IN THE SUPREME COURT OF FIJI
Criminal Jurisdiction
Criminal Case No. 43 of 1984

REGINA)
)
v.) Wounding With Intent: Contrary to section 224 of the Penal Code.
)
MOHAMMED SHAHEEM)

Mr. G. Leung for the Prosecution
Mr. N. Dean for the Accused

SUMMING-UP

Gentlemen Assessors,

We have reached the last stage in this trial before which you will be called upon to state your opinions as to the guilt or innocence of the accused person. You have seen and heard the witnesses give their evidence in this case. I wish to stress once again that in reaching your opinions, you are concerned only with the evidence which you have heard and which you have seen in this Court. You are not concerned with any other matter of which you may have heard or read elsewhere.

Learned Crown Counsel Mr. Leung and learned Counsel for the defence Mr. Dean have both addressed you and it now remains for me to sum up all of the evidence for you and to direct you as to the law involved and to advise you of the significance of such evidence. As to the law, you are required to take what I tell you as being correct and to act upon it. As to the facts of the case, it is for you to decide what evidence you accept and what evidence you reject. What Counsel have said, and what I shall say,as to the facts of the case was and is intended to assist you. If Counsel or I seem to express a view of the facts

with which you do not agree, then it is your duty to reject such view. If I omit to mention evidence which you think is important, then you must take it into account, just as if I stress evidence which you think is unimportant, then you must disregard the fact that I have stressed it. Ultimately, the final decision rests with the court, which is not obliged to conform with the opinions of the Assessors. I need hardly say however that I will attach the greatest weight to your opinions which I have no doubt will prove of inestimable value to me in reaching my decision.

Both Counsel have addressed you on the onus or the burden and the standard of proof in this case. The presumption of the innocence of the accused is enshrined in our Constitution. An accused person is presumed to be innocent until he is proved to be guilty. Because of this presumption, it is the duty of the prosecution to prove the guilt of the accused and it must prove such guilt beyond reasonable doubt. The prosecution must prove each and every ingredient of the offence charged. There is no onus upon the accused person to prove his innocence as such. If after careful consideration of all the evidence therefore, that is, the evidence for the prosecution and the evidence for the defence, you are left in reasonable doubt as to the guilt of the accused, then your individual opinions must be that the accused is not guilty.

The accused stands charged with wounding with intent. The prosecution allege that on the 5th of May, 1984 he wounded Timoci Gucake with intent to cause grievous harm. To prove the offence, the prosecution must prove the following three ingredients:

(i) that the accused wounded Timoci Gucake;
(ii) that he did so unlawfully; and
(iii) that he had the intent to cause grievous harm.

You should not have any difficulty as to the first of those ingredients. Suffice it to say that in law the

injuries received by Timoci Gucake can be described as "wounds". You have heard medical evidence that he bore altogether six wounds. Indeed, the accused does not deny that he inflicted those wounds.

As to the second ingredient, the word "unlawfully" simply means that it is alleged that the accused did the act without any lawful excuse. I shall return to this ingredient later on.

As to the third ingredient, that is, the necessary intent, the accused has admitted in evidence that he realized that he would cause serious harm by using the knife. He admits of consciously striking once at Timoci Gucake with the knife. When re-examined by his own Counsel, he testified that "when I actually struck with the knife I knew I would cause substantial damage".

Now, "grievous harm" is simply, really serious bodily harm. You may consider that if a man strikes at another with a knife, that is, Exhibit P1 in this case, then the only reasonable inference is that he must have foreseen and thus had intended to cause grievous harm.

The accused's principal object in striking at the complainant may, as we shall subsequently consider, have been the intention to defend himself or otherwise. Nonetheless, if in achieving this primary object, he intended grievous harm, the necessary intent would then be established. You may well be satisfied therefore as to the necessary intent, at least as to the first blow struck by the accused. If you are otherwise satisfied as to the accused's guilt, but you are not satisfied as to the specific intent to cause grievous harm, your opinion must be that the accused is not guilty as charged, but guilty of another offence, that is unlawful wounding, which is a minor offence, in which proof of specific intent is unnecessary.

As to the first and other blows struck by the accused, he has pleaded self-defence. As to the blows struck after the first blow, the accused has testified that he cannot remember striking those blows. Although neither he nor learned Counsel for the defence have specifically pleaded insanity, in view of the psychiatrist's evidence before the court, the questions asked of the psychiatrist, and Mr. Dean's submission in the matter, it seems in effect that such defence has been raised. It is therefore your duty to consider such defence.

It proves convenient to deal first with the defence of self-defence. Now such defence, that is self-defence, comtemplates the second ingredient of acting unlawfully, as an assault or wounding in lawful self-defence is no defence. Self-defence is lawful when it is necessary to use force to resist or defend yourself against an attack, or indeed a threatened attack, and when the amount of force used is reasonable.

Now what is reasonable depends upon all of the facts, including the nature of the attack, whether or not a weapon is used, and if it is, how it is used and what kind of weapon it is, but you must recognize that a person defending himself cannot be expected to weigh to a nicety the precise amount of defensive action which is necessary. If therefore you were to conclude that the accused did no more than what he instinctively thought was necessary, you should regard that as very strong evidence that the amount of force used was reasonable and necessary.

There is no absolute duty of retreat. Failure to retreat when attacked and when it is possible and safe to do so, is not conclusive. It is simply a factor to be taken into account in deciding whether it was necessary for the accused to use force and whether the force used was reasonable : for example you might consider that it would be foolhardy for a person faced with a powerful firearm to retreat in an open space.

Remember, because the prosecution must prove the accused's guilt, it is for the prosecution to prove beyond reasonable doubt that the defendant was not acting in self-defence. If you conclude that he was, or you are in reasonable doubt that he was, acting in self-defence, then your opinions must be that he is not guilty.

You have heard how the fracas between the accused and Timoci Gucake began and later continued. That for the prosecution and for the defence is contradictory. Further, there is contradiction between the witnesses for the prosecution.

There is the evidence of Constable Seru. There are two aspects in his evidence which are necessary to examine. He testified that when he entered the bar during the first fight, he observed the accused punch Timoci Gucake who fell to the ground. He qualified this evidence under cross-examination, by saying that the latter's "knees and legs were on the floor". You have seen both Timoci Gucake and the accused in court. The former is a very heavy powerfully-set man. Though the accused is twenty-six years younger than him, nonetheless he is of slight build, and you may well agree with Timoci Gucake's own opinion in the matter that "he (the accused) is a smaller man. I could easily have overpowered him".

You might therefore be inclined to doubt the Constable's evidence that the accused punched Timoci Gucake with such force as to cause him to fall on the floor. Further, even Timoci Gucake himself testified that instead it was he who "caught hold of his (the accused's) neck and threw him down" behind the bar, rather than vice-versa.

Timoci Gucake testified that he succeeded in opening the door of the change room and making good his escape, when Constable Seru arrived on the scene. The latter testified that he arrived on the scene to see, through the open door of the change room, the accused stabbing Timoci Gucake once on the forehead and attempting to stab him on the back, when he intervened. It was, as will be seen, the accused's own statement to the police that Constable Seru arrived on the scene when he was still striking at Timoci Gucake, so that there is support for the Constable's evidence in the accused's own statement. It may well be that Timoci Gucake's recollection of the transaction in the change room was understandably affected by the shock of being stabbed with the knife. Any reasonable doubt as to the Constable's evidence on the point must be resolved in favour of the accused however.

There are really three separate and distinct transactions, that is, in the bar, the lift and the change room, with at least a brief period of physical non-aggression in between them. Because of the nature of the evidence, it has not been possible however to isolate these transactions, as evidence of the earlier two transactions is inextricably linked with and goes to explain that of the third transaction in the change room. In reality, the evidence of the latter transaction stands or falls on its own, as at least after the parties left the lift, and before they entered the change room, there was a temporary lull in hostilities and there was equal opportunity for either party to escape from the other before ever entering the change room.

You may find it difficult to determine who was the initial aggressor in the bar, in the lift and in the change room. The fact that one party may have been the initial aggressor in the bar or the lift, does not necessarily mean that he was the initial aggressor in

the change room. In particular, you must not draw any inference unfavourable to the accused from the fact that he wielded a knife in the bar. In other words, because he wielded a knife in the bar, you must not thereby conclude that, for example, he formed the necessary criminal intent before he entered the change room, or shortly thereafter, or that he was the initial aggressor in the change room.

While the aspect that one of the parties may have been the initial aggressor in the change room is relevant, it would certainly be more relevant if, for example, the accused was charged with common assault. There it would be necessary to determine who struck whom with his fist first, as the retaliation by fist might only amount to reasonable and necessary self-defence. But here the accused is charged with wounding with intent. The prosecution say that the accused was the initial aggressor in the change room but they also say, if I am not mistaken, that even if the accused was not the initial aggressor in the change room, that the use of the knife (Exhibit P1) in this case was unreasonable and was in excess of reasonable and necessary self-defence.

Timoci Gucake's evidence reads as follows:

"When we reached the staff room he pushed me inside and closed the door. Then he opened his locker and took out a knife. This is a kitchen knife for the cooks..... Each locker has a key. Only the holder of the key can open the locker. No one else has a key. The accused took out this knife and swung the knife. He said in English "Timoci I am going to kill you". He used the knife on me. He stabbed me on the right side of the neck (indicated). I tried to push him away. I was bleeding. He knifed my nose. I got hold of his head and threw him backwards. I also scratched him. I felt weak. He moved forward again. He wasn't aiming at anything. He stabbed me on the forehead. He tried to get my eyes but I got it on my hand. He got me on the chest. I did not scream out. He kept on saying "I am going to kill you. I am going to kill you. I opened the door and got out. The police came when I was outside".

The accused on the other hand, testified:

> "We went on the lift. Timoci got wild on me. He fought with me. We went into the changing room. In the changing room Timoci punched me. I had opened my locker. I asked Timoci why we had a fight. I pushed Timoci down. Then he came and held me by the neck and started punching me. Then I got the knife from the drawer. I said Timoci "Stop it or I will kill you." He said "I will kill you. Why did you complain to the boss?" I took out the knife. I warned him. Then I struck. I saw the blood. Then I couldn't see what happened or where I was. When we came down, Timoci was going in the car. I couldn't remember who brought us down".

In cross-examination and in re-examination, the accused testified that Timoci Gucake punched him four to five times "hard" in the change room, pushed him down on the floor and held his neck: his hand was still on the locker, some two to three feet above, when he grasped the knife and warned his assailant to desist. The accused thus testified that Timoci Gucake was the initial aggressor in the change room and that he only resorted to the use of the knife in self-defence.

In this respect, there is the medical report, put in evidence by the accused, which indicates that his neck was swollen. He testified, as did Timoci Gucake himself, that the latter seized him by the neck in the bar. Timoci Gucake also testified that he seized the accused by the head and threw him backwards in self-defence in the change room; he might well have caught the accused by the neck rather than head itself, or possibly the force applied to the head might well have caused injury to the neck. Nonetheless, the medical report does tend to support the accused's version of the transaction in the change room.

It is always extremely difficult in cases of assault etc. for a court to determine who was the initial aggressor, very often due to the prior exchange of heated angry words, and the spontaneity of the eruption of violence. It is often very difficult for the parties themselves to remember who really struck the first blow, particularly when, as in this case, there was preceding violence in the bar and in the lift.

If you are satisfied beyond reasonable doubt on Timoci Gucake's evidence that the accused pushed him into the change room, closed the door, and thereafter attacked him with the knife, then clearly the accused could not be said to be acting in reasonable and necessary self-defence.

As to the accused's version as to the transaction in the lift and in the change room, his statement to Detective Sergeant Santa Prasad reads as follows :

> "Our changing room is in the third floor. Myself and Timoci both went together by lift and went to the floor. We both went into the changing room. Inside the changing room, I then asked Timoci why you want to fight with me. I punched Timoci and pushed him against a wall. There was a chair and Timoci fell on the chair. Timoci stood up and started punching me and said "I am going to kill you today". Timoci got hold of me by the neck with both hands. I managed to get myself free from Timoci. I opened my draw(er) which was locked and took out kitchen knife. The first one I hit Timoci on back on shoulder. After this I do not know how many times I hit Timoci with knife. I was still hitting Timoci when Manager Sonny Kumar and a policeman came in. This policeman took away knife from my hand. Timoci was bleeding and Manager took him to hospital."

Now, you will no doubt note that in the above passage the accused admitted that he was the initial aggressor in the change room. That is contradictory to his evidence that it was Timoci Gucake who first attacked him. If you are in reasonable doubt in the matter, you would, so to speak, have to give the benefit of the doubt to the accused and accept his evidence in court on the point. In any event, whether or not he was the initial aggressor, you must nonetheless consider all of the evidence, including that of the accused, and his statement to the police, and decide whether he acted reasonably in using the knife. As I said earlier, he is not charged with common assault, and even if he did initially assault Timoci Gucake with his fist, that is by no means the end of the matter.

The accused in his evidence said that Timoci Gucake held him by the neck on the floor and that is why he reached out for and struck with the knife. In cross-examination however he said "I took out knife from the draw(er) and he held my neck". Further, you will have observed that in his statement to the police, he said

> "Timoci got hold of me by the neck with both hands. I managed to get myself free from Timoci. I opened my draw(er) which was locked and took out kitchen knife and I started hitting Timoci with this knife".

The statement to the police thus reveals that he opened his drawer, no doubt the locker, which was locked, and took out the kitchen knife, namely that he unlocked his locker in doing so. The statement of course completely contradicts the accused's evidence. The statement was taken at approximately 10p.m. on the night of the 5th May, 1984, when the events were no doubt fresh in the accused's mind and when there was less opportunity, if I may say so, to concoct a

story. As to which version represents the truth, that is for you to decide.

As I said earlier, there is no absolute duty of retreat. Failure to retreat when attacked and when it is possible and safe to do so, is not conclusive. It is simply a factor to be taken into account in deciding whether it was necessary to use force and whether the force used was reasonable. There is the evidence that the accused's locker was nearer to the door than that of Timoci Gucake. The evidence suggests therefore that the accused himself was nearer to the door than Timoci Gucake as, you might think, that if the latter was nearer to the door he would have immediately escaped from the room when the accused produced the knife, if not at least after he had been wounded once or twice and had managed to push the accused away from him temporarily. In any event, in the accused's statement to the police, he indicated that he had freed himself from Timoci Gucake's intentions and had sufficient time, unmolested, to open, if not unlock, the locker and take the knife therefrom. You might think that there was then sufficient time for him to escape out of the room, or at least to try to do so, rather than resort to the use of a knife.

Alternatively, if you accept or you are in reasonable doubt as to the accused's evidence in court, you must consider that version, namely was it reasonable, held by the neck on the floor as he was, held down by a far heavier and far more powerful man than he, to reach out for and strike with the knife? Even in his evidence the accused indicated

that he was not entirely without other physical resources, as he testified that he had earlier in the change room "pushed Timoci down", which indicated some degree of physical strength. You might think that the accused should have made every endeavour to escape from Timoci Gucake and eventually the room. In particular, you have no doubt observed that the fracas in the change room upstairs attracted the attention of the Manager and the Police Constable, who were down stairs in the hotel foyer at the time. You may think therefore, that in the least the accused might have called out for help, and that help was forthcoming in a city hotel.

Even if you consider that it was reasonable for the accused to resort to the use of the knife, you must then consider the number of blows struck. Timoci Gucake testified that after the second wound inflicted, he managed to push the accused away and, in self-defence, to scratch him: the latter aspect may itself indicate the desperate circumstances in which Timoci Gucake found himself. The accused gave no evidence on the point. It was his evidence that he remembered but one blow. The wounds ultimately inflicted apparently could, if untended, have proved fatal. You might think that even if the accused was held by the neck, one blow, if not two, with the knife would have well reversed the situation and made him the aggressor with the opportunity to desist, indeed even to escape. There is however the evidence that at least three more blows were struck. Do you consider that that was necessary and reasonable self-defence?

The defence of legal insanity has also been raised however. Because of the presumption of sanity the prosecution does not have to adduce evidence of the accused's sanity. It merely relies on the presumption. Instead, if the accused wishes to displace or contradict the presumption, he must adduce evidence to the contrary; and so it is therefore, that if the accused wishes to

disprove his presumed sanity, the burden of proof in respect of that aspect falls upon him. But where such burden falls upon the accused the standard of proof is less than that which lies upon the prosecution. The accused does not have to prove his insanity beyond reasonable doubt. He must prove it only on a balance of probabilities. In brief, if the accused so satisfies you of his insanity so that you conclude that it is more probable than not that he was insane at the time of the commission of the offence, then he will have discharged the burden upon him.

Which brings me to the question of what constitutes legal insanity. Our law provides that a person is not criminally responsible for an act if at the time of doing the act, he is through any disease affecting his mind incapable of understanding what he is doing or knowing that he ought not to do the act. The words "disease affecting his mind" mean, in effect, an illness of the mind, as distinct from a mind being a healthy but unsophisticated and untrained mind. The Consultant Psychiatrist, in this case, Dr. Iyer testified that epilepsy is a disease of the mind, so that there is evidence before you therefore that the accused does suffer from a "disease affecting his mind". The question remains however whether at the time of the commission of the offence, as a result of such disease, the accused

(i) probably did not understand what he was doing; or

(ii) if he did understand what he was doing he probably did not know that he ought not to do what he did.

A person may be legally insane if at the time of the offence, he just did not know what he was doing. Again he would be legally insane if, for example, he was quite well aware that he was in the act of stabbing some person but was not aware that he ought not to do such a thing. So in brief, you must ask yourselves,

did the accused realize that, after he struck the first blow with the knife, he had continued to strike Timoci Gucake with the knife, or if he did realize that, did he know that he ought not to do so?

We have heard the evidence that the accused has been an epileptic since 1971, and that the mental disease is apparently congenital in his case, as his father suffers likewise. We have heard that an epileptic is, in the words of the Consultant Psychiatrist Dr. Iyer, "prone to being easily provoked" and that an epileptic fit can be preceded by feeling of extreme irritation and aggression. Under the law in Fiji however, as distinct from other countries, those matters, while they are mitigatory in character, cannot effect legal liability. In order for the defence to succeed under this head, I repeat that it must be shown that, at the time of the alleged offence, the accused

(i) probably did not know what he was doing; or

(ii) if he did know what he was doing that he probably did not know what he was doing was wrong.

Such a defence is of no avail to the accused in respect of the first blow that he struck with the knife, as both in his evidence, and in his statement to the police, it is evident that he was aware that he was striking the first blow and, apart from the issue of self-defence, realised it was wrong to do so. The defence of insanity only affects the other blows struck with the knife therefore, that is, only where you are satisfied that the accused did not act in self-defence.

Dr. Iyer testified that in an epileptic fit, a person passes through three stages, in approximately five to ten minutes, or less. During the first stage, which is very often marked as he said by feelings of extreme irritability and aggression, the person would be aware of the onset of the fit; then in the second stage the body would shake and stiffen and the person would fall down and lose consciousness.

During the first stage of the fit, the person would not lose his cognitive functions and could distinguish right from wrong. In the second stage however, he would not be in control of himself, as it seems at that stage he would have fallen down and lost consciousness. Thereafter, in the third stage, he would not remember what had earlier transpired. In effect therefore Dr. Iyer opined that an offence can be committed by an epileptic in the first stage of a fit, when he is still in control of his faculties, but not at the second stage thereof. Further, it would be obvious to a person if he had had an epileptic fit, as he would find that he had fallen down and would not understand why this had happened and would not remember what had meanwhile transpired.

Dr. Iyer testified that the accused has received daily medication as an outpatient at St. Giles Hospital, and that there is no recorded occurence of an epileptic fit suffered by the accused, at least not since 1981. The accused himself testified that he took his tablets regularly and indeed that he took both his tablets on the day the alleged offence occurred. As he himself testified, "it would be difficult to miss a tablet". During a period of six days, commencing ten days after the alleged offence, he was under observation at St. Giles Hospital. In effect Dr. Iyer found no abnormality in the accused, other than the history of epilepsy, and in particular that the accused's "cognitive abilities were in no way affected." The learned psychiatrist opined that the accused "could differentiate between right and wrong at the time of the alleged offence". In effect there is no medical evidence that the accused suffered an epileptic fit at the relevant time. We must of necessity, as laymen, rely heavily on the medical evidence before us. Nonetheless, you must consider all of the evidence before you, and if you are otherwise satisfied on the evidence, that the accused probably did not know what he was doing, or probably did not know that it was wrong to do what he did, then the offence of insanity would be made out.

The accused, as I have said, does not deny consciously stabbing the first blow with the knife. His evidence reads thus:

> "I took out the knife. I warned him. Then I struck. I saw the blood. Then I could not see what happened or where I was. When we came down Timoci was going in car. I could not remember who brought us down."

In cross-examination, when asked why he could not remember what happened after the first blow with the knife he said

> "The blood came out and I stabbed him anywhere and I couldn't remember".

There you may think the accused in effect is saying that he remembered stabbing Timoci Gucake perhaps recklessly, but he could not remember where exactly he stabbed him. When asked if he had lost consciousness, he said

> "It could be that, I don't know".

In contrast, his statement to the police reads :

> "I opened my draw(er) which was locked and took out kitchen knife and I started hitting Timoci with this knife. The first one I hit Timoci on the back of shoulder. After this I do not know how many times I hit Timoci with the knife. I was still hitting Timoci when Manager Sunny Kumar and policeman came in. This policeman took away the knife from my hand. Timoci was bleeding and manager took him to Hospital."

The accused may well be mistaken that the manager came in at that stage, because the latter testified that when he arrived on the scene, he found the policeman holding the knife and Timoci had at that stage left in the lift. Again, there is the conflict between the police officer's

evidence and that of Timoci Gucake. It will be seen nonetheless, that the accused did not there say that he took out the knife from the locker and struck once with the knife, but that he

"started hitting Timoci with this knife".

That suggests more than one blow. Thereafter he says,

"After this I do not know how many times I hit Timoci with the knife. I was still hitting Timoci when Manager Sunny Kumar and policeman came in".

The accused did not there say that he remembers striking Timoci Gucake but once: he did not say that he could not remember striking at all after the first blow, but merely that he could not remember how many times he struck, which of course for any person might prove difficult under the circumstances. Again, the accused recalls that he was still striking Timoci Gucake when the police constable came into the room. He may however, as I have said earlier, be mistaken on this point and you should give him the benefit of the doubt thereon.

You may think in any event that the accused's account to the police is that of a person who, perhaps in a fury or even frenzy of violence, struck at Timoci Gucake a number of times, which number he was unable to specify. That is not the test however. Do you think that his account is that of a person out of control to such an extent that he probably did not know what he was doing, or if he did that he probably did not know what he was doing was wrong? Considering his evidence and his statement to the police, are you satisfied that the accused probably did not know that he was striking out with the knife, or probably did not know that it was wrong to do so?

If you are so satisfied, then your opinions must amount to a special finding, namely that the accused is not guilty by reason of insanity. Where the relevant act has been committed, but the accused is not responsible for his actions at the time, then the proper finding is not just one of "Not Guilty" but, I repeat "Not Guilty By Reason Of Insanity."

I will summarise for you the decisions which you must make therefore, in order to assist you. Remember that because the accused does not deny that he consciously struck the first blow with the knife, as far as that blow is concerned, you need only consider the defence of self-defence. The defence of insanity only affects the subsequent blows. The decisions you must make are therefore as follows :

(i) did the accused act in reasonable and necessary self-defence in striking once with the knife? If you are satisfied beyond reasonable doubt that he did not so act then your opinion must be one of guilty as charged;

(ii) if you consider, or you are in reasonable doubt, that he did so act in reasonable and necessary self-defence in respect of all the blows that he struck with the knife, then your opinion must be one of not guilty as charged;

(iii) if you accept that he so acted in self-defence in respect of the first blow, but you are satisfied beyond reasonable doubt that he did not so act in respect of the other blows, then your opinion must be one of guilty as charged;

(iv) provided however that, in the latter case, if the accused satisfies you that when he struck the subsequent blows, he probably did not know what he was doing, or probably did not know it was wrong

to do what he did, then your opinions must be one of not guilty by reason of insanity;

(v) where in the case of the situations under items (i) and (iii) above, you are satisfied as to the guilt of the accused, but you are not satisfied as to the specific intent to cause grievous harm as such, then your individual opinions must be one of guilty of unlawful wounding.

I will repeat those five decisions (repeated).

Remember that at the end of the day the onus is upon the prosecution to prove the guilt of the accused beyond reasonable doubt. You may not enter an opinion that the accused is guilty unless you are satisfied beyond reasonable doubt as to the accused's guilt. If you consider, or you are in reasonable doubt as to the accused's guilt, then your individual opinions must be that the accused is not guilty.

It is for you to accept or reject the evidence which you have heard. I do not think that I can assist you any further in the matter. If you have any questions to ask then you are free to ask them and I will endeavour to answer them forthwith. You should now retire and take with you the exhibits in the case. Remember, as I said before, you are free to discuss the case between yourselves but with nobody else. Ultimately, you must form your own individual, independent opinions, which need not be unanimous. When you have done so, on return to this court, you will each be asked to state here in open court your individual opinion in the matter.

Thank you.

Delivered in Open Court this 27th day of May, 1985.

B. P. CULLINAN.

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JUDGE