge.

No.56	David Thompson	
No. 8	Franklyn Bethel (excused)	
No.31	Paul Bain	
No.30	John Strachan (challenged by Crown)	
No.50	Freddy Nottage	20
No.52	Archibold Winters (absent)	
No.23	David Dean	
No. 2	Samuel Arthur	
No.54	Howard Kemp	
No.60	Walter Wisdom	
No.11	Earl Bostwick	
No.12	David Hepburn	
No.27	Dennie Ellis	
No.14	George Carey (excused)	
No.17	Basil Charlow	30
No.43	Douglas Clear	

Both parties content.

Jurors are sworn to try the issue.
Marshalls sworn to take charge of jury.
Indictment is read to the jury and they choose as
their foreman No.60, Walter Wisdom.
Witnesses cleared from the Court.

Opening Address of the Solicitor General.

Crown alleges that on night of 28th January,
1979 accused armed with two revolvers went to the
main gate of the prison where he saw the deceased
and said, 40

"Hey man, I want to talk to you"

In the Supreme
Court

deceased said,

"Stop playing with guns".

No.2
Proceedings
4th July 1979
(Contd.)

Accused shot him and two bullets entered the body of the deceased.

10 A pre-meditated cold blooded murder. No justification. No excuse.

Refers to section 336 (definition of murder)
So Crown must prove:

1. Accused intentionally caused death of deceased.

2. Did so by means of unlawful harm.

Intention - Section 12

20 In particular section 12(3). That means a man is presumed to intend the natural consequences of his act unless it appears to him those consequences will not follow from his act.

So, if accused had two revolvers and at a distance of 7' fired at deceased and one or more bullets hit the deceased, then there can be no doubt that accused intended death.

After two shots there were more shots. Some say one more. Others two more.

Harm is defined in section 23 and section 24 defines unlawful harm. Crown says it was intentional.

30 Refers to section 107(4). Here there is no extreme necessity to justify the harm.

No evidence of provocation.

Facts

On night of 28th January, 1979, four prison officers and one Corporal were detailed to First Offenders prison. Cpl. Brown (the deceased) was in charge.

40 Accused came on duty in civilian clothes. Deceased called a parade and on parade asked accused what has happened to his uniform. Accused said he had been to the hospital and hadn't time to get in uniform. One of his hands

In the Supreme Court was bandaged. Cpl. Brown dismissed the parade and the officers went to their respective posts.

No.2
Proceedings
4th July 1979
(Contd.)

Raymond Smith is an important witness as he gives what can be called an eyewitness account. After the parade he went to the gate and sometime later about 10:15 the accused joined him. Accused then told Smith that he, the accused, was going to shoot Brown. Smith told him to stop talking foolishness and took a cigar from accused. Smith went off and returned. On his return accused still at gate but then he left and went towards the office.

10

Cartwright came to the gate after accused had gone to the office. Cartwright spoke to accused at the gate and returned to office. Whilst at the office he heard accused tell Cpl. Brown (the deceased),

"You scheming but I will teach you how to scheme".

Miller gives an account of the parade. After parade he went on rounds and later returned to the porch outside the office where there is a desk. Accused told him after he had taken two revolvers from the drawer of the desk.

20

"Suppose I start shooting everybody what will you do?"

Miller replied.

"Haul arse".

On each night shift two revolvers are assigned to the officers. So accused takes the two revolvers. This taking of the revolvers is after accused told Smith he would shoot deceased.

30

Deceased was in the office. There is evidence he went on to the porch and to the gate leaving accused on the porch. Deceased went to where Smith was. About 10:50 - 55 deceased came and asked Smith if he had matches. Smith said, "No". He saw deceased back away and saw accused with two revolvers pointed at deceased. Smith heard accused say:

40

"Look man I wan talk to you".

Deceased said:

"Stop playing with guns".

Smith heard shots. He remained in the booth as he was frightened. Accused gave him a telephone number to call. Smith sees accused pass the window of the booth where he is and hears another shot.

In the Supreme
Court

No.2
Proceedings
4th July 1979

10 Accused returned and by then Smith had spoken on the phone to the party whose number had been given him by the accused. When accused returned, Smith saw he had only one revolver.

Three spent cartridges found on the floor of the office and one by the door to the office. The cartridges are not ejected automatically. Crown says accused went to the office after firing the shots and ejected the spent shots there when he put revolver on the steps of the office.

On return to gate, accused told Smith to dial the Turnkey's office and Smith did so.

20 There is a confession to Sgt. Bannister given verbally by accused.

Officer Jordan will say he called accused at the gate. The second time he called was after speaking to Sgt. Bannister. Jordan went to the date, Accused came to him. Accused was crying. Accused handed Jordan the revolver.

Body of deceased found 60' - 70' from the gate. Doctor examined it. Deceased died shortly after he was shot. Accused intentionally shot him.

30 Cpl. Huyler recorded a statement from accused. In it he mentions the parade and not having a uniform. He says that he and deceased were wrestling and deceased got shot whilst wrestling. Deceased he says, had a .38 revolver in his hand and it went off and deceased went off with it. So, accused is saying the shooting was an accident.

No.3

Prosecution
Evidence

40

ELLERY DEVEAUX

No.3
Ellery Deveaux
4th July 1979

Ellery Deveaux s/s in ex i/c

Detective Constable attached to C.R.O. Nassau.
So attached on 28th January, 1979.

Prosecution
Evidence

No.3
Ellery Deveaux
4th July 1979
(Contd.)

On 28th January, 1979 I went to the prison at about 10:40 p.m. There I took four photographs. I went to prison because of information received about 10 - 10:15 p.m.

On Monday, 29th January, 1979 at about 10:30 a.m. I went to the mortuary of the Princess Margaret Hospital where I saw a body. I took four photos of it. Later that day, I returned to C.R.O. where I developed the negatives and made enlargements from them. I compiled albums. On the inside of each album I placed a legend. 10

These are the eight negatives of the photos I took.

(Negatives produced as Ex. J.N.1)

These albums are identical to each other and contain the photographs I took.

(Album produced as Ex. J.N.2)

(No objection from Mr. Thompson to the production of either negatives or albums). 20

Photo 1 shows the security booth of the prison.

Photo 2 shows cap - a prison overseer's cap - by the side of the wall. This cap was no more than 4' from the booth.

Photo 3 shows general area looking south from the booth and leading to a pea tree area which is down by where there is a glow of light.

Photo 4 shows body of deceased lying south of the booth area face down in the pea tree area. 30

Photo 5 shows wound below navel and on left side of body of deceased.

Photo 6 shows a close-up of the wound in photo 5

Photo 7 shows wounds on left side of body.

In photos 5 and 6 the body is lying on his back. In photo 7 the body is lying more on the right side. The wounds in photo 7 are above the left buttock. 40

Photo 8 is a facial view of the body seen in

photos 5, 6, and 7.

Prosecution
Evidence

XXD by Mr. Thompson

No.3

I used a little lighting for my photographs. I had lens open for about one and a half minutes. There was a light in the booth. By using an open flash or that light, you get the whiteness seen in photo No.1.

Ellery Deveaux
4th July 1979
(Contd.)

Cross-
examination

10

I can't say what type of bulb was inside the booth.

I can't recall any other lights in the vicinity of the booth than those shown in photo 1.

I went to prison with other investigating officers.

20

Detective Corporal Samuel Huyler was one who accompanied me. In photo 3 booth would be on your left as you look at the photo. The office would be on your left. I can't say how far apart from the booth it would be. I can't say to where the road in photo 3 leads.

I took photo 3 looking straight towards the body where the light is. I would say the office is to the east of the light in photo 3. To go to the body from the office you would go south west.

Q: Did you visit the prison in the day time?

30

A: Yes. I saw the peas patch during the day. Standing by the office and looking at the peas patch you would be on a slight slope, sloping towards the peas patch.

Re-examination

Re-examination

I went to the prison in the daytime about a week after the 28th January, 1979. I went to see if I could get a clearer photo than I got on photos 2 and 3 but as there had been building since 28th January, 1979 I did not venture on that.

To Jury

To Jury

40

I would say that roughly the body was about 200' from the booth.

Prosecution
Evidence

No. 4

LEONORA BROWN

No.4
Leonora Brown
Examination

Leonora Brown s/s in ex i/c

I live at Golden Gate Division 2 and I am a nurse at the Princess Margaret Hospital.

Deceased was my husband. I last saw him alive in mid-December, 1978. I saw his dead body on the 29th January, 1979 about 10:15 a.m. at the Princess Margaret mortuary. I then identified the body to Dr. Read and in the presence of man of the C.I.D.

10

Photo 8 of Ex. J.N.2 is the face of my husband, the deceased.

No XXD

No questions by Jury.

Prosecution
Evidence

No. 5

EARTLIN MILLER

No.5
Earltn Miller
Examination

Earltn Miller s/s in ex i/c

I live at Montfort Street and I am a prison officer at H.M. Prison.

I was on duty at the prison on 28th January, 1979, I reported at about 9:40 p.m. I began work at about 10 p.m. My shift was for 10 p.m. of 28th January, 1979 to 6:30 a.m. of 29th January, 1979. I was assigned that night to the First Offender's Prison to patrol the compound of the entire prison.

20

30

In charge of my shift that night was the deceased. Other officers on the shift were A. Smith, M. Cartwright and the accused. All of us, with the exception of the deceased, were responsible for patrolling the whole prison.

First Offenders
Annexed
Main Prison

40

I work in the First Offender's section but patrol as well the other two sections I have mentioned.

I was detailed a little before 10 p.m. on the 28th January, 1979. I do my duties after falling out. My only duty was patrolling and supervision.

Prosecution
Evidence

No.5
Earlin Miller
Examination
(Contd.)

10 Cpl. gave an order to fall-in on parade for inspection. When Cpl. said fall-in, I was then changing my shirt. I did not fall-in at once. I later joined the parade. Before falling in, I heard the accused say,

"Only three officers on parade. There is supposed to be another".

As soon as Cpl. said, "fall out" I fell out for duty. That he said after I joined the parade. With the exception of the accused all the officers on parade were in uniform. It is unusual to be on parade without uniform. After I joined the parade I heard no comment about uniform.

20 After falling out, I started on my rounds with the "ouch clock". I returned from my rounds about 10:40 p.m. to the porch to the office which I call my station. On the porch there is a desk and a couple of chairs. Returning from my rounds I had possession of two revolvers. I had collected these whilst on my rounds. To collect the revolvers is usual procedure. It is usual to collect only two revolvers.

30 On my return to the porch I put the revolvers in the drawer of the desk and started to make out my report. When I collected the revolvers they were empty. With them I collected ten rounds. On collection you check the number of the revolver against the number in the book and signed for them. I then loaded the revolvers placing five rounds in each revolver. I didn't make a note of the revolver's number, I just checked their numbers against the numbers in the book.

40 After I had been writing my report, the accused approached the desk at which I was sitting. He said,

"Excuse me".

I rested against the wall whilst seated in my chair. Accused opened the drawer and took out the revolvers.

Q: Had he right to take them?

Prosecution
Evidence

No.5
Earl Miller
Examination
(Contd.)

A: We work together. It is not unusual for an officer to make a round. What surprised me was that he took both revolvers for if even he is going on the round he should take only one. Accused in taking revolvers said:

"Suppose I start shooting everybody what will you do?"

Q: Did you reply?

A: I said:

10

"If you don't shoot me first, I'll haul arse". After this was said, I remained where I was and accused went in front of the office a little way off from me and sat on a wall.

(points about 17')

Where he sat was off the porch.

At this time deceased was in the office - about from me the distance of your (bench) from the witness stand. Deceased came out of the office and stood beside me.

20

Q: Where was the accused?

A: Still sitting on the small wall.

Deceased stood by me for about three minutes. Deceased then walked towards the gate. Accused after deceased did that got up and walked towards the gate also.

Q: How long elapsed between deceased walking towards the gate and accused doing so?

A: Deceased had got about 17' when accused began to walk towards the gate.

30

(points from witness stand to officer).

With accused having the two guns there was a sort of tension. As soon as both deceased and accused were going towards the gate I was relieved to get up. I had been tense remembering what accused had asked me and because nothing was being said. I went from the porch to the Visiting Room. That is in the opposite direction to that taken by accused and deceased. I spoke to an officer in the Visiting Room. That officer was M. Cartwright. I went into the room to speak to Cartwright. In there I could not see the accused and deceased.

40

10 After speaking to Cartwright we both came
outside the Visiting Room. I circled and
cleared the office. I was between the Visiting
Room and Isolation Ward, on the driveway when I
heard a shot. I could not then see either
accused or deceased. After hearing the first shot
I ran away from the shot. There was a little
interval between the first shot and then came two
or three shots in close succession. I did not run
for too long. I came back. I sort of circled and
climbed over the fence. I was then on the straight
road that goes to the gate and I saw other
officers. The road I was on is not that shown on
photo 3 Ex. J.N.2. On the road I was on, I was
then 80 - 90 yards from the prison gate.

20 I was approached by Sgt. Holligan and spoke
to him. Other officers joined us. I was
reluctant but I saw other officers take the first
step of going towards the gate. After they did so,
I stayed where I was. Other officers walked
towards the gate and when about 10 yards from the
gate, I heard the accused say words to the effect
that he did not want anyone come to him. The
lights were then off. They went off after I had
got back from my running. After the accused said
he wanted no one to come to him I saw officer
Jordan pass me and go towards the accused.

30 The officer who walked from me about 40 yards
towards the accused had stopped when the accused
made it clear he wanted no one near him. Mr.
Jordan walked up to the accused. I could see
accused when I heard him talking. The lights were
still on the pillars at the gate. The light that
went off was the light in the booth.

40 After Jordan approached the accused, the
other officers, including myself went to the gate
and we started to search for the deceased. The
deceased was found about 75 to 80 yards from the
booth and south of the booth.

Lunch Break.

Resumption after Lunch.

Miller cont. in ex. i/c

The body was lying sideways, I think, when
found. Photo 4 of Ex. J.N.2 shows the position.

Solicitor General

I would like to recall the witness in due
course for the identification of the revolvers

Prosecution
Evidence

which are not presently available.

No.5
Earl Miller
Examination
(Contd.)

Court:

You will be allowed to recall the witness.

XXD by Mr. Thompson

Cross-
examination

I have been on the prison staff for 10 years.
I am conversant with the workings of the staff.

Prison also has a female section. We do not patrol that section and we do not patrol the medium security section. 10

The eastern side of the main prison from the first offender's or gate section is 200 to 220 yards.

Q: Was it the case that each officer could carry out such patrol as he saw fit?

A: No we had stations and a clock. You go on rounds and a round lasts half an hour before you start the next round. 20

Q: There was some system then?

A: Yes.

Prison transportation brought me to the prison that night. Seventeen to twenty officers might have travelled by the bus. Some came by their own cars. About thirty were on the night shift.

From February, 1978 I began the duties I was performing at the time of this incident. The accused was assigned to First Offender's Section about May of 1978. Yes we have worked on the same shift since May. Usually the accused has been the gate officer, but he was not gate officer on the 28th January, 1979. 30

Q: Are you certain of that?

A: Quite certain.

I know that Cpl. Brown (the deceased) maintained a diary.

Q: Would not the various details for each night and morning be in that diary? 40

A: Yes.

Q: Did you write your report in that diary?

Prosecution Evidence

A: No.

No.5
Earl Miller
Cross-examination
(Contd.)

Q: Did you have anything that night to do with inspecting the First Offender's prison?

A: No.

10 Q: Why are you certain accused was not on gate duty on the 28th January, 1979?

A: Because he was in civilian clothes. He was in shirt and pants and had on his prison coat and hat. You can say he was partially dressed in uniform but he was not assigned to the front gate because of his clothing. We usually do some work before we fall in. I am familiar with the routine so there would not be need nightly for specific instructions on duty.

20 About 10 p.m. I began my rounds by punching the clock. Smith by then had gone to the gate.

Q: You began your rounds at 10 p.m. then you came back and fall in?

A: No, the parade was before 10 p.m. and the dormitories had been checked. I can't say who checked the dormitories.

Q: You can't say he was not told to go to the gate?

30 A: He was not detailed. I was there when the parade fell out and saw Smith go to the gate so know Smith was detailed to go to the gate.

Q: You don't know if accused asked Smith to hold the gate for him?

A: I don't know.

Q: You had nothing to do with Brown's diary?

A: Up to that point, No Sir.

Q: Were you appointed to patrol the area between the main gate and main prison?

A: We take it in turns.

40 Q: Is it usual for the officer to be armed?

Prosecution
Evidence

No.5
Earl Miller
Cross-
examination
(Contd.)

A: Yes.

Q: Is the shift before your shift armed?

A: No. I get the revolvers on my first patrol from the armory near the main prison gate. I then had the responsibility to transport them back to the First Offender's office.

Q: Did you report to the deceased or any other officer?

10

A: No. But at no time are the guns left unattended. The deceased would be expecting me to pick them up but I would not have to say,

"Sir I produce the guns."

In May, 1978 was the first time I worked directly under deceased. We did not socialize but I worked under him from the time I joined the prison service. He did not appear to me to be drinking on the 28th January. He was rather talkative some but never violent. I don't know if he drink. I don't know if Brown was out with officers that day.

20

Any officer making the rounds is entitled to have the revolvers. The man at the gate has not a revolver assigned to him.

It would be unusual for an officer assigned to the gate to ask for a gun.

Q: Accused took only one revolver from the top of the desk?

A: I deny that. It surprised me very much that he took two guns.

30

Q: Why did you not inform the officer in charge that accused had taken two guns?

A: I was perplexed after he asked me what he asked me. I assumed he was waiting for an opportunity get mad. The situation was explosive.

Q: After accused and deceased went towards the main gate that was the last you saw of accused until everything was ended?

A: No. I saw him when I came back on the road. Yes that was after the shooting. I did not see him firing any guns.

40

I was about 80 yards from the booth when I

got back to the road. When I jumped over the fence there was an officer who asked me what happened.

Prosecution
Evidence

I would have to assume an officer was in the booth when the accused was there before the lights went off. The officer who had been detailed there.

No.5
Earl Miller
Cross-
examination
(Contd.)

10 When I jumped over the fence I might not have looked at the booth. When I first saw the accused I was in the company of other officers.

I can't say if the light went off in the booth before Jordan arrived or after he arrived.

Q: Between time you jumped over the fence and Jordan came to meet the accused did you see anyone apart from accused at the booth?

A: No. Accused was outside the booth.

20 There are three lights at the gate. There is no light on the booth. At top of the two pillars there are two lights. Photo 1 of Ex. J.N.2 shows one of the pillar lights.

Q: Are there any lights between the booth and office of the First Offender's prison?

30 A: The light on Assistant Superintendent's office is usually on. There is a floodlight on the building of the office including the Assistant Superintendent office and it would reflect on the gate. I can say for sure for him - the walk and movement of a person, if that, I could see that person in that light.

Re-examination

Re-examination

Q: How did you know the accused was not that night assigned to the gate?

A: I picked up pieces of conversation whilst I was in the office and before I joined the parade. I know accused had not been assigned to the gate from those pieces of conversation.

Generally, no revolver is assigned to the person at the gate.

40 Q: To your knowledge do you remember an officer assigned to the gate asking for a revolver?

A: Never to my knowledge.

Prosecution
Evidence

To Jury

No.5
Earl
Miller
Re-

It would be exceptional for an officer to be without uniform. Disciplinary action can be taken against him.

examination
(Contd.)

Once the revolvers are left from the armoury everyone is responsible. The man going on the rounds takes a revolver.

To Jury

No one was on the porch with me when accused removed the revolvers.

On his rounds the officer takes revolver, walkie talkie and punch clock. Accused did not take either punch clock or walkie talkie.

10

I did not tell deceased what accused had said and saw when he joined me on the porch as I assumed he heard what had been said and done. He could have heard and would have seen him with the two guns.

To Court

To Court

It is a rule that two officers go on rounds and both must be armed but we deviate sometimes from the rule.

20

There is always someone on the porch in the course of the night.

When I made my first rounds at about 10 p.m. I went on my own.

When I get back to the station at 10:40 p.m. there would be no other round until 11 p.m. By then I had made two rounds.

We don't specify duties, we just work together, so I can't say who would have been on duty to make the round at 11 p.m.

30

To Jury

To Jury

Deceased did not make any comment to me when he came to my desk on the porch. He could not see accused sitting on the wall. He did not have to pass accused.

To Solicitor General
To Solicitor General

Q: Could he have gone to the gate by going past the accused?

A: No. He went by the only way he could go

40

and that would not take him past where the accused was sitting. Prosecution
Evidence

To Mr. Thompson

Q: Where was accused sitting in relation to the porch?

No.5
Earlin Miller
(Contd.)
To Mr. Thompson

A: Cpl. is going west to east and before he gets to gate he has to turn back. When Cpl. turns accused would be off to his right.

10 To Court

When the Cpl. made his turn the distance between him and accused would be about from witness stand to say 15'.

No.6

Prosecution
Evidence

MATTHIAS CARTWRIGHT

Matthias Cartwright s/s in ex. i/c

No.6
Matthias
Cartwright
Examination

20 I am a Prison Officer of H.M. Prison. I live at Lincoln Boulevard and Robinson Road.

January 28th, 1979 I reported for work at the prison at 9:45 p.m. I reported to the First Offender's Prison. I was to work from 10 p.m. on 28th January, 1979 to 6 a.m. on 29th January, 1979. On that shift with me were Cpl. Brown, Officers Smith, Miller and accused.

30 I reported for work at 9:45 p.m. and at about 9:50 p.m. deceased called an inspection parade. During the parade he asked accused.

"Why are you not in your uniform?"

Accused replied,

"I cut my hand and went to the hospital to get it dressed and that is why I am not in uniform."

Deceased said,

"You are improperly dressed."

Deceased dismissed the parade and went into his office.

Prosecution
Evidence

No.6
Matthias
Cartwright
Examination
(Contd.)

Accused was in civilian clothes with a prison coat over them. The prison coat is a thick grey coat. I can't say if the other officers were wearing their coats that night.

I saw that accused had a bandage on his right hand.

Q: What did you do after dismissal of parade?

10

A: I sat on the porch and then went to the gate where Officer Smith was.

Q: How did Smith come to be on the gate?

A: Deceased detailed Smith to take over the gate that night. When deceased so detailed Smith, accused was by the office.

Q: Was accused near enough to hear?

A: Yes. The detailing took place on the parade in front of the office. The parade is held in front of the porch and the porch is in front of the office. Smith is on the gate when accused is off duty. When accused is on duty he is at the gate.

20

After going to the gate I stayed there about five minutes.

When I got to the gate Smith alone was there. When I left the gate accused was by the gate. As he arrived I left.

Q: Where did you go?

A: I went up to the office and sat on the porch. No one was then on the porch.

30

Q: Where was Miller?

A: On his rounds.

Q: Did anyone join you on the porch?

A: Yes. Accused came and went into the office.

The deceased was then in the office.

Q: Was anything said?

A: Accused said:

"You scheming but I will teach you how to scheme."

Prosecution
Evidence

I heard no reply from deceased.

No.6
Matthias
Cartwright
Examination
(Contd.)

Accused then came and sat on a chair on the porch. I was on the porch at that time. I got up and went into a dining room adjoining the office. This dining room is also called the Visiting Room or the library. I went there as it was kind of cold on the porch.

10

Q: Any conversation on the porch between you and accused before you left it?

A: No sir.

Q: Could you see the porch from the Visiting Room?

A: No.

After a while Miller came to the Visiting Room. I had been there about fifteen minutes before Miller came. On his arrival Miller spoke to me. Whilst Miller and I were speaking I heard a shot. The sound seemed to come from a northerly direction. The gate was in a northerly direction from where I was.

20

After hearing the shot I ran in a southerly direction. I heard another shot and someone scream. It was a sharp scream of pain. I heard two more shots. I was then by the unoccupied residence of the A.S.P. I stayed in hiding there until I heard officers calling for Cpl. Brown. I was alone where I was hiding. I had been hiding about twenty minutes when I heard officers calling for Cpl. Brown. On hearing the calling, I went up to the office with Sgt. Holligan who I had meet in south garden next to the A.S.P.'s unoccupied residence. I then joined the party searching for Brown at the back of the office. We found him in a pea patch south of the office. In relation to the gate that pea patch is south of the gate. When found, Brown was lying face down and he seemed to be still. Photo 4 of Ex. J.N.2 shows the position in which I saw Brown when he was found. Number 5 shows face of Brown.

30

40

XXD By Mr. Thompson

Cross-
examination

Q: Were all officers on parade when Smith was detailed to take over the gate?

A: No. Three were on parade. The accused

Prosecution
Evidence

No.6
Matthias
Cartwright
Cross-
examination
(Contd.)

was not given any detail that evening.

My duty was to patrol around the First Offender's and the Prison.

Q: Do you know if accused had carried out any investigation as to the state of the dormitory?

A: No.

10

When I went to the gate accused was by the porch. I can't say if he was on or off it. I had been on the porch before I went to the gate and before I went to the gate accused was by the office on the porch. I left him on the porch and went to the gate.

Q. Did deceased come to the gate whilst you were there?

A: No.

Accused came to the gate whilst I was by the gate. I left and went to the office. I saw the accused a while after when he came back to the office. I did not see accused in presence of Miller. I did not see Miller before leaving the porch. I did not see Miller return from his rounds.

20

When he came to office accused went in and said,

"You scheming, but I will teach you have to scheme."

He then came on to the porch where I was. I then left and went to the dining room.

30

Re-examination Re-examination

Miller was not on parade at the time of the inspection parade.

Q: When were you detailed to do the patrol duty?

A: The only detailing given on the parade was for Smith to take over the gate. Otherwise no other detailing. Every night we did the same duty.

40

Q: Was accused detailed to do any duty on the 28th?

A: No. On the 27th he was off duty.

Q: To your knowledge was accused told to investigate the state of the dormitory?

Prosecution Evidence

A: Not in my presence.

No.6
Matthias
Cartwright
Re-examination
(Contd.)

Q: Has instruction ever been given to investigate the dormitorties?

A: Not to my knowledge.

To Jury

To Jury

10 I heard no argument between Brown and accused when Brown told him he was improperly dressed.

I did not see accused whilst I searched for Brown afterwards. Later I saw him by the gate with a few officers. I can't say if he was then carrying a weapon.

To Court

To Court

A patrol is made very half hour.

20 Miller was the first to patrol. He would tell the next officer when to go. It would be up to him to tell.

Afternoon Break

No.7

Prosecution Evidence

GEORGE BANNISTER

Resumption

31st July, 1979

No.7
George
Bannister
Examination

George Bannister s/s in ex. i/c

30 I am a prison officer of sergeant and was so employed on 28th January, 1979. That day I went to work at 10 p.m. and were the Sgt. in charge of the prison from 10 until 6:30 a.m. on 29th January, 1979. Sgt. Holligan is a Sgt. at the prison also.

On night of 28th January, 1979 I spoke with Sgt. Holligan at 10:47 p.m. I told Sgt. Holligan to investigate the matter he had spoken to me about.

40 At 10:50 p.m. I received a telephone call. I recognised the voice at the other end as that of the accused. I have known him a long time.

Prosecution
Evidence

No.7
George
Bannister
Examination
(Contd.)

My telephone number is extension 20. The caller identified himself and told me,

"I have just shot Cpl. Brown and used four rounds of ammunition."

I hung up the phone. The gate officer operates the phone. I asked him to put me on by phone to the Superintendent's residence. I did not get in touch with the Superintendent. I then asked the gate officer, Wilfred Ferguson, to put me on to the Deputy Superintendent. Ferguson's office is in front of my office and north of mine. The gate by the entrance to the First Offender's is not the gate office of which I am speaking. I got in touch with the Deputy Superintendent, Neville Taylor. I told Taylor that accused had told me he had shot Cpl. Brown. He, the Deputy Superintendent asked me a question. I replied. "No". That ended the conversation. I then hung up the phone and instructed officers Sealy and Jordan to go and investigate along with Sgt. Holligan and to find out if Cpl. Brown needed medical assistance. I did not go with them. I stayed at the prison.

10

20

I received a call from the Deputy Superintendent. He gave me some instructions. As a result, I called Police Control. That is the main police telephone centre.

That night I spoke with no one else on the telephone. But I was called by the accused. He said:

30

"I see the officers coming towards me. I can see them but they can't see me. I remind you not send any officers with guns."

He hung up.

On that night the officers on duty at the First Offender's were:

Cpl. Brown (in charge)
Accused
Cartwright
Miller and
Smith

40

I know that two .38 revolvers with ten rounds was issued to those officers on the night of the 28th January, 1979.

Q: Was that a normal issue?

A: Yes. It is a nightly occurrence.

XXD by Mr. Thompson

Prosecution
Evidence

Q: Do you remember any particular words being spoken by the accused on his first call?

A: Yes.

Q: What else?

10 A: He said, "I am willing to surrender but do not send officers with guns".

Q: Did he explain the circumstance?

A: No.

Q: Did he not say, "I had a hassle with Cpl. Brown".

A: No. I hung up the phone.

Q: What is on the south side of the road leading from the main gate of the main prison?

A: There is the small booth of the gate lodge.

20 Q: I am speaking of the road from the booth to the main prison?

A: Prison fence which is about 6' high but could be higher. That fence separates the First Offender's from the main prison.

Q: Anything on top of the fence?

A: Three lines of barbed wire.

Q: What are the duties of the officers of the First Offender's Prison?

30 A: To check the outside of the prison. They go from First Offender's around the Main Prison to the Female Prison and back. When I worked in the First Offender's Prison I was the general duty officer and the person in charge.

Q: There are prison regulations?

A: Yes.

Q: What would have been your duty in First Offender's?

A: First duty was to check the ammunition team. I would then call a parade and inspect the

Prosecution
Evidence

No.7
George
Bannister
Cross-
examination
(Contd.)

men. I would then detail the officers to various posts.

Q: Would you find the guns and ammunition at the office?

A: There would be one grena gun with four rounds of ammo. It is a long gun like a shot gun and it fires shells.

Q: When would you receive the revolvers?

A: By the First Officer on his rounds, on his way back. He picks them up at the main gate. He should then hand them over to the officer in charge of his detail. 10

Q: If you were the officer in charge what would you do with them?

A: Keep one and hand one to the officer who is making the next round. I believe since my time the regulations have changed.

Q: Between 10 - 6:30 have many officers would be in or around the office? 20

A: varied because of staff shortage. Might vary from seven to three. In my time one officer made a check round.

Now the rule is for two officers together to make a check round. The officer making patrol travels with a punch clock, walkie talkie and gun. On return from patrol he should report to the officer in charge. After reporting he sits about until his next round. He would also make a verbal report to the officer in charge. If the latter thinks it unusual he records it in his diary. The officer also signs the book from the time of the punch clock. 30

I don't know the accused that well.

I had been the officer in charge of the night shift for four days when this incident occurred.

Q: Would you have personal knowledge of the posting of the man at the gate?

A: No. The detailing of the man at the First Offender's Prison would have been the responsibility of the officer in charge there. 40

Q: Do you know how many officers were detailed to the front gate?

A: No. In the night only one officer would be detailed. In the day there may be more than one because of the activity.

Prosecution
Evidence

Q: Was it possible for the officer at the gate to be armed?

No.7
George
Bannister
Cross-
examination
(Contd.)

A: No.

10

Q: Could that procedure have changed since you left?

A: No. I know that as the rules have not changed. The Officer on his rounds may pass by them with a gun because a punch clock is there but the officer stationed there has no gun.

Q: For how long did you know the deceased?

A: Fifteen to eighteen years.

Q: You know him quite well?

20

A: Fairly well. He was always nice to get along with.

Q: Did he drink excessively or intermittently?

A: I can't say.

Q: On the day of the 28th January, 1979 did he have a drink?

A: I don't know. I did not see him that day.

30

Q: There is a telephone extension at the booth to the main gate and in the office of the First Offender's Prison?

A: Yes. Both are extensions.

Q: If a call is placed from either place it has to go through what?

A: If to outside it must go through the operator, but if internal it can be made direct.

Q: Does the operator keep a diary?

A: I don't know. If a call is made to the outside I don't think it would be recorded.

40

The booth where those incidents occurred is not today at the main gate of the prison.

Prosecution
Evidence

No.7
George
Bannister
Cross-
examination
(Contd.)

Q: How as it constructed?

A: Square booths about 3' x 4' x 6' something. There was a door on the eastern side but at that time I don't think the door was attached to it. There was a window to the north. None to the south.

There was plenty of light. A street light and two lights on the gate.

10

Q: If midway between the booth and First Offender's Office is the driveway lit?

A: Yes. At end of the fence as there is a street light close to the gate. That is about 15' - 25' from the booth. The area between the booth and First Offender's Office is reasonably well lit.

Q: Suggest the only part of the area is the area in the immediate vicinity of the booth and that about 20' - 30' from the booth, the walk is not lit?

20

A: Light comes out of the office and from the gateway.

Re-examination Re-examination

Q: Did you hear the accused say anything about having had a hassle with Brown?

A: No.

Q: Where is the grena gun normally kept?

A: In a cupboard in the office of the First Offender's.

30

Q: Are there any floodlights near the main gate or compound.

A: About 110' from the gate there is a floodlight on the northern side of the building.

Q: Was it on on the 28th January, 1979?

A: I can't say.

Q: If so, where it would shine?

A: In the direction of the booth.

To Jury

To Jury

Q: As Sgt. in charge where are you located?

40

A: In the Main Prison in an office. That is about 600' - 700' from the office of the First Offender's Prison.

Prosecution Evidence

No.7

George Bannister
To Jury (Contd.)

Q: Does the Cpl. in charge inform you of irregularities?

A: Yes. Immediately after they happen.

Q: How does he do so?

A: By telephone or the walkie talkie

10

To Court

To Court

Q: Did you on the night of the 28th January, 1979 have any communication with Brown?

A: No.

No. 8

Prosecution Evidence

DENNIS JORDAN

Dennis Jordan s/s in ex. i/c.

No.8
Dennis Jordan
Examination

20

Employed at H.M. Prison. I live at Fortfincastle. On 28th January, 1979 I was employed at H.M. Prison. I went to work on the 28th January, 1979 at 10 p.m. I was employed in the south part of the prison in the main section of the prison. Sgt. Bannister was my superior officer.

30

After completing my check round I heard of an incident on my walkie talkie. I called the First Offender's and I spoke to the accused. I recognised his voice. I have known him a year and we socialise.

Q: What was said?

A: I asked accused,

"What happened?"

He said

"Nothing much."

40

That was all that was then said. He hung up. I left the southern section and went to the Principal Offender's Office where I saw Sgt. Bannister.

Prosecution
Evidence

No.8
Dennis Jordan
Examination
(Contd.)

Q: What happened then?

A: I asked Sgt. Bannister for permission to go to the First Offender's Prison.

Q: Did you say why?

A: ... I got permission. I came up to the main gate. That is different to the first gate lodge. From the main gate I called accused by telephone. 10

Q: What was said?

A: I told him,

"I am coming to you, I don't like what I have heard. I will be wearing a black coat."

He said,

"You can come to me."

The prison officer's coat is grey in colour. When accused said, "You can come", I hung up the telephone. The gate man let me through the gate of the main prison and I went to the first gate where accused was. 20

Q: As you approached this first gate was accused immediately visible or did he come visible after a while?

A: He became visible after a while. I saw him come from inside the booth. I had stopped 50 yards from the booth and called,

"Jay come to me".

Then I walked to about 25 yards from the booth and called, 30

"Jay come to me".

He took a little while and then he came out to me and he walked up to me. I asked him,

"Where is the gun?"

He put his hand in his coat pocket and he gave me the gun. Officer Smith walked up behind accused. When accused gave me the gun he held on to me. I held him and passed the gun to Officer Smith.

When accused held onto me he was crying. I can't recall anything he may have said at that point. 40

After passing the gun to Smith I remained there until the police came.

Prosecution Evidence

Q: Did you see Cpl. Brown at any time after accused gave you the gun?

No.8
Dennis Jordan
Examination
(Contd.)

A: No.

Q: Did you see him at any time that night?

10 A: After the doctor came. Someone had already found him. When I saw Cpl. Brown he was about 75' from the booth lying partly on his face. I took a light from one of the officers and shone it so the doctor could see. She opened Brown's shirt. When the shirt was opened, I saw little holes in the abdomen and back of Brown. When I saw Brown he was still.

Break

Resumption

XXD by Mr. Thompson

Cross-
examination

20 I had no communication that night with Cpl. Brown.

Q: Do you know from which source the communication on the radio came?

A: I can't recall. It could have been open or source within the confines of the prison.

Q: Where did you telephone?

A: Extension 24, i.e. the gate. Accused answered the phone each time.

30 Q: Was anyone else at the booth to your knowledge?

A: No.

Q: Why dial extension 24?

A: He usually works at the gate.

Q: You went to Sgt. Bannister after hearing of the incident?

40 A: Yes. I went alone to accused. To get to the booth I would have had to pass the Annex. The nearest point of the Annex to the main prison is 70' - 80' and the nearest point of it to the gate is about 100 yards from the gate.

Prosecution
Evidence

No.8
Dennis Jordan
Cross-
examination
(Contd.)

I met two officers on my way to accused. One was Officer Sealy. He was at the junction of a small road and the main road on which I was and would be on the north side of that road. On my way to the accused I did not meet Officers Smith, Miller or Cartwright.

When I stopped 50 yards from the booth I could not see accused as the booth light was not on.

10

After calling Jay when I stopped 25 yards from the booth, it took about two seconds before he came out to me. He was not in prison clothes. He had a beige tam on his head and a coat over civilian clothes. I saw Smith step out of the booth behind the accused.

Q: Why did you ask accused for the gun?

A: I had heard there had been a shooting. I did not examine the gun. I passed it to Smith. It was not examined in my presence.

20

I think it took the police more than half an hour to get to me. In that time I was just standing there with the accused. One of the officers had seen Brown and told me to see him but I did not tell accused for fear of his reaction.

Q: Did you know of a second revolver at the First Offender's Office?

A: One of the other officers said a second gun had been found at the office.

Q: Did you examine that gun?

30

A: No.

Q: Or Cpl. Brown's office?

A: No.

Q: You were the senior officer?

A: Yes.

When I spoke to accused the second time the street light was behind me.

Q: Was he not standing by the door of the booth with Jordan outside and that the gun was taken from inside the booth?

40

A: No.

Q: Suggest that when the gun was given to you, you checked it and found it contained its full complement of five rounds?

Prosecution Evidence

A: No.

No.8
Dennis Jordan
Cross-examination
(Contd.)

Re-examination

10 Q: Did you see any officers apart from Sealy and the other officer on your way to accused?

Re-examination

A: I can't recall. I met them by the junction of a little road that takes you west to the garden.

Q: How close did you get to them?

A: I just passed by them. They were off the road on which I was walking.

20 After I collected the gun from the accused I was the senior officer. The officers then present were Smith, accused and myself and I was the senior of the three.

Q: Have you responsibility for checking the office of the First Offender's Prison?

A: No. I have no responsibility in that office. Second to Cpl. Brown was officer Miller. Miller and I joined together.

Q: What did Smith do with the gun after you gave it to him?

A: He took the bullets out and walked away.

30 Q: How close was he to you when he took out the bullets?

A: About 12'.

To Jury

To Jury

I gave Smith the gun as I decided to get it away from accused and me. I did not see how many bullets came out of the gun.

To Court

To Court

40 Whilst standing with accused awaiting arrival of police other officers came up. Among them were Sgt. Holligan, Cpl. Allen, Officer Miller and Officer Cartwright and Officer C. Pucherin.

RAYMOND SMITH

No.9
Raymond Smith
Examination

Raymond Smith s/s in ex. i/c.

Employed at H.M. Prison and live on East Street. On 28th January, 1979 I got to work about 9:45 p.m. to work a shift of 10 p.m. on 28th January, 1979 to 6:30 a.m. of 29th January, 1979. 10

We were on an inspection parade called by Cpl. Brown. When called, on the parade at first were Cartwright, myself and accused. Brown asked accused,

"What has happened to your uniform?"

Accused said,

"I have been to the hospital and did not have the chance to pick up my uniform."

Brown dismissed the parade and detailed me to work at the gate. It would then have been 9:55 - 10 p.m. I work at the gate when accused is off and sometimes I assist him there. 20

Whilst at the gate accused came there. It was then about 10:15 p.m. He came into the booth and said,

"I am going to shoot Brown."

I said,

"Stop talking foolishness and give me a cigarette." 30

Accused said,

"I have only cigars."

He gave me a cigar.

Neither of us had matches so I went to the kitchen to do so. It is in the area of the office. That is not the visiting room. After lighting my cigar, I returned to the gate. Accused was there when I got back but he remained only a matter of minutes before leaving. He went in the direction I had just come from. Up by the office way. 40.

Accused returned to the gate later when Brown

was there. Brown had come first. It was then 10:50 - 10:55 p.m. I was in the booth. Brown came to the door of the booth. We had a conversation. It lasted no more than a minute. Brown moved away from the door. That door was then in the position in which it is shown in Photo 1 J.N.2. It faces east. Cpl. Brown's office is south east of the booth and the First Offender's prison is east of the booth.

Prosecution
Evidence

No.9
Raymond Smith
Examination
(Contd.)

10 I had not seen Brown approaching the booth.

Lunch Break

Resumption

Raymond Smith cont. in ex. i/c.

When Brown started to leave, I saw the accused. (Pointing to Photo 1 of Ex. J.N.2). Accused was by the right side of the booth as you look at the pictures. He had a revolver in each hand. He was pointing both revolvers at Brown. He told Brown,

20 "Look man I want talk to you."

Brown said,

"Don't play around with guns like that."

After those words accused fired a shot. He fired another shot. It was a short period of less than a minute between those shots.

Accused was about 7' from Brown when he fired the first shot.

(Points from witness stand to a spot between the two tables.)

30 After the second shot accused gave me a number to make a phone call. I don't know what happened to Brown.

I was in the booth when accused fired the first shot and could see accused. I saw him fire the second shot.

Q: Before first shot was fired did you see both Brown and Newbold?

A: Yes.

40 Q: After first shot was fired did you see Brown?

Prosecution
Evidence

No.9
Raymond Smith
Examination
(Contd.)

A: No. I don't know where he went.

After the second shot accused asked me to make a phone call. He was still in the same spot when he told me to make the call.

Q: What number did you dial?

A: He told me to phone a number and gave me the name of a person I know, and had seen with accused and assumed to be his girlfriend.

10

Q: What did accused say to you?

A: I can't exactly recall. I can't remember if he said it was the girlfriend or if he gave me a name.

Q: Do you know who answered the phone?

A: No. I asked her if I could speak to accused's girlfriend. When I got through I told her.

"Newbold shot Brown."

Q: Did accused continue to stand where he was after giving you the number?

20

A: As I went to call, I saw him pass by the window. It (the window) is over the shelf shown in Photo 1 in Ex. J.N.2.

Q: What side of booth is that window?

A: On the north side. He (accused) when he passed by the window appeared to be heading west towards the wall. There is a space between the booth and the wall.

After speaking on the phone I saw accused approaching the door of the booth. He was then in the road.

30

Apart from the two shots I heard also another shot. That I heard just after he had passed the window.

When he got to the booth he said,

"Don't be scared. I won't do you anything."

He then had one revolver in his hand. He came inside the booth and turned off the light inside it. He then told me to call the office of the Principal Officer. I dialed and gave him the

40

phone; he began to talk. I dialed 20 as that is the P.O.'s number. I did not listen to the conversation. Several more phone calls were made. I heard the phoning four or five times. Accused used the phone. I did not. After the last call accused told me,

Prosecution
Evidence

No.9
Raymond Smith
Examination
(Contd.)

"Jordan will be coming to the gate wearing a black coat."

10 Jordan came about seven to eight minutes after. As Jordan approached the booth accused turned on the lights and he went out and hugged Jordan. I left the booth and walked round to the back of Jordan and Jordan passed me the revolver. When I got the revolver, I moved off from them a couple of feet and opened the revolver and took out its shells. There were five rounds.

20 By now there were a lot of officers. I told Sgt. Holligan he had two revolvers and I went to search for the other. I searched first in the area of the office.

Q: Why that area?

A: Just went that way.

Q: Where did you find it?

A: Inside the office. That is on the floor inside Cpl. Brown's office.

30 I picked up the revolver. I then examined it. I found nothing inside of it. The revolver was empty. I handed over both revolvers to the police when they arrived. I do not know the name of the police officer. I gave the revolvers to the police when they arrived.

I can't remember if I went to work the next night.

40 After the police left I went back to the booth. Between the booth and the wall I found what seemed to be the head of a bullet. Where I found it was behind the booth, so I can't see the spot in Photo 1 of Ex. J.N.2 I gave what I found to Officer Miller.

Solicitor General

As in the case of Miller, I would like to recall this officer to identify the revolvers and bullet.

Prosecution
Evidence

No.9
Raymond Smith
Cross-
examination

XXD by Mr. Thompson

Accused and I joined the prison service together.

I would not say we were real close friends.

Q: Of the men who worked with you at the First Offender's prison, was accused your best friend?

10

A: I talked with him more than I did with the rest. We are supposed to be inspected at nights, but in fact we are not inspected most nights.

I can't recall any officers coming before that night on duty improperly dressed.

Q: Was it unusual then on that night for the accused to be improperly dressed?

A: I don't understand.

I can't recall the colour of the accused's clothing but he wore civilian clothing with a prison coat over it and he had on a tam.

20

I was in the prison compound when the police arrived.

I saw a man taking photographs after the police arrived but I don't know if he was a policeman.

Q: Can you see the area in Photo 3 of Ex. J.N.2 from inside the booth?

A: No.

30

Q: Why?

A: Because it is on the south side and the booth is closed up.

The window in the booth is on the side of the booth facing the tree in Photo 1 of Ex. J.N.2.

Q: Which way does the door face?

A: East.

Q: What direction would be on your right?

A: I don't know.

Prosecution
Evidence

Q: Suggest it might be the south?

Q: Did you see on 28th January, 1979 the cap shown in Photo 2 on Ex. J.N.2 in that spot?

A: No.

Q: Do you know whose cap it is?

A: No.

No.9
Raymond Smith
Cross-
examination
(Contd.)

10 Q: Before the incident between accused and deceased how many people visited you?

A: Officers Brown, Cartwright and accused.

Q: When did Cartwright visit you?

A: About 10:10 p.m. He was the first visitor and was there four to five minutes.

Q: Were you assisting accused at the gate on 28th January, 1979?

A: Brown detailed me.

20 Q: Is it usual for you to be detailed in presence of accused?

A: He has in the detailed me to work along with accused.

Q: Did not accused that night ask you to hold the gate for him until he had done something for himself?

A: No.

Q: Did you wonder why you had been detailed?

A: No.

30 Q: When did you relieve at the gate?

A: Can't remember.

Q: There was an officer that you relieved?

A: Yes.

Q: Who visited you next after Cartwright?

A: Accused.

Prosecution
Evidence

No.9
Raymond Smith
Cross-
examination
(Contd.)

Q: In conversing with accused did you ask him for anything?

A: Yes. One cigarette.

Q: Was he smiling at the time?

A: I can't recall.

Q: Suggest you got both the cigar and a match?

A: He had no matches.

10

Q: Suggest that neither you nor the accused left the booth prior to Mr. Brown's arrival?

A: No. I left him and went and lit a cigar.

Q: Was the statement of accused that he intended to shoot Brown made in his first visit?

A: Yes.

Q: So you had it in your mind when you went to the kitchen?

A: I paid it no mind.

20

Q: Even when Brown was at the booth on your return from the kitchen you did not think it necessary to inform him of the statement the accused had made to you?

A: No.

Brown was standing blocking the entrance to the booth. Brown was a medium sized man. Bigger than I am. Not as tall as the accused.

(Demonstrates how Brown held the revolvers).

When accused was pointing the guns at Brown, Brown was not in the doorway. He was to the left of the doorway as you look at Photo 1 of Ex. J.N.2. So, he was about 7' from accused.

30

I did not see where Brown was when I heard the first shot. I can't say if Brown was hit by the first or second shot.

Q: How can you be certain the man was the accused?

A: I saw him pointing the guns. I could

easily recognise him. Photo 1 of Ex. J.N.2 shows Prosecution
the light. One on the pillar. One in the booth. Evidence
One on the lamp post shown in Photo 1 of Ex. J.N.2
I heard three shots.

No.9
Raymond Smith
Cross-
examination
(Contd.)

Q: How many shot were fired from in front
of the booth?

10 A: Two. Not that quickly, one after the
other.

Q: Did you hear anyone scream or cry out?

A: I don't remember. I heard no sound
after the third shot.

Q: How long were you on the phone speaking
to the person he (accused) asked you to speak to?

A: Three to four minutes.

Q: Did you dial direct?

A: No, through the operator.

20 Q: Having heard the shots and being told
by the accused to tell girlfriend what happened
.....?

Q: Did it occur to you to inform your
superior officer of the incident?

A: I had no time to do so. I was scared
anyhow. If a man has a gun and gives you an order
what will you do?
He had the gun in his hand but was not pointing
it at me.

Q: Had you not an opportunity to run?

30 A: No.

Q: Did accused when he came back after
going past the window tell you where he had been?

A: No.

Q: In what direction did the first shot
come?

A: I don't know.

Q: Did accused tell you he had had a hassle
with Cpl. Brown?

A: He told me nothing.

Prosecution
Evidence

No.9
Raymond Smith
Cross-
examination
(Contd.)

Q: Suggest deceased asked accused for a cigarette and accused said he had none and to ask you because you had Rothman's?

A: I don't smoke Rothman's but Salem.

Q: Suggest Cpl. did not smoke Salem. Cpl. then left and went to main office?

A: No.

Q: Suggest Cpl. declined and had a further exchange with accused?

10

A: No.

Officer in the gate has no gun.

Q: Did you not hear accused ask Brown.

"Stop playing with guns."?

A. No.

Q: Did not accused try to hold the hand in which Brown held the gun?

A: No.

Q: Was there not then a hassle or exchange?

20

A: No.

Q: During that attempt to take away the gun, the gun discharged?

A: No.

Q: Do you know where, i.e. in which part of his body Brown was shot?

A: No.

Q: Did Brown wear shades?

A: I have seen him in them in the day.

When accused came back I did not look at him as I was scared, so I saw no gun on him when he was making phone calls. As soon as he returned and told me not to be scared he turned off the light.

30

Holligan and I went searching for the revolver. I did not then know where Brown was.

Q: Did you account at any time for the

cartridges of the gun found in Brown's office?

Prosecution
Evidence

A: No. I found nothing else except the gun and pieces of bullet head. I found that bullet head as I was walking around. I just happened to see it. The time was about 4:20 a.m.

No.9
Raymond Smith
Cross-
examination
(Contd.)

Re-examination

Booth has two windows.

Re-examination

10 On night of 28th January, 1979 both windows were closed.

Q: How did you know accused pass by the window?

A: I was in the booth. I saw him pass through the glass window. One of the windows is of glass. The glass window is on the side where the shelf is. The window towards the tree is of wood.

20 On the occasion when I was detailed to work with accused at gate Cpl. Brown detailed me to do so. Sometimes 2 p.m. to 10 p.m. on visiting day and sometimes in the morning 6:30 a.m. to 2 p.m. I have also been detailed by Officer B. Miller.

I was generally on the same shift as Brown.

I was not surprised that night to be detailed to work at the gate as I have worked there before.

To Jury

To Jury

30 I know of no argument between Cpl. Brown and accused during or after the parade.

I heard no scuffle or argument between Brown and accused at the gate.

To Court

To Court

Q: How far is it from the booth to Cpl. Brown's office?

A: I don't think it is more than the alignment of the Court room glass to the verandah, further, (About 70').

40 I once fired one of the revolvers taken on patrol. I have not fired it at night or seen it fired at night.

Prosecution
Evidence

No.9
Raymond Smith
To Court
(Contd.)

When I heard the two shots I was seeing the accused I can't remember nothing, anything which could suggest to me the gun was being fired.

When Brown was speaking to me he was looking towards the inside of the booth.

When he came to leave he turned. When I said he was standing to the left of the booth he was then facing the accused.

10

I can't say from which direction the third shot came. I can't say if it sounded as loud as the first two shots. I had already dialled and was waiting for the operator to give me the number when I heard the third shot.

I would say the accused seemed to be approaching the booth from the office area as he looked as if he was coming straight down. I was seeing him through the door. He was about 10' from the booth when I first saw him.

20

Prosecution
Evidence

No. 10

EARTLIN MILLER (RECALLED)

No.10
Earltn Miller
(Recalled)
Examination

Earltn Miller s/s in answer to Court

1st August, 1979

I visited the locus with Court, accused Jay and Counsel. I pointed out:

Where the booth was.

30

As well as the wall which replaced the one shown in Photo 2 of Ex. J.N.

Cpl. Brown's office.

Porch to Cpl. Brown's office.

The desk where I was seated and how I was seated.

Where and how the accused sat on the wall.

How Brown walked from the office to the gate.

The Visiting Room.

Where Brown sat in his office with the door open.

40

Where accused was standing when he said, "Excuse me".

The Isolation ward.

The dormitories of the First Offender's Prison.

The direction in which I ran and the wall

I jumped.

The toilet to Brown's office.
Where I saw Brown's body

Prosecution
Evidence

Where I jumped the fence to get back on to
the road that leads to the gate.

No.10
Earlin Miller
(Recalled)
Examination
(Contd.)

To Mr. Thompson

10 It is relatively the same to jump the fence
from north to south as from south to north. I
lived in the quarters and have jumped it many
times.

Cross-
examination

No questions by Jury

No. 11

Prosecution
Evidence

RAYMOND SMITH (RECALLED)

Raymond Smith s/s in answer to Court

No.11
Raymond Smith
(Recalled)

20 I visited the locus with the Court, accused,
Jury and Counsel and I pointed out:

To Court

Where I found a piece of bullet head.

Where accused stood near the booth when he
returned the second time and where Brown was
standing.

Where was the glass window in the booth and
where the wooden window, and which way the door
looked.

The kitchen.

No questions by Counsel

30 To Jury

To Jury

After the shots, I saw accused coming from
the center road.

No. 12

Prosecution
Evidence

DENNIS JORDAN (RECALLED)

Dennis Jordan s/s in answer to Court

No.12
Dennis Jordan
(Recalled) To
Court

40 I visited the scene with the Court, Jury,
accused and Counsel and pointed out:

Where Sealy was when I passed him on my way

Prosecution Evidence

to the booth.

No.12
Dennis Jordan
(Recalled) To
Court (Contd.)

Where I stopped 50 yards from the booth and
25 yards from the booth.

No questions by Counsel

To Jury

To Jury

I know of no ill-feeling between accused and
Brown.

10

Prosecution Evidence

No. 13

MATTHIAS CARTWRIGHT (RECALLED)

No.13
Matthias
Cartwright
(Recalled) To
Court

Matthias Cartwright s/s to Court

I visited the locus in company of Court, Jury,
accused and Counsel and pointed out:

In which direction I ran and the unused
quarters of the Superintendent.

Where was the body of Mr. Brown.

20

No questions by Counsel or Jury

Prosecution Evidence

No. 14

EARTLIN MILLER (RECALLED)

No.14
Earltn Miller
(Recalled)
Examination

Earltn Miller recalled by Crown

I remember the numbers of the revolvers I
collected. They were 81577 and 108848.

These are the revolvers in question.

30

Revolver 81577 produced as Ex. J.N.3.
Revolver 108848 produced as Ex. J.N.4.

I was present when the police came. I was
present when the two revolvers were handed to
the police. I can't say for sure who actually
handed the revolvers to the police.

Later that night Officer Smith handed me a
bullet head. I handed it over to Mr. Moss, who
relieved me, for collecting by C.I.D. Next night
when I went to work I found it still in the office. 40
I phoned the C.I.D. and police officer Huyler

came and I handed it over to him.

Prosecution
Evidence

(Shown a bullet head)

The bullet head I got from Smith is similar to this. (marked "A" for exhibit)

No.14
Earl Miller
(Recalled)
Examination
(Contd.)

Officers were around when I handed "A" to Huyler.

10 XXD by Mr. Thompson

Cross-
examination

I did not check the revolvers.

No re-examination.

No question by Jury

To Court

To Court

I actually loaded the revolvers.

No. 15

Prosecution
Evidence

RAYMOND SMITH (RECALLED)

20 Raymond Smith recalled by Crown

No.15
Raymond Smith
(Recalled)
Examination

I made no note of the serial numbers of the revolver I found on the floor of Brown's office or of the revolver handed to me by Jordan.

I handed both revolvers to a policeman.
(Cpl. Huyler called into Court)

He is the officer to whom I handed the revolvers. (Shown J.N.3 and J.N.4)

They look similar to the revolvers I handed to Huyler and to the ones I saw in the hands of the accused when he came to the booth.

30 When I handed the revolvers to Huyler I also handed to him five live rounds.

(Shown four live rounds)

These four look similar to four of the five I handed to Huyler.

(marked "B" for exhibit)

(Shown "A" for identification)

Prosecution
Evidence

It looks similar to the bullet head I found.

No.15
Raymond Smith
(Recalled)
Examination
(Contd.)

No XXD
No questions by Jury

Prosecution
Evidence

No. 16

DENNIS JORDAN (RECALLED)

10

No.16
Dennis Jordan
(Recalled)
Examination

Dennis Jordan recalled by Crown

The gun I passed to Smith when accused hugged me was a .38 revolver.

(shown Ex. J.N.3 and J.N.4)

These are .38's. The one I got from accused looked like these.

No XXD

No questions by Jury

20

Lunch Break

Prosecution
Evidence

No. 17

KENDAL LIGHTBOURNE

No.17
Kendal Light-
bourne
Examination

Resumption

Kendal Lightbourne s/s in ex. i/c.

Attached C.R.O. and I am a Detective Chief Inspector. So attached in February, 1979.

30

On 28th February, 1979 I received from Detective Huyler two firearms .38 serial numbers 81577 and 108848. I also received an envelope containing five live cartridges and four cartridge cases. Further envelope contained one bullet. I also received a plastic container which had one bullet.

The same day I took the exhibits to Washington, F.B.I. Crime Laboratory and handed them to Mr. Richard Crum and made a request of him. My request was to compare the exhibits with the

40

firearm to compare which had fired what.

Prosecution
Evidence

I received these items back from Crum today. I examined them and found that one of the five live cartridges had its bullet separated from the cartridge case. Otherwise they were as I handed them to him.

No.17
Kendal
Lightbourne
Examination
(Contd.)

10 The four cartridge cases I had got with the five live cartridges did not have bullets.

Exs. J.N.3 and J.N.4 are the revolvers I got from Cpl. Huyler.

These are four of the five live bullets and the four cartridge cases I got from Cpl. Huyler. I also have a cartridge case. The four cartridge cases are identical. I got these five empties from Mr. Crum this morning.

(five empties marked "C" for identification)

20 I also received this from Mr. Crum, it contains the top part of a live cartridge, i.e. the bullet.

(marked "D" for identification)

This plastic container I got from Cpl. Huyler contains a bullet. I gave it to Mr. Crum and got it back from Mr. Crum.

(marked "E" for identification)

This "A" I also got from Cpl. Huyler and passed to Mr. Crum and got it back from him.

XXD by Mr. Thompson

30

Cross-
examination

Q: Any distinguishly marks on the live bullets or even on the cartridge?

A: There is not, but I am sure they are from Huyler and are the ones I got from Crum and got back because they look like those.

No re-examination

No question by Jury

To Court

To Court

40 All the articles came from Huyler on the same day and were given to Mr. Crum on that very day.

RICHARD CRUM

Richard Crum s/s in ex. i/c.

I am a special agent of the F.B.I. in Washington D.C. and have been so employed nine and a half years.

My duties include assignment to F.B.I. Laboratory in Washington and work in the Firearms Identification Unit of the Laboratory. That involves examination of bullets, cartridge cases, cartridges and weapons and it purpose to determine whether or not those various components were fired by the weapon in question.

10

In this matter I have had special training I got in the F.B.I. Laboratory in Washington D.C. under the direct supervision of Firearms Identification specialists who work in the Laboratory. I have been doing the work for the last six and a half years and in that time I have examined thousands of ammunition components and weapons. I have given evidence in Courts and have been accepted as an expert on identification at State Courts of the U.S.A. and the Supreme Court of Nassau.

20

On 28th February, 1979 I saw Chief Inspector Lightbourne in the Laboratory in Washington D.C. He then gave me:

30

(I would like to refresh my memory from my report) Five cartridges, four cartridge cases, two bullets and two .38 Weleby revolvers. The purpose of delivering them was that I could examine them and determine if any of the bullets, cartridge cases and cartridges could be associated with the two weapons.

Exs. J.N.3 and J.N.4

are the two revolvers handed to me by Chief Inspector Lightbourne

40

(shown items "A" and "E")

"E" is one of the bullets delivered to me by Lightbourne. I marked it with the specimen number I assigned to it and my initial and a portion of case number.

"A" is a .38 bullet delivered by Lightbourne and

I marked it with my specimen number I assigned to Prosecution
it, my initial and a portion of the case number. Evidence

"B" contains four live cartridges.

No.18
Richard Crum
Examination
(Contd.)

"D" has inside of it the bullet and powder I
reserved from the cartridge case in "B".

Produced as Ex. J.N.5 is "D" and the empty
cartridge case is "B".

10 These four empty cartridge cases marked "C"
are the four empties I received from Lightbourne.

The four are produced as Ex. J.N.6.

20 I examined each of the bullets and cartridge
cases received to determine their caliber and if
there were marks on them to associate with a
particular weapon. I then examined the two
weapons and as part of my examination, I test
fired them and recovered the cartridge cases and
bullets I fired from each of these weapons. I
then made a microscopic comparison of the markings
on the two bullets, four cartridge cases and the
five cartridges with the test bullets and
cartridge cases I fired with these weapons.

30 Directing my attention to the two bullets,
i.e. the bullet in "E" and "A", I compared
markings left by the barrel of the weapon from
which they were fired with the test bullets I
fired from the two weapons. I used a comparison
microscopic for this purpose. That enables me
to look at the question bullet and the test bullet
at one and the same time so as to make the
comparison. Based on that comparison, I could
conclude that each of these two bullets, i.e. "Q"
and "A" were fired by the revolver 81577 Ex. J.N.3.

40 I then directed my attention to the four
cartridge cases - Ex. J.N.6. I compared markings
on each of those cases. Specifically the type of
markings I compared are called "breach face
markings". They are markings left on a
cartridge case when fired from a particular weapon.
I compared them with corresponding markings on
the test cartridge cases that I fired from the
two revolvers. On the basis of that comparison,
I concluded that each of the cartridge cases were
fired from revolver No. 81577, Ex. J.N.3.

I then directed my attention to the five live
cartridges. (Five are marked "B" and the other
is Ex. J.N.5). I noticed that four of the five
had a firing pin impression on them near the edge
of the primer. The fifth had two such firing pin

Prosecution
Evidence

No.18
Richard Crum
Examination
(Contd.)

impressions. I made a microscopic comparison of each of those impressions with firing pin impressions left by Exs. J.N.3 and J.N.4. On the basis of that comparison, I concluded that each of those firing pin impressions in those five cartridges were made by the firing pin in the revolver 108848. Ex. J.N.4. In that, I would conclude that at one time those five cartridges had been loaded in Ex. J.N.4 and an attempt had been made to fire them.

10

Q: Is that usual or unusual?

A: When you attempt to fire a weapon and gun, pull the trigger the firing pin will strike the cartridge and set it off and so propell the bullet down the barrel. In this case, the firing pin impression was off centre and the cartridges were not.

Q: Was there anything wrong with Ex. J.N.4?

A: It is impossible to know exactly why those cartridges did not fire. The possible explanation is that when I examined Ex. J.N.4, I saw a serial number on the cylinder of the weapon which did not match the serial number on the pin of the weapon. So the cylinder could be a part from another weapon. When I test fired it in the Laboratory, I noticed when I pulled the trigger and the cylinder rotated, it rotated a small distance too far, so carrying the firing pin to strike the not in the centre but off to the side. That could be because the cylinder did not originally belong to Ex, J.N.4.

20

30

In the case of Ex. J.N.3, the number on the cylinder and on the pin are the same.

I returned the items after my examination in the F.B.I. Laboratory and brought them with me to Nassau and returned them to Mr. Lightbourne this morning.

Cross-
examination

XXD by Mr. Thompson

For my test I fired the bullets into a water recovery tank.

40

Q: If you fired a .38 into solid matter would it have effect in the bullet?

A: It would depend on the type of bullet and the nature in which fired.

Q: Look at "A"?

A: It is a bullet with a lead case and a hard metal jacket.

Prosecution Evidence

Q: If fired into a wall, would it, when returned be in the same condition as it left the gun?

No.18
Richard Crum
Cross-examination
(Contd.)

A: It is impossible to answer. I would expect any little mutilation as compared to a lead bullet.

10

Q: There may be some destruction?

A: The possibility exists, but normally you don't find much mutilation on this type of bullet.

Re-examination

Re-examination

I examined "A". The bullet is in good shape and I had no difficulty in comparing it with the test bullets I fired from Exs. J.N.3 and J.N.4 and had no difficulty reaching my conclusion.

20

I examined "E". It is in good condition and I had no problem noting my comparison or reaching my conclusion.

No questions by Jury

To Court

To Court

I marked the shell from which I extracted a bullet Q4. It was the only specimen so marked so I can relate the empty shell to the bullet.

30

The purpose of extracting that bullet was to compare the observable physical characteristics of the two bullets I received with the bullets from one of these cartridges. I picked specimen Q1, to make that comparison.

The cartridges I fired from Ex. J.N.4 fired in it even though the firing pin impression were off centre, but that they fired could be that the sensentative of the pins in the cartridge. There is no way I understand why the ones I fired jamed, and the ones sent me did not.

40

I did not check the trigger pull of Ex. J.N.3. The weapon can be fired by single or double action. Single is the trigger and pull it, double is by pulling trigger and the lever moves to the rear and the fired . It takes less pressure on trigger pull to fire it single action than it does double action.

fourth on the ground just in front of the porch. Prosecution
Evidence

Suspecting accused who was being held by other prison officers, I told him I suspected him of the shooting death of Brown. I arrested him and I cautioned him. He pulled away from me and said, No.19
Samuel Huyler
Examination
(Contd.)

10 "Man I no going no where cause I ain't do nuthin". He leave booth and continued to struggle. I was assisted by other officers and he was subdued and taken to C.I.D.

Dr. Read came to the scene after he had subdued the accused. She examined the body in my presence. I saw two wounds that looked like bullet wounds in the deceased's stomach. One looked like an entrance and an exit wound.

I instructed that the body be taken to the mortuary after the doctor had examined it.

20 Dr. Read examined the body but I can't say what time. It was after midnight.

Accused was taken to C.I.D. but I did not accompany him.

On Monday, 29th January at 8 a.m. I saw accused at the C.I.D. I told him that I suspected him of the shooting death of Brown. I cautioned him. (You are not obliged to say anything but anything you say will be taken down and given in evidence). I asked him if he wished to tell me anything of the matter. He said,

30 "Brown came playing round me with the revolver and me and him begin hassling and it fired off twice."

As a result of what he told me, I asked him if he wished to make a written statement. He said, "Yes".

I asked him,

"Do you wish to write it?"

40 He told me to write it for him. I wrote the statement. I wrote down what he told me. On completion, I handed it to him. He seemed to read it and then handed it back to me. I dictated the certificate which he wrote. He said the statement was true. He signed the statement. I signed it and so did Detective Johnson who was present at the time.

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Prosecution
Evidence

No.19
Samuel Huyler
Examination
(Contd.)

This is the statement which I recorded. I see my signature and that of accused on it.

Statement produced as Ex. J.N.7 and is handed ot Jury.

I made no promise, threat, nor used of force to get him to make the statement which was recorded at C.I.D.

At 9:47 a.m. on 29th January, I went with other officers to the mortuary of the Princess Margaret Hospital. At 11:50 a.m. while at mortuary I collected from Dr. Read a plastic container which contained a spent bullet and a death certificate from Dr. Read. 10

At 5:47 a.m. on 30th January, I went with other officers to H.M. Prison, whilst there, I saw prison officer Raymond Smith. I collected a spent .38 bullet. That day shortly after 6 a.m. on the same visit, I took a measurement of the distance between the booth at the first entrance to where I had seen the body of Brown. That was 162'. 20

On 28th February, 1979, I saw Chief Inspector Lightbourne. I handed him two revolvers, four spent cartridges, five live rounds, spent bullet collected from Dr. Read and also the bullet I had got from Smith.

The four cartridge cases are similar to those in J.N.6.

The four live rounds "B" are like the ones I give to Lightbourne. 30

(Produced as Ex. J.N.8).

"E" is the one I got from Dr. Read.

(Produced as Ex. J.N.9.)

"A" is like the one I got from Smith.

(Produced as Ex. J.N.10).

About two weeks later I received a report from Dr. Read as to her findings.

Solicitor

They are admissible under section 42(5) of the Evidence Act and section 14 of the Coroner's Act. 40

Adjournment _____

Prosecution
Evidence

2nd August, 1979

No.19
Samuel Huyler
Examination
(Contd.)

Resumption

Samuel Huyler s/s cont. in ex. i/c.

This is the death certificate issued by
Dr. Read, I recognise the signature.

10 (Produced as Ex. J.N.11).

This is the report of Dr. Read. I recognise the
signature.

(Produced as Ex. J.N.12).

On Ex. J.N.11, cause of death is shown as a
bullet wound of the abdomen.

(Reads Ex. J.N.12 - report of Dr. Read).

(Cause of death bullet wound of abdomen).

20 On 30th January, 1979 I charged accused with
murder. I cautioned him and he said nothing in
reply.

XXD by Mr. Thompson

Cross-
examination

When I first saw the accused he was dressed
in civilian clothes. I don't recall his having
on anything which is part of prison uniform. I
doubt he had anything on his head.

The two revolvers were handed to me in, I
think, the area of the office.

30 My search of the office was in the line of
my investigation.

I was not conscious of the fact that either
revolvers had or had not cartridges or bullets
in them.

When I saw the accused first he was being
held.

When I say he was hostile, I mean he was
violent and pulling away as if he wanted to fight.

Q: Trying to protect himself?

A: No one was doing him anything.

Prosecution
Evidence

No.19
Samuel Huyler
Cross-
examination
(Contd.)

Q: You said at P.M. - "He was looking in a hostile manner telling the officers holding him to let him go as he had done nothing?"

A: I don't recall saying that. He was being held.

Q: You went on to say - "I identified myself to him ...?"

A: Yes.

10

Q: When you say hostile manner was it hostile to you or to those holding him?

A: To me as he pulled away from me when I arrested him.

Q: A movement away from you you regard as hostile?

A: He did not move away from me. He pulled away from me.

Q: At any time after his arrest did accused act in a manner not co-operative?

20

A: No. The only time he was uncooperative was at the moment of arrest.

No re-examination

No question by Jury

To Court

To Court

In this type of revolver the cartridge when fired does not eject automatically. They have to be extracted. I have fired such revolvers.

The Solicitor General closes the case for the Crown.

30

Accused is told his rights by the Court. The accused elects to give sworn evidence from the witness stand.

JAVAN NEWBOLD

Javan Newbold s/s in ex. i/c

No.20
Javan Newbold
Examination

I live in Oxford Avenue.

10 I am an officer of H.M. Prison and I have
been employed as such for two years and four months.
I was so employed on night of 28th January, 1979.
I was then assigned to First Offender's Section.
I was working on the night shift from 10:00 p.m.
to 6:30 a.m.

On 28th January, 1979, I arrived for work
at 9:55 p.m. I was wearing civilian pants and
shirt, my prison officer's coat and prison
officer's cap.

20 On arrival I went to the First Offender's
Office, got the back-up start and went and
checked the dormitories and reported my findings
to Cpl. Brown i.e. all was correct. Cpl. Brown
then told the officers present to fall in for
inspection. Those officers fell in and Brown
asked,

"What has happened to your uniform?"

I told him,

"I went down town and when I got back to Fox
Hill I did not have time to put on my full
uniform."

30 Brown told the parade to dismiss. I was detailed
to take over the gate as usual. I then asked
Smith to hold the gate for me because I wanted to
use the rest room.

Q: Any other reason?

A: So I could explain to Cpl. Brown as he
did not seem to understand me at first.

On my way out of the rest room, Brown was
still grumbling so I explained the situation to
him all over again. He said,

40 "Alright Newbold."

I said,

"I won't let it happen again."

Defendant's
Evidence

No.20
Javan Newbold
Examination
(Contd.)

I then went to the First Offender's Gate. Smith was there.

At the gate Smith asked for a cigarette. I told him,

"I have no cigarettes but if you want a cigar you can have one."

I gave him the cigar and a light from the cigar I was smoking. Brown came to me at this point and asked me for a cigarette. I told him,

10

"I have no cigarettes. If you want a cigar you can have one."

He said,

"I don't smoke cigars."

I told him,

"You can ask Smith if you don't think I have no cigarettes."

Brown left and about five minutes later he returned. At the time Smith was at the gate. The three of us were at the gate.

20

Brown started to poke me in my side. When I looked round I saw he had a .38 revolver in his hand. This occurred just outside the booth close to the right of the door when facing it. Smith was standing just outside the door to the left of it. I said to Brown,

"Stop playing with the revolver."

Brown replied.

"Either you give me a cigarette or I shall have you looking like a sieve wire."

30

At this point Brown started to take off his shades. Seeing that, I used the opportunity, seeing he was distracted from me to get the revolver. At that point I jumped out of the booth. I held his wrist and we started to wrestle for the .38. While wrestling, a shot went off. At this point Brown's grip on me tightened. One more shot went off. At this point I felt his grip sort of slacken. I held him for two to three seconds then pushed him away from me. I then ran behind the booth at the gate.

40

At this point, Officer Smith was by the wall. Defendant's
I peeped around the corner of the booth and I saw Evidence
Cpl. Brown walking up the hill. Facing south the
hill of which I speak is the road on the right.
Not the middle road. I said,

No.20
Javan Newbold
Examination
(Contd.)

"That is right carry the gun back."

10 I checked myself to see if I had been hit by any
shots. I found I have received no injury. I
then saw Cpl. Brown hold his stomach and he said,

"Oh Lord Newbold call the doctor."

I did not move as I felt he was trying to get me
in the open. I then called Sgt. who was the C/O
in charge that night. I called to inform him of
what had happened. After I had explained to him
what had happened he told me to stay where I am
and he would send officers to investigate.

20 A short while after I saw officers in the
vicinity of the annexe coming towards the gate.
I called Sgt. Bannister again and told him,

"Call the officers on the radio set and let
them know I am at the gate and I don't have a
weapon."

Q: Did you have a weapon?

A: Yes. I had one.

Q: Why did you not tell Bannister that if
you have a weapon?

30 A: Knowing that the officers have to pass
the Armory to get to First Offender's, I was under
the impression they would be armed. I have been
an officer for the past two years and know the
way that officers think I was not taking any
chances. They might start shooting at anything
they saw. After calling Bannister the second
time, I received a phone call from Dennis Jordan.
He told me,

"I am coming to the gate."

40 As I hung up the phone it rang again a short while
later. I answered it and again it was Jordan.
He told me,

"I am coming to the gate and I will be
wearing a black coat."

At this point, the officers I saw first were in

Defendant's
Evidence

No.20
Javan Newbold
Examination
(Contd.)

the vicinity of the road leading to the piggery. I saw Jordan and he continued straight to the gate. When he reached he asked me.

"Do you have a gun?"

I said,

"Yes."

I stood up just outside the booth.

When I first saw Jordan coming to me I turned off the light inside the booth.

10

Q: Had you a reason for that?

A: Yes. The officers would have had a clear view of me so I eliminated that view by cutting off the light.

When Jordan asked if I had a gun, I reached in the back to the shelf where we write. I got the gun from there and gave it to Jordan. Jordan then held me around the waist. At this point, Smith who I had told to come into the booth when I saw the officers coming walked out of the booth and Jordan passed the revolver to Smith.

20

Jordan had checked the gun before he gave it to Smith. Smith on getting the gun made about four stops off and he also checked the revolver. At this, Sgt. Holligan and Cpl. Allan came to me and asked me what had happened. Cpl. Allan then held me around my waist. He asked me where I had last seen Brown. We started walking in that direction. As we got on top between the Isolation Ward and the First Offender's Prison, the officers tried to beat me up. I was held in a full nelson and almost had my hand broken. I pushed them off and told them I am not going to let you hit me unless you let me explain myself. I was encircled and I heard an officer behind me say,

30

"See Cpl. Brown over here."

I did not see Brown as I was encircled. At this point, I saw Cpl. Huyler. He came to me and told me,

40

"I will have to take you to town for questioning." I was hand cuffed and placed in the patrol car and on our way through the gate, I told Cpl. Johnson - a C.I.D. officer to stop the

car. He did so. I then gave Smith the phone number 57113 and told him,

Defendant's
Evidence

"Tell my family I have been taken to C.I.D."

No.20
Javan Newbold
Examination
(Contd.)

I was taken there and eventually charged as described by Cpl. Huyler.

Q: Did you have any intention of causing harm or death to Brown you wrestled with him?

A: No.

10 Q: What was your intention?

A: To get the revolver away from him.

Q: Have you any regrets today?

A: I am sorry it happened as it did.

I gave Smith the telephone number to call my family. I gave him no name. I did not tell him to phone my girlfriend.

20 When we are working from 6:30 a.m. to 2 p.m. and working from 2 p.m. to 10 p.m. and again 10 p.m. to 6 a.m. I am detailed to the gate. It is my regular post.

Q: Have you a right when at the gate to have a revolver on your person?

A: Yes.

Q: Did you go to the desk and remove both revolvers?

A: I deny that. On my way from the bathroom after explaining to Cpl. Brown the two revolvers were on the desk. I took one and I went to the gate.

30 Q: Was Miller then at the desk?

A: He was inside the office with Cartwright checking the notice board.

Q: Where was Cpl. Brown?

A: Standing by the phone in the room where Miller and Cartwright were.

Q: Did you say,

"Excuse me. Suppose I start shooting

Defendant's
Evidence

No.20
Javan Newbold
Examination
(Contd.)

everybody, what will you do?"

A: No.

Q: After going to the front gate did you at any time return to the office of Cpl. Brown?

A: No.

Q: Can you explain why Smith says he was detailed to the gate?

10

A: He was not detailed to assist me. He went to the gate when I asked him to hold on for me.

Q: Were you detailed that evening to the gate or was that your automatic post?

A: It was my regular post. I did not have to be told over and over.

Q: While on duty at the gate and you asked to use the toilet would you leave the booth without having someone there?

20

A: Rule is to call someone. We just call and ask someone on the porch to watch the gate.

Q: While at the gate with Smith did you have any conversation with him?

A: Only about cigarettes and cigars. I never told him it was my intention to shoot Brown. I had no conversation with him about Brown.

Break

Q: Did you see Cartwright come to the booth?

30

A: No.

Q: Did you say to Brown, "You scheming but I will teach you how to scheme"?

A. No.

Cross-
examination

XXD by Solicitor General

I did not go to the booth immediately after the dismissal of the parade. I told Smith to hold on for me.

Q: Where was Smith?

40

A: He was standing in front of the kitchen door where the parade had been held.

Defendant's
Evidence

Consulo Ginetten Harvey is my girlfriend.

Q: Did you mention her name that night to Smith?

A: No.

Q: Were not you and Smith more friendly than Smith was to the other officers?

10 A: I regard Smith as a friend. I can't figure why he is lying except for fear of losing his job. He is lying.

Q: At what time was the inspection parade dismissed?

A: About 10 p.m. or 9:58 p.m. I got to work at 9:55 p.m. Before the parade I got the lock-up state. Then I checked the four dormitories.

20 Q: How long did it take you to check the first dormitory?

A: I can't say. I just stand at the door and count as the inmates are lying in their beds.

Q: Suggest it never happened.

A: It did.

Q: You take the one light of two to check each of the four dormitories?

A: Yes.

I did all that before the parade. Usually we don't have a parade. We just go to our duties.

30 Q: Do you think he held that parade because you were not in prison clothes?

A: I fell in as I know I can't answer that. I wasn't thinking of a reason for his calling the parade.

Q: Were you upset at the question of not having on prison clothes?

A: No.

No.20
Javan Newbold
Cross-
examination
(Contd.)

Defendant's
Evidence

No.20
Javan Newbold
Cross-
examination
(Contd.)

Q: You told Brown you would not let it happen again?

A: Yes. That was on my way out of the bathroom and I saw him grumbling whilst he was seated at the desk.

Q: That is before you went to the booth?

A: Yes.

Q: That is when you picked up the revolver?

A: Yes. Miller was already back from his round. The revolvers were on the desk. Cartwright and Miller were looking at the notice board. 10

Q: When were Cartwright and Miller looking at the notice board, before or after Miller had made his rounds?

A: After.

Q: Just before you went to the bathroom where did you see Smith?

A: Standing outside facing the kitchen door. Cartwright was there when I told Smith to do so. 20

Q: You went to the bathroom to relieve yourself?

A: Yes.

Q: How long were you in the bathroom?

A: I did not time myself.

Q: Were you in there five to ten minutes?

A: Longer than five minutes.

Q: Longer than ten minutes?

A: About ten minutes. 30

When I came out of the bathroom Cartwright was by the notice board. Miller was not yet back. Whilst talking to Brown, Miller came.

My conversation with Brown was that Brown was still grumbling. I told him I explained to you on parade what happened. I went to town and when I came back I did not have time to put on my uniform. He said if you had time to put on your

coat you could have put on your uniform. He said, Defendant's Evidence

"Alright"

No.20

Q: Suggest you did not go to the gate after 10:15 p.m.?

Javan Newbold
Cross-
examination
(Contd.)

A: It was after Miller came back.

Q: How long did Smith hold on for you?

10

A: Until I got back to the gate.

Q: What did you do with the gun at the gate?

A: Rested on the shelf in the booth.

Q: Why take the gun to the gate?

A: For security. The wall is low. I have had bottles thrown at me on several occasions. I started to take the gun there only after bottles were thrown at me. I started doing that in the second week of November in 1978.

20

Q: Did you take the gun every night?

A: Not every night. Not when I am off duty. The gun would not reach back until after the first round.

Q: Suggest you were not detailed to the booth and did not take the gun there?

A: I did.

When Brown came to the booth I was inside of it and Smith was outside.

Q: Did Brown have anything with him?

30

A: Not that I noticed. When Brown came the second time Smith was outside of the booth to the north of it. Brown remained outside the booth. I was sitting in it. I was facing the glass window, i.e. north. Brown started to poke me with the gun as soon as he came.

40

Brown came up to the door. He could not see the gun which was on the shelf in the corner where there is a part wall. I think I can see the cross piece of the stool that holds the leg in photo 1 of J.N.2 when I was sitting in the booth, the stool was more in the middle of the floor.

Defendant's
Evidence

No.20
Javan Newbold
Cross-
examination
(Contd.)

This is not the first time Brown has asked me for a cigarette. It is the first time he has poked me with a gun.

Q: Did you think Brown was going to shoot you?

A: Yes. The reason why I did not go for my gun was that his attention was on me so I waited till his attention was distracted when he touched his shades. 10

Yes, I really thought Brown was going to shoot me. He had the gun in his right hand. That is the hand I gripped and I gripped it with my left hand. Because of the speed I came out of the booth his hand swayed between us.

Q: What speed did you have?

A: My body force.

At no time did I have possession of the gun.

With the gun between us we were wrestling. 20

When the first shot went off we were close up to one another. His left hand was round my waist.

Q: How did he get shot in the back?

A: The hole at the back is the exit for the front.

Lunch Break

Resumption

Q: With the gun in Brown's right hand, you could not have so moved the hand that he was shot in the back? 30

A: His hand was between us. All I can say is the gun went off between us.

Q: After the second shot you say Brown's grip slackened?

A: Yes.

Q: Where was he gripping you?

A: Around my waist. We each held one another round the waist and being taller, I squatted him. 40

Q: You can't say if your hand pushed his behind him?

A: Gun was between us when the shot went off.

Q: Suggest you shot him in the back when he ran?

A: Your suggestions are wrong as I never held the gun.

10 Q: Why did you run behind the booth?

A: To shelter as Brown still had the gun. I was not sure if he was hit or I was hit.

Q: Why peep around the booth?

A: To see where he was heading, whether coming to me or going away.

Q: He was on the road going up the hill?

A: Yes.

Q: Right after the two shots?

A: Yes.

20 Q: Did you keep peeping?

A: Till he got so far and I said,

"Carry the gun back".

Whether he heard me or not I can't say.

Q: He was on the road then?

A: Yes. I last saw him when he held his stomach. He was then on the road. He began to stumble and went towards the grass. He stumbled out of my view.

30 Q: Why didn't you move if you saw him stumble?

A: I thought it was a ruse for him to find out where I was as I felt he did not know where I was after I had pushed him off as I had run the same time behind the booth.

He stumbled off the road onto the grass and when he disappeared from my view, he was 4' to 5'

Defendant's
Evidence

No.20
Javan Newbold
Cross-
examination
(Contd.)

from my view. He was walking in a stumbling manner.

Q: Had he reached the pea patch when you last saw him?

A: I can't say how far he had got. He went in the direction of the pea patch.

Q: You had to check yourself to see if you hit?

A: I was not feeling pain, but I have been told that when you first get hit by a bullet you may not hurt.

10

Q: Was not Smith in the booth when you went behind it?

A: No. He was just outside and north of the booth. In the immediate area.

Q: You didn't ask Smith after the first two shots to make a phone call?

A: No. I did all the dialing.

Q: Why after the shooting did you find it necessary to pick up the gun then?

20

A: I did so only after Jordan asked me for the gun.

Q: When Jordan asked you for the gun you did not have it on you?

A: No. I did not take it out of my coat and pass it to him.

Jordan was a friend of mine and still is.

Q: Can you think of any reason why he should lie on you?

30

A: Not that I can recall.

Q: Why did you turn off the lights before Jordan came?

A: I was afraid because the investigating officers would have guns.

Q: Smith did not turn off the lights?

A: I did.

Q: Suggest you know that you had shot Brown?

Defendant's
Evidence

A: I did not shoot him.

Q: Why did you think they were coming for you?

NO.20
Javan Newbold
Cross-
examination
(Contd.)

A: I did not know they were coming for me.

10

Q: You know they were coming for you as you had told Bannister you had just shot Brown?

A: I did not say that.

Q: Suggest Smith was already in the booth?

A: I called him in.

Jordan hugged me when I passed him the gun. I was not crying. Jordan opened the gun but did not take out the bullets. He hugged me by putting his hand around my waist after examining the gun.

Cpl. Allen asked me what happened. I explained to him what had happened about the gun going off.

20

Q: Didn't you tell Allen.

"I tired of this fucking shit. Brown has been messing with me for a long time.

A: No.

Q: "If I am sure he is not dead I will go look for him and punish him"?

A: No.

Q: "Brown keep on telling me I going with his woman and that is why I shoot him"?

30

A: No.

Q: Did you tell police I saw Brown go towards the pea patch?"

A: Police was questioning me during my statement. I told the police in answer that the last I saw of Brown was that he was going towards the pea patch.

Q: Did the officers beat you up?

A: I did not gave them the chance. One

Defendant's
Evidence

No.20
Javan Newbold
Cross-
examination
(Contd.)

held me in a full nelson and Cpl. Pinder tried to wring my hand. I told them I was not going to let them beat me up. This was between the Isolation Ward and First Offender's prison. We were on the road. This was shortly after speaking to Cpl. Allen.

Allen met with Jordan at the gate and we walked in the direction Brown had gone going up the hill.

10

Q: You men went into the Office with Allen?

A: No.

Q: Why tell the police you went into the office?

A: I did not say so.

Q: What family do you have at 57113?

A: Miss Halbey Forbes lives there. She is not my family but she would relay the call to my aunt who lives about two houses from her.

20

Q: Do you have a girlfriend that Smith would have seen you with?

A: As far as I know, Smith has not seen me with my girlfriend.

When Brown left, he left with the revolver. Yes, I saw him stumble.

Q: Is it not surprising the gun was found in the office?

A: I don't know what went on behind my back by the other officers. It is possible that the first man who found it could have removed it.

30

Q: Suggest the gun was found on the table of the office and was never in Brown's possession?

A: I tell you it was in his possession.

It was when I said.

"It will not happen again",

that Brown got up and before I got to the porch he was by the phone. I can't say if he picked up the phone.

40

I never told Brown,

"You scheming"

Cartwright has no reason so far as I know to lie on me.

No.20
Javan Newbold
Cross-
examination
(Contd.)

Q: Suggest you were replaced at the gate by Smith?

10

A: No.

Q: Suggest you were annoyed because Brown called a parade?

A: No cause for me to get annoyed.

Q: Suggest you thought Brown was messing round with you?

A: Brown and I were on good terms. I had no reason to shoot Brown.

Q: Suggest when Miller came back with the revolvers you picked up two revolvers?

20

A: I picked up one revolver.

Q: Suggest when you saw Brown go to the gate you followed him?

A: No.

Q: Suggest on getting to the gate you said?

"Hey Man I want talk to you".

A: No.

Q: Suggest Brown told you to stop playing with guns?

A: I told him so.

30

Q: Suggest that after the first and second shots you shot at Brown with a third shot?

A: I don't know what you are talking about?

Q: You ran north side of booth and then turned south after Brown?

A: No.

Q: After emptying the first revolver you attempted to fire the second revolver?

Defendant's
Evidence

No.20
Javan Newbold
Cross-
examination
(Contd.)

A: No.

Q: You then went to the First Offender's office put down the revolver you had fired and went back to the gate?

A: No. I never left the gate.

Q: You could not have had a gun before 10:40?

10

A: I never carried a gun until Miller came back from his round.

Re-examination Re-examination

Cpl. Brown is right handed.

Q: In the scuffle have you a complete memory of what occurred.

A: We squatted. I was off balance but we did not fall to the ground. The wrestling lasted three to four minutes.

Q: In that time you were holding the right hand of Brown?

20

A: Yes.

Q: Was the gun in that position at all times between you and Brown?

A: Yes.

Cpl. Allen is the Cpl. who was attached to medium security.

Q: Is he here now?

A: Shortly after he resigned. I can't say if he is now in Nassau.

30

The bullets issued are, I think, bullets previously used, because at the passing out we were given bullets that did not fire and were put back in the box.

No questions by Jury.

CONSUELO HARVEY

Consuelo Harvey s/s in ex. i/c.

I live in Oxford Avenue and I am a domestic.

I know the accused, he is my boyfriend.

10 I last saw accused on Oxford Street coming towards the end of January, 1979 on a Saturday evening. The next time I saw him was when I visited him at the prison where I saw him.

Q: Did you receive a telephone call from someone telling you he had been charged or had shot someone?

A: No.

XXD

Cross-
examination

Q: Do you know if you are the accused's only girlfriend.

20 A: I would say yes.

Q: Do you know Hadley Forbes?

A: She lives in Oxford Street in the same yard in which I live.

Accused and I live together and he is friendly with the neighbours. He has no family in that yard. Mis Frobess knew us. I rent the house in which I live from Miss Forbes.

30 Accused and I lived together for three years and seven months before January, 1979. He and I have lived in that yard for three years. In that time, I worked on Eastern Road and at Lyford Cay as a domestic. I earned \$60.00 per week. When he first lived with me, I paid the rent. After he began to work, he paid the rent. We have two children.

Q: Has Newbold family?

A: Yes. They live on that same street. He has an aunt. I don't know of anyone else.

I did not know Cpl. Brown.

40 Q: When did you first hear of the shooting?

Defendant's
Evidence

No.21
Consuelo Harvey
Cross-
examination
(Contd.)

A: At 2 a.m. on Monday morning. I was told of it by one Mr. Cambridge who came by. He was also a prison officer but that night he was off duty.

Q: You understood the incident happened Sunday night?

A: Yes.

Q: Do you know Raymond Smith?

10

A: Yes. He knew I lived with accused.

Q: Suggest you got a call from Smith that night?

A: I did not receive a call.

No re-examination

No question by the Jury

To Court

To Court

I know that Smith knows I live with accused as he has visited my house.

Defence closes its case

20

No.22
Address of the
Solicitor
General
3rd August
1979

No.22

ADDRESS OF THE SOLICITOR GENERAL

3rd August, 1979

Address of the Solicitor General

I will show how the facts of the Crown have proved the Crown's case and I will refer to the evidence of the accused and Miss Harvey and will show that it strengthens the prosecution's case.

30

Consequences of your verdict is not your concern.

Facts agreed by both prosecution and defence are:

1. Deceased was shot on night of 28th January, 1979 by one of the revolvers issued to the persons on duty at First Offender's Prison.

Question is whether you believe the prosecution's witnesses as to what they tell you

40

the accused told them and what Smith saw. Or whether you believe Newbold.

No.22
Address of the
Solicitor
General
3rd August 1979
(Contd.)

Prosecution says on the 28th January, 1979 -

10 (1) There were the four men at the First Offender's Prison. (2) Accused turns up on parade improperly dressed. (3) Smith is detailed to take over the gate. (4) Smith is visited by accused and gets a cigar. (5) Accused leaves. (6) Cartwright sees accused at the office and hears him tell Brown, "You scheming, I will teach you how to scheme." (7) Miller gets back from his round at 10:40 p.m. Accused comes to his desk and takes the two revolvers Miller had collected. In taking guns accused says, "What will you do if I start shooting?" Brown is nearby when accused takes the guns and that explains why Miller says nothing to Brown. (8) Brown goes to 20 the gate and is followed by accused. (9) Smith relates how accused had two revolvers pointing at Brown and says, "Hey man I want to talk to you." Brown say, "Stop playing with guns." Two shots follow. Brown disappears and accused gives Smith a telephone number to call. Then a third shot.

30 Cartwright heard two and three more and Miller heard four shots. Smith sees accused go behind the booth. Conclusion is that accused made a complete circle and returned to booth having deposited the used gun in the office.

I suggest also that on evidence of Crown, you may conclude that accused attempted to fire the other gun.

Why did accused take two revolvers? He was out on a deadly mission and wanted no one else to have a weapon. He left one in the office only when it was empty.

On getting to booth accused phones Bannister and tells him:

40 "I have just shot Brown and I am willing to surrender."

Jordan takes the used gun from accused and gives it to Smith.

Evidence of the Defence

Although Miller, Smith and Cartwright have no reason to lie on him, accused says they lied. He has to say so.

No.22
Address of the Solicitor General
3rd August 1979 (Contd.)

1. Could not have checked four dormitories in the time between his arrival and the holding of the parade.

2. Miller won't have been back from his round when accused says he was.

Accused says that Brown shot himself. It cannot be accepted. It is impossible for Brown to have shot himself in the back.

No.23
Address of Defendant's Counsel
3rd August 1979

No.23

10

ADDRESS OF DEFENDANT'S COUNSEL

Address of Mr. Thompson

Two ingredients of murder are:

- (1) intention; and
- (2) unlawful harm.

In this case it is vital that prosecution prove harm to be unlawful.

20

Accused was assaulted and battered by deceased. As a result, he attempt to take away the gun. The gun discharged twice. He had no intention to kill.

Refers to section 14(1) and 14(3). No intention by accused to use the gun for an unlawful purpose. A case of accident.

Cites Archbold 38th Edition, para. 2481. Burden of proof on Crown.

On parade, accused is spoken to by Brown about his improper dress. Accused offers an explanation. He tells Smith to man the gate as he wants to use the toilet. Prosecution wants to say that the time allowed by the accused is too short for Miller to have returned from his round. He was in the toilet about ten minutes and then he converses with Brown.

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Suggest Miller had no report to write.

Suggest with Miller seated behind the desk accused could not have opened the drawer.

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Although Miller is suspicious of what accused intended to do with the gun he does not

10 speak to Brown. He acts at least unresponsibly
by not telling Brown.

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Miller says he and Cartwright heard the shots
inside the Visiting Room. Cartwright says they
were outside. Who do you believe?

Return movements of accused are recalled by
Smith.

Defence

10 It's case is substantially the written
statement given to the police in 24 hours of the
event and the evidence from the witness stand.
Such derivation as there is, is understandable.

Evidence of Bannister, Lightbourne and Huyler
corroborate the accused.

Court intervenes to prevent Counsel from
making any reference about the consequences of the
verdict.

20 Inconsistences in Crown's evidence may appear
small, but if they have lied on a small part,
they may have lied on a big matter. Some
inconsistences are:

1. Miller tells us where he jumped the
fence to get back on the road. But Jordan who
came down the road did not see Miller. He saw
only Sealy.

30 2. Miller says that after he jumped the
fence he was approached by Sgt. Holligan and others
and at that point the accused turned off the
light. That is inconsistent with Smith as Smith
says that accused turned off the light as he
entered the booth. But Cartwright and Miller
had been hiding some 20 minutes.

3. Cartwright says he was in the Visiting
Room with Miller when shots were fired. Miller
says they were outside.

40 4. Like Miller earlier, Smith on being told
by accused that he is going to shoot Brown does
not tell Brown or anyone. That is not reasonable
technique by one brother officer to another.

5. Smith telephoning the girlfriend before
contacting the Commanding Officer to tell him of
the shooting is not credible.

6. If the accused had done what the Crown

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says he did do, why should he leave one revolver in the office and go back to the gate with the other? That is unreasonable behaviour.

7. How did the bullet which Smith says he found behind the booth get there? If the prosecution's case is believed, accused was pulling the deceased who was heading south, so how could a bullet get behind the booth?

8. Whenever the booth is phoned, it is accused who answers the phone. That is because he and not Smith is in charge of the gate. 10

Defence is in the written statement of the accused and his oral evidence. This defence he put forward from the moment Huyler arrested him.

Court

Interrupts to tell Counsel that the prosecution is not bound by the accused's statement and that because the accused gives sworn the same as the statement that evidence is not corroborative of the statement. 20

Photo 7 of Ex. J.N.2 - the hand could have been forced to the back so that you get the two hands in the buttock.

Lunch Break

Summing-up begins 2:35 p.m.

Summing-up ends 3:55 p.m.

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Sentence
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No.24

VERDICT AND SENTENCE

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Jury retire - Jury return

Verdict: Unanimous verdict of guilty as charged.

Sentence of death passed.

Summing-up

Summing-up
3rd August 1979

R E G I N A

vs

JAVAN NEWBOLD

For the Prosecution: The Solicitor General &
 Mr. Anthony McKinney

For the Defence: Mr. James Thompson

10 Charge: MURDER

Mr. Foreman and Members of the Jury:

I now must sum up the case to you and in doing so I shall give you certain directions of law. Any directions of law that I give to you, you are obliged to accept as the law.

20 The first direction of law I shall give you is this: As I think you well know, the presumption of our law is that an accused is presumed to be innocent. He therefore does not have to prove his innocence; it is for the Crown who has brought him to trial to prove his guilt. That is what we mean when we say the burden of proof is on the Crown. That burden the Crown discharges if on the totality of the evidence you, the jury, feel sure of the guilt of the accused. No less a standard will suffice. Indeed, if you entertain suspicion, mere suspicion of his guilt is not enough. You must to find him guilty be without a doubt. If the evidence led by the
30 Crown is such that you are left with a doubt in your mind, then the Crown has not discharged the burden of proof. To put it another way, the Crown must prove its case beyond a reasonable doubt; that is not to say that the Crown has to prove the case so you are left with no shadow of fanciful doubt in your mind. The Crown's duty at the end of the day is to satisfy you beyond all reasonable doubt. If you have a reasonable doubt in your
40 minds as to whether he is guilty or not guilty, then you give that doubt to his benefit and you will find him not guilty. If you find there is no reasonable doubt in your minds, then of course you feel sure of his guilt. So it comes back to the same thing.

The charge is one of murder. You have had

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the definition of murder read to you by the learned Solicitor General so I do not think it necessary for me to repeat the formal words of the law, but I shall tell you what it is the Crown must prove in order to establish its case of murder. In other words I am going to tell you what are the elements which constitute the offence of murder, and they are these:-

The Crown must, of course, prove that Corporal Brown is dead. It must prove that his death was the direct consequence of a bodily hurt which was intentionally caused by an unlawful act, done without justification and without provocation. It must prove that it was the accused who inflicted that bodily hurt with the intention, at the time of inflicting that bodily hurt, to kill Brown; he must have had that intention in his mind. 10

Those are the elements of murder, and all of them the Crown must prove. They can't prove some and not the others. If it does only that, it fails to prove its case. It must prove all of them. 20

An intention is obviously a state of mind, and being a state of mind it is not something you can see and hold, but as far as the law is concerned, it is a fact that must be proved in the same way as any other fact, that is to say, you must be sure. What you are entitled to do is to look at all the facts and circumstances and make reasonable inferences to determine whether a specific intention - the intention, in this case, to kill - existed; and the law tells us in Section 12 of The Penal Code some of the instances. If a person does an act for the purpose of contributing to or causing an event, like killing, then he intends to cause that event although either in fact or in his belief; the act is unlikely to kill. If he does it knowing that act would kill then he intended it. If by 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 a great risk of the act causing or contributing to cause an event, he shall be presumed by you to have intended to cause that event until it is shown that he believed that the act would probably not cause or contribute to cause that event. To put that in simple language. The law says a person is presumed to have intended to cause the natural and probable consequences of his acts unless it is shown that he did not believe those consequences would occur. So, members of the jury, if you 30 40 50

believe that that would be the state of mind of the person charged with the offence then you could conclude that he had this specific intention to kill.

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10 Now upon a charge of murder, as some of you may know, there are sometimes alternative verdicts which may be returned. There may be a verdict of manslaughter, or there may be a verdict of manslaughter because the murder is reduced to manslaughter by reason of provocation or partial excuse. In this case the Crown is saying that those alternative verdicts are not open to you, and indeed, upon the evidence as presented by the Crown those alternative verdicts are not open to you. It is either, on the Crown's case, a case of murder or nothing. Equally, when you look at the case from the defence's point of view, the defence is saying those alternative verdicts that I mentioned to you are not open to you. Because
20 what the defence is saying is that Brown was not killed as a consequence of a bodily hurt negligently or intentionally inflicted by an unlawful act of the accused. That was the defence - it did not happen that way. The defence says it can't be a case of murder or manslaughter or murder reduced to manslaughter by reason of partial excuse because if the accused was using force intending to take the revolver away from Brown and that force, you thought, contributed to cause
30 the gun to fire whilst it was being held by Brown, then the defence says that force was justified. Justified because Brown had assaulted the accused and despite the accused telling him to desist had continued to assault him so that the accused had a right to resort to force to defend himself and in doing so used no greater degree of force than was reasonable in the circumstances. Further, the defence says, the fact that the gun went off is not an event that could properly be
40 said was intended by him but was an accident and a person cannot be held responsible for an accident.

50 Members of the jury, a killing is accidental if a person is killed without intention in the doing of a lawful act without negligence. If the unintended act was lawful but it was done negligently, that is it was done without such care and precaution as is to be expected of a reasonable man placed in the same circumstances as those in which the accused found himself, then the killing would be manslaughter by negligence. Of course it would be for the Crown to prove, so that you felt sure of it, that there was negligence. If the Crown failed to do so the

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accused could not be guilty of any offence. I mention that last proposition to make clear to you what is an accidental killing and also to make clear that this cannot be a case of manslaughter by negligence. The reason it is not such a case is that if you consider the facts of the Crown's case, taking that part first, you will find that the Crown is saying it is a murder as the accused, in shooting Brown, did an unlawful act intending to kill him and no question at all of negligence arises. If, on the other hand, you consider the facts on which the defence relies, it is saying that although the accused used some force, he had a right to resort to that force and he used no greater force than was reasonable, so his act was lawful. His intention was to get the revolver. To wrestle with another for possession of a loaded revolver, of course, may involve a risk that the gun may fire. But in the circumstances of the defence's case the accused had to wrestle and therefore the act cannot be said to be a negligent act. Further, as I have said to you, the defence is saying that it was not in fact the act of the accused which was the prime cause that led to the gun's firing, it was the act of Brown. At most, the accused's act was a contribution to cause the gun to fire but it is not a sufficient contribution which in law could amount to making it an offence of manslaughter by negligence.

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I therefore direct you now, as a matter of law in this case, that your verdict has to be either that he is not guilty of murder, or that he is guilty of murder. It is, as I say, for the Crown to prove its case. So if, after considering the matter, you accept the version of the defence, that is, the version of the incident recounted by the accused; you accept it or alternatively, if you are not sure of the Crown's version of this incident, then you must acquit the accused. If, on the other hand, having regard to all the facts, you feel sure of the Crown's case and you feel sure that all the elements I explained as constituting the offence of murder have been proved by the Crown, then it would be your duty to find the accused guilty of the offence charged. That is how you are to approach the matter. In resolving that issue, you have regard only to the facts that were given here in evidence including what you observed and noted when you visited the scene at the prison and you apply to those facts the directions of law I have given you. What consequences may follow from your verdict are no concern of yours at all. You are not to consider the consequences one way or the

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other in arriving at your verdict. Indeed, if you do so, you would not be true to the oath which you took, to decide the issue fairly between our sovereign lady the Queen and the prisoner at the bar. The consequences are no concern of yours. Finally I will say this on the matter of your verdict. In a case of this kind, your verdict, if it be guilty, must be the verdict of all of you, which is what we call a unanimous verdict.

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The next point I will mention to you is this: In the course of this trial there has been presented in evidence, by the Crown, a statement which was recorded from the accused on the morning after the incident of the Sunday night. The recording officer who was Corporal Huyler also told you that on the night of the 28th the accused verbally told him very briefly what had happened - there was a hassle and the gun went off. Now, in both of those statements, whether verbal or written, the accused has given an account which in no way involves him. That statement was put in by the Crown but it is not put in as a part of its case. Certainly not. They are not relying on that as evidence of the facts. Just merely that a statement was made and it is evidence to this degree; to show the reaction of the accused when first faced, as it were, with the incriminating evidence. From the defence point of view, having regard to the evidence that he first gave and his evidence from the witness stand, the statement shows a certain consistency. But not for one moment are you to feel that the Crown is relying on it, obviously if it was, it would not have brought him here.

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Another matter I would now mention is this: In a case of this kind, as indeed of all criminal cases, while the burden of proof is on the Crown, and I have told you what matters the Crown must prove, the Crown does not have to tell you why it was that he did what he did do. In other words, they have not got to prove motive. Why a man does what. Of course, if the Crown can show a motive then that may help you to resolve the facts one way or another. The fact that the Crown can't show a motive does not prove the case one way or another. But you will remember that when the accused was under cross-examination the Solicitor General put to him statements he was said to have made to one Corporal Alban. I will not go through all of them but one was to this effect: that the accused told Corporal Alban that he shot Brown because he, Brown, had accused him of going with his, Brown's wife. Now I only mention that to

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say that is not evidence. The accused denied it. The Crown has not brought any evidence whatsoever to suggest that he did say that. So there is no evidence in the case to support that anything like that was said by the deceased. It was a suggestion made by the Solicitor General. He was entitled to make it. Had the accused acknowledged it, then it would have been evidence. If evidenced was brought to support it, then it would have been evidence. So that can't be taken any further.

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I, as the presiding Judge, told you at the outset that being the judge of the law, I would give you directions of law because that is one of my functions, to give you directions of law. Any direction of law I give you, you are obliged to accept, as both counsel have so very fully told you. As I sum up the case to you, I have of necessity to refer to some of the facts: I can't do otherwise. In referring to the facts you may think that I hold certain views of the facts. If you happen to agree with such views as you think I hold, you can adopt them and make them your own; but if you disagree with such views of the facts as you think I hold, you are fully entitled to reject them and to form your own view of the facts because you are the sole judges of the facts. I have to refer to the facts, but you don't have to take the facts from me. You are the sole judges of the facts. When you have resolved the facts to your satisfaction, bearing in mind the burden of proof I have told you, then you apply to the facts those directions of law I have told you, and you arrive at your verdict.

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I will not turn to the facts of the case. I will deal with the facts first from the standpoint of the Crown and I will then deal with the facts from the defence. It is most useful to deal with the facts by recalling the various movements of the accused which the various witnesses have described to you. You will remember the case began with there being a parade on the night of 28th January of this year in the compound which is called the First Offenders' Compound. That parade, there seems to be no dispute about it, was at 10.00 p.m. There were five men on the parade, the Corporal on duty that night, Officers Miller, Cartwright, Smith and Newbold, the accused. When the parade began Miller wasn't on parade, he was still in the locker room, but he joined the four later so the three, Newbold, Smith and Cartwright, attended the parade in the presence of Corporal Brown. Again,

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it is not disputed, the accused was not properly dressed. He had on his prison overcoat. Apart from that, some say he had on a cap and overcoat. Certainly, Corporal Brown ticked him off that he was improperly dressed. And he gave an excuse that he had been to town because he had been to the hospital to get his hand dressed, and of course his hand was bandaged, and he had not had an opportunity to change his clothes before Brown called him on parade. Following the parade, Officer Smith said he went to the gate because he was detailed by Brown to go there. It is not in dispute that the accused was the one who usually did duty at the gate but on that particular night, perhaps because he was improperly dressed, we don't know why. Brown said. "You go to the gate." Officer Cartwright also went there. That is the evidence of both Cartwright and Smith. Whilst Cartwright is there with Smith the accused came to the gate and as the accused got to the gate he, Cartwright, went back to the office. Then Smith says the accused told him, "I'm going to shoot Brown." That is Smith's evidence. And Smith said to him, "Stop talking foolishness, give me a cigarette." With that, he said he had no cigarettes and offered him a cigar. Neither of them had matches and Smith went off to the kitchen to get a light for the cigar. Well you see, pausing there, the Crown places importance upon the words, "I'm going to shoot Brown", which manifests this intention, the intention to kill. Now Cartwright, I told you, had left the gate and gone back to the office. While he is on the porch, he says, he sees the accused come there and go into the office where Brown is and he hears the accused say to Brown. "Your're schemning but I'll teach you how to scheme." So what the Crown is saying there is rankling an ill-feeling: "You're scheming; I'll teach you how to scheme." That comes after he says to Smith, "I'm going to shoot Brown."

The accused comes and sits in a chair on the porch and he, Cartwright, leaves and goes to what is called the visiting room.

Now, the next movement of which we know is Miller. Officer Miller who is given the first patrol to do the rounds of the main prison and the First Offenders' prison. He returns from that patrol and he says he returned from that patrol at about 10:40 p.m. so that the incidents I have been relating to you all took place before 10:40 p.m. On that patrol Miller who had collected two loaded revolvers, as was his practice, brings them

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back to the office and he puts them in a drawer in the desk and he sits by that desk. He then says the accused appeared, where he came from he doesn't know; he says, "Excuse me", and takes out the two revolvers which Officer Miller had put there. Then the accused says to Miller, "Suppose I start shooting everybody, what will you do?", and Miller says, "If you don't shoot me first, I'll haul arse." I'll get out of the way. Then, says Miller, the accused goes and sits on a nearby wall. You saw that demonstrated on the scene. After that the deceased Brown came from the office and walked towards the gate; this is Miller's evidence. In doing so, says Miller, the accused would have been about 12 feet off to his right and then when the deceased was about 17' ahead of him - that distance from the dock to where the police officer is standing - that is, about 20' or so, Miller said the accused got up and started to follow the deceased.

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We then pick up the evidence with Smith. The deceased, that is Brown, arrived at the gate and he goes to the door of the booth where he is looking out and he has a conversation of not more than a minute, according to Smith. According to Smith's estimate of time it is then 10:50 or 10:55. As Brown turns to leave the booth Smith sees the accused to the left of the booth, to the right of the booth if you are facing it, with two revolvers in his hands and he is pointing the revolvers at Brown and says, "Look man, I want to talk with you", and Brown says, "Don't play around with guns like that." At that Smith hears two shots and the accused then tells him to dial a certain number which Smith says is the number of the accused's girlfriend. What happened to Brown Smith doesn't know, Brown has disappeared. At that same point in time Miller says he had just stepped out of the visitors' room with Cartwright (where Cartwright had gone after he had seen the deceased followed by the accused go to the gate, and he then hears two shots and with that he runs southwards and jumps the wall and he runs and hides behind the wall. In other words, he goes into hiding. Cartwright puts it even more plainly. He heard those shots and ran. The shots came from the north so he ran to the south and he took shelter in an unused house of an Assistant Superintendent.

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Well, having been told to dial this number (we go back to the gate) Smith in doing so sees the accused pass the booth. The accused is no longer at the booth, according to Smith, but through the window he saw the accused pass, and while he

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is speaking on the telephone Smith hears a third shot. Actually, a third and a fourth shot are heard by Cartwright and Miller when either hiding or running. Smith says he spoke on the 'phone three or four minutes. As he hung up the 'phone he saw the accused come from the direction of the office and he first saw him when he was about 10' away. The accused said to Smith, "Don't be scared, I won't do you anything." The accused entered the booth, said Smith, and switched off the booth lights. After that several telephone calls were made. At about 10:50 p.m. Sergeant Bannister who is the Sergeant in charge but is not in the First Offender's section, he is at the main prison, he says he got a 'phone call from the accused and the message that came was this: "I have just shot Corporal Brown and used four shots to kill him. I am willing to surrender but do not send officers with guns." Sergeant Bannister details Officer Jordan to make the trip.

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We pick up the story from Jordan who appears to be a friend of the accused. Jordan had heard a message over the radio and as a friend he spoke to the accused by radio and asked him what happened and the accused said, "Nothing much." Jordan went to see the Commissioner and got permission to see the accused. He told Jordan the story and then Jordan says he telephoned the accused and said, "I'm coming to you; I don't like what I have heard. I will be wearing a black coat." The accused said, "You can come to me", and so Jordan walked to the First Offenders' prison.

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At some point after that Sergeant Bannister got a 'phone call from the accused which said, "I can see the officers coming towards me. I can see them but they can't see me. I remind you not to send any officers with guns." On his way Jordan sees Mr. Sealy, another Officer, up a side street from where he was and which goes to a pig sty. Jordan calls out from about 50 yards (he hasn't seen the accused) he calls out, he says, "Jay, come to me." There appears to be no reply and he walks 25 yards and at 25 yards he repeats the call; he says, "Jay, come to me." With that, he says, the accused came out and hugs him and the accused hands the revolver to Jordan and Jordan passes it to Smith. When Jordan hands him the gun Smith breaks the gun and sees that it has five rounds intact in it unfired. Jordan and the accused stand there for half an hour awaiting the police officers. Meanwhile, Smith has gone over to Corporal Brown's office and there on the floor of the office he finds the other revolver and it

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is empty - there are no shots in there. The revolver could hold five shots. Ten rounds were issued to Miller that day. Well, the accused is taken away by the police and Smith on his return to duty at the gate, finds a piece of bullet head between the booth and the wall.

In due course Dr. Read performed the post mortem on the body of Corporal Brown which had been found now in a southerly direction from the booth in the peas patch. And in the course of her post mortem Dr. Read found a bullet at the base of the bladder of the deceased. That bullet and the bullet which Smith found at 4.20 a.m. were sent to Mr. Crum and with them the gun, the shells and the five rounds of live ammunition. Mr. Crum's evidence is that the two spent bullets sent to him were fired by a particular gun and that all the bullets were shot from the same gun as the bullet which Mr. Crum himself fired and compared with the other bullets. 10 20

So that, members of the jury, is basically the Crown's case on movements and on the findings of the doctor.

Now there is another point on the findings of Dr. Read that is of importance from the Crown's point of view. Apart from finding a bullet at the base of Brown's bladder, there were three puncture wounds- one just to the left of the navel and in the front of the abdomen and two in the back above the hip. Now what Dr. Read's evidence boils down to - of course, she is not here to give it herself, is that those three puncture holes were in fact caused by two bullets. The one that went in the front of the abdomen ended up at the base of the bladder. But the bullet which caused the exit wound, because one of those holes there is an exit wound, went in on the left side of the back above the hip bone, went under the skin and came out just in front of the entry wound about the hip. Perhaps you will bear in mind that Mr. Smith says that he found a bullet just by the booth. Is it that bullet that passed through and caused the two puncture wounds in Brown's body? 30 40

The Crown is saying that if you took those points, if you accept them, there is a man who is perhaps annoyed because his superior officer has ticked him off, and decides to dispose of that superior officer and kill him, and in fact announces his intention to kill him by saying, "I am going to shoot him." Then, says the Crown, on the evidence of Smith, the accused, at a 50

10 distance of 7' takes two revolvers out and fires two shots in the abdomen and into the back; and the Crown is saying, if somebody takes a .38 revolver, somebody who is not unfamiliar with them, because it is his duty to handle them, and he takes that .38 revolver and fires it at a man, then what other intention can there be other than to kill? On the basis of The Penal Code I read earlier - can it be believed that those actions would not cause death? How could he believe that? And so the Crown says it is a straight case of murder. Brown is dead, by an unlawful act of the accused, without any provocation, without any justification and done with the intention to kill Brown.

20 The Crown further states its case in this way: that the evidence given by the accused and Miss Harvey in fact strengthens the Crown's case. That is the suggestion put forward to you by the learned Solicitor General. You will remember that counsel for the defence made certain submissions about the Crown's case, suggesting that there were discrepancies in that case. Of course those submissions were made after the learned Solicitor General had given his address. He would, I think say they are of no real substance. There will be discrepancies in everybody's evidence. If their evidence was without discrepancy it might suggest that it was prepared. It is suggested that this is not a parrot-like telling of an incident but a telling by persons of what they remember. If there is a discrepancy of a major kind which goes to the root of the story, well, members of the jury, you may think the story is questionable. If it is not major you may think to be cogent and true what the witness is saying. For example, two witnesses for the Crown -- Mr. Miller and Mr. Smith -- didn't report to Brown the threats made by the accused. In the case of Mr. Miller he knew that the accused had taken the two revolvers. In the case of Mr. Smith he heard the accused say that he was going to shoot Brown, and Miller said there was an air of tension. But Miller says he didn't think it really necessary to report to Brown because Brown was present in that office when the accused was behaving in a certain way. So Brown, according to Miller, was aware of the threat.

50 What the Crown is suggesting is that if the accused is to be believed, every single one of his co-officers, including his friend Mr. Jordan, are telling lies. That he is apparently on bad terms with them, saying that they're all liars. Not merely liars but persons prepared to lie in

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order to incriminate the accused. And the Crown would suggest, "why should these men do that. Why should they treat their fellow officer this way?" The accused has thrown out - well they have got their jobs to keep. They have to put up a consistent story and argument. You know your country men better than anybody else. You know your people. You are the best judges of that. Another point however, that the Crown would make to you upon the evidence is that if the accused's story is true, says the Crown he could not have picked up the revolvers when he says he did. Because his story is that after the parade, which was over about 10.00 o'clock, he asked Smith to go to the gate so he could go to the toilet; he then tells us he was in the toilet about ten minutes. He came out of the toilet and came to Corporal Brown who is in the office grumbling. He sought again to explain to Corporal Brown why it was he wasn't properly dressed. Again, it is a matter for you but, what the Crown is suggesting is that if he was explaining to Brown it wasn't a very long explanation he had to give- and Miller did not get back from his rounds until 10.40 p.m. Surely - the Crown is suggesting - if the accused went to the toilet, and that didn't take all that time, this is a fabrication to explain how he came to pick up the revolver for he says it is not true that he came back after going to the gate, (after Miller had returned) and picked up the two revolvers. Then he denied what was said to have taken place in that booth between himself and Mr. Brown. So he was cross-examined and the accused said that Brown had a revolver in his right hand and that Brown was poking him, jocking him with the revolver. The accused, with his left hand got hold of Brown's right hand to try and take away the revolver and the two were locked together. At one point they were actually embracing. The one was lined up against the other; and, says the accused, Brown's right hand was in between the two bodies. The Solicitor General said to him, "Alright, so the gun goes off twice and one bullet went into the abdomen, at which point the accused's hand is between him and Brown. Well, if that was so, how did Brown", asks the Solicitor General, "get shot in the back?" And so that is why the Solicitor General says to you the accused is mistaken because the shots were fired when the men were 7' apart and the accused deliberately fired. Another point is that the body, no before we get there. Another point is that every witness speaks of more than two shots; Mr. Smith says three;

Messrs. Cartwright and Miller say four, and there is a further witness who says more. But when you come to the accused, he says two. And so there again, what happened to the other two or other one? Because there are four empty shells. Well, according to the accused, after the two shots had been fired, he, the accused, went around the booth to peep and see where Brown was going and you may think he gave a different version to the Crown's witnesses of what then happened as he says he told Brown, "That's right, take away the gun"; then saw Brown hold his stomach and stagger off the road to the peas patch. It is for you to think about that. If he was following Brown so closely and saw him go off with the gun why did he not hear more shots? But there is no mention by the accused of another shot after the first two.

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No.25
Summing-up
3rd August
1979 (Contd.)

shot Brown: I used four bullets. I am willing to give myself up but do not send officers with guns."

One final point to end this part of the Crown's case relates to a very simple matter. The accused has made out that he did not tell Smith to telephone his girlfriend; he says he gave Smith a telephone number that would reach his family. He said, "I told Smith call my family." He says he doesn't know how Smith could say it was his girlfriend as he doesn't know who his girlfriend is. The girlfriend comes in and she says, Mr. Smith knows I am his girlfriend as he has paid visits to our house. And so the Crown submits the whole of his story, when you consider it, is just a series of lies to extricate himself from a very difficult situation.

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Well, members of the jury, I do not think there is anything more I can usefully add. The Crown is saying its case speaks for itself and there is no reason why you should dis-believe its witnesses. They have not been caught in any major lie or lies. But apart from that evidence there is other cogent evidence. Real evidence in the form of the bullet wound which shows that the accused's story cannot be true, so the Crown says you should have no reasonable doubt in your mind, that the accused is guilty of murder.

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I pass to the accused's case, and with that I will do as I did with the Crown: begin with what he says happened on the parade. He said he attended the parade and the parade ended about 10.00, and on that parade, yes, he had been ticked off by Brown for not being in uniform and he explained why, but it was not true that Brown took him off his gate duty. That was his nightly duty. But he did not go immediately to the gate because he wanted to go to the toilet; and since Smith has in the past assisted him at the gate, he asked Smith to hold on at the gate for him as he wanted to go to the toilet. On his way out of the room there was Brown sitting at his desk grumbling and so he thought he would make his explanation clear to Brown and he went over his account again as to what happened. Miller came after, Cartwright was already there; Miller arrived from rounds and placed two revolvers on the desk. The accused left Brown's office with one loaded revolver, leaving the other revolver there and he goes to the gate. He says that in recent times it has always been the practice to take a revolver to the gate. Other officers say the man at the gate does not have a revolver.

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Well, at the gate Smith asked him for a cigarette and he said he didn't have a cigarette but gave him a cigar, and lighted the cigar from the one which he was smoking. And he says it is not true that Smith went off to light the cigarette; and it is not true that he told Smith that he would kill Brown. He never left the gate to light the cigar; he never went to the kitchen and that he lighted the cigar. Brown appears and asks for a cigarette. The accused says, "I have no cigarettes. If you want a cigar you can have one." Brown says he doesn't smoke cigars and the accused says, "If you don't believe me, ask Smith." Well Brown left and returned shortly afterwards, in about five minutes, and this time he has with him the other revolver and he says Brown comes with this other revolver and he pokes him with it. The accused is seated on a stool and he says Brown said: "Here, either give me a cigarette or I'll have you looking like a sieve wire." The accused says he didn't like that, and you may think so reasonably, and he tells Brown stop playing around with guns in this way but Brown still persists. Then Brown started to do something with his eye shades so taking advantage of Brown's distraction he launched himself, as it were, from the stool and grabbed Brown's right hand with his left hand and a hassle began. Well, they lock with one another and struggled for the gun. Brown's left arm was around his waist and he says while that was going on he never touched the revolver. He never held it. It was in the hand of Brown. In the course of that struggle two shots went off. With the second shot Brown's grip, which had tightened after the first shot, loosened and he pushed himself off from Brown and goes around the booth. He doesn't know that Brown has been hurt. He checks himself to see if he has been hurt. He is alright and he sees Brown walking up the path and appears to be alright. He calls out to Brown, "That's right, take away the gun." He doesn't know if Brown hears him but very shortly thereafter Brown grips his stomach and begins to stagger and he staggers off the road onto the grass in the direction of the peas patch.

Now after that, the accused goes into the booth or is around the booth and it is then he tells Smith to telephone his family. It is then that, according to the statement he gave to the police, he telephones Bannister, and tells him what had happened. Then he receives a call from Jordan and the answer then is that Jordan is coming to him and Jordan will be wearing a black coat. He also tells Jordan don't let the men

No.25
Summing-up
3rd August
1979 (Contd.)

come with guns and in due course Jordan arrives. He says Jordan came right up to the booth and they then hugged up. Whilst Jordan hugged him, he reached back and picked up the loaded revolver and gave it to Jordan. There was some mention about the prison officers threatening to beat him up but that is not of any real importance to the case. So there you have his version of the incident.

As I said, if you accept his version, then this is a case really of an accidental killing. Whatever took place was all justified because he was being prodded by that gun, he was being assaulted. The fact that the gun went off, does not make him guilty as he did not have the gun. He is not guilty of anything. Persons are not punished normally for an accident where they did not intend it or cause it negligently. So that if you are satisfied that the accused has told the truth, or, alternatively, if you are not sure of the Crown's case then you acquit the accused. Counsel for the defence has suggested to you that you ought not to be sure of the Crown's case and he pointed out to you about eight discrepancies in the evidence of the Crown's witnesses. I think out of fairness to the defence I should recall them for your benefit. One was, it was suggested, that Miller could not have jumped over the fence after running away at the place where he says he did because Jordan, who came down the road, didn't see him. If Miller had been there Jordan ought to have seen him. Then Smith told us that it was when the accused had come back after the third shot had gone off that he turned off the light in the booth but according to Miller the light was turned off after he, Miller, had run and gone off down the road and was in hiding for about fifteen minutes after the shots had gone off. But on the evidence of Smith, the accused had returned after about four minutes so Smith couldn't be right as to when the light went off. So that is another discrepancy. Another is that Cartwright says he was inside when the shots went off. Miller says they were outside. Another point put to you is that Miller said there was an air of tension and the accused had said to Smith that he was going to kill Brown. Neither Miller nor Smith mentioned that to Brown or indeed to Sergaant Bannister. None of that was reported, which suggested that none of that happened. Then he suggests to you that it is not credible that Smith, after hearing the shot and seeing the accused fire at a distance of 7' from Brown, would commence to telephone the number given by the accused. Surely, Smith would telephone Mr.

Bannister first and get help and not do anything else. Smith, you may remember explained his telephoning by saying that the man who had given that number was the man who had the gun. That is his explanation of it.

No.25
Summing-up
3rd August
1979 (Contd.)

10 Then again counsel for the accused suggested it is not reasonable that if the accused had done what the Crown said he had done, he would leave a revolver on Mr. Brown's desk. The Crown's answer to that is that he took the two revolvers to make sure nobody else had one and after he had used one he put it back. The defence asked, how did that bullet get to where Smith says he found it. Well, I made a passing reference to that. The defence also suggested that the man who is making all the telephone calls, is the accused, not Smith so that suggests it is not true that it is Smith who was detailed to do duty at the gate. The defence has mentioned these discrepancies and posed the queries which it says may seem 20 negligible to you in fact but it suggests that because those discrepancies are there may not the witnesses be lying on more important things?

30 That is, in summary, the case for the defendant. If you found that it was an accident or you didn't feel sure of the Crown's case, if you don't feel sure of that, you must acquit him. On the other hand, the Crown says the accused intended death. If you feel sure of the Crown's case you should return a verdict of guilty.

No. 26

In the Court of
Appeal

NOTICE OF APPEAL

No.26
Notice of
Appeal 27th
August 1979

CRIMINAL FORM 1

COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

40 NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO
APPEAL AGAINST CONVICTION OR SENTENCE

CRIMINAL APPEAL NO. of 19.....

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of Appellant JAVON NEWBOLD

Convicted in the Court held at (1) NASSAU, BAHAMAS

In the Court
of Appeal

No.26
Notice of
Appeal 27th
August 1979
(Contd.)

Offence of which convicted (2) Murder

Sentence Death by hanging

Date when convicted (3) 3rd August, 1979

Date when sentenced (3) 3rd August, 1979

Address (4) Fox Hill Prison

I the abovenamed appellant hereby give you notice 10
that I desire to appeal to the Court of Appeal
against my (5) conviction and sentence on the
grounds hereinafter set forth on page 2 of this
notice.

Signed J. NEWBOLD
Appellant

Dated this (7) 24th day of August 1979

QUESTIONS (8)

ANSWERS

1. Did the Judge before whom you were tried
grant you a Certificate that it was a fit 20
case for Appeal? NO

2. Do you desire the Court of Appeal to
assign you legal aid? NO

If your answer to this question is
'YES' then answer the following
questions:-

(a) What was your occupation, your
wages, salary or income? N/A

(b) Have you any means to enable
you to obtain legal aid for yourself? N/A 30

3. Is any Attorney now acting for you YES

If so, give his name and address

4. Do you desire to be present when the
Court considers your Appeal? YES

5. Do you desire to apply for leave to
call any witnesses on your Appeal? NO

Grounds of Appeal of Application (10)

The verdict is unreasonable and cannot be
supported by the evidence.

No.27

In the Court
of Appeal

JUDGMENT

COMMONWEALTH OF THE BAHAMAS

1979 No.21

No.27
Judgment 6th
March 1980

IN THE COURT OF APPEAL

CRIMINAL SIDE

JAVAN NEWBOLD

Appellant

v.

R E G I N A

Respondent

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J U D G M E N T

On 3rd August, the appellant was convicted of the murder of Stelman Brown and was sentenced to death. Against his conviction and sentence, he now appeals.

The deceased and appellant were both prison officers. During the night of 28th/29th January, 1979 the shift, of which they were members, consisted of the following men:-

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Corporal Brown (deceased) - in charge of the shift.

Raymond Smith

Matthias Cartwright

Earthlin Miller

and Javan Newbold (accused)

Corporal Brown paraded his men at 10 p.m. Accused was improperly dressed, and he was reprimanded by Brown. The accused usually did duty at the prison gate; but, on this occasion, Brown detailed Smith for duty at the gate. Shortly after Smith assumed duty at the gate, the accused appeared and said to Smith: "I'm going to shoot Brown". At this time Brown was in his office nearby and Cartwright was on the porch of the office. Cartwright said in evidence that the accused came into the office and said to Brown: "You're scheming but I'll teach you how to scheme".

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In the Court
of Appeal

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March 1980
(Contd.)

In the meantime, Miller had gone on the first patrol of the Main Prison and First Offenders' Prison. While on patrol, he had drawn two .38 revolvers and 10 rounds of ammunition. The revolvers were numbered respectively 81577 and 108848. The rule apparently is that officers on patrol carry a loaded revolver. Upon returning from his rounds at 10:40 p.m. Miller loaded each revolver with 5 rounds and put them in a desk drawer in the porch of the office. Shortly afterwards, the appellant appeared, opened the drawer and took possession of the two loaded revolvers. He said to Miller: "Suppose I start shooting everybody, what will you do?" Miller said something to the effect that he would get out of the way; and the accused then went and sat on a nearby wall.

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Miller's evidence was that he then saw Corporal Brown walk towards the gate and that the appellant got up and started to follow him. Smith, who was still on duty at the gate, said in evidence that Brown arrived at the gate and went over to the door of the booth and spoke to him for a minute. The time, according to Smith, was then between 10:50 or 10:55 p.m.

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As Brown turned to leave the booth, Smith said he saw the appellant nearby with two revolvers in his hand; that he pointed the revolvers at Brown saying: "Look man, I want to talk with you"; that Brown said: "Don't play around with guns like that"; that the appellant then fired one shot and after a short interval fired another shot. Smith said that the appellant was about 7 feet from Brown when he fired the first shot; and that after the appellant fired the second shot he gave Smith a telephone number and asked him to give a message to his (the appellant's) girlfriend. As Smith went to make the call, he saw the appellant pass by the window of the booth and he heard another shot. Smith telephoned the appellant's girlfriend and told her that the appellant had shot Brown. After making the telephone call, he saw the appellant coming from the direction of the office. As he approached, he said to Smith "Don't be scared, I won't do you anything". At this time the appellant had only one revolver in his hand. The appellant entered the booth and switched off the lights. He then told Smith to telephone the Principal Officer - - Smith did so and handed the phone to the appellant.

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It would appear that it was to Sergeant Bannister that the appellant spoke because

Bannister testified that about 10:50 p.m. the appellant spoke to him on the telephone and said: "I have just shot Corporal Brown and used four rounds of ammunition. I am willing to surrender, but do not send officers with guns".

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10 As to the number of shots fired, the evidence (Contd.) of the witnesses varies somewhat. Smith says he heard three shots. Cartwright and Miller were not eye witnesses to the shooting, although they heard shots coming from "the direction of the gate". They were scared and ran away and hid for a time. Each of them thought they heard four shots.

20 Another officer named Jordan heard a message on his radio about the shooting. He phoned the appellant and asked what happened. The appellant's answer was: "Nothing much". Jordan said he phoned the appellant again and said: "I am coming to you; I don't like what I have heard. I will be wearing a black coat". The appellant replied: "You can come to me".

By this time, a number of officers were approaching the area of the gate, and the appellant phoned Bannister and said: "I can see the officers coming towards me. I can see them but they can't see me. I remind you not to send any officers with guns".

30 Jordan approached the appellant and asked him to come to him, which he did. Jordan said to him: "Where is the gun?" Whereupon the appellant took a revolver out of his pocket and handed it to Jordan. Jordan passed it to Smith who was standing nearby. Smith took five live rounds out of it.

40 Smith knew that the appellant had been in possession of two revolvers; and so he went to look for the other revolver. He found it on the floor of Corporal Brown's office. It was empty. Near the booth, Smith also found a spent cartridge.

The police were informed and a police party under Corporal Huyler arrived at the prison. Smith handed Huyler the two revolvers, and the five live rounds and the spent cartridge. The numbers of the revolvers were 81577 and 108848. Huyler found four cartridge cases - three on the floor of the office and one on the ground in front of the porch.

50 Huyler was shown the dead body of Corporal

Brown and Detective Constable Deveaux photographed it. Huyler arrested the appellant.

Dr. Joan Read, the Government Pathologist arrived shortly afterwards. Corporal Huyler said in evidence that, in his presence, Dr. Read examined the dead body of Corporal Brown and that he saw two wounds that looked like bullet wounds in the deceased's stomach. The body was then conveyed to the mortuary and it was photographed there by Constable Deveaux the following day. Huyler also went to the mortuary that day where he met Dr. Read who performed a post-mortem examination on the body of Corporal Brown. Huyler received from Dr. Read a plastic container which contained a spent bullet and a death certificate. Two weeks later he received from Dr. Read a report relating to the post-mortem examination. The death certificate and the report were admitted in evidence without objection by counsel for the appellant.

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The death certificate (Ex J.N.11) so far as relevant reads as follows:-

"The Births and Deaths Registration Act, section 24(1)(b) Medical Certificate of the Cause of DeathI hereby certify that I performed an autopsy on Stellman Brown;.....that he died on 28th January 1979 at Fox Hill Prison and that to the best of my knowledge and belief the cause of his death was.....bullet wound of abdomen.

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Witness my hand this 29th January 1979
(Sgd) Joan M. Read MB.BS

....."

Dr. Read's report (Ex J.N.12) consists of three pages. Page 1, so far as relevant, reads as follows:-

"The Rand Pathology Laboratory Princess Margaret Hospital..... re. Stellman Brown Autopsy Findings. On Monday, January 29, 1979 at 11.15 a.m. I performed an autopsy on the body of Stellman Brown.....There was a bullet entry wound on the left side of the abdomen inches below and to the left of the navel. The bullet entered the abdomen in a downwards and left to right direction and cut through the common iliac artery. A bullet was found close to the base of the bladder..... There was a second bullet entry wound on the left side of the back inches above the left hip bone and inches from the spine. The

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bullet went under the skin and left the body through an exit inches in front of the entry wound.....I recovered the bullet, placed it in a container which I labelled and handed it to Det. Cpl. Huyler

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(Sgd.) Joan M. Read
Dr. Joan M. Read
Pathologist."

10 Page 2 of the report contains further details of what Dr. Read found at the autopsy, and on page 3 are the words "cause of death: Bullet wound of abdomen".

20 The two revolvers and the ammunition were examined by a special agent of the FBI who subsequently gave evidence at the trial of the appellant. The agent's evidence was that in his opinion the two spent bullets were fired by the revolver serial number 81577; and that each of the four cartridge cases found in the office and porch were also fired from revolver No. 81577.

30 As regards the five live cartridges, the witness said he noticed that four of them had a firing pin impression near the edge of the primer. The fifth had two such firing pin impressions. His opinion was that each of those firing pin impressions was made by the firing pin in revolver 108848. In other words, that these five cartridges had been in the chamber of that revolver and that an attempt had been made to fire them. The serial number on the cylinder of 108848 was different from the number on the firing pin. Therefore the cylinder could, at some time, have been part of another weapon. At any rate, when test-fired, the witness noticed that the cylinder rotated too far with the result that the firing pin did not hit the primer on the cartridge case fair and square.

40 The case for the Crown was that the appellant fired at least four, if not five, of the rounds in revolver 81577, deposited it in the office after the shooting, and that he also attempted to fire revolver 108848.

The appellant was interviewed by Corporal Huyler at 8 a.m. on 29th January. When asked whether he wished to say anything, he said:-

"Brown came playing round me with the revolver and me and him begin hassling and it fired off twice."

He amplified this in a written statement recorded by Huyler the same day. In this statement, the appellant alleged that he was attacked by Brown. Relevant parts of the statement read as follows:-

".....(Brown) came back about five minutes later with a thirty eight revolver in his hand and he start playing round with it by poking me in my side with it. So I tried to take it from him and through us hassling with it, it gone off. I remember hearing it go off twice then he just walk off by the pea patch. When Corporal Brown walked off, he took the thirty eight revolver with him. After he gone, I check myself to see if any of the shots hit me then all of a sudden I hear Corporal Brown say: "Oh Lord, call the doctor".....I didn't remember holding the revolver at any time while Corporal Brown had it. I never had the two revolvers that night: I never collected the two revolvers from the office. I did not shoot Corporal Brown. I believe he got shot while we were hassling for the gun." 10 20

At his trial, the appellant gave evidence to substantially the same effect.

The documents (Exs J.N.11 and J.N.12) purportedly made by Dr. Joan Read were admitted in evidence under section 42(5) of the Evidence Ordinance which reads as follows: 30

"Hearsay evidence may not be admitted except in the following cases:-

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- (5) where the statement is contained in any official record, book or register kept for the information of the Crown or for public reference and was made as the result of inquiry by a public servant in discharge of a duty enjoined by the law of the country in which such official record, book or register is kept"; 40

It was submitted by counsel for the appellant that these two documents were improperly admitted in evidence.

The question whether autopsy reports and such-like documents are admissible as an exception to the hearsay rule has been canvassed on several occasions during the last two years. Kendall Pinder v Regina (1) and Gregory Cooper and Errol Pinder 50

v Regina (2) are decisions of this Court. During the trial of Everette and Allan Ferguson for armed robbery in November 1978, Blake J. had to decide whether records kept pursuant to Rule 52 of the Prison Rules by a medical doctor employed by the Government were admissible in evidence to prove the truth of the matters stated therein. The Crown relied upon sections 42(5) and 106(1)(c) of the Evidence Act and the judgment of this Court in the Kendall Pinder case. The learned judge held that records kept pursuant to Rule 52 of the Prison Rules are not admissible as an exception to the hearsay rule under s.42(5) or as a public document under s.106(1)(c).

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During the trial of Hubert Joseph Knowles in August 1979 (case no.82/7/1979), Graham-Perkins J. held that an autopsy report by Dr. Read was not admissible under s.42(5). The rulings in the Ferguson and Knowles cases merit careful consideration.

- (1) Cr. Appeal No.18 of 1977
- (2) Cr. Appeals No.47 of 1976 and No.13 of 1978

The following cases were cited to Blake J., Graham-Perkins J. and to us on this appeal:- Sturla v Freccia (3), Lilley v Pettit (4), and Thrasylvoulos Ioannou v Papa Christoforos Demetrion (5).

In his ruling, Blake J. said:-

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"In my view section 42(5) of the Evidence Act is no more than a statutory codification of the common law of England in relation to the essentials of those public documents of the natures of surveys, inquiries or inquisitions which are admissible in evidence as exceptions to the rule against hearsay."

Sturla v Freccia was a decision of the House of Lords.

In his judgment, Lord Blackburn said (p.642):-

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"It is an established rule of law that public documents are admitted for certain purposes....I think I can hardly state it better than by quoting what Mr. Baron Parke said in delivering the opinions of the Judges in the case of The Irish Society v The Bishop of Derry"(6).

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A question in The Irish Society case was whether certain writs issued from the Court of Exchequer in Ireland to the Bishops of Derry to ascertain the value of the first fruits and twentieths, and the returns to the writs made by the bishops were admissible by common law. Baron Parke said:-

"The writs related to a public matter - the revenue of the Crown, and the bishops in making the return discharged a public duty, and faith is given that they would perform their duty correctly; 'the return is therefore admissible on the same principle on which other public documents are receivedIn public documents made for the information of the Crown, or all the King's subjects who may require the information they contain, the entry by a public officer is presumed to be true when it is made and is for that reason receivable in all cases whether the officer or his successor may be concerned in such cases or not."

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The Sturla case was concerned with a report of a committee appointed by a public department in a foreign state addressed to that department and acted on by the Government of that state. The House of Lords held that

- (3) /1860/ 5 A.C. 623 (5) /1952/ A.C. 84
(4) /1946/ KB 201 (6) 12 Cl. and F.641

the report was not necessarily admissible in the English courts as evidence of all the facts stated therein. Lord Blackburn, after quoting from Baron Parke's judgment, said (p.643):-

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"Now, my Lords, taking that decision, the principle upon which it goes is, that it should be a public inquiry, a public document and made by a public officer. I do not think that 'public' there is to be taken in the sense of meaning the whole world..... But it must be a public document, and it must be made by a public officer. I understand a public document there to mean a document that is made for the purpose of the public making use of it and being able to refer to it. It is meant to be where there is a judicial, or quasi-judicial, duty to inquire, as might be said to be the case with the bishop acting under the writs issued by the Crown. That may be said to be quasi-judicial. He is acting for the public when that is done; but I think the very object of it must be that it should be made for the purpose of

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being kept public, so that the persons concerned in it may have access to it afterwards".

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(Contd.)

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The facts in Lilley v Pettit were: The wife of a serving soldier had a child in 1944, and in registering the birth of the child she gave her husband's name as the father. The husband had been posted overseas in November 1941 and was taken prisoner in Singapore. She was charged and convicted with making a false statement contrary to s.4 of the Perjury Act. In order to prove the date the husband went overseas, a civilian staff officer at the War Office, who stated that he had charge of the records relating to the husband was called as a witness. He stated that these records were official records and documents kept by a Government department and preserved at the regimental records office; that they were not documents to which the public have access, nor were they kept for the use or information of the public. On appeal to quarter sessions, the recorder held that the records were not admissible under the common law and quashed the conviction.

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On appeal by Case Stated to the Divisional Court, the prosecution contended that the regimental records were public documents and admissible at common law. This contention was rejected. Lord Goddard C.J., who gave the leading judgment, pointed out that the records were not kept under statutory authority but under King's Regulations which are made by virtue of the Royal prerogative. The Lord Chief Justice continued (p.405):-

".....because a document is an official document it by no means follows that it is a public document."

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He then referred to the decision of Baron Parke in The Irish Society case; and as regards the words "for the information of the Crown, or all the King's subjects who may require the information they contain", Lord Goddard said (p.406):-

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"In my opinion it is quite clear that the learned Baron did not mean to lay down that every document that may be prepared by a servant of the Crown for the information of His Majesty is a public document. It may be that the words 'for the information of the Crown or all the King's subjects who may require the information they contain' should

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be read as meaning for the information of the Crown, that is to say, all the King's subjects who may require the information they contain'."

Lord Goddard added:-

"But, however that may be, (Parke B.) was there dealing with documents of record in the courts. Many documents are prepared for the information of the Crown, that is the executive which are of a highly confidential nature."

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And, having referred to the decision in Duncan v Cammell Laird & Co. - a decision on Crown privilege - Lord Goddard continued:

"It is difficult, therefore, to see how a document to which the public can have no access and which the Crown can refuse to produce under a subpoena could by any possibility be described as a public document."

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The Demettrion case was a decision of the Privy Council on appeal from the Supreme Court of Cyprus. There was a dispute between the inhabitants of two villages concerning their rights to the water in the river Karkotis. A document some 50 years old which was kept on a file in the office of the Land Registry was thought to have some relevance to the matter in dispute; and it was admitted in evidence. It was a report by a surveyor in the Land Registry who is now dead. It was addressed to the Registrar General and began thus:-

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"In compliance with your instructions respecting inquiries to be made.....I have the honour to report."

The document was produced by a witness from the Land Registry from a file which, he said, related to local inquiries made in respect of Karkotis water. He added: "This local inquiry was made under Law 5 of 1880."

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Law 5 of 1880 gives power to the High Commissioner to direct a survey. By section 2 he can appoint a Director of Surveys. Section 3 requires persons to attend and give information when required, with liability to be fined if they refuse. Section 4 gives power to enter lands for the purpose of survey, and by section 8 occupants are required to point out boundaries.

50

Lord Tucker, who gave the judgment of the Board, said (p.92):

In the Court of Appeal

"Public documentsmay be classified under different heads, but the class with which the Board is now concerned is that class which comprises documents which are brought into existence as a result of a survey, inquiry or inquisition carried out or held under lawful authority.....
The classic authority on this question is the speech of Lord Blackburn in Sturla v Freccia"

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and, having referred to the judgment of Parke B. in The Irish Society case, Lord Tucker said:

"One hundred years later Lord Goddard C.J. sitting as a member of the Divisional Court in Lilley v Petite had occasion to consider the language of Parke B. in the light of Lord Blackburn's speech in Sturla v Freccia."

20

Lord Tucker then referred to that part of Lord Goddard's judgment in which he expressed the view that the words 'for the information of the Crown or all the King's subjects' should be read as meaning "for the information of the Crown, that is to say, all the King's subjects."

Lord Tucker's judgment concludes thus:

"Applying Lord Blackburn's test to the document in question, their Lordships consider that it was not shown by the plaintiffs in the action, either intrinsically from the contents of the document itself or from other evidence, (1) that a judicial or semi-judicial inquiry was ever held by (the surveyor) as to the rights of the Kakopetrians to Karkotiswater or as to the conflicting claims of Petra and Kakopetria to such water, (2) that the inquiry in fact held by (the surveyor) was held with the object that his report thereon should be made public; or (3) that the report was in fact at all times open to public inspection....."

30

40

Section 13 of the Evidence Act 1872 read:

"Every document which by any law now in force, or hereafter to be in force, is or shall be admissible in evidence in any Court of Justice in England, shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any Court of Law or Equity in these islands....."

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As pointed out by Blake J., this provision would have incorporated the laws of England as to admissibility of public documents. It was repealed by the Evidence Act 1904 (now Ch.42); but s.4 of the present Act is substantially to the same effect as s.13 of the 1872 Act.

The important question is whether, as held by Blake J., s.42(5) is a statutory codification of the English common law in relation to the essentials of those public documents of the nature of surveys, inquiries and inquisitions which are admissible in evidence as exceptions to the hearsay rule.

10

This question was not discussed in the Kendall Pinder appeal. In that case, Dr. Boyne gave evidence at the Preliminary Inquiry, but had left the Commonwealth by the date of the trial, and his report was tendered and admitted. Presumably, his deposition was not taken pursuant to s.129 of the Criminal Procedure Code Act. If it had been so taken, it could have been read pursuant to s.165 (a)(ii) of that Act.

20

The main contention of the Crown was that the report was admissible by virtue of s.4 of the Evidence Act as read with s.1 of the English Criminal Evidence Act 1965. That argument was rejected; but the Solicitor-General's alternative contention, namely that the report was admissible under s.42(5), found favour with this Court. From the judgment, it appears that the argument put forward on behalf of the Crown was:

30

- (1) that the report was prepared pursuant to the duty imposed upon a coroner by s.14 of the Coroner's Act; and
- (2) that the report when prepared formed part of the Coroner's record.

Apparently, it was not argued that it was prepared for the information of the Crown. None of the English decisions which were cited on the hearing of this appeal were cited to the Court and the question whether the words "for the information of the Crown or for public reference" should be read disjunctively or conjunctively was not discussed.

40

In the Gregory Cooper case, which came before this Court at the same session, again the main submission (which was rejected) was that the autopsy report was admissible by virtue of s.4 of the Evidence Act as read with s.1 of the English

50

Criminal Evidence Act 1965. As regards s.42(5), In the Court
there was no citation of English decisions on the of Appeal
admissibility of public documents at common law.
The basis on which the document was admitted was
expressed thus:-

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10 "There is no direct evidence that the report (Contd.)
was made after a specific request by the
Coroner but there is a clear implication that
it was made in order to satisfy the statutory
requirement and, in our opinion, it would
satisfy that requirement if it was made in
pursuance of a well-established practice, the
existence of which is recognised and has been
confirmed by the Solicitor General, whereby
reports of this kind are made in anticipation
of a specific request from the Coroner under
the provisions of the section.

20 Although it would be desirable to have
more direct evidence on the point in future,
we think that the implications flowing from
the statutory duty and the evidence of what
actually occurred in this case are such as to
justify a deduction that it was made in
discharge of the duty enjoyed by the
provisions of the Coroners Act (Cap.37) and
consequently was admissible under section
42(5) of the Evidence Act....."

30 The Gregory Cooper decision was not referred
to by either Blake J. or Graham-Perkins J., but
both learned judges referred to the Kendall Pinder
decision. Blake J. said:

".....the fact that the report formed part
of the Coroner's Record clothed it with the
necessary attributes of a public record or
document for the purpose of section 42(5)"

Graham-Perkins J. did not agree. In regard to
sections 10-16 of the Coroners Act, the learned
judge said:-

40 "What appears to be clear is that there are
certain essential pre conditions that must
occur before the medical practitioner's
report to the coroner can become a 'public
document' and be kept as such. Those
preconditions are very precisely identified
in the sections I have quoted. It is,
perhaps, worthy of note that if the Attorney
General does not approve the coroner's report
and directs that an inquest be held there is
50 not a single provision in the Coroner's Act
which contemplates that the medical

practitioner's report to the coroner can become a public document. This is no doubt so because the doctor will, in the ordinary course give oral evidence of his findings at the inquest.

There is not a scintilla of evidence before me that any one of the several pre-conditions occurred in this case so as to make the report a public document admissible as an exception to the rule against hearsay." 10

The Evidence Act cannot be described as a code. In those jurisdictions which have one enactment containing all the law relating to the admissibility of evidence, such an enactment usually commences with a provision such as: "Evidence may be given of the following matters, and of no others." Section 3 of the Evidence Act provides that nothing in the Act shall be deemed to render inadmissible any evidence which was admissible before the passing of the Act. In other words, if, say, a document is admissible by common law or by virtue of some other statute, nothing in the Evidence Act renders such a document inadmissible. 20

Nevertheless, the Act does cover a fairly wide field- and the Part dealing with public documents is Part V. Section 106 declares that certain documents are public documents. Clearly, the list is not exhaustive- and at some future date this Court may be asked to rule on the meaning of the words "the records of the acts of public officers, legislative, judicial and executive." The intention of the Legislature appears to have been to prescribe a method of proving certain classes of public documents; and, it may be, that the classes of public documents referred to in general terms in s.106 are restricted to those which are referred to in greater detail in s.109. Be that as it may, we are not concerned with s.106(1)(c) in this appeal. 30 40

On the authorities cited to us, there is no doubt that a document to be receivable in evidence as a public document at common law, must be one prepared for the purpose of the public making use of it and with the object that all persons concerned in it may have access to it; and it is understandable that in Lilley v Pettit (supra) Lord Goddard suggested that the words of Baron Parke in The Irish Society case ("for the information of the Crown or all the King's subjects who may require the information") should be read as meaning "for the information of the Crown, that is to say, all the King's subjects 50

who may require the information". But, with respect, it was an interpretation of words which could only be justified on the footing that an essential feature of a document, admissible at common law as a public document, is that the public, or at any rate all persons concerned in it, may have access to it. The Executive branch of Government and "all the King's subjects" etc. are not synonymous expressions.

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(Contd.)

10 We must presume that in 1904 the Legislature was cognisant of the decision in the Sturla case which was decided in 1880; and there is undoubtedly a certain resemblance between the words "made for the information of the Crown or all the King's subjects who may require the information" and the words "kept for the information of the Crown or for public reference." But in 1904, there was no reason to think that in 1946 the English
20 Divisional Court would decide that the words of Baron Parke must be read conjunctively; and, in our view, effect must be given to the plain meaning of the words in subsection (5) of section 42, "For the information of the Crown" and "for public reference" are in no sense synonymous expressions.

30 The phrase "public document" does not appear in Part III of the Evidence Act; and the phrase used by the Legislature, in s.42(5) is "official record book or register". As pointed out by Lord Goddard C.J. in Lilley v Pettit supra (p.404), because a document is an "official" document, it by no means follows that it is a "public" document.

40 To be admissible under the subsection, the document, or record, must be one which was "made as a result of inquiry by a public servant in discharge of a duty enjoined by "law". We agree that, as regards autopsy reports, the "law" is contained in sections 10-16 of the Coroners Act Ch.37. Section 10 of that Act enjoins every
50 coroner to inquire into the cause of death and, if necessary, to hold an inquest. Sections 11, 12 and 13 require the fact of a death calling for an inquiry or inquest to be reported to the coroner of the district. Sections 14, 15, and 16, so far as relevant, read as follows:-

"14. On receiving such report,.....
the coroner shall, whenever it is practicable so to do, cause the body to be examined by a duly qualified medical practitioner, with or without a post mortem examination or analysis of the contents of the stomach and intestines, and a report thereof in writing to be

made to him; and shall also cause the facts and circumstances attending the death to be carefully investigated under his direction by the police, and a report thereof in writing to be made to him, or shall himself investigate such facts and circumstances.

15. If as a result of the reports and investigation the coroner is of opinion that the cause of death is sufficiently apparent and that no further light would be thrown upon the case by a public inquiry, he shall, in place of holding an inquest, draw up a report of the case, with his opinion and the reasons for it, and forward it forthwith to the Attorney-General, together with the medical report and the information and report furnished by the police or by himself. 10
16. The report, if approved by the Attorney General, shall be endorsed with his approval and forwarded by him to the Registrar of the court, to be kept together with the inquisitions as a public document. 20

Provided that the Attorney General may on receipt of the report direct that an inquest shall be held if a public inquiry seems to him advisable; 30

Provided also that nothing herein contained shall prevent the coroner from holding an inquest at any time after making the report, if he thinks fit."

As in the Kendall Pinder and Gregory Cooper cases, in the instant case, there was no direct evidence that the post-mortem examination and report thereof were performed and made respectively after a specific request by the Coroner. However, we see no reason to depart from what was said in the Gregory Cooper judgment namely that, having regard to the statutory duty and the evidence of what actually occurred, it is reasonable to infer that the P.M. and report were performed and made in pursuance of a well established practice whereby reports of this kind are made in anticipation of specific requests from the Coroner under the provisions of s.14 of the Coroners Act. 40

As s.14 of the Act also requires the Coroner 50

to "cause the facts and circumstances attending the death to be carefully investigated by the police", clearly the report of the medical practitioner is a document which assists the police in their investigations into the facts and circumstances; or to adopt the language of the Evidence Act, it is a "record....kept for the information of the Crown."

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No.27
Judgment 6th
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(Contd.)

10 However, it does not thereby become a public document. It only becomes a public document, or rather one of a series of public documents, after the various steps prescribed by sections 15 and 16 of the Coroners Act have been carried out. But sections 15 and 16 do not in any way preclude the medical practitioner's report being an "official record.....kept for the information of the Crown", even if it never becomes a "public document".

20 In our view, section 42(5) is not a statutory codification of the common law of England in relation to the essentials of those public documents of the nature of surveys, inquiries and inquisitions. The sub-section falls to be interpreted according to the plain meaning of the words. Therefore, the report of Dr. Read (Ex. JN 12) was properly admitted in evidence as an exception to the hearsay rule.

 As regards the death certificate (Ex. JN11), section 24 (1) of The Births and Deaths Registration Act (Ch. 194) reads:

30 "24(1) No person shall bury or cause or procure to be buried the dead body of a person before there is delivered
-
 (a) if there is a coroner's inquest or inquiry in connection with the death a coroner's order for the burial; or
 (b) a certificate of a medical practitioner as to the cause
40 of death,....."

 The only duty enjoined by s.24(1) is to refrain from burying a dead body without either a coroner's order or a certificate by a medical practitioner. Ex. JN 11 was undoubtedly made "as the result of inquiry by Dr. Read who was a public servant; but it was not made by her "in discharge of a duty" enjoined by any law. Mr. Evans did not contend that Ex. JN 11 was properly admitted; and, in our view, it was wrongly admitted in

In the Court
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No.27
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evidence. But, no harm was done. The cause of death was expressed in the same terms on page 3 of Ex. JN12.

We would add that even if we had come to a different conclusion namely that both Exs. JN 11 and JN 12 were wrongly admitted, the cause of Corporal Brown's death was conclusively proved by the admissible evidence on the record. The evidence in this regard was overwhelming.

10

For these reasons, the appeal is dismissed.

Alastair Blair-Kerr, P.

W.A.H. Duffus, J.A.

My Brother Sir Joseph Luckhoo has authorised me to say that he concurs in the result; but he is of the opinion that both Exhibits JN 11 and JN 12 were wrongly admitted.

Sir Alastair Blair-Kerr,
President.

DELIVERED the 6th day of March, 1980.

20

In the Privy
Council

No.28
Order granting
Special Leave
to Appeal in
forma pauperis
to H.M. in
Council 23rd
June 1982

No.28

ORDER GRANTING SPECIAL LEAVE TO APPEAL IN
FORMA PAUPERIS TO H.M. IN COUNSEL

AT THE COURT AT BUCKINGHAM PALACE

The 23rd day of June 1982

PRESENT

30

THE QUEEN'S MOST EXCELLENT MAJESTY IN
COUNCIL

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 26th day of May 1982 in the words following viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Javan Newbold in the matter of an Appeal from the Court of Appeal of the

40

Commonwealth of The Bahamas on its Criminal Side between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal in forma pauperis from a Judgment of the said Court of Appeal dated 6th March 1980 which dismissed the Appeal of the Petitioner against his conviction in the Supreme Court on 3rd August 1979 of murder: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal in forma pauperis against the said Judgment dated 6th March 1980 and for other relief:

In the Privy Council

No.28
Order granting Special Leave to Appeal in forma pauperis to H.M. in Council 23rd June 1982
(Contd.)

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20

30

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Court of Appeal of the Commonwealth of The Bahamas on its Criminal Side dated 6th March 1980:

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

40

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 Commonwealth of The Bahamas for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

50

N.E. LEIGH

Exhibits

J.N. 1.

J.N.1
Statement of
Javan Newbold
29th January
1979

STATEMENT OF JAVAN NEWBOLD

BAHAMAS POLICE

Statement Form

STATION C.I.D.

DIVISION C.I.D.

DATE 29-1-79

JAVAN NEWBOLD OF OXFORD AVENUE OF BLUE HILL
ROAD WORKS AT HER MAJESTY PRISON FOX HILL

10

AGE 28 years OCCUPATION Prison Officer SEX Male

STATEMENT I Javan Newbold wish to make a
statement I want someone to writ down what I say,
I had been told that I need not say anything
unless I wish to do so and that whatever I say
may be given in evidence. Javan Newbold.

On Sunday 28th January 1979 at about 9:55 p.m.

I reachto work at the First Offenders Section
of the Prison. On my arrival to work I went and
got the lock up state which is a sheet we use when
we check the dormitory and I check the dormitory
and when I return to the office I report everything

20

correct to Corporal Brown who was in charge of
the night shift, right after I report all correct
to him, he told all of us to fall in on parade
for inspection so we all fall in on parade
and Corporal Brown asked me what happened to my
uniform so I told him that I was down town and
when I reach back in Fox Hill I did not have time
to put on my uniform, he then told me that I

30

must take over the gate. I then left and went to
the gate. About fifteen minutes later, Corporal
Brown came there and asked me for a cigarette, I
told him that I did not have any and all I had
was two cigars, he say he dont smoke cigars so he
left and went back on the hill and he came back
about five minutes later with a thirty eight
revolver in his hand and he start playing round
me with it by poking me in my side with it so I
tried to take it from him and through us hassling
with it it gone off, I remember hearing it go off
twice then he just walk off and gone up the hill
and gone over by the peas patch. When Corporal
Brown walked off he took the thirty eight
revolver with him. After he gone I check myself

40

to see if any of the shots did hit me then all of
a sudden I hear Corporal Brown say "Oh Lord,
call the doctor" At the time this happened,
Officer Smith was at the gate where I was. About
fifteen to twenty minutes afterwards, the rest of

50

the officers from Medium Security and Main Prison came there by the gate and I told them what had happened. Before the other officers came there from Medium Security and Main Prisons, I telephoned the Turn Key Office and told Sgt. Bannister what had happened. I do not remember telephoning anybody else. The only time I went back to the office at First Offenders Prison after I left to take over the gate was when Cpl. Allen took me back holding me around my waist after the shooting. Shortly after I finished explaining things to him in the office, the Police come on the scene. I cannot remember holding the revolver at any time while Corporal Brown had it. I never had the two revolvers that night, I never collected the two revolvers from the office, I did not shoot Corporal Brown I believe he got shot while we were hassling for the gun. I have Read the above Statement. I Have been told that I can add alter or correct anything I wish. This Statement is true I made it off my own fair will.

Exhibits
Statement of
Javan Newbold
29th January
1979 (Contd.)

J. NEWBOLD

Exhibits

EXHIBIT J.N.11 Death Certificate
issued by Dr. Joan
M. Read

J.N.11
Death
Certificate
issued by
Dr. Joan
M. Read
29th January
1979

No.....

Not to be used by any other than a
registered Medical Practitioner

10

THE BIRTHS AND DEATHS REGISTRATION ACT,
(Section 24(1) (b) .

MEDICAL CERTIFICATE OF THE CAUSE OF DEATH

To be given by the Medical Attendant to some person
qualified to be an informant for the Registration
of the Death.

I HEREBY CERTIFY that I attended
performed an autopsy on Stallman Brown
last illness; that such Person's age was stated
to be 36 years alive. that he died
on the 28th day of January 1979 at Fox Hill Prison
and that to the best of my knowledge and belief
the cause of his death was as hereunder written.

20

CAUSE OF DEATH

Duration of Disease from
onset
Calendar

Years Year Days Hours

Primary (1) Bullet wound of abdomen

Secondary
contributory

30

Witness my hand this 29th day of January 1979

Signature Joan M. Read

Qualification as registered by Medical
Practitioners Act

Residence Trade Winds Sub Division

N.B.: - The person to whom this Certificate is
given by the Registered Medical Practitioner IS
REQUIRED TO DELIVER IT TO THE REGISTRAR OF BIRTHS
AND DEATHS, after it is produced to the person
who buries or performs any service for the burial
of a body, and is liable to a Penalty of forty
shillings for failure to do so.

40

The Registrar-General cautions all persons against Exhibits accepting or using this Certificate for any purpose whatever except that of delivering it to the Registrar.

J.N.11
Death
Certificate
issued by
Dr. Joan
M. Read 29th
January 1979
(Contd.)

(THIS CERTIFICATE IS ISSUED FREE OF CHARGE)

IN THE SUPREME COURT OF THE BAHAMA ISLANDS
CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL
DOCUMENT.

10

DATED THE 11TH DAY OF AUGUST, 1982

REGISTRAR

Exhibits

EXHIBIT J.N.12 Report of Dr. Joan M. Read
Pathologist

J.N.12
Report of Dr.
Joan M. Read
Pathologist
Undated

THE "RAND" PATHOLOGY LABORATORY

Princess Margaret Hospital - Colonial Research
Institute Trust

OUR REF: 8504

P.O. BOX N3730

YOUR REF:

NASSAU,
BAHAMAS

10

TEL. No.2-2861 ext 148

re: Stillman Brown Autopsy Findings

On Monday, January 29, 1979 at 11.15 a.m. I performed an autopsy on the body of Stillman Brown aged 36 years, identified to me by his wife Leanora Brown of South Beach.

Death had occurred 12 - 14 hours previously.

There was a bullet entry wound on the left side of the abdomen inches below and to the left of the naval. The bullet entered the abdomen in a downwards and left to right direction and cut through the common iliac artery. A bullet was found close to the base of the bladder.

20

There was approximately 5 pints of blood free in the abdomen as result of this wound. There was a second bullet entry wound on the left side of the back inches above the left hip bone and inches from the spine. The bullet went under the skin and left the body through an exit inches in front of the entry wound.

30

No dignificant natural disease.

Cause of Death:

Blood Group. O.

Blood Alcohol

I removed the bullet, placed it in a container which I labelled and handed it to Det. Cpl. Huyler.

40

HISTORY:

Exhibits

At 12.20 a.m. on Monday 29th January 1979 I went to H.M. Prison Fox Hill where the body of a man in prison officer's uniform was lying prone in the bushes close to the entrance. Rigor affected the jaw and face only. One bullet wound could be seen in the left lower abdomen. Two bullets could be seen in the left lower back.

J.N.12
Report of Dr.
Joan M. Read
Pathologist
Undated
(Contd.)

EXTERNAL APPEARANCES:

10 A melanodermic, negroid, adult male. Height 6 feet. Weight 164 lbs. Rigor generalised and very strong at 10.0 a.m. There was a bullet entry wound 1.0x1.5cms - in the left iliac fosses 7.0cms. below and to the left of the umbilicus. It entered the abdomen in a downwards and left to right direction. There was a bullet entry wound 0.5x0.5cm. on the left side of the back 4.0cms. above the left iliac crest and 8.0cms. lateral to the vertebral spines. It was connected by a subcutaneous track to a bullet exit wound 1.0x1.0 cm. on the left side of the back in the posterior axillary line 3.0cms. anterior to the entry wound.

CARDIO-VASCULAR SYSTEM:

Pericardium not remarkable. The heart (530 gms.) showed left ventricular hypertrophy. Ventricular thicknesses, left 1.8 cms. right 0.3cms. Coronary arteries free from disease. Valves not remarkable. Pulmonary arteries not remarkable. Aorta showed minimal atheroma. The left common iliac artery was transected. Fluid venous fluid.

RESPIRATORY SYSTEM:

Larynx, trachea and main bronchi not remarkable. Pleural cavities dry. The lungs (right 580gms., left 500gms.) showed slight oedema.

ALIMENTARY SYSTEM:

40 Tongue, oesophagus, and stomach not remarkable. There was a perforation in the small intestine approximately 60cms. from the duodeno-jejunal junction. The peritoneal cavity contained an estimated 1.5 litres of blood. An additional 1 litre of blood was present in retroperitoneal space. The liver (1500 gms.) was pale from blood loss. Biliary system and pancreas not remarkable.

URO-GENITAL SYSTEM:

Kidneys (right 220gms., left 270gms.) had smooth

Exhibits

J.N.12
Report of Dr.
Joan M. Read
Pathologist
Undated
(Contd.)

subcapsular surfaces. Cut surfaces showed normal renal pattern and palor. Ureters, bladder, prostate and testes not remarkable. A well preserved bullet was found in the retroperitoneal blood clot in the pelvis close to the base of the bladder.

LYMPHO-RETICULAR SYSTEM:

Spleen (60gms.) pale. No significant lymphadenopathy.

10

ENDOCRINE SYSTEM: Thyroid and suparenale (40gms.) not remarkable.

NERVOUS SYSTEM: Not examined.

SUMMARY:

This 36 year old male died of a bullet wound of the abdomen.

Cause of Death: Bullet wound of abdomen.

SANDILANDS REHABILITATION

Psychiatric
Report 5th
July 1979

Psychiatric Report

Ministry of Health
P.O. Box F.H.14389
Nassau, Bahams

CONFIDENTIAL

5th July, 1979

10 His Lordship,
The Chief Justice,
The Supreme Court,
P.O. Box N-167,
NASSAU, Bahamas,

Re: Javan Newbold, age 38

As requested, I have examined today at the
Prison Mr. Newbold.

He is of good intelligence. I find no
evidence of mental disorder. His account of his
past lifestyle indicates moderate habits.

20 He has no history of past mental illness or
epilepsy.

Dr. Henry Podlewski,
Chief Psychiatrist.

c.c. Prison Medical Officer.

O N A P P E A L

FROM THE COURT OF APPEAL OF THE COMMONWEALTH
OF THE BAHAMAS

B E T W E E N :

JAVAN NEWBOLD

Appellant

- AND -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB.
Solicitors for the Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL
Solicitors for the Respondent