

**R -v- SIMON TANFIELD**

**Coram:** The Chief Justice  
**Public Prosecutor:** Mr H. Toa  
**Defence:** Mrs S. Barlow

On Friday the 3rd December last this defendant, a young man in his late 20's arrived in Vila, having disembarked at 5 pm. from a ship which had brought him from Santo. His original destination had been Emae, but because the captain of the ship had decided not to stop there, he ended up in Vila. During the three days that he spent on board ship, he had been seasick as a result of which he had eaten or drunk virtually nothing. Once in Vila, he tried to establish contact with a friend called Rachel Eberhardt, but failed to do so that evening. He had managed nevertheless to establish where she lived and had left a message at her house as to where she could contact him. The defendant then went back to the Talimoru hotel, where he had decided to spend the night. After a shower, he dressed and decided to go down to the Bar, where he consumed a couple of beers, but ate no food. He then left the hotel and made his way down to the waterfront restaurant. There he met some people he recognised and consumed a few more beers, possibly 5 or 6 cans and still had nothing to eat. From there he went with his friends to the Flamingo, a night club in Vila, where he consumed some more beers: another 4 or 5 cans, he said. He left the club in the early hours of the fourth and returned to the Talimoru hotel, where he went to bed, still having eaten nothing.

The Defendant woke up at 9.45 am on the 4th December and went down for breakfast, but found that it was over. He was given two slices of toast and two cups of coffee before going up to his room to change. While there he was informed that there was someone waiting for him downstairs. It was his friend Rachel. They walked to Town together and went to the Gecko café where they met a friend called Catalina. They had some coffee, but again the defendant had nothing to eat. They eventually went back to the Talimoru at about 12.30 pm. where the defendant picked up his belongings and they were then dropped by Catalina at Rachel's house. At the house the defendant had four biscuits and some cheese to eat. He then spent the day at the house while Rachel went out.

In the late afternoon of the 4th December Rachel came back. They had a vodka each with bitter lemon. Their friend Catalina returned later with a dozen oysters. A bottle of wine was opened which they drank. They ate four oysters and some garlic bread each. Later Rachel made some fish Burgers and they ate that and some salad. Catalina and the defendant finished off the bottle of wine between them. Rachel and the defendant then had another glass of vodka and bitter lemon, and then another. It was now 9.30p.m. on the 4th. They had been invited to a party at the Aero Club, apparently in honour of a departing french aid worker friend or acquaintance of the

standing in her bedroom doorway. She asked him what he wanted. He smiled shrugged his shoulders and said something like "don't you know?" She asked again and he made no reply. She then asked him if he had the right house, he replied "yes of course." She asked "who are you looking for" he replied "you know very well who I am looking for and we are going to talk about it." She told him that any talking would have to be done outside. He said "no we're not." She said "yes we are" and with that she picked up her handbag and started to walk out of the bedroom trying to keep her composure and remain as calm as possible, and walked into her living room. During the conversation the defendant had walked into her bedroom. As she was walking out she heard a loud scream coming from behind her and the defendant said "oh no you don't, you can't get away like that, I have lost too many friends that way." She said he appeared perfectly normal, but that the conversation was most bizarre. "It was bizarre because his responses to my questions were not what I would have expected." Miss Muller then ran out of her house towards her landlord's house. Just before she got there, the defendant had caught up with her and had grabbed hold of her from behind in an arm lock around her neck and thrown her against the fence. Before she could straighten herself up he had grabbed her again and she was screaming. That was when Mr Harrison, Miss Muller's landlord arrived and pulled the Defendant off her. She ran back to the house and locked herself in and phoned her neighbour, Mr Justice Downing, the Chief Registrar of this Court. He arrived very quickly. He could see the Landlord talking to the Defendant. After first enquiring as to Miss Muller's welfare, he went towards Mr Harrison and the Defendant. When he got to about 1 metre of them the Defendant said "You take one more fucking step and you're fucking dead". Mr Harrison seemed to be calming the Defendant down and appeared to have the situation under control, and rather than put the Defendant to the test, Mr Justice Downing wisely withdrew to the complainant's house from where he phoned the police.

Mr Harrison the landlord told us that at the time, he was at his house watching a video, when he heard some screaming from outside. It was Miss Muller. He ran out and saw her being held by the defendant. He ran towards them and grabbed the defendant by the throat. Miss Muller managed to make good her escape and ran into the house.

Mr Harrison then spoke to the Defendant who appeared to be in a fairly agitated state. He tried to calm him down. The defendant had trouble remaining still and was moving a lot pacing here and there. Mr Harrison said "He was talking a lot of nonsense and things that did not make any sense, he said he was a member of a religious cult from Santo, and asked if I had seen the T.V. programme Dr Who and kept repeating that he knew me, which was obviously incorrect".

After 20 minutes the Defendant gradually calmed down and became apologetic for what he had done and said he would go and left in the direction of the beach.

Meanwhile, Mr Justice Downing who had been waiting for the police on the road way, arrived with the police and they all walked down to Rachel's house where they saw the Defendant. On the balcony was Rachel still asleep or unconscious. The Defendant gestured at them to wait. He dressed and came out. Mr Harrison recalled that at that stage the Defendant appeared to be a lot more calm.

Mr Tanfield, the Defendant, also told us that the next thing he remembered after going to sleep at 8.20 that morning, was coming to or waking up next to a man who was holding on to him, next to a house that he did not know. The man was trying to calm him down. He recalled shouting at the time but does not recall what he was shouting. He noticed that he was wearing nothing but a pair of shorts. He remembers walking back to Rachel's house quite distressed at not knowing what he had done. He sat down and thought. He felt as if he had been dreaming. He recalled being at a house, shouting at people, telling them they should come out of the house. He recalled going into the house and carrying the occupier out. That was as much as he could remember of the incident he said, apart from Mr Harrison.

During his dream he said he felt agitated, he felt something was going to happen and wanted to get the person out of the building.

He then saw three police officers and two civilians. He recognised Mr Harrison, gestured to them to wait, dressed himself and came out. He said he did not know what he had done but realised that something had happened though he did not know what. But because the police had arrived, he realised something must have happened.

He got into the back of the police truck where he spoke to the policeman, P.C. Emile Bong, who told us too that he had spoken to the Defendant whose breath smelt of alcohol and who in his opinion was drunk, although he appeared to know what he was doing. The officer said that the defendant told him that he knew he had done something wrong and that it was as a result of his being drunk.

The next officer to give evidence told us that the Defendant made a statement under caution:

"After an evening of drinking at the house of Rachel and then on to a party at the Aero Club followed by the Windsor pub and Le Flamingo, I/we went back to Rachel's house at approximately 4 a.m. Sunday. We drank more alcohol and then Rachel fell asleep and I went inside to bed. The next thing I knew was being woken from a 'dream' in this dream I entered an unknown house after trying the door and windows shouting "you must get out something is coming." I ran around the house and went inside through an open door, I found the occupant, a woman, and said she must get out, a second white male turned up and I told him not to come closer I thought 'in this dream' he was a threat to everyone. The first male talked me 'awake' and told me it was real. I then realised that I had made a very real error. After talking to this man to determine where I was, I left down the hill and back to Rachel's house. There I put on shorts and T shirt and waited for the police to come. At no time did I try to leave the immediate area or try to escape. This dream was very real to me in a dream sense but obviously I was subconsciously acting out the dream while still asleep. At no time did I mean any harm to any person. I think I over did the hard spirits for too long."

This statement was made on the 6th and was the first opportunity the Defendant had to give an explanation for his behaviour and it is right to say that it is completely consistent with the account he has given since and from which he has not departed.

Mr David Matthew Ross gave a glowing character reference for the defendant, whom he had known for only 6 months, but whom he had quickly befriended. For what that evidence was worth, if anything, it showed that the defendant behaved out of character as far as that witness knew.

Dr Finberg next gave evidence.

He is a medical practitioner of considerable experience; some 32 years to be exact. He had an early and good opportunity to make a medical and psychiatric examination of the defendant, having been contacted by the Court to carry out the examination on the 6th. The psychiatric examination disclosed no abnormality, after a reasonably in depth inquiry of the defendant.

He was then physically tested over a period of 24 hours in hospital and in Dr Finberg's surgery. The examination showed a serious glucose imbalance suggesting possible sugar diabetes in the defendant and he directed further examination.

Having examined the background and all the circumstances of the incident, Dr Finberg came to the conclusion that the defendant's behaviour was inexplicable. He then admitted him into hospital where he was further tested. The net result being that Dr Finberg concluded that there was a definite possibility that he was suffering from a pathological hypoglycaemic attack at the time, given all the surrounding circumstances (he then gave us a résumé of the circumstances that we already know.)

Dr Finberg told us that in these circumstances there was a definite relationship between alcohol abuse and such an attack. He said the alcohol affects the liver's ability to produce a substance called glycogen, which is normally produced in the liver and is also to be found in the muscles of the body.

He said this :

"when a normal person undergoes fasting, he would not normally go into a state of hypoglycaemia, because his body draws on the liver and muscle store of glycogen. However, in the case of a person who has been consuming large quantities of alcohol over a long period of time, that level of liver glycogen would be so depleted and so reduced as a result of a drinking binge after a prolonged fast, that the patient's liver becomes like a dry sponge, so that his blood glucose level starts to drop and he becomes pathologically hypoglycaemic."

In cross examination, Dr Finberg told us how a person in a state of pathological hypoglycaemia, as opposed to one in an insulin induced state, could spontaneously recover as a result of an excess of adrenalin secretion caused by fright and so on, as opposed to the insulin induced state which would always require medical intervention.

"Spontaneous recovery is possible due to the resources of the human body to augment glucose with a fright or life threatening situation, a person in that state could build up his glucose level to such an extent that he could come back to a normal state of cerebration."

He went on to say that such a person once recovered can continue with his everyday life and would not be a danger either to himself or anyone else. Nor would he need expert medical attention, but might need counselling and to reform his social attitudes.

This of course is not a trial. The defendant pleaded guilty as a result of legal advice tendered not by Mrs Barlow, but by another lawyer then acting for him on the 6th December 1993. After hearing the the brief facts of the case, the Court became sufficiently concerned to order medical reports. It was only as a result of those medical reports that I allowed this 'voire dire' before possibly acceding to an application for a change of plea under section 133 (5) of the Criminal Procedure Code Act CAP 136.

I said at the outset that I would have a full 'voire dire', and that if I was satisfied according to law that the defendant was not guilty, I would not only allow a change of plea but that I would enter a verdict of 'Not guilty'. Indeed, if I were so satisfied there would be little need for a trial and I am sure that in those circumstances the prosecution would offer no evidence and a plea of 'Not guilty' could then be recorded.

What is the law in this case:

Here the defendant is charged with two offences:

- 1 Intentional Assault
- 2 Unlawful Entry

I need hardly define those offences; it is common ground that they are both offences in which criminal intent is an element.

The defence as I see it is that the defendant was acting in a state of automatism and was deprived of the capacity to form the necessary criminal intention.

Plainly from what I have heard, the situation arose as a result of this defendant's voluntary consumption of alcohol. In other words, voluntary intoxication.

Under Section 21 (1) of Cap. 135

"Voluntary intoxication shall not constitute a defence to any charge unless the offence charged is one in which criminal intention is an element and the intoxication was of so gross a degree as to deprive the accused of the capacity to form the necessary criminal intention; the onus of proof thereof on the balance of probabilities shall lie on the accused."

Whenever the onus of proof lies on an accused, he discharges it if he proves the element of his defence on a balance of probabilities as the section itself stipulates.

I heard the accused in this case. I do not believe that he lied as to his lack of food or as to the amount that he had to drink that night. It was of such a quantity as could and almost certainly would have killed anyone unused to drinking large amounts of alcohol.

Indeed, I do not disbelieve any of the witnesses in this case. It is rare that one can say that one believes all the witnesses in a case, but in this one I do. I was highly impressed by Miss Muller and Mr Harrison. I commend Miss Muller for her cool level-headedness and Mr Harrison for his gallant and prompt action and courage. Both these witnesses were patently truthful and neither tried to "down" if I can use that word, unfairly the defendant.

The defendant's behaviour on that morning was extraordinary. He entered Miss Muller's house uninvited and terrified its occupant and used force against her.

But were his actions criminal? That is the question I must answer.

Indeed in this case, I find the answer to the question in the evidence of a very experienced Doctor, albeit a general practitioner, namely Dr Finberg. He said:

"The balance of probabilities are in favour of his having suffered an attack of pathological hypoglycaemia but, I could not be categorical about it as I could only be so if I had made a test on him at the time of his attack"

In answer to a question put by me, he said:

"If he was suffering from an attack of pathological hypoglycaemia he would have been in such a state as to be incapable of forming a criminal intent."

In Dr Finberg's opinion, the balance of probabilities were that he had suffered such an attack and I have not heard any evidence to the contrary. It is for the prosecution to disprove Dr Findberg's evidence beyond a reasonable doubt and they have not done so. I will therefore permit a change of plea under section 133 (5) and I invite the prosecution to offer no evidence in which case I will be able to enter a verdict of not guilty.

The Prosecution wished to proceed with the trial. Dr Williams was called. Far from refuting the evidence of Dr Findberg, Dr Williams agreed with it and with the probabilities that the defendant did suffer a hypoglycaemic attack. He said:

"According to the history and the nature of the event surrounding this incident, I cannot confirm nor dispute that the defendant might have suffered a bout of Hypoglycaemic attack. Alcohol in conjunction with prolonged starvation could cause Hypoglycaemia. It is well recorded that in those circumstances a hypoglycaemic attack may result."

As a result of that evidence, the prosecution wisely decided to offer no evidence. In my view they were quite right.

There remains for me therefore to enter verdicts of not guilty on both counts against this Defendant.

The Defendant is discharged.