IN THE PRIVY COUNCIL

No. 20 of 1961

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

B E T W E E N :

CHARLOTTE DAPHNE KING — Appellant

- and -

THE QUEEN — Respondent

RECORD OF PROCEEDINGS

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INDEX OF REFERENCE

E X H I B I T S

LIST OF DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
IN THE FEDERAL SUPREME COURT	
Order granting Appellant Leave to Appeal	22nd December 1960
Order granting Carl Yarde Leave to Appeal	22nd December 1960

LIST OF EXHIBITS NOT TRANSMITTED

Mark	Description
A.	District A Police Station Exhibit Book
B.	District A Police Station Daily Diary
O.M.1	Latch and Staple
O.M.2	Walking stick

IN THE PRIVY COUNCIL No. 20 of 1961

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

B E T W E E N :

CHARLOTTE DAPHNE KING Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

No. 1

In the Supreme Court

No. 1

Indictment.

I N D I C T M E N T

THE QUEEN

v.

CHARLOTTE DAPHNE KING AND CARL YARDE

THE SUPREME COURT

Charlotte Daphne King and Carl Yarde are charged with the following offence:

STATEMENT OF OFFENCE

Felony Murder

PARTICULARS OF OFFENCE

Charlotte Daphne King and Carl Yarde, sometime between the 20th and 21st days of December, 1959, in the parish of St. Michael, in this Island, murdered Ernest Peterkin.

C.A. BURTON

Attorney General.

In the Supreme Court

No. 1

Indictment - continued.

BACK OF INDICTMENT

1960

APRIL SITTING OF THE SUPREME COURT

THE QUEEN

v.

CHARLOTTE DAPHNE KING AND CARL YARDE

Indictment for

(1) Murder

Witnesses:-

Dr. Anthony Erskine Ward
James Christopher Peterkin
Olga Skeete
Reuben Benn
Theodore Lynch
Leroy Yarde
Stn. Sgt. Ormond Marshall
Ermintrude Yarde
Charles Dash
Rupert Yarde
Vere Carrington
Erskine DaCosta Rogers
P.C. Jeffrey Ellis
Michael Headley
P.C. Lionel Griffith
P.C. Keith Whittaker
W.P.C. Cynthia Hurley
Sgt. Eric Denny
Stn. Sgt. Clyde Nurse
Asst. Supt. Nathaniel Gaskin

C.A. ROCHEFORD

Registrar (Ag.)

No. 2

COURT NOTES AND APPLICATION FOR SEPARATE TRIALS

In the Supreme Court

No. 2

Court Notes and Application for Separate Trials,

15th November 1960.

15.11.60 The Queen v. Charlotte Daphne King
and
Carl Yarde

No. 1 Pleads Not Guilty

G. Sargeant for accused King

E.L. Carmichael associated with H. Forde for accused Yarde.

Malone, Acting S.G., A. Blackman with him, for Crown.

Sargeant desires to make application for separate trials before jury empanelled. 14 points for separate trial.

1. Severance may be ordered.
2. Severance is a discretionary power.
3. Possibility of a miscarriage of justice.
4. Admissibility of evidence against one which is inadmissible against other.
5. Restriction on defence challenges.
6. Each prisoner's defence is an attack.
7. Presence.
8. Presence alone not enough.
9. Presence without common design.
10. Participation.
11. Common purpose.
12. Common design.
13. Encouragement.
14. Knowledge essential.

34th edition Archbolds Criminal Pleadings para. 2547
Third point. A. Jury prejudiced against No. 1
B. Public interest no use
C. Vision physically handicapped. Blind.
D. Racial feelings.

Fourth point. Archbolds 2547

Fifth point. Section 10 subsection 6 Vol. 1 1891-7.

6. Each prisoner's defence an attack on the other.
7. Russell on Crime Vol. 1 page 146
8. Presence is not enough.

In the Supreme Court

No. 2

Court Notes and Application for Separate Trials,

15th November 1960 - continued.

9. Presence without common design. Roscoe's 16th Ed. p.766.
10. Participation. No evidence that King participated.
11. Russells p.151.
12. Common design. Roscoes p.765.
13. Russells p.156.
14. Knowledge essential (withdrawn).

Forde for No. 2. Great deal of evidence inadmissible statements, Benn, Lynch, Skeete, most of Dash's evidence.

2. Evidence of one accused indirect attack on other.

Q. v. Grondkowski & Malinowski 1 All E.R. 559.

3. Challenges.

Malone: R. v. Gradbrook and another 31 C.A.R.119

Crown's case that this is a case of common enterprise.

Gibbins and Proctor 13 C.A.R. 134.

Court rules joint trial. Arguments considered. Jurors chosen.

No. 3

Ruling refusing separate trials.

No. 3

RULING REFUSING SEPARATE TRIALS

REGINA VS. CARL YARDE & DAPHNE KING

Before the jury was empanelled in this case, Mr. Sargeant quite properly, at that early stage, made an application for separate trials and submitted 14 grounds in support of his application. Mr. Sargeant is appearing in this Court for the first time in a criminal case, and it is evident that he has put a great deal of work and research into this matter; and without in any way flattering him or trying to interfere with his conduct of the case as it proceeds, I think I am correct in saying that if he continues along that line he will have a very successful practice in this island.

I have listened to his 14 points, and have

also listened to the submissions made by Mr.Forde on behalf of the accused Yarde. They both submit, for various reasons, that there ought to be a separate trial. They contend that the defence of one is an attack on the other; they contend that the jury might be prejudiced; they contend that they will be hampered in the challenges; they contend that the evidence of common purpose or that the two accused were acting in concert is so slight, and that there is so much inadmissible evidence against the second accused, that in fairness to them I ought to order a separate trial. The two parties concede that whether a separate trial is ordered or not is a matter for the discretion of the judge, and that that discretion must be exercised judicially.

I think it correct to say that I exercise my discretion judicially if I take into account all the argument which has been laid before me. The leading case on the subject is the case of Q. v. Grondkowski & Malinowski reported at No. 31 Criminal Appeal Reports, Page 120. The law there is very clearly set out as follows:-

> "The judge must consider the interest of justice as well as the interest of the prisoner. It is too often now-a-days thought or seems to be thought that the interest of justice means only the interest of the prisoner . . . . rule of law is . . . ".

At page 119 the Lord Chief Justice said:

> "Prima Facie it appears to the Court that where the essence of . . . . that they should be".

In this case, the essence of the case for the Crown (and I am not concerned at this stage with whether it is a strong case or a weak one), is that there is joint enterprise existing between accused No. 1 and accused No. 2, and that it was as a result of that common enterprise that the deceased met his death.

If that is so, then it would be right and proper that the jury should have the whole picture before them. They should have all the circumstances - before, during and after the incident - and that can only be done by having a joint trial. In my view, in the exercise of my discretion, I must refuse the application for separate trials and the trial must proceed jointly.

In the Supreme Court

No. 4

Court Notes, 15th November 1960.

No. 4

COURT NOTES

Jury kept together. Warned.

Adjourned

Resumed: Jury checked.

Malone opens:

Stresses that case must be decided on evidence. Opens on facts. Case for Crown is that two accused jointly effected murder. Dr. Ward is an important witness. Some of evidence is only evidence concerning 1 and concerning 2.

As to both. Injuries joint. Blow to back of body delivered before blow on neck. No injuries to arms. Submits inference is that deceased in position he could not defend himself. Suggest that Peterkin was being held when struck.

As to 1. She awakes someone. Gives story of masked men. May have to consider whether masked man story was not result of agreement to tell such a story. May also consider whether there was an agreement to murder. If so both guilty even though no agreement regarding the cover story.

(I interrupt to explain masked man story cannot be used as evidence of agreement unless evidence that No. 2 agreed it should be told.) Will direct jury.

Submits case against each must be considered separately. Both guilty or one guilty or neither. Murder or nothing. Motive. Yarde's conduct. Calls:

Prosecution Evidence

No. 5

Anthony Erskine Ward, Examination.

PROSECUTION EVIDENCE

No. 5

EVIDENCE OF ANTHONY ERSKINE WARD

Anthony Erskine Ward sworn states:

I am a registered medical practitioner. On 21st December 1959 about 1.30 p.m. I performed a

post mortem examination on body of Ernest Peterkin at the Belmont Funeral Parlour, Belmont. Body identified by Christopher Peterkin. Body was that of a male adult aged 65 or over. Probable number of hours since death occurred were 6 to 48. External appearances with special reference to marks of violence were (a) two incised wounds of the throat (b) two abrasions of the chest (c) laceration of the back of the neck (d) laceration of the back of the left ear (e) multiple abrasions of the shoulders. Head, brain and spinal cord: Incised wound 3½" long lying horizontally across the front of the neck at the level of the thyroid cartridge (demonstrates). The wound was skin deep. This is one of the wounds mentioned previously. There was a second incised wound 4½" long also lying horizontally across the front of the neck approx. 1" above wound mentioned previously for a distance of 2". From the latter extremity of this wound it penetrated to a depth of ½" the middle portion extending for an inch was shallow, while the remaining 1¼" on the right side penetrated to a depth of a ¼". Both of these wounds were straight and without deviation.

There was a lacerated wound over the left posterior aspect of the neck severing the attachments of the superficial muscles to the back of the occipital region of the skull (demonstrates). There was a lacerated wound 1½" long through the back of the left ear and extending into the left mastoid region of the skull. On opening the cranial cavity massive subdural haemorrhage with clots was present over the whole of the cerebral cortex of the brain. That means a large collection of blood some of it clotted and lying between the firm envelope or membrane lining the whole of the skull and the brain tissue itself.

There was no evidence of fracture of the skull. There were contusions and lacerations of the anterior portions of both frontal lobes of the brain. Laceration is an actual tearing or severing of the tissues; a contusion is an escape of blood from blood vessels into surrounding tissues.

There was dislocation of the cervical spine at the joint between the third and fourth cervical vertebrae with compression of the spinal cord at this level. The cord was squeezed between two independent bones. Back and shoulders: There was

In the Supreme Court

Prosecution Evidence

No. 5

Anthony Erskine Ward,

Examination - continued.

an abrasion 2" x ½" over the upper part of the right shoulder. There were two longitudinal abrasions 2½" x ¼" lying parallel to each other across the right shoulder blade at the back. There was extensive contusion underlying these abrasions and covering the whole of the right shoulder blade area. There was a V shaped abrasion 1½" x 1" over the upper and back portion of the left shoulder with contusion of the underlying tissues. There were two longitudinal abrasions 2" x ⅛" lying over the left shoulder blade region lying parallel to each other with underlying contusion of the left shoulder blade area.

Chest and contents: There were two abrasions ½" in diameter over the upper part of the breast bone. There was underlying contusion in the region. Contusion extended to the portion of the neck above the breast bone. There were no abnormalities of the lungs. There was atheroma of the heart valves and of the lining of the aorta.

Abdomen and contents: No abnormalities of the stomach, intestines, liver, kidneys, spleen or bladder.

There was no evidence of injury of the upper or lower limbs.

In my opinion death was due to shock and haemorrhage following the dislocation of the cervical spine and contusion and laceration of the brain tissues. In my opinion dislocation of the cervical spine could have been due to application of considerable force to the back of the head and neck. Force by a blunt instrument. Could have been caused either by ripping iron or crow bar. Blow from an instrument as described in place described would lead to immediate unconsciousness. Subsequent haemorrhage would lead to death within a matter of minutes. If person was standing when blow received the person would fall. If force is applied to one part of the skull the part of the brain injured is the part opposite.

The wounds on the neck had no jagged edges and did not bear either upwards or downwards. Any sharp edged instrument such as a knife could have caused the neck wounds. The fact that the neck wounds had no deviation indicate that no attempt

was made to remove the neck. If a man was lying unconscious or dead that could account for lack of deviations. If the neck wounds were the only ones present I would not have expected them to cause death. I cannot say whether inflicted before or after death. Injuries on the right shoulder could have been caused by ripping iron or crow bar. One blow could have caused the two parallel lines or more than one blow may have been struck.

Abrasions on left shoulder could have been caused by ripping iron or crow bar and by one or more blows. Injuries on left and right shoulder could not be caused by one blow. Blow which broke the cervical spine could not have caused injuries on left and right shoulder. One blow could not have caused injuries to cervical spine and shoulder blade or shoulder blades. In other words there were at least three blows namely, one to spine, one on left shoulder blade, one on right shoulder blade. May have been more than three but at least three. The V shaped mark on left shoulder is consistent with V shape part of a crow bar. Injuries to upper part of breast bone consistent with a fall forward and on to the chest. Also consistent with a blow from fist.

Adjourned.

16.11.60 Resumed

Jury checked.

Anthony Erskine Ward re-sworn continues:

In the case of injuries the natural reaction is to prevent further injury by the use of the hands. The upper limbs might be expected to show evidence of injury or bloodstains. As there were no injuries to upper limbs the natural reaction does not seem to have taken place. If a person was being struck and held at the same time I would not expect signs of injuries on the upper limbs although there might or might not be injuries where the person was held.

Prior to performing the post mortem I went to house where body was lying at Jackman's, St. Michael, at 9 a.m. on 21.12.1960. I saw the body of the deceased. It was lying in a room towards the back of the house. The windows of the room were closed

In the Supreme Court

Prosecution Evidence

No. 5

Anthony Erskine Ward,

Examination - continued.

and the room was relatively warm. The body was that of a thick set man of medium height and some corpulence. The body was lying in a semi prone position with the right side in contact with the floor. The right upper limb was fully extended behind the body with the palm of the hands facing upwards. The left upper limb was also extended and was lying along the left side of the body with the palm of the hand facing upwards. The head was lying with the right cheek in contact with the floor. The right lower limb was partly flexed at the hip and the knee joints that is, drawn up towards the front and was in contact with the floor along the whole of its lateral or outer aspect. The left lower limb was lying behind the right lower limb and was almost fully extended. The leg and foot being in contact with the floor along their inner surfaces. A semi prone position is a position between a body lying on its face and lying on its side. No part of the back of the body was in contact with the floor.

Dry blood was present at the back and on both sides of the neck. There were two lacerations visible, one at the back of the neck and the other at the back of the left ear. The head was lying in a pool of blood which extended to the left of the body for a distance of approximately 10". The blood in the region of the head consisted of dark firm clots; extending from these clots towards the feet of the body was a stream of fluid blood with no visible clots. The body was clad in pyjamas. Pyjama jacket marked with blood in front and over the left shoulder region. The left upper limb was lying in a pool of blood which had soaked into the pyjama shirt over the back of the limb but not over the front or over the palm of the hand. (Policeman demonstrates and lies on instructions of doctor. No objection; all Counsel.)

Continues: There was no blood present anywhere over the back of pyjamas. There was a walking stick with a hooked end lying on the floor beneath the upper part of the body extending from the right shoulder across the chest obliquely to the left wrist. There was a metal wrist watch on the left wrist held in place by an expanding metal band. The watch was not ticking and the hands were pointing to 10 o'clock. Blood stains were present on the window wall nearest to the body extending up

In the Supreme Court

Prosecution Evidence

No. 5

Anthony Erskine Ward,

Examination - continued.

the wall for a height of 5 feet. There were also splashes of blood on the side of a bed, a mattress and a brown leather bag all three of which were situated near to the head of the deceased. The blood splashes on the wall were elongated with the sharp ends pointing towards the ceiling. No blood was visible to the naked eye anywhere else. I would expect considerable bleeding from the blow which in my opinion caused death. Bleeding would be internal and external and both arterial and from the vein. The bleeding would commence within a matter of seconds after the blow. That applies to external arterial bleeding as well.

In my opinion the body was lying on the ground when the bleeding commenced and remained there while bleeding proceeded. In my opinion where the body was found was very near the point where the injuries were inflicted. Body was turned over at my request. I saw two incised wounds on the throat. The limbs were quite rigid. Lower joint upper and lower limb and trunk were rigid due to rigor mortis. The neck region was flacid or pliable. Post mortem levidity was present over the right side and right half of the front of the face, the right side and right half of the trunk. The outer aspect of the right lower limb and the inner aspect of the left leg and front.

In my opinion injuries to shoulder blade already described could have been sustained while body was on ground or before it was on ground. Body identified by Christopher Peterkin.

Cross-examination.

XXD Sargeant

In my opinion if the head and neck were not supported at the time the blow to neck was inflicted unconsciousness supervened within a matter of seconds. I did not find any contusion underlying the abrasion of the right shoulder. All the other back injuries were associated with contusion. A body does not show any evidence of extensive contusion if injuries are inflicted after death.

I did not see No. 1 accused when I arrived at house. I saw Commissioner of Police. I do not know name of person who turned over body. Deceased was about 5'8" to 5'10". Body had a thick short neck. Would wear at least a 17" collar. Quite possible for body to have fallen other than forward after receipt of fatal blow. A crow bar is usually

In the Supreme Court

Prosecution Evidence

No. 5

Anthony Erskine Ward,

Cross-examination - continued.

made of heavy material and is longer than it is wide. I have seen different types of ripping irons. Blood found on articles under bed got there after body was on floor. Spurting must have commenced very shortly after body came in contact with the floor. The neck and base of skull are not particularly sensitive parts of the body. I agree that considerable force was used but I cannot give an opinion about violence. In my opinion the throat wounds had nothing to do with the cause of death. I saw no evidence of blood having run down the back. Blood had run down both sides of neck. If deceased was struck when standing over bed the question of whether blood should be on bed or not depends on a number of factors. If deceased was lying over someone on bed and immediately after he was struck he was pushed away from bed then it is possible that no blood would be found on bed.

XXD. Forde:

Death had occurred 6 to 48 hours before post mortem. That estimate is from 9.30 a.m. the 21st December not from 1 p.m. on 21st December. Injury to back of ear and injury in region of neck could have been caused by one blow. Could have been caused by falling on a blunt instrument not necessarily being struck. Similarly as to shoulder injuries. A stick is a blunt instrument. Injuries on right shoulder could have been caused by a fall from a stick. Injuries to right shoulder blade could not have been caused by fall on floor that I saw in that room. I cannot say which injuries came first. I saw injuries which might have been post mortem or might not be. For example injuries to top of right shoulder as distinct from shoulder blade.

I found evidence of atheroma (fullness around heart) but that would not increase the chances of death in this particular case. All observations carried out by the naked eye. No other search for blood stains.

Re-examination.

Re-exd:

There was a contusion in respect of the injury on the right shoulder blade i.e. the parallel line injury but no contusion in respect of right shoulder. Absence of contusion leads me

to say it might have been post mortem. In determining considerable force it depends on the instrument used as well as on muscular power.

If deceased fell once on walking stick he could not have two parallel line injuries. There were no ridges on floor which could have caused parallel line injuries if body had fallen on a floor with ridges. The middle of side of bed was near to head of body.

In the Supreme Court

Prosecution Evidence

No. 5

Anthony Erskine Ward,

Re-examination - continued.

To Court:

Rigor mortis can be completed within a matter of 6 hours. It passes off gradually and depending on atmospheric conditions whether body is clothed or not it may require 48 hours to pass off.

Malone through Court:

If the body was standing when fatal blow inflicted then no blood down the back of body fell immediately.

Mr. Sargeant. No question on Mr. Malone's last point.

No. 6

No. 6

EVIDENCE OF JAMES CHRISTOPHER PETERKIN

James Christopher Peterkin,

James Christopher Peterkin sworn states:

Examination.

Ernest Peterkin who lived at Jackman, St. Michael, was my uncle. On 21.12.1960 I was present when Dr. Ward arrived and I identified the body. I knew Ernest Peterkin for about 10 years. He was blind. He used a stick to assist him when walking.

XXD. Sargeant:

Cross-examination.

I went to the house that morning because of a previous arrangement with deceased. I was to go and clean house for the holiday. When I arrived at the house I saw several policemen and saw my uncle Ernest Peterkin lying dead. Police did not question me. Police asked my name. No. 1 accused was present and told police that deceased was my uncle and I was to be allowed to enter. That is how

In the Supreme Court

Prosecution Evidence

No. 6

James Christopher Peterkin,

Cross-examination - continued.

police allowed me to enter house. I gave statement to police. I cannot sign my name. I did not make my mark to statement given to police. Peterkin has been to my home plenty of times. I had been to deceased's home the Thursday before the 21st December. Now says he came to me. I did not go to him. I had seen deceased on the Sunday before Thursday. I did not go to C.I.D. this morning. I gave evidence at previous trial. Never said I saw my uncle the Tuesday before he died. I know Bertram Quintyne. Deceased asked me to see Bertram Quintyne for him. Never told me he had a job for Bertram to do. I admit I said at last trial I had no idea what the job was because he did not tell me. Deceased never complained watch was not working. The watch was working. (He is asked the time; says 10 A.M., 11 A.M. 10 to 12 (It is 10 to 12)).

XXD. Carmichael:

Deceased was totally blind. I used to visit deceased about once a week.

Re-examination: Declined.

Adjourned.

Resumed.

No. 7

Olga Skeete, Examination.

No. 7

EVIDENCE OF OLGA SKEETE

Olga Skeete sworn states:

I live at Jackman's, St. Michael. I know the home of Ernest Peterkin now dead. No house between Peterkin's and mine. The eastern wall of my house to western wall of Peterkin's is about 12 feet. On 21st December 1959 about 3 A.M. I heard a knocking at my door. I looked through window and saw Accused No. 1 and I opened the door. No.1 entered. She said Mrs. Skeete you heard my hollering for murder and would not come? I asked her what time. She made no reply. She said that she and Mr. Peterkin were in the bedroom and they heard a noise at the back door and Mr. Peterkin said Who you, leave it to him. She said Peterkin took his stick and came out of bedroom and

two masked men broke the back door and rushed in to him. She said that one of them held Mr. Peterkin and hit him around his neck with a piece of iron. She said the other man held her and as she tried to get away to shout he held her mouth and cuffed her. I told her to see whether Mr. Lynch could help. Mr. Lynch lives two houses away from me. Coming from town one gets to Mr. Lynch's house, Quintyne's house, my house then Peterkin's house.

No. 1 Accused left my house and went on the road. I remained in my house. I know Mr. Yarde. His house is countryside. No house between Peterkin's house and his house. I know Mr.Coward. He lives opposite Mr. Yard. He sells petrol. When No. 1 accused was telling me about the masked men she said she was afraid to report it. That is what made me tell her to see whether Mr. Lynch was at home. I went to bed on the 20th about 9 p.m. There are windows on the side of my house which is near to Peterkin's house. From time I went to bed until I heard the knocking on my door I heard no other noise. When I saw No. 1 accused on morning of 21st she was wearing a nightgown which looked as if it was a pink one. I think the front was torn down. She had a piece of cloth around her shoulders.

XXD. Sargeant:

I gave evidence on a previous trial. I cannot remember if I was asked what Mrs. King was wearing. I do not remember if I said that what she was wearing looked like a night gown and that I did not see the neck of the gown. Distance from my house to Peterkin's at nearest point is about 12 ft. I gave in evidence at preliminary investigation. I do not remember telling the Magistrate distance was 8 ft. I now say it looked like a night gown. I would not swear it was a night gown.

XXD. Carmichael: Declined.

Re-xd. Malone:

I did say at last trial that she was wearing a night gown and that I said it looked like a night gown.

In the Supreme Court

Prosecution Evidence

No. 8

Theodore Lynch, Examination.

No. 8

EVIDENCE OF THEODORE LYNCH

Theodore Lynch sworn states:

I live at Jackman's, St. Michael. Carpenter. I know where accused Daphne King No. 1 accused lived. On 21.12.59 about 3 A.M. I heard a knocking at my door. I asked who was knocking. The reply was Mrs. King. I knew her voice and recognised it. I was in bed. I asked what happened. She told me that two masked men broke the door back of the place and began to beat herself and Petes. She said she would like a telephone message to the police. I got up and dressed and came out. I saw Mrs. King No. 1 accused. She was then on the road speaking to a Mrs. Skeete and Mrs. Quintyne who had the windows of their house open. I went towards Mr. Coward who owns the Boston Bus Co. Mrs. King came to Boston Bus Co. She knocked on the galvanise. Someone came outside. I left.

Cross-examination.

XXD. Sargeant

I say it was 3 A.M. because I looked at the clock when I got up. I got up last night. (Witness is asked if he looked at the clock. He does not answer question). I got up night before last. I do not remember what time it was. It is not true that I went to Peterkin's house and saw him dead.

XXD. Carmichael: Declined.

Re-Examination: Declined.

No. 9

Reuben Benn, Examination.

No. 9

EVIDENCE OF REUBEN BENN

Reuben Benn sworn states:

I am employed as a chauffeur by the Boston Bus Co. at Jackson, St. Michael. On 21.12.59 I was at the Boston Garage because I worked late on Sunday night and transportation was not available to get home. Owner of Bus Co. is Mr. W.R. Coward. I heard a knocking at the door of garage about 3 A.M.

In the Supreme Court

Prosecution Evidence

No. 9

Reuben Benn, Examination - continued.

I got up. Saw a man coming through small gate of garage. I went to him. He told me something. I blew the horn of one of buses in order to arouse Mr. Coward. He did not come. The man who had spoken to me was gone. I saw a white woman coming through the gate. Woman was No. 1 accused Mrs. Daphne King. She was crying. I asked her what was the matter. She told me that two masked men broke into the house and killed Petes. I knew that King lived in a house in which a middle aged man lived but I did not know his name. She wanted me to get a message to the police. I again blew horn. No one came. She asked me to help her. I remembered that I had seen her driving a car - O 214 and I asked her if her car was in working order. She said yes. I asked her if she would allow me to drive it to police station. She agreed. We went to Peterkin's house and she went in and came back with keys for car. She unlocked garage. I drove car to District A police station. I was alone. At the police station I made a report. I returned to Peterkin's house with Sergeant Marshall and two other police constables. On arrival at Peterkin's house I parked car. We entered house by a place looking like a dining room and I handed the car keys to a little girl. I went back to Boston Bus Co. garage.

Cross-examination.

XXD. Sargeant:

I have a good memory. I looked at District A Station clock. It was 3.45 a.m. I know District A Station well. I think the clock is to the left of diary keeper at District A. My right as I enter. I think so. On arrival at District A I reported to the diary keeper. He called up the Sgt. on phone. He told me I could go but I did not go. I waited for the police. I picked up Sgt. Marshall on Hindsbury Road. I went back to District A with Sgt. Marshall and two constables. I took two constables in the car to Hindsbury Road where we collected Sgt. Marshall and returned to District A. I did not check the time when I got back to Mrs. King's house. I did not see her on my return. Cannot say how long I was away. I gave evidence at a previous trial. I did say I was away about 3/4 hour. Now says I think I was away about 1¼ hour.

XXD. Carmichael:

Man I saw coming through gate was Lynch.

Re-examination: Declined.

In the Supreme Court

Prosecution Evidence

No.10

Ormond Marshall,

Examination.

No.10

EVIDENCE OF ORMOND MARSHALL

Ormond Marshall sworn states:

I am a Station Sgt. now attached to Holetown Court but in December 1959 I was attached to District A. On 21.12.59 about 4.30 a.m. accompanied by Detective Constable Wilson I went to house of Peterkin at Jackson, St. Michael. Went in car driven by Reuben Benn. On arrival the accused King, King's two children Hazel and Clifford and other civilians were present.

I spoke to the accused King and told her I was a policeman in plain clothes. I asked her what happened. Accused King said that at about 1 a.m. that morning whilst herself and Mr. Peterkin were lying in bed in the bedroom she heard a noise at the back door and Mr. Peterkin heard it too. The house has two bedrooms. She pointed to the smaller of the two bedrooms in which Peterkin was lying dead. She told me that they both got out of bed and went towards the door. She said she was walking in front while Peterkin walked behind with a stick. She said when she got to the door (she pointed to a door leading to the yard), she found the door opened and two men standing on the inside. She said both men were wearing masks and paper gloves on their hands. She said one of the men was tall and slim while the other was short and spotted. She said one of the men held her around her waist and cuffed her on her left side and right side and prevented her from shouting. She said the other man held Peterkin and took him back to the bedroom and beat him with a piece of iron and a knife. She said the man who held her kept her to the bedroom door where she could see every blow Peterkin received. She said that after both men left they went back through the same door. She then opened the front window and looked out and saw them get into a car which drove towards Hothersal Turning. She said she then went back to the bedroom and found Peterkin dead. The front window which she referred to overlooks the Jackman's highway. I went into the bedroom and saw the dead body of Ernest Peterkin lying on the floor. I remained in the house until Dr. Ward arrived. From time I saw dead body to arrival of Dr. Ward no one interfered with body in any way.

Adjourned.

17.11.1960.

In the Supreme Court

Prosecution Evidence

No.10

Ormond Marshall,

Examination - continued.

As before

Jury checked.

Ormond Marshall re-sworn:

Nothing in the room was interfered with from time of my arrival to arrival of Dr. Ward. The house where body was found is a pink stone bungalow. It is on the left hand side of the road as one travels to the country.

At this stage at counsel's request a shorthand note of this witness's evidence is taken. Alfonso Weekes sworn to do so.

Continues:

There are steps leading to an open verandah to the front of the house. On the verandah there is a door which leads to the sitting room. That sitting room has a window which overlooks the steps that lead to the verandah. There is a passage which runs the length of the house. If one stood in the passage with back to Jackman's Road there is a large bedroom to the left. There is a door to that passage. There is a window in the bedroom overlooking the verandah. One goes down the passage and one comes to a smaller bedroom. That smaller bedroom is separated from larger bedroom by a partition in which there is a door. The body was found in the smaller bedroom. The smaller bedroom has a window which looks into yard or western side of house. Continuing down the passage one comes to the bathroom on left hand side. The expression bathroom includes a shower and toilet. On the right hand side of building the first room is sitting room. The sitting room projects in front of the first bedroom. Next room is kitchen. The dining room is included in the sitting room. The kitchen is roughly opposite the bathroom. At the end of passage there is a door. Door of wooden construction which is commonly known as a half door. It has a window to the top of wooden construction.

I examined the door. When secured there is a latch and staple for the top of the door near the end where it meets the partition or upright of the opposite side to close it. At the bottom of the

In the Supreme Court

Prosecution Evidence

No.10

Ormond Marshall,

Examination - continued.

door there is a small iron bolt which fits into a recess in the upright on the opposite side of the door. I noticed that the bolt was wrenched away from the recess. I saw indentation marks around the recess. The latch and staple were missing from the door. The accused King was present when I examined the door and she told me that the door had a latch and staple. At the top of the door where it reached the window when closed I saw indentation marks of a flat shape.

I made a search and found the latch and staple at the bottom of the steps. I took possession of latch and staple. I fitted them to hole. They fitted. This is latch and staple tendered. No objections. Ex. O.M.1.

There is a door which leads to dining room side of dining sitting room. East of house. On eastern side of house and adjoining it is a garage. Garage door faces Jackman's Road. When one comes out of house by back door and enters yard one goes into the garage. There are pillars at side of garage supporting the roof. The side of garage opposite the pillar side is of galvanize. The back of garage is of concrete blocks. The concrete blocks were broken down leading a space wide enough to admit the body of a man. A paling encloses premises. Beyond paling is a cane field. Beyond back of garage is a cane field.

On west of deceased's house is Olga Skeete. The next house to Peterkin's house is the Yarde's house on eastern side. When I refer to Yarde's house I do not mean the accused's house. There is a witness in the case called Yarde. I refer to witnesses. Between Peterkin's and Yarde's house there is a drive and then canes. From Peterkin's house to Yarde's house - witness box to western side of court (approximately 35 feet).

The canes were growing. About 5 or 6 feet. As I said before I went into room where body was lying. I took possession of a stick lying diagonally under the body. This is it. Tendered Exhibit O.M.2.

I was present when body taken to Belmont Funeral Establishment. About 12.45 p.m. on 21.12.59 I interviewed No. 1 accused at District A Police Station. No one else was present. At

the time of the interview I had not made up my mind to charge the accused King. She was not under arrest. I was interviewing her to see whether I could get any information concerning the crime. In order to get information I did not threaten her in any way. I did not hold out to her any promise of reward.

At the interview she made a statement which I took down in writing.

In the Supreme Court

Prosecution Evidence

No.10

Ormond Marshall,

Examination - continued.

Sargeant objects to production of statement. Asks that jury be withdrawn. Granted. Jury withdrawn.

No.11

EVIDENCE OF ORMOND MARSHALL

Evidence re admissibility of Appellant's First Statement

No.11

Ormond Marshall,

Examination.

Ormond Marshall

Continued:

I asked her if she would give me a statement in respect of what took place at her home on that morning. She started to speak and I started to write. After she had completed the statement I read it back to her and asked her whether it was correct. She said it was correct and I invited her to sign it. I did not leave out anything nor did I add anything. In the course of her statement I asked her questions and she answered them. After the statement she returned home.

Cross-examination.

XXD. Sargeant:

I have been in police force since April 1941. I have had opportunity of working in most departments of Barbados police force. I have worked in C.I.D. for about 12 years. N.C.O. since 1954. At one time I was instructor and lecturer at Police Training School. During my 19 years I have read books to improve my knowledge. Studied them. I have read Moriarty on Police Law and Procedure - two books. Read both. Read Garcia, Archbolds, Kenny, Morish. Never read evidence by L. Bann. I think I am conversant with my duties as an investigating officer. Taken several refresher

In the Supreme Court

Evidence re admissibility of Appellant's First Statement

No.11

Ormond Marshall,

Cross-examination - continued.

courses. Been lectured to by officers who have been trained at Hendon. Also attended refresher course at Regional Training Centre, Seawell, Barbados.

I was at home when I was informed of this murder. I was in charge of investigations at District A. On arrival at deceased's house I told No. 1 accused I was a policeman in plain clothes. She made an oral statement to me. I made an entry in my note book. I did not make entries of everything I did in connection with this case. I have given all the facts in my possession. About 8 to 9 A.M. No. 1 accused asked permission to go to Jackson, St. Michael. I refused her permission. I have my note book on me. There is no entry in it to that effect.

I do not know Eugene White of St. Elizabeth's Village. I heard the name Carl Yard at District A for the first time when I was recording No. 1's statement. I did not hear it prior to the taking of the statement. I know P.C. Tull. At the house, Tull brought to me a top or bottom of pyjamas and a pair of trousers. The garments were searched. A letter written in lead pencil was found. I did not enter that fact in my note book. No. 1 accused was present when letter found. I said nothing to her when it was found. I do not agree that the garments were potential exhibits.

I do not know who wrote the letter. No.1 was never questioned by me about the garments or the letter. Letter was unsigned. I do not know what was written. Tull kept possession of letter and clothing. They had no bearing on the matter. This is District A exhibit register. It contains an entry under date 21.12.59. Entry No. 2. It was written by me. Register tendered for this issue only. Ex. A. Tull went to the station with me. The disposal entry was made by Sgt. Bancroft. The articles were never produced in the case. They had no bearing on the investigation. No connection with this case.

Premises of deceased were searched on 21.12.60. I did not give specific instructions to search because when a crime is being investigated that is routine. Letters written by accused No. 1 were taken away but returned to her mother. I never asked accused No. 1 who had written letter found in

trousers pocket. She never told me it was a letter written to Carl Yarde. It was about 9 A.M. when No. 1 accused said she wanted to go to Jacksons. Other police were present. She wanted to drive the car.

Adjourned.

Resumed: Jury checked.

Jury retire. Issue not yet decided.

Ormond Marshall resworn.

XXD. continued:

It was not at the time within my knowledge that Accused No. 1 went to Jacksons. I know so now. I saw Mr. Waithe. On the 21st. Cannot recall the time. Did not make note of his arrival in my note book. Moriarty in his book advises that unauthorised persons be excluded. I did not exclude Waithe because I do not know when he arrived. I did not exclude him when I became aware of his presence on the premises. No. 1 accused and I went to District A police station before 12.45 P.M. I am aware that Major Stoute has written a book Police Procedure which is handed to each policeman. I know that an N.C.O. should make an entry in the station diary on his arrival at the Station. According to circumstances the N.C.O. may delegate that duty to someone else. I do not recall delegating the duty to anyone else. I know that I should have recorded what I did during my absence from the Station but I do not remember if I did it. It is not always done. Not true that accused Mrs. Daphne King went to District A before I got there. It is true I accompanied Mrs. King in a land rover to District A. Not true she went with two constables and a driver. I know a van driver keeps a log book. Superintendent Franklyn never told accused No. 1 that he had compared letters found in her house with writing on letter found in house and in his opinion letter written by one and same person. Superintendent Franklyn never said in my presence "Daphne you are trying to shield some man. Who is this man". Superintendent Franklyn never said to No. 1 accused Daphne this pyjama jacket found in your home who does it belong to and she replied Petes. He never asked her to compare the pyjama jacket with trousers. Superintendent Franklyn never told No.1

In the Supreme Court

Evidence re admissibility of Appellant's First Statement

No.11

Ormond Marshall,

Cross-examination - continued.

accused she would be used as Crown evidence. Not true that after he told her all the above she blurted out that Carl Yarde did it and that then I was told to take a statement.

I never told No. 1 accused that Commissioner of Police was interested in case as he was friendly with one Cox of Castle Grant who was related to Peterkin (deceased). When I began the statement I was seeking information. She never told me anything about Carl Yarde until she made the statement. I think I made an entry in my note book that I took the statement. When she gave the second statement I did not suspect her although I realised she was lying somewhere.

No. 1 accused left District A about 4 p.m. When I arrived at District A I arrived with driver, accused King, P.C. Griffith and P.C. Tull. Before 12.45 p.m.

I see this station diary tendered Ex. B in this issue. I see entry 2877 which records movements of members of police force but makes no reference to accused. It was written by the diary Sgt. The diary is for complaints made by members of public and movements of policemen to and from duty. I see entry 4272. The arrival of all prisoners is noted in the station diary. I admit Mrs. King's arrival at Station is not recorded in diary. Not true that when I recorded the statement there were P.C's Griffith and Whittaker present. Everything in the statement is correct. I read over the statement to No. 1 accused. She said it is true and correct and signed it. I read it over to her. It is not usual to give the statement to the maker to read it.

Re-examination

Re-exd.:

21st December 1959 was a busy day. I got to Jackman at 4.30 A.M. I never ate that day. I was moving from place to place. Every single movement for a policeman is not recorded in station diary. Statement commenced at 12.45 p.m. I got there before 12.45 p.m. From time I got to Station to time I started to read statement I was not in presence of King all the time. I left No. 1 accused in the office of the Superintendent. He does not occupy the office. He goes there when he visits the station. It was in that room that

I recorded the statement. I might have left her for about 15 minutes. While I was taking statement Superintendent Franklyn came to room enquired what I was doing. I told him and he left.

My object in taking No. 1 accused to the station was in order to see whether she could assist in the enquiries. When she was giving the statement I realised that she was giving a different statement to what she originally said. Nevertheless I did not decide to charge her. I had not made up my mind. She was not charged until the 24th.

In the Supreme Court

Evidence re admissibility of Appellant's First Statement

No.11

Ormond Marshall,

Re-examination - continued.

Mr. Sargeant: No further questions on this issue.

Adjourned.

17.11.60. Resumed: As before. Jury checked. Jury retire.

No.12

No.12

Lionel Griffith, Examination.

EVIDENCE OF LIONEL GRIFFITH

Lionel Griffith sworn states:

I am a corporal of police. In December 1959 I was attached to C.I.D. On 21.12.1959 I went to Peterkin's house. I was engaged in the investigation of death of Peterkin. My investigations were not confined to Peterkin's house. I travelled from Peterkin's house to District A in police van. Accused No. 1., Sgt. Marshall, Constable Tull, Constable Mason, the van driver, and I were in van. Tull and I in back of van. She and Sgt. Marshall went to a room which used to be occupied by Superintendent of District A. I remained in charge office. I saw Superintendent Franklyn. I left District A about 1.30 p.m.

Cross-examination.

XXD. Sargeant:

6 years a member of the Barbados Police Force arrived at Peterkin's house about 7 A.M. I did not make a note of it. At the scene of a crime I act or take instructions of senior N.C.O. on the spot. I keep a personal diary. I made up a case diary. I made notes in my personal diary and case diary. I did not record that Sgt. Marshall travelled in the van as I did not think it was important.

In the Supreme Court

Evidence re admissibility of Appellant's First Statement

No.12

Lionel Griffith, Cross-examination - continued.

I have read Moriarty on Police Law and on Police Procedure. P.81 relating to the carrying of note books and entries which should be made therein. I saw Superintendent Franklyn at District A before 12.30 - 1 p.m. I see this diary Exhibit B. I see entries under 21.12.59. No entry that Superintendent Franklyn visited. When I left District A Sgt. Marshall still there. We did travel in the van.

Not true that when Superintendent arrived I was in a room with Sgt. Marshall and No. 1 accused and P.C. Whittaker. Not true Whittaker and I were present when No. 1's statement taken.

When a serious crime is committed and a subject is brought to station no entry is made in station diary.

Evidence on issue.

Accused No. 1 wishes to give evidence on issue.

No.13

Charlotte Daphne King, Examination.

No.13

EVIDENCE OF CHARLOTTE DAPHNE KING

Charlotte Daphne King sworn states:

I lived at Jackman's, St. Michael. Knew Sgt. Marshall from morning of incident. At my home. He came to house. Two policemen with him. Marshall told me that he was a policeman in plain clothes. I told him about the murder. He went in the room where dead body was lying. He asked me questions and I answered them. Plenty strangers present. One Eugene White from St. Elizabeth's Village there. She arrived about 8.30. She started to abuse me. She said the police were at her house checking and the man they should arrest had not been arrested. I asked police to put her out the house. He did so.

I know Mr. Hinds of Jacksons. I wanted to go to his house and I told Sgt. Marshall. Waithe was a friend of deceased. Marshall told me I could go but under police escort. I went. He sent P.C. Tull with me. I went by my car. I drove. Tull went in house with me. I spoke to

Waithe in Tull's presence and brought back Waithe to my home. Waithe, his wife, Tull and I returned in my car. While in bedroom P.C. Tull entered with a parcel. He gave parcel to Sgt. Marshall who opened it. Contained pyjama jacket and grey green pants. Tull searched pockets and found a letter. Sgt. Marshall asked me to whom was letter written. I did not answer. He repeated question. I said I had written letter to Carl Yarde. He asked who is Carl Yarde. I told him from Glenburnie, St. John. Shortly after that Marshall sent me to Station. Two other policemen with me. Marshall not there. Van driven to District A. On arrival I was taken to a back room. I was left under police escort. One policeman. While there a policeman came and told me that Commissioner of Police Stoute wanted to see me. I was taken to a front room. Commissioner Stoute asked me about incident. I told him the masked men story. He told me Sgt.Marshall had already told him. I was taken back to the first room. Between 12 - 1. Sgt. Marshall came and took me to another room. P.C.'s Griffith and Whittaker there. By P.C. Griffith I mean Constable Griffith the last witness. A few minutes after Superintendent Franklyn came in. He had a parcel and he opened it. It contained the same items already referred to. Five of us then in room. He showed me the letter along with two other letters found in my house. Said he had compared writing and all the same. The parcel Superintendent Franklyn produced had a pair of pyjamas. I had left a pyjamas pants at home and that was included in parcel. Letters taken from my house were letters I had written to friends of deceased in the U.S.A. Letters were not posted. Superintendent Franklyn said pants in my house same as jacket found by Tull. He asked me to whom pants found by Tull belonged. I said to Carl. He told me I was hiding up for someone and I should tell the truth. I then told him the substance of what is contained in the statement. He told Sgt. Marshall to take a statement. He left. Sgt. Marshall, Cpl. Griffith and P.C. Whittaker remained with me. I gave Sgt. Marshall a statement. He wrote it and I signed it after he read it back to me. He never gave it to me to read. My signature at bottom of each page. I was present when statement read in Magistrate's Court. Everything in statement is not mine. I told Sgt. some of things in statement. Some I did not say. Sgt. Marshall asked me questions and

In the Supreme Court

Evidence re admissibility of Appellant's First Statement

No.13

Charlotte Daphne King,

Examination - continued.

I answered them. Sgt. Marshall told me I was hiding up for someone and I must give the right statement. He told me I would become a Crown witness. He said Commissioner of Police and Mr. Cox were good friends and Mr. Cox was related to Peterkin. He said Commissioner of Police suspicious of me. After the statement completed Sgt. Marshall left. I remained at District A until 5 to 5.30. Police present.

XXD. Malone:

Cross-examination.

When I told the masked man story I was not telling the truth. At District A when I saw Commissioner of Police I again told an untruth. Sgt. Marshall told me at the house to stick to the masked men story. The story was my invention. I was scared that is why I told an untruth. It is true Whittaker was in the van. When statement was taken Marshall wrote as I spoke. There was nothing objectionable in what he read to me. Each sheet was given to me for signature and I signed. He put it in front of me and I signed. Each time I signed the paper was in front of me. I did not take note of the writing. I signed where he told me to sign. While at the Station there were no harsh words or actions towards me. The police were seeking to get information of the crime. That could have been the reason. Tull never showed me any clothing. I was at the Station about 9 to 9.30 A.M.

It is not untrue to say that Franklyn suggested I was to be a Crown witness. The change from masked man story to story in statement was my decision except that Sgt. Marshall has not taken everything correctly.

To Court: It has never been suggested before that Franklyn induced me to make the statement.

Adjourned

Resumed: Jury checked. Jury retire.

Charlotte Daphne King resworn.

Re-exd.: Declined.

No.14

COURT NOTES AND RULING ALLOWING STATEMENT

In the Supreme Court

No.14

Court Notes and Ruling allowing Statement, 17th November 1960.

All the evidence on the issue.

Sargeant submits he should have last word on issue.

Malone on issue:

Was there promise or favour. Did it operate on mind of accused. Superintendent Franklyn out of Island. Sgt. Marhsall's evidence. 24th Ed. Archbolds para. 1114.

Sargeant in reply:

Queen v. Garner 1 Den C.C. 229 169 E.R. 267. When a confession was held inadmissible on ground that prisoner was told to tell the truth. She was induced at Jackmans to accuse the person. At police station she was induced to benefit by naming the person.

Decision. Deal with Garner's case. The issue.

Marshall's cross-examination.

Court admits statement. Rules that there was no inducement and it was a free and voluntary statement. Supt. Franklyn made no inducement. Marshall's evidence accepted.

Jury return.

No.15

EVIDENCE OF ORMOND MARSHALL (CONTINUED)

Prosecution Evidence

No.15

Ormond Marshall, Examination - continued.

Ormond Marshall resworn states:

This is the statement tendered Ex. O.M.3. It was read over to her, she said it was true and correct and signed it. She signed it and I signed it. The statement contains what she told me. After taking the statement she returned home. She spent the night at her home. I saw her on the 22nd and again on the 23rd. On the evening of the 23rd about 5 P.M. I saw the accused at her home

In the Supreme Court

Prosecution Evidence

No.15

Ormond Marshall,

Examination - continued.

looking through the window. She called me and I went to her. She handed me a letter and it bore a stamp. She told me it was a letter she had written to Carl and asked me to post it. The address was Carl Yarde, New Glenburnie, St. John. I kept the letter. I did not post it. This is the letter. Not tendered but placed at disposal of defence. On the evening of the 24th December the accused King came to District A. She came in the police van which I sent for her. She was at home. I wanted to interview her in connection with certain information in my possession. At that time I had not made up my mind to charge her. When she came in the police van I did not bring her under arrest. I took her to the same room where I had taken the statement on the 21st. Woman police Hurley was present. I told her I wanted to ask her a few questions in respect of Carl Yarde who at that time was still at large. I asked her if she would come to let me write her answers. She said all right. I used no threats, no force, no promise. This is the statement.

Statement objected to. Sargeant asks for jury to be withdrawn. Agreed.

Evidence re admissibility of Appellant's Second Statement

No.16

Ormond Marshall,

Examination.

No.16

EVIDENCE OF ORMOND MARSHALL

On issue: At a certain stage of the statement I cautioned her. After I cautioned her. She said I prefer not to say anything more at this stage. I cautioned her as soon as it appeared to me that she may be concerned in death of Peterkin. Until I cautioned her I had not suspected her.

Cross-examination.

XXD. Sargeant:

I did not see No. 1 accused at District A on 22nd. I had no talk with her before she wrote the letter. When she gave me the letter to post other people were in the house. I did not tell her to write the letter and I would call for it. During the taking of the statement I asked her if it is her intention to give evidence against Yarde. She said yes. I asked her so because of what I read in the letter. I never suspected that she was connected with crime when I began to take

statement. In her statement she said that she was the person who gave Yarde the knife he used on Peterkin. It was at that stage I became suspicious that she was implicated.

In the Supreme Court

Evidence re admissibility of Appellant's Second Statement

At the previous trial I said that I suspected her of knowing something about what took place in the house that night between 20th and 21st December.

Adjourned

No.16

19.11.60. Resumed. Jury checked. Jury retire.

Ormond Marshall,

Cross-examination - continued.

Ormond Marshall resworn states:

XXD. Sargeant:

Until her arrest police were at all times present at her house. On morning of 21st she went to District A. If I went to Jackson on 23rd I may or may not have made a record. On the 22nd I never asked No. 1 to write a letter to give me. P.C. Hurley was on duty at Accused's residence on 24th. I wanted to interview Mrs. King at District A so sent to ask her to come. I knew Mrs. King owned a car. I had information that a man had been seen at the back of Peterkin's house and that King had seen that man. I had information as to the identity of the man. I had knowledge of a letter she had written. As a result of all these things I wanted to see her. I still did not suspect her despite all these things.

Statement was as a result of questions and answers. It is not the general way in taking statements to hear the story first. It depends on intelligence of person giving statement. The statement I am fully aware that Carl will be charged with murder. I was taking statement on the assumption that accused No. 1 would be a witness against Carl Yarde. I asked her if she knew that she was expected to give evidence against Carl.

Re-exd.: My question was: Are you fully aware that Carl would be charged with murder? I put that question because I had the impression that she was not fully aware of the gravity of Yarde's statement.

Re-examination.

I considered that she should be fully aware that she would be expected to give evidence against her lover. There was no break between the words it is my intention to give evidence and although it is I who gave him the knife. I became suspicious when she admitted handing Yarde a weapon which she admitted was used by Yarde.

In the Supreme Court

Evidence re admissibility of Appellant's Second Statement

No.17

Cynthia Hurley,

Examination.

No.17

EVIDENCE OF CYNTHIA HURLEY

Cynthia Hurley

I am a woman police No. 575. On 24.12.1959 I was at District A Station. For the purpose of assisting in recording statement of No. 1 accused. Came from Peterkin's house in a van. Miss King, Corporal Griffith and van driver in van. I had been on duty from 2 p.m. on 24.12.59. My duty was to keep No. 1 accused in view for her own safety. Mrs. King was not under arrest. I was present when statement taken. At a certain stage Marshall cautioned her. I cannot remember what happened after the caution.

Cross-examination.

XXD. Sargeant:

If No. 1 wished to leave home I would have followed her and keep her in view. Now says I would only have kept her in view at the house but if she wished to leave I would not have followed her. She was free to leave if she wanted to. Now says if she left the house I would have followed her. Provided I was on duty I would have followed her for her own protection. If she went to see friends or relatives or to the sea I would have followed. Now says if she had gone to her relatives I would not have gone. I would have followed to the door but remain outside. The 24th was not the first day I was there. No. 1 had all the privacy she wanted. I was not there to watch her. Sgt. Marshall never told her that there was no reason for her to suffer for Carl's crime. The Sgt. asked one or two questions, but I cannot remember the exact words. Questions were asked about midway in the statement. I have taken statements. I always get the story first. Sgt. Marshall heard the story first. I see the statement. Read it. That story was told to Sgt. before he wrote.

To Court:

Q. Did she tell him about the knife before the statement?

A. No he was writing when he asked her a question and she told about the knife.

Continued: I did not understand Mr. Sargeant. I cannot remember whether he asked a question about the knife.

Re-Exd.:

The Sgt. was writing when No. 1 asked the words about the knife.

Jury retire. Checked

Adjourned.

In the Supreme Court

Evidence re admissibility of Appellant's Second Statement

No.17

Cynthia Hurley,

Re-examination.

21.11.1960. As before.

Jury checked. Jury retire.

No.18

COURT NOTES EXCLUDING STATEMENT

No.18

Court Notes excluding Statement,

21st November 1960.

Sargeant submits as to second statement:

1. Confession must be voluntary. Archbolds 34th edition p.1105.
2. Person in authority. Roscoes p.43.
3. Burden of proof. Phipson p.266.
4. Corroboration. Phipson p.266.

On fact:

1. Violence or restraint. Roscoes Criminal Evidence p.48.
2. Contradictions and discrepancies.
3. Inducement.
4. Hope or promise. Archbolds 34th Ed. p.1107.
5. Questioning without caution. Archbolds 34th Ed.1122.

Shorthand writer takes argument.

Queen v. Giller 11 Cox p.69.

Malone in reply:

Roscoes p.48, 16th Edition rule 1 of Judges Rules.

Court excludes statement.

In the Supreme Court

Prosecution Evidence

No.19

Ormond Marshall (recalled), Examination.

No.19

EVIDENCE OF ORMOND MARSHALL

Ormond Marshall resworn states:

The accused No. 1 was charged on 24.12.1959. Cautioned. No reply. On 31.12.1959 I saw No. 2 accused Yarde at Central Police Station. I served on him a copy of the statement Ex. O.M.3. On 4.1.1960 about 10 A.M. at Central Police Station I served on No. 1 accused a copy of statement made by No. 2 accused. In connection with my investigation I did not discover anything being stolen from Peterkin's house. I did not discover any instrument which might have inflicted the fatal injury to Peterkin.

Cross-examination.

XXD. Sargeant:

I have been a member of Barbados Police Force since April 1941. Worked in nearly all departments of Force. Been instructor in Police Training School Assistant Lecturer. Have improved knowledge of police duties by reading. Have read Moriarty, Garcia, Reginald Morish, Archbolds and Kenny. I studied what I read. Attended course at Regional Training School. Been lectured to by Supts. who have been trained at Hendon. I think I am efficient. Acquainted with judges rules. On 21.12.59 I got to Jackman's in motor car driven by Benn. P.C. Wilson in it. No one else as far as I can remember. I arrived at Jackman's about 4.30 A.M. On arrival I told No. 1 accused that we were policemen in plain clothes. I asked her what had happened. She told me the masked man story. It was a reasonably lengthy story. I recorded her story in my note book. Do not know whether P.C. Wilson did so. After she told me the story I went into a bedroom pointed out by No. 1. There I saw dead body of Peterkin. I examined the door which she said the masked men had broken into.

I would not say that passage is only 4'6". I said passage runs length of house. The passage starts from beginning of first bedroom and runs for length of house.

I measured the top of door to bottom. When back door opens it swings to its left. I examined

the marks on the door myself. At top of half door there were marks as if something could have prised open door from outside. When I examined door I formed no opinion as to whether door opened from inside or outside. Since then I received information that door broken from inside. I now say in my opinion the door was broken from inside. Latch and staple found at bottom of step. No. 1 was present. I found them. About 9 to 9.30 No. 1 accused said she wanted to go to Jackson in a car. I told her that she seemed excited and I considered it dangerous for her to be driving. At that time I did not suspect her of any complicity in the crime. At that time I believed the masked man story. Including the part which said she had been beaten. She was wearing a pink nightgown when I arrived. I never took possession of it. The nightgown was torn down the front. I considered it unsafe for her to drive a car. For herself as well as pedestrians. I did not call a doctor to her as she did not complain of being in pain. I never told her she could go to Jackson under police escort. I learnt later that she went to Jackson's.

I did not exclude Mr. Waithe of Jackson from the house. Not aware that Mrs. White was there. I did not hear Mrs. White abuse the No. 1 accused. During the morning of 21.12.59 Cons. Tull made a report to me. Tull found some garments. Not produced because no bearing on this case. Tull found pyjama suit (part of), clothes hanger, trousers which contained a letter. I never asked No. 1 who wrote letter and to whom it was written. I do not know where the letter is now. Articles found by Tull never in my physical possession. Tull could act without my approval. Tull accompanied No. 1 accused and me to District A Station.

Adjourned.

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Resumed.

Ormond Marshall still on his oath.

XXD. continued:

Persons in van from Jackman to District A were the van driver, Corporal Griffith, P.C. Tull, the accused and me. It is true that I was in the van.

In the Supreme Court

Prosecution Evidence

No.19

Ormond Marshall (recalled),

Cross-examination - continued.

I never remained at house at Jackman's. Arrived at District A about 12 to 12.15. I went to District A about 10 to 10.30. Went back to Jackman's. At 10.30 I was with Sgt. Goring and others. At that time No. 1 accused at Jackman. Before I took her to District A I asked her if she would go with me. She said she did not mind. Accused No. 1 was not shown clothing and letters before statement commenced. It is possible someone could have shown her clothing and letters as I was not there all the time.

Not true that letters and clothing were shown to No. 1 in my presence and as a result she changed her story. I never told her that I knew Carl Yarde was the person who murdered Peterkin. I never told No. 1 that the Commissioner of Police was friendly with Cox of Castle Grant who was related to Peterkin. I never told her that I did not see why she should take the blame for Carl. Moriarty says that the best way of taking a statement is to hear the story before writing. In this case I did not hear the story first as No. 1 appeared intelligent and I wrote as she spoke. I asked her a few questions. No one else present when statement taken. The statement was not witnessed because a witness's statement is not witnessed. It is true that No. 1 said "Carl and" in depositions. (I have marked depositions in order to have points questioned recorded). She did say "until he stopped making any sound." I read over the statement to her. That is usual procedure.

To Court: Statement in my handwriting.

XXD. continued:

I did not invite No. 1 to read over the statement. Moriarty says she should be invited. (see p.46 Moriarty). I felt that she was an important witness. That did not make me feel that I should have statement to her to read over. I did not think it necessary to have statement witnessed. I did not make an entry in my note book of the time statement began. Refers to Moriarty p.87. I made no entry in station diary. I wrote time statement commenced and ended on the statement. Nowhere else. It is true that I was at District A at 2.20 p.m. Accused No. 1 was in company of policemen from 4.30 a.m. to 2.30 p.m.

because she called the police. After I left accused after taking statement on 21st I saw her next at her home that night. I detailed policemen and women from night of 21st to guard No.1's house. I did so because she had given a statement implicating a man at large and I thought it wise to have policemen in case the wanted man returned. On 22nd I went to house of No. 1 accused. As a result of information I searched the canes. Returned to house. Then to District A. Accused not taken to District A. Not within my knowledge that policemen had to break her house on night of 22nd to get in. Not aware that on 22nd her house was locked and children taken to Jackson. I was not at house on night of 22nd. I saw No. 1 on the 23rd at her window. I never told a policeman that No. 1 would write a letter which I would collect. Accused did give me a letter she had written. I do not know why she gave me and not the policemen in the house. I did not get the idea of the letter from Archbolds 34 Ed. para. 1113 where it is stated that a letter given by prisoner to jailer is evidence against him. On 24th the accused did not ask me about her children. I never said them gone long time.

XXD. Carmichael:

At no time during my interview with King was Yarde present. The opening to the back of garage is large enough for persons to go through. I got the impression that it was recently knocked down.

To Court:

If one sits in garage could not see into house.

Re-exd.: Re-examination.

The garments found had no blood stains or anything striking. I did not consider them material to this case. They are at District A. At 4.30 a.m. on 21st when No. 1 told me the masked man story she was calm.

Latches were on inside of door. Latches were ripped out. The marks themselves did not convince me that door was opened from inside or outside. I could not make up mind. After information I realised that marks were consistent with opening

In the Supreme Court

Prosecution Evidence

No.19

Ormond Marshall (recalled),

Re-examination - continued.

from inside. The door when closed fits closely. Does not overlap. The bedrooms are divided from each other by a partition and are divided from rest of house by outside partition. Each bedroom has a door connecting one with the other and a door leads to each bedroom. No door from small bedroom to toilet and bath. Doorway from kitchen opposite bathroom door. What is in the statement is what she said.

No.20

Ermintrude Yarde,

Examination.

No.20

EVIDENCE OF ERMINTRUDE YARDE

Ermintrude Yarde sworn states:

I live at Jackman's. I am 17 years of age. I live with my father, Clifford Yarde. My house is country side of Peterkin's. I know No.1 accused. She lived in a house with Ernest Peterkin (deceased) and Daphne's two children. On Sunday 20th December 1959 I saw Daphne King. I went to St. George and on my return I saw Daphne King No. 1 accused at the window of her house. She called me. I went to her. I went in the house through a side door and into the dining room. Daphne King was in dining room. She took me to the bedroom but before doing so she told me that Carl got her into trouble. In the bedroom I asked her what happened. She showed me the position in which she was making up the bed and Carl was standing speaking to her. She said Peterkin heard the talking and came into the room and Carl jumped through the window. She said Carl was young and foolish and that Pete was blind and Carl could have slipped around and got outside but he jumped through the window for Peterkin to hear and Peterkin accused her of having a man in her house. I left her and went outside to Mr.Peterkin who was sitting on the steps leading to the gallery. I asked Peterkin what he was doing. He asked if it was Trudie. I said yes. He said I just catch that worthless bitch in there with a man No. 1 accused. King could hear what he said. King said Ermintrude don't mind him he worthless like me.

Peterkin began telling me that he was just telling my brother Leroy that he Peterkin wanted my

father to take him to a solicitor or a lawyer to change his will. When Peterkin said these words the accused King said If he live. At that time she was at the window. She leaned over window and said so.

Peterkin called the accused King a nasty slut. King said just like you. When King said "If he live" she spoke softly. I was standing near to her (demonstrates) (about 1 foot). At the time she used the words Peterkin was on steps about 3 or 4 feet away (demonstrates). I left the house and went home. I saw my father coming home. While going the accused King ran to my father and said "Mr. Yarde Mr. Peterkin want you". As he was about to go she told him not to go. I then went inside the house.

Adjourned. Jury warned.

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22.11.60. As before.

Ermintrude Yarde recalled resworn cont'd:

It was about 11 A.M. on 20.12.59 that I saw my father coming when I was going home from Peterkin's house. Clifford and Hazel are the children of No. 1 accused. I had seen them before I saw my father. Clifford and Hazel were outside near Mr. Peterkin. They were troubling Mr. Peterkin. Clifford ran to accused King. He was crying. He spoke to No. 1 accused. He told her that Peterkin had struck him with a stick. The No. 1 accused then said "Hazel and Clifford come in here before I have to push a knife through him." This happened before I saw my father.

After the incident with my father I went home. Next saw No. 1 about 1.30 p.m. I went to the house where No. 1 accused lived. I saw her. I saw Mr. Peterkin sitting in a chair in the sitting room. King was in the dining room. I asked accused King if Mr. Peterkin had taken his breakfast already. She said she had put the breakfast for him but he would not use it. I went back home. Saw her again about 3 p.m. At No. 1's home. I went to find out whether Clifford and Hazel were going to Sunday School. No. 1 said that she was not letting the children go out that afternoon. She was going to shut up the place so that

In the Supreme Court

Prosecution Evidence

No.20

Ermintrude Yarde,

Examination - continued.

no one would call. She said Mr. Peterkin was angry and she would not like any person to call. She said if any person called I must say that no one was at home. I returned home. I went to bed about 9.30 P.M. My father, mother, brother, sisters, a sister's baby, all there. I heard my sister's baby crying. I got up. I heard a crying and knocking outside. I went to the front house window and opened it. I saw the accused King. This was about 1 to 2 A.M. The accused King said You mean I outside hollering and nobody ain't hear me. I asked her what happened. The accused King said "two masked men just went in the house and beat me and beat Pete." She further said that "this time poor Pete must be out there dead". She said that she had some blows in her stomach worth money. She asked me to call my father. I did so. He said he was not coming. He advised her to go to the Boston Bus Co. where she could get a phone message to the police. He said that in a case like that she could not "call his one" meaning (she must call others). King left the window and went back in the street. King was wearing a pink nightgown. It was torn at the two seams and from the waist down. No. 2 accused Yarde is not related to me. I have seen him visit No. 1 accused's house. I have seen him go in the house. Last time I saw Yarde visit was on Friday 18th December 1959. About 3 P.M. I was at Peterkin's house. The accused's two children were there. So was Peterkin and No. 1 accused.

Cross-examination.

XXD. Sargeant:

Known No. 1 accused about 3 months before the incident. I visited often. I was friendly with Mrs. King and her children. It was the sitting room window at which I saw Mrs. King on 20.12.59. She called me. I was on the road coming from town to country. I did not go through the front door because it was not open and Mr. Peterkin and my brother Leroy had occupied the passage to the front door. When Mr. Peterkin called me I went to the back. The front door faces the Skeete's house. I could see from the road whether the front door is open or shut. I was very friendly with Mrs. King. We spoke regularly. We spoke for instance about Christmas, doing the house, the Exhibition. I never discussed my private business with her. She discussed her private business with me before the 20th. Never discussed her private business

regularly. No one else in the house except Mrs. King and me on morning of 20th. I do not know why she took me in bedroom and showed me where she was making up the bed and where Carl was standing. Apart from what I have already said she told me that she tried to make Mr. Peterkin believe it was one of the children but he would not believe.

I gave evidence before the Magistrate. I told the Magistrate that Mrs. King told me that when she was in bedroom with Carl, Petes came in and held her by the leg. It is true she told me so.

After the conversation with Mrs. King I went outside near the gallery steps. Mr. Peterkin was sitting on the steps. My brother Carl standing. Near him. Standing on the ground. Carl about 18 inches from Peterkin. (Witness points from witness box to a spot on floor). Peterkin was sitting on third step coming down, second step going up. When I came out of house I was standing under the window. I was then about witness box to a spot on floor estimated at (2'6" to 3') from Peterkin. Mrs. King had then come back to the window. Peterkin told me he had just caught that worthless bitch in there with a man. He said "I was just telling Leroy that when your Daddy returns I want him to take me to a solicitor or lawyer to change his will". I had heard Peterkin telling Leroy about getting my father to take him to a lawyer. I am a Barbadian.

Q. A Barbadian would have said Trude I am just here telling your brother?

A. I do not understand you.

Continued: I did hear part of the conversation between Peterkin and my brother. Peterkin called King a nasty slut. I left there about 11 to 11.30 A.M. While I was at the house I conversed with No. 1 all the time. I remember the comversation because I have a fairly good memory. It improves as I go along. It is true I heard part of the conversation between my brother and Peterkin. Not true that the only thing Mrs. King told me was the story of Yarde jumping through the window.

When Mr. Peterkin called her a nasty slut she said "just like you". When I was about to leave Mr. Peterkin told me not to forget to tell my father

In the Supreme Court

Prosecution Evidence

No.20

Ermintrude Yarde,

Cross-examination - continued.

he wanted him.

It is not true that I have invented the part about "if he live". When Mr. Peterkin spoke about changing his will No. 1 said "If he live". She did use these words.

Adjourned for 10 minutes

Jury warned.

Resumed:

Witness still on her oath:

XXD continued:

When I left the house I left my brother, Peterkin, Mrs. King and two children. I gave evidence on previous occasion. I said that I stood there about three minutes after my brother left. That would be correct. I was mistaken when I said I left before my brother. I agree that because of the lapse of time I may have forgotten some things. I do not agree that what I have said may or may not have happened. What I have said is what I can remember. Incident occurred nearly a year ago. I have not got very much interest in this case. I remember just as much now as I remembered on the last occasion. I forgot about who left first because the incident happened a long time ago and I have been at school studying. I agree I may have forgotten some of the things. What I have said this morning is what I remember and is true. I am sure about what happened because I remember "seeing and knowing them happen."

I do not think whether I left first or my brother was so important. I remember the words "If he live" because she told me so on Sunday and by Monday morning he had died. When you were cross-examining me I did not repeat the words until asked because I did not know you wanted me to repeat them. No one else heard the words. My brother was about three feet from me. Demonstrates. Looking through the window one looks on the ground. I still do not agree that my brother was nearer to me than Mr. Peterkin. Witness demonstrates. I agree now that my brother was a little nearer to me than Mr. Peterkin. I do not think my brother could have heard the words. Mrs. King spoke to me because I was speaking to her and she was close to me. She was more friendly with me than with my brother.

Our house is a distance of length of court or longer from Mrs. King's house. I walked to Jackman's road to get to my house. Mrs. King passed me before I got home. I was about half way. Mrs. King ran in order to pass me.

I cannot remember if I said at the last trial that I ran to my father and accused King came also. I went back to house at 1 P.M. Mr. Peterkin was sitting in the settee. Went again at 3 P.M. I do not remember going back after 3 P.M. I cannot remember going back after Sunday School. On my way back from Sunday School about 4.15 P.M. I saw Mrs. King at the window. Do not remember if I went in the house or if I heard quarrelling after Sunday School. I cannot remember if I saw Mrs. King before I went to evening service. At last trial I said that on my way to church I said hello. That is correct. I went to bed about 9.30 P.M. When I heard the knocking it was at the above bedroom towards the country. Not the below one to the house of Mrs. King. It was about 1 to 2 A.M. No one went with Mrs. King. I am still at school. On 21.12.59 I was at home. I saw policemen at Peterkin's house. I went over that morning. I spoke to Sgt. Denny. I cannot remember speaking to Sgt. Marshall. Sgt. Marshall took a statement from me on 23.12.59. Only time I remember speaking to Sgt. Marshall was on 23.12.59 when I gave the statement. I gave evidence at last trial. I said that I spoke to Sgt. Marshall on Monday morning when he asked me if I lived near there or if I could tell him anything about Mr. Peterkin and Mrs. King quarrelling. That is correct. I do not remember what I told him that Monday morning. I do not think my conversation with Sgt. Marshall went so far that I told him about the "if he live" story.

After Sgt. Marshall asked me if I could give information about any quarrelling or anything Sgt. Denny and other policemen came up and Sgt.Marshall left with them. On Monday 21.12.59 I had to go to work for my mother so I cannot say if policemen called at the house. Before Sgt. Marshall spoke to me Sgt. Denny spoke to me. I did not say anything to him. I heard that Peterkin had been killed. I knew about the jumping through the window story. I did not tell Sgt. Denny anything. I was afraid. I was afraid because my Daddy would have lashed me if he knew I had given information

In the Supreme Court

Prosecution Evidence

No.20

Ermintrude Yarde,

Cross-examination - continued.

to the police. I was not in habit of visiting P.C. Graham of District A. I was never friendly with P.C. Whittaker. When I gave the statement to Sgt. Marshall I gave it at my father's home. Not at District A. Statement taken on 23rd. In the evening. My father, mother and Leroy present. I do not know if Leroy had given a statement to police. I do not know if he heard what I told Sgt. Marshall.

XXD. Carmichael:

The back of the garage was broken down on the 18th December. The part leading to the canes. Persons used to visit Peterkin's house. I visited on Saturday and Sunday. I did not see Yarde. Yarde not present when I had conversation with King or Peterkin. Occasionally I saw Yarde at the house. Peterkin there.

Adjourned.

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23.11.1960. Resumed. As before.

Ermintrude Yarde recalled resworn:

Re-examination. Re-Exd.: When No. 1 accused said "if he live" she spoke softly. I gave statement to Sgt. Marshall on 23rd of what I had seen and heard.

No.21

Vere Carrington,

Examination.

No.21

EVIDENCE OF VERE CARRINGTON

Vere Carrington sworn states:

I am Permanent Secretary to the Premier. Previously I was Registrar of the Supreme Court. This is a testamentary document of one Ernest Latimer Paterkin filed in the Supreme Court Registry in January 1960. Document marked V.C.1.

Cross-examination.

XXD. Sargeant:

The document was filed on the 16.1.1960.

XXD. Carmichael: Declined.

Re-Exd.: Declined.

No.22

In the Supreme Court

Prosecution Evidence

No.22

Erskine DeLisle Rogers, Examination.

EVIDENCE OF ERSKINE DeLISLE ROGERS

Erskine DeLisle Rogers sworn states:

I live at Maxwells. I am a solicitor practising in this Island. I knew Ernest Latimer Peterkin. About 6 or 7 years ago he purchased a property at Brighton and I acted for him. In 1959 he came to my office in James Street gave me instructions to make his will. I prepared it and he signed it. I signed as a witness. This is it. Exhibit V.C.1. The other witness is Cyrillene Gittens, my Secretary. Will signed by Peterkin in presence of Gittens and me and we signed in each other's presence and his presence.

I did not prepare any other document for him. I handed the will to Peterkin. In the fourth paragraph of will Peterkin left his house at Rendezvous to his caretaker Daphne King. I know the dwelling house the subject of the gift to Daphne King. It is a bungalow. Stone walls. The house is on land which was originally owned by one Alleyne who divided it into lots of 3,000 square feet. I cannot say whether the bungalow is on one lot or more than one lot. From what I know of the property owned by Peterkin it is worth about $8,000 to $12,000. I base my estimate on the fact that I know several houses in the area. It is in my line of business to value houses. I have had transaction with land and houses in the area. I know the prices at which houses and land are bought and sold for. The will was filed in Registry on 16.1.1960.

Cross-examination.

XXD. Sargeant:

I saw Peterkin twice in connection with legal business. I have seen him on other occasions but not to talk to. The agreement for Brighton house was signed by Peterkin. It will be difficult to remember if he signed in my presence but I assume so. On second occasion he came to my office he signed the will Ex. V.C.1 in my presence. His vision was defective. I know he had difficulty in seeing but whether he had a glimmer of sight or not I could not say. Peterkin came to my office with two other people. Mrs. King was not one of the two.

XXD. Carmichael: Declined.

Re-exd.: Declined.

In the Supreme Court

Prosecution Evidence

No.23

Rupert Yarde, Examination.

No.23

EVIDENCE OF RUPERT YARDE

Rupert Yarde sworn states:

I live at Jackman's, St. Michael. I am a mason. Ermintrude is my daughter. I knew the accused Daphne King from time she came to live at Jackman's. I remember the 21st December 1959. About 2 A.M. I heard a knocking at the door (Sargeant objects to witness giving evidence about 21st. Not in depositions. Overruled).

Continued: I recognised the noise as that of accused King. She said Mr. Yarde what kind of people you all are I was outside hollering all the time and I heard no one. She said two masked men had come in the house and killed Petes. She asked me to open the door and come out. I told her I would not be the first person to come to a murder. I told her to go to the Boston Bus Co. and get a phone message to the nearest police station. I asked her how she knew he is dead and she said one of the masked men held her and stuffed cloth in my mouth and the other man beat Petes "until death". She said what made it worse was that she had to witness every blow. She left. I had remained in bed during the time she spoke to me. Before the 21st I had seen King on the 20th. About 11 A.M. I was sitting at the window of a little shop attached to my house. She said "Mr. Yarde you hear Petes is sending one of your children to call you to take him to a lawyer?" I asked her what had happened. She told me that he was putting her out but she had no where to go. She said I was not to carry him anywhere "today". I again asked her what happened. She said she was in the bedroom talking to Carl and the blind man came in and accused him (Carl) of going with her. She asked me if I thought that at a time like that, 9 in the morning that she would be doing a thing like that. She also said that if the foolish boy Carl was a man like me and had sense knowing the blind man to be blind he would walk around him but he jumped through the window. She said she was trying to make him believe it was one of her children but he did not believe. I told her to go and put the blind man's food. She said she was going to put it out he was not going to eat. The Carl referred to was the No. 2 accused.

Prior to this conversation I had seen No. 2 at Peterkin's house on one occasion, the Saturday before the incident. He and my son LeRoy were behind the garage helping LeRoy put back some bricks which had been "licked down" from the back. The only other person present during this conversation was Ermintrude but she did not stay until the conversation was present.

I went to bed about 9 P.M. on the Sunday. Before the knocking on my door I had not heard any sounds during the night.

XXD. Sargeant:

It was about 11 A.M. on Sunday 20th that I saw No. 1 accused. At my home. No one came to my home just before Mrs. King came. No one came to my home shortly after Mrs. King came. I had just got home. I did not see Ermintrude or LeRoy when I got home. While speaking to Mrs. King, Ermintrude came from inside the house to the door of the shop. I drove home in my car. When the accused Mrs. King came I had already got in the shop. I did not see when Ermintrude entered the house. I saw her for the first time while talking to Mrs. King. I would say Ermintrude heard the first part of the conversation but she then turned away and went in so I do not know if she heard the whole conversation. Mrs. King spoke to me for about 25 minutes. Mrs. King was speaking most of the time. I have a good memory I would say.

I did not make a note then or shortly after of what Mrs. King told me. I saw Mrs. King later that day. About an hour after. She was at the window of the house in which she lived. I asked her where was Petes. She indicated by pointing that he was in the house. She did not speak. She looked normal. Not vexed. Not happy. Not a serious expression in my opinion. I do not know what would be her expression if worried but she looked normal to me. I did not see her again that day. On the morning of 21st when I heard the knocking and she spoke to me I did not see her. I heard her voice.

I gave evidence before the Magistrate. I never said that she spoke to me about the masked man story as I was not asked. I worked on Monday 21st December 1959. I left home about 7 A.M. I did not go to No. 1's house before going to work. I

In the Supreme Court

Prosecution Evidence

No.23

Rupert Yarde, Cross-examination - continued.

spoke to Inspector Gaskin and Inspector Franklyn before going to work. I do not remember speaking to Sgt. Marshall. I did not tell them everything I have said today. They asked me if I could tell them anything I said I had to go to work. I told them nothing that morning.

I gave a statement to Sgt. Marshall at my home. At night but I cannot remember the day or date. My wife, Ermintrude and some of the children present. Cannot remember if LeRoy present. When Sgt. Marshall started to take Ermintrude's statement I was present but left and did not hear what she said. Ermintrude was present when I gave my statement to Sgt. Marshall. Not true I was asleep on morning of 21st and did not hear anything at all. I gave evidence in Magistrates Court. Evidence read over and signed by me. This is my signature.

Sargeant applies to tender deposition to prove that witness has given different evidence. Allowed.

Deposition tendered and read. Ex.

Cont'd XXD: She did tell me that she was in bedroom talking to Carl and the blind man accused her of going with Carl. She did tell me so. She did tell me that Peterkin wanted me to take him to a lawyer.

XXD. Forde:

Accused Yarde not present. Yarde nowhere in the vicinity. Garage was broken down before the Saturday.

Re-Exd.: Declined.

No.24

Charles Dash, Examination.

No.24

EVIDENCE OF CHARLES DASH

Charles Dash sworn states:

I am the owner of the house in which Mr. Peterkin (deceased) and Daphne King lived. I visited every week-end as canes were growing on the land and I had to visit my crop.

I recall the 18th December 1959. I met Mr. Peterkin in the Magistrate's Court. The accused King was with Peterkin and so was LeRoy Yarde. On the Thursday previous to the 18th. Mr. Peterkin and Mrs. King had come to me and in consequence of what we spoke we arranged to meet at District A Magistrates Court on the 18th. I had a conversation with the accused King. She told me that she heard that Mr. Peterkin had made a will in which Rendezvous house was left for her. She said that if anything happened to him she would have to turn back in the car as he had borrowed money on the Rendezvous property to buy the car. She said I would have to rent her the house cheaper than what I rented it to Mr. Peterkin for. I told her I would have to discuss it with my wife.

On the 21st December 1959 I went to Peterkin's house. Went twice. First about 8 A.M. Large crowd present. Went back about 7 to 8 P.M. Saw Mrs. King speaking to some people in a car. My wife and two children with me. King joined us. I went in the kitchen. King came. King told me that two masked men came in, broke the place and killed Mr. Peterkin. I asked King what she did if she did not shout for murder. She said one man held her waist and the other man beat Peterkin with a ripping iron which I had left. I had left a ripping iron, a hammer and a chisel in the house. On the Thursday before the incident. A door to the garage was 4' long and I had to do some repairs to it. Make it longer. For that purpose I had brought the instruments. Mr. Peterkin borrowed them. Have not seen the ripping iron since. Seen the hammer and chisel.

Adjourned.

Resumed.

Witness resworn.

Continued:

The ripping iron was a long piece of iron with a head cut at the end for drawing nails. On the 24th December 1959 about 8 to 9 A.M. I went back to the house. I saw No. 1 accused there. I spoke to Mrs. King and wished her a happy Christmas.

In the Supreme Court

Prosecution Evidence

No.24

Charles Dash,

Examination - continued.

Sargeant:

Sargeant objects to evidence witness about to give on the ground that it is inadmissible as being obtained by inducement. He wishes the jury to remain. I suggest that jury should withdraw as he may be hampered on his argument. He agrees. Wishes jury withdrawn. Granted.

Jury withdrawn. Marshal in charge.

Sargeant wishes to cross examine witness on this issue.

Shorthand note taken.

Charles Dash:

Cross-examination.

XXD:

I gave evidence before. On the 24th I saw two men there. One was in the gallery and one outside of the garage. I wished Mrs. King a happy Xmas. She said she might be in a cell. I said if she were to tell the government the right thing she would not have to study that at all. A policeman was in the gallery and one at the garage door. I was going to house and as a result of a conversation with her I bought some pork. I took it back.

About 2.45 P.M. as I was leaving she called me back and took me to bedroom. She said I am going to tell you the truth don't tell Mrs. Dash anything or no person. She showed me how she was spreading a sheet on the children's bed and her boy friend was in there and he talked too hard. Mr. Peterkin heard his voice. She said Mr. Peterkin asked who was in there. She said her children. Mr. Peterkin replied that she was a lying old whore and he came in bedroom feeling with his stick. She said the boy opened the window and went through. She said the whole day she tried to make peace with him and he won't come together. About 11 P.M. she went into Peterkin's bedroom muching him up. He put his hand on her and would not loose and the boy up the ripping iron and lick him down. She asked what he licked him down for. She said she don't know what to do. She is responsible for the old man. She said she went for the kitchen knife and started to put some cuts on his throat and then cried out that two men

came and killed Mr. Peterkin. One man was on steps going to the garage and the other in gallery. That is in the morning. I was backing the side door. Policeman at side door was from witness box to junior counsel bar table. I did not know he was a policeman. You said policeman. I said man.

No.24

Charles Dash, Cross-examination - continued.

When I returned in the evening two men and a woman were there. They were inside the house. Woman was in drawing room reading a paper. The woman was about 6 feet from me. Of the two men, one was at the verandah door and the other was standing near the kitchen.

Re-exd.:

Re-examination.

When I went in the morning and saw two men they were in civilian clothes. I did not know what work they were doing. In the evening the two men were in civilian clothes. So was woman. I did not know them and I did not know their occupation. When I came out I heard. On the morning of 24th I offered to get her some pork. I felt sorry for her. No one suggested I should get the pork for her. When I had the second conversation in bedroom no one else present. She told me the story. I did not prompt her to tell me.

No.25

No.25

EVIDENCE OF JEFFREY ELLIS

Jeffrey Ellis, Examination.

Jeffrey Ellis called by Sargeant sworn states:

I am P.C. 48 attached to C.I.D. I was on duty at King's house on 24th. Charles Dash visited house about 9.30 a.m. W.P.C. Beckles was also there. She was sitting near the front window. Dash said Good morning to us. I was in the sitting room.

When Dash was leaving he wished Mrs. King a happy Xmas. She said it won't be so happy as she had no pork for the children. He remained about 20 minutes. I was in the house for the protection of Mrs. King and also to arrest Yarde if he returned. Toilet and bath in house. It was not used by police. I was there all the time that

In the Supreme Court

Prosecution Evidence

No.25

Jeffrey Ellis,

Examination - continued.

Cross-examination.

Dash was there. I was nearer to Dash than Beckles. I did not hear the entire conversation between Dash and accused King. I heard him offer to buy pork. I did not hear Mrs. King tell Dash that she might be in the cell but I heard Dash wish her a happy Xmas.

XXD. Malone:

I was not expecting Dash to visit. I never suggested to Dash to speak to King to see whether he could get the truth from her. My function was to protect King but not to interfere with her liberty. She could see whom she wanted.

Sargeant states a witness summoned but she is not in Island.

No.26

Court Notes Ruling evidence of Charles Dash admissible,

23rd November 1960.

No.26

COURT NOTES RULING EVIDENCE OF CHARLES DASH ADMISSIBLE

Sargeant:

Witnesses in conflict as to policeman and policewoman were. Objection is based on acquiescence of members of the Force. By their silence in not revoking a statement of inducement. From the evidence of Dash he said "If you were to tell the truth" etc.

Crown v. Fennell 7 Q.B.D. 147. R. v. Elizabeth Laugher 175 E.R. 93. Roscoes Criminal Evidence 16th Ed. p. 45.

Malone in reply:

I rule that evidence is admissible.

Jury return.

I inform them evidence concerns No. 1 only.

No.27

EVIDENCE OF CHARLES DASH (CONTINUED)

In the Supreme Court

Prosecution Evidence

No.27

Charles Dash, Examination - continued.

Continued:

When I wished her a happy Christmas she said don't tell me so I might be in the cells. I said don't study that at all if you were to tell the Government the right thing you will be O.K. She said she did not have a piece of pork for the holidays. I said I am going in to town and if I see anyone coming that way I would send a piece.

I left the house. When I had the conversation with King she was in the middle of the dining room. Two people were in house. One was at the gallery and other on the steps near garage. I did not know who the people were. They were dressed in civilian clothes. I offered to get the pork out of kindness.

I went back to the house later that day. I had bought some pork. Returned about 2 to 2.45. I saw Mrs. King. Gave her pork. She said she was going to pot it. I was about to leave when she called me to the bedroom. She said Don't tell Mrs. Dash or any person these words I am going to tell you the truth. She said she was spreading (sic) the truth on her bed and her boy friend was there. She said Peterkin called out "whose man voice that in my place". She said she told him that it was her children. He said you lie you old whore my children outside. She said he got up with his stick and was feeling through the bedroom. She said the boy knew that Peterkin could not see and before he go under the bed he opened the window and got out. She said Mr. Peterkin was fretting the whole day. She said about 11 p.m. she went to Peterkin's bedroom muching him up and Mr. Peterkin held on to her front and won't let go and the boy up and lick him down with it. She said she asked the boy what he licked him down for. She said she did not know what to do and she went for the kitchen knife and out his throat. She further said she then cried out that some person came and break the place and killed Peterkin.

There was no one else in the bedroom when she spoke to me. Three other people were in the house. One was in the gallery and the other was in the dining room and a third in the kitchen.

In the Supreme Court

Prosecution Evidence

No.27

Charles Dash, Cross-examination.

XXD. Sargeant:

I did speak to Mrs. King on the 18th. Not true I spoke to Mr. Peterkin. I spoke to her. I was sitting in Court next to her. There was a woman called Elaine who lived with Mr. Peterkin for 6 weeks. Mr. Peterkin did not ask me to go with him to Elaine's home at Black Rock. I never went to Peterkin's home on the 18th or 19th or 20th. I went on 21st. About 8 A.M.

Adjourned.

- - - - -

24.11.1960. Resumed. As before. Jury checked.

Charles Dash:

Before witness is sworn Malone asks to defer cross-examination as he has suffered loss. Both Counsel agree.

Cross-examination deferred.

No.28

Jeffrey Ellis, Examination.

No.28

EVIDENCE OF JEFFREY ELLIS

Jeffrey Ellis sworn states:

I am P.C. attached to C.I.D. In course of my duties I was engaged in the investigation of case. On 24.12.1959 I was on duty at Peterkin's house. I was there for the purpose of arresting Carl Yarde in the event of his return.

I assumed duty about 7.45 A.M. I was dressed in plain clothes. I know Dash. I saw him at the house. Woman police constable Beckles was also at the house. Dash had a conversation with King. When he was about to leave I heard him wish King a happy Xmas. She told him it would not be so happy because she did not have any pork for the children. Mr. Dash told her not to let that worry her as he would send some by the bus or bring some for her. He left. Dash returned at about 2.15 P.M. He handed King a parcel. She took it from him and carried it in kitchen and unwrapped it. Parcel contained pork. She washed it and put it in plat. (sic)

No.28

Jeffrey Ellis, Examination - continued.

Cross-examination.

She went in bedroom and told Dash to come. He went in bedroom. I was then in sitting room. W.P.C. Beckles also in sitting room. I never went in bedroom. Nor did Beckles. I had no conversation with Dash.

XXD. Sargeant:

During Dash's first visit I never left the sitting room. During second visit I went towards kitchen. I was looking at the back as usual. I never went to see what the parcel contained. If what Dash has said is true it is because accused must have spoken much more quietly than when discussing the pork. I left the house about 2.45 P.M. W.P.C. Beckles left with me. Dash had left.

XXD. Carmichael: Declined.

Re-exd.: Declined.

To Court: Other policemen went on duty after I left.

- - - - -

Michael Headley sworn: Tendered for cross-examination.

XXD. Sargeant: Declined.

XXD. Carmichael: Declined.

No.29

No.29

Lionel Griffith (recalled), Examination.

EVIDENCE OF LIONEL GRIFFITH

Lionel Griffith sworn states:

I am now a Corporal of Police attached to C.I.D. In December 1959 I was P.C. 428. On 21.12.1959 I was at the home of the accused King at Jackman's, St. Michael about 7 P.M. Corporal Whittaker was there. He too was then a constable. We were dressed in plain clothes.

We were there for the purpose of arresting the accused Yarde in the event of his returning to the house. Accused King and her two children were in

In the Supreme Court

Prosecution Evidence

No.29

Lionel Griffith (recalled),

Examination - continued.

the house. We remained throughout the night. About 6.20 A.M. on 22.12.59 accused King and Corpl. Whittaker went into the yard of the house. Back of the house Corpl. Whittaker was near the garage and I was on the step. Corpl. Whittaker shouted Griffith come quick. I immediately went where he was and saw the figure of a dark man in the canes which were to the back of the yard. The man was wearing a blue shirt and a khaki pants. He was running with Corpl. Whittaker behind him. I ran after him too. We did not succeed in catching the man. After the chase was over we returned to the house. There Corpl. Whittaker told the accused King that she had told Yarde that we were at the house. The accused King said "I would rather the rope go around my neck."

Whittaker said to King "You know that we are here to arrest Yarde and yet you signal to him that we were here." I had been to the house at 7 A.M. on 21.12.59. King was there. Sometime after 7 A.M. I went to District A with Sgt.Marshall and P.C. Tull. Went in a police van. Got to District A police station about 11.30 to 12.30. I had nothing to do with accused King at the police station.

Cross-examination.

XXD. Sargeant:

P.C. Mason the van driver, Tull, Marshall, I and the accused King travelled in the van. It is true that Marshall was there. I left District A around 1.30 P.M. I did not make entry in my note book of my movements. Movements of investigating officers recorded in station diary. I do not know if entry made in station diary that I left about 1.30 P.M. I refreshed my memory from my statement I wrote but not from my diary. I may have made a note in my case diary. I do not remember an entry being made about clothes found at the scene of the crime. I and Corpl. Whittaker were not present when Sgt. Marshall took statement from accused Mrs. King.

I saw police officers arrive at the station. I remember seeing Supt. Franklyn. I did not see Supt. Franklyn show letters or garments to accused King. Not true that that was done in my presence. I was not present when Supt. Franklyn told accused that Commissioner of Police was friendly with Mr. Cox of Castle Grant who was related to Peterkin. Not true it was after

In the Supreme Court

Prosecution Evidence

No.29

Lionel Griffith (recalled),

Cross-examination - continued.

Franklyn told accused King that that she made a statement to Franklyn in my presence. Not true that Supt. Franklyn then said to her go and give the Sgt. a statement and she was taken to Sgt. Marshall where the statement was made. Not true I sat at the table throughout the entire statement. On morning of 22.12.59 I was on kitchen step when Whittaker shouted for me. I saw a man running. I pursued him. He escaped. We returned to house of No. 1 accused. I had my note book with me. I did not make a note of the words alleged to be used by Mrs. King. I did not make a note of words in any of the official diaries. I have been a policeman for about 6 years. It is within my knowledge that when important words are used a note should be made. I did not consider what she said important as she was not suspected at that time as far as I knew. Accused said "I would rather the rope go around my neck." I gave evidence at preliminary inquiry. Read over. Signed. I admit I said in the Magistrates Court "I would prefer the rope to go around my neck now."

I admit the words in Magistrates Court are not same as now. The accused said "rather" not "prefer". Accused might have said now.

To Court: I made no entries in my note book while in the house.

XXD. cont'd.:

Not true the accused said "You going to put the rope around my neck." I did not see the signal. I did not accuse King of giving a signal. From where I was standing I could see Whittaker. I do not agree that I could have seen the signal. I was at the house when other members of the police force arrived. I am not aware that Mrs. King was sent to District A to give a statement in connection with escape of alleged man. Not true I travelled in the van with her.

XXD. Forde:

The figure I had seen was not there when King used the words or when Whittaker accused King of signalling. I did not see any signal. King and Whittaker were close to each other. I was about door to witness box (12 feet).

Re-examination.

Re-exd.:

If I were present when a statement was made I would sign as a witness. Ex. O.M.3 not witnessed by me.

In the Supreme Court

Prosecution Evidence

No.30

Keith Whittaker, Examination.

No.30

EVIDENCE OF KEITH WHITTAKER

Keith Whittaker sworn states:

I am a Corpl. of Police attached to C.I.D. In December 1959 I was a P.C. On 21.12.59 at night I was on duty at Jackman's for purpose of arresting Carl Yarde if he returned and of protecting No. 1. I was dressed in plain clothes. Corpl. Griffith, Daphne King and her two children in the house. I remained on duty throughout the night. Before I went on duty I knew Carl Yarde. For about 3 years. About 6.20 A.M. on 22.12.59 while I was in house I heard a noise in the canes at back of palings of house. This noise sounded as if someone was walking.

As I heard the noise I saw the accused King who was nearest to the back door of the house walk to the back door, open it and went into the back yard. I followed her closely. As she reached the back of garage where there is a broken down wall I saw her look into the canes and shake her head over left shoulder. I looked into the canes and I saw the accused Carl Yarde. I shouted to Griffith. I jumped over the wall into the cane followed by Griffith and ran after the accused. Did not catch him. I returned to the house where I saw the accused Daphne King. I accused her of signalling to Carl Yarde to tell him that police on scene. Accused King said "I would rather the rope go around my neck right now."

I had been to house from 7 P.M. on 21.12.59. Had been there earlier too. I never went to District A Station with Daphne King. On 21.12.59 I was at District A Station. I knew that Daphne King was there. I went to station about 1.15 p.m. on 21.12.59 and I know King was there.

I was not present when Sgt. Marshall took a statement from King.

Cross-examination.

XXD. Sargeant:

If I took a statement in presence of other policemen whether they witnessed it or not depends on the nature of statement. An ordinary statement is not usually witnessed.

In the Supreme Court

Prosecution Evidence

No. 30

Keith Whittaker, Cross-examination - continued.

I arrived at Jackman's on 21.12.59 a little after 9 A.M. I never travelled in van with Mrs. King to District A. Not present when Supt. Franklyn told accused in presence of Sgt. Marshall that she was trying to cover up for some person. Not present when she was told that Commissioner of Police was very friendly with Cox of Castle Grant who was related to Peterkin. Not present when she was advised to give her statement and save herself.

I was not present when accused made statement to Supt. Franklyn and then to Sgt. Marshall. I never saw Supt. Franklyn at the Station. I have a good memory. Remember morning of 22.12.59. It was I who accused King of signalling not Griffith. I gave evidence in previous trial. I spoke the truth.

(Counsel does not pursue question on checking previous record).

I gave evidence at Preliminary Inquiry. At Magistrates Court I said "I will rather the rope go around my neck right now." Evidence was read over. True. Signed. The depositions do not record me as saying the words "right now". "Right now" is omitted but I did say it. The Magistrate may have omitted the words "right now".

I was in possession of official note book. I did not make a note of words used. I did not suspect her of complicity. I do not only make a note of words used by suspects. I knew nothing about the investigation. I was there for No. 1's safety. I felt that as he was wanted for murder I should be there for her safety. She did not tell me she wanted my protection. It is normal for police to be generous in protecting persons. It is normal for police to remain in person's homes for their protection.

To Court: She never objected to presence of police.

XXD. cont'd.:

I never told her she was free to object. I was vigilant all the time I was at the house. I would say that my vigilance prevented No. 2 accused from entering house. I know of other cases when the police have remained in a person's house all

In the Supreme Court

Prosecution Evidence

No.30

Keith Whittaker,

Cross-examination - continued.

night. A policeman can enter a home without being invited. I am in the habit of going on private premises without being called.

XXD. Carmichael:

I should be known to Yarde. Yarde was not present when King used the words about rope. The turning of King's neck was done quickly. My eyes fixed on her.

Re-exd. Malone:

Re-examination.

Between Peterkin's house and Yarde's house are canes. The house would not be watched effectively from outside.

Mr. Sargeant through the Court:

Desires to tender the deposition as he overlooked doing so in cross-examination.

Deposition tendered. Exhibit B.

Adjourned.

Resumed.

No.31

Nathaniel Gaskin,

Examination.

No.31

EVIDENCE OF NATHANIEL GASKIN

Nathaniel Gaskin sworn states:

I am an Asst. Supt. Police. On 21.12.1959 about 2 P.M. I went to the house of accused Yarde accompanied by Station Sgt. Nurse. I saw the grandmother of the accused. I spoke to her. She shouted. Yarde came from the house. I told him I was a policeman in plain clothes and I wanted to interview him in connection with circumstances surrounding the death of a man named Peterkin. The Accused stared at me and ran away. Nurse and I chased him. Did not catch him. I did not have a warrant for his arrest.

On following day a warrant was issued for accused Yarde. On 30.12.1959 about 7 P.M. I saw the accused at the Central Police Station. He was

arrested. I read the warrant to him. I cautioned him. He made a statement. Taken down in writing in presence of Sgt. Denny. Read it over to him. He said it was true and correct and initialled a correction. Signed it. So did I and Denny. This is the statement tendered. No objection. Ex. N.G.1.

In the Supreme Court

Prosecution Evidence

No. 31

Nathaniel Gaskin,

Examination - continued.

Cross-examination.

XXD. Sargeant:

On 21.12.59 I went there about 4.30 A.M. Stood for about 10 minutes. I never returned that day.

XXD. Forde:

As far as I know the first time warrant read to Yarde was on 30.12.59. N.G.1 was only statement he gave. He did not object to signing it. I do not know whether he came voluntary. Yarde is 20 years. When I saw Yarde in C.I.D. a constable was with him.

Re-exd.: Declined.

No. 32

No. 32

EVIDENCE OF CLYDE NURSE

Clyde Nurse,

Examination.

Clyde Nurse sworn states:

I am a station Sgt. of Police. On 21.12.59 I accompanied Asst. Supt. Gaskin to residence of accused No. 2's grandmother. Gaskin spoke to grandmother. She shouted. Yarde appeared. Gaskin told Yarde he was a policeman investigating circumstances surrounding death of Peterkin. Said he wished to interview him. Yarde ran away. Chased. Got away.

XXD. Sargeant: Declined.

XXD. Carmichael: Declined.

In the Supreme Court

Prosecution Evidence

No.33

Eric Denny, Examination.

No.33

EVIDENCE OF ERIC DENNY

Eric Denny sworn states:

I am a Sgt. of Police. Now attached to District A. Formerly Central Station.

On 22.12.1959 about 9 A.M. while assisting in the investigation of this case I was travelling along Deanes private road in police van. I saw the accused Yarde walking ahead of me. I instructed driver to stop. Yarde looked back. Ran away. He escaped through a field of canes. On 30.12.1959 about 7 P.M. I saw the accused Yarde at the Supt.'s office. Supt. Gaskin read a warrant. Cautioned him. Yarde made a voluntary statement. Ex. N.G.1. Accused's mother brought him to station.

Cross-examination.

XXD. Sargeant: Declined.

XXD. Forde:

He came with his mother. Gave statement willingly.

Re-exd.: Declined.

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Malone states that there are two other witnesses whose names are on back of indictment. Available. He does not propose to call them.

Only cross-examination of Dash left.

Adjourned.

Resumed 25.11.1960. As before. Jury checked.

No.34

Charles Dash (continued), Cross-examination.

No.34

EVIDENCE OF CHARLES DASH (CONTINUED)

Charles Dash resworn.

XXD. Sargeant:

On 18.12.1959 I saw the accused King at Magistrate's Court. I found Peterkin in Court. I never said he was taken up the court steps by

one LeRoy Yarde. I was more friendly with Mr. Peterkin than Mrs. King. When Mrs. King spoke to me the court was sitting. I am sure the conversation was in District A Court. On 21.12.1959 I went to Jackman's as a result of a message. I cannot remember if I saw Sgt. Marshall at the house. I saw Commissioner of Police. He did not wish me to enter house but I said I was owner of house. He asked me no questions. No one asked me for my name and address. I returned on night of 21st. I saw three people there. I did not speak to them. I was not interviewed by the police on the 21st.

I was interviewed by the police on Sunday 27th. At Goldenbridge, St. George. My home. Not at District A. Police came by van. My wife and children present. Not at all interviewed by police before 27th. Not true that conversation on 18th at Magistrates' Court is imagination on my part. I have not discussed this case with Sgt. Marshall. I am friendly with Sgt. Marshall. Very friendly with him. He has never told me he was one of four policemen who came to my home on 27th. Mr. Peterkin never told me he was a carpenter. He asked me to lend him my ripping iron, chisel and hammer. I did not think it strange that a blind man should borrow these tools.

On 24.12.59 I arrived at house about 8 to 9 A.M. I had left some paint in the cellar and I went to look after it. I was not sent there by anybody. I saw two men and a woman. Woman in chair in drawing room, one man near gallery door, other man near garage. Morning conversation was with Mrs. King in the drawing room. Loud tone. She was crying. Anyone near the kitchen wall should have heard conversation. One man was not on steps leading to the dining room. Wherever he was he could hear what I said if he wanted to. I was speaking in a normal way. Any person in the house could have heard me. Whole conversation in the same tone. Anyone who heard part should have heard all.

In the evening Mrs. King took me into the bedroom but not in the morning. In the morning I left the police where I found them. When I told her that if she were to tell the Government the right thing she would not be in fear of being in the cell. I meant the police.

In the Supreme Court

Prosecution Evidence

No.34

Charles Dash (continued),

Cross-examination - continued.

When I got back in the evening I saw three people there. One woman and two men. The woman was sitting in a chair in the drawing room. One man was at gallery door other at kitchen door. Mrs. King was in sitting room. I gave her the pork. She told me she was going to put it for the children. In the morning when I told her that if she told the truth etc. the men in the gallery could have heard. Other man could have heard too. I drink alcohol. I had a few drinks when I came into town that morning. I met one of my friends. I had a few drinks with him.

Christmas makes no difference to me. I work every day of the year. I drink according to my means. My job comes first. I do not drink as much now as I did when I was younger. Not true that because it was Christmas time I misheard some of the things she told me. I had known Mrs. King since the 15th October. Not true I am all mixed up. I had a friend with me in the car. One Reynold Brathwaite of St. Philip. I told him what Mrs. King told me. He is a chauffeur. I did not tell the police I had told Brathwaite. I told my wife I had done so. I have never asked the accused Mrs. King to be friendly with me. Not true I have asked her to be friendly with me on several occasions and told her that Mr. Peterkin was too old. It is true she told me she was "muching up" Mr. Peterkin and Carl Yarde struck him and she used a knife after. She did tell me so. I am not mixed up. When Mrs. King spoke to me she seemed down spirited. On the 24th I never told the accused Mrs. King that Petes could have been put out with a little washing soda.

XXD. Forde:

Accused Yarde was not present at conversation on the 18th. Nor on the 21st. First time I saw No. 2 accused was at Magistrates Court during Preliminary investigation.

Re-examination.

Re-exd.:

I had no animosity towards Mrs. King. On the 24th I was quite sober.

Case for Crown.

No.35

COURT NOTES

In the Supreme Court

No.35

Court Notes, 25/26th November 1960.

Accused Daphne King informed of courses open to her. She says she has nothing to say.

Sargeant desires to submit no case to go to jury. He asks for withdrawal of jury. Agreed.

Sargeant:

Relies on one case. Queen v. Abbott 1955 3 W.L.R. p. 373.

Sargeant agrees that it is question of fact for jury. If cannot decide who struck blow must acquit. Sargeant does not intend to call witnesses.

Carmichael wishes to make submission before No. 2 given his rights and before jury return.

Malone: No objection.

Sargeant: No objection.

Carmichael:

No case to answer against Yarde. No evidence. R. v. Bennett 8 Cr. App. Re. p.10. Gibbins and Proctor 13 Cr. App. Re. p.134. This is not a case near the line. Up to point that deceased received blow no evidence in law to connect accused Yarde.

Jury return. Warned.

Adjourned.

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Resumed Jury retire.

Carmichael continues:

Abbott's case. No prima facie case established. Yarde's return and Yarde's presence. No distinction.

Malone in reply:

Judge not to decide whether on facts. He would consider facts sufficient but whether enough facts for jury to consider. 16th Ed. Roscoes p.765. Wilcox and Jeffrey 1951 1 All E.R. 464. Dr.'s evidence.

In the Supreme Court

No. 35

Court Notes, 25/26th November 1960 - continued.

Not less than three blows struck.

Court rules case for jury.

Carl Yarde called on. Says:

"I have nothing to say".

Malone addresses:

Submits King clearly guilty. Submits Yarde also guilty.

Shorthand writer takes address.

As to Yarde.

Blows to shoulder delivered before blows to neck. Dr.'s evidence. Yarde says one blow.

Adjourned.

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26.11.1960. Resumed. Jury checked.

Shorthand note taken.

Sargeant:

Admits masked man story untrue. She found herself in a situation through no fault of her own. Acted like a human being. At first opportunity afterwards she told the truth. Benn and Lynch are truthful witnesses.

Forde:

We cannot say which one came first and which after.

I sum up.

Jury retire.

Return 5.15 p.m.

No. 1. Guilty.

No. 2. Guilty.

Sentence of death on both.

No. 36

S U M M I N G U P

In the Supreme Court

No. 36

Summing Up, 26th November 1960.

SUMMING UP

by

Mr. Justice K. Stoby

(Regina vs. Carl Yarde & Daphne King)

Mr. Foreman and Members of the Jury: We have now reached the closing stages of this trial, and at the conclusion of my summing up it will be your duty to determine a verdict on the indictment against the two accused King and Yarde. The circumstances preceding the death of Peterkin are such as may be calculated to excite pity in some quarters and annoyance in others, if you accept as true the statement which King made to Sgt. Marshall. I will deal with that statement fully later on.

You have a woman of 38, the Mistress of a blind man of 70, regularly committing sexual intercourse with a young man of 20 in the house of that blind man. But that admission of hers must not be allowed to cloud the issue with prejudice. A woman may be guilty of a human weakness and still be a most worthy character. So if you should be tempted to feel disgusted over this woman's moral conduct, please remember that extraneous considerations must not be allowed to enter your deliberations. In the case of Yarde, there is his unchallenged statement of his visits to her. Whether he was doing a right thing or a wrong thing is no concern of yours, and at all costs, you must not be selfrighteous in deciding the issues in this case.

The charge against the two accused is that some time between the 20th and 21st days of December, 1959, in the Parish of Saint Michael, in this island, they murdered Ernest Peterkin. In a criminal trial, it is the duty of the judge to explain the law to the jury; and it is the jury's function to find what facts they consider proven. The judge explains the law so that when the jury find the facts they are able to decide whether the facts they believe justify a verdict of guilty or not guilty, having regard to what the judge has said is the law. It is murder if a person of

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sound memory and discretion unlawfully kills a human being with malice aforethought, either express or implied. Those who are not familiar with law sometimes find it difficult in understanding what is meant by malice aforethought, express or implied.

Express malice may be said to exist when there is an intention to cause death or grievous bodily harm to the person killed, provided that intention preceded or is co-existent with the act which caused death. Malice may be implied from a deliberate cruel act committed by one person against another. It may be implied where death occurs as a result of the voluntary act of the prisoner, which was intentional and unprovoked. In this case no question of provocation arises.

Now, members of the jury, having explained what murder is, you may wonder how it is that two persons are charged if it is necessary to prove malice aforethought in the person who killed. This is the reason: Where two persons are charged in one indictment, although they are tried together, the case against each one must be considered separately. The evidence of one may, not be applicable to the other, as is the fact in this case. You must deliver a verdict in respect of each of them, and that verdict must be based solely on the evidence in respect of each. The result of considering the case against each separately means that it is possible to convict both; or acquit King and convict Yarde; or convict King and acquit Yarde; or acquit both. The Crown ask you to convict both because they say the murder was a result of joint agreement or a pre-arranged plan between the two accused to kill Peterkin. Or to put it another way: that they were acting in concert. In a felony such as murder, there may be a principal in the first degree and a principal in the second degree. A principal in the first degree is one who is the actual perpetrator of the crime. A principal in the second degree is one who is present at the commission of the offence and aids and abets its commission. Presence in law does not always mean actual physical presence, but I'm not going to worry you with legal technicalities; I am only going to tell you what is enoguh for the purpose of this case.

Now, as I said, a principal in the second

degree must be present; but presence alone is not enough. The presence must be in order to participate in the act. A person who is present when a crime is being committed and does nothing to prevent it is not a good citizen and not a brave man, but he is not guilty of any criminal offence. The presence must be for the purpose of participating - participating by rendering aid or assistance. The participation - the rendering of the aid or the assistance - must be the result of a concerted design; a pre-arranged plan; joint agreement; common purpose - call it what you will - to commit a specific offence. Let me give you an example. If two men set out to steal a bicycle, and one man burns down a house the other man is not guilty of arson; because the pre-arranged plan, the acting in concert, was to steal a cycle and not to burn the house. So, here in this case, in order to find both guilty you have to find that there was a joint, pre-arranged agreement to kill Peterkin. You have to find that the killing was done by one of them and that the other participated in the killing by rendering aid or assistance. I may put that in a simpler way. If two persons agree together that a felony such as murder is to be committed on a particular person, and in pursuance of that agreement the murder is committed, then each of the accused is guilty of murder, it matters not by the hands of which the fatal blow was struck. The reason for that being that the two did arrange to murder the particular person. So, you see from what I have explained, that in order to establish a joint agreement by King and Yarde to kill Peterkin, the Crown have to prove that pre-arranged plan - prove it by evidence. If the evidence does not justify you in finding that Peterkin's death was brought about as a result of a concerted plan by King and Yarde, then you cannot possibly convict both of these two accused. You will have to consider which one killed him, and if you cannot make up your minds beyond reasonable doubt as to which one killed; then you will have to acquit both. Of course, the common purpose - the joint agreement to kill - does not have to be entered into hours before the act. Let me give you an example. Two men are going home from the cinema without the slightest intention of committing a crime. They pass a building which seems deserted, and one says to the other "I'm going to break into that building and steal"; and the other stands outside and

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watches. A policeman comes along, and the one outside shouts to warn the one inside. Both are guilty of breaking and entering, because they were acting in concert - one outside watching; the other inside stealing.

I said a moment ago that in a criminal trial the judge's duty is to explain the law. It is also necessary for the judge to remind jurors of certain cardinal principles of law which are necessary for the proper trial of a criminal case. What I am going to say now, you have probably heard before, because you have been sitting on other cases. But it is my duty to tell you again. And I say it, not for the sake of mere repetition, but because it is so important that the law demands that I must tell you in every case. It is this: In every criminal case, the accused person is presumed to be innocent. That is what is known as the presumption of innocence. The onus of proving the accused persons guilty is on the Crown. That duty, that burden, is on the Crown to prove the guilt of every accused person. It is a burden which never shifts at any stage of the case. Even after the case for the prosecution is closed, and the accused are called upon and told what their rights are, the duty is on the Crown to prove the case against the accused. Now the standard of proof is what I am in the habit of calling "proof beyond reasonable doubt"; reasonable doubt meaning that you must be sure, and must not convict unless you are completely sure. Nowadays, the term reasonable doubt has fallen into disuse, and it is said it is better judges tell this to the jury: "You must not convict an accused person unless you are satisfied by the evidence that the offence has been committed. It is not for the prisoners to prove their innocence; but for the Prosecution to prove their guilt". It is your duty to examine the evidence and see that it satisfies you so that you feel sure that if you return a verdict of guilty you are completely sure of their guilt. To put all that into a nutshell, unless you are completely sure of the guilt of these accused persons acquit them. You are the judges of the facts; you accept from me what I tell you about the law, but on questions of fact you are completely supreme. You are entitled, of course, to listen to any comments that I make - and I shall make some comments during this case. You can accept the comments I make and adopt them

as your own; or you can disregard them if you think fit. You are entitled to draw inferences from facts, but you must draw reasonable inferences, and the inferences must be from the facts proved to your satisfaction in this case. And if in drawing inferences you find that there is more than one inference that you can draw, both reasonable inferences, then draw the one which is more favourable to the accused.

In view of the long time this case has been pending, it is necessary to stress that your verdict must be returned in accordance with the evidence led in this case. If, perchance, before you knew you were going to sit as a juror, you read or heard anything about this case, please discard what you may have heard or read. There is one other point I must mention, and I mention it with a certain amount of hesitation because the subject has no place in a law court. The race of accused is of no account whatsoever in deciding whether King is guilty or not guilty, or whether Yarde is guilty or not guilty. It would be utterly reprehensible to condemn King because of her complexion as it would be to acquit her for that reason only. Similarly, in respect of Yarde, you don't convict him on the ground that if one is guilty then the other must be guilty; or you don't acquit him on the ground that if King is not guilty he must not be guilty too. Or if you honestly feel that King is guilty and that Yarde is not guilty, don't be afraid of the tittle-tattle outside, or what people will say - that people will say it is because of his race. Your duty is to act in accordance with the evidence and your conscience. Although the case has lasted for eleven days the evidence can be brought within a fairly narrow compass.

The Crown's case is based on what is known as circumstantial evidence. The case against an accused person may depend on direct evidence or circumstantial evidence; or a combination of both. Direct evidence, in the sense in which I am using it now, is evidence of a fact by a witness who perceived it with one of his own senses. There is no direct evidence of anyone who saw the accused strike the deceased. It often happens in a criminal case (as would be expected to happen) that no witnesses saw the crime committed. He who sets out to kill or steal tries to do it when no one is about and therefore, the Crown often have to rely

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on circumstantial evidence. Many people say you can't convict on circumstantial evidence, but lawyers will tell you that circumstantial evidence is sometimes more conclusive than any other evidence. What is circumstantial evidence? Circumstantial evidence is the evidence of circumstances connected with the fact to be proved from which an inference of the existence of that fact can be logically drawn. Let me give you a simple example, because it may be difficult for you to fully appreciate what I have said there. Supposing we left this court, leaving this chair in the court room, and returned tomorrow morning and found the chair missing, and the police said that they had closed the court room after we left, and when the watchman came in the morning the window was open, then the fact to be proved is that that chair was stolen. No one saw anyone take that chair. But the fact which it is required to prove is the stealing of that chair. Circumstantial evidence you see, is the evidence which comes in here, and that is, that all of us will be able to say that the chair was here when we left; there is evidence from the police that the building was closed when they left; there is evidence from the watchman that the window was open, and there is also evidence from the watchman that when he entered the chair was not there. From that you can draw the inference that someone must have broken into here and stolen the chair. But to convict a person on purely circumstantial evidence the jury must be satisfied that, not only the circumstances are consistent with the accused committing the act, but inconsistent with any other rational conclusion. So if the facts which I mentioned to you about the chair existed, but in addition, it is learned that the Registrar has a key for this building and the chair is seen in his office, then you will see that it is difficult to draw the conclusion that the chair is stolen. Because if the Registrar has a key to the building he may have entered the building after we left. So that there is more than one rational conclusion which can be drawn in those circumstances. It is necessary, before drawing an inference on a case brought on circumstantial evidence, to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. Let me deal now with the facts of the case. I am going to discuss the evidence which concerns King. Then I will discuss the evidence concerning Yarde; and then I will say a word or two on common design.

You will remember I told you that the case against each one is to be considered separately, and that the admissible evidence against each one must be considered separately. That is the reason why I will now discuss the case against one alone just as if it were a separate trial against her, and then discuss the case against the other alone as if he were standing his trial separately.

On the 21st December, 1959, Dr. Ward was called to Jackmans at a house where the deceased Peterkin and the accused King lived. Dr. Ward's evidence, so far as is material to this point, is that he examined the dead body of Peterkin and it was identified by someone else. He said there was dislocation of the cervical spine, that is, the joint between the third and fourth cervical vertebrae with compression to the spinal cord at this level. The cord was squeezed between two independent bones. And then he said that in his opinion, death was due to shock and haemorrhage following the dislocation of the cervical spine and contusion and laceration of the bone and tissues. He said that, in his opinion, dislocation of the cervical spine could have been due to the application of considerable force to the back of the head and the neck. Force by a blunt instrument could have been caused either by a ripping iron or a crow bar. If you accept Dr. Ward's evidence on that point, then you have evidence that Peterkin died from a blow which must have been inflicted with some force, and that being so, you may think that the person (we are not deciding who the person is now) who inflicted that blow and broke his neck intended to do Peterkin grievous bodily harm. You remember I told you that malice may be said to exist where there is evidence of an intention to kill or cause grievous bodily harm to the person killed, provided the intention preceded or was co-existent with the act which caused death. And I also told you that malice can be implied from a deliberate, cruel act committed by one person against the other. Then, if you are satisfied that someone hit Peterkin with a weapon such as a ripping iron or a crow bar, or a blunt instrument, then there should be no difficulty in arriving at the conclusion that somebody murdered Peterkin. Unless of course the question of provocation arose, which I said does not arise in this case. There are a few facts which are not really in dispute and it may be useful to recall them now. When I say not in dispute I mean either proved or not

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challenged during the trial. In a criminal case, every fact has to be proved, nothing can be taken for granted. But at the end of the case we often speak of certain facts not being in dispute. No one denies that the accused is a married woman estranged from her husband and that force of circumstances had driven her in the arms of a blind old man. Several witnesses spoke of her living at Peterkin's house. There is nothing wrong with her living with Peterkin, I am only using that fact as a starting point for what I am now going to say.

The first point to which you might wish to give consideration is that portion of Dash's evidence dealing with his visit to the Magistrate's Court. You will remember that the witness Charles Dash told you that on the 18th December, 1959, he came to the Magistrate's Court at District "A". And he said that he had a conversation with the accused King. She told him that she heard that Mr. Peterkin had made a Will in which the Rendezvous house was left for her. She said that if anything happened to him she will have "to turn back in" the car as Peterkin had borrowed money on the Rendezvous property to buy the car. And Dash went on to say that King asked him whether he would be prepared to continue renting her the house in the event of Peterkin's death, only that he would have to let her at a reduced rental. And you will remember his answer was that he would have to consult his wife about that. ' Now, you will remember the evidence of Mr. Rogers, the Solicitor who said that he had seen Peterkin in his lifetime, and that he had prepared a Will for him. You will remember the evidence of Mr. Carrington who was formerly the Registrar of the Supreme Court, that that Will had been lodged in the Supreme Court Registry. Mr. Rogers identified the Will which he had made for the late Mr. Peterkin, and insofar as this case is concerned, the relevant portion of the Will is Paragraph 4 which is as follows:

"I give and devise my dwelling house and land situated at Rendezvous Garden in the Parish of Christ Church and island aforesaid to my caretaker Daphne King of Saint Elizabeth Village in the Parish of Saint Joseph and island aforesaid".

Mr. Rogers went on to say that, having regard to his experience as a Solicitor and Valuer in this

island, that he would place the value of that house, which he knows, at between eight and twelve thousand dollars. Now if you accept the evidence of Mr. Rogers (and there is no reason why you should not accept his evidence and the evidence of Mr. Carrington as to the lodging of the Will), and if you accept that portion of the evidence of Dash (I will deal with his other evidence later on) what does it prove? It proves that the accused King knew that on the death of Peterkin she stood to gain a bungalow worth $8,000.00 - $12,000.00. That is all that evidence stands for.

Well, from the 18th of December we can jump to the 20th of December. I am referring to the evidence of Mr. Rupert Yarde. He said that at or about 11 o'clock on the 20th, he was sitting at his shop window when the accused asked him (the accused King) if he had heard that Mr. Peterkin was sending one of his (Yarde's) children to call him to take Peterkin to a lawyer. Yarde asked King what was wrong and she replied that Peterkin was putting her out of the house and that she had nowhere to go.

You will remember that Ermintrude Yarde said that on the 20th Peterkin told her that he was going to send her brother Leroy to fetch her father as he wanted to be taken to a lawyer to change his Will. And I think that she said that conversation was given at a time when King was able to hear it. Isn't that so? (To Counsel).

Mr. Sargeant: That is correct, my Lord.

Mr. Justice Stoby: Thank you.

Now, if that evidence is true, it is entirely a matter for you. You are the judges of facts. If that evidence is true, then the Crown will have proved that the accused King was in danger not only of losing her inheritance but the means of her support. In other words, the motive for hastening the death of Peterkin would have been established. Let me say a word or two about motive. Proof that there is motive for the commission of a crime is a burden which the Crown never have to undertake. The reason being that it is often difficult to tell why persons act in a certain way. Sometimes, however, the presence of motive is relevant as one explanatory factor. It may be used as one link in

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a chain of circumstantial evidence. It is not to be given an importance it does not deserve. The jury must not say "well, there was a motive, so we believe "X" committed the offence". By itself, motive is valueless. It is only valuable when added to other relevant and believable evidence. So let me return then to the evidence of the 20th. Ermintrude Yarde said that whilst she was at the house on the 20th Peterkin began telling her that he was just telling her brother Leroy that he wanted her father to take him (Peterkin) to a Solicitor, and that when Peterkin said these things accused King said "if he live". At that time King was at the window; she leaned over the window and said so. Now if you accept that evidence, it will be for you to give it such interpretation as you think fit. Can it be that, hearing Peterkin's plan, she resolved that the only way to preserve her inheritance was to destroy the person who was giving it to her? Facts, and inferences from facts are entirely your reserve; not mine. Of course, this bit of evidence of Ermintrude's as well as other parts of Ermintrude's evidence was severely challenged by the Defence. At the moment I am dealing with the Crown's case, but it is fair to say at this early stage that the Defence suggests that while Ermintrude did speak to the No. 1 accused King on the 20th, the words "if he live" are an entire concoction. The credibility of the witnesses is entirely a matter for the jury, but I am entitled to make some comments to help you to decide. You are not bound to accept my comments. You can ignore the comments and arrive at your conclusion on the facts. Now several reasons have been suggested why we should ignore that portion of the case, and although I am not dealing with the Defence now, I think it fair to say that that evidence is somewhat important, and I draw your attention to the criticism which has been made at this stage.

Firstly, it is said that Leroy Yarde and Peterkin were so near to the No. 1 accused that both or either would have heard the words. The importance of that is that King would not have used the words "if he live" at a time when Peterkin and Leroy Yarde could have heard. This is a point that the Defence wishes you to bear in mind when considering if you accept that evidence or not. You saw the demonstration Ermintrude Yarde made of the respective position in which each was

standing; you saw the demonstration just in front of the bench here. Obviously, if a person stands two or three feet from another we would expect all in the area to hear it. But does it not depend on the tone used and the position of the mouth? If, for example, juror No. 2 turns to juror No. 3 and said something quietly - not whispering, but softly. Would juror No. 1 and No. 4 necessarily hear what 2 had told 3? That is a matter entirely for you. Secondly, the criticism is that she said that she saw Sgt. Marshall and Sgt. Denny, I think, on the morning of the 21st and never told them anything of the words which she had heard on the 20th. That appears to me to be sound criticism. One would expect that, having received such important information that it would have occurred to her to tell the police at the first opportunity. On the other hand, she said that she was afraid that her father might flog her. You would know the actions and reactions of your own countrymen better than I would, and you can make up your minds whether you think she has given a good reason for not telling the police. Because she admits that she had been making a statement to the police, I think on the 23rd; and the point Mr. Sargeant was making on behalf of the accused King was that if it were true that she had heard these words on the 20th that she would have told the police on the 21st. I think, perhaps, in fairness to the accused No. 1, that I should just read that portion of Ermintrude's evidence. In a certain portion of the cross-examination this is what she said in answer to counsel for the accused King:

"I don't remember what I told him that Monday morning (him, meaning Sgt. Marshall). I do not think my conversation with Sgt. Marshall went so far that I told him about the 'if he live' story. After Sgt. Marshall asked me if I would give information about any quarrelling or anything. Sgt. Denny and other police came up and Sgt.Marshall left with them.

"On Monday the 21st, I had to go to work for my mother, so I cannot say if policemen called at the house".

That is the material part of that evidence. Due to the criticism that has been made concerning certain discrepancies in Ermintrude's evidence,

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when I come to deal with the Defence, I am going to pick out as many of the points as possible which counsel asks you to consider and discuss them with you. But at this early stage, I shall not do so. You will appreciate the point which is being made. You are asked to disbelieve Ermintrude Yarde when she says she heard these words "if he live"; not only because of the reasons which I have already given, but because of these reasons: in cross-examination she said that she gave evidence on a previous occasion and on that occasion she said that she stood at the house for about three minutes after her brother left. That would be correct, she said. She said in cross-examination "I was mistaken when I said I left before my brother". Let me say again, that the fact that there have been other proceedings has nothing to do with you; nothing to do with this trial at all. The rule of law is where a witness has made a statement on one occasion (whether verbally or in writing) and on a subsequent occasion has made another statement, the fact that she has done so, can be proved to the jury and they can be asked to say that the witness is so unreliable - either that she is lying or that she has a faulty memory - that you should not believe her. That is why depositions are tendered. When a trial begins, the trial does not immediately commence in the Supreme Court. Evidence is taken down in the Magistrate's Court, and then that evidence known as the deposition is placed at the disposal of the accused's counsel and the judge. And Mr. Sargeant is aking you to say that if you find Ermintrude Yarde is giving a story different from that given in the Magistrate's Court or a story given on another occasion you have to regard her evidence as unreliable. It may also occur to you gentlemen, that it is quite impossible for a witness to repeat word for word the evidence she has given 8 or 9 months or even 4 months before. You see an effort is sometimes made to have it both ways. If we have a witness who makes a mistake here and there when called upon to repeat evidence, it is said that we cannot accept what is said in this court because the witness is saying something different, but if a witness repeats something word for word, the first thing counsel would say is that the witness is reciting the evidence. So that questions to ask in arriving at the credibility of a witness are: Do you think the witness is speaking the truth? Do you think the witness is a reliable one? Two questions.

Once you take into account these discrepancies and weigh them, then no one can quarrel with your findings. Now, going back to the discussion, at a previous time, it has been told you that she said that she remained at Peterkin's house for three minutes after her brother Leroy left. And at this trial she said that she left before her brother. Another discrepancy which has been brought to your attention is that she said in cross-examination "I can't remember if I said at the last trial that I ran to my father and accused King came also." You will remember what she said at this trial. What she said at this trial is that whilst she was on her way home the accused King passed her and spoke to her father. And it has been suggested to her that on a previous occasion she said that she ran to her father and the accused King came up at the same time. You will make up your minds whether you think that that is a discrepancy, or a discrepancy of such a nature which will lead you to think that the whole of her evidence is a virtual make-up. Then the last one I am going to deal with is this: In cross-examination she said "I can't remember if I saw Mrs. King before I went to evening service". "At the last trial I said that on my way to church I said hello! That is correct". She admitted that at the previous trial she said hello to Mrs. King, but on this occasion when she was asked if she saw Mrs. King before going to evening service she said she could not remember whether she saw her or not.

Well there, members of the jury, you will ask yourselves if that is so peculiar or so important that it will destroy her evidence. It was nearly eleven months ago when she said hello to Mrs. King. This brings me gentlemen, to the events of the early morning of the 21st of December, 1959.

Olga Skeete gave evidence, and she said on the 21st of December about three in the morning, she heard a knocking at her door, looked through the window and saw the accused No. 1 (i.e., King). And she opened the door and King entered. And King said Mrs. Skeete, you heard me hollering for murder and would not come? Skeete then said that she asked her: "What time". She made no reply. Then King said she and Mr. Peterkin were in bed and they heard a noise at the back door and Mr. Peterkin said who are you, and that Peterkin took his stick, came out of the bedroom and two masked men broke

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the back door and rushed in to him. She further said King told her one of them held on to Peterkin and hit him around his neck with a piece of iron and that the other man held on to her. She tried to get away, but that he held her mouth; that he cuffed her; and that she had come to see whether Mr. Lynch could give any assistance. You will remember Mr. Lynch lives nearby. Well, Skeete was cross-examined to show that she was wrong in certain details. I did not gather that the cross-examination was directed to show that no such story was told. The cross-examination was intended to show that in details Skeete was making a mistake as to some of the things which King told her. It is not being suggested that King did not in fact visit Skeete that morning and give her in substance that story of the masked men having entered the house and killed Peterkin. You also have the evidence of T. Lynch who tells you that at about the same hour in the morning (three o'clock) he heard a knocking at his door. He asked who was knocking and the reply was "Mrs. King". He knew her voice and recognized it. He said he was in bed. She told him what happened. She told him two masked men broke the door at the back of the place and began to beat herself and"Pete" and that she would like to get a telephone message to the police. He got up, dressed, and was next speaking to No.1 accused and Mrs. Quintyn. Then you have the evidence of Reuben Ben whom, I think, has been referred to as one of the reliable witnesses in this case. He tells you that he also was in the district in the early hours of that morning when he heard a knocking at the door of the garage. He got up and saw a man coming through the gate. Let me make it clear that that man was not Yarde, he was one of the witnesses. He blew the horn and did not succeed in attracting any attention, but when he was next at the gate she spoke to him; that she was crying and she asked him to get a message to the police. He dressed and borrowed her car and went to the police station. So there you have the evidence of Skeete. It is a matter for you. You can ignore all that evidence despite what has been said in this case; despite the fact that there has not been a great deal of cross-examination addressed to this witness. Since questions of fact are for you, you can still ignore all that evidence. But you may think, members of the jury, that having regard to the evidence of Olga Skeete,

Theodore Lynch, and Reuben Ben, there can be no doubt that that morning No. 1 accused did tell various people the story that two masked men had broken into the house and as a result of their breaking in Peterkin had met his death. In addition to all three of these witnesses you have also the evidence of Rupert Yarde. You will remember that I dealt with certain portions of his evidence. But he also gives some evidence dealing with the 21st. He said "before the 21st, I had seen King on the 20th at about 11.00 a.m. I was sitting at the window (in a little shop window of my house). She said: "Mr. Yarde you hear Petes is sending one of your children --- ". Sorry I have dealt with that already; but the evidence of Yarde which I really want to deal with is the evidence in which he said that on the 21st of December she had also come to him in the early hours of the morning and given this masked man story. Now criticism has been made of his evidence for this reason: It has been brought out that in the Magistrate's Court he did not say anything about the masked men story. His answer was that "I did not say anything about it because the Prosecutor didn't ask me." Remember, I have explained to you that a deposition is tendered only to contradict a witness. If a witness made a statement here different from what has been made on a previous occasion, it is important to present the deposition to see the difference. Well Mr. Sargeant tendered the deposition in the Magistrate's Court and you will see that he never said anything about King having told him this story in the early hours of the morning. His explanation was that "I was not asked". But since Ben has said it, Skeete has said it and Lynch has said it, it might have been thought that it was not necessary to get Mr. Yarde to give that evidence again. But the reason why counsel for the Defence stresses that that evidence was not given is because he wants you to come to the conclusion that since he did not give that evidence in the Magistrate's Court, he is the sort of person whom you ought not to believe, and that the evidence which he gave on the 20th is doubtful since he is saying something here which he did not say in the Magistrate's Court.

Now this masked men story, in addition to being told to Skeete, Ben, Lynch and Rupert Yarde, is also told to E. Yarde. You heard Ermintrude's evidence and you heard her account of the masked

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men story, so I'm not going to read Ermintrude Yarde's version of what King told her; I do not think it is necessary for me to refer to that.

I turn now, members of the jury, to Sgt. Marshall's evidence. Sgt. Marshall arrived on the scene at about half past four in the morning. How did Sgt. Marshall get there? As I understand the evidence, Sgt. Marshall was at his home lying peacefully in bed at his house in Hindsbury Rd. when, as a result of a telephone call (or a knocking) he got into this car driven by one of the witnesses - Ben, I think it is. And these, with another constable, drove to the house at Jackmans. He said that when he got to the house at Jackmans he spoke to the accused King and told her that he was a policeman in plain clothes. He asked her what happened and accused King said that about 1.00 a.m. that morning, whilst herself and Mr. Peterkin were lying in bed in the bedroom, she heard a noise at the back door. Mr. Peterkin heard it too. She told him the house had two bedrooms and an entry to the smaller of the two bedrooms. She told him they both got out of bed and went towards the door. She said she was walking in front while Peterkin walked behind with a stick. She said when she got to the door she found the door open and two men standing on the inside. She said both men were wearing masks and a pair of gloves on their hand. One man was tall and thin; the other one was short and squatty. One of them held her around her waist, cuffed her in her left side and right side and prevented her from shouting. While the other man held Peterkin, took him to the back of the bedroom and beat him with a piece of iron and a knife. So that you have here for the 6th time (if you accept Marshall's evidence) the story being told that two masked men had entered that house and killed Peterkin. Then Marshall goes on to say that at about 12.45 p.m. on the 21st of December, 1959 - he had originally gone there - the accused was taken to District "A" and Marshall said that he took her there to interview her to see whether he could get any further information about the crime. And at the station she made a statement - a free and voluntary statement - which has been tendered as Exhibit M3, and which you can take with you, if you wish, when you retire.

Now, in order to do justice to this case, you

must understand the law regarding statements. A statement made in the absence of another accused person is not evidence against that other accused; it is only evidence concerning the maker of the statement. It is often said that it is only evidence against the person who makes it. I prefer to say it is only evidence "concerning" the person who makes the statement. Therefore, when I read the statement which the No. 1 accused made to him, remember it has nothing at all to do with Yarde. Although this is a joint trial and all the evidence has been led in the presence of both of them, this statement that she gave here is not evidence and can not be used against Yarde. When you are considering the case against him; similarly, the statement that he gave can not be used when you are considering the case against her. You should shut it out completely and avoid it if you can. There are several reasons for that, but one obvious reason is that a person can say anything about another one in his absence and he is not there to question it. And that is why the law says that if a statement is made in the absence of someone, it is not evidence against that person. So just take my word that it is a matter of law that you must only consider this statement in relation to No. 1 accused. There are other reasons why it is not evidence against No. 2, but I will not worry to tell you anymore.

Now another important aspect of the statement is that if it is to be admissible against the maker of it, it has to be a free and voluntary statement. If a statement is made as a result of a promise or a threat, or by force, or by fear, it is not a free and voluntary statement. Perhaps I ought to tell you the reason for that. Experience has shown - it has happened during the war - that persons who are threatened, persons who are promised, often tell lies on themselves and make statements which are not true. And therefore, the law says that if a statement is not free and voluntary, I repeat, if a statement is not free and voluntary, it must be excluded from the consideration of the jury. Now, in law, when a statement is made and it is sought to tender that statement and it is objected to, it is the duty of the judge to decide in the absence of the jury whether the statement, in his opinion, is free and voluntary and should be admitted. The judge hears evidence, and in that respect he is a judge of law and of facts. Judges

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in England have laid down certain rules known as the "Judges Rules" to guide the police and the Court in respect of the taking of a statement. And if the judge in trying a case bears in mind these Judges Rules and comes to the conclusion that the statement is a free and voluntary one, then he admits the statement. But that is only the first step. The statement having been admitted - since you are trying the case and I am not trying it; since you are deciding the case and I am not - counsel is entitled to try to get you to say that although the judge has admitted this statement we, the jury, do not agree with that. So that if after having heard the cross-examination of Sargeant Marshall, you come to the conclusion that although I admitted the statement you think that it is not a free and voluntary statement, ignore the statement and discard it from your consideration. It is only if you are satisfied that the statement is a free and voluntary one that you will then give it the weight you think it deserves. Another point gentlemen: even though the statement is admitted, and even though you think that it is a free and voluntary one, you might still come to the conclusion that you ought not to attach any weight to it if you think that that what was written there was not in fact what was said. So now, gentlemen, in considering what weight you will attach to the statement, you may wish to consider a few things. I said at the beginning that I was entitled to make a few comments which you can discard or accept as you wish.

Now Sgt. Marshall did not want to go to Peterkin's house at that hour of the morning. A report was made, and as a policeman, it was his duty - even at the sacrifice of sleep - to leave his bed and to go there at that hour of the morning to investigate the crime. Now when he got there, he heard for the first time - he knows nothing about what has happened; he is called to investigate a crime - from the person sending for him that two people had come in and killed old Peterkin. If that story were true, (and you might think, members of the jury, that at that stage Marshall had no reason to doubt the truth of the statement) the accused King had committed no offence. At that stage the police would want her help. Could she identify the person who had come in there and killed old Peterkin? Could she identify the persons? Did Peterkin have any enemies? Was

robbery the motive? If Sgt. Marshall had not taken her to the station and pursued his investigations into that masked man's story to find out if the masked man's story was true, would there not be a hue and cry, not only by her, but everybody else, that the police had done nothing to try and solve the crime which had occurred in that district? You might think, members of the jury, that at this stage of the investigation it was logical and reasonable for Sgt. Marshall to invite her to the station to try to get some further information from her. But it is suggested by the Defence (and as I am dealing with the statement, I'm not going to wait until I come to the Defence, I am dealing with it now) that she made that statement as a result of an inducement and that the police suspected that there was nothing truthful about the masked men story and that they promised her that if she told them the truth she would be used as Crown evidence. Now, as I have told you, the statement must be free and voluntary. And if you make a promise to a person that they must tell you what happened, and as a result of that inducement you told them something, the statement is not really a free and voluntary statement. Because the statement has been as a result of a promise; the result of an inducement; and it is for that reason that counsel for the Defence is asking you to say that despite the circumstances of this case, that statement was not free and voluntary because, he alleges, an inducement was made. And he is asking you to say that irrespective of the fact that I have admitted it, you ought to reject it. Now let me mention some of the points which I want you to bear in mind. Firstly, it is said that she was under restraint; that although the police say that she was not arrested, her liberty was restrained, and that her liberty being restrained, she was in the position of a suspected person and that she should have been cautioned. That is the argument which has been put up on her behalf.

Well, these are some of the answers which Sgt. Marshall made: "At about 9.00/9.30, No. 1 accused said that she wanted to go to Jackson in a car. I told her that she seemed excited and I considered it dangerous for her to be driving". You see, counsel is trying to bring out here that she wanted to go to Jackson in her car and that if the police didn't suspect that she was implicated in this killing of Peterkin they would have allowed her to

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drive on wherever she wanted, and that the reason why she was not allowed to do so, is because they were breaking her down - restraining her liberty - and that she was eventually taken to the station where she gave this statement. "At that time I did not suspect her of any complicity in the crime. At that time I believed the masked man story including the part which said she had been beaten. She was wearing a pink night gown when I arrived. I never took possession of it. The night gown was torn down the front". The reason that question was asked was because it is suggested that if the police believed the masked man story they should have taken her garments to have them produced in evidence in the event of the arrest of the masked men, and that they would have been able to say that she was molested and that her night gown was torn up. Then Sgt. Marshall also said "I did not exclude Waithe of Jackman's from the house. I was not aware that Mrs. White was there. I did not hear Mrs. White abuse the No. 1 accused". The point is being made that she was being kept under restraint and that people were not allowed to be in there. But Sgt. Marshall said "I did not exclude Mr. Waithe of Jackmans from the house". Then he said this: "During the morning of the 21st December, 1959, P.C. Tull made a report to me. Tull brought some garments. The garments have not been produced because they have no bearing on the case". The garments were part of a pyjama suit; a clothes hanger; and a pair of trousers which contained a letter. It is true it appears from the evidence that on the 21st December, 1959, some garments were found in the cane fields near the house. The police said these garments were not produced in evidence and not tendered because they were not relevant to this case. A case is tried on the evidence which is relevant to the issues. Every bit of evidence led here must have some bearing on the case. The police said there was no point in producing the articles when they had no bearing on the evidence here, and I would have to tell you in my summing up to discard them. But counsel for the Defence tells you that trousers contained a letter. As far as I know, there is no evidence who wrote it. Counsel suggests that that trousers had a letter which was in the handwriting of the No. 1 accused and that Supt.Franklin took that letter and compared it with some letters which were found in the house, and said it was in the handwriting of the accused King and told her

that they had something pointing to Yarde's having to do with this offence; that she was trying to protect somebody and that it was better if she spoke the truth. If you accept that suggestion, then of course, you will have to reject the statement produced as evidence. If you ignore that statement, what have you got in this case? All that you would have is that she told a masked man's story and that there is no other explanation to the incident of the 21st December. But counsel asks you to treat the case in that way. He asks you to say that statement is not voluntary; and if you shut it out he submits there would not be enough evidence upon which you can convict the accused.

Now, I will make brief mention of Dash's evidence. I have already referred to part of his evidence - that part of his evidence which has been made in the Magistrate's Court and the fact that what he said concerning the 18th was evidence which, if you believe it, would go to show that she knew, not only that Peterkin had made a Will, but that she stood to benefit from that Will. I don't think I have pointed out to you what the criticism made about Dash's evidence was. The criticism is that he (Dash) was more friendly with Peterkin and that it was unlikely that he would confide in her and that if it were anybody who would be confiding in him it would be Peterkin and that Dash is not truthful when he gave that evidence. But the point I am now going to deal with will be very brief. It is that part where he dealt with the incident of the 21st concerning the masked men story, and then on the 24th when he was told another story. Objection was taken to Dash's statement and after hearing evidence and argument in your absence, I allowed the evidence to be given. It was objected to that Dash got King to tell him what she told him as a result of inducement. Well, in law, inducement must be by a person in authority if there is inducement at all. And you will remember that Dash did say "if you tell the truth". You are not in a position that you will know the law, but you may think that Dash was trying to induce her to say something. In your absence, I held that Dash is not a person in authority and have since admitted the evidence. There was further cross-examination of police witnesses who admitted that they were present and Dash said they could have heard what he said. So counsel for the Defence is asking you to say that this evidence

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this inducement was made in the presence of the police and Dash should be treated as a policeman. I admitted the evidence, but like the statement of Marshall you can reject it. It is the law that if an inducement is made to a person who is not in authority, but before a person who is in authority, it must not be admitted since the statement is not free and voluntary. I have already admitted that statement on the evidence before me at the time. But when you consider Dash's evidence, is it not really a change of version - a little different from the version of the 21st which Sgt. Marshall said she gave? It seems to me that in dealing with Dash's evidence, you can deal with it from this angle: that it really does not carry the case further at all. I am dealing now with the evidence of the 24th, not the 18th. That evidence of the 24th need not even have been given. On the 21st she made a statement to Marshall; on the 24th the statement to Dash was more or less the same thing (with a few additions here and there) that she had already told Marshall. So if you think that Marshall's statement was not free and voluntary and was induced then, of course, you must strike out Dash's evidence; because the inducment would have been there from the beginning - since the 21st. But if you think there was no inducement to make that statement on the 21st, and that that statement was a free and voluntary one, then you do not have to worry with the evidence of the 24th, because you would look at what was said on the 21st. So my suggestion to you is that Dash's evidence is merely surplusage and need not be considered at all.

Now I am dealing with the evidence of Griffith and Whittaker. Both of them said they were at the house of the accused. They were there because they expected Yarde to return and Whittaker said he saw Yarde in the canes and No. 1 accused King turned her head and gave a demonstration in a way which he regarded as a warning signal, and that he accused her of signalling to the No. 2 accused of their presence on the premises. He said she denied this was so and said "I would rather the rope go round my neck right now". Well, I can't help you there. You are the judges of facts, but for my part, I can not see the importance of this statement whatever. It may mean - and this is a reason I personally would give - it may mean that when she was accused of signalling to Yarde she

said "I never signalled, I would rather a rope go round my neck". But I honestly cannot give it any interpretation, and suggest that it is evidence of such a nature that you can disregard it; it does not seem to me that it will help you to decide the case one way or the other. So far, I have dealt with the Crown's case against No. 1 accused, and in dealing with the Crown's case, I have picked out certain aspects of the Defence and put her defence forward. The reason I have done that is that no verdict is properly arrived at if the jury do not fully understand what a person's defence is. (Juries, in some way or other, sometimes think that summing up the Crown's case is the only important part of the trial). It is my duty to help you not only to understand what the case for the Crown is, but also what the case for the Defence is. You cannot rightly decide the case otherwise. At the close of the case for the Crown, you heard me inform number one accused King what her rights were, and you heard her say "I have nothing to say". Well, she is entitled to do so. You heard me tell her "You need not say anything at all, or you can stay where you are and give evidence, or you can come into the witness box and give evidence in which case you are entitled to be questioned." Well, if you give a person three alternatives, and that person accepts one of the alternatives, you don't criticize that person for doing what you told her. It is her right. The stand that the accused King has taken is: I regard the evidence led by the Crown so weak that there is nothing to convict upon.

Now, the Crown have to prove the case against the two accused beyond reasonable doubt. There may come a time when, in the opinion of the jury, the Crown have proved a case which calls for an answer or, at the close of the Crown's case, the case may be so weak or so shaken in cross-examination that it may be quite unnecessary for the accused to say anything. That is what the accused has done. The accused has said the Crown's case is so weak, it has been so shattered in cross-examination, that I have nothing to say. So don't merely say she said nothing and I am going to convict her. What you would have to do, irrespective of the fact that she had nothing to say, would be to ask yourselves: are we satisfied beyond reasonable doubt that the Crown have established their case by circumstantial evidence against the accused King?

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The cross-examination of the Crown's witnesses is undertaken to show that a witness is not speaking the truth or is mistaken, or both. So her defence, so far as the case depends on motive, is this: You ought not to accept the evidence of Dash and of Ermintrude Yarde. The one weakness of circumstantial evidence is that whereas in direct evidence a person sees something and gives evidence of that fact, in circumstantial evidence the jury have to accept not only the evidence of the witness, but have to go another stage and draw an inference from what the witness has said. And so, what the Defence wishes you to understand in this case is that even if you accept the evidence of Dash, that you should not necessarily draw the inference which the Crown ask you to draw. And if you accept the evidence of Ermintrude Yarde which is really evidence of the state of mine of the No. 1 accused prior to the incident, even if you accept that evidence, you ought not to draw the conclusion or the inference which the Crown ask you to draw. If you consider human nature, you might think, members of the jury, that money and security are two of the great driving forces for a person's action. I think I have sufficiently dealt with the cross-examination of Ermintrude Yarde, and that I do not need to go further on. I think, perhaps, I should just mention to you that insofar as Rupert Yarde is concerned, that he too did admit in cross-examination before you about the masked men story. He said: "I worked the Monday, 21st December, 1959; I left home about 7.00 a.m. I did not go to No. 1 accused's house before going to work. I spoke to Inspector Gaskin and Inspector Franklin before going to work. I do not remember speaking to Sgt.Marshall. I did not tell them everything I have said today". The point there is that you are being asked to disbelieve what Rupert Yarde has said because he has admitted that on the 21st he did not tell the police that when he first spoke to them. Finally, before I leave the Defence I think I ought to draw your attention to one question which was put to Ermintrude Yarde and it is this:- it is a question from Mr. Sargeant to Ermintrude Yarde: "I suggest the only thing Mrs. King told you was the story of Yarde jumping through the window". This was her answer: "It is not true that the only thing Mrs. King told me was the story about Yarde's jumping through the window".

In fairness, not only to the Defence, but to the Crown, when you are considering whether Ermintrude Yarde's story is true or not, you will bear in mind that the suggestion was put to her that Mrs. King did speak to her at a certain time, the only suggestion is that all Mrs. King told her was about Yarde's jumping through the window. I have not read that story over to you, but you remember the story. That is the story which she is supposed to have told Ermintrude Yarde and Rupert Yarde on the 20th December, 1959. And you have here a suggestion put to the witness that she did in fact tell these things. Well, I promised to go over some of her discrepancies but I think I have dealt with a considerable part of them, and I do not wish to worry you unnecessarily. I ask you to remember all the points in her evidence. You will remember the cross-examination and her answers; and you will remember I told you how to approach the witnesses' evidence. I do not think it will help you if I picked out questions and answers and pointed out discrepancies here or there, because I have already pointed out to you what I regard as the most important ones. I do not think it is necessary to point out any more to you.

Now, members of the jury, that concludes what I have to say with regard to accused No. 1. Now I come to accused No. 2. Now do bear in mind that everything I have said in regard to accused No. 1 is not applicable to No. 2 at all; and what I am going to say in regard to No. 2 accused is not applicable to No. 1 at all.

The first thing to look at is the statement. This is his statement which he gave in evidence and which has not been challenged: (See STATEMENT - "Sunday I went down at Daphne. She and I is friends" . . . to completion of same). Now, members of the jury, you remember I told you that this statement is only evidence concerning Yarde. I have just noted that I have forgotten to read King's statement to you. I will have to go back to it, but let me finish up with No. 2. This statement only concerns him. In other words, when he said that Daphne hit Peterkin, that is not evidence against Daphne. You cannot use that against her to convict her because this is only evidence showing that he was present. So what this statement does? It places him at the house at the material time and it is evidence to prove

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that he was present when Peterkin was killed. Now the second point, in so far as he is concerned, is the evidence of Dr. Ward. Dr. Ward said there must have been three blows struck, and the statement speaks of one blow. So the Crown ask you to infer that if three blows were struck and he admits of seeing one only, it is because he did not wish to implicate himself. That is the point which the Crown brings out. Then the third point is his knowledge that Peterkin had discovered a man in the house the Sunday morning. You see, here in his statement he says "The old man came in there and he said he heard a man in there". He would know if he was that man, because he was in there. "The old man came in the bedroom and said he heard a man on the bed, I tried and get outside and I heard him inside swearing, saying that Daphne had a man in the house with him. She told me to take up my clothes and leave. I picked up my clothes and I been home". So the Crown say that Yarde knew that a discovery had been made on the Sunday morning and therefore his return at night was not an innocent return, and that his presence there at night must have been, according to the Crown, for the purpose of either committing the offence or acting in concert with No. 1 accused. Well the other point put by the Crown is that running away and his returning were circumstances from which you will infer, circumstantially, that the case is made out against No. 2 accused. Now let me deal with the last point first.

A man's conduct subsequent to a crime may or may not be a guide to his conduct at the time the crime was committed. If the driver of a car knocks down a pedestrian two o'clock in the morning and does not stop, he would have some trouble explaining that, should anyone say he was seen zig-zagging across the road. He must have trouble, because he was zig-zagging; he did not stop; and he ran away. But when a man goes to make love to a woman and something happens to cause the man's death - I am not suggesting now whether it is No.1 or No.2 accused who killed Peterkin; when you are analysing the evidence seal No. 2's statement and put it in a watertight compartment. His statement explicates himself but does not implicate No. 1. If a man goes to make love to a woman who is in love with him and something happens that causes another man's death and he runs away, you cannot say that that running away was conduct

which imparts guilt to him. The point I am making is that before running away can be treated as evidence of guilt, you must first find something to connect the accused with the crime - as in the instance of the motor car for example. Because he was the driver of the car; he knocked down the man; and he ran away. But before you can use the running away of No. 2 accused to show that that was a circumstance in which he could be considered guilty or not guilty, you must first connect him with the commission of the crime. Then the doctor's evidence. He (the doctor) said three blows were struck. Again I am saying I want to be very careful on this. I am not in any way using this against No. 1 accused. I am using this as a point in favour of the No. 2 accused. It does not necessarily follow because the doctor says three blows were struck, and that because No. 2 accused states that he saw one blow struck, that you must come to the conclusion that it is a reasonable inference to draw that since three blows were struck and he said only one was struck, that he was aiding and abetting. It does not seem to follow at all. Then you come to the point where it is suggested that he returned at night and that his return to the house was not an innocent return. Well, members of the jury, surely his knowledge that Peterkin had discovered a man in the house that day would not prevent a bold lover from returning late at night. Old age and late hours are not good companions. So that late at night, a man who had been in the habit of going to that house for an innocent purpose - a purpose which is not a guilty purpose in law - would he not expect that late at night that man would have been asleep? And suppose when he went, he found that he was not asleep? It may well be that his desire to substitute the vigour of youth for the feebleness of age urged him in that house at that hour of the night. If No. 2 accused was not in the habit of going to the house, his presence could be regarded with suspicion. But if he were accustomed going there, how then can you say that his mere presence in that house was presence other than for an innocent reason? You must ask yourselves: is there evidence upon which you can find that there was a pre-arranged plan to kill Peterkin? Were these two parties acting in concert? Let me tell you that in my opinion, the inference of a pre-arranged plan ought not to be drawn. The evidence of Dash, Rupert Yarde or of Ermintrude Yarde, is

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not evidence of a pre-arranged plan. It is not evidence because the No. 2 accused was not aware. So that if you believe the evidence of Dash, Rupert Yarde, and Ermintrude Yarde, while you have evidence of motive against No. 1 accused, there is the absence of motive against No. 2 accused. Ermintrude's saying "if he live" is not evidence of a pre-arranged plan, because No. 2 accused was not a party to these words. Not only was he not present, but there is no evidence that he knew these words were used. In so far as No.1 accused is concerned, the Crown have led that evidence which goes to show her state of mind. If you accept these words "if he live", it is not evidence which you can take into account against No. 2, because he was no party to that whatsoever. The masked men story is not evidence of a pre-arranged plan; because there is no evidence that he knew she was going to tell that story. When Peterkin was killed and King went telling this masked man's story to four, five, six people, there is not a tittle of evidence that the No. 2 accused knew that she was going to tell a false story. So her telling of that story is not evidence which you can use against him; nor is it evidence you can use in considering whether there was a pre-arranged plan or not. The evidence which can be treated as evidence against No. 2 accused, depending on what inferences you draw is, as I have suggested to you, a matter entirely for you - susceptible of more than one inference. Let me refer to some further evidence. I have dealt with the case against No. 2 accused; I am now going to make some observations about pre-arranged plan. Let me take the case against the accused Yarde.

In so far as No. 2 is concerned, evidence that I have mentioned is really all the evidence there is against him. You cannot take the things which concern No. 1 accused and apply them to No. 2 and say: here we have a pre-arranged plan. Let me, in fairness to the Crown, put to you some other evidence which it is suggested should induce you to come to the conclusion that there was common design, preconceived plan, joint agreement, acting in concert - call it what you will - by these two people. Accused No. 1 knew that Peterkin had discovered a man in his house. Her stating this is evidence only against her. The accused No. 2 knew that Peterkin had discovered a man in his house - you got that from his statement. I have not read the statement of No. 1 accused to you yet,

so let me read it now: (See STATEMENT - "I have been keeping house and caring for Ernest Peterkin," etc., etc., to end of Statement). This is only evidence against her. The only reason I am bringing in this statement now is that I did not read it before, and secondly, on the points I am going to make. In other words, her statement is not evidence against him or her as far as pre-arranged plan is concerned, or his statement is not evidence against her as far as pre-arranged plan is concerned or against him. (See STATEMENT: "Soon after, Peterkin accused me of bringing a man into his house"). The only reason I am reading this statement is because of these words. She admits as against herself that Peterkin accused her of bringing a man into the house; he admits as against himself that he knew that Peterkin had discovered a man in the house. Then, according to his statement, he returned and was in the garage. That is evidence only against him. She said in her statement that she called Yarde - evidence only against her - not evidence against him that she called Yarde, evidence against her that she called him. In her statement she said she opened the door; in his statement he said "I went in". The point I am trying to make here is that you should take all the admissible evidence against each one and keep each case separate. You have this set of circumstances that Yarde knew that Peterkin was still walking about and that she knew that Peterkin was still walking about and had not gone to sleep. And so the Crown ask you to say that the admissible evidence against each, if you analyse it, is that each one knew that Peterkin was not asleep and each one knew that although Peterkin was not asleep Yarde was coming in the house and consequently the entry was not for love. She said she called him and she opened the door; and he said in his statement "I went in". In other words, what each says is admissible evidence against each. And so, that is one of the circumstances where the Crown is asking you to say there must have been a common design or acting in concert.

Well, members of the jury, as I have been trying to tell you all along, my duty is only to tell you both sides of the case and to give you what little help there is, but having dealt with the case against each; having discussed this question of pre-arranged plan; having pointed out to you my view insofar as Yarde is concerned,

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obvious weaknesses which exist and the difficulty you might have in drawing inferences against each, I am not going to go further.

You remember my telling you that of two inferences draw the one more favourable to the accused. You remember I told you how circumstantial evidence should be treated - that it is necessary before drawing an inference from a case brought on circumstantial evidence to be sure there are no co-existing circumstances which would destroy the inference. So that if you cannot find on the evidence - and members of the jury, you may think that in this case you may not find, on the evidence - that there was any pre-arranged plan; if after you have heard me analyse the case against No. 2 accused, and you have understood the analysis I have made, you come to the conclusion that there can be no pre-arranged plan, then you cannot possibly convict both accused. What I have done is to attempt to deal with the case against No. 1 and then No. 2, and you must have found that in dealing with the case against No. 2 I hardly had anything to say. I could not say much, because there was so little evidence brought out. Apart from the inferences which could be drawn from the statement and the doctor's evidence, what evidence is there by which you can honestly find that there was a preconceived plan? The statement does not implicate him; it explicated him. You may get the opinion that as soon as he says it is number one you must put it on number one - not at all. If you bear in mind what I told you about circumstantial evidence; what I told you of presence, how can you come to the conclusion that his presence and those bits of evidence could justify you in coming to the conclusion that there was a pre-conceived plan? So that if you come to the conclusion that there was no preconceived plan; no acting in concert; you cannot find both accused guilty. You can only find both accused guilty if you find the accused were acting in concert. If they were not acting in concert, then consider if you can find either guilty and, if so, which one.

Let me finish my summing up by starting with No. 2 accused. You ask yourselves: are we completely sure that he killed Peterkin? There was no motive. It was in his interest to keep Peterkin alive; not dead. He would resume his

nocturnal visits afterwards. There was no indication he was thinking of Peterkin's death - not a shred of evidence that his motive or his state of mind contemplated the death of Peterkin. If you have reasonable doubt as to whether he struck Peterkin and killed him, then you must acquit him; and if you acquit him, then you must consider the case against No. 1 accused and examine it with care: is the evidence of motive true? Is Ermintrude Yarde's evidence true? If true, what is the inference? Is it a coincidence that Peterkin died so soon after her quarrel with him? Was the masked men story true? Was it done to protect someone whose guilt cannot be proved? Or was it done to cover up her own misdeeds? Why did she make this statement to Sgt. Marshall? (If you believe she gave it). Now at this stage I am dealing with her case, I can properly read her statement again. I do not propose to go over it, but the substance of it is that in her statement she admits being friendly with Carl Yarde and then when she comes to the material time she said: (See STATEMENT: "Sunday the 20th of December, 1959, about 8.00 a.m. Carl visited me at Jackmans whilst Peterkin was at home. He quickly leftand soon after, Peterkin accused me of bringing a man into his house. I told him I had brought no one into the house and he started to curse me, calling me a 'slut and a prostitute'. He told me to leave his house or else he would get a police to put me out. I told him I had left my mother's place to care for him and he knew I had no place else to go. He then told me I would have to leave his place by to-day December 21, 1959."

Now, members of the jury, if you accept this statement, you will give to that evidence what weight you think you are to give it. "I told him that I had left my mother's place to care for him and he knew I had no place else to go. He then told me I would have to leave his place by to-day December 21st, 1959". She said Peterkin continued quarrelling all day and that Peterkin said he was putting her out of the house on the 21st December, 1959. "Carl came back to the house where he heard Peterkin cursing me. I told him that Peterkin had accused me of bringing a man into the house and had said that the man had jumped through a bedroom window. Carl was then standing outside the house to the front window. He remained outside until about 11.00 p.m. when I opened the front door and he came inside". Only evidence which concerns her.

In the Supreme Court

No.36

Summing Up,

26th November 1960 - continued.

(See STATEMENT: "At that time Peterkin was still walking about inside the house . . . . someone had come into the house and killed Peterkin"). I do not think it is necessary to read the balance of the statement, because it is not really necessary.

Now, as I have said, this statement contains her defence. In that, she is not implicating herself. Here she is explicating herself: She said Yarde, but it is not evidence against Yarde, so you cannot convict him on this statement. But what is suggested is that, in view of the evidence which have gone before, in view of the fact that she had told the masked man's story, and is now telling this one, that although she is putting the blame on Yarde, that you ought to draw the inference from the fact that she had not told the truthful story, that she was the person responsible for the death of Peterkin.

I want to end my summing up by reading and adopting the words of the Lord Chief Justice of England in 1955. I am grateful to Mr. Sargeant for citing this case to me. I had known of the case, but I had not recently read it, and it seems to contain matter which will be of some importance to you in your deliberations. I tried to deal with the cases separately, and I tried to discuss acting in concert and inferences with you; you can come to your own conclusion. If there is no preconceived plan, you can not find both guilty. I have discussed the evidence against No. 2 accused; and you have to come to the conclusion, on the evidence, as to what verdict should be returned against him. I have discussed the evidence against No. 1 accused; and it is for you to decide what weight you give to the evidence and what inference you draw from this evidence; but in considering each one separately, I want you to remember these words:

> "If two people are jointly indicted for the commission of a crime and the evidence does not point to one rather than the other, and there is no evidence that they were acting in concert, the jury ought to return a verdict of not guilty against both because the prosecution have not proved the case. If, in those circumstances, it is left to the defendants to get out of it if they can, that would put the onus upon them to prove themselves

not guilty. Finnermore, J. remembers a case in which two sisters were indicted for murder, and there was evidence that they had both been in the room at the time the murder was committed; but the prosecution could not show that either sister A or sister B had committed the offence. Probably one or the other must have committed it, but there was no evidence to show which, and, although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice and the law maintained that the prosecution should prove its case".

Well, that is what happened in England where the judge remembered a case where a murder was committed in the presence of two sisters. One of them must have done it, but the Prosecution could not show which one committed the offence; nor could they show that they were acting in concert; and both had to be acquitted.

So members of the jury, if you are unable to make up your minds; if you are not completely sure, then, as has happened in the English case, although you have before you two people who were present when a man was killed, you can not convict either unless you are sure which one killed. You can only convict one if, on the evidence, you have no reasonable doubt that it was the hand of that one which struck the fatal blow. Please consider your verdict.

aw/26/11/60 (1:35-3:55 p.m.).

CERTIFIED A TRUE COPY

ERIC H.A. BISHOP

Registrar (Ag.)

In the Supreme Court

No.37

Minute of Sentence, 26th November 1960.

No.37

MINUTE OF SENTENCE

Before the Hon. Mr. Justice K.S. Stoby C.J.

Arraigned and both Pleaded NOT GUILTY

Jury No. 12 empanelled.

Tried on 15, 16, 17, 18, 19, 22, 23, 24, 25, 26th days of November, 1960.

26th November, 1960.

VERDICT KING: GUILTY

YARDE: GUILTY

Sentence Both accuseds sentenced to Death by hanging.

D.E. Malone, Attorney General (Ag.) with A.R. Blackman for Crown.

G.E. Sargeant for accused King.

E.L. Carmichael with H. DeB. Forde for accused Yarde.

No. 38

NOTICE AND GROUNDS OF APPEAL OF APPELLANT

In the Federal Supreme Court

No. 38

Notice and Grounds of Appeal of Appellant, 10th December 1960.

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

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

BARBADOS

Criminal Appeal No. 9 of 1960

TO THE REGISTRAR OF THE FEDERAL SUPREME COURT

Name of Appellant	Charlotte Daphne KING
Convicted at the Criminal Assizes held at	Barbados
Offence of which convicted	Murder
Sentence	Death
Date when convicted	26th November, 1960.
Date when sentence passed	26th November, 1960.
Name of Prison	Glendairy, Barbados.

I the above-named appellant hereby give you notice that I desire to appeal to the Federal Supreme Court against my Conviction and Sentence on the grounds hereinafter set forth on page 2 of this notice.

CHARLOTTE DAPHNE KING

Appellant.

Dated this 10th day of December, A.D., 1960.

In the Federal Supreme Court

No.38

Notice and Grounds of Appeal of Appellant,

10th December 1960 - continued.

QUESTIONS	ANSWERS
1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal?	No
2. Do you desire the Federal Supreme Court to assign you legal aid?	Yes
If your answer to this question is "Yes" then answer the following questions:-	
(a) What was your occupation and what wages, salary or income were you receiving before your conviction?	Nil
(b) Have you any means to enable you to obtain legal aid for yourself?	No
3. Is any solicitor now acting for you?	No
If so, give his name and address.	
4. Do you desire to be present when the Court considers your appeal?	Yes
5. Do you desire to apply for leave to call any witnesses on your appeal?	No
If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice ..	

Grounds of Appeal or Application:

(1) That the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence.

In the Federal Supreme Court

No.39

Notice and Grounds of Appeal of Carl Yarde,

10th December 1960.

No.39

NOTICE AND GROUNDS OF APPEAL OF CARL YARDE

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

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

BARBADOS

Criminal Appeal No.10 of 1960

TO THE REGISTRAR OF THE FEDERAL SUPREME COURT

Name of Appellant CARL YARDE

Convicted at the Assizes held at Law Courts, Bridgetown, Barbados

Offence of which convicted Murder

Sentence Death

Date when convicted 26th day of November, 1960

Date when sentence passed 26th day of November, 1960

Name of Prison Glendairy

I the above-named appellant hereby give you notice that I desire to appeal to the Federal Supreme Court against my Conviction on the grounds hereinafter set forth on page 2 of this notice.

CARL YARDE

Appellant.

Dated this 10th day of December, A.D., 1960.

In the Federal Supreme Court

No.39

Notice and Grounds of Appeal of Carl Yarde,

10th December 1960 - continued.

QUESTIONS	ANSWERS
1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal?	No
2. Do you desire the Federal Supreme Court to assign you legal aid?	Yes
If your answer to this question is "Yes" then answer the following questions:-	
(a) What was your occupation and what wages, salary or income were you receiving before your conviction?	Carpenter Wages: $15.00 per week
(b) Have you any means to enable you to obtain legal aid for yourself?	No
3. Is any solicitor now acting for you? If so, give his name and address.	No
4. Do you desire to be present when the Court considers your appeal?	Yes
5. Do you desire to apply for leave to call any witnesses on your appeal?	No
If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice..	

Grounds of Appeal or Application

A. That the verdict of the Jury is unreasonable or cannot be supported having regard to the evidence.

B. That the learned Trial Judge erred in law in that he failed to grant a separate trial.

C. The learned Trial Judge misdirected the Jury in that:

1. He failed to direct them to enter a formal verdict of "Not Guilty", there being no evidence or no sufficient evidence to enable the Jury to come to the conclusion that the

Appellant had participated in the death of the deceased and/or that he had been present aiding, abetting, counselling or procuring the act which caused the death of the deceased; and/or that he had himself struck the blow which caused the death of the deceased.

2. He failed to direct the Jury sufficiently or at all on the law relating to an accessory after the fact.

3. He failed to direct the Jury that on the evidence in this case it was open to them to find that the appellant could be guilty of no greater offence than that of being an accessory after the fact, and that they could not on such a finding pronounce a verdict of guilty against him on the indictment as laid.

In the Federal Supreme Court

No.39

Notice and Grounds of Appeal of Carl Yarde,

10th December 1960 - continued.

No.40

NOTICE AND ADDITIONAL GROUNDS OF APPEAL OF APPELLANT

No.40

Notice and Additional Grounds of Appeal of Appellant,

20th January 1961.

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

NOTICE OF APPEAL

BARBADOS

Criminal Appeal No. 9 of 1960.

TO THE REGISTRAR OF THE FEDERAL SUPREME COURT

Name of Appellant	Charlotte Daphne King
Convicted at the Criminal Assizes held at Barbados	
Offence of which convicted	Murder
Sentence	Death
Date when convicted	26th November, 1960
Date when sentence passed	26th November, 1960
Name of Prison	Glendairy Prison; Barbados

I the above-named appellant hereby give you

In the Federal Supreme Court

No.40

Notice and Additional Grounds of Appeal of Appellant,

20th January 1961 - continued.

notice that I desire to appeal to the Federal Supreme Court against my conviction and sentence on the additional grounds hereinafter set forth.

CHARLOTTE DAPHNE KING

Appellant.

Dated this 20th day of January, 1961.

Additional Grounds of Appeal

1. That the learned Trial Judge misdirected the jury when he failed to point out to them that an alternative innocent interpretation could be placed on the proved fact that the appellant was present in the room in which the body of the deceased was found: R. v. Nina Vassileva 6 C.A.R. 228, the fact of the appellant being in the said room insufficient to prove that she participated in the crime charged.

2. That the learned Trial Judge erred in law when he wrongly exercised his discretion in admitting as evidence the alleged statement of the appellant dated 21st day of December, 1959, the appellant not being cautioned before the said statement was taken.

3. That the learned Trial Judge wrongly exercised his discretion when he ordered a joint trial of the appellant and the other accused Carl Yarde.

4. That it was not open to the jury to return an omnibus verdict i.e. a verdict against both accused, the issue of common design being practically withdrawn from them especially when the learned Trial Judge correctly

(a) assisted them on the facts by pointing out to them that there was no evidence of common design and that they were not entitled to draw such an inference;

(b) in law also directed them thereon, i.e. that there was no evidence of common design.

Such a verdict, it is submitted, was repugnant, improper and neither on the facts nor in law open to them; and it is further submitted that the said verdict should be set aside.

G.B. NILES
Barrister-at-Law.

In the Federal Supreme Court

No.41

Judgment,

4th February, 1961.

No.41

J U D G M E N T

IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION

CRIMINAL

Territory: BARBADOS

ON APPEAL FROM THE SUPREME COURT OF BARBADOS
CRIMINAL APPEALS NOS. 9 AND 10 of 1960

REGINA

v.

10 CHARLOTTE DAPHNE KING
CARL YARDE

BEFORE:
The Honourable Sir Alfred Rennie, President
" " Mr. Justice Archer
" " Mr. Justice Wylie.

1st, 2nd and 4th February 1961

Mr. G.B. Niles for the appellant, King.
Mr. E.L. Carmichael and Mr. H. DeB. Forde for the Appellant, Yarde.
20 Mr. D.E.G. Malone, Solicitor General, for the Crown.

JUDGMENT OF THE COURT DELIVERED BY MR. JUSTICE RENNIE:

The appellants were jointly tried for the murder of Ernest Peterkin between the 20th and 21st December, 1959, and were convicted. The appellant King is a married woman who is separated from her husband. In July, 1959, she met Ernest Peterkin, a blind man of about seventy years of age, and, in
30 October of that year, she went to live with him on terms of intimacy. She had had the appellant Yarde as her lover before she met Peterkin, who was a man of some substance, and she continued to be intimate with him after she moved into Peterkin's house.

In the Federal Supreme Court

No.41

Judgment, 4th February, 1961 - continued.

Sometime before his death, Peterkin made a Will in which he devised a house to the appellant King. She knew of this provision in Peterkin's Will. On the morning of the 20th December, 1959, the appellant Yarde was with the appellant King in a room of Peterkin's house. Peterkin discovered his presence and went to the room where they were where he accused the appellant King of having a man with her in his house. She denied the accusation and tried to put him off by saying that the person he heard in the room with her was one of her children. She had two children who lived at Peterkin's house. In the meanwhile, the appellant Yarde made his exit from the house by means of a window. Throughout that day Peterkin quarrelled with the appellant King about the man he said she had brought into his house. Peterkin not only quarrelled with her, but told someone that it was his intention to go to a lawyer the following day to alter his Will and the appellant King was heard to say "if he lives".

In the afternoon of that day, the appellant Yarde went to Peterkin's house and spoke to the appellant King. He left and returned about 11.30 p.m. On his return, he remained in the car in the garage until the appellant King called him. He went into the house and, according to his story, he saw Peterkin feeling about with a stick. The appellant King had a crowbar in her hand; she gave it to him and told him to hit Peterkin with it; he told her he could not do it and she took the crowbar and hit Peterkin on his neck and he fell to the floor. She then gave the crowbar to the appellant Yarde and told him to break the lower half of the back door which he did. He then went home.

During the early hours of the morning of 21st December, the appellant King roused the neighbours with a report that masked men had entered Peterkin's house and hit him on the neck with a piece of iron. She repeated that story to the police, but later gave a statement in which she said that Peterkin continued to walk about the house quarrelling until about 12.30 a.m. on 21st December, when he went into his bedroom and closed the door to the bathroom. Just then, the appellant Yarde and herself entered that bedroom through another door. While they were in the bedroom, Peterkin held her and attempted to choke her. Yarde, on

seeing this, struck Peterkin a blow on the back of his neck with a ripping iron which was in a corner of the house. Peterkin fell to the ground, and the appellant Yarde took the kitchen knife and stabbed him several times about the neck. On realising that Peterkin was dead, she roused the neighbours and told them that masked men had come into the house and killed Peterkin. In a report to a friend, she said that she had inflicted the wounds which were seen on Peterkin's neck. Peterkin's body had two incised wounds on the throat; two abrasions of the chest; a laceration of the back of the neck; a laceration of the back of the left ear, and multiple abrasions of the shoulders.

For the appellant King it was argued in the first place that the jury must have found that there was a common design to murder Peterkin, otherwise they could not have found both appellants guilty. And that this being so, King's appeal should be allowed if this Court is of the opinion that there was not sufficient evidence on which the jury could have found that there was such a common design. That argument would, no doubt, have some force if the evidence against each appellant was the same. In this case, however, there is a vast difference between the evidence tendered against the appellant King and that tendered against the appellant Yarde. In fact, the only evidence common to both cases is the medical evidence. The bulk of the evidence in King's case is inadmissible against Yarde, and likewise, the evidence in Yarde's case is inadmissible against King. There is also a pronounced difference in the content of the evidence tendered against each appellant. The evidence against the appellant King contains a motive for the murder of Peterkin and a statement from her that expresses doubt as to Peterkin's survival to the following day. It also contains the story about the masked men. None of this evidence is admissible against the appellant Yarde. In those circumstances, it would seem proper for the jury to have considered whether King was guilty and then to have looked for evidence of a common design to determine whether Yarde was also guilty. The fact that they found both guilty does not mean that King could only be convicted if there was a common design to commit murder. The case against her did not rest on the existence of a common design.

In the Federal Supreme Court

No.41

Judgment, 4th February, 1961 - continued.

The second submission put forward on behalf of the appellant King was "that the learned trial Judge misdirected the jury when he failed to point out to them that an alternative innocent interpretation could be placed on the proved fact that King was present in the room in which the body of the deceased was found; the fact that the appellant was in the same room being insufficient to prove that she had participated in the crime. The evidence against King went far beyond her mere presence in the room and was partly circumstantial. In the course of his summing-up, the learned Judge told the jury "But to convict a person on purely circumstantial evidence the jury must be satisfied that not only the circumstances are consistent with the accused committing the act, but inconsistent with any other rational conclusion". That passage, in our view, contains the adequate direction to the jury as to the manner in which they should treat circumstantial evidence.

Finally, it was submitted on King's behalf that the verdict of the jury is unreasonable or cannot be supported having regard to the evidence. In our view, a very strong case was made out against the appellant King and we can see no reason to think the jury acted unreasonably. There was ample and sufficient evidence to support the verdict. It is for these reasons that we dismissed King's appeal at the close of the arguments.

For the appellant Yarde it was submitted that the verdict of the jury is unreasonable or cannot be supported having regard to the evidence.

His case rests entirely on the ability of the prosecution to prove a common design to murder Peterkin. The case was put forward and presented to the jury on that footing. In the summing-up, the learned Judge told the jury "You must ask yourselves: Is there evidence upon which you can find that there was a pre-arranged plan to kill Peterkin? Were these two parties acting in concert? Let me tell you that in my opinion the inference of a pre-arranged plan ought not to be drawn". In spite of the opinion of the Judge so clearly expressed, the jury returned a verdict of guilty. It is within their province to decide questions of fact and, in so doing, they may disregard the Judge's opinion if the evidence supports their view. The evidence against Yarde is that

given by the doctor, his statement to the police and the evidence of his conduct in running away when the police tried to question him and again when he approached Peterkin's house on the day after his death.

We find it impossible to say that the inferences that could be drawn from this evidence point conclusively to his guilt on this charge. The conclusion at which we have arrived is that the case against Yarde which we have carefully and anxiously considered and discussed was not proved with that certainty which is necessary in order to justify a verdict of guilty.

Yarde's appeal is accordingly allowed, the conviction quashed and the sentence set aside.

Dated the 4th day of February, 1961.

A.S. RENNIE
Federal Justice.

C.V.H. ARCHER
Federal Justice.

C. WYLIE
Federal Justice.

In the Privy Council

No.42

Order granting Special Leave to Appeal, 27th April, 1961.

No.42

ORDER GRANTING SPECIAL LEAVE TO APPEAL

AT THE COURT AT BUCKINGHAM PALACE

The 27th day of April, 1961

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
MR. SOAMES
MR. GRANT
MR. ERROLL

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 20th day of April 1961 in the words following viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Charlotte Daphne King in the matter of an Appeal from the Federal Supreme Court of the West Indies between the Petitioner and Your Majesty Respondent setting forth: that the Petitioner prays for special leave to appeal to Your Majesty in Council from a Judgment dated the 4th of February 1961 of the said Federal Supreme Court whereby the Court dismissed the Petitioner's Appeal against her conviction in the Supreme Court sitting in the Island of Barbados on the 26th of November 1960 on a charge of the murder of Ernest Peterkin: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Federal Supreme Court of the West Indies dated the 4th February 1961 or 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 leave ought to be granted to the Petitioner to enter and prosecute her Appeal against the Judgment of the Federal Supreme Court of the West Indies dated the 4th day of February 1961:

"AND Their Lordships do further report to Your Majesty that the proper officer of the said Federal Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal 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.

Whereof the Governor-General and Commander-in-Chief of the West Indies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

Exhibits

"V.C.1."

Will of Ernest Peterkin, 1st September, 1959.

E X H I B I T S

"V.C.1." - WILL OF ERNEST PETERKIN

Magistrates' Courts,
District "A"

Major R.A. Stoute,
Commissioner of Police
vs.
Charlotte Daphne King
and
Carl Yarde

L.I. WORRELL
Magistrate, District A
9.2.60

Supreme Court
Reg. v. King etal

F. KING
Ag. Senior Clerk
23.11.60

10

WILL OF ERNEST LATTIMER PETERKIN

BARBADOS.

THIS IS THE LAST WILL AND TESTAMENT of me ERNEST LATTIMER PETERKIN of Saint Elizabeth Village in the parish of Saint Joseph and Island abovesaid, Esquire hereby revoking all wills and testamentary dispositions at any time heretofore made by me and I declare this to be my last Will and Testament.

20

I appoint my daughter Ermine Marie Nevills of Fort Gulick, Canal Zone, Married Woman to be the sole Executrix of this my Will and I direct my said Executrix to pay all my just debts funeral and testamentary expenses as soon as possible after my decease.

I give and bequeath all monies payable on Policy 066-09-3182A in New York Subways Advertising Co., Inc; of 20th North Moore Street, New York, 13, N.Y. To my daughter the said Ermine Marie Nevills absolutely.

30

I GIVE AND DEVISE my dwelling house and land situate at Rendezvous Gardens in the parish of Christ Church and Island aforesaid to my caretaker Daphne King of Saint Elizabeth Village in the parish of Saint Joseph and Island aforesaid.

I GIVE AND DEVISE my dwellinghouse situate at Brighton to my daughter the said Ermine Marie

Exhibits

"V.C.1."

Will of Ernest Peterkin,

1st September, 1959 - continued.

Nevills absolutely. I GIVE AND DEVISE AND BEQUEATH unto the said Ermine Marie Nevills all my estate both real and personal whatsoever and wheresoever situate of or to which I shall be seised possessed or entitled at the time of my death or over which I shall then have a general power of disposition by will absolutely; IN TESTIMONY WHEREOF I the said Ernest Lattimer Peterkin have hereunto set my hand this Twenty first day of September One thousand nine hundred and fifty nine.

ERNEST L. PETERKIN.

SIGNED PUBLISHED AND ACKNOWLEDGED by the testator the said Ernest Lattimer Peterkin as and for his last Will and Testament in the presence of us both present at the same time who in his presence and in the presence of each other have hereunto set our names as WITNESSES:

E.D. ROGERS
C. GITTENS

"O.M.3."

Statement of Appellant,

21st December 1959.

"O.M.3." - STATEMENT OF APPELLANT

Major R.A. Stoute,
Commissioner of Police

vs.

Charlotte Daphne King
and
Carl Yarde.

Reg. vs. King etal

F. KING
(Ag.) Senior Clerk
18/11/60

L.I. WORRELL,
Magistrate, District A.
27.1.60

Statement of Accused

STATEMENT OF Daphne King — TAKEN AT District A Stn.

ALIAS OR NICKNAME — DATE 21.12.59

RESIDING AT Jackmans, St. Michael — TIME STARTED 12.45 p.m.

AGE 37 years — TIME CONCLUDED 2.20 p.m.

OCCUPATION Housekeeper — BY O. Marshall S/Sgt.

I have been keeping house and caring for Ernest

Exhibits

"O.M.3."

Statement of Appellant,

21st December 1959 - continued.

Peterkin of Jackmans, St. Michael from July 1959. I first knew him as a result of his visiting my mother's place at St. Elizabeth Village, St. Joseph during 1957. I was then separated from my husband, with whom I am still estranged. Before meeting Peterkin I was friendly with Carl Yarde, a carpenter of Foster Hall, St. Joseph, who is a coloured man. Carl and I have often been intimate. It was sometime around the 9th October, 1959 that I went to live with Peterkin in a bungalow house at Jackmans, St. Michael which is rented from Charles Dash of Golden Ridge Reservoir, St. John. During the time I resided with Peterkin, I continued my friendship with Carl, who used to visit me unknown to Peterkin. My mother Charlotte Goodman had told him of the friendship between Carl and me, but he never questioned me about it. My two (2) children Hazel who is ten years old and Clifford seven (7) resided with me at Peterkin's home. During the time I cared for Peterkin I have often slept with him in his bed. He was a man about seventy (70) years of age and was blind. He walked with the aid of a stick. He and I have been intimate. On Sunday 20.12.59 about 8.00 a.m. Carl visited me at Jackmans whilst Peterkin was at home. He quickly left and soon after, Peterkin accused me of bringing a man into his house. I told him I had brought no one into the house and he started to curse me, calling me a "slut and a prostitute". He told me to leave his house or else he would get a police to put me out. I told him I had left my mother's place to care for him and he knew I had no place else to go. He then told me I would have to leave his place by today 21.12.59. Peterkin continued quarrelling all day. About 8.00 p.m. 20.12.59 Carl came back to the house where he heard Peterkin cursing me. I told him that Peterkin had accused me of bringing a man into the house and had said that the man had jumped through a bedroom window. Carl was then standing outside the house to the front window. He remained outside until about 11.00 p.m. when I opened the front door and he came inside. At that time Peterkin was still walking about the house feeling with his stick and cursing me and the children. He threatened to wet the children's bed, but did not then go into their bedroom. Peterkin continued to walk about the house quarrelling until about 12.30 a.m. 21.12.59 when he then went into his bedroom and closed the door leading from the said bedroom to the bath. Carl and I then entered the bedroom

Exhibits

"O.M.3."

Statement of Appellant, 21st December, 1959 - continued.

from the other door which leads to the children's bedroom. Whilst I was in the bedroom Peterkin held me and attempted to choke me. Carl, on seeing this, gave Peterkin a blow on the back of his neck with a ripping iron which was in a corner of the house. Peterkin fell to the ground near the bed bleeding from his mouth. Whilst Peterkin was on the ground groaning, Carl took the kitchen knife and stabbed him several times about the neck until he stopped making any sound. Carl then left the house with the same ripping iron and the kitchen knife. After he had left, I saw that Peterkin was dead and I left the house, went to Rupert Yarde's house next door where I woke them and told them that someone had come into the house and killed Peterkin. At Yarde's house I spoke to his daughter Ermyntrude who came to the window. From Yarde's place I went to Miss Skeete's house, which is next to ours. I told her what had happened and she sent me to Mr. Lynch's place, which is near to hers. I went and spoke with Mr. Lynch who came out and went with me to Mr. Coward's place where I knocked, but did not hear anybody. Mr. Lynch then got a man whose name I don't know, but who is a bus driver and resides at Jackmans, to drive Peterkin's motor car O.214 to the police station to report the matter. I have never seen Peterkin's will, but I knew he has made one. I am not aware that I stand to benefit anything from Peterkin's death. I know he is the owner of two (2) properties, one in Rendezvous Hill, Ch. Ch., the other in Brighton, Black Rock, St. Michael. Carl is about 5 feet 11 ins. tall, stocky build, dark complexion, longish face and generally wear a shirt and pants, cap and black shoes. The type of cap he wears is a blue cricket cap. I don't know where he could be at this time.

DAPHNE KING.

This statement was read over to Daphne King who found the same true and correct and signed her name.

O. MARSHALL S/Sgt.

Exhibits

"N.G.1."

Statement of Carl Yarde, 30th December, 1959.

"N.G.1." - STATEMENT OF CARL YARDE

Supreme Court of Barbados
Reg. v. King & Yarde

R.W. DANIEL
Senior Clerk (Ag.)

Magistrates' Courts, District A,

Major R.A. Stoute

Commissioner of Police
vs.
Charlotte Daphne King, Carl Yarde

L.I. Worrell
Magistrate
22. 2. 60.

STATEMENT OF Carl Isley Adolphus Yarde
ALIAS OR NICKNAME — TAKEN AT Dst. Branch
RESIDING AT Glenburney, St. John — Date 30.12.59
AGE 20 — TIME STARTED 7.00 p.m.
OCCUPATION Carpenter — TIME CONCLUDED 7.23 p.m.
BY Asst. Supt. Gaskin

I, Carl Isley Adolphus Yarde, having been told by Asst. Supt. Gaskin that I am charged that I sometime between the 20th and 21st days of December, 1959 murdered one Ernest Peterkin and that I am not obliged to say anything unless I wish to do so, but whatever I say will be taken down in writing and may be given in evidence. I now elect to make the following statement.

Carl Yarde.

Sunday, I went down at Daphne. She and I is friends. The old man came in the bedroom and said he heard a man on the bed, I tried and get outside and I heard him inside swearing, saying that Daphne had a man in the house with him. She told me to take up my clothes and leave. I picked up my clothes and I been home. Sunday evening I came back down by Martins Bay bus and went back at the house. I speak to Daphne at the front window and went into town. About half past eleven o'clock I went back at the house and got in the car in the garage. I heard a voice call me, it was her, I been in. I saw Mr. Peterkin feeling about with a

Exhibits

"N.G.1."

Statement of Carl Yarde, 30th December, 1959 - continued.

Stick. Daphne told me to hit him and gave me a crow-bar which she had in her hand. I did not take it. I told her I could not do it. She took it and hit him in his neck when he was backing her. He fall on the floor. She give me it and told me to break the below door for her and I did so. I told her that I frighten and I gine home. I walk home and went to sleep about four to half past four o'clock, then the Monday when you come home to me I was still frighten and I run away. I did not kill him.

CARL YARDE.

This statement recorded by Asst. Supt. Gaskin was read over to me by him. I understand it, it is true and correct to the best of my knowledge and belief and I have initialled a correction and signed it.

Carl Yarde.

N. Gaskin, A.S.P.

Eric Denny Cpl. 142.

"B.1." - DEPOSITION OF KEITH WHITTAKER

"B.1."

Deposition of Keith Whittaker, 9th February, 1960.

The Deposition of Keith Whittaker of Central Police Station taken in the presence and hearing of accused who stands charged that accused at the parish of St. Michael, between the 20th and 21st days of December, 1959, murdered Ernest Peterkin.

Contrary to Common Law.

The said Deponent saith on his oath that I am P.C. 505 attached to Central Police Station. On the night of 21.12.59 I was on duty at Jackmans, St. Michael at the house of accused Daphne King. I was accompanied by P.C. 428 Griffith. The accused King and her two children were also in the house. I was there for the purpose of arresting the accused Carl Yarde. Before this I knew the accused Carl Yarde. I have known him about three years. I spent the whole of the night of the 21st there and I was there on the morning of the 22nd. On the morning of the 22nd about 6.20 a.m. while I was in the house, accompanied by Griffith, the accused

Exhibits

"B.1."

Deposition of Keith Whittaker, 9th February, 1960 - continued.

King and the two children, I heard a noise in some canes behind the paling of the house which appeared to me as though some person was walking through the canes. The accused Daphne King who was nearest to the back door opened the door and walked outside in the yard. I walked behind her and as she got in the garage I saw her look into the canes and shook her head (witness demonstrates with a nod) which I took as a signal to some person. I looked into the canes and I saw the accused Carl Yarde crouching. I looked at him and he was facing me. He ran away. I climbed over a wall and jumped over into the canes the same time I shouted for Griffith. I ran after him but he disappeared through the canes. When I got back to the house I saw the accused King and her two children. I accused accused King of telling accused Yarde that the police were at the scene. The accused King said, "I will rather the rope go around my neck."

XXD by Mr. Niles:- No questions.

XXD by Mr. Carmichael:- No questions.

K. Whittaker P.C. 505.

Taken on oath before me this 9th day of February, 1960, at the Magistrates' Court, District A.

L.I. WORRELL,
Magistrate, District A.

"A.1."

Deposition of Rupert Yarde, 9th February, 1960.

"A.1." - DEPOSITION OF RUPERT YARDE

The Deposition of Rupert Yarde of Jackmans, St. Michael, taken in the presence and hearing of accused who stands charged that accused at the parish of St. Michael between the 20th and 21st days of December, 1959, murdered Ernest Peterkin.

Contrary to Common Law.

The said Deponent saith on his oath that Ermintrude Yarde and Leroy Yarde are my children. I knew the accused Daphne King from the time she came to live in Jackmans. Once and a while I would visit her house and speak to the blind man. On 20th December, 1959, I saw the accused King

Exhibits

"A.1."

Deposition of Rupert Yarde, 9th February, 1960 - continued.

between the hours of 10.30 a.m. and 11 a.m. I was sitting on the north side of my shop window. This shop is attached to my home. The accused King came up the gap leading to my shop. She told me if I heard that Petes was sending one of my children to call me to carry him out to see some lawyer and she told me not to carry him anyway today. I asked her what happen. She said he is putting me out of his house and that she has no where to go. I told her that I am not coming over there that I am going out. She said Petes (I used to call Peterkin Petes) said Carl was in the bedroom living with her. She turned and asked me if I could believe at that time of the morning that she would do such a thing. She said "the foolish boy was in the bedroom talking to me and the blind man i.e. Petes, came into the bedroom". She also said "if the foolish boy was a man like you knowing that he was blind he would walk around." I did not know why she wanted to see a lawyer. She told me that she was trying to make the blind man believe it was one of her children that jump through the window. When accused Daphne King first came no one was there. Ermintrude was in the shop door, and then she went back into the house. The first time I saw accused Yarde was on Saturday 19th December, 1959. He was helping Leroy put up some brick to back of the garage to the house which accused King used to live in. It was about four to five o'clock in the afternoon.

XXD by Mr. Niles:- No questions.

XXD by Mr. Carmichael:- I have visited that home occasionally. In rare cases I see people there in the day. I can't remember seeing anybody there at night. Men, women and even children are sometimes there.

RUPERT YARDE

Taken on oath before me this 9th day of February, 1960 at the Magistrates' Courts, District A.

L.I. WORRELL.
Magistrate, District A.