

IN THE PRIVY COUNCIL

No. 45 of 1977

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O N A P P E A L

FROM THE COURT OF APPEAL OF GRENADA

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B E T W E E N :

CHARLES FERGUSON

Appellant

- and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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O N A P P E A L  
FROM THE COURT OF APPEAL OF GRENADA

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CHARLES FERGUSON

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RECORD OF PROCEEDINGS

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INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT</u>		
1	Indictment	25th August 1975	1
2	Judge's Notes of Evidence	27th, 28th, 29th 30th, 31st October 1975 3rd, 4th November 1975	2
	<u>Prosecution Evidence</u>		
	<u>Lawrence Gibbs</u>		
	Examination	27th October 1975	2
	Cross-Examination		3
	Re-Examination		6
	<u>Louise Donald</u>		
	Examination	27th October 1975	6
	Cross-Examination	27th & 28th October 1975	8
	Re-Examination	28th October 1975	14

No.	Description of Document	Date	Page
	<u>Linette Rock</u>		
	Examination	28th October 1975	14
	Cross-Examination		15
	Re-Examination		16
	<u>Urlan Phillip</u>		
	Examination	28th & 29th October 1975	16
	Cross-Examination	29th October 1975	17
	Re-Examination		22
	<u>Stephen Joseph</u>		
	Examination	29th October 1975	22
	Cross-Examination		23
	<u>David Alexander</u>		
	Examination	29th October 1975	23
	Cross-Examination		23
	Re-Examination		24
	<u>Selwyn Mark</u>		
	Examination	29th October 1975	24
	Cross-Examination		25
	<u>Angela Drakes</u>		
	Examination	30th October 1975	26
	Cross-Examination		27
	<u>Innocent Belmar</u>		
	Examination	30th October 1975	28
	Cross-Examination		31
	Re-Examination	31st October 1975	35
	<u>Adonis Francis</u>		
	Examination	31st October 1975	36
	Cross-Examination		39
	<u>Lawrence Gibbs (Recalled)</u>		
	Examination	31st October 1975	41
	<u>Ann Romain</u>		
	Examination	31st October 1975	42
	Cross-Examination		42

No.	Description of Document	Date	Page
	<u>Defence Evidence</u> <u>Charles Ferguson</u> Statement from the dock	3rd November 1975	43
	<u>Petra Joseph</u> Examination Cross-Examination	3rd November 1975	45 45
	<u>Ernest Wilkinson</u> Examination	3rd November 1975	46
3	Judge's Summing-up  <u>IN THE COURT OF APPEAL</u>	4th November 1975	47
4	Notice of Appeal	5th November 1975	62
5	Judgment  <u>IN THE PRIVY COUNCIL</u>	28th May 1976	64
6	Order granting special leave to appeal to Her Majesty in Council	21st December 1977	70

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
L.G.1	Affidavit of Lawrence Gibbs	May 1975	72
A.F.1	Search Warrant	7th April 1974	73
E.C.W.1	Deposition of Urlan Phillip	17th April 1974	74
E.C.W.2	Deposition of Ann Romain	23rd April 1974	77
E.C.W.3	Notes of Evidence of Ann Romain	8th October 1974	78

	Description of Document	Date	Page
	<u>ANNEXURE</u> Judgement of Court of Appeal ordering retrial of appellant, which retrial is the subject of the instant appeal.		82

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O N A P P E A L

FROM THE COURT OF APPEAL OF GRENADA

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B E T W E E N :

CHARLES FERGUSON Appellant

- and -

THE QUEEN Respondent

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RECORD OF PROCEEDINGS

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No. 1

In the High Court

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INDICTMENT dated  
25th August 1975

No.1  
Indictment  
dated 25th  
August 1975

GRENADA:

IN THE SUPREME COURT OF GRENADA AND THE  
WEST INDIES ASSOCIATED STATES  
IN THE HIGH COURT OF JUSTICE (CRIMINAL)

CASE NO. 26 of 1974

THE QUEEN

VS.

CHARLES FERGUSON

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Her Majesty's Director of Public Prosecutions in and for the State of Grenada and its Dependencies for and on behalf of Our Sovereign Lady the Queen presents that YOU CHARLES FERGUSON of Conference in the parish of Saint Andrew in the State aforesaid, on Saturday the 6th day of April, One thousand nine hundred and seventy-four at La Poterie in the parish of Saint Andrew aforesaid,

In the High Court

No.1  
Indictment  
dated 25th  
August 1975

did commit MURDER by intentionally causing the death of one ROY DONALD by unlawful harm: contrary to section 234 of the Criminal Code (Cap.76) of the Revised Laws of Grenada.

Dated this 25th day of August, 1975.

In the High Court

No.2  
Judge's  
Notes of  
Evidence  
Prosecution  
Evidence  
Lawrence  
Gibbs  
Examination

No. 2

JUDGE'S NOTES OF EVIDENCE

LAWRENCE GIBBS S O B Medical Practitioner for approximately 9 years. Registered for the State of Grenada. In April 1974 and up to now I was and am attached to Princess Alice Hospital in St. Andrew's. On Sunday 7th April, 1974, I performed post-mortem examination on body of one Roy Donald at the mortuary of the Hospital. I made note of my findings immediately after the examination. I ask leave to refresh my memory from these notes (no objection from Alexander. Leave granted) the man was middle-aged man of brown complexion about average height and moderately stout build. There was a penetrating injury persistent with a bullet entry wound situate on the midline of the anterior chest wall just below the back of the sternal angle. (Witness shows position of his own body). The above described injury on further exploration was found to be continuous with a path which extended backwards and slightly to the left penetrating the following structure in the order following :-

1. The sternum just below the level of the sternal angle.
2. The upper border of the right atrium of the heart (penetrating the right atrium).
3. The lower border of the ascending portion of aortic arch puncturing the aorta.
4. The pericardium on its left postero-lateral

aspect.

5. The medical aspect of the pleura of the left lung just above and behind the hilum of that lung.

6. The substance of the left lung.

10 Associated with the injuries described were a cardiac temponade (blood having escaped from an injured heart) and a massive left haem thorax meaning that the left lung had collapsed and it was full of blood. A spent bullet was removed from the left thoracic cavity and handed over to the Police Officer witnessing the examination. The officer's name was Joseph. I marked the bullet by putting the figure 4.7.74 and my initials L.G. I handed this bullet now to the Police Officer. The spent bullet shown to me looks like the one. I see on it the initial "L.G." under the figure 4/7 and a partly worn out 7 and a 4. I made these marks on the bullet

20 Roy Donald's body was identified by members of his family including his wife. Bullet tendered for identification marked for identification "A". The man's death was caused by the injury described which was consistent with a bullet wound.

30 xx'd by Alexander for accused: I have not been registered to practice in Grenada for the past 9 years. I have been practising in Grenada for about 2½ years for which period I have been attached to the Princess Alice Hospital located in Mirabeau. I first saw the body on the night of 6/4/74 between 9 and 11 o'clock. I examined the body. It was dead. The body was identified to me by members of the family including his wife before me the night and next day. The wife identified the body only the night. I did not know her before. I did not know deceased before.

40 Louise Donald called and gives her name as Louise Donald. The person who has just been called has given her name as Louise Donald is the person who identified the body on the night. I do not recall her being asked in my presence if she know who shot her husband. I knew one Jerome Penny a Justice of the Peace. I remember in May 1975, I signed an affidavit in the presence of Jerome Penny. I do not remember being taken on oath as to its contents. I do not recall anything that was in the affidavit.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Lawrence Gibbs  
Examination

Cross-  
Examination



In the High Court

No.2

Judge's Notes of Evidence

Prosecution Evidence

Lawrence Gibbs Cross-Examination

Christian objects to witness being cross-examined as to the exhibits of affidavit until affidavit is shown to witness.

Alexander states that the witness has said he does not recall if what he said.

By the Court: If you are seeking to get in contents of the affidavit, the affidavit itself is the best evidence.

Alexander: The affidavit is filed in the Appeal Record.

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To the Court: I was practising in Jamaica and the U.S.A. for about 6½ years. I studied in the University of the West Indies.

xx'd cont'd: There was no further injuries apart from these I mentioned. Externally there were no swelling or bruises or injuries of that nature. The dead man was approximately 160 lbs., a person of his weight falling to the ground would not necessarily have a swelling at the part of the contact with the ground. If a man's legs getting weak and he falls, he'd fall slowly. If a man is running and he is in momentum and he falls I'd expect him to fall forward. I would not necessarily expect to find any swelling. I do not know the calibre of the spent bullet. There was no collar around the entry wound. I can say if it is unusual. I studied forensic medicine including the entry of bullets, into the body. I did not see that it is usual to have a collar around the entry wound. I did not find any abrasion around the wound to any extent. There was abrasions contiguous to and continuous with the penetrating wound all the way around the wound. This may help to point out the direction from which the bullet came. I would not like to commit myself into saying that if the bullet came from the right the discolouration in that order would be more pronounced.

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I have never heard of legal medicine, Pathology and Toxicology by Gonzales.

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To the Court: I did not specialise in Pathology.

xx'd cont'd: I have much knowledge of forensic medicine as a general practitioner would have. I have never heard of Thomas Q. Gonzales M.D. or of Morgan Vance M.D. or of Milton Helpern M.D.

or of Charles J. Umberger M.D. Having had the qualifications of them once I will accept this opinion. I am not in a position to agree with what is stated on page 400 which has just been read to me. I agree with the statement that "when the penetrating occurs, the skin is dented in and stretches, the bullet punching its way through epidermis and dermis and producing a roughly circular opening with slightly ragged edges and a narrow zone or collar of reddish brown abrasion on the immediately surrounding epidermis. If the bullet strikes the skin perpendicularly this zone may be uniform in width but if it penetrates at an acute angle the zone of abrasion is usually wider on the ends from which the missile comes." Then perhaps abrasions are not usually as marked in persons of a dark skin as in a person of white skin and cannot be depended as to determine the direction from which bullet came. I accept that a proper examination would reveal the things described. I looked for a collar around the wound of Roy Donald. Speaking from memory, there was such a collar. I cannot help the jury from the collar. From the path in the body, I would say the gun was fired slightly from the right. There was no singeing or tatooing around the wound entry. The firearm was discharged more than two feet from the body. From the recollection of the calibre of the bullet the firearm may have been fired from 2ft to 20ft. I do not think that size bullet could throw a man backward to fall on his head. I commenced my post-mortem examination about 11.30 a.m. on 7/4/74. I saw the affidavit. It is one which I signed before Mr. Penny, the J.P. I see my signature and that of Mr. Penny on it. I remember saying then that I was at Princess Alice Hospital when she Louise Donald very repeatedly questioned if she knew the person who shot her husband Roy Donald. I also said in the affidavit that I heard her answer "to the effect or to whether she knew the person who shot her husband Roy Donald for whose murder was accused arrested as she repeatedly respond.

"All I knew is that it was a tall man fair complexion wearing a coat and a hat drawn over his face."

I did not know the affidavit was for the purposes of the appeal in this case.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Lawrence Gibbs  
Cross-  
Examination

In the High Court

No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Lawrence Gibbs  
Re-Examination

Re-xd. I am familiar with Keith Simpson and with Sir Sidney Smith on outlines of Taylor's Medical Jurisprudence. I accept the statements read to me at page 373 of the book. I do not recall the words as it is written in the affidavit. There were many people including Mrs. Donald and her sister at the Hospital that night and it has occurred to me that I might have been confusing Mrs. Donald with her sister. At the time of my involvement with the affidavit I had temporarily forgotten about the presence of Mrs. Donald's sister and her talking. I did not hear Mrs. Donald say the words I have attached to her a lawyer who was a friend of mine asked me casually as the topic came up for discussion. It was directly on examination that I made this statement about what Mrs. Donald said. He subsequently asked me to sign an affidavit bearing on the comments in the conversation. At first I was hesitant but he was persistent. On a night on about May 1975 he drove up to my quarters with Mr. Jerome Penny. It was about 9.00 p.m. I was already in bed. He asked me to sign the affidavit. I signed it. In answer to Alexander with leave of the Court. This is the affidavit I mean (Affidavit tendered admitted and marked Ex.LG1 Christian not objecting). On the night of 6th April, I got to know both Mrs. Donald and her sister. I spoke to the lawyer about a month or two after the trial. I did not hear Mrs. Donald or her sister give evidence. I am not saying that the lawyer misrepresented what I told him.

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Questioned by the Jury: The affidavit was read to me at the time, I was convinced what was read was the truth.

P.C.W.2 Stephen Joseph called.

To the Court: This Police Officer now called is the one to whom I gave the spent bullet.

Louise Donald  
Examination

LOUISE DONALD S O B Shopkeeper and housewife. I live at Conference now but last year April I was living at River Antoine St.Patrick's. I had been married to Roy Donald up to April, 1974. On Saturday 6/4/74 at about 8.30 p.m. I was at my shop at La Poterie, St.Andrew's. I used to sell almost anything in the shop. I left the shop to go home about 9.15 p.m. accompanied by my husband Roy; my sister, Linette Rock; my niece, Angela Drakes

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10 and a little child about 5 years. We travelled north in a Toyota pick-up. Roy was driving with the child lying near him in the seat sleeping. My sister, my niece and I were in the tray of the pick-up. I was sitting on the left side facing front of the pick-up. Angela Drakes was standing holding on to the top of the cab. Linette Rock was sitting on the right hand side when I went into the truck. I had a brown and beige bag with a long strap. It had in it roughly \$200.00 E.C. in it and well as some letters, his cheque book, a bottle with tablets, a bank book, a bunch of three keys. The keys were for the shop.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Louise Donald  
Examination

20 On approaching the River Antoine bridge I saw the road was blocked with stones in three places is one at the beginning of the bridge, one in the centre and the third at the further end of the bridge. Roy stopped the pick-up and he, my sister Linette amd Angela Drakes went out to clear the road. The lights of the pick-up were on. The truck stopped about 5 to 6ft. from the stones. I remained in the tray. Roy and his niece were helping to clear the stones from the road. Roy went to the further set of stones. Angela was on the nearest heap while Linette was at the middle heap. It was a moonlight night when Roy stopped the vehicle the lights were on. While I was sitting in the tray of the pick-up a man jumped from behind the bridge and came up to me. He came to the right end of the pick-up which is about five feet wide. He pushed a gun at me and told me not to move to stay where I was. He said, "give me all the money you made today. Where is it? I handed him the bag, Look at it." He said, still pushing the gun at me, "This is not all, it has more." He searched the bag. I told him, "Take the money and leave us alone." My sister at the second heap of stones, looked up towards me and called out "Roy". The man was still standing there. Roy looked up and started running towards me. The man fired a shot towards Roy and said, "Don't come any closer." The man was there 2ft. from Roy. It was about 10 ft. from the first to second heap and about 25 feet to 30 feet from second to third heap. Roy kept on coming shouting, "Kill me if you want to kill me, kill me" with his hands in the air. The man shot him. Roy was then about six feet away from the man who after shooting him turned and ran.

In the High Court

No.2  
Judge's Notes of Evidence

Prosecution Evidence

Louise Donald Examination

I recognised the man. He was the accused, Charles Ferguson. I had known him before for about five or six years. He used to work at Point Estate which is in boundary with River Antoine. He used to be passing the shop all the time. He used to come to my shop to buy. He had been coming then for about two years prior to that night. Sometimes he'd come into the shop twice a day. He used to come in on an average then twice a week. I used to attend to him. When accused ran, he ran back into a track, he ran south and then east. I jumped from the pick-up and started running back to La Poterie bawling. 'Murder'. When I came back I saw my husband lying on the ground about 24 feet from the pick-up on his back. He was sort of gasping. I did not notice any injuries.

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When I saw accused he was dressed in dark clothing, a cap slightly pulled over his eyes. People who came helped us to put him in the pick-up and we took him to the Princess Alice Hospital. My brother drove the pick-up and a lot of people went in it. I was present at the burial and at the post-mortem examination. I identified the body to the doctor Gibbs the same night. On 17/4/74 I was shown articles at the Grenville Police Station. The Royal Bank of Canada Passbook with my name is the one I had in my bag that night Exhibit "B". This bunch of keys shown me is the bunch I had in my bag. This bottle with tablets and a paper with my name on it on the bottle was in my bag. The envelope addressed to me containing letter another to my sister, Linnette Rock was in the bag. The envelope addressed to me containing letter written to my sister, Sheila Jones was in the bag. The envelope addressed to my later husband, Roy, was in the bag. The letter addressed to me by Linnette Rock was in the bag. This Barclays Bank Cheque Book with my husband's and my name stamped on it and this one already punched were in the bag. This is the bag I had that night in which all the above articles and about \$200.00 in money order. The foregoing articles marked for identification "B" and "G" I think it was Inspector Belmar who showed me these things at the Grenville Police Station.

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Cross-Examination

xx'd by Alexander for accused: When I heard the second shot the man was standing. Roy was running up to him. My husband's body and that of accused was about 6 feet apart. Accused had the gun in his

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hand, partially not fully extended (witness demonstrates). I lived at River Antoine since 1952. I was running the shop since 1955. Practically every work day I travelled that road to River Antoine and back. There is a short cut from La Poterie from Lyn's shop and to River Antoine Bridge. The short cut came down over the northern end of the road. There are no side walls on the bridge itself. The pick-up had not used the two walls on either of the road on the approach to the bridge. The pick-up passed a part of the approach to the bridge and was not yet to the bridge itself when it had to stop. The short cut comes and just before the approach to the bridge. On the eastern side there is a trace called Ramdhanny's trace about 500 feet from the beginning of the approach to the bridge. My husband was lying on the road before getting to the wall. He was lying on the side of the road, but I do not know if he was in stones. His body was between the approach to the bridge and Ramdhanny's trace on the eastern side of the road. On approaching the River Antoine from La Poterie are lands of Ramdhanny's on the right hand side. On the left are lands of one Mrs. Gustus. After passing the bridge you have River Antoine Estate on both sides. Ramdhanny's lands are on the east of the road. Ramdhanny's trace goes through these lands. The short cut is in the western side. That is the side I found my husband lying. I cannot doubt that the width of the tray of the pick-up is 5 ft. 6 ins. I did not measure it I do not know if the height from the top of the tray to the ground is 6 ft. 2 ins. I do not know if the height from the top of the tray to the ground is 4ft. 6ins. or if the depth of the tray is 1ft. 4ins. I sat on the side of the pick-up till I got up to run. I saw all I saw from that seat. I saw the three rows of stones before the pick-up stopped. I saw them above the hood. I was sitting near to the hood of the pick-up. I was holding on the iron rail at the back of the hood with my left hand. I let go the rail when the man came up to me. The approach to the bridge is wider than the bridge. Roy stopped the pick-up in the middle of the approach. It was not the first time I had seen the road blocked but I was concerned. I was looking at what my husband, my sister and niece went to do. My husband went

In the High  
Court  

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No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Louise Donald  
Cross-  
Examination

In the High Court

No.2

Judge's Notes of Evidence

Prosecution Evidence

Louise Donald Cross-Examination

to the further end, my sister went in the middle and my niece was on the first row of stones. It would not be true to say that both my sister and niece went to the first row of stones. I know Ann Romain since she was a child. She lives about 130 feet from River Antoine Bridge on lands west of the La Poterie Road. Her house about 15 feet from the road. Between her house and the bridge there is no other house. The short cut is between her house and the bridge. I know one Miss Shirley who lives higher up over the hill. Taking straight line from Shirley's house and Ramdhanny's trace. Shirley's house would be nearer the bridge. I cannot tell distance from Shirley's house to La Poterie Road. I do not know anyone by name of Miss Nedd living around there, I know Miss Olga, Ann's mother, who been with her. I know Ann's grandmother, Auntie Ban. I know Sybil Frederick who lives at Mount Rose. I say Mt. Rose is about 2 miles from River Antoine Bridge. I did not see Sybil Frederick anywhere around the bridge that night. Auntie Ban lives in same house as Ann Romain. I know Urlan Phillip who lives around there. I do not know how far he lives from River Antoine Bridge. It is about from here to the bottom of Market Hill. I am not sure. (Court agree distance to be about 120 yards). I have known Urlan Phillip from childhood. On 17/4/74 I went to Magistrate's Court. I went to Grenville that day for that purpose. Between 6/4/74 and 17/4/74 I saw A.S.P. Belmar more than once. I cannot remember how many times. I saw him at my home, at the Station, he came to my home the Sunday morning and after that on more than one occasion; on several occasions. I think I saw him only once at the Station. The brown and beige bag was shown to me at the Grenville Court. The letters, cheque books, tablets, bank books were taken from that bag and shown to me. I do not remember if they were letters from any other receptacle. The bag was shown to me. The cheque books, bank book, tablets and letters were taken from that bag and shown to me in the Magistrate's Court. It is not correct they were taken from a paper bag. That brown and beige bag ("G") was shown to me at the Grenville Police Station. I gave evidence before the Magistrate. What I said was read over to me by the Magistrate, I said it was correct and signed it. This was on 17/4/74. I told the Magistrate, "I went at the Grenville Police Station this morning I was shown a bunch of keys, a bank book and two cheque books, some tablets

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in a bottle and a few letters addressed to me. I said to the Police man that they were mine. The last time I had them in my possession was on the 6th of this month". If that is what is there, that is what I said, but I did see the bag. I described the brown and beige bag before the Magistrate as well as the contents. When the articles were shown to me they were taken from the brown and beige bag. It is not true that they were taken from a paper bag. I cannot remember if I opened a paper bag in the Court. I might have opened a paper bag and now I can't remember. I remember identifying the bag ("G") to the Magistrate. In the light of what has been read to me, maybe I did not identify the bag before the Magistrate. It was shown to me at the Police Station but I cannot remember if it was shown to me at the Magistrate's Court. I saw it at the Police Station around 8.10 a.m. I gave evidence at nine or after nine. I cannot remember if it was Belmar who showed me things. I said yesterday I thought it was Belmar. In the Magistrate's Court I was questioned by a Policeman and I answered. I did not identify the bag in the Magistrate's Court because it was not shown to me when I returned to the scene I think my husband was lying on a heap of stones. He was on stones. His head was on stones. When I saw him he was sort of gasping. Maybe I told the Magistrate that when I go back I saw my husband lying on the ground dead. Having seen the deposition with my signature I now say I told the Magistrate so. It is correct that my husband was gasping. I went to the hospital that night. There were several people there. I know a man called Tampoof. I do not recall seeing him there that night. I saw Dr. Gibbs. I do not recall telling anyone that night that it was accused who shot my husband. I do not recall anyone that night at the hospital asking me if I recognised the person who shot my husband. After hospital I went home. There were people there. I saw Belmar next morning between 7 and 8. Before he came to my home, I recall telling someone it was accused who shot my husband. It was about 2 or 3 in the morning. I told my sister Linette Rock. I remember giving evidence in this Court on this matter last year. (Counsel refers to p.103 of Appeal Record) I remember telling the jury in that case I could not remember if it

In the High  
Court

No.2

Judge's Notes  
of Evidence

Prosecution  
Evidence

Louise Donald  
Cross-  
Examination



In the High Court

No.2

Judge's Notes  
of Evidence

Prosecution  
Evidence

Louise Donald  
Cross-  
Examination

was that night I told Linnette Rock that it was accused who shot my husband. It is since that trial I remember when I told Linette.

(Counsel refers to p.95 of Appeal Record)

Maybe I told the jury at the first trial that Linette and Angela remained at the first heap of stones but what I now say is true. I was not concentrating on them. The man was up to me. For this reason I did not see to which row of stones my sister and niece went. My sister and niece had gone to their respective rows before the man jumped over the bridge.

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When I handed the man the bag I did not lean forward. I sat on the edge of the tray. He stretched his hand and took it. The tray reached him around his waist he stretched the left hand. The forehead is from the eyebrows to the hairline (witness demonstrates) The man was facing me first and then he turned and faced my husband. He had on a cap and dark clothes. I do not know if it was shirt jacket. I did not at the Princess Alice Hospital say the man was wearing a hat and a coat. Accused used to come to shop at weekends. Angela used to help at home at weekends.

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After my husband was shot, the man ran into Ramdhanny's trace and disappeared. As he entered the trace he disappeared. I do not know where my husband was when I started to run. While I was on the pick-up I thought I saw him running after the man. When I began to run I saw my husband running after accused. My husband had parked the pick-up before I began to run. Accused was at all times on the drivers side of the pick-up. My husband rushed up to him on that side.

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I did not see when my husband fell. I passed him but did not see him fall; I did not see him cross the road. My husband was about 3 or 4 feet from the pick-up when I jumped down and started to run. After I jumped down I did not see my husband again. When I jumped from the pick-up, the man with the gun had entered Ramdhanny's trace. When I jumped from the van, I had not seen my husband slacken his speed. When man shot he was facing my husband about 4 or 5 feet away. He shot and started running. My husband had not slackened speed. When I ran I reached to within 35 feet of Ann Romain's home and turned back with people who were coming.

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10 I ran back with them. Linette Rock ran with me and so did Angela Drakes, both to La Poterie and back to River Antoine. I cannot remember the people who came. I remember Henry came to me but I cannot remember the people I met. I cannot remember how many people came. They all came back with me and my niece and sister. Ann Romain was in that crowd. I did not remember seeing Urlan Phillip. I now say I do not remember who I met. I cannot remember if I met anyone on the bridge besides my husband when I went back. The child was, I think, still in the pick-up when we went to the Hospital but I am not sure.

In the High Court  
                      
No.2  
Judge's Notes of Evidence  
Prosecution Evidence  
Louise Donald Cross-Examination

(Council refers to pp.97/98 of Appeal Records)

20 I did tell the jury my husband appeared to be running after this man, he fell. I did not see him fall. I also told the jury this when he fell. Maybe I told the jury this that after I had seen my husband fall I jumped from the pick-up. It would not be time to say that after I saw my husband fell I jumped from the pick-up.

The gunman said, "Don't come any closer" and then fired the first shot. I remember the events of the evening of the 6th April clearly. I had been married for 22 years.

30 I do not know if the period when my husband was killed was during what is called the crisis. I do not know if there were strikes. Around that time there were marches by Police for arms and ammunitions. My husband was searched for arms and ammunitions more than once. I do not know anyone who was searched. A.S.P. Belmar was the first police officer to whom I spoke about the incident and he was the one I had most dealing. I do not recall seeing him on the evening of 6/4/74. The peak  
40 of the cap was over the man's eyes. He wore a cap. I cannot remember anybody asking me that night if I know who shot my husband. I did not say that all I know was that it was a tall man fair complexioned wearing a coat and a hat drawn over his face. I told my sister before I saw A.S.P. Belmar that it was accused who shot my husband. I did recognise the accused around River Antoine Bridge as I testified.

In the High Court

Re-xd: I still have the same pick-up. It is near the precincts of the court now.

No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence

To the Court: I do not know any of the measurements of the Toyota pick-up. I am not in a position to admit in any measurement in respect of the Toyota.

Louise Donald  
Re-Examination

Re-examination cont'd: I could see through the glass back and front. I saw over the top of the hood. It was not the first time that seen the road blocked but it was the first time I had seen it blocked like that. Ann Romain's house was about six feet above the road surface. Shirley's house is on same side of road as Ann Romain's but on top of the hill. One has to look up from the road to see her house. Standing in the road the house is further in from the road than Ann Romain's about 70 feet. The peak of the cap was resting right on the eyebrows. The man I referred to in my cross-examination is the accused, Charles Ferguson.

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Linette  
Rock  
Examination

LINETTE ROCK S O B I am sister to Louise Donald (P.W.2) I live in Trinidad and have been living there for 34 years. I come to Grenada occasionally, once a year, on holiday. I arrived in Grenada on 2/4/74 from Trinidad and went to stay with Louise Donald at River Antoine. On 6/4/74 about 9.00 p.m. I was with Louise Donald and her husband Roy at their shop situate at La Poterie. About 9.15 p.m. we closed up the shop and left for River Antoine. There were Louise, Roy, Angela Drakes, a little child and myself. We left in a Toyota pick-up. We travelled in direction of River Antoine. Roy Donald was driving. The child was lying sleeping in the driver's seat. I was sitting on the right side of the tray of the pick-up facing the front of the pick-up. Louise Donald in the left side of the tray of the pick-up. Angela was standing holding on to the top of the pick-up. On reaching River Antoine bridge there was a road block of stones. Roy Donald stopped and came out of the pick-up, Angela jumped off the pick-up and I jumped off. We all started to clear the stones. There were three heaps of stones facing the road block. One was in front of the pick-up; one was in the middle of the bridge and the third at the far end of the bridge. The first heap was on the bridge itself. Roy went to the further heap; I went to the middle heap and Angela went to the

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first heap; we started clearing away the stones. I heard the voice of my sister who was in the pick-up. There was a man standing opposite to her. I was then about 20 feet to 22 feet from my sister. When I heard her voice I turned and looked in her direction. She was still sitting in the same position. The man was standing on the right side of pick-up between the tray and the hood. I heard my sister say, "Take the money and leave us alone." The man was a very fair person. I only saw the right side of his face. I could not see his body. He had a cap on his head. When I heard my sister say this, I called out "Roy". He asked, "What happen?" and started running towards the pick-up. Then I heard a shot and the voice of the man said, "Don't come any closer." Roy kept on coming, when he almost reached the man, he flung out his arms and said, "You want to shoot me? Well kill me" I heard another shot and the man started running. Roy started running too. The man ran in the direction where there was a track. Roy ran in same direction as the man, but did not reach the track. He fell on the right hand side of the road. I did not see him when he fell I only find him on the ground. He was running and when I went up I saw him on the ground. Louise jumped off the pick-up and ran in same direction as the man and Roy. She started calling for Roy. I saw Roy on the ground and said, "Look at him here." I held his hand and spoke to him. He merely gave a deep breath. He was then on the side of the road. We started to bawl and people came. We put Roy in the pick-up and took him to Princess Alice Hospital. I went in the pick-up with him. When I went up to Roy and held his hand I did not notice anything about him.

In the High Court  
No.2  
Judge's Notes of Evidence  
Prosecution Evidence  
Linette Rock Examination

xxed by Alexander for Accused: The whole is the side of his face. The cheek is part. There is a difference between a hat and a cap. A cap has a peak. A hat doesn't. I only saw from the back up of the man. I did not see his shoulders. I do not know what he was wearing. I could not have said I saw a man wearing a coat and a hat. The cap was pulled over his forehead just over the eyebrows (witness demonstrates). The

Cross- Examination

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Linette Rock  
Cross-  
Examination

cap seems to come down above his ears. If the cap was drawn down I'd see only his shirt. I told the Magistrate the person had what appeared to be a hat pulled over his forehead. I told him this when I gave evidence on oath on 23/4/74. What I said to the Magistrate was read over to me. I did not have any fault to find with what he had written. I signed it. I have said today I saw the right side of the face. I told the Magistrate all I saw was his right cheek. On 7/4/74 at about 1.00 p.m. I went to Grenville Police Station with my niece, Angela Drakes. I attended an identification parade in which accused was. I did not identify him as the person I saw that night. Accused turned towards me when Roy was running up to him. Roy was behind me. Roy passed me. I saw him spread his hands out. The man was facing the direction from which Roy came. When Roy put up his hands he was about eight feet from the man. Roy stood up for less than half a minute before he was shot. I did not run at all. I walked up to the part where I saw Roy lying. My sister jumped from the pick-up before I saw him. I was from the pick-up about fifteen feet. When she jumped from the pick-up she ran up the road. I do not know how far she reached. Angela now was behind my sister. I did not go further than where Roy was lying. I was then the only person around there, my sister started to bawl before she came back. I can't remember who came back with her. The thing like that happen you can see anybody. There are walls on either side of the road approaching the bridge. The stones were about ten feet within these walls from the beginning of the bridge.

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Re-Examination

Re-xed: About a minute passed between the time I heard my sister's voice first and the second shot. I did not hear accused before I saw him in court on 23/4/74.

Urlan Phillip  
Examination

URLAN PHILLIP S O B In April 1974, I was living in La Poterie, St. Andrews. I am now living in Trinidad up to last year I was attending St. John's Christian Secondary School. I am now 18 years of age. I know accused as Charles Ferguson. I have known him for about four or six years. Last year April he lived in Conference, St. Andrew's. He used to work at Point Estate in St. Patrick's. I can't remember speaking to him. I went to see him once or twice a week. Sometimes I see him walking

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and sometimes I see him driving a car.

In the High  
Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Urlan Phillip  
Examination

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On Saturday, 6/4/74, about 8.30 I was by Mr. Lyon's shop at La Poterie. Franklyn Baptiste, Frederick Joseph, Osborne Pope, Lennox Drakes and others which I can't remember were there. We were all old talking and joking. While we were there I heard a shot fired. We paid attention to the shot and afterwards I heard another one. After the second shot I heard a lot of bawling. The shots came from the direction of River Antoine area. The bawling seemed to come from the same direction. I know River Antoine Bridge. It is about 400 yards from Lyons shop by the length of the road. By the other it is about 250 yards. When I heard the sound coming from the direction I ran down towards the bridge. I took the shorter road.

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On my way to the bridge I was about 100 yards when I saw the accused coming from Ramdhanny's Banana field. He was about 10 yards from me. He was wearing garments which appeared to be black. He was wearing shirt and long pants. He had a bag on his shoulders, it had a strap. He had a cap on his head with the peak reaching down to his forehead. He was trotting away from the bridge. I passed and then went on to the bridge where I saw Mr. Roy Donald lying. He appeared to be dead. He was lying on his back. I assisted in picking him up and putting him in the van. He had a little spot of blood on his chest. I saw there Louise Donald, Angela Drakes, Mrs. Linette Rock and many other people. The van was in the approach to the bridge. There were broken stones and whole stones on both sides of the bridge. I saw the lights at the back of the van on. I went in the van with Mr. Donald to Princess Alice Hospital. We got to the hospital about 9 to 9.30 that night. On 7/4/74 about 4.00 p.m. I was in Grenville Police Station. I was giving statement and later on there was an identification parade. About nine men were lined up in the parade. I picked out the person I saw the previous night trotting from Ramdhanny's field. He was Charles Ferguson.

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xxed by Alexander for Accused: I attended Secondary School. Afterwards I went to learn a trade. I learn mason trade. I never learnt

Cross-  
Examination

In the High Court

No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Urlan Phillip  
Cross-  
Examination

carpentry. I am now working in Trinidad as a mason. On 7/4/74 I was taken to Police Station by police car. I cannot remember if A.S.P. Belmar was in the car. The transport came to meet me at the Tivoli Junction. I do not remember if Belmar came to meet me at the Tivoli pasture. I gave evidence in the court in this matter before. (Counsel refers to p.110) I can't remember saying there, "Yes Sir I saw Inspector Belmar, the following day Sunday". I might have said it or I might not. It could be correct or it could be incorrect.. I cannot remember saying, "He came for me in a car and bring one down Grenville Police Station." If I said so, it might have been correct or it might have been incorrect. I think it is true that I identified accused after I made the statement but I am not sure. (Counsel refers to p.113 of Appeal Record) I cannot remember saying I gave a statement to the Police at Grenville Police Station after I identified Charles Ferguson." If I said so, it might have been correct or it might not have been. I gave evidence before the Magistrate, I cannot remember telling Magistrate, "I saw Charles Ferguson, the accused, about 130 yards from the bridge." When I gave evidence before the Magistrate it was accused back to me. I said it was correct and signed it. I see my signature on my original deposition now shown to me and I see 130 yards there recorded. Both statements could be correct. (Counsel refers to p.106 of Appeal Record) I do not remember saying at the last trial, "When I reached about 75 yards from the bridge I saw Charles Ferguson." If I said so it may have been correct or it may not. I met people on my way to the bridge before I saw the accused. They were not going down to the bridge. They were standing in their gap. They spoke to me and the other boys who left Mr. Lyons shop with me. The people was not all in one gap. The gaps are not on the main road but in a short cut which I used that night. I know Miss Shirley. She has no gap on the short cut that I took. I know Ann Romain. As you met the short cut, hers is the first gap we meet. The end of the short cut comes out to the main road before Ann Romain's home. There is a gap from that home on to the main road and one on to the short cut. I passed this second gap, my friends and I. I do not remember seeing people or talking to people at Ann Romain's gap. Going back to Lyons shop the first gap is Wilfred Williams' gap which is about

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40 yards from Ann Romain. I spoke to no-one in Williams' gap. My friends were ahead of me. That was the last gap at which my friends and I spoke to people. I was on the main road when I saw the accused. I was just approaching Ann Romain's gap on the main road when I saw him. I was about 12 ft from the gap. I saw accused at Ann Romain's gap in the main road wearing a cap. I cannot remember seeing anyone else in the gap. The short cut came and about 100 yards from River Antoine Bridge. When I left Lyons shop I started trotting. I am making a difference between trotting and running. It would not be true to say that I ran down the track. My friends trotted a little faster than me. It is about 125 yards from Lyons shop to Williams' gap. I went about 8 gaps in that distance. We spoke to people at about five gaps. We did not stop in any gap. When I got in the main road my friends were in front of me a long way. I could see them from Lyons shop. After Williams' gap they ran faster than I. My friends had already gone when I saw accused. He passed between me and my friends. I was trotting until I met the accused. When I first saw accused, he was between the road and Ramdhanny's land, coming from the road. When I first saw him he was by the last row of bananas on Ramdhanny's land. When I saw him I stood up. He was trotting at normal pace. I wouldn't say he was trotting slowly or that he was coming along slowly. I saw him come from the first row of bananas across the space in to the road up the hill and trotting up Ann Romain's gap. All this time I was standing. Accused passed behind Ann Romain's home. After I saw him disappear up the hill I then went down to the bridge. There were many people at the bridge. I meet there my friends. I cannot remember if Louise Donald was at the bridge when I got there. Angela Drakes were there so was Linette Rock as well as Ann Romain. I cannot remember seeing Ann Romain anytime before that night. It was a cap, not a hat, accused had on his head. I cannot remember if he was wearing a shirt or a jersey but it seems to me to be a shirt. It was not a coat. (Counsel refers to p.106 of Appeal Record). I do not remember saying at the last trial that accused was wearing a hat on his head. I may have said it or may not. It could have been correct and it could have been

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Urlan Phillip  
Cross-  
Examination

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In the High  
Court  
            
No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Urlan Phillip  
Cross-  
Examination

incorrect. I don't remember seeing A.S.P. Belmar in the room where the identification parade was held. He might or might not have been there. When I say I picked out the accused I mean I went and touched him and said, "That is the man I saw last night." I did not say at the parade that I could not identify the man I saw that night because he was wearing a big hat and a black coat. I never said so. I know Godfrey Ferguson. I think he taught me at school. I saw him on the night of the 6th April, 1974, I did not tell him that I could not imagine the person I saw that night. I did not tell him the person was wearing a black coat. (Counsel refers 110.) I do not remember saying, "I could not remember if I told Godfrey Ferguson that I did not imagine the person I saw that night." If I had said so it would not have been correct. When Police transport came for me I was told I was being taken to Police Station. I cannot remember if I was told the reason. I did not ask. I had to wait before attending the parade I do not remember for how long. A policeman spoke at the identification parade. (Counsel refers to p.108). I do not remember saying at the trial that Belmar was not present at the identification parade. It was when I saw accused by the row of bananas that he was about 10 yards away from me. He come straight across. It is not true that at the parade Belmar told me to walk up and down the line and have a close look and see if I could recognise the man. It is not true that Belmar walked up and down the line with me. It is not true that afterwards I came up to the end and said that he was about the same size and height as the man I saw that night but that I would not say if it was accused because the person was wearing a big hat and black coat. I cannot remember if I saw Belmar before 4.00 p.m. that Sunday morning I did not go to River Antoine Bridge with Belmar. I cannot remember the first time I spoke to Belmar about the case. I cannot remember if I spoke to him before Police came for me at Tivoli. I spoke to Police Officer about the case before they came for me at Tivoli. I can't remember the Police Officer. I think it was Sunday morning at Ann Romain's gap. It was Belmar. I do not remember Belmar at the hospital at Mirabeau. I do not remember speaking to Belmar during the course of this case. I gave my statement to a Corporal at Grenville Police Station.

I heard the shots about 8.30 p.m. I heard two

shots and then a bawling and I began to trot with my friends with whom I was sitting. I trotted up to the time I saw the accused and then ran. When I got to the bridge I saw Ann Romain there after I saw accused and before getting to the bridge I did not see Mrs. Donald or her sister or her niece or a little girl. (Counsel refers to p.107 of Appeal Record) I do not remember saying at the first trial that I met the four of them between the point where I met accused and the bridge when I was going to the bridge. I do remember saying, "Mrs. Donald and her sister was bawling." If I said I met them it could have been correct or it could have been incorrect. The little girl was a little girl about five years. I do not remember that after giving the names of my friends to the Magistrate and I said, "That is all." If I told the Magistrate so it would not have been correct. I can't remember telling the Magistrate. "As a result of what I heard I ran down on the bridge." If I told the Magistrate so it would not have been correct. I do not remember telling the Magistrate, "The names of the fellows I mentioned before, even down to the bridge with one." If I said so it would not be correct. I see in my original deposition now shown to me the passages read to me.

In the High Court

No. 2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Urlan Phillip  
Cross-  
Examination

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Alexander asks leave to tender the deposition. St. Paul objects. Deposition constitute the court's records can only be put in by the Registrar. Alexander has identified his signature. Depositions are in the custody of the court and not in the custody of the Registrar.

By the Court: The deposition must be tendered by the Registrar of the Court.

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(Counsel refers to p.109 line 5 of Appeal Records)

I do not remember saying at the trial I was learning carpenter trade. If I said so it would not have been correct. I do not remember what Police Officer told me I was being taken to Grenville Police Station. It was not Belmar.

(Counsel refers to p.111 of the Appeal Record)

In the High Court

No.2  
Judge's Notes of Evidence  
Prosecution Evidence  
Urlan Phillip Cross-Examination

I do not remember saying at the last trial "Yes, Inspector Belmar told me he was taking me to Grenville Police Station." If I said so it would not have been correct. I do not remember saying, "I was outside of the car where he (Belmar) told me so in Tivoli pasture." It would have been incorrect if I had said so. I do not remember saying, "he (Belmar) told me come let's go to the Station." If I said so it would have been incorrect. I do not remember saying, "I got in the car, he was not close in the car." If I said so it would be incorrect. Inspector Belmar is the same person as A.S.P. Belmar. I cannot remember if there were four of us in the car. I do not remember telling the jury. There were four of us in the car. If I said so it could and could not have been correct. Yes I recognised the accused on that night. I see in my original deposition where the Magistrate recorded as saying, "I was running towards the bridge and I kind of jerk back when I saw him because I was afraid." I cannot remember if I said so. If I said so, it may or may not have been correct.

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Re-examination

URLAN PHILLIP on same oath re-xed:

I estimate 100 yards to be from the witness box to St.John's Street running behind the Registry. I did not stand up and talk to the people I met on the way from Lyons shop to the bridge. They asked a question and I answered. The other boys started running from the time we reached Wilfred Williams' gap.

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Stephen Joseph Examination

STEPHEN JOSEPH S O B P.C. NO.26 attached to Birchgrove Police Station. I have been in the Force for six years and two months. In April 1974 I was stationed at Grenville Police Station. On 7/4/74 between 10 and 11 a.m., I was at the Princess Alice Hospital at Mirabeau, St.Andrew's. I witnessed the post-mortem examination on the body of Roy Donald by Dr. Gibbs (P.W.1). Lloyd Donald was there. Dr. Gibbs found a spent bullet in the body of Roy Donald near to the backbone, I saw him take it out of the body. I saw him mark it. He marked it L.G.4774. He gave it to me. I folded it in a piece of paper which I placed in an envelope which I sealed. I marked on the back of the envelope and took it to Grenville Police Station. I handed it to the N.C.O. in charge at Grenville Police Station.

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10 I gave evidence in the Magistrate's Court at Grenville. I was then shown the bullet and I identified it as the bullet handed to me by Dr. Gibbs on 7/4/74. This envelope shown to me now is the envelope in which I placed the bullet. My signature is on the envelope. This bullet shown to me is the spent bullet to which I have referred. I have seen 4774 marked on the bullet. Witness refers to article marked "A" identification.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Stephen Joseph  
Examination

xxed by Alexander for Noel No photographs were taken at the post-mortem examination. I was present from the beginning to the end of the post mortem. N.C.O. means Non Commission Officer. Inspector Andrew was the non-commission officer to whom I gave the envelope and bullet.

Cross-  
Examination

20 DAVID ALEXANDER S O B I live at Mt.Rose, St.Patrick's. I am a shopkeeper with a shop at Mt.Rose. I know accused and have known him over three years. On 6/4/74 about 6 and 6.30 p.m. I was by my shop. I saw accused go into the shop. He stayed about five minutes in the shop which is a liquor shop. I saw him again about ten to ten thirty the same night. He came back in the shop. His brother and them other boys were with him. They came in a car. I saw them. I cannot tell who was driving the car. He stayed until 30 around 11 to 12 midnight. He was dressed in dark pants and something like a dark polo shirt. I know Roy Donald for many years. I saw him on 6/4/74. He came to my shop. I spoke to him. He came in about 7 to 7.30 p.m.

David Alexander  
Examination

40 xxd by Alexander for accused I was with Roy Donald up to around 8.15 p.m. He dropped me by my shop. As a result of a conversation I had with him I concluded he was going to his house at River Antoine. When I saw accused at six he was wearing the same dark clothes. I saw wearing khaki shirt and khaki pants. When accused came he was with his brother, Ossie and Charles. That was not the first time I had seen his brother, Ossie and Charles at the shop that evening. They passed then around 8.30 p.m. The person I referred to as his brother is called Donald Ferguson. I do not know Ossie's surname. I do not know if Charles' name is Freeman Charles. 50 When they came to my shop at 8.20 they asked for Charles (accused) and someone said he

Cross-  
Examination

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

David  
Alexander  
Cross-  
Examination

said to meet him at River Sallee. Accused used to pass at my shop at weekends sometimes. He passed them sometimes going to River Sallee whom I know he had a girl friend called Petra. I am sure that accused and the others did not stay in the shop up to about 12.30 a.m. I spoke to A.S.P. Belmar on Sunday about 10.00 a.m. He came to me. He wanted to speak to me and I told him I was busy. I went to him at River Antoine about 12 to 1 p.m. He asked me if Charles had been at my shop the present night. I did not tell the Magistrate that accused remained in my shop until about 12.00. I cannot remember telling the jury in the last trial at which I gave evidence that accused remained in my shop up to around 12 to 12.30. It could have been so. It could be that he was there up to about 12.30 a.m. Wappie was not being played between 10 and 12.30. It was cards and dominoes. There was no game being played for money. I was not licensed to sell liquor after 9 o'clock. We were playing for drinks. I know a man called Tampoof. He came to the shop after the accused, his brother and friends was there. He was also there before that. He came back to the shop in a car which I had went to Mirabeau Hospital. I asked him what he gathered about the death of Mr. Donald. The man in the presence of the accused, Tampoof said a thin tall light skinned man look like Charles so that shot Mr. Donald. This was around quarter to twelve that night.

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It could be twice that I told the jury the last time that I did not remember what clothes accused was wearing the last time he came, that I did not check on him the last time.

Re-Examination

Re-xd I did send Tampoof to the Hospital. I cannot say for sure he went to hospital. Accused has a girl friend and he is married.

Selwyn Mark  
Examination

SELWYN MARK S O B Acting Corporal No.312 attached to the Criminal Records Office and a member of the Royal Grenada Police Force for about 6 years and 2 months. On Sunday, 7/4/74 between 7 and 8 a.m. I went with A.S.P.Francis to the mortuary at the Princess Alice Hospital at Mirabeau, St.Andrew's; I saw the body of a male person lying on a table at the mortuary. A.S.P.Francis was with me in the mortuary. Other people were there. I took photographs of the body I saw there. I then

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proceeded to a bye-way at River Antoine. This bye-way leads to the home of Roy Donald and also to the River Antoine Estate. I was shown certain objects in the bye-way of which I took photographs.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Selwyn Mark  
Examination

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On 13/4/74 I went with P.C. Joseph from C.I.D. back to the bye-way. On our arrival I met one Alison McBain who was employee of the late Roy Donald. I also saw Sergt. Hosten of Grenville Police Station along with a few other Policemen and Civilians. I was then taken to a spot on the River Antoine Estate between 200 to 300 feet from the said byeway. There I was shown some articles lying on the ground between some banana and cocoa trees. I took photographs of the articles on the ground and then collected the articles which was his Barclays Bank Cheque Book Nos. 30 132151 and 50 133801; a Royal Bank of Canada Bank Book No. 332 along with its case; letters; a bottle containing tablets, a bunch of three keys, two small and one large; one religious pamphlet and one ten cents from E.C.C. Two of the letters were addressed to Louise Donald; one addressed to L. Donald and the other addressed to Roy Donald. In addition to the numbers on the cheque books there was written on them "Roy F.J. Donald" and/or "Louise Donald". I placed the articles in a paper bag at the Police Station in the presence of A.S.P. Belmar and signed my name on the paper bag and handed all over to A.S.P. Belmar. These articles (marked B, C, D, E, F & G; for identification) shown to me and the articles which I find on the ground and took to the Grenville Police Station and put in a paper bag. I took out eight of his photographs. They were printed. I printed them. The photographs that is the prints were left at the Criminal Record Office was the last hearing of this case in the High Court.

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Re-xd by Alexander for Accused I was made to understand River Antoine Estate started about 150 to 200 feet before the bridge travelling from the La Poterie. The things I saw on the ground were pointed out to me by a woman Alison McBain. I got to River Antoine about 8.10 a.m. I met Inspector Andrews there with other policemen. I saw them conducting a search on the right side of the road going

Cross-  
Examination

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In the High Court

No.2  
Judge's Notes of Evidence  
Prosecution Evidence  
Selwyn Mark Cross- Examination

towards the bridge from Tivoli direction. I left before the search was completed. I left between 20-30 minutes after I arrived. I did not see Police searching in the area around where the articles were pointed out to me. I photographed and spoke, two by the bridge and the other about 20 feet from the bridge on the right side going back to Tivoli. The articles were on the left hand side about 300 to 400 feet from where Police were searching going back towards the bridge. They were somewhat scattered around a radius of about three feet.

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Angela Drakes Examination

ANGELA DRAKES S O B I live at Conference, St. Andrew's. I am 17 years old. I live with Louise Donald, my Aunt. I am a student at McDonald College, St. Patrick's. On Saturday 6/4/74 between 8 and 9 p.m., I was at Mrs. Donald's shop at La Poterie. My aunt, Mrs. Rock, Mr. Roy Donald and Alison McBain were there also. We all left the shop for home at River Antoine at 9.15 p.m. After closing the shop we travelled in a blue Toyota van No.5911. There was a child in the front of the van. The child is over 6 years old. Roy Donald was driving the van. I was standing in the van holding the back of the hood. Mrs. Rock was sitting on the right hand side of the van and Mrs. Donald was sitting on the left. I was facing the back of the van. Mrs. Donald still has the van. On approaching the River Antoine Bridge I saw that the road was blocked. The van stopped and when I looked I saw the road was blocked. There were two heaps of stones before the bridge and another at the further end of the bridge. (Witness demonstrates how heaps were placed) The lights of the van were on. I mean the head lights. I got out of the van and started picking up the stones that were in front of the van and throwing them on the other side of the bridge. Mrs. Rock and Mr. Donald both got out of the van and started picking up the stones. I was at the first heap; Mrs. Rock was at the second and Donald at the far end of the bridge. When I was finished picking up the first heap I stood up and saw a man at the front part of the van on the right hand side of the van. I was a distance of 28 feet from the man. I heard the man tell Mrs. Donald who was sitting on the left hand side of the van, "Give me the money you make today." She handed him the

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In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Angela Drakes  
Cross-  
Examination

He had it in his right hand. I saw when my aunt handed him the bag. I saw the man's whole face. Mr. Donald was at the back of me. He started running. I looked to see where he started running. Then I turned back to look at the van. The man was then facing Mr. Donald. I saw his face from two different angles. At the identification parade, I did not pick out anyone. I said that someone on the parade looked like the man I had seen that night. I said that the man I saw that night resembled one of two persons accused and the man standing next to him. A.S.P. Francis was there. I did not say that this man I saw that night resembled the man standing next to accused.

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Innocent  
Belmar  
Examination

INNOCENT BELMAR S O B I live at Birchgrove, St. Andrew's. I am self-employed. In April, 1974, I was assistant supt. of police in the Royal Grenada Police Force in charge of Eastern District. I had then been a policeman for nineteen years. I know accused very well. On Saturday 6/4/74 I was at my home at Birchgrove at about 9.45 p.m. While there I received a telephone call as a result of which I went to Grenville Police Station. There I spoke with Inspector Andrews. I then rang Princess Alice Hospital and spoke with a female. As a result I took my car and in company with Andrews and other policeman, went to the Hospital. There I saw a large crowd gathered near to the mortuary. I spoke with one Angela Drakes. I went into the mortuary where I saw the body of Roy Donald lying on a slab on his back. I inspected the body. I noticed something resembling blood about the region of the chest. I spoke to Mrs. Donald who did not reply. From there I went in my car with the same party and went to La Poterie, St. Andrew's near to River Antoine Estate. I carried out certain investigations there. I arrived at the hospital about 10.30 p.m. and left about 10.50. I then returned to Grenville Police Station. On Sunday 7/4/74 at about 7.00 a.m. I went to Mrs. Donald's home at River Antoine Estate. I spoke to her and spoke with Angela Drakes. I took Angela Drakes with me to the scene of the alleged shooting. I spoke to her on the scene and took her back to her home. I returned to the scene about 10.30 a.m. Inspector Andrews joined me there with a party of Policemen which included Sergt. Thomas, P.C. Joseph No.98; P.C. Rogers; when

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In the High Court

No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Innocent Belmar  
Examination

policemen. A.S.P.Francis followed in a second immediately behind. I dropped the accused at Grenville Police Station in car of A.S.P. Francis. Later in the afternoon I went to Tivoli and there I spoke with Urlan Phillip. I took him in my car and brought him to the Station. There I spoke with Inspector Andrews and he took Urlan Phillip away. When the house was searched I did not take anything away from the house but I remember A.S.P.Francis taking something away. On Sunday 7/4/74 about 2.10 p.m. P.C.Joseph spoke to me at the Grenville Police Station and he handed me an envelope. The envelope was addressed to me. Inside the envelope I saw something resembling a spent bullet. There was a mark on the bullet. It was like if it had been marked with a hard instrument. I could not make out what the mark was. This thing shown to me resembled the spent bullet which was in the envelope (witness refers to Identification "A") I kept the bullet in my possession until I produced it in evidence at the Preliminary Inquiry at the Magistrate's Court at Grenville. I ask leave to tender (spent bullet tendered admitted and marked Exhibit 1B1. Alexander not objecting) I kept the envelope until I produced it at the Magistrate's Court. I now ask leave to produce and tender it here. (Envelope tendered, admitted and marked Ex 1B2 Alexander not objecting).

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On Saturday 13/4/74 I saw P.C.Mark (P.W.7) He spoke to me. He handed me an envelope containing two cheque books; a Bank Book; a ten cent piece E.C.C.; a bunch of three keys; four letters, two addressed to Louise Donald; one to Roy Donald and the fourth to L. Donald. There was a plastic bottle containing something resembling tablets; some religious pamphlets. He also handed me a leather bag beige in colour. I kept all them things in my possession until I produced them and tendered them in the preliminary inquiry in the Magistrate's Court. These articles shown to me (witness refers to article marked "B" to "F") and the articles which were in the envelope handed to me by P.C.Mark (articles tendered, admitted and marked Exhibit 1B3 Alexander not objecting) This bag shown to me is the beige bag handed to me by P.C. Mark (witness refers to article marked for identification "G") (Bag tendered, admitted and marked Exh. 1B4, Alexander not objecting). At the mortuary Mrs. Donald was bawling, in a state of excitement, shocked.

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xx'd by Alexander for accused I agree that the bag (1B4) was not tendered in evidence before the Magistrate in Grenville. I do not know that Mark did not tell this jury that he gave me that back. I know that the things Mark gave me he did was as a result of a search. I did not doubt that Mark did not tell the jury that the search revealed the bag (1B4) I was not speaking the truth when I said I tendered the bag at the Magistrate's Court or when I said Mark handed me the bag (Exh. 1B4) Up to 7/4/74 I had been a policeman for 19 years. I joined the force as a Constable. I had been an A.S.P. for about eight months before 6/4/74 I had been an Inspector for about a year and a half. I had been a Sergeant for about two years. I had been a Corporal for about 3 to 4 years. My promotion could have been faster. I heard people say I was an efficient police officer. I agree with the people's opinions. I was called "The Sheriff." I was in charge of investigations in the matter. I do not remember seeing Angela Drakes the night of the 6th at the same but it might have been so. I agree that I told the Magistrate I saw her at River Antoine bridge that night. I returned there next day about 6.30 a.m. Sometime later I went to Mrs. Donald's house, and returned to the scene about 8 to 8.30 a.m. I stayed there until 10.30 a.m. When I spoke to Urlan Phillip and I remained there sometime after. Then I went to Hermitage Police Station about 11.00 a.m. with A.S.P. Francis. From there I went to accused's home in Conference I got there about 11.30 a.m. - minutes to twelve. There I spoke to accused's wife and left for Paraclete. It would have been about 12 to 12.15 I spoke to accused at Paraclete. First time I saw accused between 6/4/74 and 7/4/74 was at 12.15 p.m. on 7/4/74. From Paraclete I went with accused direct to Conference getting there about 12.30 - minutes to one p.m. A search was carried out. I was in or around the house of accused until the search was completed. Search lasted about twenty minutes. It was after the search I asked the accused about his whereabouts that night and he told me that at some time he was in Dolphus' shop. I then went to Grenville Police Station, got there about 1.30 p.m. I left the Station sometime after 2.00 p.m. about 2.15 p.m. I went to Mirabeau, Paraclete. I got to Mirabeau about 2.30 - Paraclete about 2.45 and then went back to the

In the High Court  
No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Innocent Belmar  
Cross-  
Examination

In the High Court

No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Innocent Belmar  
Cross-  
Examination

.station. I left again but not in connection with the investigation.

It should be true that I spoke to Dolphus Alexander at 10.00 o'clock that morning. I wouldn't doubt he told me he was busy. I do not remember meeting him on River Antoine bridge at 12 to 1 p.m. that day. So far as I remember I did not return to the bridge after I left it at 10.30. I do not remember that I asked Dolphus if accused was at his shop the night before. I could not have known the whereabouts of the accused, after leaving the bridge at 10.30 p.m.

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I checked the accused's story that he went to his girl friend that night. I went to the girl friend - Petra Joseph at River Sallee. I do not remember the time but accused was then in police custody. She told me yes accused was there that night. I asked her if accused had eaten there that night and she said yes. She told me what he ate. I could remember she said yes. She told me what he ate. I could remember she said amongst other things that he ate; blood pudding which she said she bought at the Grenville Market. It can take an average of about two hours to form and conduct an identification parade where there is only one identifying person.

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Around 4 p.m. I took my car to Tivoli pasture to collect Urlan Phillip. I did not see Angela Drakes and Lynette Rock at the Station before I went to collect Urlan Phillip.

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(Counsel refers to p.139 of Appeal Records)

I gave evidence in this Court to another jury in this case. I now say that I saw Angela Drakes and Lynette Rock before I went to collect Urlan Phillip. It could be more than three-quarters of an hour after I had seen them that I took Urlan to the Police Station. I am not saying that they were there at 1.00 p.m. o'clock. When I saw them I was certain they were there for an identification parade. Assuming that they were there at 1.00 o'clock, the parade would have ended by the time I saw them shortly after three o'clock. I was not in the room where Urlan Phillip attended the parade. He did not identify the accused in my presence. I gave evidence at the Magistrate's Court in this matter. My evidence was written and read back to me. I signed it. I would not doubt telling the Magistrate, "The accused was

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10 identified by Urlan Phillip in that parade in my presence." I would not have denied the Magistrate in my evidence. The statement to the Magistrate is true. I was not trying to deceive this court. This incident happened more than a year ago. I do not agree that at the parade I was walking up and down the line with Urlan Phillip. I do not know that it is improper for an investigation officer to be present at an identification parade.

To the Court I never heard so.

20 xxd continued I did not try to deny the jury by saying I was not there. I did not hear Urlan Phillip say that he could not identify the man he saw that night because he was wearing a big hat and a black coat. It took him more than half an hour to identify the accused. He was in the room for about half hour before he identified the accused. I did not tell Phillip to walk up and down the line to look carefully if he could not recognise the man. It is not true that he and I then walked up the line and back down. Accused, was in many places at different times. It is not accused who changed places while Urlan was in the room. I now say that A.S.P. Francis told accused he could change his position in the line if he wanted and accused changed from one place in the line to another. This was before Urlan came into the room. I saw accused move. I don't remember what position he occupied before he moved in that position he occupied after. I remained in the room for a little while after he had changed his position, and left. I now say after accused changed his place on the parade and Urlan Phillip identified him I left. I saw Urlan Phillip identify him. A.S.P. Francis also told me the boy identified him. I did not hear Urlan say, standing in front of accused that this man that he saw that night was the same size and height as accused but could not say if it was accused because the person he saw that night was wearing a big hat and a black coat. For the half hour Urlan was in the room, he was looking, moving up and down. Francis spoke to him. I did not hear him (Urlan) say anything. When I went to the scene at 6.30 a.m. on 7/4/74 I did not search. I had a Police party search the area later that morning. Nothing was found. Search was carried out under my direction. I gave them a specific area to search based on the information

In the High Court

No.2

Judge's Notes of Evidence

Prosecution Evidence

Innocent Belmar

Cross-Examination

In the High Court

No.2  
Judge's Notes of Evidence  
Prosecution Evidence  
Innocent Belmar Cross-Examination

which I had. By that time I had spoken to Angela Drakes, Urlan Phillip, Mrs. Donald and Mrs. Rock. I do not remember if I had spoken to Ann Romain before the search. I have heard the name Alison McBain. I do not remember telling untruth to maintain my efficiency. I do not doubt that I did not tell the Magistrate I spoke to Mrs. Donald and Angela on 7/4/74 at 7.30 p.m., but I remember speaking to her. I agree it would have been fresher in my mind than now. It is likely that if I did speak to her I would have told the Magistrate so. I told accused I had a search warrant to search his place. I did not have one. When I returned to accused's home with him and met A.S.P.Francis, it was not the first time I had seen A.S.P.Francis. When I went to accused's home first I went with Francis. He had the search warrant and the accused was not there. I went in search of him..

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I would not doubt that accused told me he remained at his girl friend up to about 9.30 to 10. He did say he got back to Dolphus' shop 10.30 to 11.

(Counsel refers to p.132 of Appeal Records)

I do not remember having told the jury at the last trial that accused told me, "I had left and went to my girlfriend's home at River Sallee I remained up to about 9.30 to 10 p.m. Then I went back to Dolphus' shop and I remained in the shop until about 1.00 a.m." I do not remember taking anything away from accused's home. I did not take a cap from the house. I took the cap and spoke to the accused about it and it was put back in its original position. So far as I remember Francis spoke to him about the cap also and took it away.

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(Counsel refers to page 135 of Appeal Record)

I remember saying at the last trial, "I did not find a cap in the house." I meant I did not search to get the cap. I saw it on the shelf. If it is written that I said I did not take the cap from the shelf, it must have been my mistake. I look at 1B2. It is not addressed to me. When I said it was addressed to me it was a clerical mistake. I could have made it. P.C.Joseph made a mistake in saying he handed the envelope to an N.C.O., Inspector Andrew. I did not know what

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became of the envelope that P.C. Mark gave me. When the articles were tendered at the Magistrate's Court, they were not tendered in the envelope. I am sure Mark brought the things to me in an envelope. I cannot remember putting them in any other container. I did not mention to the Magistrate that Mark gave them to me in the envelope. I could have told the Magistrate, "I put them in a paper bag and kept them in my possession at the Grenville Police Station. The items in the paper bag were written on the outside. This could have been true. The items did not include the beige bag. The writing on the paper bag would have described the absence of the beige bag. The paper bag was tendered in the Magistrate's Court. I do not know where it is. I agree that I showed Mrs. Donald that beige bag in the Police Station. Mark did not bring the bag at all. He brought all the other items together. I cannot say that it was the morning of the hearing at the Magistrate Court that I showed her them articles. I had information from Mrs. Donald that the articles (1B3) were in the bag.(1B4). I did not show Mrs. Donald 1B3 instead of 1B4. Exh. 1B4 was brought in to the Police Station later on the 13th April 1974. I remembered then after the cross-examination this morning. When I showed Mrs. Donald the bag I held the view it had something to do with this case. The bag was brought in. I did not know who brought it in. I found out within the 13th or 14th April, When I gave evidence in the Magistrate's Court I had the bag and had formed the view that it had some connection with the case. I do not agree that I have been harrassing accused since 1973. In February 1973, I had him as a suspect for attacking and shooting three men over a game of chance called Pokins. I did not bring any charges against him. Later that month, I was carrying out investigations into the burning of a motor car owned by him. I did not bring any charges but I succeeded in blocking the Insurance money. I did not tell the accused I'd get him one of these days. On the evening of 6/4/74 at 9.15 p.m. I was at home with my wife.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Innocent Belmar  
Cross-  
Examination

INNOCENT BELMAR S O B Re-xd

Re-Examination

When I said that accused was identified in my presence with one exception, I meant I



In the High Court

No.2

Judge's Notes of Evidence

Prosecution Evidence

Innocent Belmar Re-Examination

was in a room in the same building of the Grenville Police Station separate from the room in which the parade was. The room was divided by a partition on one side of which I was while the parade was conducted on the other side. I have seen investigating officers being present at identification parades. I heard from learned counsel in Court that it is investigation. When I said it took Urian Phillip half hour to identify accused I meant from the time he arrived at the Police Station, the period of his arrival in the room and inclusive of the time he took to identify accused took half an hour. I gave instructions to search a particular area. The search was under my direction. Subsequently articles were found but not in that area. When I spoke to him about the cap he said, "I was wearing the cap the Saturday afternoon."

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To the Court I told the Magistrate that accused said, "I am the owner but I did not wear it last night I had it in my pocket."

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Accused said, "I am the owner of the cap I had it with me last night but I don't remember wearing it."

Adonis Francis Examination

ADONIS FRANCIS S O B Asst. Supt. of Police in Royal Grenada Police Force, attached to Training College. I have been in the force for 23 years. In April 1974, I was Acting Asst. Supt. I know accused. On Sunday 7/4/74 I went to Grenville at the Station then at about 8.00 a.m. I carried out investigations in connection with the alleged shooting of Roy Donald. I was then officer in charge of Criminal Investigations Department and stationed in St. George's. I went to River Antoine at about 10.00 a.m. Then I met Belmar (P.W.9) and other policemen. I had a conversation with Belmar and as a result I went back to the Grenville Police Station where I obtained a Search Warrant to search the house or premises of accused. I went to Conference to the home of the accused. There I was joined by Belmar and other Policemen. I met accused's wife in the house but he was absent. I had a conversation with the accused's wife and spoke with Belmar who went away. After Belmar left I read the warrant to accused's wife and I searched the house with other Policemen. While searching I found a cap on a shelf in the living room of the house. It was a two colour cap in black and blue.

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I spoke to accused's wife and as a result of what she told me kept the cap in custody. I also found three twenty dollar notes E.C.C. in a shirt pocket in a bedroom. Accused's wife was present when the bills were found. I spoke to her and subsequently kept the money. While I was still in the house A.S.P. Belmar arrived with accused. I said to accused, "I had a search warrant to search your house I read the warrant to your wife and conducted a search." I then showed him the cap I found on the shelf and said, "Do you know this cap?" He said, "Yes it belongs to me. I used it last night." Belmar was present and in a position to hear what accused said. Afterwards he took the cap from me and put it on his head and pulled the peak down over his eyes. This happened in the house. I afterwards took the cap and kept it in my custody. I told him I also found three twenty dollar bills in a shirt pocket in one of the bedrooms and asked him what he had to say about them. He said, "It is my money. I had it there for sometime." I kept the money in my custody and asked accused to accompany me to Grenville Police Station. At the station I further showed him the cap and he also said, "It is mine, it belonging to me." I told him, "I intend holding an identification parade to find out who is the person who shot Roy Donald at River Antoine last night. Will you be desirous of standing in the parade?" He said, "Yes." I then gave Cpl. Andrew certain instructions. Cpl. Andrew ordered accused upstairs of the Police Station. I followed Cpl. Andrew and accused upstairs. I saw accused put to sit in a closed room upstairs. In the room he could not be seen by persons walking in the streets or along the corridor. I went back downstairs and gave Cpl. James some instructions. He left the Station walking in direction of Albert Street. About twenty minutes later he returned with about eight men approximately same age, height, complexion similarly dressed as accused. I took them to the Recreation Room upstairs of the Police Station and lined them up from right to left. I then gave Sergt. Hosten instructions. He went and brought the accused into the Recreation Room. I told accused, "These eight men standing there along with you will form the parade. You can object to anyone

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Adonis Francis  
Examination

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In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Adonis Francis  
Examination

whom you do not like on the parade. You can ask me to get anyone of the men to change his dress if you do not like how anyone is dressed. If you do not like how the men are lined up you can ask me to change the positions I will. You can call a friend or lawyer to witness the proceeding. I told him he could take up any position he wanted among the men. He said he was not worried about any of the things I told him he could do and took up the 9th position reading from right to left. After he had taken up his position I passed certain instructions to Cpl. James who was downstairs. Cpl. James ushered Urlan Phillip into the room where the parade was lined up. I said to Phillip, "Look at the men standing there and if you see the man who ran from the banana field at River Antoine last night with a bag slung over his shoulder, point him out." He looked at the men for about five minutes and he afterwards pointed the accused and said, "That's the man." I then dismissed the parade.

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To the Court Urlan Phillip didn't stay any longer in the room, only about five minutes.

Continuing evidence-in-chief He had been in another room opposite to the Police Station. Having dismissed the parade I said to the accused, "You are not obliged to say anything but whatever you say will be put into writing and may be given in evidence." I went on, "You have been identified by Urlan Phillip. What have you to say with respect to that?" He said, "I don't know anything about that." I subsequently arrested him, charged him with the murder of Roy Donald. I further cautioned him. He did not say anything.

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After I executed the search warrant I endorsed it at the back. The warrant was signed by Mr. Claude Morrison; a Justice of the Peace. I produced the warrant at the Magistrate's Court when I gave evidence. It was marked for identification. I can identify the warrant if I see it. When I took the cap from the house I took it to the Police Station, Grenville and labelled it and I left it in the custody of Belmar (P.W.9). I produced the cap as an exhibit at the preliminary inquiry at the Magistrate's Court.

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St. Paul states he wishes to tender in evidence here a search warrant which was produced

marked for identification at the Preliminary Inquiry by the witness. He has served notice of additional evidence in the Registrar and on the accused. He would like to show witness search warrant, to witness with a view to its being admitted to evidence.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Adonis Francis  
Examination

Alexander states he is not objecting.

10 This search warrant shown me is the warrant I executed in the home of accused on 7/4/74. I presented it at the Preliminary Inquiry into this matter at the Magistrate's Court in Grenville. I ask leave to tender. Search warrant dated 7/4/74 tendered, admitted and marked Exh. AF1, Alexander not objecting.

I presented the cap I found in the accused's home to the Magistrate's Court at the Preliminary Inquiry. This cap shown to me is the cap (cap tendered, admitted and marked - Exh. AF2, Alexander not objecting).

20 On 30/10/75 I inspected a Toyota van No.1195 owned by Mrs. Louise Donald in her presence at the Supreme Court courtyard, St. George's. I took measurements of the van. The length of the van is fifteen feet; width of tray five feet; height of tray from the ground three feet six inches; height of hood from ground five feet; depth of tray sixteen inches; width of tray inside four feet eight and half inches; length of tray seven feet  
30 eight inches.

40 xxd by Alexander for accused I was living in St. George's in April 1974. I left Grenville Police Station about 5 p.m. that day and did not return that day. I endorsed the warrant (exh. AF1) before I left the Station. One taken out a search warrant as a result of information received. The two hundred dollars (\$200.00) was alleged to have been stolen from the van of Louise Donald in whose custody it was. It was alleged to have been stolen on 6/4/74, at River Antoine in the vicinity of the bridge. It was alleged to have been in a bag. I had this information about 10.00 a.m. on 7/4/74. I was then in the vicinity of the River Antoine Bridge. There was another parade held earlier, attended by the intended identifying witnesses one of whom was Angela Drakes. She did not point out accused. She

Cross-  
Examination

In the High  
Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Adonis Francis  
Cross-  
Examination

pointed out another person and accused and said the person she had seen the night of the sixth resembled one of them. The accused and the other person were not standing close to each other. The other person she pointed to was one Perrotte, a Police Constable. It was not Richard Rogers she pointed to. I gave evidence at the former trial.

(Counsel refers to p.128 of Appeal Record)

I cannot remember if I then said, "She went to Police Constable Rogers." I remember saying, "That looks like the person." She was referring to P.C.Rogers and I did say the above things at the former trial - Exh. AF2. The cap does not look like a lady's cap. Accused did not say it was his wife's cap. He said he used it last night and he had it in his pocket. I understood him to mean that sometime he wore it and sometimes he took it off and put it in his pocket. He wearing the cap meant something to me but his possession of the cap that night meant more. Having the cap in his pocket meant more to me than his wearing it. I do not remember if I told the Magistrate he was wearing it. I told the Magistrate he had it in his pocket. Pocket meant to me possession. He put the cap on him twice; at his home and at the Police Station. He did so at his home on 7/4/74 about 12.15 p.m. It would not be true to say I saw accused at his home on that day. It would not be true to say that the first time I saw him that day was at the Police Station. It was an oversight when I said I saw accused at Police Station for first time. Refers to p.129.

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I said at the last trial, I said, "The first time I saw the accused was at the Police Station." That was an oversight. I said, "I think earlier than 3.20 p.m." This was an oversight. The time that I saw accused, is after twelve, as given at the last trial is correct. I can execute a warrant on a person in his absence if I am satisfied as to his dwelling place and there is a responsible person such as his wife, his mother or father, girl friend Exh. AF1 in both a search warrant and a warrant of arrest. If the person is not there then he cannot be arrested. I took out the search warrant. I made it at noon. The accused and Belmar got to the house after twelve noon. I saw Belmar when he came back from Paraclete. I had

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not yet read the search warrant when Belmar left for Paraclete. I had the cap until the accused came I spoke to accused about it and he spoke to me about it. It would not have been possible for Mr. Belmar to have removed the cap from the shelf and put it back in the interval between my finding and taking custody of it and my going to Police Station.

In the High Court

No.2  
Judge's Notes  
of Evidence

Prosecution  
Evidence

Adonis Francis  
Cross-  
Examination

(Counsel refers to p.126)

10 I did say I did not see Belmar back at the house at any time. That was not the truth. "No Sir, I did not see Charles Ferguson at that time anyhow that day" is an oversight. I just didn't tell the Magistrate about showing accused the cap at his home. I had no particular reason for the omissions. I did not tell the Magistrate anything about any transaction I had with accused at his home.

20 At the first trial I did not tell the jury either. This is the first time I am telling the Court that I had any transaction with accused at this home. What I said before was that I never saw accused at all at his home that day. Belmar was in the Recreation Room for a little while and then he left. He was standing in the corridor leading to the room for about five minutes. Parade had not yet started, Urlan Phillip was still there down-stairs. Accused was where he was originally.

30 The right room was locked up. I was in the room. I could have seen Belmar from where I was. There was nothing to prevent him from going into the room. It is not true that Belmar was in the room when the parade was being conducted. It is not true that Urlan said he could not identify the man he saw because the man was wearing a big hat and a black coat. It is not true that after that Belmar told Urlan to walk up and down the line and see if he could

40 recognise the man he saw that night. It is not true that Belmar and Urlan went up the line and back down. It is not true that Urlan said the man he saw was same height and size as accused but he could not say it was accused because the man he saw that night was wearing a big hat and a black coat. I did not know P.C. Roger on this parade.

LAWRENCE GIBBS S O B (Recalled by the Court)

Lawrence Gibbs  
(Recalled)  
Examination

The witness is handed the spent bullet and told

In the High Court

to show to the jury the marks which he put on it.

No.2  
Judge's Notes  
of Evidence  
Prosecution  
Evidence  
Lawrence Gibbs  
(Recalled)  
Examination

The jurors are shown by the witness, the marks I showed the letters "L.6" and the figures 4/7.

The figures "74" were partly obscured. The 4/7 means 7th April.

Ann Romain  
Examination

ANN ROMAIN S O B I live at La Poterie, St. Andrews. Manual Worker. On Saturday 6/4/74 between 9 and 9.30 p.m. I was at home. I hear two shots sound like a gun. I also a bawling of someone coming from the direction of River Antoine from the sound of the shots also came. I started running down the road in direction of River Antoine. I saw a man come out from Mr. Ramdhanny's fig and cut across the road about a rod in front of me (witness point out a distance of eighteen feet from witness box to last jury bench). He passed through our land and went up the hill. It was a moonlight night. He was slowly trotting across the road. I recognised the man. I see him in court today. He is the accused (witness points to accused) I know him about five years. He had on clothes showing dark in the night. He had a cap on his head. Accused was coming from direction of River Antoine. I went down to River Antoine bridge. I met Mr. Donald lying on the ground. He was lying on his side. He appeared dead to me. I also saw Mrs. Donald; Angela Drakes and Mrs. Donald's sister. Mr. Donald was Mrs. Donald's husband. Donald was lying about forty feet from the bridge. The man, when I saw him was about a hundred feet from the bridge.

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Cross-  
Examination

xxd by Alexander for accused The man crossed La Poterie Road, the main road. I was running down that road when I first saw the man. There is a gap from my house to the road. I did not come out immediately after I heard the bawling. It was about a minute after. I came down my gap to the road and turned left going to the River Antoine Bridge when I first saw the man he was in the road and he was going across the road. The left side of his face was to me. He was in the middle of the road when I first saw him. He ran straight across up the hill. I did not see him in Ramdhanny's

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land. I did not see him come from River Antoine Bridge. When I saw him, he did not have the cap down on his face. I saw it on his forehead. I gave evidence in the Magistrate's Court. It was read back to me. I said it was correct and I signed it. I did not tell the Magistrate accused was wearing his cap down on his face. I see in the original deposition signed by me and now shown to me the words, "down on his face". I gave evidence soon after the 6/4/74. The facts was there fresh in my mind. I did not see anyone else at the bridge except Mrs. Donald, her sister and her niece. I know Urlan Phillip I did not meet him at the bridge.

In the High Court

No.2  
Judge's Notes of Evidence

Prosecution Evidence

Ann Romain Cross-Examination

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Refers to p. 118.

I gave evidence before another jury in this matter. I did not tell the jury, "Besides them I met somebody alone when I got there. I met Urlan Phillip. He was the only other person there. He was standing by Mr. Donald's van when I met him." I know Franklyn Joseph, Franklyn Bristol and Lennox Drakes. They were by the bridge that night. They came there after me. Urlan was there also. He got there after me. I saw him about four minutes after I got there. I did not see when he came. He got there before the other three boys. I saw them about five minutes after I got there. I did not tell the jury in the other trial, "When I got there Urlan Phillip was there."

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D E F E N C E

Defence Evidence

CHARLES FERGUSON unsworn from the dock states-

Charles Ferguson

Statement from the dock

My name is Charles Ferguson and up to 6/4/74 I lived at Conference, St. Andrew's. I am married and have three children. On Saturday 6/4/74 I left my home at Conference, St. Andrew's and travelled to Mt. Rose by one Mr. Dolphus' shop. I went part of the way by car and the rest of the way walking. I had a drink at the shop and left there about 6.00 p.m. for River Sallee, where my girl friend Petra Joseph lived. It was a habit to meet at Mr. Dolphus' shop almost every week-end for

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In the High Court

No.2  
Judge's Notes  
of Evidence  
Defence  
Evidence  
Charles  
Ferguson  
Statement from  
the dock

drink and playing card. I was expecting my brother Donald Ferguson to meet me there. I left a message for him to meet me by my girl friend Petra Joseph. On that night I was wearing a light green shirtjack and a dark brown pants. I arrived at my girl friend's home about minutes to seven. I had food in the kitchen and remained there chatting with her. About 8.30p.m., my brother Donald, Ossie Francis and Francis Chitan came there at my girl friend. They came in Donald's car. My girl friend prepared food for them with blood pudding and they ate by the roadside. They also ate farine and sugar. After they finished eating, the four of us left about minutes to ten in Donald's car, I drove the car and we went to Mr. Dolphus' shop. We arrived there shortly after ten. At the shop Mr. Dolphus told us that he heard Mr. Donald got shot and sent Tampooof to find out at the hospital. Tampooof returned a little while after us and told Mr. Dolphus that he gathered that the man who shot Mr. Donald is a thin, tall, fair-skinned person wearing a beard. The four of us remained in the shop with other men drinking and playing cards. We left there about 12.30 a.m. for home. I arrived home about 1.00 a.m. The next day, Sunday April 7th, I went in Paraclete to my mother. A.S.P. Belmar and three other policemen came up to me and ordered me to their car. I know A.S.P. Belmar for a very long time and he also threatened me by telling me he will get me. They took me by my home and A.S.P. Belmar searched all my pockets and took my wallet with \$33.31 and other policemen take me away. They took me to the Grenville Police Station. I did not see A.S.P. Francis by my home. At the Station I was taken to a room where I met A.S.P. Francis for the first time. He showed me a brown pants and black and white and a light green shirt-jack and a cap. He asked me if I know these. I said yes. I told him the clothes belong to me and the cap belong to my wife. I did not put the cap on. About 2.30 p.m. I was taken in a room upstairs the Police Station. A.S.P. Francis told me that he is having an identification parade. I saw a strange lady came up and A.S.P. Adonis Francis told the lady, "If you see the man shot Mr. Donald in this line up, point him out." The lady went up and down the line and said, "The person isn't here." Then she left. Then Angela Drakes came up which I know very well. A.S.P. Adonis Francis also told her again if she see the man that shot Mr. Donald, point him out. She went

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and point to P.C. Richard Roger which was standing near to me and said, "You look like the man I saw last night." I was taken back downstairs the Police Station. About 3.30 p.m., I was back upstairs to the said room. A.S.P. Adonis Francis told me he intend having a next identification parade. I went and stood up in the same place. A.S.P. Belmar was there and A.S.P. Belmar called, "Come up". A boy came up which I don't know. A.S.P. Adonis Francis told him, "If you see the man you say you saw run from Mr. Ramdhanny's banana last night in this line up, point him out." The boy said, "The man I saw last night was wearing a big hat and a black coat. I did not see his face so I cannot able to identify him in the line up." After a while A.S.P. Belmar told the boy to walk up and down the line and take a close look. A.S.P. Belmar walked up and down the line with the boy. The boy came down to me and said, "The height and size of you looking as the person I saw last night but I cannot say it is you because the person was wearing a big hat and a black coat." I was taken back downstairs the Police Station and was put in a cell. I was not by River Antoine Bridge on the 6th of April 1974. I did not take any bag from Mrs. Donald. I did not shoot Mr. Donald. That is all.

In the High Court

No.2  
Judge's Notes  
of Evidence

Defence  
Evidence

Charles Ferguson

Statement from  
the dock

Accused states he has witnesses he wishes to call and calls one.

PETRA JOSEPH S O B I live at River Sallee. I know accused Charles Ferguson. Have known him for about six years. I have a child for him. I remember 6th April, 1974. I saw him at about 7 to 7.30 p.m. that day. He came to my home. He left my home about 9.45 p.m. He left with Ossie, Donald and Chitan. Ossie, Donald and Chitan came thereabout eight to eight thirty p.m.

Petra Joseph  
Examination

xxd by Christian for Crown Accused came to my home alone. He came into the kitchen. I was cooking yam and fig. I also had blood pudding. He and I had eaten before the other men came. I guessed the time he came. I cannot read the time is now showing (The clock shows 10.09 a.m.) I guess the time now to be past ten. I do not

Cross-  
Examination

In the High Court

No.2  
Judge's Notes  
of Evidence  
Defence  
Evidence  
Petra Joseph  
Cross-  
Examination

have a clock, in the house. I have a radio. It even playing in the house. It was on a shelf in the hall. We stayed in the kitchen until the other men came. I was not surprised to see accused that night. He was accustomed to come there on Saturday nights. He used to play cards and drink at Dolphus' shop on Saturday nights. I just guessed the time Ossie and the other men came. Ossie and Donald came into the kitchen. I was not surprised to see them. Ossie and them always came there. Then they left to a shop at the junction about five rods away. Before he went Donald said he was hungry. I prepared food for him. I had some already cooked. I gave Ossie and Donald food. Chitan was in the car. I gave them the food in front of my front door. They sat on the cliff which is in front the door and ate it. They remained there a little before they left. I went in front the door. They left about a quarter to ten. I asked Charles the time before he left. While they were eating, we all were in front the door. Chitan was in the car, sitting in the back seat. I did not have anywhere to go that night. The radio was still on when Charles was leaving. I asked him the time. He looked at his watch which he had on. Accused was at me between 9 and 10 o'clock that night. The story I have told is not untrue.

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Ernest  
Wilkinson  
Examination

ERNEST WILKINSON S O B Registrar of the Supreme Court and the Court of Appeal. I received the original depositions, Commissioner of Police vs. Charles Ferguson. Among them were depositions of Urlan Phillip and Ann Romain the former dated 17/4/74 and signed by him and the Magistrate; the latter dated 23/4/74 signed by him and the Magistrate. Depositions of Urlan Phillip and Ann Romain tendered, admitted and marked. Exhs.EW1 and EW2 respectively.

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I had the custody of notes of evidence taken at the first trial of Charles Ferguson. Among them is evidence of Ann Romain dated 8/10/74 at pp.117-121 of the Record of Appeal. (Notes of evidence tendered, admitted or marked Exhibit EW3. Christian not objecting).

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JUDGE'S SUMMING-UP

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No.3  
Judge's  
Summing-up  
dated 4th  
November 1975

NEDD J:

10 Mr. Foreman and members of the jury, the  
accused has been arraigned on a charge of murder.  
In the indictment presented by the Crown it is  
alleged that he, Charles Ferguson, on Saturday  
the 6th day of April, 1974, at La Poterie in  
the parish of Saint Andrew, in this state of  
Grenada, committed murder, by intentionally  
causing the death of Roy Donald by unlawful  
harm, and he thereby committed a breach of  
section 234 of the Criminal Code of the State.

20 What constitutes the crime of murder has  
actually been set out in the charge. A person  
commits murder who intentionally causes the  
death of another by unlawful harm. In order,  
therefore, for the Prosecution to secure a  
conviction of murder against the accused the  
Prosecution must prove that the accused  
intentionally did an act which caused harm to  
the deceased Roy Donald; that that harm was  
unlawful and resulted in the death of Roy Donald.

30 It will not be out of place to mention  
here also, that by the law of this State a  
death shall not be held to have been caused by  
harm unless such death takes place within a  
year and a day of the date upon which the harm  
was inflicted. You have heard me say that the  
Prosecution must prove that the accused intention-  
ally did an act. You might well ask how does  
one know when a person does an act intentionally?  
If a person does an act of a kind and in a manner  
which, if he had been cautious or observant when  
he did it, he should have realised that that act  
of his would have been likely to cause the event  
which followed upon his act, or contributed to  
cause it or, that there was a great risk of  
his act having the consequences which it did  
40 have, then that person is presumed in law to  
have intended to cause that event, unless it is  
established that he believed that the act would  
probably not have caused or contributed to  
cause the event. Again if a person does an act  
voluntarily, believing that his act will cause  
or contribute to cause an event, by the law of

In the High  
Court

No.3  
Judge's  
Summing-up  
dated 4th  
November  
1975

this state, he intended to cause that event, even though he might not have done it for the express purpose of causing the event or contributing to cause the event. His voluntary act plus his belief in the result is sufficient; and naturally if a person does an act for the purpose of causing an event or contributing to cause an event, then, by our law, he intended to cause that event. This is so even if, in fact, it was unlikely to cause the event, or even if he did not believe that it was likely to cause the event. What matters is, that he did it with that purpose, and if he did, then according to our law, his act was intentional.

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It will be your duty, Mr. Foreman and members of the jury, to examine all the evidence which has been put before you, and when I say all the evidence, I mean all the evidence adduced by the Crown, adduced by the defence and inclusive of exhibits as may have been tendered and admitted into evidence. Then, it will be your duty to see if you can infer from that evidence, such intention on the part of the accused as is required to be proved in a charge of murder.

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The intentional act must have caused harm to the deceased, Roy Donald, and that harm must have been unlawful. Now what is harm? Harm means any bodily hurt, disease or disorder, whether permanent or temporary; and harm becomes unlawful if it is caused intentionally or negligently without any of the justifications permitted and recognised by the law of this state. It may be necessary to touch upon these justifications at a later stage, even though it would appear, from the nature of the defence, that the question of justification does not arise.

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In addition, it must be established that the death of Roy Donald resulted from the unlawful harm occasioned within a year and a day of such unlawful harm. In the light of the defence, I must emphasise that it must be established, to your satisfaction, beyond reasonable doubt, that it was the accused, and no one else who intentionally did the act which caused the unlawful harm which resulted in Roy Donald's death.

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I have told you what the Prosecution must prove. I must now tell you the nature of the proof which the Prosecution has to give. The Prosecution is

not required to satisfy you beyond all doubt; it is required to satisfy you beyond reasonable doubt - to satisfy you beyond reasonable doubt that from the evidence before you - all the evidence, whether it be from the Prosecution or from the defence - that the accused is guilty of murder, as I have explained murder to you. If you entertain the kind of doubt, which might affect the mind of a person in the conduct of important affairs, then you entertain a reasonable doubt which is the kind of doubt which the Prosecution must remove in order to secure a conviction. The burden of thus proving the accused guilty rests on the Prosecution and remains there from the beginning to the end of the case, even when - as in this case - the accused has pleaded an alibi. The Prosecution must satisfy you that the accused's plea of alibi cannot, in the light of the evidence before you, stand the light of day, or hold water, or if you prefer more dignified language be entertained. Once you entertain that reasonable doubt, it must be resolved in favour of the accused, and he must be acquitted.

In the High Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November 1975

Now let us look at the evidence. I should like you first, to consider the medical evidence as to what caused Roy Donald's death. Dr. Gibbs, the first Prosecution witness, has told you that he, on the 7th of April, 1974, at about 11 a.m., performed a Post Mortem examination on the body of Roy Donald, identified to him by members of the deceased's family, including his wife, Louise Donald. His examination revealed what he described as "a penetrating injury consistent with a bullet entry wound situate in the midline of the anterior chest wall, just below the level of the sternal angle." He showed you where that was. This wound, upon exploration, was found - to use the doctor's language - to be continuous with a path which extended backwards and slightly to the left, penetrating the following structures in the order following: (1) The sternum just below the level of the sternal angle, (2) The upper border of the right Atrium of the heart penetrating the right atrium, (3) The lower border of the ascending portion of the aortic arch puncturing the aorta, (4) The Pericardium on its left posterolateral aspect, (5) Medial aspect of the pleura of the left lung just above and behind the hilum

In the High  
Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November  
1975

of that lung, (6) The substance of the left lung.

I interpret the medical verbiage to mean that a bullet entered Roy Donald's body in the region of the chest, and having entered, cut for itself a path which touched or affect, or penetrated - as the doctor has said - the several organs or structures in Roy Donald's body mentioned by the doctor. You will observe, from the foregoing, the tendency on the part of the bullet to move to the left. You may form the view that this is consistent with the opinion expressed by the doctor, that the gun which fired the bullet, was fired slightly from the right. I mention this, because great play has been made of Dr. Gibb's seeming failure to pay sufficient attention to the part the collar round the entry wound could play in determining the direction from which a bullet entering a body could come.

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You might wish to bear in mind that Dr. Gibbs, by his own admission did not specialise in pathology, and has only such basic knowledge of forensic medicine and pathology as would have been acquired by anyone qualifying as a General Medical Practitioner. It will be for you to decide if, because he does not know of eminent American experts in forensic medicine, toxicology and pathology, you should accept or reject his evidence, that, in his opinion, based on nine years' practical experience acquired in the West Indies and the United States of America, the deceased died of the injuries resulting from the firing of a bullet into his body.

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I should here mention the reference made by the learned defence counsel to the evidence of Dr. Gibbs, relative to the distance from which the bullet which entered Roy Donald's body was fired, and defence counsel's comparison of the opinion contained in that evidence with the factual evidence of Louise Donald as to the distance which separated the deceased from the deceased's assailant. You are entitled to and should give consideration to this factor, but in doing so, you will, no doubt, wish to bear in mind also that a spent bullet was extracted by Dr. Gibbs from Roy Donald's body. It was identified by him and he showed you how he marked it, after extracting it and before giving it to the Police Officer, Police Constable Joseph, the fifth

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Prosecution witness, who witnessed the Post Mortem Examination.

In the High Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November 1975

10 It is for you, Mr. Foreman and members of the jury, to decide whether or not you accept the opinion expressed by the doctor as to the cause of Roy Donald's death. If you do not, the Prosecution would have failed and you will acquit the accused. If you do, then it would have been established that harm was caused to Roy Donald which resulted in or caused his death. On the assumption that you accept the doctor's opinion, I invite you to examine the other evidence with a view to ascertaining, whether or not the Crown has established, beyond reasonable doubt, that it was the accused who intentionally caused that harm, and that the harm was unlawful.

20 It will be convenient, at this state, here, to consider Police Constable Joseph's evidence. As I have already stated, he witnessed the Post Mortem Examination performed by Dr. Gibbs; saw him extract a spent bullet from Roy Donald's body and marked it in the manner described by Dr. Gibbs. He received the spent bullet so marked from Dr. Gibbs and put it in an envelope, which he inscribed, and which he afterwards took to the Grenville Police Station and handed over to Inspector Andrews. I would have you observe that this last mentioned statement that he handed the envelope with the spent bullet to Inspector Andrews conflicts with the evidence of Innocent Belmar, who tol you that P.C. Joseph handed to him the spent bullet in an envelope addressed to him. This was one of the many conflicts in the evidence adduced by the Prosecution. The rest of the Prosecution's evidence is given by three groups of witnesses and two individual witnesses. In the first group are, Louise Donald, the widow of the deceased, Lynette Rock and Angela Drakes. These persons were on the spot at River Antoine Bridge when Roy Donald was shot. The second group consists of Urlan Phillip and Ann Romain, who arrived on the scene shortly after the shooting. The Police Investigators, Innocent Belmar and Assistant Superintendent of Police Francis, 40 comprise the third group. Acting Corporal 50



In the High Court

No.3  
Judge's  
Summing-up  
dated 4th  
November  
1975

Selwyn Mark and David Alexander, the shopkeeper, are the individuals whose evidence completes the evidence adduced by the Prosecution.

From what you have been told by Louise Donald, Lynette Rock and Angela Drakes, the three of them, along with a child, aged about 5 years, left Mrs. Donald's shop, at La Poterie on the 6th of April, 1974, at approximately 9.15 p.m. for River Antoine in a Toyota pick-up or van, driven by the deceased, Roy Donald, Louise Donald's husband. The three of them were in the tray of the pick-up. Mrs. Donald was sitting on the left side of the tray. Lynette Rock on the right side, while Angela Drakes was standing, holding on to the top of the cab. The little child was in the cab with Roy Donald. Louise Donald had a brown and beige bag with a strap, in which were about \$200.00 in Eastern Caribbean Currency, two Barclays Bank cheque books, Royal Bank of Canada Bank book, a plastic bottle containing some tablets, a bunch of three keys - one large and two small, letters addressed to 'Louise Donald,' 'L.Donald' and 'Roy Donald.' When they got to River Antoine Bridge, they found that the road had been blocked with three sets of stones, one set at each end of the bridge and a third set in the middle of the bridge. Roy Donald, Lynette Rock and Angela Drakes got out of the pick-up and started removing the stones, Roy Donald going to the set of stones at the farther end of the bridge, Lynette Rock going to the heap in the middle of the bridge and Angela Drakes giving her attention to the third set nearest to the point at which the pick-up had stopped. While they were so engaged, a man, wearing dark clothing and with a cap pulled down on his forehead to the eye brows, suddenly appeared at the right side of the pick-up, and, pointing a gun at Louise Donald, who had remained sitting on the left side of the tray of the pick-up, told her to give him the money that she had taken that day. She gave him the bag containing the money and other articles, which I have enumerated, and told him, "Take it and go and leave them alone." The man remained standing where he was, despite her pleading with him to go. In the meantime, Lynette Rock looked up, on hearing the talking, and called out to Roy Donald who started running towards the pick-up and the man

standing there. The man turned from Louise Donald to Roy Donald's direction. Roy Donald did not stop, but continued to approach the man, daring him to kill him if he so wished. The man accepted the challenged and shot Donald, then turned and ran away, entering a track on the eastern side of the public road, called 'Ramdhanny's Trace.' Donald ran after him, but eventually fell on the western side of the road where, people coming from La Poterie including Urlan Phillip and Ann Romain, met him lying on the ground. He was taken to Princess Alice Hospital, where, as you have heard, Dr. Gibbs performed a Post Mortem examination on the body, and extracted therefrom, a spent bullet which was tendered and admitted into evidence.

In the High Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November 1975

You have been told by Louise Donald that the man who held her up, who spoke to her, with whom she continued to plead and who shot her husband that night, was the accused, Charles Ferguson. You have been told by her that she had known him for about five or six years; that he used to come into her shop to do business with her, on an average, three times a week. Lynette Rock did not know who the man was, neither did Angela Drakes, who failed to identify the accused, as the man at an identification parade held at the Grenville Police Station, even though she had known him before, having seen him on the road and driving his taxi, and even though she must have had more opportunity to observe the man who was standing by the side of the pick-up, than had Urlan Phillip and Ann Romain, who saw him trotting across the public road.

This brings us, naturally, to a consideration of the evidence of the next group - Urlan Phillip and Ann Romain. Urlan Phillip was trotting or running down to River Antoine bridge, having heard the sound of two shots, followed by bawling, coming from that direction. On his way he saw the accused coming from Ramdhanny's banana field. He also said in his evidence in chief that accused was trotting away from the bridge. Under cross-examination, he said: "I saw him cross from the first row of bananas across the space on to the road and up the hill and

In the High  
Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November  
1975

trotting up Ann Romain's gap." According to him, the accused had on dark garments and wore on his head a cap with the peak pulled down to reach to his eye brows. He, Urlan Phillip, continued on to the bridge whither the boys with whom he had been sitting by Lion's shop when he heard the shots had preceded him. There, he saw Louise Donald, Lynette Rock, Angela Drakes and many other people. He also saw Roy Donald lying on his back apparently dead. He helped to put Roy Donald into the pick-up and went into the pick-up when it took Roy Donald to the Princess Alice Hospital.

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That is a brief summary of Urlan Phillip's evidence. It is necessary to analyse that evidence and subject it to some scrutiny. I have already quoted what this witness said under cross-examination as to where he saw the accused. That, however, was not his only account. Also under cross-examination, he said: "I was on the main road when I saw the accused. I was just approaching Ann Romain's gap on the main road when I saw him. I was about 12 feet from the gap. I saw accused at Ann Romain's gap on the main road running up." It is possible that these two statements of Urlan Phillip are reconcilable. I don't know. The facts are your province, not mine. I merely put them before you. Now Urlan Phillip purported to recognise the accused near to the River Antoine bridge. He told you that the accused was wearing dark clothes and a cap, not a hat on his head; yet it has been established that he has previously given evidence in the former trial that he, the accused, was wearing a hat that night. You have heard him say that he did not remember if he said so; he might or might not have said so; it might or might not have been true.

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That was the pattern of Urlan Phillip's evidence whenever he was confronted with a variation between his evidence to you and that which he gave to a different jury when the accused was being first tried. Let me give you some instances. As to his having seen Innocent Belmar on that Sunday - I quote his evidence: "I don't remember if Belmar came to meet me at Tivoli pasture. I gave evidence in this court in this matter before. I can't remember

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saying then, 'Yes Sir I saw Inspector Belmar the following day, Sunday;' I might have said it or I might not. It could be correct or it could be incorrect. I can't remember saying he came for me in a car and bring me down Grenville Police Station. If I said so, it might be true, it might be correct or it might have been incorrect." A little later on, as to when he made the statement to the Police: "I think it is true that I identified the accused after I made the statement, but I am not sure. I cannot remember saying I gave the statement to the Police at Grenville Police Station after I identified Charles Ferguson. If I said so, it might have been correct or it might not have been." And again, as to the distance that he saw the accused from the bridge: "I gave evidence before the Magistrate; I cannot remember telling the Magistrate I saw Charles Ferguson, the accused about 130 yards from the bridge. When I gave evidence before the Magistrate it was read back, I say it was correct and signed it. I see my signature on my original deposition now shown to me, and I see 130 yards there before me. Both statements could be correct. I don't remember saying at the last trial - 'When I reach about 75 yards from the bridge I saw Charles Ferguson.' If I said so, it may have been correct, or it may not be."

In the High Court

No. 3  
Judge's  
Summin-up  
dated 4th  
November  
1975

That was the pattern of the evidence given to you by Urlan Phillip. Now, the Crown is asking you to accept this witness's evidence as one who saw and recognised the accused as the man who was coming from the direction of the scene of the shooting within minutes of such shooting. The defence has submitted that Urlan Phillip was never there. You have to consider that in the matter of the cap, it is a part and an important part of the Prosecution's case, that the man who shot Roy Donald was wearing a cap. What is more, a cap was tendered and admitted in evidence, suggesting that that was the cap accused was wearing. On this very material particular as well as on others, some of which I have mentioned, Urlan Phillip has made inconsistent statements on oath on different occasions. It is my duty to tell you that Urlan Phillip's evidence should be regarded as

In the High Court

No.3  
Judge's  
Summing-up  
dated 4th  
November  
1975

unreliable. I would add that you are not entitled to act upon statements made by the witness at the first trial or in his deposition before the Magistrate.

What I have now told you applies equally to Ann Romain who purports to have seen the accused in profile, (she has not said he turned his face towards her) and recognised him as he trotted across the road from the banana field and went up her gap. She, like Urlan Phillip, made inconsistent statements on oath on two different occasions about that all important cap. She told the Magistrate - the accused had the cap down on his face, and she showed you what she meant by being down on his face, and she showed you what she meant by being down on his face. She told you: "When I saw him he did not have the cap down on his face, I saw it on his forehead." Again she told you she did not meet Urlan Phillip at the bridge; whereas she testified at the other trial, although denying that she did so, as follows: "Besides them I met somebody else when I got there. I met Urlan Phillip. He was the only other person there; he was standing by Mr. Donald's van when I saw him." She went on to tell you that Urlan Phillip got to the bridge before the other boys. You will recall that, according to Urlan Phillip, the other boys out ran him to the bridge. It is my duty to tell you that you should regard Ann Romain's evidence as unreliable, and you must not in arriving at any decision in this case, act upon any previous statement on oath which she may have made.

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The evidence of Innocent Belmar and Assistant Superintendent of Police Francis, present you with what might most be described as the usual pattern of inconsistencies, not only as between their respective statements on oath in this trial, but as between their present statements on oath here and those which they made on previous occasions. In fact on one occasion, Innocent Belmar actually lied when he asserted that the brown and beige bag was handed to him by Acting Corporal Selwyn Mark and that he tendered it in evidence at the Magistrate's Court, thereby securing its admission into evidence in this Court. He was, however, quick to agree when he was confronted

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with indisputable facts.

In the High  
Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November 1975

10 Let us look at two important areas of  
Belmar's evidence. First, the identification  
of the accused. He told you that Urlan  
Phillip did not identify accused in his  
presence, but did not doubt that he told the  
Magistrate: "The accused was identified by  
Urlan Phillip on that parade in my presence."  
He explained to you that he was in a room  
which was separated from where the parade  
was held by a partition. How would you  
interpret the words "in my presence"? You  
will recall that it is the contention of  
the defence that Belmar was not only present  
but walked up and down the line of men on  
parade with Urlan Phillip. You will also  
recall that Belmar testified that "it took  
him, (meaning Urlan Phillip) more than half  
an hour to identify the accused. He was in  
20 the room for about half an hour before he  
identified accused." You might wish to  
ask yourselves: what was Urlan Phillip  
doing or what was being done to him in that  
room, that it took him half an hour to  
identify a man whom he had recognised the  
night before? But you must remember that  
Belmar explained that his estimate of half  
an hour was from the time he brought Phillip  
to the station to the time that he identified  
30 accused. It is worthy of mention here, that  
A.S.P. Francis said that Urlan Phillip  
identified the accused in about five minutes.  
I would ask you to bear these pieces of  
evidence of Belmar and Francis in mind when  
you consider what the accused had to say  
about the identification parade, and what  
took place, and decide which you should  
believe, or whether or not there is a doubt  
in your mind as to which to believe.

40 The other area of Belmar's evidence to  
which I should like to advert is in respect  
of the all important cap, the possession of  
which by the accused was considered more  
important by A.S.P. Francis than the fact  
that the accused was wearing it that night.  
I wish to remind you of the differing accounts  
given to you by Belmar about what accused  
said about this cap. In re-examination he  
said: "When I spoke to him about the cap he  
50 said (the 'him' is the accused) - he the

In the High Court

No.3  
Judge's  
Summing-up  
dated 4th  
November  
1975

accused said, "I was wearing a cap the Saturday afternoon." In answer to the Court he said, "I told the Magistrate that accused said 'I am the owner but I did not wear it last night. I had it in my pocket.' The accused said 'I am the owner of the cap, I had it with me last night, but I don't remember wearing it'." Compare this evidence with that of Assistant Superintendent of Police Francis, who testified - I quote - "I then showed him, the accused, the cap I found on the shelf and said, 'Do you know this cap?' He said, 'Yes, it belonged to me, I wore it last night.' Belmar was present and in a position to hear what the accused said." As against this, you have the assertion made by the accused, that he told A.S.P. Francis at the Police Station only, that "the cap was his wife's."

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The evidence of Assistant Superintendent of Police Francis consists of a number of oversights on his part. In this manner did he explain the inconsistencies between his evidence in this trial and the evidence given, either before the Magistrate or before this Court at the first trial of the accused - on inconsistencies which he admitted. Because of these inconsistencies and the inconsistencies between the evidence of Belmar in this trial and his evidence on previous occasions, both of these witnesses - both Belmar and A.S.P. Francis - have qualified as unreliable witnesses, on a part with Urland Phillip and Ann Romain. There is, however, more. A.S.P. Francis has testified that Angela Drakes pointed out two persons - the accused and another man when she attended one identification parade, and said that the man she saw that night of the 6th of April, resembled one of the two Angela Drakes testified similarly. At the time of that identification parade the investigating officers were in possession of the substance of the accused's alibi. I would ask you to remember this, because it is of importance, and I shall refer to it when I deal with the defence of the accused and the duty cast upon the Crown in respect of that defence.

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The remaining witnesses called by the Prosecution were Acting Corporal Selwyn Mark and David Alexander. Selwyn Mark found the articles which were tendered and admitted as

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Exhibit 1.B.3. He did not find the bag -  
the beige bag - and he did not hand over any  
such bag to Belmar as Belmar at first said,  
later retracting. You should ignore that  
beige bag which was admitted into evidence  
in this Court as a result of a lie on the  
part of Belmar when he stated that it had  
previously been admitted into evidence in the  
Magistrate's Court. That bag, for some reason,  
of which you have not been informed, was never  
tendered at the Magistrate's Court and the  
admission in this Court was secured without  
the adoption of the proper procedure for the  
introduction of additional evidence, as was  
the course taken in the case of the Search  
Warrant. The other articles constituting  
1.B.3 were found by Mark in an area not  
searched by the Police, and some seven days  
after the shooting in an area to which he was  
directed by an employee of Louise Donald.  
You are at liberty to draw what inference  
you wish from these facts, but you might  
consider it unlikely that Roy Donald's  
assailant would have taken time off to dispose  
of those articles until he had got clear of  
the area immediately surrounding the scene  
of the crime; so that there may be nothing  
strange in these articles being found from  
the immediate vicinity of the crime.

In the High  
Court

No.3  
Judge's  
Summing-up  
dated 4th  
November 1975

David Alexander's evidence tends to  
show that he heard someone tell the accused's  
brother, Donald, Ossie and Chitan, that  
accused asked them to meet him at River  
Sallee; that the accused had earlier passed  
at his shop and left; that accused used to  
pass at his shop at weekend sometimes going  
to River Sallee to his girl friend, Petra.  
And that Mr. Foreman and members of the jury  
is exactly where the accused is saying that  
he was that night, at the time when he was  
supposed to have been engaged in shooting  
Roy Donald. He told the Police so from the  
start. He reiterated it here to you, and  
called his girl friend Petra to support him.  
You saw and heard her in evidence-in-chief  
and under cross-examination. It is for you  
to decide what weight you should attach to  
her evidence. It is for you to decide what  
weight you should attach to the accused's  
statement from the dock. The onus is on the  
Prosecution to satisfy you, beyond reasonable



In the High  
Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November  
1975

doubt, that the alibi is false - to destroy it. The Prosecution has attempted to do that by means of Urlan Phillip, Ann Romain - both unreliable witnesses - by the production of a cap, supposedly worn by the accused that night, concerning which wearing there is contradictory evidence, by an identification parade, in which the identifying witness took half an hour to identify the accused, and by the evidence of Louise Donald, who positively stated that accused was the person who shot her husband.

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In connection with the evidence of Louise Donald, you might wish to bear in mind the evidence of Dr. Gibbs, embodied in the affidavit which he swore, and concerning which he has said, in answer to you that at the time he swore it he was convinced that what was read to him was the truth. You should bear in mind also, that before you here, he has expressed the view that it was Lynette Rock who made that statement which is quoted in the affidavit.

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Mr. Foreman and members of the jury, I do not think that it can be, or is being seriously disputed, that Roy Donald died as a result of a bullet wound, and that is harm; that is harm within the meaning of our law. There is no evidence at all to support any suggestion that harm was inflicted on Roy Donald by his assailant with any justification, which would wholly excuse the act. There is evidence before you which would entitle you, from the circumstances revealed to infer an intention on the part of the assailant to cause the event which followed the act. In other words, there is evidence of murder having been done; but are you satisfied, beyond reasonable doubt, that it was the accused who did it? The Prosecution must satisfy you - I repeat - that the accused's alibi is false. Angela Drakes pointed out two men as possible suspects at a time when the Police had the accused's alibi. You might ask, what has been done with regard to that other man concerning whom Angela Drakes said the man resembled this one. You have heard nothing about Police activity in connection with that man. The Prosecution has been silent. Two men pointed out as resembling one another, one man is brought up, charged, what about the other man?

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It is for you, Mr. Foreman and members of

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the jury, to consider. You have heard the accused's story; you have heard the evidence of his witness. You have heard the evidence of David Alexander. You must have remarked the inconsistencies in the evidence for the Prosecution. It is your duty to consider all that evidence and take your decision as to the guilt or innocence of the accused; guilt beyond reasonable doubt. If you believe Louise Donald, after considering Dr. Gibb's evidence, and disbelieve the accused and his witness, you must convict the accused of murder; there are no circumstances to warrant a direction from me on the possibility of returning a verdict of manslaughter. You convict of murder or acquit. If you believe the accused and his witness, you must of course, acquit him. If you are not certain and your uncertainty is of the type which a man would have in the conduct of important affairs. In such case again, you must give such - resolve such uncertainty in favour of the accused and acquit him. In our system of law, it is better - it is considered better - that one guilty man go free rather than 999 innocent men be wrongly, improperly and unjustly convicted. Please consider your verdict.

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In the High Court

No. 3  
Judge's  
Summing-up  
dated 4th  
November 1975

In the Court  
of Appeal

No.4  
Notice of  
Appeal  
dated 5th  
November  
1975

No. 4

NOTICE OF APPEAL

CRIMINAL FORM 1

IN THE COURT OF APPEAL

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

(State) GRENADA

Criminal Appeal No.10 of 1975

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of Appellant: CHARLES FERGUSON 10

Convicted at the Assized held at ST. GEORGES,  
GRENADA

Offence of which convicted: MURDER

SENTENCE: Death by hanging

Date when convicted: 4TH NOVEMBER, 1975

Date when sentence passed: 4TH NOVEMBER, 1975

Name of Prison: RICHMOND HILL

I the above-mentioned appellant hereby  
give you notice that I desire to appeal to the  
Court of Appeal against my CONVICTION on the  
grounds hereinafter set forth on page 2 of this  
notice. 20

(signed) Charles Ferguson  
Appellant

Dated this 5th day of November, 1975

QUESTIONS

1. Did the judge before whom you  
were tried grant you a certificate  
that it was a fit case for appeal? NO

2. Do you desire the Court of Appeal  
to assign you legal aid? NO 30

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? .....

In the Court of Appeal

No.4  
Notice of Appeal  
dated 5th  
November  
1975

(b) have you any means to enable you to obtain legal aid for yourself? .....

10 3. Is any solicitor now acting for you? If so, give his name and address

YES  
Lloyd L.Noel  
Lucas Street  
St.George's

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

20 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

N.B. If one of the grounds set out is "misdirection" by the judge, particulars of such alleged misdirection must be set out in this notice. The appellant can also, if he wishes, set out, in addition to his above reasons, his case and argument fully.

30 1. The decision of the Jury is unsafe and unsatisfactory and should be set aside or a new trial ordered.

Because: (a) The decision cannot be supported by the weight of the evidence.

(b) A reasonable Jury properly directed cannot come to the decision this Jury came to.

In the Court  
of Appeal

No.5  
Judgment  
dated 28th  
May 1976

No. 5

JUDGMENT

GRENADA:

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 10 of 1975

BETWEEN: CHARLES FERGUSON - APPELLANT

Vs.

THE QUEEN

Before: The Honourable the Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

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Appearances: L. Noel and Maurice Bishop with him  
for appellant  
E. John (D.P.P.) and Lyle St. Paul  
with him for Crown

1976, May 24, 28

J U D G M E N T

ST. BERNARD J.A. delivered the Judgment of the  
Court:

The Appellant was convicted on the 4th  
November, 1975, for the murder of Roy Donald  
and sentenced to death by hanging. He has  
appealed against his conviction on the following  
grounds :-

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1. The decision is unsafe and unsatisfactory  
having regard to the evidence.
2. A reasonable jury properly directed  
could not have come to the decision  
to which this jury came.
3. The learned trial judge failed to give  
full and/or adequate directions to the  
jury on the specific intent necessary  
to support a conviction for murder in  
Grenada.

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The late Roy Donald and his wife Louise kept

a shop at La Poterie, St. Andrew's, in April 1975, but lived then at River Antoine in the parish of St. Patrick. On the 6th April, 1974, the deceased, his wife, his sister-in-law, Linnette Rock, Angela Drakes and a small child left the shop at La Poterie for home about 9.15 p.m. in a pick-up motor vehicle. The deceased was driving the vehicle with the child near to him while the others were in the tray of the pick-up. Louise Donald had a brown beige bag with a long strap containing about \$200, a bank book, a cheque book, some tablets, a bunch of keys and letters. On approaching the River Antoine bridge the deceased observed the road was blocked with stones in three places - one set at the entrance, a second set at the centre and the third set at the end of the bridge. The deceased stopped the vehicle and leaving the headlights on went outside. The other adults save Louise Donald also alighted and begun clearing the road. Angela went to the nearest heap, Linnette to the middle and Roy to the last heap. Suddenly a man leaped from behind the bridge, went to Louise pointing a gun at her telling her to remain where she was and ordering her to "give all the money made today." Louise handed him the bag saying, "Here is it." He replied, "this is not all, it has more." Louise Donald said, "Take the money and leave us alone." Linnette Rock who observed what was taking place shouted, "Roy". Roy looked up and started running towards his wife. The man fired a shot and said, "Don't come any closer". Roy kept coming with his hands in the air and shouting "kill me if you want to kill me." The man who was about six feet away shot the deceased in the chest fatally injuring him and ran away into Ramdhanny's banana field.

Louise Donald recognised the man as the appellant whom she knew for about five or six years previously. He worked at Point Estate which is in boundary with River Antoine and he also visited the shop of Louise Donald approximately twice a week for about two years.

Urlan Phillip, a lad 17 years at the time, stated that he was at one Mr. Lyon's shop at La Poterie in the company of other young men

In the Court  
of Appeal

No.5  
Judgment  
dated 28th  
May 1976

In the Court  
of Appeal

No.5  
Judgment  
dated 28th  
May 1976

when he heard the report to two shots and a "bawling" in the direction of River Antoine. He left running towards River Antoine bridge taking a "short cut" and when he was about 100 yards he saw the appellant about 10 yards away coming out of Ramdhanny's banana field. He had a bag with a strap on his shoulder and on his head was a cap pulled down over his forehead. He was trotting away from the direction of the bridge. This witness knew the appellant for four or five years previously.

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Anne Romain of La Poterie stated that she was at home about 9.00 o'clock to 9.30 p.m. when she heard two reports of a gun followed by a shouting in the direction of River Antoine. She left for that direction and on her way she saw the appellant, whom she knew about five years before, coming out of Ramdhanny's banana field. He was about 18ft away from her. He crossed the road entered her land and went up the hill. He had a cap on his head.

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Linnette Rock and Angela Drakes supported the story of Louise Donald but were unable to identify the appellant. They described him as a fair person dressed in dark clothes with a cap pulled over his forehead.

The other prosecution witnesses did not carry the case further. The doctor gave a description of the injury and the cause of death.

The appellant's defence was an alibi. In a statement from the dock he said that on that day he left his home at Conference and went to one Mr. Dolphus' shop and left there about 6.00 p.m. for his girl-friend Petra Joseph's home at River Sallee. He left a message at Mr. Dolphus' shop to let his brother know that he must meet him at his girl-friend. He arrived at his girl-friend's home about 7.00 p.m. and about 8.30 p.m. his brother Donald, Ossie Francis and one Francis Chitan joined him there. He ate and drank there and left for Mr. Dolphus' shop about 10.00 p.m. where they remained until about 12.30 a.m. playing cards and drinking. He arrived home at about 1.00 a.m. He attacked an identification parade held by the police as unfair.

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His witness Petra Joseph supported his story.

Grounds 1 and 2 were argued together. On these grounds counsel submitted that the evidence of identity was of paramount importance and the evidence in support of this issue was so unsatisfactory as to render the conviction unsafe. He stated that both Angela Drakes and Linnette Rock were unable to identify the appellant as the person who shot Roy Donald and pointed out that the evidence of Urlan Philip and Anne Romain was contradictory and there were a number of discrepancies. He also stated that the evidence of Louise Donald was unreliable.

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There is no doubt that there were contradictions and discrepancies in the evidence of the witnesses but these contradictions and discrepancies were carefully pointed out to the jury by the judge who even indicated that in his view both Urlan Philip and Anne Romain were unreliable. Counsel also admitted that on the facts of the case he could make no unfavourable criticism of the summing up. We are of the view that there was sufficient evidence on which a reasonable jury could have come to the conclusion that the man who shot the deceased Donald was the appellant.

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In regard to ground 3 counsel submitted that the trial judge misdirected the jury on the intent necessary to establish the crime of murder. He pointed out that the judge gave the jury a proper definition of murder as stated in section 242 of the Criminal Code, Chapter 76 of the Laws of Grenada, but went on to tell them that in order to secure a conviction for murder the prosecution must prove that the accused intentionally did an act which caused harm to the deceased Roy Donald, and that that harm was unlawful and resulted in his death. He directed the court's attention to four instances in the record where the judge misdirected the jury on the question of the intent which must be proved and submitted that in view of the misdirection a retrial should be ordered. In support of his submission counsel cited Jaggernath's case (1968) 11 W.I.R. 315 where it was decided by this court that by whatever means it may be sought to prove intent, in the case of St. Lucia and Grenada, the intent which was to be proved was an intent to cause death and not unlawful harm and it was for

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In the Court  
of Appeal

No.5  
Judgment  
dated 28th  
May 1976

the jury to say whether or not when the appellant inflicted the harm he intended to cause death.

The Director of Public Prosecutions conceded that there was a misdirection to the jury on the question of intent but submitted that since there was no injustice done to the appellant the court should invoke the proviso to section 41(1) of the West Indies Associated States Supreme Court (Grenada) Act, 1971 (No.17) and dismiss the appeal.

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Counsel for the appellant was asked by the court whether, in view of the facts of the case, there was room for a verdict of manslaughter. He replied that on the facts the verdict of murder was a proper one but since the judge erred in his direction on an essential ingredient of the crime albeit an important question of law the proviso should not be applied.

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The trial judge in his direction to the jury told them as follows :

"There are no circumstances to warrant a direction from me on the possibility of returning a verdict of manslaughter. You convict of murder or acquit."

Counsel's contention that the matter should be retried is untenable. In the view of this court since there was no room for a verdict of manslaughter on the facts of this case the misdirection in law to the jury by the judge did not affect the verdict in any way so that it might be said that a reasonable jury properly directed could have come to a different conclusion. Where the only issue is a misdirection as to the intent which must be proved to establish the crime of murder, and the verdict of the jury is one of murder, and the circumstances are such as may enable a jury properly directed to come to a different conclusion this court will, under section 42(2) of the West Indies Associated States Supreme Court (Grenada) Act, 1971, substitute a verdict of manslaughter for the verdict of murder. In the present case the defence of the appellant was an alibi and the jury by their verdict showed that they were satisfied of his identity. The verdict of guilty

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of murder was the only proper verdict on the evidence in the case and despite the misdirection in law to the jury the appellant, in our opinion, has suffered no injustice and we find that no miscarriage of justice has actually occurred. This court will apply the proviso to section 41(1) of the West Indies Associated States Supreme Court (Grenada) Act, 1971, and dismiss the appeal.

In the Court  
of Appeal

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No.5  
Judgment  
dated 28th  
May 1976

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(E.L.St.Bernard)  
JUSTICE OF APPEAL

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(N. Peterkin)  
JUSTICE OF APPEAL

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(Maurice Davis)  
CHIEF JUSTICE

In the Privy  
Council

No. 6

No.6  
Order granting  
Special Leave  
to Appeal to  
Her Majesty  
in Council  
dated 21st  
December  
1977

ORDER GRANTING SPECIAL  
LEAVE TO APPEAL TO HER  
MAJESTY IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE

The 21st day of December 1977

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 19th day of December 1977 in the words following viz :- 10

"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 Charles Ferguson in the matter of an Appeal from the Court of Appeal of Grenada between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal from a Judgment of the Court of Appeal of Grenada dated the 28th May 1976 dismissing the Appeal of the Petitioner against his conviction at Assizes held at St. George's Grenada of murder: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the said Judgment of the Court of Appeal of Grenada dated the 28th May 1976 or for further or other relief: 20 30

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and on behalf of the Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Grenada dated the 28th May 1976: 40

"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 Petitioner) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

In the Privy Council

No.6

Order granting Special Leave to Appeal to Her Majesty in Council dated 21st December 1977

10 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.

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

N.E. LEIGH

Exhibits

L.G.1.  
Affidavit  
of Lawrence  
Gibbs  
May 1975

EXHIBITS

L.G.1

AFFIDAVIT OF LAWRENCE GIBBS

EXHIBIT "L.G.1."

GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 13 of 1974

BETWEEN: CHARLES FERGUSON - APPELLANT

V.

THE QUEEN - RESPONDENT

10

I, LAWRENCE GIBBS of Mirabeau in the parish of Saint Andrew, Medical Practitioner, make oath and say as follows :-

1. I am a medical practitioner registered in Grenada, and employed and attached to the Princess Alice Hospital, St. Andrew's, and was so employed and attached on the 6th day of April, 1974.

2. On the said 6th day of April, 1974, at about 10.30 p.m. I was at the said Princess Alice Hospital when I heard Louise Donald in answer to the question repeatedly put to her to the effect as to whether she knew the person who shot her husband Roy Donald, for whose murder the appellant was convicted, as repeatedly respond :-

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"All I know is that it was a tall man, fair complexion, wearing a coat and a hat drawn over his face."

SWORN to before me }  
this day of } (sgd) Lawrence Gibbs  
May, 1975 }

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Before me,  
(sgd) Jerome Penney J.P.

EXHIBITS  
"A.F.1."  
SEARCH WARRANT

Exhibits  
"A.F.1."  
Search Warrant  
dated 7th  
April 1974

EXHIBIT "A.F.1."

SEARCH WARRANT

Marked "C" for  
identification  
purposes  
(sgd) E.W.J.  
23/4/74

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(Form No.6 Crim.  
Proc.Code)

GRENADA

In the Magistrate's Court Eastern District

Ag. Commissioner of Police - Complainant

and

Charles Ferguson - Defendant

To: A.S.P. Belmar Police Constable, and all  
other Constables.

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Whereas it appears on the oath of Adonis Francis  
Ag. A.S.P. of Grenville P.S. that the following  
things viz., one lady's hand bag containing about  
two thousand dollars in cash eastern Caribbean  
Currency made up of one five and twenty dollar  
notes and any other articles which may afford  
evidence in the Commission of a crime have been  
stolen and there is reason to suspect that the  
said things are concealed in the premises at  
Conference.

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This is to command you to enter between the hours  
of 5.00 a.m. and 8.00 p.m. into the said premises  
and to search for the said things and to bring  
them and the persons in whose possession they  
are found before me or some other Justice.

Dated this 7th day of April, 1974

(sgd) C.H. Morrison J.P.  
for Magistrate of the  
Eastern District

Executed on the within named defendant at his

Exhibits  
"A.F.l."  
Search Warrant  
dated 7th  
April 1974

home at Conference this 7th day of April  
1974, One cap, colours lilac and black,  
and sixty (\$60.00) E.C.C. found at the home  
of the defendant.

(sgd) A.O.Francis Ag.A.S.P.  
7/4/74  
12.00 p.m.

"E.C.W.l."  
Deposition  
of Urlan  
Phillip  
dated 17th  
April 1974

EXHIBITS  
"E.C.W.l."  
DEPOSITION OF URLAN PHILLIP

10

EXHIBIT "E.C.W.l."

DEPOSITION OF A WITNESS (Form No.17  
Crim.Proc.Code)

GRENADA

IN THE MAGISTRATE'S COURT EASTERN DISTRICT

COMMISSIONER OF POLICE Complainant

and

CHARLES FERGUSON

The Deposition of Urlan Phillip taken in the  
presence and hearing of Charles Ferguson who  
stands charged that (as per charge sheet)

20

The deponent on his oath says as follows :-

"My name is Urlan Phillip. I live at La  
Poterie, St. Andrew's. I am seventeen (17)  
years old. I am a school boy. I go to the  
St.John Christian Secondary School. I am in  
Form 11.

I know the accused Charles Ferguson. I  
know where he lives at Conference St.Andrew's.  
I know him for over six to seven years (6-7 yrs).  
I could remember him to be working on Point

30

Estate, St. Patrick's.

Exhibits

"E.C.W.1."  
Deposition  
of Urlan  
Phillip  
dated 17th  
April 1974

10 I remember Saturday 6th April, 1974.  
Between the hours of 8.00 p.m. and 9.00 p.m.  
that night I was sitting by Mr. Lyon's shop  
in La Poterie, St. Andrew's. About six  
to seven (6 to 7) of us were sitting by Mr.  
Lyon's shop. The names of the other fellows  
were Fenwick Joseph, Franklyn Bristol, Keith  
Edmund, Lennox Drakes, that is all I can  
remember. Whilst we were there I heard two  
(2) bullets fired from a gun in the direction  
of River Antoine bridge. As a result of  
what I heard I ran down on the bridge. The  
names of the fellows I mentioned before run  
down to the bridge with me. We all passed  
the same place. It was a bright moon light  
night.

20 On my way to the bridge from where I  
heard the bullets fired I saw Mr. Charles  
Ferguson the accused about one hundred and  
thirty yards (130 yds.) from the bridge  
coming from Mr. Rhamdhally banana field.  
I was about ten to twelve (10-12 yds.) yards  
away from him when I saw him. He had what  
appeared to be black bag on his side. He  
was wearing dark clothes with a cap on his  
head. It was a darkish cap.

30 The accused was trotting across the  
road and went by a house owned by Miss Olga.  
He was trotting away from the bridge when I  
saw him. Before I saw the accused I heard  
bawling going to River Antoine. I was running  
towards the bridge and I kind of jerk back  
when I saw him because I was afraid. After  
that I did not see the accused again.

40 I went down on the bridge where I met  
Mrs. Donald, her sister, I saw Mr. Donald  
was lying on the ground, I also saw a  
little girl there, I don't know her name  
she was inside the van. The people were  
bawling when I reached. The fellows I  
mentioned reached the bridge before me.

I saw the road was blocked with stones.  
The van was parked with the lights on facing  
the bridge. Mr. Donald was removed from the  
ground. I assisted in moving him. He was  
placed on the van. He appeared to be dead to me.



Exhibits  
"E.C.W.1."  
Deposition  
of Urlan  
Phillip  
dated 17th  
April 1974

He was taken to the Princess Alice Hospital.  
I went with them in the van.

I remember Sunday 7th April, 1974. At about 4.00 p.m. on that day, I was in the Tivoli pasture, St. Andrew's. Some policemen took me away and brought me to the Grenville Police Station where I gave a statement and identified Charles Ferguson. He was placed among about nine (9) other men, I went and touched him. When I touched him, he did not say anything."

10

Cross examination. The accused Charles Ferguson said, "No questions."

No re-examination by the prosecution.

Urlan Phillip  
J. Stanley Sgt. 79  
Ernest W. John  
Magistrate

Taken on oath before me this 17th day of April, 1974.

20

(Sgd) Ernest W. John  
Magistrate Eastern District

EXHIBITS  
"E.C.W.2."  
DEPOSITION OF ANN ROMAIN

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Exhibits  
"E.C.W.2."  
Deposition  
of Ann Romain  
dated 23rd  
April 1974

EXHIBIT "E.C.W.2." (Form No.17  
Crim.Proc.Code)

DEPOSITION OF A WITNESS

GRENADA

IN THE MAGISTRATE'S COURT EASTERN DISTRICT

COMMISSIONER OF POLICE - Complainant

10

and

CHARLES FERGUSON - Defendant

The Deposition of Ann Romain taken in the presence and hearing of Charles Ferguson who stands charged that (as per charge sheet).

The deponent on her oath says as follows:-

20

"My name is Ann Romain. I live at La Poterie, St. Andrew's. I don't work. I remember Saturday 6th April, 1974. At about 9.30 p.m. I was home. Whilst I was home I heard two (2) shots, shots of a gun. While I was there I heard a bawling in the direction of River Antoine. I run outside, run down the road going to River Antoine. While I was running I saw a man came out from Mr. Ramdhanny fig and cut across the road; he passed through our land and went up the hill. I saw the man's face and know who he was. Saturday night was not the first time I had seen that man. I used to see him passing at La Poterie, he was working in Point Estate, St. Patrick district. I know him for about four (4) years now. The man was Charles Ferguson. I have seen him in Court today (pointing at the accused).

30

It was a moonlight night. He had a cap on his head, he was wearing it down in his face. He had on a suit showing black in the night. He passed about a rod in front of me. From this side to the other side of the building (The distance now estimated to be twenty feet (20')).

40

I went down to River Antoine where I met Mrs. Donald, Angella Drakes and Mrs. Donald

Exhibits  
"E.C.W.2."  
Deposition  
of Ann Romain  
dated 23rd  
April 1974

sister. I don't know her sister's name.  
I did not see anybody else. I met Mr. Donald  
lying on the ground. He did not speak to me.  
He appeared to be dead to me."

Cross examination. The accused Charles Ferguson  
said, "no cross examination"

No Re-examination by the Prosecution.

(Sgd) Ann Romain

(Sgd) J. Stanley Sgt.79

(Sgd) Ernest W. John  
Magistrate

10

Taken on oath before me this 23rd day of April,  
1974

(Sgd) Ernest W. John

Magistrate Eastern District

"E.C.W.3."  
Notes of  
Evidence  
of Ann Romain  
dated 8th  
October  
1974

EXHIBITS

"E.C.W.3."  
NOTES OF EVIDENCE OF  
ANN ROMAIN

EXHIBIT "E.C.W.3."

NOTES OF EVIDENCE OF ANN ROMAIN

20

(Pages. 117-121)

9.51 a.m. ANNE ROMAIN on her oath saith :-

I live at La Poterie, St. Andrews. I am  
a housewife. I remember Saturday 6th April,  
1974, I was at home. While there I heard the  
shot of a gun. That was about after nine -  
about quarter past nine. I heard the bawling  
of someone coming from River Antoine direction.  
I run out of the house down to River Antoine.  
I was running. Whilst running I saw a man.  
He came through Mr. Ramdhanny's fig. He was  
coming along slowly. He was about from here  
to you (D.P.P.) from me when I saw him. I  
make out the man. It was Charles Ferguson.  
I was able to make him out because I saw him.  
He was dressed in black.

30

I have known Charles Ferguson about four years now. He was wearing a cap. On top his forehead, not right down over his face. He passed through in our land and he went up the hill.

Exhibits  
"E.C.W.3."  
Notes of  
Evidence of  
Ann Romain  
dated 8th  
October 1974

10 I went down to River Antoine by the river and the bridge. I saw Mr. Roy Donald lying on the ground. He appeared dead to me. I also saw Mrs. Donald, her sister and her niece. My home from River Antoine bridge is about from here to the Registry.

When I saw the accused I was just from here to the wall at the back of this building, from my home.

To Mr. De Freitas:- Where I lived was not the nearest house to the River Antoine Bridge. The nearest house on the La Poterie side is a woman they called Miss Shirley.

20 If you have the bridge going back to La Poterie there is not a house on the right hand side. No houses on the right hand side. Yes, on the right hand side going back to La Poterie. The first house is Miss Shirley house. There is another house after Miss Shirley house. Thats where I live. I know Mr. Lyons shop. I really don't have no idea how far that shop is from my house. Much further away that the bridge is from my house. About two minutes after I heard the shot I went out. As soon as I heard the bawling. Yes almost immediately after I heard the shot. I was running. I met Mrs. Donald, her sister and niece on the bridge. Beside them I met somebody else when I got there. I met Urlan Phillip. He was the only other person there. He was standing by Mr. Donald van when I met him.

30  
40 No Sir there was nobody else around where I saw the accused. Yes I saw him crossing from Mr. Ramdhanny's land. Crossing the road. From the other side. Yes and up through my land.

I said the person was wearing black. A long sleeve shirt. When I got to the bridge I did not tell anybody whom I saw. Mrs. Donald

Exhibits  
"E.C.W.3."  
Notes of  
Evidence of  
Ann Romain  
dated 8th  
October 1974

her sister and niece were standing on the bridge. The bridge was blocked. They were standing in front of the van.

From the bridge going back to La Poterie on the left hand side is Mr. Ramdhanny's land. Yes there is a track going into Ramdhanny's land. The track from where I live is about from here past the Registry. The bridge is further from my house than the track. The track from my house is about from here to the Registry. Yes the track is about same distance from my house as the bridge.

10

Running from Mr. Lyons shop to the bridge would take me about fifteen minutes. Yes there is a short cut from Lyons shop to the bridge. Using the short cut it would take me about five minutes. That short cut meets the road by my house. Where the short cut meets the road is not further from the bridge than my house. The short cut is nearer than my house.

20

When I saw the person he was nearer to my house than to the short cut. No Sir I saw nobody around that short cut. Yes Sir I saw the accused cross the road and go through my land and up the hill.

10.24 a.m. Jury request adjournment

Adjourned

(Sgd) E.H.A.B.

10.40 a.m. Resumed. All present.

Anne Romain continuing on oath:

30

To Mr. De Freitas:

The person was running along slowly when I saw him. No I was not called at any time to identify the person I said I saw that night.

I don't know Maurice John of River Sallee. I do not have a friend name Maurice John. I had a boy friend at the time. His name is Erris. He is not a mason.

I gave evidence in the Grenville Magistrat Court on 23rd April, 1974. On oath. It was read

back to me. I signed it. I said to the Magistrate: "I went down to River Antoine where I met Mrs. Donald, and Angela Drakes and Mrs. Donald's sister. I don't know her sister's name. I did not see anybody else."

Exhibits  
"E.C.W.3."  
Notes of  
Evidence of  
Ann Romain  
dated 8th  
October 1974

I also told the Magistrate: "He passed about a rod in front of me. From this side to the other side of the building."

10 I can remember the Magistrate's court at Grenville. Yes it is about from where I am standing to the pole - next to D.P.P.

I agree that the distance I showed in the Magistrate's Court is greater than the distance I showed here.

20 Yes I know Fenrick Joseph, Franklyn Bristol, Lennox Drakes. I saw them that night. After I got to the bridge they came after I got down there. When I got there Erlan Phillip was there. They came after myself and Erlan Phillip.

Re-examined: The bridge was blocked with stones. The first part of the bridge going down. From one end to the other.

To Jury: No Questions

A N N E X U R E

IN THE COURT OF APPEAL

GRENADA

CRIMINAL APPEAL NO. 13 OF 1974

BETWEEN:

CHARLES FERGUSON                      Appellant

AND

THE QUEEN                                      Respondent

Before: The Honourable the Chief Justice  
The Honourable Mr. Justice St. Bernard                      10  
The Honourable Mr. Justice Peterkin

Allan Alexander and E. De Freitas with him for  
appellant.

D.J.Christian, Attorney-General, and J. Penney  
with him for respondent.

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1975, May 27 & 28, June 2

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J U D G M E N T

DAVIS , C.J. delivered the judgment of the Court:-

The appellant was convicted at the October  
Assizes, 1974 for the murder of Roy Donald on                      20  
6th April 1974 at La Poterie, St. Andrew, and was  
sentenced to death by hanging.

The evidence led by the prosecution disclosed  
that, on 6th April 1974 at about 9.15 p.m., the  
deceased was driving a van in the direction of  
the River Antoine bridge. With him were his  
wife, Louise, Lynette Rock and Angela Drakes.  
As they got to the bridge they observed some  
stones in the path of the vehicle. The deceased  
stopped the vehicle and got out along with                      30  
Angela Drakes to clear the road. Louise Donald  
remained in the vehicle. At that stage a man  
wearing dark clothing and a cap slightly pulled  
over his forehead jumped from behind the bridge  
with a revolver and demanded money from Louise  
Donald, who handed him a bag containing the  
money collected from the sales at her shop on

10 that day. On seeing this, Lynette Rock called out to the deceased who turned and approached the van. The man fired a shot in the direction of the deceased who continued to walk towards the van. A second shot was fired which fatally wounded the deceased. The man then turned and ran through a trace in a banana cultivation owned by one Ramdhanny. Louise Donald who deposed that she knew the appellant for some six years was able to identify him with the aid of the headlights of the vehicle and the fact that it was a bright moonlit night.

Arlan Philip, a witness at the trial, stated that he heard the report of a gun, ran towards the bridge and on his way saw the appellant who was wearing dark clothes coming out of the trace at a distance of about 75 yards from the bridge. He had known the appellant for about four to five years before.

20 Ann Romain, who was at her home, also heard the shots and ran towards the bridge. On her way through Ramdhanny's cultivation, she saw the appellant dressed in black and wearing a cap going in the opposite direction. She too had known the appellant for about four years.

30 The defence was an alibi. The appellant, who gave evidence on oath, stated he was at the home of his girlfriend Petra Joseph at the time the offence was committed. He called witnesses in support.

Five grounds of appeal were argued on behalf of the appellant but for the purposes of this appeal it is necessary to deal with two only, namely :-

"1. The learned trial judge misdirected the jury by directing them that :-

40 (b) in order to act upon the evidence of the appellant and his witnesses with respect to the appellant's whereabouts at the material time, that evidence must be of such a standard as to make them feel sure and/or to raise a sufficient doubt in their minds;

(c) there was an onus on the appellant to disprove the prosecution's case,



the standard of which was satisfaction to the point where they should feel sure;

5. The learned trial judge misdirected the jury in the evidence in the following ways:-

(c) "The evidence of the removal of the picture of the accused should be disregarded" and/or "has no value in this case" and/or there was "no evidence on which you (the jury) can draw a reasonable and logical inference" and/or "it was a vague suggestion". "

10

We will deal with ground 5 (c) first.

Counsel submitted on behalf of the appellant that the wife of the appellant gave evidence that a photograph of herself and the appellant was taken by the Police during the search of their home, that it was suggested to Arlan Philip in cross-examination that he had been shown this photograph to enable him to identify the appellant at the identification parade and that, although the Police denied the taking of the photograph and the showing of it to the witness, it was an issue for consideration by the jury and the learned trial judge was wrong in directing them that the evidence of the removal of the picture of the appellant should be disregarded and was a vague suggestion which they should not accept.

20

30

In our view the identification of the appellant was the real issue in the trial and any evidence relevant to that issue could not be disregarded by the jury. It was for them to make a finding as to whether or not the photograph had been taken and to infer the purpose for which it was taken or any use that might have been made of it by the Police. The judge was therefore wrong in directing them as he did, as the weight to be attached to that evidence was a matter entirely within their province.

40

The burden of the appellant's complaint, however, was ground 1(b) and (c). The contention was that the appellant having put forward the defence of an alibi, the trial judge ought to have

given special car in hi summing up to the direction on the onus of proof. Counsel referred the Court to the direction given by the judge at pages 82 and 83 of the record, which reads as follows -

10            "The other witnesses called on behalf of the defence clearly lent support to those facts elicited or given in evidence by the accused, in support of his whereabouts  
15            ~~between about half-past eight and ten~~ o'clock on the night of the 6th of April. This witness lent support to the other witnesses, who explained his presence and his actions at the home of Petra Joseph from about half-past eight. It is a matter for you, after seeing and hearing them, to decide what you accept from the accused and his witnesses.....but it is  
20            for you to ask yourselves whether you are satisfied that they told the truth, or whether you feel sure that they have raised sufficient doubt in your minds about where Charles was between 9.15 and 9.30 that night. If they have satisfied you to the point where you can feel sure, then the prosecution's case fails. The accused asks you to believe himself and his witnesses as to his whereabouts on that night of the 6th April."

30            He then submitted that this was a misdirection in law. Counsel for the respondent conceded that this direction was wrong. The Court is of the same opinion.

40            In the case of R. v. Johnson (1961) 3 All E.R. 969, the appellant was charged with robbery with violence and put forward the defence of alibi. The judge in his summing up directed the jury that, when the defence of alibi was put forward, there was a burden of proof on the accused person to satisfy the jury that the defence which he had set up had, on the whole been established. In quashing the conviction, the Court of Appeal commenting on such a direction stated as follows -

"If a man puts forward an answer in the shape of an alibi or in the shape of self-defence he does not in law thereby assume any burden of proving that answer."

In the instant case, although the learned trial judge in the earlier parts of his summing up directed the jury that the burden of proving the guilt of the appellant remained throughout on the prosecution, yet in the passage quoted above in which he dealt specifically with the alibi he clearly directed the jury that there was a burden on the appellant to satisfy them to the point where they can feel sure. In our view this direction was clearly wrong and the error of such a fundamental nature that the conviction should not be allowed to stand. 1

Accordingly the appeal will be allowed, the conviction quashed and sentence set aside. Upon a review of the whole case, however, the Court is of the opinion that the interest of justice would be best served by ordering a new trial upon a fresh indictment. Order accordingly. The accused must remain in custody pending the retrial. 20

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MAURICE DAVIS  
CHIEF JUSTICE

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E.L. ST. BERNARD  
JUSTICE OF APPEAL

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N.A. PETERKIN  
JUSTICE OF APPEAL

IN THE PRIVY COUNCIL

No. 45 of 1977

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O N A P P E A L  
FROM THE COURT OF APPEAL OF GRENADA

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B E T W E E N :

CHARLES FERGUSON

Appellant

- and -

THE QUEEN

Respondent

---

RECORD OF PROCEEDINGS

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