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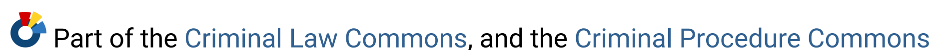

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Recommended Citation

Cuyahoga County Court of Common Pleas, "Volume 07 (Part 3 of 4)" (1969). *Ohio v. Fred Ahmed Evans: Trial record transcript, 1969*. 11.
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uniform on doesn't make him a policeman. If he is not capable of performing those duties which are incumbent upon him as a police officer because of some voluntary thing that he has done to diminish his performance, then can you say that he is acting as a police officer, when Captain Dregalla and Sergeant Ungvary testified that it is illegal, unlawful, against police regulations to consume alcohol by a police officer while he is on duty?

If I remember correctly, both Dr. Hoffman and Dr. Adelson said that it would take about, up to sixteen bottles of beer or sixteen different kinds of drinks to make this kind of alcohol content that was found in the blood of these two men, one with .25 and one with .20.

And may I say this further. We even have the testimony of one police officer, I think it was Detective Viola, who testified how Patrolman Wolff had a gun, had a .38, and he was aiming it at two men who had carbines and telling them to surrender. And certainly this would show how this alcohol had affected him, because it just doesn't seem good common sense, if you're trying to arrest two men pointing a rifle at you, with a .38.

If these men were that drunk, this is what

the State's witnesses say, then how can we say he was acting as a policeman?

Then we are saying -- I remember a certain person, I won't mention his name, gave an illustration that, suppose he would come to court dead drunk, would he be less capable as a lawyer? And I respectfully have to say yes, he would, if he was that intoxicated.

In fact, if I came to court that drunk, or any other lawyer, you would hold us in contempt, and should. But to get back to the point, if these policemen had that much alcohol in them, which they did, how can they say they were acting as duly qualified officers?

Their partners said they were functioning normal. Well, as far as we are concerned, the doctor is far more an expert on what a person can do under those circumstances than another policeman, or it's obvious that they weren't, shall we say, unbiased.

For we understand that, from their own witnesses, that when you are .15 or more, you are under the influence of alcohol. Now, this never has been disputed. How could it be?

It was their witness which testified to this.

If these men were that drunk, Judge, then how can we say they were acting as policemen?

They weren't, because the rules and regulations of the police department say that a police officer isn't supposed to consume alcohol. If he consumes it to the point that he was drunk, then he had no business out there; he shouldn't have been permitted to have been on the scene, he shouldn't have been permitted to have a uniform on.

Now, this man is charged with killing two persons who had police uniforms on and, as far as we are concerned, the evidence shows that's all that they were.

Now, we are not saying that you have a right to kill anybody except in self defense; this is not what we are saying. We are saying, under, technically under the law, it has to be shown that these officers were acting as policemen.

They weren't acting as policemen if they had that much alcohol in them. Therefore, these counts should be dismissed against these defendants.

Lieutenant Jones had been imbibing, which was also in violation, but he wasn't intoxicated. And this is why we are qualifying it not only for the second, fourth and sixth counts, but more particularly, counts four and six relating to Golonka and Wolff.

MR. CORRIGAN: May it please the Court.

First of all with respect to Lieutenant Jones, that he had been imbibing, and this was contrary to rules and regulations, Mr. Tolliver may point out to you that is what the testimony was and I am now concerned with the good name of Lieutenant Jones. That there was no alcohol in his blood --

MR. TOLLIVER: But in his urine.

MR. CORRIGAN: There was .03 alcohol in his urine.

MR. TOLLIVER: That's right.

MR. CORRIGAN: He may have had a drink in the afternoon when he cut his

lawn before he came to work. That is against no regulation and his right, if you please.

Now, with respect to Wolff. The argument is made that Wolff is standing holding a pistol on two men with rifles. We can't blow and blow cold, your Honor.

Recall when Officer Butler testified? And they cross-examined him because he stood in the back yard and he testified that he saw a man firing his rifle out to the street at police officers and that he emptied his revolver.

The defense counsel asked him, "Did you say anything to him before you emptied your revolver?"

It would seem from that question that they expected that Butler had some kind of a duty to say, "You are under arrest. Drop your arms."

But now, when Wolff shows a manifestation, if you please, of kindliness, not killing somebody, but holding them at bay, and unfortunately for him that he didn't kill them, he is suddenly acting in a manner other than as a police officer.

I submit he was acting as a police

officer and as a kind individual when he did not shoot those people and kill them under those circumstances.

The fact that Wolff, and the fact that Golonka were under the influence of an intoxicating beverage was not testified to by either of the Coroners as being, therefore, incapable of performing their duties.

Rather the testimony was that they were impaired.

I submit, however, that both of them testified that there is a principle of tolerance and that some people can drink more than others and the evidence before this Court is that these two police officers, with their partners, made numerous calls that particular day: that in the instance of Wolff, he kept the duty sheet.

In the instance of Golonka, he drove the vehicle for some 10 or, I believe, 20 miles, and that both of them had performed in a manner that did not indicate to their partners that they were acting in any unusual manner.

The Court will recall also that Patrolman Floyd, who was immediately behind Golonka as he went into 1391, that Floyd, who

was not his partner but who was with him on the scene, said that there was nothing unusual about Golonka.

Now, what did Golonka go back of 1391 for? What did Wolff go up to 12312 or 12314 for? They went there, not out of curiosity, but they went there because they were police officers. They had gotten a report over the radio. They were responding as police officers and I say that if they were under an intoxicating beverage, which we do not deny, and which we admit steadily on the State's side, this does not give license to somebody else to kill them and say that they were intoxicated nor does it give justification in killing them and saying they were no longer acting as a police officer.

There is no law to support the contention raised by the defense asking that these counts be taken from the jury because of the intoxicated state of the officers.

MR. FLEMING: If it please the Court, your Honor, when we talked about what this Patrolman Butler did out there, not alluding -- we weren't alluding then to intoxi-

cation; and we don't allude to it now.

This man said he saw a man and the man's back was to him and he was shooting at somebody out in front and he emptied his gun into his back six times and then ran and that is an act of cowardice, whether or not it be --

MR. CORRIGAN: Objection.

MR. FLEMING: He shot the man in the back.

THE COURT: Overruled.

MR. FLEMING: Six times and then turned around and didn't say anything to him. That's what we were talking about with regard to Butler.

Certainly, at least he could have said, "Drop your gun," or something. Anything. He was getting ready to kill this man. Then just shoot him, empty his gun and turns arounds and leaves the scene.

What we are talking about here with regard to intoxication in this case is only this, that there is no evidence here as to how the three of these victims were killed. The bullets were flying everywhere. Allthe officers who testified said that. And I am sure that

the Legislature when they designed this statute, designed it for a police officer who was, as is stated in the statute, "Duly-appointed, qualified, and acting."

Now, if, as the Coroner, Dr. Adelson, testified in this case, he said that they weren't qualified. I believe Dr. Hoffman was the one that talked about the tolerance and that kind of thing.

But Dr. Adelson testified, under oath, the State's witness, Dr. Hoffman's boss, that these men weren't qualified to act as police officers.

And this is only our contention that in order to be protected by this statute that was especially designed for police officers, as it should be, we are not arguing that the duties of a police officer should preclude him from the statute.

We say that this statute should be in the record and in the Code for police officers. They are entitled to it and most police officers are entitled to it by the way they perform their duties, by the way they act, and by the things they do as police officers.

And that there is no reason why two police officers who were under the influence of alcohol, as the State admits, should be entitled to this section of the statute which was designed for officers who were acting and qualified to act in their line of duty as police officers.

Mr. Corrigan says that the only evidence in this case is that he was impaired. I submit to the Court if that was the evidence, that a police officer's ability was impaired, that he wouldn't come within the purview of this statute, but the testimony was more extreme than that.

Dr. Adelson testified that these two men were not qualified to act as police officers and that is the testimony in the record and as a consequence, they shouldn't be entitled to the benefit of 2901.04.

THE COURT: The motions with reference to Counts 2, 4 and 6 are overruled.

We will take a short recess at this time.

(Thereupon a recess was had.)

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(Thereupon the following proceedings continued to be had outside the presence and hearing of the jury:)

THE COURT: Be seated. Counsel stated that they have another motion.

MR. FLEMING: If it please the Court.

Your Honor, with regard to the seventh count, the killing of Chapman, and the first, third, and fifth counts of this indictment, which charged that the victims killed were civilians, in reality, and not that they were police officers, and that they are charged, as anyone else would be, as though anyone else were the victim in that they are charged with the deliberate, purposeful and premeditated malice, we say, your Honor, that all of this evidence that the State has adduced and they would have the Court and defense believe that this is what this conspiracy contained, the evidence is that this was a conspiracy to kill police officers.

I believe that the testimony from everyone who has testified with regard to what this conspiracy was, and what it was allegedly formed to do, is that this was a conspiracy to kill policemen.

And the evidence adduced by the witnesses,

who have said anything about the conspiracy, when they referred to "beasts" or whatever names they have given, they have said this meant "police officers."

And Captain Dregalla, the other day, from the testimony that was elicited from him by Mr. Laurie, that was that this was directed towards police officers.

It has been our contention, your Honor, with regard to James Chapman, the evidence to this point doesn't show how he was killed, it doesn't show whether he was killed by the police or by someone who allegedly was a part of this conspiracy, this alleged conspiracy, which they would have the Court believe existed.

We say, if this was in fact a conspiracy to kill police officers, then this conspiracy wasn't formed to kill James Chapman; and that whoever killed him is responsible for his death.

Now, there is no evidence in this case to show that the defendant or anybody else involved in the conspiracy to kill police officers killed James Chapman. There is not one iota of evidence as to how he was killed, when he was killed, where he was killed.

The only evidence in this case about James Chapman is that there has been some testimony that a police officer asked for a car, and some of the testimony is that a police officer, who stripped his shirt off and took off his clothing, got in the back seat of a car.

The testimony first was that he handed some civilian his shotgun, then he got in the back of the car and that, while he was back there, the civilian handed him his shotgun back, and he was kneeling in the back of this car when the car took off.

The next evidence we have with regard to Chapman, the police officer Santa Maria said he didn't take his shirt off, somebody drove him down to an area to help him in an effort to retrieve the body of Lieutenant Jones; but he says he kept his shirt on, that he didn't take his shotgun, that all he took with him was his service revolver, and that he and this person, whoever he was -- and he didn't know who he was -- both jumped out of the car, and he never saw that man again.

The person that said that Chapman, and specifically identified Chapman, indicated that Chapman drove the policeman down, without a shirt on,

and that later on his body was found some few hours later. There is not one iota of evidence as to how he was killed, when he was killed, or where he was killed.

The only evidence is that his body was found in the yard at 12312 Auburndale, and there is some question about that.

There is a single inference that's where his body was found, but there is no direct evidence that that's where Chapman's body was found.

THE COURT: Patrolman Wood said that's where he took it from. Didn't Patrolman Wood say he took it out from there?

MR. FLEMING: Wolff?

THE COURT: Wood. W-o-o-d.

MR. FLEMING: Wood says he doesn't know who that man was. He said the prosecutor showed him a picture that very day, down in the prosecutor's office, a picture of Chapman, and he couldn't identify it. He said that he has no idea who the man was; all he knows, it was a colored male.

And that very day, while he was down in the prosecutor's office, a picture of Chapman was shown to him, that he could not identify; and even

assuming he could identify it, we don't know how that body got there, we don't know when it was killed, we don't know who killed him, and certainly there should be some evidence with regard to how Chapman was killed, some evidence as to where and when he was killed.

If they are going to say, by innuendo, say this is a conspiracy, then we can't let the jury speculate this man must have been killed by some people who were involved in a conspiracy to kill, and there is no evidence other than that the only evidence in this case about Chapman to this point is, that he got in the car and that he drove down the street with a person who was supposed to have been a police officer, unidentified; that person is supposed to have taken his shirt off, and he had some other person sitting in the front seat, and this police officer had a shotgun behind him, and they left the scene.

The next time he was seen, he was dead. That's the only evidence in this case about Chapman, other than Wood's saying that he removed a body. And all of the inferences upon inferences are directed toward the fact that possibly, possibly this is the body of Chapman.

But there is no evidence in this record that will reveal that that's the body of Chapman. As a matter of fact, the evidence is to the contrary.

The evidence from Patrolman Wood, from out of the Second District, is that "I never saw this man before; I haven't seen him since. They showed me a picture of a man that was supposed to be a man, and I can't say that that was the man or that wasn't the man. I don't know who it was."

But there is not one bit of evidence in this record to reveal how this man was killed. So, if there is no record to reveal how or when or where he was killed, if there is no record to reveal as to whether or not he was supposed to have been killed by someone involved in the conspiracy or not, then how can there be evidence of deliberate and premeditated malice?

The State has to make a case, at least prima facie, which reveals premeditated, purposeful, deliberate malice, and it can't be with regard to Chapman. There is no evidence of anything about Chapman, except that he was killed that night, that he was shot in the head that night and that's all.

There is no connection to his having been killed by this defendant or anyone connected to him. There is no connection as to how he was killed, or when he was killed, what time or anything.

All you have is the deceased body of Chapman, and the only way that that kind of evidence could be permitted to go to the jury would be completely and exclusively on the basis of speculation, and this jury shouldn't be permitted to speculate to that extent.

Now, when they charge him under the conspiracy section, they are charging in effect that this conspiracy was directed to kill -- let's assume they are saying in effect -- the policemen or anybody else connected with policemen: but that's not what it says -- "Conspiracy to kill and murder theretofore entered

into between the said Fred Ahmed Evans, Lathan Donald, Alfred Thomas, John Hardrick and Leslie Jackson." and they haven't shown at all that James Chapman was killed pursuant to any agreement that was made by anybody; and they haven't shown and he is not a policeman; all of the evidence in this case so far was to the effect -- what they say in the indictment isn't evidence -- but the evidence that they have placed on this witness stand and brought or adduced under oath is that if this conspiracy existed at all, it existed for the purpose of killing policemen.

That's what the State has argued; that's been the evidence they have adduced during the course of this case.

If it existed to kill policemen, James Chapman certainly wasn't a police officer, and these officers who were police officers, as they are contained in the first, third and fifth counts of this indictment, they are not included as policemen. They are as civilians, they are just as any other victim would be.

Under this section, they are not entitled to the benefits of 2901.04, by which they are entitled to certain benefits, because

they are policemen. They are just like James Chapman is there; and when you consider them just as you would consider James Chapman, then you have the same problem with regard to the kind of conspiracy that the State wants the Court and jury to believe that this was, which is the reason we have said from the outset, from the empanelling of the jury, it is a double-barreled situation; but you can't have your cake and eat it, too.

You can't charge that this conspiracy, which was formed for the purpose of killing police officers, and then everybody that happened to be found dead anywhere that night, bring them within the confines of this conspiracy.

If these parties were civilians and they were killed pursuant to a conspiracy to kill policemen, then they just shouldn't be charged in that manner, the way they are charged.

If the State believes what their evidence is supposed to have been or adduced during the course of this trial, the only proper way to charge them in regard to these police officers is under 2901.04; they are policemen. They were killed according to what the State

alleges, pursuant to performing their duties as police officers; so if they were killed in a conspiracy or by a conspiracy, pursuant to killing policemen, then that's the way they should have been charged, but not double-barreled as civilians and as police officers; and James Chapman, if they were going to charge that this man was killed pursuant to this conspiracy, that was formed to kill policemen, then certainly they should bring some evidence or there should be some evidence in the record to show that this is what they are attempting to prove in this case; but all through this case, we have said that even though you may circumstantially prove a case, you can't circumstantially prove a case by building inference upon inference.

You can take inference from facts and you can draw logical, proper inferences from facts, and you don't have to draw just one inference from one fact, you can draw a number of inferences from facts; but you can't do anything but compound inferences upon inferences; when you would have the jury believe that simply because Chapman got in a car with a policeman and he drove and he was out of sight, and later

on he died somewhere, not knowing how he was killed, when he was killed, or by whom, that couldn't be any more than an inference upon an inference.

Then they want to compound the improperness of it all, after compounding all these inferences together, that he was then killed pursuant to a conspiracy to kill policemen, and I say, your Honor, there is no evidence in the record to warrant this count of the indictment with regard to Chapman and it should most certainly be dismissed, and the counts which allude to the police officers as civilians should also be dismissed for the same reason.

MR. CORRIGAN: May it please the Court, with regard to the argument relating to the charges being double, as they were, this I believe has already been argued before the Court.

The law specifically in the State of Ohio is the Ferguson case and subsequently the Wilkinson case and also a District Court case, the Fuller case, Fuller vs. United States, decided September 26, 1968.

For the moment, for the record, the Court will recall that in the Ferguson case the Supreme Court of the State of Ohio held that the premeditated killing of an individual, charges one, first degree murder, but the intentional killing of the individual while in the premeditation of a robbery charges another count of first degree, and they are separate and distinct, although they come from the same statute.

Inthis instance, we have separate and distinct offenses, coming from separate statutes. If the Court please, the element of the two charges are different.

In the one instance, we must prove

they were police officers, acting in the scope of their employment.

In the other instance, we need not prove that element. In the instance of killing of a police officer, we need not prove the premeditation, so they are separate and distinct offenses, because they have different elements that must be proven and they have been so held to be separate and distinct by the cases that I have cited.

Now, with regard to the counts relating to the killi ng of James Chapman, if I understand the argument of the defense counsel, it is that if there is a conspiracy to kill police officers, then in the furtherance of that conspiracy they kill somebody else, they are exonerated -- they have got a license to kill somebody else.

The fact of the matter is that the law is that anything done in the furtherance of that conspiracy is the responsibility of all those that join in the conspiracy.

I might add that the charge is not a conspiracy to kill police officers, it is a conspiracy to kill and in pursuance of that

conspiracy they did kill James Chapman.

Now, with regard to the factual aspects, as it relates to Chapman. Fact number one, not inference, fact. Chapman parked his car up on Auburndale Avenue. This is testified to by Mr. Boone.

Fact number two. Chapman volunteered to Santa Maria, which was testified to by Santa Maria

Fact number three. Boone saw Chapman driving his car down the street and saw Santa Maria get into the vehicle.

Fact number four. Sergeant Gentile saw the vehicle going around the corner with Santa Maria in the vehicle.

Fact number five. Gentile saw the vehicle head in to 12312 and saw these men get out of the vehicle and saw Santa Maria immediately wounded.

Fact number six. He saw Chapman go towards the body of Wolff.

Fact number seven. Officer Wood came in and said that he found Chapman right there.

Fact number eight. Dr. Adelson had

indicated that the wound which Chapman had received was on his forehead and of the type that came from a high-velocity weapon. It was from up to down (indicating). It scooped out a good portion of his head. This is where he was found.

Yes, Officer Wood said I cannot identify that picture, but Officer Wood says I did drag a man out of there and the man was a Negro and he was dead and laid him on the sidewalk.

Fact number 9 or 10 -- Captain Dregalla came in and said that's Chapman; I was there when Wood dragged him out. There is no evidence that anybody brought any bodies in to this place. They had some difficulty getting them out, if you please. So it is not a case of somebody dying somewhere and then being brought here.

The facts clearly are that this man was killed at 12312; he was killed from a high-velocity weapon that was fired from that house, wherein the principals involved in this case, the fellow conspirators of the defendant had clearly been established to be holed-up where

anybody --

MR. FLEMING: Objection.

THE COURT: Objection over-ruled.

MR. CORRIGAN: Where the defendant had earlier left from and made his way down the street. I submit that the facts overwhelmingly support the prima facie case that Chapman did meet his death pursuant to this conspiracy and did meet his death at the hands of these conspirators.

MR. FLEMING: Your Honor, that still doesn't answer the serious questions posed by our motion. Our contention is simply this: that even if, assuming they form or establish that a conspiracy was formed -- and we don't admit that -- but even assuming that that's the case, that still doesn't mean that just because somebody died that night or somebody was shot that night, that they didn't have to prove any more evidence than that; that they don't have to submit any more evidence than that to make a prima facie case.

There isn't anything in this record, nothing in this record to show where or when or how this man was killed; and certainly with regard to Chapman, there is no case against Chapman that has been proved by the State in this case.

Now, with regard to these other police officers who are charged -- who were victims, as though they were civilians, there is no case insofar with specifically -- specifically says -- let's assume for the sake of argument that with regard to Wolff, who turned the corner -- and there is some evidence that some people were shooting out of 12312 and that these people are alleged to be a part of the conspiracy. All right.

And with regard to Golonka, then, and with regard -- and that was Jones, who turned the corner, and there is some evidence that some people were allegedly directing fire from 12312, shot.

Then, with regard to Wolff, who was back there, in the back, with these two men who had bandoleers, and I believe they were shooting out -- and the last time he was seen, he was seen with some people who were firing at police.

And the allegations of the State is that these people were co-conspirators of the defendant. Now you have some evidence to show how these people were killed, even if circumstantial.

There is no evidence that somebody shot out of 12312 and killed Jones. There is no direct evidence that anybody, either of these two men, that Wolff was standing behind, with the gun, no evidence that they killed him.

But there is a circumstantial fact from which you can draw an inference. There is no circumstantial fact as to how Chapman was killed, none at all, nothing to draw an inference from except for the fact that he got into a car with a man who was supposed to have been a policeman.

And if you draw that many inferences from

that fact, you are compounding an inference upon an inference - and you can't compound an inference upon an inference, simply because you are alleging that all this occurred pursuant to a conspiracy, and that's the argument of the State.

This is what we contend is improper. Just because this man some time that night was found to be dead doesn't mean that he was killed pursuant to any conspiracy on the part of this defendant.

And you have to prove, or have some evidence in this record from which to draw that kind of an inference, some evidentiary fact - and it is not in this record.

THE COURT: Well, I don't agree that it is not in the record. The record clearly is that he was up on Auburndale, he did get into a car with Santa Maria, and another colored gentleman in the front seat of the car with him, and the contention seems to be that it was some type of convertible.

The car came down and pulled in front of 12312 Auburndale, at kind of an angle, somewhat towards the driveway, and at that time the gentleman who was on the righthand side of the car got out, and on the lefthand side Mr. Chapman got out; and

immediately followed by Mr. Santa Maria, and the testimony was that Mr. Chapman went into the area of about the front part of 12312 Auburndale, from which a barrage of shots was coming. He was found dead in the immediate vicinity from where the shots came.

Certainly it is sufficient evidence for the jury to determine that he was actually killed from the shots that came from where these individuals have been identified as being some participants at least in a conspiracy; at least there is sufficient evidence in order for the jury to conclude that is the fact.

There is no problem in my mind with reference to the propriety as to whether this motion should or should not be granted. It should not be granted.

The motion with reference to count seven is overruled.

So far as the combination of the motions with reference to counts one, three, and five, counsel are well aware of the fact that there may be what we may call a duplication of charges growing out of almost the same facts.

But in this case, as distinct from these

cases where it has been permitted, that they may find the defendant guilty of murder in the first degree based upon premeditated and deliberate malice and in the perpetration of a robbery, those cases are all based on 12901.01. They are all in the same statute.

In this particular case, there are two separate statutes involved: the deliberate and premeditated malice is in 2901.01; the murder of a police officer while acting in pursuance of his duty is in 2901.04.

So, in that respect, and besides that, as I say, counsel is well aware of the fact that the Ferguson case disposes of the legal question that has been argued in respect to those two items.

So, the motion in all these respects is overruled.

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THE COURT: Bring down the jury.

What is the situation with reference to this-- do you have another witness?

MR. LAURIE: We have another witness, your Honor, we would like to put on very briefly in regard to some problem we had before we

recessed.

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(Whereupon the following proceedings were had within the presence and hearing of the jury:)

MR. FLEMING: May we approach the bench?

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: You have a witness?

MR. LAURIE: Yes. The State will call Mr. Seger.

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THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, recalled as a witness GERALD SEGER, who, having been previously duly sworn, resumed the stand and testified further as follows:

REDIRECT EXAMINATION (CONTINUED)

THE COURT: Mr. Seger previously has been a witness, and he was sworn at that time.

You understand you are still under oath?

THE WITNESS: Yes.

BY MR. LAURIE:

Q Mr. Seger, I am going to refresh your memory on one or two questions you gave in your testimony earlier, so please listen.

MR. FLEMING: Objection.

THE COURT: Well these are preliminary?

MR. LAURIE: Yes.

THE COURT: Go ahead.

Q (By Mr. Laurie) Do you recall a few questions that were asked of you in regard to car 591, when you were on the stand?

A Yes, sir.

Q And do you recall the question I said "Question: Did you notice their car?" That was McManamon's and Szukalski's car, do you recall that question?

A Yes, sir.

Q And you said, "Answer: The car I mentioned was 591, which was back up against this building here (indicating)." I think you indicated where it was backed up, and the next question was: "What condition was that car in as you observed it, if you did?"

And your answer was, "It was running and there was bullet holes on the right side of the vehicle."

Do you remember that, sir?

A Yes, sir.

Q Now after this, some other questions and answers took place. Now I will ask you, sir, did there come a time that you seen the car 591 again after that date?

A Yes, sir.

Q When did you see it?

A At the Fifth District garage on July 24, after 7 p.m.

Q All right, now I am going to show you some exhibits, the testimony is that they were taken some time in August at the police station over here somewhere on 19th Street, State's Exhibit 142, 184, 141, 140 and 185.

Will you examine those photographs carefully and then

I will askyou some questions.

Have you looked at them?

A Yes, sir.

Q Tell me, sir, what do they depict, what is it?

A Well, that was --

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Do these photographs fairly and accurately portray the ambulance number 591 as you saw it on July 23, 1968, out on 123rd and Beulah?

THE WITNESS: Yes, sir.

THE COURT: And does that answer also go with respect to whatever holes there were in the ambulance that you saw at that time?

A Yes, sir.

MR. FLEMING: What page are you on?

MR. LAURIE: Page 2656. That's all, Judge, thanks a lot.

MR. TOLLIVER: May we have a moment, Judge?

MR. FLEMING: May I see those photographs?

RECROSS-EXAMINATION

BY MR. FLEMING:

Q Officer, I believe you testified on April 25th in this court room, is that correct?

A Yes, sir.

Q Isn't it a fact that you told the Court and jury at that time, that when you came upon the scene that this automobile or this vehicle, 591, was backed up in a position against some wall or some building?

A Yes, sir.

Q Isn't that correct?

A Yes.

Q And I believe that you told Mr. Laurie under oath and to the Court and jury that all you saw was one side of this vehicle, and that your primary concern at that time was you noticed it was running and you saw it partially, but that your primary concern was to get Officer Szulkalski to the hospital, isn't that correct?

A That's what I testified to, sir.

Q Yes, so that you certainly can't say now, that you saw this vehicle and all the marks that were on it on the 23rd of July, can you?

A Pardon me?

Q Well, I will withdraw that. You said the question

by Mr. Laurie was "What condition was that car in as you observed it, if you did?"

And you answered, "It was running and there was bullet holes on the right side of the vehicle."

MR. LAURIE: Bullet holes.

MR. FLEMING: That's what I said.

MR. LAURIE: No, you didn't.

THE COURT: He said holes.

MR. LAURIE: Did he? I'm sorry.

Q (By Mr. Fleming) "Question: All right. And did you make any other observations of the car, other than this?"

And your answer, "No, sir, I was more interested in getting Szulkalski to the hospital."

And then Mr. Laurie asked you: "Why were you interested in getting him to the hospital?"

And your answer was: "Well, he was injured and he was bleeding very badly from his leg."

Now, is that correct?

A That's my testimony, sir.

Q Yes, so that when Mr. Laurie asked you did this vehicle, this picture fairly and accurately portray the vehicle, it fairly and accurately portrays that portion of the vehicle that you observed?

A That is right.

Q That's correct?

A Yes.

MR. FLEMING: You may inquire.

MR. LAURIE: No, we have no questions.

THE COURT: Well, here, is there some portion of these photographs that do not fairly and accurately portray what you saw?

THE WITNESS: This portion of the vehicle (indicating).

THE COURT: You are indicating the rear?

THE WITNESS: The rear.

THE COURT: How many bullet holes are there?

THE WITNESS: On the 24th, I observed a bullet hole.

THE COURT: Now you have handed me Exhibit No. 140.

THE WITNESS: Right here (indicating) by the door handle.

THE COURT: I see. Any further questions?

MR. LAURIE: That's all.

MR. FLEMING: Nothing further, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. LAURIE: Your Honor, at this time, again we offer into evidence the photographs, Exhibit Nos. 140, 141, and 178 through 189.

THE COURT: I want to look at the other exhibits. I won't take the time of doing it now.

I will tell counsel as to what the ruling is tomorrow morning.

MR. TOLLIVER: And note our objections.

THE COURT: I haven't done anything yet.

MR. TOLLIVER: He is offering them and I'm objecting to it.

THE COURT: I understand, all right, subject to what ruling I make on those, are you ready to go ahead with something?

MR. TOLLIVER: Yes.

MR. LAURIE: The people rests its case at this point.

THE COURT: Subject to the ruling on this matter.

D E F E N S E

MR. FLEMING: Call Dr. Adelson.

THEREUPON, the Defendant, to maintain the issues on his part to be maintained, called as a witness DR. LESTER ADELSON, who, having been previously duly sworn, was examined and testified as follows:

THE COURT: Doctor, you have previously been called as a witness in this case and you were qualified at that time and you are under oath. Do you understand you are still under oath?

THE WITNESS: Certainly.

DIRECT EXAMINATION

BY MR. FLEMING:

Q If it please the Court.

Dr. Adelson, I believe you previously testified that you were the chief deputy coroner for the County of Cuyahoga Coroner's office, is that correct?

A Yes, sir.

Q You have been subpoenaed here to bring with you the

protocol and record of certain persons.

Did you bring them with you?

A Yes, sir.

Q Will you tell us what protocol and records you have brought here?

A Yes. I brought with me the records of one Bernard Donald Johnson, office number 128564; one Leroy Williams, Jr., our number 128570.

THE COURT: Just a minute.

Did you say Bernard Donald Johnson?

THE WITNESS: The first was Bernard Donald Johnson -- that's the way he is carried in our file.

THE COURT: All right.

THE WITNESS: And Leroy Williams, Jr., number 128570. You have that. And Sidney Curtis Taylor, number 128565, our file number.

Q (By Mr. Fleming) All right, now, referring specifically to Sidney Curtis Taylor, did you have occasion to perform an autopsy on this body?

A Yes, sir.

Q Will you tell the Court and jury when you performed this autopsy?

MR. LAURIE: Objection.

May we approach the bench?

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: The objection is overruled.

Q (By Mr. Fleming) Now, Doctor, can you tell us when you performed this autopsy?

A On Sidney Curtis Taylor, I started the autopsy at 12:35 in the afternoon, on the 24th of July of last year.

Q All right, and did you perform an external examination at that time?

A I did.

Q Will you tell us what your findings were?

A Yes. Sidney Curtis Taylor was a 23-year-old colored male, weighed 165 pounds, was 5 feet 9 inches tall; he showed evidence of multiple gunshot injuries, and also evidence of damage by fire after he was already dead.

Q All right, now, will you tell the Court and jury how many gunshot wounds were externally apparent to you on this body?

A He had two individual gunshot wounds in his trunk, involving his chest and abdomen. He had a gunshot wound of his head - that makes three - and he had additional evidence of a shotgun wound that struck a different side of his head - which makes four.

He had a wound that went across his lower thigh and abdomen - which is five. And a wound which went through his left upper arm - which was six, at least.

Q Okay. When you say "six, at least," do you mean that there was possibly more?

A It might be that there were two separate bullets that struck his thigh and abdomen, but it is also reasonably explainable that one bullet did all that damage.

Q Did you make any other external observations?

A No. The bullet injuries and the external evidence of fire injury were the only significant findings noted on the outside of the body.

Q From the observations of the wound that you testified about, can you tell us whether all of those wounds were shotgun wounds?

A Well, I am sure some were not shotgun wounds.

Q All right, and what kind of wounds were those that weren't -- how many wounds were not shotgun wounds?

A Two wounds in the trunk were definitely not from a shotgun.

Q All right.

A The two wounds in the head were not from a shotgun; the arm wound and thigh wound were not from a shotgun.

Q Those wounds that were not from a shotgun, can you tell us, from your examination, whether or not you

ascertained they were from any high-velocity weapons?

A One down in the abdomen could have been; the others were just, as far as I could tell, from an ordinary kind of a firearm that we run into in our day-to-day work; but the other one, the large, gutter tear, suggested the possibility of high-velocity.

Q Did you make an internal examination of this body?

A I did.

Q Will you tell us what your findings were?

A I found the internal evidence of injury in the trunk where the bullet that passed through his trunk tore through his liver, passed through his lungs, and led to massive internal hemorrhage.

The shotgun injury, the large one in the top of the head, did extensive damage to the skull and brain; the other injuries were soft-tissue injuries, which were serious but would not have been, of themselves, fatal.

He was anotherwise healthy young man, no evidence of any natural disease.

Q Okay. Did you make any further examinations with regard to this body?

A I carried out the customary laboratory studies that we do in all these cases.

Q Okay, and what was that? What weke your findings?

A In the blood of Mr. Taylor. there was 0.14 per cent

alcohol in his urine. There was 0.15 per cent alcohol in his blood. He had 12 per cent hemoglobin saturation, with carbon monoxide, which indicates he inhaled some smoke while he was alive.

Q Now, did you bring any photographs with you with regard to your examination of this body?

A Yes. I brought colored photographs that were taken. Did I give you a set?

MR. FLEMING: Would you mark these exhibits, please.

(Defendant's Exhibits DD, EE, FF, GG, HH, II, JJ, KK, LL, were marked for identification.)

THE COURT: Mr. Fleming, are there any other exhibits, regardless of whether or not they pertain to Mr. Taylor, or anybody else that you would want to anticipate having identified by the Doctor?

MR. FLEMING: Yes, sir.

THE COURT: If so, counsel could probably review them and we could arrange for the jury to be excused for the afternoon.

I think we can excuse the jury. We will excuse the jury.

You remain seated a minute, Doctor. We are

going to excuse you here in a few minutes.

We will let the jury go.

THE WITNESS: All right.

THE COURT: As far as the jury is concerned, I assume you will be back here at 9:15 tomorrow morning.

When you are outside the court, don't talk to anybody and don't let anybody talk to you about this case.

(Whereupon the jury was excused and left the courtroom.)

THE COURT: Is there anything further?

MR. FLEMING: No.

THE WITNESS: You want me back?

THE COURT: We will excuse you, Doctor.

I have something else for the balance of the afternoon.

THE WITNESS: All right, I will be back tomorrow morning.

(Witness temporarily excused.)

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THE COURT: The folks in the back may leave, if they want to. I have some matters to take up with the lawyers.

(Spectators who desired left the courtroom.)

THE COURT: Gentlemen, with reference to these exhibits now, Exhibits 141, 142, 184, will be received.

(State's Exhibits Nos. 141, 142, and 184 were received in evidence.)

THE COURT: Unless there is some further evidence identifying 140, which is the back of the ambulance --

MR. LAURIE: Exhibit 140 we will withdraw.

THE COURT: That disposes of that.

(State's Exhibit No. 140 was withdrawn.)

THE COURT: I will take up with counsel about these others. We will make a ruling on the others in the morning.

Come back into chambers.

Miss Reporter, you may continue to mark the

exhibits for defense counsel.

(Thereupon Court and counsel retired to chambers for discussion off the record.)

(Defendant's Exhibits MM, through and including ZZ, were marked for identification.)

(Defendant's Exhibits AAA through and including QQQ were marked for identification.)

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(Thereupon an adjournment was taken to 9:15 o'clock a.m., Wednesday, April 30, 1969, at which time the following proceedings were had:)

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THE STATE OF OHIO,)
) SS:
COUNTY OF CUYAHOGA.)

WEDNESDAY SESSION
APRIL 30, 1969
McMONAGLE, J.

IN THE COURT OF COMMON PLEAS
(Criminal Branch)

THE STATE OF OHIO,)
)
Plaintiff)
)
vs.) No. 90,257
)
FRED AHMED EVANS,)
)
Defendant)

I N D E X

STATE'S WITNESS:	Direct	Cross	Redirect	Recross
Joseph McManamon	3480	3486		

DEFENSE WITNESSES:	Direct	Cross	Redirect	Recross
Dr. Lester Adelson (continued)	3449	3476		
Lottie Polinsky	3510	3517		
Leo G. Chimo	3519			
John J. Vondruska, Jr.	3525			
Joseph Mengel	3531			
Rodulphus Butler	3536			
Joseph Toohig	3539			
Nathan Singer	3545			

- - -

WEDNESDAY MORNING SESSION, APRIL 30, 1969 9:40 A.M.

- - -

(Prior to Court's being opened, Defendant's Exhibits RRR-1, RRR-2, RRR-3; SSS-1, SSS-2; TTT-1, TTT-2 and TTT-3 were marked for identification.)

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THE COURT: Be seated. Good morning.

THEREUPON, further to maintain the issues on his part to be maintained, the Defendant recalled as a witness DR. LESTER ADELSON, who, having been previously duly sworn, resumed the stand and testified further was follows:

DIRECT EXAMINATION (CONTINUED)

BY MR. FLEMING:

Q Doctor, I believe we were at a point where you were describing the wounds on the body of Taylor.

A Yes, I believe that's where we were yesterday.

Q Yes, you had completed the wounds on the body?

THE COURT: He had described the exterior wounds, some of the interior wounds and talked about some laboratory findings.

Q (By Mr. Fleming) Okay, fine. Now showing you, Doctor, what has been marked for identification purposes as Defendant's Exhibit DD, will you look at that, will you tell the Court and jury what that is?

A That's a photograph of the left side of the face, head and neck, and upper shoulder of Sidney Taylor, identification number 128565, shows evidence of injury by heat and evidence of injury by shotgun.

Q All right, and does that photograph fairly and accurately depict Taylor as you saw him that morning?

A It does.

Q Showing you Defendant's Exhibit EE, tell the Court and jury what that is.

A Yes, this is again, a picture of Mr. Taylor showing his head and upper part of his trunk, from his hips up to the top of the head, showing again evidence of injury by gunshot and evidence of injury by heat.

Q Does that photograph fairly and accurately depict Taylor as you saw him?

A It does.

Q Defendant's Exhibit FF.

A FF is a picture of the right side of Mr. Taylor's face and neck, showing some head injury, his identification number and nothing else.

Q Does that photograph fairly and accurately depict

Taylor as you saw him?

A It does.

Q Defendant's Exhibit GG.

A This is a picture of Mr. Taylor, partially clothed from the hips down, at the time he arrived at our office, prior to the time I saw him. I never saw him in this condition; it has his identification number.

Q Have you seen his clothing?

A No, I haven't. I can't be certain that I have seen it; there were so many things, I can't say with any degree of certainty that I saw his clothing specifically.

Q Okay. Exhibit HH.

A HH is again a picture of the clothed body of Mr. Taylor, with his identification number, showing the evidence of injury by fire and gunshot.

Again, I did not see him in this condition.

Q I guess II is similar to HH. Exhibit JJ.

A Exhibit JJ is a picture of a gunshot injury involving the left arm of Mr. Taylor, with heat injury and bears his identification number.

Q Does this photograph fairly and accurately depict that arm as you saw it?

A Yes.

Q Exhibit KK?

A KK is, again, a picture, a different view of the left

arm showing where the bullet went in the preceding one was the exit wound and shows heat damage and bears his identification number.

Q Now, Exhibit LL.

A LL is a photograph of the left upper thigh and groin of Mr. Taylor, bears the identification number and shows an entrance and exit gunshot wound in his thigh, into which I placed a probe and also shows a gutter wound in his lower abdomen where the skin was slit by the bullet, which did not enter into the addominal cavity.

MR. FLEMING: At this time we offer Defendant's Exhibits DD, EE, FF, JJ, KK and LL into evidence.

MR. CORRIGAN: No objection.

THE COURT: They may be admitted.

(Defendant's Exhibits DD, EE, FF, JJ, KK, and LL were received in evidence.)

MR. FLEMING: Your Honor, may we have the doctor step down a minute?

THE COURT: You may.

Q (By Mr. Fleming) Now, Doctor, referring to the photographs which show the injuries, the places on the body where there are shotgun wounds, will you identify the photographs by their letters, for the record?

A This is a shotgun wound in the top of the head (indicating), and appears in Exhibit DD (indicating).

This is a shotgun wound, entrance wound, here in the right lower chest (indicating), which appears in this photograph, an entrance wound in the left center chest, lower chest, which you can see here (indicating).

Q Bring that one down to this way.

A I am sorry. The entrance wound into the chest.

This picture depicts the wound that goes across the left side, in and out, and then split the skin in the lower abdomen, right above the pubic hair.

Q What kind of wound was that?

A It looks like a high-velocity weapon, split the skin, not a shotgun -- some other type of fire.

These two wounds that you see (indicating) are in the left arm and indicate the site of entrance and exit of a single bullet.

And this is a picture of the other side of the face,

which shows merely heat injury, this is the right side of the face, a burn.

THE COURT: What is the last exhibit?

THE WITNESS: The last is FF.

THE COURT: The two prior to that, two of them together?

THE WITNESS: It is KK and JJ. And KK with the arm.

Is that everything?

MR. FLEMING: That's everything.

You may resume the stand.

Q (By Mr. Fleming) Now, Doctor, did you tell us the total number of wounds that you observed on this body of Taylor?

A Well, on Taylor, from my observations, I felt he sustained two separate shotgun wounds of the head, two gunshot wounds of the trunk, a gunshot wound in the left arm and one in the side; that makes a total of six individual injuries.

Q Now, I am showing you what has been marked for identification purposes as Defendant's Exhibit MM.

Will you tell the Court and jury what that is?

A Yes. This is a Xerox copy of the official document from the coroner's office, called a Report of Autopsy.

It consists of some vital statistical data, listing of injuries and other abnormalities found in the decedent, and contains the cause and manner of death.

Q I am showing you Defendant's Exhibit NN. Will you tell the Court and jury what this is?

A Yes. This is a Xerox copy of a special form in our office for the reporting of the laboratory findings.

Q And Defendant's Exhibit OO?

A Defendant's Exhibit OO is a Xerox copy of the X-ray reports in the case of Mr. Taylor, signed by Dr. Benjamin Kaufman, our radiological consultant.

Q All of these exhibits, these last three, that's MM, NN, and OO, refer to the autopsy of Sidney Curtis Taylor, is that correct?

A Yes.

MR. FLEMING: We offer into evidence Defendant's Exhibits MM, NN, and OO, your Honor.

MR. CORRIGAN: No objection.

THE COURT: They may be admitted.

(Defendant's Exhibits MM, NN, and OO were received in evidence.)

Q (By Mr. Fleming) Now, referring to Leroy Williams,

do you have that file with you, Doctor?

A Yes, I brought it with me. Exactly as in the previous case.

Q And will you tell us when that autopsy was performed?

A This autopsy was performed starting at 3:45 in the afternoon on July 24th, and it was performed by Dr. Hoffman; but I have the file with me and I believe I can discuss it, but he is the one that did it, personally.

Q All right. Will you tell us what the external findings were with regard to that body?

A Leroy Williams, Jr., is a 23-year-old black man, was 5 feet 6 inches tall, weighed 134 pounds.

Externally, he showed evidence of several different gunshot wounds.

Do you want me to --

Q Will you describe each one for us.

A Sure thing. The number of these wounds and marks are solely for identification, because I don't know the order in which he was struck.

But entrance wound number 1 was in the right armpit, in this general area (indicating), and that communicated with the tract that went through the chest, passed through the right lung, and led to massive internal hemorrhage, and the slug was recovered.