

34, 1970

IN THE PRIVY COUNCIL

No. 14 of 1970

O N A P P E A L  
FROM THE COURT OF CRIMINAL APPEAL OF JAMAICA

B E T W E E N :

DERRICK IRVING Appellant

- and -

THE QUEEN Respondent

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

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
6 - DEC 1971  
25 RUSSELL SQUARE  
LONDON W.C.1

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RECORD OF PROCEEDINGS

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In the Home  
Circuit Court

NO. 2

PROCEEDINGS

No.2  
Proceedings  
27th January  
1969

Home Circuit Court, Kingston.  
27th January 1969.

REGINA vs. DERRICK IRVING

MURDER

REGISTRAR: Derrick Irving, you are charged with the offence of murder, the particulars are that you on the eighth day of July, 1968, in the parish of Kingston, murdered Orville Fearon. How say you, guilty or not guilty? A. Not guilty. 10

DEFENCE COUNSEL: May it please you, M'Lord, I appear for the defence and my learned colleague, Mr. U.D. Gordon, appears for the Crown.

HIS LORDSHIP: Thank you, Mr. Brown.

REGISTRAR: The names I am about to call are the names of the jurors to try your case. If therefore you wish to challenge them or any of them you must do so as they come to the Book to be sworn and before they are sworn and your objections shall be heard. 20

JURORS

- No.27 William Burton
- No. 8 Oswald Brown
- No.40 Clement Brown
- No.56 Samuel Anderson - Foreman
- No.60 George Curtiss
- No.72 Frank Coward
- No.11 Elsie Codlin
- No.21 Roy Aarons 30
- No.63 Gloria Anderson
- No.52 Valda Arscott (Challenged by Defence)
- No.24 Jellico Allison
- No.66 Vernon Castro
- No.39 Agnes Marian Brown (Challenged by Defence)
- No.49 Joyce Chin (Challenged by Crown)
- No. 2 Dorothy Allen

REGISTRAR: Members of the Jury, the prisoner at the bar is indicted on a charge of murder, the particulars are ...

HIS LORDSHIP: Members of the Jury, the prisoner at the bar is indicted under the name of Derrick Irving and the charge that he on the thirtieth of July, 1968, in the parish of Kingston, murdered Orville Fearon. To this indictment he has pleaded Not Guilty, and it is your charge, therefore, having heard the evidence, to say whether he be guilty or not guilty.

In the Home  
Circuit Court

—  
No.2

Proceedings  
27th January  
1969  
(continued)

10

PROCLAMATION

POLICE OFFICER: All witnesses in this case, keep out of hearing.

NO. 3

ANTHONY WILSON

Prosecution  
Evidence

No.3

Anthony Wilson  
Examination

ANTHONY WILSON: SWORN: SAITH:

EXAMINATION IN CHIEF BY CROWN COUNSEL:

27th January  
1969

Q. Anthony Wilson, is that your name? A. Yes, sir.

Q. Your occupation? A. Shoemaker.

20 Q. Where do you live? A. I live at 43 Georges Lane, sir.

Q. Kingston? A. Yes, sir.

Q. Please keep your voice up. Do you know the deceased Orville Fearon? A. Yes, sir.

Q. Is he a friend of yours? A. Yes, sir.

Q. Do you recall the eighth of July, last year? A. I don't remember the exact date, sir.

Q. Did you see something happen to him, to Fearon? A. On which day, sir?

30 A. Do you recall the day on which something happened to him? A. Yes, sir.

Q. Had you seen him on that day? A. Yes, sir.

In the Home  
Circuit Court

—  
Prosecution  
Evidence

No.3

Anthony Wilson  
Examination

27th January  
1969  
(continued)

- Q. About what time did you see him? A. I saw him about 1.00 o'clock, sir.
- Q. That is in the day? A. Yes, sir, in the day.
- Q. Where did you see him then? A. On Asquith Street, sir.
- Q. Did you speak to him? A. Yes, sir.
- HIS LORDSHIP? Asquith Street in Jones Town?  
A. Yes, sir, Jones Town.
- CROWN COUNSEL: Did you see him later in the day? A. Yes, sir. 10
- Q. About what time? A. About seven fifteen in the night.
- Q. Where you saw him? A. At his home, sir.
- Q. Where was that? A. At Ladd Lane, sir.
- Q. Kingston? A. Yes, sir.
- Q. When you saw him at Ladd Lane, did you speak to him? A. Yes, sir.
- Q. Did you leave Ladd Lane? A. Yes, sir.
- Q. Did you leave alone? A. No, sir. 20
- Q. Who left with you? A. Both of us left together.
- Q. How did you leave? A. Riding, both of us.
- Q. What? A. Bicycle.
- Q. One bicycle or two? A. Two, sir.
- Q. You each had a bicycle? A. Yes, sir.
- Q. Where did you ride? A. Ride up Ladd Lane, straight up Ladd Lane, sir, turn left on Barry Street and right up Rosemary Lane.
- Q. Did anything happen in the course of your ride? A. Yes, sir. 30



- Q. What happened? A. Well, I stopped, sir.
- Q. Where did you stop? A. I stopped at a yard on Rosemary Lane, I don't remember the address.
- Q. At that time where were you travelling?  
A. Up, sir, up Rosemary Lane, both of us riding up Rosemary Lane.
- Q. Where was Fearon at the time you stopped?  
A. He was riding in front of me, sir.
- 10 Q. He did not stop? A. No, sir, he did not stop, he kept on riding.
- Q. How long did you remain at this yard?  
A. For about three minutes.
- Q. Did you leave the yard after that? A. I did not go into the yard you know, sir, I stop at the fence and was speaking to somebody for about three minutes.
- 20 Q. Where you were at that time while you were speaking to this person, could you see Fearon? A. No, I did not see him, sir.
- Q. When you left the fence what did you do?  
A. I went on my bicycle and ride to catch him up.
- Q. Did you see him? A. Yes, I saw him.
- Q. Did you catch him up? A. Yes, sir.
- Q. After you caught him up what did you do?  
A. When I caught him up he had stopped already so I ride up and go and meet up where he stopped.
- 30 Q. Where had he stopped? A. A little before he reached the intersection of Rosemary Lane and North Street corner.

HIS LORDSHIP: Intersection of? A. Rosemary Lane and North Street corner.

CROWN COUNSEL: You saw when he stopped? A. I did not saw him when he stopped, I only went and saw him stop.

In the Home  
Circuit Court

—  
Prosecution  
Evidence

No. 3

Anthony Wilson  
Examination

27th January  
1969

(continued)

In the Home  
Circuit Court

—  
Prosecution  
Evidence

No. 3

Anthony Wilson  
Examination

27th January  
1969  
(continued)

Q. What was he doing? A. He was speaking to two girls, sir.

Q. Was he speaking in a pleasant, ordinary manner? A. No, sir.

Q. What was it like? A. Like a row, sir.

Q. Did you do anything? A. I told him to stop the row, and come along.

Q. What did he do? A. He was about to do what I told him and another girl came up and started to curse him. 10

Q. You know the name of this girl? A. Yes, sir.

Q. What is her name? A. Sonia.

HIS LORDSHIP: Sonia was the one who came up and was cursing him? A. Yes, as he was about to leave.

CROWN COUNSEL: What did he do? A. Well he speak back to her sir. Well she make some remark at him and he made it back and she started to move away. Well, during the row she tell him a harsh word and he got furious about it and start to walk after her in a vexed mood. 20

HIS LORDSHIP: During the row she what? A. Used a harsh word.

HIS LORDSHIP: And you say he start to move towards her? A. Yes, sir. She try to move away, sir, she start moving away from him.

CROWN COUNSEL: What did he do? A. He keep on following after her, sir. Well, she start to run. 30

Q. What did he do? A. He run her down, sir.

Q. Did he catch her? A. No, sir, she ran in a yard.

Q. Where was that yard? A. I don't know the address but it is down the street, sir.

Q. Down what? A. Rosemary Lane. She ran down Rosemary Lane.

In the Home  
Circuit Court

HIS LORDSHIP: You know any particular person who lives in that yard? A. No, sir.

Prosecution  
Evidence

HIS LORDSHIP: The yard she ran in, you don't know who was living there? A. No, sir.

No.3

CROWN COUNSEL: After she ran in the yard what did Fearon do? A. I was riding behind him at the same time, sir.

Anthony Wilson  
Examination

27th January  
1969  
(continued)

10 Q. What did he do? A. Tell him to stop and he stopped, sir, and he turn up back the street.

Q. He stopped and did what? A. Turn up back the street, sir.

Q. Where he went? A. Going up back the street to go for his bicycle for he left the bicycle to go after her.

Q. Go back up the street ... A. Yes, sir, and leave her there.

20 Q. ... towards his bicycle? A. Yes, sir.

HIS LORDSHIP: Where he had put his bicycle? He had his bicycle when she came up and was cursing him and he put down the bicycle and started to run after her? Along the wall or where? A. Along the sidewalk, sir.

CROWN COUNSEL: Did he get his bicycle, did he take it up? A. Yes, sir.

Q. What he did after he took it up? A. Both of us, we did not ride off at the same time, sir.

30 Q. What you did? A. We were about to ride up the street.

Q. Ride where? A. Going up back Rosemary Lane, sir. Well he held his bicycle and I held on to mine and we walk with the bicycles up the street.

In the Home  
Circuit Court

—  
Prosecution  
Evidence

No.3

Anthony Wilson  
Examination

27th January  
1969  
(continued)

Q. You say you held your bicycle and you were on the way up Rosemary Lane? A. Yes, sir.

Q. What happened? A. We then saw a group of boy passing, sir.

Q. So you and the deceased now started to go up where? A. Up Rosemary Lane.

HIS LORDSHIP: And you saw a group of boys you say? A. Yes, sir.

Q. Where were these boys going? A. Down Rosemary Lane. 10

Q. Did they pass you? A. Yes, sir.

Q. What did you and Fearon do? A. Well, after they passed us we turn back because in the first, when both of us coming up Rosemary Lane, when he come to speak to the girl I was asking for a friend ...

HIS LORDSHIP: You turned back down Rosemary Lane? A. Yes, sir, through I was asking for a friend at the yard I stop first.

HIS LORDSHIP: But you and Fearon turned back ... 20  
A. Down Rosemary Lane.

HIS LORDSHIP: You better pause there, but while you pause there I have reached a very important point. I just want my curiosity to be appeased. Tell me something, this Sonia, you know her a long time? A. Yes, sir.

HIS LORDSHIP: When you say a long time, about how long - year, two years, or what? A. About a year before, sir.

HIS LORDSHIP: I want to find out from you, this Sonia you know whether she was related or any association with anybody? A. She and the girl that the deceased were talking to were friends, sir. 30

HIS LORDSHIP: She was a friend of the girl that the deceased was speaking to? A. Yes, sir.

HIS LORDSHIP: This girl - you knew that girl too?  
A. I don't know her friend, sir.

In the Home  
Circuit Court

HIS LORDSHIP: That is the girl that the  
deceased was first speaking to - you don't  
know her friend? A. I don't know them, sir.

Prosecution  
Evidence

HIS LORDSHIP: How you know whether Sonia was  
a friend of one of the girls? A. Because  
she was speaking on behalf of them.

No.3

Anthony Wilson  
Examination

10 HIS LORDSHIP: At this point we will adjourn.  
Mr. Foreman and Members of the Jury we are  
now going to take the adjournment until two  
o'clock. It is the duty of the Judge,  
particularly in a case like this, to advise  
the jury not to allow any person whoever it  
is, whether connected with this case or not,  
to come up to you with a view to influencing  
you or talking to you about the case because  
once they come up and want to suggest anything  
20 to you about the case or what you are to do,  
you are to stop them or otherwise you will not  
be able to return a true verdict according to  
the evidence. There is nothing to prevent  
you having a talk among yourselves on the  
facts so far before you, but do not allow any  
outsider to interfere. Up to twenty-six  
years ago, once you were empanelled in a case  
like this, you were in custody and no going  
home until the case is finished, but you are  
30 allowed to go at large provided the Judge  
gives you the warning as I have done. Two  
o'clock.

27th January  
1969  
(continued)

COURT ADJOURNS: 12.53 p.m.

COURT RESUMES: 2.12 p.m.

JURY ROLL CALL (All Present)

ANTHONY WILSON: STILL ON OATH:

40 CROWN COUNSEL: Now at the adjournment you had  
reached the point in your evidence where you  
said that after Fearon took up his 'cycle,  
both of you turned down Rosemary Lane. Now when  
you say you turned down Rosemary Lane, did you  
walk or ride down Rosemary Lane? A. Ride down  
Rosemary Lane.

In the Home  
Circuit Court

—  
Prosecution  
Evidence

No.3

Anthony Wilson  
Examination

27th January  
1969  
(continued)

Q. While you were going down Rosemary Lane, did you see anyone ahead of you? A. Yes, sir.

Q. Who you saw? A. A group of boys were in front of us.

Q. About how many of them? A. About four to five of them.

Q. Now, did you get up to where these boys were? A. Yes.

Q. What happened? A. Well, before we reach where the boys were we saw the girl that ran down first came out of the yard. 10

Q. Out of which yard? A. That she ran into.

Q. . And what she did? A. She went across to the group of boys that was coming down the street in front of us.

HIS LORDSHIP: You saw the girl come out the yard? A. And went to the group of boys.

CROWN COUNSEL: When she went over to the boys what did she do? A. I see she was complaining to them, sir. 20

Q. At the time when she was talking to this group of boys what were you doing? A. I was riding, cruising coming down, about to pass them, sir.

Q. Did you pass them? A. We did not get to pass them.

Q. What happened? A. They came across the street and blocked us.

Q. Did any of them speak to you? You say they came across the street and blocked you? A. Stop both of us, sir. 30

Q. What did you do? A. Well, we came off our bicycle, both of us came off the bicycle at the same time, sir.

Q. Any of them spoke to you or Fearon? A. Yes, sir.

Q. Who spoke to Fearon? A. A fellow spoke to Fearon.

In the Home  
Circuit Court

Q. Do you know this fellow? A. Yes, sir.

Q. Who is the fellow?

-----  
Prosecution  
Evidence

(Witness points to accused)

No.3

Q. Who is it? A. That accused.

Anthony Wilson  
Examination

Q. The accused in the dock? A. Yes, sir.

27th January  
1969

Q. Earlier, did any of the fellows speak to you? A. No, sir.

(continued)

10 Q. To Fearon? A. Yes, sir.

Q. Is Fearon known by any other name? A. They call him Shearer.

Q. Fearon was known as Shearer? A. Yes, sir.

Q. What did he say to Fearon, what did the accused say to Fearon? A. Asked why he had to kick his girl.

Q. Kick his girl? A. Yes, sir.

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

20 Q. What did he say? A. He asked back the accused if is that the girl came and tell them.

Q. Did the accused reply? A. Him say yes.

Q. And did you see Fearon kick anybody?  
A. No, sir.

Q. After that little bit of conversation was anything done by either the accused or Fearon? A. Well, after ...

HIS LORDSHIP: Wait a minute. Who is Shearer?

30 CROWN COUNSEL: Much obliged, M'lord. I said Fearon, M'lord.

In the Home  
Circuit Court

Prosecution  
Evidence

No.3

Anthony Wilson  
Examination

27th January  
1969  
(continued)

HIS LORDSHIP: I just want to make it clear.  
Who was otherwise called 'Shearer', the  
accused or the deceased? A. the deceased.

CROWN COUNSEL: What is the next thing that  
happened? A. Well, it look as if the boys  
were going to fight Shearer sir.

Q. What you see them do? A. They start feel  
up them pocket.

Q. Who you saw feel up their pockets? A. The  
accused, sir.

Q. Feeling his pocket? A. Yes, sir, and his  
friends begin to murmur, sir - I didn't  
hear what they say.

HIS LORDSHIP: They were what?

CROWN COUNSEL: Murmuring, M'lord.

HIS LORDSHIP: So the accused start to feel his  
pocket? A. Yes, sir.

CROWN COUNSEL: Now, did Fearon do anything?  
A. Yes, he took out a knife, sir.

Q. What did the accused do then? A. Well, he  
begin to ask his friends for a knife too,  
sir.

Q. What did he say to them? A. Ask if any of  
them have a knife.

Q. He did anything else? A. Nobody did not  
answer him, sir. Well, he walked away very  
fast.

Q. Where he went? A. Down Rosemary Lane.

HIS LORDSHIP: None of his friends answered  
him? A. No, sir.

HIS LORDSHIP: Who you say you saw walk down  
Rosemary Lane fast?

CROWN COUNSEL: What did you and Fearon do?  
A. I told him to shut his knife, sir.

10

20

30



Q. You spoke to him? A. Yes, sir.

In the Home  
Circuit Court

Q. What did he do? A. Shut his knife.

Q. What else? A. Both of us went on our bicycles, sir.

Prosecution  
Evidence

HIS LORDSHIP: Mounted your bicycles?

No.3

A. Yes, sir, riding straight down Rosemary Lane.

Anthony Wilson  
Examination

10 CROWN COUNSEL: What happened to the accused at that time when you were going down Rosemary Lane? A. I don't know where him turn, sir, but he turn into a yard, sir.

27th January  
1969  
(continued)

HIS LORDSHIP: Did you pass him while going down? A. I did not pass him while going down.

HIS LORDSHIP: You don't know where he turned? A. I don't know where he turned, sir.

CROWN COUNSEL: Where did you go? A. I went to the corner of Rosemary Lane and Barry Street, sir.

Q. Did Fearon go with you? A. Yes, sir.

20 Q. Did you remain there for any time? A. I remain there asking for somebody, sir.

Q. Did you leave from the corner of Rosemary Lane and Barry Street? A. Yes, sir, both of us leave.

Q. Where you went? A. Riding up back Rosemary Lane, sir.

Q. About what time was this? A. About seven-thirty, sir.

30 HIS LORDSHIP: You and the deceased went to Rosemary Lane and Barry Street and you stayed at the corner for sometime and you started to ride back up? A. Yes, sir.

CROWN COUNSEL: You started to ride up Rosemary Lane? A. Yes, sir.

In the Home  
Circuit Court

Prosecution  
Evidence

No.3

Anthony Wilson  
Examination

27th January  
1969

(continued)

Q. When you were riding up Rosemary Lane were you riding beside one another or one of you behind the other? A. Shearer in front of me, sir.

Q. That is Fearon? A. Yes, sir.

Q. How far in front of you was he? A. About a yard, sir.

Q. Now, on the way up Rosemary Lane, did you go all the way up with Shearer a yard ahead of you? A. No, sir, I stopped, sir.

10

Q. You stopped? A. Yes, sir.

Q. And what did Fearon do? A. He kept riding slow in front of me. I stop and speaking to a girl.

Q. And he rode ahead of you slowly? A. Yes, sir.

Q. After you spoke to this person what did you do? A. I leave her, rode off, sir.

Q. Where was Shearer at that time? A. He was still riding ahead of me but the distance increased now, sir.

20

HIS LORDSHIP: But you could still see him?  
A. Yes, sir.

CROWN COUNSEL: Now, did you see anyone else on the road? A. No, sir.

Q. While Fearon was riding ahead of you did you notice anything? A. Well, as he was about to pass a light, sir ...

Q. Pass a what? A. They have a shop there on Rosemary Lane, sir, and he was riding to pass the light, sir, I saw somebody come from the right side come across the street to him walking across the street from the right.

30

A. When you say from the right ... A. He was riding this way and somebody come from this way.

Q. From the right, as you go up Rosemary Lane?  
A. Yes, sir.

In the Home  
Circuit Court

Q. You saw someone come from the right?  
A. Yes, sir.

—  
Prosecution  
Evidence

Q. What did this person do? A. Well, same  
time the person went up to Shearer,  
Fearon drop his bicycle same time, sir.  
As he was walking across to Fearon,  
Fearon drop his bicycle.

No.3

Anthony Wilson  
Examination

10 HIS LORDSHIP: Drop his bicycle? A. Yes, sir.

27th January  
1969  
(continued)

CROWN COUNSEL: Was this person a man or woman  
or child? A. A man, sir.

Q. After Fearon dropped his bicycle, what did  
he do? A. He ran off, sir, in a semi-  
circle movement and the person ran after  
him, too, sir.

HIS LORDSHIP: Tell me something, this person  
you see from the right that went across to  
Shearer, did you see him with anything?  
20 A. No, I did not see, sir.

HIS LORDSHIP: Eh? A. No, sir.

CROWN COUNSEL: You say the person ran after  
Shearer - Fearon? A. Yes, sir.

Q. What else did you see? A. Well, as he make  
another running movement around the light  
...

Q. Beg you pardon? A. They ran through the  
light and was in the dark, sir. Well,  
after they leave out the dark and go back  
into the light I saw the fellow hand go up  
30 in the air.

Q. Beg you pardon? A. I saw the person who  
come to Shearer, hand go up in the air - his  
hand go up in the air.

HIS LORDSHIP: You say you saw his hand go into  
the air. You were able to see by what means?  
A. By the light, the shop light, sir.

In the Home  
Circuit Court

Prosecution  
Evidence

No.3

Anthony Wilson  
Examination

27th January  
1969  
(continued)

CROWN COUNSEL: You mentioned the dark - where was it dark? A. Well, there was a black-out that night, sir, we did not have any light that night, sir.

Q. Black-out? A. Yes, sir.

Q. You saw the person's hand go up? A. Yes, sir.

Q. Did you notice anything in the hand? A. Yes, sir, a cutlass.

Q. After the hand went up, what happened to it?  
A. It came down, sir.

10

Q. Where was Fearon at that time? A. In front, sir.

Q. What was he doing at that time? A. Trying to run away, sir.

Q. You said the hand came down. When the hand came down did you hear or see anything? A. I hear a sound, sir, a loud sound.

Q. How it sounded to you? A. Like when you cutting coconut, sir.

Q. After you heard that sound did you notice anything about Fearon? A. Yes, sir, he drop, sir.

20

Q. Where did he fall?

DEFENCE COUNSEL: I did not hear whether he said 'chop' or 'drop'.

HIS LORDSHIP: 'Drop'.

DEFENCE COUNSEL: Much obliged, M'lord.

CROWN COUNSEL: Where did he fall? A. In the street, sir.

Q. At the time the person's hand went up and came down and you heard the sound like the chopping of coconut, did you recognise the person who had the machete in the hand? A. No, sir.

30

HIS LORDSHIP: Did you recognise the person?  
A. No, sir.

CROWN COUNSEL: What did you do after you saw Fearon fall? A. I went beside him, sir, and saw his head bleeding.

In the Home  
Circuit Court

Q. Where? A. Headback, sir.

Prosecution  
Evidence

HIS LORDSHIP: Did what? A. Went beside him, sir.

No. 3

CROWN COUNSEL: What about the person who you had seen with the machete in his hand?  
A. The person start to move away now, sir.

Anthony Wilson  
Examination

10

Q. After you noticed that Fearon was bleeding from his head, what did you do? A. Well, he dropped, sir, there was a yard there. I went to that yard plenty times, I accustom to go to that yard, at the gate where he dropped, sir.

27th January  
1969  
(continued)

Q. At the gate where he fell? A. Yes, sir.

Q. What did you do? A. I ran in the yard, sir.

Q. Having run in the yard what next did you do? A. I went up to the kitchen part, sir.

20

Q. What you did there? A. I saw a kitchen lamp in there and right beside the lamp I see a cutlass.

Q. What did you do? A. I took up the cutlass and come back through the gate, sir.

Q. When you came back through the gate did you see this person? A. The person who run after Shearer walking up the street now, sir.

Q. Going in what direction? A. Going up Rosemary Lane with the cutlass in his hand.

30

Q. What did you do? A. As the person saw I come out, he start to run.

Q. Who started to run? A. The person with the cutlass, sir.

Q. What did you do? A. Start to run him down, sir.

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Q. Where you ran? A. Up Rosemary Lane, sir.

Q. Where else? A. Turn right along Laws Street.

HIS LORDSHIP? The person started to run and you ran after him? Yes, sir.

CROWN COUNSEL: Did you go anywhere else, did you chase this person anywhere else? A. Up Maiden Lane, sir.

HIS LORDSHIP: What the person first did? A. Run up Rosemary Lane, right along Laws Street and left up Maiden Lane, sir, and left along East Queen Street. Right up Maiden Lane, East Queen Street and go up Wildman Street.

10

HIS LORDSHIP: And then right ....? A. Up Wildman Street, sir.

CROWN COUNSEL: Did you catch this person? A. No, sir.

Q. Did you, in the course of your chase, recognise this person? A. Yes, sir.

Q. Who was it? A. The accused, sir.

20

DEFENCE COUNSEL: I must object, M'lord. My friend must do things tidily.

HIS LORDSHIP: Wait a second. You object to the question: "Who was it"?

DEFENCE COUNSEL: The form in which it is put, M'lord. My friend must know that since the witness has said it was a black-out, meaning a Reddy Kilowatt power cut, that the place is in darkness, streets in darkness, and since he is being told there was a chase through a circuitous part, it is improper in that sequence to ask him who it was after asking if he recognised the person. He must ask: "Did you recognise the person" - then, "how did you manage to recognise the person"? That is the proper sequence, otherwise he is begging an answer which is unfair to the accused.

30

HIS LORDSHIP: Objection overruled.

DEFENCE COUNSEL: Much obliged, M'lord.

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HIS LORDSHIP: Who was it you saw? A. The  
accused, sir.

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CROWN COUNSEL: At what stage of the chase  
did you recognise that it was the accused?  
A. Up Maiden Lane, sir.

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Q. How did you get to recognise him? A. At  
Maiden Lane and East Queen Street there  
is a club there, sir - Silver Dollar  
Club.

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(continued)

HIS LORDSHIP: There is a club? A. I don't  
remember the name of the club, sir.  
Within the area of that club, sir, there  
is always light all the while in the yard,  
sir. The accused was running in the light,  
sir, turn along East Queen Street, he look  
back, sir.

HIS LORDSHIP: Turn? A. Turn on East Queen  
Street, sir.

20 HIS LORDSHIP: And he looked behind? A. Yes, sir.

CROWN COUNSEL: Now, after he turned up Wildman  
Street, what did you do? A. Well, I turn  
up Wildman Street, too, sir, but he was in  
front of me, sir. I did not see him, sir,  
after he turn up Wildman Street.

Q. Now after he lose you on Wildman Street, what  
did you do? A. Well, I give up the chase,  
sir.

30

Q. And having given up the chase, where did you  
go? A. I went down Rosemary Lane, sir,  
straight down, sir.

Q. Where you went on Rosemary Lane? A. To  
where the deceased was lying down, sir, saw  
him in the crowd lying down.

Q. Pardon? A. I went down there and saw a  
crowd gather where the deceased was lying  
down, sir.

Q. Was the deceased still there? A. Yes, he  
was there when I returned, sir.

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Q. Was he removed from that place? A. Yes, sir.

Q. Who removed him? A. I help remove him, sir,  
and another fellow, sir.

Q. What you did with him? A. Put him in a taxi,  
sir.

Q. What was his condition then at the time when  
you took him up to put him in the taxi?

A. I saw the back part of his head, sir, like  
it hang down, sir.

Q. And you took him to the hospital? A. Yes, sir. 10

Q. At the hospital, was he admitted? A. Yes, sir.

Q. Did you remain at the hospital? A. At the  
same day I remain there, sir.

Q. Pardon? A. Yes, sir.

HIS LORDSHIP: Wait a second, this is necessary.  
You took him to the hospital and he was  
admitted? A. Yes, sir.

CROWN COUNSEL: The nurses took charge of him?  
From then did you stay at the hospital?

A. Yes, sir, they say somebody should stay  
with him, sir. 20

Q. Did you at any time leave the hospital?

A. No, sir, they took him and carry him into  
the room, sir, they sent me around to ...

Q. You waited? A. Yes, sir.

Q. After a time, did you leave? A. Yes, sir.

Q. Did you make a report to the police? A. Yes,  
sir.

Q. Now, did you see at any time -- did the  
deceased Orville Fearon attack the accused with  
any machete? A. No, sir. 30

Q. You see himself and a crowd, that is Orville  
Fearon and a crowd attack the accused at any  
time? A. No, sir.



HIS LORDSHIP: Before you sit down, it is part of your case - can you ask him a few questions to let me and jury know how long he had known the accused?

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CROWN COUNSEL: Before that day, had you known the accused? A. No, sir.

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HIS LORDSHIP: You did not know the accused before that day? A. No, sir.

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Q. You never see him before? A. No, sir.

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(continued)

10

(Mr. Brown rises)

HIS LORDSHIP: Just wait, Mr. Brown. Now this group of boys that you saw, the group that block off your path, was it the same group that was seen earlier on, that you had passed earlier on? A. Yes, sir.

Q. About how many were in the group? A. About four to five.

Q. Did you notice any in the group that you saw? A. I know a tall fellow.

20

Q. What is his name? A. Call him 'Wingie', sir.

Q. I think you told the jury that the accused was in that group? A. Yes, sir.

Q. Apart from your recognising the accused and Wingie, you did not know anybody else in the group? A. No, sir.

Q. And this girl who was making the complaint to the group of boys, you did not know her name? A. Sonia, sir.

30

Q. Sonia was making the complaint? A. She come back out of the yard, sir.

ANTHONY WILSON: CROSS-EXAMINATION BY DEFENCE  
COUNSEL, MR. BROWN:

Cross-examination  
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Q. Now Mr. Anthony Wilson, let's get the deck cleared - is that the only name you go by, Anthony Wilson, or you have aliases. Come straight with the court, now.

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HIS LORDSHIP: You have asked the witness a question and don't make any comments - just ask the question and leave it at that.

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DEFENCE COUNSEL: Sorry, M'lord, it was a part of my question.

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HIS LORDSHIP: Part of the question is to make comment?

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Cross-  
examination

DEFENCE COUNSEL: Come straight with the court ...

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HIS LORDSHIP: That is what I am saying: come straight with the question and don't make any comment. 10

(To witness: Do you go by any other name, pet name?) A. Yes, sir.

DEFENCE COUNSEL: Let me have them. A. Only one.

Q. Which one is it? A. 'Kidd'.

Q. Kidd what. A. Kidd nothing at all, Kidd alone.

Q. Just Kidd?

HIS LORDSHIP: Kidd.

Q. DEFENCE COUNSEL: Where do you live? 20

HIS LORDSHIP: You asked for his aliases, you don't want more than one?

DEFENCE COUNSEL: Do you enjoy any other nickname or alias? A. I don't have any other nickname or alias.

HIS LORDSHIP: Kidd is the only one? A. Yes, sir.

DEFENCE COUNSEL: Am I correct in saying that you have previous convictions in that you have been to prison before? A. No, that is not correct. 30

Q. I am not correct? A. No, sir.

Q. But you will agree with me though, that I am correct that you have been arrested and bailed for robbery with aggravation?

HIS LORDSHIP: But what has that got to do with the case?

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DEFENCE COUNSEL: This is my case, M'lord, and I shall soon disclose to you, M'lord, the reason for laying this foundation in a very short while - within five minutes.

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HIS LORDSHIP: Whether he has been arrested and charged with robbery with aggravation?

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(continued)

10 DEFENCE COUNSEL: It is germane to the issue as it affects the deceased, that is why he smiles now.

(To witness): Do you care to answer my question?

HIS LORDSHIP: Just wait.

DEFENCE COUNSEL: Sorry, M'lord.

HIS LORDSHIP: Have you been arrested and charged with robbery with aggravation?  
A. No, sir.

20 HIS LORDSHIP: Is the question whether he had been bailed?

DEFENCE COUNSEL: Yes, M'lord.

HIS LORDSHIP: Have you been bailed? A. No, sir.

DEFENCE COUNSEL: Now, the third question: In your whole life, have you ever run away from your bail-bond and absconded bail?

30 HIS LORDSHIP: Don't answer that question. Now Mr. Brown, I hope these questions that you have put - whether he has had previous convictions or gone to prison before, you have particulars to put to this man that he has been convicted of a felony or misdemeanour.

DEFENCE COUNSEL: Charged with, M'lord, bailed and absconded bail. I shall prove it to the hilt.

HIS LORDSHIP: But are you able to prove that he has been convicted of a felony or misdemeanour?

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DEFENCE COUNSEL: My question is not concerning conviction, M'lord.

HIS LORDSHIP: Well, you are not allowed any such questions unless you are in a position to prove it under the law.

DEFENCE COUNSEL: I can, M'lord, and I shall.

HIS LORDSHIP: Prove what?

DEFENCE COUNSEL: Every allegation I now make, according to the ethics of my profession.

HIS LORDSHIP: Very well, I will be watching it in this case. 10

DEFENCE COUNSEL: I am well apprised, I will keep myself within the confines.

HIS LORDSHIP: Go ahead.

DEFENCE COUNSEL: Now, Mr. Anthony Wilson, aren't you well aware of the existence of a ferocious gang called the Max Gang, in the Corporate area - the Max Gang? A. Yes, sir.

Q. Glad to see that you know.

HIS LORDSHIP? You know the Max Gang? 20

DEFENCE COUNSEL: A ferocious one, that is my question.

CROWN COUNSEL: Does he know the meaning of 'ferocious'?

DEFENCE COUNSEL: Let him say so if he does not know.

(To Witness): Mr. Wilson, you know the term 'rob and flee gang'? A. No, sir.

Q. You know the word 'thief' though? A. I know the word 'thief'. 30

Q. Right. You know that the dead man that you call Shearer was a thief?

HIS LORDSHIP: Don't answer that.

DEFENCE COUNSEL: Let me get that down. I will put it another way then ...

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HIS LORDSHIP: Please if you don't mind, I say don't answer it. You see me noting it. I was just noting it - I mean don't answer that yet, that is what I mean.

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DEFENCE COUNSEL: Much obliged to you, M'lord.

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HIS LORDSHIP: The question is whether he knew that the deceased was a thief?

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10 DEFENCE COUNSEL: Was a thief, meaning if he was convicted.

HIS LORDSHIP: I know what it means. How is this relevant?

DEFENCE COUNSEL: I will abide your ruling M'lord.

HIS LORDSHIP: I have not ruled against it, I want you to help me - how is it relevant?

20 DEFENCE COUNSEL: Because Barabas was a thief, M'lord, and if one feloniously attacks me or rather attacks me to commit a ferocious felony, I am entitled to kill him and it is not murder - very simple, M'lord, and Barabas was a thief.

HIS LORDSHIP: The only relevance was that Barabas was a thief?

30 DEFENCE COUNSEL: And the law as it applies to murder - if I am attacked by a known thief and at the time he was carrying out his thievous propensity I am entitled to kill him and it is not murder or anything and that is the fulcrum of my defence, M'lord.

HIS LORDSHIP: Go ahead. So wait, let me see if I follow you. You ask these questions one way and I want to follow what you are driving at. You lay the foundation for the suggestion coming on that the deceased was attacking the accused and stealing something?

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DEFENCE COUNSEL: No, M'lord, attacking the  
accused to commit an atrocious felony.

HIS LORDSHIP: That the deceased was attacking  
the accused to ...?

DEFENCE COUNSEL: To commit a ferocious felony on  
the accused.

HIS LORDSHIP: And that felony would involve  
stealing?

DEFENCE COUNSEL: Involve a propensity to steal  
along with other ....

10

HIS LORDSHIP: As far as my final note is concerned  
on this question I will leave it open until I  
see how far you go, then you can ask him again.

DEFENCE COUNSEL: Much obliged, M'lord.

Q. Earlier on you told my learned friend that the  
deceased Orville Fearon was called Shearer.  
Am I correct in saying that that 'Shearer' is  
not spelt like the Prime Minister's - Sharer,  
a person who shares - is that correct, a person  
who shares out money?

20

HIS LORDSHIP? What has the spelling of the name  
got to do with the case Mr. Brown?

DEFENCE COUNSEL: I am coming to that, M'lord,  
give me a chance I beg you.

HIS LORDSHIP: Please, please, please let's be  
serious now.

DEFENCE COUNSEL: This is very serious, M'lord, you  
shall see it in a minute. I am serious  
M'lord, I can't joke in a murder case.

HIS LORDSHIP: Is that correct?

30

DEFENCE COUNSEL: Yes, sir.

HIS LORDSHIP: The Shearer is spelt how? This  
Shearer that he was called spell it for me.  
A. S-h-e-a-r-e-r.

DEFENCE COUNSEL: And am I not correct in saying  
that he got that nickname because ...

HIS LORDSHIP: Do you know how he got that nickname? A. No, sir.

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DEFENCE COUNSEL: Why do you call him by that name? A. Sometime I call him Shearer, sir.

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Q. Why? A. Because I hear everybody call him Shearer sometime, sir.

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Q. And you know the spelling? A. I know how it spell.

Anthony Wilson  
Cross-  
examination

10 Q. Now, Mr. Wilson, are you the only child for your parents? A. No, sir.

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Q. How many of you? A. Ten, sir.

(continued)

Q. When your mother go to share out meals ...

HIS LORDSHIP: Wait, wait.

DEFENCE COUNSEL: Your mother not rich? A. No, sir.

20 Q. So when dinner time come is not plenty to share out for is the ten of you, you agree with me? Your mother not rich so when dinner time come ... A. We have plenty to eat.

Q. She rich? A. You don't must rich to have plenty to eat.

Q. For ten children? Anyhow your mother share out your dinner for the ten of you? A. Yes.

Q. And all of you satisfied, get a belly full? A. Yes, sir.

30 Q. Don't you call her a good sharer when she do that? She share good, she is a good sharer of dinner - make everybody satisfied? A. I never term her as a sharer yet.

Q. But when she share out that way you spell it S-h-a-r-e-r, don't you agree with me? A. True.

Q. And you used to call Fearon Sharer - S-h-a-r-e-r, isn't that correct? A. No.

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Q. What you used to call him? A. But it don't spell like how you spell it?

Q. How you spell it? A. S-h-e-a-r-e-r.

Q. What is the first letter? A. 'S'.

Q. You have a lisp tongue - are you a tie-tongue Mopsie?

HIS LORDSHIP: Don't waste time.

DEFENCE COUNSEL: I thought he said ....

HIS LORDSHIP: One of my duties as a Judge is not only to see that the Jurors' minds are not taken off the case but that no time wasting by anybody.

10

DEFENCE COUNSEL: Yes, M'lord but with respect, this is vital to the liberation of my client ...

HIS LORDSHIP: As to whether he can spell Shearer as from Sharer?

A. He told us already he can spell, M'lord. You asked him, with respect, and he gave us the spelling as S-h-a-r-e-r, so he cannot change now, M'lord.

20

CROWN COUNSEL: With respect, this witness did not say that at all.

HIS LORDSHIP: I am noting it.

DEFENCE COUNSEL: M'lord, what spelling may I ask has your Lordship got from his lip?

HIS LORDSHIP: Continue with your crossexamination because that has nothing to do with this case, how he can spell Shearer.

DEFENCE COUNSEL: M'lord, with respect, I am defending, sir, I must know.

30

HIS LORDSHIP: I have ruled and it is down there and you know what your remedy is thereafter if you want it.



DEFENCE COUNSEL: I don't want to go that far, M'lord.

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HIS LORDSHIP: Continue with your cross-examination.

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DEFENCE COUNSEL: Tell me something, were you with Fearon or Shearer, whatever name in this dear world you want to call him - before 7.00 o'clock on the night that you are talking about? A. Yes, sir.

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examination

10 Q. What night was that? A. I don't remember the date of the month, sir.

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Q. Try and remember it for nobody heard a word about it.

(continued)

HIS LORDSHIP: The question is whether he was with the deceased?

Q. Earlier the night he was talking about, M'lord, - I want those words for certain reasons.

HIS LORDSHIP: Yes.

20 DEFENCE COUNSEL: Your answer is Yes, you were with him earlier the night. About what time?  
A. Not the night, in the day, 1.00 o'clock the day.

Q. You know the difference between night and day? A. Yes, sir.

Q. You said you saw him about 1.00 o'clock in the day, that is right - after mid-day meal time?  
A. Yes, sir.

Q. Did you have any food to eat? A. Yes, sir.

30 Q. Now after that 1.00 o'clock in the day time when sun shining, what is the next time that you saw Fearon for that particular day?  
A. I did not see him no time at all before 7.00 o'clock.

Q. Listen to the question clearly, sir, I don't want any confusion or waste of time. After you saw him at 1.00 o'clock, when sun shining bright in the middle of the day, at what time did you next open your eyes and see Fearon, your friend, that day?

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A. About ten past seven in the night.

Q. Do you remember what month of the year this was? A. I believe it was July, sir.

Q. You are not certain, you believe - let me write it down. You believe it is July, is that your answer Mr. Wilson? A. It was July, sir.

Q. You are now certain. Do you remember what date? A. I don't remember the date.

Q. Were you present when your friend died? A. Yes, sir. 10

Q. Where was he then when he died? A. He was in the street, in front of me, on Rosemary Lane?

Q. That is where he died? Let me get that.

HIS LORDSHIP: Could you ask that question again?

DEFENCE COUNSEL: So it is a dead man you took in the taxi and took to the hospital - is that correct. A. No, sir.

Q. So which one is the truth then? A. When he died he was at the hospital.

Q. Since he died in the lane - you tell me the truth now Mr. Wilson? 20

HIS LORDSHIP: What is the question you ask him?

DEFENCE COUNSEL: He said that he saw when Fearon died. "Where was he?" was my next question. "In Rosemary Lane before me". Next question: "So it was a dead man that you put in the taxi and took to the hospital?" and I am waiting on the answer to that. A. I don't know if he was dead when I put him into the taxi, sir.

Q. Now you say you don't know if he was dead. And Mr. Wilson, isn't it the truth of the matter that you don't honestly know the point of time at which Orville Fearon died. 30

HIS LORDSHIP: What has that got to do with the case Mr. Brown? Isn't Fearon dead?

DEFENCE COUNSEL: I don't know, M'lord, other than the 10th July, the post mortem was done. Something turns on this M'lord, and I must explore everything to protect this man for his deliverance.

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examination

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HIS LORDSHIP: As to whether Fearon is dead?

DEFENCE COUNSEL: M'lord, give me a chance please.

10 HIS LORDSHIP: I am giving you all the chances in the world, but I am telling you again that I must see to it that there is no time-wasting here.

DEFENCE COUNSEL: But, M'lord, I ask, since it is not a simple case, don't beg me in a murder case to disclose too prematurely and let my friend take advantage of it. That man's life is in my hands.

HIS LORDSHIP: Go ahead Mr. Brown, go ahead.

20 DEFENCE COUNSEL: Now tell me something, am I correct in saying that you left the hospital before your friend was declared dead, put it that way. Up to when you left he was not declared dead yet?

HIS LORDSHIP: Declared by whom?

DEFENCE COUNSEL: The doctor, that is the only man that could do it. A. I don't know, you know sir.

DEFENCE COUNSEL: Nobody tell you him dead yet?  
A. The porter, sir.

30 Q. He is not a doctor? A. The porter who push the trolley came back and say, well then, your friend died and I come outside the hospital.

HIS LORDSHIP: Is all that evidence, Mr. Brown?

DEFENCE COUNSEL: But no doctor told you so? I will get that from the doctor, but I want to get the decks clear since my friend led it that he remained until he was told some things.

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(To witness): Let's get the geography of the scene. Am I correct in saying that coming from north to south, down Wildman Street, when we cross over East Queen Street, we go into Rosemary Lane? A. Yes, sir.

Q. Rosemary Lane is the continuation of Wildman Street, going south after you pass over East Queen Street? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And Maiden Lane is to the east of Rosemary Lane? 10  
A. Yes, sir.

Q. And the big club that you don't know the name of, is at the corner of East Queen Street and Maiden Lane? A. Yes, sir.

Q. That is Silver City Club - Barclay's Silver City Club, upstairs and downstairs, nuh true? A. Yes, sir.

Q. Upstairs and downstairs place? A. Yes, sir.

HIS LORDSHIP: You agree it is Silver City Club? 20  
A. Yes, sir.

DEFENCE COUNSEL: Mr. Barclay's Silver City Club? A. Yes, sir.

Q. Now, around the spot where you say your friend fell, before you removed him, isn't there a bar one side of the lane and a shop on the other side? A. No, sir.

Q. On that part of the lane, between Laws Street and Barry Street, there is a bar on one side and a shop on the other side of the lane? 30  
A. Yes, sir; that is not where he drop though you know, sir - on the street.

HIS LORDSHIP: The question you asked was where the deceased fell ...

DEFENCE COUNSEL: Yes, M'lord.

HIS LORDSHIP: Whether there was a bar on one side..?

DEFENCE COUNSEL: ... of the lane and a shop on the other side?

HIS LORDSHIP: Of which lane?

DEFENCE COUNSEL: Same lane M'lord, that he is lying in. I don't mean they are directly opposite one another but going down the lane from Laws to Barry Street on Rosemary Lane you have a bar on the left-hand side and a shop on the right-hand side.

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10 HIS LORDSHIP: That is not the question, the question is whether the deceased fell there.

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DEFENCE COUNSEL: I am sorry if you got the wrong impression, but he understands, M'lord.

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HIS LORDSHIP: I want to know what the question is.

20 DEFENCE COUNSEL: May I rephrase it, M'lord, to make it clear. Going down Rosemary Lane from Laws Street to Barry Street, is there a bar on the left-hand side and a shop on the right-hand side? A. Yes, sir.

HIS LORDSHIP: Going down Rosemary Lane to where?

DEFENCE COUNSEL: From Laws Street to Barry Street? A. There is a bar on one side and a shop on the other.

Q. Is that correct? A. Yes, sir.

Q. Now that particular night there was a black-out due to power cut with the Public Service Company? A. Yes, sir.

30 Q. All the girls and males that you have told us about in your evidence are dark-skinned people like you and I, is that correct? You did not have any white people mixed up in that crowd? A. No white people.

Q. And the lane was dark? A. Yes, sir.

Q. And what you say you saw happen to your friend, happened in the dark lane? A. Yes, sir.

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examination

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(continued)

Q. And your friend Fearon or Shearer is also dark-skinned like you and I? A. Yes, sir.

Q. So is the accused? A. Yes, sir.

Q. And will you agree with me that it is difficult to see us in the darkness? A. Sir?

Q. It is difficult to see a dark-skinned person in the dark? A. It depends on how far the person is.

Q. Let me take that answer.

HIS LORDSHIP: What is the question, it is difficult to see or difficult to make out? 10

DEFENCE COUNSEL: Difficult to see - s-e-e - a dark-skinned person in the darkness and he says it depends upon the distance.

(To witness): Now how far were you from the deceased when you say you heard the sound? A. About two yards.

HIS LORDSHIP: Which sound you mean, the sound like a coconut?

DEFENCE COUNSEL: That is the only sound he referred to, M'lord. 20

HIS LORDSHIP: Mr. Brown you are the one cross-examining, so if I ask you a question, if you don't mind, answer the question.

DEFENCE COUNSEL: That is what I did M'lord.

HIS LORDSHIP: Don't make any comments. What sound you are talking about, the sound like the coconut?

DEFENCE COUNSEL: Yes, M'lord.

(To witness): Is it only one sound you heard before your friend fell? A. Yes, sir. 30

Q. It did not sound like two cutlasses buck-up? A. No, sir.

Q. Certain? A. Yes, sir.

Q. You know the difference between a bill  
machete and a sow machete? A. No, sir.

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HIS LORDSHIP: You don't know the difference?  
A. No, sir.

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Q. You know the short bulldog mouth machete  
they use to cut coconuts on coconut carts?  
A. Yes, sir.

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10 Q. And will you agree with me that that is  
the type of machete that you associate  
with chopping coconuts, that you see them  
use to chop coconuts? A. Yes, sir.

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Q. And that is the type of machete that you  
saw the deceased with that night - isn't  
that so? A. Not a short machete, a tall  
one, sir.

Q. The deceased had a tall one. Let me get  
that down.

(Crown Counsel speaks to Defence Counsel)

A. I thought you said the accused, sir.

20 Q. You thought what? I speak very distinctly  
and my friend should not alert you either.

CROWN COUNSEL: Just a minute.

DEFENCE COUNSEL: Let's play this game fairly,  
you know it is a murder trial.

CROWN COUNSEL: I am on my feet.

DEFENCE COUNSEL: I sit.

CROWN COUNSEL: With due respect to my learned  
friend, he deliberately put a false suggestion  
to the witness.

30 DEFENCE COUNSEL: I object to that, any aspersion  
against my integrity I object to.

HIS LORDSHIP: Both of you will not stand at the  
same time. Please sit down and when he is  
finished you can answer.

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CROWN COUNSEL: What my learned friend said to the witness is that is the type of machete you said you saw the deceased with at that time.

HIS LORDSHIP: I will find out from the notes.

(Notes read back by Shorthand Writer)

DEFENCE COUNSEL: M'lord...

HIS LORDSHIP: Just wait please.

(To witness): Did you see the deceased with any machete that night? A. No, sir.

HIS LORDSHIP: ....whether short or long machete?  
A. No, sir.

10

DEFENCE COUNSEL: Before I proceed, I demand an apology unequivocally from my colleague. He made a dastardly unfair and unethical attack, and as a barrister-at-law I will not stand and allow my conduct to be impeached. The Shorthand/writer read back that I never put it to the witness that he had said in evidence that he saw it. I said to him: isn't that the thing that you saw and I ask Your Lordship to protect my integrity.

20

HIS LORDSHIP: You are quite able to protect yourself.

DEFENCE COUNSEL: I seek your protection for the records.

HIS LORDSHIP: Continue your cross-examination.

DEFENCE COUNSEL: Your Lordship sees nothing wrong with misbehaviour?

HIS LORDSHIP: Continue with your cross-examination if you don't mind.

30

DEFENCE COUNSEL: I do mind for my integrity comes first.

HIS LORDSHIP: By the time the case is finished you will vindicate yourself.



DEFENCE COUNSEL: My friend cannot be allowed to do as he likes. If I did you would rap me over the knuckles, M'lord. In the Home Circuit Court

(To Crown Counsel): Don't try it again please, since I have to protect myself. Prosecution Evidence

HIS LORDSHIP: That is part of your protection? No.3

DEFENCE COUNSEL: I do not like to be unforensic- my friend knows better behaviour than that, but he must not do me that, Anthony Wilson Cross-examination

10 HIS LORDSHIP: Mr. Brown .... 27th January 1969 (continued)

DEFENCE COUNSEL: I do not like it.

HIS LORDSHIP: When I am speaking will you keep quiet?

DEFENCE COUNSEL: I will try...

HIS LORDSHIP: Not try, you must do it.

DEFENCE COUNSEL: I will succeed, M'lord, if I try. I am succeeding now, M'lord

20 HIS LORDSHIP: I will pass on a little of my experience down there. For years I was down there and what has passed between both of you is very mild to my time. Continue.

DEFENCE COUNSEL: Now, Mr. Wilson, try to be honest with me...

HIS LORDSHIP: Don't make comments please. If you want to make a direct suggestion put it, but don't preface your questions with comments.

DEFENCE COUNSEL: Mr. Wilson, didn't you correctly hear me when I was asking you about the bill, coconut machete? A. Yes, sir.

30 Q. Didn't you correctly hear me? A. Yes, sir.

Q. And didn't you answer me honestly at first?

HIS LORDSHIP: Did he what?

DEFENCE COUNSEL: Didn't you answer me honestly at first? A. When you ask about the deceased I

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I did not correctly hear you, I thought you said 'accused'.

- Q. How many machetes did you see on that lane just before your friend fell? A. One.
- Q. Certain? A. Yes.
- Q. What kind of machete was that, long or short? A. Long machete.
- Q. Certain? A. Yes, sir.
- Q. Quite certain? A. Yes, sir.
- Q. But you ran down somebody - rather, put it this way: you chased somebody up Rosemary Lane on Laws Street and that type of thing? A. Yes, sir. 10
- Q. And you had a machete at that time? A. Yes, sir.
- Q. Short one? A. No, sir.
- Q. What type of machete you had? A. Long one, sir.
- Q. True, true, you are really speaking the truth man? Mr. Wilson, on the sacred bible are you speaking the truth when you say that? A. I went in the yard and came out with a long machete. 20
- Q. Listen to my question carefully. Are you speaking the truth and the whole truth when you say that you chased down somebody up Rosemary Lane, on Laws Street, up Maiden Lane with a long machete in your hand and not a short machete? A. Yes, sir.
- Q. Swear by Almighty God? A. Yes, sir. 30
- Q. Now whose yard did you take that machete out of, according to you? A. A fellow by the name of Aston, sir.
- Q. Aston? A. Yes, sir.
- Q. Is his yard on the same side of the lane as the bar? A. Yes, sir.

HIS LORDSHIP: Same side? A. Yes, sir.

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DEFENCE COUNSEL: As the bar? A. Yes, sir.

Q. And about two gates down from the bar?

A. No, sir.

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Q. How many gates down from the bar?

A. above the bar, coming down Rosemary  
Lane from Laws Street.

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Q. How many gates you passed before you got  
to his gate? A. You don't pass the bar  
before you reach to the gate.

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(continued)

Q. Next door then? A. No, sir, I reach the  
gate before I reach the bar, coming down  
Rosemary Lane.

Q. Then you reach his gate and how many gates  
you pass before you reach the bar - you  
don't understand me? A. Is about two  
gates from the bar, coming down Rosemary  
Lane.

Q. His gate is two gates ...

20 HIS LORDSHIP? He did not say two gates between  
but the distance is about two gates away?  
A. Yes, sir, two gates away, above the bar.

DEFENCE COUNSEL: Much obliged. Now this person  
you call Aston, would I by any chance be  
correct in saying that is the same person as  
Adrian Wilson? A. No, sir.

Q. You know Adrian Wilson's yard though? A. I  
don't know who name Adrian Wilson, sir.

30 Q. Mr. Anthony Wilson, are you seriously stating  
on oath and tell me you don't know who is  
Adrian Wilson? A. I don't know who is Adrian  
Wilson.

Q. Let me get that down. Did you give evidence  
on oath at the Preliminary Enquiry?

HIS LORDSHIP: Where is that?

DEFENCE COUNSEL: Held on the 9th September, 1968?  
A. Yes, sir.

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HIS LORDSHIP: Where is that? You should know by this, you have been practising for sometime - where is that means you are to direct me to the part of the deposition.

DEFENCE COUNSEL: Yes, M'lord.

HIS LORDSHIP: Well, please do.

DEFENCE COUNSEL: But, M'lord, if you just listen - I am not transgressing to contradict him by his evidence, M'lord.

HIS LORDSHIP: Why are you asking about the Preliminary Enquiry?

10

DEFENCE COUNSEL: You will see in a minute and you will not have to correct me, M'lord, I am too well trained especially under your supervision.

(To witness): Did you see other witnesses come there and give evidence that same day you have given evidence? A. Yes, sir.

Q. Did you see another man go in the witness box, just like you, bearing the name of Adrian Wilson and give evidence in this same case?  
A. I don't remember, sir.

20

Q. You don't remember? Is it the first time in your life you are hearing the name Adrian Wilson?  
A. Not the first time I hear the name.

Q. You know the man, too. A. No, I don't know the man.

Q. But you hear the name? A. Yes, sir.

HIS LORDSHIP: You don't know the man Adrian Wilson?

DEFENCE COUNSEL: But he knows the name M'lord. Tell me something - you told His Lordship just before we went for lunch today, that you know Sonia for about a year? A. Yes, sir.

30

A. That is true? A. Yes, sir.

Q. But that you did not know the girl to whom your friend was speaking when Sonia came up and curse him? A. No, sir.

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Q. Is that true? A. Yes, I don't know the girl.

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Q. But didn't you give evidence earlier on this morning that your friend was near the corner of Laws Street and Rosemary Lane in a row with two girls? A. Yes, sir.

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Q. Was it two girls or one girl? A. Two girls.

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Q. Do you know either of the two girls? A. No, sir.

Q. Sure? A. Sure.

Q. Be careful you know.

HIS LORDSHIP: Don't threaten the witness Mr. Brown.

DEFENCE COUNSEL: Just warning him, M'lord.

20

HIS LORDSHIP: Just ask the question and hear his answer. I don't know where you pick up this from, this style of cross-examination.

DEFENCE COUNSEL: Queen's Counsel, M'lord, and they were not corrected.

HIS LORDSHIP: Queen's Counsel?

DEFENCE COUNSEL: Of eminence.

30

HIS LORDSHIP: Well don't bring it inside here, just put the question, listen to the answer and so forth.

DEFENCE COUNSEL: Much obliged, M'lord.

Now tell me something ....

HIS LORDSHIP: Just wait please.

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(To witness): You say the deceased was speaking to two girls and none of these you know? A. Yes, sir.

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DEFENCE COUNSEL: Look in the court now, if you see any of the two girls - take a good look this way.

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HIS LORDSHIP: Take a good look where?

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DEFENCE COUNSEL: He knows where to look M'lord - this way take a good look. You see any of the girls in court today of those two girls?

10

HIS LORDSHIP: You mean among the people sitting in court or those at the back of the room?

DEFENCE COUNSEL: Here, M'lord, I am confining it to here - in the well of the court, I make it abundantly clear, he knows what I am speaking about. Take a good look Mr. Anthony Wilson. You smile? Smile on and then answer me.

HIS LORDSHIP: Any of the girls? ..

DEFENCE COUNSEL: Of the two girls, M'lord.

(To witness): Do you? A. Yes, sir.

20

Q. Point her out. A. That one. (Points).

HIS LORDSHIP: No, no, no. You see one?  
A. Yes, sir.

DEFENCE COUNSEL: You know her name? A. No, sir.

Q. You know who she is connected to? A. No, sir.

Q. You know a girl by the name of Pamela Evans?  
A. No, sir.

Q. You don't know Pamela Evans? A. No.

HIS LORDSHIP: Pamela who?

DEFENCE COUNSEL: Pamela Evans who lives on Rosemary Lane? A. No, sir.

30

Q. Mr. Anthony Wilson, let me see if I can assist you then. Pamela Evans lives in the same

yard where you say you went for the cutlass to chase down the person who ran up the lane - see if that refreshes your memory. A. No.

Q. You can remember now? A. I don't refresh, I don't know nobody name Pamela Evans.

HIS LORDSHIP: You don't know Pamela Evans?  
A. No, sir.

10 DEFENCE COUNSEL: But you heard your friend in one row with two girls? A. What sir?

Q. First of all your friend was in one row with two girls? A. Yes, sir.

Q. One of whom you see in court now? A. Yes, sir.

Q. Then Sonia came up and one of the girls that was in the row was rowing with your friend because he had boxed and kicked her? A. I don't know if he box and kick her.

20 Q. That is what she was saying. A. I did not hear her say that, sir.

Q. You did not hear what the row was about?  
A. No, sir.

Q. Let me get that down. If that is the truth, Mr. Wilson, how do you explain what you told the court this morning that: I told him to stop the rowing and come along, if you did not hear what they were rowing about.

HIS LORDSHIP: Please don't answer that question.

30 DEFENCE COUNSEL: M'lord, please assist me.

HIS LORDSHIP: What is the question you are putting to him?

DEFENCE COUNSEL: It is the only way I can test his credit.

HIS LORDSHIP: Perhaps you have forgotten the evidence? He told the jury he stopped along Rosemary Lane and was speaking to somebody and

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in the meantime the deceased was riding his bicycle timely up Rosemary Lane and when he rode after the deceased he found the deceased speaking to these two women and they were rowing. The question you are asking is whether he knew what they were rowing about and he said No. What is wrong with that?

DEFENCE COUNSEL: M'lord, with respect the note I have here, I don't know if it is different, he already stopped near to the corner of Laws Street, he was speaking to two girls, there was a row. I tell him to stop the rowing....

10

HIS LORDSHIP: That does not mean he would know what the row was about Mr. Brown.

DEFENCE COUNSEL: I am asking if he heard what was the text of the row.

HIS LORDSHIP: And he said no.

(To witness): Do you know what the text was about? A. No, sir.

DEFENCE COUNSEL: You know what them was talking about that you call a row? What you hear them talking that you call a row? Let me see if I can get to the root of what you hear them talk that you call a row. A. If I saw?

20

DEFENCE COUNSEL: Not 'if' at all.

HIS LORDSHIP: Allow him to answer the question.

(To witness): What you saw that you called a row? A. They were gesturing, sir.

HIS LORDSHIP: Like what? A. Hold on and so.

30

DEFENCE COUNSEL: Mr. Wilson, you went to school?  
A. Yes, sir.

Q. When you say 'row' don't you mean talking and quarrelling? A. Yes, sir.

Q. You don't only mean moving of hand and everybody dumb? Talk the truth now. A. You want to hear the words?



Q. Yes, is the words I want to hear, talk them plain, slow. What were the words?

A. Well, Shearer say the girl was ....

Q. Say what? A. Say 'you too fasty'. She say 'is her own face' and him say .....

HIS LORDSHIP: Tell me something: Is this strictly the fact? That there was a row is one thing, the particulars of the row is this evidence?

10 DEFENCE COUNSEL: It goes to the issue, M'lord.

HIS LORDSHIP: Which issue? Was the accused man there when this row was going on? Was the accused there? A. No, sir.

HIS LORDSHIP: I am not going to allow any more of this detail.

20 DEFENCE COUNSEL: Anyhow, what you heard that you call a row contained words like what you started to tell us and not just moving of hands and everybody shut up 'pam' - them a talk and move hands? A. Yes, sir.

Q. Like botheration going on? A. Yes, sir, if is a row it must be botheration.

Q. You know what them call 'bangarang'? A. No.

Q. Well, now, by the way, Fearon was in the Max Gang? A. I don't know of that, sir.

30 Q. But you know of the Max Gang? A. I know of the Max Gang but I don't know if he was in the Max Gang, sir.

Q. But you are Deputy Leader of the Max Gang? A. No, sir.

Q. You are next in command of the Max Gang? A. No, sir.

HIS LORDSHIP: Are you a member of the Max Gang? A. No, sir.

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DEFENCE COUNSEL: That is not my question,  
M'lord.

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HIS LORDSHIP: That is the way you should put  
it and depending on that answer you ask  
whether he is an officer in it.

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DEFENCE COUNSEL: As you please, M'lord.

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HIS LORDSHIP: I hope when the case is finished  
you will have learned something.

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DEFENCE COUNSEL: I will have learnt something,  
M'lord.

10

HIS LORDSHIP: We will stop there now. Come back  
tomorrow at 10.00 o'clock.

Mr. Foreman and Members of the Jury we will  
will adjourn until 10.00 o'clock tomorrow  
and please remember the advice.

ADJOURNMENT TAKEN: 3.48 p.m.

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ANTHONY WILSON: SWORN: (RECALLED):

HIS LORDSHIP: Now, Mr. Wilson, it is now 22  
minutes to 11.00, why have you kept the court  
waiting so long?

20

A. I was waiting for my jacket, sir, and the  
renovator was not there.

DEFENCE COUNSEL: It is nice to see you in jacket  
this morning, why didn't you put it on  
yesterday?

HIS LORDSHIP: That is my province.

DEFENCE COUNSEL: Don't you feel better when you  
have on a tie, too?

HIS LORDSHIP: Don't answer that question.

DEFENCE COUNSEL: Now, tell mesomething: the  
answer you gave your Lordship is the correct  
answer?

30

HIS LORDSHIP: Don't answer that question.

Q. Wasn't it because of my cross-examination yesterday morning why you were afraid to come to court today? A. I saw a police and him say I must come inside.

Q. Did the police come for you yesterday.  
A. No.

10 Q. Now, tell me something, Mr. Wilson: you told us yesterday that when the accused asked one of his friends to give him the knife, at that time Fearon had the knife in his hand, is that correct? A. (No answer).

Q. That is before the boy passed down the Lane? A. No, sir, I didn't say that.

HIS LORDSHIP: That was not how the evidence was given yesterday, Mr. Brown

20 DEFENCE COUNSEL: I refer to my notes, Mi Lord, and I have the witness saying, "I didn't see Ferron kick anyone, and it look like Boyd was going to fight the accused".

Q. Do you remember saying that to the other gentleman in the wig here? A. (No answer).

Q. Look man, if you do not look how will you be able to know to which gentleman I refer?

Q. Are you afraid to answer? A. I don't remember, sir.

30 Q. Did you see accused murmur or hear him murmur at the time you saw your friend take the knife out of his pocket? A. I don't remember, sir.

Q. Do you remember giving evidence yesterday at all? A. Yes, sir.

Q. Do you remember anything you said yesterday at all? A. Yes, sir.

Q. Do you remember answering the questions that gentleman asked you? A. Yes, sir.

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Q. You remember saying Ferron took out a knife?  
A. Yes, sir, after him talk to Miss Gwen.

Q. Did you see the accused with a knife at all?  
A. No, sir.

HIS LORDSHIP: That is not what he said yesterday, Mr. Brown. What he said was this: "I did not see deceased kick anyone. I saw accused start to feel his pocket. I saw deceased taking a knife out of his pocket. Accused asked his friend for a knife but no one answered him. I saw accused and his friend walked down Rosemary Lane fast".

10

DEFENCE COUNSEL: You heard what his Lordship read a while ago? A. Yes, sir.

Q. Do you remember saying that yesterday? A. Yes, sir.

Q. So up to that time the boys walked away fast?  
A. Yes, sir.

Q. Did you see any knife in the hands of the boys including the accused? A. No, sir, I didn't see any knife in their hands.

20

Q. Now tell me something, and try to remember even though it has been a long time since this thing happened: Did you hear accused used these words to one of his friends? "Lend me a big knife, a ratchet knife". A. I don't remember that, sir.

HIS LORDSHIP: Let us be tidy.

DEFENCE COUNSEL: Anything you say I will do, Mi Lord.

30

DEFENCE COUNSEL: Did not accused used these words when Ferron took out his knife, "lend me a big knife, a ratchet knife". That was when the accused saw Shearer's knife he asked someone to lend him a knife, a big knife, a ratchet knife? A. I didn't hear him say big knife or ratchet knife; him start to feel his pocket like this, and Ferron believe he was going to take out a knife.

- Q. You cannot tell how a person feels. Anyway all that happened in the darkness? I was near to him, sir.
- Q. How near were you to him? A. About 2 feet, sir.
- Q. Point out the distance, will you? A. Like from where I am to just here, sir.
- Q. So if you were to stretch your hand out you would touch him? A. Yes, sir.
- 10 Q. The deceased and the accused are about the same height? A. Yes, sir, about the same height.
- Q. You are about the same height as the two of them? A. No, sir, I am taller than the two of them.
- Q. Did you have a knife on you that night? A. No, sir.
- 20 Q. I am putting it to you, Mr. Wilson, that the moment accused asked his friend about a knife right away you and Ferron rode off fast down Rosemary Lane? A. No, sir.
- Q. Not true? A. No, sir.
- HIS LORDSHIP: You are asking two questions at the same time, Mr. Brown. It seems that some counsel want to go back to school, because when the judge tries to explain it does not mean anything.
- HIS LORDSHIP: Did you ride fast down Rosemary Lane? A. Yes, sir, after the boys leave.
- 30 Q. What do you mean by saying after the boys leave? A. Because he asked me if I ride away fast with Ferron.
- Q. Did you ride down Rosemary Lane after the fellow died? A. Yes, sir.
- DEFENCE COUNSEL: Were you speaking the truth when you told his Lordship a while ago that you rode down Rosemary Lane fast after the boys left? No, sir.

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Q. Does Ferron live with his mother at 8 Ladd Lane? A. Yes, sir.

Q. Is it true that after both of you rode down Rosemary Lane you both went to 8 Ladd Lane? A. No, that is not true.

Q. Ferron alone rode to 8 Ladd Lane? A. No, sir.

Q. Was Ferron's mother at home? A. I don't know.

Q. Now, Mr. Wilson, did you hear your friend, Ferron, use these words to the accused before both of you rode off down Rosemary Lane, "I am going for a cutlass for you, I am going to get something bigger than a knife". A. No, sir.

10

Q. You didn't hear Ferron say anything at all to the accused after he asked his friend for a knife? A. No, sir.

Q. You are certain? A. (No answer).

Q. Do you know Adrian Wilson? A. No, sir.

Q. Was there a crowd of people out there that night? A. I didn't notice nobody only the group of boys.

20

CROWN COUNSEL: Mi Lord, I would like to know at what time he is talking.

HIS LORDSHIP: What time, Mr. Brown?

DEFENCE COUNSEL: Now that it comes from you, Mi Lord, I will answer. I am talking about the time when the pen knife was taken out by the deceased and in his hand.

HIS LORDSHIP: As far as I remember, he told the Jury that a knife was taken out but he did not see whether it was a ratchet knife, a kitchen knife or what sort of knife, or even pen knife, then.

30

DEFENCE COUNSEL: Sorry mi Lord, I only mean a knife.

HIS LORDSHIP: So your question, Mr. Brown, is if at the time he had the knife if there was a crowd there?

WITNESS: No, sir, only the group of boys.

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DEFENCE COUNSEL: Now, Mr. Wilson, think clearly and try your best to remember because it is a long time now since this thing happened; was there or were there girls present at the time? A. No, sir.

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Q. Now, you say Ferron and you only rode down Barry Street and Rosemary Lane corner and stopped there? A. Yes, sir.

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10 Q. Why did you stop there? A. To enquire about a friend.

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Q. What friend? A. Winston Myers.

(continued)

Q. Is Winston Myers in the Max Gang as far as you know? A. I don't know, sir.

Q. But he might be though? A. (No answer).

HIS LORDSHIP: He says he doesn't know.

Q. Were you living at Rosemary Lane at the time? A. No, sir.

20 Q. You lived at George's Lane? A. Yes, sir, a little distance from Rosemary Lane.

30 Q. Now, Mr. Wilson can give the Jury and myself any good reason why Ferron and you were riding up and down Rosemary Lane that night considering Ferron lives at Ladd Lane and you live at George's Lane? Why were you both riding up and down Rosemary Lane that night, well early morning then, for the hour was about 1.00 a.m.? A. That day I saw Ferron and both of us was having lunch and we make an arrangement to go to the Ambassador Theatre that Monday night. Well afterwards he told me he was going out.

DEFENCE COUNSEL: Mi Lord, isn't that hearsay?

HIS LORDSHIP: No, this will go bona fide to his evidence.

DEFENCE COUNSEL: Yes? A. He said he was going out so I asked him where I would see him,

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and he said I must come to his yard at Ladd Lane and pick him up there. After I finish my business I go to George's Lane and about five minutes to 7.00 I left George's Lane.

HIS LORDSHIP: That is where you live? A. Yes, sir.

DEFENCE COUNSEL: Yes? A. I rode and go to his home at Ladd Lane and I wait a while for him. He then come, and while we were on the way to Ambassador I told him I would be stopping at Rosemary Lane to speak to my friend Winston.

10

Q. Did you at that time tell him the name of your friend? A. Yes, sir.

Q. What name you told him? A. Winston, sir.

Q. You told him the address? A. No, sir.

Q. Did you know the address? A. No, sir, not at that time but I know the yard.

Q. And that yard is between Barry Street and Laws Street on Rosemary Lane? A. Yes, sir.

Q. And about two gates above the bar? A. No, sir.

20

Q. Is that the same place he went for the machete?

HIS LORDSHIP: Just a minute. You asked the witness, Mr. Brown, why he was riding up and down Rosemary Lane that night, you don't want an answer?

DEFENCE COUNSEL: Yes, My Lord.

WITNESS: Well we continue up Ladd Lane and come up Rosemary Lane and I stop at Winston house by the fence. While I stop there the deceased was riding up and I ask a lady at the fence...

30

HIS LORDSHIP: You spoke to a lady? A. Yes, sir.

Q. And she told you something? A. Yes, sir.

DEFENCE COUNSEL: You said she told you something? A. I ask her for Winston, if Winston is inside.



Q. And she spoke to you? A. Yes, sir.

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Q. What happened after that? A. I rode off, sir.

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Evidence

Q. Yes? A. And after we rode off, sir, we went and meet the deceased near the intersection where the two girls run, and I tell the deceased to come along.

No.3

Q. Yes? A. And after that one of the girls left and walked down Rosemary Lane.

Anthony Wilson  
Cross-  
examination

10 Q. And Ferron and you rode down Rosemary Lane then? A. Yes, sir.

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(continued)

Q. Why did you go back to Rosemary Lane?  
A. Because the lady at Winston's yard told me that Winston was down at the corner so I went to check Winston.

HIS LORDSHIP: You had got information from the lady that Winston was at the corner? A. Yes, sir.

20 Q. Which corner? A. Rosemary Lane and Barry Street, sir.

DEFENCE COUNSEL: Mr. Wilson, everything you said a while ago is true? A. Yes, sir.

Q. And nothing but the truth? A. Yes, sir.

Q. Well if that is so, tell me this: do you agree with me that Barry Street is below where you talked with the lady? A. Yes, sir.

Q. So you rode towards Laws Street up Rosemary Lane. A. I went up.

30 Q. What time of the day was it that Ferron and you made arrangements to go to the Ambassador Theatre? A. About 1.00 o'clock, sir.

Q. So while Ferron and you were riding you told him you wanted to see your friend Winston?  
A. Yes, sir.

Q. So only you wanted to see Winston? A. It affected both of us, sir. What I wanted to see him about affected the two of us, sir.

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Anthony Wilson  
Cross-  
examination

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(continued)

Q. So Winston and you were going to get the girls?

HIS LORDSHIP: Just a minute: what does this question about girls got to do with it?

DEFENCE COUNSEL: It will go to his credit, Mi Lord.

HIS LORDSHIP: You want him to tell you what was the conversation between Winston and himself?

DEFENCE COUNSEL: Yes, mi Lord.

Q. What the girls had to do with your finding Winston? A. Because the deceased told him that I had some contraction with a girl. 10

Q. Only one girl? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Go back to what you said earlier on, and that is what you said the deceased told Winston. Winston told you that the deceased told him that you have some contraction with a girl? A. Yes, sir.

Q. Yes? A. And the deceased Ferron tell me that I should not ask Winston about it, and I surprise by Ferron by asking Winston about it. 20

Q. Both Winston and the deceased Ferron are your friends? A. Yes, sir.

Q. Then what time was this Show that Ferron and you were going was going to start? A. At 7.30, sir.

Q. And the arrangement for the meeting of Ferron and you was for 7.00 o'clock? A. Not exactly 7.00, sir, about 7.00.

Q. For you to go to the Ambassador Theatre as the Show started at 7.30? A. Yes, sir. 30

Q. And you left your home at George's Lane to Ladd Lane and to reach there at 7.00 o'clock? A. Yes, sir.

Q. But don't you think you would have been running late to arrive at Ladd Lane at 7.00, wait for

Ferron, leave Ladd Lane and stop to see Winston? A. Yes, sir, but I had already seen the first Show of that same picture.

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Q. Did Ferron say, "come on, its running late?" A. No, sir, and I did see the first Show already.

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Evidence

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Q. What was the name of the picture? A. Lilly of the Fields, sir.

Anthony Wilson  
Cross-  
examination

10 Q. What time the first show start? A. Between 7.30 and 7.45.

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(continued)

Q. What time the second show starts? A. I don't remember, sir.

Q. You never go to any of the second shows at the Ambassador Theatre? A. Yes, sir.

Q. Then how long the second show lasts? A. Time varies, sir.

Q. You have been to second shows at the Ambassador Theatre? A. Yes, sir.

20 Q. What time did the second show start the last time you went to a second show at the Ambassador Theatre? A. I don't know, sir.

Q. Is the Ambassador Theatre over on the West by Jones Town? A. Yes, sir.

Q. Is it the continuation of Asquith Street? A. Yes, sir.

Q. How far is it from Rosemary Lane? A. I don't know, sir.

Q. Is it a long ride to get there from your home? A. Yes, sir.

30 Q. About how long would it take you to ride from your home to there? A. About 15 minutes, sir.

Q. But you never reached the Ambassador Theatre that night? A. No, sir.

Q. After you left the hospital that night where did you go? A. I went home, sir.

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Anthony Wilson  
Cross-  
examination

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(continued)

- Q. What time did you go to the hospital? A. I never check the time, sir.
- Q. You don't drudge a watch? A. No, sir.
- Q. Do you agree with me that the Kingston Public Hospital is nearer Ambassador Theatre than Rosemary Lane to the Ambassador Theatre?  
A. I don't know, sir.
- Q. You gave evidence at the Preliminary Enquiry?  
A. Yes, sir.
- Q. And you sat in court and hear other people give evidence? A. I sat there a part of the time, sir. 10
- Q. You did not sit in court until the end of the case when you were told to attend Circuit Court? A. I was called up last, sir.
- Q. Are you saying on oath that you were the last witness to give evidence at the Preliminary Enquiry? A. I am not saying that, sir.
- Q. Do you agree with me that you were the second witness to give evidence? A. I don't remember, sir. 20
- Q. A lady gave evidence then you?

HIS LORDSHIP: As to what order he gave evidence or sat in court has any relevance?

DEFENCE COUNSEL: I was hoping you would not have embarrassed the Defence, Mi Lord, especially when I am dealing with a tricky as this. I want to hear from this witness what he heard in court, Mi Lord.

HIS LORDSHIP: That would be evidence in this case? 30

DEFENCE COUNSEL: Yes, Mi Lord, I have seen it done, and I will use all the strategy if I am allowed so to do.

HIS LORDSHIP: You will be allowed to use all the legitimate strategies by law and practice. It is my duty to see that the case is fairly conducted, fairly tried, and cut out all irrelevancies.

- Q. Now, you say when the deceased fellow was wounded you went up and looked at him and you saw that his head-back was cut. A. I did not say that, I say when I go and look at him I see blood and he was lying down on his headback.
- Q. You actually saw when he fell? A. Yes, sir.
- Q. Am I correct in saying the deceased went four steps back and then he fell backwards? A. No, sir.
- Q. How then? A. He was moving away from the person who was coming towards him, sir.
- Q. Was he moving away backway? A. No, sir, front way.
- Q. Where was the person who was coming towards him? A. In front of him.
- Q. Did you see Ferron's head? A. Yes, sir.
- Q. Did you actually see him get injured? A. I heard a sound and saw him drop.
- Q. You didn't see when the cutlass actually reach his head? A. No, sir.
- HIS LORDSHIP: You saw the cutlass coming down and sound like when they cut coconut? A. Yes, sir.
- Q. You saw that? A. Yes, sir.
- DEFENCE COUNSEL: At that time how far away were you from Ferron, about from where you are to where? A. About 2 yards, sir.
- Q. To where these two gentlemen are from you? A. Yes, sir.
- HIS LORDSHIP: About 18 to 20 feet? A. Yes, sir.
- DEFENCE COUNSEL: And a lot of people had gathered there? A. No, sir.
- Q. Just before or rather, just when you saw the machete go up in the air and come down, at that time about how many people were there? A. Two, sir.

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Evidence

No.3

Anthony Wilson  
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(continued)

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Evidence

No. 3

Anthony Wilson  
Cross-  
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(continued)

Q. Only two people were there? A. Yes, sir.

Q. Any girls? A. No, sir.

Q. Who were the two people there? A. The deceased and the accused.

Q. You were not there then? A. I was riding along, sir, and they were in a semi-circle.

Q. Will you describe this semi-circle of which you speak? A. I was riding, sir, and the deceased and the accused were going around like this (witness demonstrates). 10

Q. Was his face turned towards you? A. Who, sir?

Q. The person with the machete? A. Him face turn towards me.

Q. But people were in the Lane apart from you? A. I didn't observe them, sir.

Q. When this thing happened where were you? A. I was riding along, sir.

Q. While riding coming along did you pass anybody? A. I didn't see anybody, sir.

Q. Both Ferron and you rode up the Lane fast? A. No, sir. 20

Q. Not true? A. No, sir.

Q. Is not it the truth of the matter that when Ferron and you were riding Ferron had a bill machete that people use to chop coconuts? A. No, sir.

Q. What happened to Ferron's bicycle when he and deceased were moving in this semi-circle. A. Him drop him cycle, sir.

Q. When you first saw the deceased where did you see him? A. Him come from the shop, sir, and then him and Ferron start to move in a semi-circle? 30

Q. Yes, then what did Ferron do with his cycle? A. Him jump off the cycle, sir.

Q. Did he give the cycle to you? A. No, sir, it drop on the ground, I was not near to him.

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Q. How far away from you was he when he jumped off the cycle? A. It was about one and a half the distance from like where I am here to over there, sir.

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Evidence

No.3

10 Q. I am putting it to you that you were riding side by side with the deceased Ferron, and when you saw the accused you said to the deceased, "see him dey!"  
A. No, sir.

Anthony Wilson  
Cross-  
examination  
28th January  
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(continued)

Q. And I am also putting it to you that it was at that time the deceased backed off his bicycle and moved towards the accused with his bill machete?

20 HIS LORDSHIP: You have asked two questions in one. Put it to him that the deceased moved towards the accused with a bill machete, and what time. Cant you learn, Mr. Brown?

DEFENCE COUNSEL: No, Mi Lord, I am dumb.

Q. Now, Mr. Wilson, didn't you see the deceased lift his hand with the machete in it after the accused as if he was going to chop off his head? A. No, sir.

Q. At the time you say you heard a sound like somebody cutting coconut, did you see any coconuts around? A. No, sir.

30 Q. At the time you heard the sound like someone cutting coconut did you see the accused at all? A. I saw somebody but I didn't know if it was the accused.

Q. That question I will repeat: You see that gentleman over there, did you see that gentleman or anybody else when you heard the sound?

HIS LORDSHIP: The witness has already

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answered the question by saying "I saw somebody but I didn't know if it was the accused".

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Evidence

DEFENCE COUNSEL: Much obliged, Mi Lord, if you will have it that way.

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Anthony Wilson  
Cross-  
examination

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1969  
(continued)

Q. When you saw the machete lifted did you see the accused? A. It is the same answer, sir. I saw someone lift it, sir, but I don't know if it was the accused.

Q. Now, you went to the hospital with the deceased that night? A. Yes, sir. 10

Q. You took him in a taxi? A. Yes, sir.

Q. Did you take your machete with you? A. I throw it down, sir, and the taxi come same time.

Q. Why did you throw away the machete? A. I didn't have any further use for it, sir.

Q. You had no further use for the machete? A. No, sir. 20

Q. That was what you said a while ago? A. Yes, sir.

Q. But didn't you tell us yesterday that that was the machete you took out of your friend's kitchen? A. Yes, sir.

Q. The machete was not yours? A. No, sir.

Q. Did the machete have on blood on it before you threw it away? A. I didn't see any blood on it, sir. 30

Q. Did you look at it? A. Yes, sir.

Q. Any blood was on it? A. No, sir.

Q. If blood was even on it you were not going to tell us.



HIS LORDSHIP: Put it to him if he saw blood on it.

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WITNESS: No sir.

—  
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Evidence

DEFENCE COUNSEL: That machete you threw away, you took it out of Ferron's hand, the deceased, when he fell to the ground, and that is my case.  
A. (No answer).

No.3

Anthony Wilson  
Cross-  
examination

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(continued)

10 HIS LORDSHIP: Mr. Brown, that question involves two parts, you have forgotten your subordinate clause and your principal clause.

Q. Did you take any machete from the dead man's hand? A. No, sir.

Q. Did you take any machete from any man's hand? A. No, sir.

HIS LORDSHIP: That is the principal clause.

DEFENCE COUNSEL: Yes, Mi Lord, but that ruins my other question.

20 HIS LORDSHIP: Yes, but it is fair, and it is regrettable that you do not know how to conduct your case.

DEFENCE COUNSEL: Mr. Wilson, I am suggesting that you took the machete out of the hand of the deceased? A. No, sir.

30 Q. Then are you suggesting, Mr. Wilson, that you saw your friend wounded and you didn't look for the person who wounded him, and just go and look at your friend bleeding? A. I saw my friend bleeding from his headback and I saw a fellow going up the street with a machete walking slowly and saying, "that man had a machete and wounded that one".

Q. I am suggesting that you took the machete out of the dead man's hand?  
A. No, sir.

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Anthony Wilson  
Cross-  
examination  
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(continued)

- Q. Was it a bill machete? A. No, sir, a  
logger-head machete.
- Q. Did the police ask you for that machete?  
A. Yes, sir.
- Q. You gave it to them? A. No, sir, I throw it  
away.

- Q. Did you help them to find it? A. No, they  
didn't ask me to help them.

- Q. You know that your friend Ferron had a lot  
of money on him that night, £70 to be exact?  
A. I don't know, sir. 10

- Q. You didn't know that when he died he had £70  
in his pocket. A. No, sir.

HIS LORDSHIP: Did you know that? A. No, sir.

DEFENCE COUNSEL: Do you know what kind of  
work Ferron used to do up to the time of  
his death. A. Yes, sir.

- Q. What? A. Apprentice tailor, sir.

- Q. With whom did he work? A. I don't know,  
sir. 20

- Q. Your friend and you do not know with whom  
he was working? No, sir.

- Q. Where did you see him at around 1.00  
o'clock that day? A. I was in a bar at  
Asquith Street and I saw him ride passing, that  
is how I see him.

- Q. That is in Jones Town? A. Yes, sir.

- Q. That is where you do your shoemaking work?  
A. Yes, sir.

- Q. From what you know of the Max Gang, can  
you say if this gang frequents Rosemary  
Lane? A. I don't know, sir. 30

- Q. Do you know this gang? A. Yes, sir.

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—  
Prosecution  
Evidence

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Anthony Wilson  
Cross-  
examination

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(continued)

- Q. The people in this gang pick pockets?  
A. I don't know, sir.
- Q. Is it a bad gang? A. From what I hear.
- Q. Have you ever had any trouble with the Max Gang? A. No, sir.
- Q. From what you know of the Max Gang, does it operate in Rosemary Lane?  
A. I don't know where they operate, sir.
- 10 HIS LORDSHIP: The witness says what he knows of the Max Gang is what he has been told.
- Q. Have you ever had any encounter with the Max Gang? A. No, sir.
- DEFENCE COUNSEL: Then what you know of the Max Gang who told you? A. My girl-friend and other people.
- Q. What is the name of your girl-friend?  
A. Minette Bernard.
- 20 Q. I am suggesting to you, Mr. Wilson, that Ferron, the dead man, was the leader of the Max Gang, and you are the Deputy Leader. A. Your suggestion is wrong, sir.
- Q. And that your Max Gang consists of young boys and their girl-friends?  
A. I am not a member so I don't know.
- 30 Q. And that these boys and girls of the Max Gang from your knowledge, frequent Rosemary Lane and rob people there?  
A. I don't know of that, sir.
- Q. And I am suggesting that from your own knowledge the boys and girls of the Max Gang go up and down Rosemary Lane and pick people's pockets, rob people? A. I don't know, sir.

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(continued)

Q. You told us yesterday that when Sonia came and cursed Ferron, Ferron chased her?  
A. (No Answer).

Q. That is up by Laws Street and Rosemary Lane when the two girls had a row and Sonia came back and cursed Ferron, she used harsh words to Ferron and ran into a shop? A. She ran into a yard, sir.

Q. Didn't Sonia have on a beige turtleneck ganzie that night? A. I don't know, sir, I didn't take notice for I was trying to stop my friend from running her down. 10

Q. Was he vexed? A. I didn't notice, sir.

Q. Earlier on you said he was vexed, so you can't change your mind.

HIS LORDSHIP: When was that?

DEFENCE COUNSEL: In examination in chief, Mi Lord.

HIS LORDSHIP: Let me see...yes, that was where Sonia was running away and during that time he said the deceased was vexed. 20

DEFENCE COUNSEL: Thanks, Mi Lord.

Q. You don't remember what kind of clothes she was wearing? I mean the kind of clothes she was wearing then. A. No, sir.

Q. Perhaps you will forget that she went into the shop then? A. No, sir, I would remember that.

Q. When Ferron was running Sonia down and was vexed, did he have an open knife in his hand?  
A. I didn't see him with any knife, sir.

HIS LORDSHIP: You saw him with any knife?  
A. No, sir. 30

DEFENCE COUNSEL: You did not see him with a knife then? A. No, sir.

Q. But later on you saw him with a knife?  
A. Yes, sir.

Q. The accused didn't tell Ferron any harsh words before Ferron opened his knife.  
A. No, sir.

Q. But only asked the deceased why he had to box his girl-friend? A. Yes, sir.

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Q. You would not like anybody to box your girl-friend? A. No, sir.

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Evidence

Q. If that happened wouldn't you try to defend her? A. Yes, sir.

No.3

Q. Did you see Ferron cut up Sonia's ganzie that night? A. No, sir.

Anthony Wilson  
Cross-  
examination

10 Q. But you saw the running down of Sonia by Ferron from start to finish? A. Yes, sir.

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Q. So you should not miss seeing that Ferron used a knife and cut up Sonia's ganzie that night?

(continued)

HIS LORDSHIP: That is argument, next question.

Q. A crowd of people ran after Ferron? A. No, sir, I alone.

Q. Other people were there that could run after him? A. I didn't notice, sir.

20 Q. So only the three of you were there, the deceased, the accused and yourself? A. As far as I am concerned, sir.

Q. You told us yesterday that when you got up to Maiden Lane near East Queen Street you saw a light from a club, and you said it was Bartley's Silver City Club? A. Yes, sir.

Q. What kind of light? A. I don't know what kind of light, sir.

Q. But you recall telling me yesterday that some clubs are usually very well lit up? A. Yes, sir.

30 Q. When you say that some clubs are usually well lit up is not what people tell you, in other words not gossip? A. No, sir.

Q. It is what you take your eyes and see? A. Yes, sir.

Q. That night when you were running and saw the light in the club, what kind of light it was? A. The light was not so bright, sir.

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Anthony Wilson  
Cross-  
examination

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(continued)

Q. I am asking you what kind of light, whether electric, kerosene or candle. I mean the same club you say you ran through? A. I never notice what kind of light, sir, I just run through.

Q. I am talking about the night, the same night of the incident when you say you were running down the person who wounded your friend and you say you ran through a club? A. Yes, sir, I didn't notice what kind of light. 10

Q. You were the only person that was running after the person? A. Yes, sir.

W. Are you a brave person? A. Yes, sir.

Q. Then why did you stop running the person after the person turned up Wildman Street? A. When him turned up Wildman Street I see a car come down and I had to go around the car and by that time the person ran and it was very dark and I couldn't see so I didn't see the purpose to continue. 20

Q. So when you got to Wildman Street you decided to turn back? A. Yes, sir.

Q. You said you recognised two girls in court yesterday? A. Yes, sir.

Q. You know their names? A. No, sir.

Q. You see them in court today? A. No, sir.

(DEFENCE COUNSEL SITS)

CROWN COUNSEL (MR. GORDON) No re-examination Mi Lord.

HIS LORDSHIP: Why did you go in this yard? A. I saw the person walking away with a machete, sir, I didn't have anything on me, so the next place I could find a weapon is in the yard, sir. 30

Q. That is your answer? A. Yes, sir.

Q. Why did you run after him with the machete? A. I run to catch him, sir, and when I catch him if him attack me I would chop him, sir.

(WITNESS WITHDRAWS)

IVY HANLON CALLED - NO ANSWER

NO. 4  
HYACINTH BRADFORD

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Prosecution  
Evidence

HYACINTH BRADFORD: SWORN: EXAMINED BY MR. ROBINSON

No. 4

Q. Is your name Hyacinth Bradford? A. Yes, sir.

Q. What is your occupation? A. Fish vendor, sir.

Q. Where do you live? A. 8 Ladd Lane, sir.

Q. On the 10th July, 1968, at about 10.00 a.m., did you attend at the Kingston Public Hospital?  
A. Yes, sir.

Hyacinth  
Bradford  
Examination  
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10 Q. Did you go to the Morgue there? A. Yes, sir.

Q. Did you then identify the body of....

DEFENCE COUNSEL: I wish my learned friend would not lead the witness.

HIS LORDSHIP: I do not agree with you, Mr. Brown.

CROWN COUNSEL (Mr. Robinson):

Q. Did you at the Morgue identify a body? A. Yes, sir.

Q. Whose body did you identify? A. The body of Orville Ferron.

20 Q. Did he have any other name? A. We call him Shearer, sir.

HIS LORDSHIP: Where the deceased used to live?

A. At 8 Ladd Lane, sir.

Q. Same place where you live? A. Yes, sir.

CROWN COUNSEL: How long since you have known him?  
A. From he was a child, sir, he was to call me aunt.

(CROWN COUNSEL SITS)

HIS LORDSHIP: Any questions, Mr. Brown?

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No. 4

Hyacinth  
Bradford:

Cross-  
Examination

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DEFENCE COUNSEL: I am in a peculiar position, My Lord, as my learned friend anticipated me a while ago when I made the objection.

HIS LORDSHIP: Is that so? Proceed, Mr. Brown.

DEFENCE COUNSEL CROSS-EXAMINES:

Q. Lady, you said you identified the body at the Morgue on the 10th July, 1968? A. Yes, sir.

Q. As the body of Orville Fearon? A. Yes, sir, otherwise called 'Shearer'.

Q. But you did not know when the person died? I mean the body you identified, you did not know when the person died? A. No, for I was not there.

10

HIS LORDSHIP: You were not there when he drew the last breath? A. No, sir.

DEFENCE COUNSEL: All you did was to go and look at the body at the Morgue? A. Yes, sir.

Q. And you recognised the body to be the person who bears the name of Orville Ferron? A. Yes, sir, Orville Fearon.

20

(DEFENCE COUNSEL SITS)

CROWN COUNSEL (Mr. Robinson): No questions, My Lord.

HIS LORDSHIP: When you identified the body was anybody there? A. Yes, sir.

Q. Who? A. The doctor, sir, and a next gentleman working there.

Q. Where was the body? A. The body was on a table, and they take off the cover from over the face and ask me if I know the man, and I said yes it is Orville Fearon.

30

(WITNESS WITHDRAWS)

No.4A

Ivy Hanlon  
Examination

NO. 4A  
IVY HANLON

IVY HANLON: SWORN: EXAMINED BY CROWN COUNSEL (Mr.Gordon):

Q. What is your name? A. Ivy Hanlon.



- Q. Are you a fish vendor? A. Yes, sir.
- Q. Do you live at 8 Ladd Lane in Kingston?  
A. Yes, sir.
- Q. Did you know one Orville Fearon? A. Yes,  
sir.
- Q. Was he related to you? A. Yes, sir.
- Q. What relation? A. My child, sir.
- Q. On the night of the 8th July, 1968, did  
you hear something? A. Yes, sir.
- 10 Q. Did you go to the Kingston Public Hospital?  
A. Yes, sir.
- Q. The following day you returned to the  
hospital? A. Yes, sir.
- Q. Did you see anything there? A. Yes, sir.
- Q. What you saw? A. I saw Orville Fearon,  
sir.
- Q. Was he dead or alive when you saw him?  
A. He was dead, sir.

(CROWN COUNSEL SITS)

20 HIS LORDSHIP: Any questions?

DEFENCE COUNSEL CROSS-EXAMINES:

- Q. How old was your son? A. He was 17 on the  
12th of June, sir.
- Q. A young lad? A. Yes, sir.
- Q. He was 17 on the 12th June, last year?  
A. Yes, sir.
- Q. What kind of work he did up to the time of  
his death? A. He used to learn shoemaking,  
sir.
- 30 Q. You are sure? A. Yes, sir.
- Q. With whom he was learning this trade?

In the Home  
Circuit Court

Prosecution  
Evidence

No. 4A

Ivy Hanlon  
Examination

28th January  
1969

(continued)

Cross-  
Examination

In the Home  
Circuit Court

Prosecution  
Evidence

No. 4A

Ivy Hanlon

Cross-  
Examination

28th January  
1969

(continued)

A. With my husband, Albert Hanlon, sir.

Q. Where your husband used to teach him  
shoemaking? A. Old Harbour, sir.

Q. Then he used to go to Old Harbour every day?  
A. No, my husband died on the 13th of June,  
1968.

Q. So what your son did after your husband died?  
A. I was responsible for him, sir.

Q. He didn't work? A. No, sir.

Q. Have you ever put him out to learn tailoring at  
any time? A. Tailoring? 10

Q. Yes, tailoring? A. No, sir, shoemaking.

Q. Was Anthony Wilson a good friend of your son?  
A. Yes, sir.

Q. Did you approve of the friendship between  
Anthony Wilson and your son Orville Fearon?  
A. I don't know what to say.

Q. You didn't like your boy to move with Anthony  
Wilson or to be friendly with him?  
A. (No answer) 20

Q. Lady, I can see from your action that your heart  
is full when I asked you about the friendly  
relationship that existed between Anthony Wilson  
and your son Orville Fearon?

HIS LORDSHIP: Mr. Brown, please don't be dishonest.  
I think I will adjourn at this time, and I think  
I will report your conduct to the Bar Association.  
Mr. Foreman and Members of the Jury, I will now  
take the luncheon adjournment, and please do not  
discuss this case with anyone, and neither should  
you allow anyone to approach you about it. 30

Court adjourned  
12.46 p.m.

Court resumed: 2.08 p.m. - Jury roll-call answered  
- all present

IVY HANLON STILL ON OATH: CROSS-EXAMINATION  
CONTINUED

In the Home  
 Circuit Court

Prosecution  
 Evidence

No.4A

Ivy Hanlon

Cross-  
 Examination

28th January  
 1969

(continued)

- Q. Lady, were you given the clothes your son was wearing when he died? A. Yes, sir.
- Q. That included his shoes? A. Shoes, shirt, merino, underpants.
- Q. What about pants? A. I didn't get any pants.
- Q. Did you get any money from the hospital with the clothes? A. Yes, sir, I got £4.4.6.
- 10 Q. That is all you got back? A. Yes, sir.
- Q. Was it his money? A. No, sir, it was money for fish I left out and I sent him to collect it.
- Q. From who, lady? A. From several people that I left fish with, I would not be able to remember everybody name now. The people are my customers, and I sent him to collect the money from them.
- Q. When you sent him you gave him a list? A. Yes, sir.
- Q. Of names: A. No, sir.
- 20 Q. A list of what? A. The money, sir.
- Q. You gave him a list of the money owing but no names? A. Yes, sir.
- Q. Then how would he know to whom he should go for the money? A. I direct him.
- Q. Then all the people to whom you sent him live in Rosemary Lane? A. No, none of my customers live in Rosemary Lane.
- 30 Q. What time of the day or night did you send him to collect these monies? A. At half-past 5.00 in the evening.
- Q. When next did you see him again? A. I didn't see him again until the Tuesday morning.
- Q. Then when you sent him with the list of monies to be collected were you at home? A. Yes, but I

In the Home  
Circuit Court

Prosecution  
Evidence

No. 4A

Ivy Hanlon

Cross-  
Examination

28th January  
1969

(continued)

left home same as I give him the list.

- Q. When did you get back to your home at 8 Ladd Lane that evening? A. I didn't check.
- Q. Before dark? A. Well it was blackout time, and I went to Pink Lane when the darkness of the night come down, and I remain there until the light come on back.
- Q. For how long did the blackout last? A. I have no idea.
- Q. Perhaps you can help me with this: what time of the night did you leave Pink Lane? A. About half-past 8.00. 10
- Q. And about what time you got home? A. I cannot tell you that.
- Q. In other words, I am not trying to trick you, lady, I just want to find out what time you got home? A. I don't know.
- Q. Did you leave Pink Lane for your home? A. Yes.
- Q. Did you stop anywhere? A. I stop at East Queen Street and I get some information. 20
- Q. And because of the information you went to the Kingston Public Hospital? A. Yes, sir.
- Q. Your son used to ride a bicycle? A. Yes, sir.
- Q. And Anthony Wilson used to ride a bicycle as well? A. I am not sure.
- Q. You don't seem to like when I call the name of Anthony Wilson? A. It doesn't matter.
- Q. Do you know whether Anthony Wilson used to ride a bicycle? A. I don't know, sir.
- Q. You know him though? A. Yes, sir. 30
- Q. And he used to visit your home to see your son? A. Yes, sir.
- Q. But you don't know if he used to ride or walk? A. I don't know.

Q. But you were not approved of the relationship between Anthony Wilson and your son?

In the Home  
Circuit Court

HIS LORDSHIP: Please don't answer that question. You are going back, Mr. Brown.

Prosecution  
Evidence

DEFENCE COUNSEL: Do you know the Max Gang, lady?  
A. No.

No.4A

Q. Don't get so cross. A. I am not getting cross.

Ivy Hanlon

Q. Do you know of the Max Gang? A. No.

Cross-  
Examination

10 Q. But you don't mind my asking you about the Max Gang? A. No.

28th January  
1969

Q. You know a bill machete? A. Yes.

(continued)

Q. That is the one they use to chop coconuts?  
A. Yes.

Q. And you also know a long machete they call 'sow'?  
A. Yes.

Q. You used to own a bill machete? A. I don't sell slice fish so I am not entitle for one.

Q. What kind of fish do you sell? A. Sprat a mackaback.

20 Q. You don't sell big fish? A. I sell fish.

Q. Are you a fish vendor? A. Yes.

Q. Then you don't use a bill machete to slice fish for cutlet? A. Only those vendors that use it to slice fish.

Q. But you don't sell sliced fish? A. No.

Q. You are a small fish vendor and only sell sprat and mackaback? A. Yes.

Q. You use a small knife to cut out the gizzard?  
A. Yes, sir.

30 Q. But at home in your kitchen you use a machete?  
A. No, sir.

Q. You have been doing nicely, help me out. A. No, sir, I don't use a machete.

In the Home  
Circuit Court

Prosecution  
Evidence

No. 4A

Ivy Hanlon

Cross-  
Examination

28th January  
1969

(continued)

Q. On the 8th of July, last year, didn't you have a bill machete in your yard? A. No, sir, I don't have any.

Q. Well have you ever seen a bill machete in your yard the whole of last year? A. No, sir.

Q. Is that the truth? A. Yes, sir.

Q. The whole truth? A. Yes, sir.

Q. And nothing but the truth? A. Yes, sir.

Q. Your son, especially during last year, he ever carried an open knife? A. I don't know nothing about that. 10

Q. You have never seen him with an open knife? A. No, sir.

Q. But you use a knife in your fish industry? A. Yes, sir.

Q. Is it a ratchet knife? A. No, sir, ordinary 1/- knife.

Q. It can open and shut? A. No, sir.

Q. Is it a kitchen knife with a handle? A. Yes, sir. 20

Q. It can shut? A. No, sir.

Q. It can't close? A. No, sir.

Q. But you know what a switch blade knife looks like though? A. Yes, sir.

Q. You ever see your son with one? A. No, sir.

Q. You ever see Anthony Wilson with one? A. I never see him when him come there for I don't go where they are.

Q. Your son was fond of going to pictures? A. Yes, sir. 30

Q. What was his favourite theatre when he goes to pictures? A. Ward Theatre, sir.

Q. You love go to show too? A. No, sir, me too

old to go show.

In the Home  
Circuit Court

Q. You ever know your son to go to show at the  
Ambassador Theatre in Jones Town? A. No, sir.

Prosecution  
Evidence

Q. Now, lady, if you cannot answer this question  
don't try to do so as it affects your son: to  
your knowledge your son during the last year of  
his life ever got mixed up with the Max Gang?  
A. I don't know nothing about that, sir.

No. 4A

Ivy Hanlon

10 Q. Your son never worked for the whole of 1968?  
A. I was responsible for him.

Cross-  
Examination

Q. He ever worked for the whole of 1968? A. No,  
he was not working.

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1969

Q. He dressed very tidily? A. Yes, sir.

(continued)

Q. Since you were responsible for him, how much per  
week you used to give him as he was not working?  
A. I don't give him any certain amount because I  
am daily working woman.

20 Q. I am not asking you that, that is about you  
working daily, what I am asking you is how much  
in fact you always give him per week? A. I  
used to give him money daily, and suppose I have  
2/- I give him, and suppose I have 5/- I give him.

Q. You ever give him any money, lady? A. Yes, sir.

Q. What is the biggest amount of money you gave him  
during last year? A. 10/-, sir.

Q. You said he had a bicycle? A. Yes, sir.

Q. He bought his bicycle? A. I bought it.

Q. When? A. I don't remember the date.

Q. What year? A. 1967.

30 Q. Before your husband died? A. Yes, sir.

Q. About how long was your son learning the shoe-  
making trade with your husband? A. About three  
years, sir.

Q. So by the time your husband died your son was a

In the Home  
Circuit Court

Prosecution  
Evidence

No. 4A

Ivy Hanlon

Cross-  
Examination

28th January  
1969

(continued)

good shoemaker? A. Not so good.

Q. He can put on shoe bottom and so on? A. Yes, for him have tools.

Q. Do you know for what reason why your son did not work for the whole of 1968? A. Well, you see, I would have to give him the money to buy material, and I was unable to find the money to give him to buy it.

Q. What kind of materials, lady? A. Leather and other things to work on shoes. 10

Q. Some people use a long needle and you would just buy the twine and wax, and the whole of that would not come up to £1? A. Yes, sir.

HIS LORDSHIP: That is argument, Mr. Brown, you are arguing with the witness.

DEFENCE COUNSEL: I am much obliged, Mi Lord.

Q. Your son has ever suggested to you, lady, that he would like to start the shoemaking trade on his own after your husband died? A. Yes, sir.

Q. Why did you take so long to answer the question, and why did you shake your head? 20

HIS LORDSHIP: Don't answer that question, that is argument.

DEFENCE COUNSEL: Lady, before you answered did you shake your head?

HIS LORDSHIP: Don't answer that question, next question.

DEFENCE COUNSEL: Isn't it the truth of the matter, lady, if I am allowed to ask you this question, and that is, did your son make any effort to do any honest work, any honest labour on his own part? A. I mind him. 30

Q: He never tried to work? A. I mind him.

HIS LORDSHIP: Now, stop that, both of you, next question.



DEFENCE COUNSEL: Lady, will you answer my question?

HIS LORDSHIP: I thought my remarks this morning sank into you?

DEFENCE COUNSEL: Yes, Mi Lord, and I am chagrined.

Q. Lady, are you speaking the truth?

HIS LORDSHIP: Don't answer that question, that is a matter for the jury.

DEFENCE COUNSEL: Do you know anybody by the name of Winston? A. No, sir.

10 Q. You know Adrian Wilson who lives two doors below a bar at Laws Street and Rosemary Lane? A. I saw him at Sutton Street.

HIS LORDSHIP: How do you know?

A. When I first get my subpoena I saw the name and the address beside it.

DEFENCE COUNSEL: You say you only got £4.4.6 from the hospital? A. Yes, sir.

Q. So you would not know from whom those monies come? A. No, sir.

20 (DEFENCE COUNSEL SITS)

HIS LORDSHIP: Any questions?

CROWN COUNSEL (Mr.Gordon): At the time you got this money from the hospital, did you also get the clothes? A. Yes, sir.

HIS LORDSHIP: At the same time? A. Yes, sir.

(CROWN COUNSEL SITS)

HIS LORDSHIP: Now tell me something: 8 Ladd Lane where you were living, is it a tenement yard? A. Yes, sir.

30 Q. From the total amount of money that was out for you, how much your son would have collected? A. £6.5/-, sir.

In the Home  
Circuit Court

Prosecution  
Evidence

No.4A

Ivy Hanlon

Cross-  
Examination  
28th January  
1969

(continued)

Re-Examination

In the Home  
Circuit Court

Prosecution  
Evidence

No. 5

Noel Clinton  
March

Examination

28th January  
1969

HIS LORDSHIP: Mr. Brown will you require this witness any longer?

DEFENCE COUNSEL: I could, Mi Lord, but I don't want to interfere with her occupation, she is a small fish vendor.

(WITNESS WITHDRAWS)

NO. 5

NOEL CLINTON MARCH.

NOEL CLINTON MARCH: SWORN: EXAMINED BY CROWN COUNSEL (Mr. Gordon):

10

Q. Your name is? A. Noel Clinton March.

Q. What is your occupation? A. I am Registered Medical Practitioner, and Pathologist.

Q. On the 10th of July, last year, doctor, did you perform a post mortem examination on the body of one Orville Fearon? A. Yes.

Q. That was done where? A. At the Kingston Public Hospital.

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

20

Q. Do you have those notes there with you? A. Yes, sir.

Q. Would you like to refresh your memory? A. Yes, sir.

CROWN COUNSEL: May the witness be permitted to refresh his memory from his notes, Mi Lord?

HIS LORDSHIP: Yes.

CROWN COUNSEL: At what time of the day was this post mortem examination done? A. At 1.00 o'clock in the afternoon, and it was about 41 hours after death.

30

Q. The body was identified by who? A. Hycainth

Bradford.

In the Home  
Circuit Court

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Evidence

No. 5

Noel Clinton  
March

Examination

28th January  
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10 Q. On external examination what did you find?  
A. Externally I saw a lacerated wound of the head. It was roughly circular in shape and extending from just to the left of the middle of the top of the head to the right, and taking in the right occipital area, and it went over and held by a small bit of skin on the right side here (witness shows spot). The wound had separated a circular piece of skull and piece of brain in the parietal area. The diameter of the wound was  $4\frac{1}{4}$  inches.

Q. Did you find any other injury? A. No, sir.

Q. Did you form any opinion as to the cause of death, doctor? A. Yes.

Q. What was the cause of death? A. Death was due to shock following the injury to the head as described.

20 Q. In your opinion what instrument could have caused this type of injury? A. A reasonably sharp heavy type of cutting instrument.

DEFENCE COUNSEL: Mi Lord, may I take objection. I see my colleague for the Crown attempting a certain manoeuvre, that is, trying to put in something at this stage, and I am going to object. I think he is about to show it to the doctor and he has not made an exhibit of it. I am seeking your protection, Mi Lord, of the malpractice of my friend.

30 CROWN COUNSEL: I merely intended to show it to the doctor, Mi Lord. It will be tendered at a later stage. I merely intended to ask the doctor if that could have caused the injury.

HIS LORDSHIP: Your objection is overruled, the doctor can be shown.

DEFENCE COUNSEL: I find that the Crown is very untidy.

HIS LORDSHIP: Well if the Crown is untidy, don't follow the Crown. Put it to him, Mr. Gordon.

(continued)

In the Home  
Circuit Court

Prosecution  
Evidence

No. 5

Noel Clinton  
March

Examination

28th January  
1969

(continued)

CROWN COUNSEL: Now, doctor, the injury you saw on the deceased, could it have been caused by infliction with this instrument? A. Yes.

Q. Assuming, doctor, that that instrument was used, how much force in your opinion would have been necessary to inflict the injury you saw?  
A. A severe degree.

Q. Assuming also, doctor, that that instrument was used, what position, in your opinion, the assailant and the deceased would have to be for the deceased to have received the injury you saw?  
A. There could be several relative positions: the most ideal is if the deceased and the assailant were standing erect or relatively erect and the assailant attacked from behind and slightly to the left or if he were left-handed and standing in the same position delivering the blow with the right hand, what is called a back-hander. But, the ideal way would be if the assailant was standing in front of the deceased and if the deceased was in a crouching position and the weapon was wielded by a right-hander.

10

20

HIS LORDSHIP: You understand what the doctor is saying, Mr. Brown?

DEFENCE COUNSEL: Yes, Mi Lord.

CROWN COUNSEL: Doctor, you say you are also a Pathologist? A. Yes.

Q. And you are the Pathologist in charge of the Forensic Laboratory in Kingston Gardens?  
A. Yes, sir.

30

Q. And from time to time articles are submitted to you for your examination? A. Yes, sir.

Q. Are you there, doctor, generally, to receive these articles when they arrived? A. No, sir.

HIS LORDSHIP: What are you talking about now?

CROWN COUNSEL: Well there are certain words at page 9 of the typescript.

HIS LORDSHIP: Are you paving the way about clothes?

CROWN COUNSEL: No, Mi Lord, I am paving the way as regards the weapon that allegedly did the act, that was allegedly used to do the act.

HIS LORDSHIP: You want to prove if any blood was on it?

DEFENCE COUNSEL: Yes, Mi Lord.

HIS LORDSHIP: Well you have witnesses to say what they saw.

DEFENCE COUNSEL: Yes, Mi Lord.

10 HIS LORDSHIP: Is that the only comment?

DEFENCE COUNSEL: Yes, Mi Lord.

CROWN COUNSEL: May the machete be marked 1 for identity, Mi Lord?

HIS LORDSHIP: Yes.

CROSS-EXAMINATION BY DEFENCE COUNSEL:

Q. Now, doctor that weapon before you, that machete, it is called a sow machete? A. Yes, it is a machete.

20 Q. If the assailant was running behind the victim would you expect an injury as the one you saw to have been inflicted from right angle?  
A. A right-hander could do that with a backhand stoken but it must be a powerful stroke. It would be a difficult stroke if they were running, and that would require a lot of force doing it the backhand.

30 Q. On the other hand, doctor, if the assailant is standing erect - in front of the victim, and both of them are approximately the same height, would a deflection of the victim's head, like this, for instance, when the machete is coming, would that deflection change the situation? A. The wound I saw started like this (doctor demonstrates), so they would have to be facing one another or with the deceased in a crouching position.

Q. But you would not rule out that aspect of the injury you saw, if the victim were standing erect

In the Home  
Circuit Court

Prosecution  
Evidence

No. 5

Noel Clinton  
March

Examination  
28th January  
1969

(continued)

Cross-  
Examination

In the Home  
Circuit Court

Prosecution  
Evidence

No. 5

Noel Clinton  
March

Cross-  
Examination

28th January  
1969

(continued)

but turned his head and the blow could then  
have taken him at the back of his head?

A. No, it would not.

Q. Whether backarm or forearm? A. No.

Q. So to crystallize, now the assailant could either  
be a righthander or a lefthander? A. Right-  
hander with the victim crouching.

Q. Was the injury you saw the result of only one  
blow? A. Yes.

Q. Just one chop? A. Yes, sir.

10

Q. Now, please lift up that machete, doctor, feel  
the weight of it. Now, assuming that that was  
the machete used to inflict the injury you saw,  
what force would have been required for such an  
injury? A. If this was the instrument used,  
then it would require severe force.

Q. You told us, doctor, that the deceased died as a  
result of shock and injury to the head as  
described? A. Yes, sir.

Q. That was due to brain injury? A. Yes, injury to  
the brain. 20

(DEFENCE COUNSEL SITS)

CROWN COUNSEL: No re-examination, My Lord.

(WITNESS WITHDRAWS)

No. 6

Cranmer King  
Examination

28th January  
1969

NO. 6

CRANMER KING

CRANMER KING: SWORN: EXAMINED BY CROWN COUNSEL:

Q. Your name is? A. Cranmer King.

Q. Detective Corporal of Police, stationed at the  
City Centre Police Station in Kingston?  
A. Yes, sir. 30

Q. Now, on the 8th of July, last year, some time

after 8.00 o'clock in the night, did you receive a report? A. Yes, I did.

In the Home  
Circuit Court

Q. Was this report made to you by one Anthony Wilson? A. Yes, sir.

Prosecution  
Evidence

Q. As a result of the report you received, did you go anywhere? A. Yes, sir.

No. 6

Q. Where did you go? A. A section of Rosemary Lane, one chain South along Laws Street.

Cranmer King  
Examination

Q. When you went there did you observe anything? A. Yes, sir.

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10

(continued)

Q. What did you observe? A. What appeared to be blood-stains in the centre of the road.

Q. From there did you go to the Kingston Public Hospital? A. Yes, sir.

Q. Now, on the following day did you receive another report? A. Yes, sir.

Q. As a result of this report did you go anywhere? A. Yes, sir.

Q. Where? A. The Allman Town Police Station.

20 " . Did you see anyone there? A. Yes, sir.

Q. Who you saw? A. The accused, sir.

Q. When you saw the accused did you say anything to him? A. Yes, sir.

Q. What did you say to him? A. I told him I was Det. Corporal King from the C.I.D. Central, and that I was making enquiries into the death of one Orville Fearon which occurred last night at Rosemary Lane, if he knew anything about it. Before saying this to him I cautioned him.

30 Q. Well, did anyone as far as you know threaten him? A. No, sir.

Q. Did anyone as far as you know offered him any promise of favour? A. No, sir.

Q. Yes, so what did he say after you cautioned him?

In the Home  
Circuit Court

Prosecution  
Evidence

No. 6

Cranmer King  
Examination

28th January  
1969

(continued)

A. He said, "a whole heap of them come to beat me so me take the cutlass and chop him". I asked him where is the cutlass, and he said, "come make me show you, sir". I then accompanied him to premises 15 Sutton Street where he went under a house and took out a cutlass and handed it to me, and he said, "see the cutlass here, sir". I took possession of same, arrested and charged him for murder, I cautioned him, and he made no statement. I made a sealed parcel of the cutlass.

10

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

CROWN COUNSEL: One for identity, Mi Lord, may it now be marked exhibit 1?

HIS LORDSHIP: Yes, exhibit 1.

WITNESS: I made sealed parcel of the cutlass and took it to the.....

HIS LORDSHIP: All right, you didn't see Crown Counsel put his hand up?

20

WITNESS: Sorry, sir.

CROSS-EXAMINATION BY DEFENCE COUNSEL:

Cross-  
Examination

Q. Now, Detective up to the time you received the report that night, can you remember if there was a blackout? A. Not to my memory, sir.

Q. Do you remember if there was a blackout that night? A. I don't remember, sir.

Q. But during that month you will remember that there were a number of unscheduled power-cuts by the Jamaica Public Service Company? A. I do know that there were black-outs, but I don't remember if it was during that period, sir.

30

Q: You say you went to the hospital after you got the report? A. Yes, sir.

Q. About what time that night you went to the hospital? A. About 10.00 p.m. that night, sir.

Q. Did you see Orville Fearon when you went there?



A. No, sir, I did not see him.

Q. You were not allowed to see him? A. No, sir.

Q. He was on the danger list? A. Yes, sir.

Q. Did you get a description of the person who was supposed to have attacked and wounded Fearon?  
A. Yes, sir.

Q. Did you go and search for that person? A. Yes, sir, I did.

Q. Did you find the person that night? A. No, sir.

10 Q. Now, the next morning did you get a telephone call from the Allman Town Police Station?  
A. Yes, sir.

Q. And when you went there you saw the accused?  
A. Yes, sir.

Q. Then you discovered that the accused had come there to deliver up himself? A. Yes, sir.

HIS LORDSHIP: You saw the accused there? A. Yes, sir.

20 Q. How did you know of this discovery? A. From information received at the home of the accused, sir.

Q. That is not evidence. Next question.

DEFENCE COUNSEL: Am I correct in saying it is only as a result of the nature of the telephone call you got that morning that you were able to find the accused at the Allman Town Police Station?  
A. Yes, sir.

30 Q. And when you told him the nature of your investigation he didn't have any lawyer with him or anybody like that? A. No, sir, there was no lawyer.

Q. You didn't make him any promise that you would go easy with him if he talked up? A. No, sir.

Q. You didn't threaten to beat him? A. No, sir.

Q. And he just told you like that that a whole heap

In the Home  
Circuit Court

Prosecution  
Evidence

No. 6

Cranmer King

Cross-  
Examination

28th January  
1969

(continued)

In the Home  
Circuit Court

Prosecution  
Evidence

No.6

Cranmer King

Cross-  
Examination

28th January  
1969

(continued)

of them come to beat him? A. Yes, sir.

Q. And he took the cutlass and chop him? A. Yes, sir.

Q. You understood that he meant the deceased?  
A. Yes, sir.

Q. Amongst those people who came to beat him?

HIS LORDSHIP: Don't answer that question.

DEFENCE COUNSEL: All I want to know, Mi Lord, is if he understood him to mean the deceased to be one of the persons who came to beat him. 10

HIS LORDSHIP: His understanding has nothing to do with it.

DEFENCE COUNSEL: But you were investigating the wound received by Fearon? A. Yes, sir.

Q. Do you know that he is called Shearer?

HIS LORDSHIP: Have you got evidence to that, Mr. Brown?

HIS LORDSHIP: Do you know Adrian Wilson? A. Yes, Mi Lord.

Q. I mean Anthony Wilson? A. No, Mi Lord, Adrian 20  
Wilson.

Q. Did you know the deceased before? A. No, sir.

Q. Did you know the accused before? A. No, sir.

DEFENCE COUNSEL: Did you know Anthony Wilson before he came to court? A. No, sir.

Q. And the accused told you how he came to chop a man? A. Yes, sir.

Q. And he took from Allman Town Police Station, all the way from there to 15 Sutton Street and showed you the cutlass? A. Yes, sir. 30

Q. Very co-operative eh? A. I would say so, sir.

Q. Did Anthony Wilson show you a machete? A. No, sir.

- Q. During your investigation did you investigate one Adrian Wilson? A. Yes, sir.
- Q. And he gave evidence at the Preliminary Examination? A. I cannot say, sir, I was not in court.
- Q. You didn't see him at court that day? A. No, sir, I did not see him there.
- Q. You also took a statement from a lady by the name of Yvonne Rutherford? A. Yes, sir.
- 10 Q. The girlfriend of the accused? A. Yes, sir.
- HIS LORDSHIP: You know whether she is the girlfriend of the accused? A. I couldn't say, sir.
- HIS LORDSHIP: Now, Mr. Brown, again I say nothing must come in by the side wind.
- DEFENCE COUNSEL: Did you take a statement from one Ronald Linton? A. Yes, sir, I did.
- Q. Finally, did you take a statement from one Bolton Simpson? A. I could have, sir, I don't quite remember.
- 20 Q. Now, Corporal, I take it that you have been a Detective for a long time? A. Yes, sir.
- Q. Especially in the Corporate Area? A. Yes, sir.
- Q. You are familiar with the area of Rosemary Lane and also gangs that have been on the warfare in the Corporate Area? A. Yes, sir.
- Q. In the course of your duty you have ever come across the Max Gang? A. Yes, I do.
- Q. And they frequent Rosemary Lane area in particular? A. They have no prescribed area, sir.
- 30 Q. Would you say that that gang is infamous for robbery and violence or just pickpocketing? A. They will do any crime so you cannot pick out any particular one.
- HIS LORDSHIP: You are speaking from your own knowledge?

In the Home  
Circuit Court

Prosecution  
Evidence

No. 6

Cranmer King

Cross-  
Examination

28th January  
1969

(continued)

In the Home  
Circuit Court

Prosecution  
Evidence

No. 6

Cranmer King

Cross-  
Examination

28th January  
1969

(continued)

A. Yes, Mi Lord, from my own knowledge.

DEFENCE COUNSEL: Do you know from your knowledge that Orville Fearon, the deceased, otherwise called 'Shearer' was a member of the Max Gang?  
A. Not to my knowledge, sir.

Q. What about Anthony Wilson who made the report to you, do you know from your personal knowledge whether he is a member of the Max gang?

A. Not to my knowledge, sir, I saw him for the first time.

10

Q. But since that night you have not made any investigation concerning Anthony Wilson or Fearon where the Max Gang is concerned?

A. No, sir.

HIS LORDSHIP: His investigation where that is concerned would not be evidence, you know, Mr. Brown?

DEFENCE COUNSEL: I know, Mi Lord.

Q. Now, Detective, you were on duty that night when you got the report from Anthony Wilson?

A. Yes, sir.

20

Q. Earlier that night did you get a report from a lady or of a lady who was robbed on the street of a large quantity of money, about £80?

A. No, sir.

Q. Tell me something Detective; what time do you go on duty? A. From 6.00 p.m. until 8.00 a.m. the following morning, sir, and all reports of crime come to my notice.

Q. And you don't recall any such report? A. No, sir.

30

Q. Were the clothes of the deceased handed over to you? A. Yes, sir.

Q. By whom? A. By Ivy Hanlon, sir.

Q. Where? A. At the Central Police Station, sir.

Q. Was any money handed over to you with the clothing? A. No, sir.

Q. Was any mention made of money? A. No mention was made of money.

In the Home  
Circuit Court

RE-EXAMINATION BY CROWN COUNSEL:

Prosecution  
Evidence

Q. On the night of the 8th when you say you received a report you went to the hospital?  
A. Yes, sir.

No. 6

Q. And after that you started your investigation?  
A. Yes, sir.

Cranmer King  
Cross-  
examination

Q. Did you discover where the accused lived?  
A. Yes, sir.

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10

Q. When did you discover that? A. About 11.00 p.m. that night, sir.

(continued)

Q. Did you go to his home? A. Yes, sir.

Q. Was he there? A. No, sir.

Q. Did you speak to anyone there? A. Yes, sir.

DEFENCE COUNSEL: Mi Lord, I now apprehend that my learned friend is taking the Defence by surprise.

HIS LORDSHIP: Don't lead before you come to the stile or don't jump before it is necessary. It seems, Mr. Brown, you are jumping before you reach the stile.

20

DEFENCE COUNSEL: Yes, Mi Lord, but I still say, Mi Lord, that the Prosecution has taken the Defence by surprise, and after all the accused must have a fair trial.

HIS LORDSHIP: Earlier on, Mr. Brown, you had asked certain questions concerning enquiries made by this Officer and what was the result and I reminded you of a case we did only two months ago. Well then, what about the case of the Queen and Saunders, 1899 Queen's Bench, 490, and Phipson on Evidence, 10th Edition, paragraph 648?

30

DEFENCE COUNSEL: Yes, Mi Lord.....

HIS LORDSHIP: I think we will now take the adjournment, and tomorrow we can pursue the matter.

In the Home  
Circuit Court

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Proceedings

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Mr. Foreman and Members of the Jury, we will now take the adjournment and please be in your seats at 10.00 o'clock tomorrow morning sharp as we have another full day's work. Please remember my advice, and that is, you are not to discuss this case at any of the adjournments with anyone, let no one approach you about the case.

Court adjourned: 3.47 p.m.

NO. 7

PROCEEDINGS

10

75.  
HOME CIRCUIT COURT,  
KINGSTON.

29th January, 1969.

R E G I N A vs. DERRICK IRVING for MURDER

CROWN COUNSEL: May it please you, M'lord, the Crown regrets the late start but the witnesses are not here yet.

HIS LORDSHIP: In which case?

CROWN COUNSEL: The case being tried, M'Lord, there are still some witnesses to come and they have not reached here yet. In the meantime I don't know if Your Lordship will be disposed to deal with the case of Stafford Lynch which is set for sentence today.

20

(Waiting Jurors excused until Thursday, 30th January, at 10.00 a.m.)

MR. BROWN: M'lord, may I make an application on behalf of the defence - a matter that I oversights - I make the application on behalf of the defence for two subpoenas to be issued for two defence witnesses.....

30

HIS LORDSHIP: Have you got to tell me in court, couldn't you apply to the Registrar?

MR. BROWN: M'lord, I have to do it formally now in

open court because of what has happened, in that I have secured the presence of the two witnesses but their employers want to deprive them of their pay, both for yesterday and today, so I have promised them to protect them by asking the court to issue subpoenas for both of them so that they have official coverage so that it will be contempt of court if their employers refuse to pay them. In the circumstances I crave your indulgence M'lord.

In the Home  
Circuit Court

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(continued)

10 HIS LORDSHIP: Let the subpoenas issue.

MR. BROWN: Bolton Simpson, 17 Dewdney Road, Kingston 11, Apprentice Dental Technician. The other one is Ronald Linton; he lives at 15 Gresham Road, Kingston 5, and he is a Printer.

HIS LORDSHIP: Let those subpoenas issue.

MR. BROWN: Much obliged, M'lord.

HIS LORDSHIP: Who are the witnesses that you say are not here Mr. Gordon?

20 CROWN COUNSEL, MR. GORDON: Hyacinth Gallimore, M'lord, and Adrian Wilson. They were here yesterday and the day before, M'lord.

HIS LORDSHIP: (To police) Will you call Hyacinth Gallimore.

(Hyacinth Gallimore called - no answer)

MR. BROWN: May the other witness be now called, M'lord, to see if he is here.

HIS LORDSHIP: Who is the other one?

CROWN COUNSEL: Adrian Wilson.

(Adrian Wilson called - no answer)

30 HIS LORDSHIP: Well, does the police know the addresses of these people to go in search of them?

CROWN COUNSEL: They have been instructed to find them M'lord, they have been turning up a bit late m'lord, yesterday they were a bit late but they were here.

MR. BROWN: M'lord, may I be heard on this point, on

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(continued)

the unwarranted delay because of the untidiness of the crown.....

HIS LORDSHIP: I did not call upon you to say anything.

MR. BROWN: I was asking if I may be heard M'lord.

HIS LORDSHIP: No, not at this point. (To Crown Counsel) How much adjournment you are asking for?

CROWN COUNSEL: M'lord, perhaps after we deal with the two matters we have then I will ask for the adjournment.

10

(R. v. Egbert Dunkley and R. v. Delroy Lawrence dealt with)

CROWN COUNSEL: M'lord, an adjournment of fifteen minutes will facilitate the Crown.

(Adrian Wilson called - answers - comes into court).

HIS LORDSHIP: Mr. Wilson, come here, why is it only now you are coming to court?

ADRIAN WILSON: Well, through the bus, sir.

HIS LORDSHIP: Which bus? A. The '22' bus, sir.

20

HIS LORDSHIP: Where are you coming from now?  
A. Up Allman Town, sir.

HIS LORDSHIP: When did you try to take the bus?  
A. About fifteen minutes to ten, sir.

HIS LORDSHIP: But why you wait so late if you are to be here at 10.00 o'clock? What were you doing?  
A. Bathing, sir.

HIS LORDSHIP: Apart from anything else I am going to make an order that you do not get a penny witness's expenses, unless I change my mind.  
A. I was out there sitting down, sir.

30

HIS LORDSHIP: You had come early you say?  
A. I come just on time, sir, but I did not hear my name.



HIS LORDSHIP (To police): He told you that?

POLICE: No, M'lord, because I passed up there and he was not there.

HIS LORDSHIP: What about the other witness, Gallimore?

CROWN COUNSEL: She hasn't appeared yet, M'lord.

HIS LORDSHIP: What is the position here?

CROWN COUNSEL: I propose to adopt a certain course with regard to these two witnesses M'lord.

10 HIS LORDSHIP: What are you doing, you are making him available?

CROWN COUNSEL: I am making this one available, M'lord, I am going to call the other one.

MR. BROWN: M'lord, may I get it abundantly clear, if I may be heard, since I was the person who made the submission yesterday and I was premature. I heard my friend talking a peculiar language that he is only calling one but making one available. The law says the crown must call witnesses and then  
20 make them available for cross-examination.

HIS LORDSHIP: You want to wait until I come back, when we have Gallimore and then make.....

MR. BROWN: No, M'lord, I want the case to go on now, with respect M'lord, both for the benefit of the accused, first of all, and the jury, you have been saying I have been wasting time. My friend asked for an adjournment so that he can have at least one witness, so now he has one witness, who has come late, may we have one, M'lord, we can  
30 continue with that one.

(Witness Hyacinth Gallimore arrives)

HYACINTH GALLIMORE enters witness box - partly sworn.

HIS LORDSHIP: Just wait a second. Yes Mr. Brown?

MR. BROWN: May it please you, M'lord, as I saw what purports to be a witness for the crown go into the witness box a while ago and come out of the box, at

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(continued)

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(continued)

your invitation, may he be sent out of the court before this witness embarks upon her evidence - if Your Lordship doesn't overrule that.

HIS LORDSHIP: Certainly.

MR. BROWN: Much obliged, M'lord.

HIS LORDSHIP: What is your name?

WITNESS GALLIMORE: Hyacinth Gallimore, sir.

HIS LORDSHIP: Can you tell me why you are only now coming to court?

A. I have a baby that is sick and I was trying to give it some feed before I leave, sir.

10

Prosecution  
Evidence

NO. 8

HYACINTH GALLIMORE

No. 8

Hyacinth  
Gallimore  
Examination  
29th January  
1969

HYACINTH GALLIMORE: SWORN: EXAMINED BY CROWN  
COUNSEL:

Q. Your name is Hyacinth Gallimore? A. Yes, sir.

Q. You are a housewife? A. Yes, sir.

Q. You live at 36 Rosemary Lane, in Kingston?  
A. Yes, sir.

Q. Do you know the accused? A. Yes, sir.

20

Q. Do you remember Monday, the 8th of July, last year? A. I don't quite remember the date.

Q. Do you remember something happening on Rosemary Lane in July, last year?

A. Yes, sir.

Q. Some time before that thing happened, did you see the accused?

MR. BROWN: M'lord, I must take an objection here, July had thirty one days and to ask the witness

in that vague, roaming, speculative fashion that if before that thing happened, on a day, on a day, she does not remember if she saw the accused, cannot be a proper question and I respectfully submit that Your Lordship does not allow him to put that question.

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Evidence

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Hyacinth  
Gallimore

Examination  
29th January  
1969

HIS LORDSHIP: (To Crown Counsel): Just a few pointed questions you can get it out.

10 (To witness) You remember something happened?  
A. Yes, sir.

CROWN COUNSEL: Last year? A. Yes, sir.

Q. You remember what month it was? A. I think it is July.

(continued)

HIS LORDSHIP: What time of the day or night it was?  
A. It was a Monday.

HIS LORDSHIP: In July last year? A. Yes, sir.

CROWN COUNSEL: About what time? A. Just as it was 'dusting' up, before night come down fully.

20 CROWN COUNSEL: Did you see the accused? A. Yes, sir.

Q. Where were you at the time when you saw him?  
A. Standing at my gate.

Q. And where was he? A. He was coming down the street.

Q. How was he coming - riding, walking? A. He was walking.

Q. Just in an ordinary manner. A. Yes, sir.

30 Q. What did he do - you saw him walking down the street, did he turn anywhere? A. Yes, he walked two doors from me.

MR. BROWN: M'lord, that is leading M'lord, in an atrocious manner. If that is not leading I am a Dutchman.

HIS LORDSHIP: Did you see him turn? A. Yes, sir.

CROWN COUNSEL: Where he turned? A. Two gates from me.

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Hyacinth  
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(continued)

Q. After he turned at this gate what did you do?  
A. I went inside back to my house.

Q. While you were in your house did you hear anything? A. When I was coming down the passage I heard a sound.

Q. What did it sound like to you? A. A loud clash.

Q. What it sound like? A. Like you would break a coconut.

Q. While coming out of the passage?

HIS LORDSHIP: I heard a sound like the breaking of a coconut..... 10

MR. BROWN: A loud clash, M'lord.

CROWN COUNSEL: After you hear the sound what did you do? A. I came outside and stood by the gate and saw a crowd.

Q. Where was this crowd? A. Just like a little over you to the corner out there (points to corner in courtroom).

Q. Was that below your gate or above your gate? A. Opposite. Here is my gate like this, this way (indicating) and then just over so. 20

Q. At that time did you see the accused?  
A. No,

Q. Thank you.

Cross-  
Examination

CROSS-EXAMINATION BY MR. BROWN:

Q. Lady, for how long have you known the accused?  
A. Not for a long time.

Q. Now lady, give me a rough idea of what you call long before you tell me 'very long'. What you call a long time? A. About four weeks. 30

Q. You call that a long time?

HIS LORDSHIP: That was not her evidence. The question you asked was: How long you know him? She said: Not for a long time.

MR. BROWN: Not for a very long time M'lord.

HIS LORDSHIP: Don't make a speech, you have already made your remark, please continue.

MR. BROWN: Lady, did you answer a while ago that you have not known the accused for a very long time? A. Yes, sir.

(Shorthand Writer reads notes at the request of the Court)

10 MR. BROWN: Lady, what do you call 'a long time'? How long a period? A. About six months or over I would call a long time.

Q. Now, when you saw the accused in July, last year, had you ever seen him before that night? A. I always see him in the days.

Q. But not in the night? A. Well, sometimes in the nights I would see him pass up the street.

HIS LORDSHIP: Which street? A. Rosemary Lane.

MR. BROWN: Now, you know Adrian Wilson, who lives on Rosemary Lane? A. Yes, sir.

20 Q. Would I be correct in saying, lady, that he lives about two gates from you? A. Yes, sir.

Q. Is it into that gate that you saw the accused go that night?

HIS LORDSHIP: She did not say that, she did not say it was Adrian Wilson's gate he went into.

MR. BROWN: I am asking if it is that gate M'lord.

HIS LORDSHIP: The question is: Is it that gate that you saw.....

30 MR. BROWN: I will rephrase it M'lord, so as not to be offensive.

HIS LORDSHIP: So that you may be precise and fair to the witness.

MR. BROWN: And to the accused, M'lord.

HIS LORDSHIP: To everybody.

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Hyacinth  
Gallimore

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Hyacinth  
Gallimore

Cross-  
Examination

29th January  
1969

(continued)

MR. BROWN: Lady, did you see the accused go into  
Adrian Wilson's gate? A. Yes, sir.

Q. That night? A. Yes, sir.

Q. But you did not see him come out back of that  
yard? A. No, sir.

Q. When you heard the loud clash, like the breaking  
of a coconut, you were in your yard?  
A. Yes, sir.

Q. Did you see anyone in your yard breaking  
coconut at that time? A. No, sir. 10

Q. From what direction did that sound come in  
relationship to where you were at the time?  
A. The sound came from out the street.

Q. Out in Rosemary Lane? A. Yes, sir.

Q. And you say that you then went and stood by  
your gate and you saw a crowd out in the lane,  
on the opposite side to your gate? A. Yes.

Q. Did you go out in the lane to see what the crowd  
was about? A. I stood right at my gate.

Q. No. Did you go out into the crowd? A. No, sir. 20

Q. Did you see any broken coconut out in Rosemary  
Lane when you came out to your gate?  
A. No, sir.

Q. This crowd that you saw, did it consist of both  
male and female? A. Yes, sir.

Q. Lady, do you know Anthony Wilson, not Adrian,  
Anthony Wilson? A. Well, maybe I know him by  
a next name because we usually call people pet-  
names.

Q. Let me look for the pet-name - called Kid? 30  
A. Yes, sir.

Q. You know how he got that name?

HIS LORDSHIP: You say you know a man called Kid?  
A. Yes, sir.

MR. BROWN: You know a gang called the Max Gang?  
 A. Heard about it, sir.

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 Circuit Court

Q. In your area? A. Yes, sir.

Prosecution  
 Evidence

Q. They frequent Rosemary Lane? A. Down the bottom,  
 Yes.

No. 8

Q. Do you know the bottom of Rosemary Lane?  
 A. Yes, sir.

Hyacinth  
 Gallimore

HIS LORDSHIP: Did you say you know the gang, or you  
 have heard about them? A. I have heard about  
 them.

Cross-  
 Examination

10

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 1969

MR. BROWN: Apart from what you hear, you don't  
 know anything about them? A. I see a few of  
 them pass.

(continued)

Q. You see a few of them pass and they frequent down  
 the bottom of Rosemary Lane? A. Yes, sir.

Q. You live up the top part, near Laws Street?  
 A. Yes, sir.

Q. Now, the few of them that you see pass are all  
 boys, or boys and girls? A. Boys.

20 Q. Young boys? A. Yes, sir.

Q. And am I correct in saying from what you see of  
 those young boys in the gang they terrorize  
 people and rob them, violent bad boys in other  
 words? A. I don't know about that, sir.

Q. They do a lot of wrong in other words?  
 A. (No answer).

Q. It is a good gang, well behaved boys? A. I  
 heard people say a lot of things but I don't know  
 of it myself.

30 Q. You have never suffered at their hands? A. No.

Q. Did you know the man who died, Orville Fearon,  
 otherwise called Shearer? A. Yes, sir.

Q. You know how he got the name Shearer? A. No, sir.

Q. You used to call him by that name too? A. Yes, sir.

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(continued)

Q. To your certain knowledge did he do sharing .  
very well in his lifetime?

HIS LORDSHIP: Don't answer that question.

MR. BROWN: To her certain knowledge M'lord.

HIS LORDSHIP: Don't answer that. I have already  
ruled on that, next question please. I thought  
this time-wasting had ceased.

MR. BROWN: I thought so too, M'lord, but we wasted  
half an hour this morning.

A. I can answer that question, sir. 10

HIS LORDSHIP: No, no, lady, just abide by my ruling.

MR. BROWN: All right lady, I won't embarrass you.  
Don't answer that question, you see. So you  
don't know what was happening in the crowd?  
A. No, sir.

Q. Nor, lady, did you see what caused the loud  
clash, like breaking a coconut? You didn't  
see what caused the sound? A. No, sir.

Q. Much obliged.

CROWN COUNSEL: Thank you, no re-examination,  
M'Lord. 20

HIS LORDSHIP: Over what period you have been  
seeing this gang passing Rosemary Lane?  
A. About three years, sir.

HIS LORDSHIP: When you used to see them, what time  
in the day was it, daytime or night time or  
what? A. Day and night.

HIS LORDSHIP: The last question is: They are  
usually young boys? A. Yes, sir.

HIS LORDSHIP: About what age you say the oldest  
one is? A. About twenty. 30

HIS LORDSHIP: And the youngest? A. Sixteen.

HIS LORDSHIP: Yes. Thank you.



MR. BROWN: M'lord, may I have your leave to ask a question arising out of what you just asked?

HIS LORDSHIP: What is the question?

MR. BROWN: If she knows the age of the deceased.

HIS LORDSHIP: But hadn't you got the evidence?

MR. BROWN: M'lord, I only ask Your Lordship.....

HIS LORDSHIP: There is direct evidence from the mother. Any other question?

10 MR. BROWN: If the deceased was one of the members of the gang that she used to see pass - because M'lord, I was being stopped so often.

HIS LORDSHIP: I stopped you? You cross-examined her on that point.

CROWN COUNSEL: He has intimated the question he intends to ask. I am taking objection to that. M'lord, this witness has said she has heard, I don't know the source of her knowledge as to the members of the gang.

20 HIS LORDSHIP: She answered she used to see a few of them. You had an opportunity to ask her then.

CROWN COUNSEL: I am objecting to that question M'lord.

HIS LORDSHIP: What is the question you are going to ask her now?

MR. BROWN: Have you ever seen Orville Fearon, otherwise called Shearer, among the boys of the Max Gang passing up Rosemary Lane?  
WITNESS: No, sir.

30 HIS LORDSHIP: Have you ever seen Anthony Wilson among those boys? A. No, sir.

HIS LORDSHIP: Any re-examination?

CROWN COUNSEL: No re-examination now, M'lord.

HIS LORDSHIP: You don't want any re-examination?

CROWN COUNSEL: No, M'lord.

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Circuit Court

Prosecution  
Evidence

No. 8

Hyacinth  
Gallimore

Cross-  
Examination

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(continued)

In the Home  
Circuit Court

NO. 9  
PROCEEDINGS

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29th January  
1969

CROWN COUNSEL: Call Adrian Wilson.

HIS LORDSHIP: What is his name?

CROWN COUNSEL: Adrian Wilson, M'lord.

HIS LORDSHIP: Whose name appears at the back of  
the indictment?

CROWN COUNSEL: Yes, M'Lord.

HIS LORDSHIP: Yes, what you say about him?

CROWN COUNSEL: The crown is making this witness  
available to the defence if they so desire.  
In that circumstance M'lord, that is the  
case for the crown.

10

MR. BROWN: M'lord.....

HIS LORDSHIP: Just wait a minute please.  
Witness available, if the defence wishes. You  
say that is your case?

CROWN COUNSEL: That is the crown's case, M'lord.

MR. BROWN: Now, M'lord, you will remember that  
yesterday morning at the commencement of the  
proceedings I adverted you to Archbold's  
Criminal Pleading 36th Edition, paragraph 1373

20

HIS LORDSHIP: Archbold 36th Edition.....

MR. BROWN: Which is the latest one, paragraph  
1373, as it affects the calling of witnesses by  
the crown whose names appear at the back of the  
indictment, and I made particular reference to  
what the learned author says, inter alia, that  
although the crown enjoys a wide discretion in  
calling the witnesses at the back of the  
indictment that they must exercise that  
discretion judiciously and not in such a manner  
as to deprive the accused of a fair trial, and,  
"if the prosecution appear to be exercising  
their discretion improperly, it is open to the

30

judge to interfere and in his discretion to invite the prosecution to call the witness", that is, calling the witness as a prosecution witness.

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No. 9

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HIS LORDSHIP: Are you saying that the prosecutor is exercising his discretion improperly?

MR. BROWN: Highly improperly and prejudicial.

(continued)

HIS LORDSHIP: What are your grounds?

10 MR. BROWN: Based on what the learned author anticipated, that, "where the witness is capable of belief it is the duty of the prosecution to call him....."

HIS LORDSHIP: Who is to decide whether he is capable of belief or not?

20 MR. BROWN: I am going on M'lord. "even though..." and this is the important part M'lord, "even though the evidence that he is going to give is inconsistent with the case sought to be proved" by the crown. Now, I say it is manifestly both improper and unfair, and I make no bones about it M'Lord. When the crown, like Your Lordship, has in its possession copy deposition of this witness taken at a preliminary enquiry and despite repeated applications from yesterday, sustained until this morning, the crown shuts its eye to fair play and the smooth unsullied administration of justice.....

HIS LORDSHIP: Just make your submission.

30 MR. BROWN: I am making my submission in elegant language M'lord.

HIS LORDSHIP: That is your training?

MR. BROWN: Yes, M'lord.

HIS LORDSHIP: Go ahead.

MR. BROWN: And to continue in that forensic language M'lord, we find here now that the crown continues its untidy presentation of this case by pretending to extend bounty to the accused by making not this crown witness available for

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cross-examination by defence counsel but begging me - offering him to me as my defence witness so I cannot cross-examine him. That is not fair play, that is what we call skulduggery, that should not be allowed in any court that prides itself in decency and sanity; that is the tradition of the bar and I know you should uphold the dignity of the tradition that both of us enjoyed at Lincoln's Inn and the other Inns M'lord.

10

HIS LORDSHIP: Finish?

MR. BROWN: Yes M'lord.

HIS LORDSHIP: I do not call on you Mr. Gordon.

Learned Counsel, Mr. Brown, has made some very strong remarks. He has argued that the action of Crown Counsel in this case by making a witness, whose name is at the back of the indictment, namely, Adrian Wilson, available for the defence, as it wishes, is improper and not in accordance with the traditions of the bar. He argues that once the witness' name appears at the back of the indictment - if I understand what his argument is - that witness must be called by the prosecution, or, alternatively, must be put up by the prosecution for cross-examination. To put it in that way is wrong. What Counsel for the prosecution must do is, if a witness gave evidence at the preliminary enquiry and in preparing the indictment the name of the witness is put at the back of the indictment in pursuance of Schedule 1, para. 5 of the Indictments Law and he does not wish to examine that witness at the trial, to make that witness available for the defence, if the defence so wishes. That is what I understand the law to be, that is the law that I practised when I was at the bar, and that is the law in accordance with all the authorities both in the Commonwealth, and in particular in England.

20

30

Now, the passage which Mr. Brown has brought to my attention, namely, Para. 1373 of the 36th Edition of Archbold reads thus:-

40

"The prosecution must have in court the witnesses whose names are on the back of the

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indictment, but there is a wide discretion in the prosecution whether they should call them and, having called them, either to examine them or merely to tender them for cross-examination. Where the witness's evidence is capable of belief it is the duty of the prosecution to call him, even though the evidence that he is going to give is inconsistent with the case sought to be proved. The discretion of the prosecution must be exercised in a manner calculated to further the interests of justice and at the same time be fair to the defence. If the prosecution appear to be exercising their discretion improperly it is open to the judge to interfere and in his discretion to invite the prosecution to call the witness:"

And in the case of Oliva (1965) is cited as authority for that proposition.

20

Now, in Jamaica, according to our constitution, we accept the final authority on any point of law from the Privy Council of England, and in the case of Adel Muhammed El Dabbah vs. The Attorney General for Palestine, which is reported in 1944 Appeal Cases, - the point as to the right of counsel for the prosecution to call what witnesses he wishes or, alternatively, to put at the disposal of the defence what witnesses that are not called, was examined and the principles underlying that practice were clearly outlined by Lord Thankerton, who delivered the judgment of the court, and at page 168 the learned Law Lord says this:

30

40

"While their Lordships agree that there was no obligation on the prosecution to tender these witnesses, and, therefore, this contention of the present appellant fails, their Lordships doubt whether the rule of practice as expressed by the Court of Criminal Appeal sufficiently recognizes that the prosecutor has a discretion as to what witnesses should be called for the prosecution, and the court will not interfere with the exercise of that discretion, unless, perhaps, it can be shown that the prosecutor has been influenced by some oblique motive."

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which means improper motive. Now, who is going to show it? It seems to me that the defence would have to allege and show this oblique motive which the learned Law Lord refers to, but I have not heard any suggestion from Mr. Brown what the particulars of this oblique motive, or improper motive on the part of the prosecution are. But apart from that, the most recent pronouncement on the right of a prosecutor to call what witnesses he wishes and to put the other witnesses at the disposal of the defence is as recent as 1967, where Lord Justice Whim in the case of R. v. Wheeler made reference to the very argument which learned Counsel for the Defence now puts forward and which the Court of Criminal Appeal rejected. In due course when it comes to my summing-up I shall deal with the remarks of Counsel alleging improper practice on the part of the prosecutor in doing what he has done, but my ruling at this stage is that it is sufficient if Counsel puts forward this witness for the defence to use, if he wishes, and there is nothing improper or contrary to the ethics of the profession as far as I know it in so doing. 10 20

MR. BROWN: May it please you M'lord, would you give me the reference for Wheeler - The Weekly Law Reports or....

HIS LORDSHIP: I know it is (1967) 3 Weekly Law Reports - (To Usher) Get the index for me.

CROWN COUNSEL: The reference to it is mentioned in the Supplement 1 Weekly Law Report - 3 A.E.R. 829 - 1 Weekly Law Report 1531. 30

HIS LORDSHIP: I was referring to the 3 All England Report, Lord Justice Whim who used to be one of the senior prosecutors of the Old Bailey - a man whose views I appreciate.

MR. BROWN: M'Lord, I am very much indebted to you both for your ruling and in particular for this case The Queen vs. Wheeler, and so in abiding your ruling M'lord, I invite you to direct attention of learned counsel to the fact that that same ruling says that in those circumstances when I am adopting that witness as a defence witness he must also hand over the police statement, that is implicit in that. 40

HIS LORDSHIP: I don't know what you are going to do.

MR. BROWN: M'Lord, I am indicating now I am abiding your ruling M'lord.....

HIS LORDSHIP: Are you going to call this witness?

MR. BROWN: I am accepting the offer so that means that I am accepting him as a defence witness.

HIS LORDSHIP: You cannot question the ruling here, you have to question it elsewhere.

10 MR. BROWN: I am accepting the offer but I want the bounty to be full, so may I get the police statement?

CROWN COUNSEL: M'Lord, I stood up to address you, common courtesy requires that he sits. However, although I am not obliged to give him this statement made to the police I am going to let him have it, M'lord.

20 HIS LORDSHIP: O yes, I did make a note of it - the reference of Wheeler is (1967) 3 A.E.R. 829, and the observations of Lord Justice Winn is at page 830, at para. (h).

MR. BROWN: Much obliged M'lord.

HIS LORDSHIP: If he is represented by Counsel Counsel knows his rights. Now make a start.

CROWN COUNSEL: Counsel must tell me what he is going to do M'Lord.

30 MR. BROWN: In those circumstances M'Lord, the accused elects to give sworn evidence so that he can be tested by cross-examination. Please bring him up.

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NO.10

DERRICK IRVING

ACCUSED DERRICK IRVING SWORN: EXAMINED BY DEFENCE  
COUNSEL, MR. BROWN:

Q. Your name is Derrick Irving? A. Yes, sir.

Q. You are twenty years old? A. Yes, sir.

Q. You live at 17 Dames Road? A. Yes, sir.

Q. Kingston 4? A. Yes, sir.

Q. Your occupation is that of an upholsterer?  
A. Yes, sir.

10

Q. Your girl friend's name is Yvonne Ruth  
Rutherford? A. Yes, sir.

HIS LORDSHIP: Is who? A. Yvonne Rutherford.

MR. BROWN: Do you remember Monday, the 8th of July  
1968? A. Yes, sir.

Q. Between the hours of 7.00 p.m. and 8.00 p.m.  
where were you? A. I was just about going  
down to Rosemary Lane, sir.

Q. You said 'about going down Rosemary Lane', from  
what street? A. From Laws Street.

20

Q. Were you alone? A. No, sir.

Q. With whom were you? A. A fellow by the name of  
Ronald Neita and another, Bolton Simpson.

Q. Now, did anything happen now after you left Laws  
Street coming down Rosemary Lane? A. As I was  
about to reach the corner I heard voices  
coming from down the lane.

Q. Male or female? A. Both male and female, sir.

Q. At that time was the lane brightly lit?  
A. It was just coming on to evening, sir,  
fairly lit up.

30

Q. Any light on the street - any street lights on?



A. Not at that time, the street lights were not on sir.

Q. Do you remember if there was any power-cut that night - black out? A. There was, sir.

Q. Now you say you heard voices down the lane, did you recognise any of the voices? A. Yes, sir.

Q. Whose voice you recognised? A. My girl friend Yvonne's voice, sir.

HIS LORDSHIP: Yvonne Rutherford? A. Yes, sir.

10 MR. BROWN: What did you do when you recognised the voice? A. I turned to go down Rosemary Lane and I saw a fellow running down a girl with a knife in his hand, sir.

Q. Did you recognise.....

HIS LORDSHIP: Wait please.

MR. BROWN: Did you recognise who that fellow was, who was running down the girl with the knife?

A. Not at the time, sir.

20 Q. But did you later on recognise who it was? A. Yes, sir.

Q. Who it was? A. It was the deceased, sir.

Q. Orville Fearon, otherwise called Shearer? A. Yes, sir.

Q. And did you recognise the girl that he was running down? A. Yes, sir.

Q. Who was she? A. It was a girl we call her Sonia, sir.

30 Q. Do you remember what kind of clothes Sonia had on on top - what kind of dress? A. I believe she had on a 'ganzi' blouse.

Q. You saw anything happen to the 'ganzi'? A. No, sir, not at that time, sir.

Q. Any time that night you saw anything happen to the 'ganzi'? A. Yes, sir.

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Q. What happened to the 'ganzi'? A. It was cut in the back, sir.

Q. When did you notice the cut in the back, before you saw her being run down or after? A. After, sir.

Q. What happened after that? A. I started to --- as I took the corner to go down Rosemary Lane my girlfriend came up to me and she was crying.

Q. And she said anything to you or you said anything to her? A. I asked her what had happened. A

10

Q. No, no, she spoke to you.

HIS LORDSHIP: Is what she said to him evidence?

MR. BROWN: He is the accused, M'lord, it was said in his presence.

HIS LORDSHIP: No, that is not evidence.

MR. BROWN: What I am saying M'Lord, the prime rule with hearsay evidence.....

HIS LORDSHIP: I know what the prime rule is. If you want to make a submission for the record make it for the record.

20

MR. BROWN: The prime rule is I understand it M'lord, subject to your ruling, is that as far as the hearsay rule is concerned that anything not said in the presence and hearing of the accused is hearsay evidence. This is said not only in the presence and hearing of the accused but to him, so it must be evidence upon his trial - The Queen vs. Bedingfield - when the woman bawled out and said "Lord the man get cut", that was evidence.

30

HIS LORDSHIP: But Chief Justice Cockburn ruled it out.

MR. BROWN: It was admitted in the case M'lord.

HIS LORDSHIP: No, he did not admit it as a dying declaration. He could not admit it, he said it was not part of the res gestae nor a dying

declaration. What is the point you are putting forward?

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10 MR. BROWN: All I am saying M'lord, this is the accused and anything said not in his presence and hearing is not evidence, being hearsay; this is something now said in his presence and hearing just like how the police told us yesterday what he is alleged to have said to the policeman, that would be hearsay then. You admitted it M'lord.

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HIS LORDSHIP: Apparently you don't realise this, that what the accused is supposed to have said to any person is admissible in evidence, if the prosecution - that is the general rule - wishes to put it in evidence; but it is not every and anything that the accused said to anybody is admissible in evidence for the simple reason that he may not be allowed to manufacture anything for him.

20 MR. BROWN: But the crown can manufacture it against him.

HIS LORDSHIP: No, no, the crown does not manufacture it for him. You must not make these comments. And if you want an authority for it I can tell you an authority for that one too.

MR. BROWN: I know it M'lord.

HIS LORDSHIP: You want him to say what was.....

MR. BROWN: Reported to him.

30 HIS LORDSHIP: He saw the girl in that distressed state and the girl made a complaint.

MR. BROWN: It comes almost like a sex case M'lord.

HIS LORDSHIP: No, no, he has already told the jury she was crying, she made a report. As a result you can ask what he did.

MR. BROWN: M'lord, will he be allowed to say what he said to the deceased as that is a part of the res gestae?

HIS LORDSHIP: But we have not reached up there

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yet. As soon as we get to the different stages. I am putting you on back now on to the trial, go on from there.

MR. BROWN: You say your girl friend, Yvonne Rutherford, came up to you crying? A. Yes, sir.

Q. And spoke to you, told you something? Judge say you mustn't say what she told you. As a result of what she told you, how did you feel? A. I feel annoyed.

HIS LORDSHIP: As a result of what she told you? 10  
A. Yes, sir.

MR. BROWN: Now, as a result of what she told you, what did you do? A. I sent her on to the shop where she was going and continue on my walking down Rosemary Lane.

Q. Try you best to talk a little louder than that, the jury have to hear you, they are trying the case. While you were going down the lane you met anybody? A. Yes, sir.

Q. Who you met? A. I came up to the fellow who 20  
was.....

Q. Who you mean, who is the person you met?  
A. It was two boys, sir.

Q. What are their names, man? A. Orville Fearon  
and Anthony Wilson.

Q. Were they walking, standing up, riding bicycle  
or what? A. One was holding a cycle and the  
other one was just.....

Q. Which one was holding a cycle? A. Anthony  
Wilson was holding a cycle. 30

Q. And Orville Fearon, what he was doing? A. He  
was just back after running down the girl, sir.

HIS LORDSHIP: Yes Mr. Brown any talking going on  
now would be admissible because one of those  
witnesses is called in the case.

MR. BROWN: Did you say anything to Fearon or Wilson?  
A. Yes, I spoke to Fearon, sir.

MR. BROWN: What did you say to Fearon? A. I told him that it was not right for him to ride a cycle on a pedestrian foot.....

Q. You said anything else to him? A. ....and after being spoken to get of the cycle and kick and box the individual.

Q. Did Fearon make any reply to that? A. He only pulled out a knife, sir.

Q. What kind of knife? A. A ratchet knife, sir.

10 Q. Where he pulled it from? A. Out of his pocket, sir.

Q. Did you have any knife with you then? A. No, sir.

Q. So, what did you do when you saw him take out the ratchet knife? A. I rub my hand over my pocket this way, sir (demonstrates)

HIS LORDSHIP: For what, feeling for a knife? A. Through I see him take out a knife I just do like this.

20 MR. BROWN: Why were you doing that, to fool him up or .....

HIS LORDSHIP: No, no, you see you had objected to that when.....

MR. BROWN: He got away with it.

HIS LORDSHIP: And, apparently, you got away with this one too. Why were you rubbing your pocket? A. I was pretending I had something, sir.

30 MR. BROWN: What you did after that? You spoke to anybody after that, after you felt your pocket? A. Yes, sir, I spin around and ask if anybody had a knife.

Q. Did anybody answer you or give you a knife? A. No, sir.

Q. Did Fearon then say or do anything? A. Well, at that stage he give his friend the bicycle to

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hold and was about coming after me with the knife.

Q. He gave his friend? A. Anthony Wilson, sir.

HIS LORDSHIP: And was doing what? A. Coming at me with his knife, sir.

MR. BROWN: Yes, and what happened, did he reach up to you? A. No, I turned and walked away from him.

Q. What he did then when you turned and walked away?  
A. Well, him turn back and took the cycle and when I looked around I see him coming on the bicycle same way with the knife open in his hand.

10

HIS LORDSHIP: The deceased turned back and what?  
A. Took the cycle from his friend.

HIS LORDSHIP: Yes.

A. And when I look around I saw him riding coming down behind me.

MR. BROWN: See him riding coming down the lane with what? A. With the knife in his hand.

Q. Open or closed up? A. Open, sir.

20

Q. Did he pass you or did he stop where you were?  
A. I quickened my haste to reach the yard where I was going.

Q. Did he say anything to you when he was riding behind you? A. Yes, sir.

Q. What he said? A. He said he was going for a cutlass, sir, which bigger than a knife, sir.

Q. So you went inside the yard and he rode down the lane? A. Yes, sir.

Q. He alone? A. He and his friend, sir.

30

Q. The same Anthony Wilson, two of them riding together down the lane? A. Yes, sir.

Q. Then was Anthony Wilson and himself together when Fearon told you that he was going for the cutlass

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which is bigger than a knife? A. Yes, sir.

Q. Both of them were together? A. Yes, sir.

Q. Now, did you come back out of that yard?  
A. I went inside and I told the people what  
had happened out.....

Q. You spoke to the people inside the yard?  
A. Yes, sir.

Q. And did you take anything from the yard on  
advice given? A. Yes, sir.

10 Q. What you took from the yard? A. A machete, sir.

(continued)

HIS LORDSHIP: Just one moment, please. You took  
a machete from the yard? A. Yes, sir.

Q. Where is the machete. Is it this machete?  
(Machete shown to witness)

A. It look like it, sir.

HIS LORDSHIP: Exhibit one.

MR. BROWN: Now, when Fearon told you that he was  
going for a cutlass which is bigger than a knife,  
how you felt? A. I didn't know what to say,  
sir, for I didn't see why he had to go for a  
cutlass, sir.

20

HIS LORDSHIP: That is not the question: "When  
deceased said he was going for a cutlass how  
did you feel?" This is the question.

A. I felt frightened, sir.

MR. BROWN: Now, when you took the cutlass where  
did you go to? A. I came out of the yard.

Q. Yes. A. And started walking up Rosemary Lane,  
on the sidewalk.

30 MR. BROWN: Where was Linton and Simpson at that  
time? A. Well, they were out in the street,  
sir.

Q. Were you walking towards them? A. Yes, sir.

Q. Now, is there a bar on the same side of the

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street that you went and got the machete?

A. Yes, sir.

Q. Is it about two gates from the bar? A. Exactly two gates from the bar sir.

Q. That you went and got this machete? A. Yes, sir.

Q. Did you reach up to where Linton and Simpson were whilst you had the machete in your hand?  
A. No, sir.

Q. You were on your way to them? A. To them, sir. 10

Q. Were they by the bar? A. Yes, sir.

Q. In front of the bar? A. Yes, sir.

Q. Why did you take out the machete and come on the lane with it? A. Because people in the yard tell me how the fellows down that end stay, sir.

HIS LORDSHIP: The same yard you got the machete from?  
A. Yes, sir.

HIS LORDSHIP: How the fellows them what?  
A. How the fellows them stay down there, sir. 20

MR. BROWN: How the what? A. The boys that frighten me when I was passing them would come back sir.

CROWN COUNSELL: M'lord, I make an objection. This is entirely hearsay, what others told him. It is not really relevant.

HIS LORDSHIP: Well, there is this to it that it would be a matter for the jury. You see the question of his intention would be relevant to this charge generally anything that might have been told to him that would affect his state of mind, so primary evidence for that point only but not to prove the truth, that I will be telling the jury later. So the fact that these people told him how these boys were won't be proof but how it affects his state of mind. I will allow the evidence on that point and I will direct the jury what is the relevance, but we don't want 30



too much of this all the same, just the general explanation. Yes, Mr. Brown.

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MR. BROWN: Which fellows? A. They call them the Max Gang, sir.

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HIS LORDSHIP: That is the Max Gang? A. Yes, sir.

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MR. BROWN: Do you personally know any of the boys or people in the Max Gang? A. I only pass and see them.

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10 Q. You know the names of any of them? A. Yes, sir, aliases sir.

(continued)

HIS LORDSHIP: You pass and see them? A. At the corner.

HIS LORDSHIP: Which is this corner again?  
A. Barry Street and Rosemary Lane, sir.

20 MR. BROWN: My next question was: if you knew the names of any of these last year - the night that this thing happened - you knew the names of any of the Max Gang boys? A. I only know them by aliases sir.

Q. You saw any of them that night? A. Yes, sir.

Q. Tell me which ones you saw that you know?  
A. The one that them call him 'Pampadou', sir.

HIS LORDSHIP: That is a Greek name?

MR. BROWN: Who else:

30 CROWN COUNSEL: Objection M'lord, at this stage I will take another objection. This witness says he has heard of the gang, he has seen members pass. We must know the source of knowledge as to the membership of those persons in the gang.

HIS LORDSHIP: You can ask him later on.

CROWN COUNSEL: It might be hearsay M'lord, the foundation should be laid by him before he asks these questions. It may turn out when he is cross examined that everything is hearsay

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and the damage would have been done by then,  
M'lord.

HIS LORDSHIP: Mr. Brown, just wait a second.

(To witness) Now tell me this, how long you have  
information about the Max Gang? Was it that  
night you were hearing about it or you were  
hearing about it before? A. Before, sir.

HIS LORDSHIP: How long before? A. About eight  
months.

HIS LORDSHIP: Having had information about this  
Max Gang, have you ever seen the gang or any  
member of them in operation? A. One time, sir. 10

MR. BROWN: What was the nature of the operation  
you saw? A. It was a fight between they and  
some other fellows.

HIS LORDSHIP: And that is only once, he said. You  
saw them yourself? A. Yes, sir.

HIS LORDSHIP: You once saw them in operation  
where there was a fight? A. Yes, sir.

HIS LORDSHIP: Between who? A. The Max Gang set  
of fellows and..... 20

MR. BROWN: And who else? A. Some other boys,  
sir.

HIS LORDSHIP: And this operation was where?  
A. It happened right at Arnold Road and Dames  
Road, sir.

HIS LORDSHIP: Continue now.

MR. BROWN: Do you know from your personal knowledge  
-- put it this way, have you ever seen Orville  
Fearon with that gang? A. Most of the time it  
is only he and Anthony Wilson I see riding pass. 30

HIS LORDSHIP: Yes, but you are not answering the  
question.

MR. BROWN: Thus is the question: Have you ever seen  
Anthony Wilson with boys from the Max Gang?  
A. Yes, sir.

Q. Now, when you were coming up the lane with the machete in your hand going towards your two friends, Linton and Simpson, did anything happen? A. Yes, sir. When I was walking on the sidewalk going up by the bar.....

Q. You walked on the sidewalk?

HIS LORDSHIP: Going towards the bar?

A. Towards the bar, sir, I hear somebody say "See the bad man de".

10 MR. BROWN: When you heard that what did you do?  
A. Well, I spin around like this, sir  
(demonstrating)

Q. When you spun around like this, were you then facing - your face was turned to the bar or to the lane now? A. My back was turned to the bar and my face.....

Q. But you are still standing on the sidewalk?  
A. Yes, sir.

20 Q. And you saw anybody? A. As I spin around I just see the deceased come up with a cutlass.

Q. You see what? A. The deceased in front of me with a cutlass in a chopping mood, sir.

Q. What kind of cutlass; look like yours?

HIS LORDSHIP: With a cutlass in a chopping motion?  
A. Yes, sir.

MR. BROWN: Long like yours? A. No, sir.

Q. When you say a chopping motion demonstrate to the jury how.

A. He had it like that, sir (demonstrating)

30 Q. And about how close was he to you then, like where you are to - and he where?

A. About two feet. sir.

HIS LORDSHIP: About touching distance?

MR. BROWN: About at arm's length? A. Yes, sir.

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Q. Where was your machete at that time? A. I had it in my hand, by my side, sir.

Q. Which hand? A. My right hand, sir.

Q. Are you a right-hander? A. Yes, sir.

Q. So, seeing him with it in a striking position so close to you what did you do? A. I swung my own at the cutlass that he had in his hand, sir.

Q. And what happened? Did the cutlass catch you? A. It seems as if both cutlass, the two of them meet in the air, sir. 10

Q. What you hears, a sound? A. Yes, sir.

Q. And what you see happen to him? A. I see him stagger back, sir.

Q. Him stagger back? A. Yes, sir.

Q. And what? A. And fell.

Q. Fell back in the lane? A. Yes, sir.

Q. When you raised your machete did you intend to do him greivous bodily harm or any injury? A. No, sir. 20

HIS LORDSHIP: What he said that he did was, he 'swung'. You better use his term.

MR. BROWN: When you swung your machete, what did you mean to do with the machete? A. I only mean to hit his own out of his hand, sir.

HIS LORDSHIP: To hit his machete out his hand? A. Yes, sir.

MR. BROWN: I asked you what type of machete it was that he.....

HIS LORDSHIP: Mr. Brown you better follow up that: why did he want to hit the machete out of his hand. 30

MR. BROWN: Much obliged, M'lord. (To witness) Why did you want to hit the machete out of his hand

when he was so close to you? A. He had it in a threatening position, sir.

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Q. Is he a taller fellow than you, or shorter?

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A. About four inches shorter, sir, can't tell you exactly, but he is shorter, sir.

Q. So when you swung at his machete were you behind him or facing him? A. I was facing him, sir.

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Q. But he was down in the lane and you were standing up on the higher part of the sidewalk, is that so?

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CROWN COUNSEL: M'lord, M'lord.

(continued)

HIS LORDSHIP: Let me take a note, I can't write shorthand you know, I am trying to learn it.

CROWN COUNSEL: You see M'lord, I have allowed my friend to get away with quite a lot. This isn't examination-in-chief, this is giving of the evidence for his witness to say yes or no. He is giving the evidence M'lord. He is, in other words, putting the pop in the witness's mouth. Highly improper!

20

MR. BROWN: I have not got any pop M'lord, but he has his mouth; but since my friend has not heard the evidence.....

HIS LORDSHIP: Just one thing Mr. Gordon, it is not every little thing you must object to because this is consistent with this thing the doctor is saying.

CROWN COUNSEL: It is the witness that is giving the evidence. I am taking objection to the form in which the question is asked.

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HIS LORDSHIP: Even if it supports your case? It is not everything you object to. If a point is not in dispute you don't object to that.

MR. BROWN: You are quite right M'lord, but he is not alerted to the significance of what you have said.

HIS LORDSHIP: Go ahead.

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MR. BROWN: Tell me something, where was -- put it this way then, when you say you saw the deceased with his hand with a machete in it raised at you, was he standing erect or what?

HIS LORDSHIP: How was he standing? A. He was standing like this, sir (demonstrating)

MR. BROWN: Just like how you are standing now?

HIS LORDSHIP: He was standing with the cutlass this way? A. Yes, sir.

HIS LORDSHIP: Show the jury again. 10

(Witness demonstrates to the jury)

MR. BROWN: Was he standing on the sidewalk with you or standing down in the lane? A. He was standing down in the street, sir, and I was standing on the sidewalk, sir.

HIS LORDSHIP: The deceased was what, was standing where? A. In the street, sir, and I was standing on the sidewalk.

HIS LORDSHIP: I thought you told us earlier on that he was down in the lane and you were on the higher level? 20

CROWN COUNSEL: My friend put it in his mouth to answer that way M'lord.

HIS LORDSHIP: You are now saying the deceased was standing in the street and you were in the....? A. Standing on the sidewalk.

MR. BROWN: Standing on the sidewalk? A. Yes, sir.

Q. So which of the two of you was on the higher ground at the time? A. I was on the higher ground, sir. 30

Q. You were on the higher ground? A. Yes, sir.

Q. Much obliged. And when you saw him fall, was it only the two of you around that area of the lane? A. No, sir.

Q. About how many people? A. I couldn't tell how

much exactly, sir, but it was about nine, sir.

HIS LORDSHIP: About nine people?

A. Yes, sir.

MR. BROWN: Any of them were connected to you?

A. Only Linton and Bolton.

HIS LORDSHIP: Bolton Simpson? A. Yes, sir.

Q. So when you saw the deceased drop, what did you do? A. I stood there for a moment, and his friend which was holding the bicycle throw down the bicycle.

10

Q. That is who? A. Anthony Wilson.

Q. Yes. A. Throw down the bicycle and take up the cutlass.

Q. Which cutlass was that? A. The cutlass that the deceased had, sir.

HIS LORDSHIP: Threw down his bicycle? A. Two bicycles sir. He was holding the deceased's own.

HIS LORDSHIP: And did what, took up the cutlass? A. Yes, sir.

20

MR. BROWN: That what? A. The deceased had in his hand, sir.

Q. The deceased still had it in his hand? A. Yes, sir.

Q. Yes, and did what? A. And he rushed at me sir.

Q. And so what you did when he rushed at you? A. I turned and ran, sir.

Q. Up the lane or down the lane? A. Up the lane, sir.

Q. So Wilson rushed at you with the machete? A. Yes, sir.

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Q. Did he run after you? A. Yes, sir.

Q. He alone? A. No, sir, a whole crowd of them

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- sir, a whole crowd of people, sir.
- Q. You sure?    A. Yes, sir.
- Q. Not only he alone?    A. No, sir.
- HIS LORDSHIP:    Is a whole crowd of people what?  
                  A. Started to run me down, sir.
- Q. But you run faster than them?    A. Yes, sir.
- Q. At that time was the block-out still on?  
                  A. Yes, sir.
- HIS LORDSHIP:    He has not told us anything about  
                  block-out yet?
- MR. BROWN:    He told us earlier on that there was a  
                  block out that night, at the very beginning.
- HIS LORDSHIP:    Just a moment.    Power cut, yes.
- MR. BROWN:    So where and where you ran?    A. I ran  
                  up Rosemary Lane, along Laws Street, in an  
                  easterly direction, up Maiden Lane and then  
                  back on East Queen Street.
- Q. Going west?    A. Yes, sir.
- HIS LORDSHIP:    You ran up Rosemary Lane?
- MR. BROWN:    Turn which way now?    A. Along Laws  
                  street in an easterly direction, up Maiden Lane,  
                  on East Queen Street in a westerly direction  
                  and up Wildman Street sir.
- Q. They chased you the whole way?    A. I couldn't  
                  tell if they chased me the whole way, sir.
- Q. You just kept on running?    A. Yes, sir.
- Q. Where you stopped?    A. I run on Sutton Street  
                  and stopped by the back gate of the Central  
                  Police Station.
- Q. And you eventually went to No. 15 Sutton Street?  
                  A. Well, the back gate to the station was  
                  closed, sir, and I turn back sir.
- Q. And went where?    A. To the courthouse, sir. I

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was afraid if I went around to the front they would back me up and ill-treat me.

HIS LORDSHIP: You said you were afraid? A. Yes, sir.

MR. BROWN: Now, the next morning, did you go anywhere? You went to Allman Town police station? A. Yes, sir.

Q. Police came for you or you went yourself?  
A. I went, sir.

10 Q. Is your father a Sergeant of Police - Special Constable? A. Yes, sir.

Q. And you told the police what had happened?

HIS LORDSHIP: You made a report to the police?

MR. BROWN: You made a report to the police?  
A. Yes, sir.

Q. Did you go there yourself? A. Yes, sir.

Q. Later on Detective King came along? A. Yes, sir.

Q. Spoke to you? A. Yes, sir.

20 Q. You heard his evidence yesterday? A. Yes, sir.

Q. You told him what had happened? A. Well, I didn't tell him what happened.

Q. You told him in your own language what had happened? A. Yes, sir.

Q. And you took him to 15 Sutton Street and took the machete from under a house and gave him?  
A. Yes, sir.

HIS LORDSHIP: That machete that you say looks like it? A. Yes, sir.

30 HIS LORDSHIP: Under a house and gave him.

MR. BROWN: And what you are telling the court today is the truth, the whole truth and nothing but the truth? A. Yes, sir.

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CROSS-EXAMINATION BY CROWN COUNSEL:

Q. You say you know 'Pampadou' was a member of the Max Gang? A. Yes, sir.

Q. How long have you known him as a member of the gang? A. About four months, sir.

Q. When last you saw him? A. The night when the whole gang of them come back, sir.

Q. The night when he came back with this gang? A. Yes, sir.

Q. I am suggesting that you never saw 'Pampadou' that night at all? A. Yes, sir, I did see him, sir. 10

Q. I am suggesting to you you know 'Pampadou' was a member of the Pigeon Gang? A. I don't know, sir.

Q. Do you know that he has been in prison since 1967 - April?

MR. BROWN: M'lord, I must take objection.

HIS LORDSHIP: What 'Pampadou' has to do with the case? 20

CROWN COUNSEL: He said he saw him on the night, M'lord.

HIS LORDSHIP: Who is 'Pampadou'?

CROWN COUNSEL: He said he saw him on the night, M'lord.

HIS LORDSHIP: You are entitled to cross-examine Mr. Crown Counsel but 'Pampadou' does not have anything to do with this case. Not because it comes out in examination you are entitled to cross-examine about it. 30

CROWN COUNSEL: You said you saw him that night? A. Yes, sir.

Q. He came back with those boys and Anthony Wilson? A. Yes, sir.

Q. I am suggesting that he has been in prison since April, 1967, so you could not have seen him in July of 1968? A. It is two 'Pampadous' you know, sir.

Q. What is his christian name? A. I don't know his christian name, I know one as 'Big Pampadou' and one as 'Little Pampadou'.

HIS LORDSHIP: And one is in Greece.

10 CROWN COUNSEL: Now, when you were going down Rosemary Lane did Sonia speak to you? A. Not at that time, sir.

Q. I am suggesting it is after Sonia spoke to you that you spoke to the deceased, Fearon? A. No, sir.

Q. That is not true? A. No, sir.

Q. At the time when you.....

HIS LORDSHIP: You are suggesting that he spoke to?

CROWN COUNSEL: Fearon, after Sonia spoke to him.

HIS LORDSHIP: Yes.

20 CROWN COUNSEL: You saw Fearon, you say, running down Sonia? A. Yes, sir.

Q. It was night then? A. No, sir.

Q. It was evening? A. Coming on to 'dusk-up', sir.

Q. Coming on to dusk? A. Yes, sir.

Q. And you could see for a good distance at that time? A. Yes, sir.

Q. When you spoke to the deceased, Fearon, it was still light? A. Fairly lit up, sir.

Q. Not dark yet? A. No, sir.

30 Q. When this incident happened, out by the shop or the bar as you say, it was now night? A. What incident, sir?

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Q. The chopping. A. It wasn't night directly, but there wasn't any light so you couldn't determine whether or not it was night, sir.

Q. But it was dark? A. Yes, sir.

Q. And there was a block-out on? A. Yes, sir.

Q. And when it is dark you don't regard that as night? A. From 1.00 o'clock - I regard from one to one as day - from twelve to twelve as day, so I couldn't regard seven or so as night.

Q. You said when you confronted the deceased, Fearon, you felt your pockets? A. After he had a knife. 10

Q. For a knife? A. With the intention that he would feel I have something.

Q. But you knew you had none? A. No.

Q. And you asked your friends if anyone had a knife? You wanted a knife. A. Yes, sir.

Q. But there was none? A. No, sir.

Q. So you went and got a machete? A. It is after he had threatened me that I 'shub' ..... 20

Q. You went and you got a machete? A. Yes.

Q. There was nothing to prevent your remaining in Adrian Wilson's yard, was there? A. No.

Q. You could have stayed there? A. I don't live there. My girlfriend had gone to shop.

Q. You could have stayed in Adrian Wilson's yard? A. Yes, sir.

Q. But you took a machete and came out to do battle? Isn't that so? A. No, sir.

Q. You came back out armed, prepared to meet this man Fearon, isn't that so? A. Yes. 30

HIS LORDSHIP: Wait, wait.

CROWN COUNSEL: Why did you come out with the

machete to meet him? A. I didn't come out to meet him, sir.

Q. You just said so, you came out prepared to meet him. A. I came out prepared that if he.....

MR. BROWN: M'lord, I am objecting. My friend has started his unfair way, that is an unfair way to put the question, that is a misrepresentation of what the witness said.

CROWN COUNSEL: M'lord.....

10 MR. BROWN: Please sit down. I don't want to join in any further combat with him, M'lord.

HIS LORDSHIP: I note with pleasure Mr. Brown that you are chiding him now for a little chiding you got yesterday. But up to now I am watching him. I don't think he has done any danger yet, but I am watching him.

CROWN COUNSEL: M'lord, this witness said he came out to do battle.

20 HIS LORDSHIP: My note I have is: 'I came out armed to meet Fearon.' You put, he came out armed to do battle.

CROWN COUNSEL: Now, how long did you stay in Adrian Wilson's yard when you went in? A. I didn't stay any time, sir.

Q. You just went in, took the machete and came back out to the road? A. No.

Q. You knew you could have got a machete in that yard? A. No, sir.

30 Q. That is a yard you go to all the time? A. Sometimes I go there, not all the time, sir.

HIS LORDSHIP: What is your answer? You didn't know you could have got a machete in that yard? A. No, sir.

CROWN COUNSEL: Why did you come out of the yard with the machete? A. I don't live down there, sir, I had to go home, sir.

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Q. Tell me, when you turned in Adrian Wilson's yard you saw Fearon and Anthony Wilson riding down the lane, didn't you? A. As I was about to...

Q. Didn't you? A. No, sir.

Q. You didn't see them riding down the lane? A. No, sir.

Q. They were riding behind you, going down the lane? A. Yes, sir.

Q. They would have had to pass Adrian Wilson's gate? A. Yes, sir.

10

Q. You didn't look where they turn? A. As I was about to step inside Fearon called to me and said he was going for a machete which is bigger than a knife.

Q. Did you see where he was at that time? A. Who? Shearer?

Q. Yes. A. He was passing the gate going in a southerly direction.

Q. Where you live? A. Woodford Park, sir.

Q. Why didn't you go home then? A. I had to go for my girlfriend, you know sir.

20

HIS LORDSHIP: So at that time you were living at Woodford Park? A. Yes, sir, still living there, sir.

HIS LORDSHIP: Now, what you say about your girlfriend, that you had to go down there. What you are saying, that your girlfriend usually go down to Rosemary Lane and spend time with some people and you usually go down for her in the evening? A. Yes, sir.

30

CROWN COUNSEL: You say this man had threatened you? A. Yes, sir.

Q. You did not value your live more than that one evening with your girlfriend? A. I value my life, sir.

MR. BROWN: M'lord, I don't understand the question

'You don't value your life more than that one evening with your girlfriend'.

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HIS LORDSHIP: That is a comment.

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CROWN COUNSEL: You thought this man was going to do you harm - Fearon? A. Yes, sir.

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Q. You had an opportunity to go home? A. Well, no, sir.

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Q. You didn't; who held you? A. I had to wait until my girlfriend come from the shop.

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10 Q. So you thought it was better for you to wait on your girlfriend than to make sure of your safety by going home?

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A. Yes, sir.

Q. And you decided to arm yourself - get a machete?

A. That was after the people inside the yard spoke to me.

Q. You got a machete and you went out in the street to meet anything that was coming your way?

20 A. I didn't stay one place, I started walking up the lane to meet my girlfriend.....

Q. You knew.....

MR. BROWN: Let him finish his answer please.

CROWN COUNSEL: You knew Fearon was in the habit of passing along that street? A. I don't know if he is in the habit of passing along that street.

Q. You knew that himself and Wilson were in the habit of passing up and down that street?

A. I didn't say Rosemary Lane, sir.

30 Q. Now, you said most of the time you see himself and Wilson - that is, Fearon and Wilson, riding past? A. Yes, sir.

Q. Riding past where then? A. Pass up Laws Street or Barry Street.

Q. Not Rosemary Lane? A. Anywhere.

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Q. So you have seen them riding up Rosemary Lane then? A. I didn't say I had seen them riding up and down Rosemary Lane.

HIS LORDSHIP: 'I have seen them ride up Rosemary Lane'.

CROWN COUNSEL: You have never seen them ride up Rosemary Lane? A. Only once I see Anthony Wilson.

Q. So you have seen them go up Rosemary Lane before? A. The same night. 10

Q. Would you say the deceased, Fearon, was just about your height? A. Shorter than myself, about here (indicating)

Q. About how much shorter, about two inches shorter? A. Little more than two, about four.

MR. BROWN: M'lord, the witness has done it with examination-in-chief, he has done it again. My friend is only wasting time, that is sheer stupidity.

CROWN COUNSEL: My friend cannot act out of character, so I bear with him. 20

HIS LORDSHIP: Go ahead. You say the deceased is about four inches shorter than you? A. Yes, sir.

CROWN COUNSEL: He came to about here in your forehead? (indicating)

A. About here (indicating)

Q. About here - mid forehead? A. Yes, sir.

Q. Did you see the deceased drop his bicycle? A. No, sir.

Q. When you turned with your cutlass his was already raised? A. Yes, he had it in a chopping position. 30

Q. He had it up in the air? A. Yes, sir.

Q. You were then where? A. On the sidewalk.



Q. And he was? A. Standing in the street.

Q. By sidewalk do you mean the water-table?  
A. Yes, sir.

Q. Is it on the same level as the water-table?  
A. That is the sidewalk?

Q. Yes. A. About so (indicating)

Q. Four to six inches? A. Yes, sir.

Q. But he faced you? A. I spun around and faced him.

10 Q. And he was standing straight, he was erect with his arm raised with the cutlass? A. Yes, sir.

HIS LORDSHIP: That is so? A. Yes, M'Lord.

Q. What did you do? A. I swung my own.

Q. How you swung it? A. Like that (demonstrating) swing it like that.

Q. You swung it like that (demonstrating)?  
A. Yes, sir.

Q. While you were facing him? A. Yes, sir.

20 Q. You swung it that way or that? A. So (demonstrating).

Q. You say you aimed at the machete? A. My intention was hitting the machete.

Q. Did you aim at the machete? A. Yes, sir, I feel I aim to get the machete out his hand.

Q. What part of the machete you aimed at?  
A. The blade.

Q. And this machete was held above the level of the head? A. Yes, sir.

30 Q. So (demonstrating), correct me if I am wrong. Here was a man facing you with a raised machete, your machete was at your side? A. Yes, sir.

Q. You lifted it, swung it at him and he never hit

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at you, his machete never descended towards you, all you saw was that it was raised? A. I spun around same time as he lifted his cutlass.

Q. But it was not coming down, it was only up?

A. He was coming like that (demonstrating) and as I spun around I see him and I swing like that (demonstrating).

HIS LORDSHIP: You say his machete was in a chopping position? A. Yes, sir.

HIS LORDSHIP: So that if it had come down.....

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A. It would chop me, sir.

CROWN COUNSEL: You say it seems as if both cutlasses met? A. Yes, sir.

Q. Cutlasses? A. Well the one that Shearer have is a little short one with a broad mouth.

Q. You call that a cutlass? A. Yes, sir.

HIS LORDSHIP: Show the jury. A. The mouth about that (indicating)

CROWN COUNSEL: You felt your cutlass made contact with something? A. Yes, sir.

20

HIS LORDSHIP: Show him this piece of wood (piece of wood shown to witness). The length of it, was it longer than that? A. The blade would be longer, sir.

HIS LORDSHIP: No, the length of the cutlass? A. Yes, sir, about that length.

HIS LORDSHIP: About that length? A. Yes, sir.

HIS LORDSHIP: This won't be going in evidence Mr. Brown, but just to have an idea.

MR. BROWN: I will clear it up in re-examination, M<sup>r</sup>Lord.

30

CROWN COUNSEL: Would Your Lordship consider this a convenient time?

MR. BROWN: I was just wondering if my friend is

finished with him.

HIS LORDSHIP: You cross-examined for two days Mr. Brown.

MR. BROWN: Nothing wrong with that M'lord.

HIS LORDSHIP: Are you finished with him?

CROWN COUNSEL: No at all M'lord.

HIS LORDSHIP: Members of the jury, this is the third day, we are still on the case. I just remind you of that advice I tendered from Monday. We are going to take the luncheon adjournment now until 2.00 o'clock.

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Time: 12.49 p.m.

Resumption 2.11 p.m.

Registrar takes jury roll call - all present.

DERRICK IRVING: STILL ON OATH: CROSS-EXAMINATION  
BY CROWN COUNSEL cont'd.

Q. When you got this report about your girlfriend were you annoyed? A. Yes, sir, I was annoyed.

Q. At that time did you see the deceased, Fearon. At the time when you were getting the report did you have him in your sight, in your vision? A. Yes, he was just coming up back on his bicycle.

Q. You decided to take him up on what you had heard? A. Yes, I went to him and speak with him.

Q. You wanted to have it out with him for having interfered with your girl? A. Not directly, sir.

MR. BROWN: I object. I do not know what Your Lordship got, I heard the witness give a straight answer "I went to speak with him", not to have it out with him.

HIS LORDSHIP: He is suggesting 'to have it out'. Was it to have it out or to speak with him?

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A. Speak to him, sir.

CROWN COUNSEL: You just wanted to have a pleasant conversation with him? A. Yes, sir.

Q. Although you were annoyed? A. Yes, sir.

Q. When you went to speak with him your friends were with you? A. No, sir.

Q. You alone? A. Yes, sir, I alone was walking. At that time they stopped with my girlfriend where I left her.

Q. You felt your pocket for a knife? A. I didn't have one. 10

Q. You felt your pocket as if you were about to take out a knife? A. As if I had something on me, sir.

Q. You had none? A. No.

Q. So you turned to your friends and asked if they had a knife? A. Not my friends, sir, I turned to the people, I asked if anyone had a knife.

Q. Was Linton there? A. No, sir. 20

Q. Simpson? A. I don't remember, sir.

Q. Were they the ones you asked if they had a knife? A. It was a crowd of people, so I turned to anyone.

Q. If you got the knife would you have used it? A. No, sir.

Q. So why you wanted a knife? A. Because he had a knife at me, sir.

Q. So you wanted your knife to be on equal terms with him? A. Yes, sir. 30

Q. So you are saying he was prepared to attack you with a knife? A. Yes, sir.

Q. So you turned your back on him and walked away? A. After I felt my pocket.

Q. After you asked your friends and they had none and you turned and walked away? A. Yes, sir.

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Q. And he was armed with a knife ready to do battle with you?

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A. Yes, sir.

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HIS LORDSHIP: I think you are really putting comment to him. You know what you must do, you put questions to him.

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CROWN COUNSEL: M'lord.....

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10 HIS LORDSHIP: Please listen to me when I am speaking to you

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CROWN COUNSEL: I am sorry M'lord.

HIS LORDSHIP: Apparently both counsel need a little shaking up. You must put facts to him, questions to him and then any reasonable inferences or matter of argument you go to the jury with it.

CROWN COUNSEL: I follow M'lord.

20 Now, you walked ahead of him down the lane?  
A. Yes, sir.

Q. And you saw him riding his bicycle behind you coming down the lane? A. When I looked back I saw him.

Q. You looked back and saw him riding his cycle?  
A. Yes, sir.

Q. How far ahead of him were you at that time, when you looked back and you saw him riding down the lane and you were going down the lane? How far behind you was he? A. About seven yards.

30 HIS LORDSHIP: He was about seven yards.....

A. Behind me, sir.

HIS LORDSHIP: When you looked back? A. Yes, sir.

CROWN COUNSEL: And he was riding slowly with Wilson? A. Not riding but they were behind.

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Q. You had moved a full seven yards away from him after you felt your pocket for the knife, or possibly more? A. He came off the cycle you know sir, and it is when he gave his friend the cycle to hold now that I walk away.

Q. So you had walked a full seven yards or more away from him after you had felt your pocket for a knife? A. Yes, sir.

Q. Did he catch up with you? A. No, sir.

Q. When was it then that he told you he was going for something bigger than a knife? A. As I was about to step into the yard, sir. 10

Q. Where was he then? A. Just passing by the gate.

Q. So he did catch up with you? A. That is after I was about to go into the yard.

Q. He told you he was going for something bigger than a knife, did you look to see where he was going? A. I only glance and see both of them going down the lane. 20

Q. How far were they below the gate you turned the last time you saw them? A. About from here to where the young lady is sitting, sir (Pointing)

HIS LORDSHIP: You mean here (indicating)

A. Yes, sir.

CROWN COUNSEL: About three yards M'lord.

HIS LORDSHIP: Yes, about that.

CROWN COUNSEL: At that time were you alone?  
A. Yes, sir.

Q. You had left your friends? A. Yes, sir. 30

Q. When the deceased spoke to you, as you were turning in the gate, you were alone? A. Yes, sir.

Q. You say at that time he still had his knife with him? A. No, sir.

Q. He had nothing? A. Yes, sir.

Q. And he told you he was going for something bigger than that..... A. Yes, sir.

Q. ....to meet you? A. (No answer)

Q. Is that the impression you got, that he was going for something bigger than a knife to meet you? A. He told me I should stay until he come back for he was going for something bigger than a knife.

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10 HIS LORDSHIP: He was going for something bigger than? A. He was going for a cutlass which is bigger than a knife, sir.

(continued)

CROWN COUNSEL: I did not get that M'lord.

HIS LORDSHIP: The deceased told him to wait until he got back for he was going for a cutlass which is bigger than a knife.

CROWN COUNSEL: You then went and got a cutlass?  
A. I went into the home.

Q. You got a cutlass? A. Yes, sir.

20 Q. And you went back on to the road? A. Yes, sir.

Q. To wait for him? A. No, I was walking up the road when he came.

Q. When you went into the yard did you see Adrian Wilson? A. Yes, he was just passing.

Q. Did you see him? A. Yes, sir.

Q. Did you go into his room? A. No, sir.

Q. Did you speak to him? A. No, sir.

Q. You didn't? A. No, sir.

30 HIS LORDSHIP: You saw Adrian Wilson in that yard?  
A. Yes, sir.

Q. Have you ever been into Adrian Wilson's room?  
A. One or two times, sir.

Q. Is he a friend of yours? A. Yes, sir.

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(continued)

Q. Was it from his room that you got the machete?  
A. No, sir.

Q. Now, where this chopping took place is it near  
a bar or a shop? A. Near a bar, sir.

Q. The bar was opened at the time? A. Yes, sir.

Q. There was light in the bar? A. Candlelight,  
sir.

Q. There was light in the bar? A. Yes, sir.

MR. BROWN: He said candlelight. You heard it.

HIS LORDSHIP: Candlelight you say? A. Yes, sir. 10

CROWN COUNSEL: The deceased coming up Rosemary  
Lane had to pass you there, before the bar?  
A. Sir?

Q. He had to pass before the bar? A. To get to  
where sir?

Q. To where the incident happened. A. Yes, he  
had to pass the bar.

Q. So the light from that bar, whether it be  
candlelight or otherwise, shun outside?  
A. Yes, sir. 20

Q. Where you were at the time when you say you spun  
around, was in darkness? A. Yes, sir.

Q. Fearon had already passed through the glare from  
the shop to reach that spot? A. I couldn't  
determine that, you know sir.

MR. BROWN: I object M'lord. The witness never said  
anything about any glare. You get glare from  
the sun.

HIS LORDSHIP: Well, you see, in cross-examination  
it is permissible for you to put a question in  
such a way which is regarded as leading, which  
can be objected to from the other side; so he  
is asking now, if he passed through the glare of  
the light. 30

MR. BROWN: That is too glaring a misrepresentation



of what is said by the witness. He said the candlelight shun outside, he didn't say the glare from outside; just like how I was rightly corrected by Your Lordship for the past three days.

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HIS LORDSHIP: Do you know what is meant by radiating? A. Yes, sir.

HIS LORDSHIP: What you mean by that? A. The light shine outside.

10 HIS LORDSHIP: Like how it shine on Mr. Brown there now? A. Yes, sir.

CROWN COUNSEL: In order to get from where you were, from down Rosemary Lane he had to pass through the light in front of the shop - the radiation, you know what that means? A. He was walking on the street.

(continued)

Q. He had to pass the light? A. It wasn't bright enough to shine out in the street, sir.

20 Q. But before the shop was not as dark as where you were standing? A. No, sir.

Q. And in order to get to where you were at the time when you say you heard somebody say something and you spun around, he had to pass through this place before the shop? A. He was on the street, you know sir.

Q. He had to pass before the shop? A. I couldn't tell for he was on the street and my back was turned to the shop.

30 Q. And when you saw him he was above the shop, according to you? A. When you say (above the shop' what you mean, sir?

Q. On the East Queen Street side of the shop; you call one side the Barry Street side and one the East Queen Street side and you were on the East Queen Street side? A. Yes, sir.

Q. You didn't see him coming up the street towards you? A. No, sir.

Q. Did you see the light of any bicycles on that Rosemary Lane that night? A. No, sir.

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- Q. Tell me this: how much time passed during the time you went into that yard - Adrian Wilson's yard - and the time you say you heard someone say "See the bad man there"? How much time passed? A. Must have been about four minutes or five minutes.
- Q. And it was light, it was not yet night when you went in the yard? A. It wasn't night.
- Q. When you went in the yard? A. Yes, sir.
- Q. When you heard this person say "See one of them there", it was dark, dark enough for the candle to be lit in the shop? A. Yes, sir. 10
- Q. And you say just four minutes passed? A. Yes, sir.
- Q. Didn't you ask Fearon when you saw him on the road, 'why you kicked my girlfriend?' Did you ask Fearon that? A. Yes, sir.
- Q. Did he not ask you 'Is that what she told you?' A. No, sir.
- HIS LORDSHIP: Did he not ask Fearon what? 20
- CROWN COUNSEL: Why he kicked his girlfriend.
- Did he not ask you if that was what she told you? A. No, sir.
- Q. At the time when you spoke to Fearon was Anthony Wilson there? A. Yes, sir.
- Q. You know Sonia? A. Yes, sir.
- Q. Did she speak to you that evening? A. No, sir.
- Q. Sonia never spoke to you? A. No, sir.
- Q. You say when you turned, after you heard this person say "See one of them there", you saw the deceased? A. Yes, sir. 30
- Q. Did you see anyone else near him? A. Yes, sir.
- Q. Who? A. Some other boys, sir.

Q. Where were they? A. Standing right behind him, sir.

Q. How far? A. Form a kind of group behind him, sir.

Q. Nobody was behind you? A. No, sir.

Q. Nor beside you? A. Only Shearer, sir.

Q. Only the deceased? A. Yes, sir.

Q. All the others were in front of you? A. Yes, sir.

10 Q. After the deceased fell did you see Anthony Wilson bend and look at him? A. No, sir.

HIS LORDSHIP: Did you see Anthony Wilson what?

CROWN COUNSEL: Look at the deceased, M'lord  
(To witness): You didn't? A. No, sir.

Q. After the deceased fell you remained standing there or did you walk away? A. I stood there for a while, sir.

Q. You saw when Anthony Wilson took up the cutlass? A. Yes, sir.

20 Q. You stood and watched him take it up? A. Well, he just jump off the bicycle that he was on and drop both bicycles, he had his friend's own in his hand, he dropped the two of them and just jump and take up the machete and rush at me and I turn away.

Q. At the time when you took that cutlass out of Adrian Wilson's yard were you still annoyed at what happened to your girlfriend? A. Not at what happened, sir, but.....

30 Q. At what you were told? A. Yes, sir.

Q. You were still annoyed? A. Yes, sir.

Q. And when you went out with the cutlass you were still annoyed? A. Because they had told me that.....

Q. You were still annoyed?. A. Yes, sir.

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MR. BROWN: He was saying 'because.....' Will you allow him to answer? I am objecting M'lord, and my friend says it is improper for me to object.

HIS LORDSHIP: Yes, Mr. Brown?

MR. BROWN: I am just objecting M'lord, to my friend interrupting the witness when the witness is giving a complete answer. He knows better than that.

HIS LORDSHIP: I have been saying this all the time. A witness is asked a question, he should be allowed to answer the question. It doesn't matter who he is, whether Crown Counsel or Defence, the witness should be given an opportunity to answer the question. If the question isn't answered he can repeat it and put it another way. Everybody must be fair to the witness, give the witness an opportunity because that is the only way the jury can decide whether he is speaking the truth or not. If the opportunity is not given the jury will not be in a position to say whether the witness is speaking the truth or not. 10 20

CROWN COUNSEL: M'lord, this witness is given every opportunity. (To witness) Weren't you still annoyed while you were walking up the street with the cutlass in your hand? A. Yes, because.....

MR. BROWN: M'lord.

HIS LORDSHIP: You were annoyed? A. Yes, sir, because when he was going down the street he told me that I should wait until he came. 30

CROWN COUNSEL: Why were you annoyed? A. Because he said I should wait until him come back because him going for a machete which is bigger than a knife.

Q. And you went out to wait on his return armed with your machete? A. No, sir, I didn't stop you know sir.

Q. You were on the look-out for him? A. Yes, sir. 40

HIS LORDSHIP: You say you were annoyed because what? A. Because when he was going down the street he told me that I should wait until him come back.

CROWN COUNSEL: And you were looking out for him? A. Yes, sir.

Q. You knew if he came back he would come up the street? A. Naturally, sir.

10 Q. You knew if he came up the street he would have to pass before that shop or bar? A. I wouldn't know you know sir, for I come out before.

Q. If he came up to you he would have to pass before the shop or bar? A. Yes, sir.

Q. And in so doing he would pass through the radiation before the shop or bar? A. As he was on the street, sir.....

Q. He would have to pass through it? A. No, sir.

Q. He could be riding on the street.....

20 HIS LORDSHIP: Remember he had told you that the light was not bright enough to cause the radiation.

CROWN COUNSEL: It did not shine across but it was lighter in front of the shop than where he was M'lord.

HIS LORDSHIP: Later on he told you that that part would still be brighter than.....

CROWN COUNSEL: Yes, M'lord. (To witness) And you waited above the light? A. I wasn't waiting, sir.

30 Q. You were above this light..... A. Yes, sir.

Q. ....at the time when this incident occurred? A. Yes, sir.

HIS LORDSHIP: That is, if you are coming up Rosemary Lane the bar would be on your left hand side? A. Right hand side, sir.

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CROWN COUNSEL: So then you would have passed the shop as if you were going towards.....?  
A. Laws Street.

Q. You were in the darkness? A. Yes, sir.

Q. Armed with a machete? A. Yes, sir.

Q. Waiting? A. I wasn't waiting, sir.

Q. On the look-out? A. Well, you can call it 'on the look out'.

Q. On the look-out for Fearon? A. Yes, sir.

Q. And you saw him, didn't you? A. Coming up the road, sir? 10

Q. I asked you if you saw him. A. Yes, after I heard the voice.

Q. I am suggesting that what happened that evening is that Sonia stopped you while you were on your way down Rosemary Lane?

HIS LORDSHIP: Is that so? A. No, M'lord.

CROWN COUNSEL: At that time there were three or four other boys with you - at the time when Sonia stopped you and spoke to you? A. She did not stop me, sir. 20

HIS LORDSHIP: Did Sonia stop you? A. No, M'lord.

CROWN COUNSEL: Three or four boys were with you? A. No, sir.

Q. I am suggesting that Sonia spoke to you, when she stopped you she spoke to you? A. No, sir.

HIS LORDSHIP: That is not so? A. No M'lord.

CROWN COUNSEL: That Fearon and the witness Anthony Wilson were then riding down Rosemary Lane? A. No, sir. 30

Q. And that you and your companions went and stopped them? A. No, sir.

HIS LORDSHIP: You didn't stop them? A. No M'lord.

CROWN COUNSEL: Having stopped them you asked him why he kicked your girlfriend? A. I didn't stop them, sir.

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- 10 Q. You asked him why he kicked your girlfriend?  
A. Yes, I asked him that.
- Q. At that time you were annoyed? A. Not that time sir. After I went to him and told him my girlfriend told me that.....
- Q. After you asked him why he kicked your girlfriend, you asked him that because you were not pleased? A. Yes, sir.
- Q. I am suggesting that you started to feel your pockets then? A. No, sir, he pulled a knife, sir.
- Q. I am suggesting that when you were feeling your pockets he pulled a knife? A. No, sir.

HIS LORDSHIP: So your suggestion is that he felt his pockets first and then the deceased pulled a knife.

20 CROWN COUNSEL: Yes, M'lord.

MR. BROWN: I must object, my friend must stick to his case, Anthony Wilson did not say that.

HIS LORDSHIP: What has he put that is improper?

MR. BROWN: Anthony Wilson said Fearon pulled the knife then this witness felt his pockets.

HIS LORDSHIP: No.

MR. BROWN: I will look back at my notes M'lord. If I am wrong, I stand corrected.

HIS LORDSHIP: Just wait a second.

30 MR. BROWN: No, I am wrong M'lord. "The accused felt his pocket and Fearon took out knife."

CROWN COUNSEL: I am accustomed to my friend's inaccuracies M'lord.

HIS LORDSHIP: We have been a long time at this

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case so some of the real details might slip up.

CROWN COUNSEL: Yes M'lord, I appreciate that too.  
(To witness) I am suggesting that yourself and  
your friends were murmuring amongst yourselves?  
A. No, sir.

Q. And that you asked if any of them had a knife?  
A. my friends were not there, you know sir,  
at that time.

Q. Then you asked complete strangers for a knife?  
A. a crowd was there and I asked if anyone had  
a knife. 10

Q. I am suggesting that your friends who were  
murmuring with you were the ones you asked if  
anyone had a knife? A. No, sir.

Q. Then you walked off quickly down Rosemary Lane?  
A. I didn't walk off quickly sir, just walk  
away.

Q. Just ordinarily? A. Yes, sir.

Q. And in that ordinary walk you put seven yards  
between yourself and Fearon? A. Yes, sir. 20

Q. And you turned into Adrian Wilson's gateway?  
A. I didn't reach his gateway yet, sir.

Q. You turned into Adrian Wilson's gate? A. Yes,  
I did turn into his gate, sir.

Q. I am suggesting that in Adrian Wilson's yard you  
got a machete? A. Yes, sir.

Q. You came on to the road looking out for Fearon?  
A. I wasn't directly looking for him, sir.

Q. You were watching to see if he would come back?  
A. Not directly watching to see if he would come  
back, but after he threatened that way..... 30

Q. You were looking to see if he would come up the  
lane? A. Not watching to see.

Q. And that you stop in the dark by the bar or shop  
and awaited his coming? A. No, sir, I did not  
stand, sir.



Q. You actually saw him coming up Rosemary Lane?  
A. No, sir.

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Q. And when he reached the light you stepped out from where you were, with the machete in your hand? A. No, sir, I didn't come off the sidewalk, sir.

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Q. I am suggesting that he then dropped his cycle and started to run - that Fearon dropped his cycle and started to run? A. Nothing like that sir.

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Q. Trying to dodge you, circling?

HIS LORDSHIP: Wait, wait. Did Fearon drop the cycle? A. No, sir.

(continued)

CROWN COUNSEL: Did Fearon appear at any time like he wanted to run? A. No, sir.

Q. I am suggesting that you chased him? A. I did not chase him sir.

Q. And that you chopped him in his head and killed him? A. I swing the cutlass, sir, but I did not intend for it to catch him in his head, sir.

20

Q. That at the time when you chopped him his back was to you, he was running away? A. No, sir.

HIS LORDSHIP: You must remember the circle that Wilson showed to the jury while he was in the box, a kind of circle around like.

MR. BROWN: He showed us a circle of movement, but described it as a circle.

HIS LORDSHIP: I am not a mathematician like you.

CROWN COUNSEL: I am suggesting that at no time did the deceased, Fearon, threaten to return with a machete for you? A. He did threaten me, sir.

30

Q. And that the only time that he showed a knife to you was when you started feeling up your pockets for one and asking your friends for a knife. A. No, sir, he pulled the knife before I started to feel my pocket sir.

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Q. And that he never attacked you at any time with any machete? A. He did attack me sir.

Q. That he had no machete in his hand at the time he got cut? A. He had a machete, sir.

Q. At the time you say when Fearon fell, after he received the blow, you stood by for a little? A. Yes, sir.

Q. That Wilson came, took up the machete, and then started to chase you? A. Him just jump off the bicycle, sir, took up the machete and run at me

10

Q. And started to chase you? A. Yes, sir.

Q. That after Wilson did that, you ran? A. Yes, sir.

Q. That in itself was the first hostile move made towards you after this incident? A. Yes, sir.

Q. After the chopping? A. Yes, sir.

HIS LORDSHIP: That was the first hostile what?

CROWN COUNSEL: Move as such, M'lord, move towards him.

HIS LORDSHIP: When Wilson chased him?

20

CROWN COUNSEL: When he rushed at him.  
(To witness) The persons that you say you saw behind the deceased when you turned around, they were standing up? A. Yes, sir.

Q. And they were some distance from him? A. Yes, sir.

Q. He was the only person near you? A. At the moment, sir?

Q. At the time; why did you therefore tell the police that the whole crowd of them came to beat you and you chop him? A. It was a whole crowd, you know sir, but I only recognise three of them, sir.

30

Q. But there was no crowd, you saw one man in front of you, the others were some distance away.

A. Just behind him.

HIS LORDSHIP: It was a crowd of what?

A. Boys, sir, standing behind him sir.

CROWN COUNSEL: Yet you told the police that a crowd came at you?

A. After he fell and I ran the whole crowd came.

Q. After he fell Wilson started to chase you, after the hue and cry was made:

10 A. When I spin round everybody was beyind him, they were not there when I was passing the bar, all of them came up together.

Q. After Fearon fell and Wilson started to chase you you heard the sound of other people coming behind Wilson?

A. No, sir, everybody started chasing me at once.

Q. That time Fearon had already fallen? A. Yes, sir.

Q. You already chopped him?

A. I didn't swing to chop him, you know sir.

Q. But you chopped him? A. Accidentally, sir.

20 Q. I am suggesting that you chopped him deliberately while he was running from you?  
A. No, sir.

Q. In the back of his head? A. No, sir.

Q. I am suggesting that the cutlass that Wilson used with which he chased you was one he ran in a yard and came out with?

A. He didn't run in any yard, sir.

30 Q. That is why you didn't run off. I am suggesting he ran in a yard and came out with a cutlass and you took to your heels?

A. He didn't run in any yard, sir.

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HIS LORDSHIP: You are saying he was there all the time, holding the bicycle?

A. Yes, sir.

HIS LORDSHIP: And it was the machete that Fearon had that he took up and chased you?

A. Yes, sir.

HIS LORDSHIP: I follow. Are you finished, Mr. Gordon?

CROWN COUNSEL: I am, M'lord.

HIS LORDSHIP: Just a minute Mr. Brown, I will just ask some questions.

10

(To witness) Tell me something, is Sonia a friend of your girlfriend, Yvonne?

A. I couldn't really say that, sir.

HIS LORDSHIP: Can you say whether she knows Yvonne or not?

A. Yes, sir, I suppose she knows her.

HIS LORDSHIP: You suppose so? A. Yes, sir.

HIS LORDSHIP: Now, was there an address on Rosemary Lane that your girlfriend had gone that night? A. Yes, sir.

20

HIS LORDSHIP: Which address was that?

A. Thirty-two and a half Rosemary Lane.

HIS LORDSHIP: You knew that she had gone to visit this place before nightfall?

A. Yes, sir.

HIS LORDSHIP: You had known that before?

A. Yes, M'lord.

HIS LORDSHIP: Now, you told Mr. Brown, when he was examining you this morning, that when you went into the yard the people in there told you something, told you how the boys down there

30

operate? A. Yes M'lord.

HIS LORDSHIP: Before you went in that yard did you know how those boys operated?

A. Only one time.....

HIS LORDSHIP: That was when you told us you saw their set fighting another set?

A. Yes M'lord.

HIS LORDSHIP: Apart from that you didn't know how they operated? A. No M'lord.

10 HIS LORDSHIP: Now, when Fearon told you to stay there -- sorry -- you should wait until he came back, did you believe he was serious?

A. Yes, sir

HIS LORDSHIP: Then why did you go back outside?

A. Well, after I went in the yard I didn't have anywhere to stay and Yvonne was on the road and I had to go back to her.

HIS LORDSHIP: You believed he was serious when he said you were to wait until he come back?

20 A. Yes, sir.

HIS LORDSHIP: The question I asked you was: why you went back out there?

A. Yvonne was on the road, you know sir, anything could happen.

HIS LORDSHIP: You didn't know how long he would take to come back though? A. No, sir.

30 HIS LORDSHIP: The last question I want to ask you: Now from this yard where you were, that is the yard where Adrian Wilson lives, to the yard where your girlfriend would have been, at 32 $\frac{1}{2}$ , could you stay there and call her and talk to anybody in the yard?

A. It is the same yard, you know sir - 32%.

HIS LORDSHIP: So your girlfriend would have come

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back at that same yard?

A. Yes, M'lord.

HIS LORDSHIP: Thank you, Mr. Brown, that is all.

RE-EXAMINATION BY DEFENCE COUNSEL, MR. BROWN:

Q. You know what they call a bill machete that they use to chop coconut?

A. Yes, I have seen it, sir.

Q. Is that one shorter than the one that is in court?

A. Yes, sir.

Q. Is that machete like a bill machete, that the deceased used that night?

A. Yes, sir.

HIS LORDSHIP: You say the bill machete is shorter than what?

A. Than the longer machete, the sow machete.

HIS LORDSHIP: It was a bill machete the deceased had? A. Yes, sir.

MR. BROWN: You know what has happened to that machete? A. No, sir.

Q. When was the last time you saw it?

A. In Anthony Wilson's hand, sir.

Q. Now, my learned friend asked you about the crowd that was along with the deceased, Fearon; now, did you see any crowd with him or near to him when you spun around and saw the machete?

A. Yes, sir.

Q. How near was that crowd to him?

10

20

- A. Some was standing exactly behind him and some a foot away.
- Q. Keep your voice up.
- A. Some of them was standing exactly behind him and some of them was about a foot away.
- MR. BROWN: Some right behind him and some what?
- A. Gather about a foot away from him.
- Q. Any of these people in that crowd were your friends? A. No, sir.
- 10 Q. They came along with the accused? (sic) A. Yes, sir.
- Q. And is that the same crowd that chased you up the lane? A. yes, sir.
- Q. Now, my friend suggested to you that you were looking out for Fearon to come up the lane with the cutlass that he said he was going for for you, remember that?
- A. Yes, I remember
- Q. Were you looking for him to come from down the lane or from up the lane?
- 20 A. From down the lane.
- Q. You were looking for him to come from down the lane? A. Yes, sir.
- Q. Why?
- A. Because it was down that way that he was when I was going.
- Q. He lives on Ladd Lane, at 8 Ladd Lane.
- A. I don't know, sir.
- Q. You don't know where he lives? A. No, sir.
- 30 Q. But when you came out of 32½ with the machete in your hand you didn't walk down the lane where you expect him to come from? A. No, sir.

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(continued)

Q. You walked up the lane with your back to the direction he was expected to be coming from? A. Yes, sir

Q. And before you spun around, on hearing something, you see, had you stopped at all between 32 $\frac{1}{2}$  and where you spun around, had you stopped and waited.....

A. No, sir.

Q. ....armed with your machete, like you were going to war? A. No, sir.

10

Q. Was there another girl along with Yvonne, your girlfriend, that night? A. Yes, sir.

Q. What is her name, is it Pamela Evans?  
A. Yes, sir.

Q. Is that the girlfriend of Adrian Wilson?  
A. Yes, sir.

Q. From 32 $\frac{1}{2}$  Rosemary Lane?

HIS LORDSHIP: Pamela what?

A. Pamela Evans, sir.

HIS LORDSHIP: She is the girlfriend of.....?

20

A. She is the girlfriend of Adrian Wilson M'Lord.

MR. BROWN: Living at 32 $\frac{1}{2}$  Rosemary Lane too, is that so?

A. Yes, sir.

Q. Much obliged.

---



NO.11ADRIAN WILSONIn the Home  
Circuit Court

(Adrian Wilson, called, not yet sworn)

Defence Evidence

No.11

Adrian Wilson  
29th January  
1969

10 MR. BROWN: M'Lord, I have to make an unusual application. I heard Your Lordship this morning warn this witness, when he was called by the crown, before he was dedicated to me, and he had been told that because he was late he would not get his expenses. I would be seriously embarrassed. If he was to go without pay, it might prove inimical to the defence.

HIS LORDSHIP: What I said, it wasn't final, I said I would reconsider it.

MR. BROWN: He reminded me of that M'lord. He does not want to feel that it is dependant on the type of evidence he is going to give.

HIS LORDSHIP: Swear him. You want to examine him?

20 MR. BROWN: I want to examine him M'lord but in a healthy atmosphere.

ADRIAN WILSON: SWORN:EXAMINED BY DEFENCE COUNSEL, MR. BROWN:

Examination

Q. Now, Adrian Wilson is your name? A. Yes, sir.

Q. And you live at 32½ Rosemary Lane, Kingston?  
A. Yes, sir.

Q. You are a mechanic by trade? A. Yes, sir.

30 Q. And Pamela Evans is your girlfriend? A. Yes, sir.

Q. The baby that she has for you --- she and yourself live together at 32½ Rosemary Lane?  
A. Yes, sir.

Q. You know Yvonne Rutherford? A. Yes, sir.

Q. She is a friend of your girlfriend? A. Yes, sir.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian Wilson  
Examination  
29th January  
1969  
(continued)

Q. And she is the girlfriend of the accused, Derrick? A. Yes, sir.

Q. Yvonne, I mean. A. Yes, sir.

Q. Do you remember Monday night, the 8th of July, last year? A. Yes, sir.

Q. Don't look frightened, the Judge is not going to hurt you. Between 7.00 o'clock and 8.00 o'clock that night did you leave your yard to go to the shop? A. Yes, sir.

HIS LORDSHIP: He is your witness you know, you mustn't lead him. 10

MR. BROWN: I am not leading him on anything vital, M'lord.

HIS LORDSHIP: Between the hours of 7.00 to 8.00 p.m. did you go anywhere? A. Yes, sir.

MR. BROWN: Where did you go? A. Up to the shop?

Q. Why? A. I heard of a incident took place.

Q. Involving who?

HIS LORDSHIP? You went to a shop? A. Yes, sir. 20

HIS LORDSHIP: After you had got some report? A. Yes, sir.

MR. BROWN: Incident involving who? A. I hear that a man kick....

Q. The incident involved who? A. My baby mother, sir.

Q. Pamela Evans? A. Yes, sir.

HIS LORDSHIP: That is Pamela Evans? A. Yes, sir.

Q. You saw her? A. Yes, sir.

Q. Was she alone? A. No, sir. 30

Q. With whom was she? A. With Yvonne, sir.

In the Home  
Circuit Court

Q. Yvonne Rutherford? A. Yes, sir.

Q. After you investigated the report with her did you leave to go back somewhere?

A. Leaving to go home, sir.

Defence  
Evidence

Q. On your way back home did you see anyone on bicycle? A. Yes, sir.

No.11

Q. Who? A. Two man riding upon bicycle, sir.

Adrian Wilson  
Examination

Q. Up where? A. Up Rosemary Lane, sir.

29th January  
1969

(continued)

10 Q. Did they reach up to where you were? A. As I about going in the gate, sir.

Q. Did you recognise, make out who they were? A. Yes, sir.

Q. Who they were? A. The deceased and Anthony Wilson, sir.

Q. They were riding one behind the other or what? A. Side by side, sir.

Q. Was it yet dark at that time? A. Yes it was dark.

20 Q. Any lights on the bicycle? A. Yes, sir.

Q. You went into your yard? A. Yes, sir.

Q. Shortly after you got into your yard did you hear a sound? A. Yes, sir.

Q. What did the sound sound like to you? A. Like two metals lick together, sir.

Q. Did you hear anything else after you heard that sound like two metals hit together? A. I heard shouts.

Q. Shouts for what? A. 'Murder', sir.

30 Q. Where that was coming from? A. Outside the street.

Q. Rosemary Lane? A. Yes, sir.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian Wilson  
Examination

29th January  
1969  
(continued)

Q. Hearing that sound and the shouts for 'murder' what did you do, if anything?  
A. I rushed back to see what was taking place.

Q. Where did you rush to? A. My fence, sir.

Q. To see what was happening, to see what was taking Place? A. Yes, sir.

Q. You looked out into Rosemary Lane? A. Yes, sir.

Q. What did you see? A. I saw a man lying on his back, sir, with a machete in his hand. 10

HIS LORDSHIP: Lying on his back?

MR. BROWN: With what? A. A machete in his hand, sir.

Q. Long machete or short machete? A. Well, it is a little bill machete, sir, with a hook on it.

Q. One with a kind of bull-dog mouth? A. It have a slant top with a hook on it sir.

Q. You made out who that man was that was lying on the ground with a machete in his hand? A. It was the deceased, sir, the one what pass me when I was going inside my home. 20

Q. Now, did you see Anthony Wilson when you looked over the fence?

HIS LORDSHIP: Did you see who?

MR. BROWN: He told us he saw both of them riding up; I am asking him if he saw Anthony Wilson when he looked over the fence. A. Yes, sir.

Q. Where did you see him? A. I saw him came off a bicycle, sir. 30

Q. And do what? A. Took out the machete out the man hand.

Q. Out whose hand? A. The man who was on the ground.

Q. That is the deceased? A. Yes, sir.

In the Home  
Circuit Court

HIS LORDSHIP: Took out the machete from the hand of the deceased? A. Yes, sir.

Defence  
Evidence

MR. BROWN: And do what with it? A. Started running up the road with it and about five other persons was following him, sir.

No.11

Q. When you looked out over the fence did you see the accused? A. No, sir.

Adrian Wilson  
Examination

10 Q. Now, when you first looked over the fence and saw Fearon, the deceased, lying on the ground did you see any other people around there, in the lane? A. Yes, sir.

29th January  
1969  
(continued)

Q. About how many people you would say? A. About ten people.

Q. About ten persons? A. Yes, sir.

Q. Man alone or men and women? A. It was mostly men sir.

Q. You know the Max Gang? A. Well, I really don't know them.

20 Q. I mean you personally. A. Well, I really don't know them, sir.

Q. Mr. Wilson, you gave evidence for the crown at the preliminary enquiry?

HIS LORDSHIP: That is irrelevant.

MR. BROWN: It is relevant here M'lord.

30 HIS LORDSHIP: It is already on the record that this witness is on the back of the indictment for the prosecution and is not being used, so whether he gave evidence at the preliminary enquiry is not relevant in the case.

MR. BROWN: As Your Lordship pleases.

CROSS-EXAMINATION BY CROWN COUNSEL, MR. GORDON:

Cross-  
examination

Q. You remember you gave the police a statement? A. Yes, sir.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian Wilson  
Cross-  
examination  
29th January  
1969  
(continued)

Q. This statement was given the same night of this incident? A. Yes, sir.

Q. Shortly after? A. Yes, sir.

Q. Corporal King took it? A. Yes, sir.

Q. At that time what happened was fresh in your mind, it had just happened?

HIS LORDSHIP: Taken by who?

CROWN COUNSEL: Detective King M'lord.

(To witness) At that time what had happened was still fresh in your mind, you could see it in your mind's eye? A. (No answer).

10

HIS LORDSHIP: 'The incident just happened'. That is a form of examination in the lower courts.

MR. BROWN: Petty session M'lord.

HIS LORDSHIP: I couldn't say which one.

CROWN COUNSEL: What you told the Corporal was true? A. Yes, sir.

Q. Everything was true? A. Well, I didn't tell him some part of what happened, sir.

20

Q. You left out some? A. Yes, sir.

Q. Why you left it out?

HIS LORDSHIP: Just wait please.

CROWN COUNSEL: You held back some? A. Well, I was beaten, sir.

Q. You were beaten? A. Yes, sir.

Q. To say what you saw happened? A. Well, at that moment, sir, I was nervous, sir.

Q. Oh, you were beaten or you were nervous, or are you saying you were beaten or shaken by your nerves?

30

HIS LORDSHIP: He hasn't said that

CROWN COUNSEL: I am asking if that is what he is saying M'lord.

In the Home  
Circuit Court

HIS LORDSHIP: No. Ask him if he was beaten, who beat him, that is the fairest way to cross-examine. Somehow I have been trying to show how to cross-examine on the other side and how to examine-in-chief, because if you don't do it I will be asking for the benefit of the jury.

Defence  
Evidence

No.11

Adrian Wilson  
Cross-  
examination

10 CROWN COUNSEL: Who beat you? A. The police.

Q. Which police? A. By Mr. King and some other policemen.

29th January  
1969  
(continued)

HIS LORDSHIP: Mr. Kinghorn? A. Mr. King, sir.

CROWN COUNSEL: You were beaten by Mr. King and some other policemen? A. Yes, sir.

Q. Were you beaten before you gave the statement? A. Yes, sir, I was beaten before I gave the statement.

20 Q. Were you beaten after you gave the statement? A. Before, I said sir.

Q. You gave evidence at the preliminary enquiry? A. Yes, sir.

Q. Were you beaten there? A. No, sir.

Q. In the Sutton Street Court? A. No, sir.

Q. Did you sign this statement which you gave Corporal King? A. Yes, sir, I did sir.

Q. And all that you told him in that statement was true? A. Yes, sir.

Q. But you left out something? A. Yes, sir.

HIS LORDSHIP: Mr. Gordon, let me see if I follow what he is saying.  
(To witness) You say you were beaten before you gave the statement? A. Yes, sir.

CROWN COUNSEL: But what part you gave in the statement, beaten or not beaten, it was the truth? A. Yes, sir.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian Wilson  
Cross-  
examination  
29th January  
1969  
(continued)

HIS LORDSHIP: Or you say that because you were beaten? A. Well I mean, you getting beaten, sir, and they trying to tell you something different, you have to say that, you know.

HIS LORDSHIP: What you said in the statement did you say it because of the beating? A. Yes, sir.

HIS LORDSHIP: If it were not for the beating you would not have said those things? A. Yes, sir. 10

CROWN COUNSEL: But what you said was true?  
A. What I said, sir?

Q. The statement to the police was true? A. Well, some of it, sir.

Q. Not all of it? A. No, sir.

Q. You signed it as true? A. Well, I had to sign it, sir, through I was at Central.

Q. You were not charged with any offence? A. No, sir. 20

Q. You were not arrested? A. No, sir.

Q. And you say you were beaten? A. Yes, sir.

MR. BROWN: M'lord, would it be correct for my friend to try to delve into the man's record. He is not the accused.

HIS LORDSHIP: Fair cross-examination..

MR. BROWN: Yes, M'lord, it might bring out something about his record. Subject to what you say M'lord, it does seem rather unsafe even if it is correct, unsafe, since it is a defence witness. It may have a savoury effect on the mind of the jury and therefore on the accused in the totality. 30

HIS LORDSHIP: Objection over-ruled. Yes Mr. Gordon? The last question was whether he was charged with any offence and whether he was arrested.



CROWN COUNSEL: So you were never arrested, not charged with any offence? A. No, sir.

In the Home  
Circuit Court

Q. You signed it? A. Yes, sir.

Q. Now tell me, did you see the accused, Derrick Irving, that night? A. Yes, sir.

Defence  
Evidence

No.11

Q. Did you see him run into your yard? A. Well, I was lying down, sir.

Adrian Wilson  
Cross-  
examination

Q. And you saw him rush into the premises?  
A. I didn't see him rush into the premises.

29th January  
1969

(continued)

10

Q. You saw him come in? A. Yes, sir.

Q. You didn't see him rush into the room?  
A. No, sir.

Q. Did he speak to you when he came in?  
A. No, sir.

Q. Was it after Derrick came into the room that you went out? A. He didn't come in the room, sir.

20

Q. Are you saying Derrick did not come into your room? A. No, sir.

Q. Where he came? A. He was standing on the verandah, sir.

Q. He came on to the verandah? A. Yes, sir.

Q. I am asking you again: Did he speak to you?  
A. No, sir.

Q. You went out? A. Yes, sir.

Q. Was that after Derrick, the accused, had come there? A. Yes, sir.

30

Q. Why you went out? A. A girl came by the window and told me an incident ...

Q. She told you something? A. Yes, sir.

W. I am suggesting it is Derrick, the accused, that told you something when you went out?  
A. No, sir, a girl came ...

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian Wilson  
Cross-  
examination

29th January  
1969  
(continued)

Q. All right. When you went out where was Derrick? A. I left him on the verandah, sir.

Q. Is he in the habit of visiting your home? A. Yes, sir.

Q. Had you at that time a machete in your home? A. Well, yes sir.

Q. A long machete? A. A machete, sir.

Q. One like .....  
(To police) Show him the Exhibit (Exhibit 1 shown to witness) A machete like that? A. Yes, sir. 10

Q. Is that your machete? A. Yes, sir.

HIS LORDSHIP: That is your machete? A. Yes, sir.

CROWN COUNSEL: And when you went out that machete was in your room? A. In my room, sir?

Q. Yes. A. Well, my girlfriend ...

Q. That machete was in your room when you went out? A. Yes, sir.

Q. And you left Derrick on the verandah? A. Yes, sir. 20

Q. After you had been out and you spoke to your girlfriend you came back to your room? A. Yes, sir.

Q. Did you see Derrick then? A. No, sir.

Q. Now, you saw, you said, the light of two bicycles coming up Rosemary Lane? A. Yes, sir.

Q. At that time you were about to enter... A. My gate.

Q. .... your gate? A. Yes, sir. 30

Q. Did you see who the persons riding those cycles were? A. Yes, sir.

Q. Tell me, was there a block-out on that night? A. Yes, sir.

HIS LORDSHIP: During the block-out did you have light in your room? A. Lamp, sir.

In the Home  
Circuit Court

CROWN COUNSEL: Now, when you heard this sound, what do you say it sounded like to you?

A. Two metal lick together sir.

Defence  
Evidence

Q. One sound you hear? A. Yes, sir, one.

No.11

Q. And you went out? A. Yes, sir.

Adrian  
Wilson  
Cross-  
examination

Q. You say you saw a man lying on the ground?

A. Yes, sir.

29th January  
1969  
(continued)

10 Q. At that time there was a block-out on when you saw the man lying on the ground?

A. Yes, sir.

Q. Was this person what was lying on the ground about twenty yards from your gate?

A. Yes, sir.

Q. Twenty yards? A. No, not twenty, about twelve feet, sir.

Q. About twenty feet from your gate?

MR. BROWN: About twelve he said.

20 CROWN COUNSEL: How far was the person from your gate? A. About from here to right out there (pointing)

Q. To the wall? A. No, sir, right by the ...

Q. Here? The jury box. Would that be about eight yards M'lord?

MR. BROWN: Yesterday he took it as eighteen to twenty feet M'lord.

HIS LORDSHIP: About twenty-four to twenty-six feet, that is my estimation.

30 CROWN COUNSEL: The block-out was still on at that time? A. Yes, sir.

W. And where this person was lying down was in darkness? A. No, sir.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian  
Wilson  
Cross-  
examination

29th January  
1969  
(continued)

- Q. It was not in darkness? A. No, sir.
- Q. This person was lying in the light? A. right where ....
- Q. Was this person lying in the light? A. Yes, sir.
- Q. Where the light came from? A. One from a bar and one from a shop, sir.
- Q. Light from bar; light from shop? A. Yes, sir.
- Q. Plenty light? A. Enough that you could see right off there, sir. 10
- Q. Enough that you could see? A. Yes, sir.
- Q. At that time you say you saw this person with a machete in his hand? A. Yes, sir.

HIS LORDSHIP: Were you able to make out the person from where you were, who he was? When you saw the person lying down with the machete in his hand, were you able to make out who he was from where you were? A. No, sir.

CROWN COUNSEL: How did you make out the person then, that he was Fearon? A. I hear the people shouting. 20

- Q. You didn't go to have a look on him to see who he was? A. No, sir.
- Q. So if it was not from the shout and the people saying you would not know who he was? A. No, sir, I wouldn't know.
- Q. After you had been to the shop and seen your girlfriend on the way back to your home did you see Derrick? A. Well, I pass ...
- Q. Did you see Derrick? A. Yes, sir. 30
- Q. You passed him? A. Yes, sir.
- Q. Where? A. Up Rosemary Lane speaking to some girls, sir.
- Q. Were you able to see if he had anything with him? A. No, sir.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian  
Wilson  
Cross-  
examination  
29th January  
1969  
(continued)

Q. You were not? At what stage did you see these two lights coming up the street?

A. When I was coming down the road, just passed the shop, I saw them was coming up near to me, sir.

Q. You saw the lights approaching? A. Yes, sir.

Q. At that time had you already passed Derrick? A. Yes, sir.

10 Q. When you heard the sound out in the road and you went out to the fence did you see Derrick? A. No, sir, I didn't see him, sir.

Q. You didn't see him? A. No, sir.

Q. Now, the statement that you gave the police was signed by you? A. Yes, sir.

Q. Was it read over to you before you signed it? A. Well, I don't remember that, you know sir.

20 (Crown passes paper to Police) Ask him if that is his signature.

MR. BROWN: I have not seen it yet. I asked for the police statement M'lord. I was given a typewritten thing, not with the signature on it M'lord.

HIS LORDSHIP: So it is just the signature you want to see?

MR. BROWN: I want to see the statement M'lord.

(Statement shown to witness)

30 CROWN COUNSEL: Do you see your signature on that document? A. Yes, sir.

Q. Tell me, is Derrick a friend of yours - the accused? A. Yes, sir.

Q. Do you recall telling Detective Corporal King in your statement that while inside your home you heard a voice?

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian  
Wilson  
Cross-  
examination  
29th January  
1969  
(continued)

MR. BROWN: M'lord, is this proper M'lord?  
If I can't put anything of the preliminary  
enquiry how can he put anything from the  
police statement?

HIS LORDSHIP: Well, he has cross-examined him  
already on something and then he is going to  
ask him - he could ask him whether he did  
tell the police this.

MR. BROWN: I know that is the proper thing but he  
is not obeying any rules at all. He showed  
him something which is - I am not sure - and  
he asked him if he sees his signature there.  
I want what I am entitled to M'lord. I insist  
that he must be decent. I was entitled to  
this M'lord.

10

HIS LORDSHIP: I said you should see it. I do not  
think you are entitled to this. The  
authorities do not say so, it is the practice  
of the judges, it is what you call ethics.

MR. BROWN: The Queen vs. Wheeler.

20

HIS LORDSHIP: Wheeler does not say anything like  
that. It is only a matter of understanding  
between Counsel. Judges do not order state-  
ments to be passed to Counsel like that.

MR. BROWN: I want to know if my friend is going  
to lay the proper foundation for what I think  
he is going to do.

HIS LORDSHIP: I think this is an appropriate  
time.  
Perhaps before I adjourn I could make one  
observation so as to shorten matters and for  
us to come to the grip of things. If this  
witness has told the jury that he was beaten  
by the police and as a result of the beating  
he gave a statement, and because of the  
beating all of what he said in the statement  
is not true, what is the purpose now of showing  
him the statement, which he said he signed.  
Members of the Jury, we are now going to take  
the adjournment until 10.00 o'clock tomorrow  
morning when this case will continue.

30

40

Adjournment taken: 3.50 p.m.

Mr. Justice Parnell  
 Mr. Gordon - Crown Counsel  
 Mr. Brown - Defence Counsel

In the Home  
 Circuit Court

Accused - Derrick Irving -  
 Thursday, 30th Jan. 1969

Defence  
 Evidence

Time: 10.05 Jury Roll Call

No.11

Defence continues

Adrian Wilson  
 Cross-Examination

ADRIAN WILSON: CROSS-EXAMINED BY CROWN COUNSEL

30th January  
 1969

- 10 Q. Did you tell the police whilst inside I heard  
 a noise on the street and I looked through  
 a window and heard a quarrel? A. Yes sir.
- Q. Is that true? A. Yes sir.
- Q. Did you go on to say I saw Derrick the  
 accused whom I knew before rushed into the  
 room and said they beat up Cherry and Pam,  
 did you say that? A. No sir.
- 20 Q. On hearing this I got up and came out of the  
 room leaving Derrick and went up to  
 Rosemary Lane where I saw Pam and my girl  
 Cherry? A. I dont know anyone name Cherry.
- Q. Did you tell the police I saw Derrick the  
 accused whom I knew before run into the room  
 they beat up Yvonne and Pam, meaning your  
 girl friend and his? A. No sir.
- Q. If that is in the statement it is not true?  
 A. No sir.
- 30 Q. On hearing this I got up and come out of the  
 room leaving Derrick and went up Rosemary  
 Lane and went into a shop and saw Pam, my  
 girl and Yvonne? A. No sir.
- Q. Did you tell the police I returned to my room  
 and I met Derrick at a printery by Rosemary  
 Lane talking to some girls? A. Yes sir.
- Q. That is true? A. Yes sir.
- Q. On returning to your room you met Derrick up  
 the lane by a Printery? A. Yes sir.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian Wilson  
Cross-  
examination  
30th January  
1969  
(continued)

- Q. I am suggesting that you were not beaten by the police at all? A. I was beaten.
- Q. Did you go on to tell the police that you went to your room and lie down? A. I was lying down before.
- HIS LORDSHIP: Did you tell the police you were lying down? A. Yes sir.
- CROWN COUNSEL: Did you say to the police that after you passed Derrick and the girl, Derrick started walking down the lane? A. Yes sir. 10
- Q. That was said in the statement you gave the police? A. Yes sir.
- Q. And you also say you never saw Shearer or Wilson, but on reaching your gate you saw two men on bicycles riding up the lane towards Derrick? A. Yes sir.
- Q. And you recognized the men to be Shearer and Wilson? A. Yes sir.
- Q. That is true? A. Yes sir. 20
- Q. Did you say as I went up to my yard I heard a sound as if someone chopped something and people calling out for murder? A. No sir.
- Q. You recall giving evidence at Sutton Street at the preliminary enquiry on the 9th September last year? A. Yes sir.
- Q. You saw the Judge write down what you said? A. I don't know.
- Q. What you told the Judge at Sutton Street was true. A. Yes sir. 30
- Q. You recall signing it? A. Yes sir.
- Q. The Judge read it over back to you? A. I don't remember.
- Q. And to correct anything that you think is wrong? A. I don't remember
- Q. Did you sign what was there as true? A. Yes sir.



Deposition shown witnessIn the Home  
Circuit Court

Q. You see your signature there? A. Yes sir.

HIS LORDSHIP: What is the particular part?

Defence  
EvidenceCROWN COUNSEL: It is 10 lines from the top  
starting with 'shortly'.

No.11

Q. Did you tell the Resident Magistrate at  
Sutton Street "shortly before I heard the  
sound I see the accused enter my house"?  
A. No sir.Adrian  
Wilson  
Cross-  
examination10 Q. Did you also tell the Resident Magistrate  
"he spoke to me when he came into the  
house"? A. He didn't speak to me.30th January  
1969  
(continued)Q. The evidence you gave at Sutton Street was  
on oath? A. Yes sir.Q. Did you tell the Resident Magistrate "when I  
came out at the fence I saw a crowd chasing  
Derrick up the road? A. Yes sir.20 HIS LORDSHIP: When you looked out I didn't see  
the accused--- A. I saw a crowd going up  
the road.CROWN COUNSEL: Did you tell the Resident  
Magistrate you saw a crowd chasing Derrick up  
the road? A. Yes sir.Q. Why did you say yesterday that you didn't see  
Derrick when you came to the fence? A. I  
didn't see him, I saw a crowd running.

Q. Did you see him? A. I didn't see him.

Q. Why you told the Resident Magistrate you saw  
him? A. I saw the crowd running up.30 HIS LORDSHIP: The truth is you didn't? A. I  
saw a crowd chasing someone, it must be him  
the crowd chasing after.Q. When you gave evidence at the Resident  
Magistrate court did you get the police  
beating yet? A. Long before that.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian  
Wilson  
Cross-  
examination  
30th January  
1969  
(continued)

CROWN COUNSEL: That wear off long time? A. I still feeling pains.

Q. Did you tell the Resident Magistrate "I leave Derrick standing inside the doorway of the house and went out to the street"?

A. No sir.

Q. Did you tell the Resident Magistrate "I saw two bicycle lights coming up the street, the lights were side by side? A. Yes sir.

Q. Did you say I could barely see as night was coming down? A. Yes sir.

10

HIS LORDSHIP: Your case is it was sufficiently light for Wilson to see a man?

CROWN COUNSEL: He is saying that he saw the cycle coming up the street.

Witness: They did not reach the shop yet sir.

CROWN COUNSEL: Did you tell the Resident Magistrate that your fence is about 20 yards or more from where you saw the man lying down? A. No sir, it was six feet.

20

HIS LORDSHIP: You told the Resident Magistrate 20 ft not 20 yds? A. Yes sir.

Q. Did you tell me yesterday when you looked you couldn't make out who the person lying down? A. No.

CROWN COUNSEL: You saw where the deceased was lying down was there a light from the shop? A. The glare.

MR. BROWN: My friend cannot have it both ways. He cannot shift from light to darkness and still have the same case.

30

HIS LORDSHIP: Mr. Gordon is in charge of the prosecution.

MR. GORDON: I am suggesting that you never saw the deceased with any machete in his hand? A. I saw him with a machete in his hand.

In the Home  
Circuit Court

Q. You see what happened to the machete that was in his hand? A. Yes sir.

Q. What happened to it? A. Somebody take it out his hand.

Defence  
Evidence

Q. You went out after you heard the sound and you saw a crowd running up the road?  
A. Yes sir.

No.11

Q. Somebody you now say was running ahead of that crowd? A. Yes sir.

Adrian  
Wilson  
Cross-  
examination

10 Q. This machete that you say you saw in the hand of the deceased, was he holding it?  
A. He was holding it.

30th January  
1969  
(continued)

Q. And at that time the crowd was going up the street and away from you? A. Yes sir.

HIS LORDSHIP: He was lying on his back or side?  
A. On his back, his head was turned west. He was on his back fluttering trying to get up.

Q. And he had the machete in his hand? A. Yes sir.

20 Q. I am suggesting you are not speaking the truth on this? A. I was there.

Q. And you swear that is what you saw? A. Yes sir.

Q. And you swear that you also see a person take the machete from his hand? A. Yes sir.

Q. Who was that person? A. His friend Anthony Wilson.

Q. Did you say yesterday you didn't see Anthony Wilson? A. I saw Anthony Wilson.

30 Q. Did you say yesterday that you never saw him? A. No sir.

HIS LORDSHIP: The note I have is this 'I looked out and saw the machete in his hand, it was a short machete. I saw Anthony Wilson came and take the machete from the hand of the deceased and started to run up the lane'.

In the Home  
Circuit Court

Defence  
Evidence

No.11

Adrian  
Wilson  
Cross-  
examination

30th January  
1969  
(continued)

MR. GORDON: When you looked out you saw a person and a crowd running up the road, you didn't see Derrick? A. No sir.

Q. You saw this man lying on the ground with a machete in his hand? A. Yes sir.

Q. And you saw Anthony Wilson take the machete from his hand? A. Yes sir.

Q. What did he do? A. Run up the road.

Q. Behind the crowd, follow the crowd? A. Yes sir.

Q. You are not speaking the truth. Did you say when I came out to the fence I saw a crowd chasing Derrick up the road? A. Yes sir. 10

Q. Shortly before I heard the sound I saw the accused enter my house? A. Yes sir.

Q. You said when I came out the fence I saw a crowd chasing Derrick up the road? A. Yes sir.

Q. You told me earlier that you never told the Resident Magistrate that? A. I saw a crowd chasing Derrick up the road. 20

Q. Are you now saying you saw a crowd chasing Derrick up the road? A. Yes sir.

Q. Now you see where it is written in the same deposition "shortly before I heard the sound I saw the accused enter my house". Earlier you told me that you didn't tell the Resident Magistrate that? A. Yes sir.

Q. Having seen it written there are you still saying say so? A. I didn't tell the Resident Magistrate that. 30

Q. Do you see where it is written in that statement "Derrick spoke to me when he came into the house"? A. Yes sir.

Q. Are you still saying that Derrick didn't speak to you? A. He didn't speak to me.

HIS LORDSHIP: You told the Jury yesterday Derrick came into the yard that night? A. Yes sir.

- |    |                                                                                                                                                                               |                                           |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
|    | Q. Where exactly were you? A. In bed.                                                                                                                                         | In the Home<br>Circuit Court              |
|    | Q. How did you see him, how did you know that<br>Derrick had gone into your yard? A. I<br>heard him speaking to some people in the<br>yard.                                   | Defence<br>Evidence                       |
|    | Q. Is your yard a tenant yard; other people<br>living there? A. Yes sir.                                                                                                      | No.11                                     |
|    | Q. This machete X1 where you used to keep it?<br>A. In the kitchen in the back of the yard.                                                                                   | Adrian<br>Wilson<br>Cross-<br>examination |
| 10 | Q. When you go to bed at night is it locked or<br>open? A. About 10 o'clock the kitchen<br>lock.                                                                              | 30th January<br>1969<br>(continued)       |
|    | Q. Did you miss your machete from that kitchen?<br>A. The next day                                                                                                            |                                           |
|    | <u>RE-EXAMINATION BY MR. BROWN:</u>                                                                                                                                           | Re-examination                            |
|    | Q. You say you gave evidence for the Crown at<br>the preliminary enquiry at Sutton Street.<br>A. Yes sir.                                                                     |                                           |
| 20 | Q. My learned friend asked you several times if<br>you saw a crowd chasing Derrick up Rosemary<br>Lane, remember? A. Yes sir.                                                 |                                           |
|    | Q. And several times you answered yes?                                                                                                                                        |                                           |
|    | HIS LORDSHIP: And another time he said he didn't<br>see him.                                                                                                                  |                                           |
|    | MR. BROWN: When you answered 'yes' is that true?<br>A. Yes sir.                                                                                                               |                                           |
|    | HIS LORDSHIP: So the truth is you saw a crowd<br>chasing Derrick up the lane? A. Yes sir.                                                                                     |                                           |
| 30 | MR. BROWN: Is it also true when you told my<br>learned friend that when you went to the fence<br>you saw a man lying on the ground with a<br>machete in his hand? A. Yes sir. |                                           |
|    | Q. Is that also true? A. Yes sir.                                                                                                                                             |                                           |
|    | Q. Which of these two you saw first, the man<br>lying down or the chasing? A. The man lying<br>down.                                                                          |                                           |
-

In the Home  
Circuit Court

NO. 12

BOLTON SIMPSON

Defence  
Evidence

BOLTON SIMPSON: SWORN: EXAMINED BY MR. BROWN

No. 12

Bolton  
Simpson  
Examination

30th January  
1969

- Q. You name is Bolton Simpson? A. Yes sir.
- Q. You are 18 years old? A. Yes sir.
- Q. Living at 17 Dewdney Road? A. Yes sir.
- Q. And you are an Apprentice Dental Technician?  
A. Yes sir.
- Q. Do you know the accused Derrick Irving? A.  
yes sir. 10
- Q. You know Arnold Linton? A. Yes sir.
- Q. They are all friends? A. Yes sir.
- Q. Do you remember Monday night 8th July 1968?  
A. Yes sir.
- Q. Between the hours of 7.30 p.m., and 8 p.m.,  
where were you? A. I was at the junction  
of Laws Street and Rosemary Lane.
- Q. You alone? A. No sir.
- Q. Who and who? A. Derrick Irving and  
Arnold Linton. 20
- Q. Do you know a lady by name of Rutherford?  
A. Yes sir.
- Q. Whilst at the corner did you see her? A. No  
sir I heard her.
- Q. Her voice? A. Yes sir.
- Q. What happened after that? A. Myself, the  
accused Derrick Irving and Arnold Linton was  
walking down Rosemary Lane when a crowd  
arrived on the road side.
- Q. You were going towards Barry Street. A. Yes  
sir.

- Q. Is there a shop on that right hand side?  
A. Yes sir.
- Q. Was the crowd near the shop? A. No sir.
- Q. How far was the crowd? A. A distance like  
from here to the wall.
- Q. Now was it dark yet? A. Could still see  
by light of day.
- 10 Q. What happened? A. When the three of us  
went on Rosemary Lane I saw a bicycle lay  
across in the middle of the road, a black  
bicycle. The accused recognised the voice  
of his girl friend and went up to the crowd  
and he was told something.
- Q. By the people in the crowd? A. Yes sir.
- Q. And after he was told something did you see  
the accused speak to anyone? A. Yes sir,  
he spoke to the deceased Fearon.
- Q. Called by another name? A. Shearer.
- 20 Q. What he said to him? A. The accused asked  
deceased what happened between his girl and  
himself.
- Q. Did the deceased answer the accused? A. No  
sir.
- Q. What did he do? A. He went into his right  
back pocket and drew a knife from his right  
back pocket and said to the accused---
- 30 Q. Was the knife closed up? A. No sir, he  
drew it and point it and said to the accused  
I dont want to hold any argument with you, if  
you want to fight let us blood-cloth fight.
- Q. Did the accused say or do anything when the  
deceased said that? A. Yes sir, the  
accused asked the crowd for a big knife.
- Q. Did you see anyone give the accused a big  
knife or any knife at all? A. No sir.

In the Home  
Circuit Court

Defence  
Evidence

No. 12

Bolton  
Simpson  
Examination  
30th January  
1969  
(continued)

In the Home  
Circuit Court

Defence  
Evidence

No. 12

Bolton  
Simpson  
Examination

30th January  
1969  
(continued)

- Q. What next happened? A. On hearing the accused ask for a knife the deceased take up his bicycle and rode down the lane in a southerly direction.
- Q. He said anything when he was riding off?  
A. I am going for a cutlass for you, something bigger than a knife.
- Q. Do you know Anthony Wilson? A. Not at that time.
- Q. Did you see him there that night? A. Probably 10 he was there, but I didn't recognise him.
- Q. Did you see the accused when the deceased was riding off and saying "I am goong for something bigger than a knife". Yes sir.
- Q. How near was the accused to you? A. About where that young lady is walking. (indicating a young lady in court)
- Q. Did you see the accused again that night?  
A. Yes sir about 5 minutes after.
- Q. Where you saw him? A. I was standing at a bar door on Rosemary Lane and Barry Street. 20
- Q. Were you alone? A. No, myself and Linton.
- Q. What happened? A. The accused came to us and spoke to us.
- Q. After he spoke what happened? A. We were about to walk off from the bar; we were walking up to the shop.
- Q. You were going up Rosemary Lane or down?  
A. We were going up Rosemary Lane to where Yvonne was at the shop, and I saw two bicycles. 30
- Q. Coming in which direction? A. Coming from down Rosemary Lane going in a northerly directon.
- Q. Were they behind one another? A. They were riding beside each other. I speak to the accused.



- Q. And what you see happen? A. The accused was still walking. In the Home Circuit Court
- Q. Up or down? A. Up, when the deceased and Wilson rode pass. Defence Evidence
- Q. What happened next? A. I heard one said to the other "see him there". No.12
- Q. What happened next? A. The deceased came off his bicycle. Bolton Simpson Examination
- Q. Slowly? A. Yes sir. 30th January 1969
- 10 Q. You noticed if he had anything with him when he came off his bicycle? A. A bill in his hand. (continued)
- Q. What is a bill? A. The thing they use to chop coconut with. He gave Anthony Wilson his bicycle to hold.
- HIS LORDSHIP: That is the deceased? A. Yes sir, and approached the accused with the bill in his hand in this position (indicating).
- 20 MR. BROWN: Was he facing the accused or behind him? A. He was facing the accused.
- Q. And what happened when he did that? A. He asked the accused if he ready for the fight. The accused didn't reply and the deceased was coming in this manner.
- Q. Where was the deceased at that time? A. The deceased was standing in the road right hand up.
- Q. What happened? A. Then I see the accused do something like he was bowling.
- Q. Slow or fast? A. Fast.
- 30 Q. And what happened? A. I hear two cutlass clash in mid air and in that position anybody could get a chop.
- Q. You didn't see anybody get a chop? A. Yes sir.
- Q. Who? A. The deceased.

In the Home  
Circuit Court

Defence  
Evidence

No.12

Bolton  
Simpson  
Examination

30th January  
1969

(continued)

Q. What happened to him? A. I see him step back two times and dropped on his back in the middle of the road.

Q. What happened to the bill, the machete that he had in his hand. A. The fellow who was riding with him took the bill out the deceased hand.

Q. And did what? A. And ran down the accused.

Q. Where was the accused at that time? A. He stood up on the sidewalk when the deceased approached him; he was standing on the sidewalk; the accused ran up the lane. 10

Q. Where was the accused standing at the time he was attacked by the deceased? A. Exactly on the sidewalk in front of the bar on the same hand on the lefthand side.

Q. Going down? A. Yes sir.

Q. In front of the bar? A. Yes sir.

Q. Was the deceased also standing on the sidewalk when he attacked the accused? A. No sir.

Q. Where was he standing? A. In the road. 20

Q. Have you ever seen that bill machete again? A. No sir.

Q. You know what happened to it? A. No sir.

Q. Did the Police take a statement from you? A. No sir.

HIS LORDSHIP: When you saw the accused about five minutes after, that is after the deceased had ridden on the bicycle down, you told us a story where the deceased rode his bicycle down Rosemary Lane and said I am going for something bigger than a knife? A. Yes sir. 30

Q. And you said the accused was walking down the Lane? A. Yes sir.

Q. About five minutes after you saw the accused standing at a bar? A. Yes sir.

- Q. Did you see him with anything? A. No sir.
- Q. You never saw the accused with anything that night? A. No sir.

In the Home  
Circuit Court

Defence  
Evidence

No.12

CROSS-EXAMINATION BY CROWN COUNSEL:

Bolton  
Simson  
Examination

30th January  
1969  
(continued)

Cross-  
examination

- 10 Q. Were you there? A. Yes sir.
- Q. You say when the accused came to you by the bar you saw him with nothing?  
A. Nothing at all.
- Q. When you saw him he had anything with him? A. Yes sir.
- Q. What? A. A cutlass.
- Q. Where he got it from? A. I don't know
- Q. That was the first time you saw the accused with a cutlass? A. Yes sir.
- Q. The moment he joined you at the bar he never left you? A. No sir.
- 20 Q. You know the accused girl-friend? A. Yes sir, I saw her when we just came on Rosemary Lane. Q. Did she speak to you or the accused?  
A. To the accused.
- Q. Do you know one Sonia? A. Yes sir.
- Q. Did you see her? A. No sir.
- Q. You and the accused were walking together up to the time that this girl spoke to him?  
A. Yes sir.
- Q. You didn't see Sonia? A. No sir.
- Q. At the time you saw the cycle in the road you saw the deceased Feron? A. No sir.
- 30 Q. You saw the cycle and saw the accused speaking to somebody in the crowd? A. Yes sir.

In the Home  
Circuit Court

Defence  
Evidence

No. 12

Bolton  
Simpson  
Cross-  
examination  
30th January  
1969  
(continued)

- Q. You saw the accused speak to Shearer? A. I dont know Shearer.
- Q. You saw the accused speak to the deceased?  
A. Yes sir.
- Q. At that time the cycle was still lying on the road? A. Yes sir.
- Q. And was it in the same crowd that the accused went to speak to someone? A. Yes sir.
- Q. At the time when the accused spoke to this man was the girl friend there? A. Which man. 10
- Q. The deceased, was the girl friend there?  
A. The accused sent her to the shop.
- Q. How far were you from the accused at the time he was speaking to the deceased? A. From here to there (indicating).
- Q. Did you see the accused feel his pocket?  
A. Yes sir.
- Q. The accused asked you if you had a knife?  
A. No sir, he asked the crowd.
- Q. Were you amongst the persons that he asked if they have a knife? A. Yes sir. 20
- Q. Did you hear the accused ask the deceased why he hit his girl friend? A. Yes sir.
- Q. And you heard the deceased reply? A. Yes sir.
- Q. What did he say? A. I dont want to hear any argument, if you want to fight just fight.
- Q. Did the accused get a knife from anybody?  
A. No sir.
- Q. What did he do after he failed to get the knife? A. He walked down Rosemary Lane. 30
- Q. What did the deceased do? A. The deceased do?  
A. The deceased rode down Rosemary Lane and stopped at the bar.

- |    |                                                                                                                                                                                             |                                            |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
|    | Q. Where was the accused at the time when the deceased spoke to him about this something bigger than a knife? A. He was standing beside a printery.                                         | In the Home<br>Circuit Court<br>_____      |
|    | Q. Standing, not walking? A. Standing; he walked off when the deceased told him he was going for something bigger than a knife.                                                             | Defence<br>Evidence<br>No.12               |
|    | Q. Where did the accused go? A. He went down Rosemary Lane.                                                                                                                                 | Bolton<br>Simpson<br>Cross-<br>examination |
| 10 | Q. Do you know 32 $\frac{1}{2}$ ? A. Yes sir.                                                                                                                                               |                                            |
|    | Q. How far was the accused from the gate of 32 $\frac{1}{2}$ when the deceased said he was going for something bigger than a knife? A. About 1 $\frac{1}{2}$ times the length of this room. | 30th January<br>1969<br>(continued)        |
|    | <u>30 yards would be a reasonable estimate</u>                                                                                                                                              |                                            |
|    | Q. Did you see where the accused went when he went down the lane? A. Yes sir, he went to 32 $\frac{1}{2}$ .                                                                                 |                                            |
|    | Q. Did you see him come out? A. Yes sir.                                                                                                                                                    |                                            |
| 20 | Q. Did you notice if he had anything in his hand? A. No sir.                                                                                                                                |                                            |
|    | Q. When he came up by the bar he had anything in his hand? A. I didn't see.                                                                                                                 |                                            |
|    | Q. In coming right down the lane did the deceased pass 32 $\frac{1}{2}$ ? A. Yes sir.                                                                                                       |                                            |
|    | Q. Did he ride down the lane before the accused stepped off to go down? A. Yes sir.                                                                                                         |                                            |
|    | Q. So the deceased rode off and left the accused there? A. Yes sir.                                                                                                                         |                                            |
| 30 | Q. And you were there? A. Yes sir.                                                                                                                                                          |                                            |
|    | Q. There is a shop on one hand, a bar on the other, one facing the other? A. Yes sir.                                                                                                       |                                            |
|    | Q. Now you said when the accused came up to you you were at the bar? A. Yes sir.                                                                                                            |                                            |

In the Home  
Circuit Court

Defence  
Evidence

No.12

Bolton  
Simpson  
Cross-  
examination

30th January  
1969  
(continued)

Q. Did you also say you start off from the bar to go up to the shop? A. Yes sir.

Q. You were going across the street? A. Yes sir, it was a different shop.

Q. Was there a blackout on that night? A. Yes sir.

W. You saw the two cyclists coming up Rosemary Lane? A. Yes sir.

Q. Bright lights? A. Yes sir.

Q. At that time you were walking, standing up, going where? A. Up Rosemary Lane.

10

Q. Where was the accused before or behind you? A. In front of me.

Q. Walking too? A. Walking.

Q. Did you look behind and see the lights of the cycles? A. I looked behind and saw the light.

Q. And you say you spoke to the accused? A. Yes sir.

Q. When you spoke to him it was about the light?

20

HIS LORDSHIP: That is not evidence, what he told the accused is not evidence.

Q. You saw lights, you knew who was riding on the cycles? A. No sir.

MR. GORDON: Because of your suspicion you spoke to the accused. I am submitting that this is material.

HIS LORDSHIP: What is material?

MR. GORDON: What he said to the accused.

HIS LORDSHIP: This man said that he saw two bicycles.

30

MR. GORDON: Did the cyclists come up to where you were?

Witness: Rode pass.

Q. Went in front of you? A. Yes sir.

Q. Where was he that time? A. On the side walk.

Q. Walking? A. Yes sir.

Q. Both cyclists past him? A. Yes sir.

Q. And went ahead? A. Yes sir.

HIS LORDSHIP: Cyclists passed you, the accused and Linton and went ahead? A. Yes sir.

10 MR. GORDON: And when they passed you you were at the bar? A. At the bar going up Rosemary Lane.

Q. Was there a light in the bar? A. Yes sir.

Q. Did the light shine outside? A. Yes sir.

Q. And where you were was in the light from the bar? A. Yes sir.

Q. When these men passed on the bicycles? A. Yes sir.

20 Q. When they went up did they go up into darkness? A. Yes sir.

Q. You say the deceased dismount slowly? A. Yes sir.

Q. Very slowly? A. He didn't come off quickly.

Q. When he came off the bicycle you noticed a bill in his hand? A. Yes sir.

Q. How far ahead was the deceased? A. The deceased dismounted in a position where I was.

30 Q. Explain? A. We were on the sidewalk; the deceased and his friend dismounted.

Q. In front of you? A. Yes sir.

In the Home  
Circuit Court

Defence  
Evidence

No.12

Bolton  
Simpson  
Cross-  
examination

30th January  
1969

(continued)

In the Home  
Circuit Court

Defence  
Evidence

No. 12

Bolton  
Simpson  
Cross-  
examination

30th January  
1969  
(continued)

- Q. They passed to the side? A. Yes sir.
- Q. At the time when he dismounted how far from you was the accused? A. He was right there and I here facing the street, 3 of us facing the street.
- Q. So he could have seen when the deceased dismounted from his bicycle? A. Yes sir.
- Q. He came off with a bill in his hand? A. Yes sir.
- Q. And he came up to where you were with the accused? A. Yes sir. 10
- Q. And you say he spoke to the accused? A. Yes sir.
- Q. You are certain of that? A. Yes sir.
- Q. You say he told him if he was ready for the fight? A. Yes sir.
- Q. And at that time he had the bill like this (indicating)? A. Yes sir.
- Q. And having said that he raised it? A. The deceased after he dismounted his bicycle and walked to approach the accused, and accused was about there, he holding the bill in his hand the accused did not reply, then the deceased drew back his hand, then I saw the accused raised his hand as if bowling. 20
- Q. And they were facing each other? A. Yes sir.
- Q. Did the accused have anything in his hand? A. Yes sir.
- Q. What? A. A cutlass.
- Q. Where he got it from? A. I dont know; he left me standing at Barry Street and went down the lane. 30
- Q. When the deceased fell what happened to the bill? A. His friend take it.



Q. Before Wilson take it up where was it?  
A. In his hand.

In the Home  
Circuit Court

Q. In which hand? A. Right hand.

Q. Still gripped? A. Yes sir.

Defence  
Evidence

Q. They had to force the fingers to get it out? A. No sir.

No. 12

Q. Where this incident occurred was it right by the bar or above the bar? A. Just a little above the bar. We did not pass the bar, the bar is about here, when he dropped he dropped here in the middle of the road.

Bolton  
Simpson  
Cross-  
examination

30th January  
1969

(continued)

Q. Was it the dark part of the street. A. He fell right in the light, in the middle of the lane.

Q. Where the accused was at the time when he made this bowling action? A. On the sidewalk.

Q. In front of the bar? A. Yes sir.

Q. Was it in the light? A. Half and half because candle was in the bar.

Q. I am suggesting that the deceased never had any machete with him that he never had a bill? A. The deceased had a bill.

Q. That what happened, if you were there, is that the deceased came up the street riding his bicycle, attacked by the accused he dropped the bicycle and ran and the accused chased him and chopped him in the back of the head? A. No sir the accused did not run down the deceased.

HIS LORDSHIP: You were with the accused and Linton from the corner of Laws Street and Rosemary Lane? A. Yes sir.

Q. And you were with him for how long? A. About five minutes.

Q. You met the accused at the corner? A. No sir.

In the Home  
Circuit Court

Defence  
Evidence

No.12

Bolton  
Simpson  
Cross-  
examination  
30th January  
1969  
(continued)

Re-  
examination

Q. You were with the accused from Laws Street?  
A. Yes sir. Q. Then you walked from the  
corner of Laws Street and Rosemary Lane?  
A. Yes sir.

Q. And you say you were at that corner standing  
for about five minutes? A. Yes sir.

Q. Do you know the girl Sonia? A. Yes sir.

Q. You know her well? A. Yes sir.

Q. How long you know her? A. For about five  
months.

Q. And you told Mr. Gordon you didn't see Sonia  
at all that night? A. Yes sir.

10

RE-EXAMINATION BY MR. BROWN:

Q. Were you there? A. Yes sir.

Q. Did you see either the accused or the deceased  
run immediately before the deceased fell?  
A. No sir.

Q. Did you see Anthony Wilson when the deceased  
was talking to the accused? A. Yes sir.

Q. How far was he from the deceased? A. He was  
when the three of us were on the sidewalk  
Anthony Wilson was about at that end of that  
table standing by the two cycles.

20

Q. The deceased bicycle and his own bicycle.  
A. Yes sir.

Q. Was any other people around the area at the  
time? A. Yes sir.

Q. Very few or plenty? A. Not plenty about nine.

Q. Friends of the accused? A. Myself and Linton  
were the only friends of the accused.

30

Q. You know who the other people concern? A. No  
sir.

---

THAT IS THE CASE FOR THE DEFENCEIn the Home  
Circuit Court

Time 12.30 p.m.

Resumption 2.05      Jury Roll Call

Defence  
Evidence

Mr. Brown addresses Jury      2.09

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1969

Mr. Gordon addresses Jury      3.25

Adjournment 3.45 p.m.

RESUMPTION January 31, 1969      Jury Roll Call31st January  
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Mr. Gordon continues his address - Time 10.05 a.m.

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SUMMING UP

Summing Up

Summing-up by His Lordship Mr. Justice Parnell31st January  
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Time 10.20 a.m.

Mr. Foreman &amp; Members of the Jury,

You have been sitting patiently and attentively since Monday of this week listening to the evidence in this case, and you have just heard the final address of learned counsel for the prosecution. You also heard Mr. Brown, counsel for the defence yesterday afternoon before the adjournment. You will observe that the case has taken some time. A lot of evidence has been put before you, and I may take some time to sum up as it is my duty to assist you both on the facts and the law in the case. You are the ones that have been sworn to try the case, and your duty, as the oath said, is to return a true verdict according to the evidence. You are not to be swayed or influenced by any matter not connected with this case or any rumour which you have heard outside the walls of this court. You should calmly and dispassionately consider the facts put before you and draw such reasonable inference from the facts and arrive at a true verdict.

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Before I go into things like the burden of proof, etc., I think it is my duty to make one or two preliminary observations. First of all, you will remember that the defence called a witness by the name of Adrian Wilson. He gave evidence at the preliminary enquiry for the prosecution and his name appears on the back of the indictment which is before you. Learned counsel for the prosecution intimated that he will not be calling Wilson, but he would make him available to the defence. You will remember that Mr. Brown made an observation that it was an improper practice on behalf of the Crown. When the prosecution did not call Wilson but made him available for the defence, if the defence wanted him, it was a proper thing to do and does not involve any misconduct on the part of learned counsel for the prosecution. The conduct and etiquette of the Bar are regulated by our law, a law that has been in force since 1960. There is nothing wrong with that practice that I have seen during my 20 years at the Bar. So that any impression that may be made on your minds that any improper thing may have been done by Mr. Gordon is wrong. My ruling is that Mr. Gordon had done nothing wrong.

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You will remember that during the trial of the case I had to intervene on one or two occasions between Mr. Brown and Mr. Gordon. Now, I make this observation that it is the accused man who is on trial in this case, not Mr. Brown for the defence or Mr. Gordon for the prosecution, so any short comings on the part of any of them you are not to use it to the prejudice of the accused. The Judge was only trying to hold the scales evenly so that the accused may have a fair trial according to the etiquette and conduct of the Bar. So as to put the record straight and it may be needed in part of my summing up, I am going to give a short observation concerning the conduct of the trial by one of the greatest advocates England has had during the present century, Lord Birkett who was named a Judge of King's Bench in 1941, retired in 1957, and in a case which appeared before him in 1952, in 213 Law Times page 230 this is what he said:-

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"The Judge had a duty to intervene by way of question or otherwise at any time when he deemed it necessary to do so. He might wish to make obscurities in the evidence

clear and intelligible. He might wish to probe a little further into matters that he deemed important and in a score of ways his interventions might be both desirable and beneficial, but it was safe to say that all his interventions must be governed by the supreme duty to see that a fair trial was enjoyed by the parties. His interventions must be interventions and not a complete usurpation of the functions of the counsel".

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Counsel for the defence can be called the mouth-piece of his client. He is putting forward the defence from the instructions he has received from the accused or from such persons who are assisting the accused. Now, you will see why I made that observation. I will give you a hint why. When Mr. Brown started to cross examine the witness Anthony Wilson, he put it clearly to him that the deceased Fearon otherwise called Chearer was the leader of a gang, which according to the suggestion of Mr. Brown, have Rosemary Lane as one of their headquarters for raping and interfering with people while Anthony Wilson was the deputy leader. The suggestion of Mr. Brown even went further, it was put in such a way as to suggest that he Fearon was a thief, so much so that £70 was found in his pocket. Not one drop of evidence has been put before you to support any of these suggestions.

An accused man, if he is to be convicted, is to be convicted on the strength of the prosecution case. The crown must satisfy you so that you can feel sure of his guilt.

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Now the facts in this case are for you. Reasonable inferences from the facts are also for you. I cannot tell you what facts to find, neither can I tell you what inferences you are to draw. The only thing that I will tell you is to listen carefully to my direction in law and follow it; and in viewing this charge to you, if I express a view or put forward an opinion, Members of the Jury, you are under no duty to adopt the view or follow the opinion unless you agree. The same applies to the views and opinions put

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forward by learned counsels, both counsels who addressed you. Mr. Brown quoted several passages from the Bible of Ruth and Naomi, passages you may think are worth consideration and that the accused and the two witnesses called Adrian Wilson and Bolton Simpson are all truthful. You should look at the demeanour of the witnesses. Those are matters you can take into account in assessing the evidence.

Before I come to the burden of proof, let me remind you of one thing. In assessing the credit to be given to a witness, you can properly take into account many other things. The relationship, if any, between that witness and the party or parties involved in the case. What I mean is this, Anthony Wilson quite frankly told you, and he is the chief witness for the prosecution, that he was up to the time of the death of the deceased, still a friend of the deceased. You remember Fearon was a 17 year old boy, born the 12th of June 1951, and the date of his death was the 8th of July 1968. As Mr. Brown told you he would have been 17 years, 1 month less 4 days. While Anthony Wilson may be something between 18 and 20. So then we have Wilson the main witness of the prosecution a friend of the deceased. You have Bolton Simpson who is called by the defence and he told you quite frankly that he is a friend of the accused Irving, whilst Adrian Wilson told you that he is also a friend of the accused and that Adrian Wilson's girl-friend is a friend of the deceased girl-friend. So they are all friends but that doesn't necessarily mean they are lying. But that is a point you can consider in the case.

Now in this case as in all criminal cases, it is the duty of the prosecution to prove the guilt of the accused person. The accused is presumed to be innocent and that presumption is not displaced unless the prosecution by evidence satisfies you to the extent that you feel sure that he is guilty. So the burden of proof is always on the Crown, and the extent of that burden is for the prosecution to satisfy you to the extent that you feel sure.

In considering whether the prosecution has proved its case to the extent that you feel sure, Mr. Foreman & Members of the Jury, you will have

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to consider the evidence which the accused man has given on his own behalf, and also the evidence of the two witnesses whom he called on his behalf. Every story they say have two sides.

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10 The indictment charges the accused with murder and the particulars state that Derrick Irving on the 8th day of July 1968 in the parish of Kingston murdered Orville Fearon. Mr. Foreman and Members of the Jury, murder is the unprovoked killing of a human being without lawful excuse and with the intention either to kill or to cause such injury as is likely to result in death and from which death in fact results. The unprovoked killing without lawful excuse with the intention to kill or to inflict such serious injury likely to result in death and from which death results.

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20 The prosecution will have to prove that Shearer is dead; that he died as a result, according to the prosecution case, of a wound or blow inflicted by the accused, and the accused told you that he did use a machete, but according to the accused the deceased was armed with a machete, was going to attack him and when he used his machete it was with the intention of knocking it out of his hand. But even if you reject that, the circumstances would be one of self-defence, which is what I  
30 will explain later on.

40 Mr. Brown says that the accused used a machete, he is not denying that he used it to defend himself from an attack from the deceased. So the real issue that we have here and that you have to consider would be the circumstances under which the accused man got hold of a machete, and what in fact caused him to use the machete which caused this wound at the back of the head, a wound as described by Dr. March and from which he died, and so the question of self-defence and whether there is any evidence to consider of provocation, I will deal with those two things later in my chat to you.

Now, I am going to just deal briefly with the prosecution case as well as the case for

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the defence, and then I will have to analyse in detail all the evidence in the case, but before I start with it, let us see if there is what you may call a basis or a reason for this incident; because when a man is said to have killed another or shoot at another, there is always some reason for it, or what Lawyers call a motive. Motive means that which drives and tells a man to do something.

Now, the motive here, Members of the Jury, is what one may call a man and woman affair. The allegation is that the deceased, Fearon, kicked or boxed a young lady by the name of Sonia and that she was either the girl-friend at the time of the accused or she is related somehow to the accused and that Sonia made a report to accused and accused tackled the deceased about it. So that is the base, Members of the Jury, we have of this human affair. Now, what is the outline that we have? I will outline the facts which are not in serious in dispute and then we will go to the real points of the case. The deceased was Orville Fearon otherwise called 'Shearer' as you have heard, and you will remember a little time was taken up as to how Shearer was spelt, and whether it was spelt like the Frime Minister's name or if it was a verb. Shearer was 17 years and a few weeks old when he died, and he was friendly with the witness Anthony Wilson as the evidence disclosed. The deceased, Fearon, was up to the 8th of July, last year, living at his mother's place, and his mother is Ivy Hanlon. Well Ivy Hanlon told you she lives at Number 8 Ladd Lane in Kingston, and she tells you that her son, the deceased Fearon, used to live there with her up to the time of his death.

Well you will remember Anthony Wilson told you that he saw the deceased Fearon at about 1.00 p.m., that day, the 8th July, in the Jones Town area, and they agreed to go to the Ambassador Theatre in Jones Town that same night to see a picture entitled "Lillies of the Field". I think they had bargained to see the second instalment of this picture and that they should meet at about 6.55 that night. I will bring in a little part of the story for this is important. The mother of the deceased told you that she is a fish vendor and people owed her monies for fish she had left

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with them. On that same day, the 8th July, she gave certain instructions to her 17 year old boy, the deceased, whom she had been caring, and she sent him off on a bicycle which she had bought for him. These instructions were for him to take a list of the amounts owing to her and for him to go and collect these monies, that was at about 5.00 p.m. that day. According to the mother, if the deceased had collected all the money outstanding for her, he would have collected £6-5/-. Now, you will remember one of the suggestions by the defence was that the deceased had over £70 cash on him. So you have the deceased at 5.00 o'clock or half-past five going out to collect this money. Let us go back to the story told us by Anthony Wilson. At about 6.55 p.m. or 7.00 p.m. he rode his bicycle to the home of the deceased at 8 Lald Lane, he saw the deceased and then they started to ride and they took up the route up Rosemary Lane. Now, Anthony Wilson told you that while he was going up Rosemary Lane he stopped somewhere up the Lane. We were told that that night was a blackout night - you will remember when we used to have those scheduled power cuts, Members of the Jury. Yes, so he said he stopped up the Lane for about three minutes while the deceased continued riding north along Rosemary Lane. He said he caught up the deceased at the corner of Rosemary Lane and Laws Street. When he got to this corner he said he saw the deceased and two ladies, and to use his language, he said they were in a row. Seeing that these two ladies and deceased were in this row he said he advised the deceased just at that time to stop the row and ride on with him. Just at that time he saw another girl by the name of Sonia coming and when she got to the spot where all of them were she started to curse the deceased, and Sonia used harsh words. He said Sonia ran off in Rosemary Lane and the deceased ran after her but he did not catch her as she ran into a yard down the street.

I will pause here, Members of the Jury, and remind you that the accused man in his evidence said the deceased was running down Sonia, he saw deceased running down Sonia with a knife in his hand. According to the witness, Anthony Wilson, he said he saw deceased ran

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after Sonia but he did not see him with any knife in his hand. You will remember the witness, Bolton Simpson, told you he was with the accused down Rosemary Lane and Laws Street, they were together for about five minutes, and he did not see Sonia that night at all. How Simpson did not see her if he was there? That is one of the suggestions put forward by the prosecution that Bolton Simpson was not there at all but brought in the picture to bolster the defence. Well, Mr. Foreman and Members of the Jury, those are matters for you. We will go back to Sonia. You may think, Members of the Jury, that if a woman were to use harsh words to a man and the man starts to chase her, you might say the man is not joking, he might do something to her. So if you accept this part of the evidence, well it is a matter for you to say if the deceased really had a knife in his hand chasing this woman whom the accused knew, and whether he knew her or not, if he had reasonable ground to believe that the deceased was going to do her anything with this knife, and if prevented the deceased from doing her anything, then you, as good citizens, may say the accused was right from preventing the deceased to do anything to Sonia. Now, according to Wilson, when the deceased was about to chase Sonia he had parked his bicycle on the sidewalk and he didn't catch her. Well Wilson said the deceased then accompanied him and rode down Rosemary Lane. While riding he saw a group of about four or five boys going down the street, and he and deceased turned back. I will deal with this matter of their riding up and down, the reason why they were riding up and down Rosemary Lane. After they turned back, still riding along Rosemary Lane these four or five boys blocked their path, and he noticed that Sonia was talking to the boys in the crowd, and in the crowd was the accused. After he and the deceased stopped a fellow in the crowd came up and spoke to the deceased, and that fellow was the accused. He said the accused came out of the crowd and spoke to the deceased. Here we have, Mr. Foreman: Question: 'What did the accused say to the deceased?' Answer: 'Why did you have to kick my girl?' Now you will remember later on I had told you that there is evidence from which you could say, you could draw the inference, perhaps you may say that the girl, at the time, of the accused was really Sonia,

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10 because it was Sonia making the report and he is saying "Why you kick my girl?" On the other hand the defence is saying that it is Yvonne Rutherford who is the girlfriend. So perhaps Sonia may have heard of this kicking and reported to the accused that his girlfriend got kicked - you may put it that way. Let us see if on this point of this report about the kicking you have any support from the defence.

10 The accused man in his evidence said this, members of the jury: (and we are dealing with the point now where he is talking to the deceased along the lane) Question: "Did you say anything to Fearon or Wilson?" Answer: "I spoke to Fearon, I told him that it was not right for him to ride a cycle on a pedestrian foot and after being spoken to to come off the cycle and kick and box the person." So then,

20 that there was a talking about kicking and boxing as between the deceased and the accused, the accused man is supporting it. The accused had been telling the boy that he should not ride on a pedestrian's foot and having ridden on the foot he should not want to kick and box people on top of it. So remember what I told you earlier on, if there is some motive, where the motive started from, what was really behind it.

30 Now we continue the narrative, according to Wilson, and that is, after the accused is supposed to have asked the deceased "why you have to kick my girlfriend?", Wilson continues: he said the deceased replied and asked the accused if that is what the girl come to tell him, and the accused replied: Yes. Wilson said he did not see the deceased kick anyone. Now let me remind you of a piece of evidence:

40 Wilson said that the deceased had ridden up the lane ahead of him when he stopped for three minutes to talk to somebody by the fence and when he went up there the row was going on, so what would have caused this row, if there was this kicking, Wilson could not have seen him, because there is something that caused the row and Wilson could not have seen the kicking. According to Wilson: "I saw the accused start to feel his pocket. I saw the deceased take out a knife and the accused ask his friends for a knife too. No one answered him. I saw

50 the accused and his friend start to walk down

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Rosemary Lane fast." Now, members of the jury, the part of Wilson's evidence "I saw the accused start to feel his pocket.." the accused told you the same thing, but what the accused said is this, that he was rubbing his pocket pretending he had a knife. In other words, the deceased having taken out a knife - and the prosecution witnesses said he took out a knife - I want you to know I have something around, don't start anything. So he said he did feel his pocket pretending to have a knife. So then that part of Wilson's evidence agrees with what the accused is saying on that point.

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Now we are coming to the real part where they have some disagreement between prosecution and defence witnesses, and I will point them out as we go along. Remember the last point that I made is that Wilson said that he saw the accused and his friends walk down fast down Rosemary Lane. According to Wilson he then spoke to the deceased who shut the knife and both of them now continue to ride down Rosemary Lane, and they stopped at the corner of Barry Street and Rosemary Lane, the deceased with him, had a talk, and they started to go back up Rosemary Lane again. Now, you ask yourselves this question: why was this riding up and down, up and down Rosemary Lane by Wilson and the deceased. Members of the Jury, that evidence came out during the cross-examination by Mr. Brown. And you remember I allowed a piece of evidence as to the talk between the deceased and the witness, Wilson, on the point because it was suggested - the suggestion you have is that you had the Leader and the Deputy Leader of a gang - a gang that has been terrorising people along that very lane - and the suggestion is that perhaps they were on one of their nightly patrol - this gang - the Leader and the Deputy Leader. So it was important then for you to understand that you have some explanation why this up and down business. This is what he told you and I will try and condense what I understand Wilson said.

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According to Wilson, he had a friend living down Rosemary Lane, near to Barry Street and Rosemary Lane, called Winston; that Winston knew Fearon, his friend - and you may think if you have a good friend and that good friend has another friend you will know him too in the usual course of things; that Winston apparently told Wilson that Fearon told him something about him, Wilson - to

use his term - concerning some contraction between him, Wilson, and a girl. In other words, there might have been a little secret between Wilson and Fearon but Fearon pinch Winston and tell him about it too. So that, according to Wilson, he was anxious now to see Mr. Winston and confront him before Fearon and ask him about it. His evidence, was, he was looking for this man to give him a surprise. That is his explanation why he went down there riding up and down to see him because Fearon and himself are supposed to go to pictures but, apparently, he wanted to have this confrontation before they go to pictures because, according to him, it could not take fifteen minutes to ride from Rosemary Lane to Ambassador.

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So we continue his story: He said that having stopped now at Barry Street and Rosemary Lane to see this friend they started to ride up Rosemary Lane again, Shearer was in front, that is, the deceased in front, and he was about one yard from him. And then, apparently, according to Wilson, while going up he stopped again for a short time, spoke to someone, and then he rode after Shearer, the deceased. And now this is the important point, and I will quote his words: "I was about to pass a shop light. As I was going up Rosemary Lane, I saw someone come from the right and went up to the deceased, who dropped his bicycle. The person ran after the deceased. I was in the dark and I saw by the shop light. There was a block-out that night. I saw a hand go up in the air" and remember his demonstration in the box. "I saw a cutlas in the hand, it came down. The deceased was trying to run away. I heard a sound like when cutting coconut. I saw the deceased drop. He fell in the street. I did not recognise who had the machete in his hand. I went beside the deceased and I saw his head back bleeding. The person with the cutlass started to move away. At the gateway where the deceased fell I used to go into that yard. I ran into the yard and went up to the kitchen. I saw a cutlass beside the kitchen lamp." Question: "What did you do?" Answer: "I came out with the cutlass. I saw the person with the cutlass in his hand going up the street. The person started to run, I ran after him." And then he told you of the route that he took.

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Now, I pause here. If you accept the evidence of this witness that while Fearon was ahead of him, he is coming on in the dark, he saw a person by the light of the shop suddenly run after the deceased -and you would expect in such a case if the deceased then was near up trying to get away he would come off the bicycle - this hand going up in the air and coming down, and he heard like the cutting of a coconut. So, members of the jury, if you accept that, that would have been a sudden and fast attack on this deceased man while he is riding up the street on his bicycle. And this sound like the cutting of coconut is important because Anthony Wilson told that this sound was like cutting coconut and Hyacinth Gallimore - remember the lady who was a little late this morning because she had to look after her baby - she told you the same thing. According to Miss Gallimore "I heard a loud clash like the breaking of coconut". But according to the accused in his evidence - Derrick Irving - and according to Adrian Wilson, his defence witness, and Bolton Simpson, the sound did not sound like a man using a machete to cut coconut, it sounded like clash of metal, metal meeting in the air. That is important for this point: first of all, would an ordinary Jamaican - use your knowledge of Jamaica, coconut is a very common thing we use in Jamaica most every Sunday, every person breaks a coconut; if a person were to use a machete and chop a coconut you know the sound that it makes - would then an ordinary Jamaican who knows the sound of coconut breaking when machete reaches it say it sound like two machetes catching up? If you say yes, and say it sound like the sound of coconut; was it the machete then meeting the head of the man, the man not having in his hand any machete at all? On the other hand, if the sound was the sound of metal then it would be consistent with what the accused is saying, and his witnesses, that the deceased had a machete; it would be consistent with his defence that he has put forward of self defence. But as I will tell you later on, this self defence which has been put forward by the accused it will have to be displaced by the prosecution, as part of the general rule.

One other comment I am making before I go

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10 further, and that is the part that Anthony  
Wilson played by going into this yard and  
armed himself with this machete. You will  
remember Wilson said after the deceased was  
chopped, the person or the man that did the  
chopping ran, and so he armed himself, he  
Wilson armed himself with a machete and ran  
after the felon but did not catch him. If  
one is brave, and you heard Wilson said he is  
a brave person, so nothing is wrong if Wilson  
armed himself with this machete with a view  
to apprehending the felon thereby assisting  
the police. Wilson said he saw this man  
chop the deceased with a machete and moved  
away with the machete. So, Members of the  
Jury, if you accept what Wilson says that he  
knew this man that chopped the deceased had a  
machete and left the scene with this machete,  
20 then, as I say, nothing is wrong if he,  
Wilson, went and armed himself with a machete  
with a view to apprehending this man.  
According to Wilson when he saw the hand  
going down with the machete he did not see  
who was the person until he went along East  
Queen Street at Bartley's Club. The point  
made by Mr. Brown on this is that Wilson armed  
himself with a machete and ran down the man  
that allegedly chopped the deceased. What did  
Wilson say on that point? I remember asking  
30 him a question and he answered, so I will now  
read the question and answers.

Q. Why did you run after him with the machete?

A. I run after him to catch him or to chop him.

40 He said to catch him or to chop him. According  
to Wilson, if you accept what he says, then  
this is after the event, after the accusedd  
was supposed to have chopped the deceased and  
made his escape. Did Wilson want to chop the  
accused because the accused had chopped the  
deceased? Was it because as was suggested to  
Wilson that the accused was the leader of the  
Max Gang and he Wilson was the Deputy Leader  
of the Max Gang? Did he run after him to chop  
him if he offered resistance and to hold him  
not knowing who it was at first? That is a  
matter for you, Members of the Jury, we will  
go back to Wilson's story where he said he ran  
after the accused. He said he ran up Rosemary

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Lane, turned right on Laws Street, then left up Maiden Lane and then along East Queen Street, then up Wildman Street. Then I asked him another question, Members of the Jury, and he answered, and I will now read the question and answer.

Q. Did you catch that person. A. No, sir.

Q. You knew who it was? A. Yes, sir, the accused.

He said he recognised the accused when the accused was running up Maiden Lane and the accused looked behind him, as well as on East Queen Street by the aid of the lights. He said accused ran into a club where there are always a lot of lights around the club premises. Then he said the accused ran from the club into East Queen Street and in doing so the accused again looked behind him, at that time he was running behind the accused. He said accused then turned up Wildman Street and he did not see him again. To use his words,-he said "the accused lost me in the dark".

Now, let us see the route the accused said he took. He said he ran up Rosemary Lane, along Laws Street, in an easterly direction, up Maiden Lane, then on East Queen Street and then in a westerly direction up Wildman Street. You will remember the witness, Wilson, told you the same thing, he told you the same route. It is a matter for you to say if you accept that Wilson is speaking the truth on all the issues. You will notice, however, that in the overall picture, the Prosecution is saying one thing and the Defence is saying another. So now, these are the areas your good judgment will be required to say who is speaking the truth, and what is the true position. Wilson told you he went back to where the deceased was and he saw a crowd there and in the back of the deceased's head looked as if it was hanging down. You had the evidence of the doctor, Members of the Jury, and he told you that that same part of the deceased's head to which the witness Wilson refers, he saw that the deceased was seriously injured. Wilson told you the deceased was taken to the Kingston Public Hospital, and he subsequently made a report to the police. He said, "I saw the accused attack the deceased, no crowd attacked the accused. I



did not know the accused before that night, I had never seen him before." Asked by the court if he would be able to identify any of the boys he said he blocked the path where deceased and himself were riding, and he said only a tall fellow called 'Wingie' he would be able to identify. That was his evidence in chief.

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10 Before I remind you of certain parts of  
the cross-examination, let me make one other  
observation, and that is the piece of evidence  
to which Mr. Brown made reference. You will  
remember Wilson told you he did not know the  
accused before that night, and he didn't  
recognise he had a cutlass with which he used  
to chop the deceased. He said he did not see  
accused's face until when he was running  
behind accused up Maiden Lane and along East  
Queen Street when accused looked behind him  
20 and was able to see accused's face with the aid  
of the electric lights. Then you will remember  
Mr. Brown made this point that the deceased with  
whom Wilson was riding had armed himself with a  
cutlass, both of them riding up and down  
Rosemary Lane, and Wilson for some strange  
reason did not arm himself also seeing there  
was a crowd there; if Wilson didn't know  
something would have happened, and if he did,  
then was he of the opinion that one cutlass,  
30 that is one the deceased had, if that one  
cutlass would have been enough for the crowd.  
All these are matters for you, Members of the  
Jury. When this witness was cross-examined  
he was asked if he had any previous convictions,  
and he said he had none. Asked if he was  
arrested for robbery with aggravation and was  
actually on bail and he said nothing of the  
kind. Asked whether he knew of the Max Gang,  
40 and he said he knew of it. He was asked  
another question, and I will now read that  
question and the answer to you.

Q. Do you know that the man called 'Shearer'  
was a thief?

A. I don't know, sir.

There is not one drop of evidence to this effect.  
Now, Members of the Jury, I must tell you that

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counsel for the defence is entitled to cross-examine a witness as to previous conviction, of any felony or misdemeanour recorded against him, and if the witness does not admit that he has been convicted of any felony or misdemeanour counsel now can prove it but he cannot just go on to contradict the man. The fact that a witness has been convicted of crime affects only his credit, and not his competency. Counsel for the defence went on to say, "I know you were convicted for robbery with aggravation, and you have told me that you have no previous conviction, I am going to prove it". I hope I will never see this type of thing happen again while I am on the Bench. These positive questions put to this witness suggests that he was convicted and that the deceased was a thief when there is no evidence put forward to support it. As a matter of fact, Members of the Jury, you will remember when the questions were put I even asked Mr. Brown if in due course evidence was coming, or rather, that I expect in due course evidence was coming to support the questions, but I will say nothing more about it. The accused is on trial, and as judge I am entitled to make comments, and I hope these comments will reach the proper quarters.

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Then the witness was cross-examined and the question of his opportunity to see the accused while running along East Queen Street, and the witness said he was able to see accused by the aid of the lights at Bartley's Silver City Club. He was asked if he saw any of the girls in court here that deceased was speaking with on the night in question. When he looked around he said he saw a girl by the name of Yvonne, but that didn't help us.

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Asked whether he saw the accused with a knife he said no, he did not see the accused with any knife. And remember his evidence on the point. The only thing he had seen was the accused feel his pocket and the accused asked the crowd for a knife. And it was suggested to him - well dealing with the question of this machete, remember the machete that he took, he told you that when he went to the scene he threw away the machete. He was speaking fast, but what I gathered he said when he went there he saw his

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10 friend was injured and he was making all attempts now to take him to the hospital. Mr. Brown's argument is that this throwing away or this using of the machete which wasn't his - by Wilson - was some indication that he didn't want the police to get charge of this machete at all; this machete which according to the Defence was not a machete that Wilson had got from the yard as he said, but it was the machete which the deceased 10 armed himself with, this bill machete, and had attacked the accused with, and that when he fell the deceased still had it in his hand and Wilson extracted the machete from the deceased's hand and used that now to chase the accused. Remember what the Defence is.

20 And then now, he was asked about another question which was put in such a way to suggest that there was positive evidence coming to support it. Question: Did you know that the deceased died with £70 in his pocket? Answer: No. He said he didn't know that, and winding up the cross-examination he asked about this 'Max' gang which Wilson told him that he did not know anything about. Wilson told him he did not know what work the Max gang did, but he said he had heard about them. This is what he said, "I know of the 30 Max gang, what I know was told to me by my girl friend, Linnette Bernard"-- what is told to him is not evidence, but that information has reached him about this Max gang, he would know it from his girl friend's information. That he was involved in the Max gang as Deputy Leader was put to him. He said, nothing like that. He was asked in cross-examination - Mr. Brown also put to him certain suggestions that the deceased was the leader of the Max 40 gang and he the witness was the Deputy leader; whether young boys or young girls are members of the gang; whether the Max gang goes up Rosemary Lane picking pockets and knifing people whether Sonia ran into any shop and whether the deceased had any knife when he was chasing Sonia; and whether the accused had used any harsh words before the deceased took out his knife. To that question he said no, 'No the accused did not use any harsh words'. The question about the Max 50 gang, I have already dealt with it - and

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whether the deceased was running down Sonia with a knife, I have already dealt with it. As to whether the deceased cut up Sonia's ganzi - Sonia was supposed to be wearing a ganzi that night - the accused said she was but Bolton Simpson who was supposed to have been there said nothing about that.

Dealing with the suggestion that the deceased had died with £70 in his pocket, I have already told you that not one drop of evidence has been put forward to support that, but the evidence of Ivy Hanlon, the mother of the deceased, is that she got information that night about her son. I think she went to the hospital and on the following day or thereabouts she was given the clothes that her son had on when he died - his shoes, shirt, merino and underpants, and she got from the hospital £4.4.6d. she didn't get any £70.0.0. And as to how this £4.4.6 could have been found on the deceased - I have already told you what she said, her instructions for him to go and collect fish money from customers which would amount to Six Pounds odd, if he had got every penny. So Members of the Jury, the chief witness for the Prosecution, Anthony Wilson I have outlined his evidence to you. His story - the vital part of his story - that after this incident where the crowd including the accused had stopped both of them while going down the street, this talk between the deceased and the accused about the boxing or kicking of a girl friend or of Sonia - I have already mentioned the admission by Wilson, that the deceased drew a knife, but he drew a knife after he saw, according to him, the accused feeling his pocket, and he rode down the street, and because of this business that I have explained, came back and while coming up it was a sudden attack made on the deceased by the accused. He never knew it was the accused who had this machete which caused the death of Fearon, and he said that Fearon was running away at the time - remember when he was in the witness box he showed you a kind of motion, circular motion - going around - when he jumped off the bicycle.

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I think I should review the other bit of evidence, including the defence before I deal with the question of self defence, because at this stage, as put by

Wilson, if you accept Wilson's evidence, this sudden attack made on this man with the machete, you have to say where is this self defence, where was this danger to limb or to the life of the accused. But as coming from the accused and his witnesses there is evidence to show that there was this attack. That is why I say I will wait and later on I will give you the directions on it.

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10 Hyacinth Bradford was called just to say that she identified the body of the deceased, Orville Fearon, to the doctor. And remember she told you she had known the deceased from he was a little child, they used to live in the same yard at 8, Ladd Lane, and the deceased used to call her 'Auntie'. She only proved to you that in fact the dead body on which the post mortem was performed by Dr. March was that of the deceased Fearon.

20 Ivy Hanlon, the mother, she only helps us on two points. I would say too main points - the question as to how the deceased could have £4.4.6 on him. She also helps us on another point and that came out in cross-examination. She was cross-examined carefully as to her trade. She told you of her selling fish and of the different kinds of fish she sold. She was questioned as to whether she kept a machete in her room or at her place. She said no. She  
30 was asked whether women who sell fish don't use a 'bill' to cut up the fish to get cutlets. She said that as far as she was concerned she doesn't use bill machete for that purpose. She said she used a little knife, and according to her, "I am a small fish vendor". She uses a knife. This cross-examination was put forward because the evidence from the accused and his two witnesses is that the accused had a bill machete and the suggestion is that the deceased  
40 got this machete from his home. He went down to 8, Ladd Lane for it, and the mother knows quite well that she had this bill machete there but she is only denying that she had a bill machete and that she doesn't use bill machete to help her in her fish trade because, according to Mr. Brown - remember he quoted words of the Sankey "Can a mother's tender care cease towards the child she bear?" What he is saying is that you

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wouldn't expect the mother to come here and to admit that the son used the machete on anybody. So that is the part of Mr. Brown's address, and he reminded you of those sacred words. Those are matters for you, Members of the Jury. She was asked whether or not she appreciated the friendship that existed between her son and the deceased, Fearon, and you will remember the answer she gave. She said Anthony Wilson and her son were good friends, but she does not know anything about Wilson. You will remember she said she always saw Anthony Wilson come to her yard to her son, but she does not know that her son was any leader of any gang and neither did she know if Anthony Wilson was the Deputy Leader of any gang.

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Then you will remember, Members of the Jury, Hyacinth Gallimore told you she used to live at 36 Rosemary Lane, and she is a housewife. She says she knows accused, and on one Monday evening in July last year, and we know the date was on the 8th of July last year which was a Monday and she said it was coming on to dusk and she saw accused coming down the street while she was standing at her gate and accused was walking coming down the street in an ordinary manner. She said the accused turned into a gate two gates from hers and she went back inside her house. While in her house she heard a sound like a loud clash which sounded as when one is breaking cocoanuts. As a result of this sound she said she came out of her house and went to her gate, and looking in the street she saw a crowd but she did not see the accused.

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In cross-examination she said she had known the accused before that time. She had seen him for about six months or more before that time, and used to see him in the day and night time, sometimes she would see him passing up the street in the night. She says she knows Adrian Wilson, and she knows where he lives in Rosemary Lane. She said she saw accused go through Wilson's gate but she did not see him come out. She says she lives at 36 Rosemary Lane, and Adrian Wilson lives at 32½ Rosemary Lane.

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Now, dealing with the sound she heard which was like someone breaking cocconut, she said she

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10 did not see anybody breaking cocoanut. Now,  
dealing with the Max Gang, she said she has  
heard about the Max Gang, and this gang  
frequents down the bottom of Rosemary Lane  
which is the corner of Barry Street and Rose-  
mary Lane. She was asked if she knew that the  
deceased was called 'Shearer' and she knew.  
She said she has seen the Max Gang passing  
Rosemary Lane for about three years. She  
20 said the oldest members of this gang as far  
as she saw could be about 20 years old, and  
the youngest member about 16 years old. You  
will remember the mother of the deceased said  
the deceased was 17 years old, so Mr. Brown  
said the deceased fell in the category of the  
ages of the members of the gang, and that he  
was a member. That logic could be wrong, not  
because the man is in this age group or was in  
it, that he must be a member of this gang.  
30 She was asked these questions, and I will read  
them to you as well as the answers.

Q. Have you ever seen the deceased in the  
company of the Max Gang passing Rosemary Lane?

A. No, sir.

Q. Have you ever seen the deceased with the  
group of boys, that is the Max Gang, passing  
Rosemary Lane? A. No sir.

Q. Have you ever seen Anthony Wilson in the  
group of the Max Gang passing Rosemary Lane?

A. No, sir.

30 So according to the suggestion she has been  
seeing this gang for the last three years,  
and she says she has never seen the leader of  
the Gang, that is the deceased and the deputy  
leader of the gang that is Anthony Wilson,  
according to the defence, in this gang. She  
did not use the words leader and deputy, but you  
will remember those words were used by the  
defence.

40 Now Det. Cranmer King gave evidence, and  
he said he got a report on the night of the  
8th July, and he went to Rosemary Lane.  
According to him he said he went south on  
Rosemary Lane to the intersection of Rosemary  
Lane and Laws Street where he saw a pool of blood.

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He said he then went to the Kingston Public Hospital but did not see the deceased as the deceased was on the danger list according to him. He said on the 9th July, that is the following day, as a result of a telephone message he got he went to the Allman Town Police Station and he saw the accused man there and he spoke to the accused but before doing that he cautioned him and told him he was Det. Corporal Cranmer King from the C.I.D. Central and was making investigations into the death of one Orville Fearon which had occurred last night, and the accused said, "a whole heap of them come to beat me, and I take a cutlass and chop him". He asked accused where was the cutlass, and accused said, "come make me show you, sir", and accused took him to premises 15 Sutton Street in Kingston and under a house the accused went and took out a machete and handed to him. The cutlass, Members of the Jury, is exhibit 1 in the case. He said he arrested the accused on a charge of murder, he cautioned him and he made no statement. Well, the accused, having been arrested and cautioned, was under no duty to make any statement.

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From the evidence, Members of the Jury, you will remember in cross-examination he told Defence Counsel he got co-operation from the accused because the accused told him what took place, and accused took him to where the cutlass was, and handed the cutlass to him.

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Now, dealing with the Max Gang, Det. King says as a Det. Corporal of Police stationed in the Corporate Area, part of his duties is to know the operations and movements of the different gangs. He says the police have to know each gang and if possible be able to identify those in the gangs who purport to be leaders. What did Det. King say about the Max Gang? He says in the course of his duties he has come across the Max Gang. This gang, he says, has no prescribed area in which to operate, and they will do any crime, the members of this gang will do any crime. This question was put to the Detective:

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Q. Do you know from your knowledge that Orville Fearon, the deceased, otherwise called 'Shearer' was a member of the Max Gang? A. I don't know sir.



Q. Do you know whether Anthony Wilson was a member of the Max Gang? A. I am unable to say, I was seeing him for the first time.

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10 So, Members of the Jury, Det. King ended up by saying he did not know Anthony Wilson before. Mr. Brown, Counsel for the Defence, went a little further by asking the Detective whether he knew or received any report that a lady was robbed of £87 that same night. He asked the Detective if he knew of any such report having been turned in to the Police that night, and the Detective said no such report was turned in. It would seem as if this question was based on the suggestion made by Mr. Brown earlier on that the deceased was found with £70 cash in his pocket that night, but there is no evidence to that effect. That question could perhaps suggest that this £70 found in the deceased's pocket, according to Mr. Brown, was part of the proceeds of the £87 cash that was supposed to have been robbed from a lady. As I have said, Members of the Jury, there is no evidence that the deceased was found with £70 cash in his pocket that night nor indeed no evidence that any lady was robbed of £87 that night. That is the evidence of Det. King as regards seeing the accused that morning when the accused gave him information as to what took place and the recovery of the cutlass, and of the Max Gang. Then you will remember Det. King told you the accused said to him "a whole heap of them come to beat me and I take the machete and chop him". Well, does the accused's story, if you accept that he told that to Det. King, does it bear out that part of the evidence that he did chop the deceased? Those are matters for you, Members of the Jury. So then the evidence of Mr. King - Detective Corporal King - with regard to the accused, after caution, telling him what happened, giving evidence leading to the discovery of the machete, and his knowledge now concerning the gang warfare in the corporate area. I make one comment before I go further: this is what the accused told King, if you accept King's evidence: "A whole heap of them come fi beat me and I take the machete and chop him" - "A whole heap of them .." Well, does the accused's story bear

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out that part that it was 'a whole heap of them'? Does the evidence of the witness Bolton Simpson bear out this suggestion that it was 'a whole heap of them'? because, according to Simpson, while he and the accused and another man by the name of Linton are going up Rosemary Lane, he did not see any machete in the hand of the accused. He observed two men who were coming up Rosemary Lane on two bicycles riding side by side and the cyclists passed them for some distance - I think, if I remember correctly, the distance from this witness box to the end of that press table over there - and he saw the deceased with a machete come off his bicycle, went up to the accused and asked him whether he wanted to fight now. And he told you of this thing. Well, if that is what Bolton Simpson said, where is the crowd that attacked the accused? Anyway, as I told you earlier on, the guilt of the accused, if it is to be established, must be established on the strength of the prosecution's case, not on the weakness of the defence.

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Now, Dr. March, members of the jury, he gave evidence that on the 10th of July he performed a post mortem examination on the deceased and that he found a lacerated wound of the head, which was roughly circular in shape and extending from just the left midline of the top of the head to the right and taking in the right occipital area, the occipital area would be the back of the skull. The wound separated a circular piece of skull and a piece of brain in the parietal area and the diameter of the wound was four and a half inches. He found no other injury. The cause of death was shock following injury to the head, which he described, and the injury was consistent with infliction by a reasonably sharp and heavy instrument. And you remember now the machete - Exhibit 1 - was shown to the Doctor and he was asked: "Could the injury have been caused by that machete?" He said "Yes." Question: "And assuming that that machete was used, what amount of force would be required?" He said: "A severe degree of force" - and you may think so, it sounded like the chopping of a coconut - and the injury found, with this machete, it would have taken a great deal of force. Then he was asked another question - certain facts - that is:

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"Assuming that Exhibit 1, the machete, was used by

the assailant, would you give an opinion as to the relative position of the deceased and the assailant in order to produce the injury you saw?" And remember the Doctor's evidence on that. He said there could have been several relative positions: if the assailant attacked from behind and slightly to the left or if he were left handed and standing in the same position with his right hand this way (demonstrates) what you call a back-hand movement, or it could have been done also in front and if the deceased was in a crouching position and the assailant wielded the instrument with the right hand. Any one of those positions he said could have been a relative position of the assailant, meaning the accused, and the deceased Fearon.

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Members of the jury, the doctor was giving his opinion, but this, strictly speaking, although he examined it, is not purely scientific as such; those of you who can wield a machete can also use your knowledge of how the wound could have been caused, having regard to the evidence of Wilson, because the position was being put by the prosecuting counsel, having regard to how Wilson put the story but you must consider the doctor's evidence as to how it could have been caused. According to Wilson there was a running, but a more circular run, and the machete coming down. So you must take into account again that up to that stage he could not make out who the man with the machete was. So you take that into account.

Now under cross-examination the Doctor told Mr. Brown that it would be a difficult stroke if they were running - that is, the assailant and the deceased - to give the wound that he saw and it would require a great degree of force by the back hand; and if they were facing each other he would expect to find the deceased in a crouching position. "If the victim was standing and turned his head it would not cause the shape of the wound I saw." He was asked if the accused could either be a left-hander or a righthander. The Doctor said, a right-hander with the victim in a crouching position. So that is the Doctor's evidence as to the cause of death and his opinion as to

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the relative positions of the deceased and the assailant, if that - Exhibit 1 - was used.

And that, members of the jury, is an outline of the prosecution's case. I don't think I will be able to finish the defence because it is going to take some time, so what I intend to do is to go to a certain point and adjourn for lunch.

The defence put three witnesses before you: the accused in his own defence, Adrian Wilson and Bolton Simpson. The accused told you that he is an Upholsterer living at 17 Dames Road and one Yvonne Rutherford is his girlfriend. On the 8th of July... last year - on a Monday - at about 7.00 p.m. he was about to go down from Rosemary Lane to Laws Street, he was with Ronald Linton and Bolton Simpson and as he was about to reach the corner he heard the voices of both male and female and he recognised the voice to be that of his girlfriend, Yvonne Rutherford; that he turned down Rosemary Lane and he saw a fellow running down a girl with a knife. He did not recognise the fellow at that time but he later recognised him as Orville Fearon, otherwise called Shearer, and the girl he was running down with the knife was Sonia. He said Sonia had on a 'ganzi', it was cut in the back, and he saw the cut in the back after he had seen the running.

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The accused told you that he felt annoyed as a result of what he saw, that is the running down. He said that he continued walking down Rosemary Lane. He met two boys on the way and those boys were Orville Fearon, the deceased, and Anthony Wilson, one was holding a bicycle, that is Anthony Wilson, and the deceased had just come back from running down the girl. The question now: "Did you say anything to Fearon or Wilson?" Answer: "I spoke to Fearon, I told him that it was not right for him to ride a bicycle on a pedestrian's foot and having been spoken to to come off the bicycle and kick and box that person". The accused said that he, the deceased, pulled a ratchet knife from his pocket. He did not have a knife on him but he started to rub his hand over his pocket to pretend that he had something. He spun around and asked if anyone had a knife. No one answered nor gave him any knife." At that stage he, that is the deceased, gave Anthony Wilson his cycle to hold and was

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coming at me with his knife. I turned and walked away from him."

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10 Members of the jury, as I review the evidence of the accused let me remind you at the same time of certain discrepancies that you are going to face when I review the evidence of the witness Bolton Simpson on certain points, for the accused told you that he saw a fellow running down a girl with a knife and the girl was Sonia; Bolton Simpsn said he was with the accused from Laws Street, he knew Sonia - as a matter of fact he knew Sonia two months before - and he did not see Sonia. If then Bolton Simpson was with the accused, would he not have seen this incident.- the deceased chasing the girl with the knife? The accused told you that the deceased gave Anthony Wilson his cycle to hold and was coming at him with the knife, but Bolton Simpson does not tell  
20 you anything about that. What the accused was saying is that the deceased wanted to attack him there and then with the knife; Simpson does not say anything about that. If what the accused is saying is true and Bolton Simpson was there wouldn't he have seen that too? Why this discrepancy and he said he was there? All those are matters for you.

30 I continue the accused's story: He said, "I turned and walked away from him. The deceased turned back and took the cycle from his friend. I looked around and saw him riding with an open knife in his hand. I quickened my pace to reach the yard I was going. The deceased said to me that he was going for a cutlass which is bigger than a knife, and he rode down the lane with his friend, Anthony Wilson. They both were together when the deceased said that he was going for a machete. I took a machete from the yard."

40 Now, I pause here again so as to show you the different parts of the evidence. According to the accused the deceased rode his bicycle, telling him, "I am going for something bigger than a knife." In cross-examination he told Mr. Gordon, "As I was about to step into the yard the deceased told me he was going to get something bigger." So as he was about to

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step into the yard of this man, Adrian Wilson -- so he, stepping in the yard, the deceased passing on bicycle and said he is going for a machete. But Bolton Simpson doesn't tell you that. Simpson told you that when the deceased said that he was going for a machete which is bigger than a knife, he was about from here to that wall one and a half times from the accused at the time. If that is so, then something seems to be wrong; so it would not be when the accused was abreast of Adrian Wilson's gate as he said. Now, he said ;; well I am going to take you back to where he said he took the machete. He said when the deceased said he was going for something bigger than a knife he felt frightened. He said, "I went to the kitchen, took up a machete, and came back outside." You will remember, Members of the Jury, when accused was asked if when deceased Fearon said he was going for something bigger than a knife if he had taken Fearon seriously, and he said he did. The Prosecution is saying or suggesting that the only reason the accused had to have gone inside that yard, armed himself with a machete, come back outside, walked fast down Rosemary Lane, was to attack the deceased. The Defence on the other hand suggests that since Yvonne Rutherford, the girlfriend of the accused, who had quarrelled with deceased and was still out on the street, the accused, like a good common-law husband, armed himself and went back on the street to protect Yvonne.

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Mr. Foreman and Members of the Jury, we will now take the adjournment until 2.00 o'clock today. When I return I will not be long in concluding my summing-up. Please remember the advice I have been giving you ever since this case started, that is you are not to discuss the case with anyone, and let no one approach you concerning it.

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HIS LORDSHIP: Yes, Mr. Foreman and Members of the Jury, before the luncheon adjournment was taken I was dealing with the question of the accused going inside the premises of Adrian Wilson for this machete and going back on the street with it. Mr. Brown in his address to you told you that the defence is not saying that Yvonne Rutherford, the girlfriend of the accused, was in

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10 jeopardy with the gang or the deceased but I only gave you that view on the evidence whether that was the reason why the accused went and armed himself with the machete and returned to the street with it because the deceased said he was going for a machete which is bigger than a knife, whether the deceased would have done something serious either to Yvonne or himself. You will remember the accused said when the  
deceased said he was going for something  
bigger than a knife, a machete, he took the  
deceased seriously, or was it according to the  
view put forward by the Prosecution that the  
accused went and got this machete, came out back  
on the street with it hoping that he would see  
the deceased and the first opportunity he got  
he would attack him. It is my duty to point  
out those views to you, Members of the Jury.

20 The accused still in his evidence, was asked these questions, and I will read them to you as well as the answers:

Q. Why did you take the machete out of the yard at 32 $\frac{1}{2}$  Rosemary Lane?

A. Because the people in the yard tell me how the fellows them stay out there, that is the members of the Max Gang.

Q. Do you personally know any of the boys or people in the Max Gang?

A. I only pass and see them.

30 Q. Where do you pass them?

A. At the corner of Barry Street and Rosemary Lane.

Q. On this night when this thing happened, did you know the names of any of the boys in the Max Gang?

A. The one them call "Famipidou", sir.

You will remember, Members of the Jury, the accused was asked this question by the court:

40 Q. How long have you information about the Max Gang? Was it that night you were hearing

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about it or you were hearing about it  
before?

A. About eight months, sir.

Q. Having heard or having information about this  
Max Gang, have you ever seen the gang or any  
member of them in operation?

A. One time, sir.

Then you will remember, Members of the Jury, he  
said it was a fight between the Max Gang set of  
fellows and some other boys. He said this fight  
took place at the corner of Arnold Road and Danes  
Road. Then he was asked by the defence:

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Q. Have you ever seen Orville Fearon, the deceased,  
with that gang?

A. Most of the time it is only he and Wilson I  
see riding pass.

Q. Have you ever seen Anthony Wilson with boys  
from the Max Gang.

A. Yes, sir.

So, Members of the Jury, he has said he has seen  
the deceased Fearon and Anthony Wilson riding  
pass, he has seen Anthony Wilson with boys from  
the Max Gang, but he has not said he saw deceased  
with the Max Gang or that deceased was a member  
of the Max Gang.

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No doubt, Members of the Jury, you will ask  
yourselves that since the deceased and Anthony  
Wilson were working hand in hand and the deceased  
was armed with a machete, why is it that Wilson  
did not arm himself with one also. Those are all  
matters for you, Members of the Jury.

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Accused continues by saying while he was  
walking towards the bar he heard someone say, "see  
the bad men them dey." He said he spun around  
after hearing that, and he saw deceased with a  
cutlass in his hand standing before him in a  
chopping motion. He said at the time the deceased  
was about two feet away from him, about an arm's  
length, he said. At that time, he said, he had  
his machete in his hand, in his right hand, and

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he swung his machete at deceased's machete. To use his words, he said, "it seems like both cutlasses not in the air, and I saw deceased stagger back".

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Q. When you swung your cutlass did you intend to do the deceased grievous bodily harm or any injury?

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A. No, sir.

10 Q. When you swung your machete, what did you mean to do with the machete?

A. I only mean to hit his own out of his hand, sir, because he had it in a threatening position.

20 He said, "when I swung my machete at his machete I was facing him." He said at the time he was on a higher plane than the deceased. You will remember the doctor in his evidence told you that the deceased or the victim would have to be in a crouching position, or a crouching position would have been ideal for him to have received the injury he saw. You will also remember that learned Counsel for the Crown asked the doctor in what position the assailant and the victim would have to be in for that injury to have been inflicted, and the doctor said facing one another, and that the ideal position for the victim to have received that injury, would be a crouching position with the victim facing the assailant. According to  
30 the accused the deceased was in the Lane and he was standing above him at the time. And, Members of the Jury, it would depend on the height of the accused and the height of the deceased; would the accused be able to reach the deceased with the machete to cause the wound the doctor described. I think the accused told you he is taller than the deceased, he was about four inches taller. He said when he saw accused fall to the ground about nine people  
40 were there, but only Linton and Bolton were connected to him, and he said he was referring to the witness Bolton Simpson.

Accused went on to say, "after deceased dropped I stood there for a moment, and

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Anthony Wilson who was holding deceased's bicycle throw down the deceased's bicycle that he was holding and take up the cutlass, that is the cutlass the deceased had in his hand." He said Anthony Wilson rushed at him, accused, with the cutlass and he turned and ran up the Lane. He said he ran to Wildman Street, and you will remember the route he said he used which coincides with the route Anthony Wilson told you he used to chase the accused. He said he eventually went to Sutton Street, and the next morning he went to the Allman Town Police Station and made a report. You will remember he told you his father is a Special Constable. He said he saw Corporal King on the morning of the 9th July and told Corporal King what had happened. He said he then took Corporal King to 15 Sutton Street and handed him the machete. Well, Members of the Jury that was his evidence in chief.

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Then he told you that he ran to Sutton Street where he stopped at the back gate of the Central Police Station and next morning he went to Allman Town Police Station and made a report - remember he told you at that stage that his father is a Special Constable - and later that morning, the morning of the 9th of July, he saw Detective Corporal King. Then he told Corporal King what had happened and he took Corporal King to 15 Sutton Street and handed him the machete. So that is his evidence-in-chief.

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30

Now, he was cross-examined and certain highlights of the cross-examination -- the first part of the cross-examination was, how long he had known Pampadou as a member of the gang. That did not really take us any further in the case; but he told Mr. Gordon, "I came out armed to meet Fearon." He said, "After Fearon pulled his knife I felt my pocket so that he may believe I had one. There was nothing to prevent me from staying in the yard of Adrian Wilson." You see, it was being put to him: why not stay in there if your story is that your girlfriend, Yvonne, had come down to visit someone in Wilson's yard? You hear the man go down, telling you he is going to bring a machete bigger than a knife; stay in the yard until when the girlfriend comes. That is the argument of the prosecution. He said, "I came out armed to meet Fearon." Now, what he came

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10 out armed to meet Fearon for? Did he come  
out - because he is giving this evidence  
under cross-examination - did he come armed  
to meet Fearon, to attack Fearon, whether  
Fearon put anything to him or not? To  
attack him with the machete as a result of  
this kicking and beating of this woman?  
or was it to meet Fearon, believing that  
Fearon had gone for his machete, as he said  
and he would be passing up the lane again,  
and he had his girlfriend outside there to  
protect, and he can walk up the street just  
like Mr. Fearon without being molested and  
attacked by anybody and therefore he was  
preparing himself to meet any attack by Mr.  
Fearon whilst he is lawfully, like anybody  
else, walking on the street? That is a  
matter for you.

20 Then he went on further - Mr. Gordon  
pressed him further - he said he did not know  
that he would have got a machete in the yard.  
"I came out the yard as I did not live there.  
Both Fearon and Anthony Wilson passed the  
yard of Adrian Wilson. Fearon called to me  
and said he was going for a machete which  
is bigger than a knife. At that time I was  
living at Woodford Park. My girlfriend  
used to go to Rosemary Lane to spend time  
with people and I used to go for her. I had  
30 to wait until my girlfriend came from the  
shop". The question again: "Why you didn't  
wait in the yard until your girlfriend came?  
because your girlfriend would come there to  
find you there; that is the place she had  
gone?" Then he said that - dealing with  
the question of his attempting to hit out  
the machete out the hand of the deceased:  
"I aimed a fairly good aim at the blade of  
the machete. The machete was in a chopping  
40 position so that if it had come down it would  
have chopped me. Shearer had a short  
cutlass, about that - he showed us a length -  
and about this - and he showed the width - and  
you remember when he was giving evidence I  
think he used this to give an indication of  
the length of the machete, a short machete  
which they call a bill machete.

Then now, he told you, members of the jury,

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under cross-examination, that he was annoyed when he got this report from his girlfriend and that when he went to speak to the deceased he really went to speak to him and not to have it out with him. What he means is that he did not go there to have any fight with him or to cause any trouble, he really went there just to talk with him. And I continue with the cross-examination: He told Mr. Gordon, "As I was about to step into the yard the deceased told me he was going to get something bigger than a knife." Now, this yard is the yard of Adrian Wilson. I think I have already dealt with that point, and I think I told you there is a discrepancy between the accused's evidence and that of Simpson. The contention of the prosecution is that Simpson was not there at all.

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Now, he continues his evidence under cross-examination: He said when he took the cutlass from Adrian Wilson's yard he was still annoyed. "When I went into the street I was still annoyed. I was annoyed because when he was going down the street he said I should wait until he came back. I was looking out for him. I knew if he came back he would come up the street and pass the shop or bar. I was above the light. I was on a look-out for Fearon". Hear again, members of the jury, was he on the look-out for Fearon to attack Fearon with this machete which he had, whether Fearon did anything or not? or was he on the look-out for Fearon, having regard to what he told you that Fearon had said to him, and having regard to the fact that his girlfriend was still on the street and he would have to - to use Mr. Brown's language - protect her and to look for her.

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Under further cross-examination he said that when he swung the cutlass he did not intend the cutlass to catch the head of the deceased. "The first hostile move towards me after the chopping was when Anthony Wilson rushed at me with the cutlass." I think I dealt with that point, that when he saw the deceased fall Wilson dropped the bicycle and rushed at him with the cutlass. And you remember, to the court now - the last part -

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he said, "I believe Fearon was serious when he said I should wait until he came back." And under re-examination by Mr. Brown, he said, "I was looking for Fearon to come from down the lane because it was down the lane that he rode. I did not know where Fearon lived. There is another girl named Pamela Evans and she is the girlfriend of Adrian Wilson.

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10 So, members of the jury, you have now the  
evidence of the accused, both in cross-  
examination and in re-examination - his story  
that he put to you. I have not yet dealt  
with the question of self-defence or whether  
provocation will arise, so I am going to deal  
briefly with the other two witnesses called  
for the defence, Adrian Wilson and Bolton  
Simpson. You remember Adrian Wilson; it was  
his yard that the accused got the machete  
from; it was his yard at 32½ Rosemary Lane,  
20 according to the accused, his girlfriend,  
Yvonne, had gone. Wilson told you that he is  
a friend of the accused, and his, Wilson's  
girlfriend is a friend of the accused's girl-  
friend too. And Wilson was a prosecution  
witness up to the stage of the preliminary  
enquiry. As a matter of fact, his name  
appears at the back of the indictment. I have  
already explained that to you this morning.

30 Now, I make one comment here which learned  
counsel, Mr. Gordon, made on a question that I  
put to him when he was cross-examining Wilson.  
You remember Adrian Wilson in the early stage  
of the cross-examination by Mr. Gordon told  
you that he, Wilson, was beaten by the police  
and that because of the beating some of what  
he told the police in the statement is not  
true at all, it is the beating that caused  
him to say that; and he went further and he  
told you that when he gave his evidence at  
40 the preliminary enquiry he had got his  
beating already and, as a matter of fact, he  
was still feeling pains up to that date when  
he was giving evidence at the preliminary  
enquiry. So then, even before Mr. Gordon  
started to cross-examine him, you may think,  
members of the jury, that Adrian Wilson had  
put before you circumstances showing how he  
gave his statement and circumstances under

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which he gave evidence on oath at the preliminary enquiry, in which he himself is saying, "It is not everything I said is correct, bearing in mind that it is the beating which caused me to talk that in the statement and so forth." So he was putting before you facts which would cause you to think carefully whether you can accept anything at all from him or something from him or what.

Now, when Mr. Gordon was cross-examining him you remember I asked him, "How are you going to put the statement to this witness and you have not challenged the point that he said he was beaten up to give his evidence?" Well, counsel continued his cross-examination. He then suggested to Wilson that what he told you, that he was beaten by the police, is not true. He says it is true and he can, to use his term, 'verify' that he got the beating. 10

Now, Mr. Gordon further made the observation that the defence, having called Wilson, is putting him up as a witness of truth; but I do not think that was a well-considered view because if Adrian Wilson is being put up as a witness of truth the prosecution should put him up since his name appears on the back of the indictment. In other words, his evidence would be capable of belief and it would be now a good point as was taken by learned counsel for the defence, that if the witness is capable of belief he should either be examined by the prosecutor, his name having appeared on the back of the indictment, or be put up for cross-examination. In such a case, Members of the Jury, what the Prosecution can do is to make the witness available, and if he be a material witness and do not call him, any sensible jury would know that the Prosecution would not rely on him at all. So the Prosecution decided to leave him at that. It is a matter for you, Members of the Jury, whether you will accept the whole of his evidence, or you will accept a part and reject a part - common-sense is the whole thing. 20 30 40

Well, Wilson was put up, and what Wilson told you in substance is this: He was in his

bed lying down; while relaxing he heard the voice of the accused in the yard, his yard is 32½ Rosemary Lane. Before that while he was at his house he said he got a report involving his girlfriend Pamela Evans, and after he got this report he heard something and went outside of his house, and to use his word, he said, "I went outside into the yard and I hear a sound."

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10 Q. What did the sound sound like?

A. Like two metal lick together.

20 He went on to say, "I hear a shout for murder coming from outside, that is in Rosemary Lane, and I look outside and I see a man lying on the ground with a machete in his hand, and the man was the deceased, and the machete was a short one. I see Anthony Wilson come up and take the machete out of the deceased's hand, and he and others run up the Lane, five others and him run up the Lane. When I look out I didn't see the accused but I see other people, about ten of them in the Lane, mostly men, that time the deceased was lying on the ground. I know nothing about the Max Gang. That night was a dark night, and when I look out and see the person lying on the ground I couldn't make out who the person was, it was after I hear the people shout that I know who it was or I would not know at all."

30 What he said supported what accused told you about two metals. The question is, did the deceased make an attack on the accused with a machete? You will remember the lengthy cross-examination that went on as to the evidence he gave at the Preliminary Examination. He said at the Preliminary Examination he had already got his beating and was still feeling pains.

40 During all this long cross-examination of this witness, he said this: "The truth is I didn't see Derrick, I saw a crowd chasing and running up the road". Later on he said, "I saw a crowd chasing Derrick up the road." In re-examination he said, "The truth is I saw a crowd chasing Derrick up the road, and when I went to the fence I saw the deceased

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man lying on the ground with a machete in his hand." So, Members of the Jury, he told two truths, the first one was that he saw no one chasing Derrick, and the other truth is that he said he saw a crowd chasing Derrick. You will say, Members of the Jury, what weight you will give to his evidence, because at one time he says one thing and another time he says something different. So, to use the Jamaica words, "he has changed his mouth". It is a matter for you to say, Members of the Jury, if you will rely on the evidence of this witness.

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Bolton Simpson was the last witness, and he supported what accused said that is at all times he was with accused and Arnold Linton. He said between the hours of 7.30 and 8.00 p.m. he was at the junction of Laws Street and Rosemary Lane with accused Irving and Arnold Linton. He said he remained there for about five minutes. He says he knows Yvonne Rutherford. While he was at this corner he did not see Yvonne Rutherford but he heard her voice. While accused, Linton and himself were down Rosemary Lane, a crowd arrived. He said they were going towards Barry Street. He says there is a shop on the right hand side of the street going down, and the crowd from him was a distance of one and one half times from this wall to that. While the three of them were walking down Rosemary Lane he saw a black bicycle lay across the middle of the road. He said accused went and spoke to the deceased Fearon by asking him what had happened between him, deceased, and his accused's girlfriend. Well he said deceased did not reply to accused, but deceased drew a ratchet knife from his pocket and said to accused, "if you want to fight to some R.C's, let us fight, but I am not going to argue with you." He said, "accused asked for a knife but I didn't see anyone give accused a knife. As deceased heard accused asked about knife he jumped on his bicycle and rode down Rosemary Lane saying he is going for something bigger than that." He has not said anything about Sonia; that he had seen deceased chasing Sonia. If he was with the accused as he said, then you may probably say how he has not told you anything about seeing the deceased chasing Sonia. He said he saw accused when deceased rode off saying he was going to get

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something bigger than a knife. Well he said he saw accused about five minutes after while he, witness, was standing at a bar door at the corner of Rosemary Lane and Barry Street, and he was with Linton at the time when he saw accused. He said accused came and spoke to them. He said, "as I was about to walk off to go up Rosemary Lane at a shop where Yvonne was, I saw two men riding two bicycles coming from Rosemary Lane going in a northerly direction." He said the men were riding side by side, and he heard one of the men say to the other, "see him there". He said the deceased then came off his bicycle slowly. Well, I should have told you this: he said the two men he saw riding these bicycles were the deceased and Anthony Wilson. Yes, so he said the deceased came off his bicycle slowly with a bill machete in his hand. Asked what was a bill machete, he said it is a machete that is used for chopping coconuts. He said deceased gave Wilson his bicycle to hold and the deceased asked accused if he was ready for a fight and accused did not answer him. He said he then saw deceased coming towards accused with the machete in a certain manner. You remember the witness demonstrated the manner he saw deceased was coming towards the accused with the machete, then he said he saw accused did something with his hand as if he was bowling, in a fast manner, and he heard both machetes clashed like two metals. He said the deceased got chopped and fell, or rather, the deceased stepped back and dropped in the road. Anthony Wilson then took the machete deceased had and chased the accused up the Lane. If what this witness tells you is the truth, that is, he saw deceased go up to accused with the machete and accused did something with his hand and machete in fast bowling manner and he heard the two machetes clashed like metals in the air, the deceased got chopped, stepped back and dropped on the ground, you will probably say how is it accused is saying to the Corporal that a whole heap of them come to beat him and he took the cutlass and chop him. This witness is saying is that he was walking with the accused and was with him but he did not notice that accused had any machete until he saw him with

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one, with a bill machete in this bowling motion. He said the deceased went up to accused with a machete and asked him if he wanted a fight; he went up to accused in a chopping motion as if he was going to chop accused and accused moved his hand with his bill machete in a bowling motion and both machetes sounded like when two metals clash in the air. Now, Members of the Jury, you will have to decide what is the true position.

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In cross-examination he was asked if he was there, and he said he was. He said when the accused came to him at the bar the accused had nothing, and when he saw him the bill machete in this bowling motion, he doesn't know from where he got it. He says he knows Sonia, and he did not see her around. He said he heard accused asked deceased why he kicked his girlfriend, and deceased said, "I don't want to hear any argument, if you want to fight, just fight". Well this witness confirmed what the accused said, in that after the deceased fell, Anthony Wilson took the machete the deceased had in his hand and chased the accused.

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But he said the accused did not run down the deceased. And then, dealing with his knowledge of Sonia, this was what he said: "I said I was with the accused from Laws Street; he walked to the corner of Laws Street and Rosemary Lane. I know Sonia; I know her well for about two months. I did not see Sonia that night."

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Now, members of the jury, that is a review of the defence. Now, the question that arises here is this: is there evidence that I should leave to you on the question of self-defence? You remember Mr. Gordon in his address - final address, of course- he and Mr. Brown prefaced their addresses to you and told you that anything they said to you on the law was subject to my better directions, and Mr. Gordon in his address suggested that on the Crown's case there is no evidence to support self-defence - on the Crown's case. You see, he limits it to that. He did not say on the whole case. Well, I agree with him. That is, if you accept the prosecution's case there is nothing whatever to

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suggest self-defence. On the other hand, there is evidence in the case coming from the accused himself and coming from these two other witnesses, Adrian Wilson and Bolton Simpson, to support this self-defence. But, members of the jury, when I say to support the self-defence, I have already told you that this self-defence must be displaced by the prosecution as part of its general burden of proof.

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10 Now, I will explain to you what is self-  
defence. Self-defence is based on what is called  
self-preservation; that is, if, as is suggested  
by the accused, he is going along the street,  
whether armed or unarmed, and a man were to  
attack suddenly, he has the right, by law, to  
take reasonable steps to defend himself. You  
cannot just lay yourself open for a man to attack  
you to cause serious injury to your body. You  
are entitled to defend yourself. As a matter of  
20 fact, that principle is well entrenched in the  
Fundamental Rights section of our Constitution,  
that a man who kills another while reasonably  
defending himself does not commit any offence  
at all. And even long before the Constitution  
came we had our Offences against the Persons'  
Law, and section 6 of it says: "No punishment  
or forfeiture shall be incurred by any person  
who shall kill another by misfortune, or in  
his own defence, or in any other manner  
30 without felony." So that is the law, and has  
always been, but one thing the jury will have  
to consider is, first of all, did the accused  
man have reasonable grounds to believe that  
his limb or life was in any danger from an  
attack made on him or threat made to him by  
the assailant, who is the deceased in this  
case? because he says he attacked him.  
Secondly, if yes, did the accused man have  
any reasonable opportunity to escape, that  
40 is, to retreat and to avoid the conflict,  
one of the requirements to show that a person  
who has been attacked acts in a reasonable  
manner, that is what the law requires,  
'reasonableness', that is, that he should  
retreat, but if there is no opportunity to  
retreat or the attack is so hot that it would  
be foolishness to retreat he can stand up  
right there and then and defend himself, he

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has not got to retreat at all, and that is what the accused is telling you. If you accept it he would have been attacked suddenly by this deceased with a machete on the public street, and just like no man can come into your house and chase you out your house, no man has a right to chase you off the street; you have a right like himself there. So with the suddenness of the attack plus the fact that he is on the Queen's highway, like anybody else, he would not have to retreat at all - but it is a question for you whether you believe it. Then the last thing now the reply of the accused, the means he takes now to defend himself must be reasonable. And if, as what the accused told you, he has his machete, the deceased having his machete it would be foolishness for the accused to say, well bring your machete come to let me see if yours is bigger or longer than mine - mine is long, yours look short. He can match machete with machete right there. So those are the principles to guide you on this evidence.

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Now I repeat: where a defence of self-defence is raised, and not only raised but, like in this case, evidence is brought by the accused to support it, with his witnesses, he is not assuming any burden of proof on that point; he has not got to prove anything, he is only explaining to you the circumstances under which the man got the cut. The prosecution will have to disprove it and if on a consideration of the whole of the evidence you are either convinced of the innocence of the prisoner that he was defending himself as he said, or you are left in doubt as to whether he was acting in necessary self-defence, your duty would be to acquit him - he is not guilty. In other words, then, if you accept what the accused man told you as to what happened, your duty is to acquit. If you are left in doubt as to whether he was acting in the necessary self-defence, again your duty will be to acquit him.

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How does the prosecution set about to disprove the self-defence - I am just reminding you briefly again, then I will refer to one other matter, then I will close. The prosecution says that

Anthony Wilson is a witness of truth and Anthony Wilson said things favourable and unfavourable to the deceased. Unfavourable: that the deceased took out a knife; that he saw the deceased running down Sonia after the deceased used harsh words. The prosecution said that Wilson could have said that when he saw the hand with the machete it was the accused's but Wilson told you he had to do some chasing and when at East Queen's Street he found out that it was the accused, so they are relying heavily on the evidence of Wilson.

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Coming to the circumstantial piece of evidence, now, in the case the prosecution said, well, on the circumstantial piece of evidence I am not relying on Wilson alone; I am also relying on Gallimore. Gallimore heard a sound as if chopping coconut - the same thing that Anthony Wilson told you that he heard. If that is so, then it was not any metal meeting metal as the defence says. Furthermore, according to the prosecution, the case they put forward is that Bolton Simpson had been called by the accused to support the story of this sudden attack, when from all the evidence Simpson was not there at all, and they show you a different thing to show that Simpson wasn't there: If what you say is true you don't have to bring this person to come and bolster your case. That is the view. As I told you, any view put forward in this case, you are under no duty to accept it unless you agree with it. This is the evidence put forward by the accused and his two witnesses, particularly Adrian Wilson, speaking about the clash, and Bolton Simpson who said he was there and saw the attack on this accused man, to support the self-defence.

One other point now, and that is this: If on a review of the evidence and on a review most fair to the defence there is evidence from which the judge may say that a reasonable jury could take the view that a reasonable person could be provoked to lose his self-control and, in fact, could cause

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the accused to lose his self-control for him to do what he did, then the judge should leave the matter to the jury and point out the bits of evidence in the case for them to consider the question of provocation; and whether or not the defence counsel raises it or it is suggested by the prosecuting counsel, the judge who is trying the case and helping the jury is not bound by what they are talking about. If he thinks, on a fair appraisal of the evidence, that element should be left to the jury, it is his duty to leave it.

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Now, members of the jury, if, as I have told you before, you accept what the accused man is telling you in regard to this attack on him, or you are left in a state of doubt as to self-defence, you must acquit him. The question now is, do I find sufficient material on the most favourable view to be given to the defence, on which I could leave to you the issue of provocation? If there was provocation sufficient to cause a reasonable man to lose his self-control from something said or something done or both together by the deceased to the accused and which actually caused the accused to lose his self-control, and any reasonable man would lose his self-control, then there would be provocation for you to consider. Now, let me examine it because this point is giving me some concern, and most of this evidence comes from the accused himself. This is what he said, he saw the deceased chasing Sonia with an open knife, and the ganzie which Sonia was wearing even got cut. Accused alone said it, Adrian Wilson does not say that, but nevertheless it is evidence in the case. According to the accused's story, he saw deceased riding a bicycle, and he asked deceased or rather, he told the deceased it was not right for him to ride a cycle on a pedestrian foot, and deceased did not reply. Well, he said he asked deceased why he had to box or kick the woman, and still the deceased did not reply but pulled out a ratchet knife out of his pocket. He said when he saw this he started to rub his hands in his pocket to fool the deceased that he too had a knife but he really did not have any, he was only pretending that he had. Well he said he spun around and

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(continued)

asked if anybody had a knife but no one answered him. He said deceased handed the knife to Anthony Wilson, rode away saying he was going for a cutlass which is bigger than a knife. Later we have the accused going into the home of Adrian Wilson. He did not stop at Wilson's home, but he took a machete from Adrian Wilson's home as a protection as he was in search of his friend and returned on the street with it. He said after coming from Adrian Wilson's home with the machete, he was walking on the sidewalk in Rosemary Lane. Just then, he said, he spun around and saw deceased, and deceased stood in front of him with a machete in a chopping motion. Before deceased came in front of him with this machete, he said he saw deceased riding a bicycle, and as the deceased came to where he was the deceased dismounted from the bicycle, and came and stood in front of him with the machete in his hand in a chopping motion as if to cut him.

Well, Members of the Jury, those bits of evidence on an accumulation are subject to one thing, and the one thing is this: was there a time limit of about five minutes according to the accused's own story between the deceased leaving him in Rosemary Lane telling him he was going for a machete which is bigger than a knife, for accused said he saw deceased after a lapse of five minutes, so was there time enough... well let us say his passion had aroused, was there time enough to cool off and did not go back out to the street at all but wait inside until his girlfriend returned. He said the deceased used the machete in a threatening way, but you will ask yourselves whether a reasonable man would have lost his self-control because of the words and actions of the deceased, and did in fact caused the accused to lose his self-control. You will bear in mind, however, what I told you about this five minutes break. But, if you say a Jamaican man, notwithstanding this five minutes break, is going to see a man come out of his house with a machete in a threatening manner would cause a reasonable Jamaican man to lose his self-control, and did cause the accused to have lost his, then acquit him of murder and consider the question of manslaughter.

In the Home  
Circuit Court

—  
No.13

Summing Up

31st January  
1969

(continued)

On this issue of provocation, Members of the Jury, if you are left in a state of reasonable doubt as to whether the facts and circumstances show sufficient provocation to reduce the killing to manslaughter, you should acquit the accused of murder and it will be open to you to convict him of manslaughter. I hope I have made it quite clear. I think I should point this out and leave the rest to you.

Now, Members of the Jury, if you accept what the accused man has said, that he was suddenly attacked by the deceased with this machete, and even though he was attacked he was only trying to knock the machete out of the hand of the deceased man, and if he was acting in self-defence, it will be open to you to acquit him both of murder and manslaughter. Then I will remind you that the accused said the deceased was chasing Sonia with an open knife, but you will remember this was not corroborated by the witness Simpson. You will also remember this five minutes break I reminded you about, and the time for cooling off. You may even say why did not the accused remain inside the house and talk with his friend Adrian Wilson until his girlfriend returned rather than going back on the street with this machete. That is a matter for your consideration, Members of the Jury. If you are satisfied, Members of the Jury, that the accused acted under provocation and, of course, provocation would reduce the charge of murder to one of manslaughter; if you are satisfied that the accused was so provoked, then you would find him guilty of manslaughter and not guilty of murder.

If, on the other hand, you take the view as put by the Prosecution through the witness, Anthony Wilson, the main witness, that it was a deliberate attack made on the deceased by the accused, that the accused was not defending himself in any way, that there is no question of self-defence, you will have to do your duty and convict the accused on the charge. As regards this charge against the accused man, from the start of the case to the finish the burden of proving guilt rests squarely on the Prosecution.

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HIS LORDSHIP: Anything more, Mr. Brown?

In the Home  
Circuit Court

DEFENCE COUNSEL: (Mr. Brown): Yes, Mi Lord, my learned friend agrees with me for once. Mi Lord, in the summing-up I think you slipped over on the point of self-defence, because when you told the jury that if they were in reasonable doubt where certain things are concerned I know your Lordship meant provocation at the time.

—  
No.13

Summing Up

31st January  
1969

(continued)

10 HIS LORDSHIP: Only that?

MR. BROWN: One other point, Mi Lord, and that is I don't know if the jury quite understood the difference between Sonia and Yvonne. Yvonne was the lady who was sitting in court and the witness pointed her out. Sonia is the girlfriend of the accused and who was allegedly boxed and or kicked by the deceased, and who the accused was protecting.

20 HIS LORDSHIP: Mr. Brown, I have already told the jury when it comes to an attack being made on a woman, girlfriend or not, whoever it is, a good citizen has the right to use reasonable means to protect the person on whom the attack was made.

Q. Anything else?

30 MR. BROWN: My Lord, Anthony Wilson having seen his friend lying on the ground wounded, no doubt had time to cool off, but he was carrying out revenge by going into this yard, armed himself with a machete, came out back and chased the accused with this machete to chop him.

HIS LORDSHIP: I have dealt with that already.

CROWN COUNSEL: M'Lord, is this another speech from the defence?

HIS LORDSHIP: I was watching that.

Members of the jury, I will deal with the last point first. Remember I dealt with it and was dealing with that point on the witness's

In the Home  
Circuit Court

—  
No.13

Summing Up

31st January  
1969

(continued)

evidence, when Wilson told you that just opposite the spot where the deceased fell was a yard in which he had gone before, and he went in it and took out a machete. When he came out he saw the person walking up the street; then he started to chase him, and remember I dealt with the right of citizens who see a felony committed to try to catch the felon and hand him over to the law. I think I dealt with that point.

One other point, which Mr. Brown brought to my attention, which he says was a slip of the tongue, dealing with self-defence: If you accept what the accused man is saying - the circumstances under which he used his machete, that is, the deceased dismounted off his bicycle, took the mac hete in a threatening position as if to chop, and then he uses his machete, he says to hit it out his hand - bearing in mind what I told you about self-defence, if you accept that, then your duty will be to acquit him. If he believes the man was going to attack him or do him hurt, bearing in mind that the deceased told him that he was going to get something bigger than a knife - if you are left in a state of doubt whether he was acting in necessary self-defence, your duty will be to acquit him. Even if you reject self-defence - and you can only reject self-defence if the prosecution's evidence is such that you reject it - you would still consider the question of manslaughter and the question of provocation on those points that I have left to you. If you are left in a state of reasonable doubt whether he was provoked, you must resolve that decision in his favour, meaning acquit of murder and up to you to convict of manslaughter.

Is that all right now, Mr. Brown?

MR. BROWN: Much obliged, m'Lord.

HIS LORDSHIP: Members of the jury, I am going to ask you to consider your verdict and tell me what is your decision in due course. If you wish to retire you may do so.

Time: 3.18 p.m.

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JURY RETIRE UNDER SWORN GUARD: 3.20 p.m.

JURY RETURN: 3.40 p.m.

JURY ROLL-CALL

In the Home  
Circuit Court

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No.13

Summing Up  
31st January  
1969  
(continued)

NO. 14

VERDICT AND SENTENCE

No.14

Verdict and  
Sentence

REGISTRAR: Mr. Foreman, please stand.

31st January  
1969

Q. Members of the Jury, have you arrived at  
your verdict?

FOREMAN: Yes.

10 Q. Is your verdict unanimous on the question  
of murder?

HIS LORDSHIP: No. Is your verdict unanimous?

A. Yes, sir.

REGISTRAR: Do you find the accused, Derrick  
Irving, guilty or not guilty of murder?

A. Guilty.

Q. This is your verdict? and so say all of you?

A. Yes.

20 MR. BROWN: M'Lord, it does appear that I owe a  
duty in view of the way the registrar,  
before being corrected by you, put the  
question to the Foreman of the Jury, which  
seems, on the authorities, especially R.v.  
Gray, to make this an ambiguous verdict.

HIS LORDSHIP: That this verdict is ambiguous?

MR. BROWN: The way the question was put before  
Your Lordship corrected her makes the

In the Home  
Circuit Court

—  
No.14

Verdict and  
Sentence

31st January  
1969  
(continued)

verdict ambiguous.

HIS LORDSHIP: Very well, I have noted that.  
You can go and argue that elsewhere.  
Just stand, Mr. Foreman. You say your  
verdict is unanimous? All of you agree?

FOREMAN: Yes, sir.

HIS LORDSHIP: And you say that on the charge of  
murder the accused is guilty?

A. Yes, sir.

HIS LORDSHIP: Just take your seat.

10

REGISTRAR: Derrick Irving, the jury having found  
you guilty of this indictment, do you wish to  
say anything why the sentence of the court  
should not be passed on you?

ACCUSED: I am not guilty.

HIS LORDSHIP: Yes, Mr. Brown?

MR. BROWN: M'Lord, as I understand it from the  
practice, the accused having been called  
upon, albeit that in celebrated practice  
which, as your Lordship pointed out about two  
months ago, is of respectful antiquity and  
should be relegated to the dump-heap, a  
proclamation before you start a murder  
indictment applicable to any other offence -  
It is a complete farce. If it is to be  
respected - and it cannot be respected if  
you call upon a person and do not wait for  
an answer, so I wish to answer. He was  
called upon, I wish to answer on his behalf.

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HIS LORDSHIP: I thought you were not going to  
say anything.

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MR. BROWN: I would not have stood up because I,  
like nature, do nothing in vain. I stand  
up here, m'Lord ....

HIS LORDSHIP: Very well, Mr. Brown, the  
allocatus is put.

MR. BROWN: An allocutus has been pronounced. If it is to be meaningful I stand now, m'Lord, even if I am to create precedence as a young man at the Bar to set the record aright and let them remove useless antiquity from the legal jargon, or from the legal procedure. It is completely purposeless to call upon this man if he has anything to say when the law says only one sentence can be passed, to ask him if he has anything to say why the sentence of the court should not be passed upon him and then say, go on, hang him.

In the Home  
Circuit Court

—  
No.14

Verdict and  
Sentence

31st January  
1969

(continued)

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HIS LORDSHIP: Do you have anything to say?

MR. BROWN: I have a lot to say, m'Lord, but I'll say it shortly. M'Lord, I reiterate: "One to every man and nation comes the moment to decide ...". The jury have returned a verdict. I shall not question it here; I shall question it there. The gentleman ceases to be a gentleman now that he has been convicted. He has been converted into a convicted man. I can no longer call him Mr. Irving. I call him the convicted and the condemned man. My character has not changed but I shall continue to protect him to the last. All that now remains for the time being is for your Lordship to pronounce the sentence, the mandatory one as prescribed by law. Your Lordship pleases.

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HIS LORDSHIP: I make one comment, that recently, I think it was in last year, by statute this distinction that used to exist between a common felony and a misdemeanour has been abolished, and I hope that those who recommend reforms in the law will follow suit.

Anything more, Mr. Brown?

40

MR. BROWN: No, m'Lord.

In the Home  
Circuit Court

PROCLAMATION

SENTENCE

No.14

HIS LORDSHIP: Derrick Irving?

Verdict and  
Sentence

ACCUSED: Yes, sir?

31st January  
1969  
(continued)

HIS LORDSHIP: The jury having found you guilty  
of the charge of murder, under the law  
there is only one sentence that I can pass,  
that you suffer death in the manner  
authorized by law.

Time: 3.54 p.m.

10

In the Court  
of Appeal

NO. 15

NOTICE AND GROUNDS OF APPEAL

No.15

Rule 43

Notice and  
Grounds of  
Appeal

IN THE COURT OF APPEAL

Filed 4/2/69

3rd February  
1969

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO  
APPEAL AGAINST CONVICTION OR SENTENCE

Criminal Appeal No.12 of 1969

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of Appellant DERRICK IRVING

20

Convicted at the Circuit Court held at  
Home Circuit Court

Offence of which convicted "MURDER"

Sentence "DEATH"

Date when convicted 27th January, 1969

Date when sentence passed 27th January, 1969

Name of Prison St. Catherine District Prison

I, the abovenamed Appellant hereby give you notice that I desire to appeal to the Court of Appeal against my Conviction on the grounds hereinafter set forth on page 3 of this notice.

Signed Derrick Irving, Appellant

Signature and address of witness attesting mark

Dated this 3rd day of February 1969

In the Court  
of Appeal

—  
No.15

Notice and  
Grounds of  
Appeal

3rd February  
1969  
(continued)

QUESTIONS

ANSWERS

- 10 1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal? No
2. Do you desire the Court of Appeal to assign you legal aid? No
- If your answer to this question is "Yes" then answer the following questions:-
- (a) What was your occupation and what wages salary or income were you receiving before your conviction? Upholsterer  
£5 per wk.
- 20 (b) Have you any means to enable you to obtain legal aid for yourself? Yes
3. Is any Solicitor now acting for you? Barrister  
If so, give his name and address: V. Blake 11  
Duke Street Kgn.
4. Do you desire to be present when the Court considers your appeal? No
5. Do you desire to apply for leave to call any witnesses on your appeal? No
- If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice.

30

GROUND OF APPEAL OR APPLICATION

1. The Judge misdirected the Jury on law and on evidence.
2. The verdict was unreasonable having regard to the evidence.

Witness. A.R. ??? wrds. i/c St.Cath.D.P.

3/2/69

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In the Court  
of Appeal

NO. 16

ADDITIONAL GROUNDS OF APPEAL

No.16

IN THE JAMAICA COURT OF APPEAL (Filed 24/2/69)  
CRIMINAL APPEAL NO.12 of 1969

Additional  
Grounds of  
Appeal

20th February  
1969

APPLICATION FOR LEAVE TO APPEAL AGAINST  
CONVICTION IN THE HOME CIRCUIT COURT,  
KINGSTON ON THE 31st JANUARY, 1969.

REGINA VS. DERRICK IRVING - FOR MURDER

TAKE NOTICE that the following are the additional  
Grounds of Appeal on which the Appellant will crave 10  
leave to rely inter alia at the hearing of the  
Application for Leave to Appeal herein as to  
reasons why the Conviction should be quashed:-

3. That the Learned Trial Judge frequently and  
improperly interrupted Learned Defence Counsel  
so that he never had an opportunity of putting  
his defence fairly before the jury, and that the  
Learned Trial Judge at the same time disparaged  
the defence which was being put forward and  
indicated that he regarded the defence as devoid 20  
of foundation. He thereby disparaged the defence  
which defence counsel was gallantly endeavouring  
to lay before the jury, and his conduct was very  
discourteous and showed pronounced signs of  
impatience, which cumulatively and positively and  
actively obstructed defence counsel in the  
pursuit of his task, which conduct was  
prejudicial to a fair trial, resulting in an un-  
satisfactory and unsafe verdict. REGINA vs.  
HIRCOCK, FARMER AND LEGGET (1969) 2 W.L.R. 29 30  
Reg. vs. CLEWER (1953) 37 Cr.App. R.37, C.C.A.  
Reg. vs. Egbert Gairy J.C.A. No.11 of 1967,  
Reg. vs. Ronald Johnson et alia J.C.A. Nos.200,  
201, 202 of 1967
4. The Learned Trial Judge failed to sum up  
adequately as to the Law on Self-Defence relating  
it fairly to the defence as put forward by the  
accused, thereby inviting the jury to reject the def-  
ence of self-defence which was in no way negatived  
by the Crown when raised by the Defence, but rather 40  
supported by the evidence of the Crown witnesses.
5. On the evidence adduced by the Crown there was  
such positive evidence by the sole eye-witness  
Anthony Wilson that he neither recognised the  
assailant with machete in hand when he heard the  
sound nor saw the accused when he heard the sound



or saw the machete lifted at the deceased, that there was not one scintilla of evidence implicating the accused as the assailant. There was therefore no more than mere suspicion as to the identity of the accused at the Close of the Crown's case, and in the circumstances the Learned Trial Judge erred in law when he abdicated his clear duty in Law to direct the Jury to return a formal verdict of "Not Guilty" without calling on the accused for a defence. Reg. vs. Leonard Atter The Times 22/3/56 page 16 Col.4 Reg. vs. Roy Hamilton and Winnifred Rickets J.C.A. Nos.83, 78 of 1966. Practice Direction (1962) 1 W.L.R.227.

In the Court  
of Appeal

—  
No.16

Additional  
Grounds of  
Appeal

20th February  
1969

(continued)

- 10
6. The Learned Resident Magistrate improperly tried to rehabilitate the Crown witnesses who were discredited in material aspects in cross-examination while disparaging the defence witnesses who had not even been shaken let alone discredited in cross-examination; especially as to the attack with a bill machete by the deceased on the accused; especially when Anthony Wilson threw away the said machete which was therefore not available as an exhibit like the sow machete made available by the accused.
- 20
7. The Learned Trial Judge by his inadequacy in summation mis-directed the jury as to reasonable inferences to be drawn by them especially in relation to blatant discrepancies in the Crown's case, and indeed invited the jury to draw inferences from portions of the testimony of the witnesses mutually contradictory, thereby leading to a miscarriage of Justice.
- 30
8. The Learned Trial Judge misdirected the Jury in that he omitted to put the defence adequately to the jury with particular reference to the necessity to defend himself and his girl-friend from personal injury of which he had reasonable apprehension and to fairly compare the passive conduct of the accused with the sustained belligerent behaviour of the deceased as described by Anthony Wilson immediately preceding the fatal chopping, which would have been predominantly in support of the defence of Self-Defence. He also failed to relate the Doctor's evidence to the defence with particular reference to the fact that accused was taller and on higher ground than deceased at the time of frontal attack, which is similar level to crouching position as indicated by doctor as a possible position for a frontal attack.
- 40
9. The manner in which the alleged unanimous verdict of Guilty was asked for given and received by the Court, rendered it an ambiguous verdict as there was no effort made to ascertain if it was an agreed verdict to Murder or albeit if the jury understood the meaning of unanimous.
- 50

In the Court  
of Appeal

No.16

Additional  
Grounds of  
Appeal

20th February  
1969  
(continued)

WHEREFORE THE APPELLANT PRAYS:-

1. That the Conviction be quashed and the sentence set aside.
2. That the Appellant be furnished with the Full Transcript as it will be necessary to support some of the grounds of appeal.
3. That this Honourable Court may grant such other relief as may be just.

Dated this 20th day of February 1969

(Sgd.) W. Bentley Brown,

COUNSEL FOR THE APPELLANT.

10

No.17

Particulars  
of Original  
Grounds of  
Appeal

15th July  
1969

NO. 17

IN THE COURT OF APPEAL OF JAMAICA

CRIMINAL APPEAL NO.12 of 1969

(Filed 15/7/69)

APPLICATION FOR LEAVE TO APPEAL  
AGAINST CONVICTION IN THE HOME  
CIRCUIT COURT, KINGSTON, ON THE  
31st JANUARY, 1969.

REGINA

vs.

DERRICK IRVING

)  
)  
)

FOR MURDER

20

TAKE NOTICE that the following are the particulars to Ground 1 of the Grounds of Appeal filed by the Applicant on the 4th February, 1969:-

- (a) The Learned Trial Judge failed to direct the jury adequately as to the defence of the Applicant.

The Applicant had stated in his evidence

"I swung my own (cutlass) at the cutlass that he (deceased) had in his hand sir."

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And later - Q. "When you raised your machete did you intend to do grievous bodily harm or injury?"

A. "No sir."

(See page 102 of the transcript).

10 On this statement the defence of accident arose and also killing without intention to cause serious injury which would be manslaughter. Nowhere in the summing-up was the law applicable to these situations ever put to the jury and the applicant thereby was deprived of the opportunity of an outright acquittal or of a verdict of manslaughter.

This non-direction amounted to misdirection.

20 (b) The Learned Trial Judge misdirected the jury by discrediting the evidence of the defence witness Adrian Wilson when he impliedly told them that if Wilson is to be a witness of truth the prosecution would have called him.

(See page 204 of the transcript).

FURTHER TAKE NOTICE that the Applicant will seek leave to argue the following additional Grounds of Appeal:

30 The Learned Trial Judge wrongly rejected the evidence of what the Applicant's girl-friend told him immediately before the incident. This evidence is admissible not in proof of the truth of what might have been said but to explain the conduct of the accused at the time of the incident in particular in a case of this nature where a defence of provocation arose. The Learned Trial Judge however wrongly rejected this evidence as being heresay.

(See pages 92 and 93 of the transcript).

WHEREFORE THE APPELLANT PRAYS:-

In the Court  
of Appeal

—  
No.17

Particulars  
of Original  
Grounds of  
Appeal

15th July  
1969  
(continued)

In the Court  
of Appeal

—  
No.17

Particulars  
of Original  
Grounds of  
Appeal

15th July  
1969  
(continued)

No.18

Judgment

23rd July  
1969

1. That the conviction be quashed and the sentence set aside.
2. That this Honourable Court may grant such other relief as may be just.

DATED the 15th day of July, 1969.

(Sgd.) FRANK PHIPPS, Q.C.

—  
NO. 18

JUDGMENT

JAMAICA

IN THE COURT OF APPEAL

10

SUPREME COURT CRIMINAL APPEAL 12/1969

BEFORE: The Hon. Mr. Justice Waddington P.(Ag.)  
The Hon. Mr. Justice Luckhoo.  
The Hon. Mr. Justice Edun.

R. v. DERRICK IRVING

F.M.G. Phipps, Q.C., for the appellant  
Miss J. Bennett for the Crown.

21st, 22nd and 23rd July, 1969

WADDINGTON, P. (Ag.):

The applicant was convicted in the Home Circuit Court on the 31st of January, 1969, of Murder, and sentenced to death. He now applies for leave to appeal against that conviction.

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The case for the Crown rested almost entirely on the evidence of Anthony Wilson, who said that at about 6.55 to 7.00 p.m. on the evening of the 8th of July, 1968, he had ridden his bicycle to the home of the deceased at 8 Lad Lane, and from there he and the deceased rode, taking a route which lead them up Rosemary Lane.

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In the Court  
of Appeal

—  
No.18

Judgment

23rd July  
1969

(continued)

10 Whilst riding on the lane, Wilson stopped for about three minutes, apparently to speak to someone, while the deceased continued riding northerly along Rosemary Lane. Wilson caught up with the deceased at the corner of Rosemary Lane and Laws Street, where he saw him speaking to two women in a manner amounting to a row. Wilson advised the deceased to stop the rowing and to ride on with him, and just at that moment he said he saw another girl by the name of Sonia coming up and she started to curse the deceased. He said that Sonia ran off along Rosemary Lane, and the deceased parked his bicycle on the side-walk and ran after her but did not catch up with her as she ran into a yard on the lane. The deceased then rejoined Wilson and they both rode down Rosemary Lane, and then they turned back up Rosemary Lane. On the way up they met a group of four or five boys who blocked their way, and he then noticed that the girl, Sonia, was talking to one of the boys in this group. In the group was the accused, and the accused came up and spoke to the deceased. The accused asked the deceased why he had kicked his girl, and the deceased replied and asked him if that was what the girl had told him, and he, the accused, replied, yes. At that stage, Wilson said that he saw the accused feeling his pocket, and he then saw the deceased

20 take out a knife. The accused then asked his friends around for a knife but no one answered him. The accused and his friends then started to walk away fast down Rosemary Lane. Wilson then told the deceased to shut the knife, and both of them continued to ride down Rosemary Lane. They stopped at the corner of Barry Street and Rosemary Lane where he and the deceased had a talk and then they started to go back up Rosemary Lane. The deceased was riding about a yard in front of Wilson. On the way up, Wilson said he again stopped for a short time to speak to someone and then he rode off after the deceased. As he was about to pass a shop in which there was a light, he said he saw someone come from the right and go up to the deceased, who dropped his bicycle, and the person who came up ran after the deceased. He said he saw a hand go up in the air and he saw a cutlass in the hand and it came down. He

30 then heard a sound like a coconut was being

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In the Court  
of Appeal

—  
No.18

Judgment

23rd July  
1969  
(continued)

cut and he saw the deceased drop, falling in the street. At that time he did not recognize who it was that had the cutlass in his hand. He went up to the deceased and saw that he was bleeding from the back of his head. The person with the cutlass then started to move away.

Wilson then went into a yard opposite to where the deceased had fallen - a place which he had known before - he went into the kitchen, armed himself with a cutlass and came back out into the lane. He then saw the person who had the cutlass going up the street. That person started to run and he chased after him. The chase led up Rosemary Lane, along Laws Street, up Maiden Lane, along East Queen Street, and up Wildman Street. He said he recognised the accused when he was chasing him because the accused had looked behind him, and besides that, when he got to East Queen Street the accused had run into a club where there were a lot of lights around the premises and so he was able to recognise him. The accused, after he turned up Wildman Street, got away and Wilson was not able to catch up with him. Wilson said that he then returned to where the deceased had fallen. There was a crowd gathered at that time, and he got a taxi, in which he took the deceased to the Public Hospital.

The next material witness was Detective Cranmer King, who said that on the 9th of July, he received a telephone message as a result of which he went to Allman Town Police Station where he saw the accused. He spoke to him, after having cautioned him, and told him that he was making investigations into the death of Orville Fearon which had occurred the night before, and the accused said, "A whole heap of them come to beat me and I take a cutlass and chop him." He asked the accused where the cutlass was, and the accused said, "Come mek me show you, Sir." The accused then took him to premises at 15 Sutton Street, Kingston, and from under a house there he took out a machete which he handed to Detective King.

The medical evidence showed that the deceased suffered from a wound - a roughly

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circular lacerated wound - in the head, extending from just to the left midline of the top of the head, to the right, and taking in the right occipital area. The wound separated a circular piece of skull and a piece of brain in the parietal area, and the diameter of the wound was four and half inches. The cause of death was shock, following injury to the head, and the injury was consistent with infliction by a reasonably sharp and heavy instrument.

In the Court  
of Appeal

—  
No.18

Judgment

23rd July  
1969  
(continued)

10 The accused gave sworn evidence in which he said that on the 8th of July, 1968, at about 7.00 p.m. he was about to go down Rosemary Lane to Laws Street in the company of Ronald Linton and Bolton Simpson, and as he was near to the corner, he heard male and female voices. He recognised one of the voices to be that of his girlfriend, Yvonne Rutherford. He continued down Rosemary Lane, and then he said he saw a  
20 fellow running down a girl with a knife. He did not recognise the fellow at the time, but he later recognised him as Orville Fearon, the deceased, and the girl whom he was running down with the knife was Sonia. He said that Sonia had on a 'ganzie' and it was cut in the back. He saw the cut after he had seen the deceased running her down. He said that he felt annoyed as a result of what he saw. He continued walking down Rosemary Lane, where  
30 he met two boys, one of whom was the deceased, Orville Fearon, and the other, Anthony Wilson. Wilson was holding a bicycle, and at that time the deceased had just returned from running down the girl. He spoke to the deceased and told him that it was not right for him to ride a bicycle on a pedestrian's foot, and having been spoken to, get off the bicycle and kick and box that person. The accused said that the deceased then pulled a ratchet knife from  
40 his pocket. He, the accused, did not have a knife on him, but he started to rub his hand over his pocket pretending that he had something there. He then asked if anyone had a knife, but no one answered him or offered him a knife. At that stage the deceased gave Anthony Wilson his bicycle to hold and was coming at him, the accused, with his knife. The accused said he then turned and walked

In the Court  
of Appeal

—  
No.18

Judgment

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away from the deceased. The deceased then turned back and took his bicycle from Wilson and rode away with the open knife still in his hand. The accused continued on to a yard, and he said he heard the deceased saying that he was going for a cutlass which was bigger than a knife, and the deceased then rode away with Wilson. The accused said he went into the kitchen of a friend of his by the name of Adrian Wilson, whose yard was also on Rosemary Lane, and he took up a machete and came back in the lane. He was walking towards the bar to the north, that is to say, up the lane, when he heard someone say, "See the bad men them deh." He said he spun around as he heard that and saw the deceased with a cutlass in his hand standing before him in a chopping motion. The accused was then about two feet away from him - about an arm's length - and at that time the machete was held in his right hand. He, the accused, swung his machete at the deceased's machete in the air, and he saw the deceased stagger backwards. He was then asked by his Counsel the question: Q. When you raised your machete, did you intend to do him grievous bodily harm or any injury? The reply was: "No, Sir." A further question was asked: Q. When you swung your machete, what did you mean to do with the machete? A: I only meant to hit his own out of his hand, Sir, because he had it in a threatening position." The accused went on to say that after the deceased dropped he stood there for a moment, and Anthony Wilson, who was holding the deceased's bicycle, threw down the bicycle that he was holding and took up the cutlass which the deceased had in his hand. Wilson then rushed at him with the cutlass and he, the accused, turned and ran up the lane. He said he ran to Wildman Street, and eventually he went to Sutton Street, and then the following morning he went to the Allman Town Police Station and made a report. He said he saw Corporal King on the morning of the 9th of July, and he told him what had happened. He also said that he took Corporal King to 15 Sutton Street and handed him the machete.

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Evidence was given on behalf of the defence,



by Adrian Wilson, who said that he lived at 32 $\frac{1}{2}$  Rosemary Lane, and that whilst he was in his house he got a report involving his girlfriend, Pamela Evans, and after he got this report he heard something and went outside into the yard. Whilst there, he said he heard a metallic sound "like two metal lick together". He then heard a shout for "murder" coming from outside, that is, in Rosemary Lane, and he looked out and saw a man lying on the ground with a machete in his hand, and that man was the deceased. He saw Anthony Wilson come up and take the machete out of the deceased's hand and run with others up the lane - five others ran with Anthony Wilson up the lane. He didn't see the accused, but he saw other people, about ten of them, in the lane, mostly men, and at that time the deceased was lying on the ground. In re-examination, he said that the truth was that he did see a crowd chasing the accused up the road.

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Bolton Simpson, said that between 7.30 and 8.00 p.m. he was at the junction of Laws Street and Rosemary Lane with the accused and Arnold Linton. They remained there for about five minutes, and whilst there he heard Yvonne Rutherford's voice. Whilst they were walking down Rosemary Lane, he saw a bicycle lying across the middle of the road, and the accused went up and spoke to the deceased, Fearon, asking him what had happened between him and the accused's girlfriend. He said that the deceased did not reply, but, instead, drew a ratchet knife from his pocket and said to the accused, "If you want to fight...." using some bad words, "...let us fight, but I am not going to argue with you." He said the accused then asked for a knife, but no one gave him a knife, and as the deceased heard the accused ask about a knife, he jumped on his bicycle and rode down Rosemary Lane, saying that he was going for something bigger than that. About five minutes later, he said, he was standing at the door of a bar at the corner of Rosemary Lane and Barry Street with Linton, and at that time the accused came up and spoke to them. He was about to walk off to go up Rosemary Lane, when, he said, he saw the

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deceased and Anthony Wilson riding their bicycles coming along Rosemary Lane in a northerly direction. They were riding side by side, and he heard one of them say to the other, "See him there." The deceased then came off his bicycle slowly, with a bill machete in his hand. The deceased gave Wilson his bicycle to hold and the deceased asked the accused if he was ready for a fight, but accused did not answer him. He said he then saw the deceased coming towards the accused with the machete in a chopping motion. He said he then saw the accused do something with his hand as if he was bowling in a fast manner, and he heard both machetes clash like two metals. He said the deceased stepped back and dropped in the road. Wilson then took the machete that the deceased had and chased the accused up the lane.

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On this evidence, the learned trial judge left to the jury the issues of self-defence and provocation. No complaint has been made with respect to his directions on provocation, but, as will be seen later, his directions on self-defence came in for very close scrutiny and consideration when dealing with the arguments on one of the grounds of appeal.

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Five grounds of appeal have been argued by learned counsel for the Applicant. The Court has given careful consideration to counsel's arguments but find that there is no merit in any of these grounds except ground 1A, with which the Court will deal.

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This ground is to the effect that the learned trial judge failed to direct the jury adequately as to the defence of the applicant, in that, on the evidence of the applicant that when he swung his cutlass which he had in his hand, he did not intend to do grievous bodily harm, the defence of accident arose and also the defence that a killing without any intention to cause serious injury would not be murder, but manslaughter. It was submitted that nowhere in the summing-up was the law applicable to these situations put to the jury, and that the applicant was thereby deprived of the opportunity of an outright acquittal or a verdict of manslaughter.

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During the course of the arguments, learned counsel abandoned his submission that on the evidence a defence of accident would arise, and he confined his arguments to the defence of killing without intention to cause serious injury. Learned counsel submitted that an accused person on trial was entitled to have his defence in fact however weak it might be, put to the jury with a proper direction on the law applicable, and that failure to do this would result in the conviction being quashed. He cited in support of this submission the cases of R. v. Dinnick, 3 Cr.App.R.77 and R. v. Henry (1963) Cr. Law Review, 61. The Court agrees with this latter submission.

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It is not disputed that the learned trial judge did not give the jury any specific directions on the question as to whether the killing could have been a killing without there having been an intention to cause serious injury, and the question now arises as to whether, having regard to the evidence and to the directions which he gave the jury on self-defence, it was necessary for him to have given them any further specific directions on this issue.

On the Crown's case, leaving out the question of provocation, a clear case of murder had been established against the applicant. The issue of self-defence only arose in the case for the defence, and whether or not the applicant had only intended to disarm the deceased by knocking his cutlass from his hand without any intention of causing him serious injury, the action which he said he took was nonetheless one which was essentially in defence of his person. It therefore becomes necessary to examine the directions given by the learned trial judge on the issue of self-defence to see whether these directions were adequate to cover all the issues raised by the defence, and if not, whether the omission to give the further directions which learned counsel submitted ought to have been given, would cause any miscarriage of justice to the applicant. The directions commence at page 210 of the summing-up

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where the learned trial judge said this:

"Now, I will explain to you what is self-defence. Self-defence is based on what is called self-preservation; that is, if, as is suggested by the accused, he is going along the street, whether armed or unarmed, and a man were to attack suddenly, he has the right, by law, to take reasonable steps to defend himself. You cannot just lay yourself open for a man to attack you to cause serious injury to your body. You are entitled to defend yourself. As a matter of fact, that principle is well entrenched in the Fundamental Rights section of our Constitution, that a man who kills another while reasonably defending himself does not commit any offence at all. And even long before the Constitution came we had our Offences against the Person's Law, and Section 6 of it says: 'No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.' So that is the law, and has always been, but one thing the jury will have to consider is, first of all, did the accused man have reasonable grounds to believe that his limb or life was in any danger from an attack made on him or threat made to him by the assailant, who is the deceased in this case? because he says he attacked him. Secondly, if yes, did the accused man have any reasonable opportunity to escape, that is, to retreat and to avoid the conflict, one of the requirements to show that a person who has been attacked acts in a reasonable manner, is that what the law requires, 'reasonableness.' that is, that he should retreat, but if there is no opportunity to retreat, or the attack is so hot that it would be foolishness to retreat he can stand up right there and then and defend himself, he has not got to retreat at all, and that is what the accused is telling you. If you accept it he would have been attacked suddenly by this deceased man with a machete on the public street, and just like no man can come to your house and chase you out your house, no man has a right to chase

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you off the street; you have a right like himself there. So with the suddenness of the attack plus the fact that he is on the Queen's highway, like anybody else, he would not have to retreat at all - but it is a question for you whether you believe it. Then the last thing now, the reply of the accused, the means he takes now to defend himself must be reasonable. And if, as what the accused told you, he has his machete, and the deceased having his machete it would be foolishness for the accused to say, well, bring your machete come to let me see if yours is bigger or longer than mine - mine is long, yours looks short. He can match machete with machete right there. So those are the principles to guide you on this evidence.

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Now, I repeat: where a defence of self-defence is raised and not only raised but, like in this case, evidence is brought by the accused to support it, with his witnesses, he is not assuming any burden of proof on that point; he has not got to prove anything, he is only explaining to you the circumstances under which the man got the cut. The prosecution will have to disprove it and if on a consideration of the whole of the evidence you are either convinced of the innocence of the prisoner that he was defending himself as he said, or you are left in doubt as to whether he was acting in necessary self-defence, your duty would be to acquit him - he is not guilty. In other words then, if you accept what the accused man told you as to what happened your duty is to acquit. If you are left in doubt as to whether he was acting in the necessary self-defence, again your duty will be to acquit him."

Later on at page 312 he said this:

"Now, Members of the Jury, if, as I have told you before, you accept what the accused man is telling you in regard to this attack on him, or you are left in a

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state of doubt as to self-defence, you must acquit him."

And at page 215 he said this:

"Now, Members of the Jury, if you accept what the accused man has said, that he was suddenly attacked by the deceased with this machete, and even though he was attacked he was only trying to knock the machete out of the hand of the deceased man, and if he was acting in self-defence, it will be open to you to acquit him both of murder and manslaughter."

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And, finally, at page 217, almost the last words he left with the jury were these:

"If you accept what the accused man is saying - the circumstances under which he used his machete, that is, the deceased dismounted off his bicycle, took the machete in a threatening position as if to chop, and then he uses his machete, he says, to hit it out his hand - bearing in mind what I told you about self-defence, if you accept that, then your duty will be to acquit him. If he believes the man was going to attack him or do him hurt, bearing in mind that the deceased told him that he was going to get something bigger than a knife - if you are left in a state of doubt whether he was acting in necessary self-defence, your duty will be to acquit him."

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It will be seen from these directions that on no less than four occasions the learned trial judge told the jury that if they accepted what the applicant had told them, then they would have to acquit him.

This was, in our view, tantamount to telling them, albeit under the label of self-defence, that if they believed the applicant that he merely intended to knock the cutlass from the hand of the deceased without causing him any serious injury, they should acquit him.

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Learned counsel for the applicant submitted that these were directions on self-defence and

10 that inevitably these directions were linked to the question which the jury would first have to consider, that is to say, did the accused man have reasonable grounds to believe that his limb or life was in any danger from an attack made on him or threat made on him by the deceased. He submitted that the jury's rejection of self-defence could have been based on their finding that there were no reasonable grounds for the accused to have apprehended danger to his life or limb. We do not think that any reasonable jury, accepting the facts of the case for the defence, could have come to any other finding than that there would in those circumstances be reasonable grounds for apprehending danger to life or limb.

20 In the face of these directions, which, in our view, were extremely favourable to the applicant, we do not think that any further directions on the issue of killing without intention to cause serious injury were necessary. If the jury believed what the applicant had said, then, if they followed the directions of the learned trial judge, they would have been obliged to acquit the applicant, whatever his intention may have been in striking the blow which killed the deceased. It seems clear that the jury in  
30 rejecting self-defence must have completely rejected the factual case for the defence and accepted that of the Crown. In the circumstances, this ground of appeal fails and the application is refused.

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(continued)

In the Privy  
Council

NO.19

No.19

ORDER GRANTING SPECIAL LEAVE TO  
APPEAL IN FORMA PAUPERIS TO  
HER MAJESTY IN COUNCIL

Order granting  
Special Leave  
to Appeal in  
forma pauperis  
to  
Her Majesty  
in Council

25th February  
1970

AT THE COURT AT BUCKINGHAM PALACE

The 25th day of February 1970

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President  
Lord Beswick

Mr. Secretary Thomas  
Mr. Hoy

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 23rd day of February 1970 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 Derrick Irving in the matter of an Appeal from the Court of Appeal of Jamaica between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment of the Court of Appeal of Jamaica dated the 23rd July 1969 which dismissed the Petitioner's Application for leave to appeal against his conviction for murder by the Home Circuit Court at Kingston on the 31st January 1969; And humbly praying Your Majesty in Council to grant him special leave to appeal in forma pauperis against the Judgment of the Court of Appeal of Jamaica dated the 23rd July 1969 and his conviction and the sentence by the Home Circuit Court at Kingston on the 31st January 1969 or for further or other relief:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council

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10 have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Court of Appeal of Jamaica dated the 23rd July 1969 and his conviction by the Home Circuit Court at Kingston on the 31st January 1969:

20 "AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy 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."

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.

30 Whereof the Governor-General or Officer administering the Government of Jamaica for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

In the Privy Council

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No.19

Order granting Special Leave to Appeal in forma pauperis to Her Majesty in Council

25th February 1970  
(continued)

W.G. AGNEW

O N A P P E A L  
FROM THE COURT OF CRIMINAL APPEAL OF JAMAICA

B E T W E E N :

DERRICK IRVING Appellant

- and -

THE QUEEN Respondent

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

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