1976/12

(12)

IN THE PRIVY COUNCIL

No. 27 of 1975

ON APPEAL

FROM THE COURT OF APPEAL
WEST INDIES ASSOCIATED STATES SUPREME COURT
(Saint Vincent)

B E T W E E N :

JUNIOR COTTLE and
LORRAINE LAIDLOW — Appellants

- and -

THE QUEEN — Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL — No.27 of 1975

ON APPEAL

FROM THE COURT OF APPEAL WEST INDIES ASSOCIATED STATES SUPREME COURT (Saint Vincent)

B E T W E E N :

JUNIOR COTTLE and LORRAINE LAIDLOW — Appellants

- and -

THE QUEEN — Respondent

RECORD OF PROCEEDINGS

No. 1

Indictment

In the High Court

No. 1

Indictment

4th September 1973

SAINT VINCENT

IN THE HIGH COURT OF JUSTICE (CRIMINAL)

NOS. OF CASE: 49 & 50/1973

THE QUEEN

v

JUNIOR COTTLE, also known as SPIRIT

and

10 LORAINE LAIDLOW

JUNIOR COTTLE also known as Spirit, and LORAINE LAIDLOW, are charged with the following offences:-

FIRST COUNT
STATEMENT OF OFFENCE

Murder, contrary to section 71 of the Indictable Offences Ordinance (Cap.24).

In the High Court

No. 1

Indictment

4th September 1973

(continued)

PARTICULARS OF OFFENCE

JUNIOR COTTLE, also known as Spirit, and LORAINE LAIDLOW, together with another person named Marcus James, on the 13th day of May, 1973 at Kingstown in this State of Saint Vincent, murdered Cecil Rawle.

SECOND COUNT

STATEMENT OF OFFENCE

Attempted murder, contrary to section 74 of the Indictable Offences Ordinance (Cap. 24).

PARTICULARS OF OFFENCE

JUNIOR COTTLE, also known as Spirit, and LORAINE LAIDLOW, together with another person named Marcus James, on the 11th day of May, 1973, at Kingstown, in this State of Saint Vincent attempted to murder Allenby Gaymes.

THIRD COUNT

STATEMENT OF OFFENCE

Discharging loaded firearm with intent, contrary to section 59 of the Indictable Offences Ordinance (Cap.24).

PARTICULARS OF OFFENCE

JUNIOR COTTLE, also known as Spirit, and LORAINE LAIDLOW, together with another person named Marcus James, on the 11th day of May, 1973, at Kingstown, in this State of Saint Vincent, discharged a loaded firearm at Allenby Gaymes, with intent to cause him grievous bodily harm, or maim, disfigure, or disable him.

Dated this 4th day of October, 1973.

/s/ C.S. Payne,

Attorney General and Director of Public Prosecutions

No. 2

Summing-up

In the High Court

No. 2

Summing-up (Extracts)

SAINT VINCENT

Transcript of Shorthand Notes of the Summing-up by the Trial Judge, His Lordship Mr. Justice Neville Berridge in Regina vs JUNIOR COTTLE and LORAINE LAIDLOW (Relevant Extracts)

... Now the accuseds are charged before you on a three count indictment the first of which alleges that Junior Cottle also known as "Spirit" and Loraine Laidlow, together with another person named Marcus James, on the 13th day of May, 1973, that is to say the day on which the deceased died, at Kingstown in this State of Saint Vincent, murdered Cecil Rawle, while the second count reads as follows - Junior Cottle, also known as "Spirit" and Loraine Laidlow, together with another person named Marcus James, on the 11th day of May, 1973, at Kingstown, in this State of St. Vincent attempted to murder Allenby Gaymes and on a third count Junior Cottle also called "Spirit" and Loraine Laidlow together with another person named Marcus James, on the 11th day of May, 1973, at Kingstown, in this State of Saint Vincent, discharged a loaded firearm at Allenby Gaymes, with intent to cause him grievous bodily harm, or maim, disfigure, or disable him.

Now, Members of the Jury, the first count is a separate and independent count, but the second and third counts are in the alternative and that means that you may not convict the accuseds on both the second and third counts. You may convict them on either one or the other, and, of course, you may acquit them on both if you find that neither one has been proven to your satisfaction.

I will tell you members of the Jury, first of all what the relevant law is on all aspects of this matter and then I will review the facts for you and finally I will leave it to you to consider your verdict.

As far as the law is concerned, however, I should tell you that even if you think that what you have heard either Counsel say in regard to the

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Summing-up (Extracts)

(continued)

law sounds similar to, or identical with what I will tell you, you can simply forget what they have told you and bear in mind what I tell you, and pay regard to that and that alone as far as the law is concerned.

Murder is defined as where a person of sound memory and discretion unlawfully killeth any reasonable creature in being under the Queen's peace with malice aforethought either express or implied the death following or occuring within a year and a day of the act that caused the death; in short, murder is unlawful homicide with malice aforethought. Every person, Members of the Jury, is deemed to be under the Queen's peace and the death you will observe occured within a matter of some two days of the date on which the fatal wound is alleged to have been inflicted.

In order to establish a charge of murder the Prosecution must establish beyond a reasonable doubt the existence of malice on the part of the accused; now malice must not be taken in that old vague sense of wickedness in general or spite or hatred, but, meaning a wrongful act done intentionally without just cause or excuse. Where no malice, Members of the Jury, has been expressed or openly indicated the law would imply or infer malice when a deliberate cruel act has been committed by one person against another - or by two persons, or by three persons against another person - and malice will also be implied where death results from a voluntary act of the prisoner or prisoners which was unprovoked and which was intentional. Malice aforethought may be said to include either an intention to kill or to do grievous bodily harm that is to say, really serious bodily harm to any person, or an intention to do an unlawful act to any person foreseeing that death or serious bodily harm is the natural and the probable result of that unlawful act.

Now as far as intent is concerned, Members of the Jury, intent is not capable of positive proof, but you are entitled to infer intent from all the surrounding facts of the case, and in the instant case the Prosecution is saying that the intent, which as I have indicated to you before must be an intent to kill or to do grievous bodily harm, may be inferred from the number and the nature of the wounds inflicted on the deceased,

or from the weapon or the weapons which was or were used on that occasion.

Now this case Members of the Jury, revolves largely around a dying declaration of the deceased man and the issues of common design, cause of death and identification. The first three will be dealt with at this stage and the last one in the course of the review of the evidence. Some of you Members of the Jury, may be wondering at the admittance in evidence of a statement accusing the prisoners not only in their absence, but also unsworn, but the law provides that the general principle on which this species of evidence is admitted is that they are declarations made in extremis. They are declarations made when the party is at the point of death and when every hope of this world has past when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth. In other words, what has arisen is a situation so solemn and so awful that it can be considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. That's what the books say I believe. The declarant, that is the person who made the dying declaration must have abandoned all hope of living, he must have a sense of impending dissolution, but he need not be expecting death immediately, that is, within the day although he must be expecting to die within a very short time; and in this connection Members of the Jury, even the works of that great bard of Avon, William Shakespeare, appear to have got into the question of dying declarations and in the book by a gentleman called Glaester on Medical Jurisprudence is to be found the following passage which is ascribed to that writer, and it runs this way.

> The words of dying men
> Enforce attention like deep harmony
> Where words are scarce they are seldom spent in vain
> For they breathe truth that breathe their words in pain.

Those are the words to which I refer.

Now, Members of the Jury, the Indictment alleges that the two accuseds with another person acted together. The Prosecution is alleging that

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Summing-up (Extracts)

(continued)

the two accuseds acted with common design, that is to say that they were participating in a common purpose, and where two or more persons join together with a common purpose or design to commit a crime the act or acts of any one of such persons done in furtherance of such common design or purpose, becomes in law the act or the acts of all of them but I should warn you that mere presence alone is not sufficient, the persons must have consciously participated as a result of a concerted design to commit the specific offence. In such a case the actions of one are the actions of all and all are responsible that, of course, is a question of fact for the Jury to determine. But if you find that that is not so or if you are in reasonable doubt about it, then only the person whom you consider actually committed the offence is punishable in law. I should tell you further Members of the Jury, that a person who is present at the commission of a crime knowing that it is being committed is not liable as a principle if he is not there for the purpose of aiding or abetting or encouraging the commission of the crime in question and the purpose of his presence is a question of fact which you will have to determine for yourselves. At this stage I will read to you what is to be found in Halsburys Laws of England (3rd Ed.) page 750, paragraph 1370, on the question of common design:-

> "Where several persons are engaged in a common design and another person is killed, whether intentionally or unintentionally, by an act of one of them done in prosecution of the common design, the other persons present are guilty of murder, if the common design was to commit murder, or to inflict felonious violence, or to commit any breach of the peace and violently to resist all opposers."

I stop at that Members of the Jury, but the learned author goes on to deal with the question of manslaughter. I stop at that deliberately, because in my view that is not relevant; this, in my opinion, is a case of murder or nothing at all and manslaughter does not fall for consideration. Again, in Russel on Crime 10th edition volume 2 page 1855, the following statement appears:-

"It is submitted that the true rule of law is that where several persons engage in the pursuit of a common and unlawful object and one of them does an act which the others ought to have known was not improbable to happen in the course of pursuing such common and unlawful object all are guilty".

I will also read toyou, Members of the Jury, on this score, a portion of the judgment of Mr. Justice Avory in a case of two men, Betts and Ridley, a case of robbery with violence, in which the man Raidley*remained in a motor car for the purpose of assisting Betts who was in fact committing the robbery with violence by snatching from a man a bag with about £900 in it. The head note to the case reads as follows:-

*/sic/

"In the case of common design to commit robbery with violence, if one prisoner causes death while another is present aiding and abetting the felony, as a principal in the second degree, both are guilty of murder, although the latter had not specifically consented to such a degree of violence as was in fact used".

The learned Judge had this to say and I quote -

"It is clear law that it is not necessary that the party to constitute him a principal in the second degree, should be actually present, an eyewitness or earwitness, of the transaction. He is, in construction of law, present aiding and abetting it if, with the intention of giving assistance, he is near enough to afford it, should occasion arise. Thus, if he be outside the house, watching to prevent surprise, while his companions are in the house committing the felony, such constructive presence is sufficient to make him a principal in the second degree. It is clear that Ridley was present in that sense so as to make him a principal in the second degree to this crime of robbery with violence; and although it might be true to say that he had not agreed before hand that Andrews should be struck (that is the man from whom they robbed) on the head in a way likely to cause him death, it is clear upon the authorities that if he was a party to this

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Summing-up (Extracts) (continued)

felonious act of robbery with violence - some violence - and that the other person, the principal in the first degree, in the course of carrying out that common design does an act which causes the death, the principal in the second degree is equally responsible in law."

You Members of the Jury, have heard different versions bearing on the other issue to which I have referred earlier, the issue of the cause of death, you have heard the version of Dr. Sunderam and you have heard the version of Dr. Busby and I would refer to these later again at some stage. But as far as the law is concerned now, in the case of a man named Smith to which case reference was made by Counsel for the Prosecution the evidence in short was that if the deceased had received immediate and different treatment he might not have died at all. That case Members of the Jury, is an authority for saying that where a person has received a wound and that person dies after an interval of time and the occurence of intervening incidents and unsatisfactory treatment, if at the time of death the original wound is still an operating (that is to say an effective) and substantial cause of death then the wound can properly be said to be the cause of death even though some other cause of death is also operating. Only if it can be said that the original wound is merely the setting in which another cause of death operates can it be said that death does not result from the original wound. But it would be otherwise if the treatment which was employed to deal with the injury was improper or it was abnormal, and death resulted from it and or if there was negligence on the part of those responsible for the operation, or the post operative treatment.

... In addition, Members of the Jury, you have heard in the deposition of Dr. Sunderam and also from the evidence of Dr. Busby, that the deceased was a heart patient, he had a big heart, and further that heart patients should not be troubled - that was Dr. Busby's opinion - not be troubled more than necessary, and you may be wondering what is the position in regard to the physical condition of the deceased and the criminal liability to the accuseds and so it will be convenient for me to read once more - and for the

last time - from a book, from what Archbold in his 38th edition at para.2483 published in 1973, has to say on this score. I quote:

> "Where a blow was given which in the opinion of a surgeon renders a restorative necessary, and the injured person being unable to swallow was choked in administering the restorative it was held that the death was caused by the blow:
> If a man is suffering from a disease, which in all likelihood would terminate his life in a short time, and another gives him a wound or hurt which hastens his death, this is such a killing as constitutes murder, or at the least manslaughter. Upon a trial for manslaughter it appeared that the deceased, at the time of the blow given, was in an infirm state of health, and this circumstance was observed upon on behalf of the prisoners, but the judge, in summing up, said, "It is said that the deceased was in bad state of health, but that is perfectly immaterial, as if the prisoner was so unfortunate as to accelerate her death he must answer for it"."

So that Members of the Jury, even if the deceased was not as it were, in the pink of health, if you are satisfied that the accuseds act were the substantial, if not the only operating cause of his death, they must answer for it.

Now Members of the Jury, on another score, you may be wondering what part has motive to play in this criminal case before you, because you will bear in mind that you have heard from time to time that the deceased and one of the accused were very good friends and, in general, he was friends with a number of other people, and you might be wondering what has motive got to do with a criminal case. Well in short, the Prosecution is not bound in any criminal charge to establish motive; but there is generally a motive for every criminal act and if there is evidence of motive then the Prosecution may lead that evidence for the purpose of strengthening their case, even though they are not obliged to do it. So that in short while the existence of evidence of motive is capable of strengthening the case for the Prosecution, the absence of evidence of motive does not in anyway weaken the case for the Prosecution. Further to

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Summing-up (Extracts)

(continued)

all this, Members of the Jury, I should also tell you that the accuseds are jointly charged and where that is so and there is a joint trial a statement made by one accused and not made on oath is evidence against him and him only and not evidence against the other accused, whom it might tend to implicate. In other words, if number one accused makes a statement, not on oath which tends to implicate number two, then that statement is not evidence against number two, but evidence only against number one the maker of that statement and vice versa.

As in every joint trial too, Members of the Jury, it will be important for you in due course to keep separate and distinct the evidence in relation to each accused, because finally you will be required to return separate verdicts in relation to each and your finding in regard to one accused, need not automatically affect your finding in regard to the other accused.

I will endeavour Members of the Jury now to tell you something about an attempt which forms part of the second count. An attempt to commit a crime is an act done with intent to commit that crime and which forms part of a series of acts which would constitute its actual commission if it were not interrupted or frustrated. Mere intention to commit a crime does not amount to or constitute an attempt.

As far as the third count is concerned, the laws of the State make it an offence to discharge a loaded firearm with intent to cause grievous bodily harm, or maim, or to disfigure, or to disable anyone.

Intent as I told you before, is not capable of positive proof but it may be inferred from overt acts and from the surrounding circumstances of the case. It may be inferred from the nature and the position of the wound and from the weapon used. The term "grievous bodily harm" means just really serious bodily harm. "To maim" also found in that third count is to injure any part of any man's body which may render him in fighting less able to defend himself.

To disfigure is to do some external injury to the person which may detract from his personal appearance; and to disable is to do something

which creates a permanent disability and not merely a temporary injury.

I would now give you some general directions on the law. In every criminal trial the onus of proof rests and rests always on the Prosecution to prove to you the guilt of the accuseds. It is not for the accuseds to establish their innocence and every accused person who comes into this Court is deemed to be innocent until guilt is brought home to them by the Prosecution. The Prosecution is required to prove their case to you in such a way that they make you feel sure not only that the offence has been committed but that the accuseds are the ones who committed these several offences. That is a cardinal feature of our system of justice and Members of the Jury, no less a standard will suffice. When I said a while ago, that the Prosecution must prove the guilt of the accuseds to you in a certain way, I do not mean that they must prove the guilt of the accuseds to you with absolute certainty, because it is very seldom in the affairs of human life that that high standard of proof will ever be attained. You will be required to consider the case for the Prosecution and also the case for the Defence and when you do so it might have one of three results, it may convince you of the innocence of the accuseds; it may cause you to entertain a reasonable doubt in which case you will have to resolve that doubt in favour of the accuseds; and it may and it sometimes does, strengthen the case for the Prosecution.

In these matters, Members of the Jury, you have certain functions and I have mine. I have just outlined the law to you and it is your duty to accept the law from me as I direct you and to apply it to the facts, but remember this, you are the judges of the facts of this case and it is for you to say what evidence you reject, what evidence you accept - and if you accept certain evidence the weight you attach to it - and whether there is sufficient evidence of any particular fact. If I express an opinion on the facts of the case and you agree with it, then you are at liberty to act upon it, but if you do not agree with it, then it is not only your privilege but it is your duty to reject it and to act as you see fit. Similarly, you will draw such reasonable inferences from the facts of the case regardless of whether the Court or Counsel invite you to draw inferences to the

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Summing-up (Extracts)

(continued)

contrary. You will draw the inferences that you feel disposed to draw and if on any set of facts you may draw two sets of inferences, one favourable and one not favourable to the accuseds then it is your duty to draw the one which is favourable to them.

In a trial of this length, it may well be that you might think that there might be certain aspects of the case which in your view are important and to which the Court has not referred. If that be so, the fact that the Court does not refer to any particular aspect, does not necessarily mean that it is not important, and if you in your wisdom and your understanding and your experience feel that it is important even though the Court might not have referred to it or over emphasized it, or emphasized it at all, then it is your duty to take it into account; and, if on any aspect of this case you entertain a reasonable doubt then it is your duty to resolve that doubt in favour of the accuseds and when I say a reasonable doubt, I do not mean a whimsical or a fanciful suspicion, I mean a real substantion* doubt, such a doubt, Members of the Jury, as would cause you in the course of your daily lives to take a decision one way or the other.

*[sic]

You have heard Counsel on both sides refer to the facts of this case, but it is the duty of the Judge to review for your benefit the evidence in this matter and so you will have to bear with me a while in reviewing that evidence. Members of the Jury, I will endeavour, as far as it is practicable for me to do so, to keep the evidence relating to the separate counts together, so that you may have a clear vision of the events as they occur. Having done that I will then endeavour to give you a brief summary of those facts as they affect each accused and each count ....

... Now Dr. Sunderam left the State and the law provides for the reading of a deposition of a witness who may have left the state or who is unable to attend the trial. That deposition was read and the material parts of it will be reviewed, but while it is fresh in my mind I should tell you this, that when you come to consider the evidence disclosed by the deposition of a witness, you must approach it with care and caution for the simple reason, that the witness had never taken that

stand and you were not in a position to observe his demeanour or to question him, or for Counsel to question him or to further cross question him as the case may be. No suggestion that he might not be speaking the truth; just that he was not here and the same thing applies to a dying declaration. You must remember that the person who made it did not appear in the box; and you were not in a position to see his demeanour and also to ask him any questions or for that matter for Counsel to do so...

..... Members of the Jury, and now to summarise as briefly as it is possible for me to do, in order to enable you to carry out your deliberations more easily.

On that first count, the Prosecution is saying that as far as number one accused is concerned, you have the dying declaration of the deceased, that "Junior Cottle and two other men shot me". They are asking you to find that regardless of who fired the fatal shot number one accused is equally responsible for the murder of the deceased. I would come in due course to the question of the statement, the statement of number one accused before the Magistrate at the Preliminary Inquiry: and as far as that is concerned, the Prosecution is asking you to say that from the number of bullets discharged that evening - you will remember that two were found in the body of the deceased and three were found on the ground - that could not be consistent with mistake. You will remember that the accused number one said that this shooting was done by mistake in his statement before the Magistrate, the shooting by the other man named Marcus James.

Now as far as the case against number two accused is concerned, and on the first count of murder, the Prosecution is saying that the deceased said in that declaration, number one accused Cottle and two others shot him, and they are asking you to find that from all the circumstances of the case that number two accused was one of those other two persons, in that by his statements, or by two of his statements which he made to the police - and which incidentally, Members of the Jury, can only be regarded as evidence against himself - by those statements he puts himself in the vicinity of the home of the deceased with Junior Cottle and James,

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and further that within a short period of time he puts himself also in company with number one accused and James at the Super Market and subsequently thereafter for a number of days. In other words, the Prosecution, is asking you to find that as far as the second accused is concerned, the circumstantial vidence indicates that he was one of those two men. Now I will have to tell you something about circumstantial evidence. Circumstantial evidence, Members of the Jury, is evidence of facts not actually in issue from which a fact actually in issue may be inferred. Now with direct evidence, that is the evidence of a witness who perceived certain facts, the Jury has to consider whether the witness is a witness of truth, but with circumstantial evidence the Jury will have to consider also whether from such facts it is entitled to infer the facts in dispute. By the process of inference and by the process of deduction which you apply you are permitted to infer from the facts proved other facts necessary to complete the elements of guilt or the establishment of innocence and as far as cases of homicide are concerned, however, I should tell you that the circumstantial evidence necessary to establish Murder ought to lead the Jury to such certainty as they would act in any matter of great consequence.

In order to convict an accused on circumstantial evidence the facts proved against him must be consistent with his guilt, and they must be utterly inconsistent with his innocence. The facts proved must show that there is something to link the accused personally with the crime or the scene of the crime and in order to enable you to return a verdict of guilty, it is necessary not only that the inference based on circumstantial evidence should be a rational inference, but that it should be the only rational inference that the circumstances would enable you to draw.

Now, alternatively to that as far as number two accused is concerned on that first count the Prosecution is saying, that on his own statement he was told by Marcus James and by number one accused to await them by a corner and if he saw any light coming to let them know and further in that statement it is disclosed that from where he was he could see the other two men going to the house. The Prosecution is contending, Members of the Jury, that number one accused and the other two men who went to Rawle's house went there that

night to commit murder or to inflict felonious violence and in the circumstances of this case they are contending that there was a common design on the part of number two accused, who is equally guilty they say, as the person or persons who fired the fatal shot.

Now as far as the second count is concerned the Prosecution is relying, in respect of number one accused, that's Junior Cottle, on the evidence of Venita Sergeant who tells you that she saw them there - number one accused and two others - standing near to the Super Market then she heard the bullets go off. She is the young woman who says that she lived in the same house with him, now* with him literally in the same house, but he in one room and she in another, for a period of about six weeks up to March this year. They are relying on the evidence of Gaymes who said that he knows him and he shops there. They are relying on the evidence of Ross who said that he saw him with a pistol pointing at Gaymes and that he had seen him before many times and also on the evidence of Edwards, who said that he saw the accused number one accused rush at Gaymes pull the gun and then and there shoot him. In respect of that second count in relation to the second accused the Prosecution are relying again on the evidence of the witness Gaymes who said that when number one accused approached him Laidlow was behind and further that he knows Laidlow, he knew him before that date, as he used to shop in the Super Market. He said further that he stood behind Spirit and he accompanied him. In addition, they are relying on the evidence of the witness Ross, who said that he saw number two accused standing next to number one accused while he number one accused was pointing the pistol at Gaymes and the same Ross who says that he had seen number two accused over the past two years and every now and then he would meet him.

*[sic]

As far as the first count is concerned, Members of the Jury, if you are satisfied that both accuseds went with Marcus James to the home of the deceased that night with intent to murder him or to do him grievous bodily harm and all or any one of them discharged a fire-arm and any one of those shots killed the victim, all are guilty of murder, although there is no proof which one fired the fatal shot. On that second count if you are satisfied that both accuseds went to that Super

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Summing-up (Extracts)

(continued)

Market for an unlawful purpose - and on the facts it is open to you to find that they went there to rob - and number one accused wounded Gaymes, then both are guilty if you find that number two accused was near enough to render assistance to number one accused if he had been called upon. Now Members of the Jury, we will proceed to the Defence.

The defence of number one accused consisted of a statement from the dock and I will tell you this that even though that statement could not be tested by cross-examination, nevertheless, it is your duty to give it such weight as you think it deserves .....

.... Mr. Foreman and Members of the Jury, yesterday we had the statement of number one accused from the dock, and in that statement the accused is saying in short that as far as that first count of murder is concerned, he was at Fort Charlotte with the accused, Lorraine Laidlow and the man Marcus James, for the purpose of borrowing the car of the deceased, with whom he was on very good terms. He is saying further that Marcus James did the shooting, without any knowledge of his that he intended so to do, and he says further in his explanation for going away that he fled from the scene as he did not know what the police will do to him, and also he had asked you to take into account his statement that he showed indignation, righteous indignation by asking Marcus at some stage if he was mad, he is asking you to find from that statement that there could be no motive and Counsel in his address to you repeated the words, "What will I murder Rawle for? all he did to me was kindness". Well, I have told you already, Members of the Jury, what the position is about motive, as far as a criminal charge is concerned, and the position remains the same, there is no need for me to repeat it. On the Super Market incident he says that he knows nothing absolutely about this. Counsel for number one accused has asked you to find that there was no common design to inflict murder or to inflict felonious violence on the deceased Rawle, and indeed Members of the Jury, if you find and if you accept his story that he went there to borrow that car or if you are in doubt that that was the only purpose for which he went there, in the circumstances of this case there could e no common design and the accused number one would be innocent of the charge

and only the person who did the shooting who is himself not here. The defence is asking you to bear in mind that number one accused said that he the dead man, James, would rather kill himself than give himself up. They remind you that he Marcus James was found in a position by A.S.P. Constantine which suggested suicide, Members of the Jury, you will also bear in mind that Marcus James was found on the 21st of May, 1973 and the statement which the accused made at the Preliminary Inquiry to the effect that Marcus James suggested, or stated that he would kill himself rather then give himself up was made on the 1st October 1973, and the further statement to that effect was made in this Court on the 12th October, 1973. The defence is also asking you to find that the three men raised no objection to Russel being in the car when they went to the Fort Road on that night, but you will also bear in mind, Members of the Jury, that it was alleged, by, I think, number two accused, that at the time the dead man, Marcus James, lived somewhere at Edinboro and that it was Marcus James who said where to drop them out. If you of your own knowledge know that Edinboro is in the vicinity of the Fort Road then you are entitled to make such use of that knowledge as you see fit, and to draw any inferences in connection with this matter you see fit. The defence is also saying that the accused Cottle did not want Russel to drop them by the home of Cecil Rawle and he gave as his reason that people knew that he was friendly with them and that he was giving them an easy time in Court, but the Prosecution has asked you to find that if that was such common knowledge it would scarcely matter what Russel thought. The accused is also asking you to find that he was so distraught that he fled from the scene that night with tears in his eyes, but on the other hand the Prosecution has asked you to find also that it is significant that the accused never made any attempt whatsoever to stop somewhere and possibly send even an anonymous phone call to the police which might have resulted in someone going to the assistance of his great friend.

Now Members of the Jury there is a passage in the statement of the accused which may be of significance but which is not quite clear. It could not be cleared up because the accused made it from the dock and he could not be questioned; that passage was to the effect that "as the door opened the

In the High Court

No. 2

Summing-up (Extracts) (continued)

glare from the light flashed into Laidlow and myself face that made us visible, and at that moment my eyes and Mr. Rawle's eyes came into focus. I then moved along with Laidlow slightly in the dark". If by the two sets of eyes coming into focus the accused means that the deceased man recognised him, then you may well wish to ask yourselves why then move away into the dark? But that is a matter for you. Of particular importance too, Members of the Jury, is that you must from all the evidence be satisfied that the deceased, Cecil Rawle was capable of identifying the accused who is the only one of the men that he is said to have recognised in his dying declaration. The evidence is from one prosecution witness and from the accused number one himself that they were friends and that number one accused was often seen in the car of Mr. Rawle. On that you may feel disposed to consider whether or not Cecil Rawle was mistaken in his identity of number one accused, and as to his physical condition which may or may not have affected his recognising the accused, you have the evidence of the man Tony who when asked what was his condition, answered that his condition was "good" and when asked what he meant by "good" he said that Rawle sounded as if he knew what he was saying.

Now as far as number one accused is concerned, Cottle, Defence Counsel elicited from Assistant Supt. Constantine, I think it was, some evidence as to his character and to the effect that over the eight years that he knew him he had never known him or remembered seeing him with a cutlass or knife. Now on this score, Members of the Jury, evidence of the general reputation of an accused person for good character is relevant to the case of the defence if it is applicable to the particular charge and it may be admitted for the purpose of showing that it is unlikely that he should have committed the offence with which he is charged, and if there are any reasonable doubts on the facts you will give him the full benefit of his previous good character. It will be for you to give such weight, as you see fit, to the evidence elicited in the circumstances of this case but I will tell you this, that regardless of the good character of any accused person if you are satisfied that the charge against him has been proved then it is your duty to convict him and by the same token even if there was evidence of doubtful reputation of any

accused person if you find that the charge against him has not been proved it is your duty to acquit him. Further in his statement from the dock no mention was made by the accused Cottle of any injury which was sustained by him, but his Counsel in the course of his address referred to a bullet wound which he sustained allegedly by the police during their hunt for him. It was pointed out to Counsel that there was no evidence of such and Counsel apologised for making the reference and I will tell you this that whether the accused sustained a bullet wound or not, in the course of the police hunt for him is not a matter which you may take into consideration in connection with this charge. In any case there is no evidence about it; the same token the accused in that statement from the dock made some reference to the fact that the deceased was always letting them off in Court. Now it is common knowledge that the deceased Cecil Rawle was at one time or the other a Magistrate; indeed at the time of the incident, his substantive post was that of Magistrate, and from that statement you may glean that the accused number one has been before the Magistrates' Court for one reason or another, and from time to time, but even if you so believe from the statement which he gave you himself that he was a frequent visitor to that Court you must not let that affect you, and you will decide this case on the facts and on the facts only as have been deposed to you.

Now what I will now tell you Members of the Jury, on one important aspect of this case relating to the cause of death is equally applicable to the case of Cottle as it is to the case of Laidlow - will come to the defence of Laidlow sooner or later - but the issue of the cause of death as affecting his defence is identical as it affects the defence of number one accused, so we will kill two birds with one stone as it were now. Cause of death, Members of the Jury, is obviously an important issue, as far as the first count of murder is concerned because if you find that at the time of the death of the deceased the gun shot wounds were not a substantial cause and an operating cause that is to say, an effective or efficacious cause of his death, and that his death resulted from those wounds, then the charge of murder will have to fail completely, that is why this question of the cause of death is so important .....

In the High Court

No. 2

Summing-up (Extracts)

(continued)

... So now we move to the Defence of Cottle in what I will term the Gaymes incident, the Super Market incident. You have the evidence of the man Clarke who says he knows Cottle well, but the defence is asking you to remember that he said that he did not recognise the man who attacked Gaymes because his face was covered with something like a dungaree hat, even though he the witness said that he had a clear view of things by the lights of the Super Market. They are asking you to find that despite the fact that Venita Sergeant lived at one time in the same house with him she did not in fact mention his name in her statement to the police even though that living in the house covered a period of some six weeks and up to March. They are asking you to find it strange that even though the complainant Gaymes said that he knows Cottle - he saw him once in the Super Market shopping - he did not tell the police on the phone who shot him and further that the witness Ross for the Prosecution stated that Gaymes did not tell him who shot him even though he had been speaking with him for a period of about five minutes. In short the accused Cottle tells you that he was not there he was elsewhere. His defence is an alibi. He is saying that at the time this offence is alleged to have been committed he was somewhere else and when an accused person puts up an alibi as a defence there is no onus on him to prove that alibi the onus of proving the charge against him still rests on the Prosecution, that is the law. As far as the shaven heads and the dungaree are concerned, they are asking you to bear in mind that one witness for the Prosecution told you that many people around the town and in a certain place have shaven heads they have dungarees, they wear them, and many of them are black which is the description given by one witness or another in regard to number one accused. They ask you to find too that it is significant that no revolver was found on number one accused and that is so, so that the position is that he must have disposed of the dummy gun he told you in his statement had been handed over to him by one of his brothers as he calls him. In addition the Defence has asked you to consider the evidence of Dr. Sunderam who said that the shot was fired not less than 20-24 inches away from the victim. They too have asked you to consider and it is open to you to give it the consideration it deserves, why this

woman who was in the room that night in which the girl Sergeant was did not give a statement to the police. Well Members of the Jury, you can't tell the police in an investigation how many witnesses they must call, and in this Court witnesses are weighed not counted, and further if the police think that they have sufficient evidence to prove a case then I presume that they are in effect saying that there is no need to take a sledge hammer to kill an ant when you can use your thumb to do so. Now the defence is saying generally on that second count - well the second count and the third, of course, as you know they are alternate counts - that the identification of number one accused was not satisfactory and they referred to a number of isolated instances one that Gaymes said that he saw a beard on the accused but other persons do not appear to have seen it. One man said that he had a puff of hair, but the other man, Ross said that he had a clean head. Then there is this description as to the head gear - one witness said he wore a Customs Guard hat one said no hat and one said a black cap. I will come in due course, Members of the Jury to these questions of discrepancies, and tell you how you must deal with them but I will tell you now what they are in isolation, as it is my duty to do. Identification, Members of the Jury, is an important aspect of this case, and it will be for you to say in due course whether in the light of all the evidence including these discrepancies number one accused, Cottle, was properly identified on that evening. The defence is also asking you to find that the Prosecution was with-holding the evidence of the witness Clarke who was put up merely for cross-examination. There is nothing improper in putting up a witness for cross-examination and all that the witness said at the Preliminary Inquiry could be obtained from the witness in the prescribed way if the Defence desires. The Defence has pointed out to you that there was no identification parade, nor did any witness describe Cottle as being very tall. Well the latter is a question of opinion, but in all the circumstances of this case, I would imagine that an identification parade could only have operated to the disadvantage of number one accused, but that is a matter for you; in any event if the police in investigating this matter are satisfied that they have sufficient evidence without resorting to an identification parade, then it is entirely a matter for them. So now we come to the evidence of Loraine Laidlow

In the High Court

No. 2

Summing-up (Extracts)

(continued)

and his defence consisted of a statement, a comparatively short statement and I will tell you here, Members of the Jury, as I told you before that even though, that statement is not capable of being tested by cross-examination nevertheless you will give it such weight as you think it deserves .....

..... That is his statement and he is saying too that he and Cottle and James went to Fort Charlotte to borrow the car of Cecil Rawle and that is the purpose and the purpose only why they went there. He is saying in that statement that James did the shooting without any knowledge on his part and that he did not know that he intended to do so, so that question of common design does not arise, that is what he is saying and, indeed, as I indicated in the case of number one accused if you believe his story or you are left in reasonable doubt, then in all the circumstances of the case there will be no question of common design and only the one who did the shooting would have committed murder. In that statement of the accused Laidlow dated the 28th of May, he mentioned that Spirit had a .38 gun in front of him, number two accused, and he was frightened and Spirit told him to wait for Marcus and that he had to run with them. In that statement Members of the Jury may appear a veiled attempt to rely on the defence of Duress, that is constraint by threats, but Duress is no defence to a charge of murder, it may be in other criminal charges but not in a charge of Murder.

The defence says that the innocence of the accused Laidlow is shown in that the man did not ask Russel to keep the trip to Fort a secret, Members of the Jury, it is a matter for you, but it may well be that if they had asked this man to do that, if they had made such a request of him that could only have aroused curiosity, that could have aroused suspicions on the part of the two other men in that car that evening. The Defence has asked you to find that the deceased Rawle was badly injured and in those circumstances may not have been disposed to give any details and so he cut them short and he made the statement which he did in fact make and which was admitted as a dying declaration, but as against that you have the evidence of Henry Williams who tells you that on their way to the hospital Rawle kept on repeating

over and over again "Junior Cottle and two other men shot me", and further having got to the hospital he made an identical statement to Sergeant Bacchus, and if we may go back to the witness Toney who said that when Rawle made this declaration at his home he seemed to know what he was saying. So you will have to weight all the pros and cons and decide for yourselves. The Defence is asking you to say that the getaway was eratic and as such they invite you to find that there was no crime contemplated when they went to that place. Well that is a matter for you Members of the Jury, you will have to decide for yourselves whether that getaway was eratic and in any event you still have to find whether they went to that place for a certain purpose. On the question of the second incident at the Super Market, the Defence are saying that the witness Ross did not describe to the police the second accused Laidlow even though he knew him and further they are asking you to take into account the fact that Mr. Constantine saw Gaymes at about 9.40 p.m. but he did not describe Laidlow to him and the further fact that the witness Clarke, witness for the Prosecution, said that he did not see anyone standing behind the man who shot Gaymes. Laidlow is telling you in his statement that he was told to say that he was at the Super Market that is his account. So there again he is setting up an alibi as a defence and the same thing applies: having done that there is no onus on him to prove it, the onus is still on the Prosecution to prove by positive evidence or circumstantial evidence that he was there on that evening. In that statement of the 30th of May, again it is not clear whether the Defence is saying that he Laidlow was compelled to watch the Super Market. He said in that statement that he was compelled to watch the Super Market because Spirit had a gun in his hand but if he is saying that he did so under Duress then Members of the Jury it will be a matter for you to decide whether the implied threat had so overbourne the will of accused number two that he had no alternative but to remain there at the scene willy nilly and if you come to that conclusion then it will be your duty to find him not guilty on that second count.

Now time, Members of the Jury, as you will have appreciated, is of some importance in this matter because the Prosecution is seeking by circumstantial evidence, among other things, to

In the High Court

No. 2

Summing-up (Extracts)

(continued)

establish that number two accused Laidlow is one of the other two men who shot Rawle in the light of the fact that he was at the Super Market among other places shortly after the incident at Fort Charlotte with the other two ..... It will be for you Members of the Jury to put your own interpretation upon the differences between what a witness said on oath at the Preliminary Inquiry and what he said here, but I will tell you this, it is not a matter of whether you prefer the version which he gave elsewhere to the version which he gave here. The evidence which he gave here is the evidence at the trial: a deposition can be put to a witness for the purpose of discrediting him and if you find that he is deliberately trying to mislead you, then it is open to you to reject him. As far as any other type of discrepancy is concerned you saw the witnesses in the box and it will be a matter for you to decide whether they are trying to mislead you or whether they are making an effort to tell you the truth. What is important, what is material, is whether those discrepancies are of such a nature, are of such importance that they cause the case for the Prosecution to break down. But when you come to consider these discrepancies you will no doubt bear in mind that this incident took place in a matter of minutes. One witness, I think it was the witness Clarke, said in about two minutes and in an atmosphere of some tension and some excitement as you may well imagine, and human frailty being what it is you may or may not think that that would have some bearing upon any discrepancies which have occured.

There is one other aspect of which I must revert again and that is the statement to the police. Number two accused Laidlow told you that he made them because inducements were held out to him and because threats were made to him but as I indicated to you before these statements have been admitted as voluntary statements and you will have to give them such weight as you think they deserve. You will treat them as any other bit of evidence. In addition, reference was made to the peculiar manner in which the statements had been signed by the accused Laidlow, the peculiar spellings. What is important Members of the Jury, is, if you believe the evidence of Constantine and Richards to the effect that no threats were made or inducement offered, or whether the statements were read back to the accused, and whether he put there what

purported to be his signature, that is the important point....

... Now Members of the Jury, it is not disputed that Cecil Rawle and Allenby Gaymes were shot at different times on the night of the 11th of May, 1973, but when you retire you will have to pose yourselves the following questions among others. You will have to ask yourselves did Cecil Rawle make any mistake as to the identity of Cottle. You will have to ask yourselves was Laidlow one of the two men to whom Rawle referred in the light of the circumstantial evidence which the Prosecution has asked you to find, by the fact that the three men appear to have been in the company of each other from about 7.00 p.m. on that evening onwards and for some days to come and in the light too of the statement of Laidlow which put him, Laidlow, in the vicinity of Rawle's house. You will have to ask yourselves did those three men, Cottle, Laidlow and James go there to Rawle's house with a common intent to murder him or to inflict felonious violence and also were Laidlow and Cottle properly identified at the scene of the Super Market. Was Laidlow if you are satisfied that he was there, present for the purpose of assisting Cottle should the necessity arise. You will have to ask yourselves were the gunshots wounds at the time of Rawle's death still an operating that is to say effective and substantial cause of his death. Those are some of the questions that you will have to ask yourselves and then you will let the answers be reflected in your verdict. In regard to the first count of murder as you are aware, the laws of the State do not permit me to accept a verdict which is not a verdict of you all which is not a unanimous verdict. I must ask you therefore when you retire, Members of the Jury, to use your best endeavours especially in regard to that first count to arrive at a unanimous verdict. When you retire to the Juror's room, when you retire there to deliberate, you must try to see the pros and cons of the case for the Prosecution and the pros and cons of the case for the Defence and you will try to reason one with another in a dispassionate way and in a logical way so that you will be able to arrive at a unanimous verdict. Now as far as the other two counts are concerned, there is no provision in the law as, far as I am aware, where non-capital charges are jointly heard by twelve jurors, to indicate that a majority verdict will be. Indeed it is only

In the High Court

No. 2

Summing-up (Extracts)

(continued)

within comparatively recent times that non-capital charges may be tried with capital charges, but the fact remains that the Jury Ordinance provides for a majority verdict in the case of non-capital charges after the expiration of two hours and with two Jurors dissenting so that on the basis of that provision the question of a majority verdict on the other two counts will be decided. In other words the verdict on the first count must be unanimous, the verdict of the second or third counts may be unanimous or it may be a 10-2 or 11-1 verdict after a period of two hours.

Now you will consider each count separately, and you will consider the evidence against each accused separately and likewise you will also consider the defence of each accused separately. As far as the first count is concerned it is either a question of guilty of murder or not guilty of anything. Manslaughter does not arise in this case. If you are satisfied that both accused went to the home of the deceased man Cecil Rawle with another man Marcus James with intent - with a common design - to murder him or to inflict felonious violence on him and any one of them fired the fatal shot and that the wound caused thereby was the cause of his death even though you are uncertain which one discharged the fatal shot, then both accuseds in the box are guilty of murder. If you are not so satisfied or you are left in reasonable doubt then you will resolve that doubt in favour of the accuseds and acquit them. If you are satisfied that the accuseds went there at Fort Charlotte to borrow the car of the deceased and that there were no concerted design to commit the offence of murder or inflicting grievous bodily harm, that they waited on Marcus James who went in to obtain the loan of the car but who for some reason or the other mortally wounded Cecil Rawle then Members of the Jury, they should be acquitted and equally so if you are in doubt, reasonable doubt. Now as far as the second count of attempted murder is concerned before you can convict the accuseds of an attempt to commit the offence with which they are charged they must be shown to have done an act which is unequivocally referable to the commission of such a crime. That is a matter of law and as a matter of law I direct you that the acts which have been imputed to them by the evidence of the Prosecution witnesses show that they did an act which is unequivocally

referable to the commission of the crime of attempting to murder Gaymes but the matter does not rest there having told you that as a matter of law it is now for you to find as a matter of fact whether in light of the evidence that they had the intention to commit the offence. If you so find then it is your duty to convict them. If you do not so find or you are in reasonable doubt then it is your duty to acquit them.

As far as the third count is concerned you will bear in mind that it is an alternate count to the second count and before you can convict the accused on the third count you must be satisfied that the firearm was loaded and was discharged - I don't think that you will have much difficulty in finding that - but you must be satisfied that number one accused, Cottle, discharged it and that number two accused, Laidlow, was present and that there was a common design to cause grievous bodily harm or to disfigure or disable Gaymes. The key to the differences between the second and the third count Members of the Jury, may be found in the question of intent. In the second count of attempted murder, the principle ingredient is the intent to Murder, whereas in the third count the principle ingredient is to cause grievous bodily harm, or to maim, disfigure or disable. So you will consider the first count first and if you can find that it has been proved then you will convict the accused; if you are not so satisfied or if you are left in reasonable doubt then you will acquit them. You will then turn your attention to the second count and if you are satisfied that it has been proved then you will convict them and you need not disturb yourselves about the third count, but if you are not satisfied that the second count has been proved or you are left in reasonable doubt then you will acquit them on that second count and turn your attention to the third count and when you come to consider the third count if you find that it has been proved then you will convict them but if you find that it has not been proved or you are left in reasonable doubt then you will acquit them.

You Members of the Jury, have your part to play in the administration of Justice and I have every reason to believe that you will play it well and that you will play it with credit to yourselves and to the community. Your duty is to consider all the facts of the case dispassionately and objectly,

In the High Court

No. 2

Summing-up (Extracts)

(continued)

apply the law to the facts and finally return a true verdict according to the evidence. More than that you cannot do and less than that is not expected of you; then and only then will you be at peace with your conscience and the oath which you have taken, then and only then in the future will you be able to look your fellow man fairly and squarely in the eye. I will now ask you to consider your verdict and tell me how you find.

In the Court of Appeal

No.3a

Notice of Appeal (Junior Cottle)

30th October 1973

No. 3(a)

Notice of Appeal (Junior Cottle)

CRIMINAL FORM 1

WEST INDIES ASSOCIATED STATES SUPREME COURT

IN THE COURT OF APPEAL

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION AND SENTENCE

(Territory) SAINT VINCENT

Criminal Appeal No. 5 of 1973

TO THE REGISTRAR OF THE WEST INDIES ASSOCIATED STATES COURT OF APPEAL

Name of Appellant: JUNIOR COTTLE

Convicted at the ASSIZES held at KINGSTOWN

Offence of which convicted: MURDER

Sentence: DEATH

Date when convicted: 17th day of October, 1973

Date when sentence passed: 17th day of October, 1973

Name of Prison: Her Majesty's

I the above-named appellant hereby give you notice that I desire to appeal to the West Indies Associated States against my Conviction on the grounds hereinafter set forth on page 2 of this

notice.

(Signed) Junior Cottle
.....
Appellant.

Signature and address of witness attesting marks.

Dated this 30th day of October, A.D. 1973

In the Court of Appeal

No.3a

Notice of Appeal (Junior Cottle)

30th October 1973

(continued)

QUESTIONS	ANSWERS
1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal?	NO
2. Do you desire the West Indies Associated States 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?	
(b) Have you any means to enable you to obtain legal aid for yourself?	
3. Is any solicitor now acting for you? If so, give his name and address	C.D.DOUGAN Kingstown
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	

Grounds of Appeal or Application

The Verdict of the Jury is unreasonable or cannot be supported having regard to the evidence.

In the Court of Appeal

No.3b

Notice of Appeal (Lorraine Laidlow)

30th October, 1973

No. 3(b)

Notice of Appeal (Lorraine Laidlow)

CRIMINAL FORM 1

WEST INDIES ASSOCIATED STATES SUPREME COURT

IN THE COURT OF APPEAL

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION AND SENTENCE

(Territory) SAINT VINCENT

Criminal Appeal No. 6 of 1973

TO THE REGISTRAR OF THE WEST INDIES ASSOCIATED STATES COURT OF APPEAL

Name of Appellant: LORRAINE LAIDLOW

Convicted at the ASSIZES held at KINGSTOWN

Offence of which convicted: MURDER

Sentence: DEATH

Date when convicted: 17th October, 1973

Date when sentence passed: 17th October, 1973

Name of Prison: HER MAJESTY'S

I the above-named appellant hereby give you notice that I desire to appeal to the West Indies Associated States against my on the grounds hereinafter set forth on page 2 of this notice.

(Signed) LORRAINE LAIDLOW
.....
Appellant.

Signature and address of witness attesting marks.

Dated this 30th day of October, A.D. 1973

QUESTIONS	ANSWERS
1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal?	NO
2. Do you desire the West Indies Associated States 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?	
(b) Have you any means to enable you to obtain legal aid for yourself?	
3. Is any solicitor now acting for you? If so, give his name and address:	KENNETH JOHN Egmont Street Kingstown
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?	
If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice	

Grounds of Appeal or Application

The Verdict of the Jury is unreasonable or cannot be supported having regard to the evidence

In the Court of Appeal

No.3b

Notice of Appeal (Lorraine Laidlow)

30th October 1973

In the Court of Appeal

No.3c

Further Notice of Appeal (Lorraine Laidlow)

30th October, 1973

No.3(c)

Further Notice of Appeal (Lorraine Laidlow)

CRIMINAL FORM 1

WEST INDIES ASSOCIATED STATES SUPREME COURT

IN THE COURT OF APPEAL

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION AND SENTENCE

(Territory) SAINT VINCENT

Criminal Appeal No. 7 of 1973 10

TO THE REGISTRAR OF THE WEST INDIES ASSOCIATED STATES COURT OF APPEAL

Name of Appellant: LORRAINE LAIDLOW

Convicted at the ASSIZES held at KINGSTOWN

Offence of which convicted: Discharging Firearm with intent

Sentence: 4 Years Imprisonment

Date when convicted: 17th October, 1973

Date when sentence passed: 17th October, 1973

Name of Prison: HER MAJESTY'S 20

I the above-named appellant hereby give you notice that I desire to appeal to the West Indies Associated States against my on the grounds hereinafter set forth on page 2 of this notice.

(Signed) LORRAINE LAIDLOW
.....
Appellant

Signature and address of witness attesting marks.

Dated this 30th day of October, A.D. 1973 30

QUESTIONS	ANSWERS
1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal?	NO
2. Do you desire the West Indies Associated States 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?	
(b) Have you any means to enable you to obtain legal aid for yourself?	
3. Is any solicitor now acting for you? If so, give his name and address	KENNETH JOHN Egmont Street KINGSTOWN
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?	
If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice	

Grounds of Appeal or Application

1. The Verdict of the Jury is unreasonable or cannot be supported having regard to the evidence.

2. The Punishment excessive.

In the Court of Appeal

No.3c

Further Notice of Appeal (Lorraine Laidlow)

30th October 1973

(continued)

In the Court of Appeal

No.4a

Amended Grounds of Appeal (Junior Cottle)

No. 4(a)

Amended Grounds of Appeal (Junior Cottle)

TAKE NOTICE THAT AT THE HEARING OF THE ABOVE APPEAL THE APPELLANT WILL SEEK LEAVE TO AMEND THE GROUNDS OF APPEAL

AND TAKE NOTICE THAT THE AMENDED GROUNDS OF APPEAL ARE AS FOLLOWS

1.

That the judgment of the Court of trial should be set aside on the ground of a wrong decision of law in that

(a) The Indictment is bad in law.

(b) The learned trial Judge erred in law withdrawing the question of manslaughter from the Jury.

2.

That the verdict of the Jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory:-

(a) The defence was prejudiced by the joinder of parties

(b) The learned trial Judge's direction to the Jury as to the standard of proof was inadequate.

(c) The learned trial Judge's direction to the Jury as to the relative weight of the conflicting evidence of the medical experts was inadequate.

3.

That there was a material irregularity in the course of the trial:-

(a) The learned trial Judge was wrong in law when he ruled that the statement of the deceased was admissible as "a dying declaration".

(b) That the learned trial Judge was wrong when he ruled that the statement of No.2 accused was admissible as confession.

(Sgd.) Hilary B. Samuel
Counsel for the No. 1 Appellant.

No. 4(b)

Amended Grounds of Appeal (Lorraine Laidlow)

In the Court of Appeal

No. 4b

Amended Grounds of Appeal (Lorraine Laidlow)

TAKE NOTICE THAT AT THE HEARING OF THE ABOVE APPEAL THE APPELLANT WILL SEEK LEAVE TO AMEND THE GROUNDS OF APPEAL

AND TAKE NOTICE THAT THE AMENDED GROUNDS OF APPEAL ARE AS FOLLOWS:-

AMENDED GROUNDS OF APPEAL

1.

That there material irregularity in the course of the trial:-

(A) That the learned trial Judge was wrong in law when he ruled that the statement of the deceased was admissible as "a dying declaration".

(B) That the learned Trial Judge was wrong in law when he ruled that the Statements of the accused were admissible as confessions.

(C) That the learned trial Judge was wrong in law when he withdrew the question of manslaughter from the Jury.

2.

That the Verdict of the Jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory:-

(a) That the learned trial Judge's direction to the Jury as to the relative weight of conflicting medical evidence was inadequate.

(b) That the learned trial Judge's direction to the Jury as to the cause of death was inadequate.

(c) That the learned trial Judge's direction to the Jury as to the weight of A Dying Declaration was inadequate.

(Sgd.) K.R.V. John

Counsel for the No. 2 Appellant.

In the Court of Appeal

No.4c

Amended Grounds of Appeal (Lorraine Laidlow)

No. 4(c)

Amended Grounds of Appeal (Lorraine Laidlow)

TAKE NOTICE THAT AT THE HEARING OF THE ABOVE APPEAL THE APPELLANT WILL SEEK LEAVE TO AMEND THE GROUNDS OF APPEAL

AND TAKE NOTICE THAT THE AMENDED GROUNDS OF APPEAL ARE AS FOLLOWS:

AMENDED GROUNDS OF APPEAL

1. THAT there was a material irregularity in the course of the trial in that the Learned Trial Judge was wrong in law when he ruled that the Statements of the accused were admissible.

2. THAT the verdict of the Jury should be set aside on the ground that under all the circumstances of the Case it is unsafe or unsatisfactory in that the evidence purporting to establish identification of the accused at the scene of the offence was inadequate.

(Sgd.) K.R.V. John
Counsel for the Appellant.

No. 5

Judgment

20th May 1974

No. 5

Judgment

SAINT VINCENT

IN THE COURT OF APPEAL

Criminal Appeals Nos. 5, 6 & 7 of 1973

BETWEEN:

1. JUNIOR COTTLE)
2. LORRAINE LAIDLOW) APPELLANTS

and

THE QUEEN RESPONDENT

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin (ag)

H. Samuel for appellant Cottle

Dr. K. John for appellant Laidlow

C.S. Payne (Attorney General) and Miss M. Joseph (Legal Assistant) for the Crown

February 22nd and May 20th 1974

JUDGMENT

CECIL LEWIS, C.J. (ag) delivered the judgment of the Court:-

The appellants were jointly charged on an indictment containing three counts. In the particulars of the first count it was alleged that they together with another person named Marcus James on the 13th May, 1973 at Kingstown in the State of St. Vincent murdered Cecil Rawle. On this count they were both convicted and sentenced to death. Each has now appealed. On the second count they were acquitted of the offence of attempting to murder one Allanby Gaymes on the 11th day of May, 1973; but they were convicted on the third count which alleged that they discharged a loaded firearm at Allenby Gaymes on the same date with intent to cause him grievous bodily harm. Both of the appellants were sentenced to four years imprisonment on this count, but only the appellant Laidlow has appealed. The three appeals have been heard together by consent.

The case for the prosecution put very shortly is that the appellants and the man Marcus James went to the house of Cecil Rawle and in pursuance of common design fired several shots into his body on the 11th day of May, 1973 and as a result of the wounds he sustained from these shots he died on the 13th of May. Mr. Rawle's assailants were not apprehended until some considerable time after they had perpetrated the attack on him. The appellants evaded capture until the 26th or 27th of May, 1973 and indeed the third man Marcus James was not captured at all but his dead body was found on the 21st of May, 1973 at about 4 p.m. in some bushes overlooking the sea at Edinboro. Assistant Superintendent of Police Felix Constantine said that when he found the body he saw a .38 special Smith and Wesson revolver bearing serial No.R501.1 lying near his outstretched right hand. This

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20th May 1974

(continued)

revolver was loaded with three live and three spent cartridge cases. It has been assumed that the man Marcus James committed suicide.

Mr. Rawle lived in a house called Fort Cottage situate on the Fort Charlotte Road. Around 7.30 p.m. on May 11th, 1973 one of his neighbours Marilyn Smith heard cries of "help" "murder" coming from the direction which she thought was Mr.Rawle's house. She phoned Mr. Henry Williams who lives not too far away. He had just arrived at his own home and as a result of the telephone call he went in the direction of Mr. Rawle's house. As he was approaching the cottage and when he was about 80 yards away from it he heard a cry coming from the cottage. It was a cry for help. He stopped his car went up the front steps, and when he got to the top of the steps he found Cecil Rawle lying on his back. There were blood spots on several parts of his torso, he was naked from the waist up and seemed to be in great pain. He asked him what was wrong with him and he told him that he had been shot. He said he had come in and was having supper, that he heard a knock at the door and that when he went to the door there were three persons standing there and he said they shot him. He identified one of the persons to be the appellant Cottle and added that he did not know the names of the other two but that he would recognise them at sight. The witness also added that when he first went to Mr. Rawle's house and found him lying on his back he said "I am dying, take me to the hospital." Mr. Williams went for assistance and returned with two persons Hugh Toney and Hugh Antoine with whose help he lifted the injured man into his car and took him to the hospital. Mr. Williams says that these two men Hugh Toney and Hugh Antoine were together with him in Mr. Rawle's house and were in a position to hear what Mr.Rawle told him. In fact Mr. Toney says that when Mr. Williams called for him in his car around 7.30 p.m. he went with him to Mr. Rawle's house where he saw him lying on his back on the porch. He said Mr. Rawle stated "take me to the hospital I am dying" and further added that Junior Cottle and two others had shot him.

Mr. Antoine was presented for cross-examination by the Crown and he said that on the same date, that is the 11th of May he went with Hugh Toney and Henry Williams to Cecil Rawle's

house and that they met him on the porch. He said that he was bawling "help, help I am dying take me to the hospital." He further added that Cecil Rawle said that he had been shot and that Junior Cottle and two others had shot him.

Mr. Williams and the other two witnesses arrived at the hospital with the injured man at about 7.57 p.m. Around 8 p.m. sergeant of police Lester Bacchus went to the General Hospital where he saw Mr. Rawle lying on a bed in the casualty department. This witness said he looked weak and pale and was crying and saying he was dying. Mr. Rawle made a statement to him in the presence of Henry Williams which he took down in writing, he read it over to him and he said it was correct but was unable to sign it. In this statement he said he had heard a knocking on his door and as soon as he opened it Junior Cottle and two other men had shot him.

Defence Counsel at the trial objected to the admissibility of this statement but the trial judge admitted it on the grounds that (a) it was part of the res gestae and (b) that it was a dying declaration. The correctness of this ruling is now being challenged.

When Mr. Rawle was taken to the hospital he was examined by Dr. Majjeri Sunderam a medical practitioner attached to the Kingstown General Hospital. This person had left the State before the trial commenced and his deposition was read at the trial. He found the patient in extreme shock and his blood pressure was hardly recordable. On examination six external injuries were found and an X-ray of the neck and shoulder revealed that the right collar bone was cracked. There were also severe internal injuries. Special mention should be made of one wound referred to by Dr. Sunderam. This was a wound one-sixth of an inch in diameter on the back of the right shoulder which caused a swelling on the right side of the neck. An X-ray of this part of the neck showed that an opaque object resembling a bullet was lodged on the right lateral aspect of the cervical vertebral column in the region of the seventh cervical spine. Some controversy centered around this wound and it will be referred to later in connection with the issue as to the cause of death.

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(continued)

Certain medical procedures (including an operation) were carried out by Dr. Sunderam who decided that it was not necessary to remove the bullet at the root of the neck on the right side, as in his opinion it was not causing any immediate threat to the life of the patient, and when the operation was completed the patient was taken to the wards for intensive medical care. In the meantime the Government of St. Vincent had obtained permission from the Government of Trinidad for a surgeon Mr. John Busby who was attached to the General Hospital of that State to come to Saint Vincent to give such assistance as he was able to offer in an effort to save the life of the injured man. Mr. Busby performed a second operation on Mr. Rawle and removed the bullet from his neck. He says he did so with Dr. Sunderam's consent but Dr. Sunderam in his deposition denied this. Mr. Busby is a very qualified surgeon and holds the Fellowship of the Royal College of Surgeons, Edinburgh, and is also a Fellow of the American College of Surgeons. He is an associate lecturer in surgery of the University of the West Indies and has been a medical practitioner and surgeon attached to the General Hospital in Port-of-Spain, Trinidad since 1955. He said that he was brought to St. Vincent as a Specialist/Surgeon because an operation of the nature which he performed called for skill, preferably the skill of a person with specialist surgical knowledge. Despite all efforts however the patient died on the 13th May, 1973 and one of the questions which arises on this appeal is what was the cause of his death. This question will be examined at a later stage.

The appellants do not deny that they were in the vicinity of Mr. Rawle's house around 7.30 p.m. on the 11th May, 1973. They were taken to the Fort Road together with the third man Marcus James in a car belonging to one Kelvin Lettine who drove them there himself. One Errol Russel was also in the car. According to this witness when the car got to the draw bridge on Fort Road the men asked the driver to leave them there and they got out of the car and paid the driver $2 for the trip. This was about 7.10 p.m. The appellant Cottle made an unsworn statement from the dock in which he said that he took a taxi on the night of the 11th May and went to the Fort Road and that he did so for the purpose of borrowing the car of the deceased man Rawle who was his friend. That is his

explanation for his presence near to Mr. Rawle's home. The appellant Laidlow also said in his unsworn statement from the dock that he and Marcus James and Spirit (i.e. Cottle) hired a taxi to go to the Fort Road to borrow Mr. Rawle's car; so he too asserts that his presence in the vicinity of Mr. Rawle's home was for the lawful purpose of borrowing his car. They both say that the person who killed Mr. Rawle was the man Marcus James who was afterwards found dead in the bush at Edinboro. In other words both appellants denied that they had any unlawful common purpose in going to Mr. Rawle's house that night.

The grounds of appeal relating to the capital charge fall into three main categories. Category A contains those grounds which were argued on behalf of the appellant Cottle only, category B those which were common to both appellants, and category C the ground argued on behalf of appellant Laidlow only.

Category A - the grounds of appeal affecting appellant Cottle only. The grounds of appeal falling under this category were (a) "The indictment was bad in law; (b) the defence was prejudiced by the joinder of parties and (c) the learned trial judge's directions to the jury as to the burden and standard of proof were inadequate."

(a) Indictment bad in law. The first comment to be made in connection with this ground of appeal is that no objection to the validity of the indictment was taken at the trial. Secondly, the notice of appeal does not give any particulars as to the reason why it is being contended that the indictment was bad in law, and so, neither the Court nor counsel for the Crown could surmise what arguments were likely to be raised under this ground of appeal. However, counsel for the appellant Cottle intimated that his arguments would be based solely on sections 12 and 13 of the Jury Ordinance 1938. These sections read as follows:-

> "12. A Jury in a criminal trial other than for a capital offence shall consist of nine persons to be selected by ballot whose verdict shall be unanimous if delivered within two hours of its consideration but if delivered more than two hours after its consideration the verdict of seven jurors shall be received as the verdict in the cause.

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13. A jury in a criminal trial for a capital offence shall consist of twelve persons to be selected by ballot whose verdict shall be unanimous:

Provided that in trials for murder after two hours of its consideration a verdict of ten jurors convicting the accused of any offence less than murder of which they are entitled by law to convict him shall be received as the verdict in the cause."

Counsel contended that the indictment on which his client is charged contained a capital and non-capital charges, that s.13 of the Ordinance requires a capital charge to be heard before a jury of twelve persons, whereas s.12 requires a non-capital charge to be heard by a jury of nine persons, and since the jury which heard all the charges in the indictment consisted of twelve persons, this was an irregularity which made the indictment bad in law and so vitiated the trial thus rendering it a nullity.

It was also contended that the felony of murder could not be joined with any other offence in an indictment and R v Large 27 Cr. App. R. 65 was cited in support of this submission. As regards the third count it was further submitted that this should have been heard before a jury of nine persons and not twelve and as a result the appellant Cottle's conviction on this count was bad. It should be observed, however, that this appellant has not appealed against his conviction on the third count.

Rule 3 of the rules relating to indictments contained in the First Schedule to the Criminal Procedure Ordinance Cap. 5 permits charges for any offences, whether felonies or misdemeanours, to be joined in the same indictment if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character. The Attorney General submitted (and we agree with him) that the charges laid in the indictment form a series of offences of the same or similar character and so were properly joined in the same indictment. The rules of practice laid down in R v Jones (1918) 1 K.B. 416; 13 Cr. App. R.86 and in R v. Large 27 Cr. App. R. 65 that counts charging other

offences should not be included in an indictment for murder or manslaughter are no longer in force in England as a result of a Practice Direction issued by Lord Parker, C.J. on October 12, 1964 and published in (1964) 1 W.L.R. 1244. In England, the prosecution now frame their indictments as they think fit and the trial judge has a complete discretion under s.5 (3) of the Indictments Act 1915 to direct an accused to be tried separately on any one or more counts. Section 5 (3) of the Indictments Act 1915 of England is in all respects similar to section 9(3) of the local Criminal Procedure Ordinance Cap.5. Moreover, by the Criminal Procedure (Amendment) Act, No. 9 of 1970, section 2A was added to Criminal Procedure Ordinance Cap.5 and this new section provided that -

> "Where not otherwise provided for in any other law or rules of court for the time being in force, the practice and procedure of this Court in Criminal cases shall be according to the forms, practice and procedure for the time being in force in England, so far as the same are not repugnant to any law in force in Saint Vincent, and with such variations as local circumstances shall require."

So, the local practice and procedure relating to the joinder of other offences in an indictment for murder is the same as in England, and we accordingly hold that the indictment in the present case was not bad merely because other offences of a non-capital nature were included therein along with the capital charge, as the judge had a discretion if he considered that the appellant Cottle might have been prejudiced in his defence to have ordered the hearing of the capital and non-capital charges to take place separately.

In so far as the capital charge is concerned the jury was properly constituted as it consisted of twelve persons and the indictment cannot be attacked on this ground. The question however, is whether this jury could validly have tried the non-capital felonies which were included in the indictment. The Attorney General submitted that the appellant Cottle far from being adversely affected when he was tried by a jury of twelve on the non-capital offences was in fact afforded a greater measure of security because he was convicted by the unanimous verdict of twelve persons

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(continued)

and this number would include the number of persons (nine) required for a conviction by a unanimous verdict on a non-capital charge. He however conceded that although such a procedure would be irregular it would not make a conviction bad because an accused person would not be prejudiced. The weakness of this argument lies in the fact that it deals only with the position where the verdict of the jury is unanimous. It does not take cognizance of the situation where a majority verdict is returned. In the latter case difficulties are bound to arise, for the Jury Ordinance does not say in what proportions a jury must be divided before a verdict may be taken in circumstances where a non-capital charge is heard before a jury of twelve. In fact, the Jury Ordinance does not permit such a trial to be had.

The trial judge anticipated this difficulty and sought to overcome it by applying by analogy the provisions of s.13 of the Jury Ordinance to the instant case. After directing the jury that a unanimous verdict was mandatory for a conviction of murder he went on in this context to deal with the other counts and said as follows at pp 426 and 427 of the record -

> "Now as far as the other two counts are concerned, there is no provision in the law, as far as I am aware, where non-capital charges are jointly heard by twelve jurors, to indicate that (what) a majority verdict will be. Indeed it is only within comparatively recent times that non-capital charges may be tried with capital charges, but the fact remains that the Jury Ordinance provides for a majority verdict in the case of non-capital charges after the expiration of two hours and with two jurors dissenting so that on the basis of that provision the question of a majority verdict on the other two counts will be decided. In other words the verdict on the first count must be unanimous, the verdict on the second or third counts may be unanimous or it may be a 10-2 or 11-1 verdict after a period of two hours."

We are of the opinion that the trial judge was wrong in directing the jury on the basis that s.13 of the Jury Ordinance applied to the non-capital charges laid in the second and third counts of the

indictment . This section plainly applies (as is stated therein) only in circumstances where on a trial for murder the jurors return a majority verdict "convicting the accused of any offence less than murder of which they are entitled by law to convict him." We have therefore come to the conclusion that the trial of the appellants by a jury of twelve on the non-capital charges in the indictment was not only an irregularity but was also contrary to the provisions of the Jury Ordinance and accordingly we hold that the conviction of each appellant on the third count was bad and cannot be allowed to stand. It is therefore quashed and the sentence of imprisonment imposed in relation thereto set aside. We must however state that where capital and non-capital charges are joined in the same indictment the non-capital charge should be heard separately from the capital charge and by a jury of nine persons. This practice is in our opinion the correct one and should be followed in future.

(b) Defence prejudiced by joinder of parties. No application was made at the trial for separate trials for the appellants on any of the counts of the indictment. We have already stated for the reasons that we have given that separate trials should have taken place as between the capital and non-capital charges; but as between the respective appellants we see no valid reason why there should have been a separate trial for each of them. They were jointly charged on three counts and in our view it was proper and in the interests of justice that the jury should have before them at the same time all the facts relating to both appellants on each joint charge at the hearing of such charge. Had the trial judge been asked to grant a separate trial for each appellant and had he refused such application he would in our opinion have exercised his discretion properly in so doing.

The arguments adduced in support in this ground of appeal were (a) the trial was complicated because it was lengthy, and (b) the statements made by one appellant were not admissible against the other, the implication being that the jury were likely to be confused in considering the evidence and might use evidence which was admissible only against one accused as evidence against the other.

As regards the first point, we do not agree that the trial was complicated. True, it was lengthy

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but this is not a factor which could validly be taken into account in deciding whether each appellant should have a separate trial because the essential evidence against each appellant which the jury would be called upon to consider could easily be extracted from the material before the Court and the trial judge did so in his summing up. As regards the second point, there has been no complaint that the trial judge did not in actual fact deal with the case of each appellant separately, nor has counsel been able to point to any portion of the summing up where the trial judge either told the jury that any particular piece of evidence was admissible against one appellant when in fact it applied to the other appellant only, or that he in any other manner confused or misled the jury. The trial judge was careful to direct the jury that the statements made by one appellant were not admissible against another and he also warned them to keep the evidence against each accused separate and distinct as it was their duty to return separate verdicts in respect of each accused. In pursuance of this latter direction he dealt with the evidence in relation to each accused separately.

In our opinion there was no difficulty in bringing to the notice of the jury what part each of the appellants played in this matter and the trial judge did this. We are therefore of the opinion that this ground of appeal fails.

Inadequacy of direction as to burden and standard of proof. It is clear from the record that the trial judge did not fail to give proper and adequate directions to the jury both in regard to the burden and standard of proof required in a criminal case. He said at 260 and 261 of the record as follows:-

> "I would now give you some general directions on the law. In every criminal trial the onus of proof rests and rests always on the Prosecution to prove to you the guilt of the accuseds. It is not for the accuseds to establish their innocence and every accused person who comes into this Court is deemed to be innocent until guilt is brought home to them by the Prosecution. The Prosecution is required to prove their case to you in such a way that they make you feel sure not

only that the offence has been committed but that the accuseds are the ones who committed those several offences. That is a cardinal feature of our system of justice and Members of the Jury, no less a standard will suffice. When I said a while ago, that the Prosecution must prove the guilt of the accused to you in a certain way, I do not mean that they must prove the guilt of the accuseds to you with absolute certainty, because it is very seldom in the affairs of human life that that high standard of proof will ever be attained. You will be required to consider the case for the Prosecution and also the case for the Defence and when you do so it might have one of three results, it may convince you of the innocence of the accuseds; it may cause you to entertain a reasonable doubt in which case you will resolve that doubt in favour of the accuseds; and it may and it sometimes does strengthen the case for the Prosecution."

We are of the opinion that there is no merit in this ground of appeal.

Category B - Common grounds of appeal

(a) Error in withdrawing manslaughter from jury. The argument that the issue of manslaughter should have been left to the jury is based on the following passage taken from 10 Halsbury's Laws of England 3rd Edition page 715 para.1370:-

"Common Design. Where several persons are engaged in a common design and another person is killed, whether intentionally or unintentionally, by an act of one of them done in prosecution of the common design, the others present are guilty of murder, if the common design was to commit murder, or to inflict felonious violence, or to commit any breach of the peace and violently to resist all opposers. If the common design was merely to commit an unlawful act involving violence, the others are guilty of manslaughter only."

It was argued that the appellants were engaged in a common design, that they both said they went to Mr. Rawle's house to borrow his car, and that in the course of their visit the third man, Marcus James, went beyond the common design and

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(continued)

murdered Cecil Rawle. In these circumstances it was submitted that a verdict of manslaughter was a possibility and therefore the trial judge should have left this issue to the jury. The passage from Halsbury's Laws of England quoted immediately above does not in our view assist the appellants, and we find it difficult to follow the argument based thereon. Looking at the matter purely from the point of view of the appellants, the essence of their defence is that (a) they went to the house of the deceased to borrow his car, and, (b) Marcus James shot Mr. Rawle, and so caused his death. In other words, the appellants are saying that their presence in the vicinity of the house was in pursuance of a lawful purpose, and therefore, the question of their being concerned in the furtherance of a common design to commit an unlawful act could not arise; and as the other man Marcus James was the person who shot Cecil Rawle, they were not guilty of any offence whatever. Since on the appellants' own contention they were not guilty of any offence it is illogical for them at the same time to contend that a verdict of manslaughter was a possibility in their case and that this issue should therefore have been left to the jury. On the other hand, the Prosecution's case is that the appellants were acting in pursuance of a common design in the course of which they intentionally killed Cecil Rawle. The facts of this case establish beyond doubt that the deceased man was riddled with bullets as soon as he opened the door of his house. On these facts it could not reasonably be contended that the perpetrators of this act could have had any intention other than to cause the death of or serious bodily harm to their victim. The appellants must as reasonable men have known that it was highly probable that their act would have that result. In these circumstances the issue of manslaughter could not possibly arise and the trial judge was correct in not leaving this question to the jury.

(b) Inadequacy of directions as to weight of conflicting medical evidence. The substantial point argued under this ground of appeal was what caused the death of the deceased.

Soon after Mr. Rawle was wounded he was taken to hospital where an operation was performed by Dr. Sunderam. X-ray pictures revealed that a

bullet was lodged somewhere near the seventh cervical spine and Dr. Sunderam decided not to remove it. However, Mr. Busby the Surgeon who had been invited by the Government of Saint Vincent to give assistance to the injured man arrived in St. Vincent on May 12, 1973 and he decided to remove the bullet. He said that he considered this the best course of action to follow and that Dr. Sunderam agreed with it. He accordingly removed the bullet but the patient nevertheless succumbed. The cause of death was given by Mr. Busby as "respiratory failure due to pulmonary oedema and left ventricular failure associated with hypertrophy of the left ventricle." He also added that in his opinion "the respiratory failure and pulmonary oedema were caused by the shock and other circumstances which were caused by his having sustained multiple gun shot wounds." Dr. Sunderam's opinion as to the cause of death is stated in his examination in chief in his deposition as follows:-

> "The cause of death was acute pulmonary oedema with respiratory and circulatory failure caused by thrombo embolus. It was primarily due to failure of the heart aggravated by shock from gun shot wounds received on 11th May."

The trial judge commented that Mr. Busby's evidence as to the cause of death was substantially the same as that given by Dr. Sunderam and this in our opinion is quite correct.

Dr. Sunderam had left the State by the time the accused men came up for trial and his deposition was read at the trial. The trial judge after dealing exhaustively with the medical evidence directed the jury as follows at pp 400 and 401 of the record -

> "Members of the Jury, you will come to your own conclusion based on the evidence he (Mr. Busby) gave as opposed to the evidence Dr. Sunderam gave in his deposition and it will be for you to consider all the aspects of this case - the evidence of the two doctors bearing in mind that one did not give oral evidence and you will have to come to a conclusion and determine whether the original wound was at the time of death a substantial and an operative cause of death, even though some other cause of death might have been

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operating at the time or whether in all the circumstances the treatment given to the deceased was abnormal or it was extraneous or that it was accompanied by negligence."

The defence contends that the cause of death was the second operation performed by Mr. Busby and not the gun shot wounds. This submission was based on the following answer appearing in the deposition of Dr. Sunderam in cross examination at p.222 of the record -

"The immediate cause of death was a second operation. In my opinion the second operation hastened the patient's death."

This statement it will be noted is in direct conflict with his evidence as to the cause of death given in his examination in chief where he said that the death was primarily due to failure of the heart aggravated by shock from gun shot wounds. One finds it difficult to understand why he departed from the evidence he had given in examination in chief. It was therefore incumbent on the judge in those circumstances to bring to the attention of the jury (which he did) the fact that as Dr. Sunderam was not present in person he could not be asked to reconcile the conflicting statements in his evidence, whereas Mr. Busby had appeared before them and they had seen and heard him give evidence. The inconsistency between Dr. Sunderam's evidence as to the cause of death as given in his examination in chief and in cross examination obviously did not trouble the jury. It was brought to their attention and by their verdict it was clear that they rejected it and accepted the evidence of Mr. Busby which, as has been stated before, was substantially the same as that given by Dr. Sunderam in examination in chief.

In this connection it was also submitted that the judge's direction as to the cause of death was inadequate. We do not agree. The trial judge directed the jury in accordance with the principles laid down in R v Smith (1959) 2 Q.B. 35; 43 Cr. A App. R. 121. He told the jury at pp 250 and 251 of the record

"That case Members of the Jury, is an authority for saying that where a person had received a wound and that person dies after

an interval of time and the occurrence of intervening incidents and unsatisfactory treatment, if at the time of death the original wound is still an operating (that is to say an effective) and substantial cause of death then the wound can properly be said to be the cause of death even though some other cause of death is also operating. Only if it can be said the original wound is merely the setting in which another cause of death operates can it be said that death does not result from the original wound."

He also referred to the fact that the wounded man was not in the best of health and concluded his direction with these words at p.256 of the record:-

"So that Members of the Jury, even if the deceased was not as it were, in the pink of health if you are satisfied that the accuseds acts were the substantial, if not the only operating cause of death they must answer for it."

In our view the directions given by the trial judge in connection with the matters raised by this ground of appeal were entirely adequate, and we hold that this ground of appeal accordingly fails.

(c) Wrongful admission of statement of deceased as a dying declaration. The injured man made a statement before he died in course of which he said to Henry Williams "I am dying, takeme to the hospital." The statement was admitted by the trial judge despite the objections of counsel for the appellants. He admitted it on two grounds - (a) as a dying declaration and (b) as part of the res gestae. No objection was taken in this court as to the admissibility to the statement on the latter ground. The judge, in admitting the statement under ground (b) applied the principles laid down in Ratten v The Queen (1972) A.C. 378, and we think that he was correct in admitting the statement on the ground that it was part of res gestae.

The only point argued in this connection was that the statement was not a dying declaration at all, and the reasons advanced for this argument were (a) the wounded man asked to be taken to the hospital and this, it was said, showed that he

In the Court of Appeal

No. 5

Judgment

20th May 1974

(continued)

thought at the time that he stood a chance of recovery if he could obtain medical assistance, and therefore, did not entertain a settled, hopeless expectation of death and (b) he consented to an operation two hours after he had been wounded thereby indicating that he had not abandoned all hope of recovery. Neither of these submissions is in our opinion inconsistent with the view that the wounded man may have entertained the feeling that death was impending and inevitable. It is in the nature of all living creatures to make efforts to survive no matter how badly they may be injured and the fact that the wounded man expressed a wish to be taken to hospital should be regarded merely as the natural and spontaneous appeal of an injured person for help. We would regard his consent to an operation as being in the same category.

In our view the trial judge was right in admitting the statement as a dying declaration.

It was also alleged that the trial judge suggested to the jury that they must accept the dying declaration as true when he quoted to them the following words appearing at p.244 of the record:-

> "The words of dying men
> Enforce attention like deep harmony
> Where words are scarce they are seldom
> spent in vain
> For they breathe truth that breathe
> their words in pain."

We do not think that this is a fair interpretation of the judge's action in quoting the above mentioned words to the jury. The quotation was part of a long passage in the summing up in which the judge was explaining to the jury the principles on which dying declarations are admitted in evidence and the words were merely intended to re-inforce his explanation.

Category C - Ground of appeal argued on behalf of appellant Laidlow only.

Wrongful admission of his statements. It was also submitted that the trial judge was wrong in ruling that the statements FC 1 and FC 6 of the appellant Laidlow were voluntarily made and

therefore erred in admitting them in evidence. It will here be observed that the statement FC 6 made on 29.5.73 is of little or no relevance to the case and for all practical purposes may be ignored. Indeed, the following note at p.87 of the record supports this view -

> "Court interposes to state that at the trial within the trial the Attorney General intimated that he was not using the statement as it took the case no further but that it was available for reading if the defence so wished. Statement admitted in evidence as Ex. FC 6 and read by deponent."

The reasons advanced in support of the submission that the statement F.C.1 was not voluntary were these (a) the appellant Laidlow "had given himself up" on May 26, 1973, and was in custody for two days when he made his first statement F.C. 1 on May 28th. The evidence of Assistant Superintendent Felix Constantine merely establishes that this appellant was seen by him at Police Headquarters and it is not clear from the record that the appellant "had given himself" up although it may be possible that he did so. It is true that the appellant made the statement F.C. 1 only on May 28th, but this fact does not in itself justify the conclusion that pressure was being exerted upon him between the 26th and 28th of May to induce him to make a statement. He certainly did not say so during the trial within the trial when the judge was inquiring into the circumstances surrounding the objection to the admissibility of the statement. The appellant was properly cautioned and he made the statement in the presence of an impartial witness, namely, a justice of the peace. Secondly, it was submitted that in his unsworn statement at the trial the appellant Laidlow said that he was beaten and a gun put to his head to induce him to make the statement. The appellant gave no evidence to this effect at the trial within the trial; and indeed, the evidence of the prosecution that the statement F.C. 1 was a voluntary one was entirely uncontradicted. When the appellant made his allegation about being beaten his statement had already been admitted in evidence and we are of the opinion that on the evidence before him the trial judge was entitled to rule the Statement F.C. 1 was voluntarily made. The appellant's allegations that improper means were used to induce him

In the Court of Appeal

No. 5

Judgment

20th May 1974

(continued)

to make the statement were made at a stage of the trial when his statement had already been admitted and therefore the allegations could not affect the question of its admissibility. It could only be of value in assessing the weight to be attributed to the statement and of bringing the attention of the jury the circumstances in which the statement was allegedly made. This submission in our view is without merit and accordingly fails.

Laidlow's appeal against conviction on third count. It was submitted that the conviction of the appellant Laidlow on the third count was unsafe because the evidence purporting to identify him as being one of the persons present when the alleged offence was committed was inadequate. In view of the fact that we have quashed his conviction on this count for other reasons, it is unnecessary to consider the arguments advanced in support of this ground of appeal.

Was joinder of several offences in indictment prejudicial? There remains for mention one final aspect of these appeals although it has not been raised by counsel on behalf of either of the appellants. There was no application made to the trial judge for separate trials for the two appellants, nor for separate trials for them on the different counts. Both of the appellants were convicted on the first and third counts of the indictment and the only question left for consideration is whether or not they were prejudiced or embarrassed in their defences by reason of being charged with more than one offence in the same indictment.

In the first place the fact that evidence is admissible on one count of an indictment and inadmissible on another is not in itself a ground for ordering the counts to be tried separately because, often the matter can be made clear in the summing up without prejudice to the accused. This is the view expressed by Lord Goddard, C.J. in R. v. Sims (1964) Q.B. 531 at 537 and we respectfully adopt it. In the instant case there was no difficulty in distinguishing the evidence relating to the respective counts and the learned trial judge summed up the evidence quite separately to the jury.

At page 264 of the record he began by saying as follows:-

"Members of the Jury I would endeavour, as far as it is practicable for me to do so, to keep the evidence relating to the separate counts together so, that you may have a clear vision of the events as they occur. Having done that I will then endeavour to give you a brief summary of those facts as they affect each accused and each count."

Having dealt with the evidence he directed them in the final stages of his summing up at p427 as follows:-

"Now you will consider each count separately, and you will consider the evidence against each accused separately and likewise you will also consider the defence of each accused separately."

The learned trial judge then dealt with the burden of proof and the question of reasonable doubt in regard to each count in the indictment.

We are therefore of the opinion that there was no risk that the jury when considering one count may have been unable to disregard the evidence relating to the others.

In the result the conviction of each appellant on the third count is set aside, but his appeal against conviction on the first count is dismissed.

.....
Acting Chief Justice

.....
Justice of Appeal

.....
Justice of Appeal (ag.)

In the Privy Council

No. 6

Order granting Special Leave to Appeal to Her Majesty in Council in forma pauperis

25th June 1975

No. 6

Order granting Special Leave to Appeal to Her Majesty in Council in forma pauperis

AT THE COURT AT BUCKINGHAM PALACE

The 25th day of June 1975

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 14th day of May 1975 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 (1) Junior Cottle and (2) Lorraine Laidlow in the matter of an Appeal from the Court of Appeal of the West Indies Associated States Supreme Court between the Petitioners and Your Majesty Respondent setting forth that the Petitioners pray for special leave to appeal in forma pauperis from a Judgment of the Court of Appeal of the West Indies Associated States Supreme Court dated the 20th May 1974 which dismissed the Petitioners' Appeals against their convictions of murder in the St. Vincent High Court on the 17th October 1973: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal in forma pauperis against the Judgment of the Court of Appeal of the West Indies Associated States dated the 20th May 1974 and for further and other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to

enter and prosecute their Appeal against the Judgment of the Court of Appeal of the West Indies Associated States Supreme Court dated the 20th May 1974.

"AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy of the Record produced by the Respondent upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Petitioners) 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.

Whereof the Governor or Officer administering the Government of St. Vincent for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

N. E. LEIGH

EXHIBIT F.C. 1

Statement of Lorraine Laidlow to Police

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

/s/ Lorraine Laidlow

Wit: B.A. Richards
A. Williams Insp.

I Lorraine Laidlow wish to make a statement I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.

/s/ Lorraine Laidlow

Wit: B.A. Richards
A. Williams Insp.

Exhibits

"F.C.1"

Statement of Lorraine Laidlow to Police

28th May 1973

(continued)

Time Statement Began: 6.55 p.m. 28/5/73

Time Statement Ended: 10.55 p.m. 28/5/73

Place statement taken: C.I.D. Office

Person Present -

Persons Present - Mr. B.A.Richards J.P. & Inspector Williams.

Name: Lorraine Laidlow

Occupation: Labourer Age: 18 yrs.

Address: Sharpes.

States:-

Week before the last Friday I was down Bottom Town. Three ah we was together me, Spirit and Marcus. Around bout 5 o'clock I go up the road and buy some ground nuts and I did come back down the road. I see Benjie car. I see Spirit and Marcus in there and I see Hillocks way got the place up street in the car to. The car drive off and go up the road. They tell me them been coming back. Well then them come back down. I only see Benjie, Spirit and Marcus in the car. It stop by the corner near to the Anglican School and I bin on the Old Car under the gallery sitting down. Spirit and Marcus left Benjie in the car and then come down and tell me they bin round by Cane Garden by some big man me aint know who the big man he. Marcus show me a gun. A sliver gun. Ah ask him why he get it. I see Spirit with a gun which he always did have. The day before that I see Spirit and Marcus in a car with Sam Slater pon the top bridge near Rampersaud. The car park. I was over by Ash drinking a coconut water and waiting to talk to Spirit. I see them by day in the car so long so I go up Sharpes. The same Thursday evening I come back down and go by the Ghetto coming on to 6 o'clock. I did see Marcus and Spirit. I go round by my girl friend Lolie and me and she been talking by the wall near to way she live in the house before you meet Russell House going down the Bay Street, when I done talk to me girl friend, I go down by the Bamboo where some fellows been beating drums. Idid not see the car that Spirit them been sitting in with

Exhibits

"F.C.1"

Statement of Lorraine Laidlow to Police

28th May 1973

(continued)

Slater. I start to beat drums with the boys. When ah beating drums Spirit and Marcus come and start to dance. I tell them I been looking for them because people was asking me for them and I tell the people I do not know why them bin gone. Marcus and Spirit say them bin up the road. Me and Spirit left and go round by he room. I did go they for a calabash to send to buy some mauby. I send a little boy with the calabash to buy twelve cents mauby and a bread and cheese for me by Garvin. I wait for the little boy in the centre of the road between Russell House and the bamboo. The boy then bin still beating the drum. when I standing waiting for the little boy. Spirit come round from his home and go in the down stairs of Russell house way he girl friend live. When the little boy come with the mauby and bread and cheese. I go on the old car under the gallery and eat and drink. That time was round bout half past seven. I go round and sit down on the bridge on Bay Street near way the boy them beating the drum. I had a tape with some drums in me hand. I take a walk and go down Bottom town and buy some ground nut and banana from a woman who bin selling under a gallery. Me alone take a walk up Back Street and sit down on the Bridge facing Rampersaud. Ah day me alone listening to some drums from there ah go sleep in a room down stairs the old house near way the old car park. Me alone go in the room. I drop asleep and in the night I see people side me sleeping. I wake up bout 10.00 a.m. the morning ah didn't see anybody else in the room. I go in the sea, when ah done bathe I go by Spirit house and meet him leave tea for me. I drink the tea. Ah make a block up street and was liming down town for the whole day. I bin in by Spirit room lay down. In the evening now I see Hillocks, Raycon and Spirit rapping in the car with Benjie near to the bridge on Bay Street. Spirit and Raycon bin by the car stand up talking to Hillocks. Raycon and Spirit get in the car and then drive away with Hillocks and Bengie it did done four o'clock, when I see them come back I was on the old car sit down. The car stop by the road near Anglican School and Marcus and Spirit come down by me. Spirit and me stand up by the old car and Raycon go in by Spirit yard the big yard in the same place way Spirit living. Raycon come back out with something wrap up in a piece ah cloth. He put it in the old car, and show me a shot gun warp in the cloth. We was there stand up and thing and some

Exhibits

"F.C.1"

Statement of Lorraine Laidlow to Police

28th May 1973

(continued)

boys come and tell we look a policeman in the back round day. Marcus carry back the shot gun and hide it. The three ah we go in the Ghetto and sit down about minutes to six. I leave them there and make a block up the road, then ask me way I going and them tell me look sharp come back because them going on a scene. When I come back we got in a car and a hire car park at Garvin there. I think the driver name Kelly. A next fellow bin in the car too. Marcus tell the driver to drive round Edinboro. I know Marcus live round Edinboro. I think is home by Marcus we going. When we got above the top Edinboro going up a hill. Marcus tell the driver to stop the car. The car stop and Marcus got out the car then me got out the car. Me Marcus and Spirit walk up a hill. When we got up the hill by a corner Marcus and Spirit tell me to stop there and wait and if I see any light coming, tell them. I see the two ah them goin the yard ah the house on the left side ah the road above way I bin standing. I see Spirit and Marcus go in the house by a door in the corner of the house facing town. Marcus was in front and Spirit behind him, the two ah them go in the house after the door open. Then I hear a bullet pull off and I see Spirit run through the door and jump over the stop then run to where I bin waiting. When Spirit nearly reach to me I start running. Spirit call to me and tell me wait for him, I wait for him and when he reach by me I hear some bullet pelting up by the same house. Marcus didn't come out of the house yet. Spirit had a gun in his hand a .38 he had it in front ah me I was frightened and he tell me lay we wait for Marcus and I have to run with the two ah them. I see Marcus running coming to me and Spirit from the house. Marcus come be we with a short shine gun in he hand. We run come down and go through the bush and chop out on the road near to nine steps. We walk down nine steps and come straight up. We walk Bay Street then to the Street near Anglican School and go across Back Street to Anglican Church yard. We walk through the Church yard and go over Pauls Lot. When we go over Pauls Lot I stand up by ah alley above Low Budget Super Market near to Olive's Hotel. Spirit and Raycon go down by a next alley below the Super Market. A rain come down and I go under the steps by Olives Hotel to shelter. When ah sheltering ah see Benjie pass up in he car with the pretty light an them. He go in the top street above

Exhibits

"F.C.1"

Statement of Lorraine Laidlow to Police

28th May 1973

(continued)

Olive Hotel, I then see him come through the same alley where Spirit and Raycon bin and he go in the road and peep in the Low Budget Super Market and go back in the alley where Spirit them bin. Spirit come out in the road from the alley. I start to go down the road to come in Back Street. Spirit run past the Super-Market to me and ask me way I going. I tell him I ain't going no way I just going down by the Street. He had the gun in front of me in a paper bag. I was frightened and I turn back. He tell me come watch the man in the supermarket when he coming out with a bag. I pass the supermarket with Spirit, he go back in the alley and I go and lean up by a shop on the next side of the road below the supermarket. When I standing there I see the man coming out the Supermarket with a black bag in he hand. Raycon come out the alley the same time to and see the man. Raycon go back to the alley and he and Benjie and Spirit come out of the alley in the road. Spirit scramble at the man bag and hold on to it. Raycon and Benjie bin standing there with Spirit. Them surround the man. I hear a bullet pelt off. Spirit run by me and tell me lay we run up in the top alley. He did have the gun in he hand I did not see the paper bag. Me and Spirit run up in the alley near to the gutter up in Pauls lot. I see Benjie car park in the road near to the next alley where I did see Benjie come out from on the side near to the Super market. Me and Spirit run to the car and got in. Then Benjie and Marcus come from behind the car and they go in the front seat. Benjie drive the car up through Plan in Pauls Lot, over Mc Kies Hill and drive to Arnos Vale and turn by a gas station right by the Airport. He drive round by Hillocks at Cane Garden. He stop the car in the road above Hillocks house. He come out of the car and go down on Hillocks Verandah. I see light put on then Benjie run back up in the car. He drive round Cane Garden, drop me off above his house and tell me to walk down by the house. We walk down above his house by Harbour Club and stop in the yard. When we in the yard I see Benjie car come up and drive in a garage near the road. Benjie come out the car and walk up in Harbour Club yard by we. He tell me he go and get Anstana and Duck Stripe to bring a boat give we. He lock we up in a room upstairs the house at Harbour Club and go way. When he come back now he open the door and tell we come. Spirit, Marcus and me come out the house. Marcus ask if he tell the man and them

Exhibits

"F.C.1"

Statement by Lorraine Laidlow to Police

28th May 1973

(continued)

to come with the boat. He say he will drop we down Bottom Town in he car. We walk from Harbour Club to Benjie garage and get in he car, me and Spirit sit down behind and Benjie and Marcus sit down in the front seat. Benjie give me he hat to put on and he drive we down the Bay Street and up Sharpes gate. When we get up there he tell we get out he tell we he coming back down town and get the hamsack and them. Spirit tell him to for them. We get out the car and go in some bush near the road. He drive way the car. We bin there long waiting for Benjie then we go over Sharps when we up Sharpes, we see Benjie going up Green Hill road and Marcus whistle him an and Benjie turn back and drive up Sharpes. We go by the car and get inside the car. Benjie start to tell we that he want to get out of it, he want get off the Street and go home. He say he aint see the man and them to get the hamsack. He tell we the town terrible, plenty police round town now. We get out the car and go up the hill. When we far up the hill we see he car come back but we did not come down. The car stop down sharpes. When we up the holl we see two flash light coming up the hill from where we bin, we think was police and we run higher up in the mountain. We didn't come back down. We walk and go over St. Andrew and stop in the bush. The next morning, the Saturday, we trevel in the bush and go over Gomea. We sit down in the bush and sleep. In the night we walk down from the bush in a banana field and Raycon leave we and come in town to bey some food. He come back to meet we in the Banana field the same night with a big paper bag with flour, rice butter, biscuit, sugar and clothes, When ah come back the three ah we go up back Gomea mountain. We eat some ah the biscuit the same night. We sleep om a watch house in the mountain and cook some rice in a little cup we did find in a watch house. When we done eat. I hear Spirit talking to some little boy. They tell him that them bin hunting gouti. The boy them fo up further in the mountain. Me and Spirit go up un a tree and after a time we see a crowd ah people coming over the road to the mountain. We run from the mountain and go over Gomea way. We sit down underneath a tree and I see some people coming down the hill above we. We left we three bag an them and jump down over a cliff and hide. We did get the bag them in a watch house in the mountain the night before and we did the things them that Marcus bring in the

three bags. Later the night we go out of the place we bin hiding and look for the bag but we didn't find them. We walk from the mountain and go in the same banana field way we bin the night before. Marcus leave we there and come in Town. Long time after Marcus gone, me and Spirit start to walk in town. We see the blue police car near the stone mill by a bridge and we run over by a river and come in town. We walk in the bush to get to town and we go by the Cave at Cemetery Hill. When we go there we meet Marcus sleeping. we go and sleep in the same Cave. We stop in the cave the whole week. Marcus use to come in town to buy food for we. I come in town one time. On the next Sunday me Marcus and Spirit bin between some rock above the cave and Marcus left we and say he going down in the Cave. When he gone down in the cave we start to hear some gun shot and we stop between the rock and late in the night me and Spirit leave and go up in the mountain above Sharpes. We ain't see Marcus again since he leave we in the rock and go down by the Cave the Sunday evening. That night we sleep in the mountain above Sharpes. The foreday morning we come down in Sharpes and go in the bush above a wall house. When we bin there I go by a shop and buy bread and Sardine then go back and meet Spirit we start to eat but we see Police coming up through Kingstown Park and we run up above Sharpes and sleep right up in Spring gutter. Early the morning we come down town and go between the rocks above Cemetary. The same Thuesday*evening we hear drums beating and we look down and see funeral. Plenty brothers been at the funeral and we believe Raycon was dead. We stay in the rocks that Tuesday and the Wednesday. We stay there the Thursday in the day and Thursday night we come over Wilson Hill and come through Pauls lot there. We as there underneath a mango tree and when the Police come we run. I aint see Spirit again. I run go up Sharps and sleep in a watch house in the bush. The Friday I go up in St. Andrew mountain and come back down in Sharpes in the night. I sleep in a watch house above Spring gutter. The Saturday morning I see some boys from Sharpes come up in the bush. I call them and them come. They tell me that me father looking for me. I send them to call me father some ah them stay with me. Then I see me father coming up the hill and I go to meet him. He buty two bread and sardine for me and carry me home. Before he reach home with me he ring Mr. Dougan. When I done eat the bread and sardine

Exhibits

"F.C.1"

Statement by Lorraine Laidlow to Police

28th May 1973

(continued)

*[sic]

Exhibits

"F.C.1"

Statement by Lorraine Laidlow to Police

28th May 1973

(continued)

Mr. Dougan come and he and father bring me to the station. When Spirit and me bin in the mountain with Raycon we did have a small radio and I hear over the radio police looking for three wanted men, Junior Cottle better known as Spirit, Marcus James better known as Raycon and Lorraine Laidlow better known as Blackie. On Friday night when Benjie was driving Spirit Marcus and me round New Roads to go to Arnos Vale Benjie tell me that if I ever run from Spirit and them he will kill me. The same Friday evening when Spirit and Marcus bin talking to Hillocks in Benjie car by the bridge down Bottom town. I pass near the car and bin watching at Hillocks in the back of the car and Hillocks call me and ask me way I want. I ask him why he mean by way I want is in the Ghetto I day and is in the ghetto he day. He say he hear that me and Spirit all ah we does day together and if anything happen he will just pass down day and shoot me. One day when Marcus, Spirit and me bin in the rock above cemetary, Marcus show me a steel boat in the bay and tell me that is Tannis Boat. I tell him I see the boat day but I bin know is Tannis Boat. Marcus then call to Spirit and tell him he wonder if Hillocks know Tannis boat in the bay. Spirit come out the cave to way me and Marcus bin and look down town. I go down in the cave so I didn't hear what Spirit say to Marcus. That is all I have to say.

The above statement was read over to me. I have been told that I can correct alter or add anything I wish. This statement is true I have made it of my own free will.

/s/ Lorrailow*Laidlow *[sic]

Wit: B.R. Richards J.P.
Williams, Inspector.

Taken by me at C.I.D. in the presence of Bertram A. Richards J.P. and Insp. Williams between 6.55 p.m. and 10.55 p.m. on Monday 28th May, 1973.

/s/ F. Constantine A.S.P.

F.C. 14.

EXHIBIT "F.C.2"

Statement of Lorraine Laidlow to Police

Exhibits

"F.C.2"

Statement of Lorraine Laidlow to Police

30th May 1973

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

/s/ Lorrailow Laidlow *[sic]

Wit: B.A. Richards J.P.
A. Williams Insp.

I Lorraine Laidlow wish to make a statement I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so but that whatever I say may be given in evidence.

/s/ Lorraine Laidlow *[sic]

Wit: B.A. Richards J.P.
A. Williams Insp.

Time Statement began: 11.30 a.m. 30/5/73

Time statement ended: 1.00 p.m.

Place statement taken: C.I.D.

Persons present: B.A. Richards J.P., Insp. Williams

Name: Lorraine Laidlow

Occ: Labourer Age: 18 yrs.

Address: Sharpes

States:- On the Friday night when Mr. Rawle get shoot me and Marcus and Spirit get in a hire car which Kelly bin driving. We get in the car down by Garvin and drive up Fort Road. When we come out the car we walk.up the road. When we reach by the corner below Rawle house I heard a whistling in the bush way car does turn. I go down in the bush and I see Benjie way got a red car. Benjie been sitting in the car in the bush. Benjie come out the car and tell me to go in the car and wait and if I see any light coming up the road I must blow his car horn. Benjie Marcus and Spirit go up the

Exhibits

"F.C.2"

Statement of Lorraine Laidlow to Police

30th May 1973

(continued)

house just above way I been waiting. When they go up in the gallery, Marcus knock on the house door, I see the door open and Marcus, Benjie and Spirit go in the house. I hear a bullet pelt off in the house and I see Spirit run out of the house and run come by the car. He get in the car with me, in the back seat. When me and Spirit sitting in the car I hear more bullets pelting in the house. Then I see Benjie and Marcus run, come to the car. Marcus and Benjie go in the front seat ah the car and Benjie drive we down town. Benjie bin got he hair plait and he bin wearing a big sponge hat. I did see him with a black revolver. Marcus did have a shine revolver and Spirit did have a black .38. When Benjie drive we from Fort we drive up the road near the Hospital, then turn right and come round by the gas station and up Back Street and turn down Anglican School and drive down Bay Street turn up the street way an old car park in the road. He turn on Back Street near the hospital and drive up the gas station near to Forde Place and drive in Pauls Lot. He stop the car in the street behind Low Budget Supermarket near wa a policeman bin got a garage. He and Spirit come our the car and walk round by Olives Hotel and Benjie and Raycon go down in the alley below Low Budget Supermarket. Spirit tell me to stop by the corner near the hotel and watch to see if I see any police come. Spirit go down past the supermarket way Benjie and them day. A rain start to come and I go underneath the step by the hotel and shelter. Then when the rain over I leave bin going Back Street and Spirit run call me and ask me way ah going. I tell him I aint going no way. That time he bin got he gun in he hand. He tell me come and watch to see when the man in the supermarket coming out. I go with him past the Supermarket and lean up on the wall by a shop. Spirit go back in the alley go meet Benjie and Raycon. When the man coming out the Supermarket, Raycon was coming out the alley the same time and Raycon wave he hand and call out Spirit. Spirit and Benjie come out from the alley with a speed and Spirit hold on pon the man bag. I hear a bullet pelt and Spirit run through the alley, by the gutter and go round by Benjie car. We go in the back seat of the car then we see Benjie and Marcus come from behind and get in the front seat and Benjie drove through Pauls lot then over Mc Kies Hill and round Arnos Vale. When we bin hiding by the cemetery, Marcus

tell me that if the Police catch we or if them kill we. The big man them have fellas from over sea to come here to kill Tannis, Joshua and the whole P.P.P. side. He tell me that the big man and them say that them can get people over sea to come here and kill any body who they want kill. Marcus say to that the big man and them say that if the Police catch we and we talk anything them going get people to kill we anyway we day. That is why I did fraid to tell the police anything. I feel they get people to kill me.

Exhibits

"F.C.2"

Statement of Lorraine Laidlow to Police

30th May 1973 (continued)

Statement read over to me and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.

/s/ Larrailow*Laidlow *[sic]

Wit: B.R.Richards, J.P.
A. Williams Insp.

Taken by me at C.I.D. in the presence of B.R. Richards and Insp. A. Williams between 11.30 a.m. and 1.00 p.m. on Wednesday 30th May, 1973.

/s/ F. Constantine.

F.C.16.

EXHIBIT "F.C.6"

"F.C.6"

Statement of Lorraine Laidlow to Police

29th May 1973

Statement of Lorraine Laidlow to Police

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

/s/ Lorraine Laidlow

Wit: Robert J.O'Garro
C.O.P.

I Lorraine Laidlow wish to make a statement I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.

/3/ Lorrewo *Laidlow *[sic]

Wit: Robert J. O'Garro C.O.P.

Exhibits

"F.C.6"

Statement of Lorraine Laidlow to Police 29th May 1973 (continued)

Time statement began: 10.35 a.m. 29/5/73

Time statement ended: 12.10 p.m. 29/5/73

Place statement taken: C.I.D.

Person present: Mr. Robert O'Garro C.O.P.

Occup: Labourer

Name: Lorraine Laidlow

Address: Sharpes

States:-

Me and Marcus James and Junior Cottle is friend. We does call Junior Cottle Spirit and call Marcus Raycon. We always does lime together. One Tuesday around the ending of last month or early this month. I been by Junior home at Bottom Town and I ask him to give me some money to buy a pants. He gave me $9.00 the same morning. About after 8 o'clock or minutes to nine in the morning me and Spirit come up town and reach up Post Office and we come back down now. When we reach cross by Das Snackette, Mr. Cato the Labour Party Cato been sitting in his car park near to Das Snackette. Spirit go by the car and start to talk to Mr. Cato. I left him there and go down by Cyrus Tailor Shop and buy a khaki pants for $9.00 when I call for the pants, I ask the man for size 33 he says he aint got no size 33 but he can open some the waist from the size 32 for me. He tell me to pass back later for it. When I come out now, I go by a red thing by Webb shop and lean up. I see Spirit still talking to Mr. Cato. I see Mr. Cato give Spirit a paper, Spirit fold up the paper and put it in he pocket. Me and he come down Bottom town. I ask him way he put in he pocket and he tell me is something from the organisation. I tell him let I see the paper, he say I can't see it. When we reach by Sutherland shop near to Anglican School we stop there and buy some mauby. When we done drink and everything we come down Bottom town and go home by Spirit. We meet Marcus and somebody else in Spirit house. I left Marcus, Spirit and the other person in Spirit house and come out the road. When I come out the road I head Spirit calling me, then Santana who is Errol Steel come out by the road and tell me that Spirit calling me,

Exhibits

"F.C.6"

Statement of Lorraine Laidlow to Police

29th May 1973

(continued)

I go in Spirit yard. I ask Marcus who is the person he bin talking to in Spirit house and he tell me was a girl. When Spirit done lock up the door, me and he and Marcus come up the road. Spirit say he come buy a search light. We go in by P.H. Veira Hardware on Bay Street and I see Mr.Cato and P.H. Veirs and Ertie Bonadie a jury who does work by Veira Office. Spirit give me $5.00 and tell me to buy the search light. Spirit and Marcus go in Veira office to meet the big man and them and I buy the search light for three dollars and some cents. I come out Veira and was waiting outside I wait around five minutes and Spirit and Marcus come out. I gave Spirit the search light and the change but I keep 25¢ to buy plum. I tell Spirit I going to buy some plum. I go up under Bata and buy twenty-five cents plum from a girl named Bogie then I made a round up the road and go back down Bottom Town and sit down on a bench in the ghetto. About minutes to eleven Spirit and Marcus come and meet me sit down there. Marcus tell me that them suppose to get some guns and things from away. I ask him who going get it get them and he and Spirit tell me the big man and them. He say Cato and Veira going get it get them to shoot Mr. Rawle, I ask them way the gun and them go come by and Spirit tell me from fellas on Tannis boat. I ask them when but they aint tell me when. Spirit and Marcus tell me that the big man and them want to kill Mr. Joshua and P.P.P.Tannis. They want to get rid ah the whole P.P.P. side. Spirit and Marcus start to tell me that if I go and tell anybody, they got people to kill me. They say if I leave them and say I going up Sharpes by my parents home to sleep them going come up day and kill me. I get really frighten for them so I use to stay with them all the time. We use to sleep in the room down stairs the old house near way the old car park. Three ah we use to sleep there, me Spirit and Raycon. Before we go in the house to sleep me and Spirit and Raycon been by the old car by the road and I see Marcus take out some money from he pocket and count it. It was three hundred dollar bill and more twenty dollars and thing. I see three one hundred dollar bill. After that I use to see Marcus and Spirit with big money but I never use to ask them nothing. The three ah we sleep in the same room in the downstairs ah the house that night. When we get inside the room the same night, Spirit and Marcus start to rap and tell me that the big man and them have to go way

Exhibits

"F.C.6"

Statement of Lorraine Laidlow to Police

29th May 1973

(continued)

to fix up something. I ask them who all going way and them tell me that Hollocks going way. Spirit and Raycon use to leave me down Bottom Team in the evening around five o'clock and tell me them going to attend meeting. Them use to come up town but I dont know where them use to go to the meeting. One evening Spirit and Marcus tell me to lay we go to the meeting. I tell them O going home. I go home and get food and thing and then come back down town later. When I come back down town it was about 7 o'clock the night. Before I come back down town, I take me father khaki jacket and put it on. I play football with some fellas on the park up Sharpes. When I come back down town I go in the Ghetto and about 9 o'clock the night Spirit and Marcus come by me and Spirit say he bin looking all about for me. He ask m eway scene I on because he tell me lay we go meeting and I aint come back. I tell he I go home in a car and the car leave me and I aint come back down until late. Spirit did got a file way they carry book in, in he hand Marcus had one to. Them go and carry the file in Spirit room and I been stand up in the road. Spirit tell me like I didnt want come to the meeting. I tell him that I go home. That day was the Friday before the Friday when Rawle got shoot. The Sunday night after the Friday when Spirit and Marcus did want me to go to the meeting I see Spirit with a gun a .38 and it long. One day in the same week, Marcus and Spirit leave me stand up in the road down Bottom Town and then tell me them going up by Benjie. Them come back down about 12 o'clock in the day. The Thursday that same week, I did see Spirit and Raycon sit down in Sam Slater car on the bridge opposite Rampersaud office and talking to Slater.

The above statement has been read over to me and I have been told that I can correct alter or add anything I wish. This statement is true. I have made it of my own free will.

/s/ Lorrwe*Laidlow *[sic]
Wit: R.J. O'Garrow

Statement taken by me at C.I.D. in the presence of Mr. R.J. O'Garro, C.OP. between 10.35 a.m. and 12.10 a.m. on Tuesday 29th May, 1973.

/s/ F. Constantine A.S.P.

EXHIBIT "C.3"

Statement of Manjeri Sunderam

Exhibits

"C.3"

Statement of Manjeri Sunderam

20th June 1973

This deponent Manjeri Sunderam on his Oath says:-

I live at Stoney Ground. I am a Surgeon at the Kingstown Hospital. Between 11th and 13th May, 1973, I was Surgeon at the said Hospital. On 11th May, 1973, about 8.00 p.m. I examined Eric Rawle at the Casualty Dept. in the presence of Dr. Rampersaud.

The patient was in extreme shock with the blood pressure hardly recordable. An intervenous drip was set up and blood was requested. The patient had the following external injuries:-

1. A 1/6" diameter wound on the back of the right shoulder with swelling on the right side of the root of the neck.

2. A ¼" diameter wound on the right flank.

3. Two wounds measuring ¼" and 1/6" in diameter on the left fore arm.

4. Two wounds each measuring ¼" in diameter on the left upper arm.

5. Clinical evidence of blood in the abdominal cavity.

6. Multiple small abrasions on the left side of the front of the chest.

X-rays were ordered.

The X-ray of the neck and the shoulder region revealed that the right collar bone was cracked. The X-ray of the neck showed that a radio opaque object resembling a bullet was lodged on the right lateral aspect of the cervical vertebrae column situated between the 7th cervical spine and the 181 corosic vertebrae. The X-ray of the lower abdomen revealed the presence of a second radio opaque object resembling a bullet situated above the left hip joint. The X-ray of the chest revealed that the patient's heart was enlarged. This was in keeping with the history of the patient having been hypertensive. While the patient was in the X-ray Dept his pressure dropped

Exhibits

"C.3"

Statement of Manjeri Sunderam

20th June 1973

(continued)

further. The patient had to be given xydro cardosone to bring up the blood pressure. It was decided that the patient should have an immediate laparasomy, but in the absence of an anaesthetic I contacted the authorities explaining the risk involved in carrying out surgery without the help of a qualified and experienced anaesthetist. After some discussion it was decided that in the interest of the patient's life I would give the anaesthetic and Dr. Rampersaud and Dr. Lalitha would open the abdomen but as we were getting ready to do this we were informed that Dr. Porter Smith who is a qualified anaesthetist was available in the island and would rush to help us. About 9.30 p.m. immediately after the patient was transferred to the Theatre the patient collapsed again and had to be given further doses of xydro cardosone. The patient also vomited a considerable amount of ingested food. At operation which was done by me the abdomen was opened and the following findings were present:-

The right flank wound had entered the abdominal cavity just below right lower border of the liver and the missile in its passage caused a 4" x 3" laceration of the mesentery of the small gut. Simultaneously punctured of the small gut in three places. The missile further caused two more punctured wounds of the descending colon. The missile finally penetrated the lateral wall of the left side of the pelvis. The abdominal cavity contained 8 pts of blood. All other abdominal organs were normal. The following procedures were carried out:-

1. The lacerated mid gut was dissected and anastamosis established.

2. The perforations of the colon were closed.

3. A decompression through the appendix was carried out to relieve undue pressure on the perforated colon which was repaired.

4. The left side of the lower abdomen were drained in view of the foetal matter having spill out from the colon. The wounds in the left arm, left fore arm, right shoulder were dressed.

Exhibits

"C.3"

Statement of Manjeri Sunderam

20th June 1973

(continued)

By the time these procedures were carried out it was around mid-night and the patient had been under anaesthetic for over 2¼ hours since at the end of the operation the patient's blood pressure had come up to almost the figures which he had before the accident and since in the opinion of myself Dr. Rampersaud and the Anaesthetist the bullet at the root of the neck on the right side was not causing any immediate threat to the life of the patient and further with the known history that the patient was a known heart case, it was decided that he would be transferred forthwith to the Wards for intensive medical care. While we were halfway through the surgery the blood bank technician informed us that Rawle was blood group A positive but no A positive blood was available. Instead we requested and transfused two pints of O positive blood which group needs a universal donor. Later in the ward he received two units of plasma. The patient was kept on vital signs observation throughout the night. About 1.00 a.m. on morning of 12th May I was called out to the Hospital switch board to take a call from Barbados. During this call I was asked by the Surgeon specialist in Barbados about the clinical condition of the patient. When I made known to him the findings and procedures he expressed the opinion he agreed with what had been done and would have done the same himself. In the circumstances there would be no need for him to fly here as he had been requested to do. At 6.30 a.m. on the morning of 12th May I visited Rawle and my examination revealed that the patient's pulse, respiration and blood pressure were fairly within normal limits. The patient was conscious and answered questions. An examination of the neck did not evidence any further change for the worse. Around 8.45 a.m. I received a phone call from one of the nursing staff informing me that one of the District Medical Officers of St. Vincent, Dr. Franklyn Jacobs would like me to come over immediately since he had a surgeon from Trinidad in the ward with Rawle. When I went to the Ward I found Dr. Jacobs and the Doctor from Trinidad Dr. Busby examining Rawle. After ten minutes Dr. Jacobs introduced me and I was asked to give details of all that transpired from the time that I had seen the patient at the casualty to the morning of 12th May. In view of the fact that Rawle was a heart case I consulted Dr. Ballantyne on which specific medical treatment could be instituted on Rawle. Around 9.00 a.m. while I was

Exhibits

"C.3"

Statement of Manjeri Sunderam

20th June 1973

(continued)

attempting to put down these lines of treatment on the case notes I was called by one of the sisters in charge of private ward A, Sister Sprott. The impression that I gained from the conversation with Sister Sprott was that I was no longer in charge of the patient. Therefore I did not put down the lines of treatment but went back home.

Prosecuting Counsel asked the witness not to give evidence of what was said by the other doctors to him that only the result of these conversations should be mentioned. Defence Counsel, however, requested that the entire conversation should be admitted as this was important for the defence. The Court does not desire to exclude anything that may be of assistance to the defence and allowed the evidence to be given. In any case this could be obtained by cross examination.

Around 10.15 a.m. I again had a phone call during which Dr. Jacobs informed me that the further X-ray of the neck had been seen by Dr. Busby and that Dr. Busby was ready to take over the case. At 11.00 a.m. when I went to the Hospital for another matter Mr. Mc. Bride, the Hospital Administrator asked*if I had requested a specialist consultation (2) if Dr. Ballantyne the Hospital Superintendent was aware that a doctor from outside St. Vincent was working in the Hospital (3) If I knew whether the local medical board had granted a licence to perform surgery for Dr. Busby. My answer was "no" to the first question and "I do not know" to the second and third questions. At this point Dr. Porter Smith the Anaesthetist came to the Hospital and since the accepted rule is that the Anaesthetist is responsible for the patient for 24 hours after the operation he wanted certain investigations, because one of the procedures which he advised immediately was not carried out by the nurse on the instructions of Dr. Jacobs who was at the time in the room. Myself and the Anaesthetist in consultation with Dr. Ballantyne were of the opinion that in the interest of the patient he should be transferred to a nearby hospital where facilities for intensive ancillary investigative facilities are available. This opinion was transmitted to the Authorities. I mean by nearby one of the neighbouring Islands like Barbados. We tried to contact the Permanent Secretary, Ministry of Health. About 1.15 p.m.

*/sic/

Exhibits

"C.3"

Statement of Majeri Sunderam

20th June 1973

(continued)

on 12th May, I was again called out to meet the Minister of Health and Dr. Busby at the Matron's office. In answer to a question I reiterated my view that the patient should be sent to Barbados or some other suitable Hospital. I express the view that he had overcome the shock and was improving but the heart needed intensive care. The bullet in the neck did not cause me any anxiety. My view was rejected. I asked for clarification as to whether I was still in charge of the patient. I was informed that Dr. Busby was flown in only to help me and not to be totally in charge of the patient. After this meeting Dr. Busby, Dr. Jacobs and myself went to see the patient about 2.00 p.m. and Mr. Busby and Dr. Jacobs expressed the view that the bullet in the neck should be removed. I disagreed. There was a suggestion that we should review the case again. I suggested 5.00 p.m. since I knew that I had to be in the Hospital at that time. Dr. Busby said he could not come before 6.00 p.m. About 6.15 p.m. I received a call saying Dr.Busby would like to see me. On arrival Dr. Busby told me that he felt that the swelling in the neck had increased in size and that the bullet had to be removed immediately. Again I disagreed. I was told that they planned to go ahead and remove the bullet under local anaesthetic. The patient was transferred to the theatre about 6.35 p.m. and after preparation between 6.45 p.m. onwards Dr. Busby made various attempts and around 8.30 p.m. he took out the missile. (bullet). At this point Dr. Busby requested Dr. Jacobs to sent* for the X-ray technician since he was planning to remove the other bullet that was lying in the hip. Various X-rays were done. At 9.00 p.m. the same night the patient took a turn for the worse. His pressure which had been 170/120 shot up to 200/100. The respiration became fast and the pulse irregular. At this point Dr. Busby decided not to proceed further and the patient was transferred back to the ward. The vital signs observation was continued during the night. On morning of 13th May around 7.15 a.m. I made my morning rounds and found that the patient was nearly breathless with congested* in both lungs. The patient was given oxygen and lasix to combat this condition. Simultaneously I consulted Dr. Ballantyne and he advised the same line of treatment which I had initiated to be continued and promised to see the patient around 10.00 a.m. I received a call around 9.30 a.m. saying that Rawle's condition did not look

*[sic]

*[sic]

Exhibits

"C.3"

Statement of Manjeri Sunderam

20th June 1973

(continued)

too healthy. I went to the Hospital and found that he was extremely cyanotic indicating that the lungs were unable to oxyenate the blood properly. By 9.15 a.m. his distal pulse was not felt and the breathing was shallow and feeble. At 9.55 a.m. the heart stopped. External cardiac massage with artificial respiration failed to revive him. The patient was clinically dead at 9.56 a.m. I said that the bullet should be marked, Dr. Busby said that it was not proper to mark the bullet. I now see a bullet which was given to me two days later by a nurse. I marked it and gave it to A.S.P. Constantine. Marked F.C.1.

I performed a post-mortem examination on 13th May, 1973, at 1.30 p.m. in the presence of Cpl. Francis Da Silva on body of Eric Rawle at Kingstown Hospital. The body was that of a 50 year old man in the state of good nourishment. The body showed six punctured wounds 2 on the left forearm, 2 on the left upper arm, one on the tip of the right shoulder. The body further had recent operative scars in abdomen and neck. The examination of the chest showed both lungs were acutely congested. The heart was very big with the left ventricle being almost double the bigness. A cut section of the heart showed evidence of previous heart attacks. The blood vessel to the heart was almost closed off. On opening the left Oricle an organised thrombo embolus measuring about 5" in length and the thickness of a pencil was found going up into the pulmonary vein. The abdomen was the same as on the night of the operation. I took out a bullet which was lodged in the left hip. Even at post-mortem it took almost 15 minutes to take out the bullet. This was immediately marked and handed over to Cpl. Da Silva. I now see a bullet. This is the said bullet that I extracted. Marked for identification F.C.2. The cause of death was acute pulmonary oedema with respiratory and circulatory failure caused by thrombo embolus. It was primarily due to failure of tne heart aggravated by shock from gun shot wounds received on 11th May. He would have been able to carry on but for the gun shot wounds. In the absence of any external aggravation the heart with the thrombo emblois*might have continued to function. The bullet which entered the flank passed through the gut and lodged in the hip caused the most damage. The blood from this wound entered the abdominal cavity and caused the shock.

*/sic/

When I was finished with the X-rays they were handed over to the Hospital Administrator for safe keeping. These are the X-rays marked F.C.3 for identification.

Exhibits

"C.3"
Statement of Manjeri Sunderam
20th June 1973
(continued)

I plan to leave the State on 18.7.73. I do not expect to return.

From the nature of the injuries the assailants would have been in front of the deceased and slightly to one side.

xxd Mr. John:

On 11th May, 1973 I was the only surgeon in St. Vincent. I did not request an outside surgeon and was not consulted. The second operation was performed against my advice. As far as I knew it was S. Nurse Stevens who received the instructions from Dr. Jacobs not to follow the instructions from the Anaesthetist. As far as I know there was no licence issued to Mr. Busby to practice in St. Vincent. In such a case the operation would be illegal. Considering the known past history of the patient Dr. Busby ought to have realised the risk involving in another operation at that stage. The immediate cause of death was a second operation. In my opinion the second operation hastened the patient's death. Had the course of treatment ordered by me and Dr. Ballantyne been followed the patient's chance of recovery would have been quite bright. At least four bullets entered the patient's body. It was gross negligence having regard to this case history of the patient.

xxd by Dougan:

I have been practicing as a doctor since 1958 and as a surgeon since Nov. 1968. I have treated bullet wounds on several occasions. I was convinced that Rawle's chances of survival were good. The bullet that entered the right flank and lodged in the hip must have travelled downwards. It passed through only soft tissues. Its point of entry was more to the front.

Mr. Dougan asked the witness if he is going to India and says that it may be necessary to find him. It is pointed out to Mr. Dougan that the defence have been warned that the witness is leaving the State not to return and his depositions will be read at the trial. His cross examination

should therefore be thorough.

Exhibits

"C.3"

Statement of Manjeri Sunderam

20th June 1973

(continued)

Mr. Dougan says that warning the defence at the Preliminary Investigation is not enough to enable the deposition to be read. There were no burns on Rawle's skin. No powder marks. If a pistol is held six inches or more from the skin powder marks would be seen. The weapon must have been more than 1ft away from the victim. The wound on the right shoulder must have been caused by a shot fired from the right and back. It must have been a small arm. The theatre is air conditioned. There are two units. There is no filtering. There is no likelihood of infection in the theatre. Between 6.45 p.m. and 8.30 p.m. Dr. Busby made several attempts to locate the bullet. The patient vomited. This reaction to shock is fortunate. It was better than having him vomit under the anaesthetic. The abrasions on the chest seem to have been caused by a bullet streaking across the skin. The patient was not in full fledged health. I did not examine Rawle's brain. Hypertension does cause damage to heart and brain. There was no evidence of renal failure when I examined the kidney. A person in better health would have had better chances of survival. I found traces of heart attack by the fact that the walls of the ventricle showed signs of fibrosis. The tissues were fibrosis not dead. The two Coronary arteries were almost closed. When I say "organised thremd-embolus" I mean it must have been existing for some time. It was because of the accumulation of fluid that the lungs were congested. The patient was in the operating theatre for more than two hours. During this time he was flat on his back. Lack of movement for a period of two hours would not cause an accumulation of fluid. The local anaesthetic would not affect the heart, but heart patients should not be troubled more than necessary.

"/sic/

Re-examined Miss Joseph:-

There was no fluid before the second operation. The procedure is to examine the heart and lung before an operation and make sure that they are clear. It was the irregular action of the heart after the second operation that caused the thrombo embolus to move. The evidence I gave about fire arms was the result of what I read. It was the wound from the bullet that entered the abdomen which caused the bleeding in the abdominal cavity.

/S/ M. Sunderam. 20.6.73

Taken by me at Kingstown this 20th day of June, 1973.

/s/ C. L. Collymore.

Exhibits

"C.3"

Statement of Manjeri Sunderam

20th June 1973

(continued)

EXHIBIT "C.4"

"C.4"

Statement of Manjeri Sunderam

12th July 1973

Statement of Manjeri Sunderam

This deponent Manjeri Sunderam on his oath says:-

I am a Medical Practitioner attached to the Kingstown General Hospital until 30th June, 1973. On 11th May, 1973, I attended to Allenby Gaymes about 8.45 - 9.00 p.m. at the Casualty Department. The patient was in shock with surgical emphysema of the right side of the chest. This means the presence of air under the skin. There was a 1/6" in diameter wound of entry on the front of the chest near the inner end of the right clavicle. There was a wound of exit on the posterior lateral aspect of the right chest at the level of fifth rib. X-ray showed a collapse of the right lung with a partial fracture of the fifth rib. The patient was treated conservatively and continued to make good progress and on 25th May, 1973 he was discharged from the Hospital. The wound entered from the side and continued downwards. The wound would have been caused by a missile or a long knife. It would be more likely that it was a missile, such as a bullet. The patient was bleeding when I saw him.

I will be leaving the State next week and I am not likely to return. I will be going to India.

xxd Mr. Dougan:

I will be prepared to return under certain conditions. The address, Service Commissions, St. Vincent. The wound at entry was on the right side of the chest. The heart is on the left side

Exhibits

"C.4"

Statement of Manjeri Sunderam

12th July 1973

(continued)

of the chest. There were no burns on the skin. The shirt had been removed. The bullet must have been fired at a distance not less than of 20-24 inches. The attacker must have been to the left of the victim or the victim may have turned. The patient spoke to me. He said that he had been shot. The wound could have been caused by anything like a .22 or .38. If the victim had a gun in his pocket and it was discharged it could not cause such a wound. The missile travelled downwards. It would have been fired by a tall person. It is possible for it to have been fired from a roof top. The maximum time for the injury would have been an hour. The bleeding confirms this. He did not say at that time who shot him.

xxd Mr. John:

The wound at the point of entry was smaller than at the point of exit. The X-ray showed the nature of the fracture of the rib. This indicated which was the point of entry. The missile must have been fired above the point of entry. There was only one missile that entered the patient's body.

Re-xd:

I did not ask the patient who shot him. The wound was bleeding. I would have seen burns even if there had been profuse bleeding.

/s/ M. Sunderam

Taken by me at Kingstown this 12th day of July, 1973

/s/ C. L. Collymore

Magistrate District 1

IN THE PRIVY COUNCIL

No. 27 of 1975

ON APPEAL

FROM THE COURT OF APPEAL
WEST INDIES ASSOCIATED STATES SUPREME COURT
(Saint Vincent)

B E T W E E N :

JUNIOR COTTLE and
LORRAINE LAIDLOW — Appellants

- and -

THE QUEEN — Respondent

RECORD OF PROCEEDINGS

HATCHETT JONES & KIDGELL
9 The Crescent
LONDON EC3N 2NA

Solicitors for the Appellants

CHARLES RUSSELL & CO.
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LONDON WC2A 3UL

Solicitors for the Respondent