

James BARTON

03/01/2018

James BARTON

Late of Pennant Hills

New South Wales Police Force

Regd. # ???

Rank: Constable

Stations: ?

Service: From ? ? ? to 19 March 1831
= ? years Service

Awards: ?

Born: ? ? 1800?

Died on: Saturday 19 March 1831

Age: 31

Cause: ?

Event location: ?

Event date: Saturday 19 March 1831

Funeral date: Saturday 19 March 1831

Funeral location: ?

**Buried at: St John's Anglican Cemetery,
Parramatta**

Funeral Service by: Samuel MARSDEN

Memorial located at: ?

[alert_yellow]**JAMES** is NOT mentioned on the Police Wall of
Remembrance[/alert_yellow] ***NEED MORE INFO**

[divider_dotted]

**FURTHER INFORMATION IS NEEDED ABOUT THIS PERSON, THEIR LIFE,
THEIR CAREER AND THEIR DEATH.**

PLEASE SEND PHOTOS AND INFORMATION TO Cal

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May they forever Rest In Peace

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James BARTON 1283/1831 V18311283 15

[Item 1283 for year 1831, Vol 15]

State Records NSW SR Reel No. 5003

Register of Baptisms, Burials and Marriages

Registry Vol. Nos: 11-16 Part

Pages 30 and 31, Burials in the Parish of **Saint John, Parramatta**
in the **County of Cumberland** in the Year **1831**

Name: **James Barton**

Abode: Pennant Hills

When Buried: 19 March 1831

Age: 31 years

Ship's Name: –

Quality or Profession: **Free, Constable**

By whom the Ceremony was performed: **Samuel Marsden**

James BARTON 9504/1831 V18319504 2C

[Item 9504 for year 1831, Vol 2C]

A0 Reel No: 5001

Register of Baptisms, Burials and Marriages

Registry Vol Nos: 1-2

Page 487 Year 1831

Date of Burial: March 19 1831

Names: **James Barton**

Abode: **Parramatta**

Age: 31

Quality or Profession: **Constable**

Where Ceremony Performed: **Parramatta**

Where Registered: **St. John, Parramatta**

1830. Mentioned in dispatches as having been dismissed for repeated drunkenness. **HOWEVER**

1831. Profession at time of death, Constable

1832. In SMH, Wills and Estates. James was still mentioned as a Constable, Parramatta and left an estate of nearly 10 pounds.

I was previously looking for a James BURTON but tried a

different spelling. Over to you if you can find out more.

[divider_dotted]

Robert WATERWORTH

03/01/2018

Robert WATERWORTH

aka " Big Bob, the constable "

Late of Blackburn, Lancashire and Field Of Mars –
Parramatta

New South Wales Police Force

Regd. # ???

Rank: Constable – appointed 20 March 1830

Stations: ?, Parramatta – Death

Service: From 20 March 1830 to 27 June 1831 = 1.5 years
Service

Awards: No find on It's An Honour

Born: ? ? 1789

Died on: Monday 27 June 1831

Age: 41

Cause: Murdered – Axe to head

Event location: Governor's Arms, 3 miles from Parramatta

Event date: Monday 27 June 1831

Funeral date: 9 July 1831

Funeral location: ?

Buried at: St John's Anglican Church, O'Connell St,
Parramatta

Minister – Samuel MARSDEN

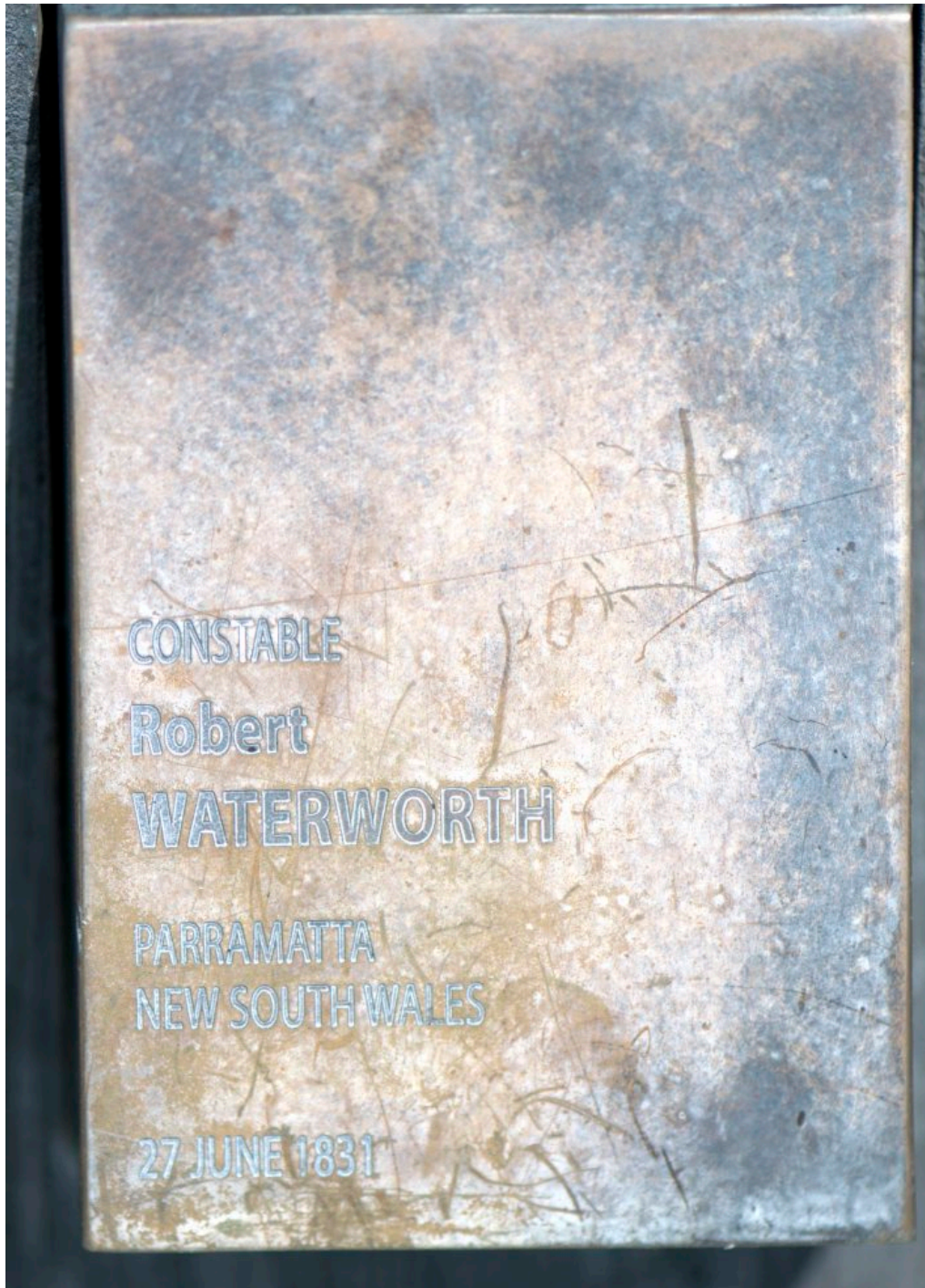
Memorial located at: ?

ROBERT is mentioned on the Police Wall of Remembrance

**FURTHER INFORMATION IS NEEDED ABOUT THIS PERSON, THEIR LIFE,
THEIR CAREER AND THEIR DEATH.**

PLEASE SEND PHOTOS AND INFORMATION TO Cal

May they forever Rest In Peace



NSWBDM = Marriage 3469/1825 V18253469 3B to **Mary HAYES** &
4531/1829 V18294531 3B PLUS 652/1829 V1829652 13 – both to
Sarah DUGGAN

NSWBDM = Death V18311312 15/1831 and 9662/1831 v18319662 2c
On 27 June, 1831 Constable Waterworth was searching an area between the Windsor Road and the Governor's Arms Hotel, Parramatta for five bushrangers who had held up and robbed a cart the previous Saturday morning. Near an area referred to as the "Veteran's Huts" he came upon one of the bushrangers named Thomas Lucas who was cutting shingles with an axe. Lucas engaged the constable in a conversation before suddenly attacking him, striking him three times to the head and inflicting fatal head injuries. Lucas later said that he had gone into the bush to retrieve some hidden bags of sugar, proceeds of the robbery, when Waterworth appeared and, fearing the constable would discover he was one of the men he was searching for, he decided to kill him.

The court records of the trial of Lucas and two accomplices, Moylan and Knowles, indicates that "*Lucas attacked Robert Waterworth & with an axe held in both hands inflicted a wound to the left side of the face & head, a wound & fracture of breadth of 4 inches & a depth of 1 inch*".

The Sydney Gazette and New South Wales Advertiser of 10 September, 1831 reported on the trial.

WEDNESDAY, SEPTEMBER 7.

Thomas Lucas was indicted for the willful murder of Robert Waterworth, at Parramatta, on the 27th of June last; and John England, as an accessory after the fact.

Mr. John Thorn – I am chief constable at Parramatta; I knew the deceased; his name was Robert Waterworth; he was a constable for the district of Parramatta, about forty years of

age, and six feet in height; the last time I saw him was on the 26th of June in the present year, when I accompanied him on the Windsor road, in search of some persons suspected of a cart robbery; he was armed with a gun, a pistol, and a cutlass. On the 27th or 28th, I can't say which, he was reported absent to me by his wife, who lives on my farm, and on whom I called to enquire after him; on the 3rd of July following I saw him dead at a place called the Governor's Arms, in the bush, about three miles from Parramatta; near some huts erected for the Veterans; he was lying on the broad of his back, with his arms stretched out, and the left side of his skull beaten in; he was dressed in a blue jacket, white duck trousers, striped waistcoat, white shirt, black handkerchief, and laced half-boots, but no hat; his feet were lying under a small oak tree which drooped over him; on the 4th of August, I found a pistol, about four miles from the spot where the body was found...

Constable Waterworth had arrived in **Sydney** as a **convict** on 22 September **1820** aboard the ship **Agamemnon** and was granted his **Ticket of Leave** on **30 May, 1828**. At the time of his death he was aged about **42 years** and was stationed at **Parramatta**.

Robert Waterworth was transported to NSW, Australia, departing England on 22 April 1820 with 178 other convicts and arriving in NSW on 22 September 1820.

He was employed as a labourer in England but was Sentenced to Life for Sheep stealing. He was convicted at York Assizes.

When he landed in NSW, Robert was assigned to the Reverend Samuel Marsden as a farm servant on Marsden's farm at **Cabramatta**. He was **31 years old**

although the shipping file shows him as **21 years**, Height 6 foot, of fair complexion, brown hair, hazel eyes.

1825: Married **Mary Hayes** who died in **1828** aged 37.

1829: Married **Sarah Duggan** (Princess Charlotte) she was 24 and Robert 40. They had a son **James** born **1830**.

Sydney Gazette and New South Wales Advertiser (NSW : 1803 – 1842),

Saturday 10 September 1831, page 3

SUPREME COURT

WEDNESDAY, SEPTEMBER 7.

(Before Mr. Justice DOWLING.)

Thomas Lucas was indicted for the wilful murder of Robert Waterworth, at Parramatta, on the 27th of June last ; and John England, as an accessory after the fact.

The **ATTORNEY GENERAL**, with whom was **Mr. MOORE**, stated the case to the Jury, and proceeded to call the following witnesses :

Mr. John Thorn – I am **chief constable** at **Parramatta**, I knew the deceased ; his name was **Robert Waterworth** ; he was a constable for the district of Parramatta, about forty years of age, and six feet in height ; the last time I saw him was on the 26th of June in the present year, when I accompanied him on the Windsor road, in search of some persons suspected of a cart robbery ; he was armed with a gun, a pistol, and a cutlass ; on the **27th or 28th**, I can't say which, he was reported absent to me, by his wife, who lives on my farm, and on whom I called to enquire after him ; on the **3rd of July** following I saw him dead at a place called the **Governor's**

Arms, in the bush, about **three miles** from **Parramatta**; near some huts erected for the **Veterans** ; he was lying on the broad of his back, with his arms stretched out, and the left side of his skull beaten in ; he was dressed in a blue jacket, white duck trowsers, striped waistcoat, white shirt, black handkerchief, and laced half-boots, but no hat ; his feet were lying under a small oak tree which drooped over him ; on the **4th of August**, I found a pistol, about four miles from the spot where the body was found ; I was acquainted with the deceased for some time, and am quite positive of the identity of his person, although the face was much disfigured ; the pistol I found by the direction of a man named **Monaghan**, who went with me, and pointed it out ; it was in a damp place, covered over with bushes, and not loaded ; the pan was shut, and I believe it was on half cock ; I did not know the pistol, but it was similar to that which **Waterworth** had ; I also found a **musket**, about 50 yards from where the body of the deceased was found ; this was on the **4th of August** ; I was taken to the place by **Monaghan** ; the musket was loaded, and was of the same sort of musket as had been issued to **Waterworth** ; on the same day, I found three empty sugar-bags, on the side of the **Kissing Point Road**, in the bush, by the information of **Monaghan** ; the place where I found the bags was about three miles from where the body lay ; I took the whole of the articles I found to the **police office** ; on the tree, towards which the feet of the body lay, were marks such as an axe would make ; about a fortnight ago, I got an axe from the prisoner **England's**, at **Parramatta**, and another at **Patrick Goggin's** who lives opposite to **England's** ; the axe at **England's** was lying openly in the yard ; after searching at **Goggin's**, for some time, I could not find the axe, but as I was going away, **Goggin** called me, and gave it to me ; a man named **Cohen**, who was in charge of **England's** place, was with me at the time ; the axe so given by **Goggin** was quite damp, and seemed as if it had been buried in sand ; on the head of it I observed some hairs, but whether human hair or the hair of a beast I could not say; I saw one long hair on it which I

believed to be the hair of a human being, and I also observed a soft fleshy substance on the head of the axe ; the iron part of the axe was marked with the initials of **England's** name, **I. E.** ; when I left the deceased on the **26th of June**, he had no musket with him, but he then went home, and I saw his musket standing at his door; the arms issued to the deceased by Government, were a musket, a pistol, and a cutlass ; the body was found about 2½ miles from the house of the deceased ; I have not been in the house since he was missing.

Thomas Atkinson – -I am a **Sawyer**, and live between the rocks, at the back of the **Darling Mills**, on the **Parramatta river** ; I knew the deceased , I saw him last, on the **29th of June** (**2 days after the official death date**), between **11 and 12 o'clock** ; he came to my saw-pit in the creek, between the **Governor's Arms** and the **Windsor road** ; he had then a gun and a horse pistol ; he asked me if I had seen any strangers ; I replied no ; he told me that a cart had been robbed on the Saturday evening before by five bushrangers ; he stayed about half-an-hour, during which time, Thomas Wilson, a mate of mine was present ; he asked us the way to the Veterans' huts, which we told him, and he went away in that direction ; the Veterans' huts are about a mile or better from my pit ; about half-an-hour or rather better, after he was gone, I heard the report of a gun, in the direction of the Veterans' huts, as well as I could judge ; we stopped sawing and listened, but heard nothing further ; I did not see Waterworth any more till I saw him carried dead to the hospital ; the features were gone, and I could not swear to the body, but I saw his clothing, and I was then perfectly satisfied that he was the same person.

Thomas Wilson corroborated the evidence of the last witness ; ***I am not sure of the date of the day*** on which I saw the deceased at the saw-pit.

Charles Jones – I live with **John Duck**, at **Parramatta**, I knew the deceased ; I saw him last **alive three or four days before**

he was murdered ; I was **stockman to Duck**, and drove cattle to and from the bush for him ; I used to have a dog with me ; whilst I was in the bush, I heard the dog barking and went to the spot, and **found the dead body** of a man who afterwards turned out to be **Waterworth** ; at the time I found the body, I did not know for certain whose body it was ; the body was lying on the back without a hat, and **putrifying** ; eight days after, I found a straw hat about two yards from where the body was found ; **after I found the body**, I drove my cattle home, and gave information to the police ; I know the prisoner, **Lucas** ; some time before I saw the dead body, I met him and another man-of whom I took no notice-in the bush, near the **Governor's Arms** ; they were in a cart at the time, and appeared to be going towards **Penant Hills**, about two miles off ; **Lucas** asked me if I saw any shingles by the road side, and I told him I did not ; I saw nothing in the cart but **Lucas** and the other man ; they were coming in the direction from **Parramatta**.

Cross-examined by Lucas – I knew you for eight or ten months at Parramatta, and knew you to work at the **Governor's Arms**, splitting shingles; I did not know who worked with you ; you have frequently met me in the bush before when you asked me if I saw any shingles, but I never saw you with a horse and cart in the bush before ; I do not recollect frequently going to you where you used to work, while the cattle were feeding in the bush ; I do not know how you got your living, but I remember having frequently seen you in the neighbourhood of the **Governor's Arms**, where you asked me if I had seen any shingles ; I never saw you at work there; but I have frequently seen bundles of shingles tied up there.

By a Juror – The place where I saw the horse and cart was about two miles from where the body was found.

By the Court – I have frequently seen the prisoner with a horse and cart in the streets of **Parramatta** ; I do not know how he got his living ; he was reported to be a free man.

By the prisoner, Lucas – I do not know how long before the murder I saw you with the horse and cart in the bush; it was before the murder ; I don't remember having seen you at work splitting shingles, but you have told me that the shingles I saw in the bush belonged to you ; I remember you living in a house belonging to my master, and that a man named **Jelly** lived with you, but I have never heard you talking together about splitting shingles in the bush; I have seen you bring wood in a cart to my master's house, but I do not know where you got it ; I believe the horse and cart belonged to **Jelly**, who lived with you ; when I met you in the bush with the horse and cart, you were driving slowly ; I did not know the man who was with you ; I did not see any thing to lead me to suppose that you were about any thing improper ; I saw nothing in the cart ; I saw no fire arms with you ; I think you were sitting on the side of the cart.

By the Court. – I know **Jelly**; he was not the man I saw with Lucas in the cart.

Dr. Anderson. – I am a **surgeon** on the **Colonial establishment**, at **Parramatta**; I knew the deceased, about the **9th or 10th of July**, his body was brought to the **hospital** ; I knew it to be the body of **Waterworth**, having been in the habit of seeing him frequently ; the **head and neck** were in a far-advanced state of **putrefaction** ; the skull, on the left side, was beaten into numerous fragments, and the jaw of the same side was also fractured; the injury to the skull was quite sufficient to have caused death ; the fractures appeared to have been done with some weapon, but whether sharp or obtuse I can't say ; the integuments of the head were completely destroyed.

Cross-examined by Mr. TERRY. – I examined the body superficially ; I observed no other wounds but the fractures I have mentioned, and I think if there had been, I should have observed them ; I observed nothing like a gun-shot wound ; a ball might have entered the head, but the fractures I saw were not such as would be made by a gun-shot wound ; I was quite

satisfied that the death was caused by the fractures I saw; I am quite satisfied it was body of **Waterworth** I saw ; he was known by the name of **Waterworth** or **Watersworth** ; the head was in such a state of **decomposition**, that other wounds might have been inflicted on it besides what I saw ; the deceased might have come by his death from a bullet, if it had entered in the place where I saw the fractures on the head.

James Monaghan an approver. – I am a **free man** I know the prisoners, I have known **Lucas** for eight or ten months, and **England** eight or ten weeks ; **Lucas** and I worked together, stumping a piece of ground on **Mr. Foster's** farm, at **Kissing Point** ; on a Monday, about ten weeks ago, or perhaps more, I was at the house of **England** ; **Lucas** and I came in on the Saturday before to **Parramatta**, and stopped at the house of a man named **William Wilson**, till about 9 o'clock ; on the Monday morning, I was at **England's** house with **Lucas**, who told me that he was going for his (**England's**) horse and cart to bring in some sugar ; this was said at **England's** where we previously had something to drink ; he said the sugar was at a place called the **Governor's Arms**; he asked the cart of **England**, who said " Yes my boy" or "*my lad*" ; **Lucas** said he wanted six bags to put the sugar in, and an axe to cut some wood ; **England** gave him the bags and the axe, and said to **Lucas** " *you know where the mare is, go and harness her yourself;*" **Lucas** then told me to go and meet him at the side of the **steam-engine** on the **road** to the **Governor's Arms**, which I did, and stopped till he came up, with the horse and cart ; this was on **Monday**, about 10 o'clock in the morning ; I went into the cart with **Lucas**, and when we came up to where one of the bags was, he pointed it out to me, and I alighted, and put it into the cart, we then went on a little farther and got another bag of sugar; I asked him why he brought six bags, when there were only three bags of sugar, I having brought in one the same morning ; he told me that **England** would not give his mare for the sake of three bags, which was the reason he said there were six ; after putting in the second bag he stopped the

cart, and I went on to get the third where I had "*planted*" having been concerned in the robbery of it ; I was away about thirty minutes ; when I found the bag, I heard a shot fired, and went to where the cart was, where I saw **Lucas** with an axe raised over his shoulder, in both hands ; I saw the axe hit a man, who, I believe, was **Waterworth**, the constable ; when I came down to him, **Lucas** said to me, "*D-n your soul, plant that gun,*" which was lying near **Waterford**, who was stretched on the ground, and **Lucas** standing over him with an axe in his hand ; I took the gun and laid it down beside a tree about twenty yards off ; I then returned, and **Lucas** said to me, "*I called you several times but you did not answer;*" I replied I did not hear him ; he said, speaking of the dead man, "*I gave him three blows, and the last was the finishing blow, and that it was better that one man should suffer than three or four*"; he said he had been "*chopping, chopping beside the tree, till he got the chance, but God spared him his two arms, which never deceived him* ;" the dead man was then lying on his back, and the blood flowing from his head ; **Waterworth** was a constable near **Mr. Blaxland's**, and it was his dead body I saw; I know him by the name of **Waterworth**, but I knew him best by the name of "***Big Bob, the constable*** ;" it was his dead body I saw ; **Lucas** and I then got into the cart, and went up by another road; and on the way we met, I believe, the **town stock-keeper**, in the direction of the **Governor's Arms** ; **Lucas** asked him did he see any shingles in such a place – naming some place in the bush, which I have forgotten – and the **stock-keeper** said he did, or did not, I forget which, for I was very much frightened and did not take much notice; we went on to a place above a place called the **Burn't Bridge** ; when we got there, we emptied the sugar bags into two of the canvass bags which we brought from **England's** ; one bag was filled, but the remainder of the sugar did not fill the other bag ; we left the empty sugar-bags behind us, and **Lucas** then covered the bags of sugar in the cart with the remainder of the canvass bags, which were four ; I told him to go into **Parramatta** in the cart, and that I should walk in on foot, for

fear of us both being seen together, on account of what had happened ; he left me then and went by the high-road, I following through the bush by a bye-road ; when I got to **Parramatta**, I went to **England**'s house, and found **Lucas** there, in the stable; **England** was out, and **Lucas** went after him, and returned in about half an hour ; he went in through the big gate, and **England** came through the house into the yard where the sugar was, and took one bag of it out of the cart, carried it into the house, and laid it in a room ; he then came for the other bag, which he laid in the same place ; **Lucas**, **England**, and I then went into the house, and had each a glass of rum, when **Lucas** told **England** that he had saved his cart and mare for him on account of killing the constable, saying " *it is better for one to lose his life than three or four,*" on which **England** said, I believe, " *It is my boy; the Devil's cure to him ;*" we had something more to drink, and about two or three hours after, one bag of sugar was weighed by us together, with a stick across our shoulders – I believe the handle of the fire-shovel-and the steelyards were suspended from it ; after one bag was weighed, **England** agreed to take both bags at three hundred weight ; we began drinking again, and about eight o'clock **two men**, named **Moyan** and **Knowles**, came to enquire after **Lucas**, who said " *Here I am my boys;*" they spoke a few words, and we then went together into a back room, where we had something to drink ; **Moyan** said to **Lucas**, " *Give me a pound for myself and my comrade, on account of what has happened,*" by which I thought he had been telling them about the murder ; **Lucas** asked **England** for a pound, who gave him five dollars, and he gave them to **Moyan** ; we then began drinking and playing cards, and I got very drunk, and, I believe, got fighting with some of them ; in the morning I found myself lying by the kitchen fire, in **England**'s house ; shortly after that, **Lucas** and I left the house, and went to **Wilson**'s, and from that to the farm where we were working ; in two or three days after, we came into town again, and went to **England**'s, where **Lucas** and I agreed to go and **burn the dead body of the constable**; **England** was not present at the first of

our agreement to do so ; after this **Lucas** asked **England** for some powder and ball, to protect us when we went to burn the dead body, which he gave to **Lucas**, saying if he, meaning the constable; was out of the way, there would be no danger then, there was no discovery then ; we were going out for the deceased's pistol which was on the farm where we were working, about ten o'clock at night, but when we got about a mile from **England's**, I "cowed" and would not consent to go ; **Lucas** called me " a d-d coward," and we went on to the farm, where we stopped at the **hut**, and worked for three or four days, and hearing nothing of the discovery of the body, we came into **Parramatta**, and returned back the same day ; **Lucas** took a job of splitting some shingles, for **Mr. Foster's** nephew, and I then left the farm, as I was frightened of **Lucas** that he would take my life some time, and went to **Parramatta**; after this I went out to him for the pistol, which he said belonged to the deceased, but he would not give it to me ; I wanted it to commit more robberies if I could ; he would not give it to me, and said he would not trust it in any one's hands unless he was present himself; in about six or seven weeks after the death of **Waterworth**, I was taken up for a robbery at **Mr. Nash's** at **Parramatta**; before this **Lucas** had got a beating on the farm, and came into **Parramatta**, to the **brickmaker's**, where I was ; this was on a Saturday, and I was taken up on the Wednesday following, on Monday he told me where the pistol was on the farm, and I went out and got it in a hollow log where he told me it was, and "*planted*" it under some rubbish and leaves, about half a mile from the town, where it lay till I told **Mr. Thorn** of it, on the Saturday after I was apprehended ; I went with **Mr. Thorn** and pointed out to him the place where it was ; I also pointed out the musket which I had laid alongside the tree, about 30 rods from where the dead man lay ; I also pointed out the sugar-bags which had been emptied, to him ; **Lucas** told me that he himself had fired the shot the report of which I heard while I was looking for the sugar in the bush ; I asked him if the constable fired, and he said no, that it was he ; the axe went in along with the sugar, to

England's place, but I do not know what became of it ; I have since seen an axe that resembles it.

Cross-examined by Dr. WARDELL. – I was an **approver** in several cases of receiving, about four years ago, against two men named **Ford** and **Bridle** ; I was the principal thief myself; **Ford** was acquitted by persons swearing contrary to what I stated ; I was sent to this colony for cattle stealing ; I was sent to an iron-gang here, for a robbery, or being in the bush, I forget which ; I also got three years to a penal settlement for absconding three times ; I have committed nine or ten robberies, but never a highway robbery but one ; I have known **England** for 9 or 10 weeks ; I don't know that I was known at **Parramatta** as a notorious informer ; if I was, I do not suppose **Lucas** would have gone with me to commit a robbery ; **Waterworth** was a very stout man, much stouter than the prisoner, **Lucas**; I heard only one shot fired ; the deceased's pistol was discharged, but I did not examine the gun ; I did not live at **England's** house, but I went there several times both before and after the murder; **Lucas** told me that the **constable**, when he met him, had no suspicion of him, but that he kept talking to him about old times, and chopping at the tree, until he got an opportunity of striking him with the axe; he said he killed him for fear I should come up with the sugar while he was there, and that when he knocked him down the pistol fell out of his hand, which he (**Lucas**) fired off to alarm me ; I do not consider myself a good man ; I will tell the truth about every thing I have done ; I gave the information because I could not sleep night or day for thinking of the murdered man, who, I fancied, was constantly appearing to me; I had continual dreams of him; I told, after I was apprehended for a robbery, fearing that I might be accused of the murder also ; I think murder should not be concealed, and I would tell it, even of my brother, if he were guilty of it.

To the prisoner, Lucas. – I have known you about 6 months ; I

have been confined in the **Sydney gaol**, for an offence committed at **Windsor** ; I was kept separate for fear of some men against whom I had given information ; you desired me to "*plant*" the musket, and I laid it at the foot of a tree, about 30 rods from the body of the deceased ; I saw you standing over the deceased as he lay on the ground, and striking him on the head with the axe ; had I known, when we went for the sugar, that you intended to commit a murder, I would not have gone with you ; I don't think you knew any thing about my character.

By the Court – After we left the dead body of the deceased, we drove the cart pretty quickly, the mare was trotting ; when we got to **Parramatta**, she was in a very great heat, owing to her having been driven very hard, and we two, together, with the sugar, being in the cart ; the conversation with the **stock keeper**, whom we met, lasted about a minute ; the witness, **Charles Jones**, is the **stock-keeper** of whom I speak, to the best of my knowledge ; he wore a plaid cap similar to that which Jones now holds in his hand.

The witness, Jones, recalled by the Court, said, I never recollect seeing **Lucas** and the strange man in a cart, in the bush, or any other occasion but the one I speak of; I cannot say how long this was before the body of the deceased was found by me ; the place where **Lucas** stopped to speak to me, is about a mile and a half from where the body lay ; the road which they were travelling would take them to **Parramatta**, but by a round-about way.

Robert Harris – I live at **Parramatta**, and am a **horse doctor**; I know the prisoner, **Lucas**, and the witness, **Monaghan** ; I remember meeting them at **England's** house, before **Watersworth's** body was found ; it was on a Monday, some time in June, but I am not positive as to the month ; about ten days or a fortnight after, **Waterworth's** body was found ; I saw **Monaghan** first in the house ; in the evening I saw **Lucas** and **Monaghan**, who were accompanied by **two blacksmiths**, in the house when

England was present ; previous to this I saw **England's** mare in the stable ; I was called out by a man named **Kehoe**, to look at the mare, to see the state she was in ; she was quite sweating, as if she had been driven hard or over-laden ; coming out of the stable, **Kehoe** went to the cart out of which he took some straw, and I saw some bags in the cart, full of something ; I returned into the house, and found **Monaghan** there ; this was about 2 or 3 o'clock in the afternoon, and in the evening **Lucas** and the other man came ; I do not know the names of the **blacksmiths** who came to enquire for **Lucas**, but I think I should if I heard them ; they had supper and something to drink, a quarrell ensued between the parties, in the course of which **Kehoe** was struck by some person, but I do not remember by whom ; some **constables** were procured, and the **two blacksmiths** were taken to the watch-house, but **Monaghan** remained in **England's** house all night ; he was very drunk, and slept by the kitchen fire ; I believe **Moylan** and **Knowles** were the names of the **blacksmiths** ; the **constables** did not take **Lucas** or **Monaghan** into custody, as they were **free men**.

Cross-examined by Mr. ROWE – I never saw the mare in such a state as on that day ; I can't say how many bags were in the cart, or whether they contained sugar ; **England** was in the habit of bringing grain and other matters from his farm, and he might leave such things in his cart in the yard ; I knew **Watersworth** ; I have heard him called by that name by numbers of persons since his death, but he was more generally known by the name of "Big Bob" ; I cannot say positively that I heard him called by the name of **Watersworth**.

To the prisoner Lucas – You once lodged in **England's** house, and therefore there was nothing remarkable in being there ; you did not lodge there then ; I recollect the evening in question, on account of the disturbance that took place.

By the ATTORNEY GENERAL – Since the death of the deceased, I heard him called **Watersworth**, in his life time, I knew him only by the name of "**Big Bob**."

James Hansell – I am a **quarryman**, in the service of **Mr. Peyton**, of **Parramatta** ; about 9 or 10 weeks ago, I saw **England** going towards the **Governor's Arms** ; I spoke to, and asked him what o'clock it was, and he said half-past two ; he said his cart was gone to the **Governor's Arms** for a load of shingles, and he feared something had happened to it ; on the same day, I heard that **Waterworth** was missing; he was found about 9 or 10 days after, as I heard.

To the prisoner, Lucas – I did not see you pass on that day ; I worked within three rods of the road, but you might have passed when I was not there ; I went to work about 8 o'clock in the morning, and remained till after 1 o'clock, and during that time I saw no cart pass, nor did I see you.

Re examined – There are two roads in that neighbourhood.

William Cohen – I am a **gardener**, living at the prisoner, **England's**, at **Parramatta** ; I remember the evening it was reported that **Monaghan** was taken up; about dusk in the evening I was in the garden, and saw **England** come there with an axe in his hand, which he threw down among some growing barley, about a foot high, and pulled up a handful, which he threw over it; that was not the usual place in which he kept his axe ; it remained there till **England** was taken up ; after that I took it to cut wood, and **Mr. Thorn** came for it a few days after, and took it away ; a man named **Goggin** gave it to **Mr. Thorn** ; I had taken it over to **Mrs. Walsh's** to cut wood, and it was there that **Goggin** gave it to **Mr. Thorn**.

Cross-examined by Mr. TERRY – I lodged in **England's** house two nights ; I was never charged with robbing him ; I never had any dispute with him, nor do I owe him any spite ; I will not undertake to swear that the axe given to **Mr. Thorn** was the axe I saw **England** put among the barley ; I did not know **Waterworth**, but I have heard people talk of "**Long Bob**."

Patrick Goggin – I live at **Parramatta**, and am a **labouring man**

, I reside nearly opposite to the house of the prisoner **England** , I remember **Mr. Thorn** coming to me for an axe, after **England** was apprehended ; the axe was left by **Cohen** at my place, where he had been cutting some wood ; I gave **Mr. Thorn** the same axe that **Cohen** had brought to my place.

Mr. John Thorn recalled, said, this is the axe I got from **Patrick Goggin**, and which has been in the Police-office some time ; I was in **England's** house on the morning of the night **Moylan** and **Knowles**, the **two blacksmiths**, were taken ; the **constables** reported to me about 2 o'clock in the morning that they had taken these men, and I ordered them to remain at **England's** till I went there, which I did at day-light; I found **Lucas**, **Monaghan**, **England**, **Bob Harris**, and **two other men** there; **Monaghan** was lying on the floor in the front room ; the **two blacksmiths** were taken to the watch-house, for being absent from their duty, they being **prisoners of the crown** employed in the Lumber-yard ; I knew the deceased ; he was a **constable** for **18 months** ; I knew him by the name of **Waterworth**; he always answered to that name ; he never said his name was **Watersworth** ; he might have been called so by many persons, but I always called him **Waterworth** ; I was present at the inquest ; I do not know what he was called there, whether **Waterworth** or **Watersworth**.

Cross-examined by Mr. ROWE – I do not know that he went by the name of " **Big Bob** ;" he might ; I can't tell whether people call him **Waterworth** or **Watersworth** ; I cannot swear that I ever heard him called **Waterworth**; I may have heard him called "**Big Bob**," but not frequently; I apprehended **Monaghan** on suspicion of robbery, and he was taken to the **police-office** ; he asked to speak to me in private, but never asked me if he pointed out the **murderer of Waterworth**, would he be released from the charge he was then under; he said nothing like that to me, nor did I make him any offers ; I did not tell him I would recommend him for mercy ; I found some bags, full of wheat, at **England's** house.

By the Jury – An hour might have elapsed between the time the **constables** took the **two blacksmiths**, into custody, and their return to **England's** house by my directions.

William Cohen recalled, said, I think I should know the axe I left at **Goggin's** house, as I drove in an iron wedge between the head and the handle; this axe is like it, but I do not observe the mark on it which I should know it by ; I think it is the same.

Cross-examined by Mr. THERRY – I can't swear to the axe ; I do not see the iron wedge of which I spoke.

This was the case for the prosecution.

The prisoner, **Lucas**, on being called upon for his defence, declined saying any thing to the **Jury**, but stated to the Court, that he had subpoenaed some witnesses from the neighbourhood of **Parramatta**, and had enclosed the subpoenas, by post, to **Mr. Thorn**, the **chief constable**, but that they had not been served, and those witnesses were not in attendance.

Mr. Thorn said, he had never received any such subpoenas ; it was possible that the prisoner might have sent them, and that the letter might be then lying in the **Post-office**, at **Parramatta**, although, if it were, he thought he should have received notice of it.

The prisoner then produced, as witnesses, two men, brought up from the gaol, by an order of the Court; but what the evidence was which he expected them to give did not appear, as they denied all knowledge of the prisoner, further than having accidentally seen him once or twice before.

On behalf of the prisoner, **England**,

Dr. WARDELL contended that the evidence did not support the information which charged him with being an accessory after the fact – an unusual course of proceeding in a case like the

present, and for a very good reason ; namely the difficulty of proving the charge, as contemplated by law. The information charged the prisoner, **England**, that he, after the commission of the felony and murder aforesaid, the said **John Lucas** did "*assist, harbour, relieve, comfort, and maintain*" &c. " Now, he contended, that the mere act of receiving the principal felon, by a party who knew that a felony had been committed, did not constitute the offence of accessory after the fact ;— that there must be some act of the party, done with a view to prevent the apprehension, trial, or the suffering the punishment of his offence, by the individual who committed the felony. In the present case the only evidence against **England** was, that he had merely received the prisoner, **Lucas**, into his house; there was no proof that he had afforded him any aid whatsoever, with reference to the danger he might be in.

Mr. THERRY and **Mr. ROWE** followed on the same side ; and also submitted, as in defending the accessory, they had a right if they could, to controvert the guilt of the principal, that there was no positive evidence, but that the deceased might have met his death from a gun-shot wound, and not from wounds inflicted by an axe, as laid in the information.

The learned **Judge** held that the objections raised by **counsel** were questions of fact to go to the Jury, upon the evidence of the approver.

Mr. ROWE then contended, that the information *laying the name of the deceased as Robert Waterworth*, was not supported by the evidence ; he having been spoken of by the majority of the witnesses, as **Watersworth**, or " **Big Bob**." Upon this point, the learned **counsel** called **Mr. Hugh Taylor**, who stated that he had been for several years in the **constabulary** at **Parramatta** ; that he had known the deceased, and always called him **Watersworth**, to which name he invariably answered ; witness has called him by that name at least **one hundred times**, and has heard other persons also call him so more than twice that number of times ; has heard him called **Waterworth** ; he would

answer indifferently to either ; he was sometimes called "**Long Bob**," and he would answer to that name.

Mr. ROWE again contended at great length, that, at the plurality of times, the deceased was called **Watersworth**, and not **Waterworth** ; and that, upon the authority of several decided cases, which he quoted, the variance between the **name laid in the information**, and the evidence, was fatal, and the prisoners were entitled to their **acquittal**.

The learned **Judge** said, as there was conflicting testimony, he would leave it to the Jury, as a preliminary question, to say, upon the evidence, *what the name of the deceased really was*.

His **Honor** then read over those parts of the evidence of the several witnesses who spoke of the name by which the deceased was known, leaving it to the **Jury** to determine **what his name really was** ; observing, if they should find it to be **Watersworth**, and not **Waterworth**, the variance, upon the authority of the cases cited from the bar, would be fatal and he should order the information to be **quashed**, leaving it open to the **Attorney-General** to adopt another course of proceedings.

The **Jury** retired for some time, and on their return into Court, stated that they **could not find, from the evidence they had heard, what the name of the deceased was**.

The **Court** enquired of the **Attorney General** what course he would pursue, after the intimation from the **Jury**, and the learned gentlemen said he would consent to their **being discharged without giving a verdict**.

The **Jury** were accordingly **discharged**, and the prisoners were **remanded**.

FRIDAY 9th.

(Before the CHIEF JUSTICE)

Thomas Lucas and John England were again put to the bar this morning, and about to be arranged before a new Jury, upon the same information, upon which they were tried on **Wednesday**.

Dr. WARDELL, Mr. TERRY, and Mr. ROWE, contended at great length against the liability of the prisoners to be again indicted on the same information.

The learned **Judge** reserved his decision to **Monday next**, after which we shall fully report the arguments of Counsel and the judgment.

<https://trove.nla.gov.au/newspaper/article/32076024?searchTerm=%22Robert%20Waterworth%22&searchLimits=sortBy=dateAsc>

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Sydney Gazette and New South Wales Advertiser (NSW : 1803 – 1842),

Saturday 17 September 1831, page 4

*[code]It would appear that the Crown could not prove the correct spelling of the **surname** of this **Constable** and because of that lack of **proof** and the ‘spelling’ in the indictment for the murder, and for the indictment for Accessory After the Fact, of the **Constable**, the **Crown** could not “**prove**” those indictments against the offenders.*

You can not be convicted of Murdering a person who does not exist on record (unless you plea guilty). You can not be convicted of Murdering Joe Blow if, in fact, the victims name is Fred Flintstone. In this case, the Indictment would have (possibly) had the surname as WATERWORTH when is surname was (possibly) WATERSWORTH. Thus was the argument in this case and so the offenders were not convicted of these offences –

however, they were then charged with the original Highway Robbery on the person of Charles Martin, and stealing from his person, some money, a knife, a hat, his property, and five bags of sugar, the goods of Thomas Fibbett, at Parramatta, on the 29th June last.

Thomas Lucas, John Moylan and Henry Knowles were either found guilty or plead guilty. In any case, all **THREE** were sentenced to **Death**. **LUCAS** was hanged on 23 September 1831.

<https://trove.nla.gov.au/newspaper/article/2202629/499331>

Sydney Gazette and New South Wales Advertiser (NSW : 1803 – 1842),

Thursday 1 December 1831, page 1

GOVERNMENT NOTICE

Colonial Secretary's Office Sydney, 28th November, 1831.

HIS Excellency the Acting Governor has been pleased to approve of the following alterations in the **Police of the Colony**; viz.-

Under the Government Order No. 12, of the 23rd May, 1831.

Parramatta – Matthew Hall, per Prince Regent, to be **Ordinary Constable**, in the room of **Robert Waterworth, deceased**.

By His Excellency's Command,

ALEXANDER McLEAY.

<https://trove.nla.gov.au/newspaper/article/2203798?searchTerm=%22Robert+Waterworth%22#>

Sydney Gazette and New South Wales Advertiser (NSW : 1803 – 1842), **Tuesday 31 May 1831**, page 4

IMPOUNDED, at Baulkham Hills,

on the 25th Instant,

One Bullock, branded on the near hip, with a bell ; white face; a little down horned; while back and belly; red sides; the near hind leg white ; off hind leg white, with a red spot ; the fore legs red, with a white ring round each fore leg.

If the above is not claimed within 21 days from, the above date, it will be sold, at the public Market-place, Parramatta, to defray expenses.

ROBERT WATERWORTH,

<https://trove.nla.gov.au/newspaper/article/2200836?searchTerm=%22Robert+Waterworth%22#> and

<https://trove.nla.gov.au/newspaper/article/32075550?searchTerm=%22Robert%20Waterworth%22&searchLimits=sortby=dateAsc>

Sydney Gazette and New South Wales Advertiser (NSW : 1803 – 1842),

Saturday 27 March 1830, page 1

**Government Notice,
Colonial Secretary's Office,
SYDNEY, March 26th, 1830.**

HIS Excellency the Governor has been pleased to approve of the following Alterations in the Police of the Colony, namely

Parramatta – Robert Waterworth, holding a Ticket of Leave, to be **Ordinary Constable**, in the **District of the Field of Mars**, from the **20th Instant**, in the room of Joseph Eyles, resigned, and

Joseph Thompson, Free by servitude, to be Scourger, from the 23d Instant, in the Room of James Walton, dismissed for highly improper Conduct.

Penrith.- John Franks, holding a Ticket of Leave, to be Ordinary Constable, from the 10th Ultimo, in the Room of George Hughes, dismissed for improper Conduct.

Sutton Forest-Christopher Rhall, dismissed on the 19th Instant, for repeated Neglect of Duty, and other misconduct.

By His Excellency's Command,

ALEXANDER McLEAY.

<https://trove.nla.gov.au/newspaper/article/2194803?searchTerm=%22Robert+Waterworth%22#> and

<https://trove.nla.gov.au/newspaper/article/32073408?searchTerm=%22Robert%20Waterworth%22&searchLimits=sortby=dateAsc>
