In The Falkland Islands Court of Appeal
At London
Criminal Appeal No. 1 of 1981

Between

Leonard Minto

**Appellant**

And

The Queen

**Respondent**

(Appeal from a conviction of the Supreme Court at Stanley (Mr. Justice Williams) dated 20th day of February 1981,

In
Criminal Case No.1 of 1981
Between

The Queen

Prosecutrix

And

Leonard Minto

Accused)

Sir Lionel Brett. J.A

The appellant, Leonard Minto, was tried in the High court before Williams, J. and a jury of seven on a charge of murdering his wife. His plea of guilty to manslaughter on the grounds of diminished responsibility was not accepted, and although expert evidence was called in support of the plea the jury, after retiring for ten minutes, brought in a verdict of guilty of murder. He has appealed against this verdict.

We should say here that the record of appeal is in some respects incomplete and that we have accepted the accuracy of certain statements about what took place at the trial made on instructions by counsel for the appellant and not disputed by counsel for the Crown.

Seven grounds of appeal were forward, but in essence they present two questions for this Court to determine. It is submitted first that the trial of the appellant before a Falkland Islands jury amounted to denial of natural justice, and secondly that

through misdirection or non-direction the jury addressed their minds to the wrong questions and brought in a verdict which was contrary to the evidence.

On the first question the appellant, who was born and brought up in Scotland and has lived in the Falkland Islands since 1948, tendered an affidavit in which, after saying generally that he believed that he was unpopular, he set out in detail his relationships with each of the seven members of the jury and his grounds for believing that four of them were likely to be prejudiced against him and that the father of a fifth was likely to influence the juror against him. He also declared that at the time the jury was being sworn he did not know the extent of his right to challenge for cause, and that his state of mind, two months after trying to take his own life, was such that he lacked the heart even to exercise the rights he knew he had.

The Judge directed the jury to put any preconceived notions out of their minds and to decide the case on the evidence before the court, but it is submitted that that was not enough, and even that it was impossible for the appellant to receive a fair trial before a Falkland Islands jury. We reject this submission both in its narrower and its wider form. It may be true that in the small community of the Falkland Islands a number of the jurors in any trial are likely to know an accused person personally or by reputation, but it does not necessarily follow that they will be incapable of reaching an impartial verdict. In this case the appellant was legally represented and we must assume that he was told of his rights; he did in fact successfully challenge one proposed juror and he must be taken to have waived any further right of challenge. In justice to the named jurors who impartiality has been impugned it is proper to add that there has not been the opportunity to file any counter-affidavits and that on the evidence as to the state of the appellant's mind it is not to be taken for granted that his suspicions would have been shared by the hypothetical reasonable observer.

There is more substance in the appellant's second submission. There facts were as follows. The appellant had been married to the deceased since 1951 and they had seven children, of whom [one was still living at home with his mother at the time of the offence]. The appellant was a heavy drinker and his wife had complained of his using violence against her on a number of occasions. During the period of the marriage he had appeared in court on minor criminal charges, usually arising out of excessive drinking, nine times, and orders had been made in 1967, 1976 and 1980 putting him on the "Black List" under s.26 of the Licensing Ordinance, (Cap.38), which made it unlawful to supply him with liquor. He had also needed medical

attention for conditions caused by his excessive drinking on numerous occasions from 1957 onwards, and in 1972, 1973, 1976 and 1977 various tranquillising or anti-depressant drugs had been prescribed. The Senior Medical Officer of the Falkland Islands, Dr. Summers, F.R.C.S., who had operated on the appellant for a perforated ulcer in September, 1980, did not feel qualified to offer an expert opinion on his state of mind but on being pressed by defending counsel expressed the view that he was not normal and that he was depressed in the sense of being low.

For some months before the 11th December, 1980 the appellant and his wife had been living apart, she at the family house [address] and he lodging [elsewhere]. All contact between them was not at an end, and she continued to wash his clothes for him. At some time during the separation – he could not say when – the appellant addressed a letter to his wife in which, after saying that he had given up hope of her forgiveness, he declared that he had a hereditary premonition of his death and expressed his wishes to the disposal of his property and his burial at sea. On the 28th November, 1980, he was bound over to keep the peace and not to molest his wife. According to his evidence they met and had an emotional reconciliation on the 9th December, but on the 10th she refused to let him into the house and the same evening he was served with a summons to appear in court the following day to answer a charge of breach of recognisance. On the morning of the 11th December he went to work at 7.30 A.M. and left during the breakfast break between 8.30 and 9.0. He went to [his lodgings] and from there to [the family home] where he found his wife and [a son]. When his wife refused to let him in he smashed a window, whereupon she opened the door and told [the son] to go and phone for the police. [The son] ran off to a neighbour's house and she tried to run away herself, but the last thing [the son] saw was the appellant catching hold of her and dragging her into the back yard. He heard her scream as he ran away.

When the police arrived about ten minutes later they found the appellant's wife lying dead in front of the house with her throat cut almost to the front of the backbone and both carotid arteries severed. The appellant was lying beside her with a wound in his throat almost deep enough to sever the windpipe. On the ground nearby was a bloodstained Escatura or Chilean knife which [the person with whom the appellant lodged] identified as being his and as having been kept either hanging on the back of a door or in a table drawer in his house.

The appellant was treated in hospital and on regaining consciousness expressed strong resentment at not having been left to die.

There can be no serious doubt that the appellant deliberately killed his wife and as there is no evidence to suggest that he acted in self-defence or under sudden provocation the ingredients of murder are all proved the offence must be regarded as murder subject only to the defence of diminished responsibility. This defence is open to the appellant by virtue of section 2 of the Homicide Act, 1957, that Act having been applied to the Falkland Islands by Homicide Ordinance, 1961.

On the issue of diminished responsibility the defence called Dr. Alfred Minto (unrelated to the appellant) who holds the diploma of Psychiatric Medicine of the Royal College of Physicians, London, and at that time held the appointment of consultant psychiatrist at St. Anne's Hospital, Nottingham. A written report by Dr. Minto also forms part of the record of appeal although it does not appear that it was produced in evidence. Dr. Minto said in evidence that he had formed an opinion as to the appellant's mental condition at the time of the killing, based on interviews with the appellant, the appellant's medical history, and the circumstances of the killing, including the degree of violence used. His opinion was that the appellant's mind was grossly abnormal at the time of the killing, and that he was suffering from a personality disorder of a psychopathic aggressive type with chronic depressive features and alcoholism such as would have substantially impaired his responsibility.

It is submitted on behalf of the appellant that the crucial question for the jury to decide was put in a misleading way in the closing speech for the prosecution and not made sufficiently clear by the Judge in his summing-up. The fact that the appellant brought the knife with him when he to [the family home] certainly suggests premeditation but the jury were not told that that is not fatal to the defence of diminished responsibility since, as was pointed out in Matheson 42 Cr.App.R.145, an abnormal mind is as capable of forming an intention and desire to kill as one that is normal, and indeed the question of diminished responsibility does not arise until all the ingredients of murder, including the necessary intent, have been proved. It may be also that too much prominence was given to the question, whether the appellant was to be believed when he said that he could not remember taking the knife or killing his wife. Dr.Minto regarded such a lapse of memory as a characteristic instance of selective amnesia and if the appellant lied about it the only bearing on diminished

responsibility would be to suggest that he had deceived Dr.Minto about his mental state. This was not made clear to the jury.

A jury is not bound to accept the opinion of an expert witness, but, as was held in Matheson, it must base its verdict on evidence. In this case the evidence as to the appellant's mental state was all one way. The opinion of the only psychiatric expert was clear; the cautious view from Dr.Summers, for what it was worth, tended to support Dr.Minto's expert opinion; and there were no facts or circumstances to displace or throw doubt on that evidence.

In the result the verdict of guilty of murder cannot be supported having regard to the evidence, and this was conceded by counsel who appeared for the Crown. We therefore set aside the conviction of murder and convict the appellant of manslaughter on the grounds of diminished responsibility. We have seen a report prepared on the 16th July, 1982 by Dr.Minto in which he states that the appellant's psychiatric condition has improved. We have also heard counsel in mitigation. It is conceded that this Court cannot make an order under the Mental Health Act, 1959, but the appellant has already been removed to England to serve his sentence under the Colonial Prisoners Removal Act, 1884, and under S.8 of that Act it will be open to the Secretary of State to make an Order under s.72 of the Mental Health Act, or any other order for the treatment of the appellant which he could have made if the appellant had been convicted in an English court. Taking into account all that has been said on the appellant's behalf we consider that a sentence of ten years imprisonment is appropriate, and we pass sentence accordingly.

London
20th July, 1982.