

COPYRIGHT RESERVED

NOTE: Copyright in this transcript is reserved to the Crown. The reproduction, except under authority from the Crown, of the contents of this transcript for any purpose other than the conduct of these proceedings, is prohibited.

LD:PI:MC 4

THE SUPREME COURT
OF NEW SOUTH WALES
CRIMINAL DIVISION

MATHEWS J

And a jury of Twelve.

WOLLONGONG: Monday 17 August 1992.70162/90 - REGINA -v- IAN STUART JONES

CHARGE: For that he on 5 May 1989 at Potts Point in the State of New South Wales did murder John Gordon Hughes.

PLEA: Not Guilty.

MR THOMPSON QC as Crown Prosecutor.
MR GREENWOOD QC for the Accused.

JURY EMPANELLED.

(In response to her Honour, counsel stated that there were some preliminary matters and legal matters to be dealt with.)

HER HONOUR: Members of the jury, as you have heard there are some matters to be dealt with before the formal part of the trial can commence. I think it is probably appropriate at this stage for me to say something to you about what you can expect to happen in a general sense during this trial and also as to your own functions, your own role during the course of the trial and then, as you have heard, there will be some preliminary matters that need to be dealt with which won't require your attendance. I will be suggesting that if you wish, although there is no compulsion about this, you might like to take advantage of the wonderful weather and go and wander around Wollongong. You do not have to do that because you will be shown your own jury quarters here in the court but you can use those quarters as a base and indeed, you can spend the whole of the intervening time there if you wish but you will also be free to go as you wish until we resume your part of the trial at two o'clock.

Going back to what you can expect to happen during the trial; it will start off, as I anticipate, at two o'clock this afternoon with the learned Crown Prosecutor, who is the senior counsel sitting down your end of the Bar table and he will start by addressing you and in the course of his address he will tell you what it is that he Crown alleges against the accused, Mr Jones

and in a general sense, the evidence that the Crown proposes to call in its case against Mr Jones in support of the charge that on 5 May 1989 he murdered John Gordon Hughes. The address of the Crown Prosecutor is not part of the evidence. Its main object is to give you an over view at the opening of the trial as to what the trial is all about and thereby, enable you to put into context the evidence of the various witnesses as they are called. To the extent that the Crown case consists of the oral evidence of witnesses, they will give their evidence-in-chief to the Crown Prosecutor and then Mr Greenwood of Queen's Counsel, who is obviously the counsel sitting further away from you and who appears for Mr Jones, can cross-examine any of those Crown witnesses and there is a right of re-examination.

When the Crown has put before you all the evidence at its disposal the Crown Prosecutor will close the Crown case and at that stage Mr Greenwood, if he wishes, might put material before you on behalf of the defence. He might or he might not. The fact is that in this, as in all criminal trials, the defence has to prove absolutely nothing to you. It is for the Crown to prove its case against him and I will just be saying something more about that in a moment.

Now, to get back though to what you can expect to happen during the course of the trial, at the close of all the evidentiary material each counsel will address you on behalf of his respective interest; the Crown Prosecutor putting the Crown case and Mr Greenwood, on behalf of Mr Jones and at the conclusion I shall sum-up to you, give you directions of law and you will be obliged to follow those directions. I will also be briefly reminding you of the evidence that will have been given.

This brings me to really the most important thing that you need to learn about at this preliminary stage of the trial and that relates to your own role, your own function during the trial. As I said, during my summing-up I will be giving you directions of law and I must say that if there are any important matters of law that you need know about during the course of the trial, then I will make sure that you are told about them. So that, you won't be operating, as it were, in a legal vacuum; because you are brought in as members of the community, not expected to have any background knowledge of the law. You accept that the law is as I tell you that it is.

However, your real function here, your fundamentally important function will be to determine all matters of fact within the legal framework of the directions that I give you. It is essential that you appreciate right from the outset that it is your most important role in this trial; so that you can be looking critically at the evidence right from the very beginning, looking to see whether there are conflicts between the evidence of the various witnesses, inherent inconsistencies because all matters of the credibility of witnesses will be for your determination, being matters of fact, and your determination alone. Who is telling the truth, who is lying, how much weight you can attach to the evidence of the various witnesses - all these matters of credibility of witnesses, the weight to be attached to their evidence, are essentially matters of fact and accordingly, will be entirely matters for you.

The final thing that I should say at the outset, and I adverted to it very briefly before but not fully, is that this being a criminal trial, it is the Crown that must prove the guilt of the accused. He comes into this court with what is called the presumption of innocence in his favour. You have no doubt all heard about it. It is an essential touchstone of our system of criminal justice in this community, that all people are presumed to be innocent until they are proved to be guilty and that applies with Mr Jones; he is presumed to be innocent and remains so unless and until the Crown can prove his guilt beyond reasonable doubt. He need prove nothing at all to you. It is for the Crown to prove its case against him beyond reasonable doubt. It is a heavy burden which the Crown bears in this case, as in all criminal trials in our community.

So, members of the jury, having said that, as you have heard there are a number of legal matters to be dealt with and in accordance with what I have just told you, all matters of law are dealt with by myself and on most occasions they really need to be dealt with in the absence of the jury because very often they are material to the type of evidence that will be allowed to be put before you and it goes without saying that it would defeat the object of having legal debate on those matters if you were here and able to hear them from the start. It would mean that we simply would not be able to talk openly about the admissibility of evidence or other such matters which are entirely matters of law and therefore, entirely for my own determination.

Therefore, it no doubt will happen from time to time during the course of the trial that legal matters will need to be determined and will have to be done in your absence. I will try and keep that to a minimum. I always do or try and make it so that it happens at the end of the day or the beginning of the day so that you are not just left sitting out in the jury room, but on this occasion it does mean that you have three hours available at your disposal. As I have said, how you spend it, whether you are here or whether you go is entirely a matter for you but there is one utterly essential thing I must say to you before you go.

You have heard that there are quite a large number of witnesses who are to be called by the Crown. Now, you have not seen them, I have not seen them but they are very likely to be in the precincts of this court and indeed, in the general area of this court house. As you know, your function in this trial that is about to start is to be the judges of the facts. It is absolutely essential as judges of the facts that none of you has any contact at all with anybody who is in any way involved in this trial.

Now, Wollongong is a big place but it is not all that big. One thing you must do overnight is if you happen to see anybody whose face is familiar from in this court room, ignore them. I will say something more to you about that at four o'clock but the important thing right now is that there will almost certainly be people in the vicinity of this court house who are integrally involved in this trial who you will see in due course as witnesses. Now, one way of avoiding any chance contact with somebody who turns out to be involved in the trial is simply

talking to nobody at all outside your own group, apart from sheriff's officers, of course, whilst you are in the general precincts of this court house. It really is most important, members of the jury, because it would be disastrous if one of you, through a chance meeting, chance conversation with somebody who turned out to be involved in the trial meant that the trial could not proceed with all of you as jurors.

So, please just do not talk to anybody at all from outside your own group, not only now but during the course of the whole trial, as you are leaving at the end of the day and returning the next morning. It is essential that you talk to nobody from outside your own group whilst you are in the precincts of the court house because there is a real danger that if you did so you might be talking to somebody who was in some way involved with the trial and even the most trivial conversation about the weather can fall into this category because it is not just a question of justice being in fact done, of you in fact being impartial, but it is a question also of you as judges of the fact being seen to be impartial, being seen to have no contact with anybody involved in the trial. That is why it is of fundamental importance that none of you have any contact with anyone involved in the trial.

One last thing I should say before I send you on your way, my associate said that you should select your foreperson at your earliest opportunity. I need only say this: that the only essential role of the person who is selected by you as your foreperson is to speak on behalf of the jury in any communication that needs to be made here in court. It sometimes does happen that that person also plays a leading role in the jury's deliberations but that is by no means an essential part of that person's role.

The foreperson is normally selected very early in the piece, before you have really had an opportunity to get to know each other and the mere fact that you do select somebody to speak on your behalf here in court does not necessarily mean that that person must play a dominant role in your deliberative processes. How you conduct those processes is entirely a matter for you, all twelve of you to determine.

So, having said that and please bearing in mind the warnings that I gave you about not speaking to anyone in the precincts of the court, you are all free to go. We will be resuming your part of the trial at two o'clock, so would you mind being back in the jury room before two in order that we can have a two o'clock start.

(Jury released until 2.00 pm.)

IN THE ABSENCE OF THE JURY:

(Her Honour granted the parties a short adjournment in order to discuss preliminary matters.)

HER HONOUR: During the day I think I shouldn't allow bail because of the problems - it is a matter for you. What do you say about bail during the day?

CROWN PROSECUTOR: I am quite happy for your Honour to go along with that.

HER HONOUR: I certainly cannot allow bail before two o'clock, not while the jury is at large. In any event, Mr Jones will have to be here for the legal discussion anyway so he should remain in the precincts of the court right now.

But my present inclination is that during the day during the course of the trial he should not be allowed bail because of the logistics problems around the court. His overnight situation is quite different and we can talk about that this afternoon. He has been on bail during the intervening time?

GREENWOOD: Yes. In fact, somebody from a church organisation is travelling to the court with him and away from court with him.

HER HONOUR: Whereabouts does he live?

GREENWOOD: In Sydney so he won't be wandering around solo.

HER HONOUR: Which is the one thing I am worrying about. We will talk about the logistics of it at four o'clock but he should remain in the precincts of the court.

Bail is refused in the sense that he is not permitted to leave the precincts of the court at the moment.

SHORT ADJOURNMENT:

UPON RESUMPTION:

(Mr Greenwood called upon her Honour to decide a question which had not been resolved by agreement referring to something said in the statement of the witness Kerrie Anne Stanton, dated 29 December 1989, at p 3.

The Crown sought to lead the testimony that the woman Stanton, who was at the time a girlfriend of the accused, would seek to say that since arriving in Bathurst on 3 May 1989 the accused had been suffering from withdrawal symptoms and then that when she saw him on 6 May he was not longer suffering from withdrawal symptoms and it appeared that he had obtained and used heroin recently.

Mr Greenwood indicated he was concerning about mention of the accused's association with heroin, which was a substantial matter and he objected to it on the basis that it represented opinion evidence from a lay person.)

HER HONOUR: This could only be determined by voir dire really on what she would say. It might be available in admissible form to the Crown in terms of pattern of behaviour that she had observed for a long time with the taking of heroin making the physical difference in her observation between these two sets of extreme forms of behaviour.

I think we should put aside that part of it for the moment because that might depend upon how the evidence is presented to look at the substance.

(Mr Greenwood addressed her Honour on the substance of the statement.)

HER HONOUR: I can understand those objections but I will call on the Crown to address on them. Also there were some aspects of the record of interview which refer to his association with heroin which you are also objecting to.

(Mr Greenwood addressed her Honour on objections to the record of interview.)

(The Crown Prosecutor submitted that the evidence of Kerrie Stanton was probative of the accused's connection with Hughes on or about the time of the murder.)

(Counsel further addressed her Honour.)

(During the course of address the Crown Prosecutor submitted that the Crown would be seeking to adduce evidence from Mark Lock that at an earlier time the accused had spoken to him about "ripping off Hughes for money and drugs."

The accused had asked Lock to "come in on the deal" and Lock declined to do so.)

(Further discussion ensued.)

(Crown Prosecutor took her Honour to the record of interview, questions and answers, 94, 95, 96, 131, 133, 141 to 143 and 174.)

(In response to her Honour the Crown agreed that he was relying on the fact that the accused gave inconsistent versions as to how many times he had come to Sydney. He also stated that he was entirely relying on answer 181 in the record of interview.)

(Her Honour stated that it was difficult to make rulings right at the outset without knowing how the evidence would pan out. She further said that she failed to see how the evidence of Ms Stanton had any truly probative value except if there was to be evidence that Hughes was the supplier. Her Honour further said that she

could not see how she could keep the accused's heroin use from the jury but would give the strongest possible direction that heroin users were victims of our society rather than people who consciously transgressed and that what the accused was charged with had nothing whatsoever to do with that.)

(Mr Greenwood stated that the Crown was proposing to postpone the tendering of the record of interview until later in the Crown case and that this may clear up a number of matters.)

(Her Honour stated that at the moment Ms Stanton's evidence and evidence of withdrawal symptoms should be deleted but that the application may be renewed at a later stage.)

(Her Honour granted counsel access to the subpoenaed documents.)

(Mr Greenwood stated that there was the question of the Commissioner's subpoena not having been answered in full and that he had informed the Crown of this. Her Honour stated to Mr Greenwood that he should take this matter up with the Crown or the Commissioner.)

LUNCHEON ADJOURNMENT:

UPON RESUMPTION:

(Mr Greenwood applied for the Crown's opening to be transcribed. Permission granted.)

IN THE PRESENCE OF THE JURY:

HER HONOUR: Member of the jury the Crown will now outline the Crown case to you.

CROWN PROSECUTOR: Members of the jury, as her Honour has said, it is my function at this stage of the trial to tell you something about the Crown case; to outline to you what the Crown case is. One, the reason being, that you being given, as it were, a picture of what the Crown case is you can more easily follow with each witness as he or she gives evidence. You can fit where that witness come into the Crown case.

This address is just simply an outline and I won't be giving you a detailed opening in relation to all of the evidence that the Crown expects to call. I will be simply approaching this with a fairly broad brush.

You have heard now on a number of occasions, members of the jury, that the accused is charged with murder. The Crown alleges that the accused murdered this victim, John Hughes at Potts Point, which is near Kings Cross, on 5 May 1989.

You will hear evidence, members of the jury, that the victim, John Gordon Hughes lived in a flat at premises in Greenknowe Street at Potts Point. He lived on the third floor and that building is a security building.

You will hear that on Saturday 6 May 1989 the body of John Hughes was found inside his flat. The police had been alerted by a man called Aaron Hill and you will hear that he is now deceased and the police went into the premises and found the body of John Hughes lying across his bed. You will hear evidence that there was no sign that there had been any force entry through the front door of the flat.

When the police went into the flat they found the body, as I said, and they also found that the television was on and a heater was on. The victim was found lying face-down on his bed, as I said, his hands were tied behind his back and his legs were also tied. The bindings were electrical cords which were attached to lamps. You will hear evidence that a pillow slip had been placed over his head and a tie and another electrical cord and a leather belt were wrapped around the deceased man's neck. The bindings around the neck were tightened by means of a pair of ordinary kitchen tongs and you will hear evidence from a doctor that the man had died from strangulation.

You will hear evidence from the doctor as well that there were a number of lacerations to his head and you will hear evidence that shattered pieces of a pottery container were found around the head of the body and the Crown would put it to you that this appears to have been the implement that caused injuries to the head. That is something for a later time.

There were near his body a number of personal papers, there was a knife which had some blood on it and that blood was examined and found to be of the same type and grouping as that of the deceased man.

The police looked through the premises and found various bits and pieces which apparently belonged to the victim. They found no wallet and no credit cards and they found no money.

You will hear evidence that the victim had withdrawn money on the Friday, the day before his body was found. He had withdrawn \$200 from his Westpac account.

He was last seen, you will hear, on the afternoon - last seen by a police officer who knew the deceased man. He was a man apparently pretty well known to the police and he was seen in a cafe. Apparently that was the last time anyone saw him until the body was found the next day, the Saturday.

The police commenced interviewing various persons and various persons who knew the deceased man. One of the persons who they interviewed was the accused Ian Stuart Jones. He was, firstly, spoken to on 26 June 1989 and you will hear evidence of what was said by the police to the accused and what he said to them.

You will hear evidence that the accused said he was a good mate of the deceased and had lived with the deceased at one time earlier in 1989; that the accused man Jones had eventually left Sydney and gone to live at Bathurst after living, I think, for a short time at Lithgow and he said that he had not seen him, in effect, for quite some time.

The police spoke to the accused again on 4 October 1989 and a signed statement was obtained and much of the same material was gone over again and you will have the opportunity of reading that statement, I expect.

Again the accused said that he had lived with Hughes at one time - that is the deceased man - but had left the premises early that year and had not seen him since that time.

There was something in the statement about his knowledge of the deceased man's banking account and he had become familiar with some details of the deceased man's financial affairs.

The accused said that he had gone to live at a place called Upfold Street in Bathurst and he shared those premises with two people called Flower and a man called Dodd and his girlfriend, that is, the accused's girlfriend, also spent some time in those premises. He said to the police that after going up to Bathurst and living there he had only returned to Sydney once. That was, as I understand it, some time in April. He told the police whilst he was living in Bathurst he was employed as a plant operator.

As I told you before, as you have heard, the murder is alleged to have occurred on 5 May 1989.

There will be evidence from the place where the accused was working Mitchell Plant Hire, that the accused was not working on that day, 5 May, which was a Friday and he had somehow notified his employers at some stage, either before or after, that that was a day to be taken off because he was sick.

You will hear evidence from the people who lived in the premises with him at ■■■ Upfold Street, including the girlfriend, Kerrie Stanton, about the accused's movements around that time, the Friday, and what he was doing on the weekend; and I expect you will hear evidence that the accused had disappeared for a time from the premises at Bathurst and did not return to those premises until the Saturday, which was 6 May.

You will hear evidence, members of the jury, he had a fight - this is what I expect - with his girlfriend early in the morning and then had gone missing.

You will hear some evidence about the type of vehicle which he was driving which was some sort of Mini-Minor.

You will hear some evidence, as I expect, that he had been invited to a wedding in Sydney for that weekend - the two people, the Flowers were getting married and the accused had been invited to the wedding and he did not turn up. He was later asked why he didn't turn up and he said to the man Flower that he had ~~been~~ been in Sydney.

You will hear evidence that the accused and his girlfriend had some sort of falling out. However, the girlfriend had retained some of the accused's clothing and I expect you will hear evidence that the police obtained from Kerrie Stanton a jacket which she said belonged to the accused. That jacket, as I say, came to the possession of the police and eventually was examined by a police officer from a section of the Police Force called the Physical Evidence Section - he is an officer trained in the collection of evidence.

Inside the jacket, inside the lining which was torn, a police officer found a St George Building Society pass book which was in the name of the deceased man. In the pass book there is recorded a transaction on 21 April 1989.

The accused was interviewed again by the police on 30 April 1990 and a record of interview was taken after a further conversation with the accused, and I expect that you will be able to see that record of interview and see what was asked by the police and see what reply was given by the accused in relation to the specific questions which were put to him.

You will see a number of matters put to the accused about what various people had said. The jacket in which the pass book was found was talked about and the accused was asked about how was it that he had this pass book in this jacket when, as he said, he had not seen the deceased man around about that time and you will see the response that he gave to that. You will see his answer or at least part of the one of the answers, that he claimed to have picked the pass book up when he was living with the deceased man.

You will see some questions about what he was doing on 5 May, that is the day before the body was found and 5 May again was the Friday and the day the Crown alleges that the murder took place. I might just read out a little bit of the record of interview in relation to that particular aspect. It was put to him that the time sheets of his employer showed that he was absent from work on Friday, 5 May and the Saturday and the Sunday and he was asked, "Can you remember the reason why you were sick on 5 May 1989?" and he answered, "It could have just been a day off. I may have not been sick. The other two days was just the weekend." He was asked at question 203: "Where did you go in this period after you had the argument with Kerrie Stanton on the morning of 5 May 1989?" He answered, according to this document: "I can't remember where I went, I could have sat in the park, for all that time, I could have gone to the pub, I could have done anything." He was asked, question 206: "Did you travel to Sydney on Friday, 5 May or Saturday, 6 May 1989?" He said, "I might have, I might not have."

He was questioned as to any person that might verify his movements on 5 or 6 May 1989. At question 241 he answered: "I believe there is. That is for me and my solicitor."

The Crown has been served, members of the jury, with alibi notices and three persons have been mentioned as being in a position to give evidence or being alibi witness for the accused;

persons who lived in Bathurst and who used to live in a street called Rankin Street and you will hear, members of the jury, from each of those persons who, as I say, have been notified to the Crown as alibi witnesses.

You will hear evidence from two persons, Mark Locke and a woman called Dowsley concerning a conversation that took place some time after the murder and you will hear from those people that the accused said in their presence that, and the Crown puts it this way, he had in effect killed the deceased man.

I might say, members of the jury, that a number of the Crown witnesses are persons who lead a lifestyle much different from any of you and certainly, any of us here and you will hear that this man Locke has a problem with drugs and he is a male prostitute and the woman Dowsley is a prostitute.

The Crown will call a witness called Gavin Scobie. I won't go through all the evidence that I expect he will give but he was a friend of the man Hughes. He will tell you about visiting the premises where Hughes lived just before, a couple of days before the body was found. Gavin Scobie is in gaol serving a sentence for dealing in drugs and I mentioned to you before about a man called Aaron Hill and you will hear evidence that Aaron Hill was apparently the man who first saw the body of the deceased and I mentioned to you that he is now dead and he was involved in drugs and drugs brought about his death. So, the Crown will be calling these sorts of persons as well as other persons, of course, who have no difficulty and have had no difficulty with their lives or with the law.

You will be asked to listen to what they say and you will be addressed firstly by myself and then by my learned friend and you will be given directions, as her Honour also has already indicated to you about the law that you are to apply in this case and you will be given directions about how to treat the various witnesses.

You will hear evidence that the man who is deceased, Hughes, was a drug dealer and he was a homosexual living his life in that world that you have probably often heard about around Kings Cross and you will hear a fair bit about the way things were in Kings Cross with these particular people and the lives that they led.

You will hear evidence firstly from the first police officers who went to the scene, what the police officers saw and what they found in the premises. You will see photographs, you will have a very detailed plan of the flat and how it looked with the man's body there. Some of the photographs are not very pleasant but they have to be produced to you so that you can understand the case and it is important, as far as the Crown is concerned, that you see these photographs.

You will hear evidence from fingerprint experts who examined the premises. You will hear evidence that fingerprints were found on the premises and about the premises. There was a fingerprint on a lamp, on the particular light bulb inside the premises. That fingerprint belonged to Aaron Hill and, as I

said, he appears to be the person who first saw the body. You will hear evidence that Aaron Hill was living at some stage with the deceased man. You will hear evidence that the fingerprints of a police officer who was involved were found about the premises. You will hear evidence that there were some fingerprints found but not identified about the premises.

You will hear evidence of what appears to have been blood near the lift and there was blood on the street near the flat. You will certainly hear evidence that certain blood which was found was of the same group as that of the deceased man and some blood that was found was probably that of the deceased man on various things.

You will hear evidence, members of the jury as I said, not only from the police but from a number of people who associated with the deceased man. You will hear evidence, I can perhaps throw in, from a person who saw a man climbing up into the flat and he was a neighbour. He saw this man climbing up the drain pipe of the flat and you will hear evidence from another person who will say that was Aaron Hill and that was the way he got up into the flat and got himself in and found the body of the deceased man and after finding the body of the deceased man he went to the police. You will hear evidence that it was a security building and you could not get it unless you were let in by the occupant of the particular place you wanted to visit.

As I said to you before, you will hear evidence from this man Locke about his dealings, not only with the deceased man, but his dealings with the accused. I mentioned to you that he said he had a conversation with the accused at a later time or perhaps heard the accused talking to another man - there was another man involved in this conversation and the woman Dowsley was nearby. You will also hear evidence, I expect, about conversations that the man Locke had with the accused prior to the death of the man Hughes.

Well, members of the jury, without burdening you any further because it is very difficult to take on board at this stage very much - I will be calling a police officer firstly, one of the first police to the scene. But, the Crown case consists of a number of items, a number of threads, as it were, and all the matters will be put together that the Crown relies upon towards the end of this trial when it is my turn to address you. I will not seek to burden you at this stage with all the matters that the Crown relies upon, as the Crown says, indicating the guilt of the accused.

The case is largely circumstantial. There is, as I said to you before, evidence from people who were involved in a conversation when the accused said, in effect, that he had killed this man. But apart from that the case depends on so many little bits and pieces and, as I say, I will address you at the appropriate time about what the Crown relies upon and very much will depend, members of the jury, on the state of the evidence at that time.

As I have addressed you you have heard me use the expression "The Crown expects", that is my expectation at this time, the Crown's expectation but you will give your verdict according to what has been presented at this trial. I will address you on the material that is before you and at least attempt to put together what the Crown case is.

As her Honour has already said to you, the Crown bears the onus of proving the guilt of the accused before you can convict. The Crown has to satisfy you beyond reasonable doubt before you can convict that the accused is guilty.

The onus, as her Honour has already said to you, remains on the Crown completely in this trial and there is no burden at all on the accused. So you have to keep that in mind all the time, that the Crown has brought the charge, that the Crown has the onus and has to satisfy you beyond reasonable doubt of his guilt before you can convict him.

There will be a number of things that you have to look at in this trial, members of the jury. Some things take time and your patience will be tested on occasions but you have to, of course, do the job according to the best of your ability and certainly as much assistance as possible will be given to you to assist you to arrive at a proper verdict.

HOWARD JOHN FOX
Sworn and examined:

CROWN PROSECUTOR: Q. Constable, is your full name Howard John Fox?

A. Yes, that is correct.

Q. You are a Constable of Police?

A. Yes, I am.

Q. On 6 May 1989 were you working at the Kings Cross Police Station?

A. Yes, I was.

Q. Do you remember what your hours of duty were?

A. Yes, they were 7 am to 3.30 pm.

Q. Whilst you were working at the police station you were at one stage near the inquiry counter, is that correct?

A. Yes, that is correct.

Q. Were you working on the inquiry counter that day?

A. Yes, I was.

Q. Did a person come into the police station?

A. Yes.

Q. Do you know what time that was?

A. It was shortly before 1.30 pm.

Q. And he gave you his name?

A. Yes, he did.

Q. Have you ascertained that person's name?

A. The name that he gave me was Bill St John.

Q. But have you ascertained his real name?

A. Yes, since then I have further found out that his name was Aaron Hill.

Q. And he told you something?

A. Yes, he did.

Q. Did you go and have a conversation with Det Scullion?

A. Yes.

Q. Did you then go with Aaron Hill and Det Scullion somewhere?

A. Yes, I did.

Q. Where did you go to?

A. We went to a block of units on the corner of Greenknowe Street and Baroda Street, Kings Cross.

Q. What happened after you went to those premises?

A. When we got to the premises Hill took us to unit number 311.

Q. Do you remember how you got in?

A. Det Scullion used the intercom and buzzed one of the other residents of the units and they let us in.

Q. You went up to unit [REDACTED]?

A. Yes, that is correct.

Q. And what did you notice up there?

A. As we arrived at unit [REDACTED] I first observed that the front door to the unit was slightly ajar. Det Scullion and I then entered the unit and I saw the unit was a small one bedroom bachelor type apartment.

As I entered the unit I saw a male person laying face-down on a double bed just to the left of the front door. I noticed that that male person had a pillow slip over his head with a leather strap around his neck and through the leather strap was a pair of silver kitchen tongs which had been twisted and was tightening the leather strap around the male person's neck. I also saw the male person's hands were tied behind his back with an electrical cord and that his feet were tied with a cord that was similar to that.

I also noticed that there were broken pieces of a ceramic pot or similar item on the bed around the head of the male person and it looked to me as though the male person was deceased.

Q. Did you see anything about a heater?

A. Yes. In the room there was a small heater, a small blow heater on and the television was on.

Q. Did you notice anything about the volume of the television?

A. It wasn't up very loud at all.

Q. Were there any lights on that you remember inside the premises?

A. No, not that I remember.

Q. After making these observations you left and you went back to the police station?

A. Yes, that is correct.

Q. And you later went back with a Det Sgt Spain to the flat, did you?

A. Yes, that is correct.

Q. And you stayed there for a short time?

A. Yes.

CROSS-EXAMINATION:

GREENWOOD: Q. Constable had you previously known this man who introduced himself as Mr St John.

A. No, I had never met him before.

Q. How long had you been a police officer at the Cross?

A. Now, up till now or up until then?

Q. Before May of 1989?

A. I was transferred to Kings Cross in December 1989 so roughly - -

Q. A substantial period of time?

A. Yes, three or four years.

Q. You had not known Aaron Hill or St John, as he sometimes called himself, before?

A. No, I didn't.

Q. Are you now familiar with the names of some of the other civilian Crown witnesses in this trial?

A. No. I don't know much about the other witnesses.

Q. Perhaps we should put this in context then. You had the original conversation with Mr Hill?

A. Yes, I did.

Q. Did you take a note of what he told you, or do you have what you consider to be a reasonably accurate recollection of what he told you?

A. On that day when I returned back to the police station I did type up a note of what was said to me.

Q. Do you recall what he said to you?

A. Yes.

Q. Would you tell us what he told you, please?

A. Well, he walked into the police station and he said, "My friend has been murdered." I said, "What do you mean he has been murdered?" and he said, "Well, he's dead and he's got a knife in his back."

Q. All right, he said, "He's dead and he's got a knife in his back."

A. Yes.

Q. Or could it have been, "Knife sticking out of his back."

A. Oh, they may have been the exact words, yes.

Q. Go on?

A. I asked him where it was and he told me that it was on the corner of Baroda Street - not on the corner of Baroda, he didn't know the exact location, he just said it was near the police station.

Q. Would he have said [REDACTED]?

A. No, he didn't say [REDACTED]. He knew where it was but he didn't know the exact address or actual location.

Q. Did you inquire as to how he knew this or how he came to observe the body of the friend?

A. No, I didn't straight away, I just went and got the detective. I was by myself in the station at the time so I just went and spoke to Det Scullion.

Q. You would have arrived, I suppose, at the [REDACTED] building certainly within - gone to the flat, let us take you right from the police station to the flat - within five, six, seven minutes of Hill walking into the police station?

A. Oh, I'd say within ten minutes.

Q. Certainly within ten minutes?

A. Yes.

Q. There was no waste of time, trying to find somebody, it was all fairly prompt?

A. Yes.

Q. And Greenknowe Avenue and the exact location of [REDACTED] is no more than a couple of hundred yards from the police station?

A. 400 metres at the most.

Q. 400 at the most?

A. Yes.

Q. When you gained entry to the building you went up to the front door of the particular apartment and it was slightly ajar?

A. Yes.

Q. And on entering the apartment you made your observations which you have told us about. Now was Hill still with you?

A. Yes, he was.

Q. And had he said anything else to you that you can now recall, with reliability, between the time that he first saw you and perhaps the walk down to [REDACTED] about the circumstances?

A. There was general talking but nothing of great note that I can remember. Nothing that stood out.

Q. Did he go into any more detail as to how he had come across the body?

A. No, not to me he didn't.

Q. And not to Det Scullion so that, at least, you could hear it?

A. Yes, that is right.

Q. So you didn't hear any explanation as to how he came to be able to tell you that he had found his friend murdered?

A. No.

Q. I gather that you were only at the flat for a very brief period of time, in the first instance. Mr Scullion asked you to go back to the police station and get another detective and that is what you did?

A. Yes, that is correct. I would have been there five minutes and then went back to the police station.

Q. So the plan was that Det Scullion remain there as an ordinary security measure while you went away and got other police officers and notified them what had happened, is that correct?

A. That is correct. Det Scullion stayed there, Det Harrison was also with him, she came with us.

Q. So three police came there, Det Scullion, Det Harrison and yourself?

A. Yes.

Q. And Det Scullion stayed there and asked you to get further police?

A. Yes.

Q. Did Hill go with you?

A. No.

Q. Did he stay at the scene?

A. Yes, he did.

Q. What was Hill's demeanour as you can now recall it in your brief dealings with him?

A. It was obvious to me he was shaken. His voice was slightly broken and he appeared a bit nervous and on edge. Obviously seemed a bit upset to me.

Q. You had some experience of being, by then, some three or four years at the Cross, of detecting signs of people who may be affected by drugs or alcohol?

A. Yes, I had.

Q. Or a combination of both?

A. Yes.

Q. Did you form any confident opinion about Hill's state in that regard?

A. No, I didn't detect any signs or smell anything, I didn't detect any signs of him using drugs. To me I seem to think his demeanour was purely from what he found at the flat, shock - direct circumstances from that.

Q. As to, further, a matter of detail I would just ask you to recollect if you can, despite the fact that Hill said to you, "My friend has been murdered. He's got a knife in his back" or "Knife sticking out of his back", the fact of the matter is when you walked into the flat and saw the body of what turned out to be Mr Hughes, there was no knife sticking out of his back, was there?

A. No but when I first looked at the body it appeared to me as though the tongs were at an angle, the silver tongs were twisted in a strap at the back of the neck. At the angle they were at at first I thought it was a knife sticking out of the back of his neck and it was a pair of silver kitchen tongs but it looked that way when I first went in there.

Q. Did it come up in any conversation with Mr Hill as to whether or not he had touched anything or touched the body?

A. No. I do not recall.

Q. You cannot recall asking him anything about that?

A. No.

Q. You have been told to remind the court that Mr Hill is now deceased?

A. Yes. I have been asked to do that.

RE-EXAMINATION:

DEATH CERTIFICATE RELATING TO AARON LEE HILL TENDERED: ADMITTED WITHOUT OBJECTION AND MARKED EX A.

HER HONOUR: Members of the jury, at the close of the trial you will have all exhibits with you and subject to any objection that counsel might have, I will also probably send out all the exhibits to you during, at least your morning tea breaks so that you can keep up with the exhibits that are currently before the court.

This is, as you have heard, the death certificate of Aaron Hill who died on 29 April 1991, aged 25 years and it is clear that it was a drug-related death - "Cause of death: acute intravenous narcotism, administration of morphine, diamorphine" and the only reason for that is to explain the fact that he is not being called here because otherwise the person who first found the body of the deceased would be a very highly relevant witness whose evidence you would expect to be called before you and this is really only to explain the failure to call him, that is Ex A.

CROWN PROSECUTOR: Q. (Witness shown document) Do you recognise the area shown in that photocopy?

A. Yes that is a photocopy of a map of the Kings Cross, Elizabeth Bay area.

Q. The corner of Baroda Street and Greenknowe Avenue it shown?

A. Yes, it is.

Q. Number ■ is indicated on the map, correct, see the little ■?

A. Yes, that is correct.

Q. That is where the block of flats was?

A. Yes.

Q. Where you went and found the body?

A. Yes.

Q. The police station is where in relation to number 3?

A. You have got the police station, there is a darkened area there marked, Fitzroy Gardens which is a park and the police station is actually in the park. In that darkened area there is a circle there and that would be the closet part of the park. There is a black dot there, that would be the closest part of the park to the police station.

Q. Under the letter "N"?

A. Yes. The police station backs on to Barncleuth, that is the rear of the police station.

Q. Barncleuth Square, is it?

A. Yes.

HER HONOUR: Would it be a good idea for the Constable to mark the place?

CROWN PROSECUTOR: Yes. (Witness complied)

PHOTOCOPY MAP OF KINGS CROSS, ELIZABETH BAY AREA TENDERED:
ADMITTED WITHOUT OBJECTION AND MARKED EX B.

HER HONOUR: They are very close to each other the two points marked with green and I understand that that is the basis of the tender, to show how close they are.

CROWN PROSECUTOR: Just to help the jury understand the evidence as well. There will be a stage when I will be asking that the jury be shown the plan, to understand a little bit more the evidence when directions are mentioned. There have been some copies made of that particular exhibit.

(Jury given copies of Ex B.)

HER HONOUR: They are copies of Ex B, members of the jury and they can be kept and they are your individual copies and it would probably be a good idea to put your name on them and it means you can mark them or put notes on them or whatever, as you wish.

Members of the jury, I will have writing material made available to you. One thing I must say about it is that it is a temptation to sit there and take notes while the important parts of the trial pass you by. In many cases it is really very important that you sit and do watch the witnesses as they give their evidence and not be distracted by the taking of notes.

As you can see, an official transcript is being taken and although the practice is that you do not have direct access to that, if you have any questions about any of the evidence the relevant parts of it can always be read back to you. So, there are advantages in taking notes but there are also disadvantages if it becomes too dominant in your role in the trial because it

very important to simply watch the evidence as it is unfolding. But, to the extent that you may well wish at the same time to take notes you now have the wherewithal to do so.

CROWN PROSECUTOR: One thing, and I understand my learned friend will concede and I think it is pretty obvious, that the top of the plan from these roadway maps is always north, north to the south.

FURTHER CROSS-EXAMINATION:

GREENWOOD: Q. Did you discern the position of the Rex Hotel?
A. Yes, it is in Macleay Street.

Q. In Macleay Street between Fitzroy Gardens and Greenknowe Avenue?

A. Yes, that is correct.

Q. Just have Ex B back and mark that. (Shown) Just put an X perhaps and it would be around about where the "le" is in Macleay Street on the right hand side going down towards Garden Island, is that right?

A. Yes, that is correct.

HER HONOUR: Q. Not far from where that 60 is in Macleay Street?

A. Just up there.

GREENWOOD: Q. North of that?

A. Yes, just north of the 60.

Q. Just around the corner you see there [REDACTED], is that right?

A. Yes, that is correct.

Q. Indeed, there is the Rex Hotel and then the post office and then Greenknowe Avenue, isn't that right?

A. No, you have the Rex Hotel which takes up a fair bit of that area there, that block. Then there is another block of units on the corner and then the post office is on the other side of Greenknowe Avenue and it takes up that block up until Greenknowe Avenue.

Q. Where that star is?

A. Yes, that is the post office.

Q. You have established that the Rex Hotel is literally just around the corner from [REDACTED]?

A. Yes, that is correct.

Q. Without breaking your neck about it, you could walk out of the bar of the Rex Hotel, turn right and get around to the [REDACTED], turn right and right again and get around to [REDACTED] in three minutes?

A. You can get out that way but there also is a back door which leads out and nearly right to the front door of [REDACTED], within 15 metres of the front door. The back door goes on to Baroda Street.

Q. That back entrance through the Rex Hotel is accessible to the pub out through the lounge isn't it and out through the back?
 A. Out through, I think it is the Bottoms Up bar. You go out through a back door there.

Q. But it is not a back door in the sense of being a staff only exit or entrance, it is for the public?
 A. No, general entrance.

Q. What you have is this position: the Rex Hotel approximately where the "le" is and a bit of the "a" in Macleay Street is on the right hand side with access through from Macleay Street through to Baroda Street, if you walk through a couple of bars and get out the back?
 A. That is correct.

Q. You have shown where [REDACTED] is so that anybody who was drinking in, or for any other reason was at the Rex Hotel, they are only a matter, with the shortest possible route, of a minute or so and they are at [REDACTED] ?
 A. That is correct.

Q. Fair enough?
 A. Yes, that is correct.

WITNESS RETIRED

(Her Honour repeated the warning to the jury about not talking to anyone in the precincts of the court or to anyone who looked familiar from the court room.)

She also directed the jury not to discuss the case with anyone outside of their group and to disregard anything that might come to their notice relating to the case outside of the court room.)

IN THE ABSENCE OF THE JURY:

(Mr Greenwood applied for overnight bail for the accused during the trial. He stated that the accused would travel back to Sydney each night by train and would have a companion from the church group with him and would come direct to court in the morning. He stated that the accused would come at 9 am and would not travel the streets of Wollongong any more than was necessary to get to the railway station.)

(Crown Prosecutor stated that he had no objection to bail as he would obviously be with somebody. He stated that previously a bail condition had been broken involving the accused speaking to a Crown witness and submitted that he was to keep away from Crown witnesses.)

(Her Honour stated that if there was any contact with Crown witnesses at this stage of the trial then there would be no question of overnight bail.)

(Her Honour continued bail with the conditions that the accused was to remain within the court complex until half an hour after the jury is excused, that he go direct by wheeled transport to the station and take the first train to Sydney and that he be back in Wollongong by the same means, in other words not using foot transport between the station and the court in order to arrive at the court thirty minutes before the court is due to convene the following morning.)

(Mr Greenwood asked her Honour to confirm that the daily reporting conditions to the Police station in Sydney which were imposed would not longer apply.)

(Her Honour stated that the reporting conditions to any police station would not longer apply and that his attendance at court was ample compliance with that requirement.)

FURTHER HEARING ADJOURNED TO TUESDAY 18 AUGUST 1992.

o0o