

3/78

IN THE PRIVY COUNCIL

No. 39 of 1977

ON APPEAL
FROM THE COURT OF APPEAL
HONG KONG

AU Pui-kuen BETWEEN *Appellant*
AND
THE ATTORNEY GENERAL OF HONG KONG *Respondent*

RECORD OF PROCEEDINGS

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ON APPEAL
FROM THE COURT OF APPEAL
HONG KONG

BETWEEN

AU Pui-kuen *Appellant*

AND

THE ATTORNEY GENERAL OF HONG KONG *Respondent*

RECORD OF PROCEEDINGS

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CRIMINAL PROCEDURE ORDINANCE
(Chapter 221)

IN THE HIGH COURT OF HONG KONG

In the Matter of : an application to a Judge in Chambers for consent under section 24A(1)(b) of the Criminal Procedure Ordinance (Chapter 221) to the preferment of an indictment charging AU Pui-kuen with the murder of LAI Hon-shing contrary to Common Law, and shooting with intent to do grievous bodily harm contrary to section 17(b) of the Offences against the Person Ordinance, Chapter 212.

To: The Registrar, Courts of Justice, Hong Kong.

Whereas —

- (1) A Coroners Inquiry was held at Tsuen Wan between the 2nd day of February 1976 and 20th day of May 1976, concerning the death of LAI Hon-shing on the 9th day of January 1976.
- (2) The Inquiry was before Mr. Timothy Lee sitting with a jury of three. Mr. Brian Caird, Senior Crown Counsel was appointed to act as Coroners Officer, Mr. A. J. Sanguinetti and Mr. Kenneth KWOK, instructed by Wilkinson & Crist, appeared on behalf of the father of the deceased. Mr. Francis Eddis and Mr. Anthony Sadgwick instructed by Philip Remedios and Co. appeared on behalf of Detective Constable AU Pui-kuen.
- (3) Evidence was given at the inquiry by 34 witnesses, including Constable AU Pui-kuen.
- (4) On the 20th of May 1976, having heard Counsel for the various interested parties and having been directed on the law by the learned Coroner, the Jury returned a verdict of death by excusable homicide.
- (5) The Attorney General is of the opinion that notwithstanding the verdict of the Jury the evidence is such as to require that he file an indictment against Constable AU Pui-kuen for the murder of LAI Hon-shing and shooting with intent to cause grievous bodily harm.

Now Therefore I, Rose Grange Penlington, the Director of Public Prosecutions hereby apply under section 24A(1)(b) of the Criminal Procedure Ordinance, Chapter 221, for the consent of one of Her Majesty's Judges of the High Court of Hong Kong for the preferment of the Indictment attached hereto and marked "A" charging the said AU Pui-kuen with the offence of murder of LAI Hon-shing, contrary to Common Law and shooting with intent to do grievous bodily harm contrary to section 17(b) of the Offences against the Person Ordinance.

In the High
Court of
Hong Kong
Case No. 74 of
1976

No. 1
Application
under section
24 A(1)(b) of the
Criminal Proce-
dure Ordinance

In the High
Court of
Hong Kong
Case No. 74 of
1976

No. 1
Application
under section
24 A(1)(b) of the
Criminal Proce-
dure Ordinance

And In Support of this my Application I refer to a certified true copy of the record of the proceedings in the Coroner's Inquiry held as aforesaid at Tsuen Wan and filed herewith.

I Certify —

- (i) that no previous application under section 24A of the Criminal Procedure Ordinance, Chapter 221, has been made in respect of the said AU Pui-kuen;
- (ii) that to the best of my knowledge, information and belief, the evidence disclosed at the Coroner's Inquiry will be available at the trial; and
- (iii) that to the best of my knowledge, information and belief the case against the said AU Pui-kuen is substantially a true case in respect of each of the aforesaid charges.

Dated this 3rd day of June, 1976.

Sd. (R. G. PENLINGTON)
Director of Public Prosecutions

Case No. 74 of 1976

In the High
Court of
Hong Kong
Case No. 74 of
1976

IN THE HIGH COURT OF HONG KONG

No. 2
Indictment

At the High Court held at Victoria on the 20th day of September 1976, the Court is informed by the Attorney General on behalf of Our Lady the Queen, that AU Pui-kuen is charged with the following offences:

*1st Count
Statement of Offence*

Common Law.

Murder, contrary to Common Law.

Cap. 212
Sec. 2.

Particulars of Offence

AU Pui-kuen, on the 9th day of January, 1976, near the junction of Argyle Street and Sai Yeung Choi Street, Kowloon, in this Colony, murdered LAI Hon-shing.

*2nd Count
Statement of Offence*

Shooting with intent to do grievous bodily harm, contrary to section 17 of the Offences against the Person Ordinance, Cap. 212.

Cap. 212
Sec. 17.

Particulars of Offence

AU Pui-kuen, on the 9th day of January, 1976, at Nathan Road, Kowloon, in this Colony, did shoot at LAI Hon-shing with intent to maim or disable or do some other grievous bodily harm to the said LAI Hon-shing.

R. G. PENLINGTON
Director of Public Prosecutions
8th June, 1976.

To: AU Pui-kuen

Take Notice that you will answer to the Indictment whereof this is a true copy at the High Court, Victoria, on the 20th day of September 1976.

.....
Registrar.

In the High
Court of
Hong Kong
Case No. 74 of
1976

IN THE HIGH COURT OF HONG KONG

20th day of September 1976.

No. 2
Indictment

Reg. v.
AU Pui-kuen

Indictment for
(1) Murder (of LAI Hon-sheng)
(2) Shooting with intent to do
grievous bodily harm

Witnesses

- | | |
|-----------------------|---------------------|
| (1) TAM Tak-yeu | (17) Tso Shiu-tat |
| (2) CHAU Siu-wai | (18) KWOK Tim-choy |
| (3) Dr. CHAN Tin-sik | (19) W. S. Robson |
| (4) LEE Mau-sum, Paul | (20) WONG Moon-lam |
| (5) Dr. YIP Chi-pan | (21) POON Lai-ying |
| (6) A. M. Cimino | (22) LAI Hon-keung |
| (7) LEUNG Wai | (23) TAM Kin-kwok |
| (8) TAM Tin-lam | (24) POON Leung |
| (9) Dr. CHAN Sin-hung | (25) WONG Shu-kwong |
| (10) LI Kin-ping | (26) FOK Wing |
| (11) CHEUNG Him | (27) WONG Ying |
| (12) FUNG On-na | (28) CHAN Po-lin |
| (13) LI To-sing | (29) YIP Kai |
| (14) CHUNG YIM-shui | (20) WONG Hon-keung |
| (15) WONG Wing-chun | (31) LEE Wai-tang |
| (16) FONG Bun | |

Attorney General's Chambers,
Hong Kong.

IN THE HIGH COURT OF JUSTICE
CRIMINAL JURISDICTION

Case No. 74 of 1976

In the High
Court of
Hong Kong
Case No. 74
of 1976

No. 3
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In the High
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Hong Kong
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1976

No. 4
Empanelling
of the Jury

IN THE HIGH COURT OF JUSTICE
CRIMINAL JURISDICTION

Case No. 74 of 1976

Transcript of the shorthand notes taken by the Court
Reporters at the trial of Regina v. AU Pui-kuen,
charged with Murder and Wounding, before the
Honourable Mr. Justice LI.

Date: 20th September, 1976 at 10.00 a.m.
Present: Mr. M. H. Jackson-Lipkin, Q.C., and
Mr. F. Eddis (D'Almada Remedios & Co.) assigned for the 10
accused
Mr. R. Penlington, Director of Public Prosecutions, and
Mr. T. Gall, Crown Counsel, for the Crown.

CLERK: The Court is informed . . .

COURT: . . . Before the charge is read, Mr. Wong, Mr. Jackson-
Lipkin, you—?

MR. JACKSON-LIPKIN: My Lord, I have consulted the learned
Director who appears for the Crown in this matter and we would invite
your Lordship to call the jury before the indictment is put.

COURT: Yes. 20

CLERK: Accused, the names that you are about to hear me call are
the names of the jurors who are to pass between our Lady the Queen and
yourself upon your trial. If therefore you wish to object to them, or to
any of them, you must do so as they come to the book to be sworn. Do
you understand?

ACCUSED: Yes, I do.

CLERK: Jurors-in-waiting, answer to your names and step into the
jury box as you are called:

Mr. John OLSZEWSKI

Mrs. PANG Lai-ngan 30

MR. PENLINGTON: Challenge, my Lord.

COURT: Yes. Would the lady please step down? Mrs. Pang, would
you please step down?

Mrs. Rosanna SHAKERLEY

Madam Iris HOWLETT

Mr. Rolph PURVIS

MR. PURVIS: Could I ask to be excused? There's a letter here which
I'd like you to read.

COURT: Yes. Ask this juror to stand down.

Mr. Roger LING 40

MR. LING: I'm acquainted with Mr. Remedios. Does this affect or
not affect?

COURT: Mr. Penlington?

MR. PENLINGTON: Yes, would you ask him to stand down?
COURT: Yes, would you stand down, please.
Mrs. Catherine LADNIER
Mr. Robert SCHILMER

COURT: Yes?
MR. PENLINGTON: This juror is, I understand, a friend of my friend Mr. Gall. My Lord, could he be stood down?
COURT: Yes, could you stand down? Stand him down.
Mr. Laurence SPENCER
Mrs. Valerie ROBERTSON

10 MR. PENLINGTON: Could this juror also be stood down?
COURT: Yes, Mrs. Robertson, would you stand down?
Mrs. SUEN So-ling
MR. JACKSON-LIPKIN: Challenge, My Lord.
COURT: Would Mrs. Suen please stand down?
Mr. Peter SMITH
Mrs. Josephine NGAN

MRS. NGAN: May I be excused, sir, because I'm undergoing hospital treatment.
20 COURT: You are—?
MRS. NGAN: Undergoing hospital treatment.
COURT: All right, yes.
Mr. LUK Shu-kuen (Absent)
Mr. Lusine MORRIS

MR. PENLINGTON: Challenged by the Crown, my Lord.
COURT: Yes.
Miss YEUNG Man-sin

MR. JACKSON-LIPKIN: Challenge, my Lord.
COURT: Miss Yeung, stand down, please.
30 Mrs. Elizabeth YEUNG

MR. PENLINGTON: Challenge—stand by for the Crown, my Lord.
COURT: I beg your pardon?
MR. PENLINGTON: May this juror be stood down?
COURT: Yes.
Mrs. Nora RUDGE (Absent)
Mr. LUI Fai-yeung

MR. LUI: My Lord, I wish to apply for exemption. . . .
COURT: Why?
MR. LUI: . . . from jury service.
40 COURT: Why?
MR. LUI: Because I'm an employee of a Government corporation.
COURT: I'm afraid quite a majority of the people here are employees of a—employees of corporations. I'm afraid this is not a proper reason for asking to be excused.
MR. LUI: Most of my colleagues have been exempted from jury service. They have been exempted from the service. I have written a letter to the Registrar outlining the reasons.

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COURT: Well, have you? I have not received any communication that you have been excused. Your name has been called. The reason why your other colleagues have been exempted has not been made known to me and I see no reason why. . . .

MR. LUI: . . . Well, I have written a letter to the Registrar.

COURT: I'm afraid the Registrar has not been in communication with me. I see no good reason why you should be excused. Would you please step into the jury box?

Jurors Empanelled:

Mr. John V. OLSZEWSKI (Foreman) 10
Mrs. Rosanna SHAKERLEY
Madam Iris HOWLETT
Mrs. Catherine LADNIER
Mr. Laurence SPENCER
Mr. Peter SMITH
Mr. LUI Fai-yeung

CLERK: Accused, have you any objection to the jury empanelled?

ACCUSED: No objection.

Jurors sworn or affirmed

COURT: Yes. Ladies and gentlemen, what I'm going to do is slightly 20
different from the normal course. The normal course is to read the charge
to you first and then the trial will proceed. However, in this case there are
certain legal points which we will have to clear before we charge you with
the duty of serving on the jury, but there is no point while we are doing
so in keeping the whole of the ladies and gentlemen waiting here to be
empanelled. You have been empanelled and we now, first of all, request
you to leave us so that we can sort out the legal points and then I would
inform you when you should come back before you leave of course, and
then you'll be charged with the duty of serving on the jury involving the
actual indictment, the actual counts in the indictment with which the 30
accused stands charged. So that will be the procedure today.

CLERK: Jurors-in-waiting, would you please proceed to the court
next door, Court No. 2, to be empanelled for another case.

COURT: My usher is now going to ask you to leave your telephone
numbers so that in case we finish before the appointed time we can
inform you at short notice so that you can return. Yes?

MRS. LADNIER: Would you tell me whether it's likely that we will
be called?

COURT: I beg your pardon?

MRS. LADNIER: Would you tell me whether it's likely that we will 40
be called today?

COURT: Likely to be called today, yes. Mr. Penlington?

MR. PENLINGTON: Yes, my Lord, I would suggest that the jury
could be stood down until 2.30.

COURT: 2.30 this afternoon, yes.

MRS. LADNIER: About 2.30.

COURT: About 2.30.

MRS. LADNIER: So should we report here at 2.30?

COURT: Yes, tentatively, would you please come back at 2.30? If in the course of the morning we find it's unlikely that we will finish in the course of the morning, you will be informed; or if it is earlier, probably, say, by eleven o'clock we've finished, you will again be informed too. You might be required to come back earlier before that. Would you please now, ladies and gentlemen, leave us and tentatively come back at 2.30 this afternoon.

10.26 a.m. Jury leave Court

COURT: Yes, Mr. Jackson-Lipkin?

MR. JACKSON-LIPKIN: Would you Lordship give me one moment? The learned Director and I are just wondering whether there are any witnesses or other persons in court who ought not to be here, or perhaps your clerk can ascertain that, and if there are perhaps they can be got rid of.

COURT: Yes. Would any one in court please inform the Court whether they or whether he or she is a potential witness in this case?
20 (Chinese male raises hand)

Would you please leave the court? Yes, anyone else? I formally order that anyone who is about to give evidence or intends to give evidence in the course of the proceedings should leave the court. They are not allowed to remain in court until they have, in their turn, given evidence. Of course, after that they may return and remain in court. Yes?

MR. JACKSON-LIPKIN: My Lord, has your Lordship a copy of the Voluntary Bill of Indictment referred to in this case?

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, you will see that the first count
30 is one alleging murder. My Lord, the second count is one of shooting with intent to do grievous bodily harm. My Lord, I think it behoves me to explain that because, on the fact of it, it looks a little bizarre because the particulars of offence deal with shooting at the person who in the first count is alleged to have earlier been killed. My Lord, what the Crown seek to do is to charge this man with murder under count one and to join with that a subsequent event when he shot at the deceased who was then—who had fled, who then turned round and whom the accused believed was going to attack him. He did not hit the deceased with that shot. That shot missed and struck either—I think I believe after a ricochet
40 —struck somebody else and wounded him—wounded that man in the abdomen.

COURT: Yes.

MR. JACKSON-LIPKIN: It is that incident that is proposed to be put before the jury as a second count joined with the murder count; in other words, wounding somebody else altogether having shot at the person now

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of the Jury

deceased. I give that by way of explanation because it does not appear in the particulars of offence. The learned Director is going to explain that to the jury if the indictment goes ahead as it is now.

My Lord, once upon a time. . . .

COURT: . . . May I interrupt at this stage? But looking at it—I'm referring to the second count of course—if the person who was actually wounded was not LAI Hon-shing but a different gentleman who was waiting at a bus stop, it would appear that the actual breaking of the skin which is essential in the second count was not in the person of LAI Hon-shing; it was in the person of that gentleman whose skin was broken and was shot at. 10

MR. JACKSON-LIPKIN: My Lord, well, we are both conscious that the wording could be more happily, and would possibly be more happily, phrased but for the purposes of my present address to your Lordship may I invite your attention to the first three words of the count "shooting with intent": in other words, he shot, it is alleged, at LAI Hon-shing with the intent to maim or disable him, but it was only with an intent because he never hit him. I believe that is the way the Crown wishes to put it. My Lord, your Lordship is perfectly correct of course on the wording. It is a matter we have discussed and it is a matter which may one day have to be put right. 20

My Lord, I'm sure your Lordship won't misunderstand me if I say that this isn't an ordinary murder case. Unfortunately, it is a case that has engendered quite an extraordinary amount of heat. There were proceedings before one of our younger coroners which took a very long time in the course of which an immense amount of unpleasant, adverse, hostile publicity against the present accused was made public in the widest possible form. It is with shame and dismay that I have to tell your Lordship that after the Coroner's Inquest, a member of our own profession from within and without the bar here wrote, and has told some of your brethren he wrote articles that, to use the mildest term I can think of, can be nothing less than scurrilous. Why Mr. Attorney never brought contempt proceedings or proceedings against the gentleman for attempting to pervert the course of justice I know not. My Lord, that is neither here nor there and your Lordship is not concerned with it. What you are concerned with is the fact that this is a case being tried against a background of the most appalling prejudice. 30

My Lord, Sergeant Au has a most capable and thorough counsel representing him and that is Mr. Francis Eddis, my learned junior in this case. The learned Director of Legal Aid took the view that such was the appalling . . . I'm sorry to use the word again . . . appalling criticism against this man that he ought to break the rules that have bound the Legal Aid Department for quite some time and call in a leader. In fact, the measure of his apprehension of this prejudice is that he wrote to that leader in his London Chambers to ask him to appear before you, as he does appear before you this morning and is now addressing you. That is the measure of the apprehension that people have of the prejudice against 40

this man in this case. My Lord, it is against that background that I make my submission to you with the greatest possible respect that this is one of those cases where there ought not to be joined with the murder count any other count, and in particular a count which involves the wounding of a wholly innocent unconcerned by-stander. I would ask your Lordship rhetorically: is there not enough prejudice without adding that?

10 My Lord, once there was a rule that one never joined a count with murder. It's a long time ago and I think it was in the days when we very sensibly enforced the death penalty. My Lord, that rule has been abrogated. There is now no longer any rule against it. My Lord, it is of some interest to see why the rule was abrogated and I would invite you to look with me at a case that came before the House of Lords in 1963–64. It is *Connelly v. The Director of Public Prosecutions*,¹ at page 1254. My Lord, the case concerns a very large number of points. The only one that need concern you appears in the headnote at the top of page 1257:

“Per Lord Reid, Lord Devlin and Lord Pearce. The rule of practice based on *Rex. v. Jones*”

which is a 1918 case,

20 “that a second charge is never combined in one indictment with a charge of murder is inconvenient and should be changed, although in a case where it would have been improper to combine the charges a second indictment is allowable. The course which the present case had taken was in accordance with existing practice.”

My Lord, it's still—you see the references to three pages where this is dealt with so may I pass to page 1296 immediately and it's from the speech of Lord Reid:

30 “The difficulty in this case arises from the practice, based on *Rex. v. Jones*, that a second charge is never combined in one indictment with a charge of murder. I would think that the Indictments Act, 1915, was designed to ensure that all charges arising out of the same facts are combined in one indictment and thus to prevent there being a series of indictments and trials on substantially the same facts. I have had an opportunity of reading the speeches of my noble and learned friends, Lord Devlin and Lord Pearce, and I agree with them. I think that the present practice is inconvenient and ought to be changed. I realise that there are cases where, for one reason or another, it would be unfair to the accused to combine certain charges in one indictment. So the general rule must be that the prosecutor should combine in one indictment all the charges which he intends to prefer. But in a case where it would have been improper to

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¹ 1964 Appeal Cases

In the High Court of Hong Kong Case No. 74 of 1976

No. 5
Submissions by Counsel for Separate Trials in the Absence of the Jury

combine the charges in that way, or where the accused has accepted without demur the prosecutor's failure so to combine the charges, a second indictment is allowable. That will avoid any general question as to the extent of the discretion of the court to prevent a trial from taking place. But I think there must always be a residual discretion to prevent anything which savours of abuse of process."

I am not suggesting an abuse of process, of course. I am going back to what he said earlier," . . . there are cases where . . . it would be unfair to the accused to combine . . .", and I particularly invite your attention, my Lord, in addition to those words, to the words "on substantially the same facts". My Lord, would your Lordship be good enough to turn to 1360 with me? My Lord, perhaps I'd better start at the bottom of 1359. It's in the speech of Lord Devlin: 10

" . . . As a general rule a judge should stay an indictment (that is, order that it remain on the file not to be proceeded with) when he is satisfied that the charges therein are founded on the same facts as the charges in a previous indictment on which the accused has been tried, or form or are a part of a series of offences of the same or a similar character as the offences charged in the previous indictment. He will do this because as a general rule it is oppressive to an accused for the prosecution not to use rule 3 where it can properly be used. But a second trial on the same or similar facts is not always and necessarily oppressive, and there may in a particular case be special circumstances which make it just and convenient in that case. The judge must then, in all the circumstances of the particular case, exercise his discretion as to whether or not he applies the general rule. Without attempting a comprehensive definition, it may be useful to indicate the sort of thing that would, I think, clearly amount to a special circumstance." 20

My Lord, I wonder if I may pause there for one moment. You see, my Lord Devlin is proceeding on the basis that to have two trials might be unfair to the accused, not unfair to the Crown, unfair to the accused. Of course it is always open to the accused to say "I would prefer two trials because it would be unfair to have one". 30

" . . . Under section 5(3) of the Act a judge has a complete discretion to order separate trials of offences charged in one indictment."

My Lord, "a complete discretion", so, you see, that is quite emphatic.

"It must, therefore, follow that where the case is one in which, if the offences in the second indictment had been included in the first, the judge would have ordered a separate trial of them, he will in his discretion allow the second indictment to be proceeded with. A 40

fortiori, where the accused has himself obtained an order for a separate trial under section 5(3). Moreover, I do not think that it is obligatory on the prosecution, in order to be on the safe side, to put into an indictment all the charges that might conceivably come within rule 3, leaving it to the defence to apply for separation. If the prosecution considers that there ought to be two or more trials, it can make its choice plain by preferring two or more indictments. In many cases this may be to the advantage of the defence.”

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I would stress that sentence again to your Lordship.

10 “If the defence accepts the choice without complaint and avails itself of any advantage that may flow from it, I should regard that as a special circumstance; for where the defence considers that a single trial of two indictments is desirable, it can apply to the judge for an order in the form. . . .

It remains to determine what rule of practice should be applied in this particular case. Should it be the rule which your Lordships, if you are of my opinion, will declare as the right rule to govern future cases; or should it be the rule of practice in force at the time of the first trial? If the decision in *Rex. v. Jones* had embodied a rule of law, it might well be said that the prosecution would simply be in the unfortunate position of a party who has good grounds for thinking that he is acting as the law requires him to do and then finds that the decision upon which he is relying is upset. But a rule of practice is in my opinion different. When declared by a court of competent jurisdiction, the rule must be followed until that court or a higher court declares it to be obsolete or bad or until it is altered by statute. The rule in *Rex. v. Jones* was accepted by both sides without challenge as governing the position at the first trial; and in his address to the jury in the passage which my noble and learned friend, Lord Morris of Borth-y-Gest, has quoted, counsel for the defence referred to the possibility of a second trial in the event of an acquittal.”

My Lord, the last passage on this point is at page 1368 but if I may go back to 1367 I think you will find a passage there which will assist you considerably. It is in the speech of Lord Pearce. My Lord, in the middle of the page he is dealing with the rule in *Rex. v. Jones* and then the penultimate paragraph, two-thirds of the way down, begins as follows:

40 “With all respect, I think that rule of procedure is inconvenient. The defendant can always apply for separate trials if any unfairness might otherwise be caused to him but he should be entitled, if he wishes, to have the whole matter dealt with.”

My Lord, I do not think that anything can demonstrate more clearly than that that the abrogation of the rule in *Rex. v. Jones* was for the benefit

of the accused so that he could have everything in one trial if he wished but it asserts in an unequivocal manner in all three speeches that if there is any unfairness, likelihood of unfairness, then the counts ought not to be joined and there is nothing wrong with separate trials. My Lord, I don't need to stress the matter of prejudice. I think I have said enough about that for your Lordship to realise that this is one of those cases where in my respectful submission it would be grossly unfair to the accused that the jury should have to consider what is alleged to be murder against the background of the wounding of an innocent by-stander. It could do nothing but prejudice their minds. 10

My Lord, may I pass to the second limb of this. These are not, as I understand the Crown case, substantially the same facts. Count one relates to an incident in Sai Yeung Choi Street where three men, two on their own confession and the third is dead, attacked the accused. Not only did they attack him and put him in fear for himself but also put him in fear of having his revolver snatched and he acted partly to prevent that and partly in self-defence, but he was trying (a) to effect an arrest, (b) to retain his weapon and (c) to get free from three men, one of whom had his arm, I believe, round his throat and was forcing his head back. That is the incident in Sai Yeung Choi Street which is the subject matter of the first count. 20

The second count relates to an incident a while later in Nathan Road when the accused with his revolver in his hand caught up with what he considered to be a fleeing criminal. The man turned round and swung at him with his right hand towards the left hand of—I believe the left hand of the accused, the hand holding the revolver. My Lord, in my respectful opinion, quite apart from anything else I have said earlier, that count is said to be “on substantially the same facts”, which were the words used by Lord Morris. My Lord, in my respectful submission (1) it is wrong, (2) it is unfair for these two counts to be put before the same jury at the same time. I am not suggesting for one moment that the Crown ought not to proceed at some time having regard to whatever happens on the first count with the second count. That is a matter for the Crown entirely. What I am saying is that this is a proper case for your Lordship to exercise your discretion and to order separate trials, my Lord, but certainly with regard to the second count the Crown will need to know what happens on the first before it decides what to do. My Lord, the danger of a miscarriage of justice, if these two are heard together, is very great. This is an application that is not made lightly because it will involve this man in two trials, both with terrible attendant publicity, both with disciplinary consequences in the Force. Such is the danger of having the second with the first that he is prepared to face two trials. He has been advised that that is the only way in which justice can be done to him. My Lord, if I can just repeat that the danger of a miscarriage of justice is enormous if a jury in considering whether the first amounts to murder has before it at the same time questions of the wounding of this innocent by-stander. My Lord, that is my submission on the second point. My Lord, I will 30 40

address you in due course at such time as your Lordship directs me on another aspect of the matter, namely, whether the evidence of the subsequent incident ought to be put before the jury at all but that involves your Lordship investigating certain questions of the law of evidence and perhaps your Lordship would like to hear the Director on the first point first. I'm entirely with your Lordship.

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COURT: Yes, I think it might be convenient to deal with the point of evidence as well because it might influence the position on the first—your first application. . . .

10 MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: . . . particularly when you say that these are not substantially on the same facts, these two counts.

MR. JACKSON-LIPKIN: My Lord, may I have just one moment, please? (Mr. Jackson-Lipkin confers with Mr. Penlington) My Lord, the learned Director has told me, and I am at liberty to tell you, that he wishes to adduce evidence of the second incident in order to demonstrate the state of mind of the accused in the first incident. My Lord, that raises a number of quite interesting points: the first is this, that he is trying to use something subsequent to demonstrate something precedent—ante-

20 dent. It is quite common to show what somebody did before to explain why he did something afterwards, for example, how somebody was driving down the road before he ran over a pedestrian. That I can quite understand, but this is something afterwards. That is the first point. That doesn't automatically disqualify it, of course, but it does put it in a different category.

The second point: on the brief facts I have given you, your Lordship may well feel that the incidents are so dissimilar that they couldn't possibly point to the necessary. . . . I'm sorry, my Lord, the incidents are so dissimilar that what the accused did in the second incident couldn't

30 possibly assist any jury as to the presence or absence of the necessary intention to constitute murder in the first incident. Even if I were not correct on that, the probative value in the second incident in attempting to demonstrate malice aforethought in the first incident is so grossly outweighed by the prejudicial effect of the evidence on all the rules of evidence your Lordship would feel bound to exclude it anyway. Quite apart from the interesting points of law your Lordship, I apprehend, would be driven to the conclusion that such would be the prejudice that it would outweigh the probative value to the extent that it ought to be excluded.

40 My Lord, on that last point, if I might go back to the first on that last point, may I read a short passage from *Cross on Evidence* to your Lordship. It's at page 339. My Lord, it's so short, perhaps I can read it now and your Lordship can look at it in a few moments. This is dealing with evidence of improper conduct of the parties on other occasions:

“In order that evidence should be admissible on the principles we have been considering, it must be relevant for some reason other than

its tendency to show bad disposition, or highly relevant if it does no more. As relevance is a matter of degree, a judge has a substantial discretion when determining whether evidence is admissible under the rule; but, even so, there may be cases in which it is impossible to say that the evidence in question lacks the requisite degree. . . .”

My Lord, the learned Director very kindly offers your Lordship his just for a moment. We are trying to get the 4th from the library. My Lord, may I stand over here; I’ll read this again:

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, it’s para. 2:

10

“In order that evidence should be admissible on the principles we have been considering, it must be relevant for some reason other than its tendency to show bad disposition, or highly relevant if it does no more.”

So there are two distinctions to begin with.

“As relevance is a matter of degree, a judge has a substantial discretion when determining whether evidence is admissible under the rule; but, even so, there may be cases in which it is impossible to say that the evidence in question lacks the requisite degree of relevance, and yet it might be unfair to admit it, having regard to its probative value as contrasted with its prejudicial propensity.”

20

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, may I take that as my starting point? The definition of murder is so well-known to your Lordship that I don’t need to repeat it but the jury have to reach a conclusion as to what the man’s intention was when he fired on the first occasion. How can it possibly assist them, without being highly prejudicial against the accused, to be asked to take into account what he did on the other occasion in Nathan Road in totally dissimilar circumstances? My Lord, it not only may confuse them because there are two different intents, but it would undoubtedly prejudice them. My Lord, that is exactly what the learned authors were talking about. I would submit to your Lordship that its probative value on the intent to murder is doubtful. I am not putting it any higher but it is doubtful, but there is one thing of which there can be no doubt and that is its “prejudicial propensity”, to use the words of the learned author of *Cross*. My Lord, of that there can be no doubt.

30

My Lord, imagine an ordinary juror trying to work out this, a very difficult point of an intent to murder. Isn’t it in the highest degree of likelihood that that juror will be wrongly prejudiced in making the assessment of such intent if he has before him evidence of this other matter? My Lord, I would say that that is a very grave matter and this

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is one of those cases where the learned author says judges would find it unfair to admit it even though it is relevant. I am not conceding that it is relevant but even if it were. My Lord, I would ask you, apart from the other points I have made, as a matter of discretion and that your discretion is absolute, to exclude it. My Lord, may I just go back? It must be relevant for some reason other than its tendency to show bad disposition.

COURT: What page is that?

MR. JACKSON-LIPKIN: It is the same page, my Lord, 339.

10 COURT: Thank you. Yes?

MR. JACKSON-LIPKIN: The learned Director has, in his usual generosity, told me that I can say that is exactly why the evidence is being proffered to show, as it were, a bad disposition, a man who was so reckless that he would do these things. My Lord, perhaps you would just bear with me read on.

“ . . . or highly relevant if it does no more.”

20 So the evidence of the second incident then has to be not merely relevant but highly relevant and I would respectfully suggest to your Lordship that it isn't. Then if you will permit me just to repeat myself, even if it were, you have this discretion that I have just outlined to your Lordship. My Lord, that evidence can be given of similar facts is certainly true; there is a great deal of law on it and the law of facts is more or less the same as statements received as part of the *res gestae* or as part of a system like making statements. Nobody is suggesting a system in this case. My Lord, in relation to that there is a short passage on page 517 of *Cross*. It is the paragraph 'D':

30 “We have seen that facts are sometimes allowed to be proved on the footing that they form part of the *res gestae*. In this context too the phrase seems merely to denote relevance on account of contemporaneity. We saw, however, in Chapter XIV,”

— My Lord, that is what I have read to you —

40 “that it had a further implication in that evidence of facts forming part of the same transaction as that under inquiry may be received notwithstanding the general rule that evidence must be excluded if it does no more than show that someone is disposed to commit crimes or civil wrongs in general, or even crimes or civil wrongs of the kind into which the court is inquiring. Contemporaneity, continuity or the fact that a number of incidents are closely connected with each other gives the evidence an added relevance which renders it admissible in spite of its prejudicial tendencies.

E.

We have already seen that the doctrine of *res gestae* renders admissible the prior consistent statements of witnesses in spite of the

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common law prohibition on the proof of such statements in order to confirm present testimony. To gain sufficient weight to be admissible as part of the *res gestae* under this head, the statement must have formed part of the transaction to which the witness is deposing as in *Milne v. Leisler*; alternatively it must have accompanied the act or event about which the witness is speaking. The doctrine of *res gestae* may sometimes serve to qualify the rule that a witness's. . . ."

My Lord, I don't think you will want me to read that, but, my Lord, may I go back to page 510:

"A person's declarations of his contemporaneous state of mind or emotion are admissible as evidence of the existence of such state of mind or emotion." 10

I am relating, my Lord, 'D' back to that. What the Crown is trying to say is that a person's acts which tend to show his state of mind or emotion are admissible as "evidence of the existence". My Lord, many of these are, of course, sexual cases, and, my Lord, the requirement is that it should be contemporaneous; it shouldn't be isolated; it should be relevant and there should be such a degree of similarity as would really assist. My Lord, with regard to the latter, I have already told your Lordship the facts and your Lordship will see that that similarity is missing. With regard to it being contemporaneous, that is not merely a question of time because something can be contemporaneous which is very much later and something can be contemporaneous which is quite soon, but I would say it could not be contemporaneous in a totally different—against the background of a totally different set of facts and it brings me back to what I have said to your Lordship earlier: how can you say there is an intent to murder when he is being half-throttled by one of the three men and he feels hands round by his revolver and he has people to arrest and when he is chasing after someone, somebody turns round and swings at him and he fires? Perhaps . . . I don't know why. 20
It is a matter for the evidence but certainly there is no connection between the two. They couldn't possibly assist and I would respectfully say they do not form part—those acts do not form part of the *res gestae* and cannot. 30

Your Lordship will have to be satisfied by the Crown that there is the highest degree of relevance to the first count in the evidence of the incident in Nathan Road. Mere relevance is insufficient because it is only evidence to try to prove a prior existing state of mind. My Lord, until I have heard what the learned Director has to say I do not wish to say any more on these two points save to say this, that I have addressed you on the evidential point at your Lordship's own invitation. The two submissions I am making do not hang together; they are quite separate and independent. 40

COURT: But the second application does have some influence on the first.

MR. JACKSON-LIPKIN: It may, indeed, my Lord, it may, indeed. I hope it does but I think it is only right that I should point out to you that they are two entirely separate applications. My Lord, perhaps I might defer anything else I might have to say until I have heard if the learned Director is going to oppose my applications, and if he is what he has to say.

COURT: Mr. Penlington?

10 MR. PENLINGTON: Yes, my Lord. First of all the question whether these two charges should be joined in the same indictment—I think it is quite clear, my Lord, from the authorities now that this is perfectly proper in a charge of murder, and it is a matter for the court's discretion to decide whether there is prejudice to the accused by doing so.

20 If I may refer your Lordship to a quite recent authority, *Dudlow v. Metropolitan Police Commissioner*, 1970 All England Law Reports, Volume 1, page 567. This is simply a case where there were two incidents both in a public house—one on the 20th of August, 1968, charged with attempted theft in a public house, the other one on the 5th of September, 1968, a fortnight afterwards, charged with assault again in a public house while attempting robbery, and it was there held that it was perfectly proper to hear both those charges together. At page 567 Lord Pearson says—quoting the approval dictum of Lord Goddard in *R. v. Sims*:

“We do not think that the mere fact that evidence is admissible. . . .”

COURT: Page?

MR. PENLINGTON: It is at page 576.

COURT: 576?

MR. PENLINGTON: Yes, 576.

COURT: Yes.

MR. PENLINGTON:

30 “We do not think that the mere fact that evidence is admissible on one count and inadmissible on another is by itself a ground for separate trials; because often the matter can be made clear in the summing-up without prejudice to the accused. In such a case as the present, however, it is asking too much to expect any jury when considering one charge to disregard the evidence on the others, and if such evidence is inadmissible, the prejudice created by it would be improper and would be too great for any direction to overcome.”

My Lord, I think that is the principle, and that is, is there going to be evidence admissible on one count and inadmissible on the other count, and which no direction can enable the jury to disregard.

40 Now it is my submission, my Lord, that in this case, that is not so that the evidence to be given is relevant to both counts and indeed, my Lord, if that is not so one is faced with the inevitable prospect that the jury must be left in a state of doubt as to what happened to the third shot

that was fired that evening. There will undoubtedly be evidence that the constable fired three shots from his revolver. There is undoubtedly evidence that the third shot did not hit the deceased. The Crown will be submitting that the evidence relating to the firing of that third shot is admissible as showing the state of mind of the accused at the time. It is the Crown's case that the accused fired the three shots with malice towards the three young men with whom he had been fighting. The evidence is, as your Lordship is fully aware, of a fight, a running away and the distance of some 90 yards the deceased falling to the ground in Nathan Road. There is ample evidence to say that this was all one continuous event. It is, however, a case that the circumstances of the third shot are somewhat different, in that at that time it seems fairly clear that the deceased had stopped, and indeed it is supported by the fact he was found at that spot and did not move from it. So whereas the first shot appeared to have been fired at him when he was running and endeavouring to escape, the third shot was fired when he had stopped, and it may well be that different considerations do apply to the animus the accused had at the time of the firing of the first two shots and the time of the firing of the third shot. Nevertheless, it is the Crown's case that they are relevant to each other, that is the animus in firing the third shot is highly relevant to his animus when he fired the first two. It is quite clear, I think, that the events were certainly contemporaneous. 10

My friend seems to suggest the only really sound argument is that there may be prejudice to the accused because he hit an innocent bystander. I find it extremely difficult to believe that if the third shot had hit the deceased that there could have been any basis whatever for having a severance of these two counts. It is purely the fact that the third shot did not hit the deceased but hit an innocent bystander. My friend suggests that because of that there would be prejudice against the accused. I suggest that prejudice, if indeed there was any prejudice, can be amply cured by your Lordship, and it is not in any way reason for taking away the evidence of the firing in Nathan Road of the third shot from the accused. The evidence of that firing, my friend has put it was that the deceased had—was closely pursued by the accused, he stopped—there is evidence that he raised his arm—he was, however, unarmed. By this time the accused was very close to him, and it is, I suggest, highly relevant that under those circumstances, notwithstanding the fact that it was in Nathan Road, a very crowded area of Nathan Road, nevertheless, he still decided to use his revolver rather than attempt to apprehend the deceased by some other means. 30 40

Even if this argument does not find favour with your Lordship, I suggest that it is strongly, I think quite clearly, as part of the *res gestae* as evidence relating to all the incidents and is clearly admissible. This must clearly be one incident—one matter although it is also clear that the circumstances and possibly the intent of the accused were different. Well the first two shots and the third, this I suggest does not mean that the evidence of one is not highly relevant to the evidence on the other.

My friend has referred to evidence of disposition. Now I suggest that is not relevant here. There is no question that the Crown is calling evidence to show that this person is or has from the other incidents, been a man likely to use his revolver. The authorities referred to by my friend—he referred to page 339 of *Cross*—he says, ‘It must be relevant for some reason other than its tendency to show bare disposition’—those authorities referred clearly to previous totally unrelated incidents, not to a state of mind of the accused within a period of a few minutes and on the same occasion. If the Crown was seeking to produce evidence that some occasion months before the constable had fired his revolver, then of course that might well be irrelevant. This is part of the same incident—it does not show disposition. It shows the state of mind. I suggest that those authorities are not relevant to the consideration here, and then if from where *Cross* says, ‘It must be highly relevant’, I suggest that the evidence is indeed highly relevant.

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Finally, my Lord, it has been suggested that evidence is not admissible of events subsequent to the actual incident—that is what happened after the firing of the shot—that evidence is not admissible to show the state of mind.

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MR. JACKSON-LIPKIN: My Lord, I am afraid I have not made myself clear—I did not in fact assert that as a proposition—I merely said it is generally anticipated, this being a different category in substance—that is all said.

MR. PENLINGTON: My Lord, sorry—I suggest there is, in many, many trials indeed evidence of subsequent conduct which is highly relevant—a man runs away from a scene is often put forward as showing a guilty intent—a false statement made after the event is relevant—there are many, many instances, I won’t go into them in detail—the events and incidents which happen after the actual crime is highly relevant and clearly admissible evidence to show the state of mind both for the accused and against the accused—for instance if a man after an incident goes straightaway to the Police Station and reports the incident, that may well be evidence strongly in his favour, that he wishes not to consider himself guilty of any offence.

30

Just one point, my Lord—my friend did refer in his submission that on their own confessions or on their own statements, the two boys, the two survivors of the group, attacked the accused—that is, my Lord, on the evidence given at the inquest, but not so here—I think both of them denied that. They certainly agreed that at one stage they all joined in and the three of them were attacked, but I think on the evidence they say the driver was the one who struck first apparently—this is a matter of evidence which of course must be gone into—unless there is any other way I can assist your Lordship?

40

COURT: Yes?

MR. JACKSON-LIPKIN: My Lord, the learned director is correct in saying that their evidence is they were struck by the accused, but their statements certainly made it quite clear that after the deceased struck the

accused, those other two joined in and attacked—that is the word they used, ‘attacked’ the accused. It is from that, that I used the phrase when I addressed your Lordship. There is no doubt—I just pointed out the particular passage up to my learned friend.

My Lord, I don’t wish to repeat what I have said before, but may I just deal very shortly with some of the points made by my learned friend. He said this was all one continuous event. My Lord, if that were so, I do not accept it is, how is it that there are two counts for one continuous offence—event? That is what, my Lord, the Law Reports was talking about in *Connolly’s* case about abuse. I regard this was not abuse, but if my learned friend is really going to say this is all one continuous event, then to charge with murder a second count would be an abuse, but I respectfully suggest that he may have been just a little over enthusiastic to say that it was one continuous event. On the facts as we both know them it cannot possibly be so. If it were so then it would be quite wrong to have two counts. 10

My Lord, secondly, my learned friend put to you the point of the third shot possibly hitting the deceased. My Lord, if it had hit the deceased, no judge would permit the second count to be included in an indictment, as the indictment would be for the murder of the man who the third shot hit. It is inconceivable in those circumstances that the Crown would prefer the second charge, certainly no judge would permit it. 20

My Lord, so far as the difficulties with the jury are concerned, that is a matter that my learned friend and I can sort out by means of agreed facts or the jury can just be told, ‘Yes there were three shots, but you are not concerned with the third. You are concerned with whether the first two constitute murder.’ My Lord, that is a procedural matter that really shouldn’t be a problem.

My Lord, I haven’t had much of a chance to look at *Ludlow*, but there are some comments on it in Archbold—I wonder if your Lordship would be kind enough to look at that with me—paragraph 135, my Lord, at page 59, and *Ludlow* is dealt with at the bottom of the page—may I give your Lordship the reference of *Ludlow*, which is a House of Lords case, which is reported at 1971 Appeal Cases at page 29. My Lord, may I read the passage: 30

“A judge has no duty to direct separate trials unless in his opinion there is some special feature of the case which would make a joint trial of the several counts embarrassing to the defendant and separate trials are required in the interests of justice. This may occur where the offences charged are too numerous and complicated or too difficult to disentangle or where one of the counts is of a scandalous nature and likely to arouse in the minds of the jury hostile feelings against the defendant.” 40

My Lord, the other point on this basis, at the top of the proceeding page, the fifth, sixth and seventh lines, where he deals with *Ludlow*—your Lordship is there?

COURT: Yes.
MR. JACKSON-LIPKIN:

“*Ludlow v. Metropolitan Police Commissioner*, where it was held that the required nexus was a feature of similarity which in all the circumstances of the case enables the offences to be described as a series.”

My Lord, that is what *Ludlow* was saying, and my Lord, you will find this in the speech of Lord Pearson at page 41.

COURT: You are referring to the report again?

10 MR. JACKSON-LIPKIN: No, I am afraid I have yours—perhaps if I may hand it up to you—it is at page 41—it is the main paragraph on that page—perhaps my learned friend would lend me his All England, and if it is not yet revised it is sometimes a help.

COURT: Yes.

MR. JACKSON-LIPKIN: Yes, my Lord, in the All England it starts at 575, and it actually just sets out in detail what is summarised at page 59 of *Archbold*.

My Lord, I hope that you did not think that I was suggesting for a moment that you cannot charge two robberies in the same indictment—
20 one in one month and one in the subsequent month. My Lord, I was not suggesting that for one moment. What I was saying was in this case it has special features, in these special circumstances and against the background I described to you, this is a case where you should exercise your discretion because it has special features—it would be embarrassing, and separate trials are in the interests of justice. I am not saying any more. I am only saying that against what has happened and against the nature of these matters and against the difficulty of the jury separating in their minds these two incidents, that the interests of justice demand a separate trial, and that the embarrassment and the prejudice to the accused are such
30 that there ought to be.

My Lord, there is one other feature—the doctrine—I am sorry may I now pass to the potential point—there is an efficient feature of the potential point that it is a doctrine of law that where the prejudicial effect outweighs the probative value the court should exclude such evidence, and that is not in any way restricted to bad disposition. It so happened that the general principle was referred to in the paragraph which related to bad disposition, but my Lord, that is a doctrine so well-known, you must have been addressed on it dozens of times—you know the authorities well—courts will always exclude evidence where its prejudicial effect
40 outweighs its probative value.

My Lord, unless there is any other aspect on which I can assist you further, that is all I have to say. On both these applications I would respectfully invite your Lordship to give a separate ruling—I would invite you, first of all to say that there ought to be separate trials, then I would invite you to say that the evidence of this second incident ought to

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be excluded, leaving it to the learned director and me to sort out on the statements of agreed facts how we deal with the third shot. My Lord, we have a number of agreed facts to put before you anyway, because we have conferred together in order to shorten the trial as much as possible.

COURT: Yes, I will adjourn for five minutes.

11.45 a.m. Court adjourns.

12.15 p.m. Court resumes.

Accused present. Appearances as before. JURY ABSENT.

COURT: In the course of the addresses in the application I have been referred to as two separate incidents, however, in the light of the depositions which I have read and at the moment I can only be guided by what is disclosed in the depositions before the Coroner, that forms the basis of the application for this indictment, the preferment of this bill, I find that there is only one incident which involves a series of acts which took place in close proximity of time. Whether there is any prejudice involved by having the two counts involving two separate acts in this incident may cause prejudice, I find that whatever prejudice that is alleged is not higher than any other trial in which a number of counts are included in the same indictment. That can be cured when it comes to the time to direct the jury when they consider their verdict. As far as the evidence is concerned, as I said that this is a series of acts which occurred within close proximity of time, and it may or may not be relevant to have the evidence of what took place subsequent as a proof of certain state of mind in an act which occurred prior to the subsequent incident, and I find that the evidence of the subsequent act may be adduced as evidence— as evidence of the act that took place earlier. **10**

For these reasons the application for separate trials is refused and the application to exclude the evidence of the so-called second incident is also refused.

MR. JACKSON-LIPKIN: Before your Lordship rises, may I mention the question of bail? **30**

COURT: Yes.

MR. JACKSON-LIPKIN: Your Lordship knows the accused is on bail granted by the Chief Justice. May the bail be enlarged to the end of the trial?

COURT: Mr. Jackson-Lipkin, before that do I understand that you might have a third application to make?

MR. JACKSON-LIPKIN: My Lord, at the end of my learned friend's evidence.

COURT: I see. Yes, bail will be extended on the same conditions, same terms until the end of the trial. You have no objection to this? **40**

MR. PENLINGTON: No, my Lord, perhaps it could be extended to the end of the trial or until further order?

COURT: Yes, right then I will adjourn to 2.30 this afternoon.

12.20 p.m. Court adjourns.

2.33 p.m. Court resumes

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No. 8
Pleas

Accused present. Appearances as before. Jury present.

CLERK: AU Pui-kuen, the Court is informed by the Attorney General on behalf of Our Lady the Queen, that you are charged with the following offences: 1st Count—Statement of Offence: Murder, contrary to Common Law. Particulars of Offence: AU Pui-kuen, on the 9th day of January, 1976, near the junction of Argyle Street and Sai Yeung Choi Street, Kowloon, in this Colony, murdered LAI Hon-shing.

How say you, are you guilty or not guilty?

10 ACCUSED: Not guilty.

MR. PENLINGTON: My Lord, before the 2nd charge is read out, after consultation with my friend I wish to add the words to the end of that count, "and did thereby wound LEUNG Wai."

COURT: "Did . . ."

MR. PENLINGTON: ". . . did thereby wound LEUNG Wai." So, my Lord, the gravamen of the charge is, of course. . . .

COURT: "Did thereby wound LEUNG Wai."

MR. PENLINGTON: "LEUNG Wai." I think it does remove any possible doubts. . . .

20 COURT: Yes.

MR. PENLINGTON: . . . as to what that charge is about. My friend has, I understand, no objection.

MR. JACKSON-LIPKIN: My Lord, I have no objection.

COURT: Yes, I will grant the amended phrase. Yes.

30 CLERK: 2nd Count—Statement of Offence: Shooting with intent to do grievous bodily harm, contrary to section 17 of the Offences against the Person Ordinance, Cap. 212. Particulars of Offence: AU Pui-kuen, on the 9th day of January, 1976, at Nathan Road, Kowloon, in this Colony, did shoot at LAI Hon-shing with intent to maim or disable or do some other grievous bodily harm to the said LAI Hon-shing, and did thereby wound LEUNG Wai. How say you, are you guilty or not guilty?

ACCUSED: Not guilty.

Jurors sworn or affirmed.

CLERK: Members of the jury, will you please choose your foreman?

Mr. Olszewski—Foreman

CLERK: Members of the jury, the accused, AU Pui-kuen, stands indicated for the following offences:

40 1st Count—Statement of Offence: Murder, contrary to Common Law. Particulars of Offence: AU Pui-kuen, on the 9th day of January, 1976, near the junction of Argyle Street and Sai Yeung Choi Street, Kowloon, in this Colony, murdered LAI Hon-shing.

2nd Count—Statement of Offence: Shooting with intent to do grievous bodily harm, contrary to section 17 of the Offences against the Person Ordinance, Cap. 212. Particulars of Offence: AU Pui-kuen, on the 9th day of January, 1976, at Nathan Road, Kowloon, in this Colony, did

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shoot at LAI Hon-shing with intent to maim or disable or do some other grievous bodily harm to the said LAI Hon-shing, and did thereby wound LEUNG Wai.

To this indictment the accused person has pleaded not guilty, and it is therefore your duty to say, having heard the evidence, whether he is guilty or not guilty.

MR. JACKSON-LIPKIN: My Lord, before my learned friend opens, there is one procedural matter I must mention to your Lordship. It is this: as your Lordship knows the accused is on bail. . . .

COURT: Yes.

10

MR. JACKSON-LIPKIN: . . . having been granted bail pending the trial by the Chief Justice. This morning your Lordship enlarged that bail until the end of the trial.

COURT: Until further order.

MR. JACKSON-LIPKIN: My Lord, one of the sureties, I am told, is about to leave the Colony and in those circumstances, my Lord, the accused wishes to offer another surety in the place of the first one. I am told by the learned Director that he has no objection to such a course and, my Lord, I wonder if your Lordship will say that bail may continue with a substitute surety?

20

COURT: You have no objection to that course?

MR. PENLINGTON: Provided the surety is approved.

COURT: He is approved by the Registrar, yes.

MR. JACKSON-LIPKIN: The surety who is leaving, my Lord, is SIU Pui-king and the surety who is proffered in place is WONG Hing-choi.

COURT: The other one, LEUNG Kuan, will be the same? The only one is SIU Pui-king?

MR. JACKSON-LIPKIN: Yes, my Lord. The matter then will be taken up before the Registrar.

COURT: The bail of the accused will be extended for a substituted 30 surety to be approved by the Registrar. Yes, Mr. Penlington.

MR. PENLINGTON: As my Lord pleases. I appear in this matter on behalf of the Crown; with me is my friend, Mr. Gall. Mr. Jackson-Lipkin and Mr. Francis Eddis appear for the defendant on the instructions of D'Almada Remedios and Co.

Ladies and gentlemen, just before I outline to you the evidence that will be called by the Crown in this matter there are one or two other matters that I would mention to you. The first of these, and I apologise if any of you have previously served on a jury because you will be aware of them perhaps, but it's just as well to bear them in mind, and that is why 40 we are all here today; what is the function of each person taking part in this trial. Your function is to decide matters of fact. In other words, the Crown presents its evidence and you are the people who decide matters of fact. Matters of law are decided by my Lord, and you must accept the directions that he will give you on the law. It is my function as Counsel for the Crown to present to you the evidence which the Crown considers to be relevant and which is necessary to support its case. It does not mean

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to say that all the evidence that will be called by the Crown you must necessarily accept as being true or must necessarily reject. You may accept what a witness says in toto or you may reject it but you may also, and I suggest that in many cases this would be the proper course, you may accept some of it and reject the other part. It does not matter a great deal whether you reject it because you think a witness is mistaken or because you think he is deliberately not telling the truth. If you are in doubt about any part of the evidence given then the accused is entitled to the benefit of that doubt. As you will be told later on, but I will say it here because

10 I think it is a matter that you should always have in mind, the burden of proof is on the Crown, and that if there is any point at all in the evidence on which you are in doubt then the accused person is entitled to the benefit of that doubt.

The other matter which unfortunately I must also mention to you and again will be no doubt referred to later on and that is the fact that this incident which occurred last January has been the subject of very wide publicity. I think it is general knowledge that there was an inquest into the death of the young man who was shot by a police officer in Mongkok last January. Much of the publicity that was given to the

20 evidence called at that inquest was perfectly proper, was perfectly good reporting, newspapers and other news media were doing what they are supposed to do. Unfortunately a lot of it was not; a lot of it was totally inaccurate and a lot of it was extremely biased, and unfortunately that publicity did not cease at the end of the inquest but it continued for some time afterwards. I have no doubt that you have all seen reports, letters to the paper, interviews with relatives and other articles relating to this tragic incident, and it is your duty and it is part of the oath that you have just sworn to entirely disregard anything which you may have heard about this incident prior to coming into court. It has been suggested to

30 me that perhaps it is impossible for the accused to be given a fair trial in this matter because of the publicity that it has received. I don't believe that is true. However, undoubtedly there was unfortunate publicity. It is also true that it was some time ago; the inquest was in May, but nevertheless it did receive such wide coverage that I am sure it must be still in your minds and I am also sure that you will disregard that publicity and you will come to your conclusions on the facts based entirely on the evidence that you will hear in court or on certain questions of fact which have been agreed between the Crown and the Defence: that is, upon which both Counsel for the Defence and myself agree and there is no

40 dispute. Therefore it can be placed before you as matters of agreed fact.

The incident that you will hear about occurred on the 9th of January, 1976, when three young men, LEE Wai-tang, WONG Hon-keung and LAI Hon-shing, met at the house of WONG Hon-keung. These three young men were friends and they often went out together. This particular flat was part of a shop premises run by Mr. Wong's father and in which he was employed. At about 9.10 p.m., Mr. Wong having finished his work for the day, they decided to go to the movies and they decided to go to

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the Mayfair Theatre in Tai Kok Tsui. They set off on foot and at about 9.20 they reached the junction of Argyle Street and Sai Yeung Choi Street. Some of you may know this particular area, some of you may not, but you probably know the old and new Hongkong & Shanghai Bank buildings on the corner of Nathan Road and Argyle Street. The old building which is to the east side of Nathan Road, that is on your right going north up Nathan Road, that building backs on to Sai Yeung Choi Street which is a one-way street, and these three young men were coming along Argyle Street heading towards Nathan Road. They were about to pass over Sai Yeung Choi Street when a car which will be referred to by witnesses—it was a yellow BMW motor car driven by the accused, Mr. Au—Constable Au—came along and cut in front of them. Mr. Lee will tell you that the car bumped against his thigh and he called out. There was an exchange of words between Mr. Lee and the driver, the accused, and the accused stopped his car and there was a further exchange of angry words; the accused still being inside his car. The accused was accompanied on this occasion by a young lady in the left-hand front seat. The accused, Constable Au, then drove his car to the other side of Sai Yeung Choi Street and parked it behind the old Hongkong & Shanghai Bank building and he then got out. The three boys walked over towards him, being led by Lee, who had been bumped by the car. 10

Constable Au, who is—I may say it is not again disputed—a detective police constable attached to the Mongkok C.I.D.—Criminal Investigation Department at the time, was wearing a jacket, and he was carrying, tucked into the left side of his trousers and underneath his jacket, a standard police issue 38 revolver, and this revolver was loaded in all chambers, that is with six rounds of ammunition. Again it is not in dispute that Constable Au had been properly and lawfully issued with this revolver and that he was quite entitled and, indeed, encouraged to carry his revolver when he was off duty. 20 30

When Constable Au got out of the car and came back he came towards the three young men and there was a further angry exchange of abusive and indeed somewhat indecent language, and as perhaps is not unexpected, tempers flared and a fight broke out. It is certainly in dispute as to who started the fight, who delivered the first blow. Lee and Wong will say that it was the constable; other witnesses will not agree with that. Irrespective, however, of who delivered the first blow a fight certainly started and it is not in dispute that the three young men joined in and punched Constable Au. You will also hear other evidence from bystanders as to exactly what did happen in this fight and here, I am afraid, that of all the many people who must have seen that fight a few have come forward. Despite widespread publicity on all news media very few people came forward to give their statements about what happened on that occasion, and as perhaps is not to be unexpected, the accounts that they give are somewhat different and you may find some difficulty and I suggest you must give particular attention to this evidence because you will find, I think, some difficulty in deciding exactly what happened during this 40

fight. You must also remember that it was shortly after 9 p.m. and the particular area was undoubtedly crowded so that perhaps people would not see things as clearly as they would in daylight or under less crowded conditions.

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It is not in dispute that Mr. Lee—neither Mr. Lee, Mr. Wong or Mr. Lai, who became unfortunately the deceased, were armed in any way. They will say that they used their fists—the two survivors used their fists to punch Constable Au. After several blows were exchanged Lee and Wong will say that the girl who was in Constable Au's car shouted out
10 words to the effect of "Don't fight." It was, of course, spoken in Chinese; the exact literal translation may not be exactly that but it was certainly words to the effect, "Stop fighting," or "Don't fight." Lee then says he called out "Go," or again something equivalent, and the three of them ran off. He will say that he thought at that time that it was wrong for them to be fighting in the way that they were and that when this girl called out "Go," this acted, so to speak, as a something that suddenly decided them that they should leave, and Lee ran away along Sai Yeung Choi Street and went straight back to the flat where he had met the other two earlier on, that is WONG Hon-keung's flat. There he
20 awaited his friends' return and he can give you no evidence regarding anything that took place after he fled away from the scene. He did not hear any shots.

Wong will tell you that when he heard this call of "Go" he also ran away but he ran west along Argyle Street towards Nathan Road, and he was accompanied by Lai. As he turned to run he heard Constable Au say something. Again I am afraid the translation is a very literal translation and I am sure it did not mean exactly this, but words to the effect of "Draw pistol and shoot your family dead." It says, "Doom family head." I think this is a very poor translation but it was words to that effect.
30 "Draw pistol and shoot your family dead." He did not see Au lift his jacket. Both Lee and Wong will say that neither of them grappled with Constable Au, nor did they see Lai do so, and that none of them made any effort whatever to take anything from him. You will hear other witnesses later on say that after the incident was over Constable Au said that they had tried or that they had snatched his revolver. Both of them will deny that they did snatch his revolver. Both of them will deny that they knew, in fact, that he was a policeman and might have had a revolver. They will say it was a straight out fist fight and there was no grappling. Again, however, there will be evidence from other witnesses which will not agree
40 with that. It will be a matter for you to decide on these points; it is, however, a very important point.

When Wong reached Nathan Road he heard a sound like a gunshot behind him and when he actually reached Nathan Road and was running along to the south and as he turned left into Nathan Road from Argyle Street he heard, as he says, 'two or three more.' Now, it is quite clear from the evidence—there is no dispute—that there were only three shots fired that night, all three coming from Constable Au's revolver, so there

can be no question that he heard three more shots: he could, in fact, only have heard two. However, it is perhaps understandable in the circumstances that he might have made a mistake as to the exact number. It is also, I think, not in dispute that of those three shots two hit Lai. You will hear evidence from the pathologist, which I shall go into in a moment; two shots hit him and when he was running into Nathan Road he must at that stage have been very seriously wounded. Wong says that he kept running along Nathan Road after he heard these shots. He did not see Lai again. He just kept going until he got back to his home where he awaited the arrival of his other friend, Lee having got there before him. 10
They saw on the television about 10 p.m. that there had been an incident in Nathan Road in which shots had been fired; one person was dead and one person was seriously injured. He then decided that this was the incident that he had been involved in: a 'phone call was made to Lee's family and the whole group, Lee's family, Wong and Lee and Wong's father all then went to Mongkok Police Station and made a report.

The third shot which was fired in Nathan Road was fired under slightly different circumstances although it was one continuous running, one continuous event. The circumstances of that third shot were somewhat different. You will hear evidence to say that at this stage Lee—Lai, 20
I'm sorry—Lai had stopped running, he had moved on to the pavement from the road where he had been running and he turned round with his arm raised. Whether this was to defend himself or to attack Constable Au who was pursuing him is a matter that you would perhaps have to decide if you considered it of any relevance, but there is evidence that he stopped and raised his arm. Constable Au was close behind him at this stage and fired a third shot. This shot did not hit Lai, it hit the pavement, it ricocheted off and struck a Mr. LEUNG Wai who was awaiting a bus nearby. It was indeed unfortunate that Mr. Leung was struck but I say at this stage it is not for you to say what a terrible thing it was that an 30
innocent bystander was injured by this bullet and that the constable must be punished. The fact that there were other people standing around this area is a factor to be taken into consideration in your deciding whether, in fact, that third shot fired by Constable Au was justified, whether he was legally entitled at that time to fire that third shot. That third shot is the subject of the 2nd Court of the indictment. That is that in Nathan Road Constable Au unlawfully shot at Mr. Lai with intent to cause him grievous bodily harm. It is for you to decide whether, under the circumstances, he was entitled to fire that shot.

The evidence given by these eye-witnesses apart from Lee and 40
Wong is, as I have said, possibly somewhat confused. However, they will no doubt give the evidence as best they can, particularly, of course, there is now a period of some 9 months since this incident. You must however listen to that evidence and come to your own conclusions as to the events that took place between the fight and the final shot in Nathan Road.

The first police officer to come to the scene was an Auxiliary Sergeant, Sergeant LI, who was on patrol on the other side of Nathan

Road. He saw a crowd gather and he jumped over the railings and went over. He found a man, the bystander, injured and he also found Lai lying on the footpath, and he was bleeding from the nose and mouth. It is quite clear that at this stage he had received a mortal injury: the bullet had penetrated his lung and he was dying. Constable Au was there and Sergeant Li says that he spoke to him—this was within probably seconds of the events—and that Constable Au said to the sergeant, “It was me firing, he snatched my pistol.” The sergeant asked if he had reported the incident and when Au said “No” the sergeant dialled ‘999’ from a
10 nearby shop and reported and asked for an ambulance. He had another conversation with the accused, Constable Au, after that. The constable showed him his warrant card and he then told the constable to pin his warrant card on to his jacket.

A police constable then came on the scene, Constable 11787. His evidence is very brief. He simply said that he saw the injured person, LEUNG Wai; he also saw Constable Au. Again Constable Au said to him that someone had snatched his pistol.

Detective Sergeant 1766, YIP Kai, arrived on the scene at 9.43 and being a regular police officer and a C.I.D. officer he took charge of the
20 scene. He saw that Lai was put into an ambulance and he also saw the accused, Constable Au, at the scene and he had a conversation with him. Constable Au said that he was driving in Argyle Street and saw three boys who looked like teddy boys. One of them patted the side of his car as he went past. Constable Au revealed his identity to these boys and told them that he was a policeman. There was an exchange of words and the boy that Constable Au was talking to grabbed him by the neck. The other two joined in assaulting him and one touched his waist as if to take his revolver. Constable Au struggled and managed to release himself, took out his revolver and the three boys ran. Constable Au fired twice
30 at one of them, he ran into Nathan Road where he eventually stopped as if to turn back. Constable Au then fired a third shot at him. Constable Au was asked by the sergeant if any of the three boys had any weapons and he replied, “No.” The sergeant noticed that Constable Au had a small abrasion—some small abrasions on his lips and there was some blood on his face. It is not again in dispute that when Constable Au was examined by a doctor later on that evening he did have some injuries. Perhaps I might tell you what those injuries are now.

He was found to have a haematoma and a swelling of blood under the skin on his right forehead and right cheek, an abrasion on the upper
40 lip, and contusion on the lower left anterior chest wall. He was not admitted to hospital, he was treated and discharged and given an anti-tetanus serum and a pain killing drug called Analgesio. The word ‘contusion’ means ‘a tenderness,’ and ‘a haematoma’ is a gathering of blood under the skin which is somewhat more serious than an ordinary bruise. The condition was serious enough for him to be given a pain killer and his abrasions were treated with Acroflavine and he was given the anti-tetanus injection because there had been a cut in the skin, so it

is not in dispute that Constable Au did suffer some injuries nor is it in dispute that he was struck by these two boys with their fists.

The sergeant took Constable Au's revolver from him and this was eventually handed to a police ballistics officer, Mr. Cimino, who will be giving evidence as to his examination of this revolver. However, it is clear that there were three shots fired from it. The only bullet that was recovered was taken from the body of Mr. LEUNG Wai, a bystander, and it was fired from this revolver. The other two bullets that hit Mr. Lai, the deceased, were not recovered.

Another important piece of evidence to be given by the ballistics officer is that he examined the clothes of the deceased person, Lai, and he found no powder marks on these clothes. From this, as an expert, he concluded that the shot must have been fired at a distance greater than 18 inches. Unfortunately he cannot be more accurate than that. He will also say that a bullet from such a weapon reaches its maximum velocity at about 15 yards from the muzzle, but it is difficult indeed from the injuries or from the bullet wounds that were received to say how far away the deceased was when this shot—shots were fired at him. It is unfortunate because that would be, of course, extremely useful evidence. However, we do know that the shot was fired from a distance greater than 18 inches. While this may not seem a great distance it is the case for the Crown that this is strong evidence to suggest that at the time that shot was fired the accused was not grappling with the deceased; the deceased was not trying to take something away from his waistband. There will be evidence from other witnesses who will say that there was a grappling and that at the time one of the boys at any rate held the constable round his neck. That is evidence to which you will pay the closest attention. However, it is the Crown's case that the scientific and medical evidence, quite apart from the evidence of Wong and Lee, the scientific and medical evidence does not support that there was such a holding round the neck. There was no sign of injury to Constable Au's neck although there was injury to his face and, as I have said, there is the evidence that the shot was fired from some distance.

The medical evidence: there will be three doctors who examined people. However, two of those doctors, their evidence is not in dispute and has been agreed. That is the evidence of the doctor who examined the accused, Constable Au. He, unfortunately, has now left the Colony and is living in the United States. When he gave his evidence at the inquest he said that he could not remember this particular occasion or examination and all he did was to read from his notes and therefore there seemed little point in bringing him all the way back from the United States just to read his notes to you and that evidence—I have now read it to you, and that is the evidence that is agreed.

The important medical evidence is that of Dr. David Yip who was a pathologist and he examined the body of the deceased person, Lai. He found that there were two pairs of bullet wounds in his body, one pair penetrated to the muscles of the right arm-pit. The entry wound was in

the back of the right arm near the arm-pit, 53 inches from his heels, which is an important matter because the exit wound which was to the right of the arm-pit was 54 inches from his heels which means that the bullet was travelling upwards. This was not a serious injury in the sense that it was by no means a fatal injury and would not have caused death. There is, of course, no way of knowing whether it was the first or the second shot. The other pair of bullet wounds which were fatal, the entry wound was in the left upper back, $52\frac{1}{2}$ inches from the deceased's heels and 4 inches from the centre line. I have some photographs which I will

10 show you in a moment. The exit wound was in the left upper chest, 54 inches from the heels and one inch left of the mid line, so again the track of the bullet appears to have been upwards and slightly from out to the inside. The track penetrated the shoulder-blade of the left sixth rib space, the upper part of the lower lobe of the left lung and the lower part of the upper lobe. It then penetrated the left first rib space through the left edge of the breast-bone and the penetration of the lung caused very severe haemorrhage and it was this very massive haemorrhage from which Lai tragically died. The left chest cavity contained on examination three pints of blood and the left lung had collapsed.

20 Now this medical evidence is, of course, extremely important because it shows clearly that the bullets were fired from the back and they were also fired—the track of the bullets was slightly upwards. It is the suggestion of the Crown that this indicates that the deceased, Lai, was running when he was hit. Now, there could well be other suggestions or other explanations, I am not saying that that is the only one. If he had been standing up and Constable Au shot with his hand held down that could explain the bullets travelling upwards, but it is the case for the Crown that at the time he was hit Lai had turned away from the fight and was running away. (To Clerk) Can the jury have the photographs, please?

30 COURT: Do I take it that the photographs will be agreed?

MR. PENLINGTON: Yes, the photographs and the plan.

MR. JACKSON-LIPKIN: Yes, my Lord.

MR. PENLINGTON: I will be preparing and, in fact, I have prepared an agreed statement of fact. My Lord, I think it will probably be easier if we keep to the same numbering of the photographs as was in the court below.

COURT: Yes.

MR. PENLINGTON: C.2A. (To Clerk) Could we also have the plan?

40 COURT: I understand that a copy—copies supplied to the jury have not been marked with numbers. I wonder whether it would be more convenient if they are marked first before they are supplied to the jury?

MR. PENLINGTON: Yes, my Lord, I don't think—yes, perhaps they could be marked. While you are doing that I could go through the plan. Could the jury have the plan?

COURT: Well, I think there is no difference in the numbering of the . . . These exhibits in the file have been marked, I believe, C.2A or C.1A. That might add to the confusion. If we just drop the letter 'C' . . .

COURT: The same number, the same lettering?

MR. PENLINGTON: Yes, we have agreed that "C" is not necessary.

COURT: Yes, it would be easier. Well, members of the jury, if you would be good enough to just mark this . . . this particular document is marked 1A. Mark it yourself.

MR. PENLINGTON: Yes, we are trying to obtain a slightly larger plan for you which may be of more assistance when the witnesses are giving their evidence. However, you can see from this plan the areas with the old Hongkong Bank building on the corner of Nathan Road and Argyle Street, the new Hongkong Bank building on the opposite corner and the junction of Argyle Street and Sai Yeung Choi Street at the back of the old Hongkong Bank building. Constable AU's car came down from Argyle Street from the right side—right hand side of your plan, naturally on the left of Argyle Street, and turned that corner into Sai Yeung Choi Street. It stopped on the left hand side of Sai Yeung Choi Street looking south. It was then driven across the road and finally parked on the west side of Sai Yeung Choi Street. The fight took place near that corner. LEE fled along Sai Yeung Choi Street towards Nelson Street; WONG and LAI pursued by Constable AU fled along Argyle Street to Nathan Road, turned left and eventually LAI stopped outside No. 656 Nathan Road but that area you will hear in the evidence is more perhaps conveniently referred to as on the pavement outside a restaurant known as the King of Kings Restaurant in Nathan Road, and he did not move from that spot until eventually he was taken away in an ambulance. Various witnesses will say when they give their evidence whereabouts they were standing when they saw the particular events that they did.

The top photograph is . . . this is simply the pavement taken on the night of the 9th of September, the pavement outside a fashion shop near the King of Kings Restaurant and it shows the marks on the pavement where the deceased LAI eventually finished. A chalk mark shows where his body lay.

Ex. 2A. MR. JACKSON-LIPKIN: My Lord, is that to be marked 2A?

COURT: Yes, Mr. Penlington has suggested that we retain the number of the exhibits as used before and that was marked as 2A-C2A. I suggest to avoid that possible confusion of having two letters one before and one after the figure I suggest just the name and 2A. The rest if exactly the same in that order.

Ex. 2B. MR. PENLINGTON: Photograph 2B is a view of the same length of pavement taken slightly further away and you can see the sign there with the four hearts and just on the left hand side you can just see the word "KING", that is the King of Kings Restaurant, and in fact the deceased, you will see, finished up just to the north of that restaurant, in fact outside a fashion shop.

Ex. 2C. Photograph 2C, again, is the same pavement looking north in Nathan Road from outside No. 648.

Ex. 2D. 2D, again, a general view of the area, again taken on the night in question looking south in Nathan Road from outside No. 662.

2E is, in fact—just shows the motor car driven by Constable AU on ^{Ex. 2E.} that evening. It is not shown exactly at the spot where it was in fact parked but very close to it. In the High Court of Hong Kong Case No. 74 of 1976

Photograph 2F is a view of the area in Nathan Road where the ^{Ex. 2F.} injured person Mr. LEUNG Wai was shot. No. 9

Those photographs were taken on the evening in question.

Photograph 3A is a view of the area in daylight taken the following ^{Ex. 3A.} day looking northward from Nathan Road from outside No. 646. Opening Address by Counsel for the Prosecution

10 3B, a photograph taken in daylight looking south in Nathan Road ^{Ex. 3B.} from the corner of Nathan Road and Argyle Street, that is from the old Hongkong and Shanghai Bank building.

Photograph 3D . . . 3C, I am sorry, photograph 3C is photographed in daylight the following day showing the junction of Argyle Street and Sai Yeung Choi Street. This is the area where the fight took place between the three boys and Constable AU. Ex. 3C.

Photograph 3D shows the junction of Nathan Road and Argyle Street. It shows again the old Hongkong and Shanghai Bank building. Ex. 3D.

20 The next two photographs, photographs 4A and 4B, photographs of the deceased LAI. You will see quite clearly from those photographs the two—4A is the front view showing the exit wounds, one just above his armpit, one just to the left of the centre line of his chest; and the entry wounds are just shown in photograph 4B, again one at the back of his arm slightly lower than the exit wound and the entry wound in his back slightly lower and to the left of the exit wound. Ex. 4A and 4B.

Ladies and gentlemen, that is all I wish to say to you at this stage. As I have said, there will be evidence, some of it perhaps conflicting evidence, and it is for you to decide in each case—in the case of each witness called what evidence that he gives you accept and what you reject.

30 The only other matter that I would mention is a matter which no doubt is of interest to you and that is how long this trial is likely to last. It has been set down for two weeks. However, while in these cases one does not like to be unduly optimistic and on many occasions counsel have been proved to be unfortunately wrong, I don't think, in fact, this case will last that long and I would anticipate, and I am afraid it is no more than a guess, I would anticipate that it should finish the beginning of next week.

40 Members of the jury, there is one point, I am sorry, that I was wrong, not that it is of any great significance but I did say that Constable AU was a member of the Mongkok CID; in fact that is quite wrong. I am afraid it shows how I was, in fact, influenced by the inaccurate reporting that happened in this case. He was not a member of the Mongkok CID; he was a member of the Kowloon Police Headquarters CID.

My Lord, I have prepared an agreed statement of facts. However, there is one paragraph which is now to be deleted because my friend and I agree it is of no significance; it carries the matter no further; and there is another matter which we are now in agreement on which is to be inserted instead. I would ask therefore for an opportunity to amend the agreed

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statement of facts and I think that should perhaps be the first thing that is put to the jury.

COURT: Yes. Perhaps we could adjourn now until tomorrow. There is an application to be made now in the absence of the jury?

MR. JACKSON-LIPKIN: My Lord, no, not at this stage, my Lord. I don't think it would be right for me to say any more but on the opening as it was presented it would not be right for me to address your lordship at this stage but in due course I shall be making that same application.

COURT: Are you proceeding now, Mr. Penlington, or are you asking for an adjournment? 10

MR. PENLINGTON: Well, as I say, my Lord, I do have two witnesses here but I think that the best thing is to put the agreed statement of facts before the jury before the actual evidence and I would like an opportunity, as I say, to amend that, and perhaps we could adjourn now until tomorrow morning.

COURT: Very well. You have not heard any evidence yet, members of the jury, but it is not too early just to give you a warning that in due course you will be hearing evidence in this trial and there may be quite a few adjournments from time to time before the case is finally concluded. During the course of the trial and during any other adjournments would 20 you please refrain from discussing the case, or the evidence you have heard, with anybody except amongst yourselves. Of course, you may discuss the matter of the evidence or anything in this case amongst yourselves as much as you like, but please refrain from discussing the case with any outsider except amongst yourselves in the course of the trial until the trial is finished. I shall not remind you unless—before you hear any evidence I remind you now, so please do remember you do not discuss the evidence of this case with anybody else except amongst yourselves and I shall adjourn the case until tomorrow morning.

30 *3:55 p.m. Court adjourns*
20th September, 1976

21st September, 1976
10.06 a.m. Court resumes

Accused present Appearances as before JURY PRESENT
Mr Gall absent

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COURT: Yes, Mr Penlington.

MR. PENLINGTON: My Lord, the agreed statement of facts is still being prepared, there are one or two alterations, it will be coming over soon, but in the meantime I'll go ahead with the evidence. I call WONG Ying. His evidence appears at paragraph 304.

10 P.W.1—WONG Ying Affirmed in Punti
XN by Mr. Penlington:

Q. Mr WONG, I think you reside at 43 Fa Yuen St, ground floor, Kowloon.

A. Yes.

Q. And you run a business there and your son, WONG Hon-keung, is employed in that business.

A. Yes.

Q. Would the normal hours of work for the members of your family be from 11.00 a.m. to 9.00 p.m.?

20 A. Correct.

Q. Did your son, WONG Hon-keung, have a friend called LAI Hon-shing?

A. Yes.

Q. Do you remember LAI Hon-shing coming to your home on the evening of the 9th of January of this year?

A. Yes, I do.

Q. About what time did he come, can you remember?

A. About 9.00 o'clock.

30 Q. Did you see any other friend of your son's come to your house that evening?

A. There was one LEE Wai-tang.

Q. Did these three boys leave your flat that same evening shortly after 9.00?

A. Yes.

Q. Which was the first to return home that evening?

A. At that time I was working in the shop so I do not know which one came home first.

Q. Which one did you see first?

A. When I returned home both of them were there.

40 Q. When you say "both" was this your son, WONG Hon-keung, and LEE Wai-tang?

A. Yes.

Q. After you returned home did you have a discussion with the two boys?

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- A. Yes.
- Q. Now Mr. WONG I don't want you to tell us what that discussion was, but as a result of that discussion what did you do?
- A. When I saw him . . . I went with him to the police station to make a report.
- Q. You went with whom?
- A. I went with LEE Wai-tang's father.
- Q. Had you telephoned LEE Wai-tang's father before you went to the police station?
- A. I did. **10**
- Q. Who was in the party that went to the police station? Yourself, LEE Wai-tang's father and anybody else?
- A. My son and LEE Wai-tang himself. Altogether four persons.
- Q. Which police station did you go to?
- A. We went to Mongkok Police Station.
- Q. Did you yourself watch the television that evening?
- A. I did.
- Q. What time was that?
- A. That was some time after 11.00 o'clock.
- Q. Did you see anything on the television relating to a shooting **20** incident that evening?
- A. Yes.
- Q. About what time did you arrive at the police station?
- A. The approximate time was 12.00 midnight.
- Q. What did you do when you arrived at the police station?
- A. I made a report.
- Q. About how long were you at the police station?
- A. I remained there until it was almost dawn, that is, some time after 5.00 o'clock.
- Q. Did you make a statement? **30**
- A. I did.
- Q. And do you know if the other members of your group made statements?
- A. Yes.
- Q. Your son, WONG Hon-keung, how old is he?
- A. It seems that he is twenty-one.
- COURT: It "seems" he's twenty-one? You're his father.
- A. Yes, my Lord.
- Q. Has he been employed in your business since he left school?
- A. Yes. **40**
- Q. As far as you are aware, has he ever been in any sort of trouble with the police?
- A. No.
- MR. PENLINGTON: Thank you.

No XXN by Mr. Jackson-Lipkin

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COURT: Well, members of the jury, as each witness is called into the witness box after examination in-chief which you have just heard, and in this particular witness there happened to be no cross-examination, but he can be cross-examined by the other party. After that, after cross-examination and re-examination, if there is any doubt as to the evidence that is given by the witness, you may ask questions through your foreman. I shall not remind you of your right throughout the proceedings, but please be informed as each witness has finished his evidence you will have
10 the right to ask that—questions through the foreman to clarify any doubts in the evidence of that witness.

MR. PENNINGTON: May this witness be released?

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, I have no objection.

COURT: Yes, Mr. Foreman?

FOREMAN: Your Lordship, we would like to know approximately how long Mr. WONG's son has been working with his father, how long he has been out of school and working; and the second point is a question about why there's doubt about his age. That's the second question.

20 COURT: Mr. WONG, for how long has your son been working for you?

A. He has been working after he finished his schooling.

COURT: Yes. When did he finish schooling, which year? You see, you were asked: "For how long has your son been working for you since he's finished his study." It may be very clear to you, but that is no answer to us because we don't know when he finished his study.

A. About five years ago.

COURT: So he has been working for you for about five years.

A. Yes.

30 COURT: In other words, he finished school round about 1970/1971.

A. Yes.

COURT: Now why is there a doubt as to the age of your son? You say he "seems" to be twenty-one. Either he's twenty-one or he's not twenty-one or he's about twenty-one. After all, you are his father.

A. Because I have too many children so I cannot remember too clearly their ages.

COURT: I don't suppose you remember his birthday, do you?

A. I can but I have to think over it, whether that was the day or not, because I have too many children.

40 COURT: Take your time, try to remember. If you still can't remember say you can't remember. If you can so much the better.

A. Twenty-one.

COURT: Thank you.

MR. PENLINGTON: I call Tso Siu-tat. His evidence is at paragraph 204, my Lord.

P.W.2—TSO Siu-tat Affirmed in Punti
XN by Mr. Penlington:

Q. Mr Tso, I think you are an electro-plate worker.

A. Yes.

Q. You live at room 625 Block 23 Lok Fu Estate.

A. Correct.

Q. On the evening of the 9th of January of this year were you on a number nine route bus? **10**

A. Yes.

Q. And did this bus go along Argyle St.?

A. Yes.

Q. Was it travelling towards Nathan Rd. or away from Nathan Rd.?

A. It was travelling towards Nathan Rd.

Q. Were you on the upper or lower part of the bus?

A. I was on the upper deck.

Q. When you were near the Gala Theatre and opposite the old Hongkong and Shanghai Bank Building did you see anything? **20**

A. I don't quite understand.

Q. When you were passing the old Hong Kong—you know the old H.K.S.B. Building on the corner of Nathan Rd. and Argyle St.

A. Yes, correct.

Q. And you know the Gala picture theatre.

A. Yes, correct.

Q. When the bus passed in that vicinity did you notice anything unusual happening in the street?

A. I saw four persons fighting at the corner of Argyle St. and Sai Yeung Choi St.

Q. Did you see a motorcar in the vicinity where these four persons were fighting? **30**

A. Yes, I did.

Q. What colour was this motorcar?

A. Yellow coloured car.

MR. JACKSON-LIPKIN: My Lord, I have no objection to my learned friend the Director leading this witness.

COURT: Thank you, yes.

Q. Mr. Tso, now I want you to tell us in your own words as best you can remember, because it's been some time ago but as best you can remember, can you describe to us how this fight was going on when you saw it. What was each person engaged in the fight doing when you saw it? **40**

A. I only saw four persons fighting together. I couldn't see clearly how they were fighting.

Q. Were these persons using any weapons to fight?

A. No.

Q. Could you see if they were using their fists? Were they punching each other?

A. I did not see clearly because I saw this only when I was passing by and I can't remember so much as this happened such a long time ago.

Q. Did the bus slow down at all as it approached Nathan Rd.?

A. It was travelling neither too fast nor too slow.

Q. It didn't stop anywhere near the scene?

A. No.

10 Q. Now Mr. Tso, I want you to try and remember as best you can, when these—when you say these people were fighting can you give us any indication of what type of fighting it was?

A. They were lumped together in fighting.

Q. Now when you say "lumped together" or "together", Mr. Tso, do you mean that they were holding each other?

A. Sometimes they were separated from one another.

Q. Sometimes separated and what about the other times?

A. Sometimes they dashed towards one side or sometimes they were separated.

20 Q. Did you see any of them holding any of the others?

A. I can't quite remember.

Q. Did you hear any noise from the direction of where this fighting was going on, any shouting or any other unusual noise?

A. I could not hear.

Q. Mr. Tso, did you notice the age or the size, how big were any of these people who were fighting. First of all, could you see approximately how old these people were?

A. I can't quite remember.

Q. What about their size? Were any of them unusually large or small or fat or thin? Anything unusual about their size?

30 A. It's very difficult to say because I was just passing by.

Q. It may be difficult to estimate, Mr. Tso, but approximately how long do you think you were watching this fight?

A. For a very short time, just when the bus was passing by.

Q. When the bus went past and when they went out of your sight, were they still, the four of them, still together?

A. Can this be repeated?

Q. When the bus went past and you lost sight, the last thing you saw, were these four people still together fighting?

40 A. You mean when the bus went past them? Well, I can't quite understand.

Q. When the bus had gone past and the last thing you saw of this fight, were the group still together? In other words, your last sight of this fight.

A. Yes, they were still together the last time I saw them when the bus went past.

Q. Did you later see an appeal made by the police for witnesses of an incident on that evening to come forward and make a statement?

A. Yes, I saw this on television.

Q. And you went to the police station on the 14th, the following Wednesday, and you made a report.

A. Correct.

MR. PENLINGTON: Thank you.

XXN by Mr. Jackson-Lipkin :

Q. Mr. Tso, you told my Lord and the jury a few minutes ago that you couldn't remember clearly as it happened so long ago.

A. Yes.

Q. Now a few days after the incident you gave a statement to a 10
detective constable at Mongkok CID, didn't you?

A. Yes.

Q. And the statement was taken down in writing and you signed it.

A. Correct.

Q. That was very shortly after the incident, very soon afterwards.

A. Yes.

Q. Now let me see if I can help you to recollect. Did you tell the
detective constable that you saw four persons fighting?

A. Yes, I did.

Q. Did you tell him that a person was grabbing another's neck? 20

A. Yes.

Q. Was that true when you told the constable that?

A. Yes.

Q. Did you also tell him that two others were assaulting the person
whose neck had been grabbed?

A. Yes.

Q. Was that also true when you told the constable that?

A. Yes.

Q. And did you tell the constable that the other two were assaulting
with their fists the man whose neck was being held? 30

A. That I cannot quite remember.

MR. JACKSON-LIPKIN: Will your Lordship give me one moment?

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, I have had a word with the
Director of Public Prosecutions on this My Lord, we both appreciate
that it's a very long time ago and very difficult for this witness indeed to
remember, but my Lord, the learned Director has very generously
allowed me to say to your Lordship that it is admitted that at the time
that Mr. Tso told the detective constable that the other two were assaulting
with fists the man whose neck was being held. My Lord, we only have 40
a typewritten copy of his statement, that's why I can't show it to him.

Q. Mr. Tso, we are agreed, we have looked at the copy of your
statement and way back in January you did in fact say that the other two
were using their fists against the man whose neck was being held.

A. Yes.

Q. Was that true when you told the constable that?

A. Yes.

Q. It was the next morning that you read the appeal for witnesses, wasn't it, in a newspaper?

A. I did not notice the appeal on the following morning.

Q. Well, you noticed the appeal very shortly afterwards, didn't you?

A. Yes.

Q. But it was because of your work that you couldn't go earlier to the police station. Is that right?

10 A. Yes.

Q. And in fact when you did go it was quite late at night, wasn't it?

A. Yes.

Q. Because of your work.

A. Correct.

Q. You're a skilled worker, are you not?

A. Yes.

Q. Aged twenty-nine.

A. Yes.

REXN by Mr. Penington :

20 Q. Mr. Tso, you have now told us that you made a statement in which you said that one person was being held by the neck. Earlier on you said that these people were going backwards and forwards, that there was a group, they were moving apart and coming together again.

A. Yes.

Q. When you first saw this group fighting, when you first saw them, did you see one of them being held by the neck?

A. I did not see when I first saw them.

30 Q. So while you were looking did somebody put his arm round another person? This grabbing by the neck, did this happen while you were watching?

A. Yes.

Q. When you last saw them was he still being held by the neck?

A. I can't quite remember.

COURT: It's a very simple question, Mr. Tso. When you first saw them fighting you did not see anyone grabbing the neck of another person.

A. Correct.

COURT: Meanwhile, you were in a bus that was moving.

A. Yes.

40 COURT: But you kept your eyes on those persons who were fighting.

A. Yes.

COURT: And in the course of so doing you saw one person grab the neck of another.

A. Yes, my Lord.

COURT: I suppose you still kept your eyes on them?

A. Yes, my Lord.

COURT: Until the bus moved to such a spot where you lost sight of them.

A. Yes, my Lord.

COURT: But just before you lost sight of them, while you could still see them, did you see that the person who was grabbing the neck of the other still was grabbing the neck of the other?

A. It's very difficult to recall.

MR. JACKSON-LIPKIN: My Lord, may I respectfully intervene at this point. His Lordship will recall that this witness said it was so long ago that he couldn't remember anything and what in fact I've been able to put to him with the aid of the Director of Public Prosecutions is what he told the police officer at the time, but here today he appears not to be able to remember very much about the incident at all. He's really, as it were, speaking from his statement in January and I would respectfully suggest that that would be the reason why he couldn't answer his Lordship's question. 10

MR. PENLINGTON: Yes, no further questions.

COURT: Yes, Mr Foreman?

FOREMAN: His Lordship, two questions; first, did Mr. Tso say what time of night it was that he was riding the bus on Argyle St.? The second question is: where exactly was this fight? I think he said the corner of Argyle and Sai Yeung Choi, but was it on Argyle St. or was it on the other street? Can he be more precise about the location of the fight? 20

By Court:

COURT: First of all, can you remember at approximately what time of the night on the 9th of January your bus passed the junction of Argyle St. and Sai Yeung Choi St.?

A. About half past nine, nine thirty.

Q. Do you remember on which side of the road was your bus? You were going towards Nathan Rd., were you not? 30

A. On the left-hand side.

Q. Was your bus—I take it that that road has three lane traffic—was your bus on the nearside lane, the middle lane or the outer lane. Can you remember that?

A. On the nearside.

Q. That's the lane nearest to the pavement.

A. Yes, my Lord.

Q. And it was travelling from north to south towards Nathan Rd. No, I'm quite wrong, I think east to west when you were travelling along Argyle St. 40

A. By 'east' do you mean the direction from the airport?

Q. Yes.

A. Correct, my Lord.

Q. So that you were fairly near—the bus was fairly near the junction of Sai Yeung Choi St. when it passed that junction.

A. Yes, my Lord.

FOREMAN: Excuse me, your Lordship. The question was also 'Where was the fight.' It wasn't clear whether it was. . . .

COURT: Yes, I misunderstood. Can you remember roughly where was the spot of the fight? Was it in Sai Yeung Choi St. or was it in Argyle St.?

A. The old H.K. Bank building and the fight took place at the corner or Argyle St. and Sai Yeung Choi St.

COURT: At the corner?

10 A. At the junction.

COURT: You say that was the junction of Argyle St. and Sai Yeung Choi St. and the corner of the old H.K. Bank building. Did you say the fight took place at the corner of the H.K. Bank building at the junction of Argyle St. and Sai Yeung Choi St.?

A. Yes.

FOREMAN: Your Lordship, the answer seems somewhat vague. Could he point to a map or a. . . .

COURT: Yes.

20 MR. PENLINGTON: My Lord, I have obtained an enlargement of the particular area from that map. Could the witness perhaps be asked to explain where Argyle St. . . .

COURT: My Gray, would you please explain to him the various streets and the spots and ask him to put a circle on the spot where he saw the fight take place.

A. The vehicle in which I was travelling was going from this direction. The approximate spot in which the fight took place is here, which I have marked with a circle.

COURT: That is the spot with the circle. That is the spot where the people were fighting?

30 A. Yes, my Lord.

COURT: Can you also put down the position of the car as well, the car, the yellow car you saw, and this with a rectangle.

FOREMAN: Excuse me, one final question: how close to the car was the fight taking place and can the witness comment on the relationship of the fight to the car?

COURT: The yellow car?

FOREMAN: Yes. Was it nearby or how far.

40 COURT: Can you tell the approximate distance between the location of the fight and the yellow car? If you can give it a number of feet or very far away or give it some indication.

A. Not very far away. The distance is about what I have just indicated.

COURT: About three feet?

A. Yes, my Lord.

COURT: Yes, you may step down.

MR. PENLINGTON: Yes, perhaps this could now be given a number, my Lord.

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MR. JACKSON-LIPKIN: Before the witness leaves might I be allowed to ask something arising out of those questions?

COURT: Yes.

Further XXN by Mr. Jackson-Lipkin :

Q. Mr. Tso, when you drew the little circle on that plan did you not say to my Lord, "That's the approximate position"?

A. Yes.

Q. And is that also the approximate position of the car?

A. Yes.

Q. And when you demonstrated that (indicating) which is about 10 three feet, was that also approximate?

A. Yes.

Q. And did you use the word "approximate" because eight months have gone by since the incident?

A. Yes.

MR. JACKSON-LIPKIN: I am obliged, my Lord.

COURT: That will be marked Exhibit. . . .

MR. JACKSON-LIPKIN: My Lord, may it be marked 1B. We have got a 1A, the small one. This is an extract.

COURT: Yes, 1B. Can you stand down. Yes, Mr. Penlington? 20

MR. PENLINGTON: Yes. I call FONG Bun, page 126—paragraph 126.

P.W.3—FONG Bun Affirmed in Punti
XN by Mr. Penlington :

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Q. Mr. FONG, you are thirty-one years of age, a foreman in a textile factory at Tsuen Wan.

A. Yes.

Q. You live with your family at room 1380 Camellia House, So Uk Estate.

Q. Do you remember at about 9.30 in the evening of the 9th of January?

10 A. Yes.

Q. You were in the Mongkok area near the H.K.S.B. Building in Nathan Rd.

A. Yes.

Q. Did you walk across Nathan Rd. from the new H.K. Bank building to the old H.K. Bank building?

A. Yes.

Mr. Gall enters court

Q. Did you go towards Sai Yeung Choi St.?

A. Yes.

20 Q. At the junction of Argyle St. and Sai Yeung Choi St. did you see a motorcar?

A. Yes.

Q. What colour was this car?

A. Yellow colour.

Q. A yellow BMW, I think.

A. Yes.

Q. Did you see who was in this car?

A. When I saw them those in the car had already come out.

COURT: Yes, but was there any person in the car?

30 A. It seems that there was one.

Q. One person still in the car?

A. Yes.

Q. Was that a man or a woman?

A. A woman.

Q. Did you see anybody get out of the car?

A. There was one person getting out of the car.

Q. Could you recognise that person if you saw him again?

A. Strictly speaking I won't be able to recognise him as I've seen him only once.

40 Q. When this person got out of the car, whereabouts were you standing?

A. I was at the H.K. & S. Bank.

Q. Mr. FONG, photograph 3C, if you look at this photograph, can you show us on that whereabouts you were standing?

A. I was in this position, my Lord. (indicates)

Ex. 3C.

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Ex. 1B.

COURT: Would you like to put a mark on it in red with a cross, your own decision. (Witness marks photograph) It isn't quite a cross, but he's marked it with a dot.

Q. The man who got out of the car, Mr. FONG, what was he wearing?

A. I can't remember.

Q. Do you remember if he had a jacket on? If you can't remember. . . .

A. I can't remember.

Q. When you saw him get out of the car, whereabouts was it 10 parked?

A. It was parked on the side of the H.K. & S. Bank.

MR. PENLINGTON: Could the witness see the enlargement 1B.

Q. That is a plan, Mr. FONG, of the area. You see Sai Yeung Choi St./Argyle St. corner?

A. Yes.

Q. All right, we'll use a fresh one. Could you mark on that plan please whereabouts the car was parked when you saw the man getting out of it.

INTERPRETER: Marked with a line, my Lord. 20

Q. What happened? Did you see anything happen when the man got out of the car?

A. That man walked to the rear of the car.

Q. Did anything happen when he walked to the rear of the car?

A. He was arguing with some people.

Q. How many people?

A. About two persons. At that time I had just arrived there when the argument took place and I only saw two persons there.

Q. Approximately how old were these two persons?

A. They were youths. 30

Q. Did you hear the argument?

A. I could not hear them clearly because I was quite far away from them.

Q. About how far? Could you indicate, point out somewhere in the court perhaps, the distance between you and these people who were arguing.

A. It's a very long time ago and I can't remember the exact distance but on recollection I believe that the distance is about between where I am now and the door over there.

COURT: Thirty-five/forty feet? 40

MR. PENLINGTON: Forty feet, my Lord?

Q. Could you hear any indication of what this argument was about?

A. I could not hear.

Q. Did you stop and look at these people?

A. Yes, I did.

Q. What did you see happen then?

A. I saw them fight.

Q. Before the fight did you hear any—and if you couldn't understand the words—did you hear any shouting or any exchange of words between these people?

A. Yes.

Q. What did you hear?

A. I heard some foul language.

Q. Did you hear who was using the foul language?

A. They all used foul language. As I can't be certain which one used foul language, I said all of them used foul language.

10 Q. Did you hear quite a lot of foul language?

A. Yes.

Q. You told us that they then started fighting.

A. Yes.

Q. Would you tell us in as much detail as you can remember about this fight. Could you see who delivered the first blow?

A. One of the three hit him first.

Q. Which one hit him first?

A. I don't know. He had his back towards me.

Q. Was he the person who had got out of the car?

20 A. No.

Q. So it was one of the youths, was it?

A. Yes.

Q. And he had his back towards you.

A. Yes.

Q. So did the driver or the person who got out of the car, he was on the other side again of that person.

A. I'm not too clear about this. I don't understand what you mean.

Q. You told us that you were standing—you pointed out the spot near the corner of Argyle St. and Sai Yeung Choi St.

30 A. Yes.

Q. Is it true that you told us that the driver or the person who got out of the car had his back towards you? No, I'm sorry—the person who struck the blow had his back towards you.

A. Yes.

Q. Then beyond that person again, the person who was struck, was that the driver of the car?

A. Yes.

Q. Did you see where he was hit?

A. He was hit on the head.

40 Q. What happened then?

A. And then the parties engaged in fighting.

MR. PENLINGTON: Could we have that map again, the one that this witness has had.

Q. Could you show us on this plan that you have already marked with a dot, Mr. FONG, where these parties were standing when the fight took place?

COURT: Put a circle.

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FOREMAN: Excuse me, this is the position of what?

COURT: The position where they fought.

FOREMAN: Where they fought. Thank you.

Q. Were there many people in that area?

A. There are always a lot of people in that area and it's very difficult to say.

Q. Can you describe to us what happened when this fight broke out.

A. During the fight fists were used and there were also kicking with the legs.

Q. Did anybody else join in this fight? You said there was the person who got out of the car, the two youths. Did you see anybody else involved in this fight? **10**

A. During the fight there were three persons engaged in it.

Q. You didn't see anybody else engaged in that fight?

A. As soon as the fight started there were four persons engaged in it and there were no other persons.

Q. There were four then.

A. Altogether four persons.

Q. There was the driver of the car.

A. Yes. **20**

Q. And now you have previously told us about two youths.

A. Yes.

Q. Now where did the third person come from?

A. At first I only noticed two persons. I did not know who was attacking who, but in the course of the fight I noticed that there were altogether four persons engaged in it.

Q. And who was attacking who?

A. They were attacking each other.

Q. Did you notice any one person getting the worst of the struggle?

A. What do you mean by "getting the worst"? Both sides were fighting one another. **30**

Q. You said both sides—did you see in fact whether there were two sides in this?

A. Do you mean the fight—it is difficult to say which side got the worst—whether who got the worst.

Q. You said there were two sides, is that right, two sides?

A. Yes, there were two sides.

Q. Who was on each side?

A. There were two sides—there was the driver on one side and those three persons on the other side. **40**

Q. Now you have told us that one of the youths had his back towards you when you saw him strike the first blow?

A. Yes.

Q. Whereabouts were the other two youths?

A. One was standing beside him.

Q. Where was the third one?

A. I cannot remember the third one.

Q. You have told us that there was punching and some kicking going on in this fight?

A. Yes.

Q. Now Mr. Fong, please remember as best you can, can you tell us anything else apart from punching and kicking?

A. You mean in the course of the fight?

Q. In the course of the fight.

A. You mean you want me to tell everything from the beginning to the end?

10 Q. Yes, please.

A. In the course of the fight, the driver was struck and he fell backwards and then they lumped together in the fight—several persons lumped together.

Q. Several persons lumped together?

A. Yes.

Q. You said you saw some kicking—who was doing the kicking?

A. I saw such movements but I did not know who was engaged in such movements.

20 MR. JACKSON-LIPKIN: My Lord, I wonder if I may ask Mr. Gray through your Lordship didn't the witness say I don't remember?

COURT: Is that so Mr. Gray?

MR. JACKSON-LIPKIN: Did he not say I don't remember?

COURT: Would you check with the witness please?

INTERPRETER: There were such movements—I cannot remember who was engaged in those movements.

MR. JACKSON-LIPKIN: Thank you Mr. Gray.

Q. Did you see any punching apart from the first blow?

A. Yes.

30 Q. Who was delivering the punches?

A. You mean the first time?

Q. No, after that?

A. When the driver was hit he struck back.

Q. Yes, when the driver was hit he struck back?

A. Yes.

Q. Who hit him?

A. What do you mean?

Q. You say when the driver was hit he struck back.

A. One of the three youths.

Q. Was any of these three youths any taller than the others?

40 A. I did not notice that.

was this Q. This blow that the youth delivered—the blow that hit the driver, the youth that had his back towards you?

A. Yes.

Q. When the driver was hit he struck back—was that the first blow?

A. Yes.

Q. Now Mr. Fong, will you make this clear to us—earlier on you said that the driver delivered the first blow.

- A. I am sorry.
- Q. Did you see any other blows delivered after this one when the driver was struck?
- A. During the fight at that time both sides were hitting one another.
- Q. Did they have enough room between them to deliver these fist blows?
- A. Yes, there was enough.
- Q. Enough room—during this fight did you see the parties—any of the parties coming into actual contact with each other?
- A. Yes. 10
- Q. Will you tell us about that?
- A. What do you mean by contact—you mean contact as a result of being hit or as a result of coming in physical contact?
- Q. Coming in physical contact apart from striking the blows?
- A. Yes.
- Q. Can you tell us exactly what happened when the persons came in contact with each other?
- A. They came to physical contact with each other when one of them grabbed the neck of the other.
- Q. Whose neck was grabbed? 20
- A. The driver's neck.
- Q. When his neck was grabbed could you see whether he was still able to struggle?
- A. He was struggling.
- Q. Was he able to kick, punch?
- A. I believe he could although I am not sure.
- Q. How many people were holding him by the neck?
- A. One.
- Q. What were the other two doing?
- A. They were engaged in some movements and were hitting. 30
- Q. What happened then?
- A. And then I saw people running.
- Q. Do you know why they were running?
- A. I don't.
- Q. What about the people who were fighting—did you see what happened to them?
- A. They also ran.
- Q. Did you hear anybody shout out anything—did you hear any unusual noise?
- A. Yes, I did. 40
- Q. What did you hear?
- A. I heard noise which sounded like fire crackers.
- COURT: Was that before or after the running?
- A. As they were running.
- Q. As they were running—can you tell where this noise came from—this noise like fire crackers?
- A. The noise came from the scene.

Q. Were there any people between you and the people who were fighting?

A. Yes, you mean myself, those fighting and those between us—yes.

Q. Approximately, Mr. Fong, approximately how many people do you think were between you and the people who were fighting?

A. I cannot estimate how many.

Q. You said that there were many people in the area, as usual for this area, were people attracted by this fight?

A. Yes.

10 Q. About how long between the time of the running—the running started and the time you heard these sounds like fire crackers?

A. I really cannot estimate the time.

Q. But there was a period of time?

A. Yes, there was a period of time.

Q. Could you tell what made the people run—why the people ran away?

A. I could not see this clearly because there were people in front of me—there were people moving in front.

Q. Did you see where the people ran to?

20 A. They were running towards the waterfront.

Q. Down Sai Yeung Choi Street or down Argyle Street?

A. Towards the new Hong Kong Bank building.

Q. You were talking about people running—are these the people who were engaged in the fight?

A. Yes.

Q. Now which of the people engaged in the fight ran along to the new Hong Kong Bank building?

A. Those taking part in the fight.

Q. All of the ones taking part in the fight?

30 A. You mean at the time when they were all running together or when they first started to run?

Q. When they first started to run away, Mr. Fong, did they all run in the same direction?

A. At first I saw two persons run.

Q. Was either of those two persons the driver of the car?

A. Then he also ran.

Q. I take it from that the first two were two of the youths, then the driver of the car, is that right?

A. Yes.

40 Q. Did you see where the third youth ran?

A. When I saw them running I myself was also running so I did not pay much attention, and there were people on the scene who were running and there was some confusion.

Q. Mr. Fong, you told us that the sounds like fire crackers happened after they had started to run.

A. Yes.

Q. About how far had the two youths who were running towards

the new Hong Kong Bank building gone when you heard the noise like fire crackers?

A. They turned round and ran and when they got to the distance from where I am now to where this shorthand book is I heard the sound of fire crackers.

COURT: About five feet.

Q. Five feet—did you hear any other noise or any other words shouted out at all at that time?

A. Some people said, 'Shots are being fired.'

Q. Did you hear any of the people who had been fighting shout 10
out anything or used any expression?

A. It was very noisy at that time and there were people shouting that shots were being fired and I was sort of frightened.

Q. Can you tell us how many noises like fire crackers or how many shots?

A. Two.

Q. Can you give us any indication what time lapse between these two noises.

A. They came almost one after another in succession.

Q. You have told us that one of the youths was grabbing the driver 20
of the car round his neck?

A. Yes.

Q. Was he one of the ones who ran away towards the new Hong Kong and Shanghai Bank building?

A. It seems that he was not one of them.

Q. Did you see him—if you saw the driver run away towards the Hong Kong and Shanghai Bank building, did you see the driver being released by this man who had him round the neck?

A. He struggled and in the course of the struggle the hand was released and he dashed out and gave chase. 30

Q. The time he released, gave chase, had you heard any noise like fire crackers?

A. I cannot remember clearly now because in the first place it was a long time ago and the second place there was confusion at the time.

Q. When you heard this noise like fire crackers and people called out that shots had been fired, what did you do?

A. I ran.

Q. Where did you run?

A. I ran in the direction of Tai Yuen Company.

Q. That is along Sai Yeung Choi Street? 40

A. Yes.

Q. And you then got a bus and went home?

A. No, I did not take a bus—I seldom travel by bus.

Q. How did you go home?

A. I took a taxi and returned home.

Q. Did you make a statement to Mongkok Police Station on the 12th of January?

A. I did give a statement, but I cannot remember the date on which I gave it.

Q. What happened when you went to Mongkok Police Station to make your statement?

A. I saw police in newspapers requesting information to be furnished by the public.

Q. This statement I think was made in the early hours of the morning—at about 1.00 a.m.?

A. Round about that time.

10 Q. Now I take you back, Mr. Fong—did you hear any other noise like fire crackers or any other shots after the two you have described?

A. No, I did not.

Q. When the two youths ran away towards the new Hong Kong Bank building pursued by the driver of the car, could you follow them—did you see where exactly they went?

A. They were going in the direction of the new Hong Kong Bank building.

Q. Did you see them reach the corner of Nathan Road?

A. No.

20 Q. Did you see the youths or the driver carrying anything in their hands?

A. No.

Q. Yes, thank you.

XXN. by Mr. Jackson-Lipkin :

Q. Mr. Fong, you said a few minutes ago it is a long time ago.

A. Yes.

Q. May I take it that your hesitation over some answers is because of the passage of time?

A. Yes.

30 Q. Let me see if I can help you—first of all is it correct that the driver was wearing a suit when he got out of the car?

A. He had a jacket, oh yes.

Q. I wonder if you would be kind enough to look at Exhibit 32(C), I think it is—my Lord, it is the one with the motor-car just inside Sai Yeung Choi Street—3C—you see there is a car in that photograph—is that about the position where the yellow car stopped on the night in question?

A. You mean this car?

Q. Yes.

40 A. Not so far away from the corner—it is a little closer to the corner.

Q. Right—now these three youths whom you saw, would it be fair to describe them as long-haired youths?

A. Their hair was quite long.

Q. And isn't it in fact the expression you used when you made your statement very shortly after the incident—three long-haired youths?

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A. I cannot remember.

MR. JACKSON-LIPKIN: Would your Lordship give me one moment—my Lord, may he be shown the statement he did make—will you look at the signature at the end of that document?

A. Yes.

Q. That is the statement you made on the 12th of January isn't it?

A. Yes.

Q. To a detective sergeant?

A. I don't know his rank.

Q. Well to a police officer?

A. Yes.

Q. You did use the expression, 'they are long-haired' did you not?

A. Now I cannot remember having read this.

Q. Thank you—would you take it away please—Mr. Fong, there is no doubt in your mind is there that there were three persons attacking the driver?

A. Correct.

Q. Although originally it appeared as there was an argument between two people, the driver and one other?

A. Yes.

Q. This was not a stationary fight—not one spot was it?

A. There must be movement in any fight.

Q. There was movement—backwards and forwards—closer and apart?

A. Yes.

Q. At the time when the shots were fired the driver was still being held by the neck from behind was he not?

A. I cannot remember.

Q. Isn't that in fact what you told the police officer at Mongkok Police Station on the 12th of January?

A. I don't know if I said that.

MR. JACKSON-LIPKIN: My Lord, I wonder if he may see his statement again?

COURT: Yes.

MR. JACKSON-LIPKIN: This is the second question and answer, Mr. Gray, after the long paragraph.

(Interpreter reads to witness in Punti)

A. In actual fact I cannot be sure of this because I did not see clearly because there were people in between.

Q. It is something you said very soon after the incident?

A. Correct.

Q. But you couldn't be sure at the time?

A. I could not be sure at the time.

Q. And that is why you said to the police officer, 'It seemed to be they were still struggling and being held round by the neck'.

A. Yes.

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- Q. You remember giving evidence in the Coroner's court do you not?
- A. Yes.
- Q. And you told the Coroner something didn't you, that as far as you could remember at the time the shots were fired someone still had his arm round the driver's neck.
- A. I cannot quite remember now.
- Q. Yes?
- A. Memory is a very strange thing.
- 10 Q. Can you remember after this length of time how—would you like a glass of water?
- A. I am suffering from bronchitis—I would like. . . .
- COURT: Shall we adjourn for five minutes?
- A. That is not necessary—I don't have much time.
- MR. JACKSON-LIPKIN: This witness suffered enough in committal—he was cross-examined on where he actually stood for four days—I think he wants to get away—can you demonstrate to us with somebody's aid Mr. Fong how the driver was being held from behind?
- A. As this was such a long time ago I cannot demonstrate.
- 20 Q. I see—would your Lordship give me a moment—can you remember this much—was the driver being held by a hand or by an arm?
- A. By an arm.
- Q. You cannot remember now which arm it was can you?
- A. I cannot be definite.
- Q. My Lord, I wonder if this witness might be shown his depositions in the court below at marginal 147—the originals are available in court—is that your signature at the foot of the depositions—Mr. Gray, the marginal note for his signature is about 203.
- A. Yes.
- 30 Q. When you gave evidence on oath to the Coroner you were asked what were the hands behind the driver doing at the moment that you heard the first noise—that is the first fire cracker noise—didn't you then indeed on recollection explain to the Coroner that a hand was still round the driver's neck when the first shot was fired?
- A. I cannot remember—I can say this that it seems that I said this although I cannot remember exactly now.
- Q. Now lastly, Mr. Fong—lastly Mr. Fong, some form of relief, may I take you through the sequence of the things that you have told us and other people about. My Lord, that is note 200.
- 40 A. Yes.
- Q. You saw the driver coming out of the car?
- A. Yes.
- Q. He spoke to somebody?
- A. Yes.
- Q. That somebody was a long-haired youth?
- A. Yes.
- Q. That youth suddenly punched the driver on the head?

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- A. Yes.
- Q. The driver punched back?
- A. Yes.
- Q. Two other long-haired youths joined in the fight?
- A. Yes.
- Q. All three were attacking the driver?
- A. Yes.
- Q. Sometimes they were close together, sometimes they separated?
- A. Yes.
- Q. One of the long-haired youths grabbed the neck of the driver 10
from behind with his fore-arm?
- A. Yes.
- Q. While he was being held he was punched by the other two?
- A. The delivery of fist blows was not one sided—both sides
delivered blows.
- Q. I will come to that—while he was being held by the neck from
behind by one of the youths, the other two youths punched him?
- A. Yes.
- Q. He was struggling and fighting back?
- A. Yes. 20
- Q. While the driver was so held you heard two noises like fire
crackers?
- A. Yes, it seems that was so.
- Q. They were in very quick succession?
- A. Yes.
- Q. That was at a time when the fighters had separated—one of
them was about the distance you said of the shorthand book away from
the driver?
- A. Right.
- Q. After the two noises like fire crackers the man from behind let 30
go of the driver?
- A. Strictly speaking he should have let go the driver, but I don't
know how.
- Q. The driver got away somehow?
- A. Yes.
- Q. Everybody started running in different directions—two of the
long-haired youths ran down Argyle Street?
- A. I don't understand what you mean by everybody.
- Q. All the people around—like yourself—you also ran?
- A. You mean they ran? 40
- Q. Yes.
- A. Yes.
- Q. Two of the long-haired youths ran down Argyle Street?
- A. Yes.
- Q. Chased by the driver?
- A. Yes.
- Q. And that is the last you saw?

A. Yes.

Q. Now just one final matter—I want to ask you about the release of the holding of the driver round the neck—you do remember do you not at one stage the driver was being pulled backwards by the hand round his neck and nearly fell?

A. That I did not quite notice.

Q. Did you not say that to the Coroner when you were giving your evidence a long time ago—my Lord it is just below 129—just five lines below 129.

10 A. I cannot remember.

Q. Now—can you remember now whether or not the driver was pulled backwards?

A. I cannot remember—I cannot remember.

Q. I see, if I can assist you, wasn't it when he was pulled backwards away from the other two that you heard the noise like fire crackers?

A. I cannot remember.

COURT: Mr. Fong, just one question or two just to clarify—you recall that when you gave evidence before the Coroner it was sometime in February/March?

20 A. Round about that time, yes.

COURT: About a month or two months immediately after the incident?

A. Yes.

COURT: It was a rather unusual incident, you may say, because you do not see every-day a fist fight to be followed with gunshots?

A. Yes, my Lord.

COURT: Now you said in this court so many times—I cannot blame you for that—you said you cannot remember so long ago.

A. I did my best.

30 COURT: When you were referred to what you said to the Coroner, you said, 'It seemed that I may have said that, but it was so long ago'—what I do want to know and I am certain the jury would like to know, is when you say it is long ago I cannot remember, you are referring to now which is about six or seven months afterwards or did you refer to the time that you gave evidence to the Coroner, that it was even then you were not so clear of the position because of the lateness of the time and confusing state of affairs at the time of the incident?

A. From the time of the incident until the time of the Coroner's hearing.

40 COURT: You say that even then you were not too clear?

A. At that time as not a long time had elapsed I could still remember but by now after such a long lapse of time especially as I had other matters to attend to I cannot remember.

COURT: Do I understand you to mean when you gave evidence before the Coroner you were still very clear as to what actually happened on the 9th of January?

A. I can say this that I would tell the Coroner's court what I can recall—of course what I cannot remember I cannot tell.

COURT: Then it is since then, because of the long time lapse you may not be able to remember what you said before the Coroner and what actually happened on the 9th of January now?

A. Yes, my Lord.

COURT: Just one last question—you said when you heard the two shots or rather the two noises that sounded like fire crackers, a youth was about the distance of—I think the starting to run—to the distance about that shorthand notebook—which is about five feet away? **10**

A. Yes.

COURT: Was that only one youth who was that far away or two youths or three youths?

A. I saw one running out, that is to say the first one who ran out.

COURT: You did not pay attention to the second one or you cannot remember where was the second one?

A. I might have forgotten.

COURT: And the third one?

A. The third one was behind.

COURT: Very well. **20**

FOREMAN: Your Lordship, we have three questions—first when the driver came out of the car, did he identify himself in any way either verbally or by showing anything.

COURT: I see what you mean.

FOREMAN: The second question—was there any other grabbing in this fight—we have heard testimony relating to the driver being grabbed by the neck—was there any other grabbing done in this fight or was that the only incident.

COURT: Yes.

FOREMAN: And lastly, when the witness heard the noise that sounded like fire crackers and the youths were—two of the youths were about five feet away from the driver, what direction were they facing—were they facing the driver or facing away from the driver.

COURT: Right—three more questions Mr. Fong. When the driver came out of the car, you were already at the corner, at the Hong Kong and Shanghai Bank Building?

A. Yes, I was almost in this position which I have marked.

COURT: You saw the driver walk towards the two youths?

A. Yes.

COURT: Where they had an argument? **40**

A. Yes.

COURT: Later on with foul language.

A. Yes.

COURT: Now before they started any arguing, as the driver approached the two youths, did you hear the driver tell the youths who he was?

A. No, I did not hear.

By Court :

Q. Well you said that there was a time when the driver was grabbed by the neck from behind?

A. Yes.

Q. But apart from that grabbing which might be a continuous process for a short while, was there any other grabbing—any other form of grabbing by anyone?

A. No.

10 Q. You said that one of the youths was about five feet away from the driver, when you heard the fire cracker noise?

A. Yes.

Q. And he was running?

A. Yes, running.

Q. Was he running away from the driver or running towards him?

A. He was running away from him.

Q. In other words, with his back against him?

A. Yes, my Lord.

Q. Did you notice the other youth in front—was he facing the driver then or with his back towards him?

20 A. It seems he was running—it seems he had turned round and ran.

Q. He was also running too?

A. Yes.

Q. Again his back against the driver? I can realise that the distance is only five feet—it can only be a split second?

A. Yes.

Q. But you will say that in this respect both the youths in front were then running away, with their backs towards the driver?

A. Yes.

30 Q. And at the time when you heard the first fire cracker noise one of the youths was five feet away from the driver—approximately?

A. Approximately that was the distance.

Q. And as far as the distance of the second youth in front you couldn't tell?

A. The time was very short during which there was a lot of confusion and I cannot tell.

MR. PENLINGTON: A point of elaboration on the first question regarding identification—you asked the question whether the driver said anything to identify himself—a further question was did he do anything at all, like show a card or anything to identify himself.

40 COURT: You said that the driver did not tell—you did not hear the driver tell the youths who he was.

A. I did not hear.

COURT: Did you see him doing anything to identify himself—he was talking.

A. He was talking—making gestures.

COURT: He was talking making gestures—did he show the youths anything?

A. No.

MR. JACKSON-LIPKIN: Arising out of the ultimate question your Lordship put, you said that this distance of the second one you could not help.

COURT: I said that I was referring to the position of the second youth—I realised the distance of the first one was five feet, it could only be a matter of a split second, and he did not notice the second one.

MR. JACKSON-LIPKIN: My Lord, yes—I was going to ask your Lordship's leave to remind him that he told the Coroner the second was two feet—you will find it under 146. 10

COURT: Yes—let's put it this way, Mr. Fong, if you told the Coroner that the second youth was about 2 feet away from the driver, would it be—at that time would that be true?

A. That was about the approximate distance, because this happened in a matter of one second.

COURT: You may step down.

FOREMAN: We have another question and that was early in the testimony of the witness there being a lady in the car—the question is did the witness notice what the woman did—did she participate in any way in the exchange. 20

COURT: You said you saw a woman in the car?

A. Yes.

COURT: Did she do anything, apart from sitting in the car?

A. No, I was paying attention to the argument.

COURT: Apart from seeing her, you did not pay any attention to her at all—you did not know whether she has come down to join them?

A. I did not pay attention.

COURT: Or that she has run away?

A. From the beginning to the end I did not pay attention.

COURTS: In other words, apart from seeing her in the car, you 30 noticed nothing about her?

A. Correct.

COURT: Very well—yes, step down. Mr. Penlington?

MR. PENLINGTON: Mr. CHEUNG Him—is my page 39, my Lord, paragraph A.83 My Lord, my friend says he will raise no objection in taking KWOK Tim-choi, as the cross-examination of Mr. CHEUNG Him will be very long—well in fact Mr. CHEUNG Him is here.

P.W.4—CHEUNG Him Affirmed in Puncti.
XN. by Mr. Penlington :

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CHEUNG Him

Q. Mr. Cheung, you are a watchman employed by the Hong Kong and Shanghai Banking Corporation?

A. Yes.

Q. You live at 43 Sai Yee Street, 7th floor?

A. Yes.

Q. On the evening of the 9th of January of this year were you on duty from 4.00 p.m. to midnight?

10 A. Correct.

Q. And in what premises of the Hong Kong Bank are you employed?

A. At No. 664 Nathan Road.

Q. That is the old Bank building?

A. Yes.

Q. Will you please see photograph Exhibit C.3C-3C.

Ex. 3C.

A. Yes.

Q. That is the building where you are employed as a watchman?

A. Yes, correct.

20 Q. Were you there at approximately 9.30 on the evening of the 9th of January?

A. Yes, I was.

Q. Look at another photograph Exhibit 2E—shows a B.M.W. motor-car?

Ex. 2E.

A. Yes.

Q. Behind the motor-car is an iron grille?

A. What iron grille is there behind the car?

Q. Is that iron grille over a . . .

A. Opposite the car there is an iron grille—this is not behind.

Q. This iron grille shown to the rear of the car.

30 A. This is the iron grille of our bank.

Q. Were you standing near that iron grille on that evening of the 9th of January?

A. Yes, I was.

Q. Could you please mark on that photograph the position that you were standing?

A. (Witness marks on the photograph)

Q. On this evening Mr. Cheung, were there many people in the area?

A. Yes.

40 Q. What sort of people were these?

A. There were hawkers and those people coming out of the cinema after the show was over.

Q. Were you standing on the steps there for any particular purpose or were you just looking at the people walking back and forth?

A. It just happened that I was there—I was looking out and saw the people.

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Q. Were you standing on the steps of the bank—were you above the pavement?

A. Yes.

Q. Could you see over the heads of the people walking along in front of the bank?

A. Yes.

Q. Did you see a motor-car turn out of Argyle Street into Sai Yeung Choi Street?

A. Yes, I did—turn from Argyle Street into Sai Yeung Choi Street.

Q. What colour was this car?

10

A. Yellow car.

Q. Did it appear to be the same car shown in photograph 2E?

A. Yes.

Q. Did you see any incident when this car turned into Sai Yeung Choi Street?

A. Not at that time.

Q. Did you see the car stop?

A. It stopped and parked outside the entrance of our bank.

Q. So that when it stopped outside the entrance of the bank, is that the first time you saw it stop?

20

A. Yes.

Q. Were there other cars coming out of Argyle Street and turning into Sai Yeung Choi Street that evening?

A. I cannot remember if there were other cars—how can I be expected to remember all the cars travelling the whole night—I can only remember this car parked outside the premises.

Q. Would it be fair to say there were normally—at 9 o'clock in the evening, there would normally be quite a lot of cars turning out of Argyle Street into Sai Yeung Choi Street?

A. Yes, normally, yes.

30

Q. Would it also be true to say you did not really notice this particular car till it parked outside your bank building?

A. That is correct.

Q. Did you see how many people were in the car when it parked outside the building?

A. Two persons.

Q. Were they male or female?

A. One male and one female.

Q. Did anybody get out of the car?

A. I saw the driver coming out of the car.

40

Ex. 2E.
Ex. 3C.

Q. Would you look at that photograph again—photograph 2E and also photograph 3C—was the car parked on that evening in the same position as the car shown in photograph 2E or was it further or closer, away from Argyle Street?

A. This is the correct position.

COURT: Which one is this?

A. I am referring to the position of the car.

COURT: The photographs that were shown to you—I am not referring to the make of the car rather the position of the car at the time.

A. If we speak of the position, it is the right position at the time.

COURT: 2E?

A. 2E.

Q. Did anybody get out of the car?

A. The driver.

Q. What did he do when he got out of the car?

A. He walked up to Argyle Street—to the junction of Argyle Street.

10 Q. Did you see anybody else at the junction of Argyle Street?

A. I saw three youths there.

Q. Did the driver go up towards these youths?

A. Yes.

Q. And were they also walking towards him?

A. No, they were standing there in stationary position.

Q. Were the three youths together?

A. They were together, yes.

Q. Was any of these youths any taller than the others?

A. At that time I wasn't paying too much attention to their heights.

20 Q. Was one of them standing on the foot-path?

A. Yes, correct.

Q. Did the driver of the car start a conversation or argument with this youth who was standing on the foot-path?

A. Yes, correct.

Q. As near as you can remember Mr. Cheung, please try your very best to remember, can you tell us what you saw or heard between the driver and these three youths.

A. In point of fact I did not hear what they said because the distance between where I was and where they were is too far.

30 Q. Did they appear to be saying something even though you couldn't hear?

A. Yes.

Q. What happened then—you say apparently there was a conversation, did you see anything happen?

A. Subsequently the two had a fight.

Q. The two had a fight?

A. Yes.

Q. Which two are you referring to?

40 A. That is to say the one standing on the pavement and the driver of the car.

Q. Can you tell us how this fight started?

A. I don't know how they came to fight but I just saw them fighting.

Q. Just saw them fighting—how were they fighting?

A. They delivered fist blows—the other delivered one back—that is what I call exchanging blows with fists.

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Q. Did you see which was the first blow that you saw—who delivered the first blow that you saw?

A. The one on the pavement delivered the first blow.

Q. What happened then after these two exchanged blows?

A. There were two others—there had originally been three. The other two also joined in the fight.

Q. How did the other two join in the fight?

A. They were using their fists and hitting in that direction, which is like any person engaged in the fight.

COURT: Any time that is convenient.

MR. PENLINGTON: Yes, my Lord.

COURT: I will adjourn to 2.30 in the afternoon.

1.00 p.m. Court adjourns.

2.40 p.m. Court resumes

Accused present. Appearances as before. Jury present.

Ex. 1C. COURT: Mr. Penlington, I will mark the second map as 1C.

MR. PENLINGTON: Yes, my Lord.

MR. JACKSON-LIPKIN: My Lord, before we proceed may I mention a matter relating to the witnesses?

COURT: Yes.

MR. JACKSON-LIPKIN: Your Lordship saw that there was a slight confusion before the present witness was called in that Mr. Kwok Tim-choy was supposed to have gone next but isn't available. My Lord, the learned Director and I have had a chance of looking at the affirmation of service by the bailiff and apparently the bailiff was unable to find Mr. KWOK Tim-choy and only served a lady at that address.

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, I gather that the police have looked for him at home and at work and he left his work some time ago.

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, Mr. Kwok was treated rather badly in the Coroners Court; not quite as monstrously as poor Mr. Fong. It could be that he is exhibiting a degree of reluctance ever to put foot in court again. My Lord, Mr. Timothy Lee, the Coroner, found Mr. KWOK Tim-choy on the second occasion by appealing to the Press to ask him to come forward and assist. My Lord, Mr. Kwok is an important witness for both sides. He is another corroborative witness of the accused having been seized from behind round the throat and, my Lord, I would invite your Lordship to ask the Press once again to assist by putting out an appeal for this gentleman who, we hope, will come forward as he did on the last occasion. An appeal from your Lordship in open court will be heard, I think, by the Press and if they do act on it we may well find him in time to call him.

COURT: Are the police unable to find him?

MR. JACKSON-LIPKIN: Yes, my Lord. They have looked at his home and his place of work.

COURT: Yes. That being the case, in the interests of justice I hope the Press will report this appeal to Mr. Kwok to come forward as soon as possible. I believe they are present in this court.

MR. JACKSON-LIPKIN: My Lord, it is Mr. KWOK Tim-choy whose last home address was 27, Yen Chau Street, 4th floor, Kowloon.

COURT: 4th floor.

MR. JACKSON-LIPKIN: Yes, my Lord, and his last place of work was the Universal Metal Works Factory at 338, Tung Chau Street, ground floor.

10 COURT: Well, it may be that the Government Information Services are able to help. . . .

MR. PENLINGTON: Yes, I will certainly speak to them.

COURT: . . . and through Radio Hong Kong maybe broadcast an appeal for him to come forward.

MR. JACKSON-LIPKIN: My Lord, I am very much obliged.

COURT: Yes, Mr. CHEUNG Him, would you return to the box?

P.W.4—CHEUNG Him—O.F.A.

XN. by Mr. Penlington continues :

COURT: Yes.

20 Q. Mr. Cheung, just before we adjourned you told us that you saw this fight break out between the driver of the motor car and the three youths at the corner of Argyle Street and Sai Yeung Choi Street.

A. Yes.

Q. Now, had you noticed these persons in particular before the fight broke out?

A. No.

Q. Did you see any of these persons making any gesture at all of any sort before the fight broke out?

A. No.

30 Q. During this fight was there punching on each side?

A. Yes.

Q. Was there any kicking?

A. No.

Q. How close to each other were the persons taking part?

A. They were very close to each other.

Q. Did this fight attract a crowd as people tend to come towards the scene of the fight?

A. Yes.

40 Q. Did the fight sort of move around or was it static? Was the scene where the four people were fighting, did they stay put or did they move around?

A. They were moving around.

Q. Did you see any—during the course of this fight any holding, any of these persons being held by any other?

A. No.

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Ex. 3C.

Q. From where you were standing on the steps of the bank could you see this fight over the heads of the people who had gathered round?

A. No. When I said the people were looking I do not mean there were people gathering around those taking part in the fight. What I mean, there were hawkers and other people selling goods there. They stopped and looked in the direction of the fight.

Q. Were there many people between you and the people who were fighting?

A. Of course there were many people because there were those who were selling things on the opposite side. 10

Q. This is people selling things between you and the people who were fighting?

A. Yes.

Q. That is just beside the railings, is it, the railings that go from the corner of Sai Yeung Choi Street? You can see them shown in photograph 3C.

A. No, those who were watching were those people on the opposite side, opposite the Hong Kong Bank building on Sai Yeung Choi Street. . . .

Q. On the other side. . . . 20

A. . . . who were hawking.

Q. . . . of Sai Yeung Choi Street. But were the people hawking or standing or doing anything near those railings shown in photograph 3C where there is now a station-waggon parked?

A. I did not pay attention to that.

COURT: I think all the questions directed on this point is that, was there anyone standing between you and the group of persons fighting have blocked your view?

A. No.

COURT: No one blocked your view? 30

A. No one.

Q. Very well. So you saw this fight between the three; there were fists, there was moving around. How long, for what period of time, did this fight go on, approximately?

A. A very short period of time.

Q. During the time this fight was going on did the young lady remain in the motor car?

A. Yes.

Q. During the course of this fight was anybody knocked down or did anybody fall down? 40

A. Yes.

Q. Could you see why he fell down?

A. I don't know why he fell down. I saw him falling on this side of his body and then immediately he got up again.

Q. When he fell down was he being held in any way, was he dragged down in any way?

A. No.

Q. He got up again. What happened then?

A. Yes, he got up by himself. After he got up this several youths started to run.

Q. Did there appear to be any reason why they ran?

A. Of course I don't know what the reason is, how do I know for what reason he ran?

Q. Did anybody shout out anything?

A. During the—when the fight first started I heard the girl shouting to them, "Not fight."

10 Q. When the fight first started?

A. Yes.

Q. Did you hear anybody else shouting out at any time?

A. No.

Q. Did she only shout out that once or did she shout out again later on?

A. Only once.

Q. You say the youths ran away. Whereabouts did they run?

A. One ran along Sai Yeung Choi Street towards Yaumati.

20 Q. This man must have run past where you were standing, is that right?

A. Yes.

Q. Was he the one who had been the one who started the fight, the one who was first involved with the driver of the car?

A. Yes, that is correct, yes.

Q. What about the other two?

A. The other two ran along Argyle Street and turned into Nathan Road.

Q. Now, did you see them turn into Nathan Road?

A. Yes, I saw them with my own eyes running and turning.

30 Q. Where were you standing when you saw these youths turn into Nathan Road?

A. No, what I mean is I didn't say that they turned, I mean I saw them running straight into Nathan Road.

Q. You saw them running towards Nathan Road?

A. Towards—in the direction of Nathan Road.

Q. During this time. . . .

COURT: I understand that you did not see them turning into Nathan Road, you only saw them running towards the direction of Nathan Road?

A. That is correct, my Lord.

40 Q. And what about the driver of the car, what did he do?

A. The driver of the car was following them from behind.

Q. Following which one?

A. He was following the two youths from behind.

Q. Did you see what the driver of the car was wearing? What sort of clothes did he have on?

A. I did not pay attention to that.

Q. During the course of this fight at the time the parties ran away,

the boys ran away, did you see any of these boys appear to be grouping around, trying to feel around the driver's clothing, under his jacket or around his waist?

A. No.

Q. When the driver set off in pursuit of these two boys did you hear anything unusual?

A. No.

Q. At any time that evening, Mr. Cheung, did you hear anything that sounded like a fire-cracker going off or a bang or detonation of any sort? 10

A. No, I did not hear.

Q. Did you continue to look out from the bank building after the various parties had dispersed, the parties to the fight?

A. During that time, yes.

Q. Did you see the lady in the car at any stage get out of it?

A. After some time a passer-by knocked at the door of the car in which the lady was. The lady did not pay any attention to him but he said to the lady the following words, "Your friend has opened fire."

COURT: "Your friend. . ."

INTERPRETER: ". . . has opened fire." 20

Q. At any time during the course of this fight, Mr. Cheung, did you see any of the youths going behind the driver of the car?

A. I did not notice.

Q. At the time the fight broke up did it seem to you that either side was getting the worst of the fight?

COURT: Did you say 'at any time?'

MR. PENLINGTON: At the time it broke up, finally.

A. Well, this is very difficult to say. What do you mean by 'getting the worst of the fight?'

Q. Well, let me put it this way: the fight was the one driver against 30 these three youths.

A. Yes.

Q. You told us the driver fell over and got up again.

A. Yes.

Q. When he got up there were further blows exchanged, is that right?

A. No, no, the fight by then had stopped.

Q. When he got up again?

A. No, by the time he got up the youths had started to run.

Q. So when he fell down—and that was the time the youths ran 40 away?

A. Yes.

Q. He got up and chased after the two who had fled towards Nathan Road?

A. He got up very quickly.

Q. Yes?

A. Yes.

Q. Yes, thank you.

COURT: Just one or two questions before Defence Counsel will ask you questions. Do I understand that from start to finish you were standing on the steps of the door of the old Hongkong & Shanghai Bank building?

A. Yes.

COURT: That was from the time they started to argue, exchange of blows and breaking up of the fight?

A. That is correct, my Lord.

10 COURT: And no one blocked your view from the four persons who were fighting?

A. No.

COURT: And you heard no unusual noise either during the fight or immediately at the breaking up of the fight?

A. Correct.

COURT: Yes, Mr. Jackson-Lipkin.

XXN. by Mr. Jackson-Lipkin :

Q. Mr. Cheung, do you know how tall you are?

A. About five feet five inches, I believe.

20 Q. Will you forgive me if I ask, could you step down so that the jury can see? (Witness leaves box & returns) Thank you. How many steps are there into your bank at the back?

A. About four to five steps.

Q. Forty-five?

A. Four to five.

Q. How many steps from the pavement to the iron shutters? Count the pavement—don't count the pavement as one.

A. I have not counted the number of steps.

30 COURT: No, no, Mr. Cheung. Please do realise that you are not on trial. Counsel are entitled to ask you questions in order to check your memory and to check whether your testimony can be relied on without suggesting that you are telling lies: sometimes people do make mistakes. You have come here, made an affirmation that you will tell the truth, the whole truth and nothing but the truth.

A. Yes.

COURT: You have nothing to fear. If you can remember say so to the best of your belief and knowledge, and if you don't remember say that you don't remember, or if you can say approximately how many steps, say so. If you say you can't, just say that you can't.

A. Approximately three to four steps.

40 Q. Looking at 2E, Mr. Cheung, that's with the shutters slightly raised, one gets the impression that those are the type of iron shutters that come down to a first or second step. However many there are behind inside those are the sort of shutters that come to the first or second step.

A. No, it is pulled down to be on floor level with the inside of the bank and then one walks down about three steps from the entrance.

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Ex. 2E.

Q. Thank you. In the iron shutters there is a gate or an iron door, isn't there?

A. Yes.

Q. Now you have thrice told us that evening that you were looking out from your bank. By that do you mean you were standing in that doorway looking out?

A. No, I meant that I was standing outside the spot which I have marked with the red pen.

Q. You were the caretaker on duty for the inside of the bank, weren't you, that night?

10

A. Yes.

Q. And which of the steps without the shutters do you say you were standing on?

INTERPRETER: Pardon?

Q. Which of the steps without the shutters do you say you were standing on?

A. I did not walk down from the steps, I was just outside the entrance.

Q. Now, on that evening we have heard—tell me if you disagree—there were people coming out from the Gala Cinema.

20

A. Yes.

Q. Hawkers?

A. Yes.

Q. Shoppers?

A. Yes.

Q. Passers-by?

A. Yes.

Q. Would I be right in saying that when the fight started there were, what is so commonly to be seen in Hong Kong if anything happens, lookers-on?

30

A. Well, I don't agree with this because in the old days people were fond of watching fights but not nowadays because they do not want to get themselves involved into trouble.

COURT: You mean now people do not look at fights any more?

A. Of course, my Lord, because nobody wants to get into trouble; people don't want to get into trouble.

Q. Mr. Cheung, would you accept that there were people passing backwards and forwards along Argyle Street on the same side as your bank building?

A. Yes.

40

Ex. 3C.

Q. And looking at 3C there were certainly people up to the corner of the street immediately behind those two young men on the right.

A. Yes.

Q. And there were people on the other side of Sai Yeung Choi Street.

A. Yes.

Q. And there were people crossing the stud crossing.

A. Of course there were.

Q. But by a singular coincidence not one soul stepped between you and this fight, is that right?

A. Maybe when people saw this fight going on they just walked away.

COURT: You mean they walked clear of the fighting party?

A. Yes, when they saw them fighting they were glad to get away from there.

10 Q. And one of the ways of getting away from the fight would be to walk down the pavement of Sai Yeung Choi Street where your bank building is?

A. Well, one could get away any place one wanted but I don't know how they got away.

Q. What I am suggesting to you is this, Mr. Cheung: there must be somebody at least coming up to that corner, seeing a fight, who would turn right down Sai Yeung Choi Street to avoid it.

A. That might be so.

Q. And if such persons did pass they would have passed between you and the four who were fighting.

20 A. Maybe so, yes.

Q. Mr. Cheung, it's a long time ago, isn't it?

A. Yes.

Q. Is it possible that you just don't remember if anyone passed between you and the fighters?

A. I may not be able to recall anyone passing between me and the fighters, but at that time my attention was concentrated on this—in the fight.

Q. You see, Mr. Penlington, that is this gentleman here, asked you, 'was there any kicking' and you said 'no.'

30 A. Correct.

Q. Now, what I want to ask you is this: does your answer mean 'No,' 'I can't remember,' 'No, there was none that I could see' or 'No, there quite definitely wasn't any?'

A. I did not notice legs being used to kick.

Q. Thank you. Mr. Cheung, I wonder if you could help my Lord and the jury. . . .

FOREMAN: Excuse us, but we could not hear the reply.

INTERPRETER: "I cannot remember legs being used to kick."

40 Q. Mr. Cheung, can you please help my Lord and the jury? If you can't remember, say you can't remember; if you didn't see, say you didn't see.

A. I did not see.

Q. Thank you. Now you say that in the course of the fight the people were moving around?

A. Yes.

Q. And this was a fight of three to one?

A. Yes.

Q. Some time the fight would be along your line of vision and other times it would be athwart your line of vision?

A. When I was watching on that night it was within my view.

Q. I am sorry, Mr. Cheung, you are not quite understanding me. You have got a group of people like that. Here is your line of vision. Sometimes they were like that and sometimes they were like that.

A. Yes.

Q. Now, at some time you have told my Lord you saw the driver held or dragged down to the ground.

COURT: I do not think he said 'held' or 'dragged down,' he just 10
said he fell down.

MR. JACKSON-LIPKIN: My Lord, I am so sorry. I think that must be the question and not the answer.

COURT: That's right.

MR. JACKSON-LIPKIN: It doesn't matter.

Q. You saw the driver appear to fall, is that right?

A. Yes.

Q. At that time were two of the youths with their back to you?

A. I am not clear about this. I dare not say if they had their backs 20
towards me or not.

Q. Can you remember, did the driver have his face towards you?

A. I just saw him falling down and then getting up again.

COURT: Yes, but as he fell was his face facing towards you or was his back towards you?

A. He was not facing me. As I was watching him from this direction he fell on this side. (Witness indicates)

COURT: Would you come down and demonstrate? Counsel—imagine yourself in the position of leading Counsel there, standing up. The fighting party was there.

MR. JACKSON-LIPKIN: I am you, looking. . . . 30

COURT: You are the driver, yes.

A. He fell down like that. (Witness demonstrates)

COURT: He fell suddenly towards you?

A. Yes, he fell towards me.

COURT: So the driver wasn't facing you he was facing sideways, and he fell towards your side?)

A. Yes, my Lord.

Q. Mr. Cheung, just one question. Remember that I am you; just show my Lord which way the driver was facing.

A. Like this. (Witness demonstrates) 40

Q. Just stay there for a moment. At that time was there not one of the youths about where Mr. Gray was a moment ago—where he is now?

A. This I did not see.

Q. You see, what I am suggesting to you, Mr. Cheung, is that the reason for the driver falling almost completely was that someone was pulling him from behind. Can you remember that?

A. It's very difficult to say regarding this.

Q. And what I am suggesting to you is that someone has hid arm around the neck of the driver.

A. This I did not see.

Q. Mr. Cheung, I think it is only right I should tell you. . . .

MR. JACKSON-LIPKIN: My Lord, may he see one of these plans?

COURT: Yes.

MR. JACKSON-LIPKIN: It doesn't matter which.

CLERK: 1C.

10 Q. There was a gentleman just on the corner of Argyle Street and Sai Yeung Choi Street who has told my Lord and the jury that there was someone behind the driver and he did have his arm round his neck. Does that help your memory? Could that have been the reason for the driver falling?

A. I did not pay much attention to this point.

COURT: To the?

INTERPRETER: 'To this point.'

MR. JACKSON-LIPKIN: 'I did not pay much attention to this point,' my Lord.

COURT: Yes.

20 Q. Just one more matter, Mr. Cheung. You said by the time he—that's the driver—got up, the youths started to run away?

A. Yes.

Q. By that you mean the two who ran along Argyle Street, don't you?

A. Yes, they were running along Argyle Street towards Nathan Road.

COURT: Any re-examination?

MR. PENLINGTON: Yes.

REXN. by Mr. Penlington:

30 Q. Mr. Cheung, on that last question, when you said 'the youths running along Argyle Street,' what about the youth who ran along Sai Yeung Choi Street? Did he run off at the same time as they did or after them?

A. At the same time.

Q. About how far behind the car—distance behind the car did this fight take place? You have told us it was a moving fight, it didn't stay still. Approximately how far?

40 A. Only several feet, seven to eight feet from the car. The car was here, shown in this photograph, and the fight took place somewhere around here in front of this traffic sign.

Q. Near the traffic sign at the junction of Sai Yeung Choi Street and Argyle Street?

A. Correct, next to the traffic sign.

Q. Now, I hate to labour this point, Mr. Cheung, but you were watching this fight, I imagine, with some interest? It was not a usual thing for a fight to break out in Sai Yeung Choi Street, is that right?

A. I don't mean that no fights ever take place in this street, fights do take place, but they won't last for such a duration.

Q. You were paying some considerable attention to this particular fight?

A. Yes.

Q. And did you at any time see the driver being held round the neck by any of the boys—any of the youths?

A. Within my view I did not notice, I only saw them exchanging blows.

Q. You saw them exchange blows?

10

A. Yes.

Q. Thank you, Mr. Cheung.

COURT: Yes, Mr. Foreman?

FOREMAN: Your Lordship, we have one question.

COURT: Yes.

FOREMAN: Could Mr. Cheung comment on how far the youths had run by the time the driver got up? He had fallen and they had started to run, how far had they gone?

COURT: Now, you said the driver fell down.

A. Yes.

20

COURT: And as soon as he fell the youths started to break away and run.

A. Yes.

COURT: And you said the driver then got up.

A. He immediately got up.

COURT: Now by the time the driver succeeded in getting up how far away had the two youths run? The two youths running, first of all—the two youths running along Argyle Street?

A. By the time the driver got up the two youths had run to where the traffic sign is here. (Witness indicates)

30

Ex. 3C.

INTERPRETER: Exhibit 3C.

COURT: Yes. How far had the youth running along Sai Yeung Choi Street gone? (Speaks in Chinese.) No, no, there were three youths, two youths ran along Argyle Street.

A. Yes, my Lord.

COURT: And, according to you, as soon as the driver got up on his feet the two youths had reached where the traffic sign was.

A. Yes.

COURT: But there was a third youth. . . .

A. Yes, my Lord.

40

COURT: . . . whom you said ran along Sai Yeung Choi Street.

A. Yes.

COURT: Now, how far did he get when the driver stood up?

A. When the driver was giving chase that youth ran past our entrance.

COURT: No, I am not talking of the time when the driver gave chase. The jury is interested to know that as soon as the driver was up on his feet

how far away was the youth running along Sai Yeung Choi Street from him.

MR. JACKSON-LIPKIN: My Lord, may I respectfully intervene. My Lord, I feel that the answer may be on a false premise, with respect. The evidence in chief of this witness, in answer to Mr. Penlington, wasn't that the youths started to run after the driver was knocked down. If your Lordship looks at your note you will find that it was after he got up that the youths started to run.

COURT: Yes. So that when he was up on his feet. . . .

10 MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: . . . how far the youths were away from him, and one was that he was—two youths were at the traffic sign but what about the third one?

A. I did not pay much attention to the direction of that in which that youth ran.

COURT: But you just said, without being asked, you said that when the driver gave chase to the other two who were along Argyle Street the third one was just running past you.

20 A. Yes, I saw him running past but I cannot say the distance which he had run.

COURT: No, I am not asking you about the distance now. I am asking you that you did say, did you not,—I just want to confirm what you said just now in evidence—that when the driver was giving chase the third one along Sai Yeung Choi Street was running past you?

A. Yes, my Lord.

COURT: Yes, Mr. Foreman?

30 MR. FOREMAN: One more question, this is a point of verification: When the driver got out of the car, Mr. Cheung has testified that he walked towards the youths who were standing waiting for him. Could Mr. Cheung please comment on his demeanour. Was he running, yelling, was he walking casually, how was he walking?

COURT: The driver?

MR. FOREMAN: Yes.

COURT: Now, could you tell us when the driver got out of his car you said he approached a youth.

A. Yes.

40 COURT: Now, can you tell us or describe his manner of approach: was he running, walking quickly or walking at a normal pace or walking slowly towards them or while he was going towards them was he shouting or was he talking or was he in silence?

A. The driver did not say anything but he was walking at a pace quicker than normal.

MR. FOREMAN: Then, as I understand him, the fight did not start as soon as he got out of the car. It started after he walked a number of steps to the youths?

COURT: Oh, yes, that was in evidence, that was in the witness's evidence. He said he got out of the car, approached the youth, there was

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an argument and then the youth standing on the pavement or near the pedestrian crossing gave him a blow on the head and he immediately returned the blow.

JUROR: He wasn't yelling?

COURT: There was no question of his fighting immediately he came out of his car. There was definitely evidence that the driver got out of his car, approached the youths or one of the youths and one of them was standing on the pavement near the pedestrian crossing, there was an argument and the youth on the pavement hit him on the head first dealt the first blow and then he returned the blows and then there was a fight. 10
Yes, would he step down, please. Yes, Mr. Penlington?

MR. PENLINGTON: Might this witness be excused?

COURT: You have no objection?

MR. JACKSON-LIPKIN: No objection. May I respectfully remind you that the last question from one of the jurors, addressed to her foreman, was about the driver yelling. There has been no evidence from anybody or from any source that the driver was yelling and the evidence so far has been that he wasn't even saying anything.

COURT: No.

MR. PENLINGTON: Mr Lord, before I call the next witness, I now have the agreed statement of facts.

COURT: Yes. (Copies passed to Court and jury)

MR. PENLINGTON: I think that should be given an exhibit number.

COURT: Well, according to the old list of exhibits, there are twenty eight in number and I think this one would be Exhibit 29.

MR. PENLINGTON: Yes, I think it can probably be given a new number because quite a lot of the exhibits called for at the inquest have not been. . . .

10 COURT: . . . We don't know which ones in the list will come up so just for safety we give it Exhibit No. 29. Please mark that, members of the jury, Exhibit 29.

MR. PENLINGTON: Shall I read this out, my Lord?

COURT: Please.

MR. PENLINGTON: (Reads)

*"In the High Court of Hong Kong
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20 Pursuant to section 65C of the Criminal Procedure Ordinance Cap. 221 it is agreed between the Crown and the Defendant as follows:

1. That the said AU Pui-kuen was medically examined by Dr. CHAN Tin-sik at Queen Elizabeth Hospital on the 9th of January 1976 at 23.04 hours.

Dr. CHAN is a qualified medical practitioner and at the time was employed by the Hong Kong Government.

30 Dr. CHAN found that haematoma and swelling of blood under the skin on his right forehead and right cheek, abrasion on the upper lip, and contusion of left lower anterior chest wall. He was not admitted. He was treated with anti-tetanus medicine and a pain reliever and discharged.

The word 'contusion' means tenderness. A 'haematoma' is a swelling which is more serious than a bruise. His condition was serious enough for him to be given a pain killer and his abrasions to be treated with acroflavine. An anti tetanus injection was given because there was a cutting of the skin.

40 2. Dr. CHAN Siu-hung, a duly qualified medical practitioner was on duty in the surgical ward of Queen Elizabeth Hospital on the 9th of January 1976. He operated on a person called LEUNG Wai and removed a bullet from his abdominal wall. He gave this bullet to Detective Constable 6301 on the 10th of January 1976 who in turn gave it to Mr. A. M. Cimino.

3. Mr. LEUNG Wai was standing awaiting a bus outside the King of Kings Restaurant at 9.20 p.m. on the 9th of January. He heard a

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'bang' and was hit in the abdomen by a bullet. He did not see who fired the shot. He was operated on and the bullet removed.

4. TAM Tak-yen is a surveying assistant and on the 5th of February 1976 he surveyed the area at the junction of Nathan Road and Argyle Street. He prepared a sketch plan and several copies which are the ones produced by the Crown as Exhibit 1A.

5. CHAN Siu-wai, a Police Photographer went to the junction of Nathan Road and Argyle Street on the 9th January 1976 where he took some photographs at the direction of Inspector Curry. These photos are the ones produced by the Crown. **10**

Ex. 2A. 2. A. Close up view of the position where the deceased was found lying on the pavement in Nathan Road.

Ex. 2B. B. General view of the area and the position where the deceased was found lying on the pavement (looking south in Nathan Road from the o/s 656 Nathan Road).

Ex. 2C. C. General view of the area looking north in Nathan Road from the o/s of 648 Nathan Road.

Ex. 2D. D. General view of the area looking south in Nathan Road from the o/s of 662 Nathan Road.

Ex. 2E. E. View of car BG 5711 parked o/s Hong Kong & Shanghai Bank Building in Sai Yeung Choi Street. **20**

Ex. 2F. F. View of the area where LEUNG Wai was found o/s 646/648 Nathan Road.

On the following day he went back to the same place and took four more photos which show the following:

Ex. 3A. 3. A. View of the area in day light looking north in Nathan Road from the o/s of 646 Nathan Road.

Ex. 3B. B. View of the area in day light looking south in Nathan Road from o/s of the Hong Kong & S.B. Building near the J/O Argyle Street. **30**

Ex. 3C. C. View of J/O Sai Yeung Choi Street and Argyle Street in day light (looking westward from Argyle Street).

Ex. 3D. D. View of Argyle Street in day light looking eastward from junction of Nathan Road.

The photos produced by the Crown are the ones referred to above.

6. LEE Mau-sum is a Police Photographer and on the 10th January 1976 he took two photographs of the body of a male person LAI Hon-shing, at the direction of Dr. David YIP. These are the photos produced by the Crown as Exhibits C4A and C4B . . . produced as **40**
Ex. 4A and 4B. 4A and 4B.

The said LAI Hon-shing is the person referred to in the indictment.

7. A Police revolver No. B46474, on issue to the accused as a member of the C.I.D. was lawfully carried by him on the evening of

the 9th of January. It was handed by him to Sgt. 1766 YIP Kai on that evening who in turn handed it to Constable 8954 WONG Shu-kwong, who in turn handed it to Mr. A. M. Cimino, a ballistics expert. It is agreed that this revolver fired three shots on that evening, the third one of which hit LEUNG Wai after ricochet.

8. That the document annexed hereto is a copy of relevant Police General Orders relating to the use of firearms in force on the 9th January 1976."

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10 COURT: Arising from the tendering of certain exhibits, I don't know whether counsel might see fit to agree on two items of exhibits, 1B and 1C, to the effect that 1B and 1C are really close-up enlargements of Exhibit 1A.

MR. JACKSON-LIPKIN: Yes, my Lord, it is agreed. My Lord, could you give me one minute to have a word with Mr. Penlington?

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, could we borrow the photographs as handed to the Coroner just for one moment?

COURT: The Court copy?

MR. JACKSON-LIPKIN: Yes, my Lord.

20 MR. PENLINGTON: Yes, my Lord, just one point: I understand from my instructing solicitor that photograph 2E which shows the motorcar in fact was moved southwards in Sai Yeung Choi Street by the accused after he came back from Nathan Road. It couldn't have been a great distance because there is in fact only some twenty feet between that doorway and the corner but it was moved some distance southwards in Sai Yeung Choi Street.

COURT: Eastwards?

MR. PENLINGTON: Southwards, away from Argyle Street.

COURT: Yes, you are right.

30 MR. PENLINGTON: So if we could add the words in paragraph 5, 2E, "View of car BG 5711 parked outside Hongkong and Shanghai Bank Building in Sai Yeung Choi Street 'but not . . .'"

COURT: I am sorry, paragraph?

MR. PENLINGTON: Paragraph 5.

COURT: Yes.

MR. PENLINGTON: Exhibit 2E.

COURT: Yes.

MR. PENLINGTON: Add the words "but not in its original position".

MR. JACKSON-LIPKIN: I am much obliged to my learned friend.

40 MR. PENLINGTON: "POLICE GENERAL ORDERS Old Edition" should be "in force", not "enforced".

COURT: "i-n", not "e-n"?

MR. PENLINGTON: And no "d".

COURT: "In force", yes.

MR. PENLINGTON: "... in June 1976" (Reads)

“29-01. USE OF FORCE.

The degree of force which may be used by a Police officer to achieve an object is determined by the circumstances prevailing at the time.

2. The rule is that only the minimum force necessary to achieve the object in view may be used and once the object has been attained the use of force must cease.

3. Whenever possible warning will be given of the intention to use force and of the nature and degree of force which will be used. A person or persons will always be given every opportunity to obey Police orders before force is applied. 10

4. Force will not be used as a punitive measure under any circumstances.

29-02. USE OF POLICE FIREARMS.

A Police officer is to practise the greatest forbearance in his dealings with the public and is not to resort to the use of force, unless such action is clearly necessary and he is unable otherwise to effect his lawful purposes. The primary rule is that any force used is not to exceed the minimum amount of force which is necessary to achieve the Police officer's lawful purpose. 20

2. This order refers to the use of any firearm by a Police officer.

3. For the purposes of this order “firearm” includes all weapons and grenades but excludes the chemical mace.

4. A Police officer may use a firearm, *provided that he is satisfied that no lesser degree of force can achieve his object, . . .*”

and I may say to members of the jury and to your lordship that in the actual Police Orders those words that are underlined here are in italics, they are not actually underlined but the typewriter in the office hasn't got italics so it is underlined here;

“ . . . to:

30

- (a) protect himself or any person from serious bodily injury; or
- (b) effect the arrest of any person whom he has strong reason to suspect of having committed a serious and violent crime; or
- (c) effect the arrest of any person whom he is lawfully arresting and who assaults him or any other person assisting in the arrest, in a dangerous manner; or
- (d) prevent the commission or continuation of a serious and violent crime.

5. When an incident occurs in a crowded street or there is a high degree of probability that an innocent person may be injured, a firearm is not to be used for either 4(b) or 4(d) until bystanders have been cleared from the danger area. A firearm may be used under para. 4(a) or 4(c) only where there is cause to believe that the serious bodily injury in 4(a) or the dangerous assault in 4(c) would result in death.
- 10 6. In considering the factors above an officer should NOT open fire if the seriousness of the crime, or degree of violence cannot be reconciled with the extreme degree of force being applied by the use of firearms; or if he has any doubt whatsoever that the use of firearms may not be justified.
7. A Police officer is not to draw a revolver from a holster unless the circumstances clearly warrant such action and the officer would be justified in using the weapon.
8. A weapon is not to be carried cocked. An officer is not to gesture or point with a weapon, loaded or otherwise, at any time unless he is engaging a target. When firing, an officer is to take calculated and deliberate aim at a particular target.
- 20 9. A Police officer is not to fire into the air to frighten or warn a suspect. The sole exception to this paragraph is that an officer exercising the authority contained in Sec. 78 Cap. 281, Merchant Shipping Ordinance, is legally required to fire a warning shot.
10. If it is essential and legally justifiable that a Police officer fires, he will fire one round and may fire a second or subsequent shots ONLY if the circumstances justifying the shooting remain unchanged and the earlier shot has no effect. He is to aim to disable and not to kill.
- 30 11. (a) A Police officer is not to fire at a motor vehicle or vessel which fails to stop when called upon to do so except in accordance with para. 4 of this order
- (b) In every such case the Police officer is to aim at the vehicle or vessel with the intention of preventing further movement. He is not to fire at the occupants, unless he is fired at from the vehicle or vessel or has reason to believe that the occupants are armed with firearms and will open fire at him or other persons.
12. If a Police officer makes an unjustifiable use of force, he is liable to either criminal or civil action just as an ordinary citizen. He may also be subjected to disciplinary proceedings."

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COURT: Yes.

MR. PENLINGTON: Yes, I call WONG Moon-lam.

P.W.5—WONG Moon-lam—Affirmed in Punt

XN. by Mr. Penlington :

Q. Mr. Wong, you are a driver by occupation and you reside at Room 145–163 Po Li Building?

A. Correct, that is the street No. 145 to 163.

Q. I see, that is where you live?

A. Yes.

Q. And you are twenty-five years of age?

10

A. Right.

Q. And I think you are married and living with your wife Poon Lai-ying?

A. Yes.

Q. On the 9th of January of this year did you have a day off and did your wife leave her employment at about 4.45 in the afternoon?

A. Yes.

Q. And did you meet your wife, go and have a meal and then go to the cinema at the Nam Wah Theatre in Portland Street?

A. Yes.

20

Q. After the picture theatre did you come out at about 9.10 p.m. and walk along to Tung Choi Street and then to Argyle Street?

A. Yes, after making purchases.

Q. When you reached Argyle Street near the junction of Sai Yeung Choi Street were you proceeding in the direction of Nathan Road?

A. Can this question be repeated, please?

Q. You were walking along Argyle Street and when you came to Sai Yeung Choi Street were you proceeding at that stage—were you walking westwards towards Nathan Road?

A. After Sai Yeung Choi Street we crossed Argyle Street and walked towards Nathan Road. 30

Q. And at the junction of Argyle Street and Sai Yeung Choi Street did you notice a yellow motor car being driven into Sai Yeung Choi Street?

A. Yes.

Q. And was this motor car parked in Sai Yeung Choi Street?

A. Yes, I saw the vehicle stop.

Q. Whereabouts did it stop?

A. At the side of the Hongkong and Shanghai Bank building, that is here. (Witness indicates)

Ex. 3C. Q. Would you please have a look at photograph 3C. Can you indicate to us there; there is a car in fact parked there; it is not the car in question but whereabouts was the car parked, the yellow car parked that evening? 40

A. Slightly in front of the car shown in this photograph.

COURT: What do you mean “in front”—nearer the road on the left or away—more away—farther away from the road on the left . . . on the right? Nearer the traffic sign or farther away from the traffic sign?

A. The car was stopped in the same position as this except that it is slightly in front.

COURT: I see, farther away from the traffic sign?

A. Yes.

COURT: Yes.

Q. And you were then on the opposite corner, were you, the corner from which this photograph 3C appears to have been taken, you were somewhere?

A. Yes, I was on this side.

10 Q. On this side?

A. Yes.

Q. On the left hand side of that photograph?

A. Yes.

Q. Did you notice if anybody got out of the car when it stopped outside the Hongkong Bank building?

A. Yes, I did.

Q. What did that man do?

A. He said something.

Q. Who was he talking to?

20 A. There were three other men who were face to face with him and he was speaking to those men.

Q. Tell us anything about these other three men, how old were they, what did they look like?

A. They were all in their teens or twenties and their appearance rather modern.

COURT: Appearance modern—what exactly do you mean by “modern”? “Trendy” is the word, isn’t it?

A. Fashion.

Q. Fashion. Well, was their hair—?

30 A. What I mean is their hair was somewhat long.

Q. Would you say, for instance, their hair was any longer than yours or shorter perhaps?

A. About the same.

Q. About the same. And how were they dressed—what type of clothing?

A. I did not notice their dress. They were just in ordinary clothes.

Q. Nothing outstanding about them?

A. No.

40 Q. And whereabouts were they standing when the driver got out of the car?

A. (Witness indicates) They were standing in this position and they were in this position and they were walking slowly towards the driver.

Q. They were near the traffic sign shown in photograph 3C, is that correct?

A. When I saw them they were in front of the traffic sign somewhere here (Witness indicates)

Q. Left of the traffic sign. Were all three of them on the road or on the pavement or can’t you remember—did you notice?

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Ex. 3C.

- A. They were on the road.
- Q. Did you hear the driver say anything to these three young men?
- A. I saw him speaking to them but I don't know to which one he was speaking.
- Q. What did he say?
- A. He said "What has happened? Did I hit you with the car?" and there was foul language used.
- Q. Did he use the foul language and ask. . . .
- COURT: . . . He didn't say he used foul language. He just said that foul language was used. 10
- A. There was foul language used.
- Q. Did the driver use this foul language?
- A. It was the driver who was speaking and it was he who said those words.
- COURT: Well, this Court is not a court on morals, Mr. Wong. If you can remember the exact words you might as well use the exact words—what the driver used. We are quite used to hearing a lot of foul words in this Court from the witness box. (Laughter at back of Court) Please those at the back of the Court, this is not a laughing matter; it is a serious matter. The witness is giving evidence and trying to give what he remembers were the exact words used by this person. Yes? 20
- A. "What's the fucking matter?"
- COURT: Yes.
- Q. And then he said "What's the fucking matter?" and then he said "Did I bump you?"?
- A. Yes.
- Q. Did the youths or did any of the youths reply to that remark?
- A. Yes.
- Q. Could you tell which one?
- A. I don't know. 30
- Q. Were the three youths at this time in a line together or was one ahead of the others; how were they standing?
- A. Again I cannot remember very clearly about this.
- Q. Anyway there was a reply from one of them?
- A. Yes.
- Q. Can you remember as best you can what that reply was?
- A. Well, a reply to the effect that they were not hit but they were grazed.
- Q. What did you do—were you still walking at this time when you heard this conversation? 40
- A. I was still walking.
- Q. When you heard this reply from the youths, had you in fact at that stage started to cross Sai Yeung Choi Street?
- A. Yes.
- Q. Approximately how far across had you got?
- A. Oh, I was almost reaching the corner, that is where the woman shown in this photograph is, Exhibit 3C.
- Ex. 3C.

- COURT: The woman right next to the traffic sign, is it, on the kerb?
A. Yes.
- Q. Did you hear any further conversation between the driver and the youths?
A. No, I did not notice. I did not pay attention rather, I just kept on walking.
- Q. You kept on walking?
A. Yes.
- Q. And did you continue on along Argyle Street towards Nathan
10 Road on the footpath?
A. Yes.
- Q. As you reached the other side of Sai Yeung Choi Street did you look back?
A. Yes, I did.
- Q. What did you see?
A. I saw them struggling.
- Q. Now, I know, Mr. Wong, it is quite some time ago but can you please describe as accurately in as much detail as you possibly can what you meant when you said you saw them in a struggle, what type of a
20 struggle were they in?
A. I had reached this corner when I turned round and saw some people moving as if they were fighting.
- Q. Did you see any blows being delivered, any punches being delivered?
A. Well, I did not see any blows being delivered because the several had my view blocked. I was not paying attention to how they were fighting.
- Q. There were other people between you and the people who were fighting?
A. Yes.
- 30 Q. But you did see that there was in fact some sort of a fight going on involving the driver and the three youths, is that correct?
A. Yes.
- Q. When you saw them fighting could you see whether—was in fact the driver fighting against the three youths?
A. I cannot be certain but I saw them moving as if they were fighting. I cannot say which one was fighting against whom.
- Q. Did you see any grappling, any people holding on to other people?
A. This I did not see.
- Q. Did you then continue to walk along Argyle Street towards
40 Nathan Road?
A. Yes.
- Q. And as you walked along did you look back again?
A. No, I could not, even if I turned around and looked my view would have been blocked by the wall of the building.
- Q. If you had turned around your view would have been blocked by the building, is that right?
A. Yes.

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Q. So you are taking from that, Mr. Wong, that the fight was some way into Sai Yeung Choi Street, some way away from Argyle Street?

A. Correct.

Q. Now, in fact did you look back again for any reason?

A. When I heard the sound "bang" I turned round to look.

Q. You heard a "bang" and you turned round to look?

A. That is correct.

Q. Now, Mr. Wong, this is a plan of the area that you have been describing. You can see there Sai Yeung Choi Street, Argyle Street and Nathan Road, and you see there the old Hongkong and Shanghai Bank building. Now, I want you to draw on this plan, first of all, the position, approximate position, where you saw the youths and the driver fight, the first time when you looked back and you saw the fight taking place. Could you indicate to us on that plan whereabouts approximately the fighting was taking place. The dark line is the edge of the building and the slightly lighter line outside is the edge of the footpath. If you can just draw a circle showing approximately where the people were fighting. 10

Ex. 1D. A. (Witness complies) This would be Exhibit 1D.

Q. Yes, thank you, Mr. Wong, and then would you please mark in. . .

COURT: Show it to the jury, please. 20

Q. Now, would you please also then mark in another spot where you think you were when you saw the fight taking place, when you looked back for the first time.

A. Do you mean when I turned around and saw the fight?

Q. When you turned round the first time and saw the fight. Would you show us approximately where you think you were.

A. I was here. (Witness indicates)

COURT: May I superimpose a cross within to distinguish the position of the fight, yes, the red circle with a blue cross.

Ex. 1 3C. Q. And finally, Mr. Wong, perhaps if you would have a look at photograph 3 1C again, it may help you on this, could you indicate also on the plan whereabouts you think you were when you heard the shot and looked back? 30

COURT: Mark it with a cross. (Witness complies)

Q. (Cont.) Mr. Wong, when you saw this fight taking place, did you quicken your pace, did you start to walk a little quicker to get away from the scene or did you slow down because you were interested or did you just continue to walk at the same speed?

A. I walked at the same normal pace.

Q. That is to say a normal walking pace? 40

A. Yes.

Q. Of course you had your wife with you?

A. Yes.

MR. PENLINGTON: This might be a convenient time to adjourn.

COURT: Yes, I will adjourn to ten o'clock tomorrow.

4.30 p.m. Court adjourns.

21st September, 1976.

22nd September, 1976.
10.00 a.m. Court resumes.

Accused present. Apparances as before. JURY PRESENT.

MR. PENLINGTON: My Lord, I apologise for the delay this morning. I am afraid the witness has not arrived—not the witness for whom appeal has been made, but the witness who was giving evidence yesterday. I am faced, therefore, with the alternative of going on with another witness or adjourn until he arrives. I think we can go on with another witness.

10 COURT: Yes, unless you have any objection to this Mr. Jackson-Lipkin.

MR. JACKSON-LIPKIN: May I have a word with my learned friend to see which witness.

COURT: Yes.

(Counsel confer)

MR. PENLINGTON: My Lord, I am afraid, the only witnesses who are in fact available are the two boys—my friend feels the two boys who are extremely important witnesses, my friend feels we should deal with the other witness before we get on to them because whatever evidence given by this other witness will have to be put to them.

20 COURT: The trouble is we have no assurance that this is mere delay or he has disappeared as well.

MR. PENLINGTON: I do not know whether or not the weather conditions in Kowloon are worse than on the island—it seems to account for a lot of absence this morning.

MR. JACKSON-LIPKIN: May I suggest you give my learned friend and I a few minutes to work out what we can, but your Lordship it wouldn't be in the interests of justice to interpose now two witnesses of very great length and vital witnesses who cannot be cross-examined until the other evidence has been heard.

30 COURT: Very well, I will give you ten minutes.

10.12 a.m. Court adjourns.

10.20 a.m. Court resumes.

Accused present. Apparances as before. Mr. Gall absent. JURY PRESENT.

MR. PENLINGTON: I am instructed, my Lord, there was a very substantial traffic jam in Kowloon—Mr. Wong and his wife and another witness were all held up. I do apologise.

P.W.5—WONG Moon-lam. On former affirmation.
XN. by Mr. Penlington (Continues):

40 Q. Mr. Wong, when we adjourned yesterday, I think you told us that having turned back or looked back on one occasion while walking down Argyle Street, you saw a fight break out?

A. Yes.

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Q. You then walked on and heard a bang—a noise and you looked back again?

A. Correct.

Q. And you have pointed out on the plan whereabouts you were on both those occasions?

A. Yes.

Q. Now Mr. Wong, could you tell us now what you saw on the second occasion, that is when you heard the bang and you looked back?

A. A short while later there was another bang.

COURT: Another bang?

10

INTERPRETER: Yes, my Lord.

COURT: But the question was when you first heard the bang—the first bang you looked back.

A. I did not see anything—there was a lot of people there and it was very dark.

Q. Could you tell approximately where this bang had come from?

A. You mean the first bang?

Q. Yes, the first.

A. The bang came from my rear.

Q. You say there were many people in the way—what were these 20 people doing?

A. They were pedestrians just walking in the streets.

Q. After the first bang were they still just walking?

A. What happened was this—I heard the first bang, I turned round and shortly afterwards the first bang was followed by a second bang and I also saw a blue flash.

Q. Whereabouts was this blue flash?

A. Assuming I was standing there, this is the Hong Kong Shanghai Bank, this is Nathan Road.

Q. This is the plan that you have already marked.

30

A. Yes.

Q. Now can you mark again best you can the spot where you saw the blue flash when you heard the second bang.

COURT: You are asking his first position or where the flash?

MR. PENLINGTON: Where the flash.

COURT: Yes, a blue pen.

MR. JACKSON-LIPKIN: Would green do, my Lord.

COURT: Green or blue, provided it is a different colour.

A. (Witness marks on plan)

Q. When you heard the second bang and saw the blue flash, could 40 you see what was causing this bang and the blue flash?

A. I did not know what was going on but within a short lapse of time from the time I heard the bang and saw the flash somebody ran past me.

COURT: A man?

A. More than one.

COURT: How many?

A. It was very dark and I cannot say how many—anyway there were several persons running.

COURT: Several men?

A. Men.

COURT: Ran past you?

A. Yes, my Lord.

Q. Now Mr. Wong, do you know what one second is?

A. Yes, I do.

10 Q. Now can you tell us then what your estimate would be of the time between the first and the second bang?

A. The approximate time I can give.

Q. Yes, well approximately.

A. Three seconds.

Q. Three seconds—now you told us that after hearing the second bang and seeing this blue flash, several men ran past you—did you recognise any of them as people that you had seen previously that evening?

A. At that time I did not notice—it was very dark there.

20 Q. Were these men just running or did you gather that some were being chased?

A. And after that one person was giving chase from behind.

Q. Were they running on the footpath or on the road?

A. Running on the road.

Q. Could you see if any of these men were holding anything in their hands?

A. Yes, I saw a pistol-like object.

Q. Who was carrying the pistol-like object?

A. The one who was giving chase from behind.

30 Q. What about the pedestrians—the other people who were in the area, and they moved away?

A. Yes, at that time they did—there was commotion because shots were being fired and people ran towards one side.

Q. Did you hear the people who were being chased or the man who was chasing them say anything or shout out anything?

A. At that time I did not hear anything but there was a lot of noise made by pedestrians.

Q. Could you give us an idea, Mr. Wong, the distance between the people who were being chased and that person who was chasing?

A. It is very difficult to say.

40 Q. Well approximately, could you point out something in this court room and say it is approximately the distance that was between them?

A. The point is this, those who were being chased and were running they were not running in a row—there were some in front and some behind.

COURT: Well I suppose you can give a rough estimate of the distance between the last of the pursued and the pursuer—the width of this court?

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- A. Round about—approximate width of this court.
COURT: Thirty feet.
Q. Thirty feet.
A. Is the width of this court about thirty feet?
COURT: It would be thirty feet or thereabouts—a couple of feet more or less—probably more.
Q. Were these people running very fast?
A. Which people?
Q. Well the people who were being chased.
A. Yes. **10**
Q. And the person who was chasing them, was he running fast?
A. Yes, he was also running very fast.
Q. Did any of the people who were being chased, people in front, did any of them appear to you to be handicapped in any way—seemed to have difficulty in running?
A. I did not see.
Q. Whereabouts was your wife when you were watching this?
A. My wife was beside me.
Q. On the inside of the pavement nearer the Bank building from you or outside nearer the road? **20**
A. On the pavement near the roadway.
Q. Whereabouts did these people go—the ones that were being chased and the person who was chasing them?
A. They turned into Nathan Road in the direction of Tsimshatsui.
Q. And did you go on towards Nathan Road yourself?
A. Yes.
Q. Did you see or hear anything else as you approached Nathan Road?
A. Before reaching Nathan Road, as I was on my way there, I heard a third bang. **30**
Q. Did you see any flash or did you see where this third bang came from?
A. I could hear the direction from which the bang came but I did not see any flash.
Q. I know it is quite a long time ago, Mr. Wong, please tell us, if you cannot remember, but did you notice in which hand this person was holding this pistol-like object?
A. I did not notice at the time in which hand he was holding that object—it was very dark and he was giving chase.
Q. Did you in fact reach the corner of Nathan Road and Argyle Street? **40**
A. I cannot quite understand what you mean.
Q. Did you keep on walking until you reached Nathan Road?
A. You mean after hearing the third shot or the third bang?
Q. Yes, after you heard the third bang.
A. I did.

Q. And what did you see there when you reached the corner of Nathan Road?

A. You mean at the corner of Argyle Street and Nathan Road?

Q. Yes.

A. I saw some people gathering together.

Q. Yes.

A. In a circle.

Q. Yes saw some people gathering around—did you go up to where they were gathering around?

10 A. Yes, I did.

Q. What did you see?

A. I saw a youth lying on the ground.

Q. Did you recognise that youth lying on the ground as being one of the people involved in the fight that you had witnessed earlier?

A. Yes, I did.

Q. Perhaps we will make this point quite clear, Mr. Wong—you told us earlier that you saw, when you were crossing—about to cross Sai Yeung Choi Street, the driver of the car and the three youths approach each other.

20 A. Yes.

Q. You also told us that a little later on when you looked back you saw a fight taking place.

A. Yes.

Q. Who was involved in that fight?

A. What do you mean who was involved?

Q. Who were the people—could you see who the people were who were involved in this fight?

A. At first when they were approaching each other I saw but I did not know which one was fighting against whom.

30 Q. You saw these people, the driver of the car and three youths?

A. Yes.

Q. Were these the people you later saw fighting?

A. Yes.

Q. And was it one of these three youths that you saw later on lying on the road?

A. Yes.

Q. Did you see anybody else in the vicinity of this youth who was lying on Nathan Road who had been involved in the fight?

40 A. Slightly in front of him in Nathan Road, outside the shop selling shoes there was a person lying on the ground.

Q. You told us this person lying on the ground was one of the youths you had seen previously.

A. Not the second one—that one was older in age.

Q. There was a second person also lying on the pavement?

A. Correct.

Q. Now in the area where these two people were, did you see anybody else who had been involved in the fight or the argument that you told us about earlier?

A. No, I did not see them.

10.45 a.m. Mr. Gall enters court.

Q. Did you see a police vehicle had arrived?

A. I did.

Q. Did somebody get out of the vehicle?

A. Yes, from the police vehicle you mean?

Q. And did you remain on the scene after that?

10

A. Yes.

Q. What else did you see after that?

A. The police vehicle arrived and after the arrival of the police vehicle the driver of the B.M.W. reappeared.

Q. Driver of the B.M.W.—the yellow motor-car?

A. Yes.

Q. He reappeared?

A. Yes.

Q. What did he do?

A. I did not hear what he said but he was talking to police officers from the police patrol car. 20

Q. Can you remember what he was wearing—what clothes this driver of the yellow B.M.W. was wearing?

A. He was wearing a European style suit.

Q. Would you recognise this man if you saw him again?

A. Yes.

Q. Is he in court?

A. Yes.

Q. Would you point him out?

A. (Points to dock)

30

Q. Was your wife with you at this time when you walked up to Nathan Road and then saw the two men lying on the pavement?

A. Yes.

Q. Now Mr. Wong, you have told us that you did not have a very clear view of the fight that was going on because people were in the way.

A. Yes.

Q. But from your impression of this fight, did it suggest to you in any way that it was—possibly was a robbery—a snatching?

A. To my mind there was no snatching or anything of that sort.

Q. Did you see any of the three youths groping at the clothing or underneath the clothing of the driver of the yellow motor-car?

40

A. No, I did not see—I could not see if they were groping because I was in the course of walking.

Q. I think Mr. Wong on the 11th January, two days later, you saw that the police were looking for witnesses of this incident and you went to Mongkok Police Station?

A. Correct.

Q. And there you made a statement?

A. Yes.

Q. Had you ever seen any of the people involved in this incident on any previous occasion?

A. No, I had never seen them.

By Court :

10 Q. Just one question first Mr. Wong—by the time you heard the third bang had the party that was pursued and the pursuer run past you and turned into Nathan Road or were they still in Argyle Street or where would be their approximate position—can you give some rough idea?

A. I don't know their approximate positions but they have already turned into Nathan Road towards Tsimshatsui.

Q. All of them—even the pursuer?

A. Correct.

Q. So that you only heard the noise—the bang, you did not see any flash—they were ahead of you were they not?

A. Yes.

20 Q. And turned out of your sight?

A. Correct.

Q. And I understand that you said that you could sense—you could tell the direction from which the third bang came from—it came from the front of you, in other words you were facing Nathan Road, it came from Nathan Road, is that right?

A. It came from the front of me, but at that time I was not yet turned into Nathan Road—I was still in Argyle Street.

Q. I understand you were walking towards Nathan Road and facing Nathan Road junction along Argyle Street?

A. Yes, my Lord.

30 Q. The party of persons being chased and the person who chased had already turned into Nathan Road ahead of you?

A. Yes.

Q. They were already out of your sight?

A. Correct.

Q. And then you heard the third bang?

A. Yes, my Lord.

XXN. by Mr. Jackson-Lipkin :

40 Q. Mr. Wong, you told us yesterday in relation to the three youths that you did not notice their dress?

A. Correct.

Q. Did you notice their shoes for example?

A. No.

Q. You wouldn't be able to speak as to what height of their heels?

A. No, I did not see—pay attention.

Q. But you did notice the length of their hair?

A. Yes.

Q. And when you went to the Police Station to make a report on the 11th of January, you described the three youths as 'Fei Chai' didn't you?

A. I did not say were 'Fei Chai'.

Q. My Lord, may he be shown the statement he made to the police on the 11th of January?

COURT: Yes.

Q. This is your statement is it not? 10

A. This is my statement—this is the statement that I gave.

MR. JACKSON-LIPKIN: Mr. Gray, would you please for the benefit of my Lord and the jury, tell us what FEI CHAI means?

INTERPRETER: FEI CHAI means Teddy Boy.

Q. May I see that statement. . . .

COURT: The witness was going to say something. . . .

MR. JACKSON-LIPKIN: My Lord, before he does, I just want to make quite sure—would you just look at the signature at the foot of that page?

A. It is my signature.

Q. Now what do you want to say? 20

A. This was a long statement consisting of many pages, and I just—I browsed through it after it was given—in the course of giving the statement I said that they wore long hair, and I was just asked if they were dressed in the style of Fei Chai or teddy boys, and I said, long hair, and as you can see, i.e. in long hair in brackets in the statement.

COURT: You mean to say that you merely mentioned long hair and the description of FEI CHAI was supplied by the officer who took the statement from you?

A. Correct.

Q. Mr. Wong, you have long hair have you not? 30

A. Yes.

Q. Would you consider yourself to be a teddy boy—would you?

A. I don't.

Q. No, well then when that was put in the statement to which you put your signature, to which you were asked to put your signature, why didn't you refuse to do so?

A. It took me a long time to have this statement recorded and if I had to read right from the beginning—I just browsed through it roughly.

MR. JACKSON-LIPKIN: My Lord, I wonder if I may just hold up the sheet we are talking about, so that your Lordship and the jury can see it—the signature is at the foot of this page. 40

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, the page before is also signed.

COURT: I take it that he signs every page?

MR. JACKSON-LIPKIN: I am just going to have a look—I have never seen this before—Mr. Gray look at page 1 please—is that your signature at the foot of it?

- A. Yes.
- Q. Look at the second page—is that your signature at the foot of it?
- A. Yes, it is.
- Q. Is it not on the second page a few lines above your signature that you have used the words FEI CHAI—that is right, isn't it?
- A. What do you mean I used the words—the two characters FEI CHAI.
- Q. Are the characters FEI CHAI on the second page of our statement?
- 10 A. Yes, the characters are there.
- Q. It is over half-way down the page?
- A. Yes.
- Q. Only a few lines above your signature?
- A. Yes.
- Q. Not a question of reading six or seven pages—it is on the second page?
- A. I gave the statement verbally and he recorded for me and he had already made a remark in bracket after putting the characters FEI CHAI—i.e. wore long hair—in brackets.
- 20 Q. Let's not make too much of this Mr. Wong—the point is this, yesterday you talked about somebody being modern, somebody being trendy, somebody being fashionable.
- COURT: Trendy was my word.
- MR. JACKSON-LIPKIN: He accepted it your Lordship.
- COURT: He said modern.
- MR. JACKSON-LIPKIN: Today you told us that you don't remember anything about their clothes or the height of their heels—the only thing that struck you was the length of their hair.
- MR. PENLINGTON: My Lord, this morning he said he did not
- 30 remember their shoes—yesterday he said their clothes were normal.
- COURT: What he described of their clothes—to use his words in Cantonese, the Interpreter may correct me if I heard him wrongly—the word was SUN CHIU—that is why I supplied the word 'trendy', is that right?
- MR. JACKSON-LIPKIN: With respect, I must say, if your Lordship looks at the notes, the question was—what did they look like? Then he used the word—then Mr. Penlington said, "What were they wearing? I did not notice their dress. It is the 9th or 10th question, my Lord—my Lord, may I assist you:
- 40 "Anyone got out? What did he do—who was he talking to? How old were they—what did they look like?"
- Then, "What were they wearing? Answer—I did not notice their dress." My learned junior has an identical note—'Did not notice their dress.'
- COURT: I think what my note is, as far as the description was concerned, he said that their appearance was rather modern—with long hair—that was his description.
- MR. JACKSON-LIPKIN: Yes, my Lord, 'All in their teens or twenties

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and their appearance is rather modern, fashionable—what I mean is their hair was somewhat long.’

COURT: Yes.

Q. Mr. Wong, the only thing that struck you about these three young men was the length of their hair—it is a very simple question I have for you—why didn’t you object to the words FEI CHAI in your statement?

A. Maybe at the time I did not pay attention to those words.

Q. Maybe at the time you considered they were teddy boys, is that right?

A. I cannot say they were teddy boys—how can I say they are 10 teddy boys since I did not know the way they behaved.

Q. Mr. Wong, I am sorry, perhaps that is a question of translation—you misunderstood my question—I did not ask you were they teddy boys—perhaps the explanation is that you thought they were teddy boys.

COURT: The question that was put to you. . . .

A. If you look at the first page it is stated clearly they were dressed in the fashion of teddy boys and I did not say they were teddy boys.

Q. That is exactly the point I am making to you Mr. Wong—did you think they appeared to be teddy boys—you did not know whether they were or they were not? 20

COURT: When you made the statement was it your impression that they dressed like teddy boys?

MR. JACKSON-LIPKIN: With respect, my Lord—looked like—not dressed like.

COURT: Gave you the impression that they looked like teddy boys—was that what you wanted to convey in your statement?

A. It did not occur that they looked like teddy boys.

Q. Mr. Wong, you have just been trying to correct me by pointing out your own words there.

A. Yes. 30

Q. Is this correct that your first impression of those three boys when you and your wife saw them, was that they looked like teddy boys?

A. This is something very abstract—I don’t know how to answer.

Q. Would you mind taking the statement away and give it back to the inspector—just one last try—do you realise I am not asking you if they were teddy boys—do you realise that?

A. Yes.

Q. You do—wasn’t the impression that their appearance created in you that they looked like teddy boys? 40

A. You can put it this way.

Ex. 1D. Q. My Lord, may he see the plan that he marked—I think it is 1D, is it not? Mr. Wong, those are the marks you made yesterday and today.

A. Yes.

Q. I know this all happened back in January—would I be correct in saying that those are approximate positions?

A. Correct.

Q. Put in to the best of your recollection after eight months ago?

A. Yes.

Q. Now you remember this gentleman Mr. Penlington asking you if you saw anybody grope in the clothing of anybody else in the struggle?

A. Yes, he did ask me.

Q. You remember you said to him you couldn't see?

A. Correct.

Q. Weren't you trying to tell this court that it was dark—there was a lot of people and you couldn't see any details of the struggle?

10 A. It wasn't dark at that spot but as they were fighting they were moving all the time, for example, myself and the interpreter moving, under such circumstances I couldn't see whether they were groping with anybody, or groping with his hand or not.

Q. There was a lot of other people around was there not—pedestrians?

A. Yes.

Q. Moving in many directions, I suppose?

A. Yes.

Q. All you really can be sure of was that a number of people were struggling more or less at the spot that you have indicated?

20 A. Yes.

Q. Now a little later on after the second bang a lot of people ran in different directions did they not?

A. No, they did not run in different directions—you have a wall here and they all ran in the same direction—towards this wall.

Q. I see, men and women?

A. Yes.

Q. Did you and your wife do the same?

A. We did not.

Q. You just kept walking on?

30 A. We stopped first.

Q. And then walked off?

A. It was after I stopped those people then ran past me.

Q. And then you walked on?

A. Yes.

REXN. by Mr. Penlington :

Q. Coming back to this Mr. Wong, about when you made the statement, did you yourself at any time use the expression FEI CHAI?

40 A. When I was giving an oral account I did not use the words that they were dressed like teddy boys or in the fashion of teddy boys—I said that they were very much up to fashion in their dress and their hair was comparatively long.

Q. You said in reply to a question by my friend, 'It did not occur to me that they looked like teddy boys.'

A. It did not occur that they were teddy boys.

Q. Thank you Mr. Wong.

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FOREMAN: Your Lordship could Mr. Wong be certain about the position—could the position of the flash that he saw be established—is he certain of the position indicated on the map?

COURT: Well what he can mark down on the map, Mr. Foreman, can only be approximate—he has already qualified it long before he gave the answer that is an approximate position of the flash as he marked it down in Exhibit 1—on the chart, but I will confirm with him—you have put down the position of the flash as you saw it at the second bang.

A. Yes.

COURT: Do we understand that was only an approximate position 10 and you are not absolutely certain that was the spot?

A. That is an approximate position.

COURT: No one looking back even with the best eye-sight and an expert in arms and ammunition can tell the exact position of a flash at night.

MR. PENLINGTON: Might this witness be released?

MR. JACKSON-LIPKIN: No objection, my Lord.

COURT: All right.

MR. PENLINGTON: I call Madam POON Lai-ying—her evidence is page 270, paragraph 270.

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XN. by Mr. Penlington :

COURT: Would you like to have a chair?

A. Yes.

Q. You are the wife of the previous witness, Mr. WONG Moon-lam?

A. Yes.

10 Q. And are you employed as a cashier of the Empress Restaurant?

A. Yes.

Q. On the 9th of January of this year was it your husband's day off and did you also have leave from the restaurant in the afternoon?

A. Yes.

Q. On that evening did you go to a 7.30 film show in Portland Street?

A. Yes.

Q. And after a meal did you do some shopping in Tung Choi Street?

A. Yes.

20 Q. Did you proceed to the junction of Sai Yeung Choi Street and Argyle Street?

A. Yes.

Q. At the junction of Sai Yeung Choi Street and Argyle Street did you notice a yellow B.M.W. motor-car turn from Argyle Street into Sai Yeung Choi Street?

A. Yes, I did.

Q. And did you see this yellow B.M.W. car stop anywhere?

A. It stopped near the kerb.

Q. Near the kerb on which side of Sai Yeung Choi Street, that is?

30 A. On the side of the old building of the Hong Kong and Shanghai Bank.

Q. Did you notice anybody get out of the car?

A. The driver got out.

MR. JACKSON-LIPKIN: May I invite your Lordship to ask this witness to speak more loudly because we can hardly hear anything.

COURT: Please raise your voice Madam Poon.

Q. Was there anybody else in the car with the driver?

A. There was another person inside.

Q. Were there other vehicles driving in from Argyle Street to Sai Yeung Choi Street?

40 A. There should be.

Q. You cannot particularly remember on this occasion?

A. Correct.

Q. Did you notice in particular this car before it parked in front of the old Hong Kong and Shanghai Bank?

A. I was crossing the street at that time and of course crossing the street I have to look around to see traffic and I saw the vehicle.

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Q. Was there any incident or was there any word used by anybody that drew your attention to this car in particular?

A. When the car stopped I heard a loud noise caused by the braking of the car, because that place is not for parking—the car merely stopped.

Q. This was when it stopped in front of the old Hong Kong Bank?

A. Yes.

Q. This was not an authorised parking place?

A. Correct.

Q. Now before the car stopped there was there anything about this car or anything that was said by pedestrians or any incident at all before it parked outside that building that drew your attention to this particular car? 10

A. I saw three youths pointing at the car but I did not know what they were saying.

Q. Three youths pointing at the car—were they saying something even if you couldn't hear?

A. Yes.

Q. Whereabouts were these three youths?

A. They were crossing Sai Yeung Choi Street towards Tsimshatsui district. 20

Q. Did you see whether the car had gone close to these three youths? Did you notice this?

A. No, I did not.

Q. Madam Poon, was there anything about the appearance of these three youths on that evening that struck you as unusual?

A. No.

Q. Where did the youths go after the car parked outside the old Bank building and they pointed at it?

A. They walked towards the car.

Q. You saw the driver get out? 30

A. As soon as he stopped the car he alighted from it.

Q. Did you hear the driver say anything?

A. I heard only two sentences uttered.

Q. Now I am afraid in this court we must hear what happened—it may be a bit embarrassing to you—will you please tell us what you heard the driver say?

A. He alighted from the car and using foul language asked them what was going on words to that effect as to what was going on or whether the car had hit them.

Q. Can you please tell us what this foul language was—would you like to write it down? 40

A. What is the matter—words like that.

Q. But you said, Madam Poon, it was foul language—was it in fact foul language?

A. What is the fuck of the matter.

Q. And was this the first thing that the driver said?

A. I don't know, but I only heard this sentence.

Q. Approximately how far away from the youths would the driver have been when he used that expression?

A. I don't know but those three youths were walking and speaking at the same time.

Q. Did you hear what the youths said?

A. One of the three said no one was hit.

Q. One of the three youths said no one was hit—how for approximately—you don't want to be exact—approximately how far away from the driver were you when you heard him use this foul language?

10 A. His car was parked and I was crossing the street obliquely towards Argyle Street.

Q. Now we better use another plan—you were crossing Sai Yeung Choi Street is that correct?

A. Yes, I was crossing from Sai Yeung Choi Street to Argyle Street.

Q. About how far across do you think you got?

A. I was almost approaching the corner.

Q. The bank corner?

A. I was almost reaching the corner.

Q. The corner with the old Hong Kong Bank?

20 A. Yes.

Q. Now I wonder if you would look at this photograph 3C, and can you tell us from that approximately where do you think the car was parked—now there is another car there when this photograph was taken, disregard that and tell us approximately where the B.M.W. was parked?

A. Placed like this car here but not in such a straight position.

COURT: Like this car?

A. But not in such a straight position.

Q. Was it parked slightly nose into the kerb, head in towards the kerb?

30 A. It was not parked parallel to the kerb but slightly at an angle with the rear of the car pointing to the opposite side.

Q. If you were near that corner, the time you heard the driver use this expression that you told us about, about how far from the young boys, the youths would you have been then—would you point out something in court?

A. I am not too clear because I was walking and they were also walking, but I believe that they were behind the car.

Q. They were behind the car, very well.

A. Yes.

40 Q. And you heard one of them say that nobody was hit—did you hear them say anything else apart from that?

A. I am not quite clear about this because I did not pay much attention to it.

Q. Did you hear any other conversation apart from the two remarks that you told us?

A. I did not pay attention.

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Ex. 3C.

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Q. Did you then walk on down Argyle Street alongside the old Hong Kong Bank building towards Nathan Road?

A. Yes.

Q. Did you look back?

A. I did.

Q. What did you see when you looked back?

A. I saw the four of them struggling.

Q. You saw four persons—were these the same four that you have previously told us about?

A. Yes. 10

Q. Can you tell us anything about this struggle?

A. I did not notice—I merely saw people struggling and then I walked past.

Q. Were they exchanging blows, were they wrestling with each other—can you tell us any more about that?

A. I am not clear about this—I only saw them moving their hands and feet.

Q. Moving their hands and feet—did they all seem to be free to move their hands and feet?

A. They should be. 20

COURT: Not whether they should be but were they?

A. Well I don't know about that—I am not clear but I saw the whole bunch of them moving.

Q. Now when you say moving, does this mean that the struggle was not in one spot—it was moving around?

A. I am not clear about this because I only had one glance—I saw them make movements and then I walked past and did not see again.

Q. When you looked back was it at the same time or—let me rephrase that. When you looked back did you notice if your husband was also looking back at that same time? 30

COURT: At the same time.

A. I'm not clear. I don't know.

Q. You then walked on. Did you look back again?

A. No, by then I had already walked past the corner. I had looked back once before but after walking past the corner my vision would have been blocked if I had turned back to look.

Q. After you had looked back and then walked on, did you then hear anything unusual?

A. When I was walking along Argyle Street I heard a loud noise resembling that of a firecracker. 40

Q. What did you do when you heard this loud noise like a firecracker?

A. I turned around to see what was going on, thinking that a tyre had burst.

Q. Did you notice if your husband had also turned round?

A. Yes.

Q. Were you standing side by side at this time?

A. Yes.

Q. Do you remember if you or your husband was nearer to the bank building? Who was on the inside?

A. My husband was nearer the bank building.

Q. What did you see when you turned round? What did you see and hear when you turned round?

A. I just turned around and everything took place in a matter of split seconds. I didn't see anything except people walking.

Q. You turned round and all you saw was people walking?

A. Nothing special I saw.

10 Q. Did you hear anything?

A. Following that I heard a second noise.

COURT: A second bang?

A. Also a bang, yes.

Q. Did you see anything?

A. When I heard the second bang and turned round I saw some light or flash which was blue or purple.

Q. In which direction was this blue or purple flash?

A. I was walking along the curb beside the railing. Earlier on I saw people running past me and then I heard the sound of "bang".

20 Q. So you are saying before you heard the second bang you saw people running.

A. I'm not too clear, but I should imagine that they both happened round about the same time.

Q. Now I wonder if you would, on that plan that you have in front of you, if you would please mark—we're running out of colours—I think perhaps blue this time—would you please mark on that plan whereabouts approximately. . . .

COURT: Is this a blank one?

30 MR. PENLINGTON: Yes, it will have to be given another number, I'm afraid my Lord.

Q. Could you mark on that plan approximately where you think you were standing at the time that you turned round and saw this flash and heard the second bang.

A. I was midway along this road opposite the Gala Theatre.

COURT: Ask her to use a red pen, it's easier. Use a red pen to mark it.

MR. PENLINGTON: Just put a cross.

COURT: Yes. This will be marked 1E. The last one was 1D, was it? This map and the chart will be marked 1E.

MR. PENLINGTON: Could the witness have that back.

40 Q. Now I want you to now put another mark, perhaps a circle. Again, I quite agree and I quite understand that you cannot be absolutely sure or definite, but would you please put another circle there at the spot or the direction, at any rate, from which you saw this blue flash and heard the bang.

COURT: Would you be kind enough to lend her your green pen again, Mr. Jackson-Lipkin? The position of the flash?

MR. PENLINGTON: Yes, the position of the flash.

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- Q. If you can't give us the. . .
- A. Slightly behind me (witness marks map)
- Q. You have drawn that circle on the roadway.
- A. Yes.
- Q. Are you certain that the flash came from the roadway and not the footpath?
- A. Correct.
- Q. Was this a loud bang, the second bang?
- A. Much louder than the first bang.
- Q. Much louder than the first. Do you know what one second, the 10 time distance of one second is?
- Q. Yes.
- Q. Can you tell us as accurately as you can what your estimate of the time between the first and the second shots was?
- A. About roughly one minute, one or two minutes.
- Q. One or two minutes?
- A. Yes, about one minute.
- Q. Now I'll say what a second is, but I'm just going to count out to you what a second is. Perhaps you had better think about this. If I start counting now: 1 . . 2 . . 3 . . 4 . . 5 . . 6 . . 7 . . 8 . . 9 . . 10. Now 20 that is 10 seconds and there are 60 seconds in a minute. Now in the light of that, do you still think it was something like a minute?
- A. About one minute.
- Q. Very well. You have told us that you heard the first bang. Did you turn round straightaway?
- A. Not straightaway.
- Q. Did you say something to your husband or did he say something to you?
- A. Yes.
- Q. What did you say? Did you say, "What's that?" or . . . 30
- A. I asked him what sort of a noise it was.
- Q. What sort of a noise?
- A. Yes.
- Q. And then did you both turn round?
- A. Yes.
- Q. And when you turned round did you then see the flash and hear the second bang?
- A. Not immediately.
- Q. When you heard the second bang you said it was much louder. Did you feel any pain or was it unpleasant? 40
- A. The second bang was somewhat piercing to the ear.
- Q. You told us that about the same time as you heard the second bang and saw the flash, you saw persons running. Were they on the road or on the footpath?
- A. I saw two persons running and there was one who ran through the railing beside which I was walking to the H.K. & S. Bank building and there he fell down.

Q. Would you look at photograph 3C again. You see on that photograph on the edge of the—just to the left of the taxi there is a railing on the side of Argyle Street.

A. Yes.

Q. Now you say the people got through that railing.

A. I don't know whether they went through the railing or not, but I do recall one of them running towards the wall of that building and then falling down.

10 Q. Now have a look at another photograph, 3D, which is taken from Nathan Road showing the same stretch of footpath.

A. Yes.

Q. You see on the left of that photograph that same railing.

A. Yes.

Q. Now I understand that it's your evidence that you and your husband were standing beside that railing when you were looking back.

A. Right.

Q. And you say that people ran past you.

A. They ran past me, yes.

20 Q. And you say one of them then ran onto that footpath this side of the railing? Is that what you're saying?

A. Right.

COURT: You mean he ran past this bit of railing and turned into the pavement?

A. No, I did not notice. He was running anyway and when I took one look at him by the time I took one look at him he had already run to this spot and fell down.

COURT: Yes. Show it to counsel and the jury.

Q. When this person fell down, did he get up again?

A. I did not pay attention.

30 Q. Did you see whether this person who fell down, was he one of the people that you had seen earlier on, either the driver or one of the three youths?

A. I did not see clearly.

Q. Did you see any other people running?

A. I only saw three people running.

Q. You saw three people running?

A. Yes.

Q. Were they running together or were they separated?

40 A. With some in front and some behind, as if there was a chase going on.

Q. How many were in front?

A. When I first saw them there were two persons in front.

Q. Can you recognise them as having seen those two people before that evening?

A. I did not see them because it was very dark there. I couldn't see clearly. . . .

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Q. There were two people running in front. About how far apart were they?

A. Because at that time there was a bus parked in front of a railing and they were running along the curb beside the bus.

Q. Who was chasing them?

A. I don't know them.

Q. You hadn't seen him before either?

A. I'm not clear about that because they were running at a very high speed.

Q. Can you give us any estimate of the distance between the person who was chasing and the people who were being chased? 10

A. The one in front was further away, but the second one pursued was nearer.

Q. About how far between the second one being pursued and the person who was chasing him?

A. I don't know the distance. The one who fell down got back up again and ran in the opposite direction again, and the others ran in this direction. (indicates)

Q. Now you told us that there were two people in front, one slightly ahead of the other. Is that correct? 20

A. Yes.

Q. There was one person behind apparently chasing them.

A. I'm not clear about that one because at that time when someone or some people ran past me I could not turn back.

Q. I understand from your evidence that you told us that you saw three people: two in front and one behind, apparently chasing the other two. Is that correct? Please tell us if that's not so.

A. Yes.

Q. If that is true then can you tell us the approximate distance between the person doing the chasing, the rearmost person, and the next person, that is, between the furthest away from you and the next one. 30

A. Supposing that the person who had fallen down was here, then the distance between them should be from here to here (indicates)

COURT: Could be from the railing to the spot where they fell down.

A. If the other person was very near this railing then the person who had fallen down should be here. (indicates)

MR. JACKSON-LIPKIN: My Lord, may I intervene to express a little concern. We now have about three minutes of "here" "there" "here" and "here". The shorthand writer doing her best is quite incapable of recording for posterity or any other place what any of that means. I wonder if we could have put into words—for example, when Mr. Gray said earlier in his translation: "The one who fell down ran in the opposite direction and the others ran in this direction" pointing on the photograph. Was this direction Nathan Road? 40

COURT: Well, let's clarify that to start with. Now you say that there were two persons running past you, one in front of the other.

A. Correct.

COURT: Raise your voice please.

A. Yes.

COURT: One of the two fell down on the pavement.

A. Yes.

COURT: Was it the one in front who fell down or the one behind him who fell down?

A. The one in front fell down.

10 COURT: The one who fell down, at the time that he fell down, fell in front of a position that is shown in Exhibit 3D just in front of the two ladies on the pavement. Is that the position, on the spot?

A. Yes.

COURT: That was the position he fell down. Now at the time when he fell down, the position as you said just now of the person behind him was near the railings as shown in Exhibit 3D.

A. Yes.

20 COURT: Now was that man's position—meaning the second man's position—at the railing near to something which looks like a traffic sign or a road sign to me with black and white markings? That is the extreme front of the railing of the photograph or the far side of the photograph and the railings in the photograph.

A. Round about there.

COURT: It would be round about there in that road sign part of the railing. Is that right?

A. His Lordship is referring. . . .

COURT: The second man, the man behind.

A. Yes, my Lord.

COURT: You also said that the first man, the man in front, after he fell down he got up again.

A. Yes.

30 COURT: Then he turned round and ran, as you said, in the opposite direction.

A. Yes.

COURT: Do you mean to say that he was running then, after he got up, instead of running towards Nathan Road he ran back towards Sai Yeung Choi Street?

A. Yes.

COURT: In other words, he was running towards you and your husband, in that direction.

A. Yes.

40 COURT: And also towards the person who pursued him.

A. Yes.

COURT: The other one, the second one behind near the railing, continued to run towards Nathan Road direction.

A. Yes.

COURT: So the two of them were running in opposite directions.

A. Yes.

COURT: Thank you. That should be clear enough now.

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- MR. JACKSON-LIPKIN: I'm very much obliged, my Lord.
- Q. When you thought—saw this person running towards you and your husband, could you see his face? 10
- A. I had a glimpse of him.
- Q. Was he any of the three youths you had seen earlier on?
- A. I cannot be certain because it was very dark there.
- Q. Did you see what happened to this person who ran back towards you and your husband?
- A. After that I did not see him.
- Q. Did he go past you in the direction of Sai Yeung Choi Street 10
- A. Yes.
- Q. And disappeared from sight?
- A. Correct.
- Q. The other two people that you saw running, did they go round the corner into Nathan Road?
- A. Yes.
- Q. Did you see either of them again?
- A. I did not see them again because they ran into a crowd.
- Q. When they went round the corner into Nathan Road could you in fact see where they had gone? 20
- A. No.
- Q. Did you hear anything after that, any unusual noise?
- A. I heard another bang.
- Q. Was this from Nathan Road?
- A. Yes, the bang came from Nathan Road.
- Q. And did you continue, you and your husband continue to walk along Argyle Street and into Nathan Road?
- A. Yes.
- Q. When you got into Nathan Road did you see anything? 30
- A. I saw many people surrounding a certain person.
- Q. Where was this person?
- A. That person was lying on the pavement.
- Q. This person—did you recognise him? Had you seen him before?
- A. No, I was not clear about that because when I saw him there was a lot of bloods covering his face.
- Q. Now you and your husband, did you discuss this incident that you had seen between you?
- A. Yes.
- Q. And on the 11th of January 1976, that's two days after the event, did you see that there was an appeal for witnesses and did you and your husband go to Mongkok Police Station to make a report? 40
- A. Yes.
- Q. Just to go back in your evidence for a moment please. When you saw this fight taking place, this struggle, the first time you looked back could you see whether it was on the road or on the footpath?
- A. The struggle took place on the road just beside the curb.

Q. Finally: this man that you say you saw fall down—was running along, fell down and turned and ran back towards Sai Yeung Choi Street—from what you are saying this man could not have gone into Nathan Road. Is that true?

A. Correct.

Q. So in fact how many people did you see run into Nathan Road?

A. Two.

MR. PENLINGTON: Yes, thank you.

COURT: Yes?

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10 *XXN. by Mr. Jackson-Lipkin:*

Q. Madam, isn't it true that this was a long time ago and you can't really remember?

A. I can't remember so clearly.

Q. But there's one thing that you are sure of, isn't there? When you turned round everything happened in a split second.

A. Yes.

Q. There's another thing you're quite clear of, isn't there? That you turned round instinctively and at once when you heard the bang.

A. Yes.

20 Q. I think you described it to the coroner as "subconsciously" and to the police as "intentionlessly". I don't know how you can translate those, Mr. Gray.

A. Correct.

REXN. by Mr. Penlington:

Q. I realise that this did happen some time ago and we are all grateful that you and your husband have been public-spirited enough to come forward and give evidence, but it is a very important matter. Now earlier in your evidence you told me that when you heard the first bang you did not turn round straightaway. You said something to your
30 husband—"What's that?" or something like that.

A. Correct.

Q. When you made your statement and when you gave your evidence at the inquest—and you have just said to my friend that you turned round straightaway—it was an instinctive turning as soon as you heard that first bang.

A. Yes. As I was turning around to look I was speaking at the same time.

40 Q. I see. So you heard the bang and you straightaway turned round and as you did so you were speaking to your husband. Is that the position?

A. Yes.

MR. PENLINGTON: Thank you.

COURT: All right, you may step down now.

MR. PENLINGTON: TAM Kin-kwok, paragraph A280.
P.W.7—TAM Kin-kwok

MR. TAM: May I make one request? I would not like the court or the Press to disclose my name.

COURT: Could you please repeat his name?

MR. PENLINGTON: TAM Kin-kwok, he is number 15. Yes Mr. TAM.
You. . . .

COURT: Just one moment please. He has a request to make and that was to ask me to ask the Press not to publish his name and I propose to give him an answer before you question him, Mr. Penlington. 10

MR. PENLINGTON: Yes.

COURT: Mr. TAM, you are public-spirited enough to have offered your statement and to give evidence. Giving evidence is one of your duties as a citizen. Today you are giving evidence as a citizen on behalf of the Crown or on behalf of somebody else. Tomorrow someone might be required to give evidence for you, you never can tell. You have nothing to fear as you are telling the truth.

A. For personal reasons I do not wish my occupation to be known because at the outset I did not know that I had to give—to come to court to give evidence. 20

COURT: The trouble is that this is an Open Court and I cannot, unless very cogent reasons are given, ask the Press not to publish your name.

A. Last time a request of this nature was granted by the coroner and I was giving evidence as one who would not like his name disclosed. On this occasion may my name be disclosed but may my occupation not be disclosed?

COURT: That depends on whether the Director of Public Prosecutions is going to ask you about your occupation.

MR. PENLINGTON: I don't think his occupation has any relevance 30 to this enquiry.

COURT: Very good.

XN. by Mr. Penlington:

Q. Yes. Mr. TAM, on the 9th of January this year did you go to a movie at the Empress Theatre?

A. Yes.

Q. And after the film did you go along Argyle Street towards Sai Yeung Choi Street?

A. Yes.

Q. At about half-past nine were you with a friend and had you 40 reached the old H.K. & S. Bank building?

A. Yes.

Q. Approximately how far west of Sai Yeung Choi Street were you—I'm sorry. . . . Did you hear anything unusual?

A. By that time I had not yet heard anything unusual.

Q. Did you hear anything unusual?

A. No.

Q. Did you hear anything unusual at all that evening?

A. I'm not too clear about the time, whether it was half-past nine or not, but when I reached outside the H.K. & S. Bank building in Argyle Street I heard something.

Q. What was that?

A. Do I have to relate everything from beginning to end?

Q. Yes please.

10 A. I was in Argyle Street outside the H.K. & S. Bank building and was about ten odd feet away from Sai Yeung Choi Street. At that time I was waiting there—standing there waiting for my friend. I was facing Nathan Road. I was standing on the pavement about one to two feet away from the roadway.

Q. Yes.

A. I was standing there . . . I'm not too clear about the direction . . . but as I was standing I heard coming from my right-hand side a sound which resembled a firecracker.

20 Q. A firecracker? Was this from the direction of Sai Yeung Choi Street?

A. Subsequently I thought about it, that is to say, the direction from which the sound came, and I believed that possibly it could have come from between where I stood and Sai Yeung Choi Street.

Q. You say at that stage you were standing with your back to Sai Yeung Choi Street?

A. Yes.

Q. And is it your evidence that the noise came from somewhere slightly to your right?

30 A. It was to my rear on the right, that is the direction from which I heard the sound, but I don't know exactly from where it came.

Q. The rear to the right, but you can't be sure. What did you do when you heard this sound from your rear to the right?

A. The situation was very confused at the time and when I heard this sound I thought . . . I asked myself if there were people firing firecrackers.

Q. What did you do? Did you turn round?

A. Subconsciously I turned to my right and looked.

Q. What did you see?

40 A. As I have already said, the situation was very confused and behind me I saw many people and they were shouting. They were shouting the following words: "Someone, some people have opened fire".

Q. Did you see anything else?

A. I had not recovered from my fright yet at that time, and therefore I did not know what was going on.

Q. Yes.

A. I did not see anything which I should pay any special attention to.

Q. Did you see anybody running?

A. During those moments, about three to four seconds later, I saw one man running past the curb.

Q. About how far away would he have been when you first saw him?

A. As he was running the approximate distance between him and me was about six to seven or ten feet.

Q. Would you prefer to point out some object in the courtroom, the distance between yourself and this man who was running when you first saw him?

A. (indicates) As he was running the distance was from where I am now to where Crown counsel is. That's the shortest distance between him and me, but as he was running the distance varied. 10

Q. When you first saw him, however, he was about ten feet away.

A. That is the shortest between him and me, but as he kept on running the distance varied and he moved further away in the direction—speaking of this courtroom—towards the door of this courtroom.

Q. He was moving away towards Nathan Road, is that right?

A. Correct.

Q. Did you see any other people running?

A. At that time I did not know actually what was going on. I saw one person running past and my attention was focused on that person. I did not pay attention to any other thing. 20

Q. Did you see any people in front of him?

A. At that time I did not realise that such a thing had happened, but later on as I go on in my evidence I'll relate what happened.

Q. All right Mr. TAM, you tell us in your own words what you saw.

A. As I have said, when I heard the first bang I had the impression it was a sound of firecrackers and it was not until I heard the second bang that I knew it was the sound of a revolver being fired. There was an interval of about four to five seconds between the first bang and the second bang. When I heard the second bang then I saw the person putting his hand down. It seemed that he was holding a revolver. I do not know if it is a revolver or not, but I saw him holding something and when he put his hand down I thought it might have been a revolver. At that time he shouted aloud and uttered some foul language. May I repeat what he said? 30

Q. Yes, would you please tell us.

COURT: Not only may you, you must.

A. After I heard the second bang and he had put his hand down, he shouted aloud, "Fuck your mother. Still running?" In front of the person who was holding what appeared to me to be a revolver, there were two shadows, the shadows of two persons running with their back towards me. I don't know the exact distance between the person running and the one with the revolver because it was very dark, but the distance could have been about ten odd feet. As all this took place in a very short time, I could vaguely see the two shadows and I only saw them for a short while. 40

Q. Did you see where these two shadows went to?

A. As it was very dark and because of the traffic signs and the crowds in the area, coupled with the fact that I did not know what was going on, at the time I did not pay attention.

Q. Did you see where the man who was running along apparently with a revolver, did you see where he went?

A. At that time as I did not continue to pay attention to this or the following, I don't know.

10 Q. When these shots were heard, Mr. TAM, did the pedestrians, the people who were walking in the area, tend to scatter and perhaps run around?

A. As I have already said, I heard "bang" and then somebody running past me, and then a second bang, the person running putting his hand down apparently holding a revolver. During that period of time there were not so many people walking in the streets.

Q. Now Mr. TAM, I just want to be quite clear about this. Your evidence is that you were standing about fifteen feet from the corner of Argyle Street and Sai Yeung Choi Street beside the old H.K. Bank building.

20 A. Yes, about fifteen feet.

Q. And you heard the first bang, the first shot, from your rear to the right.

A. Yes.

Q. You turned round and a man—when you turned round the first time you saw a man running, he had already gone past you towards Nathan Road. Is this correct?

A. I didn't turn round.

Q. Sorry. So when you first saw this person running he had gone past you and you hadn't turned round?

30 A. No. When I heard the first bang I turned around and I turned back again and was facing Gala Theatre and Nathan Road.

Q. The first time you saw this man running he had gone past you towards Nathan Road. Is that correct?

A. Yes.

Q. Was it then that you heard the second shot?

A. Yes.

Q. Did you then go on towards Nathan Road?

A. Yes.

Q. Did you see a crowd of people in Nathan Road?

40 A. There were many people.

Q. Did you see a young man lying on the pavement with blood on his face?

A. Yes.

Q. I think about two days later you went to Mongkok Police Station and you made reports about what had seen.

A. Yes.

Q. Now just one final point: do you know what, in fact, a second, the period of a second is?

A. Yes.

Q. Well, now you have given us an estimate of what the time you think was between the first and the second shot.

A. Yes.

Q. Now estimates of times and distances are difficult, but I want you to—when I first knock the table like that (indicates) we'll take that as being the first shot. I wonder if you could then tell me to stop when you think the same time has elapsed between the first and the second shots. Do you think you could do that? 10

A. At that time the situation was very confused and I only have a very vague recollection of what happened. I can't say anything conclusive on this gap of time.

COURT: No, I think the Director was merely trying to conduct an experiment as to what you mean by "four seconds." You did mention four seconds.

MR. PENLINGTON: He said four seconds? Oh, I'm sorry, I thought he said forty-five. "Four to five". I'm sorry, my Lord, I thought he said "forty-five". 20

Q. Yes. You think it was four to five seconds?

A. Yes.

MR. PENLINGTON: Yes, thank you.

COURT: Just one question first before cross-examination, Mr. TAM. By the time you heard the second bang or shot did the noise come from the front of you or the back of you or rather shall I put it this way: you said when you heard the first bang you were facing Nathan Road and therefore you said that the bang came from the rear of you but to the right.

A. Yes.

COURT: Having heard that, you might have taken a little—not a full turn, but you turned a little towards the direction of Gala Theatre. You said you saw a man run past you. 30

A. When I just turned around I looked in the direction where my friend was. I saw a crowd of people, but I did not see the person running.

COURT: But you said that. . . . When did you see a person running past you? I'm not holding you to the exact second, but approximately. . . . Do I understand you to say that after you had heard the first bang for about four to five seconds you saw a person running past you towards Nathan Road direction?

A. Yes. 40

COURT: Then how long afterwards did you hear the second bang?

A. Earlier on I said that the gap of time between the first and the second bang was four to five seconds. Now your Lordship has asked me whether it was four to five seconds after I had heard the first bang and the man started to run.

COURT: Do I understand you to mean that the time period between the first shot and the second shot was between four to five seconds?

A. Yes.

COURT: And between those four to five seconds a person had run past you?

A. Yes.

COURT: Also, is it your evidence that after you heard the second bang you saw the person who ran past you drop his hand?

A. Yes.

COURT: And you said that you thought what he held in his dropping hand was a revolver or pistol. Is that what you said?

10 A. Yes.

COURT: Do I understand then the second shot was fired or was heard—was heard after the man had run past you towards Nathan Road direction?

A. Yes.

COURT: Thank you. I will adjourn until two-thirty. Would you please come back at two-thirty, Mr. TAM.

A. Yes.

1.03 p.m. Court adjourns

2.40 p.m. Court resumes

20 Accused present. Appearances as before. (Mr. Gall absent.) Jury present.

P.W.7—TAM Kin-kwok—O.F.A.

XXN. by Mr. Jackson-Lipkin:

COURT: Yes, Mr. Jackson-Lipkin.

Q. Mr. Tam, in the forenoon today when Mr. Penlington—that is this gentleman—was asking you questions, remember he was going to give you a demonstration as to time?

A. Yes.

Q. Before he could ask the question you said something to him.

A. Yes.

30 Q. I am now going to read to you what you said.

A. Yes.

Q. “At that time the situation was very confused.”

A. Yes.

Q. “I only have a very vague recollection of what happened.”

A. That is absolutely the case.

Q. That is what I wanted to ask you. Well, that’s a very frank answer for which we are all very much obliged, Mr. Tam. May I suggest to you that your recollection of the sequence of events is as vague as your recollection of the events themselves? (Pause) Do you understand the

40 question, Mr. Tam?

A. Yes, I do.

COURT: Do you agree or disagree? (Witness speaks in Chinese.) Well, what happened before and what happened after.

A. Yes.

Q. But one thing you are quite sure of that everything happened within a very short, a very short period of time?

A. Yes.

Q. Can you recollect this, Mr. Tam? Between you and Sai Yeung Choi Street there were quite a number of pedestrians, were there not?

A. Yes.

Q. And after the first bang a number of people ran?

A. At the first bang I am not too clear as to whether there were people running because I was facing Nathan Road.

Q. I see, but quite a number of people on the pavement on which you were ran towards the wall of the bank building, didn't they? 10

A. No.

Q. You mean no or you can't remember or none that you could see?

A. During that time in front of me there were no people running towards the wall. I did not see any persons running.

Q. Was it you, Mr. Tam, who told as at that time it was quite dark in that area?

A. Yes.

Q. And when, in fact, you did turn you turned towards—and you said towards the Gala Cinema? 20

A. Yes.

Q. Now the Gala Cinema, from where you were, would have been to you right and backwards, slightly backwards?

A. No, It's to my right but not slightly behind; it's to my right in front.

Q. I did not, Mr. Tam, mean behind, I meant to your right but at a backward inclination.

A. I can say that the most, the greater part of the Gala Theatre was in my front. It is a very large building occupying the entire block from Sai Yeung Choi Street to Nathan Road. 30

COURT: Do I understand that you merely turned 90°. (Witness demonstrates) No, that would be 180. You turn 90°. You know the angle? That's it, that's it, roughly 90°. You said that you heard the first bang and you turned.

A. Yes. At first I was facing Nathan Road when I heard the bang. I turned to my rear at an angle of about 90°.

COURT: Roughly at an angle of 90°. I didn't mean to hold you to the exact angle. At least you were not doing an about turn, in other words, not a 180° turn. A 180° turn means a completely opposite turn. (Witness continues to demonstrate.) Slightly more than 90°. Well, what you have done just now is a 180° turn. 40

MR. JACKSON-LIPKIN: We will settle for 120.

COURT: If you do it a bit more it may be going once round, which is 360.

A. I should have made a 180° turn.

COURT: You have made a 180° turn means that you were facing completely the opposite direction. Do you understand that?

A. I made a turn and then turned back to my original position so that I was facing Gala Theatre and Nathan Road.

COURT: Yes. Just let us clarify it. This point is quite important, I think, at least both for the Prosecution and for the Defence. Originally, before you heard anything you were standing taut in Nathan Road?

A. Yes.

COURT: On the pavement near the old Hongkong & Shanghai Bank building.

A. I was standing next to the Hongkong & Shanghai Bank building.

10 COURT: You are near, anyway, by it or near it, I mean the same thing, on the pavement?

A. Yes, my Lord.

COURT: You were ten odd feet away from the junction of Sai Yeung Choi Street?

A. Yes.

COURT: Standing at that position and facing Nathan Road you can take it from me that you were facing west with your back towards the east. This is a statement, I am not asking you a question. It was then you heard the first bang.

20 A. Yes.

COURT: You subconsciously turned your body and your head around towards the right. Right?

A. Yes.

COURT: That is your body movement was from facing west around to west north west, north, and right round. Your turn is a right turn. (Interpreter speaks in Chinese.) No, north west.

A. Yes.

30 COURT: And do I understand you to say then at your first turn it was a full swing of 180° west? Mind you, it is a continuous movement—I am putting it to you it was a continuous movement. You swung round to the direction of Sai Yeung Choi Street, 180° as you demonstrated, and then at that point you turned back towards Nathan Road direction and eventually you stopped at roughly a 90° turn, in other words, facing the Gala Cinema, before you stopped. Is that what you said or would you like to change it or clarify it? I do not want to put words in your mouth, I just want to clarify what you say. If you want to correct it by all means do so.

40 A. There is one point I want to add for the purpose of clarification. I cannot be certain that I made a turn of 180°. I made a turn and the distance covered was equivalent to that of one pace.

COURT: Yes, but you said that you were then facing the Gala Cinema.

A. When I turned back again I was facing Gala Theatre and I was at an angle of about 45° from Nathan Road.

COURT: I think the best way probably is for you to demonstrate. Please step down from the box. That corridor is Nathan Road.

A. Yes.

COURT: You face it. That is the Gala Cinema. That is Sai Yeung Choi Street. Now, would you do please, slowly, what you did when you heard the first bang. You heard the first bang, now show the movement slowly. To the best of your recollection show what you did. (Witness demonstrates.)

A. May I start all over again?

COURT: You are standing facing Nathan Road, you heard the first bang now—'bang.'

A. Yes, there was a bang. I made this motion and then—but of course the time taken for the motion I made then was longer than the one I have made now. 10

COURT: Do it in exactly the same way as you did at the time it took place.

A. I turned round and I was trying to see what was going on. There were people talking, speaking about a shot being fired, and then I turned back to the position where I just—facing this direction.

COURT: In other words—step back into the witness-box now—do I understand you to say that on the sound of the first bang you did a 180° turn and you paused a little to reflect on what actually was happening, or trying to see what was actually happening, then you saw a lot of people, then you turned back to your original position, slightly towards the street, across the road, of Argyle Street? Obliquely looking into Argyle Street? You are not exactly facing Nathan Road. (Witness speaks in Chinese.) Yes, well, wait, wait, I am going to put this to you, I haven't finished yet. But at all times, of course you are not having a single eye and your line of vision is not in one line, of course you have got wide vision, so that as you turned your vision covered the whole area, from that turn the whole of the area leading from Gal Cinema right down to Sai Yeung Choi Street and backwards. It was a sweeping motion as far as your vision was concerned. 20 30

A. My vision—I was concentrating my vision on the area from Gala Theatre to Nathan Road where I saw the traffic lights and the vehicles travelling.

COURT: Yes, I think I have done whatever I can.

MR. JACKSON-LIPKIN: I am very much obliged, my Lord.

COURT: And if it is still not clear I will have to leave it to you.

MR. JACKSON-LIPKIN: I fear that he has left me somewhat confused in relation to his final position.

Q. Mr. Tam, there is just one thing that I think is wrong with your description, your physical description of what you did. If you had turned back, as you have said, you would have been facing the Shanghai Commercial Bank on the north side of Argyle Street and would not be looking at the Gala Cinema at all. 40

MR. JACKSON-LIPKIN: My Lord, if your Lordship looks at 1A.

COURT: Yes.

A. When I made the 180° turn I did not pay attention to what was going on in the street.

Q. Mr. Tam, just listen to me for a moment, please. If you were originally facing towards Nathan Road, being about a sixth of the way along the old Hong Kong & Shanghai Bank building. . . .

A. Yes.

Q. . . . over to your right there would be the edge of the Gala Cinema nearest to the Shanghai Commercial Bank.

A. My position was near Sai Yeung Choi Street whereas the Shanghai Commercial Bank was near Nathan Road.

10 Q. The Shanghai Commercial Bank is on the corner of Nathan Road and Argyle Street.

A. I can say that I could—I could see the Shanghai Commercial Bank and the Gala Theatre, but these two places were parallel to me and I was not at an angle with them.

MR. JACKSON-LIPKIN: My Lord, the Shanghai Commercial Bank has a rather beastly abbreviation on this side, 'Shacom Bank.'

COURT: Yes, I have finally spotted it, yes, I have found it.

MR. JACKSON-LIPKIN: My Lord, I said that in case any member of the jury has not spotted it as well.

COURT: It is spelt as S-h-a-c-o-m, Shacom.

20 MR. JACKSON-LIPKIN: Yes, my Lord.

Q. Mr. Tam, what has gone on for the last ten minutes is an excellent illustration, is it not, of what you were trying to tell the Court earlier, that you have only a very vague recollection of what happened?

A. There was such a long lapse of time of course that should be the case.

Q. That is what you were trying to tell us earlier, isn't that right? You were trying to explain earlier that your recollection was vague?

A. I try my best to remember but whatever recollection I have of anything it cannot be too clear, you can call it vague.

30 Q. Will you try and help me on two further points? If you can't, please say so. You demonstrated turning fully backwards to Sai Yeung Choi Street, pausing and looking around, and then turning back.

A. Yes.

Q. Would I be right in saying that you paused for some four to five seconds before turning back?

A. Well, I cannot remember the time now and when I spoke of time this morning I might have made a mistake. I said there was a gap of four to five minutes between the first and second bang.

Q. Seconds.

40 A. Four to five seconds between the first and the second bang; the time could have been longer.

Q. It could also have been less, could it not?

A. Yes, it could have been longer, it could have been shorter, I could not be definite.

Q. That is a very straightforward answer. I am asking you now about the demonstration you gave a few minutes ago. Before you did

it you explained to my Lord that on the night in question you acted more slowly than you were going to demonstrate now.

A. I should have taken longer time in making the turn.

Q. On the night in question or now?

A. What I mean is I took more time in making the turn on the night in question.

Q. Thank you. May I suggest to you, Mr. Tam, that you heard a bang, you turned round, you heard another bang and as you were turning back people passed in front of your vision, running towards Nathan Road.

A. Yes.

10

COURT: In other words the second bang was heard before people ran past you?

MR. JACKSON-LIPKIN: He answered 'yes' to my question, my Lord.

COURT: Yes, but have you understood the question, Mr. Tam? It is suggested to you that you heard the first bang, you turned around to have a look.

A. Yes.

COURT: Then you turned back and there was a second bang before people ran past you. In other words you heard the second bang before people ran past you.

20

A. I don't know what people.

COURT: The two persons—the person who you said ran past you in your examination-in-chief.

A. Before the sound of the second bang I looked and I saw a man running, but I did not know what he was doing or what was happening, and what is most important that it was at the sound of the second bang I came to know what was happening.

Q. And it was after the second bang, as you were turning back, that people passed across your line of vision?

A. When you say 'people' what people do you mean?

30

Q. Let me rephrase the question again. It was after you heard the second bang and were turning back that runners crossed your line of vision?

A. Before hearing the second bang I had turned back and was facing the Gala Theatre and Nathan Road.

Q. Now, Mr. . . .

COURT: "Before I heard the second bang. . . ."

MR. JACKSON-LIPKIN: ". . . I had turned back and was facing the Gala Theatre and Nathan Road."

Q. Mr. Tam, I am obliged to remind you of what you said on your oath to my Lord and this jury at 2.35 this afternoon, that your recollection of the sequence of events was very vague, and what I am suggesting to you is that you cannot truthfully remember which happened first, second or third.

40

A. I disagree, no. I have a very clear recollection concerning the sequence of events relating to the first bang and the second bang—the sequence of events relating to the first and second bang and to the person running.

Q. Why didn't you tell us that at the beginning of your evidence this afternoon?

A. Well, you talked about the first and the second bang. I have a clear recollection that the first bang was heard before the second bang came.

COURT: I should hope so.

A. And I also remember that after the second bang was heard I saw him dropping his hand and holding something which looked like a pistol.

10 Q. Mr. Tam, will you please answer this question yes or no. Do you realise that none of the facts, the basic facts you have given in your evidence, is disputed at all?

A. Yes.

Q. You do know that?

A. Yes.

Q. What I am merely suggesting to you is that you have got them out of order because you have only a very vague recollection of what happened.

20 A. When I said I have a vague recollection I mean I have a vague recollection of what happened during the whole incident and also I cannot remember the exact length of time when a certain thing happened.

COURT: What about the sequence you are being asked?

A. Speaking of the sequence of events I can say that I heard the first bang and after some time there was a second bang. This was the sequence.

Q. Yes, and is it possible, Mr. Tam, that your recollection of the sequence of the other events as you have described them today, may be wrong?

A. Yes, there is such a possibility.

30 COURT: Any re-examination?

REXN. by Mr. Penlington:

Q. Mr. Tam, you have been taken through this evidence in considerable detail. Now, you have told us in your evidence-in-chief that you saw the man carrying the revolver running away from you towards Nathan Road, and it was while he was running away from you towards Nathan Road that you heard the second shot.

A. Yes.

40 Q. And in answer to a question put to you by my friend you said, "Before I heard the second bang I had turned back and was facing towards the Gala Theatre and Nathan Road."

A. Yes.

Q. Bearing in mind that this is a very important point, Mr. Tam, is that in fact correct?

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TAM Kin-kwok

A. Let me try to recall again. The firing of the second shot and the running of the man took place at almost the same time, so I do have a recollection of this man running and then of hearing the second bang and of this man dropping his arm in which he was holding a pistol-like object.

Q. Can you recollect whether he was running towards you, past you, or away from you when that second shot was fired?

A. He was running away from me.

Q. Yes, thank you.

COURT: All right, you may step down. Yes, Mr. Penlington.

MR. PENLINGTON: No. 16, Miss Fung. Paragraph A97.

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*P.W.8—FUNG On-na—Sworn in Punt
XN. by Mr. Penlington:*

No. 19
P.W. 8
FUNG On-na

Q. Miss Fung, you are married and you reside at So Uk Estate?

A. Yes.

Q. You work as a sales girl at the Silver Star Fashion Co., 656 Nathan Road?

A. Yes.

10 Q. Now, on the 9th of January this year did you leave your shop at about 9.30 in the evening?

A. I did, I left.

Q. And did you walk along Nathan Road to the junction of Argyle Street with the intention of crossing over to the other side of Nathan Road?

A. Yes.

Q. Where you facing westwards towards the new Hongkong and Shanghai Bank building?

A. Yes.

Q. Now, did you hear anything when you were standing there waiting to cross Nathan Road?

20 A. I did not hear anything at the time I was standing there.

Q. Did you cross Nathan Road?

A. Well, I couldn't cross because the red light was on.

Q. While you were waiting there did you hear anything?

A. Yes, after standing for a short while there I heard a sound like that of firecracker.

Q. From which direction did this sound appear to come from?

A. From my right

Q. From your right?

A. Yes.

30 Q. Which direction were you facing at that time?

A. I was facing the new Hongkong and Shanghai Bank.

Q. What did you do when you heard this noise like a firecracker?

A. I was a little startled by this sound but I did not pay very much attention to it yet. A short while later I heard another sound similar to the sound I had heard earlier on like that of a firecracker.

Q. Give us some idea of how long it would have been you think between the first and the second sound.

A. About five seconds.

Q. Could you tell whereabouts this second bang came?

40 A. Also from my right.

Q. That is if it was from your right that would be from the north up Nathan Road—to the north up Nathan Road, is that right?

A. Supposing I am here intending to cross the street opposite the new Hongkong and Shanghai Bank, the sound would have come from this side, that is to say from my right.

Q. Did you change your position between the hearing of the first sound and the second sound?

A. No.

Q. After you have heard the second shot—sound, did you see anything?

A. After the second sound two persons ran past the corner.

Q. They ran past the corner. Where did they go?

A. They went to the left hand side, that is the side where the King of Kings is.

Q. In the direction of your shop, is that right? **10**

A. Yes.

Q. And your shop is next to the King of Kings Restaurant?

A. Yes.

Q. Did you see what sort of people these two people were: were they male or female, old or young, anything about them?

A. They were men but I am not too clear about their age.

Q. Did anybody else go past—run past that corner?

A. Do you mean after the two?

Q. Yes.

A. Of course as they ran past the corner my eyes would follow them **20**
in the direction in which they ran and after I had looked at them there was another man who also ran past the corner.

Q. How fast were these people running?

A. Do you mean the first two?

Q. The first two.

A. The first two were running very fast.

Q. The third one?

A. The third one was running a little more slowly.

Q. Were they running on the road or on the pavement?

A. They were below the pavement. **30**

Q. Did you hear any more noises like firecrackers that day?

A. No, I altogether heard two sounds.

Q. You heard those two sounds both before you saw these people running?

A. Yes.

Q. Did you walk over to near—close to where your shop was and did you see a young man lying on the pavement?

A. Yes.

Q. Were there many people—when you left your shop that evening before these events that you have told us about, were there many people **40**
walking in Nathan Road in that area?

A. Do you mean at the time when I was still in the shop?

Q. When you left the shop, when you walked out to Nathan Road.

A. Not many.

Q. Yes, thank you.

COURT: Yes.

XXN. by Mr Jackson-Lipkin :

Q. Madam, when you said five seconds what you meant to say to my Lord and the jury was a very short space of time, is that it?

A. Yes.

COURT: Re-examination?

MR. PENLINGTON: No re-examination.

No REXN. by Mr. Penlington

COURT: Would you please step down.

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No. 20
P.W. 9
POON Leung

P.W.9—POON Leung—Affirmed in Punt

XN. by Mr. Penlington :

Q. Mr. Poon, you live at No. 6 Fuk Wah Street, Block A, is that right?

A. Yes.

Q. And you are a garment worker by profession?

A. Yes.

Q. On the evening of the 9th of January of this year were you with your wife?

MR. JACKSON-LIPKIN: My Lord, I have no objection to anything this witness says. If the learned Director wishes to lead him right through he may. **10**

MR. PENLINGTON: Thank you.

Q. You were with your wife and her name is Chan Po-lin?

A. Yes.

Q. You walked along Nelson Street and into Nathan Road until you reached opposite a restaurant known as the King of Kings?

A. Yes.

Q. And there did you suddenly see a man rushing towards you running towards you, and did he bump into your left shoulder? **20**

A. This side (Witness indicates).

INTERPRETER: That is the left side.

Q. Mr. Poon, were there many people on the pavement of Nathan Road in that area at that time?

A. Yes, correct.

Q. Were you on the pavement or on the road?

A. I was on the pavement.

Q. And the man running towards you and who bumped into you was he also on the pavement or was he on the road?

A. He rushed towards me from the kerb and bumped against me on my shoulder. **30**

Q. And you were going north up Nathan Road?

A. I was walking towards—I was walking home towards Laichikok.

Q. After Nelson Street you turned right up Nathan Road?

A. Yes, correct.

Q. And this man came from your left and bumped into your shoulder?

A. Yes, correct.

Q. Did he come from off the road or was he running along the edge of the footpath? **40**

A. He dashed from the edge of the footpath.

Q. The edge of the footpath. Did you see anybody else running?

A. After he had bumped into me I looked in front and saw two other persons running.

Q. Two others?

A. Correct.

Q. And this man who bumped into your left shoulder what did he do after that?

A. After he bumped into me I stopped for a while; I turned round in order to have a look at him but I lost sight of him because there were many people at the time.

Q. Did he appear to go on behind you past you—did he go on past you to the south along Nathan Road?

A. Yes, he ran past me and behind me.

10 Q. Did you see him again?

A. No, I did not see him.

Q. What about these two other men that you saw running?

A. Correct.

Q. What happened to them?

A. Well, he bumped into me. I turned round to see him disappear. Then I looked in front again. I saw two men running.

Q. Yes, they were running towards you?

A. Yes.

20 Q. What happened—take the first one of these two men, the one that was close to you. Did you see what happened to him, where did he go?

A. Do you mean the one who bumped into me?

Q. No, the one who bumped into you he went on and you didn't see him. Now, the other two. You turned round and you turned back again and you saw two men, two more men, both running towards you?

A. Yes.

Q. Now, if you could take the first one of these two men, the one who was closest to you.

A. Well, the distance of the two men from me were about the same.

Q. About the same?

30 A. Yes.

Q. All right, well, can you tell us what happened to these two men: what did they do and where did they go?

A. When I looked in front of me at the time I saw two men running on the side of the pavement.

Q. Yes.

A. The two men who were running were very near each other and they were running very fast. As they were running the one in front brushed his hand or his arm at the person behind him.

40 Q. Yes. When he did this was he looking back or had he turned round or was he still going down Nathan Road?

A. (Witness indicates). What he did was he just turned at an angle.

Q. Turned at an angle—and threw his arm back?

A. Yes.

Q. How far away approximately, well, as close as you can, how far away at that time was the second man to you?

A. Do you mean there were two?

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- Q. Yes.
- A. From where I am to where this lady is.
- Q. About four feet?
- A. No, from here to here.
- Q. Yes, from where you are standing to the shorthand reporter?
- A. From here to there, about two to three feet.
- Q. All right, two to three feet. Now, was this first man, the man in front, holding anything, the first man?
- A. No.
- Q. Was—when he turned back and moved his arm back the way you have described was he still running fast? 10
- A. He had already slowed down the speed and appeared to be coming to a pause.
- Q. He appeared to be coming to a stop?
- A. Yes.
- Q. When he threw his arm back in the way you have described, did he also turn his head, was he also looking back?
- A. He could not turn his entire head back.
- Q. No, he moved his arm back as you have described like that?
- A. Like this (Witness indicates). 20
- Q. And when he did that and you also turned your head round, did he turn his head round too?
- A. He did not make a full turn with his head.
- Q. He did not make a full turn with his head but he did turn his head to some extent?
- A. Not a complete turn.
- Q. No, not a complete turn but a partial turn?
- A. Correct.
- Q. Could you see whether he had his hand, his fist, clenched or his hand open? If you couldn't see or can't remember would you please tell us? 30
- A. No, his hand was open.
- Q. Now, the second man, that is one of these two that you were talking about, the second man, was he holding anything?
- A. It seems that he was holding something in his left hand.
- Q. Holding something in his left hand?
- A. Yes.
- Q. Could you see what it was?
- A. Well, he was holding an object of which—the nature of which I can't be sure. 40
- Q. What did—did it look like anything?
- A. It looked like a pistol.
- Q. And did you then hear anything?
- A. Following that I heard a bang.
- Q. Did you see anything when you heard the bang?
- A. Yes, I—at that time I saw the person behind me dodge.

Q. You saw the person behind you dodge. What happened to the two men after you heard this bang?

A. The one in front dashed towards us on the footpath.

Q. What did he do when he dashed towards you?

A. When the bang was heard, that is the shot from the pistol was heard, someone shouted that it was—someone had opened fire.

Q. How far did this man dash; you said he dashed towards you; how far did he go?

10 A. The moment he dashed on to the pavement my wife became frightened. She pulled me in and we turned to the other direction and left.

Q. Did you see up to that time how far he had gone—from the time you heard the bang how far did he go?

A. When the bang was heard the man in front dashed all the way straight to the footpath.

Q. After you have heard the bang how far do you think he ran after the bang?

A. Well, I can't be certain of course.

Q. No, we don't want you to be certain, but can you just give us some idea?

20 A. I estimate that he ran from here to there. (Witness indicates)

Q. To where?

A. Well, I can give a rough estimate only. He ran from this side to there opposite.

Q. One witness box to the other?

A. That is what I think.

Q. About fifteen feet?

A. No, not as many as that.

Q. Anyway, from where you are standing to the other witness box?

A. Yes, this is about the distance.

30 Q. About. Mr. Poon, would you look at photograph 2B, that is the photograph of Nathan Road showing the sign outside the King of Kings Restaurant.

A. Yes.

Q. And it is not in dispute that the mark on the pavement, the chalk mark, is where the man that you saw being eventually finished?

A. Yes, that was about the place.

Q. And you see there is a bus stop sign opposite where the marks are?

A. Yes.

40 Q. Now, Mr. Poon, can you give us any indication—make a mark on that photograph—approximately where you think you were standing when you heard the bang?

A. (Witness marks in red). I was standing here.

Q. And you told us, Mr. Poon, that your wife became very frightened and you left the scene straight away?

A. Yes.

MR. PENLINGTON: Yes, thank you.

COURT: Yes.

Ex. 2B.

XXN. by Mr. Jackson-Lipkin :

Q. Mr. Poon, can you remember anything about the first man, the one who bumped into you?

A. I have a very vague recollection. The moment he bumped into me it was a very short period of time and I remember that he was a man with very long hair.

Q. I am obliged. That was the impression left on your mind as this man bumped into you and then disappeared into the night?

A. Yes.

Q. And four days later that is exactly how you described him to the police, isn't it? **10**

A. Yes, correct.

Q. Now, in your evidence a little earlier you have talked about a distance of about two to three feet, you were pointing from the edge of the witness box to the shorthand writer.

A. Yes, correct.

Q. What was that distance meant to represent? I didn't catch it.

A. The distance between the two of them.

Q. Thank you.

COURT: "The two of them", which "them"—who are they? **20**

A. Those two persons who were on the edge of the footpath.

COURT: Was one of whom is the one who brushed your shoulder or the other two persons or were you talking of two totally different persons?

A. No, I was referring to those two persons whom I saw running when I looked in front of me, the two persons running beside the footpath.

COURT: Not the one who brushed against you?

A. No, I have no impression or recollection of the man who bumped into me because I couldn't see him.

Q. Mr. Poon, I want to ask you about the demonstration which you gave a little earlier of how the man swung himself round. **30**

A. Yes.

Q. The man was—appeared to be coming to a pause you say?

A. Yes.

Q. And then he swung his arm back and turned his head round but not . . . Mr. Gray, is it possible to say "round" without meaning "right around"? . . . I will rephrase the question then: he swung his arm towards his back and his head towards the back also?

A. Not a complete turn to the back.

Q. As you have just demonstrated now? **40**

A. Yes.

Q. Would you show my Lord and the jury again.

A. (Witness complies).

Q. Now, will you please answer this next question with a "yes" or a "no" and nothing else?

A. Yes.

Q. Do you know that your wife described what happened in these terms: "The man in front turned round to beat the man armed with the terms: with his hands"? Do you know that she said that—"yes" or "no"?

A. Yes.

Q. Do you agree with her description?

A. Well, I can't be certain about this because I only saw him swing himself round and this is a question of the usage of words.

COURT: You do not like to express an opinion whether you—a
10 statement whether you agree or disagree with this; you say this is merely a matter of description, is that it?

A. I agree with what she said but there is the question of the use of that word by her; I don't know how to use that word.

COURT: You don't know how to use the word "beating" or—?

A. No, I mean—I don't mean that I don't know how to use it. It is my wife who does not know how to use it.

COURT: It was your wife who said "The man in front turned round to beat the man armed with the revolver with his hands"; you are asked whether you agree or disagree with her description. I can fully understand your predicament as a husband but you need have no fear. If you agree
20 with her say so; if you disagree with her also say so. There is no need to beat about the bush. Well, do you agree or do you disagree?

A. Well, in that case I agree.

COURT: You agree.

MR. JACKSON-LIPKIN: My Lord, in order to save your lordship's and the jury's time my learned friend and I are going to reduce the wife's statement into an agreed statement of fact. That would save the public time.

COURT: Yes.

Q. When the man in front swung around like that (Counsel demonstrates) the man behind who was chasing dodged to the left, didn't he?

30 A. Yes, he dodged.

Q. And then there was a sound like a firecracker?

A. Correct.

Q. Just one point of clarification, Mr. Poon: the man behind dodged to the left, didn't he?

A. Yes, to the left.

COURT: Re-examination?

REXN. by Mr. Penlington:

Q. Mr. Poon, speaking for yourself, your recollection, was it your
40 impression that the man in front when he turned around threw his arm back and was trying to strike the person who was following him or trying to strike the man behind him?

A. Yes, correct.

MR. PENLINGTON: Yes, thank you. Might this witness be released, my Lord?

COURT: Yes.

MR. JACKSON-LIPKIN: No objection, my Lord.

In the High
Court of
Hong Kong
Case No. 74
of 1976

No. 21
Agreed
Statement

MR. PENLINGTON: My Lord, before I call the next witness who will be one of the young boys who were with the deceased, I have here a further agreed statement of fact; in fact there now appears to be another one later which will be P.30. This statement is agreed pursuant to section 65C.

Ex-
30

COURT: 30, yes.

MR. PENLINGTON: I will read it out:

*“In the High Court of Hong Kong
Case No. 74/76
R. v. AU Pui Kuen*

10

1. On the 17th and 18th December, 1975 there were two separate incidents, one at 700 Shanghai Street and one at 77 to 79 Lai Chi Kok Road in which uniformed police constables were seized from behind, the lanyards of their revolvers cut and the revolvers stolen. Both of these cases were still under investigation by a special unit of the Criminal Investigation Department of Kowloon Police Headquarters on the 9th January, 1976. One of the members of the special unit was PC 9337 CHAN Wing-kwai who was a friend of the accused and who was on duty on the evening of the 9th January 1976 at a telephone reserved to receive calls in response to an appeal to the public in respect of the incidents. 20

2. The distance from the curb of the western pavement of Sai Yeung Choi Street to the curb of the eastern pavement of Nathan Road is 154 feet 2 inches.

The width of the building alignment of the old Hong Kong & Shanghai Bank building bound by Nathan Road, Argyle Street and Sai Yeung Choi Street is 129 feet 3 inches.

The distance from the curb of the southern pavement of Argyle Street to the iron shutter in the Hong Kong & Shanghai Bank building in Sai Yeung Choi Street is 44 feet 3 inches. 30

The distance from the building alignment of the Hong Kong & Shanghai Bank building in Argyle Street to the iron shutter of the Hong Kong & Shanghai Bank building in Sai Yeung Choi Street is 32 feet 9 inches.”

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, could you give me one minute to have a word with the learned Director?

COURT: Yes.

MR. PENLINGTON: There is one police constable present, my Lord. Perhaps we can fit him in rather than start on one of the longer witnesses?

COURT: Very well.

MR. PENLINGTON: Police Constable 11787 LI To-sing.

In the High
Court of
Hong Kong
Case No. 74
of 1976

No. 22
P.W. 10
LI To-sing

*P.W.10—LI To-sing—Affirmed in Punt
XN. by Mr. Penlington :*

- 10 Q. Constable, you are Police Constable 11787?
A. Yes.
Q. On the 9th of January this year I think you were attached to Traffic Kowloon, you were on shift duty up to 11.30 in the evening?
A. Yes.
Q. At about 9.30 did you stop your motor cycle outside the Hang Seng Bank in Nathan Road and did you hear there had been a shooting?
A. Yes.
Q. Did you then go to 648 Nathan Road, that is near a restaurant known as the King of Kings?
20 A. Yes.
Q. Was there an auxiliary police sergeant there, Sergeant 2413?
A. Yes.
Q. Sergeant Li?
A. Yes.
Q. Did you see a man lying on the footpath facing upwards?
A. Yes.
Q. And was he being assisted by another member of the public?
A. Yes.
30 Q. Did this person, injured person, give you his name as Leung Wai?
A. Yes.
Q. Did you see another man there, a police officer AU Pui-kuen?
A. Yes, I did.
Q. Is he the accused in the dock?
A. Yes, this is the person.
Q. Did you speak to him?
A. I did.
Q. What did you say to him?
A. At that time he came up and wanted to look at the injured person
who was lying on the ground. I asked him what he wanted.
40 Q. This is the injured person, that is Leung Wai?
A. Yes.
Q. You asked him what he wanted. What did he say?
A. He said that "I am Detective Constable 7211".
Q. 7211.
A. Yes. "I am attached to Headquarters".

- Q. Yes.
A. He said that somebody wanted to snatch his revolver.
Q. He said someone wanted to snatch his revolver?
A. Yes.
Q. Did he say anything else?
A. That was all.
Q. Did you see any other CID officers on the scene?
A. At a later stage shortly afterwards, yes.
Q. Did Constable Au show you his warrant card?
A. He did. **10**
Q. Did you see any other injured person at that time?
A. No.
MR. PENLINGTON: Yes, thank you.
COURT: Yes, Mr. Jackson-Lipkin?

XXN. by Mr. Jackson-Lipkin:

- Q. Mr. Li, what was the detective constable wearing?
A. He was wearing a blue coloured European style suit but was not wearing any necktie.
Q. Did you notice if his jacket was torn at all?
A. No, I did not. **20**
Q. Did you notice anything about his appearance?
A. I only notice some blood at the corner of his mouth and also some blood spots on this part of his face. (Witness indicates)
MR. JACKSON-LIPKIN: My Lord, when Mr. Gray said "this part of his face" he was telling us the face above the level of his cheek bone. Perhaps the witness can demonstrate to your lordship.
A. Bleeding here. (Witness indicates)
COURT: On his cheek bone.
Q. Bleeding on the left hand side of mouth and blood by his left cheek bone? **30**
A. Yes, round about there.
Q. Did you notice anything else?
A. No.
COURT: Re-examination?
MR. PENLINGTON: No re-examination, my Lord. Might this witness be excused?
COURT: Yes.
MR. JACKSON-LIPKIN: No objection, my Lord.

No REXN. by Mr. Penlington

MR. PENLINGTON: Yes, No. 24 on the list, Auxiliary Police Sergeant 2413 LI Kin-ping.

In the High Court of Hong Kong Case No. 74 of 1976

P.W.11—LI Kin-ping—Affirmed in Punt
XN. by Mr. Penlington:

No. 23
P.W. 11
LI Kin-ping

Q. Yes, Sergeant, you are Auxiliary Police Sergeant 2413 of the Hong Kong Police Force?

A. Yes.

Q. But by profession you are a school teacher?

A. Yes.

10 Q. And I think you were attached to the Mongkok Police Station in January of this year?

A. Correct.

Q. On the 9th of January were you on general patrol duty between four o'clock—4 p.m. and midnight?

A. Yes.

Q. And at about 9.38 p.m. were you on the western side of Nathan Road?

A. Correct.

20 King of Kings Restaurant a crowd of people had gathered?

A. Correct.

Q. Did you climb over the railing in the middle of the road—go over to see what happened?

A. Yes.

Q. And can you tell us, Sergeant, in your own words what you found when you reached the scene?

A. I went to the entrance of No. 648 Nathan Road, that is where the bus stop was. I saw a middle-aged man sitting on the ground, sitting on the ground with his face towards south. He was being assisted by a young man.

30 Q. Yes.

A. I asked the young man what had happened to him. In reply the young man said that that person had been hit by a stray bullet. He said "There is another one there."

Q. Yes, did you go over to where he had indicated?

A. Not at that time.

Q. No.

40 A. I said "Why no blood?". He said "There is in the abdomen". I looked at the abdomen of the middle-aged man and I found a hole over his—on the clothes over—on the—over the left side of his abdomen. Then I asked the young man if that person was his friend or relative. He said "No, I am merely a pedestrian". I then told him to look after the injured person for me. I then went to the direction which he had earlier indicated. That was the entrance of No. 858—658 Nathan Road . . . No, I went to the entrance of No. 656 Nathan Road, that is the entrance of

the Silver Star Company. I saw a man there lying on the ground with his face upwards and his head was facing south. He was bleeding from his nose and mouth and blood flowed to his shoulders. There was a middle-aged man aged about thirty years standing beside him. He said to me "Sergeant, it was I who opened fire. He snatched my revolver. I am DC 7211." I asked him to which station he was attached. He said "Headquarters".

Q. Do you recognise this person as being present in Court?

A. Yes, I do.

Q. Can you point him out?

10

A. (Witness points to accused). This person.

Q. Yes, go on, Sergeant.

A. He said "Headquarters". Then I asked him "Is it Kowloon Headquarters?" He said "Yse". I asked him if he had telephoned to make a report to the police. He said "No, not yet". I then asked him to keep watch over the injured person on the ground. I myself then went to No. 648 Nathan Road to borrow the use of a phone in order to make a report to the police. I dialled Control Centre '999' and I also telephoned Mongkok Police Station.

Q. Now, Sergeant, in fact the records kept by the '999' Control 20
record a phone call having been made by the accused Detective Sergeant
—Detective Constable 7211?

A. I don't know about this.

Q. You are quite sure that you yourself made this '999'—a '999'
phone call?

A. Yes.

Q. Did the detective constable 7211 show you his warrant card?

A. He did, yes.

Q. And did you tell him to pin it on to his clothes so that it could
be seen? 30

A. I only told him to hang it on his clothes.

Q. Shortly afterwards did some police vehicles arrive?

A. Yes.

Q. And did other police officers take over the scene—take over
control of the scene?

A. Yes.

Q. Did you later make another '999' call to enquire about the
ambulance?

A. I did.

Q. And eventually I think an ambulance arrived at 9.53? 40

A. Correct.

Q. Now, just one point, it is a fairly important point, Sergeant:
you are sure when you—when the constable spoke to you about his
revolver you told us that he said "He snatched my revolver". Now, was
he indicating when he said that any particular person?

A. He was pointing at the injured person on the ground.

MR. PENLINGTON: Yes, thank you.

COURT: Yes, Mr. Jackson-Lipkin?

XXN. by Mr. Jackson-Lipkin :

Q. Sergeant, I know that prepositions are one of the greatest handicaps in conversation between English and Cantonese. Now, I see you have red tabs. Can you assist my Lord and the jury to this extent: do you mean in English "He snatched at my revolver"?

A. He spoke very simple words to me. He said "Sergeant, snatched my revolver. Therefore I opened fire." He said "It was I who opened fire. He snatched my revolver."

10 Q. But there is no doubt, is there, Sergeant, that he still had his revolver?

A. Correct.

Q. And you say he spoke few and very simple words?

A. Yes.

Q. And did you take him to mean that someone had attempted to snatch his revolver?

A. That was the impression I had of that.

Q. Yes, I am obliged, Sergeant.

I wonder if you can help us on this one matter raised by Mr. Penlington. We have the actual '999' Control Centre records and they record record that the first informant of this incident was 7211 Au. Is there some magic in the word "report" that would distinguish it from dialling '999'?

A. The quickest way is to dial '999'.

Q. What I mean is this: it is quite clear that Mr. Au had not reported the matter in a formal manner to any senior officer but it is equally clear that he was the first person to tell the police about it by dialling '999'. Did you use a Cantonese word for "report" that could have meant something formal to one of his senior officers?

30 A. No, the first thing I did was to dial '999' to inform—to report and then the second thing was to telephone the Mongkok Police Station and it was the duty officer there who answered the phone.

Q. I am sorry, Sergeant, I am not referring to what you did but to what you said: did you use in your conversation with Mr. Au a term for "report" which means something formal as opposed to making a '999' call?

A. No, I did not. I only asked him if he had made a report to the police.

Q. I see. Sergeant, you are a school master, are you not, in private life?

40 A. Yes.

Q. Speaking educated and cultured Cantonese?

A. Yes.

Q. And not the simple monosyllabic Cantonese that you have heard from Mr. Au?

A. No.

In the High
Court of
Hong Kong
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P.W. 11
LI Kin-ping

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LI Kin-ping

COURT: Re-examination?
MR. PENLINGTON: No re-examination.

No REXN. by Mr. Penlington

COURT: All right, you can step down.
MR. PENLINGTON: Might this witness be excused?
MR. JACKSON-LIPKIN: No objection.
COURT: I will adjourn to ten o'clock tomorrow morning.

4.38 p.m. Court adjourns

23rd September, 1976.
10.15 a.m. Court resumes.

Accused present. Appearances as before. JURY PRESENT.
MR. PENLINGTON: I call LEE Wai-tang.

P.W.12—LEE Wai-tang—Affirmed in Punt
XN. by Mr. Penlington:

In the High
Court of
Hong Kong
Case No. 74
of 1976

No. 24
P.W. 12
LEE Wai-tang

- Q. You are single?
A. Single.
- 10 Q. You live at Room 909 Kau Man House, Oi Man Estate?
A. Yes.
Q. And your father is LEE Tse-lai?
A. Yes.
Q. You reside with your mother and father and six brothers and sisters?
A. Yes.
Q. In January of this year you were working for the Yuen Bong Motor Accessories Company, 56 Tai Nan Street?
A. Yes.
- 20 Q. In January of this year were you 18 years of age?
A. Yes.
Q. On the 9th of January of this year at about 7.00 p.m. did you go to the home of a friend of yours, WONG Hon-keung?
A. Yes, I did.
Q. Did you often go there?
A. Yes.
Q. How long had you known WONG Hon-keung?
A. Ten odd years.
Q. When you went there at 7.00 p.m. was WONG Hon-keung still working?
- 30 A. Yes.
Q. Did you then go for a short visit to your elder brother's house in Tung Choi Street?
A. Yes.
Q. You went back to WONG Hon-keung's house at about 8.35?
A. I cannot quite remember now.
Q. Did you go back?
A. I did.
Q. You may not remember the exact time?
A. Yes.
- 40 Q. Was WONG Hon-keung still working when you went back?
A. Yes.
Q. What did you do when you went back?
A. Above his shop there was a cockloft and I went up there to watch television.

- Q. Did WONG Hon-keung join you in the cockloft watching television?
- A. No.
- Q. Where did you see him?
- A. I went down to the shop.
- Q. Was there anybody else there?
- A. At that time I already saw LAI Hon-shing.
- Q. He was already there?
- A. Yes.
- Q. Did you, LAI Hon-shing and WONG Hon-keung have a 10
discussion?
- A. Yes.
- Q. What did you decide to do?
- A. Decided to go to see a movie.
- Q. Which movie did you decide to go and see?
- A. The Long Race of Love.
- Q. Whereabouts was this film being shown?
- A. At the Lai Wah cinema—Mayfair cinema.
- Q. How did you decide to go there?
- A. At first the two of them wanted to go there by motor cycle but 20
but because the helmet had been borrowed by somebody so the three of
us had to go there by walking.
- Q. And did the three of you walk along till you reached the junction
of Sai Yeung Choi Street and Argyle Street?
- A. Yes.
- Q. Now would you tell us, as much detail as you can remember
what happened when you reached that corner?
- A. When we got to the corner of the street there were many
people—we had just stepped down from the pavement, and all of a
sudden a B.M.W. private car turned in. 30
- Q. Now you were on the corner, were you opposite to the old
Hong Kong and Shanghai Bank building?
- A. Correct.
- Q. So you just stepped out from the pavement this B.M.W. car
came round the corner—what colour was this car?
- A. It was a yellow-coloured car.
- Q. Did anything happen when this car turned round the corner as
you were about to step off the pavement?
- A. No, the car suddenly turned round.
- Q. Suddenly turned round? 40
- A. Yes, suddenly turned round.
- Q. Was it going very fast?
- A. Not very fast.
- Q. What was the position of the three of you at that time—were
you all in line together or one more ahead of the others?
- A. I was in front walking in front.

- Q. Yes, what happened?
A. When the car turned round, that part of the car near the rear wheel touched my foot.
- Q. Which foot?
A. This one.
- Q. When you saw. . . .
COURT: Which one?
Q. Can you step out and show us where?
A. The car touched this part.
- 10 Q. Somewhere about your knee.
COURT: Side of his knee.
A. Around my knee.
Q. Yes, now when you say it struck your knee did it strike it hard—a severe blow?
A. Not very hard.
Q. What did you do or say when the car grazed your knee?
A. When I was grazed I bent forward and said 'Wah'.
Q. When that happened had you stepped off the footpath?
A. Yes.
- 20 Q. What happened then when you pulled back and cried out 'Wah'?
A. And then his car stopped slowly.
Q. It will be on the left-hand side of Sai Yeung Choi Street, is that right?
A. Yes.
Q. And about how far away from you?
A. The car had just passed me—I was standing and the vehicle stopped just in front of me.
Q. As it went past you did you touch the car or bang on the car with your hand?
- 30 A. No.
Q. When the car bumped you, did you see where your two companions, LAI and WONG were?
A. As I was standing in front I did not notice the two of them.
Q. Did you see who was in the car?
A. I saw the driver and a girl next to him.
Q. What happened when the car stopped just in front of you?
A. The driver leaned his head out of the windscreen and said something—he used foul language.
- 40 Q. Will you please tell us exactly what he said.
A. So you prig—you are not dissatisfied?
Q. You are dissatisfied?
COURT: Can you repeat that again?
INTERPRETER: You prig. . . .
COURT: Just say what was said by the witness.
INTERPRETER: So what—are you fucking dissatisfied?
Q. What did you do or say when you heard that?
A. I kept silent—following that he drove his car to the opposite street.

In the High
Court of
Hong Kong
Case No. 74
of 1976

No. 24
P.W. 12
LEE Wai-tang

- Q. He drove his car to the opposite side of Sai Yeung Choi Street?
A. To the side of the old Hong Kong and Shanghai Bank.
Q. Did you see your two companions at this stage?
A. Yes, I did—they were standing behind
Q. Now please try and remember as best you can at this stage had
you said anything except the exclamation 'Wah'?
A. No.
Q. Did you notice how the car was driven across to the other side
of Sai Yeung Choi Street—was it driven slowly, fast or any particularly
noticeable way it was driven across? 10
A. It was being driven at normal speed.
Q. That time did any of your companions say anything before the
car was driven across—did anybody say anything to the driver?
A. No.
Q. What happened when the car reached the other side of the road
and stopped?
A. We treated as if nothing had happened and continued to walk.
Q. Where did you walk?
A. We walked on along Argyle Street.
Q. Towards the opposite corner of Sai Yeung Choi Street? 20
A. No, we had been standing at the corner of Sai Yeung Choi
Street and we walked straight along Argyle Street.
Q. Yes, and did you notice anybody get out of the yellow car?
A. Yes, when we got to the pavement on the side of the Hong Kong
and Shanghai Bank we saw a person get out of the car.
Q. Was this the driver of the car?
A. Yes.
Q. What happened when the driver got out of the car?
A. Before the driver alighted, he again leaned his head out from
the windscreen and repeated the same remark he said earlier on, 'Are you 30
not fucking dissatisfied—this is a road, go home and fetch a stool and
sit on it.'
Q. You are saying he said this while inside the car after he had
parked on the other side of Sai Yeung Choi Street?
A. Yes.
Q. Yes, and he then got out?
A. Yes.
Q. Whereabouts were you at this stage?
A. I was standing at the junction of Argyle Street and Sai Yeung
Choi Street. 40
Q. Is this the old Hong Kong Bank building junction?
A. Correct.
Q. Did you see whether—were the windows or the driver's window
of the car wound down?
A. That I did not notice.
Q. Did you see the driver's head come out of the car when he spoke
these words?

A. Yes.

Q. Whereabouts were your two companions when this second expression was used, when he repeated his words having parked the car.

A. As I was only paying attention to him I did not know, but I believe that they were behind me.

Q. Mr. Lee, I wonder if you would have a look at this plan, Exhibit 29 and Exhibit 1E.

COURT: This is a blank one is it?

MR. PENLINGTON: Yes, blank.

10 COURT: 1F.

Q. Now you see that plan, you see Argyle Street, Sai Yeung Choi Street the old Hong Kong Bank building?

A. Yes.

Q. Now can you show — can you put a mark showing where the car was parked and where you were standing when the driver called out the expression to you from the car?

COURT: You are referring to the first utterance or the second?

MR. PENLINGTON: The second one, my Lord, when the car was finally parked outside the Hong Kong Bank building — please indicate on

20 the plan whereabouts it was.

A. (Witness marks on the plan).

Q. And at that stage did you walk towards the car?

A. No.

Q. What did the driver do when he got out?

A. He came up to me.

Q. Would you please mark again on the plan whereabouts approximately you were standing as near as you can, when the driver got out of his car and came towards you.

A. (Witness marks on the plan)

30 Q. What happened or what was said when the driver came towards you?

A. When he came up to me he said, 'Are you fucking dissatisfied?'

Q. You told us he parked the car and again repeated the earlier expression. Did you make any reply to that before he got out of the car?

A. I did.

Q. What did you say to him?

A. I said, 'No, you haven't hit me, but big brother you have to keep a lookout when you drive.'

Q. Did he then get out of the car?

40 A. Yes.

Q. And come towards you?

A. Yes.

Q. And what did he say again?

A. 'Are you fucking dissatisfied?'

Q. Is this the third time he used the same expression?

A. Yes.

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No. 24
P.W. 12
Ex. 1E. LEE Wai-tang

Ex. 1F.

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LEE Wai-tang

- Q. What happened then?
A. And then he started to hit me.
Q. Did he say anything before hitting you?
A. No, he only said, 'Are you fucking dissatisfied', and then gave me a punch.
Q. Had you moved your position you marked on the plan where you were—had you moved before he punched you?
A. I cannot quite remember but I don't think I did.
Q. Whereabouts were your two companions at this stage?
A. I did not pay attention to what happened behind. 10
Q. They were behind?
A. Yes.
Q. What did you do when the driver punched you?
A. When I saw that he hit me without any reason I hit him back.
Q. With your fist?
A. Yes.
Q. You you on this evening carrying anything at all that could have been used as a weapon?
A. No.
Q. What happened after you hit him back? 20
A. And then my two friends seeing that he was hitting me came up to me and helped me in hitting him.
Q. Whereabouts did this first blow you say the driver came up and punched you—whereabouts did the blow land?
A. It landed on my head.
Q. Whereabouts?
A. On this side of the face.
Q. Left-hand—left cheek?
A. Yes.
Q. He punched you with his right-hand or left-hand, do you 30 remember?
A. As the movement was very quick I could not see clear.
Q. Did he have his fist clenched?
A. Again I could not see clearly.
Q. Did it hurt?
A. A little.
Q. Did it knock you back with that punch having you fall back?
A. No, I did not fall back.
Q. Could it have been more of a slap than a punch?
A. No, not possible. 40
Q. So you told us you retaliated and then your two friends came up to assist you, right?
A. Yes.
Q. And what happened then?
A. Then he hit us and we hit him.
Q. When this was going on did any of you—the driver or the three of you—call out anything to each other—say anything to each other?

A. No.

Q. Were there many people—other people around?

A. I did not notice.

Q. Before this fight started had you noticed whether the lady who was with the driver had got out of the car or did she remain in the car?

A. She was inside the car.

Q. Now when you retaliated to the first blow, did you in fact succeed in hitting the driver?

A. I cannot be sure if I hit him or not.

10 Q. Did you later on succeed in hitting him?

A. Again I don't know.

Q. Is your evidence that during this entire fight you did not know whether you hit him at all?

A. Correct.

Q. Did you see if any of your companions hit him?

A. Again I did not because it was very confused at the time as there were four persons involved.

20 Q. Confusing Mr. Lee, but what did you in fact do to the driver—you see there was a fight, were you wrestling with him, were you punching each other, what were you doing?

A. He punched me first, I hit back and then my companions came up to assist me to hit him and we got lumped together in a fight.

Q. You got lumped together?

A. Correct.

Q. How close did you get to the driver?

A. Almost face to face with each other.

Q. But how close?

A. About an arm's length.

30 Q. Arm's length—can you remember touching the driver at any time?

A. I cannot.

Q. What were you doing Mr. Lee?

A. At that time I was hitting at him but I did not know if any blows landed on him.

Q. Were hitting at him—how long did you continue hitting at him?

A. For a short time.

40 Q. Now when this was going on were you stationary—were you standing on the same spot?

A. No, when the fight was going on, I moved.

Q. You were moving which way?

40 A. I moved forward.

Q. Forward?

A. Yes.

Q. Did the driver move backward?

A. No.

Q. You must have been getting closer to him as the fight went on?

A. The fight started because he came up to hit me, following that I hit back and of course I had to move forward.

Q. After you moved forward to hit him did you then move again any direction?

A. As this was a fight I believe I did.

Q. Mr. Lee, you were there—we were not—did you move?

A. Yes, I did move.

Q. Can you remember which direction you moved?

A. I cannot remember clearly, but in any event I was never behind him—at all times I was in front of him.

Q. You were moving as the fight developed—did the group of you move around? 10

A. Yes, we did.

Q. Why did you just tell us that you did not get behind him?

A. Because whenever I moved I was always in front of him, and from the beginning to the end I was face to face with him.

Q. Why did you suddenly tell us 'I did not get behind him'—why did you say that?

A. No, you asked me if we moved and I was afraid that you might misunderstand then in the course of moving I might have got behind him.

COURT: What is wrong getting behind a person you are fighting with—why fear that other people might misunderstand you in going behind the driver? 20

A. No, throughout my evidence I was afraid I shall be misunderstood.

COURT: You come into the witness box, make an affirmation to tell the truth, the whole truth and nothing but the truth—answer the question—you have so far not answered the question—why, why all of a sudden you said—you volunteered the information without being asked that at no time were you at the back of the driver?

A. Because I have been reading the newspapers and there are allegations by people that there were people grabbing him by the neck from behind. 30

COURT: If that is the case why you should say so rightaway when you were asked why—please proceed.

Q. Mr. Lee, there are no sides in this matter that we are now dealing with. You must tell us best you can recollect exactly what happened—now you fought for some time and you told us that the fight moved around as it developed?

A. Yes.

Q. Now who appeared to be—appeared to you to be getting the better of the fight—you, your companions or the driver? 40

A. I believe that we were getting the better of the fight.

Q. Did you see during the course of this fight whereabouts your other two companions were?

A. No, I did not.

Q. Could you see the driver clearly?

A. No, not very clearly because it was very confused as there were many people.

- Q. When you say there were many people—what other people?
A. Just those four of us taking part in the fight.
Q. Did anybody follow at any time—did anybody follow?
A. I did not see.
Q. Eventually did you stop fighting?
Q. The moment the fight stopped we started to run.
Q. During the course of this fight did you touch the driver's clothing, trying to get anything away from him?
A. No.
- 10 Q. Do you remember how was he dressed on that evening?
A. Who?
Q. The driver?
A. He was wearing a European style suit.
Q. A jacket—he had a jacket?
A. Yes.
Q. At any time before the fight started did the driver tell you who he was or what he did or what was his job?
A. No.
- 20 Q. Until later on that evening when you got home had you any reason at all to believe that he was a police officer?
A. No.
Q. Did you see any of your companions touch his clothing or feeling around his waist?
A. No.
Q. You told us it was all very confused—couldn't see the driver clearly?
A. Correct.
Q. Couldn't see where your companions were?
A. I saw them—there were just the four of us moving around but we couldn't see things clearly.
- 30 Q. Is your evidence then the group was constantly moving?
A. Yes.
Q. Why did you stop fighting?
A. Because I heard the girl shout out something from the vehicle.
Q. What did she shout out?
A. She said, 'Don't fight.'
Q. Did you hear anybody else, any other of the spectators, anybody else call out anything?
A. No.
- 40 Q. What did you do when you heard the girl shout out, 'Don't fight'?
A. Then I ran—I said, 'Run.'
Q. You called out 'Run'?
A. Yes.
Q. Did you run?
A. I did.

- Q. Where did you run?
A. I ran along Sai Yeung Choi Street.
- Q. When the fight stopped, the girl called out 'Don't fight', whereabouts were you in relation to the driver?
A. When I withdrew from the fight I immediately turned round and ran—I shouted 'Run', and I immediately ran.
- Q. That stage when you withdrew from the fight, were you facing towards Argyle Street or racing south down Sai Yeung Choi Street?
A. I was facing Sai Yeung Choi Street.
- Q. Down Sai Yeung Choi Street? **10**
A. I am not saying that my whole person was completely in the direction of Sai Yeung Choi Street—I was at an angle with Sai Yeung Choi Street.
- Q. Where was the driver?
A. I did not notice.
- Q. Where were your two companions?
A. Again I did not notice.
- Q. Did you become frightened at this stage?
A. Yes.
- Q. What were you frightened of? **20**
A. Of course I was bound to feel frightened if I fought in such a crowded street as that.
- Q. But you told us Mr. Lee that you were attacked by this driver—you were defending yourself—did you feel that you had become an aggressor in this fight—you were the people doing the attacking?
A. No, I became frightened and ran because I felt that it was wrong in any event for the three of us to hit one person.
- Q. One person—have you ever been involved in a fight before of any sort?
A. No. **30**
- Q. Have you ever had anything to do with the police before?
A. No.
- Q. Have you ever been a member of or anyway associated with any unlawful organisation of any sort?
A. No.
- Q. How were you dressed on this particular evening?
A. I was wearing a jacket—a green jacket which looked like a safari.
- Q. Green safari jacket?
A. It looked—it is not a safari—it looked very much like a safari.
- Q. What sort of trousers?
A. Green jeans. **40**
- Q. And on this occasion, the 9th of January, was your hair longer than it is now?
A. Yes.
- Q. Much longer?
A. No.

- Q. Whereabouts would it have come?
 A. Up to here.
 Q. To the shoulder—when you ran away from the scene where did you run to?
 A. I ran back to WONG Hon-keung's home.
 Q. And was there anybody there when you got back?
 A. Yes.
 Q. Now during the course of this fight at any stage did you see the driver being held from behind by anybody?
 10 A. No.
 Q. At any time did the fight stop one spot?
 A. Yes.
 Q. When was that?
 A. When the fight was going on?
 Q. During the course of the fight.
 A. Yes, when my two friends were helping me in the fight then we were stationary in one position—did not move.
 Q. How long did this last?
 A. Until the end of the fight we stood in that position.
 20 Q. So you did not move around?
 A. Even if we did move we moved very little.
 Q. When you got home or when you got back to WONG Hon-keung's place, did you wait there?
 A. Yes.
 Q. Who was the first one to return—sorry did anybody else return?
 A. WONG Hon-keung's grandmother and elder sister were at home.
 Q. Did you say anything to them about what had happened?
 A. No.
 Q. Did WONG Hon-keung come back eventually?
 30 A. Yes.
 Q. Did you say anything to him?
 A. Yes, I did.
 Q. Did you later on watch television?
 A. Yes.
 Q. And did you see an announcement on T.V. concerning an incident in Nathan Road?
 A. Yes.
 Q. Did you believe that this might have been the incident that you were involved in?
 40 A. Yes, I believed.
 Q. And did you speak about this to WONG's father?
 A. Yes.
 Q. Did he in turn ring your father—telephone your father?
 A. Yes.
 Q. Did you all then go to Mongkok Police Station to make a report?
 A. Yes.

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- Q. Did you make a statement?
A. Yes.
Q. That very morning—early the next morning on the 10th?
A. Early the next following morning.
Q. Early next morning?
A. We went at about twelve midnight—the same night.
Q. You made a statement that morning, correct?
A. I did.
Q. When did you first come to know that the driver of the car was
a policeman? **10**
A. I came to know it while I was watching television.
Q. Now one last question Mr. Lee, during the course of this fight
you told us that you thought you and your two companions stayed
together—is this your evidence, you stayed together.
A. Yes.
Q. Were you in the middle, the other two on each side or two on
one side or two on the other?
A. I don't know their positions but I do know that they were
beside me.
Q. Both on one side—both on your right, both on the left—one on **20**
your right—can you give some indication where they were?
A. I did not pay attention in fact to this—I was paying attention
only to the person who was fighting with me.
Q. There were three of you attacking the driver—he was punching
back—he was punching back at you and your companions?
A. Yes.
Q. During the fight did you think of trying to hold him?
A. No.
Q. Was there any kicking going on during this fight?
A. I don't know about my two friends—I myself did not. **30**
Q. What about the driver—did he kick?
A. Again I don't know.
Q. During the course of this fight or while you were running away
did you hear any noise that might have been a shot?
A. No.
Q. Did you run away as fast as you could?
A. Yes.
Q. Do you go along the roadway of Sai Yeung Choi Street?
A. I cannot remember if I ran along the roadway or footpath.
Q. You remember there was some railing alongside the side of Sai **40**
Yeung Choi Street along the Hong Kong Bank building?
A. Yes, I do.
Q. Do you remember going over or round those railings?
A. I cannot remember.
Q. You cannot remember—you might have?
A. I cannot—possibly I did not.

Q. Possibly you did not—possibly you did—when you ran away did you go over or through the railings along the edge of Sai Yeung Choi Street?

A. I cannot remember.

Q. Yes, thank you.

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XXN. by Mr. Jackson-Lipkin :

- 10 Q. You ran, you told Mr. Penlington, very fast?
A. Yes.
Q. And you ran all the way until you reached WONG's home?
A. Yes.
Q. Very fast?
A. Yes.
Q. Did not run to your own home?
A. No.
Q. Why did you run very fast all the way to your destination?
A. Because I was frightened.
Q. By a girl shouting, 'Don't fight'?
- 20 A. In any event one is bound to get frightened after a fight.
Q. I wouldn't know Mr. Wong, do you know that Mr. Lee?
A. Yes.
Q. How?
A. I was frightened—how—how can I say how.
Q. How do you know that one always gets frightened when one is involved in a fight, if as you told Mr. Penlington you have never been involved in a fight before.
A. I myself felt frightened after that fight on that occasion.
- 30 Q. Perhaps you misunderstood me, Mr. Lee—I am not asking about that—I am asking about your answer that one always gets frightened after a fight.
A. This is my own view.
Q. I see—you did not hear any shot fired?
A. No.
Q. You did not know that the man the three of you were attacking was a policeman?
A. Correct.
Q. Why run all the way to WONG's home?
A. The three of us set off from that place and of course I have to run back to that place.
- 40 Q. Why run all the way?
A. As I have already said, I was frightened.
Q. No one was chasing you.
A. I don't know if anyone was chasing me.
Q. Did you think that anyone was chasing you?
A. Yes I did at that time.

Q. Why was there such a long pause between the end of my question and your answering?

A. As this happened such a long time ago I cannot remember so clearly.

Q. But you made statements to the police on the 10th of January and the 14th of January, did you not?

A. I cannot remember clearly.

Q. You can remember making a statement in the early hours of the 10th of January. You have told us already.

A. Yes. 10

Q. You made another one in the afternoon of the same day, didn't you?

A. I cannot remember clearly.

Q. At six-twenty p.m. to detective constable CHAN Pui.

A. Yes, correct.

Q. You made another statement at four-twenty on the 14th of January, didn't you?

A. I cannot remember.

Q. Do you remember making a third statement to the police? I forget the date. 20

A. Yes.

Q. You gave evidence in the coroner's court, didn't you?

A. Yes.

Q. On your affirmation.

A. Yes.

Q. You were asked lots of questions then, weren't you?

A. Yes.

Q. And never once until after that pause a few moments ago have you ever told anybody that you thought you were being chased. 30

A. Because I was not asked.

Q. You were asked many times, were you not, why you ran?

A. But the answer I gave was that after the fight I got frightened and I ran.

Q. You were asked by counsel, two counsel, and by the jury why you ran. Do you remember that?

A. Yes.

Q. The first time you were asked you said that you ran because a girl shouted out loudly. Is that right?

A. Yes.

Q. Just as you said to Mr. Penlington this morning. 40

A. Yes.

Q. Then when you were asked by somebody else some questions you said you ran because you did not want to get involved with the police and court proceedings.

MR. JACKSON-LIPKIN: My Lord, it's just above marginal note B431.

A. No, I did not say that.

MR. JACKSON-LIPKIN: My Lord, may he see his deposition please?

COURT: Yes.

MR. JACKSON-LIPKIN: Will your Lordship give me one moment?

COURT: Yes.

MR. JACKSON-LIPKIN: This is just above marginal note 431.

COURT: That's right.

Q. Now there's a chop on that page which Mr. Gray is going to read to you. Below that is a signature. Whose signature is it?

A. Mine.

10 MR. JACKSON-LIPKIN: Mr. Gray, what does the chop say in English please?

INTERPRETER: Read it in English?

MR. JACKSON-LIPKIN: Could you read it loudly so that the people can hear.

INTERPRETER: "Read back in English and interpreted into Punti to C.W.31 who confirmed and signed."

MR. JACKSON-LIPKIN: C.W.31 was—my Lord, I think it's a matter of agreement—was LEE Wai-tang, the present witness, and your Lordship will see at the marginal note 437: "Read back in English and interpreted into Punti." C.W.31 confirmed and signed. "Sgd. Lee Wai Tang. Sgd. 20 Fong Chun Man (Court Interpreter). Sgd. Timothy Lee" the coroner himself. Mr. Gray, would you be kind enough to turn to page 430 where you have your thumb, I think. About a third of the way up the page will you read the question and answer to him please? "Why did you run to the best of your ability together with Wong after having hit me?" Will you please now read to him his answer. My Lord, I'll read it in English to the jury in a moment.

Q. Why did you tell my Lord and the jury a few minutes ago that you did not say that?

A. Because I could not remember.

30 Q. Mr. LEE, for your own sake and in the interests of justice, may I invite you in future if you can't remember, say so. Do not make positive assertions if you do not really know.

MR. JACKSON-LIPKIN: My Lord, should I or would you like Mr. Gray to read the two things that were read in Cantonese?

COURT: That is English, is it?

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: Yes, Mr. Gray can read it.

MR. JACKSON-LIPKIN: Just the question and answer so that the jury can hear.

40 INTERPRETER: "Why did you run to the best of your ability together with Wong after having hit me?" That was the question.

A. Because I did not want to get involved with the Police and Court proceedings."

MR. JACKSON-LIPKIN: My Lord, I should explain that halfway through the coroner's proceedings Mr. AU could no longer afford legal representation. He then went on on his own and these are questions asked by Mr. AU. Of course now with the aid of Legal Aid he has representation again.

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COURT: Yes.

Q. Was that a truthful answer?

A. Yes.

Q. Why didn't you say that to Mr. Penlington—that's this gentleman here—when he asked you this morning why you ran?

A. Because there were many reasons involved.

Q. Why didn't you say, "There are many reasons, one of which is the girl shouted"?

A. I might have forgotten that.

MR. JACKSON-LIPKIN: My Lord, before I continue my cross-examination there is an apology I have to make to this witness. If your Lordship would look just below marginal note 437, it doesn't appear to be part of his evidence, but it is in fact. He says at the last two lines: "I seldom"—last three lines—"I seldom fought. After a fight, I had to leave the scene. The running was for fear that he (the driver) would give chase." My Lord, I quite wrongly put it to him he had never said it before.

COURT: Yes.

Q. Mr. LEE, do you remember the jury asking you a question about your running away?

A. Yes I do.

Q. And do you remember saying to the jury: "I seldom fought"?

A. Yes.

Q. Was that true?

A. Yes.

Q. Did you then go on to say: "After a fight, I had to leave the scene." Was that true? I'm sorry, did he answer the question? Do you remember saying that?

A. This came about possibly because they asked me if it was so and I said yes. I did not say on my own volition, but as a result of being asked.

Q. In fairness to you I'll put the question to you and read out your own answer.

MR. JACKSON-LIPKIN: My Lord, I fear it's rather long.

COURT: Yes.

MR. JACKSON-LIPKIN: Mr. Gray, can you read that or would you like a typescript?

INTERPRETER: I would like a typescript.

Q. "Jury: Q. According to your evidence (1) the driver never identified himself. . . .

A. Correct.

Q. Just listen, will you please.

. . . (2) the driver hit you with his car, scolded you with foul language and hit you first with his fist. (3) you decided to break up the fight not because you were involved in the fight—

(a) You responded to the lady sitting in the car shouting to stop the fight (b) You mentioned it was wrong to have 3 fighting against one.

(4) both you and Wong have a clean record. Under these circumstances, why did you have to signal to your friends to run away as if to run for your life instead of just walking off to end the fight?"

Now that was the question put to you by the jury. It was entirely open to you whether you wanted to answer or not, wasn't it?

A. I can't remember.

Q. Well, it must have been, mustn't it?

A. I can't remember so much.

10 Q. Well, you chose to answer, didn't you?

A. I can't remember if I gave an answer or not. I might have given an answer.

Q. Will you take it from me that you did? I will now ready your answer: "I seldom fought. After a fight, I had to leave the scene. The running was for fear that he (the driver) would give chase." What did you mean a few moments ago when you said that these weren't your own words?

A. No. What I meant just now was that they asked me if I seldom fought and if I always left the scene after a fight, and I gave an answer
20 accordingly.

Q. That, Mr. LEE, is a downright lie. I have just read the question to you. Did you understand Mr. Gray? Did you understand Mr. Gray when he translated it?

A. Yes, I did.

Q. You see, when I asked you about "After a fight, I had to leave the scene" you said to my Lord and the jury here, "They asked if it was so and I had to say yes." That wasn't true, was it? You volunteered that, didn't you?

A. I cannot remember the evidence I gave before. Now that you
30 ask me the question, I cannot remember what answer I gave previously.

Q. Do you wish Mr. Gray to translate it for you a third time? He will do if you wish.

A. I understand what is stated here.

Q. You have signed it, haven't you?

A. Yes.

COURT: And even if it was put to you and you said yes, did it mean that you have signed it as true? After all, it was read back to you just before you put your signature down, not that I accept your explanation that the coroner, in taking down the notes or whoever was taking down
40 the notes of the proceedings, would have mutilated the record in such a way as not to put down your word "yes" when you said yes, and just used the question as an answer.

MR. JACKSON-LIPKIN: My Lord, those are the coroner's own notes and you will see that it takes up nearly the whole page of his longhand.

COURT: No. What this witness suggested was that the answer that was recorded as: "I seldom fought" as being the question put by the jury: "You seldom fought" and he said yes. Now had that been so, I suggest

that the coroner would certainly have recorded it in question and answer form rather than adopting it as the answer after he said yes.

MR. JACKSON-LIPKIN: My Lord, I entirely agree with your Lordship.

Q. If you have any explanation, Mr. LEE, I have one further aspect of this to ask you and it is this: you were questioned by Mr. Penlington earlier while you were still on your affirmation, as you still are, and the question was: "Have you ever been in a fight before?"

A. Yes.

Q. And on your affirmation you answered no. On your affirmation 10
in the coroner's court you said, "I seldom fought. After a fight, I had to leave the scene." Which of those two answers is true?

A. When you said "fight" I thought a "fight" with friends following a squabble or quarrel after which nothing further would happen and the matter would be forgotten, I thought that was the kind of "fight" you meant.

Q. I or the learned Director of Public Prosecutions?

A. Can I have the question again please?

Q. I didn't ask you the question, this gentleman here did. He asked 20
you two questions: "Were you ever in a fight before? Have you ever been in trouble with the police before—ever had anything to do with the police before?" To each of these questions you answered no. Now what I'm asking you is: which answer is true? The one you gave Mr. Penlington or the one you gave the jury before the coroner?

A. Maybe I misunderstood the meaning. When I was asked if I had ever had a fight I thought that it was in reference to a fight with friends. I hadn't considered that as fights. I don't consider that as fights.

COURT: Wait a minute. First of all, would you answer the question 30
and then give an explanation. You have not been asked an explanation yet. The question put to you was that before the coroner you said that you seldom fought which implies that you did fight but you did not fight frequently. You did not make a habit of it; but in this court in answer to the learned counsel for the prosecution you said you never fought before. The question that is put to you is: which is true? Was it true that you did fight before but you seldom fought or that you never fought before?

A. I had fought before.

COURT: Now if you want to qualify it or explain, please do so.

A. Just some time ago when Crown counsel asked me if I had ever 40
fought before, I thought that fights with friends as a result of being on bad terms with them or following quarrels, weren't considered fights.

COURT: Why did you think so before the coroner?

A. Because there was such a long lapse of time. Today's position is different from the position then.

COURT: You mean you think differently from day to day?

A. (No answer).

COURT: Yes?

Q. Just answer this question yes or no. Do you realise this is a trial of a man for murder?

A. Yes.

Q. Do you also realise that Mr. Penlington was asking you questions about fighting between strangers, namely, three people who didn't know a fourth.

A. Yes.

Q. And it was in that context that he used the word "fight", wasn't it?

10 A. Yes.

Q. Now there's another preliminary matter that I'm slightly confused on. Perhaps you can help me. You said to Mr. Penlington: "Until the end of the fight, we stood in the same position".

A. Yes.

Q. Remember saying that? Then you went on to say: "Even if we did move, we moved very little".

A. Yes.

Q. Not ten minutes before that you had said this: "The four of us moved around. I couldn't see the others clearly".

20 A. Yes.

Q. Was that answer true: "The group of you was constantly moving?"

A. Yes.

Q. As would be inevitable in a fight of three to one, wouldn't it?

A. Yes.

Q. Persons weaving as in a boxing match.

A. Yes.

Q. Some of you turning from left to right, some from right to left.

A. Yes.

Q. Some of you moving backwards and forwards.

30 A. Yes.

Q. Why then did you tell Mr. Penlington later that you stood in the same position throughout the fight?

A. No. I again misunderstood him when he said whether we moved. I thought he was saying whether we chased in order to hit.

Q. If you misunderstand me will you please tell me so? That wasn't the only answer you gave on that point. Immediately before it you said this: "When my two friends were helping me in the fight, we were stationary and did not move." Do you remember saying that to Mr. Penlington?

40 A. Yes, I do.

Q. It was that that prompted his next question, wasn't it? "So you did not move?"

A. Yes.

Q. He was asking you about your use of the word "stationary", *your* use of the word "stationary". There was no question of misunderstanding him, was there?

A. (No answer).

Q. We've had twenty-five seconds, are you going to answer the question?

A. Waiting for me to answer or what?

Q. There was no question, was there, that you misunderstood Mr. Penlington.

A. But the fact is that I misunderstood him.

Q. Well, I'll accept that. May we please now, Mr. LEE, having disposed of those two matters, go back to the beginning. You and the other two young men decided to go to the Mayfair Cinema.

A. Yes. 10

Q. Will you tell my Lord and the jury where the Mayfair Theatre is?

A. In Taikoktsui.

Q. Where in relation to Sai Yeung Choi Street is Taikoktsui?

A. What do you mean by "in relation to"?

Q. Well, where is it? Say you're going up Sai Yeung Choi Street, which way would you have to turn to get to Taikoktsui?

A. I have to turn to the right.

MR. JACKSON-LIPKIN: Will your Lordship give me one moment?

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, if your Lordship looks on 1A, 20
Taikoktsui is somewhere off the top left-hand corner, to the northwest of Sai Yeung Choi Street. I'm much obliged to my learned friends, they tell me it's about half a mile away.

COURT: If it is northwest would it not be the bottom left corner of 1A? Top left corner, you're quite right, yes. If you hold it properly north is upwards.

MR. JACKSON-LIPKIN: I'm told it's somewhere up here where I'm describing a circle.

COURT: Thank you. Yes.

Q. When you were crossing the studded crossing on Sai Yeung 30
Choi Street, the yellow car-came round, is that right?

A. Correct.

Q. On the side of Sai Yeung Choi Street from which you were crossing, were hawkers, were there not?

A. Yes.

Q. And also spaces for public light buses to stop if they wished.

A. Those spaces were not at the street corner. One has to go into the street for some distance.

Q. But the position of the hawkers meant that anyone turning from Argyle Street into Sai Yeung Choi Street had to come into the middle, 40
as it were, of the street rather than the extreme left-hand corner.

A. What do you mean by the "middle of the street"?

Q. Assume that notebook is the street and that's the entrance of the street. Because of the hawkers along here, any car entering would have to enter down the middle.

A. No. One could turn into the street just slightly away from the pavement, not necessarily in the middle.

Q. This car came sufficiently close to you to graze your leg. Is that right?

A. I was, in actual fact, grazed.

Q. You were crossing the studded crossing from one side of Sai Yeung Choi Street to the other.

A. Yes.

Q. You in the front and two behind.

A. Yes.

10 Q. And you say that this car, in turning into Sai Yeung Choi Street, grazed the outer edge of your right knee.

A. Yes.

Q. I suggest it didn't touch you at all. When you were later asked by the driver if the car had hit you, you said no, didn't you?

A. Correct.

Q. Why didn't you say, "But you grazed my leg"? Why say no?

A. Because when I saw him alight from the car he was very fierce.

Q. But it was you who walked to the back of his car when he parked it, wasn't it?

A. No, I was walking straight on.

20 Q. Did you not walk to the back of his car?

A. No.

MR. JACKSON-LIPKIN: My Lord, may he see his deposition at the bottom of page B400. Your Lordship will find it immediately above marginal note B401. My Lord, will your Lordship give me a moment to find it in the original.

Q. Didn't you say this to the coroner when you gave evidence on affirmation last time: "When I walked up to the back of his car, he stuck his head out, and said "You can't (X) swallow it? . . .

30 MR. PENLINGTON: My Lord, I feel in fairness to the witness my friend should read the question and answer immediately preceding that.

MR. JACKSON-LIPKIN: I'm quite prepared to do so.

COURT: Yes.

Q. "Q. He alighted?

A. No, we walked across the road thinking that nothing had happened.

Q. And then?

A. When I walked up to the back of his car, he stuck his head out, and said "You can't (X) swallow it— This is a road. Go home to fetch a stool to sit on it."

40 The question was "And then", in other words, what happened when you crossed the road?

A. Yes.

Q. Well, which is true? You did or you didn't walk up to his car?

A. No. I did not purposely walk up to his car. The car was parked parallel to the footpath and I was just merely walking along and got to the back of his car in the course of walking.

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Q. Are you trying to tell us that the car was parked close to the studded crossing? Is that what you are trying to say?

A. I have already made a mark on the plan.

Q. That was the X you put on the plan, wasn't it?

A. That was the position of the car.

MR. JACKSON-LIPKIN: My Lord, may he see the . . .

COURT: 3C?

MR. JACKSON-LIPKIN: My Lord, I think that's probably the one that shows the studded crossing. Yes my Lord, it is 3C.

Q. The studded crossing on 3C ends at the beginning of the rail 10 where there is a one-way street sign.

A. Yes.

Q. It's obvious, isn't it, that the railing's there to stop people crossing anywhere else.

A. Yes.

Q. Would you like to alter the X on your plan then or are you content to leave it where it is?

A. Is the studded crossing shown here on the plan?

Q. The question is: do you want to move your X or are you content to leave it where it is? 20

A. I don't understand what these lines here represent.

Q. Why didn't you tell us that before?

A. Now that I have seen the photograph.

Q. I see. Very well.

MR. JACKSON-LIPKIN: My Lord, perhaps to save time we'll take it as an approximate position.

COURT: Well, if he wants explanation of that little bit, that line, I take it that is the edge of the pavement, is it not?

A. Yes.

COURT: Now do you wish now to alter the position of the mark in 30 the light of that information?

MR. JACKSON-LIPKIN: My Lord, if he misunderstood it I shan't hold him to it or make any capital out of it.

A. Do these two small circles represent the windows of the H.K. & S. Bank as shown in the photograph? As I did not understand the plan sufficiently well, I would be more able to draw my—give the position on the photograph.

MR. JACKSON-LIPKIN: My Lord, perhaps he could be allowed to do that in fairness to him.

COURT: Yes. 40

Ex. 3C.

MR. JACKSON-LIPKIN: May he have a spare copy of 3C to mark?

COURT: He wants the photograph.

A. Yes, my Lord.

COURT: Is that marked? Can we get a spare copy of it?

MR. JACKSON-LIPKIN: My Lord, my instructing solicitor has very kindly volunteered to let the witness use one of his, even if the volunteering was in inverted commas, my Lord, he has done it.

COURT: Now put a rectangle on the place where you saw the car stop. Show it to counsel and the jury.

Q. What time was the performance of "The Long Race of Love" which you were going to see?

A. Nine-thirty. I don't know the exact time when the show was to start, but we were going to the final show.

Q. Yes. Nine-thirty—you would have trailers and advertisement and so on.

A. Yes.

10 Q. Mr. LEE, after this nasty, rude driver had shouted at you and drawn up his car by the H.K. Bank, why didn't the three of you walk straight on down Argyle Street?

A. Because he scolded us.

Q. But you were going to the cinema, the three of you.

A. Yes.

Q. Why didn't you say to him and say to the other, "What a beastly, rude fellow. He's obviously not Cantonese. Let's ignore him."

A. But the thing is, when we got there he had already opened his mouth to speak and so we stood there.

20 Q. Why?

A. I was asking myself at the time why he was so furious.

Q. I see. Mr. LEE, I think it is fair that you should know that two independent witnesses have already told this court that the three of you walked towards the driver.

MR. PENLINGTON: I would challenge that, my Lord, unless my friend can refer to the evidence.

30 MR. JACKSON-LIPKIN: My Lord, if my learned friend is challenging that his own witnesses are independent that is a matter for him. If he is challenging that they said it, your Lordship will recall that two people have said that the three men walked towards the car. One was the watchman, the other was, I think it is, FONG Bun my Lord, but there were certainly two.

MR. PENLINGTON: In the sense. . . . My Lord, they certainly crossed the street. I would challenge that there is evidence that they approached the car. There was one witness. . . . They were getting closer to the car, I agree. I accept it was on that side of the street.

COURT: They were approaching the car. . . .

40 MR. PENLINGTON: But I would challenge that if my learned friend is implying that the three boys walked from the corner towards the car, in other words, they weren't going across the street.

MR. JACKSON-LIPKIN: Yes my Lord, that is exactly what I am saying, and if your Lordship will allow me to sit down for a moment I'll try and find it for you.

COURT: Yes.

MR. JACKSON-LIPKIN: The first passage I can find is: "The car was parked . . ." in FONG Bun's evidence right near the beginning, my Lord. Having the advantage of a junior I haven't noted every question

and answer, only those I wanted to deal with, but mine is from near the beginning. "The car was parked at the side of the H.K. Bank. That man walked to the rear of the car." That's the first I can find by just opening my notebook, without going any further. "That man walked to the rear of the car." I'll try and find you some more.

MR. PENLINGTON: My friend's note of the watchman, my Lord, is that the driver got out, he walked up to the junction with Argyle Street. "I saw three youths there. The driver went up to these youths. They were standing there. They were all together. I don't know if one was taller. One was standing on the footpath. The driver started the conversation with the youth." 10

MR. JACKSON-LIPKIN: My Lord, it's also at the beginning of the evidence of WONG LAM. "Walking slowly towards the driver. . . ." I'm afraid I didn't take a complete note of this either. "I did not notice his dress—something or other—he was walking slowly towards the driver to the left of the traffic sign." That's the traffic sign in 3C, my Lord.

COURT: Well, until the notes of the official record are read. . . . There are no notes on my. . . .

MR. JACKSON-LIPKIN: Perhaps I can deal with it without reference to that. Your Lordship has already seen he told the coronor, "I walked to the back of the car." I'll leave it like that. 20

MR. PENLINGTON: No, he didn't say that. "When we walked across the road, thinking that nothing had happened" then "I walked up to the back of the car, he stuck his head out."

MR. JACKSON-LIPKIN: Those are the words: "I walked up to the back of the car." My Lord, I don't know why my learned friend is challenging that.

MR. PENLINGTON: I'm challenging that if my learned friend is taking that to mean that the witness walked from the studded crossing towards the motorcar. 30

COURT: In other words, you challenge that there was any intention to walk to the car by the . . . rather, just incidentally by causing the pedestrians he was at the . . .

MR. PENLINGTON: . . . he was getting closer to the car.

MR. JACKSON-LIPKIN: I don't want to waste time, we've taken up far too much on this already. I can only say that my solicitor instructing me has a note here, in relation to Mr. WONG: "They walked towards the car." I don't think it matters.

COURT: I think that can be checked in the afternoon if we have the beginning of WONG Moon-lam's evidence. Yes. 40

Q. Now Mr. LEE, the driver, you say, spoke to you from the car before getting out. Is that right?

A. Yes.

Q. That's the second time he had spoken to you.

A. Yes.

Q. Isn't the truth of the matter this: that when the driver turned into Sai Yeung Choi Street he came very near to you and that annoyed you.

A. No. The car grazed me.

Q. And that annoyed you?

A. Yes.

Q. You thought he was driving carelessly.

A. Yes.

Q. You thought he should have kept a better lookout.

A. Yes.

Q. You demonstrated that feeling of anger by banging on his car.

A. No.

10 Q. One of the three of you did, didn't you? One of the three of you banged on that car.

A. I did not see.

Q. You were still in an angry mood when you reached the other side of Sai Yeung Choi Street, weren't you?

A. At that time I treated it as a very trivial matter.

Q. So trivial that when you and the driver came within reach, you struck him a blow.

A. No. He used his hand and struck the first blow at me.

Q. I suggest to you that it was you who struck the first blow.

20 A. No.

Q. You were on the pavement, weren't you?

A. I cannot remember.

Q. Please try.

A. I cannot be certain.

Q. Very well. Can you or can you not say, now that your memory has been jogged, whether you hit the driver?

A. I did hit at him, but I don't know if I in fact delivered any blows at him.

30 Q. At any time during that fight did you see blood on the driver's face?

A. No.

Q. Mr. LEE, I suggest that you did hit him because you got your punch in first.

A. He hit me first.

COURT: No. The question was—he put to you he had his punch in first. In other words, he hit first. He should know that his blow landed on the driver because he hit him first.

A. No. I did not hit first. He hit first.

40 Q. Now according to what you told the coroner, you attacked, the three of you attacked this man for a period of about a minute.

A. I cannot remember.

Q. Is that about right?

A. Yes.

Q. The question put to you in the coroner's court was, dealing with the fight: "For how long did this exchange of blows continue?"

A. About 1 minute."

A. Yes.

Q. Now Mr. LEE, take it from me we know that the driver had some injuries to his face.

A. Yes.

Q. You told my Lord and the jury throughout the whole of this fight or struggle, call it what you like, you were always in front of the driver, face to face.

A. Yes.

Q. Was that true?

A. From beginning to end, in any event, I was in front of him, but of course in the course of the fight one might have gone a bit to one side. 10

Q. But you must have known if he was hit on the head, must you not—in the face.

A. I don't know.

Q. You do know that your other two colleagues joined in the fight.

A. Yes.

Q. If you were always in front of the driver and they were joining in, they must have been either by his side or behind, must they not?

A. I did not see.

Q. Mr. LEE, a lot of time has been taken up. Please try and help us. If there were three men in line abreast, the ones on either side can't be said to be joining in a fight against a man in front of you, can they? 20

A. Correct.

Q. And you were always in front of him. You must have seen where they were.

A. But I was engaged in a fight. I did not know how they were standing behind. I don't know if they were standing on the roadway or how they came from behind.

Q. Did one of them come from behind?

A. I did not notice because I was fighting.

Q. What do you mean by that word? 30

COURT: Which word?

MR. JACKSON-LIPKIN: Well, he said he couldn't see because he was fighting all the time.

A. "Fighting." By "fighting" I meant he hit me first and I hit back. That is a fight.

Q. Mr. LEE, you told us that the incident went on for about a minute.

A. Yes.

Q. Punches can be landed in seconds.

A. Yes. 40

Q. A minute is quite a long time.

A. Yes.

Q. I asked you about the position of your two colleagues who joined in. You said you couldn't tell the jury where they were because you said, "I was fighting all the time." Now mine is a very simple question. What did you mean by that use of the word "fighting"?

A. That is, he was hitting me and I was hitting him.

Q. Where?

A. I was hitting at his head.

MR. JACKSON-LIPKIN: My Lord, I see it is nearly one o'clock. May I just deal with one small matter before I go on with this after lunch?

COURT: Yes.

Q. Mr. LEE, you told Mr. Penlington that on the night in question your hair fell over your shoulders down to below your collar.

A. Yes.

10 Q. It's still very long today, but it's very, very much shorter than on the night of the fight.

A. Correct.

Q. Did you cut it for the purposes of giving evidence? Did you cut it so as you might give a better impression to my Lord and the jury of yourself and your appearance?

A. No. Now that I no longer like long hair, so I had it cut.

MR. JACKSON-LIPKIN: My Lord, that's taken me to the prescribed time of one o'clock.

COURT: Very well. I adjourn to two-thirty.

1.00 p.m. Court adjourns

20 *2.43 p.m. Court resumes*

Accused present. Appearances as before. Jury present.

COURT: Can the witness come back to the witness-box?

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XXN. by Mr. Jackson-Lipkin continues:

COURT: Yes, Mr. Jackson-Lipkin.

Q. Mr. Lee, I must suggest to you that it was only when you and the driver met on the pavement that he used foul language to you.

A. No. When his car grazed me on that side of the street he already used foul language. He uttered one sentence.

30 Q. Well, he was driving a motor car with his wheel on the correct side, wasn't he—steering wheel on the right hand side of the vehicle?

A. Yes.

Q. And you were grazed by his car, by the nearside of his car?

A. Correct.

Q. If he had sworn at you you wouldn't have been able to hear at all, would you?

INTERPRETER: Pardon?

Q. If he had sworn at you from the driving seat you wouldn't have been able to hear him?

40 A. He stuck his head out and turned it to the left so that I could hear.

Q. He stuck his head out of what?

A. He turned his head around to the left.

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Q. He stuck his head out of what?

A. No. What I mean is he turned his head like that, (Witness demonstrates) to the left.

Q. You see, this isn't the first time you said he stuck his head out; you said that in answer to Mr. Penlington.

A. I might have made a mistake in answering.

Q. I see. You mean he turned his head and called to you past his passenger? Is that what you are trying to say?

A. Yes, he stopped his car slowly and following that he turned his head in this direction. **10**

Q. You see, what you said to Mr. Penlington was this: he asked you, "What happened when the car stopped just in front of you?" Answer: "The driver turned his head out of the windscreen and said something, used foul language."

A. Yes.

Q. That was a mistake, was it?

A. Yes, that was.

Q. You wish to withdraw that?

A. Yes.

Q. May I invite you once again just to be more careful. I suggest **20** to you that you are mistaken about that and you are confusing it with a later use of foul language.

A. Perhaps.

Q. Thank you. Now he then parked his car and got out, did he not?

A. Yes.

Q. And when the two of you met he used foul language to you, didn't he?

A. I cannot remember clearly.

Q. Very well. Just one moment.

MR. JACKSON-LIPKIN: My Lord, you will have heard me use the **30** word 'meet' once or twice.

COURT: Yes.

MR. JACKSON-LIPKIN: That is the result of a discussion I've had with Mr. Penlington. My Lord, we don't need to trouble your Lordship—either of us—or the shorthand writers with this. As I said yesterday, the use of prepositions can be very confusing, particularly translation, and I am not going to take any point on the use of the words "walked up to." It could be "walked towards" or "walked near" and, my Lord, neither of us is going to trouble your Lordship or the jury with that.

COURT: Yes. **40**

Q. Mr. Lee, what really happened was this: you were still angry from the car brushing by you and when the driver got out and used foul language you let fly at him.

A. In any event, all this happened because he started using his hands and hitting me first.

Q. When he, as you say, walked towards you, it matters not which, you held out your hands like that, didn't you? (Counsel demonstrates) Palms upwards.

A. I cannot remember clearly.

Q. That sign means "Stop, you have gone far enough," doesn't it?

A. No.

Q. What does it mean?

A. I can't remember myself whether I made such a gesture or not.

Q. What does it mean, Mr. Lee? That is what it means, isn't it?

10 A. I know, I know.

COURT: Does that indicate. . . .

MR. JACKSON-LIPKIN: My Lord, I am just about to describe it for the purpose of the shorthand-writer. My Lord, your Lordship will notice that I have both palms uppermost. My left hand I have folded my thumb across the palm; my right hand I have raised the thumb. That's four and that's five, my Lord. Perhaps I had better show the jury what I was doing.

COURT: Is that a special sign of any sort?

MR. JACKSON-LIPKIN: Yes, my Lord and, my Lord, it's a sign in relation to which a witness will be recalled.

20 MR. PENLINGTON: My Lord, at this stage, if in fact it is going to be suggested what I think is going to be suggested to this witness, I must ask whether, in fact, my friend has any evidence whatever to support the suggestion that is going to be made.

MR. JACKSON-LIPKIN: My Lord, I have made all the suggestions I am going to make, and he said he cannot recall if he did it.

COURT: He cannot recall if he did it, but assuming that he did it was that a special sign to stop. . . .

MR. JACKSON-LIPKIN: Yes, my Lord, that's what I have asked him.

30 COURT: Do you know whether that was a sign for a person approaching you to stop? Do you see the significance?

MR. JACKSON-LIPKIN: My Lord, before we go any further I wonder if I could ask your Lordship's assistance. Could his last four or five answers be read back?

COURT: Yes, please.

Court Reporter reads:

"Q. When he, as you say, walked towards you, it matters not which, you held out your hands like that, didn't you? (Counsel demonstrates) Palms upwards.

A. I cannot remember clearly.

40 Q. That sign means 'Stop, you have gone far enough,' doesn't it?

A. No.

Q. What does it mean?

A. I can't remember myself whether I made such a gesture or not.

Q. What does it mean, Mr. Lee? That is what it means, isn't it?

A. I know, I know."

MR. JACKSON-LIPKIN: I am obliged, my Lord. I have actually got my answers, I don't need to pursue it any further.

COURT: He said he knew.

MR. JACKSON-LIPKIN: He said four times he knew, so I can go on now to something else.

COURT: You knew this?

A. No, no, I don't.

MR. JACKSON-LIPKIN: My Lord, I am so sorry, I thought I heard the note read out to me: "That is what it means?" "I know, I know."

COURT: Well, he said, "I know, I know," but that's why I asked 10 him whether he knew what it meant; I wasn't so certain he understood it.

A. No.

COURT: That means "You have gone far enough, stop." Do you understand the—this gesture means that, has a special significance to this case. Do you know that?

A. No.

Q. Mr. Lee, I suggest to you you know perfectly well what it means.

A. I know nothing at all.

Q. But I am not suggesting to you you knew the effect it would have on a policeman. 20

A. I don't even know whether I made such a gesture or not at that time.

Q. You have told us—anyway, then as we know punches were exchanged and the other two joined in. During the fight the policeman moved backwards, away from you, did he not?

A. I in fact did not notice.

Q. I see. Now at some time, Mr. Lee, towards the end of the fight you have told us you were facing into Sai Yeung Choi Street.

A. I said that I was not facing Sai Yeung Choi Street directly.

Q. You were facing into—I didn't say along—into Sai Yeung 30 Choi Street.

A. I am not clear, I don't know.

Q. And the driver was also facing into Sai Yeung Choi Street.

A. I don't know.

Q. You don't know or you don't remember, which?

A. Are you asking me whether the face of the driver was towards Sai Yeung Choi Street?

Q. Yes.

A. Yes.

Q. And that was at the same time when you were facing into—not 40 along—into Sai Yeung Choi Street?

A. I don't understand what you mean.

Q. You have told us that towards the end of the fight you were facing into Sai Yeung Thoi Street, not straight down it but into it.

A. Yes.

Q. And you have told us about half a minute ago that the driver was facing into Sai Yeung Choi Street.

A. Yes, because the whole street is Sai Yeung Choi Street.

Q. The reason for your both facing the same direction, Mr. Lee, was because you were behind the driver with your arm around his neck. Isn't that right?

A. No.

Q. In fact, you were holding him while the other two were punching him, weren't you?

A. No.

Q. He was trying to defend himself as best he could.

10 A. In fact, he was not grabbed from behind.

Q. I thought you didn't know where the other two were. If it wasn't you, who was it?

A. I did not, I don't know about the other two.

Q. It may have been one of them?

A. I did not see.

Q. May it have been one of them and not you?

A. I did not see this.

Q. Will you just tell my Lord and the jury why you broke off the fight?

20 A. Because I heard the shout of the girl in the car.

Q. Yes, and that made you break off the fight?

A. This is my earlier answer to your question. There were many reasons for this.

Q. You were asked about this in the Coroners Court and you said, "On hearing the girl shout loudly, I said 'Run' or 'Go.' "

A. Yes.

Q. That's true, is it?

A. Yes.

30 Q. You were then asked if you shouted that out with a degree of urgency and your answer was 'yes'.

A. Yes.

MR. JACKSON-LIPKIN: Note 405, my Lord.

COURT: Yes.

Q. What was the urgency arising out of the call from a girl seated in a motor car some way away from you?

A. After all it was felt that it was wrong for three person to fight one.

Q. What was the sudden urgency that you described?

COURT: Do you understand this question? If it was wrong for three to fight against one it was wrong right from the beginning, wasn't it?

40 If it is wrong for three to fight against one then it was wrong right from the beginning for three to fight against one. Why did you suddenly feel the urgency to run after the girl shouted "Stop fighting" and not before? That was the question you were asked.

A. I don't know how to answer.

COURT: Why not? You must have an answer to that, there must be. Every action and every word a person says must have a reason, unless it is something which is involuntary and instinctive. You see, Counsel asked

you why did you shout the word “Run” with a note of urgency—shouted the word run with a note of urgency. Counsel asked you why, and what was your urgency, and your answer was that, after all, it was wrong for three persons to fight against one, so you gave that as a reason for the urgency. It was urgent for you to run away because three of you were fighting one person. Then Counsel further asked you what was the sudden urgency, why should it be urgent at that stage after the girl had shouted “Stop fighting” and why not before and not later. Why was the sudden urgency at that point, because you had been fighting—the three of you had been fighting that person all along.

10

A. Yes.

COURT: What was the sudden urgency?

A. Maybe in our mind we felt that a third person had become aware of this and therefore we were in a hurry to leave.

COURT: Not because of a sudden pang of conscience?

A. No, my Lord, no.

Q. Tell me, Mr. Lee, when the girl shouted out “Stop fighting” why didn’t the three of you say to Mr. Au, “Well, that’s taught you a lesson, you go to hell, we will go to the cinema.”

A. We had been fighting and there was no reason for us to say such things. 20

Q. There was no reason for you suddenly, urgently, to run.

A. Well, one cannot say there was no reason. In the first place fighting in the street itself is wrong.

Q. Mr. Lee, if you had your hand round this man’s neck, pulling him back—I will take it by stages. If you had your arm round this man’s neck, holding him back, like that, the other two were in front of him, he got one hand free and drew a revolver, in those circumstances anybody with a degree of urgency would say “Run,” wouldn’t they?

A. There was definitely no such a thing. In point of fact nothing whatsoever was seen; the only thing that happened was the girl shouted to us to stop. 30

Q. No revolver was drawn?

A. I did not see.

Q. No shots that you could hear were fired?

A. No, I did not hear.

Q. When you ran away why didn’t you run to the cinema and wait for the other two?

A. In the first place we had not purchased the tickets in advance, and secondly we were no longer in the mood to see a movie. 40

Q. I see. You said to them, “My dear Wong, it’s time we broke off the fight, are you still in the mood to go to the cinema?” “My dear Wong, it’s time we broke off the fight, do you still want to go to the cinema?”

A. No.

Q. Did you say, "My dear Lai, do you still want to go to the cinema, because we must stop fighting?" "My dear Lai, do you still want to go to the cinema, because we must stop fighting?"

A. No.

Q. What do you mean by saying to the jury "We were not in the mood to go to the cinema?" You did say "ngor dei" and not 'ngor', didn't you?

A. You are just trying to catch the words I have used, playing with words.

COURT: It is not a matter of catching words. You did say. . . .

10 A. All right, then in that case I say I made a mistake.

Q. What do you want to say now?

A. Yes, I spoke too quickly and I now correct myself by saying that 'I' and not 'we' that should be used.

MR. JACKSON-LIPKIN: Would your Lordship give me one moment?

COURT: Yes. (Pause)

Q. Didn't you say this in the Coroners Court, "Our mood had been spoiled?"

A. I can't remember.

MR. JACKSON-LIPKIN: My Lord, marginal note 430.

20 A. Maybe on that occasion I again spoke quickly.

Q. I see. Why didn't you go home?

A. Because we had set out together and because we were subsequently dispersed I wanted to go back to see if they had returned.

Q. Let me see if I understand that explanation correctly. You had left Wong's house, all three, intending to go the Mayfair Cinema in Tai Kok Tsui?

A. Yes.

Q. You became dispersed.

A. Yes.

30 Q. Wasn't the natural place to look for them the place you had all set out to go to?

A. Because after the fight I myself felt that I was not in the mood to go to the cinema so I alone went back to WONG Hon-keung's home.

Q. It is not a question of meeting them, it is a question you were not in the mood. I will just ask you the question again. Why not go home? The other two might have gone to the cinema and wouldn't be back to—might not be back until nearly midnight.

A. In the first place I had originally set out from that place, and secondly at my home there was only my elder brother there.

40 Q. When you got at full speed to the bottom of Sai Yeung Choi Street you must have entered Nelson Street.

MR. JACKSON-LIPKIN: My Lord, it runs athwart Sai Yeung Choi Street, just at the bottom of the plan.

A. Yes, yes.

Q. Why didn't you turn the corner, stop, and wait and see if anything happened?

A. Because I want to get away as quickly as possible.

Q. You see, if nothing happened you could have then walked gently back to Fa Yuen Street, couldn't you?

A. But in my mind at that time I thought it would always be better for me to run faster and get home as early as possible.

Q. So you ran flat out all the way to Fa Yuen Street?

A. Yes.

Q. Where did the other two go?

A. I don't know.

Q. Wong arrived back about a minute or so after you, didn't he, at his house? 10

A. I can't remember clearly.

Q. It was a very short time, was it not?

A. Yes.

Q. Was that prearranged, if anything went wrong once more meet back at WONG Hon-keung's house?

A. No.

Q. When Wong came in he took you aside and spoke to you quietly, didn't he?

A. Yes.

Q. And one of the things that he said to you was "The person just now might be a policeman?" 20

A. Yes.

Q. When you told my Lord and the jury earlier on that the first time you realised it was a policeman was when you watched television was wrong, wasn't it?

COURT: I thought he said that he did not know he was a policeman until he got to Wong's place.

MR. JACKSON-LIPKIN: To where, my Lord?

COURT: Until his arrival at Wong's place; he ran back to Wong's place. 30

MR. JACKSON-LIPKIN: My Lord, if I have made a mistake I'm sorry. I will just check that for your Lordship.

"When did you first come to know the driver was a policeman?"

I came to know it while I was watching television."

COURT: Yes, he said he came to know the driver was a policeman when he was watching television.

MR. JACKSON-LIPKIN: Yes, my Lord.

Q. That was a mistake, wasn't it?

A. Because when WONG Hon-keung came back we could not be sure if he was a policeman or not. 40

Q. I see. Wong told you that four gunshots had been fired, didn't he?

A. I cannot remember.

Q. Try.

A. I cannot remember.

Q. Do you remember telling the Coroner "4 gun shots, he said?"

A. I cannot remember.

- Q. Do you want to see the depositions or will you accept it from me.
MR. JACKSON-LIPKIN: My Lord, it is just below marginal note 407,
B407.
- A. I would like to see.
- Q. Yes, certainly. Mr. Gray, you will find it on page 407, it's the
first answer beginning on page 407. "Question: Did he mention anything
else?" "Answer: 4 gun shots, he said."
- A. Yes, yes.
- Q. Was this the 10 o'clock news that you described that you
10 watched?
- A. I cannot remember the time because at that time I was not
wearing any watch.
- Q. Approximately, Mr. Lee, just try and help the jury. Approxi-
mately what time was the news programme?
- A. No, it was a special announcement.
- MR. JACKSON-LIPKIN: My Lord, I am told that this was a special
release so it could have been at any time and not necessarily on the news.
My Lord, I am sorry, I wasn't listening to him, I was told.
- Q. Can you help us at all? How soon after you got back to the
20 house you heard the special announcement?
- MR. JACKSON-LIPKIN: My Lord, I am told by my learned friend
that we can agree that a special announcement was made about 10 o'clock.
- A. I cannot remember.
- Q. Will you accept it from both of us that it was about 10 o'clock?
You are at liberty to say no, and we can prove it strictly if you want.
- A. I accept from you.
- Q. Thank you. You discussed the matter with Wong thereafter?
- A. Yes.
- Q. And his father?
- 30 COURT: After the announcement?
- MR. JACKSON-LIPKIN: Yes, my Lord.
- A. Yes.
- Q. You know, do you not, that incidents of that kind ought to be
reported to the police as soon as possible?
- A. Yes.
- Q. You gave your first statement at thirty-five minutes past one,
did you not?
- A. I cannot remember clearly.
- Q. Can you remember how long you were in the police station
40 before you gave your written statement?
- A. Cannot remember.
- Q. For some two hours you discussed with Wong what story to
concoct for the police, didn't you?
- A. No.
- Q. That was the reason for the delay in going to the police station.
- A. No.

Q. What was the reason for that delay? Your father came quite shortly after Mr. Wong's father telephoned him, didn't he?

A. In fact, there was no delay at all.

Q. Why, when you heard the special announcement, did not you and Wong go straight to a telephone, dial '999', and say, "We have something to report. Where shall we go to report to?" Why didn't you?

A. It was possibly because my mind was very confused at that time.

Q. Did the television announcement refer to an attempted snatching of a gun?

A. I cannot remember clearly. **10**

Q. Did it mention shooting?

A. Yes.

Q. Did it mention that a youth had died?

A. I can't remember now whether in the special report it was said that the person had died or had not yet died.

Q. But certainly it said that a person was gravely injured, if nothing else?

A. Yes.

Q. And LAI Hon-shing had not returned, had he? **20**

A. Correct.

Q. I will repeat the question. Why didn't you make an immediate report to the police?

A. Because we were waiting; we could not be certain if the person referred to on T.V. was him.

Q. Let me ask you something quite different then, Mr. Lee. Back to the house came Wong.

A. Yes.

Q. Before you heard anything on television he said, "That man may have been a policeman?"

A. I cannot be sure now whether he said those words first or I **30** heard the announcement first on T.V.

Q. In the Coroners Court you accepted that the T.V. announcement was later, he spoke to you first.

A. Yes.

Q. That is what he said to you. Then he said something about four gunshots.

A. Yes.

Q. Forget the T.V. for the moment. Your friend, Lai, had not returned. **40**

A. Correct.

Q. Why didn't you dial '999' and make a report at once?

A. Because Lai Hon-shing had not come back and besides my mind was very confused.

Q. Because you needed time to make up a story for yourself and Wong, didn't you?

A. Definitely no such a thing.

Q. And after the television announcement whatever time that was, you wanted to speak to Wong's father?

A. We could not decide that and we definitely had to speak to the father about it.

Q. Call him to decide what story to make up?

A. No.

Q. You knew all along that the driver was a policeman, didn't you?

A. No.

10 Q. He identified himself on the pavement, didn't he?

A. No.

Q. Did you start feeling around the waistband of his trousers in the course of that fight?

A. No.

Q. You know that is where plain clothes policemen carry their revolver, don't you?

A. I don't know where they carry.

Q. You know they are normally carried there, don't you?

A. I don't, I do not know any friends who are policemen.

Q. Do you read papers?

20 A. The newspapers don't have photographs showing where police keep their revolvers.

Q. You heard the news programme this morning, didn't you, about three young men snatching a gun from a plain clothes policeman?

A. No.

Q. You didn't hear.

A. When—when was this?

Q. Did you hear it, 'yes' or 'no'?

A. I cannot remember.

30 Q. Did either of the other two while you were holding Mr. Au feel around his waistband?

A. I did not hold Mr. Au.

Q. Well, even if you didn't, did either of the other two feel around his waistband?

A. I did not see.

Q. And you are quite clear, are you, that you heard no sounds like firecrackers?

A. No.

COURT: Yes. Any re-examination?

REXN. by Mr. Penlington :

40 Q. When you said in the Coroner's court "I seldom fought"; you said to me that you had never fought. Can you explain the difference between those two pieces of evidence?

MR. JACKSON-LIPKIN: I hesitate to intervene but I did think . . . I thought the cross-examination of this witness was reserved to me. My learned friend is not entitled to cross-examine his own witness.

COURT: Well, he has given his answer and his explanation, Mr. Penlington. The answer he gave was when he said he seldom fought, or rather when he said he had never fought he meant he had never fought with strangers; he didn't count fighting amongst friends as fighting.

MR. PENLINGTON: Yes, I am quite prepared to accept it.

Q. Now, you said to my friend that when the car grazed you "that annoyed me", is that right?

A. Yes.

Q. When you called out to him after that, called out to him "Wah!", did you sound annoyed?

10

A. No, no, this happened so suddenly I was rather startled and I shouted "Wah!".

Q. Now, when you say—you said the driver was facing, at one stage, facing into Sai Yeung Choi Street, he had come from where his car was parked, stopped in Sai Yeung Choi Street, he came back towards Argyle Street, is that correct?

A. That whole street was Sai Yeung Choi Street.

Q. Well, now, just exactly what do you mean when you say "the driver was facing into Sai Yeung Choi Street"?

A. At what stage did he look into Sai Yeung Choi Street—facing Sai Yeung Choi Street?

20

Q. My friend asked you if the driver was facing into Sai Yeung Choi Street. Now, we know that when he left his car he was facing towards Argyle Street and walking towards you.

A. Yes.

Q. At any time did he turn round and face the opposite direction?

A. No.

Q. Now, when you got home who was the first person you saw—when I say "home," when you got back to Wong's flat, who was the first person you saw?

30

A. His grandmother.

Q. And were there other members of Wong's family there?

A. His elder sister was there.

Q. Anybody else?

A. I cannot be sure but I think the children of his elder sister were also there.

Q. Now, Wong then returned shortly after you?

A. Yes.

Q. And he said to you that the driver might be a policeman?

A. Yes.

40

Q. Now, from then on to the time you reached Mongkok Police Station at about midnight were you and Wong alone together for any appreciable length of time?

A. From the time he came back I was always with him. . . .

Q. . . . Yes.

A. . . . until we went to make a report to the police.

Q. You were with him and Wong's father came in at about 10,30, did he not?

A. I don't know about the time.

Q. Well, he came in?

A. Yes, he came in.

Q. Did you discuss the matter with him and was a decision made to ring your father?

MR. JACKSON-LIPKIN: My Lord, he said this in chief and I never challenged it.

10 Q. Very well, your father was then rung?

MR. PENLINGTON: Lee's father, they rang him—they rang Lee's father.

A. Yes.

Q. Now, what I am asking you is that from the time you got back Wong spoke to you, said the man might have been a policeman, were you alone together for any period of time during which you could have concocted a story to tell the police?

A. No.

Q. Were. . . .

20 MR. JACKSON-LIPKIN: My Lord, if ever I'd hear a question with the answer put into the witness's mouth it was that. I can't think of any witness in the position of this one would have answered any other way. The question, of course, should have been in two parts: were you alone together; and if he had said "yes": during that time did you concoct a story; but putting it the other way is putting words into the witness's mouth and whatever answer he gives, my Lord, would be. . . .

COURT: . . . would be a leading question, yes.

MR. JACKSON-LIPKIN: Yes.

MR. PENLINGTON: Very well.

30 Q. Now, Mr. Lee, could you tell us then after Lee—after Wong came back, said to you he might be a policeman, what was the next thing that happened?

A. Well, he told me that that person might have been a policeman and that he heard shots being fired. I can't be sure how many shots there were. He said that he ran along Argyle Street towards Nathan Road and he also said that he saw Lai Hong-shing following from behind when he was running.

Q. Now, after this conversation, how soon after that conversation was it that Wong's father came back?

40 A. I cannot remember.

Q. Was it long—can you give us any idea?

A. Roughly how long do you mean, roughly?

Q. Yes.

A. Within half an hour.

Q. Whereabouts were you when you had this conversation with Wong—whereabouts in the flat were you when you had this conversation with Mr. Wong?

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- A. I was in the sitting room.
Q. In the sitting room?
A. Yes.
Q. Were the other members of the family in the sitting room?
A. Yes.
Q. Did you ever go with Wong to the cockloft?
A. Do you mean on that day?
Q. On that evening after you came back.
A. No.
Q. Did the other members of the family remain with you and Wong? 10
A. Yes.
Q. Now, you have told us you don't know where plain clothes
detectives carry their revolvers. Do you know whether plain clothes
detectives carry revolvers at all?
A. I do.
Q. Have you ever given any thought as to where they might carry
them?
A. It is no use for me to give thought to this.
MR. PENLINGTON: Yes, thank you.
MR. JACKSON-LIPKIN: My Lord, before the next witness is called, 20
may I trespass on your lordship's good heart and ask if you can rise for
a few minutes?
COURT: Yes, but I would like to ask the witness one question: Lee
Wai-tang, you said that you did not dial '999' at once?
A. Correct.
COURT: Because you were confused?
A. Yes.
COURT: Did you mean to say that your mind was confused?
A. Yes.
COURT: What caused the confusion. 30
A. Because I was waiting for Lai Hon-shing and I had been
waiting for such a long time and he had not yet returned and, secondly,
I saw the announcement on TV and I couldn't be sure if it was he.
COURT: You said that when Wong Hon-keung returned he told you
that that man could have been—might have been a policeman?
A. Yes.
COURT: He said that he heard shots?
A. Yes.
COURT: He said that he ran home from Argyle Street via Nathan
Road? 40
A. Yes.
COURT: And he said that as he ran he saw Lai Hon-shing was
behind him?
A. Yes, my Lord.
COURT: And I presume that this special announcement gave the
location of the shooting, did it not, or at least the area of the shooting?
A. Yes, my Lord.

COURT: It would be said somewhere in the Mongkok area near Sai Yeung Choi Street or Argyle Street, that area?

A. Yes.

COURT: That a youth had been shot and was seriously injured or whatever it may be or critically ill?

A. Yes, my Lord.

COURT: Well, adding two and two together and with a little bit of natural inference what confusion could there be?

A. I am not able to describe it.

10 COURT: Wasn't it as plain as daylight that as far as you are concerned you encountered a very rude man who was a policeman?

A. Yes, my Lord.

COURT: Because of his rude manner you had a fight with him?

A. Yes, my Lord.

COURT: And you broke off the fight and you ran home?

A. Yes.

20 COURT: You hadn't done anything which is seriously wrong, not that I encourage people in fist fights whatever the circumstances, but what was seriously wrong was that there had been shooting immediately after that fight and one of the critically injured persons could have been your friend?

A. Yes.

COURT: Why didn't you just immediately seize upon a telephone and report the incident?

A. Because I had never encountered this before.

COURT: That is your answer?

A. Yes, my Lord.

COURT: Yes, I will adjourn for five minutes.

MR. JACKSON-LIPKIN: Thank you.

30 4.05 p.m. Court adjourns

4.15 p.m. Court resumes

Accused present. Appearances as before. Jury present.

MR. JACKSON-LIPKIN: My Lord, may I apologise to your lordship and members of the jury for the delay I have caused?

COURT: Yes. Would the witness come back?

MR. FOREMAN: My Lord, we have a request: sometimes it is difficult to understand what Mr. Gray is saying. If he would speak more slowly we would appreciate that.

COURT: Yes.

40 MR. FOREMAN: We have two questions, your lordship.

COURT: Yes.

P.W.12—Lee Wai-tang—O.F.A.

MR. FOREMAN: First, where was the television set located on which the witness saw the announcement of the incident?

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COURT: And the second?

MR. FOREMAN: Could someone estimate how far it is from the corner of Sai Yeung Choi Street and Argyle Street to the Wong's flat? I am not familiar with the locations.

COURT: When you heard this special announcement did you hear it from the radio or did you hear it from the television set?

A. From the television set.

COURT: Where was this television set?

A. The television set was in the sitting room.

COURT: On the ground floor or the cockloft?

A. In the cockloft.

COURT: Can you estimate the approximate distance from the corner of Sai Yeung Choi Street and Argyle Street where the fight took place to Wong Hon-keung's flat or shop?

A. I don't know.

COURT: You don't know. Can you give a rough estimate how long did it take you to run at your best heat that night from the spot to his home?

A. I can't be sure.

MR. PENLINGTON: My Lord, if I could be of some assistance: on the plan Ex. P.1A. . . .

COURT: . . . Yes.

MR. PENLINGTON: . . . going up—going, I am sorry, to the east along Argyle Street, Sai Yeung Choi Street, Tung Choi Street and then Fa Yuen Street, so it is the next street that is not shown.

COURT: Beyond Tung Choi Street?

MR. PENLINGTON: Beyond Tung Choi Street.

COURT: So that running along Sai Yeung Choi Street one would normally take the route Sai Yeung Choi Street, Nelson Street past the junction of Tung Choi Street. . . .

MR. PENLINGTON: . . . Yes, and the next. . . .

COURT: . . . and then you come, of course, to the next junction, that is the junction between Nelson Street and Fa Yuen Street. . . .

MR. PENLINGTON: . . . and Fa Yuen Street, that's right.

COURT: . . . and that is where Wong's store is. That would be the best answer you can give?

A. Yes.

MR. FOREMAN: Can we ask another question, your lordship?

COURT: Yes, please do.

MR. FOREMAN: From the time that Lee and Wong arrived at Wong's flat until the TV announcement, their subsequent visit to the police station, what did they do to determine if the gravely injured person was in fact their friend?

COURT: When you heard the—When you have heard what Wong Hon-keung told you and having heard what was announced from the television people, what steps did either you or Wong or both of you take to find out if the injured youth was or was not Lai Hon-shing?

A. We did not take any step.

10

20

30

40

COURT: Right, you may step down.

MR. JACKSON-LIPKIN: My Lord, before he leaves I wonder if I can ask your lordship's assistance because I was pre-occupied before: did not this witness in answer to Mr. Penlington's re-examination say that they never went to the cockloft?

COURT: I think he did say so, yes.

MR. JACKSON-LIPKIN: I am much obliged, my Lord, because neither of us has a note and I need to know that.

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COURT: Yes, Mr. Penlington?
MR. PENLINGTON: Yes, I call WONG Hon-keung.

P.W.13—WONG Hon-keung Affirmed in Puncti.
XN. by Mr. Penlington:

- Q. Mr. Wong, you live at 43 Fa Yuen Street, ground floor?
A. Yes.
- Q. And you are employed in your father's garment shop or factory at that address?
A. Yes.
- Q. Did you have two friends Lai Hon-shing and the previous 10 witness Lee Wai-tang?
A. Yes.
- Q. Did they—did these two friends often just casually come round to your home?
A. They frequently came to my home.
- Q. On the 9th of January this year about what time did you finish work?
A. About 9 o'clock.
- Q. Did either—Was either Wong or Lee at your home when you finished work? 20
- COURT: Lai or Lee?
Q. I am sorry, Lai or Lee.
A. Yes.
- Q. Who was the first to arrive?
A. Lee Wai-tang.
- Q. What did he do when he arrived?
A. He came to my home, to my shop, to look for me and as I had not yet finished work he went to my home.
- Q. Yes, and what time did Lai arrive? 30
A. About nine o'clock.
- Q. When he arrived did you have a conversation with him?
A. Do you mean Lai Hon-shing?
Q. Yes.
A. He asked me to go to the cinema.
- Q. Whereabouts?
A. The Mayfair Theatre.
- Q. In Taikoktsui?
A. Yes.
- Q. Was Lee present when this conversation took place? 40
A. No, he was not.
- Q. And later on did you see Lee and ask him if he wanted to go to the pictures—to the movies?
A. Yes.
- Q. Did you all decide to go?
A. Yes.

- Q. Did you leave your home together at about 9.10 to 9.15?
A. Yes.
Q. And did you walk down Fa Yuen Street, Nelson Street?
A. Yes.
Q. And Tung Choi Street?
A. Yes.
Q. Into Argyle Street?
A. Yes.
Q. When you reached the junction of Argyle Street and Sai Yeung
10 Choi Street, whereabouts were you in relation to Lee?
A. Do you mean when we were crossing the streets?
Q. As you go up to that corner was Lee on your left, your right,
in front of you, behind you—whereabouts?
A. In front.
Q. How—About how far in front?
A. (Witness indicates) This distance.
Q. About two feet?
A. Yes.
Q. As you started to cross over Sai Yeung Choi Street did anything
20 happen?
A. A yellow coloured BMW car turned in.
Q. Turned into Sai Yeung Choi Street?
A. Yes.
Q. This time was Lee still in front of your?
A. Yes.
Q. To your right, to your left or straight in front?
A. He was in front of me to the right.
Q. In front of you to the right.
A. Yes.
30 Q. And what happened when this yellow BMW turned into Sai
Yeung Choi Street?
A. The vehicle grazed the foot of Lee Wai-tang.
Q. Now, when you say, Mr. Wong, the “foot”, could you demon-
strate to us exactly, if you saw what part of Lee was. . . .
A. . . . (Witness indicates)
Q. About his knee, just above his knee?
A. Here. (Witness indicates).
Q. What happened when Lee’s knee was hit by the car?
A. Lee Wai-tang shouted “Wah!”.
40 Q. Did you hear this hitting of his knee by the car—did it make a
bang of any sort?
A. No.
Q. Did Lee say anything else except “Wah!”?
A. No.
Q. Did you say anything or did Lai say anything?
A. No.

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- Q. Did either of you strike the car?
A. No.
Q. What happened then?
A. The driver of the car then turn round his head and scolded Lee Wai tang with foul language.
Q. Now, I wonder when the driver scolded Lee Wai-tang with foul language was the motorcar still moving?
A. No, the car had come to a halt.
Q. The car had come to a halt. How far in front of you had it gone when it came to a halt? **10**
A. We were at the rear of the car.
Q. How far away from the car?
A. I can't remember.
Q. Can you give us some idea?
A. Do you mean how far was the car away from me?
Q. Yes.
A. About this distance. (Witness indicates)
Q. You were very close to it, is that the position?
A. Yes.
Q. When the driver said something—used some foul language to Lee, did you see the driver when he did that, when he called out, did you see the driver? **20**
A. Yes, I did.
Q. How could you see?
A. I saw him through the window.
Q. Did he put his head out of the car?
A. No.
Q. What did he say?
A. "Aren't you fucking dissatisfied—what are you doing?"
Q. Was there anybody else in the car? **30**
A. There was a girl.
Q. Did you or Lee make any reply to those remarks?
A. Lee Wai-tang said "When you are driving you have to keep a look out when you are driving; there are so many people here".
Q. "Keep a look out when you are driving; there are so many people here". And what happened then?
A. Then the car drove up to the side of the rear door—the rear entrance of the Hongkong and Shanghai Bank.
Q. And did it stop there?
A. Yes. **40**
Q. Now, when it stopped there was it parked parallel to the edge of the pavement, the footpath, or was it at an oblique angle nose in to the pavement?
A. I can't remember.
Q. It stopped there. What did you and the other two boys do?
A. We continued to cross the street.

- Q. Did anybody get out of the car?
A. The driver got out of the car.
Q. Did you notice when the car was parked was it put into reverse
at all or did it go straight over and stop?
A. I can't remember.
Q. What happened after the driver got out?
A. The driver said "This is a road. You may as well go home and
fetch a stool and sit there."
Q. Who did he say that to?
10 A. To Lee Wai-tang.
Q. Where was Lee Wai-tang at that stage?
A. Lee Wai-tang was standing on the opposite side of the street.
Q. Was anything said before the driver got out of the car after he
had parked it in front of the bank?
A. Yes.
Q. What was said?
A. "What the fucking are you doing? Are you fucking dissatisfied?"
Q. Who said that?
A. The driver.
20 Q. Could you see him at that time?
A. Yes.
Q. Was his head inside or outside the car?
A. Outside the car.
Q. He then got out and he then said about getting a stool or having
a stool?
A. Yes.
Q. What happened then?
A. Lee Wai-tang said "There are so many people in this street.
When you drive you must have consideration for other people."
30 Q. Did he receive any reply to that?
A. And then the driver said "Is it that you are fucking dissatisfied?
Fuck your mother", and following this he immediately punched Lee
Wai-tang on his arm.
Q. Whereabouts were you when this happened?
A. I was behind Lee Wai-tang.
Q. How far behind?
A. About this far. (Witness indicates)
Q. About two feet?
A. Yes.
40 Q. Where was Lai?
A. He was also behind.
Q. Before this punching started did the driver tell you who he was
or what he was?
A. No.
Q. From the time the fight started did you notice what clothing he
was wearing?
A. He was wearing a European style jacket.

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Q. After the car bumped Lee and you were walking again over the-across the road, did Lee say anything to you about the incident, did he express annoyance or anything like that?

A. No.

Q. When the driver got out of the car and came towards you, what was his demeanour—what did he look like?

A. He was very ferocious.

Q. At this stage did you think that perhaps it might be as well if you and your friends got away?

A. Yes.

10

Q. Did you say anything to Lee or Lai to that effect that you should go?

A. No.

Q. What happened when the driver punched Lee?

A. Lee Wai-tang hit back and fought with him.

Q. What did you do?

A. I went to help Lee Wai-tang and fought against the driver.

Q. Were you on Lee Wai-tang's left or right?

A. Left.

Q. Left. What about Lai, where was he?

20

A. He was behind Lee Wai-tang.

Q. What did he do?

A. I saw him going up to help in the fight.

Q. Which side of Lee was Lai; you were on his left; whereabouts was Lee Wai-tang—was Lai Hon-shing?

A. He was to the right of Lee at his rear.

Q. The right of Lee at his rear. And what did you do to the driver?

A. I fought with the driver.

Q. How did you fight with the driver?

A. I fought with the driver with my hands.

30

Q. With your clenched fists?

A. Yes.

Q. What about Lee, was he also fighting with his clenched fists?

A. Yes.

Q. Did you land any blows on the driver?

A. Yes.

Q. Did you see if Lee landed any blows on the driver?

A. I did not notice.

Q. Did you notice which way—how Lai was fighting—was he also punching?

40

A. At that time I did not notice.

Q. Whereabouts on the driver did your blows land?

A. The blows landed on his arm here. (Witness indicates)

Q. On the arm?

A. On his arm.

Q. Why did you hit him on the arm?

A. Because at that time I was on this side of him.

- Q. Did any blows land on his chest?
A. I cannot remember.
Q. Were these blows delivered as hard as you could?
A. Yes.
Q. How long did this fist fight go on for?
A. For a short while.
Q. And while this fight was going on were you moving around?
A. Yes.
Q. Were the others moving around?
10 A. Do you mean—"others" do you mean Lai Hon-shing and Lee
Wai-ting?
Q. And the driver—were you moving about, weaving around?
A. Yes.
Q. And did the whole thing become a rather confused scuffle?
A. Yes.
Q. Did you during the course of this fight grapple—grab hold of
the driver?
A. No.
Q. Did you try to?
20 A. No.
Q. Did you feel around his waist or any other part of his person—
did you touch him round the waist or any other part of him?
A. No.
Q. Did you or the driver or any of the others use your feet—did
you kick?
A. No.
Q. After this fight had been going on for a while who appeared to
be getting the better of it, who seemed to be winning the fight?
A. Our side.
30 Q. Why do you say that?
A. We had three persons and there was just one on the other side.
Q. Apart from the delivering of these punches did you have any
physical contact with the driver at all during this fight?
A. Not I.
Q. Now, for how long approximately did this fight go on?
A. For less than one minute.
Q. During the course of this fight was there any further shouting
or calling out or words used?
A. I heard the girl inside the car calling out to us not to fight.
40 Q. What happened then?
A. And I heard Lee Wai-tang shout out "Run".
Q. Did he at any time during the fight with you or any of the other
people, the other two boys or the driver, fall over or partially fall over?
A. No.
Q. What happened when you heard the girl shout "Don't fight"
and Lee Wai-tang shouted out "Run"?
A. Then I turned round and ran towards Argyle Street.

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- Q. Why did you do that?
A. Because it was wrong to fight in a public place.
Q. Did Lee also run towards Argyle Street?
A. I did not see at that time.
Q. You did not see him?
A. I did not see him.
Q. When was the last time you saw him?
A. Do you mean on that day?
Q. Well, put it this way: you have told us that you were fighting
side by side, is that correct? 10
A. Yes.
Q. And Lee called out "Run"?
A. Yes.
Q. Did you see him when he called out "Run"?
A. At that time I did not pay attention.
Q. Do you know where—did the call of "Run" come from behind
you, beside you, where did it come from?
A. From beside me.
Q. Beside you?
A. Yes. 20
Q. Which side?
A. This side, right hand side.
Q. Did you feel—did you sense that Lee was beside you at that stage?
A. Yes.
Q. Did you see him again?
A. No.
Q. Did you turn round to run or were you facing towards Argyle
Street?
A. I turned round.
Q. Did you see Lai? 30
A. I did not.
Q. Did you set off then down Argyle Street?
A. Yes.
Q. Do you know if anybody was with you—did you hear anybody
behind you or see anybody in front of you?
A. Do you mean when I was running?
Q. When you left the scene of the fight.
A. I heard the driver said that he was pulling out his revolver and
would shoot us all dead. He said doom to our whole family.
COURT: You heard the driver said he—? 40
A. He would pull out his revolver and shoot us all to death and
doom to our whole family.
Q. Now, when those words were used were you still facing towards
the driver or had you turned away?
A. When I was turning away.
Q. When you were turning away?
A. Yes.

Q. Did you see—please give it some thought—did you see a revolver at that time?

COURT: At that time.

A. No, my Lord.

Q. At any time did you see the driver feeling in his waistband?

A. I heard—I saw the driver pressing with his hand over this part of his body (witness indicates) when he said that “I’m going to pull out my revolver and shoot you all dead. Doom to your whole family.”

10 Q. Now, you used your right hand then, Mr. Wong?

A. Yes.

Q. Was it the driver’s right hand?

A. Yes, because the driver was at the railing at the time

Q. The driver was at the railing. . . .

A. . . . Yes.

Q. . . . at the time.

COURT: He used his right hand to reach behind his right—the back of his right hip, is that it?

A. The back of his waist, the right waist.

20 Q. Now when you ran off down you heard these words used by the driver?

A. Yes.

Q. You ran off down Argyle Street?

A. Yes.

Q. Were you on the footpath or on the road?

A. On the footpath.

Q. At any time did you hear anybody call out “Robbery” or “Snatching” or anything of that sort?

A. No.

30 Q. Did you know at that time that plain clothes police officers carry revolvers?

A. Yes.

Q. Did you know whereabouts they keep them?

A. No.

Q. What was the next thing you heard or saw when you were running down Argyle Street?

A. When I was running down Argyle Street I turned back and I saw Lai Hon-shing running behind me

Q. Why did you turn back?

A. To see if the driver was chasing me.

40 Q. How far behind you was Lai Hon-shing?

A. About three to four feet.

Q. This time when you turned round and saw Lai Hon-shing just behind you, had you heard any sounds?

A. No.

Q. Did you continue to run along Argyle Street towards Nathan Road?

A. Yes.

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Q. Did you hear anything before you reached Nathan Road?

A. Yes.

Q. What did you hear?

COURT: Just one moment, please.

Q. What did you hear?

A. I heard a bang.

Q. Did you know what this bang was at the time?

A. At that time I did not know.

Q. Did you think that—you know, make a guess as to what it was?

A. At that time I thought I guessed that it was a sound of a shot
of a revolver. 10

Q. Shot of a revolver. Did you look round when you heard that shot?

A. I did not.

Q. Did you hear any other shots?

A. Yes.

Q. Where were you—when you heard the other shot when you
heard the next shot?

A. I was in Nathan Road.

Q. How far in Nathan Road?

A. At the Kam Kuk Yuen Preserved Meat Store. 20

COURT: At any time that is convenient, Mr. Penlington.

Ex. 3B. MR. PENLINGTON: Yes, my Lord, one more question: Is that—
Look at photograph 3B, Mr. Wong. Is that store about three shops
further south in Nathan Road from the Hongkong Bank?

A. Yes.

Q. And you heard another shot when you were about there?

A. Yes.

MR. PENLINGTON: Yes, this might be a convenient moment.

COURT: I will adjourn to ten o'clock tomorrow morning.

5.05 p.m. Court adjourns.

30

23rd September, 1976.

24th September, 1976.

10.05 a.m. Court resumes.

Accused present. Appearance as before JURY PRESENT (Mr. Gall absent)

COURT: WONG Hon-keung come back to the witness box.

P.W.13—WONG Hon-keung—On former affirmation.

XN. by Mr. Penlington (Continues):

Q. When we adjourned Mr. Wong, you told us that you had turned
into Nathan Road and you were near the Kam Kwok Yuen Provision
Store when you heard another shot? 40

A. Yes.

Q. Now could you tell the whereabouts that shot came from?

A. From behind.

- Q. Did it sound very loud?
A. It was an ordinary sound—bang.
Q. You have any idea how far away it would have been?
A. No.
Q. You turned round when you heard this next shot?
A. No.
Q. When you were running along Nathan Road did you see or hear anybody running behind you?
A. I did not hear.
- 10 Q. Why did you keep running?
A. Because at that time I was very frightened.
Q. What were you frightened of?
A. Because the driver had said that he would draw his revolver and shoot us all goddam fellows to death.
Q. When you heard the shots what did you think about the shots?
A. I was running at that time I was very frightened and I thought that it was the sound of shots fired.
Q. At any time when you were running away did you stumble or fall?
A. No.
- 20 Q. Did you continue to run along Nathan Road—were you on the pavement or on the road?
A. On the pavement.
Q. Did you bump into anybody?
A. I cannot remember.
Q. Were there many pedestrians on the footpath of Nathan Road?
A. Yes.
Q. Were you dodging, weaving away between them?
A. Yes.
Q. Did it not occur to you that if you were then amongst a lot of pedestrians that it would be safe to stop?
A. No.
- 30 Q. Did you hear any more shots?
A. Yes.
Q. How far had you gone when you heard the next shot?
A. I ran to about where the King of Kings is.
Q. Near the King of Kings Restaurant?
A. Yes.
Q. Where was this shot?
A. The shot came from behind.
- 40 Q. Was it any louder?
A. No.
Q. What did you do when you heard this next shot?
A. I continued to run forward.
Q. Did you hear any more shots?
A. No.
Q. Where did you run to then?
A. I ran to Shangtung Street.

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- Q. Then from there?
A. Then I turned in the direction of my home.
Q. Did you go straight home?
A. I went straight home.
Q. Did you run all the way?
A. Yes.
Q. Can you tell us as near and as accurately as possible where it was that you last saw LAI Hon-shing?
A. Just at the corner of Argyle Street when I turned round and saw him. **10**
Q. Corner of Argyle Street and?
A. When I turned into Argyle Street.
Q. From?
A. Sai Yeung Choi Street.
Q. That was just after the fight broke up?
A. Yes.
Q. Any time when you were running away from there, from that corner, did you turn round—did you hear LAI Hon-shing behind you?
A. Yes.
Q. Where was that? **20**
A. In Argyle Street.
Q. Near the corner of Nathan Road whereabouts in Argyle Street?
MR. JACKSON-LIPKIN: Before that question is put, I wonder if it could be reframed.
COURT: Yes.
Q. Whereabouts in Argyle Street?
A. Shortly after I had turned from Sai Yeung Choi Street into Argyle Street.
Q. Did you see or did you hear LAI Hon-shing behind?
A. I saw him. **30**
Q. Did you see him again?
A. No.
Q. Did you hear him again after that behind you?
A. No.
Q. When you saw LAI behind you what was he doing?
A. He was running.
Q. Now on this evening in question were you or to your knowledge either of your companions carrying anything at all that could have been used as a weapon?
A. No. **40**
Q. Have you ever been involved in any sort of trouble with the police before?
A. No.
Q. Have you ever been involved in any sort of fight before, apart from schoolboys' squabbles?
A. No.

Q. How long is it since you left school?

A. Five to six years.

Q. On the evening in question how were you dressed?

A. I was wearing a black leather jacket.

Q. What sort of trousers?

A. I was wearing cream-coloured jeans.

Q. And on the night of January was your hair longer than it is now?

A. A little longer.

10

Q. How far how much longer? Down to your collar—shoulder?

A. Yes.

Q. Below—why have you cut it?

A. Because I now don't like to wear long hair.

Q. What happened when you reached your home?

A. When I returned home I saw LEE Wai-tang there.

Q. Yes, did you say anything to him about the incident?

A. Yes.

Q. What did you say to him?

A. LEE Wai-tang asked me if I had seen LAI Hon-shing.

Q. Yes?

20

A. I told him that when I was running I saw him running behind me.

Q. Yes, anything else?

A. And I also said that I heard several sounds—it sounded like those of revolver shots.

Q. I think you told us, I think the driver of the car did not identify himself as a policeman?

A. Correct.

Q. At any time before you saw the T.V. that night did you come to think that perhaps he was a policeman?

A. Yes.

30

Q. When was that?

A. When I got home.

Q. Why did you think that?

A. Because he said that he had a revolver.

Q. Did you say anything to anybody about this, that you thought that he was a policeman?

A. I cannot remember.

10.20 a.m. Mr. Gall enters court.

Q. So you discussed this matter with LEE when you got back?

A. You mean about the fight?

40

Q. Yes.

A. No.

Q. Why not?

A. Because when I got home he only asked me if I had seen LAI Hon-shing.

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- Q. Were you alone together?
A. My grandmother, my elder sister and my younger sisters were there.
Q. Why did you not talk to LEE about the fight that you had that evening?
A. Because I myself was very confused and frightened at that time.
Q. Did you want the other members of your family to hear about the fight?
A. Not at that time.
Q. When did your father come back? 10
A. Shortly after my return home.
Q. Can you give us some idea approximately how long that would have been?
A. Some half an hour after we had finished watching T.V.
Q. Half an hour after?
A. Yes.
Q. What was on the T.V.?
A. The T.V.—there was a T.V. announcement of a shooting incident outside the King of Kings.
Q. When you heard that announcement did you associate that with the incident that you had been involved in? 20
A. Yes.
Q. Did you say anything to anybody after the T.V. announcement about the incident?
A. I spoke to LEE Wai-tang about it.
Q. What did you say to him?
A. 'I don't know if the person killed is LAI Hon-shing or not.'
Q. Did you think it was?
A. I thought about it, but I was not certain.
Q. Why weren't you certain? 30
A. Because at that time I saw him running behind me.
Q. Did you expect him to come back to your house?
A. Yes.
Q. And he had not come back?
A. Correct.
Q. You had seen him running behind you and you heard shots fired?
A. Yes.
Q. Did you think of ringing his family at this stage?
A. Yes.
Q. Did you do so? 40
A. I did not do so.
Q. Did you think of ringing LAI's family at this stage?
A. Yes.
Q. Did you do so?
A. No.
Q. Did you think of ringing the police reporting the matter at that stage?

A. No.

Q. Why didn't you when you were apprehensive that it was LAI Hon-shing who had been hurt or killed—why did you not report this to anyone?

A. At that time I was very frightened and I myself could not make any decision.

Q. Whereabouts was your father at this time?

A. By that time he had already returned home.

Q. Where was he?

10 A. In the cockloft.

Q. In your flat?

A. Yes.

Q. So he was home?

A. After my return home, after I have finished watching T.V. he came back.

Q. Where was he—where did he come back from?

A. When I first left to go to the cinema he was working in the shop.

Q. So if you wanted to report the matter or to seek advice you could have gone to your father who was in the shop?

20 A. Yes.

Q. Why did you not do so?

A. Because at that time I did not know that the incident had developed into such a serious matter.

Q. You said it is not a serious matter—you heard shots fired, LAI Hon-shing did not come back—you did not think this was a serious matter?

A. It was only after watching T.V. that I associated the announcement with the incident and I made it known to my father.

Q. Were you frightened at this time?

A. I was.

30 Q. Badly frightened?

A. Yes.

Q. Before you told your father about the incident had you discussed the matter further with LEE—LEE Wai-tang?

A. I asked LEE Wai-tang if it was all right or advisable for me to speak to my father about it and he said, yes.

Q. Did you realise that stage before speaking to your father that you would probably have to make a statement to the police?

A. No.

40 Q. Did you discuss with LEE Wai-tang what story—what your statement should be—what your explanation of this incident should be?

A. No.

Q. After you told your father did he ring up LEE Wai-tang's father?

A. Yes.

Q. Did LEE Wai-tang's father come to your house?

A. Yes.

Q. Did you all then go to Mongkok Police Station?

A. Yes.

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- Q. You arrived there about midnight?
A. Yes.
Q. There you did make a statement?
A. Yes.
Q. The statement started about 1.30, is that right?
A. Yes.
Q. You went back later on, on the 10th, the next day at about 6.00 p.m. and made a further statement?
A. Yes.
Q. And on the 14th you again made a further statement at Mongkok Police Station? **10**
A. I cannot remember clearly.
Q. You cannot remember—can you remember making in fact three separate statements?
A. Yes.
Q. Now just finally Mr. Wong, I want to take you back to the scene of the fight—one or two more questions—when the fight was going on, was it, according to your evidence, near the railing outside the Hong Kong and Shanghai Bank building—photograph 3C?
A. It was near the railing outside the rear entrance of the Hong Kong and Shanghai Bank. **20**
Q. The rear entrance—looking at that photograph can you point out what you mean by the rear entrance?
COURT: You don't have to mark it—just point it out.
INTERPRETER: Witness pointed here.
COURT: Just opposite the car.
Q. And during the course of the fight did you and the other three people involved move anywhere towards Argyle Street—did the fight tend to go towards Argyle Street?
A. I cannot remember. **30**
Q. During the course of that fight can you remember saying or doing anything that would make them or anybody watching the fight think there was a robbery taking place?
A. No.
Q. Yes, thank you.

XXN. by Mr. Jackson-Lipkin :

- Q. Mr. Wong, you told my Lord and the jury that when the three of you first got to the corner of Sai Yeung Choi Street and started to cross you were two feet ahead of the others—I am so sorry, LEE was two feet ahead of the other two? **40**
A. Yes.
Q. And it was in that, as it were triangular position, that you started to cross the studded crossing?
A. Yes.

Q. And it was in that somewhat triangular position that you were when the yellow B.M.W. grazed some part of LEE?

A. Yes.

MR. JACKSON-LIPKIN: My Lord, I wonder if I may borrow from your Lordship Exhibit C.19.

COURT: Yes.

MR. JACKSON-LIPKIN: Just show it to my learned friend first—Mr. Wong, you were asked about this matter in the Coroner's court were you not?

10 A. Yes.

Q. And you were asked to draw the respective positions in which you were?

A. Yes.

Q. And you drew for the learned Coroner a sketch of the relative positions in which you were?

A. Yes.

Q. You were then cross-examined by this gentleman sitting on my left weren't you?

A. Yes.

20 Q. The positions that you drew for the Coroner showed the three of you in line abreast.

A. In line abreast?

Q. Yes, do you remember that, yes or no?

A. You mean when we were crossing the street?

Q. Yes, at the time when the car came close to the front of you.

A. We were not in line abreast at that time.

Q. Did you draw for the Coroner a diagram showing the three of you in line abreast as the car came round the corner? If you cannot remember say so.

30 A. When I drew the sketch I indicated that LAI Hon-shing and myself were slightly behind and not in line abreast with the another.

Q. I will come to that in a moment—I am suggesting you first said you were in line abreast—you were then cross-examined by Mr. Eddis who put to you the impossibility of LEE being hit if the three of you were in line abreast.

A. I cannot remember.

Q. You were then given an opportunity to correct your drawing were you not? If you cannot remember please say so.

A. I cannot remember.

40 Q. And then you answered, 'Anyway we were in line abreast but I cannot remember if one was slightly ahead of the other.'

COURT: In front or behind?

MR. JACKSON-LIPKIN: The words used, if you like at marginal note 384, my Lord, at the top of the page.

COURT: Yes.

MR. JACKSON-LIPKIN: That is Mr. Eddis was giving him a chance to correct his drawing.

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“Q. Are you saying now that the drawing may be wrong?

A. Anyway we were in a line abreast but can't remember if one was slightly ahead of another.”

COURT: Yes.

A. I remember that LEE Wai-tang was slightly ahead of LAI Hon-shing and myself.

Q. Now eight months after the incident you suddenly remember that he was two feet ahead of all of you—I suggest to you Mr. Wong that you have deliberately changed your story because you have realised the impossibility of the first one. **10**

A. No.

MR. JACKSON-LIPKIN: My Lord, I wonder if that question and answer may be read out to him.

COURT: The one on page 185—marginal note 384?

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: Yes.

MR. JACKSON-LIPKIN: Mr. Gray, I will lend you the typescript, it is just the first three lines—will you be kind enough to read it to him in Cantonese.

COURT: I think for the purpose of the record the English should **20** be read:

“Q. Are you saying now that the drawing may be wrong?

A. Anyway we were in a line abreast but can't remember if one was slightly ahead of another.”

You remember saying that if it is recorded that you have said it?

A. I cannot remember.

Q. Will you accept it from me that you did say it or do you wish to be shown your depositions—you don't have to accept my word.

A. I would like to see the record.

Q. I think you may have it—it is near the end of page 383 and his **30** signature and the interpretation are on page 393—better show him the signature first.

INTERPRETER: Page?

MR. JACKSON-LIPKIN: 393—whose signature is that first one?

A. My signature.

Q. Second one is FONG Chun-man, Court interpreter?

A. Yes.

Q. The third one is Timothy Lee, Coroner is it not?

A. Yes.

Q. And above that are the words, “Read back in English and **40** interpreted into Punti to C.W. 30”, that is you, “who confirmed and signed.”

A. Yes.

Q. Now can you read to him please from 383, the question and answer my Lord read out.

INTERPRETER: Which line?

MR. JACKSON-LIPKIN: Five questions from the bottom of the page, 'Are you now saying' . . .

(Interpreter reads in Punti to witness)

Q. Do you accept now that that is what you said to the Coroner?

A. Yes.

Q. Thank you. Mr. Gray may Mr. Eddis have his typescript back. Mr. Eddis was putting to you the impossibility of the situation because you had described LEE as being in the middle of the three of you haven't you?

10 A. I don't understand why it could not happen.

Q. It is correct, is it not that you were in line abreast with LEE in middle?

A. I remember that LEE Wai-tang was slightly in front of us.

Q. Was he in the middle of the three of you?

A. Yes.

Q. You just told my Lord and the jury how it is that in March you cannot remember if anyone was ahead of you but today you can?

A. Can this be repeated please.

20 Q. How is it that now in September you can remember that LEE was two feet ahead of you whereas in the Coroner's court which is a long time ago but nearer to the incident you could not remember if anyone was ahead—you gave evidence I am told on the 6th of April—my Lord, I wonder if I may just—there is some confusion as to the dates—would your Lordship give me one moment—the first part of his evidence said adjourned on the 16th of March.

MR. PENLINGTON: The next witness gave his evidence on the 6th of April.

COURT: Unfortunately on the record the adjournments are not dated.

30 MR. PENLINGTON: It is adjourned to the 6th of April from the 2nd of April.

MR. JACKSON-LIPKIN: I don't think it matters but if you look at the bottom of note 353, 'Adjourned to 10.00 a.m. on the 19th of March'—that is the first part of this young man's evidence, when he drew the diagram, the second part of his evidence, you will see the adjournment at page 380, 'Adjourned to the 2nd of April.'

COURT: Yes.

40 MR. JACKSON-LIPKIN: And that is signed on the 19th of March, so it couldn't be later than the 2nd of April—let me put the question to you again—you probably forgot what it is—the incident happened in January, you were asked questions about it in March and April of this year.

A. Yes.

Q. In March and April of this year you were quite unable to remember if anyone was ahead of another when you were in line abreast—today with startling clarity you remember that he was, LEE was 2 feet ahead of you two—how can that be?

A. I said approximately 2 feet.

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- Q. Or, was it not that it was the rear wheel of the car that hit
LEE. . . .
- A. Yes.
- Q. And you realised between the Coroner's Court and today, that
on your then story that would be impossible.
- A. You mean, in other words, LEE Wai-tang's leg couldn't have
been grazed?
- Q. Yes, how did you guess Mr. Wong, yes.
- A. Because at that time there were many pedestrians crossing the
street and many hawkers in that area. **10**
- Q. He was not grazed was he?
- A. I don't know but we were in front of the other pedestrians and
when we withdrew there were others blocking us from behind.
- Q. You do know, do you not that he said to the driver later that he
had not been hit, don't you?
- A. Who, which one?
- Q. LEE.
- COURT: LEE Wai-tang.
- Q. You heard it yourself didn't you?
- A. He was grazed, not hit. **20**
- Q. You are prepared to alter your story at any time to suit the
present convenience are you?
- A. No.
- Q. Very well. The three of you were pretty fed up with the driver
of the yellow BMW coming so close to you, weren't you?
- A. No, we were not fed up.
- Q. You thought it careless and inconsiderate, didn't you?
- A. Yes.
- Q. And you indicated that by banging on the car, didn't you?
- A. We definitely did not bang on his car. **30**
- Q. None of you?
- A. I did not.
- Q. What about the others?
- A. I did not see.
- Q. When you thought it was careless and inconsiderate of the
driver, did that make you angry with him?
- A. Yes.
- Q. Now I wonder if you could help me, Mr. Wong. The windows
of this car were closed on your side, weren't they?
- A. To my recollection, yes. **40**
- Q. Mr. Wong, in this street before the car was parked outside the
bank, you didn't hear the driver say anything, did you?
- A. I did.
- Q. Well, you've told us there were a lot of pedestrians around.
- A. Yes.
- Q. Mainly Hong Kong Cantonese by appearance.
- A. Yes.

Q. Not known for speaking in quiet, dulcet tones. Not known for speaking quietly.

A. I did not pay attention at that time.

Q. You know that. You've been in lifts and streets before now, haven't you? In lifts and streets?

A. (Pause) They were chatting and walking. They couldn't have been talking in a very loud voice.

Q. There were buses and cars in Argyle Street?

A. Yes.

10 Q. There were hawkers beside you and to your left in Sai Yeung Choi Street.

A. Yes.

Q. The nearside windows of the car were closed.

A. Yes.

Q. I suggest to you that if the driver had said anything you would not have been able to hear it.

A. At that time when he was scolding LEE Wai-tang with foul language, my views were on him and he looked very ferocious and he was scolding in a very loud voice at LEE Wai-tang.

20 Q. You were on LEE's left.

A. Yes.

Q. There was a passenger in the passenger seat.

A. Yes.

Q. And the windows were closed.

A. Yes.

Q. Mr. WONG, to put the most favourable construction on it, are you possibly confusing that scolding with the one which undoubtedly happened later on the pavement?

A. No.

30 Q. Now you described the driver yesterday as "wearing a European-style jacket and no tie". Do you remember saying that yesterday?

A. No I did not say that he was not wearing a tie. I only said that he was wearing a jacket, European-style jacket.

Q. I see, well maybe my recollection is mistaken. I want please to go straight to the incident where the fight started. You say you were on LEE's left and LAI was behind LEE.

A. Yes.

Q. In saying that, did you mean you were to the left of LEE but nonetheless turned so as to face the driver? Is that what you mean?

40 A. In the course of the fight I did not turn round.

Q. But you hit Mr AU, did you not?

A. Yes.

Q. Imagine that Mr. Penlington here is LEE and that I am you and the driver is there. (indicates) Without turning yourself how did you manage to hit him?

A. I was standing here, LEE Wai-tang was here and LAI Hon-shing in this position. (witness demonstrates)

Q. Thank you. That's what I was putting to you in fact. You were asked by Mr. Penlington if you saw whether LEE landed any punch on the driver, do you remember, and your answer was: "I did not notice".

A. Correct.

Q. Was that a truthful answer?

A. Yes.

Q. I am now going to read to you what you said to the learned coroner on your affirmation. I assume you have no religion and affirmed.

A. Yes.

MR. JACKSON-LIPKIN: It's page 351, just at the bottom of the page, 10
my Lord. "LEE Wai-tang fought back with his hand clenched". Can you translate that please, Mr. Gray. "LEE's blow landed on the driver's face."

Q. That you said on your affirmation.

A. Yes.

Q. Are you saying that that on your affirmation was true?

A. True.

Q. Now just explain in your own words and your own time to my Lord and the jury how both can be true: you did not notice, or his blow landed on the driver's face.

A. As this was such a long time ago I cannot remember so clearly 20
now.

Q. When I asked you a moment ago if your answer was true, why did you not say, "I really can't remember. I'm sorry"?

A. (No reply).

Q. What's your answer?

A. At that time I was very confused and I could not see clearly.

COURT: At which time?

A. At the time of the fight.

MR. JACKSON-LIPKIN: Mr. Gray, would you be kind enough please to read two lines further up in his own sworn evidence: "I was observing 30
things very clearly".

Q. Which of those two answers is true?

A. I saw him fight when he moved his hand to hit, but I don't know if any blow landed on him.

Q. Then why did you say to the coroner on your affirmation: "LEE's blow landed on the driver's face" if you weren't clear?

A. (Pause) Possibly at that time I misunderstood the question put to me.

Q. But your answers were read back to you and you signed them as being true. 40

MR. JACKSON-LIPKIN: I'm sorry, Mr. Gray, I am incorrect. That wasn't an answer.

Q. This was your own personal description when being asked any questions. It was then read back to you and you said it was true.

A. (No reply).

COURT: Wasn't that the position?

A. Yes.

Q. MR. JACKSON-LIPKIN: My Lord, I think anything more is a matter for comment. I'll pass on to something else.

Q. Mr. WONG, LEE hit the driver on a number of other occasions in the fight, didn't he?

A. I can't remember.

Q. Let me see if I can assist your memory. The top of 352 please, Mr. Gray. This is your own description unprompted by anybody: "I am not clear as to how many punches Lee had effected on the driver's person. Roughly I would say 2 or 3."

10 A. Yes.

Q. Was that true?

A. Yes.

Q. Now yesterday you said in answer to Mr. Penlington, that's this gentleman here, that your blows landed on the driver's arm. Do you remember saying that?

A. Yes.

Q. Was that true?

A. Yes.

20 Q. Turn to page 352 please, Mr. Gray. "I used my right hand to hit the driver on his right chest 3 or 4 times. They were blows effected with force." That's also what you told the police on the 10th of January at one-thirty in the morning, was it not?

A. Yes.

Q. You said to the police the Cantonese for "I fisted the driver's chest part."

MR. JACKSON-LIPKIN: Yes, you may well look astonished, Mr. Gray, but that's been translated.

Q. That's what you told the police and that's what you told the coroner.

30 A. Yes.

Q. Why did you tell my Lord and the jury yesterday that your blow landed on the driver's arm?

A. There is such a long gap of time between the fight and now, and I now recall . . . I can only recall hitting him on the arm.

Q. Why didn't you say so to Mr. Penlington yesterday? Say, "Mr Penlington, I'm terribly sorry, it's a long time ago, I can't really remember, but I think I hit him on the arm."

A. (No reply).

Q. "Why" is the question.

40 A. No, yesterday when I answered the prosecutor I said as far as I remembered I hit him on the arm.

MR. JACKSON-LIPKIN: My Lord, I believe your Lordship recalls the answer. It was merely: "On his arm."

COURT: Yes.

Q. Mr. WONG, as you were told yesterday, there are no sides in this case. Mr. Penlington and I are both trying to do justice. That's how British courts are run. If you cannot remember anything please say

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so. If you don't know please say so. If you don't understand me please tell me.

A. Yes.

Q. Now let's get back to these "blows on the chest delivered with force." You were punching with both hands, were you not?

A. Cannot remember.

Q. Did you or did you not give a demonstration to the coroner that you were punching with both hands? If you can't remember say so.

A. I cannot remember.

MR. JACKSON-LIPKIN: Mr. Gray, would you please read out what is under the third from last answer on page 355. My Lord, his answer recorded by the coroner is: "(Witness demonstrated that he was punching with both hands)." 10

A. Yes.

Q. Now Mr. WONG, you have agreed with me that you hit the driver on his right chest three or four times with your right fist.

A. Yes.

Q. I now want to ask you what you were doing with your left fist. With your left fist you struck the driver on his right upper arm, did you not?

A. I cannot remember. 20

MR. JACKSON-LIPKIN: Will you please read to him, Mr. Gray, the second answer from the bottom on 355. It's difficult to read, is it? You had better borrow the typescript.

Q. Was that true when you said it?

A. Yes.

Q. Now for the benefit of the jury, if for no one else, please explain how, if you are on Mr. LEE's right—assume that Mr. Penlington is LEE and I'm you, the driver in front of LEE—how you managed from that position to strike the right upper arm and the right chest without even inclining yourself. . . . 30

COURT: I think he said on the left.

MR. JACKSON-LIPKIN: On the left, I'm sorry, that's what I meant, my Lord. . . .

Q. Mr. Penlington here and WONG here, how you managed to strike his right upper chest and right upper arm without inclining yourself as I first suggested.

A. (demonstrating) At that time I was standing in this position. The driver was here, LEE Wai-tang was here and the driver was here in the opposite direction. The driver turned and fell back to the railing.

Q. Yes, I was going to ask you about that. The fight forced the driver back up against the railings, didn't it? 40

A. He himself turned back to the railing. He himself.

Q. "Forced" back, not turned back.

A. I cannot remember.

Q. What did you mean when you said "fell back to the railings"?

A. In other words, the railing . . . behind him was the railing—railings.

- Q. So the answer is: he was forced back to the railing.
A. I don't know.
Q. Tell us what you mean when you said he fell back to the railing.
Do you mean he fell over and hit the railing or he fell back in the sense that he went backwards?
A. I mean he went backwards.
Q. Now can you help us, Mr. WONG. Was this on the pavement side of the railing or on the roadway side of the railing?
A. On the roadway.
- 10 Q. LEE Wai-tang was still on the pavement, was he not?
A. The position in which they stood was near the roadway.
Q. Was LEE still on the pavement?
A. I cannot remember.
Q. He was, however, behind the driver, wasn't he?
A. No.
Q. Holding him by his neck with his forearm, holding the driver by the driver's neck with his, LEE's, forearm.
A. No.
- 20 Q. Are you sure or don't you remember?
A. Because I remember that LEE Wai-tang was by my side.
Q. You remember that quite clearly, do you?
A. Because when I was standing there LEE Wai-tang was here in front of me. (Witness indicates)
Q. The whole time?
A. When he was fighting with the driver I went forward.
Q. You all moved around. You've told Mr. Penlington that yesterday.
A. Yes, we moved.
- 30 Q. Now in the whole of this struggle you, having landed with your best force at least three blows on his chest and one on his arm, you weren't touched at all, were you?
A. I cannot remember.
Q. Try.
A. I cannot remember.
Q. I suggest to you you know perfectly well you weren't touched.
A. It being such a long time ago, I really cannot remember.
Q. Let me assist you. . . .
COURT: Did you have occasion to see a doctor?
A. No, my Lord.
- 40 COURT: It was a fairly ferocious fight, was it not? You weren't caressing one another, to say the least, right?
A. I don't know if it was a ferocious fight.
COURT: By the description you made in the other court it gave me the impression it was a fairly ferocious fight. Let's face that. You were not exactly giving one another a pat on the back. You were landing punches or at least attempting to land punches, one on the other.
A. Yes, my Lord.

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COURT: If any blow landed on you probably you would need a little bit of medication and some medical care.

A. Yes, my Lord.

COURT: Don't tell me that now if any blow landed on you you can't even remember whether you were hurt or not or whether any blow landed on you or not.

MR. JACKSON-LIPKIN: 354, my Lord.

COURT: You come here with an affirmation of promising to tell the truth, the whole truth and nothing but the truth. I don't care whose side you are on, if you take sides at all, but tell the truth. Don't try to hide behind the shield: "I can't remember" because it's obvious that you must have remembered. 10

A. I really can't remember.

Q. Mr. WONG, I'm just going to have something read out to you again. It's the top of 354. You were giving evidence of the three or four blows that you struck the driver on the chest with force, and you said this: "When I struck those blows I was very near to the driver. . . ."

MR. JACKSON-LIPKIN: Right at the top, Mr. Gray.

A. Yes.

Q. "No blows landed on my person." 20

A. Yes.

Q. Was that true?

A. Yes.

Q. You remember now?

A. Yes.

Q. You told the police the same thing on the morning of the 10th of January, didn't you? "I am not assaulted by people. I don't have injury".

A. Correct.

Q. Can you remember now? 30

A. Yes.

Q. In the last thirty seconds you have suddenly remembered?

A. No.

Q. Mr. WONG, I'm obliged to ask you this question. Do you realise this is a trial of a man for murder?

A. Yes.

Q. Well, be a little more careful. In order to effect with force the punches you're talking about and not be touched yourself by the driver's arms or legs, you must have been weaving around like a boxer, must you not? 40

A. At that time I only thought of fighting.

Q. Weaving in and out.

A. Yes.

Q. Turning to the left and to the right.

A. Yes.

Q. Backwards and forwards.

A. Yes.

Q. That's what you were all doing, wasn't it?
A. I did not notice the others.
Q. LEE wasn't injured, was he?
A. He did not tell me if he was injured or not.
Q. What did you mean you "didn't notice the others"? There were three of you punching up one man.
A. At that time I was concentrating on the fight and therefore I did not look at what the others were doing.
10 Q. I see. Like an experienced fighter you were concentrating on being hit in such a way that you would not be hit yourself. Oh, I'm sorry, I've put it the wrong way round. . . .
A. This is a natural reaction.
Q. . . . concentrating on hitting without being hit yourself.
A. This is a natural reaction.
Q. LEE concentrating the same and LAI concentrating the same.
A. I was fighting at that time and I did not notice how they were fighting.
Q. Mr. WONG, forgive me if I observe that this seems to be singularly experienced conduct on your part for somebody who has never
20 been in a fight in his life before. Was your answer true, that you've never been in a fight before?
A. Correct.
Q. How long did this fight go on from the first punch to the time when somebody shouted "Run"? If you can't remember please say so.
A. I cannot remember.
Q. Would you like to make a guess then? You don't have to if you don't wish to.
A. You mean from the time his leg was touched?
Q. No, from the time the first blow was delivered.
30 A. About one minute.
Q. You must have punched very quickly to get all your blows in in that time.
A. Yes.
Q. I see. Now yesterday Mr. Penlington asked you: during the course of the fight or grapple did you get hold of the driver and you said no.
A. Correct.
Q. When you were asked if you tried to you said no.
A. Right.
40 Q. When asked if you felt around his waist or his person you said no.
A. Yes.
Q. When you were asked whether anyone used their feet to kick you said no.
A. Correct.
Q. When you were asked whether there was any physical contact with the driver at any time, you said: "Not I"?
A. Correct.

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Q. By that did you mean that somebody else had physical contact with the driver but it was not you?

A. I don't know if they had physical contact or not.

Q. And similarly, you would not know if anyone got him round the neck with their forearms.

A. Correct.

Q. Let us go back to the time when the driver was forced back against the railings.

A. Yes.

Q. Was it at that time that you heard the cry from the girl in the 10 car, "Don't fight"?

A. No. When the fight first started, before the girl ever cried out, the driver fell back to the railing.

Q. Very well. Did he manage to get away from the railings?

A. He did not get away from the railing.

Q. When you said earlier: "The driver turned and fell back to the railings" did you mean that he fell chest forward against the railings or with his back to the railing?

A. No, he merely withdrew.

Q. Withdrew or was pulled back? 20

A. He himself withdrew.

Q. To get away from your blows?

A. Yes.

Q. The blows of three of you?

A. Yes.

Q. And he then suddenly found, by feeling railings behind him, he had no further place to retreat to. Is that right?

A. Can you repeat this please?

MR. JACKSON-LIPKIN: My Lord, I think repetition would be comment. It was really more of a comment than a question. 30

COURT: Yes. Well, if the time is convenient I'll rise now and resume in the afternoon.

MR. JACKSON-LIPKIN: If your Lordship please. . . .

COURT: Would it be convenient to stop now?

MR. JACKSON-LIPKIN: It would be convenient, my Lord, but may I invite your Lordship by the strongest possible terms to make sure that this man is incommunicado till half-past two? I don't know what can be done about it, but we can try.

COURT: Yes. WONG Hon-keung, let me warn you that you must not discuss your evidence with anybody at all during the adjournment. Do 40 you understand?

A. Yes, my Lord.

COURT: I will adjourn to two-thirty.

MR. JACKSON-LIPKIN: As you Lordship pleases.

12.00 noon Court adjourns

2.38 p.m. Court resumes

Accused present. Appearances as before. Jury present.

MR. JACKSON-LIPKIN: My Lord, before Mr. Wong comes back, I did indicate to your Lordship that there was something that we had all forgotten to ask Mr. CHEUNG Him. The Crown has very kindly made him available. My Lord, he has been dragged from his place of work at very short notice; he will only be required for a minute, two minutes: may he be interposed?

COURT: Yes.

10 MR. JACKSON-LIPKIN: My Lord, I am very much obliged, and I'm sure he is as well. My Lord, CHEUNG Him was the watchman, you may remember, at the Hongkong & Shanghai Bank.

COURT: Yes, he is the fourth witness in this case.

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Further XXN. by Mr. Jackson-Lipkin :

COURT: Yes.

Q. Mr. Cheung, thank you for coming back, I'm sorry to have troubled you. Mr. Cheung, do you remember giving evidence before the Coroner?

20 A. Yes.

Q. And do you remember giving evidence of when the driver started to argue with a youth standing on the pavement?

A. You mean when the driver went up and spoke to the youth about a matter?

Q. Yes, you are being asked about that.

A. Yes.

Q. Now let me read something, you are recorded as having said something to the Coroner. Mr. Gray, it's at the bottom of page A84. You were talking about the youth standing on the pavement with whom

30 the driver was arguing.

A. Yes.

Q. You said this:

"I saw the one standing on the pavement put out his hands in such a way that the palms were facing upwards."

Was that correct?

A. I saw him putting out his hands.

Q. You said to the Coroner, "... in such a way that the palms were facing upwards."

A. Like this. (Witness demonstrates)

40 Q. Was it. . . .

COURT: Can you get down, please? (Witness demonstrates) Yes.

Q. That answer was correct then?

A. Yes.

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Q. Can you remember the details of how he held his fingers on his hands?

A. I only saw him doing that, I did not notice if there was any folding of the fingers.

Q. Thank you.

COURT: "Did not notice . . .?"

MR. JACKSON-LIPKIN: ". . . if there was any folding of the fingers."

Q. You can't remember whether he folded a finger or more than one finger or no fingers?

A. Correct.

10

Further REXN. by Mr. Penlington :

Q. Yes, Mr. Cheung, just one question. What did that gesture mean or indicate to you at that time? What did you think he was meaning by that gesture?

A. To my mind I thought that he was arguing with him.

Q. He was arguing?

A. Arguing, yes.

Q. What did this gesture mean?

A. For example, in a certain matter I said if you did it and you said you didn't do it so you said 'no' like this.

20

Q. You are saying it was a form of denial?

A. Yes.

Q. Yes, thank you.

MR. JACKSON-LIPKIN: With respect, I think the witness said that was the impression he had in his mind of what he thought.

MR. PENLINGTON: Oh, yes.

COURT: Yes. All right, you may step down. WONG Hon-keung.

MR. PENLINGTON: Might this witness be excused?

COURT: Yes.

P.W.13. WONG Hon-keung—O.F.A.

30

XXN. by Mr. Jackson-Lipkin continues :

Q. Mr. Wong, yesterday you described a movement by the driver whereby he put his hand behind or just above his right hip. I think you described it as 'back of right waist.'

A. Yes, yes.

Q. You have also said that you know of your own knowledge—you said this to Mr. Penlington—that plain clothes policemen carry guns.

A. Yes.

Q. Did you think his putting his hand on the back of his right waist he was going to draw a gun?

40

COURT: At that time.

A. Yes.

Q. So you thought, did you, that police officers carried guns on their hips?

A. I don't know where they put their guns.

Q. That is the question I asked you: did you think that that's where a policeman carried his gun?

A. Yes.

Q. Did you then think that he must be a policeman?

A. No.

Q. Because it was immediately after that that you started to turn away, wasn't it?

A. No.

10 Q. You didn't know that this policeman carried his gun on the left side of his abdomen, did you?

A. I did not.

Q. That's why you couldn't find it when you were fumbling around his waistband, wasn't it?

A. In fact, we did not fumble at his waistband.

Q. Now, you say that as he reached his hand at his right waist he said that he would shoot you all dead?

A. Yes.

Q. And as those words were uttered you started turning away. Is that your story?

20 A. No. When I turned round to run I heard this.

Q. You see, in your answer this morning to Mr. Penlington you said—he asked you, “When were the words used?” You said, “When I was turning.”

A. Yes.

Q. Which is correct? As you were turning you heard the words or when you were running away?

A. As I was turning.

Q. And very shortly after that you heard a bang?

A. Yes.

30 Q. According to one of the eye-witnesses you were something about 5 yards away—5 feet away. Would that be about right?

A. I don't know.

Q. Mr. Wong, you mean you don't know or at this stage you can no longer remember?

A. I don't know.

Q. Would you think that that was about right? The witness said that it was about from the edge of the witness-stand, from the box, to the shorthand writer's notebook.

A. Do you mean when I was running?

40 COURT: No, at the time when you heard the bang and you were roughly about 5 feet away from the accused. Do you agree or disagree?

A. I don't know how far away I was from him.

Q. This was in Sai Yeung Choi Street, wasn't it?

A. Yes.

Q. And as you turned the corner left into Argyle Street. . . .

A. Yes.

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Q. . . . LAI Hon-shing was then behind you?

A. Yes.

Q. Three to four feet behind you, about?

A. Yes.

Q. If it is not too difficult try and answer the next question with a 'yes' or 'no'. Can you now remember in which direction Lai was facing as you looked at him from the corner of Sai Yeung Choi Street and Argyle Street? The question is, can you now remember?

A. Yes.

Q. Which way was he facing?

10

A. Facing Nathan Road.

Q. Mr. Wong, you have just told the jury as you turned left from Sai Yeung Choi Street into Nathan Road you looked round and saw LAI Hon-shing behind you. Just watch what I am doing, please. I am in Sai Yeung Choi Street. I turn left into Nathan Road. I look back and see LAI Hon-shing—into Argyle Street. I will do it again. It am in Sai Yeung Choi Street. I turn into Argyle Street. That is Nathan Road down there. I look round and there is LAI Hon-shing. He must still be in Sai Yeung Choi Street, mustn't he?

A. I mean after I had turned into Argyle Street from Sai Yeung Choi Street I turned back and I saw LAI Hon-shing running behind me.

COURT: You mean you looked back from Argyle Street?

A. Yes, my Lord.

COURT: And how far were you in Argyle Street? Was it at right at the corner of Sai Yeung Choi Street or right in argyle Street? Where?

A. I was somewhere inside Argyle Street.

COURT: When you looked back?

A. Yes.

Q. Mr. Wong, either you are telling us an untruth or your memory has failed you again. . . .

30

MR. JACKSON-LIPKIN: Marginal note 357, my Lord.

Q. . . . because you told the Coroner:

"As soon as I turned into Argyle Street I looked round. . . ."

Was that true when you said it to the Coroner?

A. Yes.

Q. And is it correct that you can no longer remember where it was you were when you turned round and saw LAI Hon-shing? Is it true that you can no longer remember where you were when you turned round and saw LAI Hon-shing?

A. I remember.

40

Q. You remember that he was 3 to 4 feet behind you? That would still leave him in Sai Yeung Choi Street, wouldn't it?

A. He was at the intersection of Sai Yeung Choi Street and Argyle Street with his face towards Nathan Road.

A. So you would all be facing into Nathan Road, in fact, because you were so near the corner, is that right? Is that right?

A. Yes.

MR. JACKSON-LIPKIN: My Lord, I apprehend that must be right. My learned friend's learned junior has pointed out to me on 3C the extent of that railing. It comes almost up to the corner line of the building, if not right up to it, and therefore at the railing if anyone was facing westwards they would all be facing Nathan Road.

COURT: Yes, I see.

MR. JACKSON-LIPKIN: My Lord, so that is my mistake.

Q. Now you say that you ran along the pavement of Argyle Street?

A. Yes.

10 Q. Are you able to tell my Lord and the jury whether LAI Hon-shing ran on the pavement as well, or do you not know?

A. He was running along the pavement.

COURT: Along the pavement or on the pavement?

A. On the pavement.

Q. And having heard that bang you ran all the way down Argyle Street to the junction with Nathan Road, is that right?

A. It was when I was almost reaching the corner of Nathan Road that I heard it.

Q. That you heard what?

20 A. Bang.

Q. Have you not just told us that the words were used as you were turning and very shortly after that you heard 'bang'? Isn't that right? You told us about half a minute ago.

A. Yes.

Q. And at that time you say that LAI Hon-shing was about three to four feet behind you, and you also said that you couldn't remember how far you were from the driver.

A. Correct.

Q. That's quite correct, is it?

30 A. Yes.

Q. You told the police that you heard four shots fired, didn't you?

A. Yes.

Q. You said the first one you heard was when you were running southwards along Nathan Road, didn't you?

A. You mean the first shot?

Q. Yes.

40 "When I was running along Nathan Road southwards I turned round to have a look. I saw the driver was chasing after me. I therefore kept on running forwards. At that time I heard the sound of a gunshot."

A. I did not see the driver behind me.

Q. I am not suggesting for a moment that you did. I am not suggesting for a moment that you did. I am merely reading to you what you told the police.

A. I did not say this to the police.

MR. JACKSON-LIPKIN: My Lord, may he see paragraph 6 of his first statement to the police made the following morning at half-past one?

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COURT: Yes. The original is in Chinese, is it?

MR. JACKSON-LIPKIN: Yes, my Lord, Paragraph 6, please, Mr. Gray. Don't let him see my marks because I have marked the gunshots 1, 2, 3 and 4.

INTERPRETER: I will read the Chinese to him.

MR. JACKSON-LIPKIN: Yes, please. Here is an unmarked one, Mr. Gray. My Lord, they should be before your Lordship because all three statements were put in evidence in the court below because there was some dispute about foul language. Paragraph 6, page 2, up at the top.

COURT: Is this an exhibit?

MR. JACKSON-LIPKIN: My Lord, they were put in evidence. Whether they were given exhibit numbers or not I don't know. Mr. Wong appears to have a list.

COURT: It is not in the list of exhibits anyway. Could I have that?

MR. JACKSON-LIPKIN: Paragraph 6 of the first statement, my Lord.

COURT: (To Interpreter) Would you also read the English for the purposes of the record.

INTERPRETER:

"When I was running along Nathan Road southwards I turned round to have a look. I saw that the driver was chasing after me." 20

MR. JACKSON-LIPKIN: Read the next two sentences, please, Mr. Gray.

INTERPRETER:

"I therefore kept on running forward. At that time I heard the sound of a gunshot."

MR. JACKSON-LIPKIN: Number one.

Q. "When I arrived outside the shop of Crocodile shirts in Nathan Road I heard the second sound of a gun."

Read it to him, please.

"When I arrived outside the shop of King of Kings I heard the third sound of gunshot. After several seconds I heard the fourth sound of gunshot. I therefore turned into Shangtung Street." 30

There is not a mention there of any sound of gunshot in Argyle Street, is there?

A. In truth I never told the police officer that I saw the driver.

MR. JACKSON-LIPKIN: My Lord, I am told that Shangtung Street is the next one to the south of Nelson Street to the bottom of 1A.

COURT: Yes.

Q. Whose is the signature at the bottom of the page from which Mr. Gray has been reading? 40

A. My signature.

Q. Thank you. Let me just deal with your running, from Shangtung Street—you turned left into Shangtung Street, did you?

A. Yes.

Q. Running flat out?

A. Yes.

Q. All the way along Shangtung Street till you reached Fa Yuen Street?

A. Yes.

Q. And then what, turned right into Fa Yuen Street and went home?

A. Yes.

Q. Running all the way?

A. Yes.

10 Q. And now would you please tell my Lord and the jury first of all, did you hear any gunshots or sounds that could be gunshots?

A. You mean when I was running?

Q. At any time did you hear any gunshots?

A. I heard several sounds of 'bang'.

Q. How many?

A. I was running at the time and I was frightened. I heard three to four sounds.

Q. When you got back to your home you told Lee that you had heard four, didn't you?

A. Yes.

20 Q. When you got to the police station that following morning very early you told them you had heard four.

A. Yes.

Q. The truth is, is it not, that you heard two as you were starting to run down Nathan Road? I'm sorry, I have done it again. You heard two as you were starting to run into Argyle Street and one in Nathan Road, isn't that right? (Pause) Isn't that right?

A. No, not right.

Q. Then how many did you heard?

A. Four.

30 Q. All four in Nathan Road as you told the police?

A. No.

Q. Would it surprise you to know that only three shots were fired?

A. At that time I was very frightened, running at full speed, I couldn't be certain how many shots were fired, I could only estimate that there were about four.

Q. Will you accept it from me that there were only three?

A. Yes.

Q. Thank you. Now you have told us very shortly after you turned to commence your run you heard a bang. Looking back on it do you

40 consider that was the first gunshot?

A. Yes.

Q. The second one was very quickly after the first, wasn't it? Wasn't it?

A. Yes.

Q. But there was a very distinct gap of time between that and the third, was there not? (Pause) If you can't remember say so.

A. I can't remember.

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- Q. Did you hear any gunshots as you were running down Nathan Road?
- A. Yes.
- Q. Now, let me deal with what happened when you got home. Just tell us about your home, please. What's on the ground floor?
- A. There was a shop on the ground floor.
- Q. A?
- A. A shop.
- Q. Whose?
- A. My father's shop. **10**
- Q. Your father's garment factory wherein you are a button-hole maker?
- A. Yes.
- Q. And when you talked earlier about your father being at his shop working while you were at home with the television you were talking about father being on the ground floor and you being in the cockloft?
- A. Yes.
- Q. A cockloft is a sort of platform, as it were, between the floor of the ground floor and the ceiling of the ground floor?
- A. No, no. **20**
- Q. What do you mean by a cockloft? Is it what is normally called a mezzanine floor? What do you mean by a cockloft if it is not a platform between the ground of the ground floor and the ceiling of the ground floor?
- A. That is not what I mean by a cockloft.
- Q. Will you please tell us?
- A. The address of my home is—there is the word 'cockloft' mentioned.
- COURT: Never mind how it was mentioned, what was the situation? Where was the situation of that cockloft?
- A. Above the shop. **30**
- Q. And the shop is on the ground floor?
- A. Yes.
- COURT: Before you get to the cockloft do you have to go through the shop on the ground floor?
- A. No.
- COURT: Was there a separate entrance and separate stairs?
- A. Yes, my Lord.
- COURT: It was completely separated from the ground floor?
- A. There is a window through which one could get down to the shop.
- Q. Do you mean a trap door? **40**
- A. No.
- Q. There is direct access anyway from the shop to the cockloft?
- A. Yes.
- Q. So if you are in the cockloft with grandma and sister and you want to call your father, you put your head through the hole in the floor and say, "Father, please come up?"
- A. Yes.

Q. Well, what was all this story about—you told the jury before about having to wait for your father to come home from work?

A. I did not mean that I had to wait for my father to return from work. What I meant was that before I met him I had no intentions of speaking to him about this matter.

Q. You wanted to speak to Lee first, didn't you?

A. Yes.

Q. And when you got back Lee was in the cockloft, was he?

A. Yes.

10 Q. Did you get to the cockloft by going through father's shop on the ground floor?

A. No.

Q. You went through some other entrance?

A. There was another staircase leading to it.

Q. Is that the staircase which goes on upwards to the 1st floor?

A. Yes.

Q. When you got there your grandmother and sister were watching the television?

A. Yes.

20 Q. And you took Wong to one side and spoke to him quietly?

COURT: Wong took Lee.

MR. JACKSON-LIPKIN: I'm sorry, your Lordship is quite right.

Q. You took Lee to one side and spoke to him quietly?

A. I did not take him to one side.

Q. You spoke to him quietly, did you not, so that grandmother and sister could not hear?

A. Yes.

Q. You spoke to him quietly so that grandma couldn't hear about the fight?

30 A. Correct.

Q. And you said to him, "The person just now might be a police officer."

A. Yes.

Q. You said to him that he had fired four shots?

A. Yes.

Q. And the two of you had a discussion about the unhappy events?

A. Yes.

Q. And Lai didn't turn up?

A. Correct.

40 Q. And time went by and Lai still did not turn up?

A. Yes.

Q. Why didn't you 'phone Lai's family, because it is possible he might have gone there?

A. Because at that time he had just moved to stay in Shangtung Street. I did not have his telephone number.

Q. I see. Now Shangtung Street was quite near, wasn't it?

A. Yes.

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Q. Didn't you and Lee say, "Let's wander round to Hon-shing's house and see if he is in?"

A. Yes.

Q. You did say that?

A. Yes.

Q. Well, why didn't you go?

A. Because normally LAI Hon-shing would come to my home after he had gone out.

Q. I see. Did it occur to you that you ought to go and visit Hon-shing's house in view of the fact that you had heard gunshots? **10**

A. No.

Q. This was what, about a quarter to ten, ten to ten, was it?

A. Do you mean by the time I ran home?

Q. Yes.

A. I don't know what time it was because I did not have any clock.

Q. Was it about—I asked you was it about that time?

A. About that time.

Q. Did it occur to you to take Mr. Lee and go to the Mayfair Cinema to see if Hon-shing had gone there? **20**

A. No.

Q. The reason why you have said no, probably truthfully, to the last few questions is that because it was appermost in your mind to discuss the fight with Lee, isn't that right?

A. No.

Q. That's why you stayed having a discussion with Lee instead of going to look for Lai.

A. No.

Q. Would you like to volunteer any other reason?

A. Because after I had returned home from the fight I was very frightened and my mind was very confused. **30**

Q. Confused about what? Was it about what you ought to say if you were questioned?

A. No.

Q. Was it because you thought that the incident was so trivial you ought to forget about it?

A. No.

Q. When the police asked you why you didn't make a report immediately you said because you thought it was a trifling matter. Did you think it was a trifling matter at the time that four shots had been fired and Lai was missing? **40**

COURT: Did you tell the police so, it was a trifling matter?

A. I did not say that it was a trifling matter but it didn't occur to me that it would become such a serious matter.

Q. There is one final matter I want to ask you about.

Ex. 3C.

Ex. 2E.

MR. JACKSON-LIPKIN: Could he see 3C, my Lord. Something he has said I don't quite understand. Could he see 3C, please, and 2E?

Q. When you said that the BMW was outside—I'm sorry, Mr. Gray, 3C and 2E. When you said that the car was outside the rear entrance of the Hongkong & Shanghai Bank in 3C were you talking about the iron shuttered doorway in 2E?

A. Yes.

COURT: Any re-examination?

REXN. by Mr. Penlington :

Q. Mr. Wong, the grazing or the bumping of Lee by the car, did you actually see this happen?

10 A. Yes, I did.

Q. Did you hear anything?

A. No, I did not.

Q. What did you actually see?

A. I saw the vehicle touch this part of his leg.

Q. Let's just get this straight: you were on his left or right?

A. I was on his left.

Q. You were on his left. Now, you have told us that at one stage during the fight the driver was up against the railing?

A. Yes.

20 Q. With his back to the railing?

A. Yes.

Q. Did he try to get through the railing?

A. No.

Q. How long was he in that position?

A. From the time the fight started he retreated to the railing and he was in that position until the fight broke up.

Q. Now, you have told us that "We were weaving in and out, turning to right and left, going backwards and forwards"?

A. Yes.

30 Q. Would you please explain.

A. What I meant was when I myself was fighting I was moving right and left and moving forwards and backwards; I was not talking about the driver.

Q. Was he against the railing when you say he put his hand on his right hip and you thought he was going to draw a revolver?

A. He was slightly at an angle.

Q. How far away from the back of the car was he?

A. I can't remember.

Q. Yes, thank you.

40 COURT: Yes, Mr. Foreman?

MR. FOREMAN: Your lordship, we have two questions.

COURT: Yes.

MR. FOREMAN: First, can the witness please give some indication of how far along the railing this—that is how far from the corner this fight took place.

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COURT: How far from the corner of Argyle Street and Sai Yeung Choi Street?

MR. FOREMAN: Yes, how far along the railing. . . .

COURT: . . . As indicated in Exhibit 3C?

MR. FOREMAN: That is convenient, yes. And the second question is: did the driver have his jacket buttoned or unbuttoned?

COURT: Now, first of all, give him a blank 3C. Mr. Penlington, do you think you can furnish another copy of 3C which is not marked? If it is not possible, we can borrow one copy from the jury, a clean one.

MR. PENLINGTON: I am afraid mine is marked. 10

COURT: I want one that is not marked.

MR. FOREMAN: Your lordship, here's one that is not marked.

COURT: Thank you. Now, Mr. Wong, look at this photograph 3C. Do you recognise this as the junction between Argyle Street and Sai Yeung Choi Street?

A. Yes.

COURT: Showing the corner as well as the rear entrance of the old Hongkong Bank building?

A. Yes.

COURT: You said the fight took place in that vicinity? 20

A. Yes.

COURT: With the driver's back slightly at an angle backing towards the railing?

A. Yes.

COURT: Do you see the railing there?

A. Yes, I do.

COURT: Up to the corner of the street with an "Entry Only" sign. Now, can you indicate which part of the railing or how far along the railing down Sai Yeung Choi Street where the fight took place? I am not asking you to put a dot there because obviously it would be wrong, but mark it with a big circle indicating the area. Of course you said you were moving about—just to show how far down the railing that fight took place. 30

A. (Witness marks on plan)

COURT: Further, you said you saw the driver wearing a jacket.

A. Yes.

COURT: Did you notice that during the fight was his jacket buttoned up or was it unbuttoned?

A. I did not notice.

COURT: You did not notice, yes. Yes, Mr. Penlington?

MR. PENLINGTON: Yes, I would like to call Dr. Yip.

P.W.14—YIP Chi-pang—Affirmed.

XN. by Mr. Penlington:

Q. Yes, Dr. Yip, you are a forensic pathologist attached to the Police Laboratory?

A. Yes, my Lord.

Q. And you have the degrees of Bachelor of Medicine and Bachelor of Surgery, Hong Kong, and DMJ. What is that?

A. Diploma in Medical Jurisprudence.

10 Q. Did you perform a post-mortem examination on the body of Lai Hon-shing on the 10th January of this year?

A. Yes, I did.

Q. Did you make notes of the time and subsequently prepared a post-mortem report?

A. Yes, I did.

Q. We are not quite sure what has happened to the actual original, but this is a . . . do you have the actual original?

MR. JACKSON-LIPKIN: It should be C5, my Lord. This is a copy but it is a signed copy.

20 Q. Is this a signed copy of your post-mortem report?

A. Yes.

Q. Would you read it out?

A. It was on the dead body of a moderately built Chinese male, 5 ft. 8 ins. tall, belonging to blood group B. It was pale looking and there was frothy blood in the mouth and nostrils. There were two pairs of bullet wounds, each about $\frac{3}{8}$ of an inch in diameter. The first pair penetrated through the muscles of the right armpit. The entry wound was at the back of the right arm near the armpit about 53 in. from the heel and the exit wound was on the front of the right armit wall, about 54 in. from the heels and $6\frac{1}{2}$ in. from the midline. No large blood vessels were injured by this bullet wound. The other pair penetrated the left chest. The entry wound was on the left upper back, $52\frac{1}{2}$ in. from the heels and 4 in. from the midline, whereas the exit wound was on the left upper chest, 54 in. from the heels and 1 in. left of the midline. The bullet track penetrated the shoulder blade, the left sixth rib space partly fracturing the sixth rib through both the lower and the upper lobe of the left lung, and then penetrated the left first rib space and through the left edge of the breast bone. The left chest cavity contained about three pints of blood and the left lung had collapsed. Frothy blood was present in the
40 airway and the lower gullet. The stomach contained a meal of rice with altered blood. No other injury, external or internal, was found and all the internal organs were healthy although they were pale and the cause of death was given as bullet wound through the left lung.

Q. The bullet wound causing a . . .

COURT: . . . This is Exhibit 5, is it?

MR. PENLINGTON: Exhibit 5.

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Ex. 5.

COURT: The jury—have they been given a copy?

MR. PENLINGTON: I have copies, my Lord, but I am afraid I haven't got them with me but I will certainly arrange for copies to be given to them later.

Q. Is it also true to say that the result of your examination—that the track of the two bullets was slightly upwards from the back?

A. With respect to the dead body at upright position the track was slightly upwards but the posture of the deceased when the shots were received had a bearing on the actual line of fire.

Q. Would it be true to say that if he was leaning forwards and the shots were fired parallel with the ground, this would account for the angle? 10

A. Yes.

Q. Could you give us some idea, Doctor, how long do you think a man with these injuries would be able to keep on running?

A. Death in this case was entirely due to internal bleeding and bullet wounds of that size I think would take minutes before enough blood was shed to disable the deceased, so I would say he would be able to run for at least a few minutes before he collapsed.

COURT: How much did he have to bend forward or lean forward before the track would not become upwards? The second pair was—the difference between the entry and the exit was—? 20

A. 10 in.

COURT: 10 in.?

A. That would be. . . .

COURT: . . . A slight bend over?

A. Yes, a very slight bend.

Q. Would you be able to say which of the two wounds was received first?

A. No, I cannot but I can say that both of them were received before he died, that is the first one did not kill him. . . . I'm sorry, I should say the bullet wound was received before the first hit him, that is assuming. . . . I'm sorry, my Lord, the second pair of bullet wound was the actual cause of death. He could have received the first pair which I've described before or after the second pair which I've described, but when he received the first pair of bullet wound which I've described he was still alive. 30

COURT: Well, in other words, I think you can say that he received both pairs of wounds before he died?

A. Yes. 40

COURT: Because you said that he could have run for a few minutes?

A. Yes.

Q. Doctor, the tracks of the two bullet appear to converge?

A. Yes.

Q. If a man was running away and was fired at from behind, have you any explanation as to how the two tracks could converge into one?

A. If a person was running he would be moving this way and the movement of the body around a vertical axis could account for the apparent convergence.

Q. Could you give us any idea at all as a pathologist of the distance from which these shots were fired, the distance between the gun and the deceased?

A. I can only say that they were not contact wounds or near discharge, not a contact wound or result of a near discharge, that is within a few inches.

10 MR. PENLINGTON: Thank you.

COURT: Yes?

XXN. by Mr Jackson-Lipkin :

Q. A twisting stationary body would also produce a converging effect of two bullets fired, as my friend said, on a parallel course?

A. Yes.

Q. Whether or not the feet were moving, if the body were moving you would still get that convergence?

MR. PENLINGTON: No re-examination, my Lord.

No REXN. by Mr. Penlington

20 MR. PENLINGTON: Might this witness be excused?

COURT: Yes.

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Alistair Malcolm CIMINO

MR. PENLINGTON: Yes, I'll take Mr. Cimino, the Ballistics Officer.

P.W.15—Alistair Malcolm CIMINO—Sworn.

XN. by Mr. Penlington:

Q. Yes, Mr. Cimino. . . .

MR. JACKSON-LIPKIN: My Lord, all this evidence is agreed and my learned friend can take it that he can lead this witness right through if he wishes, if it is necessary.

Q. Yes, Mr. Cimino, you are a Ballistics Officer attached to the Police Headquarters in Arsenal Street?

A. Yes. 10

Q. And you are duly qualified with a Certificate of Science in Chemistry and you are a Member of the Association of Firearms and Tool Mark Examiners?

A. Yes.

Q. On the 9th of January this year at 10.55 did you go to 660 Nathan Road?

A. I did so, sir.

Q. There did you receive a Colt revolver from Police Constable 8954?

A. May I refer to my notes made at the time? 20

COURT: Yes.

A. I received a revolver from Detective Constable 8954.

Q. And is this a 0.38 Colt revolver No. B46474?

A. Yes.

Q. Is this the revolver?

A. This is the revolver.

Q. Is this a standard police revolver issued to CID personnel?

A. This is a standard issue revolver. This model has been issued to uniform or CID personnel.

Q. Did you examine the revolver and find it to be in good working order and that three rounds had been fired and three live rounds were still in it? 30

A. Yes.

Q. Did you later receive also from Constable 9854 a khaki pullover?

A. I did, sir.

Ex. 7. MR. PENLINGTON: Exhibit 7.

COURT: The revolver is Exhibit—?

Ex. 6. MR. PENLINGTON: Exhibit 6.

A. This is the pullover I received.

Q. Did you examine that pullover and did you find there was a bullet entry hole in the back of the garment? 40

A. Yes, there is a bullet entry hole at the back of the right sleeve just up near the shoulder. There is a corresponding exit hole in the front in the upper shoulder area.

Q. Were there two other—one other entry hole and one other exit hole?

A. There is another entry hole in the back—left side of the back a little bit down from the shoulder and an exit hole in the front on the left side of the collar.

Q. Could you just hold it up?

A. In the back there is an entry hole at the back of the sleeve here. It is on the right side of the back and another entry hole at the back here. In the front there is an exit hole here and another one on the neck.

10 Q. Did you examine the two entry holes for signs of powder grains?

A. I did so and I found none,

Q. What conclusion did you come to from—by finding no powder grains?

A. I concluded that a weapon had been fired at a distance greater than 18 in. from the garment.

COURT: I beg your pardon? You were saying no gun powder and you said it was fired at a distance.

A. That's right, sir, I just want to. . . .

(Chinese female wails loudly at back of Court)

20 COURT: If the old lady cannot restrain herself I think it is better that she should leave the court.

MR. PENLINGTON: Yes, my Lord.

COURT: Yes.

A. I concluded that the shots had been fired at a distance greater than 18 in. from the garment.

MR. PENLINGTON: There is also a shirt, my Lord; unless my learned friend thinks it is really of any use I don't think it takes us any further—I don't think it takes the matter any further.

30 COURT: Well, if it doesn't take the matter any further, unless you want particularly, Mr. Eddis—?

MR. EDDIS: No, my Lord, I don't think I really need. . . .

Q. Mr. Cimino, I think on the 13th of January you also received from Constable 9854 a bullet, 0.38 calibre bullet?

A. I did, sir.

Q. Do you produce that? Exhibit 9.

Ex. 9.

COURT: Yes.

A. Yes, this is the bullet I received.

40 Q. And was that as a result of your examination you decided that was fired from the revolver Exhibit 6?

Ex. 6.

A. That is correct.

COURT: You were satisfied that this bullet was fired from Exhibit 6?

A. Yes, from that particular. . . .

COURT: . . . From your test?

A. Yes, from my test.

Q. Now, for a bullet from a revolver such as C6 to penetrate right through a body in the way. . . . I think you have seen the—Have you seen the post-mortem report?

A. I haven't seen it.

Q. Well, anyway, for the bullets to go through the deceased body in the way that they did, can you give us any idea of the distance from the person firing the shot to the person hit?

A. I can't give any indication of distance except to say that the revolver was not very close to the garment and because of the penetration, deep penetration, it was not an exceptionally long way away.

Q. When you say not an exceptionally long way away, what distance would you expect the bullet to stay in the body?

A. This is more depending on where it hits the body, sir, whether it hits a bone or not. 10

COURT: Would it help you if you were to read the post-mortem report as to the track of the bullets going through the body—does that help you?

A. It does not help me much at all. If the range was extreme in the order of it must be half a mile or something like this, a bullet would probably have insufficient energy to penetrate under any circumstances.

Q. But up to, say, 50 yards would you say that it would?

A. A bullet could penetrate at this range, yes.

Q. Now, I understand, Mr. Cimino, that a search for the bullets was made in the area, a fairly thorough search was made in the area for the two bullets that made the holes you have seen, but they were not found in the area. Presumably they must have gone on for some distance? 20

A. This is quite possible.

Q. It is very hard to predict the bullet's flight once it has penetrated something. It could have bounced off the surface into the roadway and one other factor I have been advancing, where people have tried to souvenir items like this.

Q. So you wouldn't come to any conclusion?

A. No, sir. 30

MR. PENLINGTON: Yes, thank you, Mr. Cimino.

COURT: Just one question before cross-examination, Mr. Cimino.

MR. PENLINGTON: I am sorry, my Lord, there is one other point; my learned friend has just mentioned it to me:

Q. Mr. Cimino, at night time if a gun pointing towards somebody was fired such as this, would you expect to see a flash?

A. You would, sir.

Q. Would this be a fairly clear flash?

A. It would.

Q. If the weapon was pointing away from a person would he again see a flash? 40

A. It is quite possible. From the side of the revolver there would be two places: one in front of the cylinder and one at the end of the muzzle.

Q. Yes, one other point: the bullet that you examined did it appear to have ricocheted off a hard surface?

A. It had, sir.

MR. PENLINGTON: Yes, thank you.

COURT: Yes, just one question: this is a 0.38 revolver?

A. Yes.

COURT: When it hits a human being would it cause him to stumble like, say, a .45, I understand, might cause him to stumble?

A. It could cause a person to stumble, yes, particularly if it hit. . . .

COURT: . . . if it is hit at close range. . . . Does the range have anything to do with it?

A. It does.

10 COURT: The closer the more possibility it would cause him to stumble?

A. Yes, sir, energy is at its maximum when a bullet is about 10 ft. out of the muzzle when it stabilizes.

MR. EDDIS: I have no question, my Lord.

COURT: Yes, thank you.

No XXN. by Mr. Eddis

MR. PENLINGTON: Might this witness be excused?

COURT: Yes.

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CIMINO

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XN. by Mr. Penlington :

Q. Yes, you are Sergeant 1766 of the Royal Hong Kong Police?

A. Yes.

Q. And on the 9th of January this year were you on duty at CID Mongkok?

A. Yes.

Q. At 2145 hours, that is forty-five minutes past eleven p.m., did you receive a report from the duty officer. . . . I'm sorry, past nine rather?

A. Yes.

Q. And as a result did you go with Inspector Curry to the King of Kings Restaurant, Nathan Road?

A. Yes.

Q. Did you find two injured people there?

A. Yes.

Q. One Leung Wai?

A. Yes.

Q. And one Lai Hon-shing?

A. Yes.

Q. You gave certain instructions?

A. Yes.

Q. And did you interview at the scene a police constable, Detective Constable 7211 Au Pui-kuen?

A. Yes, I did.

Q. Did you tell him who you were?

A. Yes.

Q. What did he say to you?

A. He said that he was Detective Constable 7211 Au Pui-kuen attached to Kowloon Headquarters.

Q. Did you ask him what had happened?

A. I did.

Q. What did he say?

A. He said that at that time he was driving a car with his girlfriend. He said that he turned, he drove from Argyle Street into Sai Yeung Choi Street. On the side of Sai Yeung Choi Street he saw three young men, teddy boy young men, standing. He said that when his car was passing the pavement one of the three men tapped at the car, and then he said that after parking his car he alighted from it to ask them why did they tap at his car. At the same time he revealed his identity to them that he was a police detective and then one of the teddy boys, according to him, said, "So what if you are a police detective? Do you think that detectives are all high and mighty?" Then the person who said "Do you think that detectives are high and mighty", that very same person rushed up to him and grabbed him round his neck. Then the other two started to hit him. One of the two persons assaulting him put his hand over his waist in order to snatch his revolver. At that time he tried his best to struggle and

then he himself pulled out his revolver from this part. (Witness indicates) The three youths seeing that he had pulled out his revolver started to run. Then he fired two shots at one of the three. After firing—after he had fired the shots that person continued to run and he continued to chase. When he got to Nathan Road he turned to the left, that is to say, that person whom he was chasing turned to the left towards Nelson Street in the direction of Tsimshatsui and then he outside the—he saw the young man outside No. 656 Nathan Road pause and turn round, then he fired the third shot.

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- 10 Q. You saw him pause and turn?
A. Turned round.
Q. Turned round and he then fired the third shot. Did you ask him whether these three boys were armed?
A. I did.
Q. What did he say?
A. He said "No".
Q. Did you notice whether he had any injuries, apparent injuries?
A. Yes, there were some cuts at the corner of his lip and some bloodstains on his face.
- 20 Q. Did you notice whether his clothing was damaged in any way?
A. No, I did not notice there was any damage but it appeared to be very crumpled.
Q. What sort of clothing was he wearing?
A. I can't remember now.
Q. Did you organise a search in the Argyle/Sai Yeung Choi Street area for expended bullets?
A. Yes?
Q. Did this search go on till about half past two in the morning of the 10th?
- 30 A. Yes.
Q. Did you find any?
A. No.
Q. As a member of the CID, Sergeant, can you tell us are CID officers permitted to carry guns when they are off duty?
A. They are permitted to, yes, in the CID.
Q. And the same restrictions and rules relating to CID officers, are they subject to the same rules and restrictions as ordinary uniformed officers?
A. The same.
- 40 Q. On the evening in question did you take the revolver that Constable 7211 had and handed it over to Constable 8954?
A. Yes.
Q. How long have you been in the Police Force?
A. Thirty-one years.
Q. Constable, if you saw anybody gesturing towards you with his hands out-stretched like that with one thumb folded, would this have any significance to you?

A. It is very difficult to say.

Q. Well, has it got any special meaning to you—if you saw somebody in the street, you were approaching somebody and they held their hands up like that with one thumb folded, thumb up like that, one thumb folded, would that have any special significance to you as a police officer?

A. I can't think of any.

Q. You can't. The constable that you saw, Constable 7211, on that evening is he present in Court?

A. Yes.

Q. Can you point him out, please?

10

A. This one.

Q. The accused?

A. Yes, this one.

MR. PENLINGTON: Yes, thank you.

COURT: Yes, Mr. Eddis?

XXN. by Mr. Eddis:

Q. Sergeant, in telling us today what Mr. Au told you in January you have had him describe to you that his car was tapped, the word "tapped" came out. Did he indicate either by word or some other method of indicating to you whether that was a loud tap or a gentle tap on the car? 20

A. He said that his car was hit with much force.

Q. Hit with much force. Did he tell you once—that it happened once or did it happen more than once?

A. He did not say.

Q. All right. Now, I have had you recorded as telling us that "According to Au one of the two put his hand over his waist." Did he indicate to you, can you remember today, which part of his waist, he said, that one of these two youths put his hand on?

A. No.

Q. He merely said it without indicating which part of his body was touched? 30

A. Correct.

MR. EDDIS: Thank you. My Lord, I have no further question.

COURT: Any re-examination?

MR. PENLINGTON: No re-examination, my Lord. Might this witness be excused?

COURT: Yes.

MR. PENLINGTON: My Lord, counsel have agreed on a further statement in respect of Madam CHAN Po-lin who is the wife of the witness POON Leung and who was with her husband. She just confirms what he has said. It is not in dispute:

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of Madam
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*"In the High Court of Hong Kong
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Pursuant to section 65C of the Criminal Procedure Ordinance it is hereby agreed between the Crown and the accused that:

- 10 1. Madam CHAN Po-lin was with her husband Poon Leung in Nathan Road on the 9th of January 1976 at about 9.30 p.m. A man running south in Nathan Road bumped into Poon Leung and ran on. Behind him were two after men, one carrying a revolver. They were chase together. The after man who was being chased by the man with a revolver turned round as if to hit the man chasing him. At that moment Madam Chan heard a bang and saw some sparks. The pedestrians ran away in all directions. Madam Chan and her husband went home as she was frightened."

20 My Lord, Detective Inspector Robson I have indicated that I would make him available—tender him if you would require him. Counsel for the defence have indicated to me that they do not require him if he is so tendered. I do not intend to call DC. 13136; he seems to add nothing. The other witnesses have been agreed. I am afraid, therefore, my Lord, it only remains—the only witness outstanding is Mr. KWOK Tim-choy.

COURT: Yes.

MR. PENLINGTON: Further appeals were made last night and this morning through television and newspapers and I very much regret to say he has not appeared.

COURT: So you are not in a position to call him?

30 MR. PENLINGTON: I am not therefore in a position to call him. I have, my Lord, his statement, a certified translation, and, of course, the evidence he gave at the Inquest is also available. I have given this matter, and my friend has given this matter, considerable consideration. My own view is that his evidence is so confused and contradictory that if all this evidence was put before the jury it really would take us no further. However, if it is your lordship's view that it should be done I am quite prepared to do so. Perhaps Mr. Jackson-Lipkin and I could confer further about this this evening and inform you tomorrow morning, but that is the view I have taken: it is so contradictory and apparently so confused that
40 it really does not take the matter any further. Subject to that, my Lord, that is the case for the Crown.

COURT: Mr. Eddis, I understand that Mr. Jackson-Lipkin would like to address me tomorrow morning?

MR. EDDIS: On a matter of law.

COURT: On a matter of law in the absence of the jury.

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MR. EDDIS: As I understand.

COURT: So I can safely ask the jury to come back on Monday morning at ten o'clock and we adjourn this case until ten o'clock tomorrow morning in the absence of the jury. Mr. Jackson-Lipkin will address the Court in the absence of the jury and then the trial will resume again with the jury on Monday morning.

MR. EDDIS: I will inform Mr. Jackson-Lipkin. I am much obliged, my Lord.

COURT: Well, yes, members of the jury, would you please come back at ten o'clock on Monday while I will continue this case in your **10** absence tomorrow.

*4.40 p.m. Court adjourns
24th September, 1976*

25th September, 1976.
10.10 a.m. Court resumes.

Accused present. Appearances as before. JURY ABSENT.

MR. JACKSON-LIPKIN: My Lord, before I address you, may I be permitted to say how very grateful I am, and I am sure Mr. Au is, for your Lordship's great generosity in sitting on a day that ought never to be sitting in court, that is Saturday.

COURT: We do that from time to time.

MR. JACKSON-LIPKIN: My Lord, I am most grateful. Also, I think
10 that I should say because before we saw you in chambers, there is no record of it, I should say this, the reason why your Lordship is accommodating me in this way is that my brief from the Director of Legal Aid is restricted to this week, and I am not instructed to appear next week, and therefore, today is the only day, as the case has gone so slowly, on which I can address you. My Lord, I have been asked to use my best endeavour to come back for the final speech if I can, and if I can I will be reinstructed to do that. My Lord, it is very singular state of affairs if I were to suggest it would be very wrong indeed, in fact I would never dream of suggesting it, but these are the terms put to me by letter to
20 London by the Director and I have accepted the brief on those terms.

My Lord, perhaps you will allow my learned friend Mr. Eddis to make a short explanation to the jury next week, otherwise they may think I have abandoned him.

COURT: Yes.

MR. JACKSON-LIPKIN: My Lord, I haven't actually ascertained yet what Mr. Penlington's attitude will be on my submission that murder ought not to be left to the jury. I know, of course, what his submission will be on leading manslaughter to the jury, but whether frankly he has been able to reconcile his position as a barrister and solicitor of New
30 Zealand with his official duties in Hong Kong as D.P.P. is a matter we will hear in due course. That would not be easily reconcilable in this case. My Lord, I have really found the case so difficult for me to form a rational view to put to a judge. I don't know whether your Lordship quite appreciates the insidious effect of (a) the newspapers, (b) the wireless, (c) the television, (d) talk at drinking parties, (e) talk at dinners and (f) chats in chambers. We have both heard and your Lordship has heard opinions biased in favour of the accused, strongly biased in favour of the accused by one section of the society. Your Lordship, I know, has heard and I assume, will have read opinions strongly biased against Au in other
40 sections of society, indeed up to this very moment the reporting of this case in the Chinese press is a matter which would cause dismay to any of your brethren if they have the ability to read it—I am sure you can tell them about it when the case is over.

My Lord, it must be agonizingly difficult for you personally, when your own views on the case, when it was before the Coroner, have been so sidely distributed. It is extremely difficult for you and for me to ask

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you to look at your own case of HUI Kwok-ying which you decided in November last year. It is extremely difficult for your Lordship, and for me to ask you to look at it on my submission today when it has been so widely broadcast during the inquest that you have already expressed the view that it is distinguishable from this case, but of course you haven't heard me on it today, but it does make it difficult when your Lordship's views have already been so widely told.

My Lord, an example of the insidious effect of all this is the effect on Mr. Penlington and me. Now in Mr. Penlington's opening and in something I said, we both referred to the accused as having been stationed in Mongkok. We both corrected it but the significance is this that we both said it. Now he never was and at all times he has been in Kowloon City Headquarters. Mongkok, my Lord, was the invention of an advocate who alleged and tried to prove a cover-up by the police saying that the whole investigation of the case was carried out, as it was, by Mongkok, which was the accused's own Police Station, which it was not. That is an example how insidious all this can be, and that is why it makes it so difficult for me to address you, and I know how agonizingly difficult it must be for you. 10

My Lord, as I said against that background it then becomes painfully difficult for counsel dispassionately to review the evidence and the law relating to it. I shall endeavour to do that shortly, and I mean shortly because a submission of this kind should not be made at any length, but that is what I am going to try to do, and I will assist you best I can, and what I shall try to assist you to do is equally dispassionately to adjudicate only on what we have heard in this trial, not what we have been told in our chambers or at dinners. I will do my best and I do hope your Lordship will appreciate that all of us here in court know how difficult it is going to be. 20

Now, my Lord, in relation to the first count, it is quite clear that the Crown has two duties additional to proving the essential elements of murder. Obviously of course it does without saying they must prove the essential elements, but equally there is a burden on the Crown (1) to disprove self-defence—that is such a trite proposition in law, I needn't support it, my learned friend would be the first to agree with me; the second is for the prosecution to overcome police duty. Now in mentioning police duty, my Lord, may I subdivide it into (a) and (b). (a) falls into two parts: (a)(i) is common-law; (a)(ii) is Section 101A—or rather 101 and 101A of the Criminal Procedure Ordinance, which is page 59 of the Ordinance: 30

“A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders. . . .” 40

You needn't trouble with the last few words, your Lordship will see this does not say you must use reasonable force, because it would be quite impossible to say what reasonable force is, so the draughtsmen have used the phrase 'reasonable in the circumstances; and that my Lord, is a very

important difference, because 'reasonable in the circumstances; includes these facts:

(1) That this is a policeman who, to use your Lordship's own words, would be in dereliction of his duty if he retreated.

(2) A man who was lawfully carrying a gun.

My Lord, that is one of the agreed facts, and,

(3) A man who was hopelessly outnumbered, and as we now know had been forced up against some railings.

10 My Lord, my learned junior said to me the other day—imagine you were in a tube train in a No Smoking compartment and three long-haired youths with singular clothes by perhaps our standards—perhaps not for all of us who appear beside me, but for most of us, got into the carriage and started smoking—one other person with me or your Lordship—you wouldn't go by tube train—perhaps Mr. Eddis—turned round and pointed to the 'No Smoking' sign, and those three young men set on you—my goodness, my Lord, anyone of us would say, 'If only to God I have some weapon with which to defend myself—with my hands and my fists are not enough.' By the time you get to the next tube station, Lord knows what the condition I will be in.

20 I thought when he told me it was quite an apt example because I hate to think what might have happened to this officer if he hadn't in fact been lawfully carrying a gun. Remember WONG yesterday, he managed in the space of a very few seconds to land three powerful blows on AU's chest and one on his arm—that is all he admitted—there may well be more, without being touched in any way himself. He said, in addition, that LEE had landed one blow on AU's face and two or three more blows, and then there was the third man—we don't know how many blows he landed. Even if you are a trained detective it is certainly very terrifying. You wonder how you are going to defend yourself, but those assaults upon—

30 may I take the non-contentious aspect of it, the assaults by WONG were undoubtedly criminal assaults. You see, my Lord, the reason I say that is this—assume that a perverted jury were to say that Mr. AU hit Mr. LEE first—they might say that Mr. LEE's blows in retaliation was not a criminal assault, so may I just leave that on one side—it couldn't happen on the evidence, but just assuming, undoubtedly WONG's assaults were criminal assaults, it was this man's duty to apprehend him for a number of reasons that I will come to in a moment. He had to effect a lawful arrest, using such force as was reasonable in the circumstances when he was being punched and possibly kicked by three young men—one is dead I will

40 say little about him—two of whom are undoubtedly hooligans.

My Lord, you have heard from Exhibit 29 that Mr. AU's condition was serious enough to be given a pain killer and anti-tetanus injections and treated with aquaflavin. My Lord, without his revolver he might now be impotent or still in hospital with broken bones in many parts of his body. It is those matters the Crown has to address itself and disprove both under self-defence and policy duty. My Lord, sufficient for Section 101A.

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May I now turn to my Item (b), which is again subdivided, and may I ask your Lordship to look with me at the Police Force Ordinance, which is Chapter 232. My Lord, furthermore, my learned junior has just reminded me of course this fight stopped when he drew his gun—up until that moment, of course, he did not know whether they were going to produce any weapons against him. They haven't done so far.

May I turn to Section 50, which is on page 23 of the Ordinance. I am sorry, my Lord, start at Section 10:

“The duties of the police force shall be to take lawful measures . . .”
is your Lordship there—page 6 of the ordinance. **10**

COURT: Yes.

MR. JACKSON-LIPKIN: 10a, 10b, 10c, 10d and 10f:

“The duties of the police force shall be to take lawful measures to preserve the public peace.”

This was undoubtedly breach of the public peace,

(b) preventing crimes

WONG's action was undoubtedly a crime, and so was LAI's, and I will submit on the evidence you have heard, so was LEE's.

(c) preventing injury to life.

Certainly his life could have been endangered, but it was preventing injury to his life, **20**

(d) apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists;

Well again forget LEE for moment and take WONG and LAI, and (f), my Lord—I am sorry, it is not (f)—it is (g):

(g) preserving order in public places;

And then if your Lordship would be good enough to turn to Section 50:

“It shall be lawful for any police officer to apprehend any person who may be charged with or whom he may reasonably suspect of being guilty of any offence without any warrant for that purpose. . . . **30**

(2) If any such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such officer or other person may use all means necessary to effect the arrest.”

‘All means necessary’—now my Lord, I am dealing with the law of the Colony of Hong Kong as laid down by the legislature. Whatever your Lordship and the jury decide—either your Lordship alone today or your Lordship with the jury in due course, this man must one day come up before his own officers for disciplinary enquiry under Police General Orders. What the result of those enquiries will be I cannot foretell. It will be wrong for me to comment on them. What I am trying to get at is this. What I have read to you is the law of the Colony. Police General Orders are mere guidance and disciplinary weapons against policemen. Their only significance in this case could be to show the state of mind, because it will be suggested, I apprehend it by the Crown, that he ought to have known the Police General Orders and they would suggest that what he did was in breach of those Orders. It may or may not be, I suggest not, but it cannot in any way dodge what his duties are or what his rights **40**

are at common-law or by legislation, and that is why I read to you those, because those are his duties and his rights. My (a) and my (b) are his duties and his rights. Police General Orders are mere principles of evidence in the Crown's case that there was an intent to kill or an intent to cause grievous bodily harm or that he acted deliberately without lawful excuse—your Lordship appreciates those are mere quotations from various definitions of murder—that is all. They are not the law of the Colony. I hope you won't say I am teaching you things that you know so well, but I think it is my duty to remind you as these have gone in as agreed

10 documents.

My Lord, in relation to the Police General Orders, I would respectfully remind you of Section 65A of the Criminal Procedure Ordinance which is the law not disciplinary practice of the force. Has your Lordship that section? It is on page 27 of the Ordinance.

COURT: Yes, I have.

MR. JACKSON-LIPKIN:

"A court or jury in determining whether a person has committed an offence—

- 20 (a) shall not be bound in law to infer that he intended or foresaw a result of his acts or omissions by reason only of its being a natural and probable consequence of those acts or omissions; but
- (b) shall decide whether he did intend or foresee that result by reference to all the evidence drawing such inferences from the evidence as appear proper in the circumstances."

What that means is, my Lord, you cannot look at the P.G.O.—Police General Orders and say, 'Oh, but that section you should not draw a revolver unless it is this'—you are hit in the face—you are hit on the chest—you are hit on the arm—you are kicked—you are held—you are pushed up against the railings, you say, 'Stop, one minute—let me get

- 30 out my notebook. Now gentlemen, I am a police officer and you know that you should not assault a police officer. You are committing a breach of peace. Now this is the position gentlemen, I shall be obliged to draw a weapon and use it in the execution of my duty, and attempt to arrest you for common assault.' The same problem has arisen in law where some people, on the sinister side in Parliament would suggest that someone suddenly should stop and read from the yellow pamphlet which was in issue before they open fire on people killing woman and children and throwing bombs through a window, which is just as stupid, and that is
- 40 why the draughtsmen of Section 101A said, 'reasonable in the circumstances', but 65A is very important your Lordship, because it will assist you in assessing the weight of the P.G.O.'s. The P.G.O., if you find a breach of the P.G.O.'s it does not oblige you to say as a matter of law, therefore, he is guilty, because of 65 (1)(a) and (1)(b), all it is is a piece of evidence to assist you, under 65 (1)(a) and (1)(b), my Lord, that is why I mentioned it.

My Lord, this man has done things of which he, I hope, must be thoroughly ashamed, and of which I know the Police Force is ashamed,

my Lord, no justification for the language he used or his behaviour, but that cannot influence anybody, and I know if your Lordship allows the first count to go to the jury, you will so direct—cannot be allowed to influence anybody in relation to that. It is a question of, has the Crown rebutted either of those two things—self-defence or police duty and rights?

Now, my Lord, may I take first of all self-defence as shortly as I can. My Lord, I hope that your Lordship will not think it impertinent of me if I do ask you a question. I will understand if your Lordship does not wish to answer, but would it be right for us to take it that you did not regard LEE or WONG as credible witnesses for the purpose of this submission—those two young men. **10**

COURT: Well, whether they are credible or not is not a question for me.

MR. JACKSON-LIPKIN: No, for the purpose of this submission, otherwise it is obviously, if you leave the case to the jury it will be a matter for the jury. . . .

COURT: Yes.

MR. JACKSON-LIPKIN: But do you wish me to address you on the value of their evidence or may I pass on to other matters? **20**

COURT: I think in order to be safe, you may as well comment on their evidence.

MR. JACKSON-LIPKIN: Yes, I will, my Lord.

They have been caught over and over again doing two things which would make it unsafe to let a jury convict on what they said. They changed their stories to suit both the convenience and the implications of the questions being put to them. That is one thing. They say something for the convenience of Mr. Penlington, something else to avoid conveniencing me which would conflict with what they said to Mr. Penlington. When faced with a conflict they would either say a third thing or rely on a misunderstanding. Your Lordship's own tone and words show what view you took of those alleged misunderstandings. **30**

Secondly, they were shown over and over again to have told quite deliberate lies.

In relation to LEE, it is just beyond belief that a girl calling out "Don't fight" could have caused him to do what he did, and although people down near Nathan Road, the lady—I think it was a lady—waiting to cross to the other side of Nathan Road heard the bang behind her, he heard nothing whatever although he was on the street where, on the balance of evidence, the shots were fired. **40**

My Lord, in my submission if a conviction were to be founded on that evidence, any appellate court would quash it, but once that is read in cold print as it will be—I don't know whether your Lordship is going to have a transcript, but if you were—as it can be read it would make a conviction unsupported. Therefore, one has to look outside those two young men to see if the Crown has in fact discharged its task of disproving self-defence.

Now in essence, the only evidence that the Crown has called that could possibly touch on self-defence are Mr. TAM and Sergeant YIP, no one else. They don't go to this issue at all. My Lord, may I review the evidence as it comes from people who actually were there and saw things, but were not taking part. Now there were two people who were actually facing the fight, if you recall. One was a Mr. FONG Bun and one was the watchman, and the totality of their evidence amounts—there are only three points really that I need rely on today—but at the time that the first shot was fired the distance between the accused and WONG was from the

10 edge of the witness box to the shorthand writer's notebook which we estimated at five feet; and the distance of LAI from the constable, and LAI was the one who was wounded and died, was something in the region of two to three feet. Secondly, that the shots were four to five seconds apart. These are indisputable in that this is the evidence of people who were on the spot and looking, not who were some way away and were suddenly shocked into consciousness that something was happening and turned round to look. A very important difference indeed because the impressions and visions of somebody who stopped and turned round to look are governed by the first shot, whereas FONG Bun was actually

20 there looking at the fight and so was the watchman so at the forefront . . . and the third is, on the balance of the evidence, Mr. AU was being held from behind by a forearm around his neck at the time at least when the first shot was fired, but as both shots were fired within four to five seconds, I would suggest to you that the evidence adduced by the Crown can only lead to the conclusion that he was still held then.

Now my Lord, there was further evidence, your Lordship will remember, that the boys—if that is what you want to call them, or youths—were weaving, turning left, turning right, going backwards and forwards. Now your Lordship will recall that's come from a number of

30 witnesses. Therefore, my Lord, and I think you will find this of assistance, the final movement of LAI in turning was no different from the movements that had been made by the three attackers during the fight. Now in hindsight all of us know it was his final movement because he was breaking off, but we only know that in hindsight. At the time to the attacked it was merely another movement such as had been executed by all three throughout the fight. My Lord, forgetting hindsight for a moment and taking ourselves in time, as it were, to the fight, that movement of LAI's might have been something other than a mere doing this

40 (demonstrating) in which case he would catch a bullet there or that (demonstrating) in which case he would catch a bullet there. He might in fact have been going round to the other side of the railings so then they could have this man pulled over the railings: in other words, rendered absolutely powerless by being bent over the railings or pulled in between. That's what the Crown has to disprove: that there was no element of self-defence in this. But when you consider what was happening, when the Crown has called nothing to disprove those elements at all, nothing, except, as I say, TAM and Sergeant YIP. Now TAM—may I deal with TAM first.

Now first of all, my Lord, may I ask you to forget for a moment his oral testimony for reasons that will become clear in a minute, and I want you to remember something that was probably of greater value to a jury and certainly of greater value to a judge in summing up than all his words put together. He showed you what he did, explaining that he executed it in court quicker than he did on the night in question. Remember your Lordship invited him to go down there and you will remember he thrice told you on the night in question this was slower. Now my Lord, if you will forgive me, I will show you and remind you of what he did . . . (demonstrating) . . . and that, he said, was quicker than on the night in question. My Lord, there are young four or five seconds between the two shots, and when he was looking that way the struggle was still that. It wasn't until he turned—he in fact described a re-turn of 135°. He said he was then facing the Gala Theatre and Nathan Road which, as your Lordship knows from the plan, is a physical impossibility. He must have been facing the Shanghai Commercial Bank on Nathan Road, but that's as it may be. Then, having gone back the 135°, people crossed his vision. The really important thing is that he did it slower on the night and even the quicker demonstration that he did and I've just given to you accounts for the four to five seconds between the two first shots which the two facing onlookers said was the gap of time. Now those shots must have been fired at the spot of the struggle at a time when, on all the other evidence called by the Crown, this man was still being held by the throat and, as we now know, held against the railings. 10

So my Lord, before I pass to Mr. TAM's words, may I say that his actions cannot displace self-defence. The Crown in fact, by adducing that evidence, has not merely not displaced self-defence, but probably enhanced that aspect of the case, but it's when one get to his words that you see how strongly those actions are reinforced. His last answer in-chief was, as taken, as your Lordship will remember, from the shorthand note: "At that time the situation was very confused and I have only a vague recollection of what happened. I cannot say anything conclusive on this gap of time." My Lord, your Lordship will remember we sent out and got the shorthand note so that we had the exact words of that. My Lord, has your Lordship his cross-examination? 30

COURT: I have.

MR. JACKSON-LIPKIN: And the first question put to him after reading out his last—that answer in-chief. It was read to him, the shorthand note was read to him, and the question was put: "You only have a very vague recollection of the incident?" "Answer: Absolutely the case." 40
The second question: "I suggest your recollection of the sequence of events is as vague as the recollection of the events themselves" and we got the unequivocal answer: "Yes." My Lord, Mr. Penlington tried to remedy the situation in re-examination and he got this answer: "The firing of the second shot and the running of the man took place about the same time, so I do have a recollection of the man running and then of hearing the second bang." My Lord, that cannot remedy the man's,

“Oh, yes. I’ve got a recollection of it.” That cannot remedy what he said so positively: that his recollection of the sequence is as vague as his recollection of the events, and his recollection of the events is very very vague.

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Now my Lord, in making submissions to you of this kind I have to appreciate, of course, that your Lordship may say, “Well, much as I am in sympathy with you, Mr. Jackson-Lipkin, there is evidence to go to the jury.” A judge can say that and in some circumstances he does, but a scintilla of evidence is not enough; it’s got to be something much more
10 than that. My Lord, I don’t know if your Lordship does need an authority for that, but if you do, there are two short passages I could read you. The first is Hipson’s case which is reported in 1969 Criminal Law Review. The only other place it’s found is in the Solicitor’s Journal. I think we are all very familiar with it. The appeal was allowed and the Court of Appeal said:

“ . . . when a submission is made that the case should not be left to the jury it is a judge’s duty not only to consider whether there is some scintilla of evidence which in law could go to the jury but also whether it would be safe for a jury to convict on the evidence as it then stands.”

20 My Lord, it’s the bottom of page 85 and the top of page 86. Will your Lordship give me one moment. The other case that I’ll come back to in a moment is *Falconer-Atlee* which is reported at 1974 Criminal Appeal Reports, page 348. My Lord, I’ll come back to that in a moment, but as my learned friend, I’m afraid, may not have noticed that I was going to use it, I will just lend it to him and read it to your Lordship in a moment.

The proposition is clearly there in *Hipson*. It is not sufficient to say, “Oh, there is something that could go to the jury.” You have to say even if there is something that could, is it safe to let it go? My Lord, all I need
30 say in relation to Sergeant Au is. . . .

COURT: Sergeant YIP.

MR. JACKSON-LIPKIN: I mean Sergeant YIP, yes. Some time in January of 1976 he had an oral conversation with Mr. AU. He never recorded it in a notebook. He never reduced it to a statement. No evidence was adduced of any notebook or any statement and now in September he gives his recollection of what he could remember of what somebody told him back in January. My Lord, in my respectful submission, none of that can displace nor does it displace the question of self-defence. My Lord, may I pass then to the second thing and that is police duty and rights.

40 My Lord, nothing has been adduced by the Crown against that save police general orders and I’ve dealt with those already, a subsequent incident in Nathan Road, Mr. TAM’s very very vague recollection that the second bang was after somebody ran past him, and I think I have dealt with that sufficisutly for today’s purposes. It would be unsafe in the extreme to allow that to go to the jury. Let me then pass to the incident in Nathan Road. My Lord, we all have our views of that incident. I shan’t express mine, I shall merely review the evidence that you have.

A man and wife remember somebody holding a revolver chasing a man who stopped in his tracks and swung back as if to hit him. The man behind dodged to the left and there was a bang. My Lord, I most respectfully suggest that there is nothing in that incident which can assist a jury on the first count. This man who was swung at as if to be hit, the man had been attacked as your Lordship so well knows, earlier; he's running up to this man and this man swings round and your Lordship will recall it was not only in cross-examination, but it was also in re-examination that it came out that the impression was on onlookers that the man who stopped, that's the deceased, was going to hit Mr. Au. You may remember there was only one question put to him in re-examination: "Was it your impression that the man in front was trying to strike the man behind?" Answer, "Yes." So it was not only in answer to me, it was also in answer to Mr. Penlington. Will your Lordship give me one moment, I appear not to have the document we put in yesterday about CHAN Po-lin. My Lord, my impression is that my learned friend and I had agreed that her evidence would have been, if she'd given it, and that she had said that the man swung, turned to hit. . . . My Lord, I don't know what's happened to my copy, but none of us seem to have a copy at the moment unless Mr. WONG can come up with it, I'm afraid I don't know what number's been given, either 32. . . .

CLERK: 31.

MR. JACKSON-LIPKIN: 31, my Lord, I'm told. Has your Lordship that?

COURT: I have 31, yes.

MR. JACKSON-LIPKIN: Your Lordship will recall the lady is merely corroborating what her husband said.

COURT: Yes.

MR. JACKSON-LIPKIN: He corroborated her after your Lordship had told him that he needn't if he didn't want to, you will recall. My Lord, that incident cannot show an intention to kill, an intention to cause grievous bodily harm or a deliberate and unlawful act back in Sai Yeung Choi Street. Whatever it may show in Nathan Road, it can't displace self-defence or police rights and duties in Sai Yeung Choi Street. My Lord, I have found, with assistance found, the passage in *Falconer-Atlee*. It's at page 357. It's the fifth line:

"If a judge thinks that the case is tenuous, then, even though there is some evidence against the accused person, the judge, if he thinks it would be unsafe or. . . .

MR. JACKSON-LIPKIN: . . . 'or' not 'and' . . .

. . . unsatisfactory to allow the case to go to the jury even with a proper direction, should take upon himself the responsibility of stopping it there and then. If the judge is not prepared to stop the case on his own responsibility, it is wrong for him to try and cast the responsibility of stopping it on to the jury."

My Lord, it's really Lord Justice Roskill echoing your Lordship's own decision last year, the one in which your comments were put around

Timothy LEE's court, but on which you've not yet heard either of us address you. My Lord, may I just at this point remind you of one short passage that you used. It's on the second page of what you said. My Lord, for the purpose of the shorthand note I'd better give the reference. It's the Queen and HUI Kwok-hung which was in criminal case number 63 of 1975 and your decision was given at 10.11 in the forenoon of the 26th of November 1975. What you said was this:

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10 "Now the criteria for this question is this—whether, taking the totality of the Prosecution evidence, there is any evidence of fact for you to decide whereupon you could convict the accused of the offence charged. The second question of mixed fact and law is whether, assuming that you could so convict, taking the totality of the Prosecution evidence, you would convict as a reasonable jury. So that there are two separate questions. Indeed, if I were to take the easy way out in our respective functions to the letter, I can easily say that, "All right, at certain stage of this case, irrespective of the evidence, you, members of the jury, you will decide". This type of method is not new. It happened more than 1900 years ago when a judge can wash his hands and let you decide. However, if I do that,

20 I will be shirking my duty as a judge because I have to give the matter my serious thought and see whether it is fair that the trial should continue. I have given it serious thought in the course of last night after the submissions in the afternoon. I have now come to the conclusion that the accused should not be put in jeopardy any further."

My Lord, that was the case where a policeman shot a pak pai driver from a distance of ten feet. My Lord, I am reminded before I go on that I omitted in relation to WONG to add just for your Lordship's note, the utter incredibility of his version of how the grazing of the knee took place,

30 with three men walking in line abreast and the middle of them is struck by the rear wheel of a car turning a corner. I'm sorry if I omitted that before. No doubt your Lordship will bear it in mind.

Now my Lord, in my respectful submission, what you have to ask yourself is: is it really safe or satisfactory to let this man go before a jury on an issue of murder, having regard to the Crown's failure to displace the two matters that I mentioned and having regard to the totality of the evidence, not these little bits that appear here and there. You also have to ask yourself the second question which is: whether a reasonable jury could convict of murder on what you've heard. I would respectfully

40 suggest to you the answer to both questions is no. Then you have to ask yourself whether it would be safe or satisfactory to let manslaughter go to the jury, and equally, the second alternative in relation to that. My Lord, your Lordship knows that in manslaughter if somebody is doing his duty, his lawful duty, and somebody dies, that is what the three Cantonese Jurymen in the coroner's court already found to be "excusable homicide".

I would respectfully suggest to your Lordship that it is a matter of law or is a matter of mixed law and fact. This case of manslaughter ought not to go to the jury, and it would be a waste of your Lordship's time if I elaborated any further because I would only be repeating what I have said in relation to murder.

My Lord, may I now pass to the 2nd count and ask if you have available the Offences against the Person Ordinance, Cap. 212, my Lord? My Lord, he is charged under section 17, my Lord, which you will find on page 7 of the Ordinance.

"Any person who—

shoots at any person with intent . . . to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person . . . shall be guilty of felony, and shall be liable to imprisonment for life."

My Lord, there you have the question of intent to maim or disfigure, In fact, what is in the indictment is ". . . to maim or disable or do some other grievous bodily harm to LAI Hon-shing." My Lord, in the face of the combination of two things and they are these, (1) what had happened at Sai Yeung Choi Street, and (2) the evidence of Mr. WONG Moon-lam and his wife, I would respectfully suggest that that charge under section 17(b) ought not to be left to the jury. My Lord, when one is dealing with offences against the person one has to consider if there are any lesser offences which ought to be left to the jury.

COURT: If I may interrupt at this stage, Mr. Jackson-Lipkin. Does it not strike you as odd that the wording of 17 is separated into—read the punctuation as well in this section.

"Any person who—

unlawfully and maliciously, by any means . . . wounds. . . ." —that it is a matter of wounding, it has to be unlawful and malicious. When it comes to (b) it is simply shooting.

MR. JACKSON-LIPKIN: Yes, my Lord.

COURT: You don't require malice or the unlawful element.

MR. JACKSON-LIPKIN: My Lord, I apprehend the reason for that in the drafter's mind was—you see that it comes from a Victorian Statute—was the idea that nobody would use a firearm unless it were unlawful and malicious. My Lord, that is the only way I can answer your Lordship by looking at its origin. My Lord, I do not think it was envisaged in those days that in Her Majesty's name ordinary constables would walk abroad with loaded revolvers, or that plain clothes policemen with their girl-friends in yellow BMWs, would be allowed to carry loaded revolvers lawfully tucked into the waistband of their trousers. I think if you had suggested that to the draftsman he would have been appalled. My Lord, I am probably right in saying that your Lordship is as appalled as I am that our policemen in Hong Kong are armed, but for the purposes of this trial we have got to accept that he was lawfully armed, so, my Lord, when you have "shoots" there you don't need the words "unlawfully and maliciously" because you have to look at the intent lower down. One

shouldn't discharge a firearm unless it is lawful, but as it's charged, its charge is "shooting with intent to do grievous bodily harm to LAI Hon-shing." My Lord, does that answer your Lordship's problem on the wording of this? I see the difficulty without the words "unlawfully and maliciously", it could have been a mere shooting. . . .

COURT: Yes.

10 MR. JACKSON-LIPKIN: . . . but I would respectfully suggest to you that if somebody is entitled, as this man was entitled, to carry a gun, loaded gun, then the shooting would have to be a wrongful shooting, an unlawful shooting. When this section is read normally it deals with the ordinary person who is not entitled to a firearm. My Lord, then, as I say, that does not dispose of the matter when it is an Offence against the Person Ordinance because you have to think if there is anything lesser. Well, then you have this rather ridiculous system of going down the scale but I am afraid I will have to do the exercise with your Lordship. The next is to look at section 19 and see whether that could properly be left to the jury.

"Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person. . . ."

20 It can't be said in this case that there was any unlawful or malicious wounding of LEUNG Wai. It might have been unlawful but it couldn't possibly have been malicious, so that can't be left to the jury. Is there anything that could be left to the jury, because I cannot, as Counsel, suggest to you that there is nothing to go to the jury on the 2nd count. It would be quite wrong of me to do so and I am not going to attempt to do so, but this did cause me a great deal of concern last night to see what could properly be left to the jury if, as I submit to you, section 17(b) is one that should not be left and I would respectfully suggest to you that it would be assault occasioning actual bodily harm under section 39 that
30 ought to be left to the jury to decide, after having heard Mr. Au's version—section 39. Something has got to be left to them to decide after hearing him, because at the moment they have no explanation other than what Mr. Wong and his wife have said—WONG Moon-lam, I think it was. I appreciate that a misdemeanour carries three years, but none the less if anything is to be left to the jury on the 2nd count, and I have told you already I can't submit that nothing should be left, I respectfully suggest it's that one.

40 My Lord, that is all I wish to say in opening this submission. I will, of course, answer anything that the learned Director says in due course for an answer. First of all, of course, he will tell us how he has reconciled his two positions.

COURT: Yes, Mr. Penlington.

MR. PENLINGTON: Yes, my Lord. I am in no difficulty, I may say, in reconciling my two positions, if there are two positions. I suggest that there are really three—so far as the 1st count is concerned, there are three defences to this. Well, the first one as mentioned by my friend is self-defence. I suggest that there is ample evidence to indicate that this

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was not—the shooting was not done in self-defence and in particular, of course, the medical and the ballistics' evidence that the wounds—that both bullets entered the back and there must have been a distance of at least 18 inches between the muzzle of the gun and the deceased when it was fired. I do bear in mind various dicta, in particular one by Mr. Justice Holmes, a famous American judge, when he said that when a person is acting in a situation where he is forced to make a decision in a moment of stress that one must not look at it in hindsight, in the cold light of a courtroom or of an office and say, "Well, taking everything into consideration that decision was a wrong one." Nevertheless I suggest that there is ample evidence, both from the eye-witnesses and from the medical and ballistics' experts to say that at the time the shots were fired this boy had turned and was about to run away, if indeed he was not already running away. We have certainly the evidence of Mr. Tam. I would suggest that his evidence, although he certainly said he was vague about events, his evidence as to seeing a man run past and a shot fired after he had run past him completely negates the suggestion that, at any rate that second shot was fired in self-defence. At that stage Constable Au was in hot pursuit of the deceased. We do not know, of course, whether that was the fatal shot. If it was the fatal shot there can be no question of self-defence. 10

We are left then with the first shot. Now, we have evidence from the watchman that he did not hear a shot at all, which suggests that perhaps that first shot was also fired when the parties had gone round the corner. Whether that is true or not it is certainly a matter for the jury to decide. We have the evidence of the two boys that at the time the fight broke up they certainly or at least Wong had certainly heard mention of drawing a revolver; he was apprehensive that a revolver was about to be used and he fled. He said he did not hear any shots at that time. As far as the boy's evidence is concerned, of course, my friend has said there are certainly aspects of it which are not satisfactory. Nevertheless, that is this boy's evidence, a matter again, I suggest, for the jury to decide. Then Mr. WONG Moon-lam and his wife. His evidence again I think is important, and he also said that he was walking down Argyle Street, heard a bang, turned his head round, hear a second sound of 'bang' and saw the flash. His evidence was that he was further down—he and his wife were further down Argyle Street than was Mr. Tam. So we have Mr. Wong, his wife and Mr. Tam in Argyle Street, all of whom, I suggest, their evidence is very believable and supports very strongly that the second shot was fired in Argyle Street when the deceased was running away. 30 40

We are left then with this first shot. Now, we have first of all the evidence of the Police Sergeant YIP Kai. Now it was never put in any way to Sergeant YIP Kai that he was mistaken as to what the accused had said to him at the time, that his memory was not accurate. He had given the evidence at the inquest, not a great deal of time after the incident, and the evidence he gave in the box here was almost exactly the same as he gave at the inquest. As a police officer no doubt he realised that it was

extremely important that he gave an accurate account of what was said. It is true he did not at the time write it down, nevertheless, it was a clear and, I suggest, a believable statement from the accused of what had happened, and it did not appear, when the sergeant gave evidence, to be in any way challenged. If it is accepted then again I suggest that it negatives self-defence. His evidence—I have a note of what he said in court but, as I say, it followed exactly what he said in the other court.

10 “One of the two assailants touched Au’s waist as if to try to take his revolver. Au struggled violently. After releasing himself from the struggle Au took out his revolver. Those two persons then ran. Au fired twice at one of them and gave chase to that one in Nathan Road.”

Now, I think when he gave his evidence here he did not say, as he had in the court below, “After releasing himself from the struggle.” Nevertheless, even without those few words I suggest, here is his statement which, if believed, completely negatives self-defence.

MR. JACKSON-LIPKIN: I hesitate to intervene but I think that your Lordship in relation to this sergeant should look at the evidence before you and not a deposition of what was before somebody else and what was not before you.

MR. PENLINGTON: I am afraid that I am speaking only from memory, my Lord, as to what he said but I was—when he was giving his evidence here I was following it on the deposition and that was the only. . . .

COURT: Of course, I am not concerned with the deposition. . . .

MR. PENLINGTON: No, my Lord. I am only just saying that my memory is based on the deposition. If my memory is wrong then of course, as my friend has said, you must go by the evidence he gave here, but my memory was that his evidence here was very, very close indeed to the deposition.

30 COURT: The point I was trying to make on this, Mr. Penlington, is unless you are challenging his evidence in this court then I have no knowledge—I am not supposed to have any knowledge of the depositions in the court below.

MR. PENLINGTON: No, no, I am saying I didn’t and my friend did not make a note of his evidence here.

COURT: I see.

MR. PENLINGTON: And I am just saying that as far as I can remember his evidence did follow—on that point follow the deposition. I am quite prepared, if my friend has got a note of what he said—the evidence he gave here which, of course, is the important evidence. . . .

40 MR. JACKSON-LIPKIN: I’m sorry, my Lord, I will just look at my learned junior’s notes.

MR. PENLINGTON: Well, perhaps on this point it might be that you would ask for perhaps a transcript. . . .

COURT: Well, I think—I took pretty full notes on that. He said, “He struggled and pulled out his revolver. The three youths started to run and then he fired two shots. . . .”

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MR. PENLINGTON: Yes, that is my recollection.

COURT: "... at one of the three youths."

MR. PENLINGTON: Two youths started to run?

COURT: "The three youths started to run and then he fired two shots at one of the three youths."

MR. PENLINGTON: Yes. Now, I suggest, my Lord, that if that statement is accepted, that he pulled out his gun, the three youths started to run and he then fired two shots at one of them, that is a complete negative to the defence of self-defence, and certainly—I am not saying it is a negative to the other line my friend has taken, but that is the end of self-defence. Certainly there is sufficient evidence to go to the jury. 10

I'll just very briefly, my Lord, I am not going into this in any detail, refer to the evidence of the events leading up to the struggle. Now my friend has made much of very little evidence indeed to suggest that these boys were long-haired hooligans. There is no evidence whatever that they were hooligans. The evidence that they did have long hair—there is evidence that they were dressed perfectly normally, the khaki pullover that has been produced in court I suggest is certainly not the clothing one would expect from a trendy teddy boy. They were certainly well dressed; they were going out to the movies. The evidence, I suggest, is very strong indeed that this was an incident in which the defendant lost his temper because, no doubt, of what was said to him when his car grazed and touched, or even if it did, certainly frightened one of these boys enough for him to call out. The witnesses, I think, are unanimous that the accused got out of the car, used foul language and appeared to be aggressive. He walked up to the boys who had stopped. Now, under those circumstances, I suggest it is not for the constable then to say, "I then found myself in a position from which I could only extricate myself by using a firearm." I suggest there is evidence that the jury could well believe that he had gone looking for trouble when he got out of the car. There was no suggestion that anybody had been hurt, that there was an accident that he should investigate. Quite clearly, his feathers had been ruffled and he was going to sort these lads out. It is quite true that he had received some injuries, the boys did not. Again, the evidence is that this was a general scuffle. They were moving round, dodging in and out, one wonders really whether at any stage, even if there was some grabbing, some holding, it is quite believable, but did this fight ever reach the stage where the accused had to resort to the final way out and that was to use his revolver, not firing at the ground in any other way but shooting at one of the people who were fighting. 40

COURT: In the initial argument, initial fight, it might well have been caused by what one will say is a certain mood, not in the line of duty, but as the fight developed could it not be said that at a certain stage, at the stage of shooting, he might take the view that he was going to apprehend these people who had got out of control, attacking him, and therefore he resorted to the use of a firearm?

MR. PENLINGTON: No, my Lord, I suggest not. I suggest, first of

all, there is no evidence from the witnesses to suggest that the fight had reached that stage. It was a scuffle, and I suggest that if he thought—my friend has suggested that at any rate, one of these—the other two, the two that joined in later on, had committed an assault on him that he was not justified at that stage in using a revolver in the way that he did. It was the fight, the injuries he received, the whole circumstances of this in no way could justify the use of a revolver either to defend himself or to apprehend any of these youths either for assault or—and, of course, on this point we have no evidence except statements made by the accused at the time at all for the offence of trying to take away his revolver. I suggest on that point all the evidence so far of eye-witnesses is that this was a fight in which the people were weaving in and out, moving backwards and forwards. It is not the sort of fight where it appears there was any opportunity at all for this grouping, such a grouping as would give the constable justification to believe that he was about to be robbed and, indeed, none of the witnesses saw anything of that sort at all, so I suggest that, in fact, there is no evidence which would justify the use of the revolver to apprehend.

The Criminal Procedure Ordinance referred to says:

- 20 “A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large ”

—“as is reasonable in the circumstances”. And I suggest that the jury might well on the evidence come to the conclusion that the amount of force that was used on this occasion under the circumstances, all the circumstances, that then prevailed was far from reasonable. I suggest it is certainly a matter that must be decided by the jury.

- 30 I would refer your lordship to a passage; the case that I am referring to is the case of *Regina v. McInnes*, [1971] 1 Weekly Law Reports, and the report is at page 1600, and in particular page 1607 to page 1609 where the Court considers this question of self-defence. On page 1608 Lord Justice Edmund Davis says:

“The final criticism levelled against the summing up is that the judge wrongly failed to direct the jury that, if death resulted from the use of excessive force by the accused in defending himself against the aggressiveness of the deceased, the proper verdict was one of not guilty of murder but guilty of manslaughter. Certainly no such direction was given, and the question that arises is whether its omission constitutes a defect in the summing up.

- 40 The Privy Council decision in *Palmer v. The Queen* [1971] 2 W.L.R. 831 provides high persuasive authority which we, for our part, unhesitatingly accept, that there is certainly no rule that, in every case where self defence is left to the jury, such a direction is called for.”

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The Court then goes on and at page 1609 cites with approval a passage from *Reg. v. Cascoe* [1970] 2 All England Reports, page 833. In that case Lord Justice Salmon said at the bottom of the page:

“No doubt there are cases where self-defence is raised and negatived by the jury in which it would be possible for the jury to return a verdict of not guilty of murder but guilty of manslaughter; for example if a man who is attacked draws a gun and fires it in the direction of his attacker, not intending to shoot him, but only to frighten him, that is to say, intending to miss him, and nevertheless he kills him. The jury could in such a case conclude that self-defence was negatived. Of course, it was unreasonable to draw a gun to resist the kind of attack in question. The jury might be satisfied that it was criminally dangerous or negligent to fire the gun, but not satisfied that there was any intention to do grievous bodily harm, let alone kill. Therefore, although self-defence would be negatived, the accused would be guilty not of murder but only of manslaughter.” 10

In this case I suggest that there is every ground for believing that the accused fired not intending to miss him but, in fact, intending to hit the deceased. Nevertheless, if the jury did come to the conclusion that there was no evidence that the accused intended to hit the deceased but only did so through negligence, then on that authority they could bring in a verdict of manslaughter. Nevertheless, again I suggest that this is a matter which should be decided by the jury. It is quite true, of course, that the police constable was lawfully armed and he had his duty to do as a police constable. It is also true that the Police General Orders are not part of the law of Hong Kong, as my friend said; nevertheless, they are the instructions given to police officers as to how they should use their revolvers and under what circumstances they are entitled to use them and I think it is quite clear on the evidence there is evidence to justify the jury concluding that the constable did not have, as is said in the General Orders, strong reasons for believing these boys had committed a serious and violent crime. The assault on him, I suggest, was not such a serious and violent crime as is contemplated; even if there was such an assault and if the evidence is to be accepted of the eye-witnesses, when the constable went up in the manner he did using the words he did and approached Lee, surely he must have anticipated that if there was a fight with Lee that the other two would join in. It was as inevitable as night follows day that he would become engaged in a fight with these three boys, young lads considerably younger than he is, not strongly built and unarmed; he had no reason to believe at any stage that any of these boys were in any way armed. He certainly did not have strong reason to believe that they had committed a crime of theft of his revolver. The most is that he may have felt a hand somewhere around his waist. Quite clearly they didn't ever actually get to his revolver. His grounds for believing, if indeed he believed that, must have been tenuous indeed. This, again, however, is clearly a matter which must be decided by the jury. 30 40

So far as the events in Nathan Road are concerned, as I have previously said, I do consider it is the Crown's submission that the animosity that he had on that occasion to fire in the manner that he did is relevant to what happened at Sai Yeung Choi Street, but even taking that event on its own, again on the evidence of the two—of one of the witnesses I suggest that the jury might well come to the conclusion that this man, the deceased, then an extremist, had gone as far as he could go and was on the stage of collapse and he turned round, half turned round, to protect himself if he could against this man who had been chasing him from Sai Yeung Choi Street and who had fired shots at him, two of which had hit him, both had hit him. Whether it was an aggressive blow or a defensive blow is a matter for the jury to decide but I suggest overwhelmingly the evidence indicates that it was a defensive blow . . . this man had come to the end of his tether . . . that the firing under those circumstances was unlawful, but the section does not require the Crown to prove that it was unlawful or that it was malicious; the section quite clearly says that the Crown must prove that there was a shooting, that it was a shooting with intent to maim, disable or disfigure or do some other grievous bodily harm. It is difficult to see how shooting at a person can be done, if you intended to hit him, can be done with any other purpose than to cause him grievous bodily harm, and it is for the defence to show that it was lawful. The question of whether it was malicious does not come in. Again the evidence in the circumstances of that firing of the third shot really, I suggest, is a matter to be left to the jury with the alternatives that are available to them.

COURT: Are we not really required to read malicious and unlawful into the paragraph concerning shooting, Mr Penlington, because as I understand it if you want a proper interpretation of any statute you completely disregard punctuations and the punctuation is only for the convenience of people reading it so that if you read a section you read it as if there is no punctuation whatsoever; in fact, if you read the Ordinances the number of sections would be a matter of convenience, at least that is one school of thought that you read it from the first word right down to the last as if there is no punctuation whatsoever and then you interpret it accordingly.

MR. PENLINGTON: Well, even if that was true,

“Any person who—

- (a) unlawfully and maliciously, by any means whatsoever, wounds or causes any grievous bodily harm to any person; or
- (b) shoots at any person; or
- (c) by drawing a trigger or in any other manner, attempts to discharge any kind of loaded arms at any person, with intent in any of such cases. . . .”

I would suggest that even if ignoring the punctuation, ignoring the “a”s, ignoring the “b”s, there is an “or” quite clearly.

COURT: Do you mean we read this "Any person who unlawfully and maliciously by any means whatsoever wounds and anybody who unlawfully and maliciously shoots at any person"?

MR. PENLINGTON: My Lord, I must disagree with that interpretation. I think the section. . . .

COURT: . . . Do you mean to say that the use of "or" is already as a disjunctive?

MR. PENLINGTON: Yes, and I suggest that in fact in this case that the use of the paragraph (a) and paragraph (b) and paragraph (c) is not a matter of punctuation. 10

COURT: Yes.

MR. PENLINGTON: I think this section quite clearly says that if you wound or cause grievous bodily harm then the Crown must show that it was unlawful and malicious. If you shoot then it is up to you, it is up to the defendant to show that it is lawful.

I think, my Lord, that is all I wish to say.

COURT: Thank you. Yes, Mr. Jackson-Lipkin?

MR. JACKSON-LIPKIN: My Lord, my learned friend has quoted the late Oliver Wendell Holmes. Of course that is to be found in Smith & Hogan, Third Edition, at page 260, but at the same page there is a warning by Mr. Justice Geoffrey Lane: 20

"In the circumstances one did not use jewellers' scales to measure reasonable force . . ."

—it is by your lordship's left arm—

"Detached reflection cannot be demanded in the presence of an uplifted knife."

That is what my learned friend was talking about.

COURT: Yes.

MR. JACKSON-LIPKIN: Well, I hesitate to come back but I must remind your lordship this isn't a fight between two persons, nor is it as in *McInnes* a fight between two persons being part of a fight between two groups. *McInnes* which eventually ended up as *Regina v. McInnes* started off as "greasers" versus "skinheads" and it was in the course of these two gangs fighting each other that two men fought each other and one was killed. I cannot think of a case further away than that which you have to consider—than *McInnes*. And, my Lord, if you do consider *McInnes* at all I ask you to remember that distinguishing factor. 30

Now, my Lord, may I very briefly go through some of the points that my learned friend has made. He said that the medical and ballistic evidence displaces the self-defence. My Lord, there are three answers to that: the first is that Mr. Cimino said that it is less than an arm's length away when you cease to get powder burns. 40

COURT: Yes.

MR. JACKSON-LIPKIN: Secondly, Dr. Yip said that turning and weaving left to right would produce the angles of deflection that he found in the post-mortem.

COURT: Yes.

MR. JACKSON-LIPKIN: And, my Lord, you must not look at this in hindsight, you must think of at the time. The turning away by the deceased was that it was not more than two to three feet away from the accused. Now, if you add those up there is nothing in the medical and ballistic evidence whatever that would displace the element of self-defence.

The next point my learned friend made was in relation to Mr. Tam. He said Mr. Tam said that the shot was after a man ran past, therefore that negatives self-defence. But, my Lord, your lordship heard the evidence that he was very, very vague about the sequence of events. He
10 looked for more than five seconds and there were only five seconds between the two shots; in fact somebody else said that it was rather less. My Lord, my learned friend says it is a matter for the jury to decide. I would respectfully suggest that it is both unsafe and unsatisfactory to leave that to the jury. And, my Lord, before I proceed with that incident, my learned friend mentioned the evidence of Wong Moon-lam. It was Wong Moon-lam who said there were only three seconds between the first and the second bangs. Now, my Lord, I mention Wong Moon-lam, your lordship will recall earlier that when I addressed you—and I hope the shorthand writer will assist me on this—I mentioned Wong Moon-lam as being the
20 husband of Chan Po-lin in Nathan Road; of course he wasn't, it was Mr. Poon Leung, and I should be most obliged if in due course your lordship will alter your note and the shorthand writer will correct me, Wong Moon-lam is somebody quite different, the husband is Poon Leung, but then my learned friend used the phrase of "starting to run"; he took that from the recollection of Sergeant Yip—of what Au had said to Sergeant Yip in January. That can be of assistance if you recall other people who used the 'starting to run'. When cross-examined on it they explained that it was the act of turning and beginning, in other words, it was not
30 "while running". It is the turning to commence that is described as a "starting to run"; and, my Lord, your lordship of course sitting today cannot look at it in hindsight, you must look at it as if it were at the moment when the man was there in Sai Yeung Choi Street and, as I said before, and I only repeat it very quickly now, that act of turning was no different from the turning and weaving that had gone on; they had gone round him and punched him from different sides. And then, my Lord, if my learned friend is going to rely on Sergeant Yip to negative self-defence because he used the words "starting to run", may I respectfully remind your lordship that it was Sergeant Yip who gave evidence of the groping and the feeling around the waist. You cannot rely on it for one
40 thing and not for another. My Lord, there is that also. My Lord, it is said that the defendant lost his temper but then Lee admitted that he was angry, under cross-examination of course; Wong admitted that he also was angry; but your lordship will recall what an independent eye-witness said. She I think said that Au said "Have I hit anybody?" and Lee said "No". Under cross-examination Lee admitted that that, in fact, was true. My Lord, going back, I'm sorry, going back to the groping and feeling, may I remind your lordship of this that if you look at Exhibit 30 you will

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see that not very long before there had been two snatchings and they were still under investigation that day by this man's own headquarters and a friend of his that day was on duty on what the press called a hot line in relation to snatchings. And, my Lord, when you are dealing with intent on matters of law or mixed law and fact you cannot disregard that which is an agreed fact. Oh, yes, it is very easy for us to stand here today and say "Oh, those were only long haired boys who thought that long hair looked nice but they weren't snatching". What you have got to do is looking intent for murder or manslaughter. Put yourself in the place of the person at the time: he was an officer whose friend was on duty that very night in relation to two snatchings of guns and you will recall that it is not merely to Sergeant Yip that he talked about groping and snatching, it was also told, I think, was it not, the auxiliary policeman? 10

COURT: Yes.

MR. JACKSON-LIPKIN: And somebody else attempted to snatch. And also in relation to the groping may I remind your lordship of what was extracted from Wong's examination: he thought that detectives carried their revolvers on their right hip. My Lord, that would account for the groping and the feeling and not finding the revolver, and your lordship may consider it a mercy that they didn't find it but it is something 20 that you can properly take into account.

My Lord, it is not self-defence or police rights and duties. Your lordship can consider self-defence and police rights and duties and I would ask your lordship this question in relation to that and the PGO—in relation to what I have just said and to the PGSs. You have got the groping and the feeling, that is an attempt, it seems to be an attempt to steal a revolver, together with actual bodily harm, and we have got very clear evidence of actual bodily harm. Even if we didn't call the doctor we know from Wong himself under cross-examination that he landed three forceful strong punches on Au's chest and one on his arm, that Lee had 30 landed one on his face and two or three others. . . . Never mind how many Lee. . . . My Lord, if that isn't a serious and violent crime if taken in combination I don't know what is. Oh, I know that there are more serious and more violent crimes, of course: there are armed robberies; but attempted snatching together with beating is both serious and violent. Now, my Lord, I would suggest that even if you do take PGOs into account, it would assist. . . . My Lord, I am interested in my learned friend's interpretation of section 17 of the Offences against the Person Ordinance for this reason: that according to the PGOs produced it is the duty of a police officer using a revolver to shoot with intent to 40 disable. You will find that in the documents. I don't think he can be suggesting that every time a police officer obeys that general order he is guilty of a crime under section 17 but it follows logically from what my learned friend said to you in the interpretation. My Lord, I respectfully adopt—I regret not for the same reasons—what your lordship has said but one must read "unlawful" into 17(b). My Lord, the reason I dissent from the approach by which you reach the same conclusion is not just

the punctuation, the punctuation with the disjunctive. You see, my Lord, if there were a semi-colon after the “malicious” and then everything else was set out in the paragraph underneath I would accept your lordship’s way of reaching that conclusion. I would ask you to accept it—to reach the same conclusion by the way I reach it that it can only be unlawful and must be intended to mean unlawful and without reasonable excuse.

My Lord, has your lordship had a chance of reading your own direction?

COURT: I think I remember it fairly well.

- 10 MR. JACKSON-LIPKIN: Your lordship did in fact in that—and this again relates to McInnes not on the group aspect but on the retreat aspect, McInnes was not only a group case, a group fight, but it was also a retreat fight—you said that

“As far as killing in self-defence is concerned, there is a difference between a private individual and a police officer. Before an ordinary individual may kill in self-defence, he must retreat up to a certain point that there is no way for him to retreat, or that it would be very dangerous for him to retreat any further. . . .”

and

- 20 “In the case of a police officer, or a person assisting him in apprehending a criminal, he has no duty to retreat. If he should retreat, it would show dereliction of duty . . . it is up to the prosecution in this case to negative this self-defence, and to adduce evidence before you that there is no evidence of self-defence at all.”

Now, my Lord, may I just remind you that he was up against this railing, that even if he had been a private person there was no retreat; even if he had been a private person lawfully carrying a pistol there was no retreat; but, anyway, he wasn’t a private individual, he was a police officer, and, my Lord, I would respectfully suggest that there has been

- 30 no negative rebuttal. The prosecution has not adduced evidence to negative that self-defence.

In my submission we have reached this decision (1) as a matter of law—there is no evidence adduced by the prosecution to negative either or both of self-defence and police right and duty; Secondly, as a matter of mixed law and fact, on the totality of the evidence it would be both unsafe and unsatisfactory to let this case go to the jury. What you are being asked to do by Mr. Penlington is to say, ‘Well there is some evidence—I am going to wash my hands in this’, as the gentleman you mentioned

- 40 in your other judgment, ‘I am going to wash my hands of it and leave it to the jury’, that would be a dereliction by you, and I know you are not a coward. You have the courage to stand up and say, ‘I will do my duty. I am not going to wash my hands of it and leave it to the jury.’

My Lord, on both those aspects, law or mixed law and fact, I respectfully suggest the first count ought not to go to the jury, either in

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part or at all, and with regard to the second count, it will be a mere repetition of what I said before. I have taken you through the Offences against the Person Ordinance. Unless you wish to hear me any further on any aspect of it, I don't think I could usefully add to what I have said.

COURT: I would like to give the matter some thought. I will give my decision on Monday morning.

12.20 p.m. Court adjourns.

27th September, 1976.
10.15 a.m. Court resumes.

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Accused present. Appearances as before. Mr. Jackson-Lipkin absent.

JURY ABSENT.

COURT: Having given the submissions that I heard on Saturday morning my serious consideration and having reviewed the evidence myself over the weekend, I see not sufficient reason to interfere with the indictment as it stands and accordingly the application is refused.

10 MR. EDDIS: May it please my Lord. There is one matter, my Lord, which I would appreciate your assistance. I understand, though I did not hear it myself, the Government Information Services on the radio over the week-end, announcements were made that submissions of no case to answer were made on Saturday morning, but the newspapers very properly said legal arguments were made. I would appreciate, if your Lordship saw fit, to warn the jury what went on on Saturday was a matter of law for your consideration and not a matter for them.

COURT: Should I tell the jury now or at a later stage?

MR. EDDIS: I would appreciate if you would when they come back.

COURT: I will do that.

20 MR. EDDIS: They may not have heard this radio announcement, I did not myself.

COURT: Certainly I haven't heard it, but then of course it must have been so.

MR. EDDIS: I am informed it took place—I am very much obliged.

COURT: Very well.

10.17 a.m. Jury Enter Court.

30 COURT: Members of the Jury, I regret that you have been made to wait outside. The idea was that what happened on last Saturday was no concern of yours. It is some legal argument and whatever decision I may make should be made in your absence, but I am informed that over the week-end there have been certain radio announcements concerning the submissions yesterday. What I wish to tell you now is that whatever you have heard from that radio announcement please completely ignore it. It is a matter of law, and submissions in law at this stage are no concern of yours, and indeed you should take no heed of any submission that is in law or in fact which is made outside this court, and as far as the law is concerned, I will at the time when I sum up the case, direct you on matters of law, and you will take it from me and take it from me alone. Yes Mr. Eddis?

MR. EDDIS: May it please you, my Lord. Members of the Jury, I would like to make two remarks before calling upon Mr. Au to give his defence. You will note my Lord and Members of the Jury that I am appearing alone today. Mr. Jackson-Lipkin, the leading counsel, was written to especially in England by the Director of Legal Aid to come to handle this case, but for one week only, and in so far as the case has to go on beyond that one week, he is engaged in another court and you, therefore, will have to put up with me, and he sends to my Lord and Members of the Jury his apologies.

The second point I wish to make is simply this. Most of the basic 10
facts of this incident are agreed. Mr. Au who has chosen to come and give evidence and will shortly do so, will tell you two things, in effect first that he was acting in the course of his duty as a police officer, and in due course of time you will have to consider his rights and obligations in so acting, and secondly that he was acting in self-defence, and you will have to consider that defence too in due course. I merely tell you this, Members of the Jury, so that you will understand what is happening in case you have not been in a trial before. Up to now you have heard a lot of disconcerted facts, the two other parties of the incident came closest to the issue, but today you will hear the defendant tell you what happened 20
as far as he was concerned. I do not intend to open any further, my Lord. I now call Mr. Au, who has elected to give evidence.

D.W.1—AU Pui-kuen (Accused)—Affirmed in Puncti.
XN. by Mr. Eddis:

Q. Your number and rank, Mr. Au, is D.C. 7211—Detective Constable 7211, is that correct?

A. Yes.

Q. Will you tell my Lord and the jury your present address?

A. No. 21, Block D, Wongtaisin Police Quarters. 30

Q. How long have you been in the Royal Hong Kong Police Force?

A. Thirteen years.

Q. And for how long during that time have you been a detective constable, namely in the Criminal Investigation Department of the Royal Hong Kong Police Force?

A. Since July 1974.

Q. July, 1974—to which particular section or department of the Criminal Investigation Department were you assigned?

A. Operations Division, Kowloon Headquarters.

Q. During the course of your time in the C.I.D. had you remained 40
attached to Operations Headquarters or had you any other C.I.D. posting?

A. I have never been transferred.

Q. In that posting did you have any specific hours of duty?

A. Yes.

Q. What were your specific hours of duty?

A. The specific hours in which I would be on duty were from nine in the morning to five in the afternoon.

Q. And it is correct is it not that in that position you do not wear uniform on duty?

A. Correct.

Q. And it is correct is it not that you are entitled to carry a fire-arm whether you are within the hours of nine to five or outside those hours?

10 A. This is because we may be called upon to perform our duties at any time of the day and for that reason we had to carry a fire-arm throughout twenty-four hours of the day.

Q. You have seen a revolver being produced in this court which is in effect Exhibit 6.

A. Yes.

Q. It is correct is it not that that was the revolver issued to you?

A. Yes.

Q. Now I want to take you to the events of the 9th of January of this year—you have told us that your duty was normally from 9 o'clock to 5 o'clock?

20 A. Yes.

Q. Can you remember at what hour on the 9th of January you came off duty, in so far as you were no longer on duty?

A. At about half past six.

Q. What did you do after coming off duty?

A. After coming off duty we would usually interview informers or attend to our own affairs.

Q. Can you remember what in fact you did on that particular day?

A. At 7.30 p.m. that day the Sergeant from our C.I.D. telephoned me.

30 Q. Where were you when he telephoned?

A. I was at home.

Q. What was the nature of his telephone call—what were you asked to do?

A. He asked me to get a photograph of a wanted person and he also told me where that person wanted by the police would usually go.

Q. Any other things you remember you did between six and eight o'clock that evening?

A. Also I remember a foki from Headquarters telephoned me asking me to buy a meal for him if I had the time.

40 Q. Did you agree to buy a meal for him?

A. I promised that I would buy him a box of meal before 9.00 p.m. together with newspapers and fruits.

Q. Why was he unable to do this for himself?

A. Because he was on telephone duty at that time in connection with an incident in which two revolvers were snatched in the busy area of Mongkok in December last year.

Q. I think you mean, is it not correct, you mean two incidents of two revolvers not two revolvers in one incident?

A. Yes.

Q. And can you tell us his name and his number or only his number or his name, can you tell us one or the other?

A. D. Constable 9337—CHAN Kwai-to.

Q. All right, he asked you to supply him with a meal and newspapers if you had time and you agreed, and did you do so—what time did you do so?

A. I did supply him with them subsequently. **10**

Q. Do you remember about what time it was you called on him with this food and newspapers?

A. I went there at about 9 o'clock bringing with me a packet of rice.

Q. What did you do after that?

A. Before looking for him I did something for my wife.

Q. What was that?

A. What happened was my wife had made an appointment with a girl to buy some piecegoods for that girl to make clothes for her because New Year was approaching. As she was busy at home she told me to meet that girl and to take the girl somewhere for tea and then telephone my wife to ask her to come and have a get together with the girl. **20**

Q. Just a point of clarification, Mr. Au, you said as it was getting to New Year—you mean the Chinese Lunar New Year do you not?

A. Yes, Chinese New Year.

Q. What was the name of this girl who you were supposed to pick up for the purpose you have described?

A. Her surname is YEUNG—her name is YEUNG Siu-ping.

Q. Did you in fact go to pick her up as requested by your wife?

A. Yes, at about half past eight I picked her up.

Q. Where did you pick her up—what was her address? **30**

A. I picked her up at No. 6 Tai Ping Road, ground floor.

Q. Which general area of Hong Kong or Kowloon is that?

A. In Mongkok, Kowloon.

Q. You picked her up with what—with what kind of vehicle?

A. I was driving a private car B.G.5711.

Q. Was that your own car?

A. Yes, I was paying instalments for that car—it could be said that the car was mine.

Q. It is yours to the extent that you were paying instalments on it?

A. Correct. **40**

Q. When did you start paying instalments for that car—can you remember approximately?

A. I bought the car in the middle of November, 1975.

Q. Do you know who had been the previous owner or owners?

A. Yes, I do.

Q. Well from the Registration Book you would know the names, but did you know them personally—the previous owners?

A. I knew the man personally who sold the car to me but he was a broker.

Q. Yes, the broker—the previous owners of the car as shown in the Registration Book, were they people known to you?

A. I have never seen that book—I had no opportunity of seeing that book because I was paying instalments.

Q. The broker kept the Registration Book until you have finished paying instalments?

10 A. No, the book was being kept by the bank to which I was paying the instalments.

Q. Have you now fully paid for that car—that is, is that car now fully yours?

A. No, in February 1976 this year after this incident I sold the car back to the broker.

Q. Now you told us, I think, you said approximately 8.30 you picked up Miss YEUNG Siu-ping at 6 Tai Ping Road in Mongkok area where did you go after you picked her up?

A. I took her first to buy some meal.

20 Q. For your foki in the Headquarters?

A. And also to buy newspapers, but I could not buy any.

Q. All right, whatever you did buy you then took to your foki in Headquarters?

A. Yes.

Q. Where did you go after that?

A. I then drove the car along Argyle Street in the direction of Nathan Road.

Q. This point of time, can you remember approximately what time it was you were driving along Argyle Street?

30 A. At the time I was leaving the Headquarters the time was about 9.20 p.m.

Q. I see, so that part of Argyle Street which you were driving, was there much traffic at that time?

A. The traffic could be described as congested because there were red and green traffic-lights there and vehicles could not travel fast.

Q. Now it is common ground that Sai Yeung Choi Street runs up to Argyle Street and at some point of time you would have reached that part of Sai Yeung Choi Street which joins Argyle Street?

A. Yes.

40 Q. Would you agree, and at that time you were proceeding along Argyle Street in the direction of Nathan Road?

A. Yes.

Q. Now what happened at the mouth of Sai Yeung Choi Street?

A. When my vehicle arrived at the junction of Argyle Street and Sai Yeung Choi Street I wanted to turn into Sai Yeung Choi Street.

Q. What was the estimate of your speed as you turned into Sai Yeung Choi Street?

A. I was driving very slowly—the vehicle was travelling at a slower speed than pedestrians.

Q. Now we have seen from the photographs, that is a One-Way street, as it were in your favour going downwards, so into what part of that street were you aiming as you turned into it—another street in front of you like this—there is left a little and the right—that side of the street.

A. My car was turning slowly towards Hong Kong Bank, that is the old Hong Kong Bank because to my left there was a row of car parks with meters, in the middle there were some public light-buses waiting there to pick up pedestrians because ahead—in front of me there was a Public Light bus stop to go to Homantin and Oi Man Village and at the mouth of the road there were some hawkers—in those circumstances I was not able to drive my vehicle fast. 10

Q. Would you say there were hawkers on the left-hand side of the vehicles—would you say you turned into the middle part of the road, more to the right-hand side, how would you describe the angle to which you went into that road?

A. I was turning to the right-hand side of the road.

Q. Nearer the old Hong Kong Bank building?

A. Yes. 20

Q. As you were turning in in this manner, did anything happen?

A. There were many pedestrians at the time when I was turning my vehicle into that part of the road, and my car was travelling at such slow speed that pedestrians were able to cross the street in front of my car.

Q. What happened next?

A. Suddenly I felt that some people were banging on the near side rear part and the near side bonnet of my car.

Ex. 2E. Q. To be accurate, I will ask you now to look—may the witness be shown photograph 2E—first of all how many approximately—was there one bang or more than one bang? 30

A. Several bangs.

Q. Several bangs, all right, is it possible for you to remember how many—can you give us an estimate of that or you cannot remember?

A. A number of bangs came in quite succession.

Q. You had time to see what part of the car was being banged or was it only your impression as to what part of the car was banged?

A. Well I was sitting in the driver's seat—I felt bangs on the bonnet at the near side of my car.

COURT: Mr. Gray would you point to the car—the roof of the car or the bonnet? 40

Q. The bonnet, Mr. Au, means that part in front of the windscreen—is that the part of the car you mean that was being banged?

A. The roof of the car.

Q. You mean the roof of the car and also luggage compartment at the rear of the car—all right now hearing this bang what did you do?

A. I just thought that some friends knew me and banged the car—I

thought that some friends were joking with me or wanted to call out to me because the windows of my car were closed at the time.

Q. Did any other thoughts cross your mind as to what might have been the cause of those bangings?

A. Really there should not have been any other cause.

Q. Did you then look round to see if you could recognise a friend?

A. I did.

Q. And what in fact did you see?

A. I saw three young men with very long hair dressed in the style
10 of teddy boys.

Q. Can you remember now to day how they were grouped—there were three of them you looked out the window—the back window of your car—how were they grouped together?

A. The three of them were standing in a row.

Q. Now you described them in that way—was there in fact any friend known to you?

A. I had never seen them before.

Q. Apart from noticing their long hair and style of teddy boys, what did you see them do or say anything?

20 A. Yes.

Q. What did you see them do or say?

A. When my car stopped after a while—stopped for a while, one of them who was on the side of the girl surnamed YEUNG, made faces to her and said, 'Wah'.

Q. Was her window shut at the time?

A. The window was shut but he leaned towards the windows and said, 'Wah'.

Q. How close do you think that person's face was to the window when he made that sound?

30 A. He was very near the window of the car because he leaned towards the window and so his head was very, very near the girl when he said, 'Wah'.

Q. What did you do after that—did you say anything in answer to this expression you heard?

A. Then I said to the girl surnamed YEUNG sitting next to me, 'I don't know what is going on with them.'

Q. Did you say anything else to her?

A. 'I don't know if I hit them.'

Q. That is what you said to her, 'I don't know if I hit them'?

40 A. Yes. That was what I said to the girl.

Q. So what did you then in fact do?

A. Then I parked my car outside the old Hong Kong and Shanghai Bank in almost the same position as shown in this photograph.

Q. Almost you said?

A. Almost.

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- Q. And then what did you do?
- A. Yes, I alighted from the car because I had seen those young men walking towards my car and waved at me to come out.
- Q. Were they all waving or one of them waved or more than one waved.
- A. Two of them were waving.
- Q. Would that have included the one that said, 'Wah' or was it the other two?
- A. Including the one who had earlier on said, 'Wah'.
- Q. Now all the three abreast, therefore the one who said 'Wah' was 10 the one nearest to the passenger seat?
- A. He was standing in the middle.
- Q. Can you remember which was the other one who signalled you to get out—which of the other two on either side?
- A. That was the deceased.
- Q. Do you remember in this line abreast where was he standing, to the right of the person who shouted 'Wah' or to the left of the person who shouted 'Wah'?
- A. When he was crossing the street the deceased was to the left of the person who had shouted 'Wah', but when he was waving at me he 20 was standing to that person's right.
- Q. Can you tell us now this day which of the three it was that shouted 'Wah' or can you still not identify that person?
- A. LEE Wai-tang.
- Q. All right—now you got out of the car what did you do then?
- A. When I got out of the car I walked towards those three young men who had signalled to me to come up to them—they were walking towards me—in other words we were walking towards each other.
- Q. Yes?
- A. At that time they were standing by the rail. One of them was 30 standing on the kerb of the pavement, two were standing on the carriage-way beside the kerb.
- Q. Well since you can now identify them, can you remember who was standing on the pavement by the railing?
- A. LAI Hon-shing was standing by the railing.
- Q. What happened next as you approached each other?
- A. I spoke to them.
- Q. Were you the first person to speak or did they speak first?
- A. I was the first person to speak.
- Q. What did you say? 40
- A. I said to them, 'I am a policeman.'
- Q. Anything else?
- A. 'Did my car hit you?'
- Q. Were you addressing anyone in particular that point of time or all three of them?
- A. I was addressing all three of them.

Q. Which one answered?

A. LEE Wai-tang.

Q. Do you remember what he said?

A. Yes, I do.

Q. Tell us so far as you can remember what he said?

A. Regarding hitting, he said, 'Regarding hitting you did not hit us but policemen are a fucking pig.'

Q. You remember asking anything else?

10 A. Then I said to him—I said that I wanted to arrest him—I said that what he did earlier amounted to making trouble deliberately.

COURT: What he did earlier on?

INTERPRETER: Amounted to making trouble deliberately—purposely.

Q. Still were you addressing LEE Wai-tang?

A. No, I was addressing the three of them.

Q. What happened next—what was said or done next?

A. And then I wanted to go up to them to arrest them.

COURT: Them—all of them?

A. I had already disclosed my identity and I wanted to arrest LEE Wai-tang first.

20 Q. Now you told us that they used words—LEE Wai-tang used some foul language. Had you by then used any foul language?

A. I had not yet used foul language.

Q. All right, so you are now going to arrest, with the idea of arresting LEE Wai-tang—what was said or done next?

A. LEE Wai-tang then stretched out his arm and he retreated and stretched out his arm and said, 'Don't you make any fucking move.'

Q. Did he stretch out his arms in any special way?

A. He folded the thumb of his left hand.

30 Q. Would you step down from the witness box and demonstrate so far as you can remember what he did with his hands.

A. (Witness demonstrates)

COURT: Can Members of the Jury see?

FOREMAN: Yes.

Q. Did that have any significance to you?

A. In the course of our daily work we have come to know that this was a gesture made by members of the 14K to enquire whether those on the other side were their own people.

Q. When he made that sign what did you do or say?

A. Then I said to him, 'Fuck you—I will arrest you anyway.'

40 Q. All this again was between you and LEE Wai-tang, is that correct?

A. Yes, but the other two were standing beside him.

Q. What happened next?

A. Then as I was approaching him with the view to arresting him, LEE Wai-tang gave out one punch and hit me on the face.

Q. Will you indicate on your own face which part of your face this blow landed, on which part of your face this blow from LEE Wai-tang landed.

A. This part.

- Q. Indicates just. . . .
- COURT: Left side of his nose.
- Q. Was this a blow with an open hand or a closed fist or could you not tell?
- A. With closed fist.
- Q. What do you remember happening next after that?
- A. When LEE Wai-tang hit me, the other two said, 'Hit him.'
- Q. What were you trying to do yourself at that time—that is after you had been hit, we know you were trying to arrest him before you were hit, but after you were hit what were you trying to do? **10**
- A. At that time since I wanted to defend myself and to find a way to escape, I retreated and hit back.
- Q. Now you mentioned the word railings before—did you retreat back so far as you can remember towards the railings—over the railings or away into the middle of the road?
- A. There was no room for me to retreat because they surrounded me in order to hit me.
- Q. Well then?
- A. And I was forced to the railing as a result.
- Q. Now throughout your account of what happened, Mr. Au, do you realise that what in fact happened and what you intended to do can be very different—do you realise that? **20**
- A. Yes.
- Q. You told us you tried to escape then you said there was no room to escape—to retreat, I beg your pardon.
- A. Correct.
- Q. So will you please make clear in your evidence from now onwards what you wanted to do or what you thought might happen as opposed to what in fact did happen.
- A. At that time I wanted to retreat but I could not do so because **30**
I had been forced by them to the railing. I then put my hand over my head at the railing and dashed out from where I was at the railing. But after I had dashed forward for a few paces, suddenly I was grabbed behind by the neck by someone. What crossed my mind at that time was it was more than just a mere matter of fighting or stir up trouble, and I also thought that matters were developing into something more serious in a criminal way.
- Q. Now you were grabbed by the neck by someone—can you tell now who is it—who it was that grabbed you by the neck—which of the three? **40**
- A. I know today.
- Q. Tell us who it was today?
- A. It was LEE Wai-tang who subsequently ran in Sai Yeung Choi Street.
- Q. So now you thought it might develop into something more serious—what kind of lines were you frightened of?

A. The first thing I thought was that they would resist when I said that I was going to arrest them—they had already resisted arrest—second point I had in mind was that he had used a hand signal of the 49K Triad Society.

Q. 49 member of the 14K.

10 A. 49 member of 14K—thus indicating that he was more than an ordinary teddy boy. The third point that was in my mind was that he had the temerity of trying to subdue me after attacking me and besides I had earlier on told him that I was a policeman—in those circumstances I did not know whether matters would develop to such a stage that they would snatch my gun because one or two months before this incident two revolvers had been lost in the busy district of the same area—that is Mongkok, so it did occur to me that they might snatch at my revolver.

Q. Did any other thoughts cross your mind as to what they might or might not do at that time?

20 A. As my neck was being grabbed I could not turn my head and I was able to see those two persons standing in front of me attacking me. At that time I was afraid that they might have offensive weapons with them, because during the last few years fights of this nature usually involved young men of this age and young men dressed in this style.

Q. You have used the words offensive weapons—can you be more explicit as to what you mean—did you think they might have a gun?

A. I thought that they had knives.

Q. You have told us what thoughts you had in your head—can you tell us now so far as you can remember what in fact happened to you?

30 A. What in fact happened was that my neck was being grabbed, my head and my chest were being attacked and there was someone feeling at my—at the right side of my waist.

MR. EDDIS: Mr. Gray, you are showing your left-side.

INTER-RETER: Right-side.

MR. EDDIS: You do mean the right-side—your face, it was hit again was it when your neck was held?

A. Yes.

Q. Can you indicate now to my Lord and jury whereabouts you were hit on the face, after that initial blow, where you were hit on the face when you were being held by the neck?

A. This part—head and this part.

40 Q. Forehead and the right-side of the face.

A. And also on the chest.

Q. Were these blows so far as you can tell—what was used to deliver these blows?

A. I did not notice—I could not see how they were hitting because I was being pulled backwards—I was at a tilted position and seeing that my body had lost balance.

Q. Do you remember at any stage losing balance altogether?

A. Yes, I did when I was suddenly grabbed—held on my neck behind I fell backwards—I did not fall to the ground because my neck was being grabbed from behind.

Q. Now what about—you have indicated that someone was feeling around your right waist.

A. Yes.

Q. Could you tell us now which person you think that was?

A. I cannot say because it was—I did not know who the person was feeling the right-side of my waist because my head was in a tilted position when I was grabbed from behind by the neck—but I can say with certainty it was either LAI Hon-shing or WONG Hon-keung, that LEE Wai-tang grabbed hold of my neck from behind. 10

Q. Did you have anything of significance on your right waist area that they might have felt either in your pockets or anywhere?

A. Because my revolver was tucked at my right waist—left waist, I am sorry.

Q. And what, if anything, was in your right waist?

A. I had a paging system, a bleeper, and also a round of ammunition on my right waist. 20

Q. A round or more than one round?

A. Twelve rounds.

Q. Twelve rounds of ammunition. Now you told us just now that you kept your revolver at your left waist.

A. Yes.

Q. Can you, by using this pen, show us by getting down from the witness box in what manner you tucked your revolver in your left waist, which direction it was.

COURT: Give him Exhibit 6, I think.

MR. EDDIS: Very well, my Lord. I don't have any objection if the court does not. 30

COURT: Just one moment. Make sure that it's empty. Don't point at me. Check it and see whether it's empty.

MR. EDDIS: And point it away to the window.

COURT: All right. Now you can demonstrate.

MR. EDDIS: Would you come down.

A. At that time I was using this holster. (witness demonstrates)

COURT: Yes.

MR. EDDIS: Do you want any description of that for the record, my Lord? The left hip, butt pointing. . . . 40

COURT: Would you put it back please and let us see it. Yes, tucked with the handle facing to the front on the left hip.

Q. Do you fire a revolver, if you have to do so, with your left hand or your right hand?

A. I could use either left or right hand. I try with both hands.

Q. Now the fight that you have now described to us, was it a stationary fight or were you moving around?

A. We moved around many times during the fight. There were many occasions on which we moved around from the time my neck was grabbed. From the beginning until the end of the fight we moved around many times.

Q. Now of those two who were in front of you, that would be the deceased and WONG Hon-keung, were they always full face to you so far as you could see or did they sometimes—were they sometimes in a different position?

10 A. They sometimes were facing me. Sometimes I could not see them because in the course of the fight as we were moving around sometimes they moved to my side, whilst at other times they were in front of me.

Q. I think it is common ground that a moment arrived in the fight when you drew out your revolver. Is that correct?

A. Yes.

Q. Did you draw it out with your left hand or your right hand?

A. With my left hand.

20 Q. At the moment when you drew it out, what was the arm which you have described as being round your neck, what was that situation? What was the situation with regard to the arm of LEE Wai-tang around your neck?

A. The arm was still around my neck. At that time I felt difficulty in breathing. I feared that if this continued I might faint. At that time there was also someone holding me by my right hand.

Q. What did you do when you drew out your revolver? First of all, it's in your waist.

A. Yes.

Q. Did it stay at your waist or what did you do with it with your left hand?

30 A. At that time I thought that I had no alternative but to draw out my revolver in order to stop this matter from developing further.

Q. Did you in fact fire your revolver at that point in time?

A. Yes.

Q. Did you give any warning to them before you fired?

A. No.

Q. Why not?

A. At that time my neck was being grabbed by them. I had difficulty in breathing. I was not able to speak.

Q. Which person did you aim at? The person who was immediately in front of you or where was the person you were aiming at on that occasion?

40 A. At that time I was not able to aim at anything when I drew out my revolver because my neck was being grabbed so I opened fire once when I drew out my revolver. My purpose at the time was to prevent this matter from developing further. I felt that I was given one further punch with a fist by someone after I had opened the first shot, and besides, the person who had been grabbing me by the neck did not release his grip. Accordingly, I fired another shot. It was then that I discovered that the person grabbing me by the neck had released his grip.

Q. How long in time would you estimate—what was the time between the first and second shot?

A. The two shots were almost fired in succession. At the most, there was a gap of two minutes. One can say that there were two successive shots . . . two seconds.

Q. You have heard the medical evidence in this court which establishes that the deceased received two shots in the back. Can you tell us how you think that happened?

A. Possibly this happened because the moment he saw me drawing my revolver he turned round and ran. One of them. **10**

Q. Did you in fact see him turn round?

A. In fact I could not see because my neck was being grabbed from behind. I could only see the shadows of two heads moving.

Q. What at the time did you think had happened between the first and second shots? What did you think these two shadowy heads were doing or might do?

A. I thought that the two were attacking me.

Q. This is after the first shot and before the second?

A. Yes.

Q. You thought they were still manoeuvring to attack you further? **20**

A. Yes.

Q. Now that is what you thought. When the arm around your neck was released what in fact were they doing?

A. In fact they were running in front of me, about five feet away from me.

Q. What was the moment of time—can you remember today the exact moment of time when you realised they were running? When I say the exact moment of time I mean in relation to the other incidents: the firing, the arm around the neck and so on. At what moment of time did you realise they were in fact running away? **30**

A. When my neck was grabbed and when I discovered that I was not able to see then I became very frightened. I was afraid that they might injure me with knives, small knives, and so forth. Then accordingly I pulled out my revolver and fired a first shot, in order to prevent this incident from deteriorating, but when I fired the second shot my neck was still being held from behind and I therefore could not see them. I also felt that I was hit once more on the head after I had fired the first shot. This fist blow can be said to have been delivered at the same time as the first shot was fired, and for that reason I fired another shot. After the second shot was fired and the person who had been grabbing me from behind released his hand, I dropped my head and it was then that I realised that they were running. **40**

Q. Running away then?

A. When I first had a look at them they were running away at a distance of five feet, approximately five feet away from me.

Q. Now the person with his arm round your neck, have you any idea what happened to him? That's LEE Wai-tang.

A. From the evidence of the witnesses I know that this person subsequently ran into the crowd in Sai Yeung Choi Street.

Q. This is in fact that you know from the witnesses. Did you at the time know what had happened to him, the man who was grabbing your neck, namely, LEE Wai-tang?

A. I did not.

Q. All right. But the other two whom we now know to be LAI Hon-shing and WONG Hon-keung, were running ahead of you. What did you do so far as they were concerned?

10 A. I immediately chased them.

Q. When you were chasing them, I think it is common ground they ran along Argyle Street towards Nathan Road. Were you, as the chaser, were you on the pavement or in the roadway? Were you in Argyle Street or on the pavement of Argyle Street?

A. As there were many pedestrians on the pavement and in addition to the presence of a railing, it was not so easy for one to dash to the pavement so I was chasing along the curb.

20 Q. Did you see whether they were on the curb, on the pavement, sometimes on the curb, sometimes on the pavement, or did you lose sight of them?

A. I never lost sight of them. During all the time they were running along the curb beside the pavement.

Q. Did you say anything as you chased them along Argyle Street?

A. No. As I wanted to run faster there was no reason for me to say anything.

Q. What did you do with your revolver? You had fired two shots. Where was your revolver while you were carrying out this chase?

A. As I was giving chase the revolver was being held in my left hand and was pointing downwards.

30 Q. Was your hand then, when you were giving chase, on the trigger or not?

A. I cannot remember.

Q. Now the chase went on and continued down Nathan Road. What happened in Nathan Road, in your own words?

A. As I was giving chase I noticed that the two persons in front were not running very fast because both of them were wearing very high heeled shoes.

Q. Yes. Carry on in your own words what happened in Nathan Road?

40 A. I myself believed that I could overtake. The two persons in front of me were running along Argyle Street towards Nathan Road. Then they got to the curb near the entrance of Crocodile Shirts. I discovered then that I was catching up with the one who was running at a slower speed.

Q. Now for the sake of everyone here, Crocodile Shirts shop that you're talking about is in Nathan Road. You are talking about a point in time when the chase had turned the corner into Nathan Road, are you not?

A. Yes.

Q. Right. At that point of time you realised you were catching them up. Now do you mean both of them or was one of them running ahead of the other?

A. One of them.

Q. What about the other one? Was he going fast or had he gone off out of sight or what?

A. The other one was running faster and when he got into the junction of Nathan Road he dashed to the crowd in Nathan Road on the pavement.

Q. So you were now catching up with LAI Hon-shing. **10**

A. Correct.

Q. What in your own words happened next?

A. I then shouted out to him, "Still running?" At that he paused, turned round and swung his right arm towards me. When he turned round and swung his right arm around me I did not know if he was holding any weapon in his hand. Then accordingly I dodged to the left. By that time in my mind I was thinking that he might be swinging around to attack me or swinging around to snatch my revolver because I was already catching up with him and he was no longer able to continue running.

Q. You thought he might snatch your revolver. What did his arm **20**
in fact do? Did it in fact connect with you, this swinging arm of LAI Hon-shing? Did it in fact connect?

A. I dodged, otherwise that arm would have hit me.

Q. So the answer is no, the arm did not in fact connect with you. Is that right?

A. Because I dodged.

Q. Very well. What in your own words happened next? First of all, before you go on, how close were you to each other now? That is to say, he had swung his arm back, you had dodged. How close are you to him at that point in time? **30**

A. About two feet.

Q. What in your own words happened next?

A. I then dodged quickly and it occurred to me that he was swinging around possibly to attack me or to snatch my revolver because by then he was no longer able to run as I had already caught up with him. At that time it occurred to me that if I were to struggle with him for the revolver in that area it would be very dangerous for everybody because there were many pedestrians walking there, but if I were to open fire at him I could hit him 100%, I could hit him at any part of his body that I aimed, but I did not want to do that. Consequently, I aimed at the ground **40**
and fired one shot in order to frighten him from doing anything further.

Q. What part of the ground in relation to his body did you aim at? Mr. Gray is there. What part of the ground would you have aimed at with your left hand?

A. Well, just "bang" — I opened fire this way. (witness demonstrates)

Q. Was he facing you at this time or to the side you or with his back to you? That's LAI Hon-shing.

A. At that time he was at an angle with one side of his body towards me, just in the same position as the Interpreter is as in relation to me.

Q. So, witness, you are indicating you are half turned towards the Interpreter and the Interpreter is facing the jury half way from you. Is that the position between the two of you?

A. No, that was not the position at the time. If this were Nathan Road and this is the pavement, the curb, and this is the pavement, I was giving chase at the time he turned round and made this movement. . . .

Q. And how far round did his face and body. . . .

10 A. . . . I dodged in that direction.

Q. So you were more or less behind him at this point in time. Is that right?

A. I was reaching him by then, being separated by a distance of about two feet from him.

Q. Will you go back to the witness box. So when you fired you were about two feet away. Is that right?

A. Yes.

Q. All right. What happened next?

20 A. When he saw that I fired another shot, he dodged to the pavement, he dashed to the crowd on the pavement and he ran to the entrance of Silver Star Fashion Shop. By then I had already caught up with him. When I caught hold of him, the moment I caught hold of him he squatted down and he said to me he was in great agony. When he said these words to me it was then that I realised that he had been shot.

Q. So what did you do then?

A. Then I gently assisted him and made him lie on the ground. I myself rushed into the Silver Star Fashion Shop and dialled 999.

Q. In dialling 999 which of the services did you alert? Obviously not the fire brigade, but ambulance, police, one or the other or both.

30 A. Dialling 999 is the fastest way of making a report. When one dials 999 then any Government department would be aware of the report. The fire brigade and the ambulance service would send people over rightaway.

Q. What description did you give to them as to what had happened?

A. Well, I spoke to them and firstly I revealed my identity to them. This was a necessary part of a policeman's daily routine, to identify himself. Then I told them what had happened and I also told them it was very necessary to have an ambulance sent over because one person had been injured.

40 Q. The auxiliary sergeant who gave evidence told my Lord and the jury that when he asked if you had phoned, you said "Not yet."

A. I disagree.

MR. EDDIS: I think, my Lord, it is common ground between the Director and the defence that the first recorded 999 call was made by Mr. AU.

COURT: Yes.

A. Because by the time I saw the sergeant I had already made the telephone call and had come out.

- Q. So he must have misunderstood you, is that right?
- A. I don't know if he misheard me or misunderstood me.
- Q. All right. What did you do after that, after making the 999 call?
- A. After dialling 999 I walked out to the entrance of the Silver Star Fashion Shop to attend to the injured person. As soon as I walked to the entrance I saw a sergeant of the Auxiliary Police; he had arrived. That sergeant was then squatting down and looking at the injured person and he was holding the injured person and attending to him.
- Q. What did you do next?
- A. I immediately went to the scene in Sai Yeung Choi Street where the shooting incident occurred. I went to look for the girl surnamed YEUNG who had been sitting with me at the time in the car. 10
- Q. So you went back to your car in Argyle Street briefly—in Sai Yeung Choi Street.
- A. I ran immediately to that spot.
- Q. What did you do or say when you got back to your car in Sai Yeung Choi Street?
- A. At that time I told the auxiliary police sergeant to look after the injured person and told him that the ambulance would soon be coming.
- Q. At your car what did you do or say there? What did you do when you got to your car? 20
- A. When I reached the side of the car I saw the girl still sitting there and looking very frightened. I asked her if anything had happened. She told me that there was one person who tried to get into the car and that person was unknown to her so she told me that she was very frightened and requested that she leave the scene, but I told her that she could not leave because she was the most important eyewitness and she became so eager that she burst into tears. I then told her to leave behind her home telephone number and to return home to wait for any possible telephone call and not to go out because the police would look for her rightaway to give a statement. 30
- Q. You say you asked her for her telephone number. Does that mean that you did not know it before then?
- A. I did not know before then.
- Q. And did she give you her telephone number?
- A. She did.
- Q. Did she then leave the scene and go away.
- A. Yes. She took a taxi and went home.
- Q. Did you do anything with the car?
- A. No, I just took the key of the car with me and went back to Nathan Road rightaway. 40
- Q. Now you say you ran to your car in Sai Yeung Choi Street as soon as you saw the auxiliary sergeant was taking care of LAI Hon-shing. Did you go back in the same manner, running, or did you walk back?
- A. Yes.
- Q. Which? Walked back or ran back?
- A. I ran back.

Q. By the time you got back what was the situation then?

A. Shortly after I ran back an Emergency Unit vehicle arrived, that is a vehicle from 999.

Q. Did the ambulance arrive shortly after that?

A. Shortly afterwards an ambulance arrived.

Q. And took away LAI Hon-shing.

A. Yes.

Q. And LEUNG Wai who had been injured by the ricocheted bullet that you had fired in Nathan Road.

10 A. Yes.

Q. Did you yourself later go to a hospital?

A. Yes.

Q. Who accompanied you?

A. I was accompanied by a detective sergeant.

Q. Is that sergeant YIP Kai?

A. Yes. I went to Queen Elizabeth Hospital.

Q. Now sergeant YIP Kai gave evidence last week about your description of the incident to him in Nathan Road. Did he write down the description that you gave to him?

20 A. No. I only gave him a rough oral account because by then there were more senior officers at that spot so I very hurriedly gave him a rough account.

Q. Can you now today remember exactly what you said?

A. Yes, I can.

Q. Can you tell us exactly what you said to him?

A. I at that time gave him a very short and simple account.

Q. If you can remember exactly what you said please tell us today exactly what you said in January.

30 A. At that time it was nine-thirty p.m. I was driving a girl surnamed YEUNG and wanted to turn from Argyle Street into Sai Yeung Choi Street. As several teddy-boys hit my car with force I alighted from the car to make enquiries. I was attacked and it was those three teddy-boys who attacked me. In the course of their attack on me I pulled out my revolver because I felt at the time that they attempted to snatch . . . they had the intent to snatch my revolver. Accordingly I fired two shots at that time, then they ran and I gave chase up to this spot. Before I reached the spot, when I was about two shop spaces away, the injured person turned round to attack me and consequently I fired one other shot, so consequently I fired altogether three shots. I said those words to him very hurriedly
40 and there was no time for me to speak to him. I only gave him a very rough account. At that time he did not use any paper or pencil to make a record. He said . . . oh, the only thing he said was, "All right. All right."

Q. When you got to the hospital you were medically examined. Did you have to undress to be medically examined?

A. Yes, I had to.

Q. Did you notice anything about your clothing when you had to undress?

A. When I was undressing I felt that the right shoulder part of my jacket had been torn. I believed that it was torn during the time I was being held from behind by the neck and struggling, because I put on that jacket only at half-past seven that evening when I went out.

Q. And what have you done with that jacket since?

A. That jacket was later on handed to Mongkok Police Station as an exhibit after I got back to the Mongkok station.

Q. And so far as you know, is the jacket still in the custody of the police?

A. Yes. 10

MR. EDDIS: My Lord, the Director has previously agreed with us to produce it if we ask for it. We have forgotten to ask for it so it isn't in fact, I don't think, available at this moment, but we do now request it.

COURT: Is it available?

MR. EDDIS: Oh, it is available? Well, may we then produce it?

Q. Is this the jacket you were wearing on the night in question?

A. Yes.

Q. Will you hold it up for everyone to see? Do you now produce that jacket for the court?

A. Yes. 20

MR. EDDIS: May it be marked as before, my Lord, Exhibit 27?

COURT: Yes.

MR. EDDIS: And may it now be shown to the jury?

Q. There are one or two other matters, Mr. AU. You have heard both WONG Hon-keung and LEE Wai-tang say that they were not armed on the night in question. Did you have any occasion during this incident to search either one or the other?

A. During the course of the accident I did not see any weapon with them, but I can't say definitely that they had no weapon because they had already run home and I did not search them. 30

MR. EDDIS: Thank you Mr. AU. Thank you, my Lord. No further questions. Would you wait there, Mr. AU, for cross-examination.

COURT: Yes, Mr. Penlington.

XXN. by Mr. Penlington:

Q. Mr. AU, you told us and it is an agreed fact that in December there were two cases where police officers had their revolver snatched, one in Shanghai Street and the other one in Laichikok Road.

A. Yes.

Q. Did you know anything of the circumstances surrounding those two snatches? 40

A. They occurred in busy areas of the streets of the city.

Q. Is it not true, Mr. AU, that in fact both of those officers were uniformed constables?

A. For that reason we have to be all the more careful.

Q. Yes?

- A. Because they even dare to snatch the revolvers from policemen in uniform.
- Q. They were uniformed police officers.
- A. Yes.
- Q. They were attacked from behind.
- A. Yes.
- Q. Unexpectedly.
- A. In the same unexpected way as I myself was grabbed by the neck from behind.
- 10 Q. The lanyards of their revolvers were cut and the revolver taken away.
- A. Yes.
- Q. Very well. Now you have told us that your friend in Headquarters asked you to bring him a meal. Were you surprised at that request?
- A. No.
- Q. Is there not a canteen in Police Headquarters?
- A. The canteen always closes for business at five p.m.
- Q. I see.
- A. And besides, when he was on duty then he could not leave his
- 20 post.
- Q. Very well. Now is it your evidence that this meeting with Miss YEUNG was entirely at your wife's request?
- A. Yes.
- Q. Did you know Miss YEUNG before this evening?
- A. Yes. I had been introduced to her by my wife. I had seen her on two to three occasions.
- Q. Had you ever seen her previously on her own?
- A. No.
- Q. Had you told her whereabouts you were going to?
- 30 A. What?
- Q. Had you told her where you were taking her to?
- A. My wife had spoken to her.
- Q. Your wife had spoken to her?
- A. My wife had spoken to her and asked her to wait so that she could go with her together to buy piecegoods and have some clothes made because this person surnamed YEUNG used to make clothes for people at her own home, and it would be much cheaper for clothes to be made in that way by her than in tailor shops and for this reason my wife associated with her after coming to know her.
- 40 Q. Now Mr. AU, will you just . . . we're spending a lot of time on this, but answer the questions. My question was this: on this evening is it your evidence that your wife had arranged with Miss YEUNG to meet her somewhere?
- A. No. No arrangement on a fixed basis had yet been made. She merely told me that she and I, that Miss YEUNG and I, would first find a place. Once we had found a place for dinner then we would telephone and ask her to come.

- Q. Your wife had told Miss YEUNG this?
A. Yes.
Q. So Miss YEUNG would not have been surprised when you arrived to collect her.
A. Yes, she had known about it.
Q. Do you know whether Miss YEUNG gave evidence in the inquest?
A. Yes.
Q. Did she say anything about that, this arranged meeting?
A. I can't remember.
Q. Very well. You picked up Miss YEUNG in your motor car? **10**
A. Yes.
Q. After going to Police Headquarters you were going along Argyle Street?
A. Yes.
Q. At that stage had you decided where you were going to have dinner?
A. No.
Q. You turned into Sai Yeung Choi Street, as you say, slowly?
A. Yes.
Q. As you turned past the pedestrians crossing Sai Yeung Choi Street did you hear any bump or feel anything that might indicate that you had struck any pedestrian? **20**
A. As I have already said in my evidence, my car was travelling at a speed slower than that of pedestrians. This being the case it was not possible for me to have hit anyone.
Q. Were the pedestrians walking across the street crossing from one corner of Sai Yeung Choi Street to the other?
A. No. At that time some pedestrians were crossing this way, some were not, because there were too many people crossing the road.
Q. There were a lot of people crossing the road in both directions from one corner of Sai Yeung Choi Street to the other, isn't that not true? **30**
A. Yes, correct.
Q. As you turned, as you say, slowly from Argyle Street into Sai Yeung Choi Street you had to push your way; your car had to make its way through this line of pedestrians, isn't that true?
A. We had to make way for each other.
Q. Yes, didn't they have to stop to let your car go through?
A. Yes.
Q. And if they didn't stop quickly enough they would have walked into your car or your car would have bumped them? **40**
A. But if there was any hitting at all it would be the front of the car hitting them and I would have seen it.
Q. Now, Mr. AU, the question was simply this: did you then feel any bump or hear any bump indicating that your car, any part of your car, had struck a pedestrian?
A. I can say with certainty that my car did not hit anyone.

Q. And even if it had hit anyone you were going so slowly they couldn't possibly have been hurt. Is that the case?

A. I can only say that my car did not hit anyone.

Q. You also told us you were travelling very slowly, is that right?

A. Yes.

Q. Now, Mr. Au, those of us who drive round Hong Kong often find that turning across a line of pedestrians like that the pedestrians are often very reluctant to allow you to drive through them, and you have some difficulty forcing your way through such a line. Did you find that
10 on this occasion?

A. There was no way for me to drive through. There was no need for me to drive through the pedestrians crossing the street. There was no way to do so because the road was very narrow.

Q. Perhaps you misunderstood me, Mr. Au. As I understand it, you were turning from Argyle Street into Sai Yeung Choi Street.

A. Yes.

Q. You told us that there were pedestrians crossing from both ways, both going east and west, crossing from one corner of Sai Yeung Choi Street to the other.

20 A. Yes.

Q. Isn't it then true that to get into Sai Yeung Choi Street you had to go through this line of pedestrians crossing the road?

A. Yes.

Q. Now the next question is simply, did you have any difficulty in getting through that line of pedestrians in your car?

A. There was no difficulty because the pedestrians would make way for you to drive through for they knew that it was a carriage way.

Q. It's your evidence, is it, that on this particular evening there was no difficulty; the pedestrians made way for you to drive through into
30 Sai Yeung Choi Street?

A. Yes. I was driving very slowly myself, I was making way for them to walk.

Q. Did it not happen that as you turned into this line or to cross this line of pedestrians initially some people walked in front of your car and as your car moved further forwards they started to go round behind it?

A. Yes.

Q. Some of these people must have passed very close to your car.

A. I don't know, I don't know.

Q. Anyway, you told us that you then heard—felt a banging—a
40 banging on the roof of your car and on the luggage compartment.

(12.30 p.m. Mr. Gall enters courtroom)

A. Yes.

Q. Now this car, Mr. Au, BMW sports saloon shown in photograph
2E, it's a low slung car, isn't it? It is, as I say, a sports saloon and it's
low down.

A. Yes.

Q. So that a pedestrian who was standing beside it would be able to reach out and bang on the roof without any difficulty?

A. Yes.

Q. Now, when you heard this bang—felt this banging you told us you thought it was a friend.

A. Yes.

Q. Had you seen anybody in this line of pedestrians that you recognised before you turned?

A. As there were many people walking I could not see clearly and I was paying full attention to the car I was driving and did not therefore see those pedestrians. 10

Q. Surely, Mr. Au, if you are driving a car through a line of pedestrians as you have described you would be paying attention to them, because otherwise you might knock one of them down. Isn't that true?

A. Yes, I was paying attention to what was in front of the car.

Q. At any rate you didn't see anybody that you recognised?

A. Correct.

Q. Mr. Au, I put it to you that you were not—that you did not think this was a friend banging on the car, you became annoyed because some strangers had banged on your car. 20

A. I disagree.

Q. And that one of the—somebody called out as you went across this line of pedestrians, called out "Wa".

A. The "Wa", shout of "Wa" was not an indication of a person being hit by a car. It was not that he made it subconsciously, rather it was accompanied by making of face, as if to mock or make fun of someone.

Q. We will come to that in a moment, but I put it to you that in fact you heard this shout of "Wa" as you turned through this line of pedestrians.

A. No, after I had parked my car.

Q. Up to the time you had parked your car had anything happened except the banging on the roof and the luggage compartment? 30

A. No.

Q. Up to the time you parked your car had you looked back?

A. I stopped the car and then I looked.

Q. Why did you stop?

A. There are two ways of looking at it—at the matter when one heard the sound of "Wa". One way is that some teddy boys wanted to stir up trouble, another way of looking at it would be that some friends known to you who were making a joke.

Q. Did you stop your car at any time before you parked outside the Hongkong Bank building? 40

A. I can only say that the car did not stop; it was moving at a very slow speed.

Q. Now, let me get this quite correct. Whereabouts was the car when you say somebody called out "Wa" and made a face at Miss Yeung?

A. At that time the car had already crossed the pedestrian crossing and the whole body of the car was inside Sai Yeung Choi Street.

Q. Was it still moving?

A. Yes, it was still moving at a very slow speed.

Q. Did you see this boy that you say called out "Wa" and made a face?

A. Yes, I did.

Q. Through the left-hand window or the right window?

A. Through the left-hand window.

Q. The rear window or the front window?

A. The left-hand front window.

10 Q. So it is your evidence, Mr. Au, that while you were driving along still you looked out through the left window and you saw this boy making a face at Miss Yeung?

A. Yes.

Q. Now, that is not what you told us in your evidence in chief, is it?

A. Not different.

Q. Well, please correct me if you think I am wrong but my note of what you said is:

"I looked round and saw three young men with very long hair dressed in the style of teddy boys. They were standing in a row. I had never seen them before."

20

A. Yes.

Q. "When my car stopped one of them on Yeung's side made a face to her and said 'Wa'".

A. Can I explain?

Q. Yes, please do.

A. As I have already said in my evidence, the three youngsters were on the side of—on the side of Miss Yeung. I haven't said that my car stopped. My car merely made a momentary pause when it was hit and somebody said "Wa". When I turned my head in the direction of where
30 Miss Yeung was I was merely turning my head, slightly, not very much.

Q. Slapping?

INTER-RETER: No, a little, not very much.

Q. Mr. Au, I put it to you that what happened was you passed these pedestrians closely, and as you did so there was a noise, a sort of banging on your car, and at the same time somebody called out "Wa".

A. "Wa" was said when LEE Wai-tang was making a face to Miss Yeung beside me.

COURT: What was put to you was that the bang on the car and the shout "Wa" happened simultaneously. Do you agree or disagree?

40

A. I disagree.

Q. And I suggest to you that you became annoyed at this shout and the banging on your car, which you thought was banging on your car, and you drove across to the other side of the road and stopped.

A. I disagree.

Q. Did you then look out of your window, after you had stopped your car, to look back?

INTERPRETER: Look out of the window?

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- Q. Did you look out of your window before?
A. When my car paused for a short while I merely looked to the—
at the window to my left.
Q. This was when your car paused, not when it had stopped, when
it had paused?
A. It did not stop.
Q. How many people did you see?
A. I saw many people walking past but those three were not walk-
ing, they were standing beside the car. **10**
Q. Standing beside the car?
A. Yes.
Q. You had never seen them before?
A. I had never seen them before, I did not know them.
Q. Did you think they were the people that had banged on your car?
A. Yes.
Q. So that at that stage you knew that the people who had banged
on your car were not friends?
A. I knew that those who banged at my car were not friends of
mine, but as I have already said I did not know if they were people who
had been asked by my friends to do that to make a joke. **20**
Q. Mr. Au, are you seriously asking us to believe that you thought
some friends of yours had asked these three teddy boys to bang on your
car to make a joke?
A. Well, things of this kind happen very often. Very often I ask
friends to make jokes with those I am familiar with so that there will be
this element of surprise. This is something very ordinary.
Q. Now, you said these boys were—had very long hair, dressed in
the style of teddy boys. Did you use the expression 'fei chai?' This is
what you thought?
A. Yes. **30**
Q. Apart from their long hair what, in their dress, made you think
that they were 'fei chais'?
A. One of them was wearing a black jacket, the buttons were all
shiny. They were all sewn to both sides of the jacket, fixed to the jacket,
and were glittering—the buttons.
Q. One of them had a leather jacket with glittering buttons?
A. Not leather, black wool.
Q. Black?
A. Woollen jacket.
Q. What were the other two wearing? **40**
A. One was wearing a jacket similar to that worn by the marines.
Q. This was a green, military type jacket?
A. It looked like a military jacket, yes.
Q. The third one?
COURT: Are you saying that a person put on a military jacket to
look like a teddy boy?

A. No. At that time as I was looking at him he was standing and shaking his leg for misdemeanour. I can say that. . . .

Q. Misdemeanour?

A. Teddy boy type of misdemeanour.

Q. The third one was wearing a very ordinary type khaki coloured or greeny coloured pullover, jersey?

A. Yes.

Q. Are you saying it was their demeanour rather than their style of dress that made you think they were 'fei chais'?

10 A. The first impression I had of them was that they were very much up to fashion in the way they dressed, and then I noticed their demeanour.

Q. And the other thing I suggest you noticed, Mr. Au, was that they looked a bit annoyed, they looked angry.

A. They did not seem to be angry.

Q. And you say you saw these people through the left window of the car?

A. Yes.

Q. You could also see their faces and their hair?

20 A. Yes, because as I was sitting down I was at a lower level compared with them. They were standing up, therefore I could see them.

Q. How far away from the car do you think they would have been at that stage?

A. They were very close to the car; they were peeping into the car at that time.

Q. They were peeping into the car?

A. Yes.

Q. They were bending down?

30 A. Yes, because at that time LEE Wai-tang was standing in the middle; the three of them had their hands on one another's shoulders as they were walking, so with their hands on one another's shoulders when LEE Wai-tang bent down the other two also had to bend down. As LEE Wai-tang bent down to make faces the other two looked into the car with a contemptuous look. Well, the impression they gave was—if I may say so—"You think you're very smart."

Q. Now, Mr. Au, you told us that this happened after you had turned into Sai Yeung Choi Street and your car was still moving. Is that correct?

A. Yes.

40 Q. Is it your evidence that on that occasion, after turning into Sai Yeung Choi Street, with your car still moving, these three boys all together bent down, peered into your car and Lee called out "Wa"?

A. All these things happened at about the same time. There was only a small gap of time between the hitting of the car and the shouting of the word "Wa".

Q. Mr. Au, I suggest to you it happened at exactly the same time, in fact.

A. If you ask questions this way you will just prolong matters, you will only prolong matters because I can give the description and movements of one of the men. If you so desire I can give you the description and detail of what the other two men were doing, If you want me to, but all this happened in a very short spell of time.

COURT: Never mind how long it will prolong it. It is put to you that it happened at the same time. Do you agree or disagree?

A. I disagree.

MR. PENLINGTON: It might be a convenient time, my Lord.

COURT: Yes, adjourned to 2.30.

10

12.57 p.m. Court adjourns.

2.35 p.m. Court resumes.

Accused present. Appearances as before. Jury present.

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XXN. by Mr. Penlington continues :

COURT: Yes, Mr. Penlington.

Q. When we adjourned, Mr. Au, we had got to the stage where you had stopped your car outside the Hongkong & Shanghai Bank building.

A. Correct.

Ex. 3C. Q. Now, various eye-witnesses have looked at the relevant photograph, 3C. 20

A. Yes.

Q. And they have told us that your car was parked on that evening at approximately the same position as the station-waggon which is shown in that photograph.

A. Yes.

Q. And that it was not parallel—exactly parallel to the kerbing, it was parked slightly nose in to the pavement. Do you agree with that?

A. Perhaps at that time I had not parked the car in its right—absolutely right position yet. 30

Q. Was that the position in which the car finished? That was were you parked it?

A. That was the position in which I parked the car by the kerb.

Q. Did you then look out of your right window, the one beside you?

A. You mean after I had parked the car?

Q. Yes.

A. Yes, I did.

Q. Did you see. . . .

COURT: Did you?

A. Yes, I did. 40

COURT: You did?

A. Yes.

Q. Did you see the three young boys at that stage?

A. They were at the rear of my car to the right.

Q. So they had in fact crossed over Sai Yeung Choi Street and were now near the corner, the Hongkong Bank corner?

A. They were near the edge of the railing, facing the same direction as the man here, shown in this photograph.

COURT: Which man, the one in black?

A. Yes.

COURT: Show the Counsel and jury.

INTERPRETER: They were near the railing, in the same direction as the man.

10 COURT: In other words facing the same direction, towards the bank building?

A. I am talking of the position in which the. . .

COURT: Not the direction?

A. Not the direction, yes, and to be more exact they were standing near the sign here, the sign on the railing as shown in this photograph.

COURT: Would you show it to the jury, please? Near the 'entry only' sign, that sign here, in this picture? Which sign, the sign on the wall?

20 A. I don't know, but anyway they were in this position, along the railing.

COURT: Would you show it to the jury?

Q. Would you agree with me, Mr. Au, that there is a 'No waiting' sign up there by this railing?

A. Yes.

Q. So your car was illegally parked when you put it beside those railings?

A. Where?

Q. Well, if it was parked where the station-waggon is.

A. Yes, I know. I only wanted to alight from the car to have a look.

30 It was illegal parking.

Q. Now, you told us earlier on, Mr. Au, that you thought there were two alternatives when these people banged on your car.

A. Yes.

Q. Either they were friends who wished to attract your attention.

A. Yes.

Q. Or, to use your words, they were teddy boys out to make trouble.

A. Yes.

40 Q. When you stopped your car outside the bank and looked back, didn't it seem perfectly clear to you that there was only, at that stage, the second alternative left, according to your evidence, these were boys out to make trouble?

A. No.

Q. What other alternative was there at that stage?

A. Maybe my friend had not turned up yet.

Q. Mr. Au, with all respect, I think possibly that translation does not do you justice.

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INTERPRETER: . . . friend had not appeared.

Q. Your friend had not appeared?

A. Put it that way.

Q. You still thought at that stage that somewhere there was a friend or friends of yours who had instructed these or asked these boys to bang on your car?

A. Yes.

Q. Could you see anybody else, apart from these three boys?

A. I saw pedestrians walking.

Q. Could you recognise any of them? **10**

A. No.

Q. Did you hear them when you were still in the car? Did anybody, any of these boys, call out anything to you?

A. No.

Q. Did you say anything to them while you were still in the car?

A. No.

Q. You decided to get out of the car and go back to where these boys were?

A. Yes.

Q. Now, you have told us that as far as you know you had not **20** hit them.

A. Correct.

Q. They had made a face to your passenger.

A. Yes.

Q. And had called out "Wa".

A. Yes.

Q. And on that you decided to park your car in this unorthodox position, get out and go back to where these boys were?

A. There was already a row of cars.

COURT: Would you answer the question. **30**

A. Yes.

Q. Now, Mr. Au, I suggest to you that there was more to it than that; that there had been an exchange of words and you were annoyed because the boys, you thought, had banged on your car, and they had been rude to you and your passenger, and you were very annoyed.

A. I disagree.

Q. Mr. Au, that is what you told the Coroner, wasn't it? You were asked, "Did you have any feeling of anger?" and you said, "Yes I had that."

A. No.

Q. Are you saying that you did not say that to the Coroner or that **40** you did not have any feeling of anger?

COURT: Did you say—by 'no' do you mean you did not say that to the Coroner?

A. I can't remember.

Q. If you did say that to the Coroner was that true?

A. I don't know. I hope that you can produce the record and let me see.

Q. Yes, we can. Paragraph B.495—at page 405 and the bottom of page 494. Yes, Mr. Au, is this your signature?

COURT: Which page?

MR. PENFINGTON: I think it is page 577, my Lord.

A. Yes.

Q. And would you look at the bottom of page 494 and the top of page 495?

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10 “Question: What were you thinking at this time?
Answer: I thought possibly my car had touched them or they were creating trouble.

Question: Did you have any feeling of anger?

Answer: Yes I had that.”

A. What I mean, if they had wanted to stir up trouble then I would have naturally become angry, but on the other hand if they were my friends just making a joke with me I had no reason to be angry.

Q. Mr. Au, the next question you were asked:

20 “Was it because someone had banged on your car and made face at you?”

and you said “Yes.”

A. I have already given my reasons to the two questions you have put to me.

Q. Very well. I suggest that your evidence before the Coroner was quite clear that you were angry at that time.

A. At that time it did not occur to me yet as to whether I should be angry or not. As I have already said, there were two possibilities and before I came to know the truth of the matter I had not reason to be angry.

30 Q. So you then got out of the car, did you?

A. Correct.

Q. And what did you look for when you got out of the car?

A. To look for the reason why my car was banged.

Q. Did you look around?

A. The two of them waved at me and asked me to go up to them.

Q. Did you see anybody else in the area?

A. There were many people walking.

Q. Did you recognise any of them?

A. Recognise what?

40 Q. Did you recognise any people in the crowd that you could see as people that you knew?

A. At that time I just took one look, I did not try to see if I recognised anyone. I was at that time walking towards those three youths. They were walking towards me; we were walking towards each other.

Q. You were very close to them at this stage, weren't you?

A. About 3 to 4 feet. You mean when I was first walking towards them or my closest distance?

Q. When you got out of the car you were fairly close to them; you were only a few feet away.

A. When I first got out of the car I was neither too near them or too far away from them. They were about 5 to 6 feet behind the rear of my car.

Q. So you were within 15 feet of them?

A. At what stage?

Q. When you got out of the car.

A. About that, yes.

Q. When you got out of the car did you say to them, "Is this a 10 joke?" or anything of that sort?

A. I got out of the car and walked up to them and the first thing I said to them I have already told you, namely, I said that I was a policeman.

Q. At this stage did you look round to see if there were any of your friends in the area?

A. I had no opportunity to look round. If my friends had been making a joke with me by then they should have appeared to see me.

Q. So by then, Mr. Au, had you decided that the second alternative was the true one, that these were boys out to make trouble? 20

A. Not yet. They had to answer my questions first.

Q. Now, just before we leave this point, Mr. Au, to make it quite clear, there could be no suggestion, could there, that any of your friends would know that you were going to be passing that particular spot at that particular time?

A. We might have met by chance and they wanted to make a joke with me. If an arrangement had been previously made for some jokes to be cracked that would not be a joke.

Q. Can I put it another way: if your friends, any of your friends, had seen you driving around that corner on that occasion it must have 30 been a pure coincidence, there was no pre-arrangement, is that right?

A. Correct.

Q. They must have very quickly seen you driving in the car and very quickly told these boys to bang on the car?

A. Yes.

Q. Now, you said to me you said to the boy who was in front "I am a policeman. Did my car hit you?"?

A. Correct.

Q. Now, you have told us that there was no reason whatever for you to believe that the car had hit them and in fact it was going so slowly 40 that it was almost impossible for it to do so?

A. Correct.

Q. I suggest to you, Mr. Au, you did not say that; in fact you were very annoyed and you said something to this boy using very abusive language because he had, you thought, banged on your car and made a face at Miss Yeung?

A. I disagree.

COURT: What counsel asked you in the question was if you are that certain that car never hit anyone, any one of them, why ask so obviously "Did my car hit you"?

A. I think it was merely a prelude of what I was going to say when I got out of the car to ask them. There is always the beginning, the first sentence, in every dialogue.

Q. Anyway. . . .

A. . . . First of all, I had to satisfy myself as to whether I myself had done anything wrong.

10 Q. Lee answered, according to you, "Policemen are fucking big"?

A. No, before that he said that I had not hit him.

Q. Before that he had said; all right, would you tell us now exactly what he did say?

A. He said "Regarding hitting you did not hit me but policemen they are so fucking big."

Q. I put it to you that you approached these boys in a manner that has been described by a witness, an eye-witness, as aggressive?

A. No reason for that because I was by myself.

20 Q. You might have been by yourself, Mr. Au, but I put it to you you are older, you are stronger than these boys and you were armed, is that not true?

A. No.

Q. You are older, aren't you?

A. Neither are they young.

COURT: The question you were asked was were you older than they.

A. I am older in age than they.

Q. And you are stronger than these boys, aren't you?

A. We are about the same, strong.

Q. You don't dispute that you were armed?

30 A. I was legally armed.

Q. So Lee said he was not hit and did you then ask him anything else?

A. Yes, I did.

Q. What did you ask?

A. I wanted to clarify from them whether they were really trying to—they were really out for trouble and therefore I asked them why they had banged on my car and also to tell them that they were wrong in doing this and that I would arrest them.

COURT: Just one moment: "I asked why they banged on my car"—?

A. And I would tell them that. . . .

40 COURT: Not "I would", did you? You have in your examination-in-chief had it explained to you by your counsel that you must separate what you think you would do and what you intended to do and what you actually did.

A. Yes, my Lord.

COURT: Do not mix them all up. Now, you said in your reply in the first sentence "I asked them why they banged on my car"?

A. Yes, my Lord.

COURT: And then?

A. I then said "If you bang on my car without any reason it would mean causing trouble in a public place" and in such an event I would arrest them.

Q. You would arrest them?

COURT: "And I would arrest him"?

A. Yes, my Lord, I would arrest him.

COURT: Yes.

Q. When you said that had he used any foul language?

A. Yes, he had, he had said "Policemen are so fucking big".

10

Q. Now, is it your evidence, Mr. Au, that as an experienced officer of thirteen years you proposed to arrest these boys for banging on your car as you drove past them?

A. This was the cause, that is to say, the reason leading to my wanting to arrest them but the offence for which they would be arrested would be behaving in a disorderly manner in a public place.

Q. You were going to arrest the whole three of them or just Lee?

A. Just Lee.

Q. Just Lee or the whole three?

A. If you ask what I was prepared to do I was prepared to arrest all three. 20

Q. And it was your considered opinion of a man who was not, you say, angry as a law officer at that stage you had enough to arrest these boys for creating a disturbance in a public place?

A. I was prepared to arrest the three of them and then to have it clarified as to which particular one was making trouble.

Q. What were you going to do with them when you had arrested them?

A. If it was the case of a law abiding young man then he should go with me to the police station to clear himself up in connection with the matter for which he was suspected. 30

Q. And so you thought the three of them would do this if they were law abiding men?

A. Yes.

Q. Your sworn evidence, Mr. Au, then is that as a police officer of thirteen years' standing you proposed to arrive at a police station with these three boys and say to the duty officer "These boys are under arrest. On of them banged on the side of my car."?

A. Well, I could not ascertain myself which one it was that banged on my car. I hoped that they themselves would of their own volition admit to me who it was that banged on my car, although I could be sure as to which one that made faces. 40

Q. When Lee said to you or used foul language in reply to your question did you become angry then?

A. At that time I was executing my duty but speaking of feeling I was a little angry.

Q. You have told us that you were on your way at this stage with Miss Yeung to go to a restaurant from which you would ring up your wife and you would then have a conference on making clothes for the Chinese New Year?

A. Yes.

Q. But with no great feelings of anger you were prepared at this stage to embark on an—on the arrest and investigation of the offence, you considered an offence, banging on the side of your car?

COURT: Did you say without anger?

10 Q. Without any great anger.

A. That is—this is the duty of a policeman.

Q. I put it to you, Mr. Au, that in fact that is completely untrue, you were angry at this stage, you felt that you had lost face in front of Miss Yeung?

A. No.

Q. You say then that Lee retreated?

A. Retreated one step.

Q. Now, he couldn't have come forward very far, could he, because you car was parked very close to this studded crossing?

20 A. They could turn round and come up.

Q. How far had they come up?

A. How far had they come up to my—to me or to the studded crossing?

Q. Well, they had crossed over the studded crossing, hadn't they, you have told us they had finished up at the corner of the Hongkong Bank?

A. No, they were not walking straight. They turned round towards me and they waved at me to go forward.

Q. They were waving at you to come forward?

A. Yes.

30 Q. Now, you told us it was only at the most fifteen feet between you and the boys at this stage?

A. Yes.

Q. Did they say to you "Come over here"?

A. They waved at me.

Q. From a distance of about fifteen feet they were waving at you?

A. No, they were waving at me as they were walking towards me.

Q. Across the crossing?

A. Yes.

Q. Did you see this while you were driving your car over to park it?

40 A. No, I was driving my car.

Q. And you saw this waving when you were driving the car?

A. No, I did not see them waving when I was driving the car.

Q. When did you see them waving?

A. When I had stopped the car and turned round.

Q. You have told us that Lee then retreated one step and held out his hands in the way you have described?

A. Yes.

Q. And he said to you "Don't you make any fucking movements"?

A. Yes.

Q. You have told us that you took this, the way he held out his hand, as being a triad sign?

A. Yes.

Q. Now, is it your evidence on oath that that is a well-known triad sign?

A. It is the most common sign used by triad societies to enquire the identity of the other party.

Q. And yet, Sergeant Yip Kai who has been in the Police Force 10 I think he has told us for thirty-one years from his demeanour in the box and from what he said did not know that that gesture meant anything of any significance at all?

A. When a policeman had not experienced or encountered such a sign then if I had not encountered that I myself would not know what it meant.

Q. But if it was to be used in the way that you have described, surely it must be a well-known sign?

A. The more obvious and more commonly known signs are such things as poems, seals and so forth. The sign in question can be easily 20 used in a public place because it would not be easily recognised.

Q. It would not be easily recognised. If you thought—did you think that the use of this sign meant this young lad Lee was a member of a triad society?

A. Otherwise he would not have known this.

Q. Did this make you think that perhaps the other two were also associated with triad society?

A. At that time I didn't think about the other two also belonging to triads.

Q. Nevertheless having seen this, what you say to be a triad sign, 30 you pressed on with the idea of arresting these three young men?

A. Yes.

Q. On your own?

A. Yes.

Q. Mr. Au, I put it to you that this sign was made, the holding out of the hand in that manner was a simple, perfectly straightforward sign, an indication from this boy that so far as he was concerned he had done nothing wrong?

A. I disagree.

Q. When Mr. Cheung the watchman of the bank gave his evidence, 40 you remember that is what he took it to be; did you hear that?

A. Well, his thinking and the way he looks at things is different from that of a policeman.

Q. You then said to Mr. Lee, according to your evidence, "Fuck you, I will arrest you anyway"?

A. Yes.

Q. Didn't you think it was somewhat unwise in view of the situation that you faced, three of them to your one, one of them you suspected to be a member of a triad society, that you yourself should then antagonise him by using bad language?

A. No, I should have. It was right for me to do that. There is no reason for me to be afraid of them when I came to know about what they were.

COURT: You were asked whether it was unwise to use such a language to antagonise him.

10 Q. Including foul language, and you said you thought it was right for you to do so.

COURT: Do you mean to say it was right for you to use foul language to effect an arrest?

A. No. What I meant was that I was determined to arrest them and I would persist in doing so. I wanted the other side to know that I was not just submitting and the use of the foul language was emphasised that I would not just run away because I knew what they were.

COURT: I see, so the foul language was to show him formally?

A. Yes, this is the practice among the Chinese.

20 COURT: Not all the Chinese. . . .

A. . . . Not all the Chinese.

Q. Mr. Au, at this stage you were very close to these boys, were you not?

A. Yes.

Q. Would you not agree with me that feelings were running high on both sides?

A. I won't say running high but comparatively angry.

30 Q. I suggest to you that at this stage it was perfectly obvious that they were not going to submit or leave, certainly not submit to being arrested?

A. Correct.

Q. There was going to be a fight?

A. It did not occur to me that there would be a fight because I did not think that they would assault me.

Q. I put it to you, Mr. Au, if you were going to, as you say, if you were determined that you were going to effect arrest you would—at this stage obviously you would have to use force to do it?

A. Correct.

40 Q. Was it not also perfectly clear that if you used force on Lee the other two would join in?

A. I did not know if they would.

Q. Mr. Au, an experienced police officer, it must I suggest to you be obvious to you that they would not stand by and allow their friends to be arrested?

A. And there was no reason for me on the other hand to run.

Q. Did you think that you should stay there in that position and see if you could get assistance, get Miss Yeung perhaps to go for help,

ask members of the public—there must have been a lot of them there at that stage—to see if they can find another policeman and dial ‘999’?

A. Do you mean whether I thought of doing that or not?

Q. As you approached these boys this argument developed between you, you say you saw one of them use a triad sign, you said “Fuck you all, I will arrest you anyway”, at that stage didn’t you think that you should get some assistance?

A. I believed that if I turned round to walk in the other direction then they would run away.

Q. And you were determined at this stage that they should not run away? **10**

A. Correct.

Q. Mr. Au, I suggest to you that at this stage you had no intention of arresting any of these boys; you were merely exerting your feelings or showing your feelings as an ordinary motorist who had been annoyed by the conduct of these boys?

A. Can you repeat this again, please?

Q. I suggest that you were not acting in your capacity as a police officer in arresting any of these youths; you were merely expressing your anger at their behaviour towards you? **20**

A. I object to this, I disagree.

Q. That feelings ran so high that a fight, an exchange of blows, broke out between you and Lee?

A. But I did not go up to him in order to strike him. I only wanted to arrest him when I went up to him; sir, I hope you make yourself more clear when you said that I went up and there would be—and there were exchange of blows; you are implying that I went up to fight with them.

Q. I suggest, Mr. Au, when you went up to them you were angry, they had become angry because of the language you had used but you were not acting at that stage in any way as a police officer? **30**

A. I disagree.

Q. Because at that stage none of these boys had committed any offences for which you could conceivably arrest them?

A. I disagree.

Q. At any rate, a fight broke out and you say you were hit and you punched back?

A. I was hit but I had not yet hit back.

Q. I see.

A. And when the two friends beside him also joined in then I was forced to hit back in self-defence. Even a most stupid fellow would not just for no reason go up to fight against three. **40**

Q. Your evidence is then, Mr. Au, when Lee hit you on the cheek you did not strike back until the other two joined in?

A. Well, because the blow was delivered too suddenly at the time when it didn’t occur to me that they would hit me but at that time the two other immediately joined in and started to hit. It can be said that

these two events took place at almost the same time but the striking by Lee took place just a little earlier.

Q. You have heard the witness Mr. Fong Bun and Mr. Cheung, they said Lee hit you and you hit him back straight away?

A. I don't know how those witnesses were looking at this and I don't care what they said.

Q. I put it to you, Mr. Au, that the feelings were so high at this point that the two blows between you and Lee were delivered almost at the same time?

10 A. I disagree.

Q. Very well, you say you were forced back by the three boys?

A. Yes.

Q. Forced back against the railings?

A. Yes.

Q. During your career in the Police Force have you done any training in unarmed combat?

A. No. The only training we have in the Police Force is how to overcome or subdue the other party. The Police Department did not—does not teach us how to fight.

20 Q. But it does teach you how to overcome a person who is resisting you?

A. Yes, when it's a fight between—involving one against one.

Q. Your evidence is that you have never received any training in connection with fights or struggles where there is more than one against one?

A. No.

COURT: Never trained in more than one against one?

A. Correct.

30 Q. Now you then told us you dashed forward from the railings, went a few paces when you were grabbed from behind?

A. Yes.

Q. How long had the fight gone on when that happened?

A. Not for long.

Q. Not for long. Now, please give this some thought before you answer, Mr. Au: from that moment on, you say you were grabbed from behind up to the time you fired shots, was that grip released?

A. No. The grip was released only when the second shot was fired.

Q. You are in no doubt about that in your mind, Mr. Au?

A. Correct.

40 Q. Very well, so while you were being held by this man who it seems quite clear was Lee, you were held continuously till the second shot?

COURT: I think he knows by now, not at the time?

Q. Yes, now it appears clear in fact?

A. Correct.

Q. During this time you have told us you were being hit on the chest?

A. Yes.

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Q. Your right hand was held?

A. Yes.

Q. Somebody groped along your right hand side around your waist?

A. Yes.

Q. And then started to grope round your left hand side?

A. No, he had not groped at my left hand side. He only groped at the right hand side. At that moment I pulled my revolver.

Q. He groped only your right hand side and then you drew your revolver?

A. No, he groped at my right hand side. After finished groping he was about to turn round to grope at my left hand side, I drew my revolver. 10

Q. During this time you would say you were pulled backwards and you almost fell over?

A. No, that was when I was first grabbed by the neck.

Q. When you were first grabbed by the neck?

A. Yes.

Q. So you were grabbed by the neck, you almost fell over?

A. Yes.

Q. You got back up again, did you?

A. My body was being pulled backwards and it was not possible for me to stand up. 20

COURT: Do I understand you that you were at all times leaning against the man with your back. . . .

A. . . . Yes.

COURT: . . . or your neck or head resting on his chest or arm?

A. My head was resting on his arm.

Q. Can you remember, Mr. Au, whether this time you had your jacket buttoned up?

A. It was not buttoned, because usually when I wear European style jacket I don't like to button up. 30

Q. When you were leaning backwards, as you say, with your head against this man's—his arm or shoulder, was this the time that you were being hit on the chest?

A. I was hit on the chest and the head.

Q. Could you see the other two in front of you?

A. I saw but they were moving and therefore I could only see their heads.

Q. Did you use your feet at this stage to kick out these people in front of you?

A. Well, no, no, because I was trying my best to stand on my feet. 40

Q. Did you use your elbows to attack the person who was behind you?

A. My right hand was being grabbed.

Q. One person was holding your right arm, one person was holding your neck?

A. There was one hand holding me by my right arm and another arm grabbing me by the neck but I can't say to whom the respective hands belonged.

COURT: You were asked did you use your free hand, presumably your left hand or left elbow, to hit the person who was at your back?

A. Not at that time.

Q. Your main pre-occupation at that time was to try and release yourself from the man behind you, is that correct?

A. Yes.

Q. Throughout all this struggle blows were being landed, you felt a hand searching your waist, you were unable to free yourself from this man behind you?

10 A. I was not able to free myself.

Q. You weren't even able to get back on to your feet?

A. Correct.

MR. PENLINGTON: (To Chinese male) Stand up.

(Chinese male stands up at back of Court)

Q. There. (Counsel indicates Chinese male)

Now, as we all know, Constable Au, if anybody was holding you it must have been Mr. Lee. Now, is it your evidence then that that boy was holding you in such a grip that you were not able, during all that time, to free yourself from him?

20 A. Yes, correct, because at that time I had to think of myself being hit from the front. Besides I tried to free myself of his grip.

MR. PENLINGTON: Yes, thank you. (Chinese male sits down)

Q. Yes, Mr. Au, I suggest to you that these three boys, and in particular Mr. Lee, though they outnumbered you they were of slight build and they are young and that you would not have had anything like the difficulty that you have told us about in freeing yourself?

A. I disagree.

30 Q. I put it to you that this was a general scuffle with a few blows being landed, a lot more being aimed; there may well have been some attempt to hold on to you by these boys but that at no time were you either unable to see them or were you in a position where you had the slightest reason to believe they were trying to take your gun?

A. I disagree.

Q. If anybody had groped round your waist in the way that you have described you would certainly have lashed out with your feet to keep him away?

40 A. No, at that time I myself had already lost balance and, secondly, as I was suddenly attacked I myself really did not know what to do. How would a person be in a position to strike back when he couldn't even stand properly on his feet? And, besides, one would be no match for three in a fight unless he is Bruce Lee.

Q. Mr. Au, I might not put you quite in the Bruce Lee class but I suggest in this particular struggle which was by no means just one against three, it was one older, more experienced, more strongly built man against three very moderately built young boys?

A. I disagree.

Q. I am not saying you were not getting the worst of this fight, but I am saying—suggesting to you, Mr. Au, that you were not by any means as helpless as you have described.

A. I disagree—what I wanted to tell just now is that I am just an ordinary person—those who attacked me were not people aging 11 to 12 years—all of them were almost twenty years old making an independent living on their own—so they cannot be treated as juveniles.

Q. You heard Mr. Cheung say that in fact he did see you fall over—partly fall over and very quickly get up again.

A. Yes. 10

Q. I suggest that is in fact what had happened and that you then realised that you were in a difficult position.

A. Yes.

Q. And you then drew your revolver.

A. There was no reason to do that because I couldn't have done this—even when I was coming just—was face to face with him at a distance of about two feet from each other in Nathan Road I did not do that and I did not do that when he was running in front of me after I had given chase of about 100 yards.

Q. Now you told us that you fired one shot? 20

A. Yes.

Q. Could you see anybody in front of you that you were aiming at when you fired that shot?

A. At that time my neck was being grabbed and I could only see the hair of the head of those persons.

Q. Both persons?

A. Yes, because they were moving.

Q. How long could you just see the hair of these persons?

A. When my neck was being grabbed.

Q. Surely, Mr. Au, this was a fight where there was a struggling going on—you were moving backwards and forwards, to and fro—are you saying that during this time all you could see was the hair of the people in front of you? 30

A. Because when my neck was being grabbed I was not able to lower my head so during the fight I could say that I was able to see only their face but when I fired the first shot I could say that certainly I could only see their hair.

Q. Did you fire at the person whose hair you could see?

A. Everything was in a state of confusion at that time, and I was not able to aim at anything—I wanted to struggle to free myself and I was moving. 40

Q. So you just simply, your evidence is, you drew your gun and fired a shot in any direction?

A. When I drew my revolver I aimed in what I believed to be in the direction of the person attacking me but I was not sure whether I was aiming at the right direction or not.

COURT: Just a minute—you say that ‘I aimed in what I believed to be the direction of the person attacking me’?

INTERPRETER: ‘I am not sure if that was the right direction.

Q. You told us there were many pedestrians in this area at that time?

A. Yes.

Q. Did you think—did you give any thought when you fired that first shot as to whether you might hit perfectly innocent pedestrians?

A. Because at that time if I had not open fire I might have fainted because I felt that I had difficulty in breathing, so my only hope was to
10 put a stop to this as early as possible.

Q. By firing a shot—a completely unaimed shot at somebody you couldn’t see?

A. No.

Q. Did you think of firing a shot at the ground?

A. No.

COURT: Did you say on the ground or to the air?

MR. PENLINGTON: To the ground.

A. Because the people were moving—I was under their control—the space between which I could move was limited and it was not possible
20 for me to draw my revolver and stretch my arm to fire in the air.

Q. No, I said did you think of shooting on the ground?

A. Because I was not in control of myself at that time.

Q. While we know Mr. Au, as a matter of fact beyond any dispute that you certainly fired a shot which hit LAI who was standing in front of you, surely you had in fact perfect control of your left-hand even on your own evidence that this stage you could have fired that shot at any direction you chose?

A. At that time we were at close quarters and there was no reason for me not to fire—once I have drawn my revolver I had to fire if not it
30 would be very dangerous—if on the other hand I did not draw my revolver there would also be danger, so the only alternative at the time was to draw my revolver immediately in the hope of arresting this matter from progressing further.

Q. Is it your evidence Mr. Au that you could not fire your revolver downwards to the ground or upwards into the air?

A. The reason why I fired immediately after drawing my revolver was that I would like to stop this incident from developing, and to let the other party know that I had already drawn my revolver.

Q. It does not answer the question—is it your evidence that you
40 were so held that you were not able to fire the revolver either into the air or the ground?

A. At that time my neck was being held, not to the extent that I was under complete control of somebody else otherwise I would not have been able to draw the gun.

COURT: The question put to you was that you were so under control of the others that you couldn’t shoot to the air or shoot to the ground, in that you were completely immobile.

A. At that time I did not have the time to think as to what I should do.

Q. Now the evidence that has come out, Mr. Au, you have heard, seems to indicate clearly that WONG ran off first followed by LAI—you heard that evidence?

A. I don't know.

Q. I suggest to you that seems to have been established—we know that LAI was shot—LAI was shot in the back and through the back of the arm—would you agree with that, when you fired that first shot, on your own evidence, two people in front of you had turned and had run away? 10

A. I disagree because when I fired the first shot I noticed that another blow landed on my face—my left face was hit about the same time as I fired the first shot, so I knew subconsciously that they were still in front of me and attacking me.

Q. Well Mr. Au, we know as a matter of medical evidence that LAI was in fact hit in the back—you heard that evidence?

A. Yes, I believe I accept what the doctor says.

Q. Would you agree on that basis it is extremely unlikely, in fact it is impossible that LAI could have hit that blow which you said you felt at the same time or after you fired the shot. 20

A. No, because there were two persons attacking me from in front—you can only say that one of them had run.

Q. Yes, just answer the question—the question was do you agree that if LAI was shot in the back by that first shot, either his arm or through his back, that he could not have been the one who delivered that final blow?

A. I don't know.

Q. I put it to you that as the evidence seems clear that WONG ran off ahead of LAI, there is no way that he could have delivered the blow—there could have been no way that he could have delivered the blow if he was running away before LAI. 30

A. When I lowered my head at the time I had a glimpse of them, and I noticed that both were running at about the same time.

Q. Same time? Very well, so far as this second shot was concerned again were you able that stage to fire the ground or into the air?

A. When I fired both shots I did not have the time to think of what action I could take because all this happened within a very short space of time. It was not up to me to give careful or slow consideration as to what I should do.

Q. You heard the evidence given by three witnesses who were in Argyle Street? 40

A. Yes.

Q. There were Mr. WONG Moon-lam and his wife POON Lai-ying?

A. Yes.

Q. And Mr. TAM Kin-kwok?

A. Yes.

Q. They gave evidence that after hearing the first shot they heard the second shot and in two cases saw the flash of the second shot coming from Argyle Street.

A. Yes.

Q. And they said there was a gap of—some estimates varied, three, four or five seconds between the shots.

A. Yes.

Q. And Mr. TAM in fact gave evidence that the second shot was fired by you after you had passed him and you were chasing LAI along
10 Argyle Street.

A. I disagree with his evidence—if he had said that there were people running after he had heard the shots fired then I would agree with his evidence, because there were many people walking around there and if there were people running after they had heard the shots fired it would be a very natural thing to do.

Q. I put it to you Mr. Au that the evidence of these three witnesses is quite contrary to the evidence you have given, that the second shot was fired from the same position as the first one.

A. I have no right to comment upon what witnesses have said. It is
20 difficult to see how they would not differ from each other in what they said regarding this incident after such a long lapse of time, and it is also difficult to say—to note the accuracy of what they have said. What I am recounting before you now is what I have actually experienced and encountered at the time.

Q. Now you have told us also that you were afraid that these young men might have weapons?

A. Yes.

Q. You in fact never saw or felt any sort of weapon did you?

A. But when my head was grabbed by them from behind I was not
30 able to see them—any person when someone covers his eyes suddenly would be very frightened. My feelings are the same. When I was suddenly unable to see or see anything clearly, for that reason I cannot see definitely if they had any weapon with them or not during that time—moreover from the beginning to the end I have never seen what was on their person, and I have never searched their person.

Q. When the first confrontation took place they certainly at that stage did not produce any weapon did they—the first exchange of blows, you were forced up against the railing, there was no suggestion that stage that they have produced any sort of weapon?

A. At that time I was already getting the worst of the fight—I could
40 not see what was going on—I was beaten in such a way that I couldn't see what they were doing.

Q. Even this stage of the fight you couldn't see what they were doing, is that your evidence?

A. I was not able to see and to be sure that they had any weapon with them at that time.

Q. Mr. Au, there is no doubt is there that this incident took place without any pre-arrangement—it was a purely chance encounter?

A. Yes, correct—I never knew them before.

Q. You said in your evidence there was a lot of robberies, fights and young men like these carry weapons?

A. Yes.

Q. You had no reason to believe did you that these three young men were out to commit a robbery or looking for a fight that night?

A. I did not know what they were up to.

Q. I suggest to you Mr. Au that in fact when you realised you were perhaps getting the worst of this fight, you produced your revolver—you drew your revolver and immediately the young boys, and indeed a lot of the other spectators, but certainly the boys, immediately ran away when they saw it? **10**

A. But I can say this that when I drew my revolver I was still being attacked and my neck was still being grabbed from behind, however I did not know if any pedestrians were running at that time or not, because I could not see anything at that time.

Q. Is it your evidence that the fact that you hit LAI with both those first shots was purely good luck or perhaps bad luck depending on which way you look at it—they were completely unaimed shots but both struck their mark? **20**

A. Yes.

Q. I suggest to you Mr. Au that in fact they were both aimed shots, one fired very shortly after the boys started to run, the other one fired when you were chasing him along Argyle Street.

A. I disagree—if I had aimed at the target when I fired the shots I would not have fired as few as just two shots. If I had the intention of shooting I would not have fired just two shots.

COURT: At any time Mr. Penlington. **30**

MR. PENLINGTON: Yes, that might be a convenient time.

COURT: I will adjourn to 10 o'clock tomorrow morning.

4.31 p.m. Court adjourns.

28th September, 1976

10.05 a.m. Court resumes

Accused present. Appearances as before. Mr. Gall absent. JURY PRESENT.

COURT: Yes, Mr. Penlington.

D.W.1—AU Pui-kuen (accused)—On former affirmation.

XXN. by Mr Penlington continues:

Q. Yes, Mr. Au, when we adjourned last night I think we had come to the stage where I asked you or I suggested to you that both the shots that you fired at LAI were aimed and that they were fired at him after he had started to run, and you said that you disagreed with that; that if you had aimed, you would not have just fired two shots only. **40**

A. That was not what I meant.

Q. Well, would you tell us what you did mean?

A. What I meant was the two shots were fired because, in the first place, the incident took place so suddenly and secondly, I was not in control of myself and there was no other way open to me than this way, in order to prevent this matter from developing further. . . .

COURT: Sorry. "I was not in control of myself and then. . . .?"

INTERPRETER: And that was the only way open to me in order to prevent this matter from developing further. . . .

A. . . . and to defend myself. When I said "aiming at the target,
10 I meant that I would have continued to fire at him when he was running if I had the intention to kill him or shoot at him. I won't have run all the way for over one hundred yards without firing a shot. By all this I want to convey this idea: that if I really had the intention of doing this, I could have done it, but I did not do it.

COURT: By this very long answer, do I understand you to say that you deny having fired any shot while you were chasing the deceased down Argyle Street?

A. Yes, my Lord.

COURT: Because it was put to you that you did fire the two shots
20 while you were in Argyle Street or while you were chasing in Argyle Street. It was put to you, and by your very long answer you meant to say that you had the opportunity of doing so but you haven't done so.

A. Yes.

COURT: And you reiterated the evidence you gave that the two shots were fired on the spot in the junction between Argyle Street and Sai Yeung Choi Street.

A. Yes, my Lord.

COURT: In other words, to cut your answer short and take the gist of it, it's that you deny having fired the two shots during the chase, but
30 you said the two shots were fired at the junction between Argyle Street and Sai Yeung Choi Street.

A. Yes, my Lord.

Q. Mr. AU, since we adjourned last night and this morning have you discussed this matter with anybody?

A. No.

Mr. Gall enters court

Q. You were talking to your wife when you came into court this morning, were you not?

A. Yes.

40 Q. Were you talking about this case?

A. No.

Q. Now you have told us that according to your impression when you managed to release yourself by firing these two shots, you then saw the two boys, as we now know, LAI and WONG, running off about five feet away from you.

A. Yes.

- Q. And they were together.
- A. One was in front of the other, but it can be said that they were almost in the same position.
- Q. How far in front was one from the other?
- A. About one foot.
- Q. And did you set off in pursuit?
- A. Yes. I started to pursue.
- Q. Straightaway?
- A. I immediately gave chase.
- Q. Were you running as fast as you could? **10**
- A. Yes.
- Q. Now you have told us that just before this you thought you were about to faint because of the pressure round your neck. Is that right?
- A. Yes.
- Q. So do we take it you made a very speedy recovery from this feeling that you were about to faint?
- A. No. When I said I was about to faint, I meant should this continue I would faint. I did not mean that I was fainting at that time.
- Q. I see. "Should this continue" that you might faint. **20**
- A. Yes.
- Q. Now you also told us that you saw that the people in front weren't going fast as they were both wearing high-heeled shoes.
- A. Yes.
- Q. Did it seem to you that one was running faster than the other?
- A. Later on, in the course of the chase, I did.
- Q. Did you seem to be catching up on either of these two boys?
- A. I was catching up on the one behind. That is to say, the one running more slowly.
- Q. If you started out five feet from him and you were catching him up, why did it take you until you reached Nathan Road to in fact come **30**
up to him?
- A. Because when I saw them they were running, and as regards myself, I had just started to run. Therefore, I had to give chase covering a certain distance before catching up on them.
- Q. Did you see any sign or hear anything which might indicate whereabouts the third person had gone who had been the one presumably holding you by the throat?
- A. I did not notice him.
- Q. When was the first time you noticed that these boys were **40**
wearing high-heeled shoes?
- A. When they were running in front of me.
- A. Could you see that quite clearly?
- A. Yes.
- Q. But even so, it still took you something like a hundred yards along Argyle Street and down Nathan Road before you finally caught up with the youth?
- A. Yes.

Q. During this chase did the boy that was closest to you appear to be slowing down?

A. No, he was not running slowly, he was running very fast. He was running like any ordinary person.

Q. Constable, you have told us that during this chase you did not shout out anything until you got into Nathan Road.

A. Yes. Like any person running, I had to take a deep breath before setting off in the chase.

10 Q. Is it your evidence that you did not shout anything at all or say anything until you reached Nathan Road and just before you fired the third shot you shouted out, "Still running?"

A. Yes.

Q. You didn't follow the instructions or suggestions made by the police authorities over the television that in these circumstances one should raise a hue and cry?

COURT: Could you be more explicit, Mr. Penlington. Was it raise hue and cry to arouse the attention of the public?

20 Q. Yes. You didn't shout out as you were chasing these boys to try and get the members of the public who were there, and you told us there were quite a lot of people, to get the members of the public to try and stop these boys?

A. I did not.

Q. Why not?

30 A. Because during the whole course of the fight, from beginning to end, not a single member of the public came forward to assist me. So I had the impression then that those members of the public there were very much afraid of trouble. Moreover, I had brought about a change in the situation in my favour in that I was able, without the assistance of anybody, to catch them, and besides, I wanted to run faster, therefore I did not shout.

Q. Did you think, when you were chasing these boys, that you would be able to catch and detain both of them?

A. I believed that it would be enough for me to catch hold of one because if I could catch hold of one then that one would take me to get the second and even the third one.

Q. As you were chasing along Argyle Street, what made you believe that you were going to catch one of these boys?

A. Because all along I had been engaged in athletic sports such as football and so forth. I believed that I could outpace them.

40 Q. When you got into Nathan Road you say you then shouted out, "Still running?" Are you sure that is all you said?

A. At this moment I can remember only saying those words, but I can't remember if I said any other words. I can remember saying words to this effect.

Q. During this chase did any of the boys, either of the boys, stumble or fall over?

A. No.

Q. If you told us you were saving your breath for running, why did you call out in Nathan Road, "Still running?"?

A. I uttered this shout in order to indicate to the person in front of me that I was going to catch him.

Q. When you gave evidence. . . .

COURT: (To Interpreter) Will you check with the witness whether he said, "I was already in a position to catch him and this served as a warning."

A. Yes. I shouted out these words in order to warn him that I was able to catch him—I was in a position to catch him. **10**

Q. You were then, you thought, in a position to catch him. You were about to lay hands on him. Is that what you are saying?

A. By running one or two paces more, I could catch him because he was running ahead of me by a distance of only two feet.

Q. So just to be quite clear, Mr. AU, your evidence is that when you saw the boys they were five feet away in Sai Yeung Choi Street.

A. Yes, at the junction of Argyle Street. . . .

Q. . . . and Sai Yeung Choi Street.

A. Yes.

Q. You immediately set off in pursuit as far as you could. **20**

A. Yes.

Q. Because of their shoes, because you were fit, you gradually caught up.

A. Yes.

Q. And when you got into Nathan Road near the Crocodile Shirts Shop you were within two feet.

A. I was two feet from the one who was running more slowly.

Q. Now we have heard evidence that the other boy, WONG, he was some distance in front of LAI. Does this mean that he in fact outpaced you and you couldn't catch up with him? **30**

A. No, but that person WONG was running faster than LAI.

Q. Were you catching up with WONG as well? Was he going faster than you?

A. When I took a deep breath before starting to give chase they were about five feet ahead of me, but when I actually started to chase they were some seven to eight feet in front of me. That being the case, he ran to Nathan Road and then ran into the crowd and disappeared. He rushed into the crowd of pedestrians and I could no longer see where he was.

Q. Were you catching up with WONG during the chase or was he gradually getting away from you? **40**

A. The distance between us was about the same there and when the chase first started, that is about seven to eight feet.

COURT: Just to clarify the point. Didn't you yesterday say earlier that you had your eyes on both of them throughout the chase?

A. Yes.

COURT: And now you say that at least in part of the chase, after you had turned in Nathan Road, you had lost sight of WONG.

A. No. It was after he had turned into Nathan Road that he dashed towards the crowd of pedestrians. It was after he had dashed into the crowd of pedestrians that I lost sight of him. During that time of the chase both of them were still within my sight.

COURT: So what you mean was that you kept both of them in sight until they had turned into Nathan Road where WONG dashed into the crowd or mingled with the crowd on the pavement and you lost him.

A. Yes, my Lord.

COURT: Yes, Mr. Penlington.

10 Q. Now you have told us that when you came up to LAI you were very close to him and you shouted out, "Still running?" When you gave evidence before the coroner you told him, did you not, that you in fact used an obscene expression on that occasion.

A. No, no. As I have already said, I don't deny having said something else, but I can only remember now saying words to that effect.

Q. What were your feelings towards this boy that you were chasing at that stage? Were you feeling very angry?

A. As I was giving chase I could not have been feeling angry or not.

20 Q. Well, according to your evidence, this was one of three boys who had attacked you and punched you and held you.

A. Yes.

Q. You thought that maybe they might have tried to take your revolver if the matter had been allowed to continue.

A. Yes.

Q. You had to chase them all the way along Argyle Street and into Nathan Road.

A. Yes.

Q. Were you feeling angry at these boys for causing all this trouble?

30 A. No. At that time my mind was thinking firstly of catching hold of that young man and secondly, I had to maintain a cool head in order to encounter any sudden incidents, so at that time I didn't even have the time to think as to whether I should be angry or not.

Q. When you caught up with LAI in Nathan Road were you then confident that you could apprehend him?

A. Yes.

Q. Now you have told us that you did not know at that stage if LAI had a weapon.

A. Correct.

40 Q. Constable, is it your evidence that at that stage you honestly thought that this boy might have had a weapon?

A. Because when he suddenly swung his arms backward like that, I could not see if there was anything tucked in his waist.

COURT: Yes. The question was: did you honestly think that he might have had a weapon?

A. At that time I could not be certain if he had any weapon or not because I had not searched his person.

Q. Constable, my question's a simple one, will you please answer it? Did you honestly think at that time that the boy might have had a weapon?

A. As I have already said, I could not be certain then if the youth had any weapon with him or not.

COURT: In other words, do I understand you to mean that at that time you could not be certain he had a weapon with him?

A. Correct.

Q. Do I take it from that then your answer is you thought he might have a weapon? 10

A. Yes.

Q. You had been fighting with this boy and his two companions previously.

A. Yes.

Q. Your evidence is that during that fight you were held, they were punching you.

A. Yes.

Q. There had been an angry confrontation or argument before the fight.

A. Yes.

Q. During that time you had seen no sign, had you, of any weapon? 20

A. Correct.

Q. After this long chase the boy stops and turns with his arm out.

A. Yes.

Q. Could you see if there was any weapon in his hand?

A. During that brief moment when he swung his arm round I was not able to see. I could only see his arms swinging and the reason why I paused was because I saw his shoulder moving.

Q. And you at that stage still had your revolver, carrying your revolver in your left hand.

A. Correct. 30

Q. At this stage did you think of saying to him, "Stop or I will shoot"?

A. I did not say "shoot". It is not worthwhile to shoot at such a man even for what he had done.

COURT: Just stop there for a moment. The question is: did you shout out, "Stop or I'll shoot". The answer was no and the reason you gave was that he was not worthy of a shot?

A. Correct.

COURT: Yes, go on.

Q. And you told us. . . . 40

COURT: No, the witness hasn't finished.

MR. PENLINGTON: I'm sorry.

A. If I wanted to shoot I would have shot at the outside of the chase, and would not have waited until I was about to catch up with him.

Q. Well, I put it to you, Mr. AU, in fact you did shoot during the course of the chase.

A. I disagree.

Q. You have also told us that when the boy turned round you thought he was going to hit you or snatch your gun.

A. Yes, or attack me. I don't know what he was up to at that time, but that was the movement I saw.

Q. You have told us that by this time WONG had disappeared into the crowd. Is that right?

A. Yes.

Q. So at this stage it was just you against LAI, is that right?

A. Yes.

10 Q. And you had got to within two feet of him?

A. Yes.

Q. LAI has been described, Mr. AU, by the Pathologist as a moderately-built Chinese male, height five foot eight and the photographs we have seen of this unfortunate boy, he does not appear a strongly-built lad.

A. Correct. . . .

Q. He was nineteen years of age.

A. . . . he was not very thin.

Q. He was nineteen years of age.

A. Yes.

20 Q. And he had been running as hard as he could for something like a hundred yards.

A. Yes.

Q. I suggest to you, Mr. AU, that at that stage there was not the slightest doubt that you were perfectly capable of resisting any attack that this boy might think fit of making on your.

A. If the attack was not sudden, yes.

Q. If the attack was not sudden? Do you think he could have overcome you if he had made a sudden attack?

30 A. If an attack was made suddenly then any person could subdue the opposite side. Even if there was no sudden attack, assuming it was a fight between one and another, just one against one, it would still be not so easy to subdue the other side.

Q. Did you have any reason to believe at that stage that the boy might have been hit by either of your two shots?

A. No, that was not possible because he was running very fast and I could not believe that he had sustained any shots. He had been running for a hundred odd yards.

Q. Mr. AU, I suggest to you that in fact he was slowing down very quickly as he got into Nathan Road.

40 A. I did not notice.

Q. I also suggest to you that at this stage you did not have the slightest reason to believe that he might try and snatch your revolver.

A. I disagree because in fact he did make such a movement, but I did not know what his motive was.

Q. Are you saying that the flinging back of his arm in the manner that has been described by the witnesses you took to be or could have been a movement to snatch your revolver?

A. I did not know what he was up to. I did not know if he would attack me or try to snatch my revolver. He himself would know . . . it's only he himself who could tell what the motive was.

Q. Yes, Mr. AU, would you please answer my question? Did you think, did you think at that time, that his movement of his arm as described by the witnesses, flinging his arm back, could have been an attempt to snatch your revolver?

A. That could be one of the reasons.

Q. That could have been one of the reasons?

A. But only he himself knew what the reason was, because I myself 10
did not know what he was actually up to.

Q. Mr. AU, we are interested in what you thought, what was in your mind at that time. Now is your answer that you at that time thought he might, by this flinging back of his arm, be trying to snatch your revolver?

A. That was one of the reasons.

Q. Very well. Now you said that you thought if you struggled with him for the revolver it would be dangerous.

A. Yes.

Q. If you are within two feet of this boy who had turned round, 20
why didn't you just put your revolver away and attempt to detain him with your arms, with your hands?

A. Because at that time I was giving chase and I did not put the revolver back in its right place. After they had released their grip following their grabbing of my neck, I thought of giving chase immediately and therefore I did not put the revolver back in its original place, but if I had spent time then in putting the revolver back in its original place, I don't think I would be able to catch up with them because there would be some delay. Therefore, I still held the revolver in my hand.

Q. At this stage when the boy had stopped, you say you did not 30
want to struggle with him for the revolver. Why did you not then at that stage replace it in its holster?

A. If I had to put the revolver back in its holster, I have to take out the holster and then put the revolver into it and then put the holster back in its original position. On that day I had demonstrated the putting of the revolver into the holster before you. It would take a very long time.

Q. So you decided at this stage that the best way to end the matter was for you to fire a shot at the ground.

A. There were two ways. One was to fire at him, the other way 40
would be to fire at the ground. I chose the latter way.

COURT: Wasn't there a third way?

A. No. We were too close to each other at that time and there was no other way which I could think of. If there was a third way it would be best for Crown counsel to suggest it to me.

COURT: That was not a suggestion by Crown counsel. I made this observation, constable.

A. Yes, my Lord.

- Q. You have told us that there were many people in the area.
A. Yes.
Q. You thought that if there were a struggle the revolver might go off again, did you, and somebody might be hit?
A. Yes. If there was a struggle then that would be the case.
Q. You are saying that in order to avoid this danger to the public, you fired a bullet at the ground.
A. I fired at the ground slightly at an angle, in the direction of the carriageway.
- 10 Q. I think we can take it, Mr. AU, can we, that this was a hard pavement that you fired at?
A. No. We were on the curb at that time, not on the pavement.
Q. You were on the curb at that time? On the edge of the road?
A. Yes, and along the gutter.
Q. In which direction did you fire?
A. I fired in the direction of the road.
Q. Mr. LEUNG Wai was standing at the bus stop on the pavement and he was struck.
A. Yes.
- 20 Q. Have you any explanation, if you were standing on the edge of the road and you fired at the road, how was it that Mr. LEUNG Wai was struck?
A. The bullet bounced back and hit LEUNG Wai. According to the medical report the bullet entered into his body sideways like this and not directly. At that time LEUNG Wai was standing in the position in which he was facing west, so the bullet . . . my bullet which hit him was bounced back by a "V" shape direction, because at that time LEUNG Wai's position was similar to the position between . . . the direction in which LEUNG Wai was facing is similar to the direction which Crown counsel
- 30 is now facing. May I demonstrate on the photograph the position where Mr. LEUNG was standing at the bus stop at that time?
COURT: Yes.
Q. Yes, by all means.
A. Mr. LEUNG Wai at that time was waiting for a bus, No. 1A.
- 40 and when I opened the—fired the third shot the position I was then in could be seen in another photograph, exhibit 3B. I was just under 'Crocodile shirts' when I opened the third shot after catching up with Mr. Lai. At that time I fired a shot at the ground, slightly at an angle, in the direction of the roadway. For that reason as evidence—as shown in the doctor's report the bullet entered sideways through—into Mr. LEUNG's abdomen and not directly into his abdomen. This goes to prove that I had a concern at the time for the pedestrians in that area when I

Ex. 1A.
Ex. 2B.
Ex. 2C.

Ex. 3B.

opened the third shot. This is all I have to say. You can look up the doctor's report.

Q. Yes, that is true that the bullet entered Mr. LEUNG Wai's body sideways, but is it not true that he was standing on the pavement in the queue for the buses?

A. Yes.

Q. I suggest to you that from that position you could not have fired that third shot out into the roadway.

A. At that time that was the only way I could adopt to stop Mr. Lai from attacking me, and when the bullet bounced back and hit Mr. Leung in the abdomen this was purely accidental. All that I have said earlier on was for the purpose of showing that I fired the third shot just because I did not want—in that way—I fired the third shot in that way just because I did not want to have any pedestrians injured. Well, I would like the Court and members of the jury to look at the relevant medical report because that will show that at the time the shot was not fired directly into Leung but was bounced back accidentally and went into his body.

Q. It is not disputed, Mr. Au, that the bullet ricocheted off the road and entered Mr. Au's (Leung) body from the side.

A. Thank you. 20

Q. Now what I am suggesting to you then is that from where you were on the roadway that the shot could not, even with a ricochet, the shot could not have been fired outwards into the roadway in the manner that you have described.

A. No.

Q. Did you think at this stage of firing a shot into the air?

A. It was not possible to fire any shot into the air. What if someone on the premises above stuck his head out, he would have been killed, because I was running along the pavement.

Q. You were running along the pavement? 30

A. Along the edge of the pavement.

Q. Along the edge of the pavement?

A. Yes.

Q. Is it your evidence that from the edge of the pavement in Nathan Road it was impossible to fire a shot into the air without running any risk?

A. Whatever shot I fired I had to take many matters into consideration. I had to think of those people possibly on the premises above me. This is the first consideration, and secondly if I raised my hand to fire into the sky people could very easily snatch my revolver away. This would be a very dangerous move. 40

Q. Did you think at that time that Police General Orders say that you should not fire into the air?

A. Yes, and that is again why I did not fire into the air.

Q. You were familiar with Police General Orders relating to the use of fire-arms?

A. Under normal circumstances police officers had to abide by

these General Regulations, but when there were special circumstances then it would not be necessary to follow these General Regulations.

COURT: The question you were asked was whether you were familiar with those Orders, not whether you should follow them or not.

A. Yes, I am familiar.

COURT: You are?

A. Yes.

Q. And you are also saying that if there was an unusual emergency you felt that you should take these General Orders as a guide and not
10 something to be obeyed absolutely to the letter?

A. Correct.

Q. I suggest to you, Mr. Au, that in the situation that you found in Nathan Road, even if you thought you had to open fire, you could easily have done so, and safely done so, by firing into the air.

A. No.

Q. Now, would you tell us exactly what happened after you fired that shot at the pavement—at the road?

A. When I fired that shot LAI Hon-shing immediately turned round and ran. He dashed to the pavement. He ran for a distance of two shop
20 spaces by then because by the time he dashed on to the pavement I myself also dashed on to it in chase. When I chased for a distance of two shop spaces I was in a position then to put my hand on his shoulder and catch hold of him, but by then LAI Hon-shing squatted down.

Q. Were you worried at that stage that he might try and snatch your revolver?

A. When he squatted down he told me that he was in great agony, and when I saw him I believed that he was not pretending. It might well be that he was in agony. He might have been shot or he might have encountered something accidental.

Q. Mr. Au, I put it to you that under the circumstances that
30 existed in Nathan Road, your pursuit of this boy for that distance, the fact that you were catching up with him, there was no need whatever for you to fire that third shot.

A. As I have already said, I opened fire because he suddenly swung round to attack me.

Q. Now, you were asked when you gave evidence before the Coroner about this shot. You were asked, "Did he actually touch you?"

MR. PENLINGTON: My Lord, this is, I am afraid, a very bad xeroxed
40 copy. It's paragraph 505 or page 505—paragraph 505 in the typed deposition.

Q. Do you remember being asked, Mr. Au, in the Coroner's Court, "Did he actually touch you?" and you replied, "No, but I withdrew and dodged him?"

A. Yes.

Q. You were then asked, "What then?" and I can't read clearly the answer but I think it is "I fired one shot."

COURT: "I fired one shot more."

In the High
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Q. "I fired one shot more." Is that right?

A. Yes.

Q. Is that true?

A. Yes, I did fire one more shot.

COURT: Yes.

Q. Mr. Au. . . .

A. I overlooked it.

Q. I suggest to you that if in fact you aimed at the ground and outwards into Nathan Road as you have now told us that there is no way that you would have replied to that question in the way that you did, saying that you aimed at his legs. 10

A. As I have said earlier, I did not elaborate on what I said in the court below.

COURT: No. This question is very different from the one that I asked you because what the Director of Public Prosecutions asked you was this, that assuming all you have done and said in this court and in the Coroner's court were both actually what took place, in other words, it was right when you spoke to the Coroner that you only aimed at the direction of the foot and not at the deceased's foot and you were shooting in that direction and not at his foot, that is still a long way from what you have told this Court when you said you shot into the road—shot out at the road and not at his foot or anywhere near the direction of his foot, because you added a little earlier, you said the bullet took a 'V' shape in its trail. In other words, it travelled outside the road, bounced back and entered the abdomen of Mr. LEUNG Wai sideways. 20

A. At that time I was holding the revolver in my left hand. When I opened fire at that time I fired it this way, (witness demonstrates) because when he swung round I turned round like this and I opened fire in this way. He had swung round and I dodged him, so my body was slightly at an angle. 30

COURT: You still have not grasped the meaning of this question yet, have you? When you said that you were shooting out into the road you couldn't possibly have shot in the direction of his foot. That was the question that was put to you.

A. Because at that time I had already dodged to his left and I was on his left-hand side. A witness has said that I dodged to the left, and therefore I fired at the carriage-way at an angle because at that time I was not directly behind, I was behind at an angle. When I fired the shot I was not facing the same direction as Nathan Road, I was slightly facing the west. 40

COURT: Yes.

Q. I suggest to you, Mr. Au, that you fired that third shot because you were angry.

A. No, I disagree.

Q. That you were not giving the matter any real thought at all.

A. No.

Q. You fired it with the intention of hitting the boy, Lai, that you had been chasing.

A. I entirely disagree with you. I have already explained why I fired that shot.

Q. Now, later on that same evening you saw Sergeant 1766?

A. Correct.

Q. And you told him what had happened?

A. I gave him a rough account of what had happened. The situation was very confused when I gave him an account of what happened, I was
10 explaining very hurriedly.

COURT: Was that true? Did you tell that to the Coroner?

A. Yes.

Q. You were then asked, "Where did you aim?"

A. Yes.

Q. What did you say to that?

A. I fired a shot below his leg. When I said "below his leg," I meant that the revolver itself was pointing downwards, with the handle upwards.

Q. Mr. Au, your answer to the Coroner was, in reply to the question "Where did you aim?" was "His leg, as there were people walking there."

20 A. No, no reason for that.

COURT: Do you say that you did not say that now? Whether you aimed at his leg is one thing, the question was "Did you tell the Coroner you aimed at his legs?"

A. I said that when I opened fire it was in the direction of his foot because if it was in the direction of the leg then it would be much higher.

Q. When you said you aimed at his leg you meant you aimed at his foot. Is that your reply?

A. Yes—no. When I said in the direction of the foot I meant that the barrel of the gun was not in the direction of that person. I was giving
30 a description of the general direction in which the—the approximate direction in which I fired the shot. I was not actually aiming at his foot to fire.

COURT: This question and answer were part and parcel of your evidence before the Coroner.

A. Yes.

COURT: At the end of the evidence your evidence was read back to you and interpreted to you by the Court Interpreter.

A. Yes.

COURT: And you signed your name at the end of it to indicate that what had been interpreted to you was correct and what had been recorded
40 was correct.

A. Yes.

COURT: When you come to a vital question did you actually know where did you aim? Do you know what the meaning of aiming at, and the answer as recorded was "His leg, as there were people walking there?" Given the general latitude sometimes in language, translation, that in Chinese 'leg' might be misinterpreted as 'foot' or 'foot' as 'leg'. . . .

A. Yes.

COURT: There certainly cannot be much mistake about the word 'aim', can there? Why didn't you correct it?

A. At that time I was merely asked that question. I was not asked to explain or elaborate on these words. When I said 'aim' I was actually referring to the direction in which the barrel was facing. When I said 'leg' what I had in mind was the—when I said 'leg' what I had in mind was whether the revolver was pointing upwards or downwards, and the use of 'leg' meant the revolver was pointing downwards.

COURT: Yes. What was recorded was not really what you wanted to say or what you meant. Why didn't you correct it? 10

A. That was my mistake.

Q. The sergeant told us that he interviewed you at about 10 p.m. Do you agree with that?

A. Yes, I agree.

Q. Do you agree that would be some twenty minutes or a quarter of an hour after the incident had happened?

A. I disagree, because the entire incident from the time it first began until it ended in Nathan Road lasted for more than ten minutes. What time you said he came—did he say he came?

Q. I think he said he saw you at about 10 p.m. 20

A. Yes.

Q. What time do you suggest the incident stopped?

A. But the whole incident lasted for about fifteen minutes, including the time I spent in making the telephone call.

Q. It started at about 9.30, would you agree with that?

A. Yes.

Q. Now, you have told us that you went into the fashion shop and dialled '999'.

A. Yes.

Q. Did you leave anybody with the boy that had been hurt? 30

A. Which boy?

Q. Lai.

A. At that time when I made the telephone call I did not leave the boy to anyone because I was the only one with the boy. After I had made the telephone call I saw the auxiliary police sergeant and I handed the boy over to that sergeant. The auxiliary police sergeant then became responsible for the care of that boy.

Q. But was it not the position, Mr. Au, this boy that you had been chasing, who you thought had attacked you, tried to snatch your revolver, was a person who would struggle with you for your revolver, when you finally caught him and he was squatting down are you saying that you then went into the shop and you dialled '999' yourself, didn't ask anybody else to do it for you, and you left the boy on the pavement? 40

A. Because at that time I was the only policeman there and if an immediate report had to be made I was the only one to make it, and besides, he had sustained injuries and I dare not move him. I also wanted the ambulance to arrive quickly, therefore I telephoned immediately.

Q. Did you closely examine him before you made this telephone call?

A. At that time I had already noticed some blood flowing from the nose of that youth, and the colour of his face had changed.

Q. I suggest to you, Mr. Au, that at that stage you became very frightened because of what you had done.

A. No.

Q. You were not in the slightest bit worried about whether this boy would run away or get away.

10 A. I disagree. If I were frightened as you—in the way you describe then I would not have telephoned immediately in an attempt to save the youth.

Q. I suggest that if you had been pursuing him as a police officer, in other words, in order to arrest him for committing an offence, that you would not have left him on the pavement, you would have asked a passer-by to ring for an ambulance, you would have stayed with him.

A. The pedestrians were running and there was not a single pedestrian who had the courage of telling me that he was willing to keep watch over the injured person, and I couldn't have given thoughts to so many matters because I was concerned mainly with making a telephone call right away. It was not for me then to think of getting someone to keep watch over the boy so that I could attend to something else. I was afraid that pedestrians might promise to make a telephone call for you and then break that promise, that would only do harm to the boy, because pedestrians were not in duty bound to make such telephone calls.

20 Q. Were there people in the Star Fashions—Silver Star Fashion Shop?

A. Yes.

30 Q. Could you not simply have said to one of those, "A person has been injured, please dial '999' and get an ambulance?"

A. Those—the people inside were shrinking in the corner because of fear. They were all girls.

Q. Anyway, your evidence is that having taken the extreme measures that you did to apprehend this boy, Lai, you left him on the pavement and you yourself went into the shop to make a '999' call?

A. What should I have done?

Q. I suggest, Mr. Au, if you had been acting in the diligent pursuit of your duty as you have described you would have stayed with him and you could have got somebody else to make a '999' call.

40 A. No. At that time I had already noticed that he had suffered injuries but I did not know the extent of the injuries.

Q. No.

A. So I believed that even if I had left him to make a telephone call he could not have gone far, even assuming that he would leave, because I noticed that the injuries he suffered were not light—could not be light and, moreover, it would just take a very short time for me to telephone.

Q. But this boy had run a hundred yards, hadn't he, after the shots were fired, the first shots were fired?

A. More than one hundred yards.

Q. Are you saying that you then decided at that stage that there was no possibility of him going any further? No possibility of him being able to go any further?

A. No, because I had already caught up with him.

Q. Did you handcuff him?

A. No, because I knew then that he was not able to continue running. That was the time when he squatted down. 10

Q. You told us you then went back to Sai Yeung Choi Street.

A. Yes.

Q. Now, you realised, did you, at that stage that you had shot Lai?

A. It was only when I noticed that he had injuries that I first realised he had been shot.

COURT: The short answer is 'yes', isn't it?

A. Yes.

Q. You went back to see Miss Yeung who, you say, was a very casual friend of your wife's who was going to make these New Year clothes? 20

A. Yes, to buy some piece goods to make clothes.

Q. And you left the scene where these two injured people were lying?

A. At that time there was another police officer looking after him and the person Yeung was an eye-witness in this incident, therefore I also considered her importance. I had to find this person.

Q. So at that stage you were concerned about people giving evidence in respect of this incident?

A. Because at that time as somebody was already looking after the injured person then what I had to do was look for eye-witnesses. 30

Q. You had to look for eye-witnesses?

A. Looking for witnesses is part of the work of policemen.

Q. Apart from going and seeing Miss Yeung, sending her home, what other steps did you take to find witnesses?

A. Because at that time another squad of detectives had arrived and these detectives were also looking around for witnesses, I myself at the time had a lot of other matters to attend to since my superior officers were already there.

Q. I suggest to you that you went back to see Miss Yeung and you got her away from the scene as quickly as you could. 40

A. No. She requested to leave the scene, I did not want her to leave. However, she complained of having seen and having been molested by a stranger and as she was very frightened I only allowed her to go home and to wait for telephone call at home. I did not ask her just to leave or to go to any other place. I spoke to her about the importance of this matter.

Q. Very well. You then saw the Sergeant 1766, YIP Kai?

A. Yes.

Q. And you heard him give his evidence as to what you said to him?

A. Yes.

Q. Do you agree that what the sergeant said in court is true, that is what you did say to him?

A. The account he gave was not a very accurate one, firstly because this happened such a long time ago and besides, I spoke to him when there was much confusion. I only gave him a rough account of this incident, and besides, he did not use any pencil to record—pen to record the account I gave him, therefore he was not too accurate.

10 Q. What confusion was there at the time that you gave this statement to Sergeant YIP Kai?

A. At that time I was very busy as such an incident had occurred, and besides I felt that I had a very bad headache and I had many other things to do. I had to see—I had to be interviewed by the ballistics expert and by many other people because many people had arrived at the scene in a few cars, and therefore it was very confused at the time.

Q. Mr. Au, isn't it true that except as to one point, except one point, the statement that you made to Sergeant YIP Kai that evening tallies very closely indeed with the evidence that you have given in this court?

20 INTERPRETER: Except . . . ?

Q. Except for one point which I will come to in a moment, except for that one point your evidence—your statement to YIP Kai follows very closely the evidence that you have given to this Court?

A. Yes.

Q. The one point, Mr. Au, is when the sergeant said that you told him, "Au took out his revolver, those first three person then ran."

MR. EDDIS: My Lord, I think my learned friend, the Director, is reading from something which is not in evidence before this Court. I would much prefer him to read what Sergeant Yip today remembers about this conversation as it is totally inaccurate to . . .

30 MR. PENLINGTON: Has your Lordship—I'm afraid I haven't got—I was just following the transcript.

COURT: He said he told—what he told the sergeant, as I have recorded here, is that "There was a struggle and I—I struggled and pulled out my revolver. The three youths started to run, then I fired two shots at one of them, at one of the three youths." That can be checked from the official record.

MR. PENLINGTON: This evidence will be important; I wonder if we could have the transcript typed?

40 COURT: Yes, there shouldn't be any difficulty tracing it because it was on Friday, just before—yes, near the end of Friday's evidence, last Friday.

MR. PENLINGTON: As I say, I haven't got a note of it but I thought what you Lordship read out just then was in fact what had been said. He struggled, pulled out his revolver and the three youths then ran.

MR. EDDIS: Started to run.

COURT: Is it vital that you have the official record now, or if so I will get. . . .

MR. PENLINGTON: Could we have it read out?

COURT: Do you want the answer now or can it wait while you go on with other aspects, because the court reporter has it in her office. . . .

MR. PENLINGTON: Yes, my Lord.

COURT: . . . which will take some time to arrive.

MR. PENLINGTON: No, I think if it can be got now I can go on.

COURT: Yes.

Q. Leave that aside for the moment, Mr. Au. Now, you have also told us in your evidence that your jacket was torn or the seams came apart during the struggle. 10

A. Yes.

Q. Whereabouts did you notice that? When did you first notice that your jacket was torn?

A. I first noticed that my jacket had been torn when I was taking off my jacket in the hospital before a doctor who was examining me in the hospital.

Q. Did you show this torn jacket to anybody?

A. When I got back to the police station I showed the jacket to those who were dealing with this case.

Q. Who was that? 20

A. Inspector Cheung.

Q. Inspector Cheung? Is this the same inspector?

A. Yes.

Q. Your evidence is that you showed him that jacket immediately you got back from the hospital?

A. Yes.

Q. As a police officer of 13 years' standing did you consider that that torn jacket was important evidence?

A. Yes.

Q. Did you hand that jacket over to the officers who were investi- 30
gating the case?

A. Yes.

Q. And that was the last you saw of it, was it, until it was produced at the inquest?

A. Yes.

Q. You are quite sure of that? You did not have that jacket after the evening of the 9th of January until it was produced at the inquest?

A. On that night, that is the night of the 9th of January, I told Inspector Cheung that my jacket had been torn. He knew about it.

Q. Yes. 40

A. But he told me to keep the jacket.

Q. That's not what you just told us a few moments ago, is it?

A. He told me to keep the jacket and that he would get it back from me when it became necessary. Later on he took it back and it was then in the custody of the police.

Q. Having shown this jacket, the torn jacket, to Inspector Cheung, how long did you have it in your possession?

A. I can't remember. One or two days.

Q. One or two days.

A. But I never touched it.

Q. I put it to you, Mr. Au, that when your jacket, clothing, was handed over you did not point out the tear and, indeed, it was not obvious that there was a tear.

A. If it was not obvious that there was a tear then why should I hand it out?

Q. And that you yourself must have realised that if your jacket was
10 torn, and this was an important piece of evidence, that it should remain in police custody.

A. But he told me to take it back so I took it back, so I took back the jacket back home and I did not touch it or wash it because I realised the importance of this jacket, otherwise I would have had it mended and I would have worn it again because I don't have many jackets to wear.

Q. I suggest to you that you realised perfectly well—you would have realised perfectly well that if you took the jacket home that night the value of this evidence would be almost totally lost.

A. But there was nothing I could do, there was nothing I could say
20 when he told me to take it back. Don't tell me that I should just throw it around so that no one would look after the jacket. What if it had got lost?

Q. Mr. Au, you could have insisted that it be taken into police custody, couldn't you?

A. He was my superior officer.

MR. PENLINGTON: (To court reporter on arrival with notebook)
Could you read out as slowly as possible; if you could read out all the statement.

COURT: Starting from "The constable said he drove to Sai Yeung
Choi Street and saw three teddy boys. . . ."

30 Court Reporter reads:

40 "At the same time he revealed his identity to them that he was a police detective and then one of the teddy boys, according to him, said, 'So what if you are a police detective? Do you think that detectives are all high and mighty?' Then the person who said 'Do you think that detectives are high and mighty', that very same person rushed up to him and grabbed him round his neck. Then the other two started to hit him. One of the two persons assaulting him put his hand over his waist in order to snatch his revolver. At that time he tried his best to struggle and then he himself pulled out his revolver from this part. (Witness demonstrates) The three youths seeing that he had pulled out his revolver started to run. Then he fired two shots at one of the three. After firing—after he had fired the shots that person continued to run and he continued to chase. When he got to Nathan Road he turned to the left, that is to say, that person whom he was chasing turned to the left towards Nelson Street in the direction of Tsim Sha Tsui. . . ."

COURT: Is that sufficient now, Mr. Penlington?

MR. PENLINGTON: Yes, that is sufficient.

Q. Now, Mr. Au, I suggest that the statement, as I said, given by you to the sergeant follows very closely to the evidence that you have given of the incident except that on that night you said to the sergeant that you pulled out your revolver, the three youths seeing that started to run and then you fired two shots at one of them.

A. That was what the sergeant said, not what I said, because when I spoke to him about what happened at the scene I gave him only a rough account. He might have got mixed up his task because he was not present at the time and he did not make a record immediately. 10

Q. But it is true, isn't it, Mr. Au, that apart from that one point, the drawing of the revolver and the three youths seeing that started to run, that apart from that one point your statement to the sergeant on that night was a pretty accurate account of what you say took place?

A. It was—that was a rough account of what happened.

Q. And I suggest to you, Mr. Au, that it is in fact—the statement that you made to the sergeant is exacty what happened, that the reason these boys ran away in Sai Yeung Choi Street was when they saw your revolver? 20

A. I disagree. I am now telling the Court what happened on that night because I was a participant in the incident at the scene and therefore what I am saying now is more accurate; the sergeant just listened to the account I gave him and did not make any record of what I said.

Q. Mr. Au, I suggest to you that the sequence of events on this evening was that you crossed in front of these youths, Lee, Lai and Wong, and you crossed very close to them causing them to shout out “Wah!”—one of them to shout out “Wah!”?

A. I disagree.

Q. That there was then an exchange of words between you sitting in the car and Lee in which he told you to be more careful? 30

A. No, he did not say that.

Q. And you rightly or wrongly thought that they had banged on your car?

A. I disagree.

Q. You became very annoyed that the three young men should talk to you in that way when you had Miss Yeung in the car with you?

A. This is all the more untrue.

Q. You parked your car outside the Hong Kong Bank building? 40

A. Yes.

Q. Got out?

A. Yes.

Q. And there was an exchange of obscene language between you and the boys; they were still on the stud crossing in the corner and you walked up to them?

A. No, they came up to me. We approached each other. They waved to me to come over.

Q. But you were not at that time acting as a police officer, you were simply an irate motorist?

A. I disagree.

Q. There was no suggestion of a triad sign and the boys stood their ground, did not back down as you anticipated?

A. No.

Q. After the bad language, a fight suddenly broke out, blows being exchanged almost simultaneously?

A. Yes.

10 Q. And this fight moved round constantly, it was not in any one particular spot?

A. Correct.

Q. While there may have been some effort to hold you, at no time were you held by the throat so as to be incapable of defending yourself?

A. I disagree.

Q. But nevertheless you were getting the worse of the fight?

A. Correct.

Q. You then decided to draw your revolver but that there was no attempt of any sort by any of these boys to snatch it from you?

20 A. I disagree.

Q. The three boys immediately on seeing your revolver ran away?

A. No.

Q. And you fired a shot at Lai?

A. Not correct.

Q. You set off in hot pursuit of Lai and Wong and in Argyle Street fired another shot?

A. Not in Argyle Street.

30 Q. You continued to chase the two boys into Nathan Road when Lai turned because he had gone as far as he could possibly go with his injuries?

A. I disagree because later on he ran for a distance of two shop spaces.

Q. You then fired. . . .

A. . . . He ran very fast and did not appear to be a man with injuries.

Q. You then fired a third shot at his legs and at that time you were not giving the matter of whether it was a justified shot any thought at all, you were very angry?

40 A. No, I disagree because when I fired the third shot I considered everything very carefully.

Q. And that you—when you found that Lai was seriously injured you became very frightened, left him on the pavement and went in to make a '999' call?

A. That is not correct. Bloodstains were only found near that shop and, besides, the most important point is we cannot move any person who has sustained injuries and there were witnesses who have proved that it was not I who assisted him onto the pavement but it was rather he

himself who dashed onto the pavement while he was running. His movements were not like those of a person who had sustained injuries.

Q. And you then realised that your actions that evening would have to be justified and you told every police officer that you saw that they had tried or that they had snatched your revolver?

A. No. You said that I told every police officer at that time—I told that to every police officer at that time—but actually I told every police officer what I had actually experienced at the scene at the time because at that time I did feel that such a thing did happen.

Q. Isn't it true that the only such thing you said to the auxiliary sergeant was "He snatched my revolver"? **10**

A. Not correct.

Q. Did you give him an account of what had happened?

A. I did not tell the auxiliary police sergeant what happened because he did not ask me and there was no need for me to tell him. I merely identified—revealed my identity to the auxiliary police sergeant and told him that I had shot that person because he was trying to snatch at my revolver.

Q. You didn't say—Did you say to the sergeant "He snatched my pistol"—"my revolver"? **20**

A. Yes.

Q. You didn't mean that though, you meant he tried to snatch?

A. Yes.

Q. When you said that did you mean he tried to snatch your revolver in Sai Yeung Choi Street or in Nathan Road?

A. Well, I was giving him a general account of what happened without any reference to a specific spot because this happened at both spots.

Q. And I suggest that when you made your statement to the sergeant you carefully mentioned this question of the attempt to take your revolver but you also told him the truth which was that the boys fled when they saw your revolver and you fired at them after they ran? **30**

A. I did not say that.

Q. Now . . .

COURT: . . . Just one thing: have you brought your holster with you today?

A. Yes, I have.

COURT: (To Clerk) Have the officer check to see whether the magazine is empty of completely everything.

(Officer complies)

Now, would you put it back, as you have demonstrated to the Court and the jury the other day, put it back on your waist. (Witness complies) Now, that was the position of the revolver when you had it at the time of the fight? **40**

A. Correct.

COURT: You said. . . . Would you step down now. . . . You said that your neck was grabbed by someone's arm. Mr. Gray, would you please for the time being be that man. Left hand or right hand?

A. Right hand.

COURT: All right, yes. Was—Your face was tilted upwards?

A. Yes.

COURT: Now you said you pulled out your revolver with your left hand. Now do it.

A. (Witness demonstrates) Like this.

COURT: All right.

10 A. I want to explain now it is impossible for me in this position to put the revolver back into the holster. I have to take out the holster before putting the revolver back and that is why I didn't have the time to put the revolver back in its original position then.

COURT: Yes. Any re-examination?

REXN. by Mr. Eddis:

Q. It was put to you, Mr. Au, that Sergeant Yip in remembering last week what you told him in January was accurate except for one small point.

A. Yes.

Q. According to his account last Friday he made no mention of the punch on your face. Was that something you think you told him?

20 A. Yes, I did tell him. I said that he hit me and I pointed that part of my body which was hit.

Q. He made no mention of your face being hit or your chest being hit. Do you think that you told him those points?

A. I did tell him, yes, these points. He said in the witness box that he saw blood flowing from near my mouth and that my face was swollen.

Q. He saw that but when he was recounting to us what you told him he made no mention of you having told him that. So what I am asking you is do you think you did tell him about which parts of your body were hit?

30 A. I did tell him.

Q. Do you think you told him that you were hit on the chest?

A. Yes.

Q. He made no mention of that in his evidence either, did he?

A. He did not mention.

Q. Now, you have said in answer just now "Did not make a note immediately" but did he ever make a note?

40 A. I was with him at the time for quite a long time but he did not make any record during that time but I don't know if he made any record after he went back to the police station because it was he who accompanied me to see the doctor.

Q. So is it your evidence that your description to him at the time was a rough one?

A. Yes.

Q. And would you say that his memory last Friday of what you told him in January accurately and completely reflected what you told him?

A. No, he did not remember everything.

Q. Now, there was some considerable difficulty in understanding, Mr. Au, as to your position and the position of Mr. Lai regarding that third shot in Nathan Road. Now, let's take it slowly, Mr. Au: you and he initially are proceeding southwards down Nathan Road. That is your evidence, isn't it, proceeding down towards the Star Ferry. . . . Let's not use north, south, east and west . . . proceeding down towards the Star Ferry you chasing him?

A. Correct.

Q. Now, at the moment when you drew to within about two feet of him were you on the pavement or in the roadway? **10**

A. I was on the edge of the pavement.

Q. Was he on the pavement or the roadway?

A. He was also on the edge of the pavement.

Q. Now, when he swung round with his right arm, you say you dodged . . . I think I am not putting words into your mouth, you have said this before . . . all right, which way did you dodge: to the left or to the right, did you get off the pavement onto the road or did you go further onto the pavement?

A. I dodged left in the direction of the pavement.

Q. At what moment of time did you fire this third shot: after you had dodged left or had you made any further movement in any other direction? **20**

A. I opened—I fired the third shot immediately after dodging to the left because I was afraid that he might do something else.

Q. Now, in the questioning in the Coroner's Court the question was "Where did you aim?", would you agree that there is no mention of direction in that question—"Where did you aim?" there was no mention of the word "direction," was there?

A. That is correct because strictly speaking the word "aim" implies having a target in front of one's eyes looking at the target. **30**

Q. Apart from there being no mention of the word "direction" how did you understand the question: did you understand it whether you were supposed to be saying that you were aiming at a target or did you understand it as a direction that he asked you?

A. Well, I took the word "aim" to mean the direction in which I was pointing.

Q. Now, the answer you give also contains no word "direction" but starts off immediately as "His leg". You have already told us that his leg is an incorrect translation for his foot.

A. Yes. **40**

Q. Now, the question is, Mr. Au, was his foot your target or was it the direction of your aim?

A. When I said "leg" I did not mean that I was pointing at the leg as a target to fire. I mean I was pointing downwards in a downward direction.

Q. Now, we have understood you to say the leg meant foot; was his foot your target or was it a direction?

A. Direction.

Q. Now, lastly, while I am on this subject, have you seen the medical report of the injuries to Mr. Leung Wai?

A. Yes, I have. I have not read the report.

Q. You heard the report read out?

A. But I have heard it being read out when the inquest was going on.

Q. And you heard it is common ground that the bullet entered the abdomen sideways. Now, by "sideways" I mean instead of going in like that in a pointed direction it went in like that? (Counsel demonstrates)

10 A. Taking this as the bullet the bullet entered this way. (Witness demonstrates)

Q. And do you remember from what was said in the Court below how far this sideways bullet penetrated—how far into the outer—below the outer skin?

A. Not very far but I don't know how far.

Q. You remember it as being not very far?

A. A little.

Q. Some questions have been put to you, Mr. Au, about the relative physique and height of the deceased person.

20 A. Yes.

Q. Was he on that day a taller person than you or a shorter person than you?

A. A taller person than I.

Q. You have told us he had high heels. Was this because of the high heels or can you not tell us whether he was physically taller or merely taller because of the high heels?

A. In fact he was physically taller than I and of larger build than I.

30 Q. When you have been talking about the firing of the two shots at the junction of Argyle Street and Sai Yeung Choi Street, you have I think more than once used this phrase, "secondly, I was not in control of myself". What do you mean by the "not in control of myself" at that space of time?

A. Because there was someone grabbing hold of me from behind by my neck and I want to free myself from his grip. There was a struggle in the course of which I was moving in order to free myself.

Q. Now, Mr. Au, was the lack of control a mental lack of control or a physical lack of control?

A. In my movements.

40 Q. In your movements. Yesterday it was put to you that three witnesses, Wong Moon-lam, his wife and Tam Kin-kwok, had given an estimate of time between the first two shots as three, four or five seconds. Now, Mr. Au, I will put to you what in fact those witnesses did say about this time element and not wrap it up all together: Wong Moon-lam after much hesitation in saying that he was muddled eventually said about three seconds; his wife said it was a split second interval and Tam Kin-kwok after also saying he was completely muddled about everything eventually said it was four to five seconds. Which of those three estimates

do you think is the more accurate: three seconds, split second or four to five seconds?

A. I am of the opinion that the estimates. . . .

MR. EDDIS: . . . Could you speak up, Mr. Gray?

A. I am of the opinion that the estimates they gave were merely to indicate that the time gap was very fast between the firing of the first and the second shot.

Q. So would you like to venture any opinion as to whether three seconds, split second or four to five seconds was more accurate?

A. About two to three seconds. **10**

Q. Now, you have been asked, Mr. Au, at great length about your point of aim when you fired both the first and the second shot.

A. Yes.

Q. I think I am not misquoting you when you say at that time you could see the hair of those in front of you. Now, do you mean the hair of one or both?

A. The hair of both.

Q. Right. Now, was your point of aim above or below that bit of hair that you saw?

A. I cannot remember because my body was moving at that time. **20**

Q. Did you aim above the hair or below the hair as far as you could tell?

A. I cannot remember.

Q. Can you remember whether you aimed to the left or the right of the moving bit of hair?

A. I cannot remember with any accuracy because when my neck was being grabbed I was moving so I myself was sometimes to the left and sometimes to the right.

Q. Now, I can understand that you didn't see fully but how far did you sense that they were away from you? I am not asking—I am not going to ask you in number of feet but could you indicate with the length of your outstretched arm was it further away than that or closer than that, how far did you sense they were, not where in fact they were? **30**

A. About two feet.

Q. Yes.

MR. EDDIS: Thank you, my Lord, I have no further questions.

COURT: Then I will continue this afternoon. It is nearly one o'clock now. If there is any question you want to ask, Mr. Foreman, you can ask him at 2.30 this afternoon. I will adjourn to 2.30.

1.00 p.m. Court adjourns **40**

2.35 p.m. Court resumes

Accused present. Appearance as before. Mr. Jackson-Lipkin absent. Jury present.

D.W.1—AU Pui-kuen (Accused)—O.F.A.

COURT: Yes?

MR. FOREMAN: You lordship, we have a number of questions. Shall I give them to you one at a time?

COURT: If you would like to give them all first I will put to him one by one.

MR. FOREMAN: The first question: Why was Mr. Au's wife not able to accompany him on the evening in question when he went to pick up Miss Yeung?

COURT: Yes.

10 MR. FOREMAN: The second question: After Mr. Au got out of the car, according to his testimony, he identified himself and Lee gave a sign to him which he interpreted as a triad sign. Why does Mr. Au feel that Lee would have given a sign like this to a policeman?

COURT: Yes.

20 MR. FOREMAN: The third: According to Mr. Au's testimony when his neck was released and he was able to see the youths clearly they were about five feet away and running away. One youth was about a foot ahead of the other. Can Mr. Au remember which youth was further away and which was nearer to him, in other words, which was right in front of him and which was right behind. Now, relating to that same point of time when Mr. Au was free to move why did he choose to chase the two boys rather than the one who, according to his testimony, was holding his neck? And the last question: How did Mr. Au hold his gun while running after the two youths: did he hold it still or move his arm as he went and was his finger on the trigger?

COURT: Now, there are a few questions that members of the jury would like to put to you: On the evening in question why was it that your wife was not able to accompany you when you went to pick up Miss Yeung?

30 A. Because my wife had to attend to my children who were having their supper at that time at home, and, besides, I believe that she was expecting that I would telephone her in a very short time. The reason why there was such a long time had elapsed before I telephoned her there was another reason for it: that reason was that I was trying to buy a newspaper because my colleague Detective Constable 9377—9337 of Police Headquarters had asked me to buy a newspaper for him, but it happened on that day that the Chinese Premier Chou En Lai passed away on that day and I was not able to find any newspaper by going through half of Kowloon even. For these reasons there was a delay and it took me such a long time to ring her up. Had it not been for such delays
40 I would have telephoned her much earlier on to ask her to come out.

COURT: Now, the second question is this: After you have got out of your car you said that you immediately identified yourself as a policeman or a police officer to the three youths.

A. Yes.

COURT: But after you have done that you said the youth Lee Wai-tang gave you a sign which you interpreted to be a triad sign.

A. Yes.

COURT: Now, if you cannot answer the question say so but in so far as you can what reason can you give that Lee should show you a triad sign knowing full well that you are a police officer?

A. I believe that his motive was to find out whether I belonged to his group of people or not. A signal of this kind could not be recognised just by any ordinary person. Even if a signal of this kind was made in a public place not many people would realise the significance.

COURT: In other words in your own estimation Lee who gave the sign might have thought that a police officer could be a member of the triad society? **10**

A. It is very difficult to say because one cannot say for certainty that you cannot find such people in the Police Force.

COURT: And the third question is this: that you said when your neck was released you were able to see things then?

A. Yes.

COURT: And you saw two youths in front of you?

A. Yes.

COURT: Approximately five feet away from you?

A. Yes.

COURT: Together but one approximately one foot ahead of the **20** other, farther away?

A. Yes, my Lord.

COURT: And they were both running away?

A. Yes.

COURT: To the best of your recollection and knowing their names now, can you tell who was in front and who was behind?

A. Lai Hon-shing was ahead and Wong Hon-keung was behind but in the course of the chase Wong Hon-keung overtook Lai Hon-shing. He might have been running faster than Lai Hon-shing.

COURT: Well, anyway on your first sight of the two Lai was in front? **30**

A. Yes, he was running ahead.

COURT: And it was in the course of the chase that Wong overtook Lai?

A. Correct.

COURT: The fourth question was that at that time . . . I am going back to the time that your neck was being released . . . when you saw the two of them Lai and Wong in front of you. . . .

A. . . . Yes, my Lord.

COURT: . . . by that time you were a free agent, in other words, of your own movements, in other words, you were free to move now, the grip had been released? **40**

A. Yes, my Lord, they had just released their grip.

COURT: Right, and so that you could chase them?

A. Yes, my Lord.

COURT: Now, why was it that you did not see fit to chase the one who was behind you instead of the two in front of you; obviously the one behind you would be nearer to you because he was the last—had just released his grip?

A. Because if I had to chase the one behind me I would have to turn round.

COURT: Yes.

10 A. If I had to turn round it would mean that I would have to take more time, there would be a delay. Then it occurred to me why don't I chase those two persons who are just in front of me. I felt that it would be more easy to chase after those two and, besides, they were—they had always been within my view during the whole time. If I turned round to look for the one behind me and eventually find myself unable to find him, then if I had to turn back to give chase to the other two it would be very difficult and much time would have been wasted. Because of this time element I immediately gave chase to the two in front. That is all.

COURT: The last question to you was that when you were chasing Lai and Wong you said you had the gun in your hand, the revolver in your hand.

A. Correct.

COURT: How did you hold your gun: did you . . . obviously when you were running you were holding it in your left hand, your left hand or arm moved while you were running?

20 A. No, it was not moving. It moved slightly. The position of my hand was like this (Witness demonstrates). I tried to avoid moving the revolver as best as I could.

COURT: And while you were holding it in your hand did you have your finger on the trigger or off the trigger?

A. No, off the trigger. My finger was outside the trigger. I can demonstrate it. (Witness demonstrates)

COURT: Yes.

A. Like this.

30 COURT: Yes, would you hold it in the same position as you were running?

A. Like this, my Lord, the pistol was in this position. (Witness demonstrates)

COURT: Yes. Is that all?

MR. FOREMAN: Yes.

COURT: Right, you may step down.

MR. EDDIS: That is the case for the defence, my Lord.

MR. PENLINGTON: My Lord, I presume that it is not your Lordship's intention to sum up this afternoon.

40 COURT: I doubt very much if I have time to sum up this afternoon before 4.30.

MR. PENLINGTON: Yes.

COURT: Yes.

MR. PENLINGTON: I think I would be about an hour, my friend will probably be a bit longer—if in fact we are, you do have to go to tomorrow I would appreciate an adjournment now rather than later.

MR. EDDIS: I would support that view if you agree. Both of us have a lot of evidence to put together, and if your Lordship feel we were

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endangering the time limit, tomorrow we could perhaps start half an hour earlier. My learned friend's estimate of my speech to last an hour and a little may be correct.

COURT: Yes, in view of the evidence that has been adduced in the past week—in any event, you will finish by Thursday morning, tomorrow will be Wednesday. I take it that Mr. Penlington will take an hour or a bit more than an hour. . . .

MR. PENLINGTON: Yes.

COURT: You may take the rest of the morning and bit in the afternoon? 10

MR. EDDIS: I don't think I will take much more than an hour—I have found it difficult to hold people's attention more than half an hour

COURT: What I intend to do, if I could sum up in the morning and leave the rest of the day for the jury to consider their verdict, but if we take up the morning, this means I will have to start in the afternoon—it will be obviously unfair to require the jury, after the summing-up to spend the rest of the evening considering the verdict. What I intend to do then is to sum up tomorrow afternoon, part of the summing-up, it may not be entirely satisfactory, but my summing-up can be divided at least into two compartments matters of law and recalling certain evidence, in so far as the summing up will be part tomorrow afternoon and a little bit on Thursday morning, and then the jury will have the whole of Thursday to consider their verdict. If that is the case, Mr. Foreman, would that be agreeable to you and your fellow jurors? 20

FOREMAN: That is fine, my Lord.

COURT: I will adjourn to 10 o'clock tomorrow morning.

3.55 p.m. Court adjourns.

29th September, 1976.
10.20 a.m. Court resumes.

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No. 33
Closing Address
by Counsel for
the Prosecution

Accused present. Appearances as before. JURY PRESENT (Mr. Gall absent)

MR. PENLINGTON: Ladies and gentlemen, as you have heard yesterday one bright bit of news is now my friend and myself intend to address you for a length of time, and may I say, before I begin to go through some of the evidence in this matter, that it has been refreshing to have a jury that is obviously taking a very intelligent interest in the evidence, and
10 judging by what I might say very penetrating questions that have been asked by your Foreman, it is clear that you had been listening to this evidence as we have gone along, and that being so, I see no point whatever in my going into the evidence in any great detail.

When I addressed you at the beginning of this trial I mentioned to you the various functions that we have in the case, and it is certainly not my function at any time to press you, to urge you that you should bring in any particular verdict. It is my function to present the evidence supporting the Crown's case. It is also my function to place any evidence that is called by the defence before you. Having done that I hope that is
20 the end of my duty. It is not in any way my task to ask you or to press you to bring in any particular verdict. In considering the evidence, however, I would ask you, above all, to do one thing, and that is use your commonsense. You are not lawyers and your function is not to decide matters of law. That is for his Lordship, but in assessing the evidence, in deciding what you can believe and what you cannot believe, this is your function very much as intelligent members of the public to use your commonsense if a particular piece of evidence appears to fit in with what you think is likely to have happened—if it is what people normally do—if it is what you would expect an ordinary person's reaction to be—the use of certain
30 words or certain talk—it is obviously you can accept that much easier than if it is something which your commonsense indicates is at any rate unlikely.

When the defendant gave his evidence I went through and put to him basically the Crown's case in this matter, the sequence of events which the Crown suggests happened on that evening of the 9th of January. And if you go through the evidence I think you will find that to a very large extent that sequence of events is almost agreed by all the parties and by the independent witnesses—when I use that expression I exclude
40 the two young boys who gave evidence and the defendant himself—the other witnesses I would suggest, there is no reason whatever to suggest that any of them were doing anything else when they gave evidence, except to do their best to recollect what happened and to assist you by telling their account as accurately as they could. As I have said, it is tragic in this case that of all the people who must have witnessed the events, so few have seen fit to come forward and make a statement, and unfortunately, due to the confusion at the time, even those witnesses who have

come forward clearly cannot give an absolutely diagraphically clear account—they were people, in their way perhaps they were frightened when they heard certain sounds, so none of them really could give as clear a description as we would like, however, there are, I think, at least five or six witnesses who, if their evidence is pieced together, you can obtain, I think, a fairly clear picture of what had happened on that evening.

I suggest that it is quite clear that the boys were walking across Sai Yeung Choi Street and the car turned across in front of them, and it was going, as one would expect, quite slowly, because of the crowded conditions. In this car was the defendant and Miss YEUNG. Now there are certain aspects of the evidence in this case which might form, if they were allowed to, what we might call red herrings, and you must discard entirely any evidence which detracts from your consideration of the issues involved, and there are two such red herrings straightway. 10

The first is that this constable is driving quite clearly a fairly expensive sports saloon—it is not part of the Crown's case—it is entirely irrelevant as to how and why he had this motor-car, and he was also in the company of a young lady, who he says was to make some clothes for his wife, and it is again no part of the evidence as to why he was in the company of this young lady at 9.30 on that evening. You have heard the evidence from the boys and from the defendant as to what exactly happened when the car drove across this line of pedestrians, and I suggest that what happened was that the boys were, if not hit, the car went very close to them and they were at any rate startled to call out 'Wah' and they jumped back. Whether LEE was hit or not I suggest it does not really matter. What is clear is if he was hit, it was a very slight bump, if any. What is clear is that there was then an exchange of words. The boys, I suggest, called out, as you would expect, 'Why don't you drive more carefully' or words to that effect. It does not matter exactly what words were used. At any rate what we are dealing with is a translation of the Chinese words that were used. There was, I suggest, a call and an indignant exchange of words, and this was accompanied by one of the boys making a face at Miss YEUNG. The driver, I suggest, became annoyed. He drove over to the other side of the road and stopped. His account for this, I suggest, is difficult to believe that he thought possibly some friends of his had asked these boys to bang on his car, and he was getting out to investigate. Here he was, at 9.30, by his own evidence being delayed in buying a newspaper for his friend before 9.30, he had yet to find somewhere to go for dinner, to take Miss YEUNG, and then, according to his evidence, to go and ring up his wife. I suggest that if in fact there was nothing more to the incident than what he says, if he was still then quite calm and collected, he would have driven off. Later on he says that he intended to arrest these boys for what they had done. Well I suggest you don't have to be police officers or a lawyer to say that it was ridiculous to suggest that they had done anything that would justify the whole three of them being arrested and taken back to a Police Station. Mr. Au would 40

look a complete fool for arriving at the Duty Office with these three boys in tow to tell the Duty Officer he had arrested them because they had banged on the side of his car. There was no reason to suppose that anybody was injured, and I think you can discount the suggestion that he was going back to make enquiries as to whether anybody was injured. If he said, 'Are you injured?' it would certainly not be a genuine query—it was just 'what are you making all this fuss about—are you injured?' It was very much a rhetorical question. The car was going very slowly. It is quite clear that the boys had not suffered any injury.

- 10 The evidence then, after the car was parked, is largely that of, ignoring the constable and the two boys, those two witnesses, FONG Bun and Mr. CHEUNG. Mr. FONG, you remember was standing near the corner and had to turned round when he heard the argument, and then later on saw the fight, and he told you that there was a lot of bad language used during this argument, and MR. CHEUNG also says the same thing. Neither of them say that they heard the policeman, the defendant, identifying himself as a policeman, and the only evidence you have on that saying that he did identify himself is his own evidence. The boys both deny it and the witnesses said they did not hear it, and I wonder whether considering
- 20 his conduct, the way he was acting and the language he was using, was it the conduct and the language one would expect to come from a man who had immediately identified himself as a police officer, or was it the language and conduct of an indignant, embarrassed one who had been, he thought, made to lose face in front of the lady he had in the car?

- We have conflicting evidence as to who struck the first blow. I won't think really it is all that important. I suggest that the evidence upon the situation developing—policeman walking back from his car towards the boys, who were standing their ground, the use of very bad language possibly on both sides, and the situation developing into a fight became
- 30 almost inevitable, and I suggest there was, according to the evidence and according to what one would expect, a sudden quick exchange of blows. Mr. FONG and Mr. CHEUNG both say that LEE struck first. You may find that evidence is plausible—it is for you to decide—even if you do, I suggest that the first two blows were exchanged almost at the same time—this is just a sudden flurry of blows and the other two boys, as you would expect, immediately joined in. I suggest that the constable, when he went back and conducted himself in the manner that he did, was looking for trouble. He was not conducting himself as a police officer. He was aggressive and he expected these young boys would back down.
- 40 When they did not violence became not only a possibility but a very strong probability, and that, at that stage, before the fight took place, the constable could, I suggest, have avoided trouble, and indeed at that stage the boys had not committed any offence for which they could possibly have been arrested.

We then come to another, what I would suggest is something of a red herring—that is the alleged use of this Triad sign. There is no evidence whatever that either of these boys were in any way involved in

Triad activities. I have no doubt it will be put to you that this does not matter. They might have known—LEE might have known the Triad sign even if he was not a member of Triad Society, and he used this sign to try and stop the policeman. First of all you heard the Detective Sergeant giving evidence—YIP Kai, a sergeant of 30 years experience in the Police Force, C.I.D., and it was quite obvious, I think, when he gave evidence, that sign meant absolutely nothing to him whatever. Furthermore, I suggest that the defendant, if he had identified himself as a policeman, the last thing that he would do would be to make a Triad sign. This, I think, is a matter of common knowledge—mere membership of a Triad Society in Hong Kong is a serious criminal offence. Mr. CHEUNG, the watchman, says he saw this stretching out of the hands by LEE, and he took it in the way I suggest LEE intended it, the way anybody else would take it as simply a denial—‘I have not done anything—what is all this fuss?’ I suggest that any suggestion this was a Triad sign from him is a red herring which you should entirely disregard. 10

We also have other evidence I suggest here, which is another matter which should be disregarded to some extent, and that is that the boys have long hair and they were dressed as teddy boys—FEI CHAIS. One says he had some sort of military jacket on—the deceased boy, we know, was wearing what had been produced in court, a very ordinary looking long-green khaki jersey, a pair of slacks—the only one that was possibly dressed in an unusual manner was WONG, who had on something of a dark coloured jacket—he said leather, Au says woollen jacket, which had glittery buttons. That is the only bit of evidence that these boys had any dress that suggested they may be FEI CHAIS. They had long hair—they don’t deny that—you can see from the photograph of Mr. LAI, the unfortunate boy—his hair is longish—they said down to the bottom of their collars, but to describe them as long-haired teddy boys, some sort of hooligans who were out for trouble, I suggest, is quite wrong. They were well-dressed—they had their hair in what they regarded, as the first fashion—fashions have changed somewhat since then, but I suggest there is nothing for people or for the constable to believe that he was having an encounter with three young long-haired hooligans armed with weapons who were out for trouble. I suggest that any evidence that these boys were FEI CHAIS is another red herring. 20 30

The fight then broke out—you have seen the two boys—you have seen the photograph of the deceased and you have seen the accused—it was three to one, but you have also seen that the Accused, Detective AU, is a man considerably older than the boys—he himself said he was fit. He is not tall but he is strongly built—he is a policeman—he was armed, and I suggest that although it was three to one the odds were nothing like the mere numbers suggest. Nevertheless, Au’s own statement, and what one would expect, nevertheless the detective did get pushed back—Mr. FONG says that there was punching and kicking—both he and Mr. CHEUNG said that there was an exchange of blows, and I suggest that it developed, as one would expect it to a general scuffle or mêlée, exchange 40

of blows and kicks—it was a moving fight—everybody moved around—the participants were weaving in and out, moving backwards and forwards from side to side—nothing whatever to suggest that at any time, except Constable Au’s evidence, that he was hold in one spot so that he could not move. The independent witnesses are unanimous to suggest that there was considerable amount of moving going on, and this is what you would expect—one strongly built man attacked by three others, defending himself, hitting back, moving around, and I suggest that there is no evidence one would expect that at any time the constable was in one spot

10 being held, and defenceless while the other two rained blows down on him. Nor do I suggest that one of these boys could then start to search him to see whether he had a revolver, and if he could try and take it away from him.

Mr. CHEUNG’s evidence, I suggest, should be given very considerable weight. Mr. CHEUNG watched standing on the steps of the Hong Kong Bank—he is not a big man—he was standing on the steps—he must have had a fairly clear view, a very, very short distance, of what was going on. Mr. FONG was also there, although he said there were quite a few people between him and the fight. Their evidence differs in that CHEUNG says

20 that there was no grabbing, no holding that he could see and Mr. FONG says there was, and we have another witness, Mr. Tso, who was passing in a bus—he also says that he saw one person being held. I am not saying at all that there is no evidence which you could well believe and indeed it is evidence which you would not find unexpected that one or more of these boys did try to hold the constable. No doubt he was punching out vigorously and that the three of them or perhaps naturally that one or more should try to hold him—to try and hold his arms to try to disable him in some way. There is evidence suggesting that that was done. What I suggest is that there is no specific evidence and that your commonsense

30 would militate against your believing that he was so helpless that he became defenceless and had to use the very extreme measure of drawing a revolver and firing at where he thought these boys were.

Mr. CHEUNG says that the driver, the defendant, fell over, got up and then the boys ran. Mr. FONG says that in the course of the fight the driver hit out and fell back—whether he was dragged back or whether he was simply punched and fell, I suggest it is not clear, but in any event the evidence appears to be clear that he did stumble and fall. Mr. CHEUNG told you that he quickly recovered himself and it was at that stage that the boys ran away, and I suggest that Mr. FONG also says while the driver

40 was held, others were hitting, then they ran—don’t know why. I suggest the commonsense view of why these boys ran was that the driver fell, and when he fell he drew his revolver and that was why the boys ran, and that understandably fits in with the evidence, and it is what you would expect to happen, at the sight of the revolver they immediately became frightened and they ran. Mr. FONG says there was a period of time—could not estimate between the running and the first shot—saw two youths running followed by the driver.

Now under cross-examination he also said he couldn't remember if the driver was released before the shots. Mr. CHEUNG says that he was not held at all, but the boys in their own evidence of course say they ran because they did not see the revolver but because they heard the shout, 'Don't fight'.

Well it is for you to assess this evidence, but I do suggest there is every reason to believe that when the driver fell he did draw a revolver—whether it was because of that the boys ran or because they heard the shout or because they thought they had been going on long enough, they became frightened, is a matter for yourself. I suggest all the evidence point to the fact that these two boys at any rate were running away when that first shot was fired. You heard the evidence of the defendant that after he fired the first shot he was hit again. Well if that is true it shows the degree of courage in one of these two boys, which in time of War would earn him a medal, that having seen a revolver drawn, a shot fired that, I believe LAI, continued to hit him—that must mean that he was shot either in the back or on the back of his arm, turned round again and continued the attack on the constable, or if that is not true, that WONG owing to the fact that a shot had been fired in his back, even perhaps not knowing he had been hit, in the face of this wouldn't continue the attack on the constable. Neither of this I suggest is credible for one moment. What is the evidence is that the shots were fired when the boys were running. 10

First of all, of course, CHEUNG says he did not hear any shots in Sai Yeung Choi Street and LEE says he ran away along Sai Yeung Choi Street and he did not hear any shots. Whether you accept his evidence or not, is there any reason to believe that Mr. CHEUNG is not telling the truth. And if in fact he did not hear any shots, is this because the shots were fired after the constable had passed round the corner of the Hong Kong and Shanghai Bank building, at any rate, was the second shot fired after he had got well into Argyle Street. On his version, this is supported by the three eye witnesses who were in Argyle Street. Mr. WONG Moon-lam, his wife and Mr. TAM—they all told you they heard a shot and some time after—the period they say varies—I suggest on the evidence it sounds like about five seconds. Certainly Mr. WONG Moon-lam and his wife did attempt to turn round and have a look before they saw a flash the sound of the second shot. Their evidence supports that the shots were fired some time—the second shot was fired some time after the first, and it came from Argyle Street. 30

The medical evidence certainly supports, and I suggest, there is no other plausible explanation for this medical evidence than that LAI was running away. He was shot in the back—the shots were going upwards slightly, suggesting that he was leaning forward as he ran and the bullets were slightly converging, suggesting that he was a bit or slightly turning at the time. It was not the case of the boy with his back to the accused and two shots being fired straight at the back—Bang, Bang—one would then expect two bullet wounds to be together and through the target to 40

have been the same, but possibly, even if he was weaving there would be some difference—you would expect, I suggest, the wounds to be closely together; and if the constable's version is true, he fired blindly at somebody he thought was attacking him, both shots struck LAI—that is a matter beyond any doubt whatever—the first two shots both hit LAI, and they were both at the back, is that what one would expect two shots fired blindly by a man who was being held back and he couldn't see in front of him? The ballistics expert told you that the shot was fired when the muzzle was more than 18 inches away—that, of course, is perhaps not as

10 helpful as it could have been, but it does clearly suggest that when that shot was fired, LAI was in no position to be punching or attacking the constable. There was at least 18 inches between the muzzle of the gun and LAI's body—could of course have been any distance beyond 18 inches, but it was not less.

Mr. TAM, who was in Argyle Street, told you, I suggest that although he said he was vague as to the events, his evidence on this was quite clear—he was not shaken. He may have been vague as to exactly what happened on that evening or the confusion of people running, but he told you quite clearly and categorically, I suggest, that he heard the first

20 shot, and that after the first shot, some time after people ran past him—they were being chased by a third person who was carrying a revolver, and after that person passed him and was going away from him, another shot was fired. This also coincides with the evidence of WONG Moon-lam and his wife, and I suggest that there is the very strongest evidence from the witnesses, from the medical and ballistics evidence that that second shot, at any rate, was fired well into Argyle Street and that, of course, is absolutely and completely contrary to the evidence that has been given to you by the defendant. He is quite clear and quite definite that he fired both shots when he was being held and he could not see what he was

30 firing at, and they were both fired from the same spot.

There are, I suggest, two fundamental justifications to the firing of these shots by Mr. AU. The first is that he was acting in self-defence, and the second, that he was acting in pursuance of his duty as a police officer, So far as one is concerned, even on his own evidence he was not reduced to such a state that he had to use his revolver to get him out of it. A man is entitled to defend himself and even if he feels in the course of his fight, three against one, he was entitled to use a weapon if he had one, I suggest he was certainly not entitled to fire a revolver in the manner that he did. To do that he would have to have been reduced to such a state, where he

40 was justified to say, 'It is my life or theirs and I am going to use my revolver, no matter even if I do kill my attackers and even if I may run the risk of shooting an innocent bystander'—there must have been clear evidence there were many bystanders, curious on-lookers, even if not very public-spirited citizens.

It has been said by a judge in another jurisdiction, Justice Oliver Wendell Holmes that one must not look—must not judge a man's actions in defending himself if you look at it with hindsight from the cool comfort

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of an office or a court room. You must look at these things putting yourself in that man's situation. Justice Holmes said, 'One must not expect an entirely reasonable decision in face of an uplifted knife.' And you must certainly look at the evidence and decide what the constable was entitled to do in the light of the situation as he must have seen it, and if he made a wrong decision in an emergency of that sort, then of course if it was a reasonable decision, then it is excused. If a motorist is faced with an emergency and turns the wrong way, and then maybe it was a wrong decision, but it is an understandable decision, then it is a defence, but I suggest that on his own evidence, there was nothing in this fight to justify use of his revolver in the way that he did. He says, 'I was being held and I thought that I should end this matter if it went on then I might faint.' Now at this stage, I suggest, there could not have been anybody attacking him from the front. What could have been happening was he was being held by LEE from behind, and I suggest to you that a strong-built man such as Constable AU could easily have extricated himself from such a situation without the use of any weapon at all. 10

Talking about weapons, again though it has been said to you by constable in his evidence that he thought that these boys might be armed, even when he was catching up with LAI in Nathan Road, after this long chase he still says he thought this boy might be armed. There is no suggestion whatever that these boys were armed. There is no suggestion whatever that Constable AU had any reason to believe that they were armed. It was a chance encounter—a car going close to three pedestrians. It was put to you it has occurred—that there had been two snatches of police revolvers in the month preceding this incident—these were cases where people had come up behind the uniformed police officers, whose revolvers were perfectly plain and obvious, and they were attacked from behind, they had cut the lanyards with the revolvers and had taken them away. 20 30

I suggest that this incident on the evening of the 9th of January is totally and completely different. There was no reason to believe that these boys had any intention of doing anything else that night except going to the pictures, theatre, in the way they have said. There was no reason for the constable to believe that they were armed. I suggest there was no reason at any time for him to believe that they were about to snatch or at some stage in that fight to take his revolver. There was no use of any weapon or anything during the course of the fight—the constable says that he did not see any reach for a knife of anything of that sort. These boys were not armed and the constable knew perfectly well that they were unarmed. 40

The last piece of evidence which AU would suggest point strangely to the fact that the boys had run by the time these shots were fired is the constable's own statement made to the C.I.D. sergeant that same evening. That statement is being attacked on the ground that the Sergeant did not write it down when the constable was only giving him a rough outline of what happened and now nine months later one cannot rely on the

constable's memory. Well the constable did give evidence at the inquest about two months after the incident—he has given evidence again today, and this, I suggest, is very important evidence, and I will just read to you what he says, and in particular about this vital point of where were these boys when the shot was fired—when the first two shots were fired. The Sergeant said that constable AU said to him that he—I will read my junior's writing: 'Same time'—this was after the argument started, 'Same time he revealed his identity to him that he was a police detective, and one of the boys, according to him, said, 'So what you are a detective—
10 do you think you are all that high and mighty'. That same boy then rushed up and grabbed his neck and the other two hit him' Then I suggest, this follows exactly what the constable said, 'One of the assailants put his hand on his waist to snatch his revolver. He tried to struggle—he pulled out his revolver'—demonstrated how he did that—'the three youths seeing that started to run, then he fired two shots at one of the three. After he had fired the shots that person continued to run and he continued to chase. When he got to Nathan Road he turned left—LAI turned left towards Nelson Street.'

Now as I put to the constable, what he said to the sergeant that night
20 by and large follows almost exactly the evidence that he has given in this court except on that one vital point. He tried to struggle, pulled out his revolver, the three youths seeing that started to run then he fired two shots at one. I suggest that in fact is what happened.

There has been evidence given by the two boys. I am not going to go through their evidence in any detail, it is up to you to believe what they have said or part of what they have said. You may accept some of their evidence, you may not accept other parts of their evidence. It is clear they ran home. I suggest it is also clear that they were terrified because of this incident. I have no doubt when they got back they discussed the matter
30 between them. They then reported it to their parents and a report was made to the police, I suggest, within a reasonable time. They got back home probably about quarter to ten, discussed it with their parents, they saw on the TV there had been a shooting. Eventually the whole group arrived at Mongkok Police Station at about midnight. It is not an unreasonable time, I suggest. You heard evidence that one said to the other: "That man may have been a policeman." If Constable AU had identified himself at the time of the argument before the incident started, then they would have no doubt that he was a policeman. I think probably by the time they got home they knew perfectly well, at least WONG knew perfectly well,
40 that he was a policeman because, of course, he had heard the shots. If the boys had acted in the manner that AU suggests, I wonder whether they would have been quite so keen to report, to tell their parents what had happened. It may be that they felt that because AU did not come back. . . . LAI did not come back, they didn't have any option, but if in fact they had deliberately attacked a police officer, if they had deliberately tried to steal his revolver, I wonder if they would have been quite so keen to report the matter to their parents. However, that is a matter for you, but I suggest

their conduct, indeed the conduct of the boys and their family after they fled from the scene is not unreasonable and it is fundamentally what you would expect from two boys who had been involved in the incident that you have heard about.

Now finally I just want to say very briefly a few words about the incident in Nathan Road. That is the subject of the second charge, that of firing or shooting with intent to cause grievous bodily harm. You have heard the evidence from the Crown on this and it is basically not disputed, and indeed there is an agreed statement from the wife of Mr. POON that the boy WONG ran along Nathan Road, bumped into Mr. POON and then ran on and disappeared from the scene. He was followed by LAI, also running. LAI stopped or, at any rate, slowed down, turned in the way that has been described by the witnesses, threw back his arm, the constable dodged to the left and immediately fired another shot. The constable giving evidence before the coroner said he fired at his legs or fired at his feet. I quite agree we shouldn't be too worried about just minor matters, matters of translation, but on his evidence before the coroner he fired at LAI downwards, that is quite true. 10

It is not the Crown's case that he fired at LAI at that stage with intent to kill him. He fired at him, he fired at his legs. I suggest that his evidence that he fired deliberately at the ground and out towards Nathan Road is not to be believed. It doesn't tally with the fact that the shot in fact hit the unfortunate Mr. LEUNG Wai who was on the edge of the road, near the edge of the road and at the bus stop. You can see the bus stop in the photographs. If the constable was on the road himself and he fired out into the roadway, I don't know whether you know much about Newton's Law, but I suggest there is no way that that shot could have gone back and hit Mr. LEUNG Wai. 20

Mr. POON, who was standing there, who was bumped by WONG in his fight, told you that the arm was flung back and that the hand was open. I suggest there is nothing to support the constable's version that at this stage he thought he was going to be attacked and still less to support his statement that he thought again at this stage that there was a threat to snatch his revolver. This boy had been deserted by his companion who had gone off and made good his escape. He had been deserted by his other companion earlier on who had disappeared down Sai Yeung Choi Street. He was on his own. He had run for something like a hundred yards. He in fact, of course, had been shot twice. Even if we give the constable the benefit of the doubt and say he didn't realise this boy had been shot, could he honestly feel that at this stage the boy was doing anything else except turning round and making a despairing gesture to try and keep the constable away from him? That is what he was doing, I suggest. That is what it must have appeared to Constable AU. His firing of that third shot at LAI was unlawful. There was no conceivable justification for that shot, and furthermore, not only in itself was it an offence, I suggest it shows very clearly what his state of mind was during the whole of this incident from the time he stopped his motorcar in Sai Yeung Choi 40

Street. He had lost his temper, he had panicked and he was not acting in a reasonable manner, certainly not in a manner one would expect of a police officer. He was a very angry man and he was determined that he was going to stop this boy and he fired two shots at him originally and a third one in Nathan Road. His state of mind in Nathan Road in firing that shot was the same as it was when he fired the shots; the first one, I suggest, near the junction of Argyle Street and Sai Yeung Choi Street, the second one along Argyle Street when he was setting off in hot pursuit.

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10 Ladies and gentlemen, you have before you a lot of documents, plans, maps. I'm sorry that it has been necessary, for instance, for each witness to mark his position on a separate map. However, I think it is necessary otherwise if they're all on one you can become confused. Those maps, photographs and agreed facts will be with you. I suggest that you give them some study. The photographs in particular, I suggest, and the plans are important because they do show clearly where each of these witnesses was when he heard and saw what he did. If you take those markings on the plans and the photographs in conjunction with their evidence, I suggest that the sequence of events and what happened on this particular evening become fairly clear.

20 It is the Crown's case that the constable, in firing the shots, was not acting in genuine self-defence nor was he acting in the way that the law says he may act. Of course, it is not for me to tell you what the law is, but I will read you just briefly the Criminal Procedure Ordinance, section 101(A). It is a very important section:

"A person may use such force as is reasonable in the circumstances in the protection of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

30 The vital words, the words which you must give consideration to, are those: "such force as is reasonable in the circumstances" and I suggest it is the Crown's case the degree of force used by Constable AU in pursuing LAI was, in the circumstances, far beyond that which was reasonable. It was quite unreasonable.

Ladies and gentlemen, that is all I wish to say to you except again to thank you for the very patient way that you have listened to the evidence in this case.

COURT: Yes, Mr. Eddis.

MR. EDDIS: My Lord, members of the jury. The Director has been very fair in his closing remarks to you and I will only make this comment at this stage: he has time and again, in order to paint to you the picture of what might have happened, he has time and again disowned his own witnesses, and in particular those witnesses whom he ought to rely on most, namely, the participants, the two boys. He has said to you for instance, "Well, the boys—one of the boys called out 'Why do you not drive more carefully?'" That is not what they said at all. You may think they said it, but that is not what they said at all. LEE said, "I bent forward and said 'Wa'" —no question of making a face—"We treated it as nothing happened," WONG said LEE shouted and nothing else. So in asking you gently that this is what might have happened, he is going beyond or disowning what his own witnesses have said. Later on, he is saying, "I'm not saying there is no evidence that one or more did not try to hold the officer" but both these boys deny not only that they themselves did it, but so far as they could see, nobody else did it, so you can't get out of it by saying the poor unfortunate boy who was killed might have been the one holding him. We all know today that it is the case for the defence that it was LEE Wai-tang who did the holding round the neck, but neither one of them admitted it. But here he is saying, "Well, I'm not saying there isn't evidence" but his principal witnesses both deny it. "It is clear that he did stumble and fall." Well, again his principal witnesses say nobody fell during the fight. He says it is suggested that the boys ran because "when he fell he drew a revolver." His principal witnesses say nothing of the sort. So bear that in mind when he is inviting you to take a certain view of things, that he is disowning or disagreeing with the principal witnesses who ought to know best, namely, the participants. 10

Now members of the jury, my learned friend the Director opened on this point and I must come back to it. This is a very difficult case for a jury in Hong Kong because of the mountains of prejudice and half-digested facts which the Press, parts of it, have given out. Now when I say the Press, members of the jury, I don't necessarily blame any particular paper. Perhaps the person or persons whom we should be blaming are the people who have fed them with prejudice and biased facts, but even after the coroner's verdict—now you know there was a coroner's verdict—there have been totally biased and one-sided articles in certain parts of the Press reporting only, only what LEE Wai-tang and WONG Hon-keung have said, and I will come to their evidence shortly and I suggest, members of the jury, that you will find their evidence nothing more than mere fabrication. But primed as you have been, as we all have been, by what has been written in the Press and the radio and television throughout this year, it is going to be very difficult to forget all the so-called stated facts which have been presented. 20 30 40

For example, my learned friend the Director himself in opening referred to AU as a policeman from the Mongkok Police Station. He very gracefully acknowledged his error shortly after that when the Inspector

pointed him out that error, but the indoctrination was there. Now in case it escapes your notice as to why it matters whether he was from Mongkok or Headquarters, the fact is that part of the articles of the Press have been trying to infer that this was a police cover-up. Of course the Director took no part in suggesting that, that it was a Mongkok policeman and Mongkok police were doing the investigation, but at any rate, the indoctrination is there. Another example is that one member of the jury, asked one of the earlier witnesses, "Did he come out of the car yelling?"

Well, that had not only not been given in evidence at that stage, but it's
10 never been in evidence, and this is a residue of the pernicious effect of what, for want of a better term, I would call propaganda. So I do beg you, members of the jury, to be most careful about the insidious influence of this propaganda. If you take a certain view of any event or any part of the event, please check it with each other that that is based on evidence you have heard in this court, and which by your sworn evidence you are bound by. Now let me come to some of the evidence in this case.

I would start off by saying, apart from the participants, that there are two reasonably reliable eyewitnesses and one doubtful one. In
20 addition, there are three very unreliable eyewitnesses. Let us take the bus upper deck traveller, Mr. Tso. Well, I say he's a reliable one because at least to start with, what happened was in front of him. He had a forward vision as to what was going on. After a time the bus passed along and he didn't see the end of the fight, but he told us this: when he was looking forward and looking at the fight, "Saw a person was grabbing another by the neck. Two others were assaulting the person whose neck was grabbed. Two other person were assaulting with fists." Then his bus passed on and he gives no further evidence of that.

FONG Bun also had a forward vision of much more of the fight. He was walking across that junction, this took place in front of him, the whole
30 thing took place in front of him. What does he say? "The driver was struck on the head. He was struck and fell back. Driver's neck was grabbed. One was holding him by the neck while the others were punching." Then he says, "I cannot remember the exact moment of release" and later on being shown what he said in the coroner's court back in March, much nearer to the event than today, he told the coroner and he agreed in this court that this is what he said then, "Still had the arm around the neck when the shots were fired." Members of the jury, that is a forward-looking eyewitness. Everything happened in front of
40 him. He then finally agreed to the sequence of events which was put to him in March and it was put to him again in this court. The sequence of events was this, and he agreed with it:

"On the night of the incident and at the scene you saw the driver coming out of the car?"

Yes.

"He talked to a youth who was long-haired."

Yes.

“He was suddenly hit on the head or body.”

Yes.

“The driver fought back.”

Yes.

“Almost immediately two others, also long-haired youths, joined in and fought against the driver.”

Yes.

“Then there were three youths fighting against the driver.”

Yes.

“During the course of the fight one of the youths grabbed the 10 driver’s neck from behind with his forearm.”

Yes.

“Whilst the driver was so grabbed from behind, another one of the youths attacked at the driver in front.”

Yes.

“While so held he was punched by the other two.”

Yes. He was seemingly fighting back.

“Whilst the driver was still so grabbed you heard two noises resembling that of firecrackers.”

Yes.

20

“These two noises were in quick succession at a time when the fighters had separated.”

One was about five feet away. . . .
and then he was later asked, “Well, what about the other?”—I think it was in answer to a jury question—and he said the other one was two feet away—no more than arm’s length.

“Only after you heard the two noises that you saw the hand being loosened from the driver’s neck.”

Yes.

“Then two long-haired youths ran by. . . .”

30

This is the sequence of events which he as a man, everything happened in front of him, said he saw.

Now we come to a slightly doubtful witness whom my learned friend seems to want to press straightaway, and this is CHEUNG Him, the watchman. Bearing in mind we’ve got the upper deck bus watcher, FONG Bun, now we have this watchman. Now I ask you to treat his evidence with a certain amount of doubt, members of the jury. One moment he said, “Of course there were many people between me and the fight” and another moment he said, “No one blocked my view.” He said he saw AU falling down. This coincides with AU’s evidence that he was dragged 40 by the neck and half falling down. He said when the fight first started he heard the girl shout “Do not fight”, but extraordinarily enough, he didn’t hear any detonation that evening at all. It’s a bit odd that, and one wonders whether as a bank night watchman he was in fact as closely

watching things as he wants us to believe or was he somewhere else having a snack or a little bit of sleep? Has he picked up a little bit of what other people have said and put it together? It's a bit odd that, that he didn't hear any detonations at all.

Now we come to three witnesses whom I would suggest to you are totally unreliable. Now they're not deliberately untruthful. They are good public-spirited citizens and we wish there were more of them in this case, but because of their individual circumstances, they are not reliable for accuracy of detail. WONG Moon-lam: the vital part of the incident

- 10 happened at his back, not in front of him. He says things like this: "I did not pay much attention. Looked back and saw them struggling. Several people blocked my view. Did not see clearly. Could not see if there were any groping as I was walking" and it was happening behind him. He later said he could not see if there was any groping because there were lots of other people running. Now what value is the rest of his evidence for accuracy of details? He gives the estimate of the time between the two shots as about three seconds. Well, Mr. Au himself says there was a slight pause, two to three seconds. He denied saying they were teddy-boys, but agreed that he had said they looked like teddy-boys.
- 20 Does the rest of what he told you really matter? It all happened behind him. Walking along like this, and he looked round, there was a bit of struggle, walked on a bit more and then there was a "bang bang". Compare him with FONG Bun who watched it all in front of him.

Now his wife was even more vague, if possible. "I did not notice the details of the struggle. I'm not clear. I took only one glance and then turned back. Everything happened in a split second." Later, actually, she said the whole time between the shots was one minute. Remember, she was the lady who saw this person running along Argyle Street, falling down, getting up and running in the opposite direction past her. Well,

30 that might have happened or was she so totally confused she didn't know really what happened? Again, it all happened behind her. She just gave one glance, not even as much as her husband.

- TAM Tin-kwok is the other unreliable. . . . Don't misunderstand me. He is a man who was honest enough to say this: "At that time the situation was very confused. I only have a very vague recollection of what happened. I cannot say anything conclusive on this gap of time"—that's between the shots. Don't forget, when he gave you his demonstration of the gap of time he turned round (demonstrating) paused—now if you do that or counted it at the time, it was itself three or four seconds. He said
- 40 he did it slower on the day because naturally he was wondering what on earth was going on and then he turned back again. Now he saw somebody running. Do you think he saw one of the three participants we're talking about or one of the crowd who ran away when the shots were fired? Isn't that equally possible? He did say he saw somebody running and then later he saw the constable with his hand in the position which the constable has told us, downwards more or less, pointing downwards. Can he really be relied upon for detailed accuracy of what happened

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behind his back when he was peering round himself to see what on earth was happening?

Let us take the participants whom my learned friend the Director wishes to disown a great deal of their evidence. Remember that LEE Wai-tang was totally uninjured. Remember also LEE Wai-tang said no revolver was seen by him at all, he heard no shots at all that evening. He was the one, you remember, whom we now suggest, the defence suggests, was the one holding him behind the neck. He was the one who said that "As soon as the fight stopped—whatever that may mean—we started to run." We have all sorts of ridiculous reasons as to why he started to run. 10 One of them was, "Because we heard the girl shout, 'Don't fight'". Well, if CHEUNG Him is to be relied upon at all, because he cited that right at the very beginning, isn't that what you would expect the girl to do at the very beginning, to shout "Don't fight." He admits that he called out "Run" with urgency. Well, members of the jury, he was pressed to tell us why he should ask . . . why this urgency. Why this urgency? Why shout "Run" and do so? "I felt it was wrong for three of us to fight." When his Lordship said, "Well, why suddenly wrong? Wasn't it wrong from the beginning?" "I don't know." Then he was asked, "Why did you run home, not to your home but to WONG Hon-keung's home?" His answers 20 there were equally banal, members of the jury. Do we need to go over them? You heard him make them. Do you believe any of what he says about the reason why he suddenly stopped fighting and ran? Later still, when he was shown what he said in March to the coroner, he gave a slightly more truthful answer then: "Did not want to get involved with the police and court proceedings." Well, why not? According to him here was a thoroughly rude, offensive driver who got out and made foul language and struck him on the face. Isn't that the sort of thing that you would go to the police and say, "Here's what happened"? Later still he got into even more of a muddle. He said, "I seldom fought. After a fight 30 I have to leave scene. The running was for fear that he would give chase" having previously agreed that he never mentioned the fears of chasing. Then his answers as to whether he fought before or not. Having given totally contrary answers in this court and to the coroner, you are left with a helpless hopeless liar. He could not get out of that at all. At one moment he said he never fought in this court, to the coroner he said, "I seldom fought." There's no way out of it. At one point he says the fight was a moving one, at another point he says, "We stood in the same position throughout the fight." His little escape line whenever he got into difficulties and gave silly answers was, "Well, I misunderstood the question." 40

Now both of these two people are typical, in my suggestion to you members of the jury, of people who have concocted a story. They had two or three hours to do it in. According to the learned Director, two hours up to midnight. According to the time they made their statement—their statement was made at one-thirty—they had lots of time to concoct this story. Now for concocting stories so far as they are concerned, it is easy to say something like this: "Well, now you remember the girl said

'Don't fight', she won't be able to deny that, so let's say that's why we ran. Now it's true we banged on the car, but let's say he banged one of us. Now we know he swore and hopefully somebody will have heard him swearing. Let's say he did that first. We knew that he struck back. Let's say he did that first. Now what are we going to say about LAI's absence? Well, let's pretend we don't know what happened. What about the revolver? Oh, well let's say, let's say we saw him digging for that in his right hip." Unfortunately for them he kept it on his left. The trouble with a concocted story, members of the jury, is that the more often it's

10 repeated, the more holes it has in it. This is plainly shown if you try and fill the pieces or listen to the evidence of WONG Hon-keung. Now I have listed about eight occasions when he varied. . . . You see, when you're asked most things like the girl said "Don't run" that's why we ran, we were looking for a revolver, blah blah blah," you can get all those all right, but when you're asked for the detail in between and you're not telling the truth at all, you're bound to say something one time and something another.

One of the awful errors that WONG made earlier on was to draw a diagram to the coroner showing that they were in line abreast, but he did

20 worse than that because he said to the coroner, "Anyway, we were in line abreast, but can't remember if one was slightly ahead of the other." Now this upset the version that the car had bumped LEE. You see, it's AU's contention there was no bumping. In fact, this bumping, even by their own admission was so light it would be unlikely for a driver to notice it, but (demonstrating) "bang, bang, bang" on the roof of the car that was going by, then he would have noticed that, but they want to have it that LEE was slightly bumped, slightly grazed, "Let's say that." Then he draws his diagram with them all in line abreast with the man in the middle being bumped, so that's where that part of the concocted story fell down.

30 Well, let's go on with the kind of trouble his concocted story, or two of their concocted stories got into. He was asked by the Director whether LEE landed any punch on the driver, to which he said, "I did not notice." However, he was reminded that previously he said, "LEE fought back with his hand, clenched fist, blow landed on the driver's face." So he falls back on the "Well, what do you say about that discrepancy?" "Well, I can't remember now." Then he says in answer to "Why didn't you say 'I can't remember' ", he said, "Well, at that time it was very confusing. I could not see clearly." Unfortunately for him, to the Coroner he said, "I could see everything very clearly." Then he was asked whether LEE

40 hit the driver on a number of occasions in the fight. He says, "I cannot remember" but in the coroner's court he had said, "I'm not clear how many punches LEE delivered on the driver's person. Two or three." "Why tell the judge and jury that it landed on the arm?" He says, "Because it's such a long time ago since fight and cannot remember now." Now this was his escape route: "Cannot remember now." But he came badly unstuck at one point because he said, "During the whole struggle you were not touched at all." "Huh, cannot remember." Now that was

too much for every one of you, members of the jury, you are seven judges. It was certainly too much for his Lordship who told him, "Do not try and hide behind the shield 'I cannot remember.'" Of course he could remember whether he himself was struck. He gives many other instances about when he ran away. He varied it in this court with the Coroner's. He was constantly being caught out in the variations in his story that he told today and in March, and they were details of which, if he was truly telling the truth, he wouldn't mix up. So when the mix up was pointed out to him, "Oh well, I can't remember." You are not going to be impressed by that sort of excuse, members of the jury. 10

Let us briefly run over what AU says happened, and I agree with my learned friend there are red herrings, but I must go over those red herrings to begin with. He, AU, thinks that the fact that he hit somebody was extremely unlikely because if he had hit anyone it would have to be behind him and, really, behind him it was up to the pedestrians to stop. They must have walked into the side of his car, but as I have already said, even the boys themselves wish to minimise the graze or the bump, and it's unlikely that he would have stopped for that, but he would have stopped for the (demonstrating) banging on the roof. Now their teddy-boy appearance, my learned friend the Director has said, "Well, does it really matter, they had long hair, nothing else." It is true that the unfortunate boy who is deceased was certainly not dressed in anything that could be called teddy-boy. He had an army-style pullover on. Of the other two one had a leather jacket or wollen jacket with fancy buttons and the other had a sort of safari suit. Well, does it really matter? The point is, as I will come to more strongly in a minute, is what AU thought they looked like, not whether or not they were teddy-boys. 20

Now up to the exchange of words, I would agree with my learned friend the Director it is very much of a red herring. Up to then there had been an argument, somebody had said something and somebody had answered it. It was annoying behaviour on both sides and there had been foul language on both sides. Just pause a moment and see which is more likely: whether AU declared his identity or not. My learned friend the Director is extremely keen to show you that AU was an aggressive sort of policeman. Now you don't have to throw your common sense out of the window, you have been invited to use your common sense. The very first thing an aggressive policeman does is to say, "I am a policeman" on all occasions whether they justify it or not. Now AU says he said that. Do you think he did or do you think he didn't? If you think his ideas of arresting them for banging on his roof, saying rude language at him was unjustified, then you would agree that he was an aggressive policeman, but if you agree that he was an aggressive policeman then you have to go one step further. Aggressive policemen do announce their identity. 30 40

Now there were certain choices—after all these red herrings in this argument—there were certain choices open to them. They could, as AU says, go to the police station as law-abiding citizens and complain about AU or they could tell him to buzz off and mind his own business and walk

away, or if they saw that he was really about to arrest them, they could run away. Now had they run away at that moment when he had little or no right to arrest them and he then fired at them, there wouldn't be a person in this room today who could justify his actions. But whatever had happened up to that stage, it did not entitle them to mount what was a murderous assault on him. Even if there are rights and wrongs before then, not wholly in AU's favour, the murderous assault that they concerted on him at that point completely changes the rights and wrongs of the situation. From now, on, since AU is charged with murder for his

10 subsequent action, you members of the jury, have to watch very carefully and to be satisfied, to be convinced that thereafter—never mind what the rights and wrongs were before they mounted this assault—but thereafter that he acted unlawfully with an intent to kill. In order properly to evaluate that, may I suggest you have to be very clear in your own minds to separate from what actually happened to what at each stage AU might reasonably think was going to happen next.

My learned friend the Director has drawn to your attention what the great American judge Mr. Justice Wendell Holmes said: "Detached reflection cannot be demanded in the presence of an uplifted knife" nor

20 in the presence of three people attacking you, one with his arm around your neck. That's not what Mr. Justice Wendell Holmes said, it's my addition. An English judge has used another expression which is equally appropriate: "One does not use jeweller's scales to measure reasonable force." Let us have a look at his dilemma in his own words in cross-examination. Now to the Director he said this to him. He said, "We know that the first shot was at LAI who was standing in front." I don't know why he put it that way because that doesn't seem to be his case now, he seems to want you to find without any reason to doubt it that LAI was running, but anyway that is how he put it. We know that the first shot

30 was at LAI who was standing in front. We know, of course, that the learned Director from his final speech to you doesn't really trust his own principal participants because he constantly suggests to you things could have happened which are contrary to what they say. Then the learned Director said, "Surely you had control of your left hand and could fire in any direction." Why should he fire in any direction? He was held tightly by the neck, there were two shadows very close in front of him who might be up to anything. Why should he fire in any direction? Anyway, what did he answer? He said, "If I did not fire after drawing the revolver it would be very dangerous."

40 Supposing he had drawn his revolver and said, "Now you stop so I may write your names down", what about the man behind him with his arm around his neck? What about these two people? He could hardly see these two people in front. He said also "If I did not draw it would also be very dangerous", and so, members of the jury, might you think it was if you were nearly being throttled by a man with an arm round your neck and two people punching you in front, you don't draw, what is going to happen to you next; if you do draw and then fire what are

these three people going to do? While you are not firing and telling them to do this, that and the other they will snatch your revolver even more than they have snatched it before. Au said, "My only hope was to draw and fire in the hope of stopping the incident from going further"; he could have said "and save my life". He was asked why he fired that second shot. He said he noticed another blow landed on his face and knew subconsciously they were still in front of him. Now, the learned Director has poured scorn on this. It may be that the rain of blows had occurred before the first shot. Maybe Au had got this wrong. They may or may not after the first shot have turned around. What you have to consider is what he 10
thought they might be doing. To convict him of this criminal charge you have to be completely sure he could not reasonably have had any doubt as to what they were doing, but where can you get such certainty in your minds? Neither Lee nor Wong said anything. Lee didn't hear at all and Wong who shaded his evidence to suit any question that was put to him said he didn't hear any shots until he got into Nathan Road. Can you get any certainly as my learned friend the Director, said from the evidence? I suggest you cannot. Dr. Yip the pathologist said both shots could have been made while he was either standing still or running. You can't get any certainty out of that kind of answer; you cannot say with certainty 20
they were running; nor can you say which shots were fired first, but Au in his demonstration of drawing the revolver in this position and getting it up to there exactly matches the angle of the bullet and matches the fact that both the participants agree that there was weaving to and fro throughout the fight. He said this—Au—the reason for the second shots, "When I fired both shots I did not have time to think what action I could take. Not up to me to give careful and slow consideration to what I should do."
. . . Extracts of Mr. Justice Wendell but those were Au's words. You have corroboration on the severity of the attack on Au from his injuries. One of the agreed statements lists these for you: forehead . . . I may point 30
to the wrong point, I don't know right or left . . . forehead, cheek, upper lip and chest. These were not minor injuries; they were the result of considerable blows and many of them. You have additional corroboration on the severity of the fight from Exhibit 27, his jacket. You have seen how the right sleeve had nearly been torn off. He was cross-examined on that and it is not clear from his cross-examination how much of the damage to his jacket he told the Inspector about at the time that evening but, at any rate, the police told him to take it home, and they collected it themselves or told him to bring it back two days later. I think you would want very much better evidence than that, members of the jury, before you 40
accept any insinuation that he had tried to fabricate the evidence and torn the sleeve himself. He took it to the police on the night in question, told to take it away, told by the police to bring it back two days later.

One or two other little points that have been made in the course of the case, this word "snatching". Now, it has come out in the translation that Au had said to one or two people "he snatched my revolver". Well, that means—that must mean tried to snatch. It is ludicrous to suppose

he told anybody be snatched because he was still in possession of the revolver. So let's not worry about whether "snatching" means "snatched" or "tried to snatch."

Now, the words "started to run" which my learned friend put so much weigh on. This comes from a reported conversation in January by Au to Sergeant Yip Kai. He, Sergeant Yip Kai, gives a half-baked, a very incomplete account of the incident, some of the facts of which coincide, but can he give you, members of the jury, any unbounded confidence to depend upon the exact accuracy of words used? But, at any rate, let's

10 see what do these words—what could these words exactly mean, "started to run". Let's disregard all the difficulties of translation and misunderstanding. Now, "started to run", they certainly didn't start to run. . . . Never mind his eye . . . they didn't run past him, did they, they turned round. So the "starting to run", if you want to try and give some exact meaning to it, would simply mean that they turned round. We know, in fact, from Au's own evidence that when he was able to see properly they were running. But, again, members of the jury, you must remember that what in fact they did has to be separated from what Au reasonably thought they might do when these arms were round his neck nearly throttling him.

- 20 I hesitate to trespass on any matters of law because these, as his lordship and the Director have told you, are his province but on anything I say on this subject, of course, is—can be overridden and you have to take what his lordship says. There is often in cases of murder an alternative verdict said to be open to you, members of the jury, manslaughter. His lordship, if he chooses to leave that possibility open to you, will carefully explain the law. In my submission manslaughter, if it lies at all, has to start with an unlawful act, then the act is unlawful. Recklessness, even if you didn't intend to do grievous bodily harm, can lead to manslaughter. For instance, a reckless driver of a motorcar kills a pedestrian and be accused of manslaughter. He could say "Well, I was only going
- 30 70 miles an hour on a 30 miles an hour limit and I couldn't turn the corner and it wasn't my fault if there was somebody there." Never mind, he was committing an unlawful act by going at 70 miles an hour on a 30 miles an hour limit and he is liable for the consequences, but you cannot put it the other way round. You cannot say because a certain act might or might not be reckless therefore manslaughter arises. You start with the act; here the act is shooting. Never mind about his evidence about not aiming anywhere in particular. Now, this may be contrary to Police General Orders that you should be absolutely sure where you are aiming
- 40 but Police General Orders are not the law. The fact that he shot at all was justified; it was justified because he was under severe attack, because he had reasonable grounds to think that the attack might become more severe and he had every right to defend himself. This is as an ordinary layman. If you or any of us are ever in such an awful predicament we would, I hope, not be thwarted if we fought back. If we fought back with anything at our disposal, whether we had a knife which we shouldn't have had and we wielded it, one would hope that we would not be thwarted.

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He also in addition to self-defence as an ordinary human being had the right and duty as a policeman to prevent crime; in this case the crime was against him. So far as his aim is concerned, was it really all that reckless anyway? So far as he knew, these two assailants in front were an arm's length away or a little bit further. He must have aimed in their apparent direction and, in fact, as we know it did hit one of them; at least he didn't aim into the air which is what apparently the learned Director thought he ought to do on one occasion. Do you remember what he said about that? "By aiming in the air I might hit somebody up there. Furthermore, if I left my hand like this it makes it all that much more easier for the attackers to disarm me." All right, those are the points that I wish to make to you, members of the jury, about the main charge. 10

The second charge, I would submit to you, is absolutely baseless. Let's read together what he is accused of doing: "AU . . . did shoot at LAI Hon-shing with intent to maim or disable or do some other grievous bodily harm to the said LAI Hon-shing and did thereby wound LEUNG Wai." Now, no Crown witness has come anywhere near to suggesting that he aimed at this boy on that occasion. All that two—the husband and wife—had said was that this man turned around and there was a bang. They had never even suggested where the aim was. The only way the Crown can get anywhere near to substantiating this is, in my submission, from an unwarranted misinterpretation of his words which came out in cross-examination but before coming to that passage let's see what Au himself says: "Even when giving chase and even when two feet away from each other in Nathan Road I did not aim at him. I would have continued firing at him as he was running. If I had the intention of hitting him I would not have run a hundred yards without firing a shot. If I really had the intention of doing it I could have done it." This really supplies the answer to both charges in a way. When gripped by the neck and not knowing what further mischief might happen he fires in self-defence and rightly as a policeman to prevent crime. When chasing and catching up and easily able to fire he fires only at the direction of the feet to bring him to order. He fired not in self-defence. My learned friend the Director has missed the point here whether that blow could or could not have hit Au. He had already dodged it; he wasn't firing having dodged the blow in self-defence; he wasn't dodging because he thought there was another blow; he was dodging to say "I have caught up with you now. No more nonsense." He fires the gun with the left hand. It is possibly contrary to Police General Orders but you have there to read as an exhibit Police General Orders is not the law of the land and that is not a matter for your consideration. Doesn't it amount to this, members of the jury: when he had him at his mercy two feet away and could easily have hit him he did nothing of the sort, he fired into the ground in the direction of his feet. When he thought he was at their mercy he fired. Much time was wasted in trying to force his answer that he fired in the direction of the street. In my submission this is really rather a red herring. The Crown in order to substantiate its claim has to show, convince you that he fired now they 30 40

say the leg and the foot, it doesn't matter which, all right, he had got to fire at his foot, tried to aim at his toes or his ankle. No evidence of that from their own witnesses. Au's evidence was that he shot in the direction of the street. Now, nobody knows what a ricochet bullet does. We do know that this bullet went in sideways into poor Mr. Leung Wai; it didn't go in very far although he was only a hundred yards away. Heaven knows what it had hit on the way; if he had aimed at the street it could have hit the side of a bus or the rear and ricocheted back. There is no certainty in what a bullet going over a thousand miles an hour can do in a short distance when it ends up like this in Mr. Lai's stomach, but at any rate the Crown to convince you of his guilt on this point have to show that he aimed at this man's toe or at his ankle. I suggest to you, members of the jury, he had this man at his mercy and could easily have hit him anywhere at all. He wouldn't have bothered aiming at his toe. If he had been what the Crown want you to believe, an angry irate officer ready to fire at the slightest opportunity, he had this man at his mercy, he did not fire at him; when he thought he was at their mercy he fired. The Crown seems to want to base their case on his question and answer which comes out in the transcript in very odd language indeed: first of all, it comes out as "Where did you arm?" . . . All right, let's assume "arm" equals "aim" . . . there is no mention of direction. You were not at the Coroner's inquiry; you do not know how the question was understood or translated to Mr. Lai . . . to Mr. Au. He said he took it "Where did you aim at?", and his answer which is equally ungrammatical, I think it is . . . it goes like this, "His leg as others were people walking there". Well, it doesn't make sense in English anyway, but he has told you in this Court on oath that what he intended by his answer was in the direction and he didn't mean leg at all because, to him, leg is quite different from the foot, he meant the foot. The questions and answers are written out in English and when they are read back to him they are read back to him in Cantonese. So if the translator made the same fault to begin with himself mistaking leg for foot he could have made the same mistake in reading it back and my learned friend the Director has very properly accepted that there may be a mistranslation between leg and foot. So you have his evidence that he aimed in the direction of the foot and he says he aimed also towards the street. The nature and flight of that bullet which was a ricochet really cannot be properly and fully explained by any science known to any of us, certainly not by any evidence.

Members of the jury, I have paid close attention naturally to the questions that you have asked and I trust that you have been satisfied with the answers but there are one or two comments I would like to make on one or two of the answers. Now, Fong Bun was asked by you "When the driver got out of the car did he identify himself?". Now, Fong Bun said this, "I did not hear the driver identify himself", bearing in mind, members of the jury, that he was forty feet away and he possibly was not within hearing, although he could see he did not hear the driver, he did not hear him identify himself. Then, members of the jury, he was asked

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“Was there any other grabbing done?” because he talked about grabbing by the neck and his answer was “No.” Now, you might have wished, if you had thought of it, to ask a supplementary question; you asked him “Was there any other grabbing done?”; Au said there wasn’t any other grabbing, there was the feeling. If you had asked “Was there any groping?” he might or might not have been able to help you but I am afraid you asked the question of grabbing and he said “No”, but it is not the defence case there was any other grabbing, there was groping, they groped on the wrong side because he kept his revolver here. Then you asked, members of the jury, “When the shots were heard were the two youths facing the driver or away?” and his answer was “When the shots were heard the youth who was five feet away was running away with his back to the driver”. . . . “When the shots were heard the youth who was five feet away was running away with his back to the driver. It seems the other also was running but it was only a split second, both were running away with back to driver. Time was very short. There was a lot of confusion.” Now, again, you don’t throw commonsense out of your heads, members of the jury, and there is, I would suggest to you, a difference between hearing something and noticing something; although he was probably looking in that direction the mental picture you have when something unexpected like a shot occurs takes a fraction of a second to register. I think we all know that. Now, can you be sure even on Fong Bun’s evidence on that uncertain answer that they were actually trot, trot, trotting away; do you remember, they had to turn round first? He doesn’t give a very accurate picture but, as I have stated, members of the jury, whether they were running or not is not a vital point. The point is what did Au — what did he think they were doing or what did he think they were going to do. I suggest to you, members of the jury, that Fong Bun who was one of those witnesses who saw things from the front of him is not really reasonable from any of his answers to pin point the exact moment of fire, the exact moment of turning, the exact moment of firing.

You have to consider what was Au’s dilemma in the circumstances he found himself. You asked Lee Wai-tang a pertinent question, “Where was the television set?” He said it was in the sitting room in the cockloft but I am sure you will remember that just before that in re-examination he said he had never been to the cockloft after the fight. Well, this is just typical of him; he doesn’t tell every answer truthfully, he answers the first thing that comes into his head; because the whole story was concocted he answers different things at different times. And you did ask him this, members of the jury, “What steps did you take to find out if the injured person is” . . . in answer to a question about the purpose or something of watching television . . . “was or was not Lai?”; “We did nothing” because they knew they had attacked a policeman and were busy concocting their stories; that is why they didn’t do anything; they would have rung the police if it was an offensive driver who had never given any indication that he was a policeman.

Now, you asked Au at the end of his defence some questions,

members of the jury. I would only make comment on one or two of them: you asked him about the triad sign. Now, he gave the answer that they did it so far as he was concerned to find out if he was a believer and he said that they might have done that even knowing that he was a policeman because he admitted that some police—that this could happen in the Police Force. It is also possible, members of the jury, Mr. Au didn't say this but Au may have misinterpreted it—may have been too quick to see a triad sign when no triad sign existed. It is also possible that Lee made this sign because he did not believe Au saying he was a policeman, and

10 in order to find out whether he was really a policeman or just “one of us” out to make trouble. Remember this, members of the jury, about this triad sign, it is rather a red herring. Of course this may or may not have some importance in your consideration. It was the sergeant who said he had—he didn't recognise it; “You were able not only to see, to hear him but you watched him, didn't you?”; he looked very frightened giving that answer and then he protested very strongly, “Oh, no, I don't know anything about that”, protesting too much, did he or didn't he? The watchman showing him copied the sign almost exactly and gave it an innocent interpretation. Lee said when he was asked “What is this the

20 meaning of?”, “I know, I know” he said, he knew what it meant whether it was given at that time or not. It is not possibly very important but bear those facts in mind when you are considering whether it is important or not. The police sergeant looked frightened when he denied it and Lee knew what it meant.

Members of the jury, the basis of a conviction as you will be told by his lordship on either of these two counts is if you have a finding you are convinced and to be convinced you have to take what was in Au's mind at the time. You are entitled to disbelieve him but if you disbelieve him you have to be absolutely certain he is not telling the truth and he had

30 no fear for his life at all. Now, if as an example robbers or attempted robbers are coming out of a bank and a policeman—or if they were coming out of a bank firing at everybody around the place, there is little doubt that a policeman would be entitled to fire without fear of being prosecuted under those circumstances. If a policeman had an argument in a bar while drinking and shoots one of his fellow drinkers for disagreeing with him, there is little doubt that people will say that he was totally unjustified but in this case isn't it very much closer to that first example I gave you, feeling that arm around your neck, feeling the attackers around you and possibly groping for your revolver though fortunately

40 for you not on the side where you keep it; is there really much difference to the justification for a policeman shooting a robber? We would hope, members of the jury, that none of us would be involved in the kind of situation that you have heard described that Au was involved in but this sort of situation can arise, can it not? We could be in a non-smoking compartment in a train going underground. We could see three youths enter smoking, all of them. You can point to the sign, or even, does it really matter, we could aggressively use foul language and say “You jolly

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well get out of here” or using stronger language than that. Does it really matter if the result is that those three people assault us to within an inch of our life; our reaction in either case is to resist? We may have little hope against three determined thugs before the train gets to the next station. We could have some hope if we had a revolver. Members of the jury, it is under that kind of condition or Mr. Au’s condition that you find a person criminally liable. I would say there is no hope for an unarmed civilian in the underground situation, non-smoking compartment situation; there is no hope even for an armed person whether in an underground situation or in our situation. Such a conviction in my submission, members of the jury, would simply be endorsing what might be his right. Thank you. 10

COURT: Well, members of the jury, I will adjourn to 2.30 this afternoon for the summing-up.

12.18 p.m. Court adjourns

2.35 p.m. Court resumes.

Accused present. Appearances as before. JURY PRESENT.

MR. PENLINGTON: My Lord, before you address the jury there is just one matter. My friend in his closing address referred to the evidence given by LEE Wai-tang, relating to the alleged triad sign in which he said that LEE WaiKtang had agreed that he knew what the sign meant. 20

COURT: Yes.

MR. PENLINGTON: During the luncheon adjournment I got hold of the stenographer and I have obtained a transcript of the note as to what in fact occurred.

COURT: Yes.

MR. PENLINGTON: I have shown this to my friend, and I think he agrees that there was some confusion as to exactly what he said, but briefly, Mr. Jackson-Lipkin was cross-examing, he said:

“That sign means ‘Stop, you have gone far enough’ doesn’t it?”
He answered, ‘No.’ 30

Q. What does it mean?

A. I can’t remember myself whether I made such a gesture or not.

Q. What does it mean, Mr. Lee? That is what it means, isn’t it?

A. I know, I know.”

Then your Lordship, ‘Does that indicate . . .’ The note says (Court and Counsel discuss the matter) (Court Reporter reads back questions and answers)

Court: He said he knew.

Mr. Jackson-Lipkin: He said four times he knew, so I can go on now to something else. 40

Court: You knew this?

A. No, no, I don’t.

Mr. Jackson-Lipkin: My Lord, I am so sorry, I thought I heard the note read out to me: ‘That is what it means?’ ‘I know, I know.’

Court: That means 'You have gone far enough, stop.' Do you understand the—this gesture means that has a special significance to this case. Do you know that?

A. No.

Q. Mr. Lee, I suggest to you you know perfectly well what it means.

A. I know nothing at all."

COURT: I think there was some confusion—I did draw his attention whether he understood that question or not

MR. PENLINGTON: But, I think at the end of the day his answer was **10** he did not. (Court proceeds to sum up the case to the Jury).

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Members of the Jury, a little over a fortnight ago there was some discussion among people whether the symbol of justice should be blind. I have no desire to dispute whatever the symbol may be provided justice is done. However, in the present case, as indeed in all other criminal trials, I must ask you to be blind to certain things. You must be blind to what you have seen outside this court. You must be blind to whatever proceedings that took place outside of this court. You must be blind to whatever comment or expression of opinion in newspapers, television and from friends. You must also be blind to the publicity that has been given to this case, and you must be blind from emotion that has been shown inside or outside this court. You must be blind to the presence and absence of a leader for defence throughout the trial. The accused is in perfectly good hands at all times including the last two days. As your oath indicates, you are to hear the evidence in this court and to judge the case by the evidence alone and nothing else. You, members of the jury, are the judges of facts and the facts to be judged are from the evidence adduced before you in this court. No one can usurp that function from you. In the course of their final addresses learned counsel for the prosecution and learned counsel for the defence may have expressed their opinion on facts and made comments on the facts. I, in the course of this summing-up may have to comment on the facts. If you happen to agree with any of such comments they become your own judgment and you arrive at your own conclusion. If you happen to disagree with such comments or expressions of opinion, by all means ignore them. You are quite entitled to ignore the comments and come to your own conclusion because you are the judges of facts and this is entirely your prerogative. 10

On the other hand I am the judge of law. You must accept the law from me and nobody else—certainly not from any person outside of this court or newspapers, not even from counsel who may happen to differ from the law that I tell you. There is a safeguard to that because I am not such a dictator as far as the law is concerned. If I am wrong in law there is another court to correct me. 30

So that is our separate function—I am the judge of law and you are the judges of facts. Before I go on I now will give you some preliminary points of law. The first I would like to tell you is burden of proof. It is incumbent upon the prosecution to prove to your satisfaction beyond reasonable doubt every ingredient that is set out in the particulars of offence before you can return a verdict of guilty. If you have any reasonable doubt you must give the accused the benefit of the doubt and acquit him. In our system it is never for the accused to prove his innocence. 40 From start to finish there is a burden on the prosecution to prove his guilt. By reasonable doubt I do not mean any doubt for which there is no reason. As a member of the society you apply your common-sense when you have to decide on an important matter and indeed a very important matter, not like the matter of buying an umbrella or a handbag, but a very important decision, you want to be sure. If you can guide yourself along that line that you are sure in important matters, then you

can say that it is beyond reasonable doubt. Otherwise not. The word 'reasonable' is to define a reasonable man. Some people, can never make up their mind. But as sensible persons, average reasonable persons, you can ask yourselves having regard to all these facts, are we sure. If you are sure that the prosecution has satisfied you with all the ingredients of the charge you return a verdict of guilty. Otherwise you give the benefit of the doubt to the accused and return a verdict of not guilty.

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The second preliminary point is that there are two counts on the indictment—one of murder and another of shooting with intent. Now you
10 must consider these two counts separately. Please do remember that if you should find the accused guilty of murder it does not mean that he is automatically guilty of the other count of shooting with intent. If you should find him guilty of shooting with intent it does not mean that he is automatically guilty of murder. If you find him not guilty of murder it does not mean that he is also not guilty of shooting with intent, or if you find him not guilty of shooting with intent, the second count, it does not mean that he is automatically not guilty of murder. So remember, you must consider the evidence relating to each count separately and arrive at a separate verdict in respect of each of the two counts. I know
20 this is one incident comprising of a series of acts—the two shots that were fired in the first instance, the third shot that was fired somewhere along Nathan Road. It started with an argument, the foul language, the fight, the shooting and ended up with the ambulance taking away the injured and the deceased. It is just like a stream, it is difficult to segregate them, but you must look at the evidence section by section and consider the verdict there and then and arrive at a certain spot. Indeed the shooting at Nathan Road may be a reflection upon the approach of the accused in the first two shots that were fired. But the prejudicial risk is so much that I would ask you to ignore the subsequent shooting as evidence of the
30 previous two shots. Again the first two shots might be indicative of the approach of the accused when he fired the third shot. However, not because he fired the two shots in the first instance then the third shot must of necessity be a shooting with intent to disable the person alleged—LAI Hon-shing.

I have also warned you that you must ignore the proceedings which had taken place in another court. You have heard many times until you may be tired of it, that there had been an inquest during which depositions were taken. In so far as the depositions which have not been repeated in this court and accepted by the witnesses concerned, the depositions are
40 not evidence before you. Only such portion of the depositions that are read in this court and admitted by the witness concerned then it may become part and parcel of the evidence you have heard in this court and you may consider such evidence. It is then for you in the light of these broad principles that you start to evaluate the evidence. But that is not all on matters of law. Of course I have to explain to you what are the ingredients in these two counts.

The first count is that of murder in which it is alleged that AU

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Pui-kuen on the 9th day of January, 1976 near the junction of Argyle Street and Sai Yeung Choi Street, Kowloon, in this Colony murdered LAI Hon-shing. I think a lot of the allegations in these particulars of offence need not be explained you you. They are clear enough except one word, and that is the word 'Murder'. What then is murder? I will try to give you the simplest definition to this word. It simply means an unlawful killing of a person with malice aforethought. Again in this very, very simple definition there are only two terms that require explanation. I will start with the term malice aforethought, and then secondly unlawful killing. These two terms require some explanation. 10

What then is malice aforethought? The word 'aforethought' does not mean premeditation, but it does imply a foresight that death or grievous bodily harm might be caused at the time of the act which did kill or cause bodily harm. In other words it co-exists with the act of killing or doing people bodily harm. 'Malice' is a state of mind which can only be judged by the totality of evidence and the circumstances before you. It has indeed been said that even the devil knows not a person's mind. It is a state of mind which either pre-exists or co-exists with the act by which death is caused even though the act is unpremeditated. That is malice aforethought. What is that state of mind that will constitute malice? It is either an intention to kill or an intention to do grievous bodily harm, or alternatively, a knowledge that the act which eventually caused death or grievous bodily harm would probably cause the death or grievous bodily harm to someone—it doesn't matter who, and such knowledge is accompanied by a complete indifference whether death or grievous bodily harm would result or be caused or even with the wish that it may not result at all. 20

Perhaps the best way is to give an example. If I expressly vow to kill somebody, that I intend to kill somebody and shoot at him and kill him obviously that is malice aforethought. But not many people would declare his intention to kill. If I, with a revolver, seeing the crowd at the back of the court, just point my revolver at the lot of them and fire several shots or one shot, you may—I am not saying that you must—find that if I know that revolver is loaded that if I shoot at a lot of people, someone would be killed or someone would be seriously injured, and you also find that I am completely indifferent whether I kill someone over there or seriously injure someone over there then you may find I have malice aforethought, even if I say that I only had a crack at them and I wished the bullet would not touch any one of them. 30

Having explained what is malice aforethought I now come to the term 'unlawful killing'. Every killing is unlawful subject to two exceptions. The first is what is called justifiable homicide. This form of killing is when a person who is a proper officer who carries out a judicial sentence. You may not find it nowadays, but at one time there were people who where required to carry out a judicial sentence of death. If he hangs somebody or helps to hang somebody by carrying out a judicial sentence, that is justifiable homicide. He is not guilty of anything. 40

Another form of justifiable homicide is where an officer—peace officer—or officer or the law in legal exercise of his duty, for instance like arresting a dangerous criminal, or kills one who resists his arrest with force reasonable in the circumstances, then that is another form of justifiable homicide.

The third form of justifiable homicide will be killing in preventing a forcible and atrocious crime. These are what we call justifiable homicide.

10 Pausing here, I would like to explain further the second form of justifiable homicide—that is when an officer of the law in legal exercise of his duty kills someone. You must remember that to enable you to find justifiable homicide, you must find that the person who killed was killing in legal exercise of his duty, and that he only used force which was reasonable in the circumstances. This you will find in our Criminal Procedure Ordinance, Section 101A. I think learned counsel for the defence has read to you, which provides that:

“A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

20 That is the requirement. In other words there must be a legal exercise of duty and that the force used is a reasonable force in the circumstances.

Members of the jury, as people with common-sense, you are the sole judges of what is reasonable in the circumstances and what is not. A force, a type of force that may be reasonable in one instance may not be reasonable in another instance. Even though it is a matter of arrest or prevention of crime it depends on the seriousness of the crime, it depends on the circumstances how the force was used and why the force had to be used. You have to judge the circumstances prevailing at the time. So bear in mind it must be legal exercise of his duty and with a force which is reasonable in the circumstances. This is what we call justifiable homicide.

30 The other type of exception to unlawful killing is excusable homicide. One can give an example like a person who is doing a lawful act without any intention to hurt or kill, accidentally kills someone. I don't know whether a golf ball might kill. I hope I have not offended any golfer. If a person playing golf drives a golf ball fiercely and so hard that it cracks the skull of the passer-by, and if there is no negligence, and he does not expect anybody passing by, he is absolved of any unlawful killing. That is entirely excusable. The golfer would have committed what is called excusable homicide.

40 The second type of excusable homicide is self-defence. Now in coming to self-defence one must after all consider human nature and what an individual is entitled to do. Any individual is entitled to preserve his life from an attacker. He is allowed to use force to repel force. When it comes to a matter between life and death, and it is either his own life or his assailant's life, he may resort to the extreme measure of killing his

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assailant in order to save himself. This defence or this type of excusable homicide is available only if the force used is reasonable, reasonable force in repelling the attack in the circumstances. If someone slaps me on the face, certainly I am not justified in producing a revolver to shoot him. If I have plenty of means of escape or running away instead of having to shoot at the person or wield an axe to slam at him, certainly that is not excusable homicide. I must have either retreated to a certain spot where there is no longer any retreat possible, and I am faced with the danger of the assailant killing me or maiming me, then I may turn back and use force even to the extreme measure of killing him. However, if there is a way for me to escape and I can run away or get myself out of the trouble—out of the tight spot, so to speak, I am not justified in using the extreme measure of killing the person, even though that person is my assailant. 10

In this connection I have to tell you that a police officer is slightly different from an individual. There again you must use your common-sense approach. An individual when he is attacked is required to retreat to a place of no retreat or that the danger is so imminent that he can no longer wait before resorting to the extreme measure of killing. A police officer has this advantage, that is if—and it is a very big ‘if’—you must underline it with three lines—if he is acting in the course of his duty in arresting a dangerous criminal or in preventing a serious crime (not a parking offence I can assure you) and if there is such resistance and attack upon him, he is not required to retreat because he must stand firm in the execution of his duty. If, because he stands firm and the force of the assailant increases to such an extent that there is no alternative, either he is going to be killed or the assailant is going to be killed, he will be allowed to use the extreme measure. That will again be excusable homicide. But I must ask you in this approach to adopt your common-sense. He must be acting solely in the execution of his duty that he is not required to retreat. Otherwise he is in no different position from any other individual, and that is he is required to retreat in exactly the same way as any private individual. Bear in mind that the force used in the instance must be reasonable. If he used force more than necessary and more than reasonable in the circumstances, he is responsible for that killing in exactly the same way as any private individual. A police has no more privilege to kill than any other private individual. 20 30

To sum up, in order to find the accused guilty of murder you must be sure and satisfied that on that day he killed LAI Hon-shing unlawfully, and unlawfully killed him and with malice aforethought. It is not for the accused to say that, ‘I have no malice, and certainly no malice aforethought’. It is not for him to say that the killing was not unlawful. It is for the Crown, for the prosecution to prove that when he killed he had malice aforethought and the killing was unlawful. That is throughout the case that burden is very much on the prosecution. 40

Here in this case you have heard sufficient evidence as to the circumstances in which the shooting took place. You have to consider whether such shooting was in the legal exercise of duty by the accused to

arrest a criminal or alternatively to prevent a serious crime or in self-defence. If the accused shot in either of these three circumstances you have to acquit him of murder, but it is all very well to say that, 'I shot in legal exercise of my duty to arrest a criminal' or that 'I shot in order to prevent a crime'. Now you must differentiate a crime from a punishable offence. Take it simply, a lot of people will say, 'A crime is a crime—a crime for which a penalty is awarded for certain behaviour'. To use a rather old formula which is far too general and I will certainly not subscribe to it, and that is that the definition of the word 'crime' is an offence for which the law awards a punishment. If that is so I think I can see a lot of us, with great respect, are criminals—a parking offender is a criminal; a person who commits a speeding offence is a criminal, a person who forgets to pay his rates in which a penalty is incurred is a criminal. Certainly this is not the sense of the criminal or crime that we mean. Certainly a punishable offence and a crime are quite different. By crime I mean the crime that you and I understand it, like murder, robbery with aggravation, rape—things like that, to give a few examples, not accidentally going on to the other side of the road and getting pinched by the traffic police—certainly not that.

- 20 So much for the definition of murder, but I must not leave the count of murder without mentioning another aspect. If you are not satisfied that the accused is guilty of murder you may proceed to consider another verdict. There is another possibility. It is not either murder or nothing. If you find in the evidence to justify your conclusion that there was manslaughter you are at liberty to return the alternative verdict of manslaughter. Manslaughter is only unlawful killing. It falls back to that same old definition which I have explained to you—same old term I have explain to you. It does not require malice aforethought. In other words there is no question of intention to do grievous bodily harm or intention to kill. It has no relation to the knowledge that a certain act would kill or do grievous bodily harm and did it with indifference. It merely means unlawful killing. It means the doing of an unlawful act and in which some one killed and that the killing is unlawful. This may be termed as voluntary manslaughter or involuntary manslaughter.
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- Involuntary manslaughter is done by gross negligence, like what defence counsel told you a little earlier this morning. If one person drives a car at very great speed with complete indifference to the safety of the other road users, then either he smashes another car and kills the other driver or he kills a pedestrian, he may be guilty of manslaughter because his negligence is so gross that the guilt is manslaughter—involuntary manslaughter. Although he had never any intention to kill or do anybody any harm he was just being reckless and irresponsible—that is involuntary manslaughter. A person knowing that there is a big crowd underneath throws a rock down to the street and kills a person, I would call that at least manslaughter.
- 40

The other type is what is called voluntary manslaughter. Now voluntary manslaughter is what normally would have been murder i.e.

with malice aforethought—that there had been a killing with the intent to kill or with knowledge that the act would cause the death or grievous bodily harm, but nonetheless did it with total indifference. Now a person may have the guilt of murder reduced to that of manslaughter if at the time of killing or just prior to that, the person who killed was provoked either by conduct or words of his victim to such an extent that a reasonable man would have lost control of himself temporarily, then you may say that he has been provoked and that, although the killing was unlawful, he was not in possession of his full faculty and that he has lost control of himself for the time being, then he is guilty of manslaughter and not murder. 10

It is also for the prosecution, therefore in order to enable you to come to a conclusion that there has been murder, it is also for the prosecution to negative provocation. In other words, there must be evidence before you that the killer, the accused, was not provoked—provoked to the extent that a reasonable man would lose control of himself. You must also bear in mind that it is not any slight provocation that will reduce murder to manslaughter—it requires provocation sufficient to upset a reasonable man—not a man with a bad temper or unreasonable temper—it must be a reasonable man, and a reasonable man you can find with your common-sense, and he is provoked to such an extent that even a reasonable man would lose control, then the murder will be reduced to manslaughter. It is, therefore, for the prosecution to negative provocation, negative self-defence and to satisfy you that either the accused was not in legal exercise of his duty or, that if he were in legal exercise of his duty he was using force far beyond what is reasonable in the circumstances. Then you may return a verdict of guilty of murder. Otherwise you will acquit the accused of the charge of murder. If you should find that although the prosecution have negatived self-defence, and adduced sufficient evidence to negative the question of legal exercise of duty and reasonable force being applied, but they fail to negative 30 provocation then you may return a verdict of manslaughter. Mind you, all these negativings of these elements must be beyond reasonable doubt. Unless they are negatived to your satisfaction, that is there was certainly no exercise of legal authority to arrest a criminal or to prevent a serious crime or self-defence you will acquit the accused. If you are in doubt, reasonable doubt, in these matters, you acquit him. It is only when you are satisfied that the shooting or the killing was not in legal exercise of his duty, or if it were in legal exercise of his duty he used force far beyond what was reasonable in the circumstances, and that he either intended to 40 kill or to do grievous bodily harm, and also that you are sure that there was no provocation, and you are sure that it was not done in self-defence, that you may convict him of murder. Otherwise you may either acquit him or, if you are satisfied he killed unlawfully and with intent but he was provoked into doing so, then you return a verdict of guilty of manslaughter. Otherwise you acquit the accused of murder simpliciter. The question in this case for your serious consideration is whether the shooting was lawful in the circumstances.

While I am on this subject I may mention that the conduct of the accused in the happenings and occurrences leading up to the shooting or to the fight at least, are not relevant except in one aspect: that it would reflect upon the accused's attitude and approach, whether he in fact opened fire in order to effect re-arrest of a criminal or to prevent a serious crime or in self-defence. It may reflect upon his approach. Otherwise taking a girl in his car at nine-thirty in the evening is irrelevant, driving a comparatively expensive car is irrelevant, parking his car at an angle to the curb in a place where there is a "no waiting" sign there, as you have
10 seen in the exhibit, is irrelevant. The use of foul language is irrelevant. I will come to that when I review the evidence later on. So much for the 1st count.

The 2nd count is fairly simple. It is a count of shooting with intent to do grievous bodily harm. It reads in the particulars of offence: AU Pui-kuen, on the 9th day of January 1976 at Nathan Road, Kowloon, in this Colony did shoot at LAI Hon-shing with intent to maim or disable or do some grievous bodily harm to the said LAI Hon-shing and did thereby wound LEUNG Wai. I do not think this requires much explanation. "Shooting" is simple enough, you know what it is. "Disable", you know
20 what it is. "Maim", you know what it is. "Grievous bodily harm" means some harm which seriously interferes with the health or comfort of a person. The only little explanation I have to give is that you may find it a bit funny in the particulars of offence why he was shooting at "A" "and thereby wounded 'B' ". That is perfectly all right. If I shoot at a person, at "A", although I intend to shoot at "A" but my eyesight is so poor that in fact my shot hit another person who is ten feet away or half a mile away, that does not absolve me from guilt because the intention is to shoot somebody with the intention to maim or disable or to do grievous bodily harm, and in fact someone has been harmed by me. That
30 is what we call "transferred malice". Incidentally that is why when I explained murder, I said that if one shot at people at random with intention to kill or do grievous bodily harm with a complete indifference whether someone is hurt or not and if someone is hurt I am guilty of murder with malice aforethought. That is what is called "transferred malice". Whatever malice I had against "A" is transferred to the person who is actually hit.

In this count you have to be satisfied again that the shooting took place, that the accused intended to shoot at LAI Hon-shing with the necessary intention. There again, intention is a state of mind and it can
40 be only judged from the circumstances of the case, the totality of the evidence. It is, members of the jury, your prerogative to find the answer. If you find that he shot at LAI Hon-shing with the intention either to maim LAI Hon-shing or to disfigure LAI Hon-shing or to do LAI Hon-shing grievous bodily harm, then the offence is complete even if you find that the shot eventually hit LEUNG Wai and did injure LEUNG Wai instead of LAI Hon-shing. Otherwise you will acquit the accused if you are not satisfied with all these ingredients. When it comes to shooting, although

the word “unlawful” has not been mentioned, you must also consider whether the shooting was done in self-defence or in legal exercise of duty or to prevent a serious crime. If they are done in either of these circumstances then such shooting would again be either justifiable or excusable.

You have heard the evidence in this case for the last seven days and you have had some of the evidence particularly drawn to your attention by both counsel for the prosecution and counsel for the defence. By this time you have a clear picture as far as the evidence is concerned. You must be satisfied, insofar as the 1st count is concerned, that two shots fired by the accused killed LAI Hon-shing. You have heard the medical evidence, 10
you have heard from Dr. YIP Chi-pang. You have also heard the evidence by the ballistics officer, Mr. Cimino. You have had the agreed facts put before you in the documents of which you are furnished with a copy. You probably are satisfied that the shooting took place somewhere—you have to decide for yourself, it is not for me—between the junction of Sai Yeung Choi Street/Argyle Street right down to Argyle Street, the junction of Argyle Street and Nathan Road. It depends on what evidence you accept and what evidence you reject. It took place around that area. You are satisfied that the shooting was at the tail end of a fight between three 20
young men and the accused.

It is common ground that at approximately 9.30 p.m. on the 9th of January 1976, the accused was driving a car along Argyle Street and turned into Sai Yeung Choi Street. As he turned there was some argument whether his car grazed the leg of one of the three youths by the name of LEE Wai-tang. Arising from this very minor traffic incident—I would not even call it an accident—there was an argument between the young men and the accused which developed into a fight and as a result of that shots were fired. You may be, I assume, satisfied that this has been proved. This is the background of the case. The issue before you is this: as far as 30
the Crown is concerned, the prosecution case is that although it started in a minor traffic incident, the accused from beginning to end adopted a vindictive and aggressive attitude. First of all, while he was in the car he swore at the three youths, got down from the car, used foul language at them and had a fight with the three young men. There might or might not be, for a very short while, a grabbing of the accused’s neck by one of them. But the Crown’s case is that it would not affect the accused so much as to justify him pulling out a revolver to shoot at the young men. It is also the case of the prosecution that there was never any feeling or groping around the accused’s waist, and that as soon as the accused pulled out the revolver 40
or as someone said “Run” the three youths fled from the scene of the fight. The first two shots fired by the accused were fired while all three of the young men—two in one direction and one in another—had turned to their heels and the two shots entered the body of LAI Hon-shing, killing him. It is the Crown’s case that even though LAI Hon-shing was injured, he was able to run a bit further as far as Nathan Road where the accused practically caught up with LAI Hon-shing and he still shot at LAI Hon-shing. That was the third shot at the place near the King of

Kings in Nathan Road. The third shot, however, did not hit LAI Hon-shing but went onto some hard object or the road surface, ricocheted and hit LEUNG Wai in the abdomen. That is the subject matter of the 2nd count. So the first shooting of the two shots is the subject matter of the 1st count of Murder and the third shot is the subject matter of the 2nd count of Shooting with Intent.

The defence case, as I can gather, is a different story. The defence allege that the three youths were in fact teddy-boys with shoulder length hair. Whether every youth wearing hair to the shoulder can be termed
10 "teddy-boy" is, members of the jury, not a matter that I would like to comment on. As sensible persons, as men and women of the world, you can answer whether because a person wears long hair he must automatically be a teddy-boy. A teddy-boy very much depends on his own behaviour. Anyway, as far as the accused is concerned he said, "Well, by the manner of their dress and their shoes and their long hair, they were teddy-boys". He was certain that he did not graze the leg of any one of them although he heard a bang on his car and he wanted to go down to find out whether it was a practical joke by a friend or the agents of a friend. When he got out the three young men were provoking and
20 challenging in attitude. He immediately identified himself to the youths that he was a police officer, but the young men used foul language on him and he was there and then determined to arrest them. As he approached them he said LEE Wai-tang gave a sign which was a triad sign signifying a question to the person who approached him to identify himself, as to whatever unlawful society or triad society that person belonged. He was then even more determined to arrest thm. However, before he could do so, with a few exchanges of words, he was hit on the face. There was a struggle. In the course of the struggle his neck was grabbed by one of the youths from behind while the other two joined in and attacked him in
30 front. He was being grabbed out of control of himself. Then he felt that his waistline on the right side was being felt and the feeling was that he was felt around his waist from right to left where he carried his revolver in a holster. At that moment he was thrown into agony as to how to extricate himself and to end this struggle. He thought that if the grabbing should persist long enough he would faint. He also felt that there might be danger of his revolver being snatched. He immediately used his one free hand, namely the left hand, pulled out the revolver and fired a shot while he was facing upwards with his head tilted.

At that moment he could see only two mops of hair in front of him
40 and he fired in that direction. He said that even when he fired the first shot, a blow landed on his face practically simultaneously. That was why he fired a second shot. After the second shot was fired he then felt his neck released. He looked up and he saw two of the young men in front of him approximately five feet away from him. One of them was approximately one foot ahead of the other. He gave chase along Argyle Street down to Nathan Road. When he was near the King of Kings restaurant he saw one of the youths who lagged behind, one of the two youths who

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were running away swung round as he demonstrated to you, as if attacking him. He dodged to the left. The youth missed him. He at once fired the third shot not, he said, at the youth but onto the roadway from the side of the curb. The bullet rebounded and the trail of the bullet went on a V-shape down to the road surface and back towards the pavement and hit LEUNG Wai sideways. He said, he had no intention at all times to shoot at anybody but onto the road. He said that even when he fired the first two shots he was not shooting at anyone. He only wanted to end the matter and the two shots were fired with only one object in mind, that is, to end the struggle, to save himself from the predicament of being attacked further and fainting. 10

You have, as I have said, by this time no doubt that LAI was killed by the first two shots and LEUNG Wai was injured by the third shot. There is no dispute as far as this is concerned. The only issue before you is that the guilt or innocence of the accused depends very much on the circumstances under which he opened fire and the intention with which he opened fire. In this connection the prosecution has called no less than eight to nine material witnesses. To name them, they are: TSO Siu-tat, the passenger on the bus, FONG Bun, the one who walked from the opposite side of Argyle Street onto the junction of Argyle Street and Sai Yeung Choi Street, CHEUNG Him, the watchman of the Hong Kong & Shanghai Banking Corporation at the entrance at Sai Yeung Choi Street, WONG Moon-lam and POON Lai-ying, the husband and wife who were walking along Sai Yeung Choi Street obliquely onto Argyle Street across practically the same time as the three young men were having an argument with the accused, TAM Kin-kwok who was standing a little on the spot opposite the Gala Theatre. You have the chart, you can find out for yourself, and he has marked his position on one of the charts. He was a little away from the junction of Sai Yeung Choi Street and Argyle Street. 20

You have also the two young men LEE Wai-tang and WONG Hon-keung, the two men who were involved in the fight with the accused. 30

As far as TSO Siu-tat is concerned, he said he was on the bus on the upper deck at the material time when he saw four persons fighting but he could not see how they fought. He could see no weapon used at all and his bus soon passed them. He heard no sound like a firecracker. In fact he did not hear anything. Under cross-examination he admitted that, on the 14th of January, he made a statement when he told the police that he saw one person grab another while another two attacked the person who was grabbed. Now that is the sum total of TSO Siu-tat's evidence.

FONG Bun said that at the material time he was walking towards the vicinity and he was about thirty-five to forty feet away from the three young men and the driver when the four persons were arguing and later fighting. He said that one of the three hit the driver. It was three against one. One of them grabbed the driver. However, the driver still could punch and kick. He further said: "As they were running, I heard a sound like a firecracker from the scene". Now remember he said, "as they were running", he said the youths were running. Then he heard a sound like 40

a firecracker from the scene. He said there was a time gap between the start of the run and the hearing of the sound which sounded like a firecracker. That, members of the jury, was his evidence in-chief. Under cross-examination he said that when the shots were fired the driver's neck was still held. He said, in his own words, "In fact, it seemed that they were still struggling". Before the fight and before the struggle. He did not hear the driver identified himself. That members of the jury, may be reasonable because he was thirty-five to forty feet away at the time when he first saw them. However, he did say three things: he heard a sound like

10 a firecracker after the youths started to run; the time gap between the start to run and the sound of the firecracker was approximately five seconds; that while the first sound was heard, the neck of the driver was still being held. That was his evidence in-chief and under cross-examination. Further I have to remind you that Fong Bun marked his position at the time in Exhibit 1B for your reference.

Then you have the evidence of CHEUNG Him, the night watchman. He said that he saw the accused, parked his car and walked to the three young men. It was one of the three young men who delivered the first blow. But he did not see anyone being held at all. Now here is an independent witness who said the contrary. You remember that FONG

20 Bun and Tso Siu-tat both said that they saw the driver's neck being held, but CHEUNG Him said that he saw no one holding anybody's neck. However, he said that he saw the accused fell down and instantly got up. Then the young men started to run. He could not assign any reason why there was this sudden running away. He did not see anyone feeling the waist of the driver or grope around the waist of the driver, and he heard no noise at all. Mind you, it is an agreed fact that the entrance at which he stood is not very far away from the junction of Sai Yeung Choi Street. I think you have with you the agreed facts which indicate that the

30 distance from the curb of the southern pavement of Argyle Street to the iron shutter in the Hong Kong Bank Building in Sai Yeung Choi Street is about forty-four feet three inches. Thus Cheung Him was not very far away, but from the junction. But he said he heard no shot. He further confirmed that no young man had gone behind the driver and that once the driver got up from his fall there was no more fighting and that was the end. He said that the fight took place near the "entry only" sign, the traffic sign, and there was only exchange of blows. After a while he also saw a person approach the vehicle of the accused in which his female companion still remained and knocked at the window of the vehicle and

40 told her, "Your friend has opened fire" or something to that effect, but the female ignored that person. He marked his position in Exhibit 1C.

You have the evidence of WONG Moon-lam, who is also a driver himself and who was walking in the vicinity with his wife. He marked the various positions in Exhibit 1D. He said that he and his wife were walking across Sai Yeung Choi Street to Argyle Street junction. He was going further down Argyle Street but before he walked further down Argyle Street he saw the accused and the three young men using foul

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language. They were arguing. He and his wife just walked past them. When he looked back he saw they were fighting. Soon afterwards he heard a bang, the first shot. He marked the position where he saw the fight and his own position where he heard the bang. That is in Exhibit 1D. Now, members of the jury, his position depends on how fast he walked and how soon the shot was fired immediately after the fight started. But it might give you some idea whether the shot was fired in the course of the fight or in the course of a chase. He said he heard the first bang and then he turned back and saw a blue flash somewhere behind him. You may, members of the jury, take it that the flash was the flash of the second shot, and he marked the position of the blue flash as he saw it and his own position where he saw it. Then he said people ran past him and ran into Nathan Road, but he walked along Argyle Street. Before he could turn into Nathan Road he heard a third bang. He walked along to Nathan Road where near the King of Kings Restaurant he saw this young man, LAI Hon-shing, lying on the ground or sitting on the ground with blood coming out from his mouth and nostrils. In cross-examination he was asked whether these three were "fei chais". He was confronted with his own statement to the police, if you remember, and he said all he did say was that the youth had long hair and wore high-heeled shoes but the term "fei chai" was supplied by the officer who took his statement. Members of the jury, you may judge for yourselves. However, he signed that statement and he was asked if he did not agree with that description why should he not change it. But, members of the jury, you may find that that class of person, having given a statement to the police was not too particular. When the police said, "Well, what you have described were fei chais". He was prepared to leave it at that. You have seen him in court, how he readily responded to the description of the three young men. When it was put to him that his wife said they were fei chais and if he was going to disagree with that he responded: "Well, you can say that". He was not going to quibble over this. That, members of the jury, is a matter for you to decide; whether the appearance of these three young men was in fact so teddy-boy like that would arouse suspicion. That again is a matter for you.

There is the witness POON Lai-ying, the wife of WONG Moon-lam whose evidence more or less was the same as that of her husband. She also marked in Exhibit 1E the various positions where she saw the blue flash. She told you that as soon as the first bang was heard she slowly turned back while she was chatting with her husband about the first bang, wondering what it was, and at that time she saw a blue flash and heard the second bang. That must be the second shot. She has marked the position in the Exhibit 1E. She gave the time gap between the first and second shot as one minute. I suggest it might not be as long as that. She did not require one full minute to turn her head while chatting to her husband. As you know, people do make mistakes as far as time is concerned. She also said that she saw a person running past her or there were three persons running. One of the two in front stumbled and then went

back in the opposite direction towards her. It may or may not be a pedestrian who stumbled and tumbled. As far as the evidence is concerned you may be perfectly satisfied that at the time there was a chase and the accused was chasing. LAI Hon-shing and WONG Hon-keung were running in one direction and one direction only, that is, along Argyle Street and turned into Nathan Road, where WONG Hon-keung made good his escape. LAI Hon-shing was hit, fell down and was picked up in Nathan Road.

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- 10 You have again the evidence of TAM Kin-kwok who said that he was standing in Argyle Street waiting for a friend at the time. He said that he saw a person ran past him while he was there, about ten odd feet away from the junction. He heard a bang. He demonstrated to you how he turned. At one time he was facing Nathan Road on a spot in Argyle Street near the Hongkong and Shanghai Bank old building. When he heard the first shot which was at his back and to his right, he slowly turned back to have a look; a hundred and eighty degree turn, and then he turned back and made another one hundred and thirty degree turn back to the reverse direction. By then he was obliquely facing the Gala Theatre. Then he saw a man running past him and said some foul language and asked
- 20 "Are you still running?" That man then fired a shot with a revolver, and after that shot the man continued the chase. As soon as this man fired the shot he saw two men in front of this man running away and into Nathan Road. They were about ten to fifteen feet ahead of the man who fired the shot. In cross-examination he agreed that his impression of the events was vague as was his impression of the sequence of events. I feel that I must read to you part of his evidence under cross-examination. You will remember TAM Kin-kwok is the person who said that he saw so much. He was cross-examined at one stage. The question was "You heard a bang, turned round and heard another bang before people ran past you?"
- 30 He said "Yes". That is quite contradictory to his evidence in chief. However, he added that: "but before the sound of the second bang I saw the man ran past me". By this he immediately corrected his answer "Yes". If he heard the second shot as soon as he turned round towards Sai Yeung Choi Street then there could not have been any chasing before the second shot was fired. But he stood some ten odd feet away from the junction of Sai Yeung Choi and Argyle Street and he said that the man did run past him before he heard the second shot. It was further put to him that "It was after the second bang and the turning back that the runners started to cross your line?" He said "Before I heard the second bang I had
- 40 turned back and was facing the Gala cinema and Nathan Road", in other words, he looked back after the first bang and then turned back to face the Gala cinema and then he found a person running past him. The question was "You can't be truthful and you can't remember what happened between the first, second and the third bang?" He said "No, I have a clear recollection of events relating to the first and second bang and to the person running". That was after he said that he had not so clear a recollection of the events or the sequence of events.

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Now, that is the sum total of the evidence of witnesses who were not involved in the fight about the circumstances of the shooting. Well, members of the jury, it was put to these witnesses that the incident so long ago—eight months—that their memory was vague. I would ask you to take this into consideration. It is very true that the witnesses give evidence today eight months subsequent to the events. You have also heard evidence in this Court that a few days after the event they volunteered information and went to the police station. They also told you that when they went to the police station they made statements. You have seen these witnesses in this Court. When they omitted things or said things 10
contrary to their statements to the police or to their evidence in another court, learned defence counsel very properly, was meticulous in the defence. The witness was immediately taken to task: “Did you on such and such a date make a statement to the police?” and so on and so forth. The witness was immediately contradicted: “You have said something which is quite different from today”. A classic example is the witness Tso Siu-tat when he had completely forgotten to mention in his evidence that the driver’s neck was being grabbed. It was put to him and straight-away he said “Yes, I did tell the police” and he said “Well, that would 20
have to be true if I told them in the statement”. Now, it is all very well to say that after eight months they don’t remember. But if they don’t remember or they say something contradictory to what they might have said earlier would you not expect that such a witness be contradicted and be confronted with whatever he had said before? So I would like you to take this into consideration. When the witnesses said they were confused and forgetful because of the passage of time, you may like to apply your common-sense. If they say that they were confused because the events took place so very quickly and that there were so many people around you may feel that that may be the case. If they say that because of the passage of time they say something, which is quite contradictory, you 30
may like to take into consideration that if what he said is quite untrue and his memory is at fault, there are always ways and means of refreshing his memory.

I have so far told you about the evidence of the witnesses up to TAM Kin-kwok. I will generally tell you something about the evidence of LEE Wai-tang and WONG Hon-keung with my comments, together with my comments on the evidence of the accused tomorrow morning. I think I shall not keep you longer this afternoon and I will adjourn until tomorrow morning before I conclude this summing-up. 40

4.20 p.m. Court adjourns

30th September, 1976
10.00 a.m. Court Resumes.

Accused present. Appearances as before. Mr. Jackson-Lipkin and Eddis absent. Mr. Gilbert Rodway present on behalf of Mr. Eddis.
JURY PRESENT.

COURT: Well, members of the jury, to continue from where I left off yesterday, I will now give you the further direction on the evidence. Before I do so I am given to understand that there might be some misunderstanding of the example I gave as to what would constitute malice aforethought, the example I gave yesterday. The example I gave was that if I shoot at a crowd of persons at the back of the Court with the intent that I might hurt someone and with the knowledge that someone—it doesn't matter who—would be hurt or someone would be killed, accompanied with an indifference whether someone would be killed or

10 hurt or not, or even with a wish that someone might not be hit or hurt provided that the intention was to shoot at them and the knowledge that someone would be killed or seriously hurt was present then it would be malice aforethought; and if the shooting was also unlawful and someone was killed, then it would be unlawful killing with malice aforethought, and that was murder. On the other hand, if I blindly shoot at a crowd of people at the back of the Court without any intention whatsoever that anybody be killed or seriously hurt, then there would be no malice aforethought and at that time if the shooting was unlawful then it would be manslaughter and not murder. I think I have said it in so many words

20 yesterday but it may not be so clear because I have separated in the course of my summing-up to you the part about malice aforethought well before I went on to the alternative verdict of manslaughter. Please, if I have not made myself clear, understand the difference between murder and manslaughter in that light and also the requirement to constitute malice aforethought in that light.

I have finished the summary of evidence of several independent witnesses and I shall go on to the evidence of the parties involved in the fight namely, LEE Wai-tang, WONG Hon-keung and the accused. I have told you to view the evidence of the independent witnesses in a certain

30 light as to their confusion. There is a difference for consideration when confusion is due to the condition at the time of the incident and confusion that is caused by the passage of time. If the confusion is due to passage of time then I will say to you that these people have all made statements to the police and if they have said anything or omitted anything which they had previously remembered but not now, I am certain the witness would be contradicted or reminded. I shall say no more as far as that is concerned. There is also the evidence of Sergeant YIP Kai. His evidence is that after the injured persons were discovered the accused went to him and told him what happened. The sergeant said he interviewed the accused

40 and the accused told him that when he drove to Sai Yeung Choi Street and saw three teddy boys who banged his car. He parked his car and queried them after he had revealed his identity. Then one of them said "So what, you think detectives are all high and mighty?" Then they rushed at him and one of them grabbed him by his neck. The other two started to hit him. Then one of them put the hand over his waist to snatch his revolver. He struggled and pulled out his revolver. The three youths started to run, then he fired two shots at them. The youths

continued to run and he continued to chase. The youths turned into Nathan Road in the direction of Nelson Street. At 656 Nathan Road one of the youths stopped and turned round; he fired the third shot. The sergeant said "I asked if the three youths were armed, and he said "No." ". The sergeant also saw some blood on the accused's right cheek, that his lips were slightly cut and his clothes were fairly crumpled. That was the evidence of Sergeant YIP Kai. It has been said that there was a passage of time of eight months, the sergeant never recorded what he heard from the accused and he might not have remembered exactly the same words that were told to him by the accused. Now, members of the jury, it is 10
entirely for you to assess the value of the sergeant's evidence. If you evaluate that his evidence is accurate it seems that the firing of the two shots took place after the deceased and his companions started to run. Otherwise the sergeant may have given you the wrong impression. That is for you to determine. The sergeant also said despite his thirty years' experience in the C.I.D. he had never known a gesture like this, stretching out the hands, means a question in a triad society as "Who are you and which society do you belong?" That has been put to the sergeant and the sergeant said he had never heard of such a thing. Well, members of 20
the jury, the sergeant also works in the Criminal Investigation Department. You may feel that some people never learn however long they work and some people learn very quickly. Well that is a matter for you whether such a thing exists or not in a triad society.

In this connection I have gone through the typed script of the evidence of LEE Wai-tang on this point. Learned counsel for the defence questioned Lee about this gesture. His question was "What does this mean, Mr. LEE, does this sign mean 'Stop, you have gone far enough', doesn't it?" and his answer was "No." He was asked "What does it mean?" and his answer was "I can't remember myself whether I made 30
such a gesture or not". Then he was further pressed with the question "That is what it means, isn't it?" meaning when counsel put that question "I understood him to mean that gesture meant 'Stop, you have gone far enough". That was precisely the repetition of that question. The answer of LEE was "I know, I know". At that point I wasn't satisfied that he understood the question because of his demeanour, but counsel for the defence said that he had already said no. And then the transcript was read back to the Court, whereupon defence counsel said "He said four times he knew, so I can go on now to something else". In order to be sure, I checked with the witness LEE Wai-tang. I said "Did you know this?" and his answer was "No, no, I don't". Defence counsel said "My Lord, 40
I am so sorry. I thought I heard the note read out to be that is what he means and he said 'I know, I know' ". Now, in other words, assuming that LEE Wai-tang said "I know, I know", he understood and he knew the meaning when you stretch your hand like this meant "Stop, you have gone far enough", it was never put to LEE Wai-tang that that gesture means "Where did you come from?" or "Which society do you belong? Who are you?" as was put in the evidence by the accused when he was

in the witness box. To make it quite certain I went on to ask the accused "Does such a gesture mean that you have gone far enough, stop? Do you understand this gesture has a special significance do you know that" The answer was "No". Then a question by defence counsel: "Mr. LEE, I suggest to you you know perfectly well what it means?" Then he repeated "I know nothing at all". Well, that is the evidence. You can derive your own conclusion that either LEE seized upon the chance to reverse his answer from knowing what the gesture meant to that of "I don't know", or, alternatively, assuming that he did what he knew was that this gesture

10 was "Stop, you have gone far enough". That is different from what has been suggested by the accused's evidence that this gesture is a triad signal meaning "Look, where do you come from? Who are you? What society do you belong?" That has never been put to LEE Wai-tang.

Now I come to the parties who are involved. Well, I don't wish to repeat, again all the evidence that has been said by LEE Wai-tang and by the accused. Needles to say that the evidence of the parties, LEE Wai-tang, WONG Hon-keung and the accused, are understandably one-sided. As far as LEE Wai-tang is concerned, his evidence appears to have quite a lot of loop-holes. Whether the loop-holes would be sufficient for you to

20 completely ignore his evidence is a matter for you. According to him, the accused was the aggressive party; he took the initiative to provoke these three youths. He was in the wrong. He was an inconsiderate motorist and he hit the first blow. All the time LEE and his friends were defending themselves, although in the course of so defending they got the upper hand of the accused. They felt that it was wrong in any way for three to fight against one and therefore when the girl companion of the accused shouted out "Don't fight!" LEE Wai-tang at once gave the signal "Run!" and he ran back all the way not to his own home, not to the cinema where they originally wanted to go, but to the home of WONG Hon-keung. You

30 may ask why. Was WONG Hon-keung's home nearer? Was there other reasons? He said "Oh, no." He started from Wong's home anyway, "so I went back to his home". "Why didn't you go to the cinema?" He said: "By that time we were in no mood to go to the cinema." He was further asked "Did you enquire and consult LAI Hon-shing or WONG Hon-keung about it?" He said "No, I meant I was in no mood to go the cinema." Then he was queried "What was the urgency in running all the way to Wong's home? You broke up the fight. You run a few steps." He said: "I was in fear—in fear of being chased. I was confused." You will remember that I queried him when he said that he was never in a fight

40 with anybody. Then he said "Well, I do not regard fighting amongst friends as a fight. This is the first time I fought with a stranger, three against one, and therefore I was confused." Now, it is for you to evaluate his evidence. Here is a person who said that he was not certain whether he landed any blow on the accused whereas his companion WONG Hon-keung said that certainly LEE Wai-tang did land a few blows on the accused in the course of the fight. You will also recall I asked him to the effect that: "After you got to the home of WONG Hon-keung you have

nothing to fear. You were the injured party because here is a policeman or a person who was aggressive who grazed your leg with the car first without a word of apology but used foul language on you, hit you first and you had a fight with him. Then you returned home. Then you heard WONG Hon-keung told you that there were a few shots. Would it not be your first reaction to ring up and report to the police that there was such an unreasonable creature in a civilised society?" He said "No, no, I was confused and scared. I have never had that experience before. This incident was new to me". Well, that was his answer. Whether you accept it or not is entirely a matter for you. However, you may, if you like, accept part of his evidence and reject part of his evidence. You may feel that there had been a fight—never mind who delivered the first blow; you may find that he might even grab the neck of the accused. That is of no matter. The question is did he release his grip before the accused fired the first shot, or did he, as the accused alleged, grab the accused's neck, tilt the accused's head upwards, so that the accused was so out of control of himself when the accused fired those shots in self-defence? You have, again, the evidence of WONG Hon-keung who is, also one-sided. You will remember he said to me he hit the accused on the arm. In the other court before the Coroner he said that he landed a few blows on the accused's chest as well. He said that he never saw LEE hitting the accused at all. In the Coroner's court he said that LEE had landed a few blows on the accused. These are the instances of patching up of their evidence. It is up to you, members of the jury, to segregate what you consider to be unreliable evidence and reject them. I would certainly not suggest that you can accept the evidence of LEE and WONG in whole. Whatever part you choose to believe them or disbelieve them is entirely your prerogative. I have only tried to point out a few of these inconsistencies in their evidence. 10 20

I come to the evidence of the accused now. Well, his story is that of a very . . . what shall I say . . . strong-minded, forthright person. He said that his car had never hit any one of the youths. He was certain of that. He heard a bang on his car or several bangs, loud bangs, on his car. He said that he was not particularly annoyed. As he turned round to slow the car when he heard the bang on his car these three young men arm in arm on each other's shoulder in one straight line went near to the window of his car. LEE Wai-tang who was in the middle with the two other young men on each side of him bent down near the window, looked at his girl, made a funny face and said "Wah!" Even then he was not particularly annoyed. He thought it might be a friend's joke. When he was pressed in cross-examination whether he saw any friends around he said "Oh, no, there might not be friends but friends might send a person to make a practical joke on me." Well, members of the jury, I don't know whether you would consider that sort of behaviour as a joke. If it is it would be a very poor joke and hardly one would delegate this sort of joke to somebody else to practise on one's own friends. But he said "Oh, no, I was not particularly angry. I left the car in order to find out 30 40

whether it was a joke by friends". Yet the first thing he said when he got out from the car: "I am a police officer. Did my car hit you?" While he was walking and approaching these three young men the latter walked towards him and waved him on. Now, members of the jury, you may wonder that if he thought those people facing him were his friends or his friends' agents would he at once tell them he was a policeman"? When he was so certain that his car never hit any one of them, would he bother to say "Did my car hit you?" I asked the accused about it when he was in the witness box. He said "No, no, I never meant that I was in any doubt

30 that my car hit him but it was a prelude"—a prelude to what? On the other hand was it quite a normal reaction of a reasonable person, like you or me, to be annoyed when someone bang our car without any apparent reason? Not so annoyed as to involve ourselves in a fight perhaps but we would be annoyed if someone made a funny face at our lady companion and said "Wah!" Also we may not go to the extent of stopping the car and have an argument. However, I wonder if you would accept his evidence to the effect he was not angry at that stage. Do you feel that is strange? Was there some annoyance? Then the accused said "Well, they looked like teddy boys, just like teddy boys to me anyway, and I was

20 going to find out if they were not making a joke I was going to arrest them." At that stage he had conceived the idea of arrest. Now, is banging a car and making a funny face, assuming that took place, an arrestable offence? I can tell you that it is not an arrestable offence. Then he said that the lad used foul language at him when he approached them and after he had identified himself to be a policeman. Again if a triad sign was made as he suggested, would any young man, teddy boy or no teddy boy, try that on a policeman? Members of the jury, that, again, is a matter for you. He said that after that sign was seen by him he was determined to arrest the lot of them, even though the sign was given only

30 by one of them. He started to use the foul language and said "I will arrest you anyway". He said that it did not matter. If he arrested one of them he would have ways and means of finding out who actually made the face at his girl. In this respect I would like at a later stage to refresh your memory with a few of his answers in cross-examination. He said then a fight then developed because as he approached LEE Wai-tang the latter hit the first blow on his face. The three went against him and one then went behind him. They moved and he was forced to the railing. One went behind him, grabbed him by the neck and dragged him along. He nearly fell down but for the fact that he could lean on the one who

40 grabbed his neck. He was completely out of control of himself physically. He also felt that the two young men in front of him continued to attack him with fists. He felt someone groping around his waist on the right of his waist. He carried his revolver on the left. As the groping went from right to left he immediately sensed the danger that if he didn't do anything to end this matter he might faint or his revolver could be snatched. It was in these circumstances that he pulled out the revolver at once, fired a shot to the direction of two mops of hair which he could see. He

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couldn't see a thing except the hair and he just fired a shot. He said the purpose of firing this shot was not to injure anyone at all but to end the matter.

Members of the jury, it is, again, up to you to believe or disbelieve him when he said that his only intention of firing this shot was to end the matter and not to hit anybody at all and that this shot was fired in the circumstances under which he had to use the extreme measure of a fire-arm. You have heard questions put to him whether he was given training in unarmed combat. It was also put to him that he had thirteen years' experience in the police force, and that he was, compared with these young men, a stronger man. He was asked whether he could extricate himself from his difficulty without having to resort to the use of firearm. You have heard his answer which is perfectly legitimate and reasonable. Although these were young men they were all in their late teens or early twenties you may feel that a person who is thirty and twenty, doesn't really make much odds when it is three against one. I defy any person who is thirty years of age or so—can say that he is a better match than three young men of twenty years of age. He said that he was in such a predicament when he fired that shot; and even when he fired the first shot he had a blow landed on his face. Because of this he immediately fired the second shot. But regarding these shots you have to now listen to his answers to questions in cross-examination and that is why I said earlier that I intend to read it to you to refresh your memory. Learned counsel for the prosecution asked him "So you just fired a shot in any direction?" Answer: "I aimed in what I believed to be the direction of persons attacking me but I was not sure if that was the right direction." That was his answer. Question: "There were many persons in the area?" Answer: "Yes". Question: "Did you think you might hit some innocent person?" Answer: "If I did not shoot"—and I take him to mean—"I might faint. I fired hoping to stop it." Question: "By firing an unaimed shot?" Answer: "No". Question: "Did you think of firing a shot to the ground?" Answer: "No, there was a limit in space. It was impossible to stretch out my arms to the car." Well, whether it was possible for him to stretch out his arm to the air or not, you have seen him demonstrate it when I asked him how he pulled out his revolver with his left hand. Now, if he could shoot in the direction of the two persons in front of him, was there enough room for him to stretch out his arm? But there might be an explanation. He gave his explanation in relation to the later shot. He said "If I shot to the air I might hit someone who happened to stand in a tall building in a balcony." Well, members of the jury, accept it or reject it as you like. Then he was further queried. He was asked: "Did you not think of firing a shot to the ground?" He answered again "No, I was not in control of myself". So this is another explanation: one is that he had not the space to do so; secondly it was impossible for him to stretch his arm to the air; and, thirdly, that he was (and this might be a complementary answer to the second reason) that he was not in control of himself. Question: "You cannot fire downwards or upwards?" Answer:

- “I fired immediately. I liked to stop this incident to let the other party know I had drawn my revolver”. Now, if the sole object of firing the revolver was to warn the other party that he had a revolver, was it necessary to fire it? The very moment he pulled it out the other party would have seen it. But he said that the only object of firing was to let the other party know he had a revolver so that he could end the matter. This same question was repeated: “Can’t you fire downwards or upwards?” Answer: “At that time I had no time to think as to what I should do”. Well, that is yet another explanation. He was further asked
- 10 “When you fired the first shot the two in front of you had already turned and run away?” Answer: “No, when I fired the first shot a blow landed on my face.” That was what he said in his evidence in chief. He said “I knew they were still in front and were attacking me.” Now, the further three questions and answers may be significant. The question was “LAI was hit on the back and LAI could not have been the one who gave the blow to you?” He said “There were two of them attacking me.” This question was repeated. His answer was “I don’t know”. Well, the answer is obvious, members of the jury, you can answer that as well as I do. If the first shot and the blow that landed on his face happened at
- 20 approximately the same time and LAI was hit on the back by both shots LAI couldn’t possibly have landed the blow at the same time when the first shot was fired unless his turning was quicker than the bullet. The accused’s answer was “I don’t know”. Then a further question: “If WONG was ahead of LAI there was even less chance for him to hit you?” He said: “I lowered my head. Both were running at the same time.” Members of the jury, remember these few questions, although you must also remember his own evidence in re-examination. He said that after the second shot the grab on his neck was released and he saw WONG and LAI were approximately five feet away from him LAI was ahead of WONG. That was
- 30 the first time he told you that LAI was ahead of WONG. He said that in the course of the running away WONG overtook LAI and was ahead of LAI. That was his evidence in re-examination. That might explain the situation that after LAI turned his back WONG still succeeded in landing a blow on him and then turned away again. By the time when he regained his balance he saw LAI ahead of WONG and then in the course of running WONG then overtook LAI. He said that he chased them. He said that two shots were fired between a time gap of about three seconds, almost one succeeding the other. You will recall his evidence that he did not want to chase the one who grabbed his neck because he didn’t want to lose
- 40 time by turning round. Members of the jury, do you accept it? Would he lose so much time in just a simple turning round to chase the one who was obviously the culprit of the three who grabbed his neck or was it true that there was no grabbing at all?

Members of the jury, it is entirely a matter for you bearing in mind that there are two independent witnesses who said that they saw the grabbing. They did not tell you how long the grabbing was. As far as the accused is concerned he would have you believe that the grabbing took

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place soon after the fight started and it lasted until the two shots had been fired. FONG Bun told you that he heard a shot very soon after he walked down Argyle Street from the spot where he saw the fighting at the junction of Argyle Street and Sai Yeung Choi Street. The accused said he continued the chase. You have heard the evidence of the prosecution as to how the chase took place. Now the accused's version is that he just chased them, getting closer and closer to them, until they reached Nathan Road near the King of Kings Restaurant. He saw they were both by the side of the kerb on the road when he saw the deceased LAI Hon-shing suddenly swung back his right arm. The accused had to 10
dodge to the left. Immediately after he dodged to the left he fired a shot to the ground, not at LAI Hon-shing but to the road—to the ground. He had demonstrated to you how it took place, how the shooting was done. Unfortunately the bullet rebounded and hit a gentleman by the name of LEUNG Wai who was waiting for a bus at the bus stop. Now, the accused was taken through the same questions again as to why he shot at the ground. His answer was that "I didn't want to shoot LAI Hon-shing. I don't feel that he was worthy of a shot. I chased him. Had I wanted to shoot him I could have shot him while I was chasing 20
him." Of course, that is no answer. But he said: "If I wanted to shoot him I was only about two feet away then. I could have shot any part of his body and I would have hit him anyway but I deliberately aimed a shot on to the road side and the shooting that injured LEUNG Wai was entirely accidental." Accidental certainly, members of the jury, because you will accept that he never intended to shoot LEUNG Wai at all. The question you have to ask yourself is whether he intended to shoot LAI Hon-shing and whether it was true that at the time of the shooting he was only two feet away from LAI Hon-shing. You may also ask whether he intended to shoot LAI Hon-shing but missed his real target and hit LEUNG Wai 30
because when he shot at LAI he was in fact farther away from LAI than two feet. Members of the jury, you have one witness who said that while the accused was chasing the two persons in front of him they were about ten to fifteen feet away ahead of him. Now, was he as near as two feet from LAI Hon-shing? Was he so near to LAI, that is within arm's reach, when the latter swung back? He had already dodged his blow—LAI Hon-shing had by that time swung like this—as he demonstrated—would it not be more sensible just to use LAI's own force, push him over to the ground? Was it necessary to fire that shot at all? He said he had no intention to hit him. Now, members of the jury, that is a matter for you to 41
decide. You have to consider the evidence, in the light of your common sense, of what happened. The accused was so determined to arrest LAI Hon-shing that when he finally brought him to the ground he immediately left LAI Hon-shing to make his telephone report to the police. Counsel for the prosecution queried if he was so determined to arrest what he considered to be dangerous criminal, he should never have left him at large, on the ground. But the accused said that from his own observation this injured person was in no position to run away, therefore, he felt safe

that he could leave him for the telephone. Now again, members of the jury, that is a matter entirely for you.

By and large I have given you a summary of the evidence of the shooting, the circumstances of the shooting and the evidence which might be relevant to the accused's intention when he fired the shots with my comments for whatever they are worth. As I have told you earlier, the question of facts is entirely for you. If you don't agree with my comments, by all means ignore them. You are the sole judges of facts. That is why your assistance is so invaluable because you bring in your commonsense
10 approach to the matter and you judge the facts by yourself according to the evidence.

If in this case you find that the first two shots were fired with the intention of killing or causing the death or grievous bodily harm of either LAI Hon-shing or WONG Hon-kueng and the shooting was not justified in law (and I have told you what would be justified in self-defence, in legal apprehension of a dangerous criminal or to prevent a serious crime) then if you are satisfied and sure that the shooting was unlawful and with intent to kill or to do grievous bodily harm, you will find the accused guilty of murder. If you find that the shooting was lawful or that there
20 was no intention to kill or cause grievous bodily harm, you acquit him of murder. If you find the accused, though intended to kill or cause grievous bodily harm, was at the time of the act provoked to such an extent that no reasonable human being would be able to control his own action, then you convict him of manslaughter. If you find that the shooting was lawful, then you will acquit the accused completely and absolve him from blame of murder or manslaughter. You have to decide whether he was acting in legal exercise of his duty to arrest a criminal who has committed a crime, a serious crime, and used force that was reasonable in the circumstances. If he was not exercising his legal duty or he was
30 shooting at someone who has committed a petty crime or petty offence, then the case of justifiable homicide would not be open to him. If you find that the accused fired the shots, whether he intended to kill or not, in the circumstances that he was trying to defend himself from a desperate position, there again you will acquit him of either murder or manslaughter. If you find that he did not so do or that the force he used to defend himself far exceeded his requirement to extricate himself from his trouble then you will find him either guilty of murder or guilty of manslaughter.

As far as the second count is concerned, if you find that the shooting is lawful, you will acquit him of this count—the second count of shooting
40 with intent. If you find that he fired the shot but that he had never intended to wound anybody, there again you acquit him of the offence. If you find that he did not shoot at LAI Hon-shing you acquit him of the second count. The entire evidence relied by the Crown is circumstantial. There is no direct evidence that he did so.

The Crown rely on the fact that he shot the first two shots at LAI Hon-shing anyway. In his own answer the accused said he had to shoot in the direction of the two men attacking him to stop the situation. When

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he regained his balance he gave chase. It is the contention of the prosecution, that he fired all three shots while in pursuit—the first two shots earlier and then after some time the third shot—the third shot being fired in Nathan Road. It is suggested to you, members of the jury, that inasmuch as he fired the two shots at LAI Hon-shing in the first instance he must have fired the third shot at LAI Hon-shing as well. But the only evidence you have is from the mouth of the accused. He said, “I did not shoot at LAI Hon-shing. I shot on the ground.” If you accept his evidence you must, be that shooting lawful or unlawful, acquit him because he never shot at LAI Hon-shing. He said: “I never intended”. The intention is to be found in circumstantial evidence. The shooting now is also founded on circumstantial evidence. If you find that the third shot was fired unlawfully and was fired in excess of a force that was reasonable even for self-defence or to affect an arrest of a dangerous criminal—if you find that shot was a force which exceeds the requirement of the circumstances and he intended to shoot at LAI Hon-shing, then you will find him guilty of the second count of shooting with intent. 10

Now, members of the jury, I have practically finished what I wanted to say to you except to remind you that in the count of murder you must arrive at a unanimous verdict and return a unanimous verdict. In other words, whether it is guilty or not guilty, you must be unanimous. If you find the accused not guilty of murder but guilty of manslaughter, there can be a majority verdict. In other words, if five of you find him guilty and two not guilty, you need spend no more time. Alternatively, if five of you find him not guilty of manslaughter and two find him guilty of manslaughter, you need not spend any more time. There can be a majority verdict. It can be either 6–1 or 5–2 one way or the other for the manslaughter verdict. Similarly, in the second count you are allowed to return a majority verdict one way or another—6–1 or 5–2. When it comes to 3 and 4, then the margin is too low. You have disagreed. Then you have to spend further time to discuss until you have reached agreement or tell me that you have disagreed. 20 30

Now please take all the exhibits, particularly exhibits 29, 30 and 31—statements of the agreed facts. These are not only evidence but agreed evidence by both parties—the prosecution and the defence. You will take the photographs, the chart, exhibit 1A to 1F which have been marked by the various witnesses I have reminded you of, and then you will proceed to consider your verdict. Before you do so, I have to tell you one further point—that is at the beginning of the trial I continued the bail of the accused up to the end of the trial. Now after the summing-up I am requiring him to remain in custody until the verdict is returned. I must emphasise that this does not mean that I think that he is guilty or not guilty. I express no opinion. This action is taken by me, not as an indication of my opinion at all. Please remember that. Even though he is innocent the bail was granted to the end of the trial, I think up to the time of the summing-up; he should stay in court—not in court but 40

inside the building—and await the jury’s verdict. That is why I asked him to be in custody pending the return of the verdict.

Mr. Penlington, is there anything that counsel would like me to add?

MR. PENLINGTON: Yes, my Lord, there are two points—I think you covered the point earlier on but in your final summary of the alternatives available to the jury, I do feel that perhaps it could be specifically put to them that if they find that the shots—the two early shots that were fired by the accused and he did not intend to hit LAI or indeed to hit anybody, there was no intention, the jury are not satisfied beyond doubt there was
10 an intention to hit anybody with intent to kill or cause grievous bodily harm, that the shots were fired in negligence, that he was not entitled to fire them, but he did not intend to hit anybody, then that is manslaughter.

COURT: Manslaughter—for the third shot?

MR. PENLINGTON: No, the first two—if the first two, I suggest, were fired by the accused without lawful excuse, but without the intention of hitting anybody. . . .

COURT: Oh yes.

MR. PENLINGTON: . . . they were just simply fired—he was just discharging his revolver at random without the intention of hitting
20 anybody, that is manslaughter—that is firing with recklessness and negligence, it is manslaughter.

COURT: I mentioned that I believe, yesterday afternoon.

MR. PENLINGTON: I think you did earlier this morning, but I think perhaps. . . .

COURT: Yes.

MR. PENLINGTON: The second point is on the question of the third shot—shooting at LAI—the Crown does rely on the evidence given by the accused when he said that he did say earlier at the inquest that he fired at LAI’s legs. Now of course we now know that might mean fired at
30 his foot, but the Crown does rely on the evidence given by the accused himself at the inquest when he said he fired at LAI’s legs.

COURT: Thank you for reminding me—yes, I did intend to read this to you. Yes, perhaps I should. You recall the evidence that it was put to the accused, members of the jury, that at the Coroner’s inquest he, the accused, asked, “Where did you aim?” His answer was, “His legs, as there were people walking there.” Now you have heard how I queried him as far as that was concerned. The accused said in his answer he meant he was not firing at LAI’s leg but firing in the direction of LAI’s foot. I have told you, about my comments for a witness not correcting a
40 statement to the police. That applies to a statement made to the Coroner. It is a matter for you. You will recall that I asked a witness that if he did not use the term “Fei Chai”, why he did not correct it before he signed the statement. This man said, “I might have just let it go”. He did not apply his mind to the matter. Finally when it was put to him even his wife referred to them as “Fei Chai” he said: “You can say that”. I asked the accused, “If what all you meant was that you were shooting at the direction of the deceased’s foot and not actually at the deceased’s foot

at all, why did you say it was correct when it was read back to you". He said he was not asked—he was not asked to explain the word "aim". Now members of the jury, it is up to you. You may feel that the persons are easy in their statements to the police as they are easy in their evidence given before the Coroner when it was read back to them. But I find it that if he meant "I shot at the direction of the feet" and the record was, "I shot at his foot"—that is a very different thing. It was not corrected there and then. But, members of the jury, you must take it as negligence on the part of the accused when he failed to correct this before the Coroner. But Mr. Penlington is quite right that the Crown is entitled to rely on this bit of evidence as recorded. The accused admitted that he said it in the lower court that he was shooting at the deceased's leg, which he now explain as meaning the foot and further explained that it was in fact shooting at the direction of the deceased's foot. Thus, there are two versions, both by the accused. One is that he meant he shot at the direction of the deceased's foot. The other is that he shot on to the road, to the ground in that direction. It is up to you to decide whether he shot at LAI Hon-shing or he shot at the ground. 10

Now if there is anything you like to understand that I have not made myself clear please do ask me now or in the course of the discussion while you are considering your verdict. If you like further direction let me know—I will be around. 20

Is there any question at the moment? Yes Mr. Foreman?

FOREMAN: Your Lordship, we would appreciate a written text of your instructions on the interpretation of murder that you gave yesterday. It would be helpful if you could have it typed out for us.

COURT: I regret that I am not in a position to furnish you with a written or typescript of my direction of yesterday, owing to the short time available—they are taken down, they have to be checked and rechecked before it is typed so that within the short time available it is not possible. If there is anything at the moment which might have slipped the mind of the jury I will be quite prepared to repeat it. 30

FOREMAN: Not at this time.

COURT: If at any time you feel that you like to have further direction on any point, let me know.

One thing I should add, members of the jury you will have to remain here and we will clear the court for you to consider your verdict.

*11.20 a.m. Court adjourns pending
deliberation by the Jury.*

4.05 p.m. Court resumes 40

Accused present. Appearances as before. Jury present. Mr. Rodway absent, Mr. Eddis present.

COURT: Mr. Penlington, Mr. Eddis, about fifteen to twenty minutes ago I received a message from the Foreman of the jury which I should read in open court as everything should be in open court. It is a note to

say that, "Our notes are incomplete on your instructions regarding the law on the second charge (shooting with intent)—what are the lawful conditions under which the shot could be fired?" Signed by the Foreman of the jury. That is all the message that I received. I at once understand that the jury require further direction on this point.

Now members of the jury, I regret that I have not made entirely clear the lawful conditions under which the shot relating to the second count may be fired, I understand you must have referred to the third shot that was fired in Nathan Road.

10 As I said earlier on, the lawful condition to use firearm in the second count will be the same as that in the first count. In other words firearm may be used by the accused for self-defence; or in legal exercise of his duty—in exercise of his legal duty—in other words to arrest a criminal who has committed a serious crime; or to prevent a serious crime. These are the three conditions.

Relating to the second count you will have to ask, "Was the third shot fired in self-defence?" If it was fired in self-defence, no matter what resulted you must acquit the accused. If it was not fired for self-defence then you will ask, "Was it fired in order to arrest a criminal who had committed a serious crime?" Why I used the word "serious" is this—that the force used must be reasonable in the circumstances. First of all it must be a serious crime, and then the situation necessitated the use of firearm. If you find that the shot was fired without necessity—in other words, not reasonable in the circumstances, then provided you are satisfied on the other ingredients of the second count, namely shooting with intent, then you convict the accused. Otherwise you acquit him. You will also ask: "Did he fire the third shot with the view to prevent a serious crime?" There again you consider whether the firing of the shot was reasonable in the circumstances. If you find that it was reasonable

30 you must acquit him even though he fired the shot with intent to maim or disfigure because it was a lawful firing of the shot. It is reasonable. If you find it is unreasonable in the circumstances and you also find he fired the shot with intent to maim or cause grievous bodily harm or to disable, then you convict him on that count.

Have I made myself fairly clear on this? Is there anything you wish me to add Mr. Penlington, Mr. Eddis?

MR. PENLINGTON: No.

MR. EDDIS: No.

40 FOREMAN: Your Lordship, in your instruction you referred to as this particular incident and the certain conditions—first, that the shooting took place; secondly that the accused intended to shoot at this individual, and thirdly, shooting with intent. Can you relate those conditions to the points that you just. . . .

COURT: That is referring to the second count?

FOREMAN: Yes, right.

COURT: Now you approach this step by step—the charge is that he shot at LAI Hon-shing with intent to maim or disfigure or do grievous

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bodily harm to LAI Hon-shing and thereby wounded LEUNG Wai. These are the ingredients of the charge. First of all, you will have to find whether he shot at LAI Hon-shing; secondly, whether the shot was with intent either to disfigure or to maim or to do grievous bodily harm to LAI Hon-shing. The result of the shot you know, that has been proved. LEUNG Wai was wounded. But that is neither here nor there. As I told you yesterday, that is what is called transferred malice. So far as he shot at LAI Hon-shing with the intent to maim, disfigure or do him grievous bodily harm, he is guilty of the second count. If you take the evidence as a whole and come to the conclusion that shot was fired in self-defence or in lawful exercise of his duty as a policeman, for example to arrest a dangerous criminal or a criminal who has committed a serious crime, or the shot was fired to prevent a serious crime—even though the shot was fired, you proceed to consider whether the shooting was necessary at that time. As counsel has repeated to you quite fairly and properly you are not to weigh the matter, the proposition, with a jeweller's scale. You will have to consider his position at that time. It is easy to be wise after the event. But at that moment, did you find that his action of shooting reasonable in the circumstances, that is in the circumstances he was in at that time. If you find that it was reasonable in the circumstances it does not matter even if he shot with intent to disfigure or maim or do grievous bodily harm. However, if you find that the shooting was not reasonable in the circumstances, then you will have to go back to your original step and to ask yourself, "Did he shoot with intent—did he shoot at LAI Hon-shing?" and if he shot at LAI Hon-shing, "Did he shoot with intent to maim or disfigure?"

Have I made myself clear? Is that all? Is there any other question you want to ask?

FOREMAN: No more questions.

COURT: Very well, I will then have to ask you to resume again to consider your verdicts.

*4.20 p.m. Court adjourns again
for further deliberation by the Jury.*

10.24 p.m. Court resumes

Accused present Appearances as before JURY PRESENT

CLERK: Mr. Foreman, will you kindly stand up? I am going to ask you to return the verdict. On the 1st count of Murder against the accused, AU Pui-kuen, have you agreed upon your verdict?

FOREMAN: Yes, we have agreed upon our verdict.

CLERK: Are you unanimous?

FOREMAN: We are unanimous.

CLERK: How say you, do you find him guilty or not guilty?

10 FOREMAN: We find the defendant guilty.

CLERK: Now on the 2nd count of Shooting with Intent to do Grievous Bodily Harm, have you agreed upon your verdict?

FOREMAN: We have agreed upon our verdict.

CLERK: Are you unanimous?

FOREMAN: We are not unanimous.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: We find the defendant not guilty.

CLERK: By what majority?

FOREMAN: Five votes.

20 COURT: AU Pui-kuen, would you stand up. The jury has found you guilty of murder. The sentence of this court is that you suffer death in a manner as prescribed by law.

Members of the Jury, it remains for me to thank you for your services, a very conscientious effort indeed, and I would excuse you from jury service for the next six years. Thank you very much.

10.26 p.m. Court rises
30th September, 1976

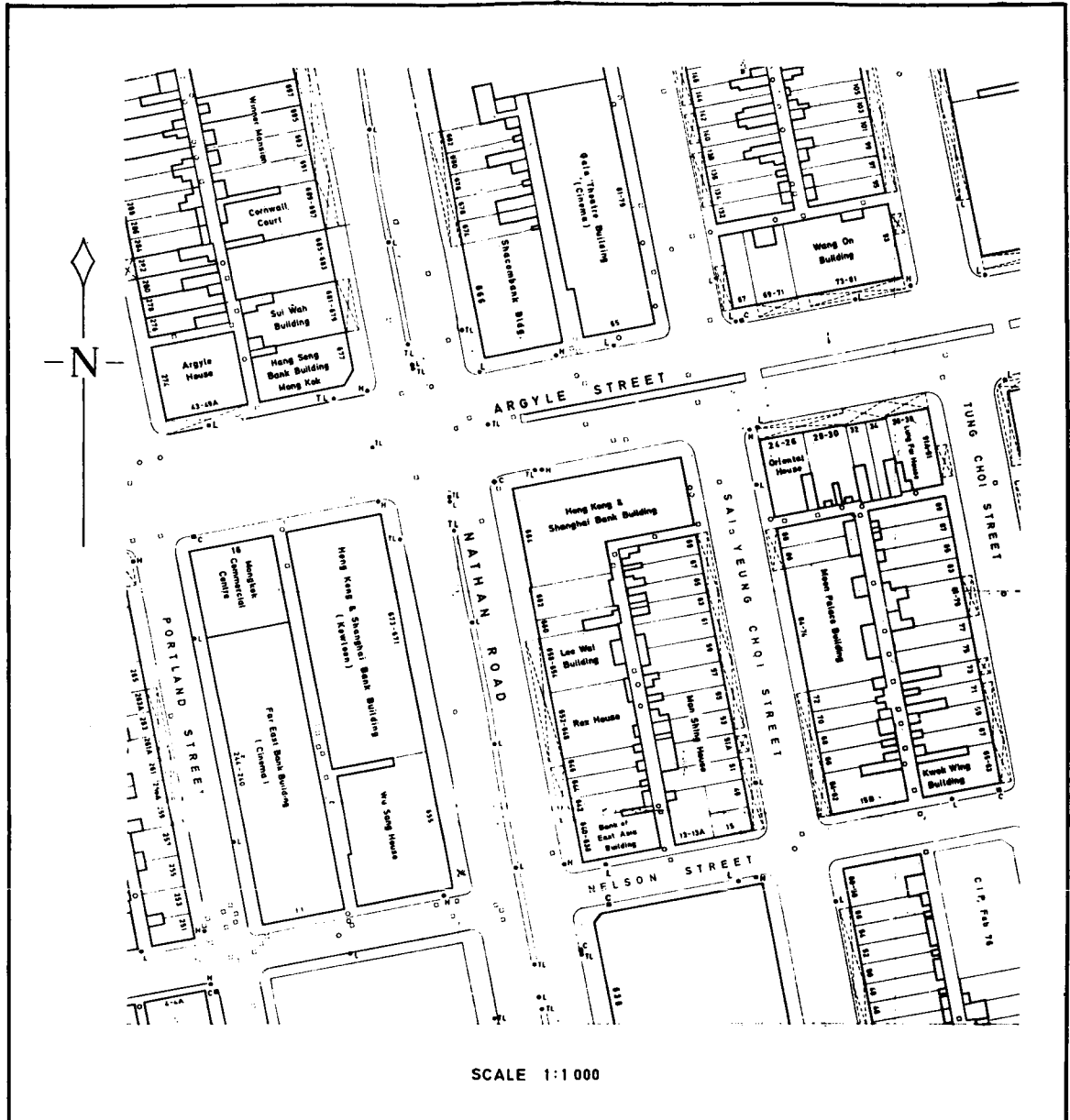
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Sentence

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No. 37 Exhibits

Exhibit 1A



- C Indicates Cabinet
- CIP " Construction in Progress
- H " Fire Hydrant
- L " Lamp Post
- TL " Traffic Light

PLAN SHOWING AREA OF SAIO YEUNG CHOI STREET, ARGYLE STREET, NATHAN ROAD AND VICINITY.

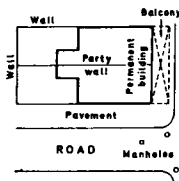
A

SURVEYED BY ME ON 5th FEBRUARY, 1976.

T. M. Lam

(TAM TAK YEU)

SURVEYING ASSISTANT (LAND)
CROWN LANDS & SURVEY OFFICE, P.W.D.



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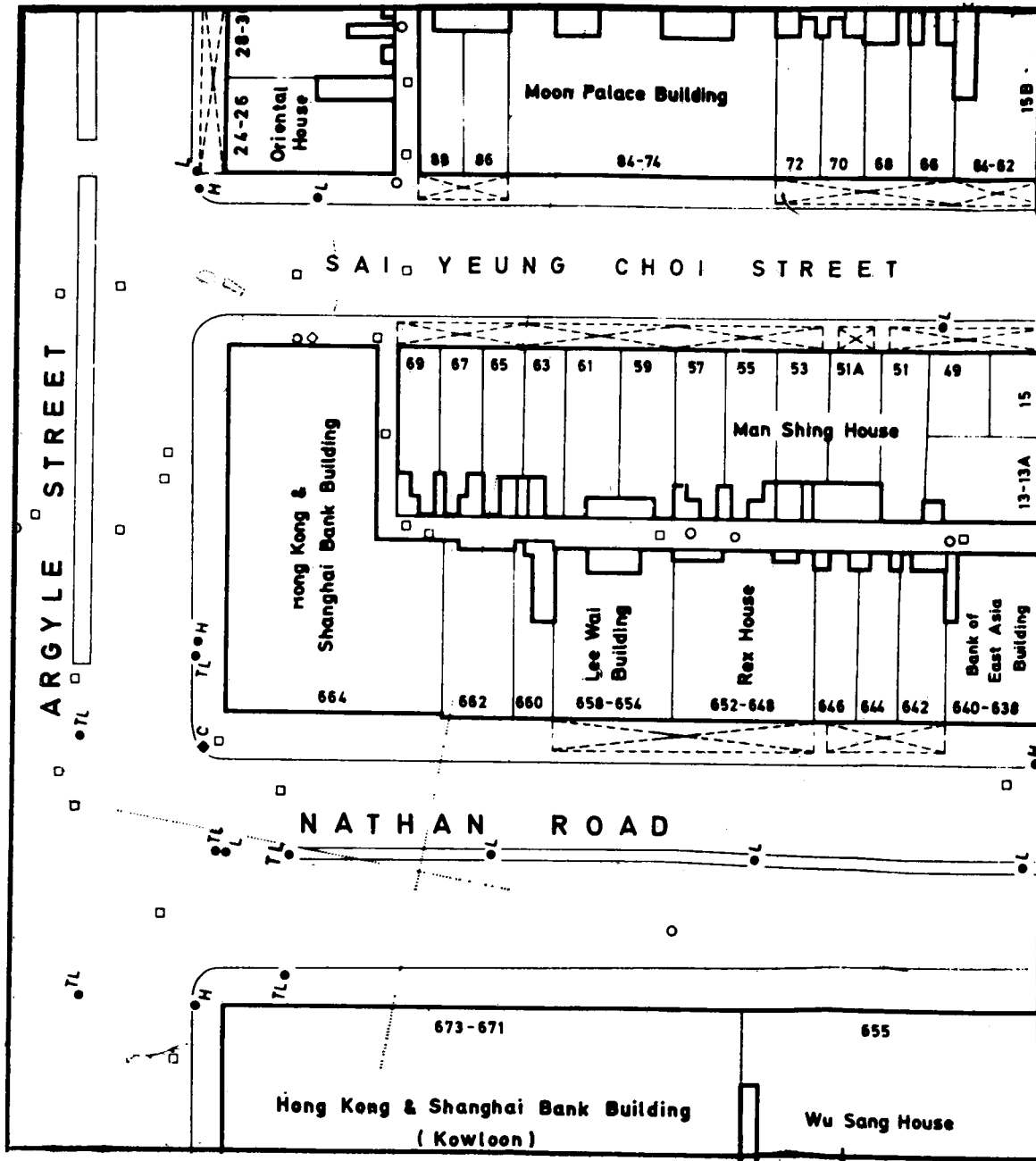


Exhibit 1B

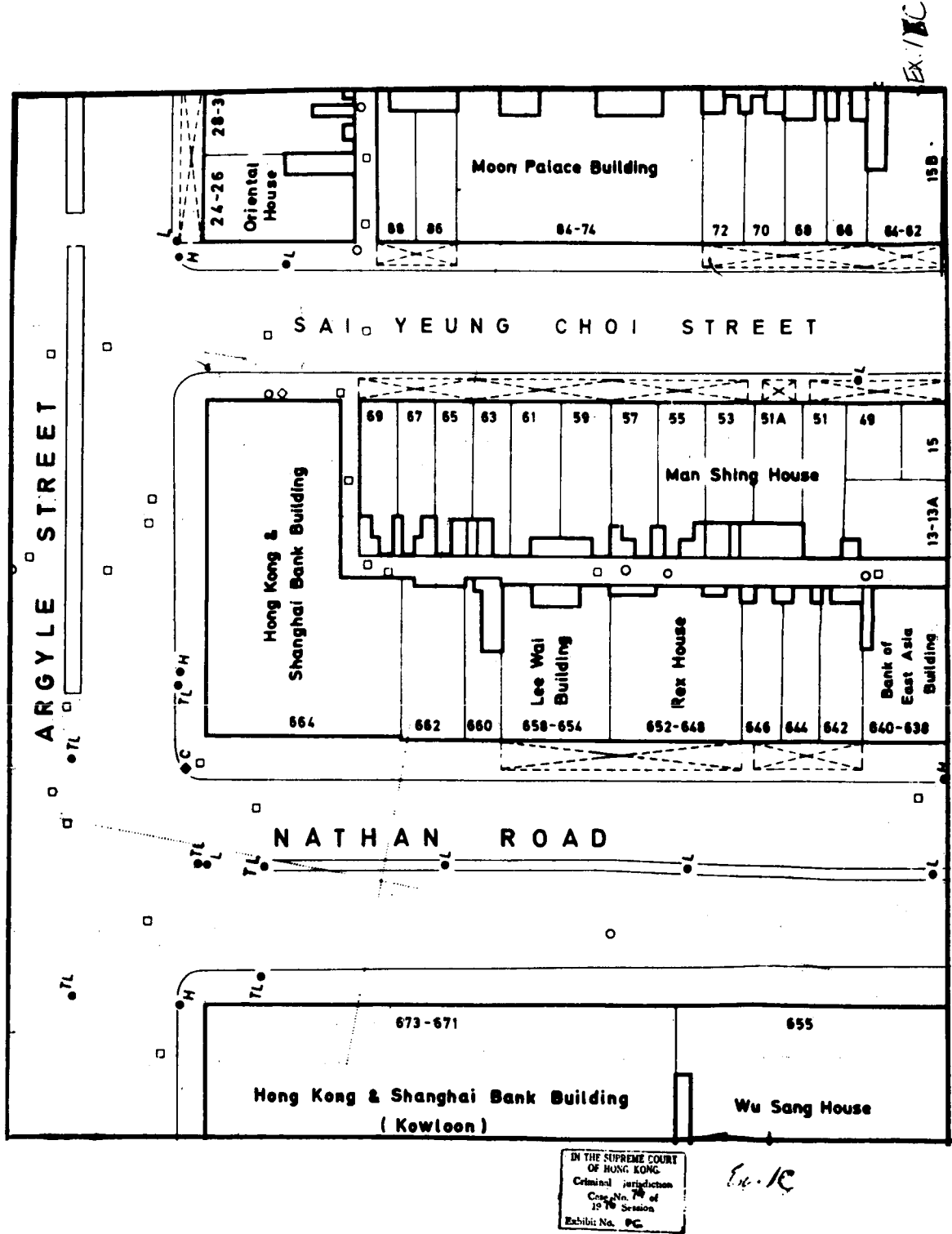
IN THE HIGH COURT OF HONG KONG
Criminal Jurisdiction
Case No. 74 of
1976 Session
Exhibit No. 1B

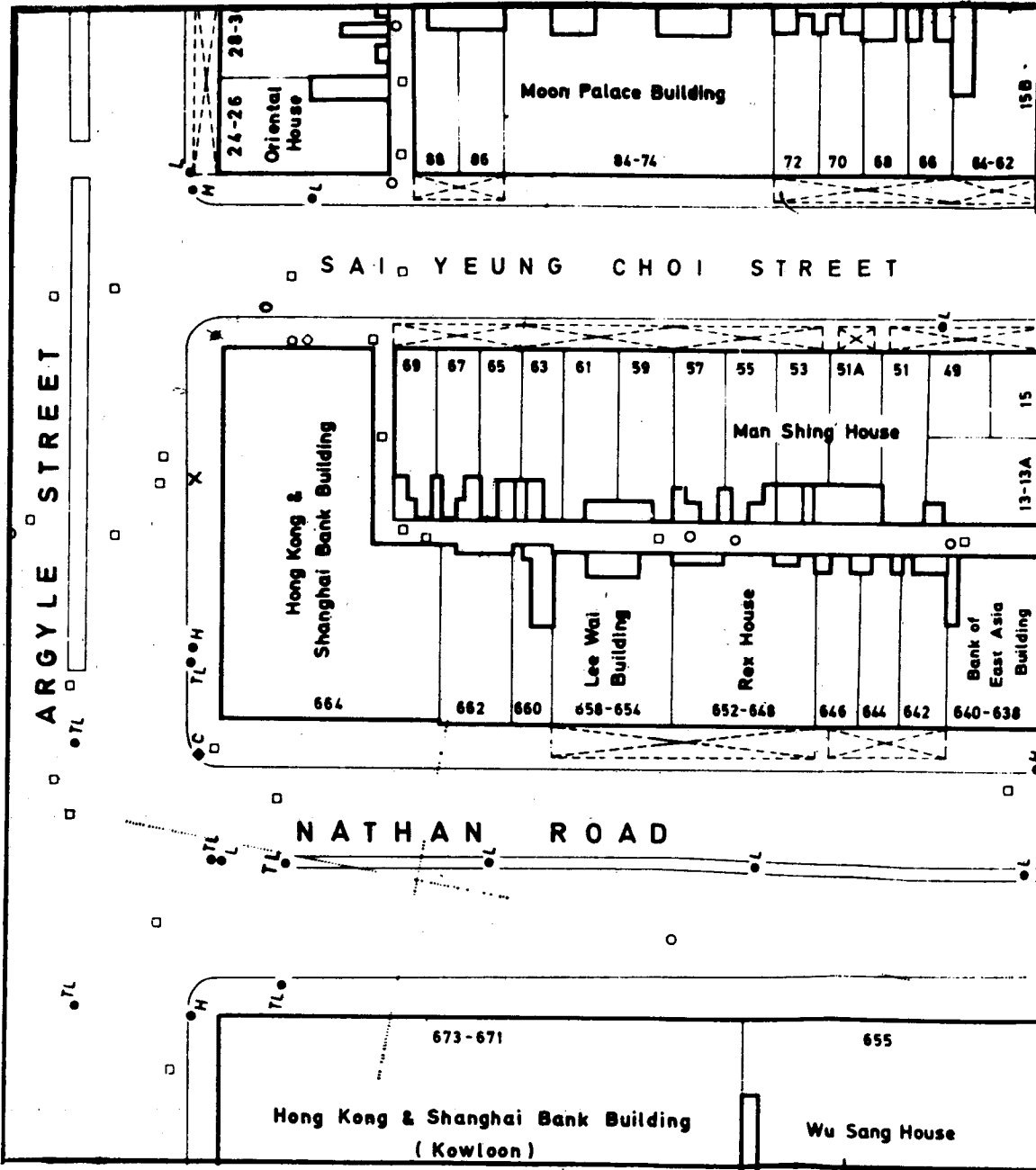
EX. 1B

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Exhibit 1C





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Exhibit 1D

E-1D

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 Exhibit No. 1D

In the High Court of Hong Kong Case No. 74 of 1976
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Exhibit 1E

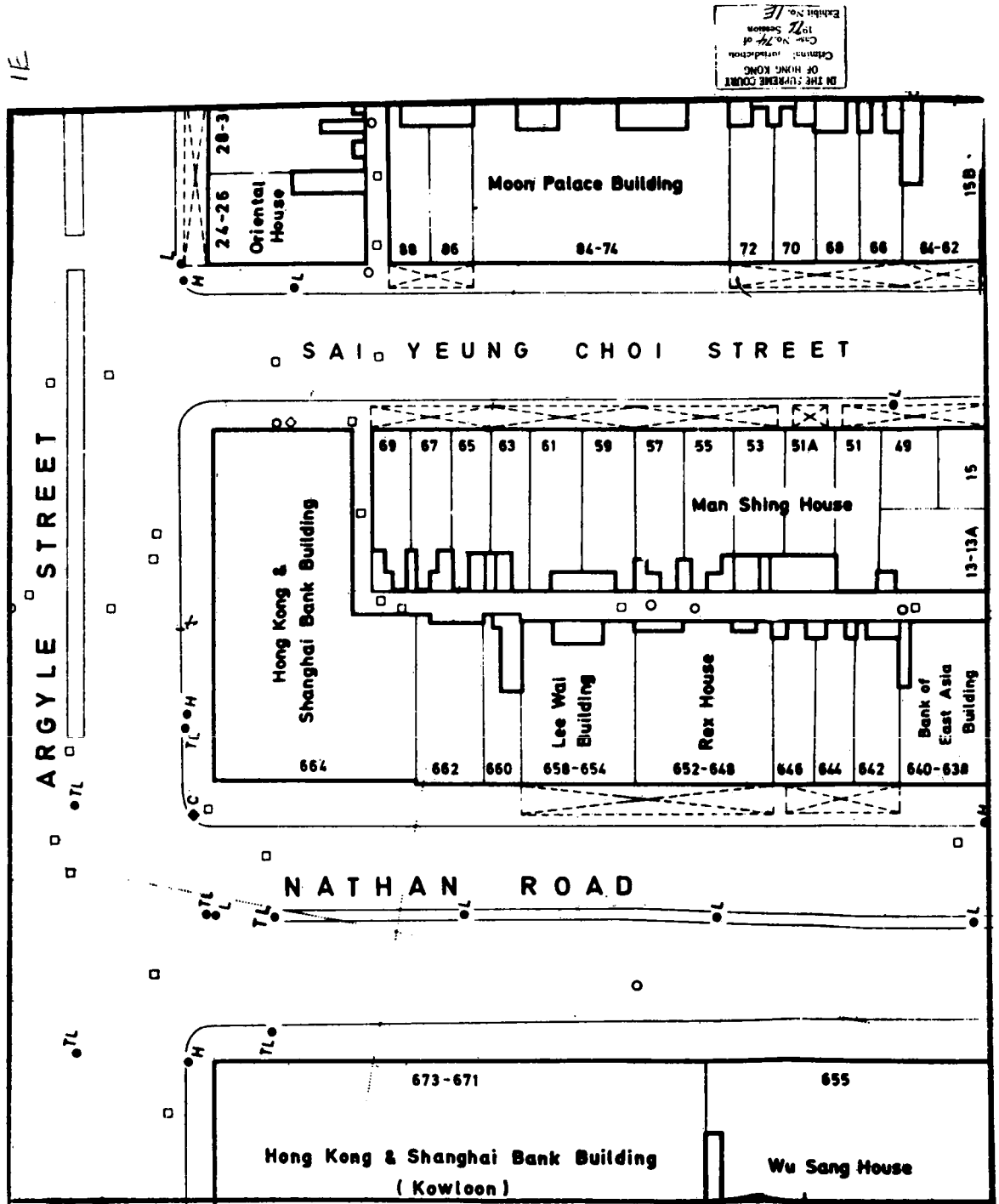
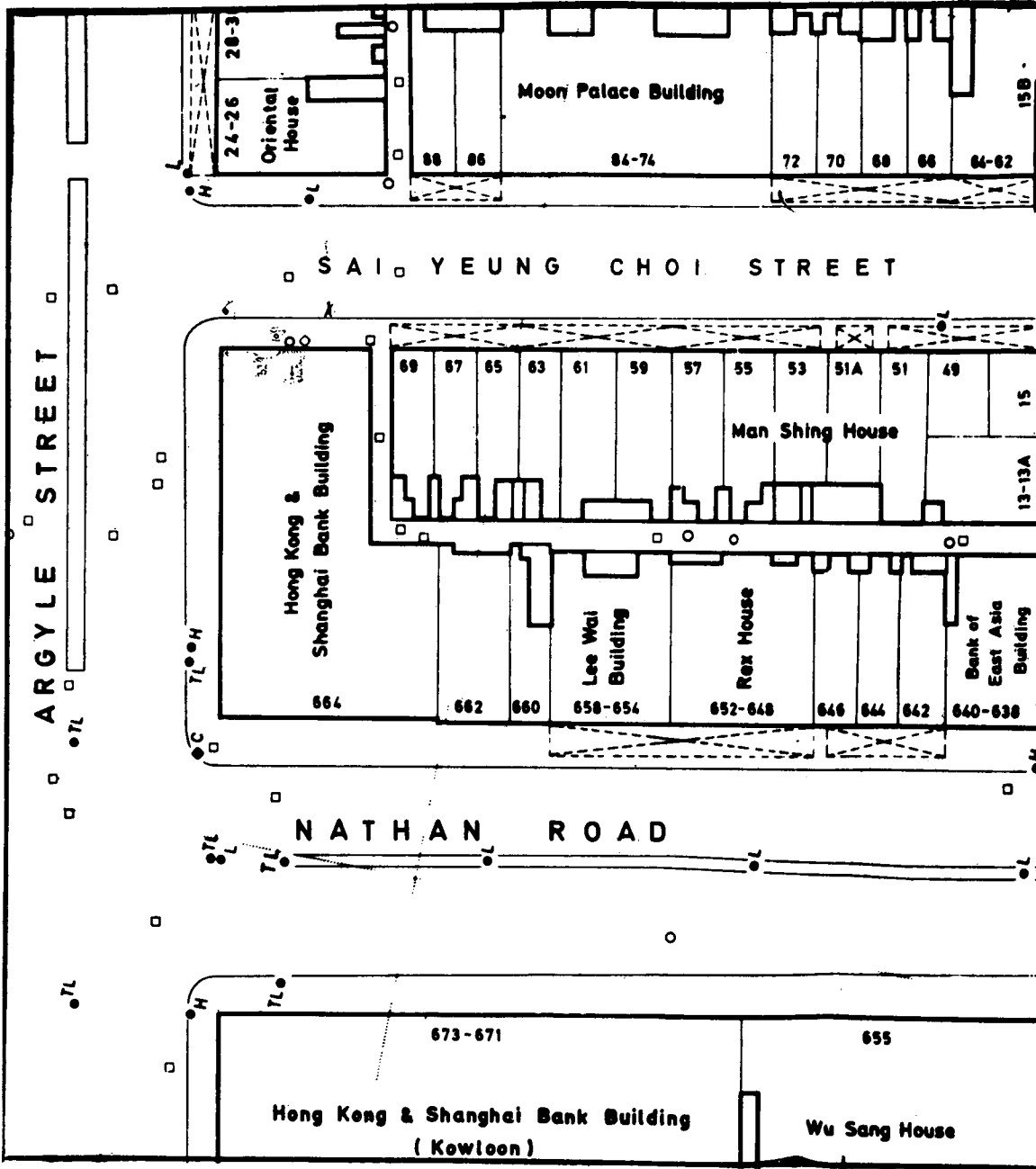


Exhibit No. 1F
 IN THE SUPREME COURT
 OF HONG KONG
 Criminal Jurisdiction
 Case No. 74
 of 1976



In the High Court of Hong Kong Case No. 74 of 1976
 No. 37 Exhibits

Exhibit 1F

In the High Court of Hong Kong Case No. 74 of 1976

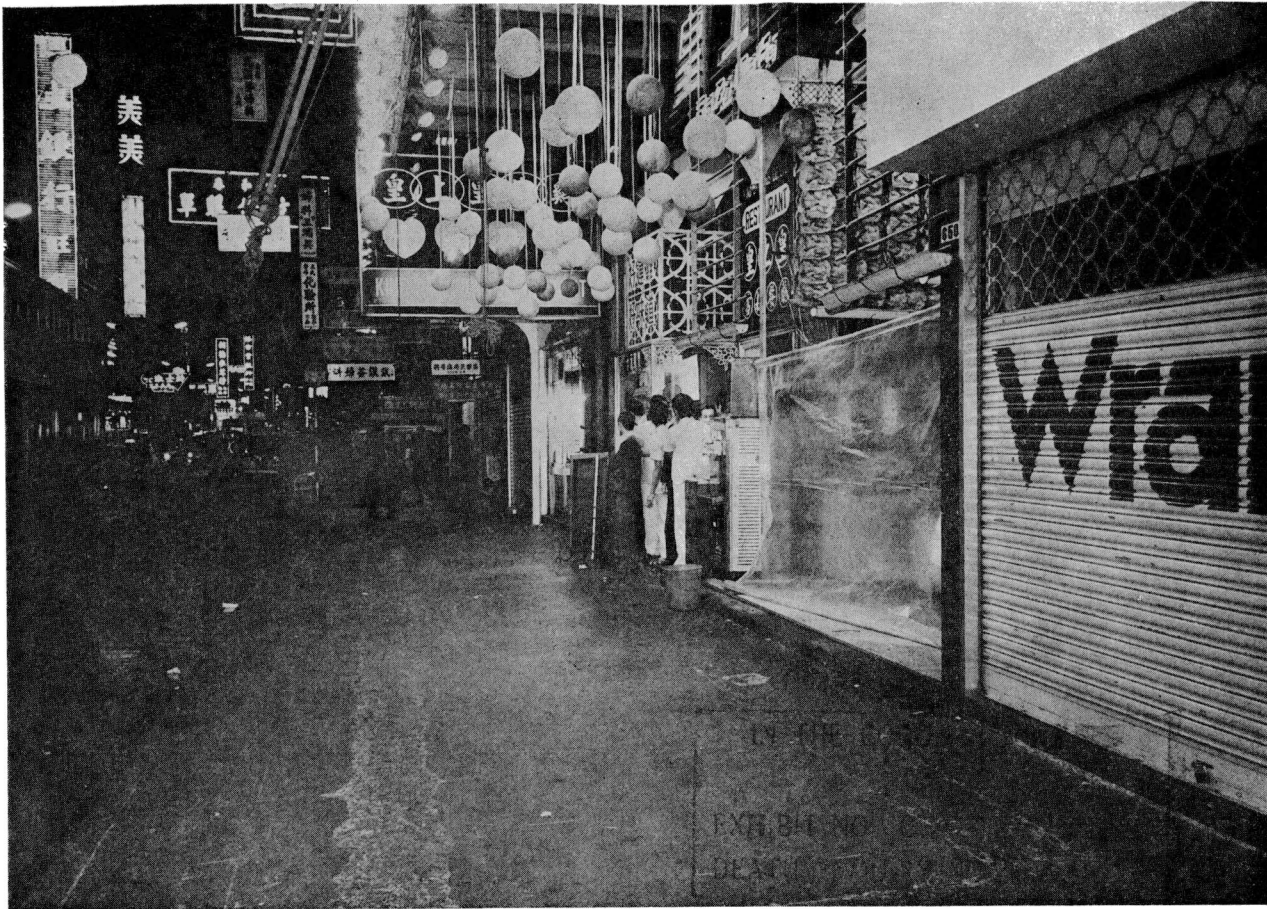
No. 37 Exhibits

Exhibit 2A



Exhibit 2B





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No. 37 Exhibits

Exhibit 2C

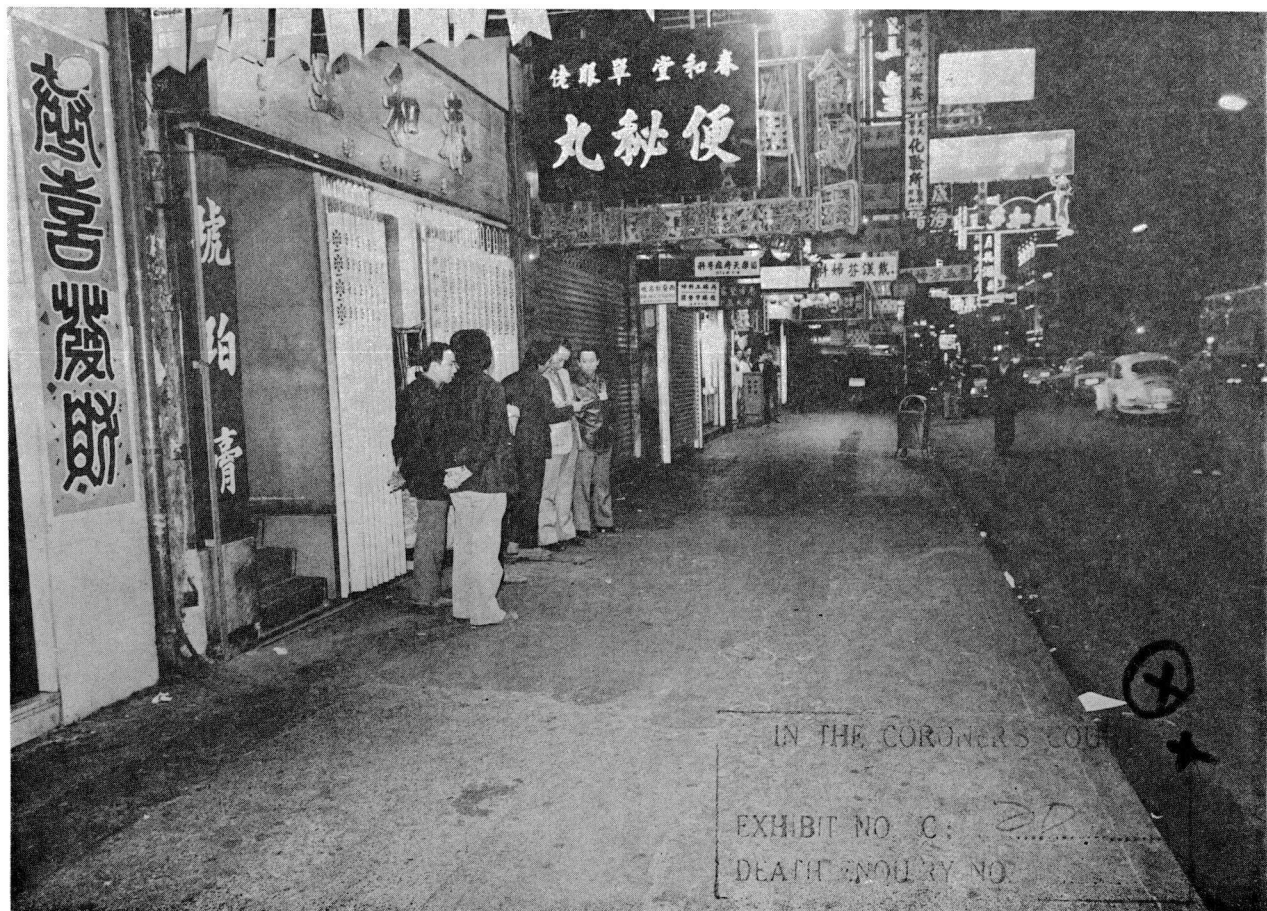


Exhibit 2D

In the High Court of Hong Kong Case No. 74 of 1976

No. 37 Exhibits

Exhibit 2E

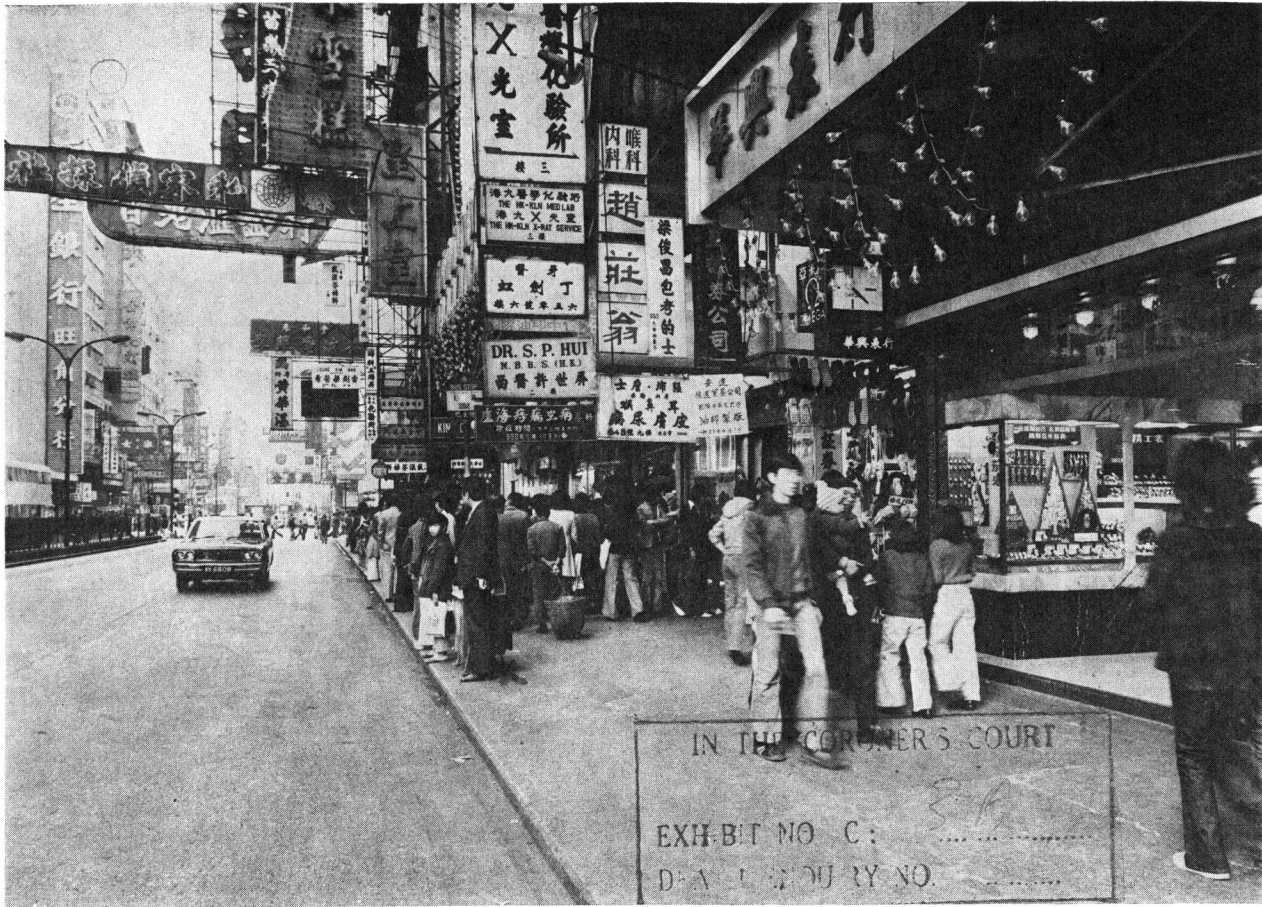


Exhibit 2F



400

IN THE CORONER'S COURT
EXHIBIT NO. C. *DF*
DEPARTMENT OF JUSTICE



In the High Court of Hong Kong Case No. 74 of 1976
No. 37 Exhibits

Exhibit 3A

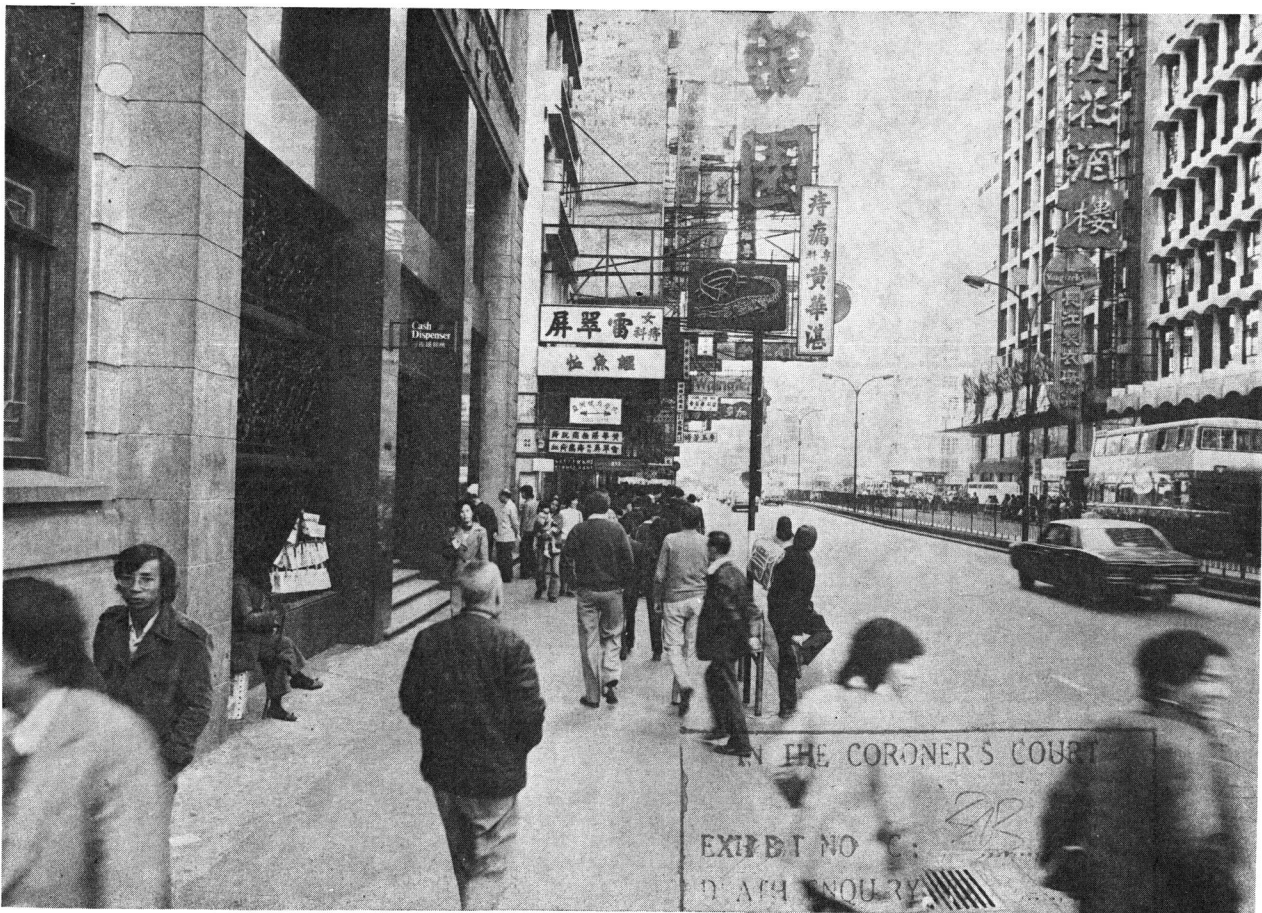


Exhibit 3B

In the High Court of Hong Kong Case No. 74 of 1976

No. 37 Exhibits

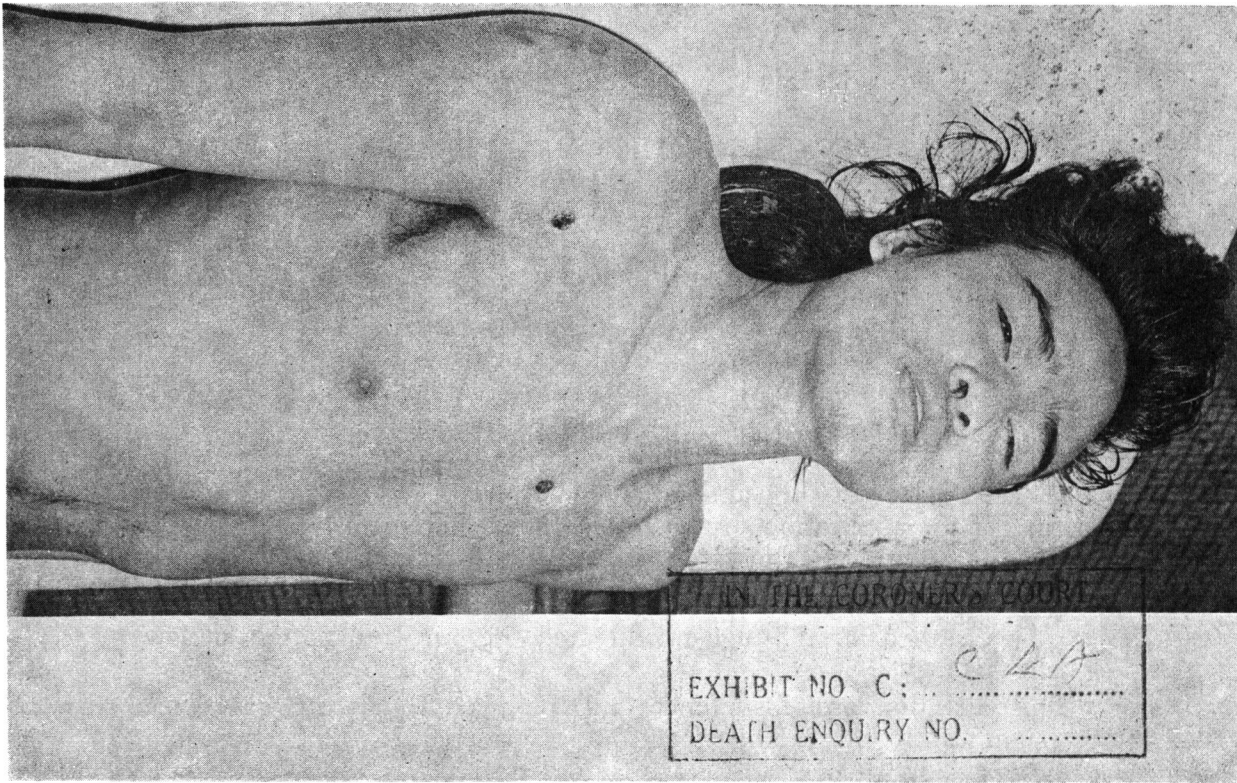
Exhibit 3C



Exhibit 3D

402





In the High
Court of
Hong Kong
Case No. 74
of 1976
No. 37
Exhibits

Exhibit 4A

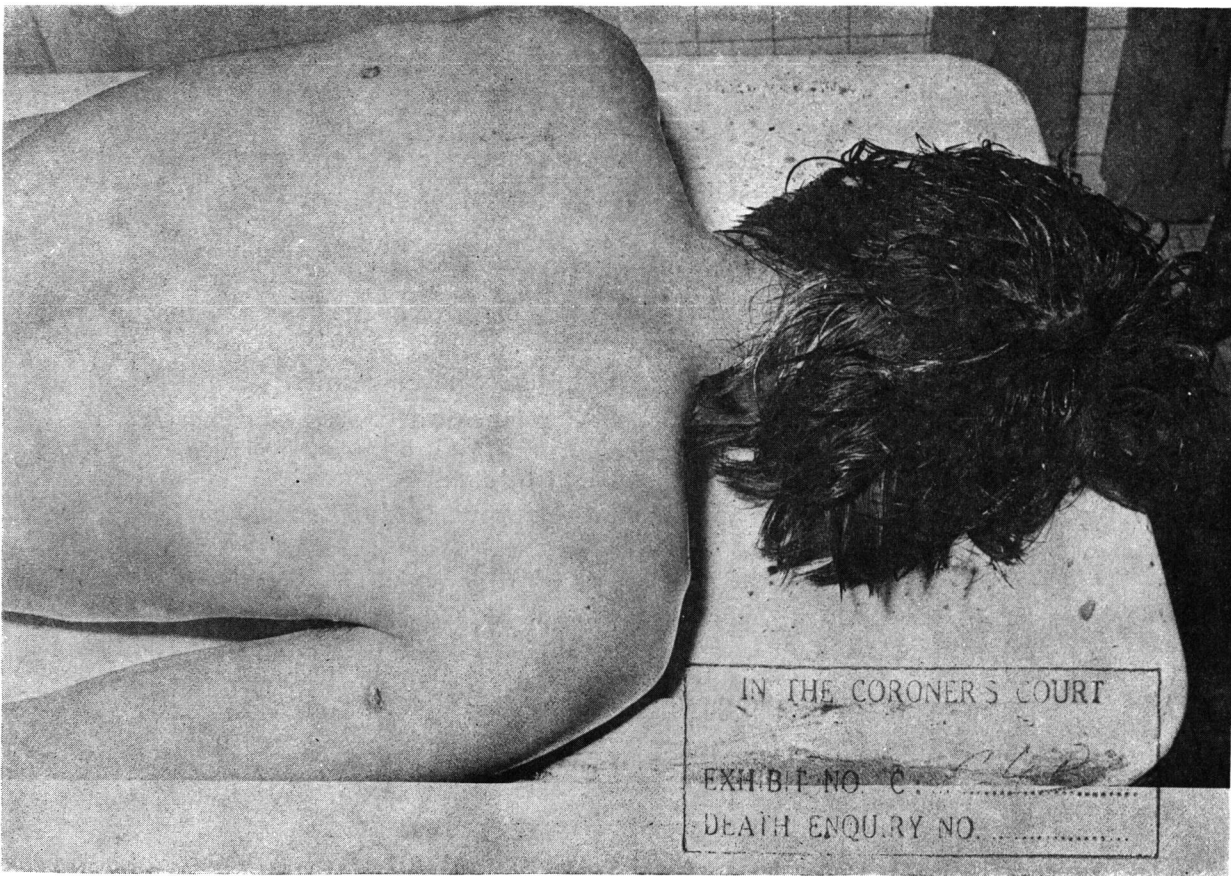


Exhibit 4B

In the Court
of Appeal
No. 1028 of 1976

No. 38
Additional
Grounds of
Appeal

IN THE COURT OF APPEAL
CRIMINAL APPEAL NO. 1028/76, HONG KONG

BETWEEN:—

AU PUI KUEN
and
THE QUEEN

Appellant
Respondent

ADDITIONAL GROUNDS OF APPEAL

TAKE NOTICE that the above-named Appellant intends to rely at the hearing of his application for leave to Appeal herein on the following grounds in addition to those set forth in the Notice of Application for leave to Appeal dated the 1st day of October 1976 namely:— **10**

1. The learned Trial Judge misdirected the Jury on matters of law in that:—
his direction on self-defence and the need to retreat was twice significantly misleading as set out on pages 327R-328F and again on page 328P-R.
P. 366 ll. 3-14
 2. Further or in the alternative the learned Trial Judge failed to direct the Jury on matters of law in that:—
on the same pages regarding the need to retreat he failed to direct them that a failure to retreat is only an element in the consideration upon which the reasonableness of an accused's conduct is to be judged. **20**
P. 365 ll. 9-13
 3. The learned Trial Judge on page 326I-M misdirected the Jury and thereby completely deprived the accused of the defence available to him under Section 101A of the Criminal Procedure Ordinance by limiting such defence in contradiction to the express wording of the Statute to: "When an officer of the law in legal exercise of his duty kills someone".
 4. The learned Trial Judge failed properly to direct and/or inadequately directed the Jury on the following matters of law, namely: **30**
 - (a) the subjective test of the Appellant's state of mind at and just before firing the fatal shot or shots
 - (b) the term "grievous bodily harm" was never defined
 - (c) in the warning to disregard what jurors had seen and heard outside the Court in relation to pre-Trial publicity he failed to take notice of the fact that such publicity was
 - (i) improperly prejudicial to the Appellant's interests
 - (ii) inaccurate and untrue
 - (d) in the direction in relation to murder which was clearly not understood by the Jury as shown by the Foreman's question on page 368I. **40**
- P. 388 l. 24

- (e) on the standard of reasonableness to be applied in respect of Section 101A of the Criminal Procedure Ordinance
- (f) on the duty of a Policeman at all times
 - (i) to prevent crime
 - (ii) to effect or assist in the lawful arrest of offenders or suspected offenders.

In the Court
of Appeal
No. 1028 of 1976

No. 38
Additional
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Appeal

5. The learned Trial Judge failed properly to direct and/or inadequately directed the Jury on the following matters of mixed law and fact, namely:—

- 10 (a) In giving instances of the kind of crime as opposed to a punishable offence that would entitle a policeman to say “I shot in legal exercise of my duty to arrest a criminal” or that “I shot in legal exercise of my duty to arrest a criminal” or that “I shot in order to prevent a crime” page 329 K and L the learned Trial Judge entirely omitted at page 329 S and T to mention the possible crimes that had been committed or might be about to be committed on the Appellant namely:—
 - (i) an attempt to commit robbery in respect of Appellant’s loaded revolver
 - 20 (ii) assault and battery by 3 people all at the same time
 - (iii) further assault with weapons which could have been produced either by the attacker who was grabbing his neck from behind or from the clothing of either of the 2 frontal attackers
 - (iv) possible injury from an affray started by 3 other people
- (b) the possibility of eye-witnesses such as Cheung Him, Wong Moon Lam, Madam Poon Lai Yong and Tam Kin Kwok being totally unreliable even though prompted by the best attempts at honest recollection
- 30 (c) the contradictions in general but particularly with regard to the grabbing of the neck as seen and described by the independent Crown witnesses Tso Siu Tat and Fong Bun when compared with such other independent Crown witnesses as the said Cheung Him, Wong Moon Lam, Madam Poon Lai Ying and Tam Kin Kwok.
- (d) that within their province they had to determine whether the entry and exit wounds might be consistent with Appellant’s evidence.

P. 367 ll. 3-5
P. 367 ll. 15-17

- 40 6. The learned Trial Judge did not adequately fully or fairly put the Appellant’s case to the Jury in that:—
 - (a) he misdirected them as set forth in the first Ground of Appeal
 - (b) he failed to direct them as set forth in the second Ground of Appeal
 - (c) he misdirected them as set forth in the third Ground of Appeal

- In the Court
of Appeal
No. 1028 of 1976
No. 38
Additional
Grounds of
Appeal
- P. 370
ll. 16-17
- P. 377 ll. 46-47
- P. 378 ll. 11-15
- Pp. 380-386
- P. 382 ll. 43-47
P. 383 ll. 8 and 9
- P. 383 ll. 2-4
- P. 383 ll. 40-43
- P. 371 l. 7
- (d) he failed to direct them as set forth in the fourth Ground of Appeal
- (e) there was no credible evidence from any source whatsoever that “the shooting” could have taken place at the junction of Argyle Street and Nathan Road as indicated as a possibility by the learned Trial Judge at page 334U of the record and the widening of the possible location of “the shooting” was unwarranted and misleading
- (f) in quoting that part of Sergeant Yip’s evidence which he recorded on page 338-D of the Record as “The 3 youths started to run, then he fired 2 shots at them” and then later implying at page 338-O,P,Q that it could be accurately evaluated without any reference at all to the type of movement implied by the word “started” the learned Trial Judge gave an impression not justified by the evidence. **10**
- (g) the very detailed analysis which the learned Trial Judge gave to the evidence of the accused from pages 353 to 364 of the Record was in general tendentious and misleading particularly in the following instances inter alia:—
- (i) it was never part of the evidence that the Appellant “brought Lai Hon Shing to the ground” as noted in the sentence on pages 353 to 364 of the Record but rather that the said Lai fell to the ground mortally wounded with blood dribbling from his mouth **20**
- (ii) the critical analysis of the various so called “explanations” enumerated by the learned Trial Judge on page 358-B,D, and L obscure the fact that the Appellant’s acts as opposed to his possible alternative acts were the spontaneous reaction to a moment of extreme danger to him
- (iii) the rhetorical question about merely showing the revolver rather than firing in noted at page 358G to J totally ignores the fact that 2 hands from behind him and 4 hands in front of the Appellant would have been more than capable of snatching an unfired revolver from his hand had he chosen on such an unwise course. **30**
- (iv) the rhetorical question as to whether or not he ought to have turned round to deal with the attacker previously grabbing his neck from behind page 359R to T ignores the fact that the said attacker was by no means “obviously the culprit” since the attacking blows and the search for his firearm had come from those in front of him and high-lighting his dilemma in such a questioning way as “Members of the Jury do you accept it?” was unfair and unreasonable. **40**
- (h) he was unjustified on page 336H in qualifying at the outset the whole of the case for the Appellant with the words “as I can gather”

- (i) his comments on the characteristics of teddy-boys on page 336I to M were unjustifiably critical of the Appellant since 2 Crown witnesses shared the same opinion.
7. The verdicts of the Jury were perverse contradictory and ambiguous in that they had to assume sufficient malice on the part of the Appellant to commit murder when he was being or had been attacked by 3 persons together and yet after having had a cooling off period during which he chased the deceased over a distances in excess of 100 yards and having caught up with the deceased he then was found to have insufficient malice even to aim a shot with the intent of doing grievous bodily harm.
8. The verdict of the Jury of guilty of murder cannot properly be supported by the evidence and the said verdict was unsafe and unsatisfactory.
9. When putting manslaughter as an alternative verdict the learned Trial Judge failed sufficiently or at all to direct them on the subjective approach when considering provocation.
10. The learned Trial Judge wrongfully refused to withdraw the case from the Jury at the close of the prosecution case in face of the following consideration:—
- (a) on the totality of the evidence adduced by the prosecution the case was so tenuous as to make it unsafe or unsatisfactory to go to the Jury even with a proper direction
- (b) there had been no or no sufficient evidence adduced by the prosecution to negative
- (i) self-defence
- (ii) police rights and duties
- (iii) persons rights under S. 101 A of the Criminal Procedure Ordinance
- (c) his own decision in Criminal Case Number 63 of 1975, the Queen against Hui Kwok Hung, far from being distinguishable from the case against the Appellant, should have strengthened the decision to withdraw the Appellant's case from the Jury in that:—
- (i) the crime of assault against the Appellant was for more severe and at far closer quarters than the manner in which the said Hui had been assaulted
- (ii) the degree of apprehension of the Appellant must on the fact of being involved in a 3-to-1 conflict have been far more severe than that occasioned to the said Hui alone
- (d) between the said "Coroner's verdict" and the date of the Appellant's indictment for murder there had been a persistent campaign in certain sectors of the Press and Radio so that a

In the Court
of Appeal
No. 1028 of 1976
No. 38
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grave and public contempt of Court had occurred of such a nature that:—

(i) the learned Trial Judge ought to have taken judicial notice of it

(ii) the Appellant was deprived of the possibility of a fair Trial.

11. In all the circumstances of the case, the verdict is unsafe or unsatisfactory.

AND FURTHER TAKE NOTICE that the Appellant will ask for an order that his conviction be quashed.

Dated the 15th day of January 1977.

10

D'ALMADA REMEDIOS & Co.
Solicitors for the Appellant

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
Criminal Appeal No. 1028 of 1976

In the Court
of Appeal
No. 1028 of 1976
No. 39
Notice of
Resumption
of Hearing

BETWEEN

AU PUI-KUEN
and
THE QUEEN

Appellant
Respondent

NOTICE OF RESUMPTION OF HEARING

TAKE NOTICE that the hearing of the appeal above-mentioned will
10 resume before the Court of Appeal, Thursday the 3rd day of February,
1977, 10.00 o'clock in the forenoon.

Dated this 26th day of January, 1977.

(H. M. HASSAN)
p. Registrar.

IN THE HIGH COURT OF HONG KONG
CRIMINAL JURISDICTION
Case No. 74 of 1976

No. 40
Order for
Retrial

THE QUEEN v. AU PUI-KUEN

To: The Registrar, High Court.

20 PURSUANT to section 83E of the Criminal Procedure Ordinance,
Cap. 221, I hereby direct that the abovenamed AU Pui-kuen be retried
in the High Court.

Dated this 17th day of February, 1977.

(G. C. BRIGGS)
President, Court of Appeal.

c.c. The Hon. Attorney General.

In the Privy
Council
No. 39 of 1977

No. 41
Affidavit of
Leonardo
Jose
D'Almada
Remedios

IN THE PRIVY COUNCIL
THE COURT OF APPEAL OF HONG KONG

BETWEEN

AU PUI KUEN
and
THE QUEEN

Petitioner

Respondent

I, LEONARDO JOSE D'ALMADA REMEDIOS of 22 Kent Road, Kowloon Tong, Kowloon in the Colony of Hong Kong, Solicitor of the Supreme Courts of England and Wales and of Hong Kong make oath and say as follows that:—

1. I was the Solicitor assigned by the Director of Legal Aid for and had the conduct of the case of the abovenamed Petitioner for his trial before the Honourable Mr. Justice Li and a jury in the High Court of Justice of Hong Kong, for his Appeal to the Court of Appeal of Hong Kong from his conviction for murder by the aforesaid jury and for his applications concerning Orders for a re-trial made by the Court of Appeal on 3rd and 17th of February 1976. 10
2. On the advice of counsel I wrote to the Registrar of the Supreme Court of Hong Kong who is ex officio the Master of the Crown Office in terms of a letter dated the 13th of June 1977 a copy whereof is now produced and shewn unto me marked "L.J. d'A.R.1". 20
3. Although there was no written response to my said letter, I received telephone call from the Clerk of the Court who supplied me with a copy of a document bearing the date 3rd of February 1976 which I believe to be a judgment of The Honourable Mr. Justice Huggins a Judge of the Court of Appeal of Hong Kong.
4. The said judgment has not, to my knowledge, been delivered or "handed down" and no copy was ever sent or supplied to me before 14th of June 1977. I first came to know of this judgment when I had occasion to search the Court record prior to my writing this letter, consequent upon receipt of a letter from Messrs Stephenson Harwood informing me of the presence in the record of a judgment dated 3rd February, 1977. 30
5. There is now produced and shewn unto me marked "L.J. d' A.R. 2" a true photostat copy of the said document entitled "judgment".

SWORN this 24th day of
June 1977 at the Courts
of Justice
Victoria in the Colony
of Hong Kong
Before me

A Commissioner for Oaths 40
MAK CHEK HUNG
Clerk-in-charge, Supreme Court Registry
Judiciary.

Hong Kong, 13th June, 1977

The Registrar,
Supreme Court,
Hong Kong.

In the Privy
Council
No. 39 of 1977
No. 42
Exhibits of
Leonardo
Jose
D'Almada
Remedios
"L.J.d'A.R.-1"

Dear Sir,

Re: Rv. Au Pui Kuen
(*Appeal to Privy Council*)

We have heard that a written judgement by the Court of Appeal (relating to either the appeal or the Order for re-trial) has appeared.

10 We do not appear to have been notified nor have we received a copy of such a judgement. If there is such a judgement we would be obliged if we could kindly supply as with a copy.

Thanking you,
We remain,

Yours faithfully,

"L.J.d'A.R.-1"

IN THE SUPREME COURT
Criminal Appeal 1976 No. 1028

"L.J.d'A.R.-2"

BETWEEN

20

AU PUI-KUEN
and
THE QUEEN

Appellant

Respondent

Coram: Briggs, C. J., Huggins and Pickering, JJ.A.

JUDGMENT

Huggins, J. A.:

30 On 21st January we allowed the Appellant's appeal against his conviction and pronounced in open court that there should be a new trial. Counsel now moves us to reconsider the question whether there should be a new trial and the first matter to be decided is whether we have jurisdiction to entertain such an application. It is conceded that as regards the substantive appeal we are functus officio, but the argument is that an order for a new trial is not perfected until it has been communicated to the court of trial. The same point arose in England in *Reg. v Cross* 1973 1 Q.B. 937, but the case is distinguishable in two ways. First, in England a new trial must be held in the same court as that in which the first trial was held: in Hong Kong the new trial is held

In the Privy
Council
No. 39 of 1977
No. 42
Exhibits of
Leonardo
Jose
D'Almada
Remedios
"L.J.d'A.R.-2"

"before such court as the Court of Appeal may direct (being the High Court or, if the offence is within the jurisdiction of the District Court, the District Court) or, if no such direction is given, before the court by which he was originally tried". (Section 83F of the Criminal Procedure Ordinance).

Secondly, in England the Criminal Appeal Rules expressly require that the order be transmitted to the court of trial, whereas we have no such provision. We have been referred to s.83(3) of the Criminal Procedure Ordinance, which is in these terms:

"An order of the Court of Appeal quashing a conviction shall, except 10
when under section 83E the appellant is ordered to be retried,
operate as a direction to the court of trial to enter, instead of the
record of conviction, a judgment and verdict of acquittal."

Mr. Jackson-Lipkin submits that it is implicit that, to give effect to the exception, the court of trial must be given notice of the order and that the order cannot have been perfected until such notice has been given. In the majority of cases the court of trial will hold the new trial, but where the new trial is to be held before another court one would have thought that it was equally important that that court should be given 20
notice, although no requirement apparently exists as to this. Section 83F further provides that any new trial shall be "on a fresh indictment preferred by direction of the Court of Appeal", but Mr. Penlington argues that this is a purely procedural matter and it has not been contended that service of a direction on the Attorney General is a necessary step in the perfection of the order. However, we agree that a notice to the court of trial is necessary and as no such notice has yet been given, the notice having been withheld when the present application was set down for hearing, we have jurisdiction to reconsider the question whether an order 30
ought to be made.

It remains to be decided whether we ought to exercise that jurisdiction. As to this Mr. Jackson-Lipkin says first that no order for a new trial ought to have been made because the court did not give proper consideration to the whole of the evidence. Indeed, he goes further and says that because all the evidence was not considered on the hearing of the appeal that precluded any order for a new trial. What happened was that we heard full argument on only one point on the appeal, a point of law, and came to the conclusion that the appeal must be allowed on that point. It therefore became unnecessary to hear counsel on the grounds of appeal which complained that the evidence was unsatisfactory. Instead we went 40
on to hear argument on the issue of a new trial. Counsel for the Appellant did draw attention to the fact that we had not heard all the arguments he would have advanced on the appeal had the matter taken a different course and, in particular, he mentioned that the evidence was contradictory. He did not, however, deal with his criticisms of the evidence in detail,

apparently thinking that it was not open to us to conduct such an enquiry and that, even if it was, he should not do so unless we asked him. There may have been some misunderstanding here and we have no wish to blame counsel for what occurred. At the same time we cannot accept that the mere fact that the evidence has not been considered in detail on the hearing of an appeal prevents a subsequent consideration of the evidence or that it is incumbent on the court to tell counsel what matters he should put before the court in relation to the issue whether there should be a new trial. We did not understand that counsel was waiting

10 for an indication from us that he should, if he thought it necessary, address us fully on the evidence and we assumed that he had said all that he wished to say. If our understanding was correct we were, in our view, justified in making our decision, for what has to be given proper consideration is such of the evidence as counsel thinks it appropriate to draw to our attention: we cannot be required to go away and read all the evidence for ourselves. The learned judge had drawn the attention of the jury to various inconsistencies in the evidence and of those we were aware when we made our order. Counsel wishes now to draw our attention to other inconsistencies and we are reluctant to insist that it is too late if there is a

20 possibility that we might have come to a different conclusion had we known of them.

Secondly, Mr. Jackson-Lipkin says that we might have come to a different conclusion because the strength of the case against the Appellant is an important factor when considering whether to order a new trial. Again he goes further and submits that the evidence must be such that there is "something very considerably stronger than a possibility that the case will get home". Indeed, at one stage he appeared to be saying that there must be at least a probability of a conviction on the new trial. He referred us to a number of cases, some of which lend a measure of support

30 to his argument. We are bound to say that in our opinion some of the dicta go very much too far. We view with horror the suggestion that the making by this court of an order for a new trial could, or would, be interpreted as an indication that we thought the appellant was guilty and ought to be convicted at the new trial. That would make a mockery of the administration of justice. Apart from that, if we were certain of the appellant's guilt we would, where that course was open to us, apply the proviso rather than order a new trial. Even worse was the contention that by embarking upon an examination of the evidence after the dismissal of the appeal we would appear to be "straining to order a new trial". We do

40 not believe that the sight of a court acquainting itself with matters relevant to the decision of an issue properly before it could ever be interpreted by a reasonable person as indicating a desire to reach a particular conclusion and we are sad that any one could suggest that it could. The true principle is that the court will *not* order a new trial where a conviction is improbable or where a conviction will, assuming the same evidence is given, be unsafe or unsatisfactory. In any other case the court will consider the strength of the evidence as just one of the factors

In the Privy
Council
No. 39 of 1977

No. 42
Exhibits of
Leonardo
Jose
D'Almada
Remedios
"L.J.d'A.R.-2"

relevant to the determination of what are the interests of justice. It is a factor which in some cases may assume greater importance than in others. In so far as the judgment in *Aplin v Reg.* Cr. App. No. 707 of 1976 decided that the prospect of a further unsuccessful prosecution is always of "paramount" importance we think it went too far.

Having said all this we think that the Appellant should not suffer from any misunderstanding there may have been and we are prepared to hear his counsel address us further upon the evidence. The amount of detail into which it will be necessary to go is a matter which we must leave to him at this stage.

10

3rd February 1977.

"L.J.d'A.R.-2"

*In the matter of an application
for special leave to appeal by*

AU PUI KUEN

In the Privy
Council
No. 39 of 1977

No. 43
Amended
Agreed Facts

It is agreed between Counsel for the Petitioner and the Crown as follows:

1. That an inquest was held in Hong Kong from the 2nd day of February 1976 to the 20th day of May 1976 into the death of LAI Hon-shing on the 9th day of January 1976.
2. The an all Chinese Coroners jury of three brought in a verdict of
10 “excusable homicide” having heard evidence from 33 witnesses, including the Petitioner who was warned before giving evidence that he was not obliged to do so.
3. That an indictment against the Petitioner was filed in the High Court pursuant to leave granted by the Honourable the Chief Justice, based on the evidence called at the inquest.
4. That the indictment filed in pursuance to such leave contained two counts, one for murder and one for shooting with intent to cause grievous bodily harm. This second count was amended by consent and the counts
20 as put to the jury in the High Court were as set out on Page 26 of the record.
5. The trial in the High Court was before a jury of seven, six members being European and the seventh Chinese. The trial commenced on the 20th day of September 1976 and concluded on the 30th day of September 1976. The jury returned a verdict of guilty in respect of the murder count and not guilty in respect of the shooting with intent count. The Petitioner was sentenced to death.
6. On the 21st day of January 1977 an application for leave to appeal
30 against his conviction was heard by the Court of Appeal of Hong Kong (Briggs C. J. Huggins and Pickering JJ. A.). There were eleven grounds of appeal and Counsel for the petitioner argued on the first four of these, which were points of law. At the conclusion of those arguments Counsel for the Petitioner invited the Court, if they considered there was merit in the points already taken, to call on the Crown to answer so as to avoid hearing lengthy argument on the grounds of mixed law and fact.
7. The Crown was accordingly called on to answer on grounds one to four and the Director of Public Prosecutions did so, following which Counsel for the Petitioner replied. The Court then retired and considered its decision on the points argued. On its return the President said that
40 the Court was of the opinion that the direction given by the learned trial Judge at page 327, lines M to P was wrong in that it said that only if his life was threatened could a person kill in self-defence. That was not the law and it put the requirement for the justified use of a firearm in self-defence too high.

8. The President of the Court of Appeal then stated that the application for leave to appeal would be granted, the appeal would be allowed and the conviction quashed. He then invited Counsel to make submissions on the question of re-trial. The Director of Public Prosecutions stated that the Crown considered that there should be a re-trial and Counsel for the petitioner urged on his behalf that the Court could not and should not make such an order and it would not be just to so order. After a brief retirement the President of the Court announced that there would be an order for a re-trial by a majority of the Court.

9. In open Court on the 3rd day of February 1977 the Chief Justice **10** gave it as his view that rightly or wrongly having read the whole of the evidence it (the evidence) did not stand up to being sufficient to amount to conviction.

10. On the 3rd day of February Counsel for the Petitioner moved the Court of Appeal to consider further argument on the question of a re-trial and this application was granted as the Court considered that no order having been served on the trial Judge under Section 83E(1) it was not functus officio. The President of the Court then stated that the order would not be reversed but it would not be issued until Counsel had had an opportunity to address the Court on the evidence which had been **20** called at the trial.

11. On the 16th and 17th days of February 1977 Counsel for the Petitioner and the Director of Public Prosecutions presented further argument to the Court of Appeal as to the sufficiency of the evidence. At the conclusion of this argument the President of the Court stated that the previous order for a re-trial would be recalled, the Court had reconsidered whether such an order should issue and by a majority had decided to do so.

Dated this day of July, 1977.

..... **30**
Counsel for the Petitioner

.....
Director of Public Prosecutions

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of July 1977

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

In the Privy
Council
No. 39 of 1977
No. 44
Order of 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 21st day, of July 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 Au Pui-kuen in the matter of an Appeal from the Court of Appeal of Hong Kong between the Petitioner and the Attorney General of Hong Kong Respondent setting forth that the Petitioner prays for special leave to appeal *in forma pauperis* from an order of the Court of Appeal of Hong Kong delivered orally on the 17th February 1977 affirming its previous Order for a re-trial of the Petitioner whose conviction of murder was quashed by the said Court: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal
20 *in forma pauperis* against the Order made by the Court of Appeal of Hong Kong on the 17th February 1977 and for further or other relief:

 “*The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Order made by the Court of Appeal of Hong Kong on the 17th February 1977:*

30 “*And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal.*”

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.

40 Whereof the Governor or Officer administering the Government of Hong Kong and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

In the Privy
Council
No. 39 of 1977

No. 45
Affidavit of
Francis Eddis

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM
THE COURT OF APPEAL OF HONG KONG

BETWEEN:—

AU PUI-KUEN *Petitioner*
and
THE ATTORNEY GENERAL OF HONG KONG *Respondent*

I, FRANCIS EDDIS, of Francisville, Keng Hau Road, New Territories, Hong Kong, Barrister-at-Law MAKE OATH and say as follows that:—

1. I am a Barrister-at-Law of Gray's Inn and a member of the Hong Kong Bar and I carry on practice as such at 1903 Hang Chong Building, Queen's Road, Central, Hong Kong. 10
2. I was instructed as Counsel for the Petitioner for the major part of the Coroner's Inquest held as the result of a shooting incident which took place on the 9th of January 1976 and which involved the Petitioner and 3 young males. The said inquest took place at various dates during the months of February, March, April and May 1976.
3. I was instructed as Junior Counsel
 - (a) for the defence of the Petitioner when he stood his Trial for the offence inter alia of murder, such Trial starting on the 20th day of September 1976, 20
 - (b) at the Petitioner's hearing before the Court of Appeal on the
 - (i) 21st and 22nd days of January 1977
 - (ii) 3rd day of February 1977
 - (iii) 16th and 17th days of February 1977.
4. On some day in the month of June 1977, the precise date of which I cannot now remember, Mr. Remedios of those instructing me as Junior Counsel telephoned me and informed me that some written document had appeared purporting to be a Judgment in relation to the proceedings or some of them held in the Court of Appeal. 30
5. Subsequently a copy of the said document purporting to be a Judgment of the Court of Appeal was forwarded to me by Instructing Solicitors.
6. After reading it and in consultation with leading Counsel, M. H. Jackson-Lipkin, Q.C., we agreed together that in view of the serious errors contained in the said document coupled with the unexplained way in which it had appeared leading Counsel would
 - (a) inform the Director of Public Prosecutions about the said document and its errors
 - (b) advise the Director of Public Prosecutions that a letter in respect of which he would be asked to concur would be written to the Chief Justice. 40

7. Accordingly leading Counsel wrote to the Chief Justice in the terms of the letter dated 22nd day of June 1977 a copy of which is now shewn to me and marked "FE-1".
8. On the 21st day of June 1977 pursuant to the said letter a hearing in the Chambers of the Chief Justice took place at which were present
- (a) The Director of Public Prosecutions
 - (b) M. H. Jackson-Lipkin, Q.C.
 - (c) Myself.
9. The document purporting to be a Judgment had in fact been written
- 10 by Mr. Justice Huggins, a Justice of Appeal, and he was not apparently available on the said 27th day of June for the Chief Justice to discuss with him the contents of the letter, exhibited as "FE-1", and the matters raised at the hearing in the Chief Justice's Chambers. Accordingly the hearing was adjourned.
10. On the 28th day of June 1977 the adjourned hearing took place in the Chief Justice's Chambers with the same parties being present.
11. The Chief Justice advised that he had discussed the matter with Mr. Justice Huggins and told us that Mr. Justice Huggins felt that no alteration could or should be made.
- 20 12. In the course of the said adjourned hearing the Chief Justice was asked whether he could assist us in pinpointing the date when the document was in fact put in the Court file. His answer, which I can remember, if not verbatim, at least very closely repeating his actual words, were:—
- "It is the practice, rightly or wrongly—I suspect wrongly for one of us to write a Judgment and simply put it in the file, sometimes days sometimes weeks later".
- To the best of my recollection leading Counsel then asked the Chief Justice:—
- "Could it be months?" to which the Chief Justice replied "Yes".
- 30 13. I am informed by leading Counsel and verily believe that his researches shew that as a matter of practice going back for a number of years a copy of each such "Judgment" is also given to the librarian of the Supreme Court Library for filing. It was thence that the Clerk of the Court supplied a copy to Mr. Remedios.

SWORN at the Courts of Justice,
Victoria Hong Kong this 18th
day of January, 1978

FRANCIS EDDIS
Before me,
Commissioner of Oaths
MAK CHEK HUNG
Clerk-in-charge, Supreme Court Registry
Judiciary.

In the Privy
Council
No. 39 of 1977

No. 46
Exhibit of
Francis Eddis

EXHIBIT "FE-1" REFERRED TO IN THE AFFIDAVIT OF
FRANCIS EDDIS SWORN ON THE
18TH DAY OF JANUARY, 1978.

22nd June, 1977

The Honourable The Chief Justice,
Court of Appeal,
Supreme Court Building,
Jackson Road,
HONG KONG

Dear Chief Justice,

Au Pui-kuen v. The Queen

10

I refer to the above-named Appeal in which, you may recall, I appeared for the Appellant with Mr. Francis Eddis and Mr. Ross Penlington appeared for the Respondent. I write this letter with the consent and approval both of my junior and of Mr. Ross Penlington, each of whom considered its content before I signed it.

I refer to a letter sent in this matter by Mr. d'Almada Remedios sent to the Registrar on 13th June, of which I enclose a copy.

The result of Mr. d'Almada Remedios' letter was that the Registrar sent him a document dated 3rd February entitled "Judgment". That judgment has been neither delivered nor "handed-down" and it was by chance only that I heard of its existence and caused Mr. d'Almada Remedios to write the letter referred to above. 20

As a result of the judgment never having been delivered in the presence of counsel for either party, it, unhappily and unfortunately, contains certain errors, two of which appear to be of considerable importance.

The latter two are of such weight that I feel duty-bound to invite your intention to them and they are as follows:—

1. I remember and my Junior has a note that, when you announced the order of the Court on 17th February (which you made in fact on 30 3rd February), you commenced with the words, "you will remember that we recalled our previous order . . .", as indeed you had. From the document dated 3rd February it appeared that all you were going to permit on that day was that counsel should be allowed to "address us further upon the evidence". There is a world of difference between further argument on a decision already made, and allowing it to stand and recalling the order, hearing further argument and making a fresh order, which is what, as you will remember, you did.

2. You will further recall that there was some discussion on Rule 40 30 of the Criminal Appeal Rules, and, in the course of that argument, I remember and my Junior has a note that you asked your clerk, in open Court, if notice under Rule 30 had in fact been given. He informed you,

and you informed counsel, that notice under Rule 30 had been given to the Chief Secretary and the Commissioner of Prisons on the very night of the determination of the Appeal, namely 21st January. The argument then proceeded to s. 83 E (1) and thence to s. 83 (3). You, on behalf of the Court, announced that, whatever had been done in the past, matters should be governed by what ought to be done, and on that basis you wished to hear Counsel. The whole of the rest of the argument turned upon whether an order had been drawn up for retrial and submitted to the lower Court. There was no question of "notice", as appears on page 2
10 of the document dated 3rd February 1977, because the question of notice arose only under Rule 30, and that never featured in my argument or in that of Mr. Penlington for the reasons given above.

There is a world of difference between mere notification of something that has been done, and giving and receipt of an order which has to be drawn up and served by one Court, the Court of Appeal, on another Court, namely the High Court.

Before I pass to the other matters, may I explain why I am writing and what is the urgency. The events of 3rd, 16th and 17th February in this matter are shortly to be the subject of an application to the Privy
20 Council, that application is due to be heard in the week commencing 11th July, and I am proceeding to London the beginning of the previous week, and Mr. Penlington in the middle of that week. If, therefore, you wish to see Mr. Penlington and me, either as a single Judge of the Court of Appeal or as Chief Justice, or if you wish the matter discussed with or argued before you with your brethren, there is very little time in which to do that. I should be very grateful indeed for some indication as to what course you wish us to adopt.

Before closing may I mention the other matter, not quite of such gravity, but of importance. When I addressed you on 21st January on
30 the question of a retrial, one of the matters I said was, you can not make an order for retrial having not reviewed the evidence or investigated the strength or otherwise of the Crown's case. I had in fact written down what I was going to say, so I know that I used the words "can not" and my junior also has a note of them. They were deliberately chosen in contradistinction to "should not". On page 2 of the document dated 3rd February 1977 7 and 3 lines from the bottom are phrases which do not reflect that fact. One is, "Counsel for the Appellant 'did draw attention to the fact' that we had not heard all the arguments he would have advanced on the Appeal . . .", and the second is "he did not, however, deal with his
40 criticisms of the evidence in detail, 'apparently thinking' that it was not open to us to conduct such an enquiry . . .".

Those phrases would put in the mind of the Privy Council a state of affairs and an approach totally different from that taken by me as counsel for the Appellant, namely that it was not open to the Court to order a retrial without considering the evidence and the strength or otherwise of the Crown's case.

In the Privy
Council
No. 39 of 1977
No. 46
Exhibit of
Francis Eddis

As this is a letter asking for guidance, copies of it have not been sent to Mr. Justice Huggins in Hong Kong or to Mr. Justice Pickering in England. We felt that it would be better if the matter were taken up with you as Chief Justice so that we may be guided by your advice. If you feel that copies of this letter should be so sent, we will do that as soon as we receive a message from you to that effect. I say that because we do not wish to be thought guilty of any discourtesy to Mr. Justice Huggins or to Mr. Justice Pickering, and most certainly none is intended by any of us: This is a situation with which none of us has ever before been faced.

Yours sincerely, **10**

M. H. JACKSON-LIPKIN, Q.C.