

~~GALL-G.2~~

33

1963

IN THE PRIVY COUNCIL

No. 16 of 1963

O N A P P E A L

FROM THE SUPREME COURT OF BERMUDA

B E T W E E N :

BILLY MAX SPARKS ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

19 JUN 1964

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74159

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(i)

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INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF BERMUDA</u>		
1	Indictment	21st December, 1962	1
2	Judge's Notes of Submissions on Admissibility of complaint of child aged 3 years	28th January, 1963	2
	<u>PROSECUTION EVIDENCE</u>		
3	Sylvia Ann Bargett	28th January, 1963	2
4	Margaret Avis Tribley	28th January, 1963	4
5	Elizabeth Ann Klemmer	28th January, 1963	5
6	Reginald Arthur Speed	28th January, 1963	6
7	Ernest Faries Simons	28th January, 1963	6
8	Irving Canterbury Richardson	28th January, 1963	7

No.	Description of Document	Date	Page
9	Judge's Notes of Further Submissions on Admissibility of complaint of child aged 3 years and Ruling	28th January, 1963	8
10	David Lee Neberman	28th January, 1963	9
11	Clayton Laverne Cameron	28th January, 1963	12
12	Neville Ross Phillips	28th January, 1963	13
13	William Arthur Jones	28th January, 1963	14
14	Gerald Tattersall	28th January, 1963	14
15	Thomas Alfred Oliver	28th January, 1963	15
	<u>PROCEEDINGS AND EVIDENCE ON ADMISSIBILITY OF ACCUSED'S CONFESSIONS</u>		
16	Judge's Notes	29th January, 1963	16
17	Thomas Alfred Oliver (recalled)	29th January, 1963	17
18	Michael Leng	29th January, 1963	20
19	Frederick Colburn Bean	29th January, 1963	24
20	Billy Max Sparks	29th January, 1963 and	26
		31st January, 1963	
21	Rita Ann Sparks	31st January, 1963	32
22	Final Submissions	31st January, 1963	34
23	Ruling	4th February, 1963	36
	<u>PROSECUTION EVIDENCE</u> (Continued)		
24	Thomas Alfred Oliver (recalled)	4th February, 1963	41
25	Michael Leng (recalled)	4th February, 1963	45
26	Frederick Colburn Bean (recalled)	4th February, 1963	49

No.	Description of Document	Date	Page
27	Deposition of Ronald Evans Shaw	26th November, 1962	51
28	Cannoth Roberts	5th February, 1963	54
29	Jeffrey Saunders	5th February, 1963	54
30	Thomas Alfred Oliver (recalled)	5th February, 1963	54
31	Michael Leng (recalled)	5th February, 1963	55
32	Frederick Colburn Bean (recalled)	5th February, 1963	55
<u>DEFENCE EVIDENCE</u>			
33	Billy Max Sparks	5th, 6th and 7th February, 1963	56
34	Rita Ann Sparks	7th February, 1963	67
35	James Alvin Lowry	7th February, 1963	70
36	Deposition of Victor Louis Mason	30th November, 1962	71
37	John Joseph Donovan	8th February, 1963	78
38	George William Cochrane	8th February, 1963	79
39	Adele Loraine Cochrane	8th February, 1963	79
40	James Henry Moeller	8th February, 1963	80
41	Walter Roy Duff	8th February, 1963	80
42	Deposition of Dorothy Ruffing	30th November, 1962	81
43	Michael Patrick Higgins	8th February, 1963	87
44	Max Orville McIlrath	8th February, 1963	87
45	Judge's Note	8th February, 1963	88
46	Chief Justice's Summing-up	12th February, 1963	89
47	Conviction Certificate	12th February, 1963	121

(iv)

No.	Description of Document	Date	Page
48	<u>IN THE PRIVY COUNCIL</u> Order in Council granting Special Leave to Appeal	30th May, 1963	122

EXHIBITS

No.	Description of Document	Date	Page
5	<u>EXHIBITED FOR THE PROSECUTION</u> First Statement of Billy Max Sparks	4th November, 1962	123
9	Second Statement of Billy Max Sparks	4th November, 1962	125
10	Third Statement of Billy Max Sparks	4th November, 1962	126
	<u>DEPOSITION OF SYLVIA ANN BARGETT</u>	26th November, 1962	127

O N A P P E A L

FROM THE SUPREME COURT OF BERMUDA

B E T W E E N :

BILLY MAX SPARKS ... Appellant

- and -

THE QUEEN ... Respondent

R E C O R D O F P R O C E E D I N G S

No. 1.

No.1

10

INDICTMENT

Indictment

R. v. SPARKS B.M.

21st December,
1962

The Attorney General for our Lady the Queen charges that BILLY MAX SPARKS, on the 3rd day of November, 1962, in Warwick Parish, unlawfully and indecently assaulted Wendy Sue Bargett, a girl under the age of fourteen years, contrary to section 324 of the Criminal Code and against the peace of our Lady the Queen Her Crown and Dignity.

20

H. BARCILON

S.G.

for Attorney General

21st December, 1962

No.2

Judge's Notes of Submissions on Admissibility of Complaint of Child aged 3 years
28th January, 1963

No.2.

JUDGE'S NOTES OF SUBMISSIONS ON ADMISSIBILITY OF COMPLAINT OF CHILD AGED 3 YEARS

A.G. asks for court's ruling whether what child of 3 said to her mother is admissible. The "complaint" was recent. As complainant being a child aged 3, is not being called and as consent is not material in any event, then any evidence given of what the child said is hearsay, and inadmissible.

10

Diel

I agree evidence ought to be excluded as hearsay. Exception - when hearsay forms part of "res gestae". I say statements made of child this same night are admissible but not those made just before hearing in court below. Child made some statement at Sgt. Cochrane's house and some at Bowling Alley before she was taken to hospital. Some more made following day. Statements at lower court 23 days later.

20

A.G. Res gestae are events connected with the charge. These statements are not part of res gestae.

Diel I cannot quote any authority for what I say. I have not brought the authorities.

CHIEF JUSTICE:

In that case the evidence will be excluded until the authorities which Diel says support his submission can be brought and cited. I will then, having heard both counsel further if necessary, give a final ruling.

30

M.J. ABBOTT.
Chief Justice.

Prosecution Evidence

No.3

Sylvia Ann Bargett
Examination

PROSECUTION EVIDENCE

No.3.

EVIDENCE OF SYLVIA ANN BARGETT

P.W.1. Sylvia Ann Bargett, Harrington Sound, Smith's Parish, Wife of Donald Bargett. We have 6 children. Wendy Sue is not here. She is my

daughter. She was 4 last Saturday. This Ex.1 is her birth certificate. 3.11.62. I was at home and went to Bermuda Bowl arriving there just before 8 p.m. Vauxhall Station Wagon is my car. Wendy in car with me. On arrival at Bda. Bowl Wendy was asleep. I left her asleep in the car. All windows closed except front louvres for ventilation. Car doors not locked. Wendy could have opened the car door herself.

10 I made arrangements for periodical visits of myself and my friends while I was in Bda. Bowl and as a result these visits were paid. I went out myself at about 9 or 9.15 p.m. That was the last time I saw the child in the car. All was then well. I tried to wake her but she was very fast asleep so I left her there. A friend, Margaret Tribley, went out about 9.30 to look at Wendy. She came back and told me something. As a result I rushed out to car to see if Wendy
20 was there. Offside rear door was open. Wendy had been sleeping on back seat. No sign of Wendy. I believe I was alone at that moment. Began with friends searching all the cars in the car park and under the car. I then reported to police. Wendy was wearing this dress Ex. 2 also these two pairs of panties Ex. 3A (white) and Ex.3B (red). When last I had seen Wendy she was wearing Exs. 3A and 3B.

30 After I had phoned police I was called outside and was shown by a police officer Exs.3A and 3B lying on the ground between two cars, 3 parking spaces from my car. Another police officer then arrived carrying Wendy on his arm. I fainted. When I came round I examined Wendy and saw blood on her hand, and also blood on her legs and lower part of her body - on her private parts. I took her to King Edward Hospital and Wendy was then examined by Dr. Shaw.

Cross-examined:-

40 My decision to take Wendy to Bda. Bowl and leave her in the car. I had never done it before at night. She began to cry when I started to leave without her so I took her with me and left my husband at home with the other children. I did not tell Wendy I was going to leave her in the car when I got to Bda. Bowl.

When I went out about 9.0 or 9.15 it was raining.

Prosecution
Evidence

No.3

Sylvia Ann
Bargett

Examination
continued

Cross-
Examination

Prosecution Evidence

No.3

Sylvia Ann Bargett
Cross-Examination continued

I got wet. Raining fairly hard. I shock her and started to move her but she was very sound asleep. She didn't appear to begin to wake up at all. When I re-entered Bda. Bowl I changed back into my bowling shoes, which I had changed for walking shoes before going out to the car. I don't recall if I began to bowl again at once after I returned to Alley, nor if I asked Miss Tribley to go out before or after I began bowling again. When she came back in and told me Wendy was missing I had bowled my frame. I can't remember if I had bowled one or more frames. Now I say I asked Miss Tribley to go out before I went up to bowl. I saw blood on Wendy's fingers of right hand. Dry blood. Blood on inner side of thighs. This was also dry.

10

Wendy had been in hospital on October 13 or 14th for cauterization of her left nostril. She had been suffering from nose-bleeding. She was discharged on 16.10.62 and re-admitted on same day with same ailment. Finally discharged on 18.10.62.

20

My taking her to Bda. Bowl on 3.11.62 had nothing whatever to do with Wendy being in hospital.

Wendy did not like being left in the car alone if she was awake. I have never left her in the car alone and she has got upset so far as I remember.

No.4

No.4.

Margaret Avis Tribley

EVIDENCE OF MARGARET AVIS TRIBLEY

Examination

P.W.2. Margaret Avis Tribley, North Shore, Pembroke West. 3.11.62. evening I went to Bda. Bowl with friends. Not actually bowling myself. I know P.W.1. She was there that evening. I was one of her friends who arranged to go out to her car to see if her child Wendy was all right. I went out only once and found Wendy gone. - 9.20 or 9.30 p.m. I knew the car number. Offside rear door open. I opened front door to see if child had crawled to front seat - no trace of child in car.

30

40

I searched parking place and along the street and no sign of her. It had stopped raining. I went back to Bowling Alley and got Mrs. Flood to come

out and help me search. Each search 5 mins. still no sign of child. We reported to P.W.1. She came out with both of us. Further search. No success. Then police were informed. Police arrived.

Prosecution Evidence

No.4

Margaret Avis Tribley

Examination continued

Cross-examined:-

Cross-Examination

Back seat of car wet with rain quite wet.

10 By Court I remember Wendy being brought back to Bda. Bowl by a police officer. That was about 10.15 p.m.

No.5

No.5

ELIZABETH ANN KLEMMER

Elizabeth Ann Klemmer

P.W.3. Elizabeth Ann Klemmer. Spice Hill, Warwick.

Examination

20 3.11.62. I was at Bda. Bowl in the evening. I got there around 8 p.m. I went to score for a friend. Saw P.W.1. and other friends. I recall her going out to car park to see that her child was all right. I know acc. I have known him long enough to enable me to recognise him. I saw acc. that night at Bda. Bowl between 9. and 9.10 p.m. I saw him come in. I can't recall whether I was going into or coming from ladies room when I saw him but on the journey whichever way it was, I both saw him and glanced at the clock. It was either 9.00 or 9.10 p.m.

30 Acc. was wearing Khaki military uniform. I can't recall if he had a hat on or not. He was drunk. That was plain from the way he came through the door. He went towards restaurant. I saw nothing more of him that night.

Cross-examined

Cross-Examination

When I saw acc. come in I was or may have been talking to friends on my journey to or from the ladies room.

Prosecution
Evidence

No.5

Elizabeth Ann
KlemmerCross-
Examination
continued

One of these friends was a Mrs. Correira - Margery Correia. She drew my attention to acc. I had been at some parties with him and his wife. I think he knew me well enough to come and speak to me if he saw me. I tried to avoid him on this occasion because he was drunk. Didn't notice condition of his uniform. He usually wears glasses, I did not notice if he was then.

 No.6

No.6

EVIDENCE OF REGINALD ARTHUR SPEED

10

Reginald
Arthur Speed
ExaminationP.W.4.

Evidence of Reginald Arthur Speed.

Reginald Arthur Speed, Manager, Bermuda Bowl.

3.11.62. evening I was on duty. About 9.30 p.m. or 9.45. I received information about a missing child from P.W.1. I organised a search - about 24 people took part. No success. Sgt. Roberts of Bda. Police was present and I asked him to get police assistance. Police arrived about 10 p.m. I was outside the building when they arrived. Resumed search. Sgt. Scott in charge. I know P/C Phillips. I was present when he found a pair of child's panties - these Ex.3A. I saw him pull them out from under a car. Almost at same time a police officer arrived carrying Wendy Bargett.

20

I took child and P.W.1. to my office. There was blood on sleeve of police officer - on arm on which he had been carrying child when I first saw him.

Cross-
ExaminationCross-examined:-

30

I saw Sgt. Roberts about 5 or 7 minutes after we had began to search.

No.7

 No.7
Ernest
Faries
SimonsEVIDENCE OF ERNEST FARIES SIMONSP.W.5.

Examination

Ernest Faries Simons. South Road, Paget.

3.11.62. evening I was at Bda. Bowl. I was bowling on alleys 9 and 10. near entrance. I saw acc. come

in. He was in soldiers khaki uniform, no hat, glasses. I did not know him before. He was obviously very drunk. He almost fell down when he came in the door - walked towards restaurant then turned round and came back and went out through same door by which he had entered. He was in the building I would say about 5 mins. The time was approximately 10 p.m. I began bowling 8.00 - takes 1 hour per game. I had played two games and just began the third. I would not agree that the time acc. came in was 9.10 p.m.

Prosecution
Evidence

No.7

Ernest Faries
Simons

Examination
continued

I bowl in this league every week. I did up to 3.11.62. Don't always begin and end at same time. Each game approx. 1 hour - might be 10 mins. more or less. Acc. could have come in 9.50 or 10.10. Acc. uniform was wet with rain on shoulders.

Cross-
Examination

No.8

No.8

EVIDENCE OF IRVING CANTERBURY RICHARDSON

20 P.W.6.

Irving Canterbury Richardson

Irving
Canterbury
Richardson

Examination

I live behind Bda. Bowl or did do on 3.11.62.

30 I remember leaving home to look for a taxi about 9.15 or 9.20. I asked my wife what the time was about 5 mins before. I went to E. side of Bda. Bowl to look for taxi. Half way down the hill in a parking lot I saw a black Ford Anglia car one man in it. As I walked down hill, I saw the Anglia move out of parking space and hit a station wagon. Anglia stopped. Driver jumped out and ducked down as if trying to hide. Lighting there pretty good. The back of Anglia hit station wagon. Can't say which side. The man was about 5'6" in height 140 or 150 lbs. Light coloured shirt. Light trousers. No glasses at the time. It was acc.

Cross-examined:

Cross-
Examination

40 The parking space where I saw the Anglia is the parking space at the Bda. Bowl. I was walking, looking for the taxi, down the E side of it. Now I say I was on W side of Bda. Bowl.

Prosecution
Evidence

No.8

Irving
Canterbury
Richardson

Cross-
Examination
continued

I did not pay much attention to the incident.
Maybe Acc. was wearing Khaki coloured clothing.
I was walking along there was a slight drizzle.
I was 15 feet from Anglia.
Acc. jumped out of Anglia in a hurry, saw me and
ducked down.
I formed no opinion as to condition of acc. I paid
no more attention after he ducked down.

No.9

Judge's Notes
on Further
Submissions
on Admissibility
of Complaint
of Child aged
3 years

28th January,
1963

No.9

JUDGE'S NOTES ON FURTHER SUBMISSIONS
ON ADMISSIBILITY OF COMPLAINT OF
CHILD AGED 3 YEARS

10

Diel:

I now wish to address the Court on the admissibility
of the child's statements to her mother.

Phipson p.59 (9th Edn). First para. of Chapter VI.

p.67 "Declarations accompanying acts" "must be
contemporaneous" p.68

p.78 R v Christie (1914) A.C. 545

p.132 R v Kiddle 19 Cox 77

20

I submit that what the child said to P.W.1. the
same evening

I resist the admission of what the child said just
before lower court hearing - this was much too
late. Evidence of what child said same evening
should be admitted as a court complaint. I
abandon my submission that it is part of res gestae.

Attorney General:-

Archbold 34th Edition para.1077. R. v Brasier

1 Leach 199. As child has not given and will not
give evidence, complaint to mother must be
excluded as it cannot show consistency of child's

30

story. If admitted, therefore, it cannot do but seek to prove facts complained of which is the very thing for which it may not be admitted.

Prosecution
Evidence

No.9

Judge's Notes
on Further
Submissions
on Admissibility
of Complaint
of Child aged
3 years

28th January,
1963
continued

Diel

No need to negative consent in Kiddle's case. I agree complaint here could not show consistency of child's statement because she has made and will make none.

10 Ruling:

I hold the evidence of the child's complaint to her mother the same evening is inadmissible.

Ruling

No.10.

EVIDENCE OF DAVID LEE NEBERMAN

No.10

P.W.7.

David Lee
Neberman

David Lee Neberman, Serviceman Kindley A.F.B.
Airman 1st Cl.

Examination

20 3.11.62. evening I went to Bill Cochran's house
in Warwick with Paul Waters and Clay Cameron, by
taxi, arriving between 7.30 and 8.00 p.m.
Supposed to be a birthday party. Quite a lot of
going and coming - about 25 people present.
About 8.30 majority left. The rest went away in
ones and twos later on. Finally there was
myself, Cameron, Waters, Victor Mason and
Douglas Neberman. Later acc. arrived. I knew
him before. Probably this was between 10 and
30 11 p.m. I was standing on the front porch. I
spoke to him. He did not answer. There was a

Prosecution
Evidence

No.10

David Lee
Neberman

Examination
continued

girl 10 or 15 ft. behind him. She seemed to be following. The girl seemed to be 3 or 4 years old. Acc. in my opinion was drunk. I had seen him sober.

He went to door and called for Cochrane. Words slurred, gait unsteady. Flushed face.

Child did not follow him into house. When acc. called out for Cochrane someone called out he was not there.

Cameron came out and picked up the child. Meantime acc. had entered the house.

10

Child taken into house by Cameron. Child crying then and when I first saw her.

People in the house were trying to stop her crying.

We tried to find out her name but couldn't get much out of her.

Cameron decided to take the child down the street and see if any of the neighbours could identify her. The child was then calming down.

We couldn't find anybody who knew the child. Cameron and I were together - out for about 15 mins. I never lost sight of him and the child. During that 15 mins. nothing happened to suggest Cameron interfered with the child.

20

When we got back to Cochrane's house a report to police was made. On two different occasions I noticed that the child had no underpants on. First occasion when Cameron was carrying the child on our search for someone to identify her. Second occasion when we got back to the house. Police arrived in a very short time and took the child away. After that, I went into kitchen. Cameron and Mason there also. They both had had more than enough to drink. During whole evening I had had only two or three drinks. I was sober. While in kitchen I heard Cameron say nothing like "I have done something awful". Nor did he say anything that might be interpreted as such. All I remember him saying was "Why do I always get into trouble for trying to help someone". I had not been interviewed by police but Cameron had. After that Cameron came out with that remark.

30

40

Cross-examinedProsecution
Evidence

No.10

David Lee
NebermanCross-
Examination

10 I know Howard and his wife. They were at the party. I also know Duff. He was there. Duff had a friend named Dorothy with him. Cameron went out from the party for a while and then returned. That was when he was being interviewed by the police. That was later on, some time after they had taken the child. I base my estimate of time when acc. came into house on the length of time I had been at the party. It was about an hour after majority of guests left the party. When Cameron came out and picked up the child, I entered house with him. I merely glanced at the child then. Her clothes did not seem wet. She looked like a child of that age would normally look. Cameron held her all the time in the house except that Dorothy held her for a time both before and after Cameron and I had taken her out. Child followed acc. into driveway and towards house. 8 or 10

20 steps up to house. When Cameron picked her up she was at bottom of steps. Acc. said child had followed him from some place by a church. Cochrane's house is Khyber Pass and child and acc. approached from the Middle Road direction. I did not see acc. in the house when Cameron first took child into house. I did not see acc. again that evening. We were in the house about 15 mins. before we went out to search neighbourhood. We stopped at two houses on our search. As we came

30 out of Cochrane's house we turned left. Almost immediately we returned police were called. I believe child had a plaid check dress on. Nothing on over the dress as I recall. Don't know colour of shoes. Did not tell Cameron I noticed she had no panties on. When we stopped for the two enquiries we found a baby-sitter at one house. After that, on way back, I saw the child had no panties on. I agree my deposition says "we discovered the girl did not have any pants on".

40 When we went to kitchen, I found Mason frying eggs. Talked to Cameron there within two feet of Mason who had his back to us. We did not include him in conversation. He could have heard had he listened. He turned round and said "What's going on?" or words to that effect. That was after Cameron had complained that he always seemed to get into trouble for trying to help people. Cameron did not say he had done something awful. I remember no such remark. At that time Cameron had been

50 questioned by police, and he had told us he considered himself a suspect. Cameron is a friend

Prosecution Evidence

No.10

David Lee Neberman

Cross-Examination continued

of mine and my room mate. He may have been shaking his head while he made the remark to which I have deposed. Cameron and I had had some drinks before going to Cochrane's house. We had drinks when we got there. Cameron had alcohol all evening. I had one alcoholic drink at Cochrane's house. I had one or two at Club - rum and coka-cola before going to Cochrane's house. I don't know if Cameron was drinking more than I or not. He generally drinks doubles. I never noticed any blood on the child. Cameron was carrying her on his arm - right or left. Noticed no blood on Cameron. He did not mention seeing any.

10

By Court

When Cameron and I were out on our search of the neighbourhood Cameron was drunk. I asked Cameron what he meant when making his remark about getting into trouble. He seemed to think police considered him a suspect in this case.

20

No.11

Clayton Laverne Cameron

Examination

No.11

EVIDENCE OF CLAYTON LAVERNE CAMERON

P.W.8

Clayton Laverne Cameron. Serviceman, K.A.F.B. Airman 1st Class.

Left K.A.F.B. evening of 3.11.62. to go to Cochrane's house in Warwick. Don't know time of arrival. House named "Green Fingers", Khyber Pass. Went to P.W.7 and Waters. As driving in, saw a car pulling away. Don't know whose car it was. We three entered Cochrane's house. Later on acc. came into house. I was then inside the house. Little girl aged 4 followed him into the house. I asked him whose the child was. He said he did not know - she had followed him up the road from in front of the church. I tried to get information from the child. She told me her name. Acc. was then talking to other people requesting assistance to get his car out. I took her out with P.W. 7 to try to find her home. We were out about 20 mins. No success in our search. When we got back I phoned to the police. I don't remember how soon they arrived. One policeman took the child away. Other police investigated next door. I was

30

40

interviewed by police that night. I can't remember if I went into kitchen after that. I was slightly drunk at that stage. I know Mason. Don't remember him frying eggs that evening. I did nothing in relation to the child of which I need be ashamed. I never interfered with her sexually. I don't remember at any stage saying "I have done something awful". After I had seen police I had no impression I was a suspect in the case. I don't remember saying that night that I always seemed to get into trouble trying to help people. I have said it about this case at other times.

Prosecution
Evidence

No.11

Clayton
Laverne
Cameron

Examination
continued

Cross-examined

Cross-
Examination

When I picked up the child her dress was dry. Acc. was all wet. Head to foot. I just saw the child when she came in at the front door. When I picked her up I don't know where acc. was. She came in about 4 feet behind him. I don't know where she was when acc. entered the house. I don't remember walking down the steps and picking the child up there. I carried her all the time I was out with P.W.7. Carried her on either arm. I had short sleeved shirt on. Didn't notice if she had pants on or not. Had marks on my arms red marks. No blood on my arms. I don't remember telling P.W.7. Police considered me a suspect. I may have done. I had had drinks before going to Warwick - doubles of Whisky and doubles of Bacardi. At Cochrane's I had whisky. I was affected by alcohol. P.W.7. said nothing that night so far as I remember about the child having no pants on. Acc. said nothing that I heard about the child except where he found her. Phoned police immediately P.W.7. and I got back with the child. When we turned out of the house with the child we turned left. Knew church was to the right. No houses with lights on in that direction. Just looked from Cochrane's house.

40

No.12

No.12

EVIDENCE OF NEVILLE ROSS PHILLIPS

Neville Ross
Phillips

P.W.9.

Examination

Neville Ross Phillips P.C. Bermuda Police.
Western District

3.11.62. I was on patrol Camp Hill area - scooter

Prosecution
Evidence

No.12

Neville Ross
Phillips

patrol. About 10.15 p.m. I made a routine call to Somerset Police Stn. and received information. As a result I went to Bda. Bowl. I then saw Police Sgt. Selby. A search of parking place ensued. I took part. I found Ex. 3A and 3B on ground between two cars. I took them into Bda. Bowl.

Examination
continuedCross
ExaminationCross-examined

Ex. 3A and 3B found on N.E. side of parking place, about 50 feet from N.E. corner. Cars parked facing E and W. One was a two-toned Standard and the other was a small black Ford. I picked up Ex. 3A and 3B myself. They seemed dry. It was not raining but ground was wet. Seemed to have been put on the ground after rain stopped. Both Ex. 3A and 3B together - near one another as though somebody had just dropped them there. It looked as though they had been dropped from the black Ford. Parking place not paved.

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No.13

William
Arthur Jones
Examination

No.13

EVIDENCE OF WILLIAM ARTHUR JONESP.W.9.

William Arthur Jones P.C. Bda Police West. Dist. 3.11.62. I was on duty at Somerset Pol. Stn. 10.15 received information. Went to Bda. Bowl with P.C. Tattersall. Arrived there. Handed a parcel containing Ex. 3A and 3B. Later accompanied P.W.1 and her little daughter Wendy to hospital. There saw Dr. Shaw and handed him Ex. 3A and 3B and left P.W.1 and child in his care.

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No.14

Gerald
Tattersall
Examination

No.14

EVIDENCE OF GERALD TATTERSALLP.W.11

Gerald Tattersall P.C. Bda Police West. Dist.

3.11.62. evening I was on duty at Somerset Pol. Stn. I received information 9.47 p.m. Re child

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missing from Bda. Bowl. With P.W.10. and another P.C. went there. Joined in search of car park and surrounding area in car. Recd. further information over car radio about 10.40 p.m. As a result I went to a home called "Green Fingers" in Khyber Pass. There I went up to a door. Party on. I spoke to Cochrane who told me someone else had picked up the child. She seemed to have been crying. Hair tousled. No signs of injury. Then took child to Bda. Bowl and gave her to P.W.1. I was in summer uniform. Shirt and long trousers. Carried child on my left arm. This Ex.4. is the shirt. I gave it to Sgt. Bean next day.

Prosecution Evidence

No.14

Gerald Tattersall

Examination continued

Cross-examined.

Cross-Examination

I went to "Green Fingers" above. When I found child she was in quite good spirits. She spoke to me. I carried her from house to car and from car to P.W.1. at Bda. Bowl.

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No.15

No.15

EVIDENCE OF THOMAS ALFRED OLIVER

Thomas Alfred Oliver

P.W.12

Examination

Thomas Alfred Oliver. Det. Cons. Bda Police. W. District.

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4.11.62. I was investigating a case of indecent assault in respect of a little girl aged 3. D/C Leng with me at the time. 12.30 p.m. we went to home of acc. in South Shore, Warwick. I saw him in presence of his wife. I told him who I was and what I was doing. I told him I understood he had found a child in Khyber Pass. I asked him if he would give me a statement of the circumstances in which he found the girl. He agreed to do so and I wrote down a statement at his dictation. I read it back to him and he signed it as correct. This is it. Ex.5. (Ex.5 read). I then made further investigation. At 3.00 p.m. again with Leng saw acc. again. His wife was present. I told him I had been making further enquiries and there seemed to be discrepancies in Ex 5 and would he come to Police H.Q. as I wanted to ask him some more questions. I told him he was not under arrest. He agreed to come with me. Before I

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<p><u>Prosecution Evidence</u></p> <p>No.15</p> <p>Thomas Alfred Oliver</p> <p>Examination continued</p>	<p>left the house I asked the acc. to give us the uniform he had been wearing the previous evening and also to bring his car with him. He handed me this uniform (Ex.6 and 7) (Shirt and trousers). We went to Prospect. Acc. driving his own car with Leng. At Police H.Q. I continued enquiries of acc. in presence of Leng, part of the time, and Bean the rest of the time. From acc. car I took from passenger seat covers. These are they Ex.8. I asked acc. about his movements previous evening. (<u>Diel</u> I think witness is about to give evidence whose admissibility I challenge)</p>	<p>10</p>
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<p><u>Proceedings and Evidence on Admissibility of Accused's Confessions</u></p>	<p><u>PROCEEDINGS AND EVIDENCE ON ADMISSIBILITY OF ACCUSED'S CONFESSIONS</u></p>
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<p>No.16</p> <p>Judge's Notes</p> <p>29th January, 1963</p>	<p style="text-align: center;">No.16</p> <p style="text-align: center;">JUDGE'S NOTES</p> <p style="text-align: center;">29TH JANUARY, 1963 RESUMED. COUNSEL AS BEFORE.</p> <p style="text-align: center;">JURY ABSENT</p> <p>Ct. I shall now proceed to deal with the question of the admissibility of certain of the evidence on the depositions which the prosecution desire to adduce at this trial.</p> <p><u>A.G.</u> There are four separate items of evidence which may be objected to. If defence counsel will indicate his grounds of objection regarding each, I can examine the witnesses accordingly.</p>	<p>20</p>
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<p><u>Diel.</u></p>	<p>I don't altogether agree there are four separate items. But I say that three of them should be lumped together and called confessions. The remark to Leng I put in a category by itself.</p>	<p>30</p>
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Ct. Very well, proceed accordingly.

Diel. The following I consider inadmissible:-

(1) The acc's reply "I did it" to P.W.12 when he was asked "How did she" (the child) "get there" i.e. in the company of the acc.

(2) Exhibit K.

<p>(3) Conversation of acc. with his wife on the telephone recorded by P.W.12 and D/Sgt. Bean and D/C Leng.</p>	<p>40</p>
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(4) Additional evidence of Leng where acc. is stated to have said he would prefer to be detained as he would not like to face his neighbours and

friends from the Base I group the first three together as confessions. No.4 is a confession by inference only.

Ct. I think we had better hear at what point the accused's status so to speak had arrived before Diel can properly formulate his grounds of objection. I.e. was the acc. under arrest or had P.W.12 made up his mind to arrest him or what in fact were the circumstances.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.16
Judge's
Notes
29th January,
1963
continued

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No.17

No.17

EVIDENCE OF THOMAS ALFRED OLIVER

Thomas
Alfred
Oliver

Recalled and reminded of oath.

Examination
continued

Sgt. Bean joined us about 5 p.m. There had been no changes in status of acc. He was not under arrest then. Up to Sgt. Bean's joining us I had not made up my mind to charge acc. with this offence. Sgt. Bean said to acc. something to this effect:- "The last time the little girl was seen was at 9.20 at the Bda Bowl. The next time she was seen she was in your company. Have you any idea how she got there?" The answer he gave was made voluntarily. No threat or promise was made. I was not present at the whole of the interview up to that point. I had been outside a couple of times for 5 mins. or so. At no time while I was there was any promise or threat made to acc.

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Cross-examined

Cross-
Examination

I took acc. to Prospect because more convenient to question him there than at his home with his wife and children about. When I took acc. to Prospect I knew he had been at Bda. Bowl the previous evening at about the time the child disappeared. I also knew he had been in his house or Khyber Pass near Cochrane's house the previous evening. I didn't know at Prospect on 4.11.62 that he had run his car into another. I wanted to question him about his presence at Bda Bowl and Cochrane's house. I could have taken acc. out and questioned him in the police car. I have done this sometimes. At Police H.Q. we went to Western C.I.D. Office. There are two rooms with an open door between. One is the constables office and one is Inspector's office which Bean

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Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.17

Thomas
Alfred
Oliver

Cross-
Examination
continued

was using at the time. Acc. was in constables' office. I was with him from 3.30 until 5 p.m. except for the two occasions when I went out for a few minutes. When I went out, Leng or Bean or both were with him. First occasion Leng was left with him. I think Leng and Bean were with him on more than one occasion. I may have gone out more than twice. I was present when Leng asked acc. some questions. Acc. asked at one time to be taken before Wendy Bargett to see if she could identify him. If acc. prior to his answer to Bean, had wanted to go home he would have been allowed to do so. I never heard Leng tell acc. he could be charged with drunken driving, or with leaving the scene of an accident. Acc. I believe mentioned rape once - I told him to forget rape. I don't think I mentioned "misdemeanour" or "felony". Bean questioned acc. in my presence. He only did so once, about 5 p.m. He did not say in my hearing "Listen Sparks, we are going to convict you of this. We can prove it" nor did he say "You might just as well confess" or anything like it. Acc. did not say "Is that all you want from me, a statement?" Bean may have told acc. we had proof Acc. was at Bda Bowl. In reply to Sgt. Bean's question given in my evidence-in-chief, acc. replied "I did it". He did not say "If you say I did it, I did it". Bean did not say "You can't guess about something like this. The moment acc. said "I did it" I cautioned acc. No fingerprints had then been taken.

(Diel I wish to reserve further cross-examination until the statement made by acc. at that stage)

Further Examination-in-Chief

Further
Examination-
in-Chief

Acc. after caution elected to make a statement. No threat or promise made. I recorded the statement in writing. About 6.10 p.m. phone rang Leng answered it. Leng said acc's. wife was on the line. I told acc. he could speak to her. He did so. Again no threat or promise was made. I think acc. listened for a few seconds and then he said "Honey I did it". Then after a pause he said "All the proof in the world". Another pause, then "You know how drunk I was". Then I got the impression someone else came on the line whom acc. asked to look after his wife. At that time I knew that Dr Shaw said the child had been interfered with but that nothing more than a finger had been inserted in the child's private parts. I may

have told acc. at the time I was telling him to forget rape that nothing more than a finger had been put into the child's private parts.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.17

Thomas
Alfred
Oliver

Further
Examination-
in-Chief
continued

Cross-examination.

Cross-
Examination

I never heard Bean offer the acc. the chance to make a confession to one person only. I never heard Bean say that he had better confess and save embarrassment to his wife and friends. I never heard Bean say that if acc. confessed the case would be kept out of the papers. I never told acc. that in cases like this where the military were involved they were generally taken out of the Island. Both I and Leng reconstructed acc's. movements the previous evening, to the acc. I see this statement (Ex. K in the court below). During the recording I did not ask acc. any questions. He dictated it and I wrote it down. He was not questioned in any way after signing the caution and uttering the first sentence of the statement. I don't think he was then asked how did she get in the car. He was asked earlier in the afternoon if he had given a little girl a ride in his car. Acc. did not continue "I drove up Spice Hill Road and parked and molested her". He said what I have recorded. I deny asking "What do you mean by molesting her?" Nor did acc. reply "I don't know: what was I supposed to have done to her". Leng did not say "You put your finger in her" nor anything of that kind. I agree acc. was saying throughout the interview that he did not know where he had been the night before. We told him where he had been and that we could prove where he had been - at Bda Bowl. I agree he said once "If you can prove I was at Bda. Bowl, all right I was there," or words to that effect. I still say we merely reconstructed acc's. movements and told him the child had disappeared about the same time. He may have been asked prior to making the statement "Didn't you give a little girl a ride in your car?"

Proceedings and Evidence on Admissibility of Accused's Confessions

No.17
Thomas
Alfred
Oliver
Cross-
Examination continued
Re-
Examination

Leng and I work together as a team. We discussed asking acc. to come to Prospect (Police H.Q.) and decided to do so. No other arrangement was made between us. Leng could have decided to charge him just the same way as I did. Had he refused to come to Prospect I would not have taken steps to compel him to do so. Had he refused to give us his uniform or the car seat covers when I took them, I would not have compelled him to give them up. I removed the seat covers at Prospect. I didn't ask acc's. permission to do so. Up till acc. said "I did it" he could have gone away without hindrance. Until he said that I had not made up my mind to charge him.

Re-examined

Acc. was our No. 1 suspect but until he said "I did it" we had not sufficient evidence to charge him.

No.18

Michael
Leng
Examination

No.18.

EVIDENCE OF MICHAEL LENG

Michael Leng, Det.Const. Bda. Police, Police H.Q. Prospect.

About 3.00 p.m. on 4.11.62 P.W.12 and I took acc. to Prospect. There about 3.30. P.W.12 questioned him first. Bean joined in about 3.50 or 4.00 p.m. I was not there all the time. I left the room 2 or 3 times during the questioning. Away 5 or 10 mins. each time. When I went out P.W.12 and/or Bean was left with acc. I was present when acc. said "I did it". No threat ever made to acc. nor any promise made to acc. I never said to acc. we could charge him with drunken driving or "we could get you for leaving the scene of an accident". Bean never said "Look Sparks, we are going to convict you of this. We can prove it" in my presence. Nor "You might as well confess, we can prove you did it". Acc. never said "Is that all you want from me a statement?" Nor "If you say I did it, I did it". Nor did Bean then say "You can't guess about a thing like that" Bean never offered acc. to be in a room alone with one person in order to confess. Bean never said "As we can prove it, you should confess and save your family

a lot of embarrassment". Nor that if acc. confessed, the matter would be kept out of the papers. I agree that I said in my opinion acc. had taken the child out of the car at Bde. Bowl, driven her along Khyber Pass, indecently assaulted her and afterwards took her to a party on the pretext of having found her. I had not made up my mind to charge acc. until he said "I did it" but I strongly suspected him. Once acc. said that, P.W.12 cautioned him. He then

10 elected to make a statement during the making of which I was present. No threat or promise was used to induce a confession. I see the statement. Taken down verbatim by P.W.12. No questions were asked of acc. during making of statement I deny acc. saying, instead of what appears in the statement "I drove up Spice Hill Road and parked and molested her" I deny when asked what he meant by molesting her said "I don't know what I am supposed to have done to her". I didn't then

20 know exactly what had happened to the child. I was under the impression that only a finger had been inserted. I deny saying to acc. "You put your finger in her" As far as I know nothing improper was said or done during taking of statement. Acc. was given an opportunity of reading the statement over. P.W.12 read it over and acc. could see it while P.W.12 was reading it. It was on the desk between them. Once it had been read, acc. signed it. About 5.40 p.m. I was taking

30 certain personal particulars from accused. Acc. asked me something. Nothing had been said after taking the statement which might have induced him to confess. Acc. asked me if he was going to be detained in custody. I didn't know and told him so, as I had to refer to a senior officer. Acc. then said he didn't want to face his neighbours and friends from the American Base. He gave me the impression that for this reason he wanted to be detained $\frac{1}{2}$ hour later a phone conversation

40 took place between acc. and someone else. I answered the phone when it rang. Nothing had by then been said to acc. in nature of threat or promise. Person at other end said she was Mrs. Sparks and asked if she could speak to acc. In the office there were Bean and P.W.12. Acc. was allowed to answer the phone. When he picked up the phone he said something straight away, it appeared to me. He said "Honey I did it" then there was pause and acc. then said "Yes, all the proof in the world". Another pause, then "You know how drunk I was." From 3.00 p.m. to

50 6.10 acc. was sober. During questioning he was

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.18

Michael
Leng

Examination
continued

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.18

Michael Leng
Examination
continued

calm and collected but after he made the written statement he was crying. He was upset when he was talking on the phone.

Cross-Examined

Cross-
Examination

Bean came into West C.I.D. Office at Prospect, into the Constables room. He came from outside the building. He stayed there until acc. was taken to Hamilton Police Stn. which was after 6.00 p.m. He was not in the office all the time. I didn't see him go into the Inspectors room though he may have done. After he first came in, I can't remember how long he stayed. He left the office two or three times. His absences from the room were much the same as mine and P.W.12's. P.W.12 and I jointly decided to ask acc. to come to Prospect. When we first got there no caution was administered to acc. Questioning began almost at once. Acc. maintained he couldn't remember what had happened the night before. He had said so before. He said that he had been drunk - that's why he could not remember. His wife helped him with details as to times etc. when he was making a witness statement at his house about noon on 4.11.62. During questioning one of us told acc. he had been at Bda. Bowl the night before. I can't remember if I said there were witnesses. I told him he had been seen there. I can't remember if anyone else said that to him. I might have told him he had also been to a house in Khyber Pass in addition to the Cochrane's house. I can't remember acc. then mentioning Sgt. Griffiths. He may have mentioned Jack and Betty who live on Khyber Pass. I might have said that must be the Klemmer's house. When we told him the story of what we knew about his movements he accepted he had been at Bda. Bowl and said he might have been at a party in a house in Khyber Pass. I don't use the word "molest". When I reconstructed the crime, acc. denied the offence and insisted he had merely found the child wandering on the road. I agree I told Magistrate I did not tell acc. that it could be proved he was at the Bda. Bowl the previous evening. I can't explain why I have altered my story. I never said to acc. "We are going easy on you. We could get you for drunken driving, leaving the scene of an

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accident and molesting a little girl. But we are only going ahead with the molesting". I wouldn't have threatened acc. with a charge of drunken driving the day after he had been drunk-in-charge. I never said to acc. "The little girl is no dumbell, she knows who did this" whereat acc. replied "Of course my little boy of 4 would know who hurt him. Can we have the little girl come to identify me?" Nothing like that was said. I deny telling acc. the charge was not nearly so serious as rape and that indecent assault was only a misdemeanor and happened quite often. When I reconstructed (verbally) the crime to the acc. I don't know if P.W.12 and/or Bean was there. People were going in and out all the time. I can't remember what time I made the reconstruction - probably it was about 4.15 p.m. When we fetched acc. from his house I had strong suspicion that he had committed the offence. If he had refused to come I don't know what I would have done. P.W.12 said he was not under arrest. I did not tell him he was a suspect. I was convinced he was the man we wanted when we got to his house. If acc. had wanted to leave Police H.Q. before saying "I did it" he would have been allowed to go, I would not have detained him. I can't explain the inconsistency between what I have just said and my telling the Magistrate that if the investigation had been in my hands I would have charged the acc. with the offence before he said "I did it". I think I used the phrase "indecent assault". I don't think I said "Putting a finger into her private parts". I don't think it is possible that I did so. I deny asking acc. any questions during the taking of the written statement. P.W.12 asked him none either. Acc. did not say "Hell, no, I guess I just opened the door and she got in". I did not hear P.W.12 ask "What do you mean by molesting her". I deny I said to acc. that he had put his finger inside the child. Acc. did not say "O.K. damn it, I put my finger in her". I deny saying "Front or back". The written statement represents a record of what acc. said on that occasion. A correct record. I deny that on my reconstruction of the events of the previous evening the acc. said "Well if you say so, that's right". I deny he said something like that at any time that Sunday afternoon. When I reconstructed acc.'s movements to him, he seemed to remember more on some of the points. Acc. paced up and down during the questioning. I don't think he was worried and upset then. I think he was concerned about being taken to Prospect and

Proceedings
 and Evidence
 on
Admissibility
 of Accused's
 Confessions

No.18

Michael Leng

Cross-
 Examination
 continued

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

questioned. I believe acc's. wife had phoned earlier. She did not speak to him on that occasion. Call came to Western C.I.D. Office. Don't know in which room I refused to let her speak to acc. just then because he was being questioned at the time.

No.18

Michael Leng

Cross-
examination
continued

Re-Examination

Re-
examination

Bean took charge of investigation once he arrived. It would not have been proper for me to charge acc. once Bean had taken over. Until acc. said "I did it" there was no evidence against him to bring before a court. There is nothing in Ex.J to suggest he could not remember events of night before. When I say acc. seemed to recollect more, I mean he admitted recollecting more.

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Examination
by Court

By Court.

I can't explain why I did not permit acc's. wife to speak to him the first time she rang up.

I don't think I told acc. of his wife's ringing up the first time. I had no particular reason for not telling him. I can't say why I did not tell him. It is usual in such circumstances if someone wants to speak to a person in the then position of the acc., for a senior officer to make the decision whether the conversation should be permitted or not. In this case it was my decision. I so decided merely because the acc. was being questioned at the time. I don't think I consulted Sgt. Bean because he was engaged in questioning acc.

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No.19

No.19

Frederick
Colburn Bean
Examination

EVIDENCE OF FREDERICK COLBURN BEAN

Frederick Colburn Bean D/Sgt. Bda. Police.

4.11.62 I was concerned in investigation of a case of indecent assault on Wendy Bargett. I was in charge of investigation. Leng and Oliver acted under my instructions. 3.40 p.m. I went to

Western C.I.D. Office as a result of information received from Leng and Oliver. I spent some time examining the car belonging to accused. I went into office to see acc. about 4.45 p.m. That was the first time that I saw acc. that afternoon. I remember question and acc's. answer "I did it" During time I was there no threat or promise was made to acc. Nothing of that kind was said. After acc. said "I did it" he was immediately cautioned by P.W.12. I was not present when any suggestion was made (if it was) by Leng that acc. could be charged with drunken driving. I never heard Leng say "we could get you for leaving the scene of an accident". I never heard the word "rape" used by acc. or anyone else. I never said "Sparks, we are going to convict you of this, we can prove it" or anything like that. I never said "You might as well confess, we can prove that you did it" or anything like that. I never heard acc. say "Is that all you want from me, a statement" I don't remember if the acc. said "O.K. if you say I did it, I did it". If he had said that I would have made a note of it. I did make notes of what he actually said. I made them about 6.00 p.m. I see this notebook, it is mine. (Ex. H in Court below). I did not say "You can't guess about a thing like that". I never gave acc. a chance to be in the room with one officer so that he could confess. I never suggested to acc. that he should confess and so save his family a lot of embarrassment. I never said that if he confessed the case would be kept out of the papers. Up to moment when acc. said "I did it" I could not have proved case against him. I made up my mind to charge him when he said "I did it". Acc. cautioned, elected to make a statement. This is it. I was present while it was recorded. It was taken down verbatim. Acc. was not questioned while he made the statement. I don't remember any question being put to acc. such as "How did the little girl get into the car?". I cannot remember any exchange such as acc. saying he "drove up Spice Hill Road and molested her" and either Leng or Oliver saying what do you mean by "molesting" and acc. saying "I don't know what I am supposed to have done to her" and Leng saying "You put your finger in her". When statement concluded P.W.12 read it back to acc. who was sitting alongside P.W.12. He could have read it had he wished. He signed it in my presence. About 1 hour later a phone call came from acc's. wife. Acc. was allowed to talk to her. When he took phone he spoke immediately and said "Honey I did it". Then a pause then acc. said something I could not hear. I heard no more.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.19

Frederick
Colburn Bean

Examination
continued

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.19

Frederick
Colburn Bean
Cross-
Examination

Cross-Examined

I was in November 1962 in charge of Western C.I.D. I did not know Oliver and Leng were going to bring acc. to H.Q. I later learned why they did - because they were not satisfied with the statement acc. had given them at 12 noon that day. When I learned acc. was at H.Q. I already knew there was evidence he had been at Bda. Bowl the night before. For the first 65 mins. after arriving at H.Q. that afternoon I was engaged with Insp. Mullen in removing certain exhibits from acc.'s car. I don't agree with Oliver that I joined him and Leng at 4.00 p.m. that day. Having entered at 4.45 p.m. I left the room after 6.00 p.m. after which I was in and out. Continuously there from 4.45 to 6.00 p.m. I know of only one phone call for acc. - when he spoke to his wife. I have made no other notes about questioning of acc. I did not hear Leng reconstruct crime to acc. I was using Inspector's room as an office. I was not in that room before 4.45. D/C Cann was with me and Mullen. Most of the time I was in Mullen's company. I was alone some of the time examining acc's car Oliver and Leng had no authority to charge acc. I did not tell them so. Had they had enough evidence I would have been informed before they preferred a formal charge. I had discussed with Oliver and Leng their questioning of acc. before I went into the room. These discussions took place with Leng just before I went in at 4.45 p.m. I had no discussion with P.W.12 except in presence of acc. It is possible I said something wrong in the court below. My discussions with Leng gave me a clear picture up to a point. I had received information about acc's. movements after I got to H.Q. and before entering the room where acc. was. Important part of his movements were not clear to me. I understood he could not remember being at Bda. Bowl soon after 9.00 p.m. the previous evening. I think that was the only point in doubt. I regarded acc. as a suspect. The number one suspect. Up to his saying "I did it" we had not enough evidence to charge him.

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No.20

Billy Max
Sparks

Examination

No.20.

EVIDENCE OF BILLY MAX SPARKS

Acc. enters witness box on question of admissibility of evidence.

Billy Max Sparks, U.S.A.F. Staff Sgt. South Shore

Road, Warwick.

Last November 4.11.62 Oliver and Leng called on me at my home about 12 noon and then again about 2.30. I was then in bed and I got up and went to them. They said that certain things about my movements of previous night were not clear to them and would I mind going with them down town. I told them I didn't know how I could help further as they already knew of my condition the night before but that I would go with them. While I dressed, we talked the four of us, Oliver, Leng, my wife and myself. The P.C.'s repeated they were investigating an indecent assault on a little girl. They did not mention her name but I understood it was the same little girl who had been seen with me the night before. I did not then know her name. I asked if I was a suspect and either Oliver or Leng said I was not. Something was said to the effect "At this point everyone is a suspect". I drove my car with Leng to Prospect Police H.Q. and was taken to a room there. There I was questioned by Oliver and Leng. Later I saw Sgt. Bean. That was within 20 or 30 mins. after my arrival. In the same room. Bean said there were things he wanted to clear up, that my movements of the night before were not correct in my first statement, - the one given at 12 noon. He said "we have witnesses and can prove that you were at the Bda. Bowl". I said something to the effect that if I had been there people would have seen me. I had earlier said that I didn't remember where I had been most of the night before because I was drunk. I said if witnesses had seen me at Bda. Bowl I must have been there. Bean said he had had many cases of this "convenient loss of memory". He asked me if it would be less embarrassing for me if Oliver and Leng left the room, so that I could give him a statement. I said "A statement about what, I can't remember anything?". I don't remember what Bean then said. Later he said he wanted a statement from me to avoid embarrassment to my family and my friends. He said the further the investigations went the more publicity there would be and more people would know about it. I can't exactly recall that he mentioned newspapers. Bean then went into the other room of the office leaving the door open. Oliver and Leng were still with me. They went on questioning me - mostly Leng did. He said "We could get you for drunken driving, hit and run, leaving the scene of an accident and molesting the child. All we want is

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.20

Billy Max
Sparks

Examination
continued

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.20

Billy Max
Sparks

Examination
continued

a statement about the child. We have spoken to this girl, she is no dumbell, she knows who did this to her". I said "My boy of 4 would know anybody who harmed him, why can't the little girl see me". I was told it would be too hard on her. At that time I did not know what the offence against the child consisted of. I gathered it was rape and I said "This is a hideous thing you are accusing me of" and someone said "What do you mean" and I said "Raping a child" Leng said "It's not nearly as serious as that, this is completely different and it happens quite often and in fact it is only a misdemeanor". Questioning went on. Leng reconstructed crime to me. Oliver was there and I believe Bean as well. Leng said "You were at Bda Bowl and saw the little girl - possibly she was relieving herself and you took her in your car and drove up Spice Hill Road, parked and indecently assaulted the child, couldn't get your car started, took the child with you to the party." I asked him why I would take her to a place where 25 people would know me if I had done this thing and Leng said "You had no other place to take her". Bean spoke to me again. He used more of the same type of questioning. I don't recall his exact words. He suggested I should confess. I made same reply saying I do not remember where I had been. I made a statement eventually. I don't think Bean was actually present when I made it but he was when I said I would make a statement. There was then a conversation between me and Bean. I said "Is all you want a statement from me?" He said "Yes", and I said "O.K., I guess I did it". He said "You can't guess" I said "O.K. damn it, I did it." He told Oliver to take my statement and that was the last I saw of him. I then made a statement. This one (Ex. K in Magistrates Court). I signed it as correct. It is not in my words and it is not a true statement. I first began by asking "Where shall I start?" I was told "Start at the Bowling Alley". I said "I saw the little girl and gave her a ride". I think Oliver said "How did she get in the car?" I said "Hell, I don't know, maybe I just opened the door and she got in". Then I carried on with the statement saying "I drove up Spice Hill Road, parked the car and molested her". Leng asked "What do you mean, molested her?" I said "Hell, I don't know what am I supposed to have done to her?". Leng said "You put your finger in her" and I said "O.K. damn it, I put my finger in her" Leng said "Front or back?" I said "Hell, I don't know". I don't believe I said "I took hold of her and put my finger between her legs".

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I consider the statement which I signed as correct to be a complete fabrication. I believe, I now say, that I did say "I thought that by leaving her there she'd get home". Then Oliver asked "Do you want to say any more" and I said "I am very sorry and ashamed". At Prospect my wife called up three times. I was only allowed to speak to her once - on the last occasion she phoned. I asked on one of the other two occasions why I could not speak to her and was told it was because I was being questioned. I'm not certain of the words I used to my wife but it was something like this "Honey, they said I did it, I guess I did it". She said "Do they have any proof" and I said "All the proof in the world". Then Mrs. Cochrane came on the line and also someone else. I spoke about getting my wife off the Island to avoid her being embarrassed. I have four children, 6, 4, 2 and 1. I am quite sure I did not do this to this child. I signed confession because I got to the point where I believed them. I had had an argument with my wife about being out the night before. I was in a confused state of mind. I did not work that morning.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.20

Billy Max
Sparks

Examination
continued

Cross-examined.

Cross-
Examination

I am a reasonably intelligent man. I was a Staff Sgt. at 20 yrs. old. That was early. I have a good sense of decency. I referred to this offence as a hideous offence. I have very little recollection of the night of 3.11.62. I recall quite well most of the evening up to the time I was at the Swizzle Inn. That was on the way from K.A.F.B. to Khyber Pass. I remember calling at Sgt. Donovan's house between Flatts and Devonshire Church. I don't remember leaving that house. I next remember seeing Cochrane in a suit and tie at a house, and Mrs. Cochrane telling me my wife had phoned, and Cameron asking me the Police Phone Number. I remember a little girl crying to me that night saying something about her mother. I remember leading her into the house where I had earlier seen the Cochrane's. Apparently this was my second visit there. I also remember that night several persons lifting my car out of a ditch. That is all I remember. It is easy to say "I can't remember". Particularly when it helps myself. I remember making Ex. 5 and saying it was a true statement. There is nothing there to show I didn't remember.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.20

Billy Max
Sparks

Cross-
Examination
continued

It contains much more than I can remember now. My wife furnished the information which I could not supply. My wife told the P/C I arrived at Cochrane's house between 8 and 9 p.m. I did say I couldn't remember. I signed Ex. 5 on the faith of my wife's statements being correct. My wife knew about my leaving the party and driving along Spice Hill Road and running into a ditch. My wife got this information from people at the party. This Ex.5 is reconstructed from information from other persons and from what I could remember. When I say in Ex.5 "I thought-----house" that was my thinking, not my wife's. I don't remember telling the people there I had found her near the church. I don't agree most of Ex.5 is not my own recollection. I feel Ex.5 to be a true statement. I did say I could not remember. I agree there is nothing in Ex.5 to say I could not remember or to show Ex.5 is a reconstruction from statements made by others. My original home was at Oregon and now Nevada. Assaulting a little girl is a serious offence. During investigation at C.I.D. Office I was told it was not rape but something much less serious indecent assault on a little girl of 3. I didn't know what indecent assault was until after I said "If you say I did it, I guess I did it". I said that without knowing the nature of the offence. I don't excuse my mental state when I said that. I agree it was verging on lunacy to accept I had committed a crime without knowing the nature of the crime. I signed statement made at Police H.Q. (Ex.K at magistrates court). I signed it as correct. The police knew it was not correct, and I knew it was not correct. I accept that by signing it I am acknowledging it as being my statement. There is nothing in it to suggest I can't remember. Several times I asked Police for proof. They proved me to have been to Bda Bowl, crashed my car and been to Cochrane's house. I accepted what they told me as proof. I accepted it when they told me where the indecent assault was supposed to have taken place. I signed the caution. I agree I was not obliged to say anything. I can't explain why I made this statement except what I have said already. I agree it is not a reasonable explanation, merely to say I can't account for my mental state at the time of making the statement. I was confused at that time. The caution was clear to me at the time. I made the statement (1) to prevent embarrassment to my family and friends (2) to avoid publicity and (3) to remove my wife from the Island. Leng told me my wife would have

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to remain in the Island for the investigation and trial. That was before I made the statement. From what Leng told me I gathered there was a possibility I would not be prosecuted by the civil power if I made a statement. I wasn't going to make my position any lighter by making a statement. I never imagined matter would be completely dropped. I thought military would be much more stringent. It was suggested to me by Leng that if I did not make a statement it would be the worse for me etc. I would be prosecuted in addition for the motoring offences. The details of what I was supposed to have done horrified me. But I put them in my statement (Mgte's Ex K). I agree my evidence conflicts with police evidence. I think Bean may have made mistakes but Oliver and Leng are deliberately lying. The words "I'm very sorry and ashamed" came as a result of Oliver suggesting I should say something to apologise to the child's parents. I asked to be kept in detention because I was too afraid to face my friends even from the time I was taken to police H.Q. Much more so when I had made a written statement. I remember talking on the phone to my wife. I was very upset at the time. I agree my recollection may not have been so good as if I had been calm and collected. Police officers were not upset. If I am telling the truth, all three officers are deliberately lying. I don't know if Bean then supported his lie by making a note of what I said in his notebook. When I said "All the proof in the world" I spoke to someone else. I may have said "You know how drunk I was". I don't recall hearing evidence that I said this, given at court below.

Re-examined.

"Hit and run" offences are looked upon seriously in my home State, also drunken driving. When Bean joined us at Police H.Q. he at once began asking me questions. He said "Listen Sparks, we can prove this and will prove it". Then he spoke about the fact they had witnesses and he spoke about the paint sample taken from my car that would prove the accident. He told me to think of the embarrassment to my wife when he had to take me out to get a Khaki uniform for me to wear and he would have to continue this investigation and every step he took would cause further embarrassment to my friends, wife and family. Bean suggested I should confess. If I

Proceedings and Evidence on Admissibility of Accused's Confessions

No.20

Billy Max Sparks

Cross-Examination continued

Re-Examination

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.20

Billy Max
Sparks

Re-
Examination
continued

did, investigation would stop. When I signed the confession statement I was convinced in my own mind that I didn't know what I had done. I don't believe I am the type of person who could have done this. I mentioned to my wife about her leaving Bermuda at the Police Station, that was about 8 p.m. My wife is still here. She refused to leave.

By Court

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Examination
by Court

The Church where I say in Ex.5 I found the child is one door away from Cochrane's house. It is not St.Mary's, Warwick, but a new church on Khyber Pass Road after it turns right. I know that church is one mile from Bda. Bowl. I don't know how the child got there. The confession statement is not true. I can't explain why I made a confession. When I said "All the proof in the world" I considered the police had all that proof. They had said that the child had given a description of me. I don't know what time I got to Sgt. Donovan's house, probably about 7 p.m. The police did not write in the confession statement all I said I did say more than once that I could not remember what had happened the previous night.

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No.21

Rita Ann
Sparks

Examination

No.21.

EVIDENCE OF RITA ANN SPARKS

Rita Ann Sparks. Wife of acc.

In November, 1962 I was living with him in Warwick Parish. I remember Oliver and Leng coming to our house on Sunday 4.11.62. That was about 1 p.m. Acc. came in with the officers. They explained they had come to ask him questions about the child he had found and about his movements the night before. They wanted to know where he had been and what time. Acc. could not give them those details. I helped by giving them the times he had been at certain places. I had got this information from telephone calls which I had made. I know Sgt. Donovan. Acc. and he used to ride to work together. I knew acc. had been to Donovan's on night of 3.11.62. I told police what time acc. had been there. I remember

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acc. saying he had been drunk the night before and couldn't remember where he had been and what time. During afternoon and evening of Nov. 4th I tried to reach acc. by phone. I didn't know exactly where he was. When I got through to the right place I spoke to Leng. I was told by him I could not speak to acc. because he was not available. I think this happened twice. At the third attempt I did speak to acc. Acc. said "Honey, I did it, I must have done it because they say I did it". I asked him "What proof do they have" he said "Every proof in the world". I had no more conversation. I nearly fainted and dropped the phone. Acc. was crying or sounded as if he was about to cry. Mrs. Cochrane then spoke to acc. on the phone. I saw acc. later that day at Hamilton Police Stn. He said he wanted me to return to U.S.A. I refused to agree. He was hysterical and very upset and later on, to calm him down, I said I would go but I did not intend to do so. He didn't really seem to want me to go. He was asking me to go but really wanted me to stay. He said he didn't want me to go through the ordeal of everything he knew was going to come up.

Cross-examined

I have discussed this case with acc. and have discussed the evidence I was going to give such as how and why he was accused of this crime. I don't remember acc. saying on the phone "You know how drunk I was". Some of the evidence I have given has been discussed between us. (A.G. here asks a question to produce evidence of communication between husband and wife).
Ct. Do you think you are entitled to ask these questions? A.G. Yes, by virtue of this being a charge under Section 324 and the Evidence Act.
Diel. I am not challenging that the question of A.G. infringes privilege which normally attaches to communications between husband and wife.
Ct. Then the questions may be asked. (M.J.A.). I didn't tell the acc. what I was going to say, nor did he tell me what he was going to say. He asked me how clearly I remembered the phone conversation and I said I remembered it very clearly. I told him partially what I remembered. I mean by "partially" I don't believe I told him that part of the conversation I had remembered. Now I say I told him in part what I remembered - that I remembered his saying that he had done it and there was all the proof in the world in reply

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.21

Rita Ann
Sparks

Examination
continued

Cross-
Examination

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.21

Rita Ann
Sparks

Cross-
Examination
continued

No.22

Final
Submissions

31st January,
1963

to my question. I may have related to the acc. all the evidence I have given in court today. He did say something more than "Honey, I did it". If acc. and I are telling the truth, then three police officers are lying. I know acc. did not do this. I have lived with him for 5 years and I know what he would and would not do, even if hopelessly drunk.

No.22

FINAL SUBMISSIONS

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Diel addresses Court

I submit all four statements are inadmissible. I again group the four pieces of evidence as follows - the first three together and the last one by itself.

2 main grounds :-

(1) Judges Rules 2 and 3 and infringements Archbold 34th Edition para 1118

(2) All four "confessions" obtained by inducements held out by police 3 Halsbury Vol. 10 page 469 para. 860.

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Judge Rule 2

Leng admits that had the matter been in his hands he would have charged acc. some little time before he said "I did it". Leng says he didn't feel he could have charged the acc. if he had wanted to. Bean says he did not go in and see the acc. until 4.45. Oliver and Leng acted on their own initiative in taking the acc. to H.Q. Oliver said he was in a position to charge Sparks if he wished, but had not made up his mind to do so as he had no evidence. Bean says that he (Bean) should have known that the acc. was going to be charged but not that he would have had to know. Acc. taken to H.Q. for a purpose. Knew they had no evidence against him up to 5.00 p.m. The questioning must have been done with the idea of getting him to confess.

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Judges Rule 3.

Was acc. in custody? R v Knight and Thayre
20 Cox C.C.711 at p.712

R v. Booth 5 Cr. App. R.177 at p.180.

R v. Bass (1953) 1 A.E.R. 1064 at p.1065 F.G.H.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.22

Final
Submissions

31st January,
1963
continued

10 Acc. was taken to H.Q. by Police but went voluntarily. Seat covers taken from car without his permission. Not allowed to speak with his wife "I say acc. in fact in custody". If Court agrees it has to exercise discretion as to admissibility. Atmosphere prevailing at time should be considered. Attitude of Police Officers towards acc. and his own belief he was in the hands of the law already. Same considerations apply to whether confessions voluntary or not. Two main inducements held out to acc. - (1) embarrassment to friends and (2) other charges (of motoring offences). Leng said not interested if the charge about the child were fixed ----- Conflicts of
20 evidence. Leng alone with Sparks at one time according to Oliver - who did not hear reconstruction of crime, only of events. Acc. story about motoring offences could have taken place when Leng and Acc. alone. Inducement (1) effect on acc. children. Powerful forces working on acc. Oliver says he and Leng and sometimes Bean were questioning acc. This shows Bean was questioning acc. before 4.45. Leng says Bean just came in about
30 4 p.m. and was in and out of room as he and Oliver were. Leng and Oliver agree with acc. and not with Bean. If Court finds there was an inducement, how long did it go on?

Attorney-General:-

Attorney-
General

2 statements voluntarily? Inducements.

Phipson 9th Edn. p.268. No suggestion that acc. if he confessed would not be prosecuted or get off more lightly. Inducements must be connected with the charge. Avoidance of publicity is collateral. Archbold paras 1114 and 1112

40 Inducement must be one likely to produce an untrue confession.

Assuming acc. evidence true, was anything said to him to induce an untrue confession? If Police Officers are lying they must have conspired to do so. Inconceivable that each one told the same lies.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.22

Final
Submissions
31st January,
1963
continued

"In custody" - acc. was told before going to H.Q. he was not under arrest. "Making up his mind to charge" acc. Leng said he had made up his mind but on strong suspicion only. Not enough. It would have been wrong for Leng to charge acc. with Bean available. Interruption of questioning could affect result of investigation.

Judges Rules Even failure to comply does not necessarily exclude confession. Most that can be said is that Police unduly delayed cautioning. If that so the words "I did it" are excluded. But nothing else. 10

Rule 7 - not suggested been infringed.

"About it" there must not be Cross-Examination. Even if there was questioning here, what did it amount to? There was nothing improper. If Court finds there was an inducement, its effect was removed by the caution. Everything after caution and everything before is admissible.

Diel in reply

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Matters suggested as collateral are not - they are directly connected with the offence. Motoring offences directly connected with charge. Archbold paras. 1112 "calculated" means "intended" not "likely"

No.23

No.23

Ruling
4th February,
1963

RULING

It seems to me here that I have to consider the following questions :-

- (1) Was any promise of favour or any menace or undue terror made use of to induce the accused to confess? 30
- (2) If so, (a) was such promise or menace etc. directly connected with the charge, or was it merely collateral? (b) was the accused induced by such promise or menace etc. to make the confessions sought to be adduced?
- (3) If there was an inducement (a) was it one "calculated" (which I interpret to mean "likely",

not "intended") to make the accused's confession an untrue one, and (b) did the inducement continue to operate at the moment of the confession?

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.23

Ruling

4th February,
1963
continued

10 In coming to my decision I am going to assume without, I would stress, in any way impugning the integrity of the police, that the accused's version of his interview with the police on the afternoon of Sunday 4th November 1962 is the true one, and what I am now about to say is based on that assumption, and emerges from the story told by the accused and his wife.

20 The police told the accused that they could "get him" for drunken driving, leaving the scene of an accident, and other motoring offences but were only interested in what had happened to the child. They, or one of them, also said that the further the investigation went the more publicity there would be.

30 Later in the questioning of the accused he said to Sgt. Bean: "Is all you want a statement from me?". Bean said: "Yes". Accused said: "O.K., I guess I did it". Bean said "You can't guess". Accused said: "O.K., damn it, I did it". Thereafter the accused made the statement which was Ex K in the court below, which amounts to a confession of the crime, and which the accused signed as correct. The accused agrees that he was properly cautioned before he made the statement.

From what the accused was told by P.C. Leng, the accused gathered that there was a possibility that he would not be prosecuted in the civil courts if he made a statement, but that, he says, would not have resulted in his position being made lighter, because the military courts would have been more severe. That could hardly be said to be an inducement to make a statement.

40 The accused further says that Leng suggested to him that, if he did not make a statement, it would be the worse for him, as he would be prosecuted in addition for the motoring offences: also that Leng or one of the other officers said that if he made a statement there would be less publicity and consequently less embarrassment for his family and friends.

Pausing here for a moment, it is important to

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.23

Ruling

4th February,
1963
continued

point out that the accused does not suggest that on any of these occasions he was being asked or induced to make a confession. He refers throughout to a statement - which could have been a denial equally as well as a confession: or indeed it might merely have been "I have nothing to say". That is just as much a statement as a story, of whatever length, of the incidents concerned.

Dealing first with the conversation between the accused and Sgt. Bean, there was nothing there which could be described as an inducement, but I shall deal with the accused's words "I did it" hereafter.

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Leng's suggestion that the accused would not be prosecuted in the civil courts if he made a statement did, in my view, relate to the charge. But, as I have already said, that was not an inducement.

Any inducement in Leng's suggestion that if the accused did not make a statement, he would, in addition be prosecuted for the motoring offences, does not, in my judgment, relate to the charge on which the accused is now being tried, so that, if in fact it was made, it must be ignored.

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The only possible inducement there can have been, I think, is the suggestion of one or more of the police officers that the making of a statement by the accused would reduce publicity and so avoid embarrassment to the accused's family and friends. But, even if such a suggestion were made (and I am not saying that I think it was) was it an inducement calculated to make a subsequent confession an untrue one, and did it continue to operate at the moment of the confession? I answer both questions in the negative. In regard to the latter, I consider on the accused's own evidence, that it has been shown that the subsequent caution (in the words of Whiteside C.J. in Reg. v. Doherty 13 Cox C.C. 23 at p.24) "had the effect of removing all such expectation" (i.e. of advantage to the accused) "from the prisoner's mind". In that case, I may mention, the accused who made the confession was in law and in fact in custody.

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Now to take the four alleged confessions seriatim, and to apply to them the questions which I have posed.

First, the accused's words "I did it" in reply

to Bean's question "How did the child get there?" i.e. into the accused's company. I am not very happy about this. The words "I did it" do not seem to follow as a natural answer to the question "How did the child get there", and as I have some misgivings about this answer, I think it would be safer and fairer to the accused to exclude those words uttered by him and I therefore hold them inadmissible.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No. 23

Ruling

4th February,
1963
continued

10 Secondly, the written statement. If there were any inducement, did it continue to operate at the moment of making that statement? For the reasons which I have given earlier, I find it impossible to say that it did. The accused freely admits that he was properly cautioned - i.e., that he was told he was not obliged to say anything unless he wished to do so, and that the meaning of the caution was clear to him. Therefore, the answer to question 3(b) being in the negative, I
20 hold that the statement is admissible.

Next, the accused's words to his wife over the telephone (and again I am acting on the assumption that the accused's version and that of his wife are the true ones) "Honey, they say I did it, I guess I did it" or, in Mrs. Sparks' version "Honey, I did it, I must have done it because they say I did it". I am quite satisfied that no inducement was operating then, and therefore I hold that the evidence of the whole of this conversation
30 between the accused and his wife is admissible - that is to say, the evidence of what the accused said to his wife over the telephone in the presence of the police officers. It will, of course, be for the jury to consider which version - that of the prosecution or that of the defence - they believe, and the weight which should be attached, and I shall so direct them

Finally, the accused's asking to be detained so that he would not have to face his family and friends, which Mr. Diel calls a confession by
40 inference. The only possible inducement which there could be to encourage the accused to make this request would be, to my mind, the fact of his having already confessed to the crime, and that is not such an inducement as would render any evidence inadmissible. The evidence of this request by the accused may therefore be admitted.

It is important to point out, as was held by the Court of Criminal Appeal in England in Reg.

Proceedings
and Evidence
on
Admissibility
of Accused's
Confessions

No.23

Ruling

4th February,
1963.

continued

v. Bass (1953) 1 All E.R.1064 that while it is for the presiding judge to rule whether a statement is admissible, it is for the jury to determine the weight to be given to it if the statement is admitted, and thus, when a statement has been admitted by the judge, he should direct the jury to apply to their consideration of it the principle as stated by Lord Sumner in Ibrahim v Regem (1914) A.C. 609, and the judge should further tell the jury that if they are not satisfied that a particular statement was made voluntarily, they should give it no weight at all and disregard it. I propose so to direct the jury in this case.

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I should emphasise, as I endeavoured to do at the beginning of this ruling, that I have dealt with this matter on the basis of the accused's own story, supplemented as it is in some respects by that of his wife. I must also emphasise that my dealing with this important question in this way does not mean that I accept the accused's story in preference to that told by the prosecution witnesses. For me to do that would be to usurp the functions of the jury. I merely add that to deal with this matter in this way seems to be the method most fair to the accused.

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In conclusion, there is one other matter to which I must refer. I am not unaware of the difficulties often encountered by police officers in the investigation of crime, but I consider that it was not necessary, while the accused was being questioned, and when he was not, according to the police officers, in custody, and could have gone away freely if he had wished to, to refuse to allow his wife to speak to him on the telephone on the first two occasions when she rang up. I would not make this criticism if the caller had been anyone but his wife or someone on her behalf, but it is obvious that Mrs. Sparks must have been in a state of great worry over her husband's lengthy absence and I think she should have been allowed to speak to him. I cannot see what harm it could have done, and I think that such a prohibition is apt to create undesirable impressions of police methods. Had the caller been a lawyer retained for the accused, I imagine he would have been allowed to speak to his client. At any rate, I sincerely hope so.

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PROSECUTION EVIDENCE (CONTINUED)

JURY RETURN TO COURT AND ANSWER TO NAMES

Prosecution
Evidence

No.24

EVIDENCE OF THOMAS ALFRED OLIVER (RECALLED)

No.24

Thomas
Alfred
Oliver -
recalled

Examination

10 About 4.45 Bean joined me and I think Leng at
interview with acc. Bean asked acc. certain
questions. In answer to a question by Bean acc.
made a remark. In consequence thereof I
administered formal caution to acc. In answer
to caution acc. said he wished to make a state-
ment. Caution was written down and signed by acc.
in my presence. Then acc. made a statement which
I recorded verbatim. When he had finished I read
it back to him. He could see it as I read it.
He then signed it as correct. This is it, Ex.9
(Ex. 9 read by witness) Acc. was still at Police
H.Q. that same evening about 6.10 p.m. A phone
call came through about then Leng answered it and
said it was acc.'s wife ringing up. She was
20 allowed to speak to him. The first words acc.
said were "Honey I did it". It appeared that he
said this almost immediately he picked up the
phone. They were his first words. Then there was
a pause and acc. said "All the proof in the world"
and then another pause and then acc. said "You
know how drunk I was". Then I got the impression
that someone else was speaking at the other end
whom acc. told to look after his wife. Next day
about 10 a.m. I took possession of shirt belonging
30 to P.C. Tattersall Ex 4. I took this and Ex.6
and 7 and Ex.8 to Dr. Shaw. About that time I
received from Dr. Shaw. I received Ex.2 and Ex's.
3A and 3B. Two days later I received from Shaw
Ex's. 4, 6, 7 and 8. 5.30 p.m. 4.11.62 I had
formally charged acc. with this offence, unlawfully
and indecently assaulting Wendy Sue Bargett.
Cautioned. He wrote down his own reply. This is
it Ex.10 (Ex.10 read by witness)

Cross-examinedCross-
Examination

40 When I took Ex.5 I was asking the acc. questions
as to where he had been the night before and
what he had done. I did not then want to know
where he had been at 9 p.m. the night before.
Acc. said he couldn't remember about his movements
the night before, because he had been drunk.
Acc's wife did not supply any information about
acc. movements the night before but she said
something about having telephoned to try to find
out where he was. I can't remember if she

Prosecution
Evidence

No.24

Thomas
Alfred
Oliver -
recalled

Cross-
Examination
continued

mentioned the times she phoned. The words "Between 8.30 and 9 p.m." in Ex 5 may have been the result of a leading question by me. There is no particular reason for omitting from Ex.5 the acc's. statement that he couldn't remember the events of the previous evening because he was so drunk. I went back to acc's home same afternoon (4.11.62) By then I had discovered there were certain things I wanted to know from him that were not covered by Ex 5. I knew he had been at Bda. Bowl about 9 p.m. and to two houses at least at Khyber Pass. I told him I wanted him to come to Police H.Q. at Prospect because there were discrepancies in Ex.5, and I wanted to ask him some more questions. He asked if he was a suspect in connection with the assault on this child. I did not say he was not a suspect but that a lot of people were suspect. Mrs. Sparks said "Is my husband a suspect and is he being arrested?" Either Leng or I said No and if he were a suspect we would tell her so. I think Leng and I were together at this time. Acc. handed over his uniform Ex.6 and 7 quite happily. In fact he may have asked his wife "Honey, what uniform did I have on yesterday?" We were all there in acc's. house. While we were there he may have said "Look, if I am a suspect why not have this little girl see me?". He certainly did say that at sometime that day. Either Leng or I said that was not possible. Acc. was taken to Police H.Q. to be further questioned. I could have asked him further questions at his house. We did not ask him any questions at his house on our afternoon visit there. At Police H.Q. acc. was taken to Western C.I.D. office which consists of two rooms with communicating door. One of these is used by the constable and the other by the O.I.C. as their respective offices. Bean was the O.I.C. but he was not in the office when we arrived with acc. about 3.30 p.m. Acc. had come in his car at our request. We did not say why we wanted the car brought along. He drove it with Leng in the car. At Western C.I.D. the three of us entered the constable's office and we began questioning acc. I don't know who began the questioning. When one of us finished the other began. Leng and I were questioning acc. by turns. At outset I told acc. there was something wrong with Ex.5 and that we had witnesses to prove he had been at Bda. Bowl about 9 p.m. I never said or remember Leng saying that acc. had been away from Cochrane's house "better than an hour, that was far too long". At very beginning of questioning acc. said he couldn't remember the times of events the night before. That could have been in reply to a

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question about acc's. movements and times. I agree it seems that it was. I had already told acc. that we were investigating that he had found a little girl wandering and we asked for a statement covering this incident. That was at our morning visit the afternoon I explained to acc. that we were investigating what had been done to the child. I think I said she had been indecently assaulted, not molested. I did not explain the term "indecently assaulted" nor did acc. ask me directly for the meaning. At Police H.Q. acc. gave us the impression that he thought we were investigating a case of rape of the child. I replied saying something to the effect that it was nothing so serious as rape. I did not I think mention the word "misdemeanor". I was not in room whole time acc. was being questioned. I left the room two or three times. Acc. was never left alone. First time I went out Leng was with him. Second time also probably Leng. Third time Bean and Leng were with him. I was out five to ten mins. on each occasion. I think Leng carried on questioning during my absence. Acc. was not told at outset that he need not answer questions if he did not want to. When we removed Ex.8 from his car we did not tell acc. we were going to do this or ask his permission. I was present when Bean entered the office the first time - about 4.45. I think I had spoken to Bean outside before that. I asked via car radio that Bean be informed that we were going to Police H.Q. and would he come there too. I was alone in police car at that time. I first spoke to Bean sometime between 3.30 and 4.45 when I left the office. Sgt. Bean was in charge of the case at this time. Leng and I had gone out on our own initiative to bring acc. in. I can't remember exact time I first spoke to Bean. I could have charged acc. if I felt I had enough evidence against him. Up till 4.45 I didn't feel I had enough evidence. The purpose of taking acc. to Police H.Q. was to question acc. to find out if there was evidence to support a charge. It was our purpose in taking acc. to Police Headquarters to get him to admit this offence. I told acc. I could prove he was at Bda. Bowl for purpose of making him believe he had been there. Acc. replied "If you say you can prove I was there I must have been there". I can't remember saying we could prove acc. had been to the house next to Cochrane's house. I did not reconstruct to acc. that he must have picked the child up and driven

Prosecution
Evidence

No.24

Thomas
Alfred
Oliver -
recalled

Cross-
Examination
continued

Prosecution
Evidence

No.24

Thomas
Alfred
Oliver -
recalled

Cross-
Examination
continued

her up Spice Hill Road and molested her. Leng did so, so I heard in court last Tuesday. I heard no reconstruction of the crime at Police H.Q. I heard Leng reconstruct acc's. movements that did not include the reconstruction of the crime. I did not question acc. while he was making Ex.9. I deny acc. said "I was in Bda. Bowl parking lot. I saw the little girl and I took her for a ride up Spice Hill Road". I also deny that either Leng or I interrupted at that point by asking "How did she get in the car". I deny acc. replied "Hell, I don't know, maybe I just opened the door and she got in". Ex.9 is what acc. said word for word. The sentence ending with "I don't know" was not in reply to a question. I deny acc. said "I drove up Spice Hill Road, parked, and molested her". I deny Leng then said "What do you mean by molesting her?". I deny acc. said "I don't know, what am I supposed to have done to her". I deny Leng said then "You put your finger in her". I deny acc. then said "O.K. damn it, then I put my finger in her", and that Leng then said "Front or back"? and that acc. then said "I don't know". During questioning acc. seemed a little bit worried. He got up sometimes and paced up and down. He seemed a little agitated at times. He was knitting his brow some of the time.

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Re-
Examination

Re-examination

I wrote Ex.5 from what acc. said. While I did so acc. and his wife were talking together. I could hear what they said but I can't remember what they said. Mrs. Sparks was supplying some of information in Ex.5. I think she helped over the times. Acc. was not vague as to his movements concerning the little girl. "I left the party ----- in the house again". The whole of that part of Ex.5 was supplied by acc. The time 10 p.m. was supplied by acc. after consultation with his wife, working it out from the time 8.30 - 9 p.m. supplied by his wife. Apart from this assistance all the information in Ex.5 was supplied by acc. When I said I took acc. to Police H.Q. to get him to admit offence that was not sole purpose. I agree my answer given to Diel gives impression we wanted to get acc. to admit the offence at all costs.

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By Court

I could not say it was not our purpose in taking acc. to Police H.Q. to get acc. to admit the offence.

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No.25

EVIDENCE OF MICHAEL LENG (RECALLED)Prosecution
Evidence

No.25

Michael Leng
- recalled
ExaminationP.W.13.

Michael Leng, Detective Constable, Bermuda Police.

10 With P.W.12 I began making enquiries into a case of indecent assault now the subject of this charge. About 12.30 I went to acc's. house on South Shore, Warwick. P.W.12 conducted the interview and questioned acc. regarding finding of the child the previous evening. In answer to P.W.12's questions P.W.12 took down Ex.5. Later, as a result of further enquiries we went to acc's. house again. Then P.W.12 asked acc. to come to Western C.I.D. office at Police H.Q. to answer some further questions. He was told we were not satisfied with some of the answers he had given that morning. Acc. came willingly. He was told it was optional whether he came or not. Before we left acc. gave P.W.12 Ex's. 6 and 7. Acc. was asked to drive his car to Police H.Q. and I went with him in his car.

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30 Arrived Police H.Q. about 3.30 p.m. Then P.W.12 and I proceeded to question acc. in Western C.I.D. office. At one stage Sgt. Bean joined us. I had asked him to come while I was at Police H.Q. He arrived at about 4 p.m. I think. I think he was busy outside for a time. He came into the office about 4.15 p.m. possibly. From time of his arrival he was in charge of the proceedings. He took part in the questioning of acc. As a result of Bean's questions acc. said something. As soon as he had given that answer P.W.12 cautioned him. Acc. elected to make a statement. P.W.12 took it down verbatim. No questions were put to acc. while he made Ex.9. I deny that there was any exchange of questions and answers between me and acc. during the making of Ex.9. Ex.9 read out and opportunity for corrections given. Acc. signed it as correct. 5.40 p.m. I was still in office with acc. I was taking personal details of acc.

40 While I was doing this acc. asked if he was going to be detained in custody. I was alone with him then. I told him I would have to ask a senior officer about that. He intimated he wanted to be detained, so that his friends from the Base and his neighbours would not know about it. 6.10 p.m. acc's. wife rang up. I let acc. speak on phone to her. When he went to phone the first words he

Prosecution
Evidence

No.25

Michael Leng
 - recalled

Examination
 continued

Cross-
 Examination

uttered were "Honey I did it". He seemed to say this immediately. Next he said after a pause "Yes, all the proof in the world". Another pause, then acc. said "You know how drunk I was". 6.30 acc. taken to Hamilton Police Stn. and detained. I obtained Ex.1 from Registry General.

Cross-examined.

Acc. was able to give us certain details of his movements the evening before when we called upon him on the Sunday morning. He said that he had been drunk the night before and could not remember some of the places he had been. Also that he could not remember some of the times he had been at various places. His wife told us what she knew of some of the places where he had been and what time he had been there. We returned about 3 p.m. to acc's. house to ask him more questions and we then asked him to come to Police H.Q. and to bring certain things with him. Mrs. Sparks asked why we wanted acc. to go to Hamilton with us and P.W.12, I believe, told her we were not satisfied with some of the statements he had made that morning and we wanted to clear the matter up. She did ask if acc. was being arrested and P.W.12 said no. She asked if acc. was a suspect. I don't think I personally replied. I think P.W.12 replied. I can't remember what he said. I did not say nor did P.W.12 in reply to Mrs. Sparks' question whether acc. was a suspect "No man, if he were we would tell you". I don't know if Mrs. Sparks asked the question a second time. I remember P.W.12 asking acc. for the uniform he had worn the previous evening and acc. going into his bedroom as a result. I don't remember acc. asking his wife which was the uniform he had been wearing the night before or his wife identifying it. Acc. had to dress himself in order to come with us. He did not say anything about wanting the child to see him. He never made this request in my hearing. I went with acc. in his car to Police H.Q. I went with him for no particular reason. I can't say why I did. I was then suspicious that acc. was guilty of this offence. In my mind he was a very strong suspect. I still say I don't know what reply was given when Mrs. Sparks asked if her husband was a suspect. Sgt. Bean came into office about 3/4 hour after we had arrived with acc. I agree I said in answer previously that Bean arrived at Police H.Q. about 20 mins. after we got

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there. I saw his car arrive outside. He took part in questioning immediately he came in. I deny Bean said something to this effect "We have had this convenient loss of memory before, we are going to prove it anyhow so why don't you own up and confess?". I deny Bean said acc. would save embarrassment to his wife and family by owning up and confessing. Nor did Bean offer acc. a chance to be alone in the room with one person while he confessed. P.W.12 and I on our own initiative asked acc. to come to Police H.Q. We, P.W.12 and I, had discussed before deciding to do so. I knew when we did so, and so did P.W.12, that acc. had been at certain places not mentioned in Ex.5. We wanted to clear up discrepancies in Ex.5. We did not ask the questions at his house because if the acc. did not give satisfactory answers he was going to be charged with the offence. He was not in fact charged until 5 p.m. I don't think it is right to say therefore, that between the time we picked him up at 3.00 p.m. and 5 p.m., he did not give any satisfactory answers. I deny P.W.12 and I decided to take acc. to Police H.Q. for the purpose of getting him to admit this offence. When we got to Police H.Q. P.W.12 and I began to question acc. We told him we had witnesses to prove he had been at Bda. Bowl who had seen him there. I can't explain why I said at court below that I did not tell him it could be proved he was at Bda. Bowl the previous evening. That was a mistake I made in the court below. I have not made any mistakes this afternoon. I did not tell acc. that he had run into another car at Bda. Bowl. I can't remember saying to acc. that the time he had been absent from Cochrane's house was better than an hour which was too long. I don't think I said that. It is not possible that I said that. I did not say anything to this effect "We can prove this now, you'd better own up and confess". Acc. did not say "It's a hideous crime you are accusing me of, to have raped this little girl". I did not reply "Oh no, if nothing as serious as that, it is only a misdemeanor". I never heard acc. raise the question of whether he was accused of rape that Sunday afternoon at Police H.Q. I reconstructed crime to acc. according to my version - that he had found a little girl in Bda. Bowl car park, taken her up Spice Hill Road and molested her and then dropped her off at the party because he had nowhere else to take her. When I made this reconstruction P.W.12 was present. I don't think Bean was there. I don't know what time it was.

Prosecution
Evidence

No.25

Michael Leng
- recalled

Cross-
Examination
continued

Prosecution
Evidence

No.25

Michael Leng
- recalled

Cross-
Examination
continued

I can't say if it was before 4.45 or not. I made this reconstruction to see if acc. admitted the offence. I deny our purpose in asking all these questions was to get acc. to admit the offence. I deny he was taken to Police H.Q. for this purpose. I deny telling acc. we could get him for various motoring offences as well as for molesting the little girl but that we were only interested in the molesting of the little girl. I don't think I was ever left alone with acc. but I am not sure about that. P.W.12 was with me and acc. all the time until Bean came into the office. P.W.12 and I were both questioning acc. from 3.30 until Bean came in. Thereafter I was out of the office sometimes. I don't know if Bean had examined acc. car before he came into the office. I don't know if Bean left the office again after he had come in the first time. I never heard Bean say to acc. "Listen Sparks, we are going to get you, we can prove it and you might just as well confess". I deny Bean ever said this in my presence. I may have been out of the room between 4.45 p.m. and 5 p.m. Acc. was not cautioned by us when we took him up to Police H.Q. He was not told he did not have to answer questions if he did not wish to. He was not told he could leave any time he wished to. He was not so far as I recall, left alone at any time. I would have allowed him to go free and unaccompanied if he had wanted to leave before 5 p.m. even though I was myself convinced he was guilty. I would have charged him had I been able to. Neither I nor P.W.12 was in a position to charge acc. before Sgt. Bean came into office. During questioning acc. never asked that the child should see him. P.W.12 and I were working as a team on this case. We were on an equal basis. I received one request from acc's. wife to speak to him on the phone before I allowed the conversation to which I have already deposed. I refused to let her speak to him on the first occasion because acc. was at that time being questioned by P.W.12 and Bean. I think that was before acc. made Ex.9. I deny acc. had admitted before making Ex.9 that he had been at Bda Bowl. He never said "If you can prove I was at Bda. Bowl, all right, I was there". I think he was denying his presence there up to the time he made Ex.9. I can't explain why my evidence is different now from what it was last week. I realise I must be careful about what I say. I deny that being convinced acc. was guilty I was putting pressure on him to confess and that now I don't want to admit that that was what I was doing. I deny preventing acc's. wife speaking to acc. because I did not want to interrupt questioning as it was coming to a head, and I thought we might extract a confession from acc. Up to Bean's

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arrival P.W.12 and I were with acc. all the time. P.W.12 never left me alone with acc. Q. Oliver said he did.

A. I say he didn't.

After Bean came in I think I probably did ask acc. a few more questions. Up to Bean's arrival I think P.W.12 asked a few more questions than I did. When Bean arrived he more or less took over the questioning. I agree I reconstructed crime to acc.

Prosecution Evidence

No.25

Michael Leng - recalled

Cross-Examination continued

Re-Examination

Re-examination

P.W.12 and I were on an equal basis because we were of equal rank.

By Court

Examination by Court

I don't think Bean could have known what answers acc. had given before he came in. I had not reported to Bean since morning interview with acc. how the investigation was going. Bean came in and plunged straight into the questioning. He repeated I believe some of the questions which P.W.12 and I had previously asked. During car journey to Police H.Q. I talked to acc. but nothing to do with this case. So far as I know acc. was never told he could consult a lawyer. If acc. had confessed immediately on arrival at Police H.Q. he would have been cautioned at once but I don't think he would have been charged at once. Acc. was taken to Police H.Q. in order that we could clear up ambiguities in Ex.5. That could have been done at acc's house or in police car outside his house but it was not done there because C.I.D. office is a more convenient place to interview anybody. I maintain I can't say why I accompanied acc. in his car to Police H.Q.

No.26

No.26

EVIDENCE OF FREDERICK COLBURN BEAN (RECALLED)

Frederick Colburn Bean - recalled

Examination

P.W.14 Frederick Colburn Bean. Detective Sergeant, Bermuda Police in charge Western C.I.D. early November, 1962.

4.11.62. on duty investigating this case. P.W.12 and 13 were assisting. About 3.40 p.m. I went to headquarters as a result of a message received over car radio so I was told. On arrival at Headquarters I helped Inspector Mullan to remove seat

Prosecution
Evidence
 No.26
 Frederick
 Colburn Bean -
 recalled
 Examination
 continued

covers from acc's. car. It was one hour approximately before I went into office where acc. was. After arrival at H.Q. I received certain information from P.W.13. just before I went into office at 4.45 p.m. I then took part in questioning of acc. I asked acc. certain particular questions. He made a certain reply. After he made that reply he was immediately cautioned by P.W.12. Acc. elected to make statement which was recorded in writing by P.W.12. He was not questioned while he was making Ex.9. There was during making of Ex.9 no exchange of questions and answers between P.W.13 and acc. Ex.9 read back to acc. who then signed it as correct. It represents so far as I remember what he said. Later that evening I was present when a telephone call came for acc. P.W.13 answered the phone and acc. was allowed to speak. It was his wife on the line. The first words I heard acc. say when he picked up the phone were "Honey, I did it". I heard no more of the conversation because I then went into the back office. I there made a note of the conversation in this book Ex.11 (witness reads note) I took Ex.4 to P.W.12.

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Cross-
 Examination

Cross-examined

I examined acc's. car at H.Q. I saw certain damage at front of car. Did not notice any damage to rear of car. I assisted Mullan to examine acc's car immediately I arrived at H.Q. on the afternoon of 4.11.62. The time was about 3.40 p.m. Mullan was then with acc's car and I talked to him for a few minutes before I began to help him. I maintain I did not enter C.F.D. office until 4.45. Acc. was a suspect our prime (No.1) suspect. I had never seen him before I entered the office. I did not wish to question him myself unless it was really necessary, because I had received information and I was engaged in checking it. I later found P.W.13 had received this information and checked it. He told me this just before I went into the office. I did not see P.W.12 before entering office. I can't explain discrepancies between what I have just said and my telling magistrate I had spoken with Oliver and Leng before I saw the acc. myself, and that I did ask them about the results of their questioning the acc. I deny entering office before 4.45. I deny saying to acc. "We have had this convenient loss of memory before we are going to get you, we can prove this". I

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deny telling acc. that if investigations stopped there would be no further embarrassment to his family and friends. I deny telling acc. he could confess to only one police officer if he preferred. I told P.W.13 the results of my investigations before I went into the office at 4.45 p.m. I can't remember if I told him about paint scrapings off front of car. I heard nothing of acc's. conversation with his wife except what I have deposed to. I did not know of any other phone calls for acc. I still say I entered office at 4.45 p.m.

Prosecution
Evidence

No.26

Frederick Colburn Bean - recalled

Cross-
Examination
continued

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By Court

Examination
by Court

I found it really necessary to take over the questioning because acc. in his answers up to then had not mentioned being at Bda. Bowl. I don't know if it had then been suggested to him that he had been at Bda. Bowl. If it had been suggested it would be a question of his admitting or denying it, not a question of his mentioning it. When I took over the questioning I did not immediately deal with that point. I dealt with it later. At no time did acc. admit at having been at Bda. Bowl. My efforts thus, so far as acc. mentioning the Bda. Bowl was concerned, did not meet with much success. I think maybe there was one phone call while I was with acc. before that when he spoke to his wife. The caller was Supt. Fielders. No other calls.

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A.G. asks to have read the deposition of Dr. Shaw pursuant to Sec.22 of the Indictable Offences Act, Dr. Shaw having died since the lower court hearing.

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A.G. hands in Certificate of Death

Diel: No objection

Order Leave granted accordingly.

No.27

No.27

DEPOSITION OF RONALD EVANS SHAW

Deposition of
Ronald Evans
Shaw

26th November,
1962

Having been duly sworn on oath, states as follows:-

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I am a Registered Medical Practitionery and the Pathologist at the King Edward Hospital.

At 11.15 p.m. on the 3rd November, 1962, I had

Prosecution
Evidence

No.27

Deposition of
Ronald Evans
Shaw

26th November,
1962

continued

occasion to conduct an examination at the King Edward Hospital.

I examined one Wendy Sue Bargett. The girl now shown to me in court is Wendy Sue Bargett.

There was an abrasion on the chin, slight abrasion, vertical, above the left eyebrow and an abrasion between the shoulder blades on the back.

There was blood on the fingers of the right hand, and she was bleeding from the vagina.

There was no tearing of the entroitus. There were scratches and a stretch tear of the hymen from which she was bleeding. 10

I can only say that there was nothing larger than a finger passed.

Swabs were taken but no sperm were found.

At the same time of the examination I was handed certain articles. P.C. Jones gave to me two pairs of pants, one was red and a pair of inner panties which were white.

These were damp but did not show any stains. 20

The panties now shown to me in court are the ones. (Exhibit "A").

I took possession of a red and white dress which I took off the child. On examination there was blood stain on the left shoulder, and the right arm, and the right and front lower hem.

The dress now shown to me in court is the one. (Exhibit 2).

At 10-00 a.m. on the 5th November, 1962, P.C. Oliver brought a khaki shirt, khaki trousers, two faded red car seat covers and 1 police officer's blue shirt. 30

I examined these. The shirt had mud stains over the right pocket, on the right pocket and below the right pocket.

The trousers showed mud stains from about the knee down. They were damp and on the right side of the fly there was a blood stain and on the very edge of the left flap of the fly there was also a blood

stain, and on the left flap of the fly, one and a half inches in, two and a half inches down from the belt.

Prosecution
Evidence

No.27

The seat cover now shown to me in court is the one which I examined. (Exhibit 8).

Deposition of
Ronald Evans
Shaw

There were two blood stains on the seat with the elastic straps.

26th November,
1962

The Khaki shirt now shown to me in court, Exhibit 6 is the one which I examined.

continued

- 10 The Khaki Trousers now shown to me in court, Exhibit 7 are the ones which I examined.

The Blue short now shown to me in court, Exhibit 4 is the one which I examined.

On the left cuff of this shirt there were blood stains.

Having examined all of the items referred to, I then returned them to Detective Constable Oliver.

CROSS EXAMINATION BY Mr. Diel Counsel for the Accused:

- 20 It is not possible to tell the age of blood stains by examination.

If there was enough blood one might be able to estimate the age of the stains, but there is no certain way of doing this.

They were very faint and one would not be able to tell except for the one on the right lower hem of the child's dress.

It was not possible for me to tell whether or not any of these stains were recent or old.

- 30 NO RE-EXAMINATION:

(Signed) R.E. Shaw, M.D.

I hereby certify that the above deposition of Ronald Evans Shaw was taken, sworn, read over to, acknowledged by and signed by the said Ronald Evans Shaw before me and in the presence and hearing of the accused and that the accused had full opportunity of cross-examining the said Ronald Evans Shaw on the 26th day of November, 1962.

Prosecution
Evidence

No.28

EVIDENCE OF CANNOTH ROBERTS

No.28

P.W.15Cannoth
RobertsCannoth Roberts P/Sgt. Bda. Police Force.
Tendered for Cross-Examination.Cross-
ExaminationCross-examined

On 3.11.62. I was at Bda. Bowl about 9.45 p.m. I left my home in Southampton about 9.15 p.m. I estimate it took me between 20 mins and 30 mins. for the journey. I was in civilian clothes at the Bda. Bowl when P.W.4 told me a little girl was missing. That was about 3 mins. after I got to the place. 10

No.29

No.29

Jeffrey
SaundersEVIDENCE OF JEFFREY SAUNDERS

Examination

P.W.16

Jeffrey Saunders P/C Bda. Police.

Early last Nov. I was attached to Traffic Unit. 3.11.62 I was on duty as Duty officer at Traffic Unit. Worked as telephone operator. That night I received a call from Mrs. Bargett at 9.47 p.m. Later I had a call from one calling himself Airman Cameron. I was handling all calls coming into Police H.Q. at that time. 20

Cross-
ExaminationCross-examined

Cameron said he had a little girl with him. I phoned this report to the radio operator whose duty it was to send the nearest car to where Cameron said he had the child. That was at a house called "Green Fingers", at Khyber Pass. I record times of calls made. 30

No.30

No.30

Thomas
Alfred
Oliver
- recalledEVIDENCE OF THOMAS ALFRED OLIVER - (RECALLED)

Recalled and reminded of oath.

Cross-
ExaminationFurther Cross-examination

I deny P.W.14 said to acc. at any time "Look here

10	<p>Sparks, we are going to get you, we can prove it, you might just as well confess". I never heard him say that. The first words acc. said to his wife on the phone were "Honey I did it" not "Honey they say I did it, I guess I did it". When acc. was asking the other person to whom he spoke to look after his wife he said nothing about getting her out of Bermuda so far as I can remember. Acc. was crying while he was speaking on the telephone and somewhat incoherent towards the end of the conversation.</p>	<p><u>Prosecution Evidence</u></p> <p>No.30</p> <p>Thomas Alfred Oliver - recalled</p> <p>Cross- Examination continued</p>
<hr/> <p>No.31</p> <p><u>EVIDENCE OF MICHAEL LENG (RECALLED)</u></p>		<p>No.31</p>
	<p><u>P.W.13</u> Recalled and reminded of oath.</p> <p><u>Further Cross-examination</u></p> <p>I deny that Acc's. first words to his wife on the phone were "Honey they say I did it, I guess I did it". His words were, "Honey, I did it", then a pause, then "All the proof in the world", then another pause "You know how drunk I was", then acc. said something else, but I can't remember what it was. He may have been asking someone to look after his wife and to get her off the Island. I agree I said acc. did not raise the question of his being seen by the child while he was at Police H.Q. I deny saying to acc. then "This little girl is no dumbell, she knows who did it to her". I deny acc's. reply "I have a little boy, he would know who hurt him. Go and get the little girl to identify me".</p>	<p>Michael Leng - recalled</p> <p>Cross- Examination</p>
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<hr/> <p>No.32</p> <p><u>EVIDENCE OF FREDERICK COLBURN BEAN (RECALLED)</u></p>		<p>No.32</p>
	<p><u>P.W.14.</u> Recalled and reminded of oath</p> <p><u>Further Cross-Examination</u></p> <p>I deny acc. words to his wife over the phone were "Honey, they say I did it, I guess I did it". I heard another remark after a pause then I went out of the room and heard no more. The only thing I recorded of what acc. said was "Honey, I did it".</p>	<p>Frederick Colburn Bean - recalled</p> <p>Cross- Examination</p>
40	<p><u>By Court</u></p> <p>Once acc. had said, on the phone, without any</p>	<p>Examination by Court</p>

Prosecution
Evidence

No.32

Frederick
Colburn
Bean -
recalled

preliminary words "Honey I did it". I immediately left the room to record these words in my note book which was in the room to which I went. I could have merely fetched my note book and recorded the acc's. words in the room where he was.

Case for Crown

Examination
by Court
continuedDefence
EvidenceDEFENCE EVIDENCE

No.33

No.33.

Billy Max
SparksEVIDENCE OF BILLY MAX SPARKSD.W.1. Acc. Billy Max Sparks, Staff Sgt. U.S.A.F. 10

Examination

In U.S.A.F. since August, 1952. In November 1962 I was working in control tower at Kindley Airport as Shift Supervisor. I remember 3.11.62. I went to work about 11.35 a.m. I left my car with a friend, Sgt. Donovan, on the way and drove the rest of the way in his car. Off work 4.45 p.m. and to Stag Bar in the N.C.O's Club at Kindley. Two others with me, Sgt. Donovan and Sgt. Cobb. 3 rounds of beers there. Then Donovan and I left for his home so that I could pick up my car which I had left there. On the way I saw Sgt. Cochrane's car parked at the Swizzle Inn so we stopped and went in. There was Sgt. Cochrane, Airman Freeman, Airman Mason and Airman Scraff. Donovan and I joined them. Cochrane was celebrating his birthday. I don't know how many beers I had there. It was at least 3 and may well have been more but nothing but beer. Cochrane invited me to a party at his home that night and asked me to take my wife with me. I believe I accepted it on behalf of both of us. Everyone present was invited. All accepted except Donovan. I think we left the Swizzle Inn about 7 p.m. Donovan had already gone. I went in Cochrane's car with the 3 airmen. We were drinking as we went along. Drinking Sloe Gin straight from the bottle. I believe Cochrane had bought several bottles of liquor for the party he was giving later. I had more than one drink from the Sloe Gin bottle. We got to Donovan's house. It is on Middle Road, Devonshire, between the cricket field and Devonshire Church. My recollection of what happened at Donovan's house is not clear. I don't remember going into the house but I know I went in.

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	I think I had a drink there. Don't know what kind of liquor. I then drove my own car 1959 black Ford Prefect - I don't know where to but I finally ended up at Cochrane's house, "Green Fingers", Spice Hill Road, Warwick. There I recall seeing Cochrane and his wife. Cochrane was wearing a coat and tie. I had never seen him dressed like that before. I remember speaking to Mrs. Cochrane. She told me my wife had been	<u>Defence Evidence</u>
		No.33
		Billy Max Sparks
10	phoning and was mad, i.e. angry with me. I don't remember leaving Cochrane's house, my next recollection after talking to Mrs. Cochrane was my car getting stuck. I don't remember getting out of the car but I do remember being on the way back to Cochrane's house. While on the way back there, I saw a little girl in the road very near to Cochrane's house. She was crying and said something about her mummy. I took her inside	Examination continued
20	Cochrane's house. There were people there who came out and helped me get my car out. In the house I spoke to Airman Cameron. He asked me if I knew phone number of Police Station. I don't recall how I got back to my car or going back. I only recall after I was there. I don't know what time I got to Cochrane's house with the child. Two of the people who went to get my car out were Freeman and Mason. I had known them about 18 months. The only thing I remember is physically lifting my car. I don't even know if we were successful. I	
30	think it was in a deep hole. Someone had a flashlight and there was a truck there. Ultimately my car was freed - I don't know how. I don't know if I then drove home. I don't remember arriving home. I recall my wife and I having words after I got home. My wife complained that I had gone out without her and had not been at home when I should have been. I went to work next morning - reported at 6.45. I got up at 5 a.m. I drove my own car to	
40	Donovan's house and he drove me to the Airport. I did not "work" any air traffic because I thought that my drinking of the night before and my lack of sleep did not qualify me for work. Before I went to work I apologised to my wife for my behaviour of the night before. I did not discuss previous night's events with Donovan that Sunday morning. During that morning at the Airport I received a phone call from my wife. She told me I should come home at once because there would be police officers waiting to see me about the child. I said "What child" and	
50	she said "The child that you found". I asked her how she knew the police were coming and she said they had been to Cochrane's house and were questioning everybody. She also told me that the child had	

Defence Evidence
 No.33
 Billy Max Sparks
 Examination continued

been molested. I asked her if she knew when the police were coming and I said if they came before I got back to tell them I would be back about 12.30 p.m. That morning Airman 2/C1. James Moeller was working under me in the Control Tower. He was there all the time I was there. I went off work at 11.40 a.m. I went straight home with Donovan to his house, picked up my car and drove on home. When I got there I saw a police car, as I now know it was, in the road, and the occupants were speaking to one of my neighbours to try to find my house. The occupants of the car P.W.12 and P.W.13 entered my house with me. They said they were investigating the incident of the little girl that I had found and that they would like a statement from me about finding her. At some time while they were in the house they said that the child had been assaulted. I said I couldn't be of much help to them because I had been drunk and that I would tell them whatever I could. My wife was either in the room with me and P.W.12 and P.W.13 or in the adjoining kitchen with the communicating door open. She took part in the conversation. She told the police something of my movements the night before. She furnished all of the times and some of the places where I had been. I see Ex. 5. My wife supplied the times mentioned in the first sentence. I think she supplied the direction I had gone after leaving the party and the police put in "westward". I think the "some time trying to get out" was deduced by the police because they told me or my wife told me I had been absent from the party for an hour. I believe I said "I then set off to walk back to the party for help", although the wording is not mine. I would not say "Set off" but "walked" or "went". "At the church just west of Cochrane's" was put in as a result of discussions. I having said, so I was told, the night before that I had found the child by the church. "I saw a little girl" was my own. "I think she was standing still" was in reply to a question "She was crying -mother" was my own story. "I thoughthouse" was my answer to a question why had I taken her to the house. "I told car out" is what I said, so is "I remember Clayton.....left", so is "I did not again". Last sentence - "10.00 p.m." supplied by my wife. The rest is what I said. I made it clear to police I could remember very little because of my drunken condition of previous night. Taking of Ex. 5 took about 30 to 45 mins. My wife and I continued our argument of the night before then I ate a sandwich and went to bed. I was

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due back on duty at midnight that Sunday night. P.W.12 and 13 came back in the afternoon. P.W.12 said they had come back because there was something wrong with my statement and they wanted to clear them up.

Defence
Evidence

No.33

Billy Max
Sparks

Examination
continued

10 Either P.W.12 or P.W.13 asked if I would mind going down town with them. I said I wanted to be of help naturally, but this "going down town" was a very personal thing and was I a suspect. One of them said "At this stage, everyone is a suspect". My wife was, I think, present at the time. The officers asked if I would mind bringing the uniform I had worn the day before. My wife and I procured it. My wife was doing the laundry at the time and I asked her which uniform it was and she picked it out or pointed it out to me and I gave it to P.W.12. There was more conversation between me and my wife and the officers before we left. My wife asked if I were under arrest or was I a suspect. One of the officers or both of them said "No mam, if he were a suspect we would tell you". The officers asked me if I would mind taking my own car. I told them that I would not harm a child and "Could we have the little girl see me and straighten it out right now?" I said this, I think, to both officers, but I think P.W.13 answered. He said it would be too hard on the child and that it was impossible to have an identification. I drove my car with P.W.13 with me. 30 He did not discuss the case with me on the way. P.W.13 directed me what road to take and we ended up at Police H.Q. I was then taken to a room in a large building by P.W.13 and soon after P.W.12 joined us. When I first went in P.W.13 said there were certain things wrong in Ex. 5 and that one hour was entirely too long for me to have been away from the Cochrane's and he wanted to know what had transpired during that hour, and where I had been. P.W.13 said I had been to Bda. Bowl and that they had witnesses who placed me in Bda. Bowl. P.W.12 40 was in the room by then. He had joined us two mins. after P.W.13 and I had gone in. I told them that if I had been at Bda. Bowl and they had witnesses, people would certainly have seen me there. I said I didn't remember having been there. P.W.13 also said (he did practically all of the questioning) that he could place me in another house in Khyber Pass and that I had seen people there and talked to them. I told them I didn't remember 50 being in another house and that the only other people whom I knew were "Jack and Betty". (I didn't know their surnames) and Sgt. Griffin. I

Defence Evidence
 No.33
 Billy Max Sparks
 Examination continued

said I didn't remember being in either of their houses. P.W.13 said that I was their main suspect and that he thought I had assaulted the child. I told him it was impossible, that I wasn't capable of such a thing, that I could not recall anything like that. I said it was a hideous thing to be accused of, raping a child. P.W.13 said I could forget about rape, that it was not nearly so serious and only a misdemeanor, not a felony. He also said then, I think, that it was quite a common thing and that they had several cases of it. P.W.14 joined the three of us within 20 or 30 mins. after our arrival at H.Q. which I think was about 3.00 p.m. P.W.14 said "Listen Sparks, we can prove this thing, we have proof that you were at the Bda. Bowl at the time the little girl was missing". He said they could prove I had run into another car at the Bda. Bowl and that since I could give no reasonable excuse for my not being able to remember, they had had these convenient losses of memory before and that I had just as well go ahead and confess, that by prolonging it and not confessing, I was just causing embarrassment and trouble to my friends and family. He said if I would confess, the investigation would end right there, and that if I didn't confess he would have to go on investigating and asking questions of people and thereby embarrassing my family and friends. I am not sure of the chronological order of this conversation but I know he said at one time to think of the embarrassment which it would cause my wife for him to have to take me back to my house to get another khaki uniform for an identification. I told him I had asked for an identification before and why didn't we do that. P.W.14 gave no answer. My reaction to this suggestion of saving of embarrassment was to say, "I can't remember it, how can I confess to it". P.W.14 asked me if I would like the other officers to leave the room so that I could confess to just one person so it would be less embarrassing. P.W.12 and 13 or at least P.W.13 was in the room then. P.W.12 had not put any important questions to me up to then. He would sometimes ask for clarification of my answers to P.W.13's questions. Throughout, from the first time they came to my house that day, I had the impression that P.W.13 was taking the leading part and that P.W.12 was only learning. After Bean P.W.14 had been talking to me he left and went into the adjoining room. He left the communicating door open. Some of the time I sat down, some of the time I paced about. Bean came through the room and back once. When he came back he was carrying a plastic bag containing Ex. 8. He went straight through to the inner room again. Nobody had said anything to

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me about Ex. 8 or my car up to that time. After P.W.14 went out, after talking to me, questioning by P.W.13 and at times by P.W.12 went on. P.W.13 said "Listen, we are taking it easy with you, we could also charge you with drunken driving hit and run, leaving the scene of an accident and the assaulting of the child also. All we are interested in is the assaulting of the child". I gathered from this that if P.W.13 could clear up the matter of the child he was not going to charge me with the motoring offences. P.W.13 said either "The little girl is no dumbell" or "The little girl is no dummy". She knows who did this and if she sees you she'll be able to identify you". I told him "Of course she would, I have a little boy the same age and he would know who hurt him if someone had. Why don't we have her see me?" P.W.13 said something to the effect that that was out of the question as it would be too much of a strain on the child. P.W.13 reconstructed the crime and my movements as he believed them to have taken place. He said, I think, "This is the way I have reconstructed it. You were in the Bda. Bowl parking lot. You saw the little girl, possibly she was relieving herself. You took her in the car, drove up Spice Hill Road, parked and assaulted her. You couldn't get your car started and you took the child back to the party with you". That is substantially, I believe, what P.W.13 said. I asked him why would I take the little girl back to the party where there were so many people who would know me. I don't think P.W.13 answered this question. After this reconstruction by P.W.13 we were joined again not long after by P.W.14. In the meantime, questioning continued.

Defence
Evidence

No.33

Billy Max
Sparks

Examination
continued

When P.W.14 came in second time he said something to the effect "Listen Sparks, we have the proof, it's time you made a statement to end the investigation and straighten it out". By "Statement" I understood P.W.14 to mean "confession". There was never any question of any other type of statement. After this P.W.14 addressed another remark to me and I answered him. Very shortly after that I was cautioned and made a statement which P.W.12 recorded in writing. That is Ex.9. I signed it in two places. Ex. 9 was not dictated in full without any interruption. Questions were put to me while I was making Ex.9 in the same way as while I was making Ex.5. When I began dictating for Ex.9. I said "What do you want me to say". Either P.W.12 or P.W.13 said

Defence
Evidence

No.33

Billy Max
Sparks

Examination
continued

"Let's start at the Bda. Bowl parking lot. The words in Ex. 9 preceding the words "I was at the Bda. Bowl parking lot" are not my words. If I wanted to say what those words convey I would not say it in that manner. I say the words in Ex. 9 down to "Parking lot" were written by P.W.12. and then one of the officers asked "Did you give a little girl a ride". I replied "Yes I did" or "O.K. I did". I don't believe any of us mentioned the words "In my car". I said I had given her a ride up Spice Hill Road. I was then asked by P.W.12 how the child got in the car. I said "Hell, I don't know maybe I just opened the door and she got in". Then I said "I parked and molested her". Then P.W.13 asked "What do you mean by molesting her" and I said "I don't know what am I supposed to have done?". P.W.13 said "You put your finger in her". I said "O.K. damn it, I put my finger in her". Then there were more questions about getting my car started and walking to the party. One question I specifically remember immediately I had said I put my finger in her. P.W.13 said "Front or back". I said "Hell, I don't know". I believe I was further questioned then. I agree I said the last sentence of Ex. 9. That was in reply to P.W. 12's question as to whether I wanted to say I was sorry. While I was making Ex. 9 I was real mixed up. I didn't believe I could have done it but with all the proof they were telling me they had I didn't know where I was or where I had been. My wife and I were fighting and I thought being questioned about this was just about enough. The caution didn't mean very much to me - I was there for no other reason but to make a statement. I felt it made no difference whether I signed it or not. They had all the proof and at that point I was practically believing it was possible I had done it. I expected to gain something by signing Ex. 9 - I expected to end the embarrassment to my wife and friends that was going on as a result of this investigation and to get her off the Island and out of this mess. I didn't think I could lose anything by signing Ex. 9. Some little time later my wife phoned while I was still at Police H.Q. and I spoke to her at that time. She had rung up at least twice before this. I heard P.W. 13 at least once address the caller as "Mrs. Sparks" telling her it was "Completely out of the question". On the other occasion I think P.W.14 answered the phone. He used my wife's name in answering I heard him say something about her being able to talk to me as soon as the questioning was over. When I did speak to my wife on the phone in the room where I had been all the time I said to my wife "Honey they said I did it, I guess I did it". She

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cried out "Oh no, do they have any proof". I said "All the proof in the world". Then someone else (Mrs. Cochrane) came on the line and I asked her if they would take care of my wife and the children and help her and them to leave the Island. I believe Mrs. Cochrane asked if the police had any proof and I said they had a lot of proof and it looked as if I had done it. Mrs. Cochrane told me not to worry about my family. I saw my wife later that evening at Hamilton Police Station. I told her to prepare to leave the Island as soon as possible and how. She agreed to go but she is in fact still here. I was then living in South Shore Road, Warwick, in the development to the East of Warwick Camp. From Cochrane's house I could go West and turn left onto Camp Hill Road. I do not believe I committed this offence against this child.

Defence
Evidence

No.33

Billy Max
Sparks

Examination
continued

Cross-examined

Cross-
Examination

I was a Staff Sgt. at the age of 20 I am an expert in my own job. It would need intelligence to be so. I would agree that more than average intelligence was needed to get me to Staff Sgt. at that age. I don't call myself a weak-willed person. I remember referring to this offence as "hideous". I think the police officer answered this by telling me it was not rape. I was thinking in terms of rape. I had known throughout that the case was one of molesting a young child. I agree indecent assault on a child of 3 is a horrible offence. My horror was accentuated by hearing what I was supposed to have done. Ex. 5 - I don't agree my wife supplied only times. My wife knew where I had gone after leaving Cochrane's house. She supplied the direction. "Afterget out" - may have been supplied partly by my wife and partly from deduction. My wife would have known more than I. Walking back to the party and seeing the little girl "she was crying and saying something about her mother, I thought she possibly belonged to someone at the party and so I took her to the house". All that was my own recollection. Finding her near the church was not my recollection. I had told people at the party I had found her near the church. I remember Cameron asking Police phone number and "I did not go back in the house again". My wife supplied the "10.00 p.m.". It was my recollection - "I just got the impression that she was lost and frightened". I still don't agree that apart from times Ex. 5 represents my own recollection of events. I agree yesterday I went into much more detail of those events. I agree Ex. 5 says nothing about my being

Defence Evidence
 No.33
 Billy Max Sparks
 Cross-Examination continued

at Bda. Bowl and giving the child a ride. I can't remember either being at the Bda. Bowl or giving the child a ride in my car. I don't think it is a coincidence that these two items have been blotted out of my memory. It is a pity I did not say in Ex. 9 "I did not give the girl a ride". It is easy to say "I can't remember". Ex. 9 does not use those words. I agree loss of memory can be convenient. I did not tell my wife about the child when I got home on 3.11.62 after the party. It did not occur to me to ask police officers specifically what had been done to the child while they were at my house. I considered myself a suspect and I was taken away to Police H.Q. There was no mention of my being a suspect before then, during the interview. I did not consider myself a suspect then. I most certainly asked at Police H.Q. what was the nature of the offence committed against the child. When I heard it was indecent assault I did not ask the nature of the indecent assault. I was trying to persuade police I could not remember. I did not know what had happened to the child. I appreciated the offence was a very serious one indeed. I was very upset when making Ex. 9 - not owing to a guilty conscience. I knew prosecution must follow and that there must be publicity to some extent and the confession would come out in the evidence. At the time of making Ex. 9 I did not think confessing to the crime would cause more embarrassment than a continuance of the investigation. I felt I was going to be convicted in any event

I felt that owing to the whole questioning, I don't think I am gullible. I did accept it when a policeman told me he could prove the offence against me. What Bean said did convince me I had committed this offence. Nothing was shown or told to me beyond this to convince me I was guilty. I don't know what specifically convinced me. I agree that there was nothing said to me by any police officer which gave actual proof that I had committed the offence. I know the difference between circumstantial evidence and direct evidence. I think there was circumstantial evidence - anyway, what there was convinced me. Leng never satisfied me of what had occurred with regard to the child. In saying "All the proof in the world" I was referring to what had been told me in the course of the whole afternoon. I knew the car seat covers had been removed, but not that blood had been found there and on the fly of my trousers. I agree that when I said "All the proof in the world" there had been proof only that I was in a position and had the opportunity to commit the offence. I am agreed

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	that between the making of Ex. 9 and my speaking to my wife one hour elapsed. I did, in talking to my wife, consider there was all the proof in the world but I do not consider so now. The words of the caution are in plain English. I don't believe I understood the caution at the time but even if I did, I had been told for the previous two hours that I had to make a statement. That was the whole reason for my being there. The whole atmosphere was that I had to make a statement. There were no questions from the time I went into that room of my being innocent. Nothing but a confession would have satisfied the police. That was the whole reason for my being there. Had I said merely I couldn't remember I can't say what would have happened. I can't say whether I said "What do you want me to say" not "Where do I start". I agree however the answer "Start at the Bowling Alley" or "Start at the Bda. Bowl Parking lot" is likely to be the answer to "Where do I start". I feel I was asked "Did you give the little girl a ride". I can come to no other conclusion except that Leng, Oliver and Bean conspired together to give the same evidence. That is if Bean was there. I don't know any reason why Ex. 9 says "I put my finger between her legs" instead of "I put my finger in her". I agree Ex. 9 says "I rememberlot" but in fact I don't remember. Nor do I remember driving along Spice Hill Road. There is nothing in Ex. 9 to say I don't remember going to the Bda. Bowl. I agree what Ex. 10 says. Nothing there to suggest I couldn't remember. I felt I was half believing the Police and if I had done it I thought I must have been insane. When I asked to be detained I was not in a normal state of mind. I don't agree I said that because I knew I was guilty. My recollection of what I said to my wife on the phone is good. I did early on discuss this phone conversation with my wife. I agree my recollection has been reinforced since last week but not by talking with my wife. I pit my recollection, I then being distressed, against that of three police officers who were not distressed. I don't recall what happened at conversation with my wife about the phone conversation. I don't believe we have discussed what words I actually used on the phone. I dispute that I said "You know how drunk I was". I don't recall saying that, my wife doesn't recall it either. I know the two police officers Oliver and Leng are lying about that. I accept they were never challenged about it. It is wrong to say I have no substantial recollection of the phone	Defence <u>Evidence</u> No.33 Billy Max Sparks Cross- Examination continued
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Defence
Evidence

No.33

Billy Max
SparksCross-
Examination
continued

conversation with my wife. I agree the two versions of what I first said (prosecution and defence) are widely different. I don't believe all these officers could have been mistaken. I agree Bean made a note of what I said. But I don't agree he went straight off to his room and made that note. I know blood was found on passenger seat cover and that child was bleeding when restored to her mother. The blood on seat cover may have come from my child when he cut his arm. One occasion my wife bled in the car. Sunday 4.11.62 I had a cut on my hand. Blood on trouser fly came from cut on hand which I sustained the night before. I maintain I was not in my right mind when I made Ex.9.

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Re-
ExaminationRe-examined

The cut on my hand was on inside of left little finger. I first became aware of this cut on Sunday morning 4.11.62. It was discussed at work. I had a handkerchief wrapped around it. Discussed with Moeller and Cress. When I made Ex.9 I was not certain I had not committed the crime. There was doubt in my mind placed there by what had gone before and it was still in my mind when I said I did not want to face my family and friends.

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Examination
by CourtBy Court

When I left home on afternoon of 4.11.62. my wife knew the child had been assaulted. I think she had found out from someone the police had questioned earlier that day. When I said "All the proof in the world" I was referring to what the police had said to me. I was not referring to Ex.9 at all. I felt from what police had said that they had the proof and that Ex.9 did not matter one way or the other. The police said the child could describe me and my car and the times which were important I couldn't remember about. The words "I parked and molested her" were merely a repetition of what the police told me I was supposed to have done. When signing Ex. 9 I didn't stop to notice that it does not contain the word "molested". By "molested" I meant I interfered with the child. I don't know if I had any drinks at Cochrane's house on my first visit. I believe now on looking back that I left the party in order to fetch my wife. I can't explain how or why I got to the Bda. Bowl.

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EVIDENCE OF RITA ANN SPARKSDefence
Evidence

No.34

D.W.2.Rita Ann
Sparks

Rita Ann Sparks, wife of acc.

Examination

3.11.62 11.45 a.m. acc. due to be at work.
Shift due to finish about 4.45. He and Donovan
shared a car pool. He would drive to Donovan's
house and then go on either in his car or
Donovan's. We are close friends of the Cochrane's.
10 I expected acc. to be home about 6.00 or 6.30 p.m.
He did not come home. I found out the reason when
Cochrane phoned me about 7.00 p.m. At 8.00 I
phoned Donovan. As a result my mind was set to
rest to some extent. But I became concerned about
acc's. welfare. I later called Cochrane about
9.00 p.m. As a result I learnt more about acc's.
movements and what time I could expect him home but
he did not come at that time. I rang up Cochrane's
20 house again about 9.45 p.m. and spoke to Cameron
and Miss Dorothy Ruffing. She is a friend of
Airman Duff. Cameron told me something from which
I gathered I could not expect acc. home for some
further time. I rang Cochrane's house again later
- acc. still not home. That was about 11.p.m. I
spoke to Cameron and asked if acc. was there. I
spoke to Cameron again about 11.45 p.m. On this
occasion I think Cameron rang me up. He sounded
drunk. Acc. came home about 10 mins after that.
30 I scolded him severely for his conduct. He was
then pretty drunk - swaying on his feet - speech
not clear. Clothes dirty - covered with mud from
knees down. Shoes very muddy - well caked with
mud. I had to clean them next morning. Shirt
looked as if the shoulders had been completely
soaked. Next morning I looked at acc. uniform
again to see how badly it was damaged and how dirty
it was. I was preparing to do the laundry.
Shoulders seams and underneath stripes still wet.
Trousers covered in mud. Acc. slept in our bedroom
40 and I slept on couch. I saw him next morning
before he went to work. That was in the front room
where I had been sleeping. He apologised for his
behaviour of the night before, promised not to
repeat it and asked if I was still angry with him.
I said "No". He said he was sorry he went out and
got drunk and he thought he had wrecked the car
quite extensively. I phoned the Cochrane house
that morning. I then phoned the acc. because I
gathered the police wanted to see him. I told

Defence
Evidence

No.34

Rita Ann
Sparks

Examination
continued

acc. police wanted to talk to him about the little girl whom they had found. I knew then what had happened to the child. I told acc. of this on the phone. I had been told the child had been sexually molested. Acc. said "What little girl". I said "The little girl you took to the Cochrane's". Acc. said "Oh yes, that little girl". I told acc. police might come to Airport to see him. I am not sure if I used the word "molested" or not. Acc. said "Oh my God, how could anybody do something like that". There may have been more conversation - 10
Acc. said he would be home directly after work. He arrived home 12.45 or 1.00 p.m. When he entered the house P.W.'s 12 and 13 came in with him. They said they wanted to ask him about the little girl they had found and wanted to know his movements the night before. Acc. made a statement in my presence - written down by P.W.12. Acc. was unable to give any information as to times when he had been at various places. He remembered being at the Swizale Inn. 20
Donovan's and Cochrane's. He remembered being on Spice Hill Road and running into a ditch, about 1 or 1½ miles from Cochrane's. Acc. told police he had been very drunk the night before. He said this several times. I gave police times acc. had been at different places - information I had gained from phone calls I had made. Police left and returned later. Acc. was then asleep - he was going on duty at midnight. Police came about 3.00 p.m. They said they would like to ask acc. some further questions about the little girl. I asked police if acc. was a suspect in this case and they told me "No". I asked the question more than once. I can't remember exactly when I first asked it. I asked it again just before police and acc. left the house. I then said "Now wait a minute, I want to find out one thing before you leave. I want to know if my husband is a suspect in this case". Both police turned round and said "No mam". and P.W.13 added "If he were a suspect in this case we would tell you". Police 40
asked acc. for uniform he had worn night before. Acc. asked me which of them it was. I told him which it was. Later at my request Mrs. Cochrane came to my house. I tried to get in touch with the acc. during the afternoon. I tried three times. On the third call I spoke to acc. First call - don't remember time - I spoke to P.W.13. Asked to speak to acc. P.W.13 said I could not do so but would get acc. to call back shortly. He did not do so so I rang up again and still was not able to speak to acc. I 50
spoke to P.W.13 again. He again said I could not speak to Acc. I was very nervous and very upset. I rang up a third time and first spoke to P.W.13 who

said I could speak to acc. Acc. spoke first. He said "Honey I did it, they say I did it so I must have done it". I said "what proof do they have". Acc. said "Every proof in the world". When acc. was talking he spunded as if he was about to cry - seemed hysterical and upset. To my knowledge he did not say anything after "Every proof in the world". I almost fainted. Mrs. Cochrane picked up phone and spoke to acc. I saw Acc. again that evening at Hamilton Police Stn. He begged me to go back to U.S.A. with the children so that I wouldn't have to go through all that was going to come out. Wanted me back home. At first I didn't agree. He became very upset and I finally agreed to go.

Defence
Evidence

No.34

Rita Ann
Sparks

Examination
continued

I can explain stains on Ex.8. I think in August acc. had taken the children out to the beach at Kindley. I was due to start my monthly period so I did not go swimming. I went in the car with acc. and children. Then we were living in Warwick. On the way back from Kindley my period began. There were stains - very heavy stains on my shorts and underwear. Shorts stained outside as well as inside. On another occasion, my son cut his arm and it bled freely. I think that was in July. He was in the car. When acc. spoke to me about 5 a.m. on 4.11.62. in front room, he was picking at little finger on his left hand. He said nothing to me about that.

30 Cross-examined

Cross-
Examination

When Ex.5 was made I only helped with the times. No help with the places where he had been. By the time I had managed to speak to my husband on the phone I was pretty near frantic. But I would still say my recollection is accurate. (of the conversation). My recollection would be as good as that of the police, if not better. They have a perfect right to say what they did in evidence. I discussed this conversation partially with acc. I don't know when that was. Maybe about a month after the event. Anyway it was after committal proceedings. I don't remember if acc. told me of police evidence. I don't remember what took place when we discussed this conversation. I may have reminded acc. of the opening words of that conversation. I told acc. I remembered acc. saying "Honey I did it". That's all I told him. I can't remember the rest of our discussion. I believe I first heard about blood on seat covers after lower court hearing. I think it was acc. who

Defence
Evidence

No.34

Rita Ann
SparksCross-
Examination
continued

told me about this. I said I knew I myself had put stains on the seat covers. I had seen the stains before November. It would not have taken long to wash them but I didn't have the time or energy to do so. When I saw acc. at Hamilton Police Stn. on 4.11.62. the offence was mentioned. Acc. was completely in shock and babbling and I was not much better. I can't remember exactly what was said about the offence. Acc. said he was sorry all this had happened and he didn't think I should have to go through with it. Police had better put him in gaol and have done with it all. I remember acc. said he had confessed to the whole thing. If acc. is convicted it will be serious for him and me and the children. I have three. There would be no support for them. I am very fond of the acc. and would go a long way to help him.

10

Re-
ExaminationRe-examined:-

I know acc. did not commit this offence. I am not afraid of having true facts of this case brought out. I believe in the sanctity of the oath I have taken, whoever, husband or mother or father, is concerned. What I say here is between me and God and He knows if I am telling the truth or not. When police came on morning of 4.11.62. I knew acc. had run his car into the ditch the night before. Somewhere on Spice Hill Road. Cameron told me he had shown up at Cochrane's house asking for help. Car ditched West of Cochrane's house. I mentioned some of these facts to police on morning of 4.11.62.

20

30

Examination By Court
by Court

Acc. does not habitually get drunk. I had had occasion before, not frequently, to reprimand him for having too much to drink. We have been married 5½ years.

No.35

No.35

James
Alvin
LowryEVIDENCE OF JAMES ALVIN LOWRYD.W.3.

Examination

James Alvin Lowry. Capt. U.S.A.F. Personnel Officer 1934 Communication Squadron, Kindley Base. I know Airman Victor Louis Mason. He left Bermuda 2.12.62. for Germany. He has not returned here.

40

Defence
Evidence

No.35

James Alvin
Lowry
Examination
continuedDefence Counsel asks for reading of deposition
of Mason.A.G. No objection.Order. The deposition may be read.

No.36

No.36

DEPOSITION OF VICTOR LOUIS MASONDeposition
of Victor
Louis Mason.30th November,
1962.

Deposition of VICTOR LOUIS MASON

10 Having been duly sworn on oath, states as
follows:-

I am an Airman stationed at Kindle Air Force Base.

I am now due for transfer to another Base.

I should have left Bermuda Sunday afternoon last.

I know Sergeant Sparks. I have known him for about
one year.On Saturday the 3rd November, 1962, I attended a
party.

This party was held at Sergeant Cochrane's house.

20 I do not know the name of the house, but it is up on
Khyber Pass.

I arrived there around 9-00 p.m.

Sgt. Cochran, Doug. Freeman and myself were together.

I had travelled from the Swizzle Inn.

I cannot say what time I left the Swizzle Inn.

We left the terminal at the airport, as we had been
to see two girls off, around five o'clock.Sgt. Cochran was not with us at the Terminal. I met
him at the Swizzle Inn. Bob Sharpe was also there.

30 Later on Sgt. Sparks came into the Swizzle Inn. He

Defence
Evidence

No.36

Deposition
of Victor
Louis Mason.
30th November,
1962.
continued

was with another Sergeant whom I did not know. Sparks came in and he sat around, had a few drinks and talked.

He joined my party. I do not recall how many drinks I had. I left in Sgt. Cochran's car. He was driving it.

Sparks, Freeman and Bob Sharpe went along as well.

Sparks did not go all the way to Cochran's house with us. He got off at a house on the Middle Road.

10

On the way to Cochran's house we stopped and dropped off Bob Sharpe.

The first time that I saw Sparks again was when Doug Freeman and I were leaving the house to go and pick up our "dates". He drove in the driveway to Sgt. Sparks' house as we were going out. This was a little bit after nine o'clock. I hollered at him. He did not speak or stop. We were late for our "dates" so we just waved and went on. I returned to Cochran's house that evening. I cannot say, for sure, what time it was.

20

I had gone from Cochran's house to Harmony Hall to pick up our "dates" and from there to the "Paraquet" to get a bag of ice and then back to Cochran's house.

When I returned I found Cameron, Neberman, Stephens, Duff and his girl-friend, Wolf, Airman Howard and his wife, there.

When I first returned Sparks was not there. I walked out into the kitchen to mix a drink for my girl and myself and while I was in the kitchen mixing the drinks, Sgt. Sparks came into the house. This was almost immediately after I got there.

30

On the trip out to get my girl, I did not stop to have a drink anywhere and I did not stop at the "Paraquet" to have anything to eat.

Sparks came in while I was still in the kitchen, and when I came out into the Living Room he was there and the little girl was there. She was standing with Mrs. Howard, I believe, and Duff's girl-friend, and Airman Cameron. Sparks was pretty "loaded" and he mumbled something about his car being stuck. He asked for Bill and I told him that Bill had gone to a party at

40

the "Forty Thieves".

Then he wanted to know if someone would take him back down to where he car was, because it was stuck.

10 When I saw Sparks in the Living Room, I would say that he was feeling pretty good. His clothing was wet. I cannot say anything about the condition of the little girl. The girl I had, Doug. Freeman and his girl and Sgt. Sparks went out to where his car was stuck. When we got there we pushed him out and then we had trouble getting our car started, then we got our car out and then Sgt. Sparks' car would not start.

We pushed Sgt. Sparks' car down the hill, we got it started, we got in it and he went to back-up and backed over a little bank.

20 We tried to push it out, but it was really stuck, so the girl I had with me and myself walked to the house above where the car was stuck and called back to Cochran's house for a couple of guys to come out to help us.

When we came back out of the house a big truck had stopped and they were pulling the car out with the truck.

30 The car was pulled out and Sgt. Sparks drove it down the road, turned around and came back. Then we got back to the top of the hill where we had left our car and Sgt. Sparks shoved our car down a dirt road. We broke a tail light in the back of our car. We got our car started and he started to turn around by backing-up, so that we could get our car and his car stalled. We went to drive our car out and our car stalled. Both cars were stalled. This was on the dirt road. This road was very muddy and wet. This road was near where I had found Sgt. Sparks' car when I first went down there.

40 Sgt. Sparks helped to push the car. This was after I had used my car to push his and after he had used his car to push mine.

I did not hurt myself in pushing these cars.

I had marks across both hands from picking up the cars by the bumper. When we left Cochran's house there was a sharp curve bearing to the right and at

Defence
Evidence
 No.36

Deposition
 of Victor
 Louis Mason.
 30th November,
 1962.
 continued.

the end of this curve there was a dirt road, this was approximately where we found Sgt. Sparks' car.

When we left Cochran's house to go with Sgt. Sparks, we turned right. I do not know how far we travelled before we found the car.

The house from which I made the call is the first house on the left going down the hill.

This house was a sort of whitish. There is a set of steps as one comes up the walk. I did not notice anything about the truck which pulled Sgt. Sparks' car out. I am not sure what was written on the truck. I do not know who was driving it. A Coloured man was driving it. He towed the car out.

10

After we got everything started we went back to the party.

Sgt. Sparks had the girls with him, he backed up, they got out and he left. I do not know which way he went.

At this time I had not heard anything about the little girl being molested. I have no idea what time it was that we returned to the party after having worked on the cars.

20

We were out working on the cars for a long time, it must have been an hour or two hours.

Everybody had got back from the "Forty Thieves", they were all dancing and I got hungry and I went into the kitchen and started to fry myself some eggs. When I first got into the kitchen there was no one in there but myself. I took the eggs out and started to fry them and then I was watching the eggs and I heard some noise behind me. Airman Neberman and Cameron were the ones behind me. Cameron stood there shaking his head, I left the eggs and walked over and said, "What's happening?". The first things Neberman said were "Nothing's happening", "forget it".

30

Cameron and Neberman were talking to each other, but I did not understand what was being said.

Then Cameron kept shaking his head and said, "I've done something awful". Then I asked Neberman what had happened and he told me that when they took the little girl to the house, or wherever it was they took her, to see about where she lived, they called from a house and the "Bobbies" came and told

40

Clay that he was a suspect in a morals charge.

I did not hear anything more about the incident.
I would say that Cameron was real drunk.

The party carried on and broke up in the early hours of the morning.

CROSS EXAMINATION:

10 I do not know what time it was when I left the Swizzle Inn. I know that we had dates for 9-00 and I remember Doug telling me that we were late for the "dates".

I was about ten minutes late for my "date".

I do not recall how many drinks I had at the Swizzle Inn.

I had a few beers there. When I left the Swizzle Inn, I was in Sgt. Cochran's car. Sparks was also a passenger in that car and he was dropped off on the Middle Road. It was dark at the time, I do not recall just where he was dropped off.

20 We also stopped to drop off Bob Sharpe somewhere before we got to Cochran's house.

I was at Cochran's house long enough to have two fried eggs before I left the first time.

I now say that the time spent there could be between ten to twenty minutes. We talked about the lateness regarding our "dates" while we were on the way to the house in the car and when we got to the house we laughed about it and said that the girls would be pretty "Burned".

30 We talked about it several times, in the car and in the house.

Sparks arrived at the house at the same time we were leaving to pick up our "dates".

When we left to go to Harmony Hall, we went down through the "Pass".

We did not make any stops on the way to Harmony Hall.

40 We parked the car, walked inside and the girls were ready. We then went to the Paraquet Restaurant. I went inside and got a bag of ice

Defence
Evidence

No.36

Deposition
of Victor
Louis Mason.
30th November,
1962.
continued

Defence
Evidence

No.36

Deposition
of Victor
Louis Mason
30th November,
1962.
continued

and came back out.

I would say this would have taken about five minutes.

I then went back to Cochran's house.

I did not see either Neberman or Cameron before I left Cochran's house to go to Harmony Hall.

They were there when I returned with the ice.

When I got there I went into the kitchen for a drink and it was while in the kitchen that Sparks arrived.

Sparks' condition was between being drunk and totally drunk. He was in bad shape. 10

He could stand and walk "O.K.". I can't say for sure whether or not his speech was alright.

I came to the conclusion that he was pretty loaded, maybe by the way that he looked.

I have no idea how long it took to go from Cochran's house to Harmony Hall, to the Parquet and back to Cochran's house again.

I obeyed the speed limits on the journey. I was not driving and we went slowly at times, because it was raining, - it was really coming down. 20

I have been in Bermuda for two years. I have been travelling around the Island on a cycle. I now say that the journey from Cochran's house and back could have taken about forty minutes.

When Sparks came in asking for help to push his car out of a ditch, I was one who went to give him some assistance. I went in Sgt. Cochran's car. Doug drove me down. I guess it took about five to ten minutes to get there. 30

After we had managed to get both cars out of trouble, we all went back to the house.

Sparks dropped off the two girls and he kept going.

I have no idea at all what time it was when we got back to the house. The first time I heard about the little girl being molested was when I was in the kitchen and Airman Neberman told me about it. He told me that Airman Cameron was a suspect because a little girl had been molested.

Friday, November 30th, 1962.

Witness Resworn:

Cross Examination continues:

It was then that I overheard the conversation between Neberman and Cameron.

At first I did not hear anything, but then I walked back to Clay and Neberman and Clay said, "I've done something awful".

10 He was shaking his head. I do not know what he was referring to when he said, "I've done something awful".

I did not hear any more of the conversation.

There was nothing in what I heard Cameron say which would lead me to believe that he had committed this offence.

RE-EXAMINATION:

Neberman and Cameron were facing each other and I was standing to the side of them.

Neberman's general attitude was like, "Forget about it".

20 My impression was that he did not do anything.

While I was standing there he was telling Cameron to forget about it. Nothing more was said after I joined them. I stayed talking to them for a very short time after I had joined them. My eggs were still cooking. They were burning.

(Signed) VICTOR L. MASON

Taken and acknowledged this 30th day of November, 1962, before me.

(Signed) D.E. WILKINSON J.P.

30

Magistrate

Defence
Evidence
No.36.
Deposition
of Victor
Louis Mason
30th November,
1962.
continued

Defence
Evidence

No.37

EVIDENCE OF JOHN JOSEPH DONOVAN

No.37

D.W.4.

John Joseph
Donovan

John Joseph Donovan. Sgt. U.S.A.F.

Examination

I know acc. and have done for two years. I travel to and from work with him sometimes his car sometimes mine. Off work 3.11.62 4.45p.m. Acc. and I went to N.C.O.'s. canteen and had beer. Sgt. Cobb was with us. Maybe each of us bought a round. Then all three of us set off for home in my car. We stopped at Swizzle Inn. Met other friends there. Cochrane and others. I bought a round of drinks. I left Swizzle Inn alone between 6.30 and 7.00 p.m. I went home, got there about 7.00 p.m. Acc. car was still at my home then and about 7.45 acc. came and picked it up. He came into my house went to the lavatory. I made him a drink. He began to drink it, we were talking for about 10 or 15 mins. and then he left in his car. He had had quite a few drinks. I gave him whisky and ginger ale. He could stand all right but was obviously feeling the effects of alcohol. I had not seen him that far gone before. I suggested to him that he let me drive him home, but he said he was capable of making it on his own. I doubted that but to stop him I would probably have had to use force which I thought it would be wrong to do. After he left - about 30 to 45 mins. after, D.W.2. rang up. I told her that if he didn't show up within the next 5 or 10 mins. she should ring up again. She did not ring up again. I saw acc. next morning. We rode to work together. Acc. looked pale and seemed to have a hangover. I came home from work with him. Then he told me Sloe Gin was pretty potent. After work on 4.11.62. we got back to my house about 12.15. His car was there. He had mentioned to me he had banged up the bumper a bit when he was pushing another car. We had a look at the car at 12.15 - front bumper pushed in to grill and part of grill also pushed in. Big piece of rope tied on front axle. I asked acc. how he managed to drive the car from his house to mine without the rope becoming entangled. Acc. was pretty shocked to see how bad the front of the car was. He was pretty much concerned. He didn't seem to know the rope was there.

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Cross-
Examination

Cross-examined

I didn't know that acc. had told his wife before going to work on 4.11.62 that he had damaged the car rather badly.

No.38

EVIDENCE OF GEORGE WILLIAM COCHRANED.W.5.

George William Cochrane. Staff Sgt. U.S.A. F.

Defence
Evidence

No.38

George
William
Cochrane

Examination

3.11.62. I was at Swizzle Inn in afternoon. I know acc. I saw him there. He came in a little after 5 p.m. with D.W.4. There was Mason and Freeman and Shraff. We were drinking beer. After acc. and D.W.4. came in we each bought a round of drinks. We were all drinking beer. Acc. bought an extra round and so did D.W.4. I left the place with acc. Mason, Freeman and Shraff, in my car. We were having a party that night. I had a 26 oz. bottle of Sloe Gin in the car, which we were all drinking, neat out of the bottle as we went along. Acc. was sitting beside me. By the time we dropped acc. at D.W.4's house the bottle was nearly empty. Acc. came in to my house "Green Fingers", Khyber Pass, a little before 9 p.m. I was told by my wife he was there and I went into the kitchen to see him but he had already gone out of the back door. I called his name and stopped and turned round. He was trying to light a cigarette. It was raining quite hard just then. I asked acc. where he was going and he said he was going next door to see a mutual friend, Klemmer. I did not see if he got to Klemmer's house. I next saw him trying to back his car out of my driveway. That was about 10 mins. after I had spoken to him. The car was stuck in the wet grass and he had backed into my banana patch, knocking over 3 or 4 trees. By this time it was raining very hard. Finally acc. got the car out and backed out of the driveway. That is the last I saw of him that night. He drove off in the direction of Middle Road.

No Cross-examination

No.39

EVIDENCE OF ADELE LORAINÉ COCHRANED.W.6.

No.39

Adele Loraine
Cochrane

Examination

40 Adele Loraine Cochrane, wife of D.W.5.

I am friendly with acc. and D.W.2. Before 9 p.m. on evening of 3.11.62 D.W.5 and I were planning to

Defence
Evidence

No.39

Adele Loraine
CochraneExamination
continued

go out. Acc. arrived about 8.45 p.m. He came in the back door into the kitchen. I asked him if he wanted a drink and he said "No, I have had enough". Then I told him D.W.2. had been phoning for him. He went out of the back door. He seemed very drunk. Sometime in afternoon of 4.11.62. I went to acc. house at request of D.W.2. Acc. was not there. D.W.2. said two police officers had taken him away. D.W.2. tried to get in touch with acc. twice before she finally got him. I did not overhear all of her conversation with him but at one point she dropped the telephone and told me acc. had told her he had done it. I picked up the phone. I asked acc. if he was sure they had positive proof. Acc. said "Yes", and then went on to ask me to look after his wife. He sounded upset. Acc. mentioned his wife leaving the Island and asked me if I would help her prepare to leave.

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No Cross-examination.

No.40

No.40

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James Henry
MoellerExaminationEVIDENCE OF JAMES HENRY MOELLER.D.W.7.

James Henry Moeller, Airman 2/Cl. U.S.A.F.

4.11.62. I was working at Kindley Control Tower with acc. When he came in he told me he had a hangover and he looked it. During the morning it came out in conversation that he had a cut on one of the fingers of his left hand. I saw the cut, it was a fresh cut.

No Cross-examination

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No.41

No.41

Walter Roy
DuffExaminationEVIDENCE OF WALTER ROY DUFFD.W.8.

Walter Roy Duff. Airman 1/Cl. U.S.A.F.

I used to be a friend of Miss Dorothy Ruffing. I attended a party at D.W.5's house on 3.11.62. Miss Ruffing not in Bermuda now. She left on 7.1.63. I

saw her board the plane. I have had letters from her since from U.S.A.

Defence
Evidence

No Cross-examination

No.41

Walter Roy
Duff

Examination
continued

Defence Counsel on this **evidence** applies for reading of deposition of Miss Ruffing.

A.G. No objection

Order Deposition may be read.

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No.42

No.42

DEPOSITION OF DOROTHY RUFFING

Deposition
of Dorothy
Ruffing

This deponent DOROTHY RUFFING having been duly sworn on oath, states as follows:-

30th November,
1962

I live on St.Mary's Road, Warwick Parish.

I am employed as a Waitress at the "Copper Kettle".

I expect to be leaving Bermuda in the near future.

This will be around the 6th January, 1963.

20

I know the accused Sparks. I also know Sergeant Cochran. I attended a party at his house on Saturday, the 3rd November, 1962. I went there with Airman Duff.

Cochran lives at "Green Fingers", Khyber Pass, Warwick Parish.

I got to the party at approximately a quarter after nine. There was another airman at my place and just before we left Airman Duff asked him the time and it was then a quarter after nine, and it was a few minutes later that we left because we had to get the bikes out.

30

I would imagine that it would take about five minutes to get from my home to Cochran's home.

Defence
Evidence

No.42

Deposition
of Dorothy
Ruffing

30th November,
1962
continued

I now say that I would have arrived at Cochran's house at about 9-20.

When I arrived, there were Clay, Walters and of course Cochran's children and I believe one more airman beside that.

There were other people there whom I did not know.

I had met all of these people before, but I did not know their names.

The Cochran's children were all up when I got there. They have three children. 10

The Cochrans were not there, they had gone to the "Forty Thieves" Club to celebrate his birthday.

I saw the accused that night. He came in, I believe it was around ten, I am not sure of the time, but give or take a few minutes.

I was sitting on the couch in the Living Room when he came in. He came up on the porch and started to call for Bill. We called out and told him that Bill was not there.

I had not seen him at this time, but a few minutes later he came staggering through the door. He told us that there was a little girl outside and he said that she had followed him from the church. He said that he asked her where her mother was and she did not know and he asked her where she lived and that was when he and some of the others went outside to get the little girl. 20

He was standing right inside the door, when he was telling us this. He was only inside for about a couple of steps. 30

I was still sitting on the couch at this time. I was only able to see about waist high on him, as my view was obscured.

They brought the little girl in and sat her on another lady's lap.

Walters and Clay and another man brought the girl in, it was Clay mostly. They sat the girl on the lap of a Canadian tourist.

In the meantime a bunch of men had gathered around

Defence
Evidence

No.42

Deposition
of Dorothy
Ruffing30th November,
1962
continued

10 him and he was telling them that he had run his car into a ditch and he needed help to get it back out. I noticed that Sparks was rather wet and "under the weather". He was in uniform at the time. He had no hat on. His uniform was wet and dirty. His uniform had, what would have been, mud on it. Across his shirt there was water and some mud, I did not see his trousers. I know that his shirt was wet and it looked like mud on it also. We were trying to get the name of the little girl, for a while. When she did not reply, Clay and another gentleman took her down the road a ways to see if they could find her home.

20 When they brought her back, they sat her on my lap. Her dress was a very neat little red and white dress, it had green flowers on it across the top, these were sewn on with red thread. Her dress was not wrinkled, muddy or wet. She was wearing black shoes with three white buttons on each. The shoes looked as if they were rather worn, but they were still good. The tops were not wet nor were the sides. The bottoms may have been. There was no mud on them.

I had the little girl on my lap after Clay and the other gentleman brought her back.

I had not had her on my lap before this; she had been sitting on the other lady's lap, just close to me.

30 She had on little faded red socks, her hair was blonde and in a Pony Tail. When Clay came over for her, he held his arms out for her and he lifted her up under his arms and as he did so, I got a good glimpse of the back of her panties. They were white in colour, I got the impression that they had a sort of sheen, like a silk or something.

I have absolutely no doubt in my mind at all that she was wearing panties. When Clay took her up, he was going to take her outside to wait for the Police because he had called.

40 I have two little sisters and an older brother.

One of my sisters is eighteen and the other is nineteen.

I am almost twenty-four.

We lost our mother when my youngest sister was

Defence
Evidence

No.42

Deposition
of Dorothy
Ruffing
30th November,
1962
continued

seven years, and in my younger days I have liked to look after my sister.

I have looked after my step brother's children and I have done a lot of baby sitting. I like children very much.

I believe it was a quarter after ten when the little girl left the Cochran house.

When Mr. Sparks brought her in she was kind of whimpering a little bit, just like any little child who could not find her parents or mom. 10

She did not appear to be hurt, she calmed down very quickly.

I did not notice any evidence of her bleeding.

I think I would have noticed had she been bleeding.

I really don't see how I could have helped, but seeing it.

Sparks and the men left right away to go to his car to get him out. I did not see him again that evening. 20

I did not see the little girl again after she left.

I had had a half a drink all evening, at the party.

I do not take alcohol very much. I was not in any way affected by the half drink which I had.

My recollection of the events of that evening are very clear.

CROSS EXAMINATION.

The first time that I saw Sparks that night, was when he came through the door after he had called for Bill. 30

I cannot tell you the time exactly, because I had no watch or any other way of knowing. I now say that it was probably before ten, but I don't know.

I heard the voice of the accused outside the door, before I saw him. The first time I saw him was when he came staggering through the door. This was the time that he said that the girl had followed him from the church.

He staggered in to tell us and he was standing where he had staggered.

Defence
Evidence

When the girl was brought in she was sat on the tourist's lap.

No.42

I would say that the little girl was in the house for about five to ten minutes before Clay and the man took her out to try and find out where she lived.

Deposition
of Dorothy
Ruffing
30th November,
1962
continued

10 I saw them when they went out of the door with the little girl.

I saw them when they came back with her.

I would say that they were away between ten to fifteen minutes. I do not believe that it was longer than fifteen minutes.

It was on this occasion that she was sitting on my lap.

I would imagine that she was on my lap for about ten minutes.

20 I was there when the police arrived to pick up the little girl.

I would guess about twenty to twenty five minutes had elapsed between the time that Clay and the other man brought the girl back from their enquiries to the time that the police arrived.

I cannot say how long it was between the time he came back and the time he made the call to the police, because I was not sure when he made the call.

30 When Clay took the girl from me, he went to the door with her, then he went into the kitchen to make a telephone call to the accused wife. It was while he was in the kitchen that the police arrived.

When Clay took the girl from me, I got a glimpse of her panties, almost to her waist.

I am absolutely sure that she was wearing panties.

It is not impossible that she was wearing panties at this time, because I saw them.

40 Just before the Police knocked on the door, Clay was still on the phone and I went to him and he

Defence
Evidence

No.42

Deposition
of Dorothy
Ruffing

30th November,
1962
continued

told me to whom he was talking and I asked what time it was and he told me it was ten fifteen. At this time he was talking to Mrs. Sparks.

The last that I noticed on the weather was that just shortly before we arrived it had stopped raining. I had been inside all of the time so I really do not know if it had rained again.

I am quite sure that Sparks' shirt was wet. I am equally sure that the little girl was dry.

She was sat on my lap and I was wearing a light coloured dress and if she had been bleeding, it would have been on my dress. 10

Besides this I did look her over very closely because I am interested in children.

It is quite true that if she had been bleeding and that fact that she was wearing panties, the blood might not have come through onto my dress, but I think it would have been on the back of her panties and on the front and on her legs, but of course would depend too on the amount of bleeding. 20

It is quite possible that during the time that I had the child she could have been bleeding or bled, without my noticing it.

RE-EXAMINATION:

He (Sparks) told me that he had walked from the church where he had found the girl to Cochran's house.

He (Sparks) indicated that he had walked from the South Shore Direction. He said that the church was right over there, which was the church just one door from the Cochran's house. 30

(Signed) DOROTHY RUFFING

Taken and acknowledged this 30th day of November, 1962, before me.

(Signed) D.E. WILKINSON J.P.
Magistrate

Adj'd. 30 mins.

M.J.A.

Defence
Evidence

Resumed, Counsel as before. Acc. present.
Jury present.

No.43

No.43

EVIDENCE OF MICHAEL PATRICK HIGGINS

Michael
Patrick
Higgins

D.W.9.

Examination

Michael Patrick Higgins, Staff Sgt. U.S.A.F.

10 I know acc. Good friends for about 1 year. I
have been out with him. I have been to his home
and he has been to mine. Worked with him 9 to 10
months, had good opportunity to observe him. My
family and I enjoy his company. I enjoy his
character. If I didn't I wouldn't associate with
him. He is a good family man. I know what he is
charged with. I don't believe he is capable of
committing this offence. I have three daughters
and would not let them associate with him if I
20 thought he would do something like that. I have
not altered my view of him since I heard about
this charge.

No Cross-examination

No.44

No.44

EVIDENCE OF MAX ORVILLE MCILLRATH

Max Orville
McIlrath

D.W.10.

Examination

Max Orville McIlrath. Chief Master Sergeant
U.S.A.F.

Chief Controller of Kindley Field Control Tower.

30 Acc. worked under me there, I have access to his
service record. This is the latest report Ex.12.
He entered U.S.A.F. 7.8.49. Total active service
now 10½ years. No blemishes on his record at all.
Very good record. "Exceptional Airman of great
value to the service". Job done by acc. involves
great responsibility. Radar controller, "talking
down" aircraft. Very reliable man. I would give
him a very favourable report.

No Cross-examination

No.45

JUDGE'S NOTE

No.45

Judge's
Note

Defence Counsel I think for me to address jury
now would not be fair to my client. I ask
for adjournment till 11.2.63.

8th February,
1963.

A.G.

I don't oppose. But I am surprised the application
should be made.

Order. Adj'd. 9.30 a.m. 11.2.63.

11.2.63 9.30 a.m. Resumed. Acc. present. Counsel 10
as before. Jury present.

Defence Counsel addresses jury.

Adj'd. 15 mins.

Resumed, Counsel as before. Acc. present. Jury
present.

A.G. addresses jury.

Adj'd 12.2.63 9.30 a.m.

M.J. Abbott

C.J.

11.2.63.

20

12.2.63. Resumed. Counsel as before. Acc. present.
Jury present. Summing up begins 9.30 a.m. ends
11.40 a.m.

Jury retire 11.45 a.m.

Court adjourns pending return of jury.

M.J. Abbott

C.J.

12.2.63.

Jury return 2.26 p.m. and answer to names.

Acc. present, Counsel as before.

30

Verdict:- Guilty by majority.

Defence Counsel in mitigation

Acc. drunken condition made him do this. Acc. took

child to Cochrane's house instead of leaving her out in the road. Service career ruined. Mental anguish.

No.45

Judge's Note

Allocutus I have nothing to say except if this is your Police Force God help you. I did not do this. I am incapable of doing it. What more can I say?

8th February, 1963. continued

Sentence 2 yrs. imp.

10

M.J. Abbott
C.J.
12.2.63

No.46

No.46

IN THE SUPREME COURT OF BERMUDA

Hilary Assize, 1963

Chief Justice's Summing-up. 12th February, 1963.

Case No. 10 R -v- BILLY MAX SPARKS

Transcription of the Summing-up to the Jury by the Honourable the Chief Justice.

Gentlemen of the Jury :

20

We have now come to the closing stages of this very long case, and I would ask you to please give to what I have to say the same careful attention you have paid to the evidence and addresses of counsel throughout. Will you also please remember, Gentlemen, that when you first entered that box to deal with this case, each of you took an oath to find a verdict according to the evidence, and those words are important: "according to the evidence". It is on that

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evidence, and that evidence alone, that you must come to your decision in this case. Disregard anything you may have heard outside; disregard, in fact, everything except the evidence you have heard in this court and the documentary evidence which has been put in and which you will have an opportunity of studying when you come to consider your verdict.

40

Now in this case, as in every criminal case, it is the duty of the Prosecution to prove the guilt of the accused to your satisfaction

No.46

Chief
Justice's
Summing-up.
12th February,
1963.
continued

beyond reasonable doubt. It is never, in a criminal case in a court where the British system of justice obtains, for the accused to prove his innocence. It is for the Prosecution to prove his guilt to your satisfaction beyond reasonable doubt. I make no apology for repeating that. I shall probably repeat it to you again before you retire. You will please, therefore, bear in mind that that is the most important consideration for you during your deliberations: has the Prosecution carried out that duty to your satisfaction or have they not. 10

Now during my summing-up to you, it will be necessary for me to read certain parts of evidence, those I will come to later but in the meantime may I remind you with what the accused is charged. He is charged that on the third day of November, 1962, in Warwick Parish, he unlawfully and indecently assaulted Wendy Sue Bargett, a girl under the age of fourteen years. And we know, Gentlemen, that at that time, 3rd November, this child was actually three years old. She is now four. 20

Now I am going to deal with the Prosecution evidence first of all down to a certain point and then I am going to turn to what we know, more or less without dispute, of the accused's movements down also to the same point. The first witness, you remember was Mrs. Bargett and she told us that she was due to go bowling at the Bermuda Bowl on the evening of the 3rd November. She has a number of children - I think six altogether now - and when she was going out to bowl at the Bermuda Bowl Wendy, this child of three, made rather a fuss and started to cry, so she took her in the car with her - leaving her husband at home to look after the other children. She got to the Bermuda Bowl at 8 o'clock in the evening, or thereabouts, and got out of the car leaving Wendy asleep on the back seat. The car doors were unlocked and the windows were shut, only the louvres being open to give Wendy, naturally, sufficient air. Mrs. Bargett also told us that the child was of age and knowledge to be able to open car doors herself if she wished to. As I just mentioned, the doors were left unlocked; if the child had sufficient strength and intelligence to open the doors then obviously she could do so if she wished. While she was asleep, or in the car, from the time of arrival at the Bermuda Bowl until she finally disappeared, various visits were paid to the car to see if she was all right by Mrs. Bargett and friends of hers. You remember that Mrs. Bargett 30 40 50

went out at 9.0 o'clock or 9.15 and Wendy then
was fast asleep. In fact, Mrs. Bargett had
attempted awakening her but she was so deep down
she did not bother and left her there. Some
fifteen minutes after that, Miss Tribley went out
and found one of the rear doors of the car open
and the child gone. She made a search of the
area with other friends, with no success at all
and they went back and told Mrs. Bargett what had
happened. Mrs. Bargett was, naturally, almost
driven frantic by this news of the disappearance of
Wendy. Mrs. Bargett also told us that on that
evening Wendy was wearing a red dress and two
pairs of panties, a white inside pair and a red
pair outside to match the dress.

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Now, pausing there for a moment, let us see
what the accused was doing in the afternoon and
evening of that day. And really you may think that
there is precious little dispute about that up to a
point. The accused, as we know, works in the
Kindley Airport Control Tower and he came off duty
on the 3rd November at 4.45 p.m. He then went,
with a couple of friends, to the stag bar (the
men's bar, I suppose it is) in the N.C.O.'s Club at
Kindley, where he had three beers. His method of
transport in getting to and from Kindley is to
share a sort of car pool with Sergeant Donovan and
on this particular day he had driven his own car
from the South Shore Road in Warwick to Donovan's
house and there left it and had gone in Donovan's
car to work. So he didn't have his own car with
him at Kindley that day. Having had their refresh-
ments in the bar at the airport, he and Donovan went
to the Swizzle Inn. There they had at least three
more beers - and it may be "more" the accused
admits, it may well have been more than three.
Having done that, Donovan went off in his own car
leaving the accused with his other friends whom he
found at the Swizzle Inn and in due course these
friends, including Sergeant Cochran, got into
Sergeant Cochran's car, the accused and Cochran in
the front with Cochran driving and three airmen
friends in the back seat. Sergeant Cochran was
giving a party that night because it was his birth-
day and had, one gathers, a certain amount of liquor
in the car with him; at any rate, on the journey
between Kindley and Sergeant Donovan's house, where,
as I told you, the accused left his car, the
occupants of Cochran's car, the five men in it,
sampled some of the liquor in the car. What they
chose was a bottle of sloe gin and they were drinking
it neat out of the bottle - passing it round

No.46

Chief
Justice's
Summing-up.
12th February,
1963.
continued

No.46

Chief
Justice's
Summing-up.
12th February,
1963.
continued.

between them. By the time they got to Sergeant Donovan's house, where they dropped the accused, the bottle was at least three quarters empty, only a quarter of the original contents were left in it. The accused got out of the car at Donovan's house and went into the house. He asked, or didn't ask, but anyway he went to the toilet and while he was in there Sergeant Donovan fixed him a drink of whisky and ginger ale, the accused came out and drank it in a very short space of time, one gathers, and then proposed to start off in his own car home. Sergeant Donovan told us that he thought the accused was then distinctly affected by alcohol and, in fact, was very worried about his capability to drive his car. But he says he didn't stop him because he thought if he tried to do so he would have to use force and so he let him go.

10

Well, off goes the accused in his own car and the next we see of him is at Sergeant Cochran's house, before Cochran and his wife went out for their own apparently private celebration. He was seen coming into the house and going straight out through the back door; Cochran saw him and shouted out to him, called to him and he said something about going next door to see some friends. That was the last Cochran and his wife saw of the accused until they themselves returned from their little private celebration.

20

Now we know that the accused was next seen, so far as the evidence goes, backing his car out of the driveway at Cochran's house and then he was seen by Mrs. Klemmer at the Bermuda Bowl. That was, according to Mrs. Klemmer, 9 O o'clock or around ten past nine. Mrs. Klemmer fixes the time because she says she happened to glance at the clock at that particular moment. She says he was obviously ~~then~~ very drunk and she endeavoured and succeeded in avoiding him because she knew him and she didn't want him to approach her and start talking to her when he was in that condition.

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Now, you remember that there was a certain amount of conflict about the hour the accused was at the Bermuda Bowl and it is in a way a material conflict. Simons, one of the expert bowlers down there apparently says he saw the accused at the Bermuda Bowl some time between nine-fifty and ten minutes past ten. And the Attorney-General in his address to you yesterday pointed out that Simons said that he had finished two or three games - it

No.46

Chief
Justice's
Summing-up.
12th February,
1963.
continued

10 doesn't matter which it was, and the Attorney
General suggests that Simons had made a mistake in
the number of games he had in fact played and
really the correct time was about nine or ten past
nine, because it takes one hour to play one of
these games. Well, Gentlemen, that is the
conflict that exists which I must point out to you
and which it is for you to resolve. It may be
that you will come to the conclusion that Simons
was mistaken and, as I suggest to you, may be
that Mrs. Klemmer was mistaken, but you will not
forget that she did happen to glance at the clock at
the time she saw the accused. There is that
conflict and it is for you to resolve.

20 But there is a little bit of additional
evidence on the time that the accused was at the
Bermuda Bowl, and that is supplied by the witness
Richardson. Richardson said he is quite sure he
saw him, the accused in the car park at about a
quarter or twenty past nine.

So you have those two witnesses, Mrs. Klemmer
and Richardson placing the time they saw the
accused at the Bermuda Bowl at about nine or a short
time after, and Simons who said he saw the accused
at the Bermuda Bowl just before or just after ten.

30 Now let us come back if we may to the
Prosecution case. Once the child was found to have
disappeared the police were informed and they
arrived not very long afterwards and, on searching
the area of the car park, you will remember that a
police officer found Wendy's two pairs of panties
lying between two cars, at about a quarter past ten.

40 Now that I shall have to refer to a little
later, in view of Miss Ruffing's evidence which was
read to you from the deposition. There is, however,
I think you will conclude, no doubt that the panties
found in the car park were Wendy's - her mother said they
were and who better should know to whom they
belonged. How they got there we don't know: you
may think, possibly that Wendy wanted to relieve
herself, opened the car door and removed her
panties and relieved herself. That may be so: we
don't know and that is pure speculation, but that
may be one explanation of how those panties got
there.

Now let's come back to the next piece of
evidence that we know about the accused. As I
told you, he was seen at the Bermuda Bowl at a time

her evidence you remember stated that she is sure they were underpants that she saw, she said there was a sort of sheen on the material of which they were made and they were white. Now it may be - and you will have to consider this Gentlemen - that she mis took the child's bare flesh for her under- pants. The child's bare flesh would be probably white, and Miss Ruffing may have been mistaken in that bare flesh for underpants. There again is a matter for you to resolve.

No. 46

Chief Justice's
Summing-up.
12th February,
1963.
continued

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Now you remember that once the child got back to her mother she was taken, very properly, to the King Edward Hospital, because her mother noticed certain blood on her thighs and between her legs and generally in those private regions. At the King Edward Hospital, she was examined by Dr. Shaw who found an abrasion on her chin, a slight abrasion, vertical, above the left eyebrow and an abrasion between the shoulder blades on the back; there was blood on the fingers of the right hand and she was bleeding from the private parts; there was no tearing of the entrance to her private parts; there were scratches and a stretched tear of the hymen, which had caused the bleeding - and Dr. Shaw told the magistrate (his deposition was read here) that nothing larger than a finger passed. Dr. Shaw also examined the panties, the red and the white panties and said they were damp but did not show any stains. He also examined Wendy's red dress and there were blood stains on the left shoulder and the right arm and the right front lower hem.

30

Now we'll have to come back to Dr. Shaw a little later on: we know, as I told you, that a police officer carried the child from Cochran's house into the police car and took her down to the Bermuda Bowl and restored her to her mother, carrying her out of the car for that purpose. The shirt which the police officer was wearing at the time was examined by Dr. Shaw and on the left cuff there were blood stains. In cross-examination, Dr. Shaw stated - and this applied to the whole of Dr. Shaw's evidence of blood stains, more of which I shall have to refer to in a moment - he said it was not possible for him to estimate the age of the blood stains by examination. "It is not possible to tell the age of blood stains by examination. If there was enough blood one might be able to estimate the age of the stains but there is no certain way of doing this. They were very faint and one would not be able to tell except for the one on the right lower hem of the child's dress. It was not possible for me to tell whether or not

40

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No.46 any of these stains were recent or old".

Chief
Justice's
Summing-up.
12th February,
1963.
continued.

Now we know that the child having been restored to her mother and taken to the King Edward Hospital, the accused, after various telephone calls by his wife to Cochran's house, got home about half past eleven or midnight on that evening. When there, his wife scolded him severely for his conduct in leaving her at home and not taking her to the party with him and more for his disgracefully intoxicated condition. He then went to bed in the bedroom they normally shared and Mrs. Sparks slept on a couch in the living room. The next morning the accused was on the early shift and had to be up at 5.0 o'clock to get to the airport in time, before he left he apologized to his wife for his conduct of the night before, he said he was sorry and also mentioned that he had damaged the car, severely he thought. Well, he goes out to work at the airport and while he is there in the Control Tower, his wife rings him up and tells him to come straight home as by the time he got there the police would be waiting to see him in connection with the little girl he had found last night. The accused said "What little girl" and Mrs. Sparks replied "The one you found" (or words to that effect) and he said "Oh that little girl", anyway, he came off duty about 11.45 or thereabouts and he went more or less straight home. On arrival at his house, he found waiting to see him Detective Constables Oliver and Leng and they said they wanted to have a statement from him about his movements of the previous evening - and, indeed, they obtained one which is Exhibit 5 in this case. And it is not disputed that the statement was provided by the accused in reply to questions put by the police officers. There is no objection to that, none at all. The police officers were merely making enquiries and they cannot be criticized for asking questions at that stage. It is also beyond dispute, I think, that it was Mrs. Sparks who was able to give information, which appears in Exhibit 5, regarding the times at which the accused was at various places. There is some conflict as to who supplied the rest of the details, but anyway, either the accused or his wife supplied the rest of the details and the statement was written down as the result of the questioning of the accused and the answers supplied by him and his wife and the accused signed it. The accused said, according to Prosecution evidence, at that stage, that he could not remember his movements of the previous night

No.46

Chief
Justice's
Summing-up.
12th February,
1963.
continued.

but you will recollect, Gentlemen - and you will see it when you take the statement with you when you retire - that Exhibit 5 says nothing about the accused's lack of memory at all. Having got this statement, Constables Oliver and Leng pursued their enquiries and we are not entitled to know what enquiries they made or what information they received as a result of their enquiries, but as a result they returned to the accused's
10 house about half past two or three o'clock that afternoon and they said that they wanted the accused to accompany them to Police Headquarters at Prospect so that they could ask him further questions. They there stated that in view of enquiries they had made since he made Exhibit 5, they were not satisfied and they wanted more information from him. The accused agreed to go with them to Police Headquarters, quite willingly, and before they started off the police said "May we please have the uniform you were
20 wearing last night?" and the accused or his wife, it doesn't very much matter, produced the uniform which he had worn the previous night and which Mrs. Sparks told us was very heavily stained with mud - she was going to wash it that day and hadn't got around to that and she handed it over to the police and they took it away with them.

Now, to digress for one moment: that uniform was also examined by Dr. Shaw and he confirms that the khaki shirt and trousers were pretty muddy, the
30 trousers showing mud stains from the knee down. But on the right side of the fly of the trousers there was a blood stain and on the very edge of the left flap of the fly there was also a blood stain, and on the left flap of the fly one and a half inches in, two and a half inches down from the belt. That is what Dr. Shaw found on that clothing when he examined it.

Well now, as I say, the accused was just about to leave for Prospect and before he left Mrs Sparks
40 said to the police officers (this is what Constable Oliver says) "Look here, is my husband a suspect? and the reply was "No, and if he were we would tell you". Oliver says that Mrs Sparks said that and Leng denies it - I shall come to deal with these discrepancies rather later. In any case, off went this party to Police Headquarters, with Oliver driving the police car with Leng sitting beside the accused in the accused's car and the accused driving it because he had been asked to bring his
50 car also to Police Headquarters.

No.46

Chief
Justice's
Summing-up.
12th February,
1963
continued

Now at some time in the afternoon, and the accused said that it was at his house before they left he asked that the little girl should be produced to identify him and the police say "Yes, he did ask that at some time during the afternoon". The request was not granted, the reply being that it would be impossible too hard on the child - words to that effect. The request was refused.

When they got to Police Headquarters, they went to the Western C.I.D. office which consists 10
of two rooms, an inner room and an outer room with a communicating door between; the outer room is occupied by the detective constables and the inner room by the inspector or officer in charge, who at this time was Sergeant Bean. And it seems that the latest time at which anybody says the accused arrived at Police Headquarters was 3.30 p.m. Questioning of the accused then began and the accused was told that there was evidence that he had been at the Bermuda Bowl the previous 20
evening and the accused said at the outset - this is according to what the police say - that he could not remember the times and events of the night before. That may be true: that may not be true; that is one of the matters which you will have to resolve, Gentlemen. You may think that he was so extremely drunk that he couldn't remember, or you may think that his memory, or his loss of memory rather, was a matter of convenience, as was suggested by the Prosecution. 30

The accused was never told that afternoon that he need not answer questions if he didn't wish to. He was never told that. That again, is police evidence. Oliver says "I think I told the accused that the child had been indecently assaulted", and later on in his evidence Oliver said that his purpose - his and Leng's purpose because they were working together as a team - in taking the accused to Police Headquarters was to get him to admit to the offence. Now that, 40
at least, Gentlemen, was a frank and open admission by Oliver; and you may remember that when the time came for me to ask him questions, in answer to me he said that "it would be wrong to say that our purpose was not to get him to admit the offence". He stuck to it - let's face it - quite frankly. While that was frank and open, you will have to consider that purpose in deciding about other important matters, to which I shall come in 50
due course.

Now while this questioning was going on, Leng, according to Leng, made a reconstruction of the crime and he said that Oliver was present when he did it. Oliver said that there was only a reconstruction of the accused's movements and he heard no reconstruction of the crime. That Gentlemen, is yet another conflict for you to resolve.

No.46
Chief
Justice's
Summing-up.
12th February,
1963
continued

10 Now we know that at a certain point in the questioning - and this I think is going to be difficult for you, Gentlemen, to work out - Sergeant Bean, the Head of the Western C.I.D. entered the room where the accused was with Oliver and Leng. Now Bean is quite certain that it was at 4.45 and no earlier. The accused says it was more like 4 0 o'clock and either Oliver or Leng (I think the latter) said it was about 4.15. In any case, when Bean did come in, further questioning took place by Bean in addition to Oliver and Leng, and as a
20 result of an answer which the accused made to one of Bean's questions the accused was immediately cautioned. Having been cautioned, he signed the caution, and he then made this statement which is Exhibit 9 in this case. Now I am going to read that to you, it is important, and I think, no doubt you will desire to read it again when you reach your deliberations:-

30 "I have been told that I am not obliged to say anything unless I wish to do so but whatever I say will be taken down in writing and may be given in evidence"

I can direct you, Gentlemen, as a matter of law, that that caution is in the correct form. Immediately after the word "evidence" appears the signature Billy M. Sparks. Then begins the statement :-

40 "On Saturday the third of November 1962 while drunk, I was at the Bermuda Bowl Parking lot and did give a little girl a ride in my car. I remember her walking to me in the Parking lot and I believe I just opened the car door and she climbed in. I don't know, I remember driving along Spice Hill Road and I either parked or ran off the road. I don't know which. I took hold of her and put my finger between her legs. I tried to get the car started. I tried to push it but it wouldn't start. I don't know how I got to the party. I guess I must have walked. The girl was with me when I got to the party. I thought that by leaving her there she'd get home. I'm very sorry and ashamed".

No.46

Chief
Justice's
Summing-up.
12th February,
1963
continued.

Now that is the first in time of the confessions as to which I shall give you full directions later on.

The second confession, and perhaps it is, as Mr. Diel describes, a confession by inference only, was when Leng was taking personal details from the accused about twenty minutes to six that evening, and the accused then asked if he could be detained, so that he would not have to face his family and friends. And the Prosecution urge upon you that that was a second confession of his part in the crime. 10

I should perhaps - I'm sorry - have brought in, I should have told you about the statement which was made when the accused was formally charged. It doesn't matter much in which order they come. When he was formally charged with this offence, he was again cautioned with very much the same words and he said "I feel I was insane at the time due to drink or other causes" And that is the third confession to which the Prosecution point. 20

Now what was Mrs. Sparks doing all this time? Well, we know that she was getting very disturbed about her husband's lengthy absence without any news and, in fact, she had rung up Police Headquarters at least once, and she says twice, earlier and had not been allowed to speak to her husband. Finally at 6.10 p.m. when she rang up, she was allowed to speak to him and the police evidence of that conversation, the opening words of it, is that the accused picked up the telephone and the first words he said were "Honey, I did it". And the police say that that is all he said in his first talk to his wife - I will come later to what the other versions are. 30

Now to come back for a moment.... I should say first that that is the fourth confession to which the Prosecution point ... now to come back to Leng for a moment: when he was cross-examined he said that he had very strong suspicions about the accused and he thought he was the man they wanted, in fact, and he was asked "Why didn't you question the accused at his house instead of taking him to Police Headquarters?" What does he answer? He said he didn't ask further questions at his house because if the accused did not give satisfactory answers, he was going to be charged with the offence. Now 40

that is what Leng says. Whether that attitude of mind rested with Bean and Oliver we don't know, but at any rate, it did rest in the mind of one of the Police officers. And Leng said also in cross-examination "I made the reconstruction of the crime to see if the accused admitted the offence". Gentlemen, you may take those things, if you think it right, in conjunction together.

No.46

Chief
Justice's
Summing-up.
12th February,
1963
continued

10 Now I am going to read to you here, part of the cross-examination of Leng, because I think it is important:-

"I made this reconstruction" - (that is, of the crime)

"I made this reconstruction to see if the accused admitted the offence. I deny our purpose in asking all these questions was to get the accused to admit the offence - (that you will remember, Gentlemen, is contrary to what Oliver said) "I deny" said Leng "the accused was taken to Police
20 Headquarters for this purpose".

Now when the time came for me to ask Leng questions, he admitted to me that the questioning which took place up at Police Headquarters could have been done at the accused's house, or in the police car, but he said that the C.I.D. office was more convenient. You will please consider, very
Gentlemen, how much more convenient the office at Police Headquarters was. Was it convenient purely
30 from the point of view of being able to sit down at a table and write? Well, I imagine that in the accused's house there is a table and chairs! Or was it - and this is what you have to consider very carefully - was it done, was he taken up there in order to create some kind of "atmosphere" (I think the word probably is) ? That is what you will have to consider very carefully.

Now let us come to Bean, who as I told you, was in charge of the Western C.I.D. at this time. He said he arrived at Headquarters at about twenty
40 minutes to four, in response to a message by telephone. He then busied himself with another officer, in examining the accused's car and in removing the seat covers from the front seats. Now it is admitted by the police that that was done without the permission of the accused; he was never asked for his permission; this was just done and whether that was a correct thing to do is not

No.46

Chief
Justice's
Summing-up.
12th February,
1963
continued

a matter, Gentlemen, with which you are concerned. If it was an incorrect thing to do, you can be sure that the necessary steps will be taken to see that such things do not happen in future. It is not a matter with which you need concern yourselves. The only thing that bears on it, is that Sparks was available in a room just beside the car, and could have been asked - unless of course, it was thought that the questioning could not be interrupted "We've got this chap, let's examine his car while he's here", something to that effect.

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Now Bean says he went into this office about 4.45 at 4.45 and Leng and Oliver say he was there considerably earlier and so does the accused. The accused Leng and Oliver agree on that point. Bean says that Leng gave him certain information just before he, Bean went into the office, Leng said he did nothing of the kind. In reply to me, Gentlemen, Leng told me that he had made no report to Sergeant Bean since the morning interview with the accused and Bean said that at the court below he said different here. Bean also said - and you may think it rather peculiar remark - that he did not want to question the accused unless it was really necessary. Well, Gentlemen, you will like to consider whether in fact it was really necessary and you may remember that I asked Sergeant Bean some questions about that you will like to consider whether or not I got satisfactory answers about it. This is what Sergnt Bean said:- "I found it really necessary to take over the questioning because the accused in his answers up to then had not mentioned being at the Bermuda Bowl. I don't know if it had then been suggested to him that he had been at the Bermuda Bowl. If it had been suggested, it would be a question of his admitting or denying it not a question of his mentioning it".

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Now, then we know, as I told you before, that but before I come to that I will mention this: having read that to you do you think that was a satisfactory explanation of the real necessity for Bean to take over the questioning? Or was it because Oliver and Leng - perhaps according to Leng's reports to Bean, if he made them - were not having much success. And you will have to consider what was the real necessity for Bean to interrogate the accused on this occasion, because we know that it was while Bean was questioning the accused that the accused made a remark which resulted in his being immediately cautioned.

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Now let us come once again to Exhibit 9. The police evidence about this statement Exhibit 9, is that it was recorded verbatim from dictation by the accused. They deny that any questions were put to the accused while he was making that statement. The accused says he was questioned while he was making it. And you will please, Gentlemen, look carefully at that statement and consider whether you think it was made in reply to questions or whether it proceeded direct from the accused verbatim. Just to give you an example of what I mean, you will want to consider whether people talk like this: "On Saturday the third of November 1962 while drunk, I was at the Bermuda Bowl Parking lot and did give a little girl a ride in my car". Now this is a matter for you, Gentlemen: if you think that and the other sentences in Exhibit 9 are the verbatim record of dictation by the accused, then so be it. But you want to consider whether or not the statement was, in fact, in reply to questions.

No.46
Chief
Justice's
Summing-up.
12th February,
1963
continued

Now let us come back to Sergeant Bean. He gives evidence also of this telephone conversation of the accused with his wife and he says he heard the accused say "Honey, I did it", and then he immediately went into his own room (the accused was speaking on the telephone in the constables' room) and picked up his notebook and recorded that statement. Now Gentlemen, here is the notebook. You will have it before you when you retire to consider your verdict. This is what the notebook says:- "Billy M. Sparks received telephone call from his wife at 6.10 p.m. 4th Nov 1962. His first words to her were Honey I did it P.C.Bean D/Sgt 37 Witness J.F. Mullan" We never heard that Mullan was there, but he apparently witnessed what was in the notebook. Please bear in mind, Gentlemen, that that was Bean recording those words in his notebook the moment they were spoken. That is his evidence. I tried to obliterate, as far as I could, to be fair to him, the picture which it seemed to me he had painted, of his hearing those words and dashing off into his own office to record them. But you may think I didn't have much success in obliterating that picture.

Now it is noteworthy, I think - this is a subsidiary point - that the only note that any of the police officers made of anything that happened in regard to this case, or anything the accused said, is that one note. The other notes refer to certain house to house enquiries, Khyber Pass Bermuda Bowl Riddle's Bay Cedar Hill Warwick

No.46

Chief
Justice's
Summing-up.
12th February,
1963
continued

Parquet Cox's Hill - those notes appear after the recording of the words "Honey I did it" and then after that we have "3.45 p.m. at Prospect Office, due to be heard 26.11.62 Spark's case, wife and three children". But of what the accused said or what the accused said on Sunday 4th Nov '62 that is the sole and only note which has been produced in this case.

We come now, please, to the evidence for the Defence. I have already given you some of it, 10
what we know about the accused's movements after he came off duty on the 3rd November, and we left him, you remember, proceeding, so far as he knew, or Donovan knew, towards his home in his car, considerably affected by alcohol. Now, his next recollection is his first visit to Cochran's house; he doesn't remember leaving there and his next recollection is his car getting stuck and his being unable to extricate it and walking back to Cochran's house, where, he says, he saw Wendy in 20
the road nearby, crying for her mother. And he then went to Cochran's house, as we know, followed at any rate up to the steps by Wendy. He went into Cochran's house for the purpose of asking for help to get his car out, and you heard the considerably lengthy deposition read about two cars getting stuck and ultimately getting them all out with the help of a truck, some truck or other. But that is really not material to this case. At any rate, the accused does know that his car was ultimately 30
freed and that he drove it home, where as we know, he was given a sound dressing-down by his wife.

Now he confirms - and, indeed, so does his wife - that when he was asked to go to Police Headquarters in the afternoon, his wife asked "Is my husband a suspect?" and received the answer from the police constables "No mam, and if he were we would tell you". Now you will have to consider, Gentlemen, how that disagrees, shall we say, or is inconsistent with Leng's expressed view that he 40
was very strongly suspicious of the accused - he, Leng, at least. Now when the accused got to the Police Headquarters, he said that the police told him "Now look here, we've got witnesses who saw you at the Bermuda Bowl and they can say you were there", and he said "All right, if you've got witnesses who say they saw me there, I must have been there". Now the fact that he admitted he was at the Bermuda Bowl doesn't mean an admission that he had committed that offence but it is an 50
admission, to some extent at least, that he was in

a position, or had an opportunity, to commit the offence; because Wendy was at the Bermuda Bowl that evening also.

No.46
Chief
Justice's
Summing-up,
12th February,
1963
continued

10 Sparks also says that Leng said to him that he was the main suspect and that he, Leng, thought the accused had assaulted the child. Well, Sparks, replied "That's impossible. What a hideous thing to accuse me of" and he said that Leng told him that it was quite a common thing and we have several cases of it. Unfortunately Leng was quite right to say that: we do get these unpleasant cases quite frequently in these courts - but that is quite immaterial.

20 Now the accused said that when Bean came in about 4 O o'clock - and that time is very much nearer the times stated for Bean's arrival by Leng and Oliver than it is to the time stated by Bean himself - Bean said: "Listen Sparks, we can prove this thing. We have proof that you were at the Bermuda Bowl at the time the little girl was missing". He said that Bean said "that they could prove that I had run into another car at the Bermuda Bowl and that since I could give no reasonable excuse for my not being able to remember, they had had these convenient losses of memory before and that I might just as well go ahead and confess, that by prolonging it and not confessing it was just causing embarrassment and trouble to my friends and family". "If you don't confess it will cause further embarrassment to your family" - or words to that effect. The accused says that he then asked for the little girl to identify him and Bean gave no reply. And in reply to Bean's suggestion of saving embarrassment, the accused said "I can't remember, how can I confess".

40 Then the accused said that at some time in the interview Leng said "You know, we're going pretty easy with you, we could also charge you with drunken driving, hit and run, leaving the scene of an accident", and various other motoring offences, it doesn't matter which but "what we're interested in is this child, we are not going to bother about the motoring offences, we are interested in the assaulting of this child". The police officers deny that any such thing was said. That is a further conflict, Gentlemen, which it will be for you to resolve.

I needn't at this stage go further with the accused's evidence. I shall have to come back to it

No.46

later when I point out the conflicts in the evidence as between the Prosecution and the Defence.

Chief
Justice's
Summing-up,
12th February,
1963
continued

Now what does Mrs. Sparks say? She says that on the night of the 3rd November her husband arrived home about midnight and she scolded him. His clothes were dirty and his shoes covered in mud and she had to clean them. They went to bed, he in the bedroom and she on the couch in the living room - and I needn't bother about the next events until 12.30 on Sunday, 4th November, then, she says, she supplied the times which you will find in Exhibit 5 and she also swears that the accused told the police officers that he was very drunk the night before. Now I've already dealt with the question of the accused's wife, Mrs. Sparks asking if her husband were a suspect - I needn't bother you with that again, at this moment at least.

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Let us now come, please to the telephone conversation. Now what does Mrs. Sparks say her husband said: "Honey, I did it, they say I did it so I must have done it". Now let us bear in mind please, very carefully, Gentlemen, that the first four words "Honey, I did it" exactly accord with the evidence of Bean, Oliver and Leng and Bean's notebook - exactly accord. And you will have to consider, first of all, whether the other words were said by the accused or not, the other words being "They say I did it so I must have done it". And in considering that problem, you will no doubt notice that the police evidence is that the accused's first words to his wife were "Honey, I did it" and, indeed, that is the phrase used in the notebook "His first words to her were "Honey I did it".

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Now Mrs. Sparks also said that when she and her husband as was natural you may think Gentlemen, discussed this case in general, and this telephone conversation in particular, she told her husband that she remembered his saying those words "Honey I did it", and she went on (these are her own words) "That's all I told him". Now you will bear that statement in mind also when considering whether the accused, in fact, said the other words which his wife attributes to him. If you come to the conclusion that those additional words were said, you will also have to consider whether they whittle down in any way the confessional effect of the words "Honey I did it"; or do they leave them as a frank confession.

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Now Mrs Sparks was also very frank when she was cross-examined, when she said that she would go a long way to help the accused; and you will have to consider whether she would go the length of committing perjury to help him. You remember what she said and you must give such weight to this answer as you think fit. She said "What I say here is between me and God and He knows if I am telling the truth".

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

10 Now's let's pass on. Well, just before we pass on to anything else I must remind you that Mrs. Sparks also spoke as to how she may have caused the stains on the seat covers of the accused's car, the seat covers on which Dr. Shaw found certain blood stains. In fact, she gave you two solutions, one from herself, and one from her child having cut his arm. The suggestion of the Prosecution is that the blood found on those seat covers by Dr. Shaw came from Wendy. That is
20 the suggestion. It is no more than a suggestion and the Prosecution doesn't put it forward as more, because they have no proof. Mrs. Sparks said it came from one of two different causes and the accused said it came from one of those two different causes. The accused also says that the blood on his trousers was from a cut finger which his wife saw him picking at and which airman Muller noticed on the Sunday morning - that he had a fresh cut on his finger.

30 Now you remember, Gentlemen, that airman Mason was not available to give evidence here and so his deposition was read. Now the material part of his evidence, I think, that he arrived at Cochran's house about 9 0 p.m. and a little bit after 9 0 o'clock he saw the accused drive into the driveway. He, Mason, spent about forty or forty five minutes away from Cochran's house, he and another man getting cycles and picking up girl friends and when he got back to Cochran's house - one assumes at
40 about 10 0 o'clock - the accused was not there. He walked into the kitchen to mix a drink and while he was there the accused came into the house. The accused was then what Mason describes as "pretty loaded" and he mumbled something about his car being stuck and Mason said his clothing was wet. Then Mason gives a lot of details about the moving of various cars but there was very little else in his deposition which is of material interest to you in this case except this: that is that he says he
50 heard Cameron say "I've done something awful" - Cameron being then, in the opinion of Mason, real drunk.

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

Now you will bear in mind, Gentlemen, (I shall have to say this again) that you are not here to decide who committed this crime; you are here to say if the accused committed it or not. You are not concerned with Cameron, he is not on trial here. Your duty is to find out whether the accused, in your judgment, committed this crime. And with nobody else are you concerned.

Now Sergeant Donovan in his evidence said that the accused was fairly drunk when he was at his house, and he gave him some whisky and was worried about him getting home safely in his car. 10

Sergeant Cochran saw the accused at his house just before nine o'clock and saw him backing his car out about 9.10 or 9.15. Cochran said the accused was very drunk on his arrival at his house.

I have already dealt with Miss Ruffing's evidence. Bear in mind what I said about her statement - she being so certain about the child wearing panties when she was in Cochran's house. 20

Next, I come to some evidence given by the accused when he was being examined by his own counsel, Mr. Diel:- "Leng reconstructed the crime and my movements as he believed them to have taken place. He said, I think, "This is the way I have reconstructed it. You were at the Bermuda Bowl parking lot, you saw the little girl, possibly she was relieving herself, you took her in your car, drove up Spice Hill Road, parked and assaulted her. You couldn't get your car started and you took the child back to the party with you'. That is substantially, I believe, what Leng said". Then the accused went on "I asked him why would I take the little girl back to the party where there were so many people who would have known me. I don't think he answered this question". 30

Now that was the reconstruction which we heard so much about. According to Leng, that was made with a view to getting the accused to admit this offence. 40

Then we have the accused's evidence about Bean coming in and saying "Now listen Sparks, we can prove this thing, you'd much better own up and confess". You have to consider very carefully, Gentlemen, if Bean did say something to that effect, in other words, that the accused had

much better own up and confess because they had witnesses.

No.46

Now on the question of Exhibit 9 which I will come back to now, please, this is what the accused said :-

Chief
Justice's
Summing-up,
12th February,
1963
continued

10 "When I began dictating for Exhibit 9 I said
'What do you want me to say?'. Either Leng or
Oliver said 'Let's start at the Bermuda Bowl
parking lot'. The words in Exhibit 9 preceding
the words "I was at the Bermuda Bowl parking lot"
are not my words. If I wanted to say what those
words convey, I would not say it in that manner.
I say the words in Exhibit 9 down to "parking lot"
were written by Oliver and then one of the officers
asked 'Did you give a little girl a ride?' I
replied "Yes I did' or 'O.K. I did'. I don't
believe any of us mentioned the words 'in my car'.
I said I had given her a ride up Spice Hill Road
I was then asked by Oliver how the child got in the
20 car. I said 'Hell, I don't know, maybe I just
opened the door and she got in". Then I said "I
parked and molested her". Leng asked "What do you
mean by molesting her?". I said "I don't know,
what am I supposed to have done?". Leng said
"You put your finger in her". I said "O.K. damn
it, I put my finger in her". Then there were more
questions about getting my car started and walking
to the party. One question I specifically remember
immediately I had said I put my finger in her Leng
30 said:"Front or back". I said, "Hell, I don't know".
I believe I was further questioned then. I agree
I said the last sentence of Exhibit 9. That was in
reply to Oliver's question as to whether I wanted
to say I was sorry.

40 While I was making Exhibit 9 I was real mixed
up. I didn't believe I could have done it but
with all the proof they were telling me they had
I didn't know where I was or where I had been. My
wife and I were fighting and I thought being
questioned about this was just about enough. The
caution didn't mean very much to me - I was there
for no other reason but to make a statement. I
felt it made no difference whether I signed it or
not, they had all the proof and at that point I was
partially believing it was possible I had done it.

I expected to gain something by signing Exhibit
9 - I expected to end the embarrassment to my wife
and friends that was going on as a result of this
investigation and to get her off the Island and

No.46 out of this mess. I didn't think I could lose anything by signing Exhibit 9 "

Chief Justice's Summing-up, 12th February, 1963 continued

That is the accused's story in evidence-in-chief about the making of Exhibit 9.

Now I want to refer again to this - if I may so term it, "famous" telephone conversation between the accused and his wife. He gives a different account, different in this sense; that he does not say that he never used the words "Honey I did it", what he says he said was this, "Honey they said I did it, I guess I did it". His wife then said "Do they have any proof?" and he replied "All the proof in the world". That is the accused's account - I think Mrs. Spark's account said "Every proof in the world". You may think the distinction between "all" and "every" is so minor as not to matter very much.

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When the accused was cross-examined, he agreed (as I think any of us must agree) that it is always easy to say "I can't remember". It is one of the easiest things in the world to say "I can't remember". He knew, he says, that a prosecution must follow his putting his name to Exhibit 9. But he said "It didn't seem to matter much what I did; I felt I was going to be convicted in any event". Bean, he says, convinced him that he had committed the offence, but he admits that there was nothing of actual proof given to show that. And he says that his words "All the proof in the world" refer to what had been told him during the whole of the afternoon's questioning. The accused also agrees that he was in a position and had an opportunity to commit this offence. He does not now agree - this is important - that the police had all the proof in the world. In other words, he says - to use an expression which I think the Attorney General used - that he was "bamboozled" into thinking the police had all the proof in the world. He said that even if he understood the caution, he had been told for the previous two hours that he had to make a statement; and according to him "that was the whole reason for my being at Police Headquarters". And, Gentlemen, you may think there is some support for his view when you remember Oliver saying that the purpose of their taking him to Police Headquarters was to get him to admit the offence. Now on that subject, this is what the accused says: "There was no question, from the time I went into that room, the C.I.D. office of my being innocent. Nothing but a confession would have satisfied the police. That was the whole reason for my being there". And the

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accused gave those answers in cross-examination by the learned Attorney General. And it is for you to consider, Gentlemen, whether that was so or not.

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

10 The accused further says that he was not in his right mind when he made Exhibit 9 and he says that the police conspired together to give the same evidence (and, let's face it "false" evidence). He agrees that Exhibit 10, which I read to you earlier merely says that he felt he was insane at the time and says nothing about his lack or loss of memory and he agrees that he asked Leng if he could be detained rather than let out on bail, but not, he says, because he knew he was guilty. And he gave his explanation about the various blood stains which were found by Dr. Shaw on the garments and car seat covers and the like.

20 You will remember that the Defence evidence finished up with two witnesses as to the accused's character, and it is quite clear from that Gentlemen, you may think, that the accused has a good and completely unblemished record of service. That is of some use to you possibly in your deliberations, but it is only fair to point out what the Attorney General stated, that even the best of us can go wrong, unfortunately, and there always has to be a first time. Nevertheless, we do know that up to the time of this charge, the accused has in his service an unblemished record. And you will have to consider how far he has the character for - or how far he is the sort of man perhaps who would do this kind of thing.

40 Now I turn to what Mr. Diel suggested to you in his address, I think I have covered a great deal of it actually in my previous remarks to you, but Mr. Diel suggests also, quite properly, that Exhibit 9 is not a voluntary statement. I shall have more to say about that in a moment. He points out too, the conflicts in the evidence of Bean where he said different things here from what he told the Magistrate in the court below. Mr Diel asks the question : Did Bean go into that office before 4.45 as Oliver and Leng and the accused all say he did? And he suggests that if Bean lied about that he could also lie about what he said to the accused and also about what the accused said to his wife. Leng, suggested Mr. Diel, was uncomfortable in the witness-box and trying to evade the truth, and, in fact, Mr. Diel submits to you that Leng also lied. He points out certain conflicts in the evidence of Leng and Oliver (I

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

will come to that in a moment) and that Leng was convinced that the accused was guilty of this offence, and that Leng didn't admit, as Oliver did, telling the accused's wife that the accused was not a suspect, as that would have been a lie because he, Leng, admits frankly that he was very suspicious of the accused.

Mr. Diel next asks if you think that the caution made Exhibit 9 a true and voluntary statement. Then he goes on to point to the one at least, maybe two, telephone calls which Mrs. Sparks made to Police Headquarters while her husband was being questioned before she was allowed finally to speak to him, and he suggests that had the accused been allowed to speak to his wife it might have caused such an interruption as would prevent the accused confessing to this crime, which, Mr. Diel suggests it may be he was on the point of doing. That is a matter for you, Gentlemen, which Mr. Diel is quite right to put before you.

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Now Mr. Diel also suggests, with some force, that Exhibit 9 fits over the skeleton, the "bones" of Leng's reconstruction of the crime. You remember what I read to you of the accused's evidence as to that reconstruction and you will **consider** whether or not Exhibit 9 has that characteristic you should take that into account.

Mr. Diel next asked if you thought that the child, Wendy, would have followed a man who had injured her - if he did do that. We know she did follow him at least to the front of Cochran's house. Well, who can say, Gentlemen, I wonder, what a little child of three would do at ten o'clock at night alone? Let's assume that the accused had done this to her and had got his car stuck and they then got out of the car; she wasn't actually with him, he wasn't holding her by the arm or anything of that kind, she was just following behind him and you may think that's quite a normal thing for a little girl of three to follow an adult, possibly at the time the only person about in order to look after her own safety, which, after all, is one of the prime ideas of all of us. What other thing would she have done? You may like to consider that very carefully. And you may think that her following the accused, even if he had done this to her, was not so very abnormal.

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Now, the Attorney General in his address to you yesterday, pointed out that when the accused

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and Wendy arrived at Cochran's house he was soaking wet and her clothes were dry and he said that what may have happened is that the accused had Wendy in the car and when the car got stuck in the ditch he got out of the car and tried to push it out and so got wet, while Wendy remained in the car dry. That may be so, I don't know.

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

10 The Attorney General also mentioned to you that on the Sunday morning the accused had told his wife that he thought he had wrecked the car extensively; yet the damage to his car was not all that extensive and the Attorney General suggests that this was the accused laying the foundation for what the Prosecution suggest is his convenient loss of memory.

20 The Attorney General also pointed out to you, in rather dramatic fashion, that the police are not on trial here. Of course, that is so, I confirm that, and so, I am sure, would Defence counsel. The police are not on trial. Yet when I come to direct you about the voluntary nature of Exhibit 9, you will have to take into account what may have happened at this interrogation of the accused on that Sunday afternoon.

30 Then the Attorney General referred to these telephone calls by Mrs. Sparks and he said it would be disconcerting for the police to have interruptions - I would like to commend that particular phrase to your careful attention, Gentlemen. This man Sparks, was not then under arrest, he could have gone away at any time he pleased, we know from the evidence that he had not been charged yet with any offence and, indeed, there was no evidence against him whatever at that stage. Now, whether you like it or not, the police were not entitled not to be disconcerted by such a man, in such a position, speaking to his wife.

40 Now the Attorney General frankly concedes - he has to - that there are discrepancies in the police evidence, but he says "Do they go to the root of the matter?". Well, I shall be pointing them out to you shortly and you will then have to consider whether they do go to the root of the matter or not.

The Attorney General also asks why did the accused say "all the proof in the world". What was the proof? All there was at that stage was the proof that he had had the opportunity to commit the

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

offence. And so far as the words spoken to the police by the accused "You know how drunk I was", the Attorney General correctly points out that not one word of challenge was addressed to the prosecution witnesses about that, and therefore the accused's denial of it is not entitled to the weight it would have in your minds had those witnesses been challenged about it.

As to the blood stains on the clothing and the car seat covers and the like, the Attorney General says they are not conclusive - and, indeed, they are not. But he says they are included in the totality of the evidence in this case, and he is equally right there, that is, if you accept that they came from Wendy. There are several explanations which have been given as to how, in fact, those blood stains were caused and it is for you to decide which you accept. 10

Now, the Attorney General briefly referred to a question of law in regard to drunkenness and if I may say so, he quoted the law entirely correctly. Drunkenness is not an excuse for a crime unless the commission of the crime involves a specific intent and the person is so drunk that he is incapable of forming that intent. Now here, Gentlemen, there is no specific intent involved, therefore, I must direct you that the drunkenness of the accused, if it existed at the time of the offence, if he committed the offence, is no excuse. 20 30

Now I want to come to the conflicts between the various witnesses, both as between themselves and as between themselves and the accused. Mrs Sparks states that she asked on the afternoon of the 4th November "Is my husband a suspect" and the police replied "No maam". And that Oliver gave a further reply "If he were a suspect in this case we would tell you". Oliver agrees that a reply was given and says that either he or Leng gave the reply. Leng denies that an answer was ever given. Both the accused and Oliver says that it was given. So, Oliver, the accused and Mrs. Sparks all agree about that Leng denies it. 40

Oliver admits that the accused may have asked Mrs. Sparks about which uniform he had worn the previous day. Leng does not remember that that was done. The accused said he did ask his wife about the uniform.

The accused says he said to the police "If

I am a suspect why not have the little girl see me?" , and it is also Oliver's evidence that the accused said that Oliver says that the accused did ask that and that either he or Leng replied that it was impossible Leng denied that the accused ever said that in his presence at all although, according to Oliver, Oliver said that Leng was present at the time. The accused says he said it and Oliver agrees that he did Leng denies it.

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

10 Oliver said that at the very beginning of the questioning the accused said he could not remember the times and events of the night before. Leng says nothing about that. Nor does Bean. The accused agrees that he said it.

Oliver and Leng say that Bean went into the office before 4.45. Bean says he went in there at that time, 4.45. The accused says that Bean went there at approximately 4 0 o'clock.

20 Oliver says the purpose of taking the accused to Police Headquarters was to get him to admit the offence. Leng denies this.

Oliver says "I told the accused I could prove he was at the Bermuda Bowl for the purpose of making him believe he had been there and the accused replied 'If you say you can prove I was there. I must have been there' ". Leng denies that the accused ever said that and says "I think he was denying his presence there up to the time he made Exhibit 9."

30 Oliver says he heard no reconstruction of the crime at Police Headquarters that afternoon. Leng says he reconstructed the crime to the accused in Oliver's presence, and "I made this reconstruction to see if the accused admitted the offence". Yet Leng denies the purpose of taking the accused to Police Headquarters was to get him to admit the offence.

40 Leng says that he had not reported to Bean since the morning interview with the accused. Bean says that Leng told him he had checked certain information, that just before he, Bean, went into the office Leng had made a report to him, Leng denies that.

Leng said that the accused asked to be detained and the accused admits that "When I asked to be detained I was not in a normal state of mind;

No.46

I don't agree I said that because I knew I was guilty".

Chief
Justice's
Summing-up,
12th February,
1963
continued

Finally, on this question of the conflicts, may I remind you again about this telephone conversation. Oliver says the first words the accused said were "Honey I did it". Leng says the first words were "Honey I did it". Bean said the first words the accused said were "Honey I did it" - and we have it written down in his own record here in his notebook. The accused's version is that he said "Honey they say I did it, I guess I did it", and Mrs. Sparks' version is that her husband said "Honey I did it, they say I did it so I must have done it". Now there are the five witnesses giving accounts of that conversation and it is for you, Gentlemen, to consider which version you accept.

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Now I am coming near the end, Gentlemen; I must apologise for keeping you so long. First of all, may I point out to you that the confessions by the accused, that is exhibit 9, Exhibit 10 (which says merely "I must have been insane at the time due to drink and other causes) his request to be detained, and his confession to his wife - those four Gentlemen, are the only evidence against the accused in this case. If those confessions did not exist this man would never have appeared in court anywhere. Now will you please bear in mind, it is one of the most important factors in this case: those confessions are the only evidence against the accused. There is no other evidence the Prosecution could bring other than mere suspicion; and suspicion, however strong, is not enough either for you to bring in a verdict, or, indeed, for this man to be taken before a court of justice. Suspicion is not enough.

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Now, with regard to those confessions, Gentlemen, I must direct you in accordance with the well known principles of English criminal justice. And I am going to give you a direction which was stated by one of the Law Lords in England nearly fifty years ago, but it is just as good today as it was then :-

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"It has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the Prosecution to have been a voluntary

statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority "

(A.E.R. (1953) 1 p.1066)

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

The person in authority in this case would of course be the one or more of the police officers.

10 Now it is for you, Gentlemen, to determine the weight to be attached to these four confessions, and each of them. You must therefore apply the principle I have just read to you, and if you are not satisfied that these confessions, or any one of them, is voluntary, you must reject it, disregard it and give no weight to it whatsoever. It is only considered properly acceptable in evidence against the accused if it is a voluntary statement. And you will want to consider it, maybe I suggest, in this way: first of all, Exhibit 9, now was that or was it not a voluntary statement? Was it proceeding out of the accused mouth, dictated by him? Or was it, shall we say "extracted" is the word, I think, from him either by questions or as a result of what had gone on previously that afternoon?

30 Now, let us assume that you consider Exhibit 9 was not a voluntary statement, you will then wish to go on to the other statements, Exhibit 10 "I was insane at the time from drink or other causes"; "I requested to be detained"; and the words on the telephone. Assuming you decide Exhibit 9 was not a voluntary statement, you will also wish to consider whether the atmosphere which produced Exhibit 9 was still operating when the other confessions were made. Was it operating when Exhibit 10 was made? Was it operating also at the time of the accused's request to be detained and when he said (if you think he said) "Honey I did it"? If the same atmosphere which produced Exhibit 9 - involuntarily you may think - was operating at the time of any one or all of the other confessions, then you may equally come to the conclusion that Exhibit 10 and the accused's request to be detained and the words "Honey I did it" were equally not voluntary. That may be your conclusion. On the other hand, you may think that one of the four was voluntary and the other three involuntary and vice versa. You must consider them all separately and come to your conclusion as to each.

Now the Judges' Rules were mentioned by the Attorney General about people being questioned

No.46

Chief
Justice's
Summing-up,
12th February,
1963
continued

while making statements. They don't say that he must not be questioned, but they do say that he must not be cross-examined - no questions should be put to a person making a statement except for the purposes of removing any ambiguity in what he has said. That may or may not be material here. But the evidence is that while the accused made Exhibit 9, not a single question was asked him, that it flowed out of his mouth and was taken down verbatim. If you think he was cross-examined, that damages what the Prosecution desire to set up as its voluntary character - it must be so. If you think he merely was asked questions for removing ambiguity, then such questions are not objectionable and do not affect adversely the voluntary character of the statement.

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Now you will want to consider, I am sure, when you come to decide about the voluntary or other nature of these confessions what was the atmosphere of the Police Headquarters on that afternoon. You heard a good deal about it from the accused and you heard about it from the Prosecution witnesses; and in considering whether or not Exhibit 9 was voluntary, you will want to think whether the atmosphere was such that the accused thought himself driven into a corner from which he could not escape except by confessing to the crime. As against that, you will balance what you have seen of the accused in the witness-box yourselves: he is an intelligent man whose level of intelligence enabled him to attain the rank of Staff Sergeant at the early age of twenty and you will want to consider whether a man of that intelligence would make a statement confessing to a crime he didn't commit. That all has to be balanced against the possible atmosphere which you may think prevailed at Police Headquarters that afternoon. You may think that Oliver and Leng - and Bean, he, and the others - were firing questions at this man to such an extent that he felt the only thing to do was to break down and confess. On the other hand, is he the sort of man, do you think, who would succumb to that kind of treatment? Is he telling the truth when he says he felt that the only thing which would satisfy the police was a confession. Is that true or isn't it? It is a matter for you.

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Now I suggest, therefore, Gentlemen - without in any way compelling you to do so - that your first consideration when you come to consider your verdict should be the voluntary or other nature of these confessions: because, as I say, they are, as

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the Attorney General frankly concedes, the only evidence against this man. And if you think those confessions are not voluntary, you should give no weight to them at all, you should disregard them. If you disregard the whole four, then your duty is absolutely plain, you bring in a verdict of not guilty, because you have, in effect, decided that there is no evidence against the accused. And, moreover, as I told you at the outset, and recently when I read this extract from the law reports to you, you must be satisfied that the Prosecution have proved the confessions to be voluntary. It is not for the accused to prove that they were not voluntary. It is for the Prosecution to satisfy you that they were voluntary and if the Prosecution have not done that, then, Gentlemen, as I say, your duty is clear and your verdict should be not guilty.

No. 46

Chief
Justice's
Summing-up,
12th February,
1963
continued

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Now, just two more points and then I have done : First of all, you may think, we all may think, that the actions of Mrs. Bargett in leaving Wendy in that car alone were crassly stupid. So they may have been. But that is not a material consideration for you in this case. It has nothing whatever to do with it. The fact that somebody does something which you may think crassly stupid is no excuse for somebody else to assault a child left alone like that.

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Also, Gentlemen, the results of your verdict are not matters for your consideration. We have heard from Mrs. Sparks what would be the result of a verdict of guilty against her husband. That is not a matter which you are entitled to consider. We have also heard, from the Attorney General, what might be the effect of your acquittal of this man - that there will be some slur cast on the police officers who have given evidence in this case. That is not a matter for your consideration at all. The results of your verdict are not a matter for your consideration. So please exclude such considerations entirely from your deliberations. You have sworn to find a verdict according to the evidence; not according to what results of your verdict might be.

Now I repeat again that it is the duty of the Prosecution to prove the guilt of the accused to you beyond reasonable doubt. If you consider that they have carried out that duty to your satisfaction then your verdict should be one of guilty; but if

No.46
 Chief
 Justice's
 Summing-up,
 12th February,
 1963
 continued

you have any reasonable doubt, the accused is entitled, as of right, to the benefit of that doubt and you should find him not guilty. By reasonable doubt I mean such a doubt as would give you reason to pause and think again in any important matter affecting your personal or business affairs. I mean that kind of doubt, not just a capricious, fanciful doubt, but a real doubt. If that doubt exists, your duty is plain and you should bring in a verdict of not guilty. Finally, if you find that all of these confessions are otherwise than voluntary, then there is no evidence against the accused and you should equally find him not guilty. 10

(Some discussion between the Chief Justice and Attorney General. Archbold, paras. 1112 and 1114 mentioned)

Chief Justice to the Jury : Well, Gentlemen, the Attorney General wishes me to mention the fact that this man was cautioned before he made Exhibit 9; and so he was, that he need not say anything unless he wished to, and that if he did say anything, it would be used in evidence. And he signed to the effect that that had been read to him. Now you will consider please, whether the wording of that caution removed any possible pressure, there might have been on the accused, before that, to confess. That is the suggestion of the Prosecution: that the caution removed all possible pressure there might have been. Or is the accused's version, that the caution didn't mean much to him by that time because by that time he'd been questioned for an hour or more, correct? You will wish to consider which of these versions is right. 20 30

The Attorney General also raised certain other matters and I will repeat them again: You must not accept any of these confessions as voluntary if you consider that any inducement was held out and the accused was, to use a slang expression, "bulldozed" into making them either by some promise or some threat against him. (I haven't referred to the motoring offences because I think that is a matter outside the consideration of this case - it is not in this charge) I am also asked to tell you that, on the question of inducement, the only proper questions are whether the inducement held out to the accused was calculated to make his confession an untrue one and whether the inducement continued to operate at the moment of the confession. You will 40 50

also wish to consider those points. I have been asked to put them forward and I do so.

No.46

Well now, Gentlemen, I will ask you to consider your verdict. If you wish to retire you may do so and you may take the Exhibits to your room and have full opportunity of studying them there.

Chief Justice's Summing-up, 12th February, 1963 continued

No.47

CONVICTION CERTIFICATE 12TH FEBRUARY 1963.

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No.47

Conviction Certificate

12th February, 1963.

The Registry,
The Supreme Court of
Bermuda.

I, WILLIAM T. ANGELO-THOMSON Registrar of the Supreme Court of Bermuda hereby certify that BILLY MAX SPARKS was tried in the said Court for the offence of Indecent Assault and was convicted by the verdict of a Jury and was on the date hereof sentenced by the said Court to TWO YEARS IMPRISONMENT

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(L.S.)

IN WITNESS WHEREOF I have hereto set my hand and the seal of the said Court this 12th day of February One thousand nine hundred and sixty-three

W.T. Angelo-Thomson
Registrar.

I HEREBY CERTIFY The above to be a true copy of the original Conviction Certificate given in Criminal Case No.10 R -v- Billy Max Sparks.

30

GIVEN under my hand and the Seal of the Supreme Court of Bermuda this 22nd day of March, 1963.

(L.S.)

Registrar

In the Privy
Council

No.48

No.48

ORDER IN COUNCIL GRANTING SPECIAL LEAVE
TO APPEAL

Order in
Council
granting
Special Leave
to Appeal.
30th May, 1963

AT THE COURT AT BUCKINGHAM PALACE

The 30th day of May, 1963

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT MR. RIPPON
EARL OF DUNDEE MR. CARR
MR. SECRETARY PROFUMO

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 10th day of May 1963 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 Billy Max Sparks in the matter of an appeal from the Supreme Court of Bermuda between the Petitioner and Your Majesty Respondent setting forth that the Petitioner an American citizen serving in the United States Air Force in Bermuda was on the 28th January 1963 arraigned before the Supreme Court of Bermuda on an indictment charging him that he did on the 3rd November 1962 in Warwick Parish Bermuda Islands indecently assault Wendy Sue Bargett a girl under the age of fourteen years contrary to Section 324(1) of the Criminal Code: that on the 12th February 1963 the Jury by a majority verdict found him guilty of the said offence and he was sentenced to two years imprisonment; And humbly praying your Majesty in Council to grant him special leave to appeal against his conviction dated the 12th day of February 1963 and for further or other Order:

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"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

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leave ought to be granted to the
Petitioner to enter and prosecute his
Appeal against his conviction by the
Supreme Court of Bermuda dated the
12th day of February 1963:

In the Privy
Council

No.48

Order in
Council
granting
Special Leave
to Appeal.

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"And Their Lordships do further
report to Your Majesty that the
authenticated copy under seal of the
Record produced by the Petitioner upon
the hearing of the Petition ought to be
accepted (subject to any objection that
may be taken thereto by the Respondent)
as the Record proper to be laid before
Your Majesty on the hearing of the
Appeal."

30th May, 1963
(continued)

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HER MAJESTY having taken the said Report
into consideration was pleased by and with the
advice of Her Privy Council to approve thereof
and to order as it is hereby ordered that the
same be punctually observed obeyed and carried
into execution.

Whereof the Governor and Commander-in-
Chief or Officer administering the Government
of the Bermuda or Somers Islands for the time
being and all other persons whom it may concern
are to take notice and govern themselves
accordingly.

W.G. AGNEW

30

EXHIBITS

"5"

Exhibits

1ST STATEMENT OF BILLY MAX SPARKS

"5"

BILLY MAX SPARKS, South Shore, Warwick, W/A
Staff Sergeant U.S.A.F. 28777195. 27 years.

1st Statement
of Billy Max
Sparks

States :-

4th November,
1962.

On the evening of Saturday, Nov. 3rd.
1962, between 8-30 and 9-00 p.m. I went to a party
at the residence of S/Sgt. Cochrane on Khyber
Pass, Warwick. I had a few drinks. I had been

Exhibits

drinking earlier and I was pretty high.

"5"

1st Statement
of Billy Max
Sparks

4th November,
1962.

continued

I left the party in my car and set off along Spice Hill Road. After about $\frac{1}{4}$ - $\frac{1}{2}$ mile I ran into a ditch and spent some time trying to get out. I then set off to walk back to the party for help. At the church just west of Cochrane's I saw a little girl, I think she was standing still, she was crying and saying something about her mother. I thought she possibly belonged to someone at the party and so I took her to the house. I told the people there I had found her near the church then tried to arrange for help to get my car out. I remember Clayton Cameron asking the number of the police then I left. I did not go back in the house again.

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As far as I can figure it, it must have been close to 10 p.m. when I found the girl and I just got the impression she was lost and frightened.

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(signed) BILLY M. SPARKS.

Above statement recorded by me at South Road, Warwick at 12-30 p.m. 4.11.62, read over to and signed by maker as correct after being asked if he wished to make any alterations.

(signed) T.A. OLIVER, D/c.

Exhibits

"9"

"9"

2ND STATEMENT OF BILLY MAX SPARKS

2nd Statement
of Billy Max
Sparks.

4th November,
1962.

Billy Max Sparks, South Shore, Warwick
Parish, W/A Staff Sergeant U.S.A.F.
No. 28777195; 27 years

States :-

I have been told that I am not
obliged to say anything unless I wish to
do so, but whatever I say will be taken
10 down in writing and may be given in
evidence.

(signed) BILLY M. SPARKS.

On Saturday the third of November, 1962,
while drunk, I was at the Bermuda Bowl
parking lot and did give a little girl a
ride in my car. I remember her walking to
me in the parking lot and I believe I just
opened the car door and she climbed in, I

Exhibits

don't know.

"9"

2nd Statement
of Billy Max
Sparks.

4th November,
1962.

continued

I remember driving along Spice Hill Road and I either parked or ran off the road, I don't know which. I took hold of her and put my finger between her legs. I tried to get the car started, I tried to push it but it wouldn't start. I don't know how I got to the party. I guess I must have walked. The girl was with me when I got to the party. I thought that by leaving her there she'd get home. I'm very sorry and ashamed.

(signed) Billy M. Sparks.

(Witness) M. Leng

The above statement was recorded by me at Police H.Q., Prospect, between 5 p.m. and 5-20 p.m. at the dictation of the person making it. I read it over to him and asked him if he wished to make any corrections. He said it was correct and signed it.

(signed) T.A. Oliver, D/c.

"10"

3rd Statement
of Billy Max
Sparks.

4th November,
1962.

"10"

3RD STATEMENT OF BILLY MAX SPARKS

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CHARGE - Ex.10.

5.30 p.m.

Name of Person charged ... BILLY MAX SPARKS

It is charged that you, on the 3rd day of November, 1962, in Warwick Parish, unlawfully and indecently assaulted Wendy Sue Bardgett, a girl under the age of 14 years, contrary to Section 324 (1) of the Criminal Code.

Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.

30

Signed BILLY M. SPARKS

Witness T.A. OLIVER D.C.70.

Reply:- I feel I was insane at the time due

to drink or other causes.

Signed BILLY M. SPARKS

Witness T.A. OLIVER D.C.70.

Exhibits

3rd Statement
of Billy Max
Sparks.

4th November,
1962.

continued.

Billy Max Sparks cautioned and charged by me at 5.30 p.m. Sunday 4th November 1962 at Western C.I.D. H.Q. He wrote down his reply and signed sheet.

Signed T.A. OLIVER D.C.

DEPOSITION OF SYLVIA ANN BARGETT

Deposition of
Sylvia Ann
Bargett

10 This deponent

Having been duly sworn on oath, states as follows:- 26th November, 1962.

I reside at "Eldonbraidie", on the Harrington Sound, Smith's Parish.

I am the wife of Donald Bargett and I have five children. Wendy Sue is the youngest of the children. She is three years of age.

The Birth Certificate now shown to me in court, Exhibit "G" refers to Wendy Sue.

20 On the evening of Saturday the 3rd November, 1962, I was at home but I had intended to go to the Bermuda Bowl. I did in fact go there. Wendy Sue was with me at this time.

I went there in my car which is a Vauxhall Station Waggon. It is navy blue in colour with a white top, registration number 8201.

When I left home to go to the Bowl, I realised that I had forgotten something and I went back again.

I arrived at the Bermuda Bowl at about five to eight.

30 I parked the car in the third row of the parking area on the western corner.

Deposition of
Sylvia Ann
Bargett

26th November,
1962
continued

Wendy Sue was asleep in the back seat, so I left her there, took my things out and went inside.

I left all the windows and doors closed, except for the two side windows, these were left open. The windows which were closed were not locked. While I was in the bowling alley, a couple of girls went out to have a look for me and I went out a couple of times myself.

I do not know how often these visits were made, but at a quarter after nine, I went out and Wendy was there, then at twenty after nine, a girl went out and that was when she found that Wendy was gone. 10

Margaret Tribley was the one who went out on this occasion.

I thought she had gone out alone, but apparently she did not go out alone.

She seemed to be out there a long time, and I was just going to go out to see what had happened and she walked in with my cousin and they told me that the car door was wide open and Wendy was not there. I then rushed outside to see if we could find her. 20

I saw that the car door was open. I looked all around in all of the cars. We looked all around the Bowling Alley, across the street and then I called the Police.

It had been raining quite a lot, but it had stopped at this time.

When I left Wendy Sue in the car she was wearing a red dress which had a white yolk and green trimming. She had on two pairs of panties, white silk ones and a pair of red ones to match the dress, red socks and black shoes. 30

Later on I was called outside to the car park and I was shown something. I was shown Wendy's panties. The white ones and the red ones. They were on the ground between two cars, when I saw them. This was between the first row of cars about three or four cars up. The panties now shown to me in court, Exhibit "A", are the ones. I started to cry and someone said that they had just found her and I turned around, saw her, and fainted. 40

She was in the arms of a Policeman when I saw her.

Deposition of
Sylvia Ann
Bargett

26th November,
1962

continued

When I had recovered from the faint, they then put her on my lap and I noticed that she had some blood on her finger. I lifted up her dress and I found blood on her body. I do not recall Wendy Sue saying anything to me at that time. But she did say that I should have looked the other way, I do not know what she meant.

10 Then I asked her who took her out of the car. I asked her this and she said that she did not know. I then asked her what did the person look like, and she said that it was a coloured boy. She did not say anything more after that.

This conversation took place at the Bermuda Bowl in the office.

I then went to the Hospital with Wendy Sue. I was present when Dr. Shaw conducted an examination.

I had a conversation with Wendy Sue at the Hospital.

20 After the Doctor had gone out, she said that he had put two fingers to "Ducie". Then she said that he hit her on her face.

When she made these statements, she was talking about the man who took her.

She did say something to the effect that she had walked up a hill to a house. She did not say any more about the incident that night.

30 The next day when the Policewoman was there, we asked her who had taken her out of the car and she said that it was a white man. She kept saying that it was a white man.

The dress now shown to me in court, Exhibit "B" is Wendy's dress.

CROSS EXAMINATION:

I expect to have a child in January, 1962.

I was due to start bowling at 8-00 p.m.

I bowl on a team. I did not arrive late, despite the fact that I had turned around and gone back home.

40 When I went into the Bowl Wendy Sue was asleep and

Deposition of
Sylvia Ann
Bargett

26th November,
1962
continued

I did not awaken her. I did try later on, but she was still asleep.

I had not planned to leave her in the car that evening. This was just one of those things which happen. I do not normally take her at all.

She was not in the habit of finding herself in the car and me in the Bermuda Bowl. Each time that I went out to check on her I found her asleep.

The last time I went out it was raining quite hard and I got quite wet. I tried to awaken her at this time, but she was still sound asleep. I would say that the time was then between nine and nine-fifteen. 10

I had finished the first game and we were in the process of finishing the second game when I asked this other girl to go out and check for me. I would say that the time was nine thirty or Twenty five minutes to ten. I do not know how long it was between the time I went out and the time I asked the other girl to go out. 20

I had bowled my frame and I was standing there watching and she took so long to come back that I was going out to check myself and she came in.

I was the third man on my team.

I had not started my frame when she went out.

Wendy Sue was quite able to open the doors of the car from the inside.

Apparently Margaret Tribley had gone out, found Wendy Sue missing then she came back and got Isobell, my cousin, she did not bother me, because I was bowling at the time. 30

I looked in the parking lot, then I went across the street to Simons' Flame House, then I went down the street towards the Bus Stop, then I came back. It was then that I called the Police. I just could not believe that she was missing.

This has never happened to me before.

I have never left Wendy Sue in the car and she had gotten lost before. 40

When she told me that she had walked up a hill to a house, I think she said that the colour of the house was pink. I asked her what kind of a car and she said that it was a black car.

Deposition of
Sylvia Ann
Bargett

26th November,
1962

NO RE-EXAMINATION:

continued

(Signed) SYLVIA A. BARGETT

10 I hereby certify that the above deposition of Sylvia Ann Bargett was taken, sworn, read over to, acknowledged by and signed by the said Sylvia Ann Bargett before me and in the presence and hearing of the accused and that the accused had full opportunity of cross-examining the said Sylvia Ann Bargett on the 26th day of November, 1962.

(Signed) D.E. WILKINSON J.P.
Magistrate

IN THE PRIVY COUNCIL

No. 16 of 1963

O N A P P E A L

FROM THE SUPREME COURT OF BERMUDA

B E T W E E N :

BILLY MAX SPARKS ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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Appellant's Solicitors

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