

## SYD1789

Court of Criminal Jurisdiction, Minutes of Proceedings, Feb. 1788 to Oct. 1794, State Records N.S.W., 1147A[1]

R. v. Davis

Court of Criminal Jurisdiction

Collins J.A., **21 November 1789**

[151] At a Court of Criminal Judicature held by Virtue of a Precept under the Hand and Seal of His Excellency, A. Phillip Esqr., Captain General and Governor in Chief, in and over the Territory of New South Wales and its Dependencies, for the trial of such offenders as shall be respectively brought before it:

Present:

The Judge Advocate

Captain John Hunter, of the *Sirius*

Lieut Mr Bradley of the *Sirius*

Capt Lieut Nathan Tench, of the Marines

First Lieut James Furzer

First Lieut John Poulder

First Lieut J Maitland Shairp

**ANN DAVIS**

**Alias JUDITH JONES:** The Precept being read and the Court duly sworn: was charged, for that she on Saturday the fourteenth day of November in the thirtieth year of the Reign of our Sovereign Lord George the Third, now King of Great Britain, France and Ireland, Defender of the Faith, at about the Hour of four in the afternoon of the same Day, with Force and Arms, at Sydney Cove, in the County of Cumberland the Dwelling house of **ROBERT SIDAWAY** there situate, feloniously did break and enter (the Prisoner the same Dwelling house then and there being) and four Linen Shirts of the value of Twenty nine shillings and Six pence; One cheque shirt of the value of four Pence; one Linen Waistcoat of the Value of Two shillings; two Cambrick Handkerchiefs of the Value of Three shillings; one Silk Waistcoat of the Value of Two shillings; one Dimety Waistcoat of the Value of Eighteen Pence of the Goods and Chattels of the said Robert Sidaway; and one Linen Bed gown of the value of Two Shillings; one Linen Apron of the Value of Eighteen pence; Two Linen Caps of the value of Sixpence; One Piece of a Cap of the Vale of one Penny; one muslin Handkerchief of the Value of Six Pence; and One Pair of Linen Pockets of the Value of One Penny of the Goods and Chattels of Mary Marshall [152] in the same Dwelling House, then and there being found, feloniously did steal, take and carry away, against the Peace of One said Lord the King, his Crown, and Dignity.

The Prisoner on her arraignment, having pleaded Not Guilty.

Robert Sidaway being sworn deposes, that on Saturday last the 14th Instant about four in the afternoon he was at wash and the Bake House which near a Quarter of a Mile distant from his House. That he left his House about 2 o'clock. That he left **JOHN RYAN** in [?]. That at about 4 o'clock Ryan came to tell him that his House had been broke open and several articles taken away. When he got home he found a Box broke open. that he missed the Articles mentioned in the Indictment. The box seemed to have been opened with a shovel that was in the Room. The Hatch of it was wrenched from the lid. That it was very well secured and nailed. That when he went out of the House to go to Work, he left his box locked,. That he had been at it, a few minutes before to take some flour out. That he had not seen the prisoner there that Day and has not spoken to her for five or six months. That he is alleged to leave his

house five days out of the Seven, to go to the Bake House. That Saturdays is always one of those days on which he is alleged to be absent. That he does not know that the Prisoner has any knowledge of his absence. That he does not pass by her Hut going to the Bake House.

The following articles deposed to by this witness

[153] One Silk Waistcoat, 3 shirts, 1 Cambrick Handkerchief, 1 cheque shirt, 1 Linen Waistcoat, 1 new shirt.

Question: What time was Ryan to stay in your House.

Answer: No particular time was fixed. He was told when he went out to lock the Door.

**MARY MARSHALL**, being sworn deposes, that she lives in the House with the last witness. There she keeps her property in the same Box with Sidaway. That last Saturday the 14th Instant she lost 1 Bedgown, 1 Apron, 2 Capes, a piece of tarp, 1 pair of Pockets and 1 Piece of Linen Cloth. that she was certain these article were in the chair on Saturday last, for in the Morning ... she had taken them to clean them and put them in again. That she knows the Prisoner very well but she has not seen her for some Months in her house. She never came there but to casually light a pipe as she passed by. She left her house about 10 o'clock on Saturday and went to the Bakers House. That she did not return until told by John Ryan that her house was broke open and several things stole. That the window was secured when she went out. It is a sliding shutter made hard by a wooden peg at the [?]. That the window was open when she came home. The house is divided into two apartments. The Box stands in the first of them which also has the window in it. The window is large enough for a person to get in it. A tub of water which stood under a stool under the window, was found thrown down. Any person [?] by the assistance of the stool, step into the window.

The following articles produced and deposed [154] by this witness - 1 Bedgown, 1 Pair of Pockets, 1 apron, 1 piece of [?] and 1 piece of a cap. That Ryan has taken care of her house when she is about for several Months for which purpose he has the Bag that he leaves in an outhouse on the outside.

John Ryan, being sworn, deposes, that he lives with the two last witnesses who employ him to get wood chopped for them and leave him frequently to take Care of the House serving their home. That he was left in Charge of the House last Saturday the 14 Inst. That they left the house about there about 8 o'clock in the Morning of that Day and returned again about one and immediately went out again to the Bake House leaving him in charge of the House. That he staid in it until about 4 o'clock, when he went out to chop some wood. That he staid about a Quarter of an hour. On his recollection he was ordered down to the Hospital to see a man punished. That he locked the door and left the window shutters about half way down for the fowls to fly in at. That he secured it by a strong hitch at the Bottom. That he took the key with him. That he was absent about a Quarter of an Hour. That a little before he went out, he brought a tub full of water and put it on a stool under the window. On his notion, he perceived before he got to the House that the Door was open, and suspected that it was a robber. That he ran as fast as he could, and found the shutter door. The Hitch [?]. The Box had been open several Articles lying on the ground. That the tub was overturned. The stool remained. The lock of the Door was shoved back the ball of it gone into a staple. [155] He had not seen the Prisoner at all that Day. That the nearest house to Sidaway might be about fifty yards. That when he went to tell Sidaway of the robbery he locked the Door. That it locked easily. That being told by the fry that he

had seen the Prisoner near the Garden hedge with something in her apron, he taxt her with the Robbery. When she denied he then charged one of the watch with her.

**CHARLES FRY** being sworn deposes, that last Saturday afternoon between four and five o'clock as he went from his own House to chop some wood, as he stopped upon the Hill, to pick up some wood, he saw the Prisoner turning the corner of Sidaway's hedge, just by his House. That he was not very far from her. That he observed a large parcel in her apron. She was turning the bend of the House, and appeared as if she was going into the woods, but seeing him, she turned about upon her Heel and fell down. He did not perceive anything fall from her apron but she got up, and walked away as well as she could being very much in Liquor. That he went straight home soon after while Ryan came to him, and he told him he had seen the Prisoner, and no else upon the Hill. That he took particular notice of the Prisoner, and when she went away, he looked after her for half an Hour, to see which way she went. That less positive the Prisoner is the woman he saw turning the corner of Sidaway's Hedge. That he was not at the Punishment on Saturday last, but was cutting wood. That when the prisoner got up, she called in a low tone of voice for [156] ...That her apron was as full as it could hold.

Question: The prisoner : What time was it you saw me on Saturday afternoon?

Answer: Between four and five o'clock.

**JOHN SILVERTHON** being sworn, deposes that he knows the prisoner by sight. That last Saturday afternoon, between four and five o'clock, he was standing at the Door of his Hut, he saw the Prisoner, coming down the Hill, over the Rocks. She staggered very much as she came down. That she had a bundle in her apron, which he took to be a bundle of clothes. It appeared to be very large and she also [?] some [?] as she came along... The road lands for Sidaway's House almost down to his Door and the Prisoner came down that road. She was alone, and her rolling about a good Deal made him take Notice of her. That she stopped several times as she came down and when at the Bottom of the Hill, she stretched across towards her own Hut. He was soon after asked by Ryan and Fry if he had seen the Prisoner and he gave them all the Information he could and they went on to her house.

**JOSEPH MARSHALL**, being sworn, deposes, that he is employed as one of the watch. That he knows the Prisoner, and sees her on a Saturday afternoon in her own House about 5 o'clock. He was called there by Ryan, Fry and Silverthon who told him that Sidaway's House was broke open and that they suspected the Prisoner. That he went in and asked her if she had any theory of the Robbery - which she denied. That a woman that was in the Hut, told him she had [157] a suspicion that the Prisoner had committed the Robbery and asked her about it and desired her to give the property to him if she had any of it, the Prisoner immediately took from behind her a waistcoat and an apron which she desired him to conceal. That he searched but could not find nothing else and she said she had no more. That he went up to Sidaway's with the waistcoat and apron and found the door broke open and the window open. An hour later he met Sidaway and Mary Marshall coming home. That he told them he had got some of their property from the Prisoner. They requested him to take charge of her, which as he was proceeding to do, he met two others of the watch, who had found some more of the property. that the prisoner was in liquor. On his return to her house he took charge of her.

**JOHN COEN WALSH**, being sworn, deposes that he saw the Prisoner last Saturday afternoon in her own house between the Hours of four and six o'clock about which time he heard the alarm of Sidaway's being rolled and was called out by Silverthon who took him to the place where he had at different times seen the Prisoner

stoop. That he went with Silverthon [?]. That they found a white shirt and an old one - a waistcoat - a piece of a woman's cloth - and a piece of cloth. That these articles were found hid under the Rocks, and appeared as if disguised and stacked in to be concealed. They were hid some Distance from the Road. That Silverthon told him, he as first imagined the Prisoner was very much in Liquor, by her stooping frequently, but on hearing the Robbery, he suspected she was [158] the person who committed it, and when she stooped she was concealing the property. That consulting with others of the watch, they agreed to watch about the place where the articles were found, and the next morning about one hundred yards where he found the first articles he found in and with Harris a silk waistcoat, spotted, a white working waistcoat, a Pair of Women's pockets, and a cheque shirt. They were likewise concealed under the Rock. The silk waistcoat, one linen shirt, a chequed shirt, a waistcoat without lining, the Pocket for a bedgown, the Piece of a Cap and a Piece of Cloth, an old shirt, being shown to this witness, he believes then to the best of his Remembrance to be the same articles he found.

John Silverthon being again called in, deposes, that he went with Harris and Peate, to the different places where he saw the Prisoner stopping there they found the articles already stated by watch. That having seen the Prisoner not something like a Bundle, he went with Harris and Peate, to the spot and a shirt was found there.

**MARY ALLEN**

**Alias Mrs GORMAN:** being sworn deposes, that she was in the same house with the Prisoner. That the prisoner came home about 5 o'clock on Saturday afternoon. Just after Symics had been punished. That he was in the house when she came home. That she had a Bundle in her apron which contained a Cap. That he saw some and shortly after Ryan came to enquire for her. That she told him she was within. He came in and asked her if she knew any thing of Mrs [159] Marshall's Property. She denied having any knowledge of it. Then Marshall came in and made the same inquiry. She at first denied, but at last she put her hand behind her Hand behind her and gave him an apron and a waistcoat. She was then sitting on the bed. The Cap was still in her apron. There was nothing on the Bed when she went out. That it was very near upon 9 o'clock when she went out and about 5 o'clock when she came in. that about 4 o'clock she saw the Prisoner standing nearly opposite the Sirius. She said she was coming down to get some wood. She then saw a seaman of the Sirius (Terry) come up to her and ask her if she would take a cap up to his washerwoman - which she did. The cap did not seem heavy. She was not in liquor when she went out at 9 o'clock but at 4 o'clock she looked as if she had been drinking and when she came Home, she was very much in Liquor. She did not see her drink anything with the Seaman.

The Prisoner in her Defence says, that last Saturday about ½ past 2 o'clock in the afternoon Mary Allen and **MARY DIRKS** went down with her facing of the *Sirius* having promised to go on the Wednesday before. They staid there till past 5 o'clock. They drunk a considerable quantity of grog and as it is but said had not drunken many, it very soon took effect upon her and there were three men with them from the Sirius (one of [?]). Burn and Mary Dirks went first. She (the prisoner) was unwilling to supply. Mrs Whites being in liquor. She left Mrs Allen and conversely left the Sirius there. **JONATHAN TERRY** came up to her and asked if she would take a cap [160] home for her as Mr Allen was afraid to take it past Mr Whites. That she went at the back of the hospital with it. There was some grog in it, how much she cannot tell, but it ran out and made her apron stay wet. That as she went on, near M. Dawson's House, she met **ELIZABETH DRUDGE**. She told her she was going down fairing the *Sirius*, to send some clear Liquor on board on board to one of the Seamen. She

gave her a Parcel which she desired her to keep for her until she came Home. That she took the Parcel not knowing what it contained, and was the same she gave to Marshall. That Marshall came in and asked her about the Robbery. That she told him she knew nothing about it. That she told her if she had any part of it, she would give it to him, he would try it where it might be found, and nothing said about it. She then gave the Parcel, which she suspected to be a Part [?], to him.

**ANN FOWLER**

**Alias E. DRUGE:** being sworn and called by the Prisoner, or

Prisoner: Did not I meet you on Saturday last in the afternoon, as you were going to the *Sirius*

Answer: No you did not.

Prisoner: Did you not give me a Parcel that Day to keep for you.

Answer: No I did not. I never saw you.

**MARY DIX:** called also by the Prisoner, was sworn.

Prisoner: Were not Mary Allen, myself and you drinking grog with some Seamen of the *Sirius*, on Saturday afternoon.

Answer: On Saturday afternoon I took some linen for [161] Burn down where he was boiling Pitch. That while I was there the Prisoner came with some Hitches in her apron. And Terry gave her a Cup to take home for him. That she went away leaving me there. I cannot tell the time the Prisoner staid. It might be about 10 minutes. That I did not notice whether she was solen on liquor. Upon the Oath I have taken, I did not drink any Liquor in Company with the Prisoner or the Seamen of the *Sirius*. That Mary Allen walked down to the same Place, at a little Distance behind me.

**JAMES TERRY,** Seaman on His Majesties Ship, *Sirius*, called by the Prisoner, was duly sworn.

Prisoner: Did not Mary Allen and the Prisoner come together on Saturday afternoon, to where you was employed, boiling Pitch.

Answer: I cannot tell - being at wash under the shed.

Prisoner: did you not drink grog with Mary Allen, Mary Dix and the Prisoner that afternoon

Answer: She did drink grog there

Prisoner: Did you not drink a small Cup of grog on Ship

Answer: He does not know he brought more on there.

Prisoner: Did you pull a large cup out for the Rock.

Answer: No upon the Oath he has taken

Prisoner: Did you not give me a Cup to keep for

Answer: Yes, I gave her an empty Cup, which I took from her as soon as I went up.

Prisoner: can you recollect the time that you gave me the Cup

Answer: As near as I can remember, it might be betwixt four or five o'clock.

[162] He went away soon after she got the Cup. Does not know how long the Prisoner was there. She had nothing in her apron when he gave her the Cup, which might hold a gallon. That to his knowledge she was not in Liquor. That as soon as he left wash, he went up to the Prisoner's House. That he does not recollect that she was in Liquor. That he went to work about ½ past 2. That it was near 3 when he went to the Pitch Pod. About that time he saw the Prisoner there together with Mary Allen and Mary Dix. He does not know what quantity of Liquor was drunk. But in positive the Prisoner was there between an Hour and an Hour and a half ago.

**JAMES COVENTRY,** Seaman on board the *Sirius*, called by the Prisoner was sworn,

Question: Did Mary come with the Prisoner to where you were boiling Pitch last Saturday.

Answer: He saw a woman there, but who came with or together he does not know.

Question: Was not In Terry and Burn, sitting together when the Prisoner came down.

Answer: He cannot be positive, if they were sitting together, but they were together when the women were there.

Question Cont.. What time did the women go away

Answer: The Pitch Kettle went on about 4 o'clock. They had gone away before.

Question: What Liquor was drank there.

Answer: Our grog was drank before the women came. He was there the whole time the women went. He saw the Prisoner go away, but does not recollect who she went with. To the best of his knowledge, he thought the [163] Prisoner was sober. He does not remember any grog being drunk while the women were there. He saw Terry give the Prisoner a Cup, which he imagined was empty. That he did not expect the women there that Day. That he had expected M. Allen before.

Prisoner: Did you not desire me to come down with M. Allen, last Saturday.

Answer: I do not recollect that I did. I did not desire M. Allen to come that Day. I expected her two days before.

Question: Was the Pitch Kettle sent away at 4 o'clock and were the women gone.

Answer: I do not exactly recollect. I was sent away soon after 4 o'clock. I remained there some time after, and the women had been gone some time.

Guilty - Death.

David Collins

Judge Advocate

On receiving Sentence, the Prisoner declared that she was with Child.

**A Jury of twelve Matrons were then inpanelled and sworn to try if the Prisoner is quick with Child.**

On their return into Court, the Forman delivered in their Verdict. That the Prisoner at the Bar is not with Child.

David Collins

Judge Advocate

Executed the 23d November

David Collins

Judge Advocate

[1] We have included this case even though the manuscript is very difficult to read. We intend to make another careful attempt at proofreading our transcription.

**This case resulted in the first execution of a woman in Australia.** When the prisoner claimed to be pregnant and thus that she could not be executed, the court ordered a trial by matrons. The jury of matrons was the most important function women performed in eighteenth century courts.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University