25/8/89 D/S Criminal.

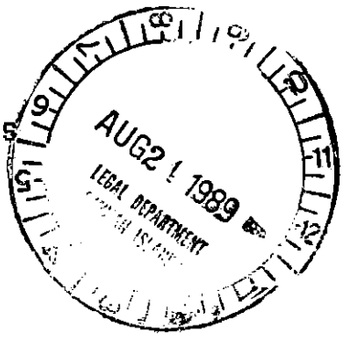
IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

BEFORE THE HON. THE CHIEF JUSTICE

ON 4th January, 1st March, 24th April, 10th to 14th July, and 7th to 10th August, 1989

IND. 39 OF 1989

Mr. A. Smellie for the Crown
Mrs. P. Levers and Mr. G. Hampson for the Defendant



REGINA V PHILLIP GLENNON EBANKS

MURDER

COLLETT C.J. JUDGEMENT

The Defendant, Phillip Glennon Ebanks, is charged in this Indictment with a single count of murder the particulars being 'that on 12th December, 1982 or 13th December, 1982 at West Bay, Grand Cayman he murdered Una Elva Yates'. The offence of murder is one created and defined by section 168 of the Penal Code, which provides that whoever of malice aforethought express or implied causes the death of another person by an unlawful act or omission is guilty of murder. By section 171 of the Code malice aforethought shall be deemed established by evidence proving, inter alia, an intention to cause death or to do grievous bodily harm to a person.

The Defendant having pleaded not guilty to this Count elected to be tried by Judge alone in accordance with section 121A of the Criminal Procedure Code. Accordingly, this trial has proceeded without a jury in accordance with Part IV of the Code as is directed in such cases by subsection (2) of section 121A. In such a trial the presiding judge is the trier both of questions of law and of matters of fact in issue between the Crown and the Defendant.

As to the law I have directed myself that is for the

Crown to prove every ingredient necessary to constitute the charge of murder to my satisfaction by evidence so that I can feel sure that the Defendant is guilty. No burden of proof at all rests upon the Defendant and if, at the conclusion of the trial, any real doubt exists in my mind on the evidence as a whole whether or not any necessary ingredient of this offence of murder has been proved against the Defendant, my duty will be to acquit him.

The ingredients of the offence of murder which the Crown have to prove to this standard in this case are fourfold. The first is that the death of Una Elva Yates popularly known as Miss Che Che, occurred within a year and a day of some unlawful act or omission which caused it. The second is that this unlawful act or omission was perpetrated by this Defendant. The third is that it was accompanied on his part by an actual intention to kill or to do grievous bodily harm to her or to another person. The fourth is that the act or omission was perpetrated in West Bay on 12th or 13th December, 1982.

The Crown have alleged that the Deceased, Miss Yates died in the night of 12th December or early hours of 13th December, 1982 at her house at Watercourse Road, West Bay as the direct result of two gunshot wounds which they allege were inflicted by the Defendant by the use of a .22 calibre gun at short range. The Court is invited to infer from all the circumstances proved by the evidence that this shooting was accompanied by an intent on the part of the Defendant to kill the deceased.

The evidence which the Crown has called in support of this charge is partly circumstantial. As such it is no whit inferior to direct evidence of a fact in issue but it must be carefully examined before it is accepted by the Court. Inferences from circumstantial evidence must only be drawn adversely to a defendant if such an inference is the only logical one which may be drawn from it. Also the Court must be sure that there are no other co-existing circumstances which would

weaken or destroy that inference.

Some twenty-one witnesses were called by the Crown at this trial and thirty-one exhibits were produced. The Defendant called two witnesses in his defence but he elected not to testify himself. This was of course his legal right and no inference whatever can be drawn against him on account of his electing not to do so. It is convenient first to examine the Crown case and thereafter that of the Defence and this I will now do in detail.

The evidence of Jesse Belman Yates, brother of the deceased woman was that he saw her last on Sunday 12th December, 1982 after they returned together from church about 8:45 p.m. He lived next door and saw her to her house before returning to his own. Later he observed that her outside lights were off which was usual and he went to bed. The next morning, Monday 13th, Mr. Yates got up and about 7.30 a.m he noticed his sister's outside light burning, which was unusual. He went around the back of her house to find her back door open, went inside and called but got no reply. Investigating further he discovered her lifeless body in the bathroom of her house slumped over the toilet bowl. He called the Police and stayed at the scene until the first officer to come, Inspector (now Detective Superintendent) Hall arrived. The body was later that day examined by Dr. Kenneth Grant the Chief Medical Officer who pronounced Miss Yates to be dead. From this evidence, which has not been challenged, the Court is entirely satisfied that she died as result of some occurrence at her home in West Bay, Grand Cayman between 8:45 in the evening of 12th October and 7:30 in the morning of 13th December, 1982.

Investigations at the scene were conducted by former Superintendent William Dalziel assisted by Superintendent Hall, Sgt. Ebanks and Chief Inspector Lindsay Cacho of the Cayman Islands Police Force. Their testimony reveals that Miss Yates' house, a single storey structure, consisted of her living quarters adjoining a small general store with interior access between these two sections. Five glass louvres had been removed

from the bedroom windows as had the screen from that window which was piled on the bed with a fan on top. The room had been ransacked. The bathroom where the body of the deceased lay was next door to the bedroom and its window gave onto a narrow passageway at the back of the house. Two louvres had been removed from that window also but the screen was still in place.

In the bottom left hand part of the screen of the bathroom window looking out there was a small hole which Mr. Burton Whittaker, an experienced examiner of physical evidence, testified had in his opinion been caused by an extremely high velocity projectile such as a .22 bullet passing through it from the outside inwards. He also found a powder pattern surrounding the hole indicating that the muzzle of a gun which might have fired that projectile had been between 1" and 3" away from the screen when the trigger was pulled. A spent cartridge case was found outside the back door some 19 feet from that window. There was also a small hole in the edge of the shower curtain which was drawn across the bath situated under that window on the inside; also marks on a wooden cabinet door on the wall of the bathroom at the same approximate height as the hole in the screen. A second spent cartridge case was found on the floor of the bathroom and Mr. Whittaker, by use of a comparison microscope, was able to determine that the shots from both these cartridge cases had been fired by the same weapon and that they were almost certainly the cases of .22 calibre long rifle ammunition. I accept that evidence.

The body of the deceased woman was examined by an experienced and qualified pathologist, Dr. Joseph Davis, on 15th December, 1982. The only significant features which his examination revealed were two gunshot wounds with associated injuries, the first to the right forehead region and the other to the back of the neck on the left of the midline. These were the cause of death.

The wound on the forehead was longitudinal in direction and continued into a roughly circular defect in the front of the

deceased's skull with resulting penetration of a portion of a bullet through the right cerebral hemisphere of her brain from front to back in a horizontal plane. A portion of a bullet was found within the brain but another portion had escaped and would have continued on. This appears to have caused the mark on the cabinet door of the bathroom. There were no gunpowder marks on the body associated with this wound, however.

The other wound on the neck did have fragments of gunpowder adhering to the skin, indicating that a shot at very close range although not a contact shot had caused it. The direction of this second wound was left to right and it had impacted near the right ear of the deceased. On its way along the base of the skull it had virtually separated the spinal chord from the brain at the place where these two are joined.

It was the Pathologist's opinion, which I accept, that the neck wound was such as would cause instantaneous cessation of the ability to breath and complete paralysis from the neck down. The other wound to the forehead would have resulted immediate paralysis of the left side of the body but not an immediate cessation of the ability to breathe. That by itself could result in a dying process extending a matter of hours, although in cross-examination the doctor agreed he would expect laboured breathing to continue only for a matter of minutes rather than hours thereafter.

The doctor also visited the scene of the shooting and, with his experience and drawing upon his observations there as well as his examination of the body, he was able to give as his opinion that the wound to the forehead was the first to be inflicted. This is because the indications were that the victim was facing the bathroom window at the time she received this wound, which obviously she could not have been doing if she had already received the other wound and its associated condition of immediate total paralysis. There was also a significant finding by the doctor of blood on the back of the deceased right hand between the thumb and forefinger which seems to me to indicate

that she may have raised her hand to touch the forehead wound before she lost consciousness.

From these various pieces of evidence it is legitimate to infer and I find myself satisfied so that I feel sure of the following facts, i.e:-

(1) that the Deceased was standing in her bathroom facing the window when she was shot in the right forehead with a .22 bullet fired through the screen of that window from outside by an assailant wielding a gun of that calibre a few inches from that screen;

(2) that the louvres from that window had been removed before the shooting took place (none were broken);

(3) that sometime later, which was probably a matter of minutes but could have been a matter of hours, she was shot in the back of the neck at point blank range by an assailant wielding the same .22 gun while lying unconscious in the bathroom into which that assailant had also come, probably by way of the bedroom window.

I am therefore satisfied and feel sure that the cause of the deceased's death was an unlawful act perpetrated by the wielder(s) of the gun in question. I am further satisfied and feel sure that by reason of the range and the location of the wounds in each case the assailant must be assumed to have accompanied his pulling of the trigger with an express intention to kill Ms. Yates. That is enough to establish that the death of Miss amounted to the offence of murder on the part of her assailant. The question that remains, and this is the crucial issue in the case, is, was the perpetrator of that offence or was it not the Defendant, Phillip Ebanks?

Evidence of the police officers show that not only had the bedroom of the Deceased's house been ransacked but also the adjoining store which had been last closed up after business on Saturday 11th December, 1982 about 7 p.m. by Jesse Yates. He used to help his sister with the store. He had left it in a tidy condition on Saturday evening but on the Monday morning there were boxes, clothes and envelopes scattered on the floor.

It is clear that no detailed inventory of the stock in trade was kept but Mr. Yates was familiar with the lines which were carried. He was able to tell the Police that Hanes briefs and two pairs of shoes - one yellow suede and one white - were missing from the store. The white ones were subsequently found lying outside the store.

On the 22nd December, 1982 Supt. Dalziel and other police officers armed with a search warrant went to the house on Watercourse Road where the Defendant lived with his brothers. The officers noticed a pair of tan suede boots on the kitchen floor which the Defendant, who was present, acknowledged to be his in response to a question from the officers. Asked where he had got them the Defendant replied that he had got them from 'Lucindas' indicating another small store in West Bay, about two weeks before. The Police took possession of these boots and Mr. Yates later confirmed that they are similar to the type of shoes he had reported missing out of one of the boxes in his sister's store. There is no positive identification of the boots found as those which were missing from the store. However, Lucinda Ebanks, proprietor of 'Lucindas' and her husband, James, testified that the Defendant never bought boots of that type from that store in December, 1982 at all: indeed at that time they did not stock footwear. I accept that evidence and it follows that the Defendant's first explanation to the Police, of his possession of those boots is shown to be a false one.

The Police commenced a search of the Ebanks' house on 22nd December 1982 and in the course of it they found nine pairs of Hanes briefs apparently unused, in a bathroom cabinet. These were size 18. Another pair of the same size was being worn by the Defendant at the time of the search. All these briefs were of the same type and size as those reported missing from the Deceased's store by her brother. The Defendant told the Police that he had bought them from 'Lucindas' at the same time as the boots. This was refuted by the evidence of James and Lucinda Ebanks who testified that they did not stock size 18 in Hanes

Briefs at their store at that time. Another false explanation from the Defendant, therefore.

Also found during the search were five pairs of shorts which were new but were lying in a pile of clothing most of which was used. The Defendant acknowledged these shorts to be his and this time his explanation was that they had been bought for him for Christmas by his mother. That explanation has not been proved false but is sits rather awkwardly with the date of the search - three days before Christmas - and the location of shorts when found. Mr. Yates had not yet reported any shorts missing from his sister's store but, on his re-checking at Police request, he reported that there were shorts of the same type missing. This he had not noticed before since not all the shorts in the stock had been taken - only some and he had not counted them on his initial check of the stock remaining.

I accept this evidence but I also accept that both Hanes briefs size 18 and shorts of this particular kind were readily available at other retail outlets in Grand Cayman in 1982.

Later the same day the Police resumed their search at the Ebanks residence and Sgt. Franklin found a box containing 24 Bereck electric batteries concealed behind a pigeon pen at the rear of the house. This box of batteries was shown to Mr. Yates who once again confirmed their similarity to items stocked in his sister's store, although he had not missed this particular box earlier. More importantly, he identified the marking of the figures '45cents' on the recovered battery box, made by a black felt pen as being in his sister's handwriting. A witness who is familiar with the handwriting of a person is, of course, competent to identify it. No expert evidence of handwriting was called to compare this marking with those appearing on two other battery boxes kept in the Deceased's store. I have, however, examined the boxes carefully and I can see no good reason from their appearance to disbelieve the evidence of Mr. Yates on this point which was confidently given. I accept it and I feel sure that the battery box (Ex.15) discovered behind the chicken coop

had infact come out the Deceased's store shortly before hand.

Upon an analysis of this circumstantial evidence it appears to me that, while the finding of any one of those four different items as described in the Police evidence could not give rise to a legitimate inference that the Defendant was on 22nd December 1982 in possession of goods recently stolen from the deceased's store, the finding of all four of these different items, taken cumulatively and in conjunction with at least two false explanations given by him as to how he came by some of them, are sufficient to lead to an irresistible inference that they were all stolen from that store and that he had come by them dishonestly.

It is a trite doctrine of law that such a possession in the absence of any reasonable explanation for it (and there is none here consistent with innocence) can justify a conviction for either stealing or handling of stolen property. It cannot, of course, by itself justify a conviction for murder of the person from whom the goods were stolen. In the present case alternative charges were profered earlier against this Defendant for burglary and theft and for handling stolen goods in relation to this possession. He pleaded guilty to the latter charge on legal advice which I regard as soundly given. In consequence there was no trial of those charges and no finding on the evidence whether or not the charge of burglary could be made out. Nor is this court required to reach such a factual determination in the present trial. Nevertheless I find the Defendant's dishonest possession of these items which I am quite satisfied were taken from the Deceased's store on the night of 12th-13th December, 1982 to be capable of affording cogent support to any other reliable evidence there may be which connects this Defendant with her murder.

I now turn to other testimony introduced by Crown Counsel in an endeavour to prove that connection. The first group of it relates to an old revolver said to have been kept by the Deceased in a drawer in her bedroom but which was not there

after her murder had taken place. Some evidence about this gun was given by Mr. Yates but it is fair to say that his recollection of it was very hazy. He said it was a revolver and had aluminum paint on it but he admitted in cross-examination that was many years - perhaps as much as 21 years ago that he had last seen it. He could not positively identify the gun which was produced by the Police in evidence as being allegedly that weapon of the Deceased's. The most he could said was that it has the same general appearance as the gun he remembered seeing so long before.

Considerably more positive on this point was his daughter, Claudette Eden, who described the weapon as silver with a black handle and silver paint on it. In cross-examination she was unable to recall some markings on the butt which consist of two owls but she told the Court that she herself had put the silver paint on its muzzle. When the gun recovered by Police (Exhibit 28) was shown to her she made a confident identification of it as being that of her late aunt, the Deceased. I was impressed by her evidence. I have not been able to find in her father's testimony any evidence which would contradict hers as to the origin of the silver paint, but if there had been I would have readily preferred her evidence on this point to his. The appearance of the gun (Ex.28) is distinctive, in particular because of the presence on it of silver paint added after manufacture and it lends itself readily to identification by reason of this feature. I have no doubt it was the Deceased's gun. There is however no reliable evidence as to when it was last seen in the Deceased's house prior to her murder.

The significance of this weapon in the case is that it was recovered by Chief Inspector Cacho on 23rd December, 1982 from beneath an old sofa in the yard behind the house of a Mr. Leo Ebanks, a neighbour of the Defendant whose house is about 300 - 4oo feet distant. Mr. Leo Ebanks gave evidence that on Tuesday 14th December 1982 he saw the Defendant standing in his yard shortly before midnight with a gun which looked like Exhibit 28 stuck in his waistband under his shirt. According to this

witness the Defendant volunteered that it was Miss Che Che's gun. Ebanks told the Defendant to leave and he last saw him going around the east side of the house as he himself was going back inside it. When the gun was found by the Police they asked Mr. Leo Ebanks about it but although his testimony is that he recognised it as the one the Defendant had had with him on that occasion, he denied all knowledge of it at that time. His explanation for so doing is that he was frightened what might happen to him, which on the face of it seems a reasonable explanation for his lack of candour.

There are, however, significant problems with Leo Ebanks' evidence. The first is that he also testified in chief that about three days after the Police had found this gun under the sofa, he was playing a football game in which the Defendant was also playing when they had a conversation about some change money which the Defendant said he had concealed in a nearby tree. The gun had been found on the 23rd December, 1982 but the evidence of the Police officers is that they had arrested the Defendant after the search at his house the day before and that he had remained in custody after his arrest until the first Preliminary Enquiry into this charge took place in early 1983. If so, of course, he could not have been playing football when Mr. Ebanks said he was. Mr. Ebanks could offer no explanation of this patent contradiction when it was put to him in cross-examination. Of course, an honest witness can always make a mistake as to dates but there is force in Defence Counsel's submission that the sequence of events which Mr. Ebanks related in his testimony here was not elicited by any leading question but was spontaneous. So the possibility that he was caught out in a lie cannot be ruled out.

Furthermore the finding by Police of an unlicensed gun in a person's premises inevitably creates an awkward situation for the householder concerned and furnishes a motive for him seeking to avoid responsibility by falsely blaming some other person already under suspicion by the police. Perhaps this witness decided to do so here!

Mr. Ebanks was not obviously uneasy in the witness box and he appears to be a person of good character. I was inclined on balance to accept him as an honest witness but in the last analysis I am unable to do so to the extent of feeling sure that this evidence is true. The benefit of the doubt must therefore in this instance be given to the Defendant with the result that this testimony must be dismissed from the Court's consideration as a piece of circumstantial evidence connecting the Defendant with this murder. Since there is no other link between the Deceased's gun and the Defendant apparent from the corpus of the evidence, this exhibit therefore loses all significance as does the other testimony of Mr. Leo Ebanks about the cash in the tree and what the Defendant is supposed to have told him of its origin.

There is however other testimony which connects the Defendant with a weapon of a type consistent with the one the forensic evidence indicates was used to shoot the Deceased. First there is evidence from Christina Furnett Ebanks who became friendly with the Defendant while he was incarcerated in Northward Prison in 1983 and she was working as a cook there. The Defendant escaped from the prison in 1984 and was at large for a few days before recapture. During that period she testified that he came to her parent's house in the night. They had a brief conversation and as a result she went with him into the bushes at West Bay. While there he pointed in a certain direction towards a tamarind tree and told her that he had a gun there which had been used in a murder, that it was buried in plastic bag and that he had to get rid of it and needed to get another for his protection. My observation of this witness giving evidence was that she was honest although of limited intelligence. Despite the brief intimate relationship between them at that time there seems to be no reason why she should now tell lies against the Defendant five years later: there is no sign that the relationship ceased acrimoniously. I have weighed the fact that her statement to the Police given in 1987 does not report the whole of what she now is telling the Court the Defendant said about this gun. That is, I think, due to her not

being very bright intellectually.

There is some support to be found for her testimony in the evidence of P.C. Kenric Morrison who accompanied her back into the bushes in 1987 after she had given her statement. She pointed out to him the spot which she said was the one the Defendant had indicated to her three years earlier as the burial place of the gun. No gun was found despite an extensive search but there was a mound of earth with the remains of an old tamarind tree scattered about it and signs of excavation which the constable estimated to be some six months old. That is consistent with a buried object having been dug up at the spot she indicated. On a full consideration of this evidence I accept Miss Ebanks as a witness of truth to what she relates of this conversation with the Defendant. It is an admission that some 1 - 2 years after the Deceased's murder the Defendant had a gun concealed in the bushes which he knew to have featured in somebody's murder.

Then there is evidence from James Patterson Ebanks who impressed me as honest and straightforward. He told the Court that early in 1982 he acted as a go between with the Defendant and a man nicknamed 'Bird Dog' who worked on a boat which was wrecked. As a result of his efforts a gun was delivered to the Defendant. Later he and Israel Carrozana were in the bushes in the company of the Defendant who said he had got the gun and he went off and returned with a gun in his hand. In their presence he fired off two shots at a lizard from this gun and after that told the witness and Carrozana to leave so that he could hide it. James Patterson Ebanks described it as about 16 inches long and it looked to him as if the handle had been sawn off. The handle was mahogany colour and varnished according to his account.

Israel Carrozana gave evidence of the same shooting expedition when he came to testify although he could not recall who had actually fired the gun on that occasion. However he described the gun as belonging to Patterson Ebanks rather than the Defendant. His own explanation for so saying was that

Patterson had told them that he had got the gun off 'some guy on a boat'. If Patterson's evidence is to be believed that is precisely what he had done but he had got it not for himself but for the Defendant, a circumstance of which Israel Carrozana was not aware. Properly considered, therefore, what is a first glance a contradiction turns out to be a confirmation of the substance of Patterson Ebanks' evidence. I accept it as the truth. It shows the Defendant in possession of a gun of unknown calibre but of the rifle variety at some time prior to the murder of the Deceased.

Finally in this connection there is evidence from Roy Bertram Nicholson that a few weeks before that murder he was asked by the Defendant to get him some .22 shots. On the first occasion he was so asked Nicholson did not comply but the Defendant repeated his request and Nicholson then asked a third party to supply him with .22 shots. He was given some 5 or 6 shots wrapped in a piece of paper towelling at the Club Inferno, West Bay and he handed these on to the Defendant without examining them to see whether they were indeed .22 bullets. This he did some two weeks before Miss Yates was murdered. I accept this evidence also and from it must be inferred that the Defendant believed he had a use for .22 ammunition at that time and that in all probability he was supplied with enough to fire a gun of that calibre at least five separate times.

This evidence in my judgement taken cumulatively establishes on the part of the Defendant proof of an opportunity to commit the offence charged in this indictment by furnishing him with the means to commit the crime if minded so to do. It does not afford any proof that he actually did so but it indicates knowledge on his part after the event that the gun had featured sometime in someone's murder, which is consistent with his having been present when it was so used.

This brings me to the evidence of two key witnesses for the Crown, Bart Collins McCarthy and Israel Carrozana. The evidence of the former was that on the morning after the

Defendant's murder (Monday 13the December, 1982) he and Israel Carrozana had met with the Defendant at the back of his (the Defendant's) house. He said he asked the Defendant if he went to Bosun Bay the night before and that the Defendant told him that he and 'Rodney' and 'Dwayne" had been to Miss Che Che's house and that he had to shoot her because she had a gun. According to McCarthy the Defendant related that they had taken out the panes of the bathroom window, that she had walked into the bathroom with a gun in her hand and had told them "you must come in here tonight, I have something for you" or words to that effect; that she had come to the bathroom window looking out and that he, the Defendant, had shot her twice from outside.

If that evidence were to be accepted it would amount to proof that the Defendant confessed to this murder voluntarily but before I could accept it as proof of such a confession and act upon it I would have to be satisfied firstly that McCarthy is an honest witness, secondly that he has accurately reported what the Defendant told him and thirdly that what the Defendant told him was true. Bart McCarthy was not an impressive witness. From his demeanour in cross-examination I formed a distinct impression that he might give whatever testimony he thought would be to his own best advantage. He admitted to some seventeen previous convictions, at least one being for assault with a firearm. Moreover, his evidence was directly contradicted by that of Leslie Hydes, a witness for the Defence who was in prison with him when McCarthy gave a statement of evidence to the Police in 1987. Hydes told the Court that McCarthy then admitted to him that the Defendant had not spoken to him about the murder and that he was only telling the Police that because they had promised to give him back 78 days remission time which he had lost for bad behaviour if he would do so. In fact that remission was never restored to him.

There are difficulties with the evidence of Leslie Hydes also, in that he may now have a motive for telling lies against McCarthy because McCarthy has taken up with Hydes' former girlfriend while Hydes is still in prison. Hydes too has a

record of previous convictions. But his evidence coupled with McCarthy's dreadful record and unimposing demeanour under cross-examination leave me quite unable to be sure that Bart McCarthy is an honest witness. Even Crown Counsel conceded that if his evidence had stood alone he would not have invited me to rely on it. And even if I had been able to do so I could not have regarded McCarthy's report of the Defendant's words as accurate because he insists he was told two shots were fired from outside the bathroom window whereas it is manifest from the police and forensic evidence that only one shot was fired from outside and the other from inside that room. I am therefore unable to regard the evidence of Bart McCarthy as advancing the Crown case any further against the Defendant.

It is otherwise however with the witness Israel Carrozana. His evidence concerning the morning of 13th December 1982 was that he went down to 'the land' which is scrub land in the vicinity of the houses of himself, the Defendant and Bart McCarthy, and that he spoke to the Defendant at the back of the Defendant's house. The three of them moved to behind McCarthy's house for a smoke where McCarthy asked the Defendant to tell them about 'it'. The Defendant, according to Carrozana, said he did not wish to do so. As to what 'it' might have been one can readily suppose that in West Bay that Monday morning there was only a single topic of conversation. After McCarthy had repeated his question the Defendant, according to Carrozana's account, said as follows. He the Defendant,'Rodney' and 'Dwayne' had gone to Miss Che Che's house that night and had gone round the back of the house where they had made some noise and heard a voice say "You all coming in here, I've got something for you all". The Defendant had then looked through the bathroom window and had seen her and pointed the gun at her forehead, had hesitated a while and had then pulled the trigger. Then they had gone away from the house for an hour, had come back and had broken into the house. Seeing that she was still breathing he had cocked the gun and shot her in the back of her head. They had searched the place and found $320 in paper and silver, then after that he had left the place.

This again is evidence of a full voluntary confession to murder. The same considerations arise as in the case of McCarthy's evidence in giving to it the close scrutiny which it demands. Firstly, can Carrozana be accepted as an honest witness? The impression which he made upon the Court while giving his evidence was favourable in that respect. He did not appear to be evasive or 'gilding the lily'. He readily admitted some earlier convictions, mostly for drug offences but including one for burglary on three occasions between 1981 and 1985, the last being for an offence committed in 1983. He appears to have committed no further offences in the past five years. He claims to be now a practising Seventh Day Adventist and I pay no serious attention to the unproven assertion that, as such, he ought to have affirmed rather taken the oath on the Bible when he came to give evidence. His explanation that he thought the Court required him to take an oath is perfectly acceptable from a lay witness who has not had the alternation of affirmation explained to him before being called into the witness box.

No explicit motive on the part of Carrozana for giving false evidence against the Defendant is suggested. He first told his story to New Scotland Yard detectives assisting the local police in this investigation in August, 1983 but at that time he would not give a written statement. That fact was confirmed by former Detective Chief Inspector Donald Gibson. One can understand why. At that time he was in custody and the Defendant was also in custody at Northward Prison. I do not in light of these circumstances regard his not having given a written witness statement to Police until 1987 as of any real significance. Clearly it was in 1987 that this whole investigation was revived and vigorously pursued once more by Police after marking time since 1983. It has been suggested that Carrozana's evidence as to another conversation which he says he had in the evening of 12th December 1982 with the Defendant is refuted by that of another Crown witness Debra Bush who said the Defendant had come to her house to spend that evening with her sister and herself 'sometime after 7 p.m.'. Carrozana who had not ventured anytime for this conversation with

the Defendant in chief was confronted in cross-examination with evidence which he gave at the Preliminary Inquiry and finally said that if he had then stated the conversation took place at 8 p.m., 'it could have been then'. When one appreciates that we are here concerned with lay witnesses giving estimates of time when events occurred several years earlier it would be quite unjustifiable to draw an inference that the evidence of one or other must be rejected on account of apparent discrepancies in those two time estimates. It is far more likely that one or other or both of the time estimates is wrong than that either witness is lying about the events.

Then it has been submitted that the reported words of the Defendant to Carrozana about leaving the Deceased's house 'for an hour' between the firing of the two shots which wounded the deceased and finding her still breathing when he returned are on their face quite inconsistent with the Pathologist's admission that it is more likely that she would only give signs of laboured breathing for a matter of minutes rather than of hours after receiving the first wound. Once again we are in the realm of time estimates here: 'a matter of minutes' is not an exact expression nor is 'a matter of hours'. It must be remembered that Carrozana is not reporting that the trio had left the Deceased's house for an hour according to his, the witness' own estimation, in which case it might have been legitimate to cast doubt upon the accuracy of his evidence. On the contrary, he is only reporting the alleged words of the Defendant, so that logically Carrozana may be reporting with total accuracy what he heard the Defendant tell him but the Defendant in saying it could have been mistaken in his own estimate of how long he was away from the house between the shots. Thus the cartesian logic breaks down when it is sought to discredit Carrozana's evidence by reference to that of the Pathologist. There is no necessary contradiction between the two of them at all.

What struck the Court forceably, in reviewing the evidence of Carrozana as to what the Defendant told him, was the degree to which the content of that report accords with the

police and forensic evidence as to the circumstances surrounding the deceased's death. The noise at the back of the house is consistent with the removal of the two louvres from the bathroom window prior to the first shot. The arrival of the deceased at the window confronting the Defendant is consistent with the posture which the pathologist considers to be mostly likely hers when she received the first gunshot wound. The powder marks on the screen and the hole in it strongly suggest the firing of that first bullet at the Deceased's forehead as she peered out. Her recognition of the intruder or intruders could well have furnished a motive for the shooting after a due moment of reflection to weigh the options of flight or of blowing away the means of identification. The removal of the five louvres and screen of the bedroom window clearly indicates the mode of gaining entry into the house. A pause and withdrawal to see if the noise of the first shot had awakened neighbours would be a natural precaution after such an untoward turn of events.

I do not ignore the arguement advance by Counsel for the Defence that very considerable publicity has attended this case so that the possibility exists that dishonest witnesses could have access to material which would have enabled them to fabricate a circumstantial confession. This indeed was one additional factor in my rejection of Bart McCarthy's evidence as unreliable. But once the Court has satisfied himself that a particular witness is honestly recounting to the best of his ability the words he remembers being told, then the timing of the confession when examined in its detail provides powerful confirmation of its accuracy. If that is what the Defendant told Israel Carrozana on the morning of 13th December, 1982 when the Police investigations had barely begun let alone been reported in detail, then the only reasonable inference is that the Defendant had acquired his detailed knowledge of the events which he related from a personal presence at and participation in the scene of the murder of the Deceased some few hours earlier. And if it be true that the Defendant then told Israel Carrozana what the latter has sworn the former said to him that morning, I can see nothing in the rest of the evidence which would suggest

that the Defendant falsely confessed to a crime which he did not in fact commit.

With those provisional conclusions in mind I now turn to examine the Defence evidence and evidence related to it for the purpose of considering whether there is any countervailing evidence to be found which would weaken or destroy the inferences which can properly be drawn from that elicited by the Crown and so far examined.

The evidence of Leslie Hydes need not be further examined since its sole purpose, which it has achieved, is it to help to neutralise that of Bart McCarthy. The other evidence called by the Defence was that of Marcia Pansy Gay. Its purpose was to establish a partial alibi for the Defendant: I say a partial alibi because even taken at its highest it does not cover the hours of 4 a.m. to 7 a.m. on the morning of 13th December, 1982. But it is fair to say that, if the Court did conclude from her testimony that the Defendant was or may well have been in her company until 3:30 a.m. or later that morning as she suggested then this circumstance would clearly weaken the inference to be drawn from the other evidence reviewed that he was at Miss Che Che's house when the murder took place.

It was the evidence of Ms Gay that the Defendant was at her mother's house where she lived with sisters Debra Bush and D'arcy Ruth from 'around 7 to 7:30 p.m.'on the evening of 12th December, 1982. The four of them were sitting outside the house drinking beer and playing music. She says that Debra who was the youngest sister left the party between midnight and 12.30 a.m. because her mother called her to bed. Debra confirms that she did go inside around that time for that reason but says that the Defendant was then saying goodnight. However, Debra admitted she did not see him leave. Marcia Gay says he did not leave then but stayed on with her until, she would judge, 3:30 4:00 a.m. in the morning because the roosters were crowing at that time. As the readers familiar with the Gospel according to St. Mark Chapter 14, will know, roosters can crow at a variety of

dramatic or embarrassing moments but I cannot regard them as being very reliable indicators of the hour of night. In chief Ms Gay said that she fell asleep and when she woke up she found the Defendant had left. In cross examination she repeated that she woke up to find him gone and said she knew it was early in the morning as 'daylight was coming and the rooster was crowing'.

I accept Marcia Gay as an honest witness albeit as one who admitted a close friendship with the Defendant. But I cannot accept her evidence as accurate concerning the time when the Defendant left her company. Her answers convince me that she was asleep when he left, no doubt as a result of drowsiness induced by the late hours and the beer. It was probably after 12:30 a.m. when he left but there is no reliable evidence that it was as later as 3:30 a.m. It has already been noted that the Defendant elected not to give evidence. While no adverse inference is to be drawn from that election on his part it cannot be denied that a positive defence such as an alibi may be deprived of some weight if the very person whose whereabouts are in question does not choose to give evidence himself to confirm that which his own witnesses have spoken to on his behalf. At the end of the day, I can only conclude that the force of Ms Gay's evidence taken in tandem with that of Debra Bush, which is equally credible, is not by itself such as to induce in me any real doubt as to what must be the logical inference to be drawn from the other evidence I have reviewed and which points towards the guilt of the Defendant.

Here is a man whom the evidence of a credible witness shows confessed to him of his own accord on the following morning that he had deliberately shot the Deceased woman to death. He is shown to have arranged to acquire a firearm before the killing; to have test-fired a firearm of a description which could have caused the fatal wounds; to have sought to acquire and probably acquired ammunition of the calibre which caused those wounds shortly beforehand; to have admitted afterwards having hid a gun which had been used in a murder. The details of his reported confession tally closely with the circumstances of the

shooting as disclosed by subsequent Police investigations and forensic examination. Ten days after the shooting the Defendant is found in possession of items which were apparently taken from the Deceased's store on the night of the murder and gave at least two false accounts of how he came by them. No evidence points to any other culprit.

True there were no finger prints to connect the Defendant with this crime, but nor were there any fingerprints found which would point to any other person. True the gun which caused the fatal injuries has not been found but the circumstances are not such as to suggest that this is at all surprising. True the Defendant made no apparent attempt to conceal the clothing found in his house and he admitted it was his; but there are many criminals who do not act furtively but rather boldly in the face of police enquiries in the apparent conviction that they can bluff their way out of any trouble. I have read the record of the Defendant's interview with Chief Superintendent Gibson on 18th September, 1983 (Exhibit 31)and having done so the impression is left that the officer had to deal with a 'cool customer'.

Giving the matter the best consideration which I can and conscious of the onerous responsibility which weighs upon the shoulders of a single judge in sizing up a case of this kind and gravity, I find myself finally left in no doubt at all that Phillip Glennon Ebanks deliberately and with malice aforethought shot to death Una Elva Yates at her home in West Bay in the early hours of Monday 13th December, 1982. Accordingly I find him guilty and convict him of murder as charged in the Indictment.

Dated the 25th August, 1989.

CHIEF JUSTICE