

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ALLAN JOSEPH LEGERE

TRIAL held before Honourable Mr. Justice
David M. Dickson and a Petit Jury at Burton, New
Brunswick, commencing on the 26th day of August,
A. D. 1991, at 10:00 in the forenoon.

APPEARANCES:

Graham J. Sleeth, Esq.,)
Anthony Allman, Esq., and) for the Crown.
John J. Walsh, Esq.,)

Weldon J. Furlotte, Esq., for the Accused.
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September 9, 10, and 11, 1991.

GERALD TURNBULL
COURT STENOGRAPHER

HER MAJESTY THE QUEEN and ALLAN LEGERE

PROCEEDINGS September 9 - 11, 1991 inc.

September 9, 1991.

MR. FURLOTTE: My Lord before we call in the jury I would to bring
5 to the Court's attention like Mr. Allman did last week
about inaccuracies in the newspaper and since you have
already instructed the jury that they could read the
newspapers and listen to media broadcasts, I am quite
concerned that by the time this trial ends, since it is
10 going to be quite a distance away, that the jury is not
going to be able to distinguish the evidence that they've
- between the evidence that they've heard in Court and
what they've read in the newspapers. In the Moncton
Times Transcript, Saturday's paper September 7, they were
15 referring to the evidence given by Rita McKendrick and at
page 24 it says that Rita McKendrick, she looked out her
bedroom window and saw a man standing outside Annie
Flam's place peering into a small lit window; and as you
recall, the evidence was that she saw somebody looking
20 into an apartment building a couple of buildings away
from the Flam residence. And then it says, a minute or
two after that he turned, walked along the left side of
the house to the left and disappeared from view. You
know I'm quite concerned that by the time this trial ends
25 the members of the jury are not going to be able to
distinguish between the evidence they hear in court and
the evidence that they read in the newspaper. For that
purpose I think I might like to re-instruct the jury to
do their best not to listen to the news broadcasts and
30 not to read newspapers.

THE COURT: Well I'm in sympathy with the point you made. I read
the same report that you read. It's written by a
gentleman who normally does a pretty good job I think in

2

reporting the thing but he does seem now and again to
make some awfully glaring errors, and that was one. I
saw the same thing. There's only - I'm not going to
mention it right now - I did dwell on that on Friday, I
5 think it was Friday morning, and I will be bringing this
up with the jury again from time to time. I don't think
that any members of the jury saw the newspaper that we
have in mind here that you are referring to; I'd be very
much surprised if any of them are exposed to that
10 newspaper at all, so I don't think I should focus
attention on that at this time. I will be mentioning
this and perhaps I will be making some reference to this
particular item but I don't want to compound the
difficulty by pointing out something to them that - you
15 know, you say that I have told them they can read the
newspapers; I really haven't told them that. I say I
recognize the fact that they will be reading the
newspapers and that's a fact of life today. As I said
the other day, it used to be the practice in criminal
20 trials of all sorts that a judge instructed a jury they
weren't to read any newspapers and as a matter of fact
when the juries used to be locked up - this is sort of
before the mid 1960's - in murder trials or in certain
types of offences, more serious offences, the jury was
25 invariably locked up and somebody went through all the
newspapers they were provided with and cut out everything
pertaining to the trial. But you know in this day and
age I think it is different. All I can do is keep
reminding the jury about that and I'll probably do it at
30 the rate of once a week for the rest of the trial. I
recognize what you said.

You are ready to go on?

MR. SLEETH: Yes My Lord.

3

THE COURT: Please, if you have the first witness Mr. Sleeth, don't say good morning to the jury and expect them - we're not in church - you're not a preacher. Okay ---

5

JURY POLLED - ALL PRESENT.

THE COURT: Does the Crown have another witness?

MR. ALLMAN: Yes My Lord. Just before we call that witness, I believe we omitted to do this - it is appropriate to enter at this time the following items - C for identification; D for identification; A for identification. I think we've completed the shade of continuity on all those items.

10

15

THE COURT: C - at one point I think it was rather agreed that it had been established. As a matter of fact I think the defence were---

MR. ALLMAN: I think it is agreed for all of them, subject to any objection. My learned friends have the continuity sheets on them but we just forgot to move them from identification to---

20

THE COURT: But have they - I can't just recall off hand - do you suggest that the continuity has been established? I know it has for the tin box and I didn't check earlier.

25

MR. ALLMAN: I'm going to check with Mr. Furlotte which ones - if there is any problem with any of them. I guess the only one that there is no dispute about My Lord is A for identification.

THE COURT: And that's the tin box, and A becomes P-14. And you are holding up - I'm not saying the others - you may have established the others, but perhaps you can work it out.

30

MR. ALLMAN: Mr. Furlotte is aware of the situation and we will come to it at the appropriate time.

THE COURT: Okay.

MR. ALLMAN: Michael George Sproule

4

Mr. Sproule - direct

MICHAEL GEORGE SPROULE having been called as a witness testified as follows:

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DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

A. Michael Sproule.

Q. Where do you live Mr. Sproule?

A. Chatham, New Brunswick

10

Q. What road?

A. 33 Kelly Road.

Q. Did you live there in May 1989?

A. Yes.

15

Q. When you were living there in May 1989 were you acquainted with some neighbours, Norman and Cathy Mecure?

A. Yes.

Q. Whereabouts did they live in relation to your place?

A. On the Kelly Road on the opposite side towards the water.

20

Q. If you could just take a yellow pen and turn around and look at the map behind you - have you had a chance to look at several aerial photographs of that one before?

A. Yes.

Q. Take this yellow pen and put it where your house is. Could you also put a '2' by it?

25

A. Okay.

Q. I was asking you about Cathy Mecure's. Where would her house be in relation to the other yellow pin, the one that is just above yours?

A. Do you want me to point it out?

30

Q. Yes. You are pointing to that as being Cathy Mecure's residence?

A. Yes.

Q. I want you to take your mind back to the---

5

THE COURT: Which, for the record, is the pin put in by Mrs. Mecure.

MR. ALLMAN: By Cathy Mecure and has, No.1 written along side it.

5 Q. I want you to take your mind back to May 1989 and tell us what if anything happened that month of any connection to this matter.

A. On a late Sunday afternoon returning from the ball park in May of 1989 I went to my residence and it was beginning to rain---

10 Q. Stop there. About what time of day would this be?

A. About four o'clock maybe.

Q. And you say a late May afternoon. Do you remember the actual date by any chance?

A. No.

15 Q. Do you remember the day of the week?

A. Yes.

Q. What was it?

A. Sunday.

20 Q. Are there any events that you read about that you can fix as coming before or after the incident you are going to be telling us about now?

A. It was after Mr. Legere had escaped and it was before Mrs. Flam's death.

25 Q. Those two things, the escape and the death of Mrs. Flam I take it you read about in the media?

A. Yes.

Q. The newspaper I should say. Okay. So you had come back home on a Sunday in May and it was beginning to rain, and what did you do?

30 A. I went out onto my back patio to cover my barbecue.

Q. When you go to your back patio, would the back patio be facing the street or facing the ---

A. It's facing the wooded area.

6

Q. If you could just stand up and show the jury what do you see when look out the back patio of your house?

A. You could see a field area and---

Q. That's a sort of white or grey colour on the map?

5 A. Yes.

THE COURT: The map, or the photo - I think it has been established runs north-south. So you could refer to west or south from your house, or east, whatever the case is.

MR. ALLMAN:

10 Q. If you look out of your window you would be looking practically due according to that map?

A. Yes.

Q. You are pointing to the light grey area which you said is a field?

15 A. Right.

Q. And what's behind the light grey area?

A. A wooded area.

Q. That's the dark area shade on the picture?

A. Yes.

20 Q. And would that be the direction in which you were looking, that is to say the wooded area and behind it - the field and behind it, the wooded area?

A. Yes, towards my left.

Q. What did you see?

25 A. At the time I just heard a noise so I assumed it was a deer because there are several deer around the area. So I stepped back behind my chimney and a man appeared in a small opening along the tree line.

Q. The tree line - what's the tree line.

30 A. Trees along the wooded area.

Q. The line between the trees and the field. How long would this man be in your observation?

A. At the most two seconds.

Q. And how far away would he be?

7

Mr. Sproule - direct

A. 300 feet - two to 300 feet.

Q. Did you have sufficient time or opportunity to see who it was?

A. No sir.

5 Q. What happened to the man after those couple of seconds when
you seen him.

A. He disappeared along the edge of the wooded area. You could
still hear the noise of a person walking.

10 Q. Judging by the noise you could hear, where was he now after he
disappeared from your sight?

A. Starting into the woods.

Q. Did you see him again at all?

A. No.

15 Q. What's the next thing that happens of any excitement or
interest?

A. I returned to my house and came back out on the patio a few
minutes later and Norman Mecure came in my back yard.

Q. Norman Mecure is whose husband?

A. Cathy's.

20 Q. Cathy Mecure was a previous witness here?

A. Yes.

Q. And what happened between you and Norman?

A. He asked me---

THE COURT: Well now----

25 MR. ALLMAN: There is a - I'm going to ask this witness a couple of
questions, not for the truth of what is said but simply to
establish the date and the relationship between what Cathy
Mecure said and what happened now. I'm not going to ask
him to get into the details of the conversation.

30 THE COURT: All right.

MR. ALLMAN:

Q. How did Mr. Mecure appear?

A. Quite excited.

Q. And did you and he then have a conversation?

8

Mr. Sproule - direct

A. Yes.

Q. I don't want to know the details of the conversation but what was it that was exciting Mr. Mecure?

5 A. He said he had----

MR. FURLOTTE: Objection.

MR. ALLMAN: I repeat My Lord, I'm not putting this in for the truth of what Mr. Mecure said---

THE COURT: Well that ---

10 MR. FURLOTTE: Mr. Mecure had been an original witness on the witness list and now the Crown is not calling him, so I would suggest that if they want to get something in that Mr. Mecure has to say let them call him as a witness so I can cross examine him.

15 THE CROWN: Well go ahead Mr. Allman. I'll stop you if I feel that you're----

MR. ALLMAN:

Q. You told us Mr. Mecure was excited, is that correct?

A. Yes.

20 Q. Who did - did you have any idea at all as to who it was whom you had seen?

A. I assumed it was a neighbour of mine.

Q. You say you assumed that. What do you mean by that?

A. I just seen a man with old clothes on so I assumed it was a neighbour who often cuts through a path along the tree line.

25 Q. After your conversation with Mr. Mecure what was - did you still assume that or did you change your mind?

A. No, I still assumed that.

Q. What about Mr. Mecure, was he in agreement with you or not?

30 A. No sir he wasn't.

MR. ALLMAN: Thank you.

THE COURT: Cross examination Mr. Furlotte?

9

CROSS EXAMINATION BY MR. FURLOTTE

Q. Mr. Sproule you said you assumed it was a neighbour of yours?

A. Yes.

5 Q. And do you know which neighbour you assumed it was?

A. Yes sir.

Q. His name?

A. Billy Cabel.

Q. You said he had old clothes on.

10 A. Yes.

Q. Could you describe the clothes?

A. They were just old clothes.

Q. Just old clothes.

A. I only seen the gentleman for a brief time.

15 Q. Could you tell how big the man was?

A. No sir.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination?

MR. ALLMAN: No My Lord, may this witness be excused

20 THE COURT: Thank you very much Mr. Sproule, that's all for you.

MR. ALLMAN: My next witness is John William Smith

JOHN WILLIAM SMITH having been called as a witness
testified as follows.

25

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

A. John William Smith.

30 Q. Where do you live Mr. Smith?

A. 98 Church Street, Chatham.

Q. How long have you lived there?

A. 25 years.

10

Mr. Smith - direct

Q. Do you know or have you in the past known Allen Joseph Legere, the accused in this case?

A. Yes I have.

5 Q. Where is Mr. Legere now - at this moment?

A. Sitting right over there.

Q. How and when did you know Mr. Legere?

A. I met him about 20 years ago I guess. I've known him - I met him - the first time I ever met him was at a park called The
10 Enclosure.

Q. Where's that?

A. It's a provincial park in Newcastle and Mr. Legere was looking for some thread and a needle to sew up something - a bathing suit or whatever. My father run a canteen at the Enclosure
15 and I got him the thread and a needle and ever since then I guess I've known him.

Q. How have you known him?

A. Oh to see him around and talk to him.

Q. Was there any - so you've known him off and on for 20 years?

20 A. Uh huh.

Q. Do you also know the Flam family?

A. Very well, yes.

Q. How did you get to know the - specifically Nina and Annie Flam?

25 A. I took Nina's daughter out for approximately seven years.

Q. What time period would it have been when you and Nancy were going out together?

A. Between 1976 and 84 - 85.

Q. During that time frame and when you were going out with Nancy
30 what would your acquaintance have been with Mr. Legere?

A. We've seen him around town. He worked out of a club, a night cub called the Zodiac that Nancy and I both frequent.

Q. So would you and Nancy have had occasion to meet him at that Zodiac night club?

11

Mr. Smith - direct

A. Yes.

Q. To your knowledge would Mr. Legere be aware - have been aware during that time of your relationship with Nancy?

5 A. Yes.

Q. What about Annie and Nina Flam, do you know whether Mr. Legere would have any knowledge of or acquaintance with them?

A. I guess I wouldn't say yes or no.

Q. Could you just explain what you mean?

10 A. Well I know he knew Nancy and I and whether he knew Annie or Nina, I guess I couldn't---

Q. Do you know where Mr. Legere was living at this time, from 76 to 82 - 84, whatever it was?

A. Yes, he was living on Upper Water Street.

15 Q. Where is Upper Water Street in relation to Nina and Annie Flam's store and residence?

A. Probably about a mile up river.

Q. Could you tell us how well known or ill known locally Nina and Annie Flam's store was?

20 A. Everybody knew Annie Flam's store.

Q. Do you - I gather from what you said a moment ago that you and Nancy stopped going out together in 82 - 83 - 84 - somewhere around that time frame---

THE COURT: Wait now, I think it was 84 - 85.

25 MR. ALLMAN: I apologize.

Q. You stopped going out together around 84 - 85?

A. Yes.

Q. What happened between you after that, I mean what type of relationship---

30 A. I moved to Moncton to go to school and our relationship was good, good friends.

Q. So if I understand, you'd not be going out together but you'd still be friends?

12

Mr. Smith - direct

A. Yeah, we still seen each other and what not. She wanted to live in Halifax and it was too big a city for me, so---

5 Q. In fact did you see Nancy at all around the time that Annie and Nina died?

A. The night before, Saturday, Nancy and I both went out to supper to another night club in Chatham.

Q. How old is Nancy now?

A. Nancy would be 33.

10 Q. This may sound - may be an ungallant question I'm not sure. Does she look 33?

A. No.

Q. How old does she look?

A. May 25, 26.

15 Q. Has she always looked younger than her age or is that something recent?

A. No, she always looked younger than her age.

20 Q. You mentioned that - your address, that you'd lived there for a good many years - I'm going to move this aerial photograph down. Could you take that yellow pin and put it where your residence is and has been during those years, and could you put a '3' beside that? You remember the date of the death of the two Flam sisters?

A. Yeah.

25 Q. Did anything happen to you or to your property in the time preceding the date the Flam sisters died?

A. The previous week I had my camper trailer broken into.

Q. Your camper trailer?

A. Yes.

30 Q. What's that?

A. Just a trailer I use for camping I guess.

Q. What if anything was taken from inside the camper trailer?

A. A sleeping bag and a Puma hunting knife.

13

Mr. Smith - direct

Q. Do you know - and if you don't just say so - whether Mr. Legere would know where you were living at this time?

A. Yes.

5 Q. How would he know that?

A. He knew me and previous to that he had bought a car from my older brother some years before.

Q. How does that put him aware of your house?

10 A. Well he was there to pick up the car and I knew him at that time.

Q. So one last question. You told us that you and Nancy had stopped going out together in 84 - 85 and that Nancy had moved to Halifax?

A. No, she was already living in Halifax.

15 Q. When did she move to Halifax?

A. She moved to Halifax in 80 or 81.

Q. So do I gather than that despite her move you kept going out together?

A. Yeah, I lived in Halifax for a year and a half.

20 Q. So what ends the relationship then?

A. I got accepted in the Trade School in Moncton and I guess she just liked the big city and I didn't, so it kind of----

MR. ALLMAN: Thank you very much.

THE COURT: Cross examination?

25

CROSS EXAMINATION BY MR. FURLOTTE

Q. Mr. Smith, you say you went out with Nina Flam's daughter Nancy since 1976?

30 A. Yes sir.

Q. And you have known Mr. Legere now for about 20 years which would have been well before 1976?

A. Yes sir.

14

Mr. Smith - cross

Q. And on occasion when Mr. Legere was working at a club - the Zodiac Club - you and Nancy would visit the club?

A. Yes sir.

5 Q. And would you ever talk to Mr. Legere at the club?

A. Yes. A lot of times when we walked in the door he'd be there and he'd say hello to both of us.

Q. Say hello to both of you. So he knew Nancy also?

A. Yes sir.

10 Q. And you used to talk to him about Nancy?

A. Talk to him - yes, I guess so.

Q. I understand Nancy went to university?

A. She went to Tech School in Moncton.

Q. She went to a Tech School in Moncton?

15 A. Yes.

Q. And what years was that?

A. 77-78-79.

Q. 77 to 79?

A. Yeah.

20 Q. And you say that Nancy is 33 years old?

A. Yes sir.

Q. But she looks 25 or 26?

A. Yeah, she looks young.

Q. But Allen Legere would well know how old Nancy was wouldn't he?

25

A. She was asked for identification numerous times going into the club down there.

Q. Aside from the identification going into the club, Allen Legere knew that Nancy was going to further her education after high school when you were going out with her?

30

A. I couldn't answer that. I don't know if he would or not.

Q. Do you recall when you - did you ever drive Nancy to school in Moncton?

A. Many times.

15

Mr. Smith - cross

Q. Many times?

A. Yes.

Q. And during those years 77 to 79 do you recall telling Allen
5 Legere that one time Nancy had to drive the car to Moncton
because I suppose you were impaired to some degree?

A. Not that I can recall, no.

Q. Mr. Legere would have known you were - back in 77 to 79 he
knew that you were going out with Nancy at that time?

10 A. Yes sir.

Q. And he would have known Nancy's age back in 77 and 79?

A. I assume so. He knew she was legal age to get into the bar,
yes.

Q. Legal age to get into the bar. So in 1989 Allen Legere would
15 have well known that Nancy was in her 30's?

A. Should have I guess, yes.

Q. So it would only be somebody who wouldn't know Nancy who might
think she was 25 or 26. Would that be safe to say?

A. I don't know.

20 Q. Or maybe who wouldn't know Nancy who would think she might be
23?

A. It's possible I guess.

Q. Now you said you hadn't been going out with Nancy since 84 -
85?

25 A. Right.

Q. But on the week before Nina Flam - or Annie Flam's death you
were out with Nancy one Saturday evening?

A. Yes sir.

Q. And you were out to dinner with her?

30 A. We were out and had supper and went out to a club for a drink.

Q. You went out for a drink to a club?

A. Yeah.

Q. So it's quite possible somebody who saw you and Nancy out that
evening thought maybe you were still going out together?

16

Mr. Smith - cross

A. It's possible.

Q. Or that you were going out with Nancy?

A. It's possible.

5 Q. Did you talk to anybody at the club?

A. I imagine I did.

Q. How long were you at the club?

A. Two or three hours.

Q. Two or three hours - did you see Allen Legere at the club?

10 A. No.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination?

REDIRECT EXAMINATION BY MR. ALLMAN

15

Q. Do you know how many sisters Nancy has?

A. She has four.

Q. Do you know what their ages are - approximately?

A. Approximately.

20 Q. Could you give me the ages of the other sisters?

A. Natalie would be 36 - 37; Trudy would be 35 - 36; Susan would be 34 - 35 and Agnes I believe is around 25.

Q. So they range from 25 to 37?

A. Roughly, yes.

25 MR. ALLMAN: I have no further questions.

THE COURT: Thank you very much Mr. Smith. You are excused.

MR. ALLMAN: Wendy Jenkins.

WENDY JENKINS having been called as a witness testified
as follows:

30

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

35 A. Wendy Jenkins.

16

Mr. Smith - cross

A. It's possible.

Q. Or that you were going out with Nancy?

A. It's possible.

5 Q. Did you talk to anybody at the club?

A. I imagine I did.

Q. How long were you at the club?

A. Two or three hours.

Q. Two or three hours - did you see Allen Legere at the club?

10 A. No.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination?

REDIRECT EXAMINATION BY MR. ALLMAN

15

Q. Do you know how many sisters Nancy has?

A. She has four.

Q. Do you know what their ages are - approximately?

A. Approximately.

20 Q. Could you give me the ages of the other sisters?

A. Natalie would be 36 - 37; Trudy would be 35 - 36; Susan would be 34 - 35 and Agnes I believe is around 25.

Q. So they range from 25 to 37?

A. Roughly, yes.

25 MR. ALLMAN: I have no further questions.

THE COURT: Thank you very much Mr. Smith. You are excused.

MR. ALLMAN: Wendy Jenkins.

WENDY JENKINS having been called as a witness testified
as follows:

30

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

35 A. Wendy Jenkins.

17

Wendy Jenkins - direct

Q. Where do you live?

A. Chatham.

5 Q. On May - 28th, 29th of May 1989 were you still living in Chatham then?

A. Yes.

Q. At what address?

A. 248 Water Street.

10 Q. Where is that in relation to the store and residence of Nina and Annie Flam?

A. It's two doors down.

Q. I show you a photograph, F-1, which is P-4-1 and you can see on that photograph what's been identified as Annie Flam's residence with the burnt room - where would your house be?

15 A. Right here.

Q. Okay, could you just point to the Judge and then to the jury?

THE COURT: Could you describe it in words Mr. Allman?

MR. ALLMAN: If you go from the Flam residence to its immediate right there's a longish building with a green roof.

20 Q. Do you see that?

A. Yes.

Q. And next to that there's an L-shaped white building with a dark roof. That's the one you are referring to?

THE COURT: I'm sorry, I was looking at the wrong photograph here.

25 Which one did you---

MR. ALLMAN: I had F-1; P-4-1.

THE COURT: Yes, now I have the right one.

MR. ALLMAN: And she was referring to the white house.

THE COURT: Next to the green roof.

30 MR. ALLMAN: Next to the green one.

THE COURT: Right.

MR. ALLMAN:

Q. How long had you been living there?

A. Five or six years.

18

Q. Did you ever have occasion to do any shopping at Annie Flam's store?

A. Two or three times a day I was in there.

Q. Did you have any particular arrangement with Annie Flam regarding payment?

A. I had an account.

Q. You had a?

A. An account.

Q. Do you remember going in to that store on Sunday the 28th?

10 A. Yes.

Q. About what time of day would it have been when you went in there?

A. It was around ten thirty in the evening.

Q. What time did Annie Flam usually start to close up?

15 A. Eleven.

Q. When you went in that evening at ten thirty what were you going in for?

A. I went to buy a pop.

Q. Tell us what happened when you went in?

20 A. I went in the door and I went to the pop cooler and got a pop out and I went over and put it on the counter.

Q. Where was Annie Flam while you were selecting your bottle of pop?

25 A. She was sitting on a stool behind her cake counter watching her small portable TV.

Q. What happened then?

A. She didn't know I was there, so I called her name.

Q. How come she didn't know you were there?

A. Well she didn't hear me.

30 Q. Was that an uncommon thing?

A. No.

Q. What was the problem?

A. The TV was up quite loud.

A. Would that be a normal or an abnormal thing?

35 A. That was normal usually.

19

Wendy Jenkins - direct

Q. What did you used to have to do when you went in there and Annie didn't notice you?

A. Well I'd just call her name and she'll come over.

5 Q. Is that what happened on this particular evening?

A. Yes.

Q. What happened next?

A. Well she turned the TV down and came over to wait on me.

Q. And you bought the pop I take it?

10 A. Uh huh.

Q. Was there anything of any significance or importance that you know of that took place in the course of buying that pop?

A. No.

Q. So what did you do after that?

15 A. I went home.

Q. Did you ever see Annie Flam again?

A. No.

Q. Given the circumstances that you encountered, that is to say when you went in there Annie Flam obviously didn't notice you being there----

20

A. No.

Q. Could you tell us what you could have done had you been minded to do so?

A. Well I could have kept going right in through to Nina's apartment.

25

Q. From your observation of Annie Flam on that occasion would she have been aware, had you chosen to do that?

A. No.

Q. You said that you left Annie Flam's after you bought the pop so I take it that would be just a couple of minutes after ten thirty?

30

A. Uh huh.

Q. What did you do after that?

A. I went home and I watched TV til about one and I didn't hear anything.

35

20

Wendy Jenkins - direct

Q. You didn't notice anything between ten thirty and one?

A. No.

Q. What's the next thing you noticed?

5 A. How I woke up.

Q. And what was happening when you woke up?

A. I went to sleep at one thirty and I got up in the morning -
uh, around shortly after four I think it was and they were
knocking on my door - the police I think - to get me out
10 because there was a fire next door.

MR. ALLMAN: Thank you.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

15

Q. Now Miss Jenkins, you stated that it is not uncommon for you
to go in and Annie Flam would have been preoccupied with the
television?

A. Yes.

20 Q. And she wouldn't have been able to hear you?

A. Yes.

Q. And you have also stated that under those conditions you could
have kept right on going into her apartment, is that what I
understand?

25 A. Through to Nina's.

Q. Pardon?

A. Through to Nina's apartment.

Q. Into Nina's apartment?

A. Yes.

30 Q. Was that asked to you by the police or did that come into your
head all by yourself?

A. That came into my head.

Q. The police didn't suggest that---

A. No.

35 Q. ---something like that could have happened?

21

Wendy Jenkins - cross
Gerald Marsh - direct

Mr. Furlotte: I have no further questions.

MR. ALLMAN: No re-examination. May this witness be excused?

5 THE COURT: Yes.

MR. ALLMAN: My next witness is Gerald Marsh.

GERALD MARSH having been called as a witness testified as follows:

10

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

A. Gerald Marsh.

15 Q. Where do you live Mr. Marsh?

A. At 247 Water Street.

Q. That's in Chatham?

A. Yes.

Q. New Brunswick. And did you live there on the evening of the
20 29th - 28th - morning of the 29th of May 1989?

A. Yes.

Q. I am going to show you P-4-1 - that's F-1 and ask you if you
could indicate on that which would be your residence. The
Flam residence has been pointed out to be the house with the
25 somewhat burnt roof.

A. This is my residence here.

Q. Could you first of all point to the Judge?

A. Right here.

Q. And then show it to the jury?

30 A. Okay.

Q. And then we will describe it for the record. It's the green -
the siding is green, the roof is black or dark. There's like
a fence to the right hand side of it and a grey brown car in
front, and it's the one, two, three house along from the left
35 on the side opposite Annie Flam's?

A. Yes.

22

Mr. Marsh - direct

- Q. How long had you lived there?
- A. 18 years.
- Q. During that period of time how long had Annie Flam been there?
- 5 A. Oh I've known her to be there more than 30 years since I've known here.
- Q. Would the Flam - how well known locally would the Flam store be?
- A. It was well known in Chatham.
- 10 Q. Do you remember how long Nina Flam had lived there?
- A. I'm not real sure but she's been there since I've known.
- Q. What time did Annie Flam usually close up her store?
- A. Usually at eleven. Five to eleven or five after, but pretty well around eleven.
- 15 Q. That would obviously be p.m.?
- A. Yes.
- Q. On the evening of the 28th did you have occasion to make any observations about Annie and the store?
- A. I did. She has asked me a couple of times to keep an eye on
- 20 the place because she'd been broken into - or not broken into, or attempted - robbed a couple of times so she asked me if I'd keep an eye on the place for her, by living directly across the street and this night, this particular night, I waited til she closed and shortly after I went to bed.
- 25 Q. What did she do to close up - what steps did she take?
- A. Well she always turned the outside sign off first and then---
- Q. Did you see that happen?
- A. Yes. And then she'd lock the door and from there she'd turn all the lights off except the night light which was directly
- 30 to the door of the entrance going into the store back of the - at the back of the store.
- Q. On this particular occasion, the 28th, did she follow that routine?
- A. Yes.

23

Mr. Marsh - direct

- Q. What about Nina, did you make any observations about the light and the situation on Nina's side?
- A. Yes I did. I looked up and Nina had her bedroom window open.
- 5 Nina's lights were on and the drapes were closed.
- Q. Had you seen Annie earlier on during the day?
- A. I had seen her the day before the fire, yes.
- Q. What about Nina, had you seen her?
- A. Yes, and I had seen Nina and her daughter the day before the
- 10 fire.
- Q. After - and what time was it on this particular evening, the 28th when the routine of closing up took place, the usual time or a different time?
- A. On this particular night?
- 15 Q. Yes.
- A. It was the regular time, at 11 p.m. - right around eleven.
- Q. After you satisfied yourself that the routine - that the routine had been gone through did you make any further observations of the Flam residence or not?
- 20 A. No I did not. I went directly to bed.
- Q. And what's the next thing that you know about in relationship to the Flam house?
- A. Well at around 3.40 - 3.45 the phone rang and my wife got up to answer it and it was my neighbour across the street---
- 25 Q. This is 3.45 a.m. the next morning?
- A. Yes.
- Q. We don't want to know what the neighbour said, but what did you do after that?
- A. Well we were wakened by this phone call and we got up and
- 30 looked and all we seen was the smoke coming out through the roof - thinking it was just a fire until the fire trucks were there and people started gathering around on my front lawn and word started getting around that---

24

Q. Again, we can't get into words getting around. You woke up - you woke up by the phone call and you became aware there was a fire?

A. I became aware there was a fire, yes.

5 Q. And did you ever see Annie or Nina again?

A. No I didn't.

MR. ALLMAN: I have no other questions.

THE COURT: Cross examination Mr. Furlotte?

10

CROSS EXAMINATION BY MR. FURLOTTE

Q. I understand Mr. Marsh you stated that Annie Flam was robbed twice before, or attempted robbery?

A. Attempted robbery, yes.

Q. Attempted robbery?

15

A. Yes.

Q. And she asked you to keep an eye on the place?

A. She did so, yes.

Q. She was nervous about being robbed?

A. Yes.

20

Q. Mr. Marsh do you know a John Marsh?

A. Yes I do.

Q. Is he related to you?

A. Yes. He's my nephew.

Q. He's your nephew?

25

A. Uh huh.

Q. Could you give a general description of John Marsh?

A. He's a man about 40 - not exactly sure - 45 - 44 - along about there and slim build, small.

Q. How tall would he be?

30

A. Oh, trying to think - about five eight - five seven, five eight.

Q. When you say slim built and tall - not tall, slim built and small, say in comparison to this gentleman sitting in the back here with the jury----

25

THE COURT: Well no we wont have reference to jury members. Pick out somebody else.

MR. FURLOTTE: They all look too big My Lord.

Q. How much would he weigh?

5 A. I'd say 150 - 155.

Q. Does John have any kind of distinctive accent I suppose?

A. No I don't think so.

Q. Speaks like most of the people from Chatham?

A. Yes.

10 Q. Sound like a Chatham boy I presume?

A. Yes.

MR. FURLOTTE: I have no further questions.

THE COURT: Mr. Allman?

MR. ALLMAN: I have no re-examination.

15 THE COURT: Thank you very much Mr. Marsh. You are excused.

MR. ALLMAN: The next witness is K. LeGresley

KAY LeGRESLEY JOHNSTON having been called as a witness testified as follows:

20

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

A. Kay LeGresley Johnston.

25 Q. And in May 1989 where were you living?

A. 26 Logan Avenue, Chatham, New Brunswick.

Q. And where were you working?

A. Pizza Delight in Chatham on Water Street.

Q. I show you the photograph - the same one members of the jury -
30 P-4-1 - F-1. Can you locate the Pizza Delight store on that picture?

A. Uh huh.

Q. You are pointing to the one with the orange and red baloon on top?

35 A. Yes.

MR. ALLMAN: Can Your Lordship see it?

26

K. LeGresley-Johnston - direct

THE COURT: Yes.

MR. ALLMAN:

Q. What time did you arrive for work on the 28th?

5 A. Four o'clock - 4 p.m.

Q. Do you remember - I take it you would know Annie Flam's store and house?

A. Yes I do.

Q. That was on the same street?

10 A. Yes.

Q. On that day, the 28th, did you happen to make any observations about the Flam residence?

A. Yes.

Q. What was that?

15 A. It was on my way home from work when I was driving home. I seen the light on---

Q. Which would be - what time, about would you be driving home?

A. 11.30 in the evening.

Q. What did you notice about the Flam residence?

20 A. There was a light on upstairs.

Q. Which side?

A. Facing Water Street. It was the first window.

Q. I am going to show you P-6, - a large bundle of photos, members of the jury - and the first picture on it is a picture
25 of the front of Annie Flam's place?

A. Uh huh.

Q. Which window are you talking about?

A. This one here.

Q. You are talking about the top right-hand front window?

30 A. Yes.

MR. ALLMAN: The first picture My Lord - the very first picture.

Q. On that picture you are talking about the top right-hand window?

A. Yes.

27

K. LeGresley-Johnston - direct

Q. Apart from that light did you see any other lights in the entire building?

A. No.

5 Q. Earlier on in the evening had you noticed anything unusual while you were still working at Pizza Delight?

A. Yes.

Q. What was that?

A. I noticed a man running through the alley.

10 Q. About what time would that be?

A. About 11.15.

Q. Now the alley you are talking about - let's look again at P-4 - where would that alley be?

A. Right here.

15 Q. If you look at the Pizza Delight place, on the left-hand side wall as you look at it there's a - a piece of green and yellow. I take it that's an entrance?

A. No, those are garbage bins.

Q. Across from the green and yellow there is a house with red----

20 A. ---and black roof.

Q. Two cars in between?

A. Uh huh.

Q. The man that you mentioned seeing, where would he be in relation to those two cars that come in between Pizza Delight and the next house?

25

A. He'd be between the car and the house with the black roof - red roof, running along here.

MR. ALLMAN: Your Lordship she's pointing to the - close to the right hand side as you look at it, of the house with the dark roof and red---

30

Q. Along the side of that?

A. Uh huh.

Q. Did you make any particular observations or note about the man, what he was wearing on any part of him?

35

A. Yes.

28

K. LeGresley-Johnston - direct

A. He was wearing blue jeans and white sneakers.

Q. White sneakers. Apart from that can you give us any description of the man in terms of height, size or age, or anything?

5

A. No I can't.

Q. How come you happened to be out in the alleyway at 11.15, I think it was?

A. I was cleaning and was taking out our garbage for the night.

10 Q. Okay, you mentioned that that's the garbage place.

A. Garbage bags.

Q. Did you pay any particular attention to the man?

A. No, I shut the door really fast because we're not supposed to have it open when there's someone out there.

15 Q. How long would you have seen him for?

A. Just a flash.

Q. And what, from your perception was he doing?

A. Not running really fast but like a walk-fast pace type thing.

Q. Walking at a fast pace. Which way - towards or away from Water Street?

20

A. Away.

MR. ALLMAN: Thank you.

THE ACCUSED: (Inaudible) - never had a moustache.

THE COURT: Cross examination?

25

CROSS EXAMINATION BY MR. FURLOTTE

Q. Ms. LeGresley you say you saw a man running. Are you sure it was a man - could it have been a woman?

30

MR. ALLMAN: She didn't say running Your Lordship.

MR. FURLOTTE: I'm sorry. I thought "running from the alley" were the words she used.

Q. What did you see this person doing again?

35

A. Walking at a fast pace.

Q. Walking at a fast pace?

29

K. LeGresley-Johnson - cross

THE COURT: I think the witness did say running initially, and then modified it somewhat.

MR. FURLOTTE: After the Crown objected - no after---

5 THE COURT: No, I think when she---

MR. SLEETH: It doesn't matter whether the man was running or walking or crawling My Lord.

MR. FURLOTTE:

Q. Are you sure it was a man - could it have been a woman?

10 A. No, I'm sure it was a man.

Q. And you could notice that it was blue jeans?

A. Blue jeans, yes.

Q. And the lighting fairly well in that area?

A. Really well.

15 Q. And the person had white sneakers?

A. Yes.

Q. Is it quite common for men or boys in the Chatham area to wear blue jeans?

A. Yes.

20 Q. And it is quite common for them to wear white sneakers?

A. Yes.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination?

MR. ALLMAN: I have no re-examination My Lord. May this witness be
25 excused?

THE COURT: Yes. Thank you very much Mrs. Johnston.

MR. ALLMAN: My Lord the next group of witnesses, Mr. Walsh is going to deal with and there's one brief aspect of the line of inquiry that he wants to ask you. He feels he should check
30 with Your Lordship so we would ask the jury to leave.

THE COURT: Yes. Perhaps we should---

MR. WALSH: Five minutes is all it would take My Lord.

THE COURT: All right, we'll probably be bringing you back in and then have a mid-morning break a little later after that, so
35 don't get too much ensconsed in comfort out there.

JURY RETIRES

- MR. WALSH: My Lord if I may, I have two points to address. The first one deals with Mr. Legere's recent comment a few minutes ago when this witness was on the stand. This is the second or third time he has done this and he has done it during the voir dire to civilian witnesses. Whatever his intentions are, one of the effects of him commenting when the witness is on the stand is to intimidate them---
- 5
- THE ACCUSED: Aw be quiet for Jesus sake.
- MR. WALSH: You have warned this man a number of times that he is not to comment, and he keeps doing it.
- THE ACCUSED: Stop your crying.
- MR. WALSH: The second point I wish to address My Lord---
- 10
- THE ACCUSED: ---for God's sake.
- MR. WALSH: --is related to the testimony of Cst. Mole. I wish to pursue a line of questioning with Cst. Mole when he takes the stand in a series of one, two, three, four, five questions and what I would probably do before we get into that line of questions is to seek your guidance with respect to them. It is our belief that the questions are proper and are relevant but we wish to be assured that the Court is aware of them so we do not run into a problem with the jury. The question - the first question would be, how many homicide investigations has he been directly involved in; the second question would be, what if anything can he tell the jury generally about such investigations in relation to the manner in which suspects are identified---
- 15
- 20
- 25
- THE COURT: Well just what sort of an answer are you eliciting?
- MR. WALSH: I expect that the answer will be that you can become a suspect in a homicide investigation for - from anything from the fact that somebody would call up and say that they saw someone do it, or - you can become a suspect for almost any reason as long as there's a tip from an anonymous source that someone was seen in a particular area---
- 30
- 35

31

THE COURT: That would be fair enough.

MR. WALSH: The next question would be, what process is generally followed with respect to suspects in homicide investigations. The general answer would be that there is - where you have a number of suspects, and I expect his answer will be related to the fact that in a homicide investigation there are always normally a number of suspects, that they eliminate them. They go through a process of elimination. That's generally the testimony in that regard.

10 THE COURT: As long as he makes clear that they are eliminated for police purposes.

MR. WALSH: That's right.

THE COURT: They may eliminate the actual perpetrator.

MR. WALSH: That's a valid point My Lord. For police purposes they are eliminated.

15 THE COURT: But based on the evidence they have, they---

MR. WALSH: As a result of follow-up with that particular suspect, for police purposes they are eliminated. And the next question would be in - these were background questions leading up to this one - in relation to the Flam homicide, did you have occasion to investigate David Tanasichuk as a suspect. If so what did he do and as a result - what did he do to - generally he investigated him, and as a result what did he do, and I expect the answer will be that he eliminated him for police purposes. We can add the qualification 'for police purposes' as you pointed out. And the next question would be the identical question with respect to John Marsh and if so, what did you do, and the general answer will be that he eliminated him. The reason we want to follow up this line of questioning is directly related to Mr. Furlotte's questioning earlier, his line of questioning particularly with respect to Nina Flam he has raised - and prior to Nina Flam he has raised and put the questions to some of the witnesses, police and civilian, that there were a number of suspects - a large number of suspects with respect to the Flam homicide. That

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30

35

line of questioning is generally to - for the purpose of showing the jury that that is not unusual. The next line of questioning that Mr. Furlotte - was with respect to Nina Flam particularly identifying I believe it is David Tanasichuk and John Marsh, where who - those are two people that were specifically identified or named up until this point in time as suspects and I think it is important that the jury hear that these people were followed up by the police. There has to be a balance there and that's the reason for this whole series and line of questioning. So I seek your guidance on that. It is the Crown's position that that is a valid line of questioning inasmuch as those points have been made relevant by the defence. They've been put points in issue. Thank you My Lord.

15 THE COURT: Do you have any representations to make Mr. Furlotte?

MR. FURLOTTE: I've never heard of such a request before My Lord and it has taken me a little bit by surprise here. I think the Crown would be requesting the Court to open a door which might lead down a long hallway. If the Crown is entitled to ask these questions My Lord I think I may request that that witness be set aside for further cross examination and my ability to assess the situation.

THE COURT: Well I'll say this. Actually when some of these names, Ewaschatuk is it?

25 MR. WALSH: Tanasichuk My Lord.

THE COURT: Well whatever it is. I can't pronounce it - and the other man, Marsh - John Marsh - when those names were brought into it I was tempted to say to Mr. Furlotte, if you are going to implicate these people and point the finger of suspicion as them, are you prepared to call evidence in the course of your case to show that there was some involvement there, rather than just - it is highly dangerous just to raise suspicions to a jury which may not be substantiated in any way. I am prepared to allow the Crown to examine these things. If the police witness testifies, I think it is important that he make

33

clear that in removing them from the list of suspects it is only because it was the police view that the circumstances as they found it didn't justify further - didn't justify the suspicions and didn't justify further follow-up investigation.

5 You know sometimes the perpetrators of crime may be suspected and they may be discarded. Look at the case in England where DNA was first used, that's a prime example.

MR. WALSH: Yes My Lord.

THE COURT: Well now that settles that point.

10 MR. WALSH: Now there was one other question I was going to ask Cst. Mole and it relates to fixing a time for the jury as to when Mr. Legere was incarcerated prior to his escape. The jury knows from the first witness that he escaped from custody in May 89. And what we want to be able to do, the Crown
15 wishes to lead evidence that he had been in custody since June of 1986. It is directly related to the - what we are suggesting is inferences that the jury can draw from some of the statements made, particularly at the Nina Flam residence that the one inference that can be drawn is that the
20 individual was there, knew these people, knew details associated with it but was out of touch so to speak and as well is directly related to one of the comments that the perpetrator apparently made to Mrs. Flam about his inability to sustain an erection in terms of being away. What we would
25 want to be able to do My Lord is to be able to lead evidence that he had in fact been in custody since June of 1986. Obviously I tell you this because it is also related to the fact that he was in gaol but it is something that the Court I expect will be addressing the jury any way that that can't be
30 used for that particular purpose. We simply want to point out that we will be seeking your permission to ask that question inasmuch as they are already aware and it is all part of the background that is necessary that his escape - we not believe there would be any additional problem with respect to exactly
35 pointing out when he went into custody.

34

THE COURT: Well I see no objection.

MR. WALSH: Thank you My Lord.

THE COURT: Dealing with the first point you raised Mr. Walsh about
the exclamations in court I can only say this that if it
5 reaches the proportions where I feel it is interfering with
the trial and when it comes under Section 560 of the Criminal
Code then I will have to resort to the steps that I referred
to on three occasions now. But I don't - I haven't been
persuaded yet that---

10 MR. WALSH: No My Lord, I appreciate your----

THE COURT: ---that point has been reached. There's one thing I
want to point out to counsel and the accused will hear what I
say, and that is, one of my duties when I charge the jury at
the end of this trial will be to tell them that they have to
15 have regard for the evidence given during the course of the
trial; and another thing the presiding judge is obliged to
tell the jury, and I will be telling them, is that the jury
are entitled also to take into consideration what they have
observed about the accused in court, for instance his height,
20 his weight, his appearance, his attitude, what he has to say
and the intonation of his voice. Normally in a criminal trial
a jury hears very little from an accused person other than
when, if there is a trial, other than the not guilty plea and
that's the only time they hear the accused mentioned, but if
25 an accused speaks up out of turn in front of the jury he is
providing the jury with a sample of his voice, his intonation,
his accent, dialect or whatever have you. I'm not saying that
these points are significant, will here be significant to the
jury. I am merely pointing out that an accused person who
30 intervenes or speaks up in this way is providing an element to
the trial which the jury have to assess when they go out. If
a jury for instance feels that an accused isn't able to abide
by the rules of court practice and observe the discipline that
is necessary in following any court case through, they may say
35 "well that indicates a lack of discipline that could extend in

35

other directions". I'm not saying they will. This is one of the things that they are entitled to observe and again I point out this is one of the reasons why I have forbid the video people to take pictures of the accused. It is as much for the accused's own protection as it is for any other purpose, in fact more so to protect the validity of the trial. That's all I'm going to say about that. Now could we have the jury back please?

5

JURY RETURNS - POLLED, ALL PRESENT

10

Her Majesty The Queen and Allan Joseph Legere
Portion of the proceedings - September 9, 1991
5 Evidence of Joseph Ivory.

10 JOE IVORY having been called as a witness testified
as follows:

15 DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please?

A. Joe Ivory.

Q. Where do you live Mr. Ivory?

A. 132 Wellington St., Chatham.

20 Q. I know Mr. Ivory you are a very nervous person.

A. Yes.

THE COURT: Are you nervous?

A. Yes.

THE COURT: What are you nervous about?

25 A. I don't know. Don't like crowds I guess.

THE COURT: You don't like crowds - well you and I are sitting up
up here alone. Just ignore those people back there.

MR. WALSH:

Q. You live where Mr. Ivory?

30 A. 132 Welling Street, Chatham.

Q. And did you know the location of the premises of Annie and
Nina Flam?

A. Yes.

35 Q. I'm going to show you a photograph - No.1 ladies and
gentlemen, of the aerial photographs, Exhibit P-4 - would you
look at that one please and just point - try and relax
and just point to the home there, okay. Is this your----

A. It's where I live, yeah.

MR. WALSH: He has pointed to here My Lord.

40 THE COURT: All right. That's the white----

MR. WALSH:

Q. Now I note from where you've pointed Mr. Ivory that there
appears to be two structures there. There's one with a
black roof and one with a white roof?

J. Ivory - direct

A. Yes, that's our garage.

Q. The white roof is your garage?

A. Yeah.

5 Q. What kind of things do you keep in your garage?

A. Oh, tools, fuel. Just about everything you know - bikes
and---

Q. Do you put a car in there?

A. No not usually.

10 Q. And could you just point to - could you find the residence
of Annie and Nina Flam in that photograph?

A. It's right here, there.

THE COURT: Perhaps Mr. Walsh for the record - you just described
the house he indicated to be his own. He has pointed it out
15 but it is not in the record.

MR. WALSH: Okay My Lord, if you allow me maybe I could circle it
with a grease pencil if that would be of any---

THE COURT: Well it's the large - the barn with the large white
roof at the bottom of the photograph, P-4-1. That describes
20 it.

MR. WALSH:

Q. Could you tell the Court Mr. Foley what if any knowledge you
have of this matter; what if anything you can tell the jury in
regard to this matter? Mr. Ivory, excuse me.

25 A. Well on the 16th of May---

Q. Of what year?

A. 89. I was working late in their shop across the field, down
in the basement---

Q. Whose shop were you working in?

3

J. Ivory - direct

A. My uncle's.

Q. And what is your uncle's name?

A. Bill McKendrick.

5 Q. And is - I'll show you F-1 again. Is this particular place
that you were working, is that present?

A. Yes right here.

MR. WALSH: He is pointing to a building My Lord with a black roof.
It appears to have green sides. It is on the lower left hand
10 corner of this photograph.

Q. And you were there working?

A. Yes, down in the basement.

Q. What time of the day or night would this be?

A. This was - we stopped about eleven thirty at night.

15 Q. And what if anything happened?

A. Well I came up out of the basement and I started across the
field in between the two houses---

Q. Between whose two houses?

A. The green house and mine.

20 Q. Where were you going?

A. I was going home to bed.

Q. And what if anything happened or did you observe?

A. Well I was coming across the field and I had a trailer parked
in the middle between the two houses.

25 Q. Could you point please if you could to just the general area?

A. There.

Q. You are referring to an area - correct me if I'm wrong - you
pointed to this area here?

A. Right.

4

J. Ivory - direct

MR. WALSH: He is referring to an area My Lord between the two premises, the one he has identified as McKendrick's, the other as his own. There appears to be a dirt roadway that runs
5 between their houses. He is pointing to the centre.

Q. Is that correct?

A. Yes.

Q. Okay, could you tell the jury please what if anything happened?

10 A. Well I was standing beside the trailer and I looked over towards the back of Wallace's house here.

Q. We'll just go slow so they will know - you looked over to the back of what house?

A. Right there.

15 Q. You are referring to this house or this one?

A. That one.

MR. WALSH: Okay, at the very bottom of the photograph where he has identified his garage with the white roof and the red side there is right below that at the very bottom of the photograph
20 part of a roof showing - is that correct?

A. Yes.

Q. And you are referring to looking over in this direction?

A. Yeah, exactly.

THE COURT: Whose house was that - you said the name of the house?

25 A. It's Wallace's.

THE COURT: Wallace.

A. W-A-L-L.

THE COURT: Wall - okay.

MR. WALSH:

30 Q. You say you were looking in that direction. What if anything happened or what if anything did you observe? Well I saw a man coming around the shed and going across his lawn here.

5

J. Ivory - direct

Q. Where are you pointing to?

A. To there.

Q. Point to where he was when you saw him.

5 A. Right about there.

Q. You are referring just at the left - as you look at the photograph - right here?

A. A little bit more than that.

Q. Down this way?

10 A. Yeah, right about there.

MR. WALSH: As you look at the photograph where he has identified as his garage it would be at the left corner of his garage and towards the bottom of the photograph My Lord.

THE COURT: Where the clothes are hanging on the line.

15 MR. WALSH: Yes.

Q. Will you continue Mr. Ivory?

A. So what I did, I was - you know it is odd to see somebody out there at that hour of the night so I started to walk across to get a better look at who it was and I just tramped - we have
20 crushed stone in our driveway - and I just tramped on the crushed stone and he heard me and he beat her around the corner out of my sight.

Q. At the time that you tramped on the crushed stone, what was this person actually doing?

25 A. He was just walking - just walking across their lawn.

Q. And you say he beat her around where?

A. You can't see it on the photograph here.

Q. On F-1?

A. Yeah.

30 Q. Well perhaps I can get - I am going to just show you a photograph marked F-3. Now---

A. Okay. There's where he was and he----

6

J. Ivory - direct

Q. Okay, in F-3 we are just going to put your home. You pointed
- this is the garage back of your house?

A. Yes that's right.

5 MR. WALSH: This particular location here My Lord in the centre of
photograph. The building with the white roof.

THE COURT: I see.

MR. WALSH:

10 Q. Now where did this person run when you tramped on the crushed
stone?

A. Okay, he came right around down this side - down this alley
here where this green grass is.

Q. Did you see him later?

A. No, I just saw him go around the corner out of my sight.

15 Q. And how did he move?

A. It seemed like he was standing upright and then all of a
sudden he ducked - just kind of ducked down and he was gone.

Q. Did you notice anything about - was he walking away or running
away?

20 A. I think he started to run but I couldn't - I'm not sure.

MR. WALSH: For the record My Lord, he has indicated - where his
garage is, he has indicated that the person run around the
home -

Q. Is that correct?

25 A. That's right.

Q. Which you previously identified as Wall's?

A. That's right.

Q. What Wall's would that be - do you remember his first name?

A. Norm.

30 Q. Norman Wall's.

THE COURT: On the south side?

7

J. Ivory - direct

MR. WALSH: Yes, he would be running towards the left of the photograph and around the house.

THE COURT: On the south side.

5 MR. WALSH: Yes. We have been referring to F-3 which is Exhibit P-4-3.

Q. Did anything else happen that night?

A. No, that was it.

Q. Did you have occasion to have anything else happen after that?

10 A. Yeah, on the 27th---

Q. Of May?

A. Of May--

Q. The same year?

A. 89, yeah. I came home on a Saturday afternoon and I had a hockey bag hanging up in the shed with hockey equipment in it-

-

Q. Now that's that red garage you have referred to earlier?

A. Yeah. And my hockey bag was gone and my hockey stuff was all over the floor. The only thing that was left of the hockey bag was a - like it was a rope around the top of it and the rope was cut and laying on the floor.

20

Q. What kind of a bag was it, do you remember?

A. It was an Air Force duffel bag.

Q. Do you remember what colour it was?

25 A. It was blue.

Q. Do you remember what if any markings it had on it?

A. Yeah. It had D.W. Holmes on it.

Q. And this would have been - you have indicated the 27th of May - you had been away?

30 A. Yes I had been down at our cottage.

Q. And did you do anything with respect to the contents that were on the floor - did you touch them or anything?

8

J. Ivory - direct

A. We reported it to the R.C.M.P. first, or the town police.

Q. But did you gather them up that day?

5 A. Oh yes, yeah, but more or less just threw them in the chair, you know, that was in the garage, just to get them off the floor.

Q. When was the last time you had been in your garage before you noticed it on this Saturday?

A. The day before.

10 Q. Which would have been on what---

A. Friday.

Q. And did you stay in your home Friday night?

A. No, we were down at our cottage on Friday night.

Q. And who is we?

15 A. My wife and my mother and myself.

Q. And would there have been anybody staying in your premises?

A. Yes my aunt was there.

Q. What if anything else happened in relation - in that area following that?

20 A. Well the duffel bag like it was stolen, and then about - let me see, the 1st of June---

Q. Okay, after that Saturday did anything happen - do you remember Annie Flam's - the fire at Annie Flam's?

A. The fire was - the fire was on Sunday.

25 Q. And this would have been the day before, on Saturday, that you noticed the duffel bag missing?

A. Yes I think so, yeah.

Q. And what happened - you say---

A. The fire.

30 Q. When did you become aware of Annie Flam's fire?

A. Well I went back to the cottage.

Q. That same day, Saturday?

9

J. Ivory - direct

A. Yeah, Saturday. And then I came back up on Sunday - no, we stayed there on Sunday and Monday morning we came up. You know we heard about the fire.

5 Q. Did you notice - could you see the building at that time when you came up Monday morning?

A. You could smell smoke in the air but you couldn't see the building. Like you can't really - you can just see sort of the roof of it from our place.

10 Q. And that would have been on Monday morning that you came up from your cottage?

A. Yeah, that's right.

Q. And then what was the next thing, if anything---

A. Well the 1st of June I was down at Escuminac again.

15 Q. What day of the week would that have been?

A. It was a Thursday.

Q. So this would be the Thursday---

A. The 1st of June. Yeah that would be the following----

Q. You came up on a Monday?

20 A. Yeah.

Q. And this would have been the Thursday?

A. Right. I was working. I was selling some equipment to a fisherman down there and we went down to finish up the contract. So, about eleven thirty that night I drove in the yard and there was---

25

Q. Anybody with you?

A. My wife, yeah. We were driving our white Oldsmobile, and I drove in the yard and there was somebody down at the shed - the garage door like - the door slides like this - there was
30 somebody down trying to get in - well I don't know whether they were trying to get in or not but they were down on their knees, you know like they were working at the door.

10

J. Ivory - direct

Q. I'm just going to - so that everyone can see where
you are referring to, I am going to again refer you ~~members~~
of the jury to Exhibit P-4, f-1.

5 A. On the face of this red building there's a sliding door.

Q. You are referring to - if you are looking at this red
building you are referring to the left side of the building?

A. That's right.

Q. Facing towards where those cars are?

10 A. Yeah.

THE COURT: The west side?

A. The west side, exactly. So there was somebody crouched down
right there trying to get in to our garage.

MR. WALSH:

15 Q. Okay, you are referring to the west side of the garage in this
area here?

A. Yeah, exactly.

Q. Now that's the place where you put the individual. Can you
show the jury in relation to that photograph whereabouts your
20 car would have been when you first noticed this person?

A. Right about where that black one is.

Q. The black car that is shown in the driveway there?

A. Yeah.

Q. All right. What if anything did you do - what if anything did
25 you do and what if anything did the other person do at this
time?

A. Well the guy saw, like my lights you know shone on him and the
guy took off. There was gate where that fence is and he took
off through the gate, running, and I took off after him with
30 the car.

11

Q. So you are referring again to the - as you look at the garage in F-1, you are looking at the bottom left corner of the garage?

A. Exactly.

5 Q. Running in which direction - towards where?

A. Well he ran out here through that gate and I was right behind him with the car.

Q. Now that gate would be where the clothes are hanging on the line?

10 A. Yeah. So he ran down this driveway here - there.

Q. So you are referring to, in F-1 - you are referring to between the garage, the white roof with the red side, and that house that is shown at the very bottom of the photograph. Between there?

15 A. Yeah.

Q. Heading towards the right side of the photograph?

A. That's right.

THE COURT: Between the garage and the Wall house?

A. Right.

20 MR. WALSH:

Q. Did you notice - okay, continue please - what did you do?

A. Well I went right through the fence and I couldn't make a left-hand turn there so I had to go around the other house.

Q. That's Norman Wall's house?

25 A. Yeah.

Q. Well we'll go to another photograph. It will be easier to the jury. I'm going to refer the jury please if you would, F7 okay, - just so we can become oriented again can you find your house in F7?

30 THE COURT: P-6 - 7.

MR. WALSH: Yes My Lord.

A. You can't see it except for the tree - the back shed.

12

J. Ivory - direct

Q. Okay. You are referring to the centre-right of the photograph. You can see the white roof and the red shed and part of your home under the tree?

5 A. That's right, yeah.

Q. This is the point - your home?

A. Yeah.

Q. And I take it from your previous description that this particular building here, the one with the brown roof with the light coloured siding is Normal Wall's?

10

A. Yes that's right.

Q. Okay, now you say you went through the fence with the car?

A. Yeah.

Q. Can you tell the jury how fast you would have been going?

15 A. Probably about thirty or so - thirty-five.

Q. Kilometres or miles per hour?

A. Miles per hour.

Q. And where did you go with the car?

A. Well like I say, I couldn't make that right-hand turn, right here, so I went out around the house and down that strip of grass again.

20

Q. So you went out around Normal Wall's house?

A. That's right. Down the south side of his house.

Q. So this would be through here, around this house here?

5 A. Yes.

Q. Heading towards this street?

A. Yeah.

Q. Okay, continue please.

A. So when I came around the corner of Norman's house this person I was chasing was standing right here at the - this is what we call this green house here, it used to be McLaughlin's lived there - so I'll just call it the McLaughlin house, and this

30

13

J. Ivory - direct

guy was standing in the middle of the road. He didn't know which way to run.

5 Q. Where in relation to the McLaughlin house was he standing in the middle of the road?

A. Right in front of the driveway.

Q. Okay.

Q. It's a driveway about ten feet wide I guess.

Q. So this is the McLaughlin house you are referring to here?

10 A. Yeah.

Q. It's kind of a greyish colour siding with black roof across the road from Normal Wall's? Is that a fair description?

A. Yeah.

15 Q. And the driveway you are referring to is this area you pointed to that appears to have two cars in it and there's a white fence on one side and a house on the other?

A. Right.

MR. WALSH: This is the residence and this is the driveway.

THE COURT: That house there?

20 MR. WALSH: Yes My Lord. The McLaughlin house and the driveway.

Q. You say he was standing in the middle of that street - what was he doing Mr. Ivory?

A. He was just sort of dancing back and forth, like he didn't know which way to run.

5 Q. What were you doing with your car at the time?

A. I was driving towards him.

Q. And what happened?

30 A. Well the only place he could go to get away from me was into the McLaughlin driveway and there was a car parked in there and there was just about, you know, this much room down between the car and the fence.

14

J. Ivory - direct

Q. You are referring to about the width of a person with your hands?

A. Yeah. And that was the last I saw of him.

5 Q. And which direction was he heading when he went in the driveway?

A. Right straight down the driveway.

Q. Towards the left of the photograph?

A. Yes.

10 Q. Between the fence and the McLaughlin house?

A. Yeah. Between the car and the fence actually.

Q. Between the car and the fence?

A. Yes.

15 Q. And did you make any note about how quickly this person was moving?

A. He was running.

Q. Did you make any note about how fast he could run?

A. No.

Q. And you never saw him after that?

20 A. No.

Q. Mr. Ivory could you tell the jury please, during the period of time that - from the time you saw this person and started to chase him until the time he disappeared up that driveway, did you get any kind of - is there any description that you could give to the jury as to what you observed?

25 A. He was wearing kind of like a light grey jacket, tight jeans and white running shoes.

Q. Did you note what if anything he was carrying?

30 A. He was carrying a knapsack of some sort. I didn't get a real good look at that.

Q. Did you - do you have any - did you get a look at this person's face?

15

J. Ivory - direct

A. No.

Q. Did you make any note about any part of his body?

A. No, not really.

5 Q. Can you tell the Court whether he was wearing a hat or not?

A. No he wasn't wearing a hat.

Q. What if anything did you notice about his head or his hair?

A. Curly - it seemed like curly hair from what I can remember.

10 Q. And what if anything could you tell about the colour of the hair?

A. Black.

Q. Did you get a look at this person's face?

A. No.

Q. Did you make any note about how big a person this was?

15 A. No it's just that he was running low and fast.

Q. The last place you saw this particular person would have been where?

A. Well it was back behind - or you know back turned to me and he was running into that yard between the car and the fence.

20 Q. What if any comparison were you able to make between the person that you were chasing with the car and the person that you had seen on May 16th I believe you said - did you make any comparison? Did you notice anything about the person on May 16th - did you notice anything about the person on May 16th?

25 A. No.

Q. Did you notice - what if anything did you notice about - on May 16th what if anything did you notice about the person's head or hair?

30 A. Well I'd say it was - like from what I could see, the silhouette up against the, you know the street light, silhouetted against the building, and the light was kind of

16

J. Ivory - direct

shining on him, I'd say it was the same kind of curly head of hair.

Q. What if anything did you notice about the colour?

5 A. I couldn't tell really that - on the 16th.

Q. Who was with you that night, the night in the car?

A. Oh my wife was there.

Q. Your wife?

A. Yeah.

10 Q. The aerial map that is above your head, you've seen this before, a replica of this?

A. Yes.

Q. I'm going to ask you, if you would please, to pin the location of your home and the location of the home that you have
15 identified as McLaughlin's. Just take your time until you get yourself oriented with the map.

THE COURT: Why don't you indicate to him where his house is - well, this is the purpose of the exercise is it?

MR. WALSH: Yes. Just take your time. The red pin has been
20 previously identified as the location of Annie Flam's store. I would just like you to find your home.

A. It would be right there.

Q. Would you put a pin there please?

A. Right there, that's it.

25 Q. Now could you please, if you would, point to the home you have identified as McLaughlin's?

A. It's right there, right beside me.

Q. Across the street?

A. Yeah, across the street.

30 Q. Is that a fair representation of where your home is and where the McLaughlin home is?

A. Yes.

17

J. Ivory - direct

Q. Would you put the number beside your home----

THE COURT: You do that Mr. Walsh. Put 4 beside Mr. Ivory's home
and 5 beside Mr. McLaughlin's home.

5 MR. WALSH:

Q. Can you see that 4 and 5 there?

A. Yes.

MR. WALSH: Thank you. I have no further questions.

THE COURT: Mr. Furlotte?

10

CROSS EXAMINATION BY MR. FURLOTTE

Q. Mr. Ivory, on May 16th when you were walking back from the
workshop to your home and you stated you saw an individual,
15 could you tell at that time the size?

A. About five eight or somewhere around there.

Q. Five eight?

A. About the same height I am.

Q. The same height as you are?

20 A. Yeah.

Q. How about weight?

A. I have no idea.

Q. And on May 16th you think when he saw you he started - he
ducked down first and then he run off?

25 A. Heard me.

Q. And on May 27th you say you come home and you found your
duffel bag was gone that you kept your hockey gear in?

A. Yes.

Q. And you had seen it there the night before?

30 A. Yes.

Q. Or at least on Friday?

A. Well it was hanging up on the wall. It's pretty hard to miss.

18

J. Ivory - cross

Q. Was there anything else missing?

A. Yes there was meat missing out of our freezer.

Q. Meat in your freezer?

5 A. Yeah.

Q. And where was your freezer kept?

A. Like in behind - there's a wall there and a little - we've got a little slot there for the freezer in the garage.

Q. And when did you notice that meat missing in the freezer?

10 A. Well to tell you the truth I didn't miss it. My wife missed it.

Q. Okay, and your wife will be testifying?

A. Yeah.

15 Q. Now when you gave a - you recall giving a couple of statements to the police?

A. Yeah.

Q. And on the statement that you gave on June 1st, that would have been I suppose after the last time you had seen this individual?

20 A. Yeah.

Q. Chasing with the car?

A. Yeah.

Q. Do you recall any description you gave to the police in that statement?

25 A. I think I - well I said that he was wearing a light grey jacket and jeans and white running shoes.

Q. White running shoes - and did you mention about his hair---

A. I can't remember now if I did or not.

Q. Did you mention what you told the police about his build?

30 A. No I don't. (sic)

13

J. Ivory - cross

Q. Your statements don't check, so maybe I'll just remind you. Here you state his description was white running shoes, jeans,----

5 A. Yeah.

Q. ---satin grey type material style jacket, a knapsack grey colour which had straps on the right hand, average build and a lot of bushy hair.

A. Yeah.

10 Q. Or a lot of hair, bushy. Is that right?

A. Yeah.

Q. Now what do you consider average build?

A. I don't know, something about my size I guess.

Q. About your size. When----

15 A. Maybe a little thinner

Q. Pardon?

A. Maybe a little thinner.

THE COURT: They can't see your stomach from here.

MR. FURLOTTE:

20 Q. You said average build. You mentioned earlier that he was about five foot eight, your height?

A. Yeah.

Q. Is that what you meant by average build?

A. Yeah. I just saw him and he was gone.

25 Q. You saw him and he was gone.

A. Between the time I saw him and the time he was going through the fence it was about two or three seconds.

Q. So it would be difficult for you to guess?

A. Yeah.

30 MR. FURLOTTE: That's fair. I have no further questions.

20

Wendy Ivory - direct

THE COURT: Another witness Mr. Walsh?

MR. WALSH: Yes My Lord thank you. I call Wendy Ivory.

5 WENDY IVORY having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please?

10 A. Wendy Ivory.

Q. And your husband is Joe Ivory who just testified?

A. The nervous one, yeah.

Q. Is that right?

THE COURT: What did you say about him?

15 A. The nervous one.

MR. WALSH:

Q. Mrs. Ivory would you tell the jury please your involvement in this matter - what your personal involvement is? Where would you come into any of these sequences that your husband has described?

20

A. On Monday we returned from the cottage.

Q. Yes?

A. We heard that there had been a fire the night before at Flams.

Q. You were returning from your cottage?

25 A. Yes.

Q. You hadn't been living in your home?

A. We were at the cottage for the weekend.

Q. I see.

A. We had been away since Friday. We weren't in Chatham over the weekend.

30

Q. What about your husband?

A. He had returned home on Saturday with his mother.

Q. And you came home Monday morning?

21

Wendy Ivory - direct

A. I didn't come until Monday with him. He returned back to the cottage, then we all came up, my daughter and her husband and her cousin and myself in the car.

5 Q. And the flam fire would have taken place the evening before?

A. The night before. It was still smoldering.

Q. What happened?

A. When I returned home on Monday morning around eight o'clock we saw the smoke and smelled the smoke from the fire. We went
10 into the yard and I heard about the fire that had happened the previous night and when I went into the shed I noticed the contents of the hockey bag were all over the garage floor. I particularly noticed it because I had just cleaned the whole garage out that Friday night, so---

15 Q. That was the Friday before you left for the weekend?

A. Before I left, so it was very visible and after looking at it I noticed a string that looked as if it had been cut with a knife laying with it too.

Q. Did you - what do you have in your garage - what kind of
20 things are in your garage?

A. 20 years of living because my husband and I had lived in Ontario for 17 to 20 years and we returned home to look after his mother. We had just returned home that year, the previous fall.

25 Q. Would you just tell us, at that time in 1989 could you give the jury just an idea of what kind of items would be in the garage?

A. Furniture, clothing, anything you would have on a 10-acre
30 farm. It was all in that shed. That's where we put all of our belongings. They were in storage there.

22

Q. What if anything did you notice when you noticed the stuff on the floor - what if anything - did you determine whether or not there was anything missing?

A. The hockey bag was missing.

5 Q. Did you determine whether anything else was missing?

A. Later that day?

Q. Yes?

A. My mother-in-law was running around looking for two pounds of sausages she was sure she had and they were missing.

10 Q. Did you make any - I want your direct involvement. Did you go looking for anything?

A. Well this is what brought to my attention to go to the freezer and check for them and when I got to the freezer a large order of meat that we had just received from the store that week was missing.

15

Q. How much meat - you say a large order?

A. Over a hundred dollars.

Q. And what if anything else did you notice?

A. There's a fridge also, a little bit down from the freezer.

20 Q. You would come to the fridge first and the freezer after and there was a piece of rhubarb pie in the fridge with a chunk of it missing.

Q. When you say a chunk - how much of the pie was in the fridge?

A. Just a piece, maybe a double piece of pie.

25 Q. And when you say chunk, was it a sliced off chunk?

A. Well you know how you cut a piece of pie?

Q. Right.

A. Well there was a portion of it missing.

30 Q. And when you say a portion, could you describe to the jury how that portion was missing?

A. Well it's not the way you would cut a piece of pie that was - like a handfull missing.

23

Wendy Ivory - direct

Q. Continue please - this was on Monday?

A. Yes.

Q. Continue.

5 A. That's all that I noticed on Monday.

Q. On Monday, okay. Did anything else happen in relation to---

A. The following Thursday that same week I returned home with my
husband from Escuminac. A little after eleven o'clock we
pulled into the yard and there was a man hunched over by the
10 garage door next to the clothes line stand.

Q. That's the red garage with the white roof?

A. Right.

Q. That your husband described?

A. Yes. So we pulled up - my husband stopped the car and he
15 appeared to be looking at us - we had the lights on - in his
crouched down manner and he had his face hidden. The rest of
him was quite visible but his head and face was always turned
in and he was looking in our direction and it seemed like a
year but I don't know how many seconds went by and then he
20 took off by foot towards the back of the shed through the door
that was left open on the gate and my husband followed with
the car.

Q. And where did your husband go?

A. He went through my wooden lawn chair and he ran over a ladder
25 and then he blew through the fence.

Q. And then what happened?

A. This person seemed to make a quick turn to the left. He
disappeared out of my view altogether. I thought maybe he was
under us but he made a quick turn to the left.

30 Q. And where would he have gone when he---

A. Down Norma Walters driveway. I didn't see him actually go
down the driveway but he went in that direction. Actually I

24

Wendy Ivory - direct

didn't see anything. He just went by the driveway and my husband continued to pursue him around the house.

Q. Norman Walls' house?

5 A. Normal Walls' house, because he couldn't turn the car left, he was going too fast. So we ended up out on Johnson street with the car still on and at a stop position pointed in the direction of - this man appeared again underneath a well lit light on that street.

10 Q. On Johnson street.

A. On Johnson street.

Q. Whereabouts in relation to the street, would it be on the side, the centre?

A. I'm not that good with directions.

15 Q. You say a street, is that a paved street?

A. Yes a paved street.

Q. Would he be on the - one side---

A. He had crossed over the street and was standing almost in front of Lees - what we call the old Lees house - where the door was, next door to the, as you referred to the McLaughlin house.

Q. The what house?

A. The McLaughlin house.

Q. He was standing where in relation to the McLaughlin house?

25 A. Close to the driveway of the McLaughlin house.

Q. And what was he doing when you----

A. He was making a motion of running in one direction and then a motion of running in the other direction. He didn't seem to know which way he should go.

30 Q. And then what happened?

25

A. My husband started with the car again, so he decided to go in a direction which took him into the back of the McLaughlin house.

Q. Where did he go?

5 A. He went down the driveway.

Q. Of the McLaughlin house?

A. Between the - the car was in my husband's way so he couldn't follow him through the driveway and - but he went down the driveway between the fence and the car.

10 Q. Is that a big driveway?

A. No. Just wide enough for a car and to get out of.

Q. And there was a car in that driveway?

A. Yes.

15 Q. And when the person - you say he was standing in the road - what did you say he was doing?

A. He was making a motion of running but he didn't know which way to run.

Q. When he went in the driveway of the McLaughlin house was he walking, running?

20 A. Running and fast.

Q. Pardon?

A. Running fast and low to the ground.

25 Q. Could you tell the jury anything about what you saw in terms of this person's description, whether his physical appearance, his height, his weight, his clothes; anything at all?

A. He carried a bag with him. He had shoulder-length curly black hair or dark brown - dark hair; and a jacket. He wore pants. I don't know what kind of pants and he wore light coloured running shoes.

30 Q. Did you notice anything about his size?

A. He was a husky fellow.

Q. Could you tell us anything about his height?

26

Wendy Ivory - direct

A. He was average height, maybe five foot eight or nine.

Q. And that was the night you were with your husband Joe. Is that correct?

5 A. Uh huh.

Q. And the person - when did you lose sight of the person, where was he when you last sighted him?

A. He was running into the McLaughlin driveway.

MR. WALSH: Thank you My Lord, I have no further questions.

10 THE COURT: Cross examination Mr. Furlotte:

CROSS EXAMINATION BY MR. FURLOTTE

15 Q. Mrs. Ivory how many times did you find food missing from the freezer?

A. Never, no.

Q. When you mentioned all the food - the meat that was stolen, you mean never besides that time?

20 A. I have never said there's food missing in my freezer in my life.

Q. Sorry, I misunderstood there. Maybe you could explain again--
-

A. Before that occasion.

25 Q. When you mentioned your mother-in-law was missing two pounds of sausages---

A. Yes.

Q. And you mentioned other food - a large order of meat missing, over a hundred dollars worth?

A. Yes.

30 Q. Was that yours or your mother-in-law's?

A. That was mine and my mother-in-law's. We live together in that house and we share the cost.

Q. Where was that food?

27

Wendy Ivory - cross

A. It was in the freezer.

Q. In the freezer.

A. Uh huh.

5 Q. And where was the freezer?

A. In the shed.

Q. In the garage?

A. Uh huh.

10 Q. Is that the only time that you noticed food missing from the freezer?

A. I'm not sure what you are getting at. I noticed food missing on that occasion from the freezer.

Q. And is that the only time that---

A. The only time, yes.

15 Q. Okay, that's what I'm getting at. Now you mentioned the second time that you noticed the man and your husband wrecked all your furniture - that man had long shoulder-length curly black hair?

A. Shoulder-length, curly.

20 Q. What do you mean by shoulder-length?

A. Well there's your shoulder and---

Q. Laying on the shoulder?

A. Yes.

Q. Not past the shoulders---

25 A. Shoulder-length.

Q. And you said he was husky?

A. He was heavily built - husky. I used the word husky.

Q. Was there anybody else saw this individual besides yourself and your husband that evening?

30 A. I don't know.

Q. Do you recall telling the police whether or not anybody else saw this individual?

28

Wendy Ivory - cross

A. I didn't tell them that anybody else saw him, no.

Q. You didn't tell them anybody else saw him?

A. No.

5 Q. Okay, I have your statement here taken on June 3rd 1989.

THE COURT: What was the date again, sorry?

MR. FURLOTTE: June 3rd, 1989.

Q. And I am just curious as to what you mean in here. You said
10 he then made a U-turn and a girl standing around the vacant
lot by the theatre yelled "he's at Ben's".

A. That was after. I only went so far with the story. The last
time I saw this man he ran in to McLaughlin's. That's as far
as the story went. That happened after. We went down to
report it to the police and somebody from the street yelled at
15 us.

Q. So this happened after?

A. Yes.

Q. So after you reported to the police it appeared this person
was still around, or---

20 A. I don't know, there was just---

Q. I'm not sure I follow you.

A. There was just a person who yelled at us on our way home back
to the house, that he went in such and such a direction.

Q. When you say he then made a U-turn, who are you referring to
25 as he?

A. My husband.

Q. Your husband, okay I thought you meant the person.

A. Oh no, that was us in the car.

Q. Could there have been two people there that evening?

30 A. I don't know. Maybe there could have been ten people, I don't
know.

MR. FURLOTTE: Thank you.

29

Lloyd Hannah - direct

THE COURT: Re-examination Mr. Walsh?

MR. WALSH: No My Lord.

THE COURT: I think the General Motors people would be interested
5 in knowing what that Oldsmobile was capable of. Thank you
Mrs. Ivory.

MR. WALSH: My Lord my next witness is Lloyd Hannah.

10 LLOYD HANNAH having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please?

15 A. Lloyd Hannah, 40 Gordon Road, Chatham.

Q. And Mr. Hannah you have an involvement in this particular
matter. Would you tell us please - you have heard Mr. and
Mrs. Ivory testify?

A. Uh huh.

20 Q. Would you tell us what if anything happened in relation to
that, that you are aware of?A. Well it was the morning after that Joe chased the individual
through his yard with the car. I was going to the lumber pile
for lumber. We were working across the road there and I
25 spotted a pair of glasses on the ground.Q. Now when you say you were you were working in a lumber pile
across the road - you were working---

A. We were building a patio for the house across the road.

Q. Do you know the name of the house across the road?

30 A. It's the McLaughlin house if I recall right.

Q. Perhaps if I - F-7 My Lord, Exhibit P-4-7. I am going to ask
you, just so that we are sure we are looking at the same
place, I show you P-4-7 first of all. Would you look at that
for me please and tell me whether or not you can identify the
35 McLaughlin house?

30

L. Hannah - direct

A. Uh huh.

MR. WALSH: For the record My Lord it is the same residence Mr. Ivory identified as being the McLaughlin house.

5 Q. Now I am going to show you photograph P-4-3. Would you look at that for me please and I will give the jury a chance to get the photograph? P-4-3. On the testimony previously this is an earlier photograph taken shortly after the incident, the night of the fire. Can you see the McLaughlin house in that particular photograph?

10 A. Yes, right here.

Q. You are referring to a house to the left centre. There appears to be something bright---

A. That's the patio we were building.

15 MR. WALSH: This particular location here My Lord.

Q. This is in fact - correct me if I'm wrong Mr. Hannah - is a photograph of the back of the McLaughlin home, is that correct?

A. Correct.

20 Q. Now you were - what time of the morning would this be?

A. This was about a quarter to eight I think.

Q. And you were working on a deck?

A. Yes.

Q. How many people were working on it?

25 A. Two of us.

Q. When had you started working - when had you started working on this deck in terms - when did you first start to build it?

A. A week ago - probably a week prior to that.

Q. Now this particular - had you been working the day before?

30 A. Uh huh.

Q. Before this morning?

A. Uh huh.

31

L. Hannah - direct

Q. And that morning, what did you say you found?

A. I found a pair of glasses.

5 Q. Where did you find the pair of glasses? First of all, where
in relation to the driveway and what if anything was around
that area?

A. Well there was a hole dug at the end of the driveway about a
foot and a half or two feet deep. They were going to plant a
tree there. It was to the east side of the hole I found the
10 glasses lying.

Q. If I came from Johnson street in that driveway would I come
across this hole?

A. Yes, right at the back of the driveway.

Q. And how wide would that driveway be?

15 A. It was very narrow. Probably ten feet maybe at the most.

Q. These glasses, were they there the day before?

A. No they weren't.

Q. Would you have seen them if they had been?

A. Definitely.

20 Q. What if anything did you do when you saw these glasses?

A. We called the police, the Chatham police, and Constable
Carnahan came and took the glasses.

Q. Did you pick the glasses off the ground?

A. No I never touched them.

25 Q. Did you do anything - did you notice anything about them?

A. They were bent. They seemed to be bent back on the bottom.

Q. Which part - you have a pair of glasses?

A. The bottom of the lense seemed to be bent back.

30 Q. I am going to show you - I better have this marked for
identification.

Pair of glasses marked 'F' for Identification

32

L. Hannah - direct

Q. Did you actually handle the glasses yourself?

A. No.

Q. I am going to show you what has been marked F for
5 identification. Will you look at that please and tell me
whether or not you can identify it?

A. Yes. Those are the glasses.

Q. Pardon?

A. Yes, those are the glasses.

10 MR. WALSH: I have no further questions My Lord.

THE COURT: Cross examination Mr. Furlotte?

MR. FURLOTTE: I have no questions of this witness My Lord.

THE COURT: That's all for you then Mr. Hannah. Thank you.

15 MR. SLEETH: Recall Cst. Derek Carnahan My Lord. My Lord Constable
Carnahan identified himself earlier and was sworn earlier and
testified earlier.

THE COURT: Still under oath.

20 CONSTABLE DEREK CARNAHAN still being under oath testified
as follows:

Q. Cst. Carnahan you heard the testimony given by the witness who
just preceded you?

A. Yes.

25 Q. I am now showing you an item which is contained in a plastic
sack and appears to be glasses and is marked F for
identification. Please exam that for the jurors.

A. Marked F for identification are a pair of glasses that I
received from Lloyd Hannah on the 2nd day of June 1989 at the
30 McLaughlin house, Chatham, County of Northumberland, Province
of New Brunswick.

Q. And once you had received those sir what did you proceed to do
with them?

33

Cst. Carnahan - direct

A. I exhibited (sic) them in my exhibit locker at the Chatham police station and I transferred them to Cst. Brown who also works with us at the Chatham police department.

5 Q. And when would you have done that?

A. I done that on the 3rd day of June 1989 at about 2.30 p.m.

Q. Was that the last you had to do with those items, 'P' for identification, glasses?

A. Yes.

10 MR. WALSH: Thank you. I have no further questions of this witness My Lord.

MR. FURLOTTE: No questions.

MR. WALSH: We will want him recalled My Lord. I would ask that he be stood aside, not excused.

15 THE COURT: You are stood aside and you shouldn't discuss this aspect of your evidence with anyone until all of your testimony is complete. You may go if you like, now.

On the matter of this exhibit, you know you have a - if you had gone on question further Mr. Walsh you could have
20 tendered those as an exhibit at this point and they would have become admissible; if you had asked are they in the same condition now as they were then, or ostensibly so.

MR. WALSH: Well My Lord I---

25 THE COURT: You don't have to prove continuity for a pair of glasses you know.

MR. WALSH: Well My Lord----

THE COURT: Unless something turns on that, that you know about that I don't.

30 MR. WALSH: Well My Lord my understanding is that we are required to - we are required to prove the continuity of all the items that we wish to have entered as exhibits at this particular trial. We will---

34

Cst. Carnahan - direct

THE COURT: That's wrong. That isn't the law. In any event, you govern yourself. I'm just trying to simplify the thing you know, rather than give identification numbers and so on.

5 MR. WALSH: Well My Lord, believe me the Crown would like nothing better than to have the matter simplified. However,---

THE COURT: You see the point I'm---

MR. WALSH: Yes I do see the point My Lord. Unfortunately this is the process we have been required to follow.

10 THE COURT: Not required by me.

MR. WALSH: No My Lord, but you know it is difficult for me to comment at this particular point as to why we are following this particular course.

15 THE COURT: Is there somebody magic back there that's trying to tell you how to run your case?

MR. WALSH: No My Lord - no My Lord.

THE COURT: Well you - I'm just telling you---

MR. WALSH: My Lord the fact is that---

20 THE COURT: What I'm saying is that if a witness gets on the stand and says "look, there is a pair of glasses that I found in a certain place" and it's obviously - I mean if it is relevant and can be connected with the case and one accepts the assurance of counsel in that regard then there's the pair of glasses and you offer it in evidence and you put it in
25 evidence and it is marked as an exhibit. If you want to go on later to prove that it went from Cst. so-and-so to Cst. so-and-so and in exhibit lockers you can do that, but really there's not very much point in doing it.

30 MR. WALSH: Well that's fine My Lord. I'm certainly - from the Crown's point of view we would very much like to follow that particular practice. We've taken the pure strict view of the

35

matter and as Your Lordship is aware, some judges actually require the continuity to be proven bit by bit, step by step.

THE COURT: It's totally different - well other judges don't know - you know there are a lot of them out there who don't know.

5 MR. WALSH: Yes My Lord.

THE COURT: It's otherwise with say a blood sample or a fingerprint or a hair sample or something like that. Then you have got to prove continuity.

MR. WALSH: These glasses were analysed. We will call evidence
10 with respect to---

THE COURT: Well that still doesn't---

MR. WALSH: Fine My Lord. And at this time then - we'll continue the practice unless you wish me to move to enter those at this time.

15 THE COURT: You do it whichever way you want.

MR. WALSH: Thank you My Lord, and perhaps we will have a discussion at lunch hour with counsel and we'll see if we can simplify the matter for the jury.

THE COURT: It would simplify it.

20 MR. WALSH: Yes, I would very much like to do that. Thank you My Lord. I call Constable Brown.

KINGSTON WILLIAM BROWN having been called as a witness testified as follows:

25 DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please and your occupation?

A. Kingston William Brown. I'm a police constable for the town of Chatham and I've been a police officer for the past seven
30 years.

Q. This is part of your testimony. I'm just going to ask you to look at what has been marked 'F' for identification and tell me whether or not you can identify it, and under what circumstances you would have seen that item?

36

Cst. Brown - direct

- A. Okay, I can identify them as a pair of glasses that I had received from Cst. Carnahan.
- Q. Do you remember the date?
- 5 A. That would have been the 3rd of June 1989.
- Q. And what if anything did you do with these particular glasses?
- A. I received them from Cst. Carnahan as an exhibit. I placed them in my personal exhibit locker at the Chatham police station?
- 10 Q. Did anyone else have access to that particular locker?
- A. No.
- Q. What if anything did you do with those glasses?
- A. On the same date - I received them at around 2.30 in the afternoon on the 3rd of June 89 and around five p.m. the same date I turned them over to Cpl. Kevin Mole who is an R.C.M.P. officer.
- 15 Q. Cst. Brown do you know Norman and/or Cathy Mecure?
- A. Yes I do. I know both of them.
- Q. In relation to the time frame in which these glasses were found, did you ever have occasion to visit Norman or Cathy Mecure?
- 20 Q. Yes I did. On the 22nd of May 1989.
- Q. Was that in your official capacity as a police officer?
- A. Yes, as a police officer, yes it was. I was on duty and as a result of a call a patrol was made to the area of their residence.
- 25 Q. Which is where?
- A. It is situated on the Kelly road in Chatham.
- Q. I see. And what if anything - this was on what date?
- 30 A. It would have been the 22nd of May.
- Q. 1989?
- A. 1989 yes.

37

Q. And did you do anything - I don't want conversation - but did you do anything yourself - organize anything?

A. Like I say, as a result of the call I myself didn't go right to the residence. Cst. McGee went to the residence; I went off on foot in a wooded area which would be to the east of the Mecure residence, like towards town. They live right at the town---

Q. I take it you were conducting a search?

A. Yes I was, a search of a wooded area as a result of the complaint.

Q. How long have you lived yourself in the town of Chatham?

A. I was born there and lived there all my life except for two years, June 86 to June 88 where I worked for the Moncton police force.

Q. From June 86 to June 1988?

A. That's correct.

Q. You were living in Moncton then?

A. Yes I was.

Q. Apart from that you have always lived in Chatham?

A. I have lived in Chatham all my life.

Q. Do you know Allan Legere?

A. Yes I do.

Q. Is he present in court today?

A. Yes he is.

Q. Where?

A. The gentleman to my left, brown shirt, white collar, dark hair.

Q. Sitting between the two police officers?

A. Between the two R.C.M.P. officers, yes.

Q. Prior to 1986, prior to you going to Moncton, did you ever see Mr. Legere in the town of Chatham?

A. Yes I did.

38

Cst. Brown - direct

Q. In what areas would you have seen him in the town of Chatham?

A. Different areas. I would have seen him eating, driving
5 around several different areas of town - different areas that he frequented.

Q. Such as?

A. In the early 80s there was a - the early 1980s there was
10 a residence in King Street which had a body shop which he used to frequent quite a bit. He had a vehicle there that he worked on.

Q. Any place else in the vicinity of that area?

A. Around the Mirada motel. He used to frequent there quite
15 a bit around the winter of 85 and the spring of 86. He was going out with a girl who was staying at the motel.

Q. The Mirada motel?

A. The Mirada motel in Chatham.

Q. The town of Chatham?

A. The town of Chatham yes.

20 MR. WALSH: I have no further questions My Lord.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. Cst. Brown I understand also that you had consultation
25 with Sgt. Saintonge of the Newcastle R.C.M.P. over the possible sighting?

A. On the 22nd of May.

Q. On the 22nd of May?

A. Yes I did.

Q. And what was supposed to be done if a positive sighting
30 was made?

A. Of?

39

Cst. Brown - cross

Q. If a positive sighting had been reported of Mr. Legere, what was supposed to be done?

5 A. The area was to be cordoned off and a ground search conducted.

Q. That was it. Your instructions were that if a positive sighting was made----

10 A. It was up to the discretion of the officer. If he felt that the informant was reliable or the sighting had any grounds to it then it would be the proper procedure, yes.

Q. And how long did you search for the alleged Mr. Legere at that time?

15 A. It would have lasted at least an hour. I can't tell you how long it went on for because I don't believe I stayed there for the full duration of the search because there was only two of us on duty that day, so---

MR. FURLOTTE: I have no further questions.

MR. WALSH: I have just a couple on redirect.

REDIRECT EXAMINATION BY MR. WALSH

20 Q. With respect to S/Sgt. Saintonge, who is he? Would you tell the jury who S/Sgt. Saintonge is?

A. On that date, the 22nd of May 89, he would have been the officer in charge of the Newcastle detachment, the R.C.M.P.

25 Q. I see. And you were coordinating with the R.C.M.P., the town police?

A. Yes I was.

Q. This search that was conducted, who was involved in the search?

30 A. Several R.C.M.P. officers, a dog----

Q. A police dog?

40

A. A police dog, yes, with the officers from Chatham -
police officers as well.

Q. I am going to show you this document here. It purports
to be headed Chatham Police Department Occurrence Report.

5 Do you see this particular document?

A. Yes I do.

MR. WALSH: My Lord at this time I would ask that the officer -
Mr. Furlotte has asked the officer a question about
a positive sighting and my understanding is Mr.
10 Furlotte would have gotten this from the
occurrence report and I would like to be able
to set the context in which that particular
word would have been used, with your permission.

THE COURT: Yes. Would that be where you got this positive
15 report?

MR. FURLOTTE: I didn't feel that I was myself able to get into
it because it was hearsay evidence from S/Sgt.
Saintonge.

MR. WALSH: It hasn't stopped him before My Lord.

20 THE COURT: Well look, let's deal with it in this way---

MR. FURLOTTE: The only hearsay evidence I got into before was
when themselves would be testifying. Sgt.
Saintonge is not going to be a witness in this
case.

25 THE COURT: The witness was asked on cross examination about
procedure on positive sighting, I guess is the
expression. If you want to ask him what he means
by that, then to elaborate on the answer he gave at
that time - that was a new thing brought up on
30 cross examination---

MR. WALSH: Thank you My Lord.

41

Cst. Brown

THE COURT: You may do that, but let's forget about the report that was made.

MR. WALSH: I'm concerned about anything being taken out of
5 context, that was my concern My Lord.

THE COURT: If there is anything special that comes out of this Mr. Furlotte I'll give you a chance to cross examine freely on it.

Q. What - could you tell the jury please what is meant by a
10 positive sighting?

A. I - to me, like I say it was up to the officer's discretion because, you know, numerous sightings, and all kinds of different reports and whatnot, and if we felt that the informer was reliable as to who they
15 believed they saw, and like I say I lived in the town of Chatham all my life and I knew Norman Mecure and Cathy Mecure for several years and I knew that they had associated with Mr. Legere or at least would have known him anyway.

Q. Did you consider it a positive sighting?
20

A. I did myself, yes.

MR. FURLOTTE: I have nothing further thank you.

THE COURT: I'm sorry - the answer to the last question?

MR. FURLOTTE: He considered it a positive sighting.

THE WITNESS: Yes.
25

Q. And as your consideration of positive sighting of Mr. Legere, you felt it sufficient to search for one hour and then call it off?

A. I didn't have the authority to call it off, nor did I
30 call it off.

Q. Well who called it off if it only lasted an hour?

42

Cst. Brown

A. Once S/Sgt. Saintonge was called in, he would have been the officer to decide whether or not to call off the search. I just said that it went on for at least an hour and I don't believe I stayed there any longer than that because there was only two officers available looking after the regular patrols in Chatham. So once there was enough officers on the scene to conduct the search I would have left the area.

10 Q. As far as you know the search only lasted an hour?

A. I don't know if it lasted an hour. It lasted at least an hour. It could have lasted two or three hours.

THE COURT: Mr. Walsh you are entitled again to redirect but I don't think it is necessary.

15 MR. WALSH: That's fine My Lord.

THE COURT: Thank you very much. Is this witness being stood aside at this point?

MR. WALSH: No, that's it for Cst. Brown My Lord.

THE COURT: Okay, two o'clock.

20 (JURY RETIRES)

MR. WALSH: Awhile ago in front of the jury I was fumbling for words because I didn't want to say anything that would adversely reflect on a party unnecessarily or give the wrong perception. Mr. Furlotte - Mr. Legere and his counsel are quite right in requiring the Crown to prove every aspect of the case associated with it. Part of that proof is that we are required, and we have given them a list of witnesses long before this as to whether we could reach agreement on any particular witnesses. We are proceeding in this fashion because we are required----

25

30

43

MR. FURLOTTE: My Lord any conversation between the Crown and myself as to how the Crown - what I might consent to as to how the Crown would conduct the trial, I don't think is proper discussion here.

5 THE COURT: Yes, but - well I asked---

MR. WALSH: I'm simply pointing out My Lord - you were putting questions to me in front of the jury as to why I was proceeding the way I did and I couldn't very well--

10 THE COURT: Well this was on this exhibit?

MR. WALSH: Yes. I didn't want to tell the jury the reason I'm proceeding this way is that our position was that we had to prove it before we could tender it. That was our understanding of---

15 THE COURT: What you are saying is you had to either follow the continuity through or get Mr. Furlotte's permission.

MR. WALSH: Mr. Furlotte to agree.

20 THE COURT: You don't have to get Mr. Furlotte's permission. He can still object to it going in and if he has a valid ground it would be refused.

MR. WALSH: Well that was our understanding. Anyway My Lord that was the reason I was proceeding and again I couldn't very well address that particular aspect in front of the jury. I didn't want to adversely reflect on the---

25 THE COURT: No, no. Well I didn't----

MR. WALSH: That's the reason I was proceeding----

30 THE COURT: Perhaps I shouldn't have mentioned it. You know the practice grows up - there are a lot of - probably some - a few judges in the province who don't even appreciate that. They think - if a

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witness came on and said "I saw somebody hit somebody over the head with this pick and shovel or a pick, a great heavy pick, and there it is. You know quite obviously in the same condition it was at the time. This is just a hypothetical case. You ought then, on the completion - or at that time offer that pick or shovel or whatever it is in evidence. You don't have to prove continuity of that all through or you don't have to seek the approval of opposite counsel. You just say "look I'm tendering this object into evidence" and it becomes now - it may turn out later by other evidence, either your witnesses or the defence witnesses that that pick isn't the same pick at all, but you've got a witness who says "there is the pick and I know because it's got a little knick on it here.

MR. WALSH: The only thing My Lord is you can appreciate the fact that there are some that vary that practice and I know counsel have been involved in situations where we cannot do anything with that until it is entered into the actual - as an exhibit. I just wanted to clarify why we did what we did.

THE COURT: Okay.

25 (Lunch break)

2.00 p.m.

MR. SLEETH: My Lord if it please the Court and perhaps before calling back the jury, you have on the witness list My Lord, No.49 Gerald Dupuis. I advised Mr. Kearney, counsel for the accused, this morning that

45

it is the intention of the Crown to present instead and remove too, and replace him with a gentleman by the name of Claude Brunet. We would not be calling him until tomorrow. If counsel for the accused wish, over night if they are thinking about it, to still have Mr. Dupuis here given that he was initially on the list we will present him as well, but it is the intention that we will present Claude Brunet in his place.

5

10 THE COURT: What about advising the defense of the nature of his testimony?

MR. SLEETH: We are going to be providing curriculum vitae and the like My Lord. They are being sent by fax and we will provide them to the defense as soon as they get in by fax. I have advised Mr. Kearney.

15

THE COURT: Are you going to get to him today - to Mr. Brunet?

MR. SLEETH: Oh no. We give them an opportunity to consider it.

THE COURT: All right. Nothing else to bring up now. We can get the jury back.

20

Jury polled. All present.

THE CLERK: The 12 jurors are present My Lord and Mr. Legere is present.

THE COURT: Now Mr. Walsh, another witness?

MR. WALSH: Yes My Lord. For the benefit of the jury and yourself, we finished this morning with witness No.43 on the indictment list. We would with your permission - we would like to move down to No.54 and call witnesses 54 through to 63. They are police officers and they will be related solely to the issue of scene continuity and we would like to get them out of here today if we possibly could.

25

30

46

G. Lussier - direct

THE COURT: Yes. When you are jumping around on your list you are keeping defense counsel advised of your intentions are you so that---

5 MR. WALSH: I don't know if I actually mentioned that to Mr. Furlotte specifically. I expect he is aware of the fact that we have all these witnesses for that purpose, yes.

THE COURT: Yes, well it might be a courtesy to him to let him
10 know so that he's not genning up to the noon recess on perhaps the next three or four key witnesses.

MR. WALSH: Yes My Lord.

THE COURT: However, go ahead.

MR. WALSH: I call Cpl. G. Lussier.

15 GUY LUSSIER having been call as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please and your occupation?

20 A. Guy Lussier, a member of the Royal Canadian Mounted Police, presently stationed in Sackville, New Brunswick.

Q. And prior to that you were stationed where?

A. Newcastle, Northumberland County, New Brunswick

Q. Would you tell the jury please in your own words what
25 your involvement is in this particular matter beginning with the date, the time and the place?

A. On the 29th of May 1989 I went to 242 Water Street in Chatham.

Q. Identified to you as being the residence of who?

30 A. The Flam's grocery store - Annie and Nina Flam.

Q. And what was the purpose of attending at that particular location?

47

A. My duty at the scene was keep the security of the scene like the building - making sure that nobody would come close to the building and making sure that nobody would go inside.

5 Q. And would you keep a record of those individuals who were authorized to go inside?

A. Yes I did.

Q. You went there what day and at what time?

A. The 29th of May 1989 at 9.30 where I met Cst. Britt, a member of the R.C.M.P. in Newcastle.

10

Q. How long did you remain there that day?

A. I stayed until 10.30 p.m. when I turned the scene over to Cst. Dufour and Cst. Totten, both from Newcastle at the time.

15 Q. And what and who, during that period of time that you were maintaining the scene continuity - who would have entered that particular building?

A. Members of the R.C.M.P. Ident. Section, Sgt. Chaisson, Sgt. McNeil, Cpl. Roy and Cpl. Godin with Cst. Britt.

20 Q. Did anyone else enter that building in addition to the R.C.M.P. officers?

A. It's around six o'clock p.m. that the ambulance - George Grant came over to the scene and went inside.

Q. Who is he?

25 A. George Grant from Ambulance Services in Chatham.

Q. And did anyone else go in other than those individuals?

A. Shortly before ten three members of the Chatham fire department went in to the right hand side, second floor, to put a tarp over the bed and the floor.

30 Q. You are speaking about the room that would be on the---

A. Going upstairs would be on the right hand side.

Q. Facing the street?

48

Cpl. Lussier - direct

A. Yeah.

Q. Facing - watched as you were facing the building?

A. Yeah.

5 Q. And that was----

THE COURT: The right hand side?

MR. WALSH: Yes.

THE COURT: Was it the bedroom over the store or the other bedroom?

10 A. I'm not quite familiar with - as far as I remember we
went up and they went to the right.

MR. WALSH:

Q. And was it the bedroom facing the street?

A. I believe so.

Q. And they did what there?

15 A. They just put a tarp over a bed and the floor.

Q. I see, and those were three members of the fire
department?A. Yes they were. Mike McGrath, Ross Wilson and Edward
Casey.

20 Q. And did anyone else enter that particular premises?

A. No.

Q. And you turned the scene over on that day to who?

A. Cst. Jean Dufour and Cst. Glen Totten, both from the
Newcastle detachment.25 Q. And did you do anything on the outside of the building in
terms of setting up some kind of a perimeter?A. We had a guard cage around in the front to make sure that
people wouldn't come - just a cord on the area.

Q. Did you have occasion to return to this particular area?

30 A. The following morning on the 30th of May 1989 I went over
shortly after nine thirty. I took the scene over from
Cst. Dufour and Totten.

49

Cpl. Lussier - direct

Q. Was anybody accompanying you on that particular day?

A. Cst. lHoule.

Q. And how long did you remain there?

5 A. Until ten o'clock or shortly after ten. I turned the scene over to Monique Vaughn and Ross White from Richibucto.

Q. Those are R.C.M.P. members?

A. Yes they are

10 Q. And that was at ten o'clock that same night?

A. Yeah, p.m.

Q. And during that particular time that you were there did you note who would have access to that building?

A. Ident. members and Cst. Britt.

15 Q. Did anyone else, in addition to the R.C.M.P. officers?

A. At twenty to three in the afternoon Edward Plessis----

Q. Who is he?

A. He is a member of the fire department in Chatham. He came over with someone to check the furnace.

20 Q. The person with him was there to check the furnace?

A. Yes.

Q. Do you know that person's name?

A. No I don't.

Q. Apart from that was there any other - apart from R.C.M.P. members and these people, was there anyone else?

25 A. No.

MR. WALSH: My Lord I have no further questions.

THE COURT: Cross examination Mr. Furlotte?

MR. FURLOTTE: I have no questions.

30 THE COURT: Thank you very much Cpl. Lussier. You are excused.

MR. WALSH: The next witness on the list is Cst. Glen Totten My Lord. He is not to be called. He is a member of the

50

Cst. Dufour - direct

R.C.M.P. Musical Ride and the defence have consented that we would not have to bring him on this occasion. I call Cst. Jean Dufour.

5 JEAN DUFOUR having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

- Q. Would give the Court your name please and your
10 occupation?
- A. Jean Dufour. I am a member of the Royal Canadian Mounted Police presently stationed in Fredericton, New Brunswick.
- Q. Would you tell the Court please in your own words your involvement in this matter beginning with the date, the
15 time and the place?
- A. The 29th of May 1989 I relieved Cpl. Lussier at 242 Water Street in Chatham, New Brunswick.
- Q. What time of the day?
- A. 22.15.
- 20 Q. Which is, for people who are not used to---
- A. Ten fifteen in the evening with Cst. Totten.
- Q. Cst. Totten was with you?
- A. Yes he was.
- Q. And what was your duty?
- 25 A. To make sure that nobody was getting in the building during that night.
- Q. And how long did you stay there?
- A. Until nine o'clock in the morning when Cpl. Lussier relieved me.
- 30 Q. And during that period of time when you were there did anyone enter that building?
- A. No, there was nobody that went in.
- MR. WALSH: I have no further questions My Lord.

51

Cst. Houle - direct

THE COURT: Cross examination Mr. Furlotte?

MR. FURLOTTE: I have no questions of this witness.

THE COURT: Yes, you are excused. Thank you.

5 MR. WALSH: My Lord I call Cst. Laurent Houle.

JOSEPH RENE LAURENT HOULE having been called as a
witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

10 Q. Would you give the Court your name please and your
occupation?A. My name is Joseph Rene Laurent Houle. I am a peace
officer with the Royal Canadian Mounted Police. I have
been for the past six years and am presently stationed at
15 the Newcastle R.C.M.P. detachment in the County of
Northumberland, province of New Brunswick and have been
so for the past two and a half years.Q. Could you tell the Court please in your own words your
involvement in this matter - the initial involvement in
20 this matter --MR. WALSH: Cst. Houle My Lord is one of the members who will be
stood aside to be called later.Q. But your initial involvement in this matter constable,
would you tell the jury what your involvement was?25 A. Yes, on the 30th of May 1989 I was made aware by my
supervisor that I was going to be assigned to do scene
security at the murder scene at the Flam grocery store on
Water Street in Chatham, county of Northumberland,
province of New Brunswick.

30 Q. And were you accompanied by anyone?

A. I was with Cst. Lussier.

Q. And did you in fact maintain scene continuity at that
place?

A. Yes I did.

52

Cst. Houle - direct

Q. For what period of time?

A. From 0940 hours in the morning until ten o'clock at night.

5 Q. You have heard Cst. Lussier testify?

A. Yes I did.

Q. In addition to the people that he has mentioned what if any other people entered that particular building?

A. No, I can't add anything to that.

10 MR. WALSH: I have nothing further My Lord.

MR. FURLOTTE: I have no questions My Lord.

THE COURT: You are stood aside Cst. Houle.

MR. WALSH: My Lord I call Cst. Ross White.

15

ROSS ACKER WHITE having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please and your occupation?

20 A. My name is Ross Acker White. I am a peace officer and member of the R.C.M.P. presently stationed in Richibucto, Kent County, New Brunswick and have been so stationed for the past four and a half years.

Q. Would you tell the Court please in your own words what 25 you know of this particular matter?

A. My involvement in this matter is that on May 30th 1989 I went to the Flam grocery store murder scene on Water Street in Chatham, New Brunswick, and I did scene security there.

30 Q. Who were you accompanied by?

A. I was accompanied by Cst. Monique Vaughn.

Q. And you kept scene security from what time to what time?

A. The scene security was from ten p.m. that evening until ten p.m. the next morning.

53

Ross White - direct

Q. Ten a.m. the next morning?

A. Ten a.m., excuse me, the next morning when I was relieved by Cst. Mazerolle and Cst. Francoeur.

5 Q. And during that period of time did you note the entrance of anyone into that particular building?

A. Nobody entered that building.

Q. And did you have occasion to return to that particular premises?

10 A. Yes I did. On May 31, 1989 I returned to the same scene and did the same scene security.

Q. From what time to what time?

A. Ten p.m. that evening until ten a.m. the next morning. On that particular evening I was with Cst. Reade.

15 Q. Did you note the entrance of anybody to the building?

A. Nobody entered the building.

MR. WALSH: I have no further questions My Lord.

MR. FURLOTTE: I have no questions of this witness.

20 THE COURT: Thank you very much. This is the only time Cst. White appears?

MR. WALSH: That is correct My Lord.

THE COURT: So you are excused constable. Thank you.

MR. WALSH: I call Cst. Monique Vaughn.

25 MONIQUE VAUGHN having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

30 Q. Would you give the Court your name please and your occupation?

A. My name is Marie Andree Louise Monique Vaughn. I have been a member of the R.C.M.P. since February 1986, presently posted at the St. George R.C.M.P. since
35 December 1st last year, Charlotte County, New Brunswick.

54

Monique Vaughn - direct

Q. Would you tell the Court in your own words what you know of this particular matter beginning with the date and time and the place?

5 A. Yes, on the 30th of May 89 I accompanied Cst. White to the Flam residence in Chatham and took care of security of the scene with him.

Q. From what time to what time?

A. From a little after ten until ten the next morning.

10 Q. And who if anyone entered that particular premises to your knowledge?

A. As far as I know, no one did.

MR. WALSH: I have no further questions My Lord.

MR. FURLOTTE: I have no questions of this witness My Lord.

15 THE COURT: That excuses you then, Cst. Vaughn.

MR. WALSH: My Lord the next witness would be Cst. David Mazerolle. The indictment list shows Cpl. Norm Mazerolle but it was in fact Cst. Dave Mazerolle.

20 DAVID MAZEROLLE having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

25 Q. Would you give the Court, please, your name and your occupation?

A. My name is Cst. David Mazerolle. I am a peace officer and member of the R.C.M.P. presently stationed in Moncton, New Brunswick.

30 Q. And would you tell the Court please in your own words what involvement you had in this matter beginning with the date and time and place?

A. On the 31st of May 1989 we departed and relieved the two members, Cst. White and Cst. Monique Vaughn at a murder scene on Water Street in Chatham, New Brunswick.

35

55

Cst. Mazerolle - direct

Q. Who was with you?

A. There was myself and Cst. Francoeur.

Q. And how long did you remain on continuity there?

5 A. We maintained continuity between 10.05 a.m. until 10.00 p.m. that same day.

Q. And who if anyone did you note entering that particular premises?

10 A. The particular persons involved the Moncton - some of the Moncton Ident. Section and other Ident. Sections from the R.C.M.P. There was Sgt. McNeil, Sgt. Chiasson, Cpl. Godin and Cpl. Roy at the scene.

Q. Apart from those was there anyone else who entered that particular premises to your knowledge?

15 A. No, not to my knowledge.

MR. WALSH: I have no further questions.

MR. FURLOTTE: I have no questions of this witness My Lord.

THE COURT: Cpl. Mazerolle you are excused, thank you.

MR. WALSH: I call Cst. Richer Francoeur.

20

RICHER FRANCOEUR having been called as a witness testified as follows:

25

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name and your occupation?

A. My name is Richer Francoeur. I am a member of the R.C.M.P. I am a peace officer and have been so since January 1984. I am posted at Buctouche, New Brunswick.

30 Q. Could you tell the Court and jury please in your own words what you know of this particular matter beginning with the date, the time and the place?

A. On May 31, 1989 myself and Cst. Mazerolle were advised to attend at 242 Water Street in Chatham in order to conduct security of the scene. We attended there, arrived

35

56

Cst. Francoeur - direct

approximately 10.05 that morning and relieved Cst. Monique Vaughn and Ross White from the scene.

Q. You stayed there for how long?

5 A. We stayed there until that evening at ten o'clock.

Q. Who if anyone did you note entering those particular premises?

A. There was a member from Ident. Section - there were four members. They were Sgt. Chiasson, Sgt. McNeil, Cpl. Roy and Cpl. Godin.

10

Q. Did you have any other involvement in this particular matter?

A. No I did not.

MR. WALSH: I have no further questions My Lord.

15 MR. FURLOTTE: I have no questions of this witness My Lord.

THE COURT: Thank you very much Cst. Francoeur, you are excused.

MR. WALSH: I call Cst. Mike Reade My Lord.

20

MICHAEL WAYNE READE having been called as witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

25 Q. Would you give the Court your name and your occupation please?

A. My name is Michael Wayne Reade. I am a regular of the R.C.M.P. presently stationed in Moncton, New Brunswick.

Q. Could you tell the Court please in your own words what you know of this matter beginning with the date, the time and the place?

30

A. On the 31st of May 1989 myself and Cst. Ross White were attending to the crime scene on Water Street in Chatham, New Brunswick. Our tour of duty was from ten p.m. on the

57

Cst. Reade - direct

New Brunswick. Our tour of duty was from ten p.m. on the 31st of May until ten a.m. on the 1st of June for on site security.

5 Q. And you stayed there for how long?

A. For a 12-hour shift.

Q. And who if anyone did you observe on that particular occasion enter the building?

A. No one.

10 MR. WALSH: I have nothing further My Lord.

MR. FURLOTTE: I have no questions of this witness My Lord.

THE COURT: So you are excused, thank you constable.

MR. WALSH: I call Cst. Ellen Dixon.

15 RUTH ELLEN DIXON having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

20 Q. Would you give the Court your name and your occupation please?

A. My name is Ruth Ellen Dixon. I am a regular member of the R.C.M.P. presently stationed in Shipagan, New Brunswick.

25 Q. Would you tell the Court please in your own words your involvement in this matter beginning with the date, the time and the place?

A. At approximately 9.45 in the morning of June 1, 1989 I attended the residence on Water Street of Annie and Nina
30 Flam at which time I replaced constables Reade and White of the R.C.M.P. I remained there until 9.35 in the evening of the same day.

Q. And who if anyone entered this particular premises?

A. No one entered the house.

35 MR. WALSH: I have no further questions.

58

MR. FURLOTTE: I have no questions of this witness My Lord.

THE COURT: One woman replaced two men? Thank you, you are
excused.

5

Her Majesty The Queen and Allan Joseph Legere

Evidence of Cpl. Kevin Mole - September 9 and 10, 1991

5 MR. WALSH: My Lord if I may then, I wish to move back to the
regular order. My next witness on the indictment
list would be Constable Kevin Mole. Constable
Mole will be subject to 'stand aside' My Lord.

CONSTABLE KEVIN MOLE called as a witness and having been duly
10 sworn testified as follows:

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the court your name please and
your occupation?

15 A. Yes, my name is Kevin Michael Mole. I am a
member of the Royal Canadian Mounted Police. I
have been with the Royal Canadian Mounted Police
for fourteen years. I am presently stationed and
residing in Fredericton. That's in the County of
York, Province of New Brunswick.

20 Q. Would you tell the court please what if any role
you had in the Flam homicide investigation?

A. In May of 1989 I was stationed in Moncton, New
Brunswick. I was assigned to the Moncton General
Investigation Section and I was required to
25 attend to the scene of a homicide in Chatham on
the morning of the 29th of May 1989.

Q. For the purposes - so the jury understand, would
you explain to them the General Investigation
Section and the role it plays in the R.C.M.P.?

30 A. My Lord the General Investigation Section of the
Royal Canadian Mounted Police is normally

Cpl. Mole - direct

5 comprised of a group of investigators with a
senior person in charge, normally a sergeant
or a corporal. Their mandate would be to
assist the local detachment in the smaller police
agencies with the investigation of major crimes
ranging from fraud, assault causing bodily harm,
major break and enters, sudden deaths, homicides
and crimes of that nature.

10

Q. What was your actual role - what role did you
actually have in that - as a member of the G.I.S.
section what role did you assume in the homicide
investigation of the Flam.

15

A. Most homicide investigations are set up with a
main file coordinator that would come from the
local area, the local detachment. In this case
it was Cpl. Gary McNeil. The main file
investigator or the investigator in charge would
normally come from the General Investigation
Section, our unit, and that was Cpl. Gaetan
Germain. I was a part of a group of
investigators assigned to assist in the
investigation so I was one of the main file
investigators.

20

25

Q. Cpl. Mole how many homicide investigations have
you been directly involved in since joining the
R.C.M.P.?

30

A. In my service with the R.C.M.P. I have been
involved with approximately 20 homicide related
investigations.

Cpl. Maule - direct

5 have been capable of doing such a crime and if
 the person is named he would have to be tipped.
 A witness may have saw a person in the area in
10 the area. That person would have to be tipped as
 a possible suspect and would have to be
 investigated as a possible suspect. Sometimes it
 could be a very minor or vague reference to a
15 person and that person would still be tipped and
 investigated.

 Q. Are you required to follow up all these pieces of
 information no matter where they come from?

 A. That's correct.

15 Q. What process is followed in relation to these
 tips - what process is generally followed with
 respect to those tipped or the suspects in
 homicide investigations?

 A. Normally My Lord, based on the information
20 provided the tip would be prioritized on how urgent
 it would be and that would be based solely on the
 information that is provided by the tipster or
 whatever and following that it would be assigned
 to an investigator or a team of investigators and
25 they would be required to make every attempt to
 either identify the suspect as the culprit or
 eliminate them from the investigation.

 Q. Eliminate them for police purposes?

Cpl. Mole - direct

- A. To eliminate them for police purposes on the investigation.
- 5 Q. In relation to the Flam homicide investigation, did you have occasion to investigate a David Tanasachuk as a possible suspect?
- A. Yes I did.
- 10 Q. Would you explain to the jury please what you did in that particular regard?
- A. I was one of several investigators to deal with Mr. Tanasachuk. I would have interviewed him I believe on the 14th of June 1989 and would have, through a series of investigative avenues, eliminated for police purposes Mr. Tanasachuk as a suspect.
- 15 Q. Would you tell the jury please where you met - where you met Mr. Tanasachuk and where he had come from?
- 20 A. Mr. Tanasachuk had been unlawfully at large from the Westmorland Institution Correctional Centre in Dorchester since the 22nd of May 1989. He had been apprehended I believe on the 9th of June 1989 and I would have encountered him after his arrest and at the courthouse in Moncton.
- 25 Q. And could you tell the jury please - you called it the Westmorland Institution?
- A. The Westmorland Institution, yes.
- Q. Would you explain to the jury what that is?

Cpl. Mole - direct

- A. That is the medium security prison located in
Dorchester, New Brunswick.
- 5 Q. And when you say medium, again for the
uninitiated, what do you mean by medium security,
can you explain to them what that would mean?
- A. In my experience with the - having visited on
several occasions Westmorland Institution, the
inmates are not locked in their cells. They are
10 free to roam the area of the compound and within
the facilities.
- Q. How difficult is it to get away from the
Westmorland Institute?
- A. I believe that the inmates are normally accounted
15 for three or four times a day and normally it has
been my experience that when inmates leave the
Westmorland Institution they walk away and
normally head for the Trans Canada Highway or
whatever, and---
- 20 Q. They can just walk - you can just walk away from
that place?
- A. That's correct.
- THE COURT: You couldn't walk away from there when I was in
there last summer. I spent a day in there. You
25 are talking about which - not the big prison?
- A. No My Lord.
- THE COURT: You are talking about - well I just wanted to,
for public information, get it straightened out.
You are talking about the prison farm or whatever?

Cpl. Mole - direct

A. The farm annex they call it I believe.

Q. The prison farm?

A. The prison farm.

5 MR. WALSH: Your Lordship was talking about what place - you
were talking about Dorchester My Lord?

THE COURT: Yes. And you are talking about the--

MR. WALSH: I'm talking about the farm annex.

THE COURT: At Dorechester?

10 MR. WALSH: Yes.

THE COURT: Well I just didn't want you leaving the impression
that people are walking in and out.

MR. WALSH: No, I didn't believe the officer was in fact
talking about Dorchester My Lord.

15 THE WITNESS: If I may My Lord, the Dorchester penitentiary I
believe is a maximum security prison where the
Westmorland Institution I believe is medium
security.

THE COURT: That's the big fortress on the hill?

20 THE WITNESS: Yes My Lord.

MR. WALSH: No, I certainly didn't want it coming out that
you walk out of Dorchester.

25 Q. Could you tell us please - you are familiar with
the Westmorland Institution, the farm annex,
could you tell us please what if any restraint
equipment are these prisoners under while they
are there?

Cpl. Mole - Direct

- A. It has been my experience on several visits to the institution that the inmates don't wear any restraint devices, or haven't in my presence.
- 5 Q. Restraint device, for the jury - for the uninitiated, what do you mean by a restraint device?
- A. Either handcuffs, leg irons, strait-jacket, body chains, waist-belts, anything of that nature.
- 10 Q. In relation to the Flam homicide investigation did you have occasion to investigate a person by the name of John Marsh as a suspect on the tip file?
- A. Yes I did.
- 15 Q. What did you do?
- A. I was able to eliminate Mr. Marsh as a suspect in this investigation for police purposes.
- Q. Do you know Allan Legere?
- A. Yes I do.
- 20 Q. Is he present in court?
- A. Yes I do - he is seated to my extreme left against the wall. He is seated between the two R.C.M.P. members. He has a beige shirt with white lapel.
- 25 Q. Thank you officer, that will be fine. How long have you known Allan Legere?
- A. I have personally known Mr. Legere since June of 1986.

Cpl. Mole - direct

- Q. What if anything have you noticed about Mr. Legere and the wearing of glasses in the past?
- A. I have noted that Mr. Legere on occasion will wear prescription eye glasses or what appear to be prescription eye glasses.
- 5
- Q. In your experience does he wear them all the time?
- A. No. On occasion.
- 10
- Q. What if anything can you tell the jury about Mr. Legere's voice?
- A. I have had the opportunity to speak with Mr. Legere on several occasions over the last five years and I am able to remark that I noticed his voice change or appear to sound different depending on the situation - the situation at the time.
- 15
- Q. We have heard evidence at the outset of this trial that Mr. Legere escaped from custody on May 3, 1989. Can you tell the jury when he was imprisoned please?
- 20
- A. I am aware that Mr. Legere was arrested in June 1986.
- Q. What if anything did you do in relation to Nina Flam with respect to fingerprints?
- 25
- A. As a member assigned to deal with the witness Mrs. Flam, it was requested that I attempt to provide or obtain suitable finger impressions to provide for elimination purposes of the - at the scene of the homicide.
- 30
- Q. When you say for elimination purposes, what are you referring to?
- A. For physical comparison of the fingerprints found at the scene - at Mrs. Flam's residence.

Cpl. Mole - direct

Q. And were you able to obtain the fingerprints that you had been requested to get?

5 A. No. Mrs. Flam had badly burned hands and I wasn't able to obtain her fingerprints.

Q. I am going to show you the item that has been marked F for identification. Would you look at it please and tell the jury when you first came in - if you can identify that first of all?

10 A. Yes, I recognize these eye glasses as a pair of eye glasses that I would have received personally on the 3rd of June 1989 My Lord, from Constable Kingston Brown at the Newcastle detachment. Constable Kingston Brown of the Chatham police
15 department.

Q. And what if anything did you do with those particular glasses?

A. I maintained these glasses in my personal possession until the 5th of June and I would have
20 handed them over to Constable Robin Britt.

MR. WALSH: I have no further questions My Lord, thank you.

THE COURT: Cross examination? Again, Mr. Furlotte of course has the privilege of either saving it until later - you are recalling this witness?

25 MR. WALSH: Yes we are My Lord.

THE COURT: So you can either cross examine up to this point now, or---

MR. FURLOTTE: Just a question My Lord to the Crown. You are
30 calling this witness in relation to the Flam case again are you?

MR. WALSH: No I don't believe so. I stand to be corrected

Cpl. Mole - direct
- cross

5 but - if I could just have a moment My Lord. He
has been recalled at this time with respect to a
time frame that takes in the period around the
particular investigation. He will be called at a
later time - his evidence at a later time will
obviously have an indirect - or direct - it will
deal with his aspect of the investigation some
10 time, quite some time after the particular Flam
homicide occurred.

THE COURT: But may refer back to some of these events?

MR. WALSH: Yes, it may have a direct contact back to it but
in terms of his actual involvement, he was there
15 for some time and involved in a number of parts
of it.

CROSS EXAMINATION BY MR. FURLOTTE

Q. It's Corporal Mole now is it?
20 A. Yes it is.
Q. If I understand it correctly Cpl. Mole you were
one of the main file coordinators in this Flam
case?
A. In this particular case here I was one of the
25 main file investigators.
Q. One of the main file investigators. So therefore
you would have access to most of the evidence
throughout the investigation, whether you
obtained it yourself or not?
30 A. I would be aware of most of the investigation.

12

Cpl Mole - cross

- Q. You would be aware of most of it. Cpl Mole, maybe to get one point out of the way here, I see in the police brief and the profile of Annie Flam that she had been getting treatment for her heart condition.
- 5
- A. Yes, I understand that to be correct.
- Q. And her Dr. prescribed her nitro-glycerine pills?
- A. I would only know that from reading that document. I don't have any personal knowledge of that.
- 10
- Q. Did you read the profile on Annie Flam?
- MR. WALSH: My Lord at this time I just want to point out clearly that we are not objecting but what Mr. Furlotte is getting into is clearly hearsay, but we wanted to point that out although we are not objecting obviously to the line of questioning, it is hearsay evidence that he has been delving into.
- 15
- MR. FURLOTTE: Well it's hearsay from the police report - the results of their investigation. I would assume that---
- 20
- THE COURT: Well the police report itself is not admissible, nor are any of the contents.
- 25
- MR. FURLOTTE:
- Q. Do you know whether or not the police investigation consulted with Annie Flam's personal physician?
- A. I would expect that they would.
- 30
- Q. And the police would make themselves aware as to what her medical health was at the time of her age, 75 years?

13

Cpl. Mole - cross

A. I would think that the investigator responsible would look into that, yes.

5

Q. And any recent illnesses and medication that she might have been taking?

A. That's correct.

Q. Now you mentioned the procedure is that anybody can be a suspect on very little or no evidence, correct?

10

A. That's correct.

Q. Just basically if people have some kind of an idea that somebody may be involved, that's enough for you to consider them a possible suspect?

15

A. If they are identified by name they would be looked into.

Q. And then you would do your best to eliminate them?

A. Identify them and eliminate them, yes.

20

Q. And you mentioned that David Tanasichuk for one reason or another was a suspect.

A. That's correct.

Q. And for police purposes he was eliminated?

A. That's correct.

Q. And you took part in that elimination yourself?

25

A. Yes I did.

Q. You interviewed - I believe you said you interviewed Mr. Tanasichuk?

A. Yes I did.

30

Q. And you say that through a series of investigative avenues that you were content upon that itself that you could eliminate him as a suspect?

14

Cpl. Mole - cross

A. I was satisfied that for police purposes Mr. Tanasichuk would be eliminated as a suspect, yes.

Q. Just through your interview with him?

5 A. No, it was---

Q. Through a series of investigative avenues?

A. Yes.

Q. What investigative avenues were they?

MR. WALSH: My Lord I think that the officer is going to have
10 some difficulty at this particular point. Perhaps if we could - I don't believe the answer will assist Mr. Furlotte but perhaps if his Lordship would listen to the answer in the absence of the jury and then rule on the
15 question?

THE COURT: Well perhaps this whole thing could be easily resolved you know, if the witness says "look, we established that he was in South America that week", that's---

MR. WALSH: I believe I know the answer from the officer. As
20 I said, I don't believe it is going to assist Mr. Furlotte but I think it is appropriate that his answer be given to you so that you can determine how it best be dealt with.

THE COURT: All right then, we'll ask the jury to go out then
25 just for a few minutes.

MR. WALSH: We are dealing with police investigative procedures.

(Jury retires)

30

15

Cpl. Mole - cross

MR. WALSH: Mr. Furlotte has asked a question - I would respectfully suggest that you permit the Corporal to answer the question and you could rule on -

5 you could see what I mean then.

THE COURT: You are asking Mr. Furlotte to ask the question again?

MR. WALSH: Or permit Cpl. Mole to answer it.

THE COURT: Well the question is, as I recall it, why did you eliminate this gentleman?

10

MR. FURLOTTE: Yes, and Mr. - sorry, Cpl. Mole stated on direct examination that through an interview and through a series of investigative avenues, and I asked what those investigative avenues were.

THE COURT: Yes. Well what you are asking is "precisely why did you eliminate him"?

15

MR. FURLOTTE: Yes.

THE COURT: Well would you answer that?

A. Yes My Lord. In addition to one interview that

20 another constable had with Mr. Tanasichuk I proceeded to Moncton and met with Mr. Tanasichuk and met with his counsel. I received from a very cooperative Mr. Tanasichuk, hair samples, fingerprints, palm prints - he was not able to

25 provide an alibi obviously because he was unlawfully at large but he did consent to a polygraph examination without reluctance. He took the polygraph examination and I was advised that he had passed - he was being truthful. He

30 had been questioned on his involvement with the Flam homicide.

16

Cpl. Mole - cross

- Q. Anything else? You mentioned you took the hair samples and you had hair samples checked with lab reports or with the hair found at the scene of the crime?
- 5
- A. His hair was sent to the - hair samples that were taken, both pubic and head hair, were sent to the crime laboratory in Sackville and I was advised or I received information that they were negative in comparison to the hair samples found at the scene.
- 10
- Q. And was there any D.N.A. analysis done on Mr. Tanasichuk?
- A. Not to my knowledge.
- 15
- Q. Were there any other investigative avenues arranged that you can think of that were done to eliminate him?
- A. No. Mr. Tanasichuk was very cooperative and it is my personal experience coupled with what I had gleaned from that part of the investigation I was satisfied for police purposes that he could be eliminated from being involved in that homicide.
- 20
- Q. Well those are the answers for the investigative or aids for investigation avenues I guess My Lord for elimination and Mr. Walsh would like you to rule on which particular ones, or---
- 25
- A. Well My Lord as you are aware the question of polygraph - the use of a polygraph has been ruled on by the Supreme Court of Canada. My understanding is that the nature of a polygraph examination, although it is normally directly
- 30

17

Cpl. Mole - cross related to whether the accused did or didn't take a polygraph, my understanding is that to relate to the jury the polygraph - the fact that this particular person tendered a polygraph---

5

THE COURT: Well just to cut this thing a little shorter here, I have no objection or can see no objection to Mr. Furlotte asking this same question and getting the same answer or seeking the same answer as he's got now before the jury. It is going to lead to you quite obviously asking on re-examination what is a polygraph test and why do you employ polygraph tests and the explanation given by the officer presumably being "we can't use it as an investigative aid. It has no authority in court but notwithstanding that we placed sufficient reliance on it for investigative purposes that we use it and someone passes it, it is one of the things we consider in eliminating him as a suspect". Now this I gather - I mean I have heard this answer before at other trials and presumably it is the answer given but I just want to point out that if you get into polygraph either Mr. Furlotte should ask about the implications which you may not desire to do but Mr. Walsh would then be given that right to have it explained.

10

15

20

25

30

MR. WALSH: Yes My Lord. The point I wish to make My Lord is not that we object to the answer as inasmuch as we want to forewarn the court of the fact that the use of the polygraph was going to be

18

Cpl. Mole - cross
incorporated in his answer and I didn't know what
the court's position would be with respect to it
so we considered it prudent to give you advance
notice.

5

THE COURT: I don't mind it being mentioned. I may even have
- at the moment I may even have something to say
to the jury about polygraph because jurors and
people generally don't know very much about
polygraphs.

10

MR. WALSH: My Lord I have no objection to the actual answer
but I did want to forewarn the court. We thought
collectively it would be best and to be cautious
and advise you in advance that this was going to
be raised.

15

THE COURT: I leave it up to Mr. Furlotte whether he even
wants to use this on cross examination. Again it
is up to him to decide.

20

MR. FURLOTTE: My Lord if I was aware of any Case Law that
would say that Cpl. Mole was not able to resort
to that type of an answer I would surely advise
the court but I am not aware of it and I don't
believe there's anything - any rules or laws
against it. Again it may be just a simple matter
of discretion for the Court, I don't know.

25

THE COURT: Well I'll give an example of it. The case I was
involved in around four or five years ago, a
murder case where the suspect was put through
polygraph tests and very detailed evidence of the
questions and answers put to him on the polygraph
test were allowed in court, not as evidence of
whether he was guilty or innocence of the crime

30

19

Cpl. Mole - cross

5 but to show what events led up to what amounted
to a confession by him. This led up to a
confession but it was important from that point
of view and I had to explain to the jury - look
we don't - as far as the law is concerned, as far
as justice is concerned, we put no credence
whatever in the result of a polygraph test and in
that case have been permitted to hear this
10 evidence or have been required to hear the
evidence merely insofar as it provides a
background for certain events which followed
later. But I have - this is up to you if you
want to ask this. I dislike the idea really of
getting into polygraph tests and all that. It's
15 sort of a red herring to a certain extent but the
accused is entitled to ask that. Can we have the
jury back?

MR. WALSH: 20 One final pattern My Lord. I have spoken to co-
counsel again. We are being overly cautious I
appreciate but I think it's best to be prudent.
One of the questions I anticipate - and again
anticipate from Mr. Furlotte simply based on the
examination he conducted of Mrs. Flam, and one of
25 the questions he had put to Mrs. Flam was whether
or not Cpl. Mole had tried to influence her by
putting the name Allan Legere to her. I tell the
Court now that if Mr. Furlotte - I'm simply doing
this because I don't want to have to bring the
30 jury in and take them out again, or have you do
that - if he asks that question of Cpl. Mole "why

20

Cpl. Mole - cross

did he put the name Allan Legere to Nina Flam",
my understanding of the answer, and correct me if
I'm wrong Cpl., is that during the investigation
5 he had been advised by a police officer---

MR. FURLOTTE: Well I don't think the Crown should be putting
the answer in Cpl. Mole's mouth before he even
asks it, which is exactly what he is doing.

MR. WALSH: I have no further - that's fine. Mr. Furlotte
10 doesn't want to find out---

MR. FURLOTTE: Mr. Walsh is quite right. I have every
intention of asking the question.

MR. WALSH: ---he can go right through this open door. I
just tried to be super cautious and be a courtesy
15 to Mr. Furlotte and the accused. If he wants to
act in this fashion My Lord, please bring the
jury back and ask the question.

THE COURT: Yes but what is your bottom line point?

MR. WALSH: The bottom line is that if he asks that
20 particular question Cpl. Mole is going to tell
Mr. Furlotte that the reason he put to it is
that Mrs. Flam told the nurse that she thought it
was Allan Legere. Correct me if I'm wrong.

THE COURT: Well you are going to - you are just warning----

MR. WALSH: I'm warning Mr. Furlotte that that is - that the
25 answer to that question can be highly
prejudicial to his client and - or at least we
perceive it could be taken to be prejudicial. I
wanted to forewarn him that if he blundered into
30 that particular area he could step on a land mine
so to speak. We are again attempting to just
forewarn the Court of these particular matters.

21

Cpl. Mole - cross

THE COURT: Well okay, we are all forewarned. We'll have nothing - nothing else necessary to consider here. We'll have the jury in.

5

(Jury polled - all present)

THE CLERK: All jurors are present My Lord.

THE COURT: Thank you. Now we will go on with the cross examination.

MR. FURLOTTE:

10

Q. Cpl. Mole, back again to the question, when you are investigating particular evidence of trying to either prove that a suspect - that there is evidence against a certain suspect or to eliminate a suspect, you mention that with David Tanasichuk, you interviewed him and that through a series of investigative avenues you again tended to eliminate Mr. Tanasichuk. What were those series of investigative avenues?

15

20

A. My Lord, in addition to the subsequent interview with David Tanasichuk - the first interview was conducted upon his arrest by another policeman - I visited with Mr. Tanasichuk and his counsel in Moncton. I requested and received from who I perceived to be a very cooperative Mr. Tanasichuk, hair samples - both head and pubic hair samples. I accompanied him to the Moncton cell area where I received from Mr. Tanasichuk finger and palm impressions. A request was made to - in light of the fact that Mr. Tanasichuk could not provide an alibi because of the fact that he was unlawfully at large - normally an alibi if it can be substantiated is a very

25

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22

Cpl. Mole - cross

valuable tool in that part of the investigation -
Mr. Tanasichuk did not have an alibi available so
it was requested that he submit to a polygraphic
5 examination to establish whether or not he had
any involvement with the homicide at the Flam
residence. Subsequent to my request Mr.
Tanasichuk, on the advice of his counsel,
submitted to an examination and I was advised, or
10 I received information that he was found to be
truthful and that he had no involvement in the
homicide at the Flam residence My Lord.

Q. You mentioned that he gave hair samples, and were
those hair samples checked at the lab for
15 elimination purposes?

A. Those hair samples were collected by myself and
transported personally to the lab in Sackville,
New Brunswick, where they were examined and I was
subsequently advised that they were compared with
20 the hair found at the scene and that it did not -
or that the hair wasn't consistent.

Q. So that was one reason you were able to eliminate
Mr. Tanasichuk because the hairs were not
consistent with the hairs found at the scene?

A. That avenue was one of several that were
collected.

Q. That was one avenue taken into consideration?

A. That's correct.

Q. Now, was there any - do you know whether or not
30 there was any D.N.A. analysis done on them - Mr.
Tanasichuk's?

23

Cpl. Mole - cross

A. To my knowledge I am not aware of whether or not that test has been conducted.

5 Q. Now the polygraph test that you conducted on Mr. Tanasichuk, the R.C.M.P. usually rely on them pretty heavily do they?

A. I - myself personally I did not conduct the polygraph examination on Mr. Tanasichuk. The polygraph examination is - it's a tool, it's an
10 investigative tool and normally the results of a polygraph examination are evaluated in light of whatever evidence you have or the results of other evidence.

Q. The things you have or may not have?

15 A. That's correct.

Q. You mentioned that Mr. Tanasichuk escaped from Westmorland Institute.

A. That's correct.

Q. And basically at Westmorland Institute inmates do
20 not have any restraining equipment on?

A. Not that I am aware of.

Q. Not that you are aware of. Handicuffs, leg irons, or body chains I believe.

A. Shackles, leg irons, body chains, waist belts,
25 strait jackets, handcuffs.

Q. Now when you were questioning Nina Flam and she mentioned to you about the body chain - the chain around the waist with the piece hanging down eight to ten inches, you were concerned that that
30 would be a body chain that inmates are sometimes restricted with. Is that correct?

A. That's correct.

24

Cpl. Mole - cross

Q. And the description she gave you pretty well described one of those body chains?

A. It was very similar, yes. That's correct.

5 Q. Very similar. So that was quite interesting to you whenever she identified that on her intruder. Is that correct?

A. That's correct.

10 Q. So you are confident that Mr. Tanasichuk did not have one of those body chains on - waist chains on when he escaped?

A. I feel fairly certain yes, that he had no restraint device on if he walked away from Westmorland Institution.

15 Q. And you are satisfied that when Mr. Legere escaped he didn't have any body chain or waist chain on him either?

A. Are you asking my opinion, or---

20 Q. Well you did the investigating. You are one of the chief investigators in this case.

THE COURT: Well he doesn't know the answer to that. He wasn't there.

A. No, I wasn't there when he escaped.

MR. FURLOTTE:

25 Q. You were not there but you are one of the chief file coordinators and I believe the evidence of Robert Winters---

THE COURT: Yes but you can't bring out rumours in connection with this case or information of that nature.

30

25

Cpl. Mole - cross

MR. FURLOTTE:

- 5 Q. The evidence of Robert Winters, the first witness
in this trial brought evidence that the day Mr.
Legere escaped- he gave evidence that handcuffs,
leg irons and waist chain restraint were all left
behind the scene at the hospital when he escaped.
- A. I understand that's what Mr. Winters said.
- 10 Q. Right. Do you have any other evidence contrary
to that?
- A. No I do not.
- Q. Do you have any evidence of motorcycle gangs
being in the Chatham, Newcastle area in the
summer of 1989?
- 15 A. I am not aware if there were any.
- Q. Aside from inmates who wear waist chains, are you
aware of any other type of people who might wear
chains around their waist?
- A. Recently, no.
- 20 Q. I believe Nina Flam, also in court and in your
interviewing her identified something like a
square thing on the chain also?
- A. That's correct.
- Q. Which could have been a padlock?
- 25 A. It's possible.
- Q. Did you do your best to try to get Nina Flam to
identify that square thing as a padlock?
- A. Are you - excuse me My Lord - is the question
'did I attempt to have Mrs. Flam identify that
30 item as a padlock, or ---
- THE COURT: Did you do your best to try to have---
- MR. FURLOTTE: --Mrs. Flam identify the square thing as a padlock.

26

Cpl. Mole - cross

THE COURT: I don't think the question is really a proper one
Mr. Furlotte. What are you getting at?

MR. FURLOTTE:

5 Q. Did you try to influence Nina Flam - did
you---

THE COURT: Did you put pressure on her to say that that was
a padlock. Is that the question?

MR. FURLOTTE: Pressure might be a strong word, but influence
10 - but if you want to use the word pressure---

THE COURT: Influence maybe.

MR. FURLOTTE:

Q. Attempt to pressure or influence Nina Flam---

THE COURT: Did you use influence to make Nina Flam say that
15 it was a padlock?

MR. FURLOTTE:

Q. To say that was a padlock - a lock?

A. My Lord I---

THE COURT: I don't think she did say it was a padlock. She
20 said it was box.

MR. FURLOTTE: She said it was a box or square thing and I am
asking this constable if he put pressure on Nina
Flam to say things you wanted her to say - that
it was a lock.

25 A. My Lord I feel personally it would be very
difficult for anyone in that position to put
pressure on Nina Flam in the hospital room, where
she was at that time, and I can assure you that I
made no attempt to influence Mrs. Flam on any
30 part of her statement or subsequent evidence.

Q. Did you bring an inmate waist chain, lock and
all, to the hospital to show it to Nina Flam?

27

Cpl. Mole - cross

A. Yes My Lord I did.

Q. Did you ask her if the square thing that she saw looked like the lock that was on the waist chain?

5 A. Yes My Lord I did.

Q. Cpl. Mole are you - how well are you experienced in taking statements from witnesses?

THE COURT: Oh that's a - gosh, how's he going to answer that?

10 MR. FURLOTTE:

Q. Well, how many witnesses would you have interviewed to take statements from?

A. I - sorry My Lord I don't really have any way of guaging---

15 Q. Say a hundred, two hundred?

A. Witness statements?

Q. Yes.

A. Far more than two hundred. I really have no way of---

20 Q. Let me put it this way then Cpl., is it proper to ask witnesses leading questions when you are attempting to get information?

A. It would depend on the situation I guess probably.

25 Q. Would you admit Cpl. that you asked Nina Flam many leading questions?

A. I asked Mrs. Flam many questions and---

Q. Where you would suggest the answer?

A. I don't recall doing that.

30 Q. You don't recall doing that?

A. No.

28

Cpl. Mole - cross

Q. I have a copy of a statement that you took from
Nina Flam on May 31, 1989 at 1320 hours at the
Dr. Chalmers hospital in Fredericton. Page 21 of
5 the transcript, at the bottom of the page you
asked Nina Flam 'was it just----

MR. WALSH: My Lord at this time I am going to register an
objection. If the purpose of this particular
cross examination is to demonstrate to the jury
10 that Cpl. Mole somehow influenced or pressured
Nina Flam, then in order I would suggest for him
to follow up that line of questioning the whole
statement of Nina Flam should be read to the jury
so that they can assess how that was said in
15 relation to the - to any individual piece.

THE COURT: I guess that would be how it would have to be -
why don't you read the whole statement? How long
is the statement - 21 pages?

MR. FURLOTTE: This is page 21. That whole statement taken on
20 that day would be 26 pages.

THE COURT: Well, start at page 1 and read it.

MR. FURLOTTE: I'd love to My Lord. I didn't think the Crown
would be so agreeable. Starting on page 1---

THE COURT: Does the witness have a copy - is there a copy
25 that he could follow along on?

MR. WALSH: I can provide a copy. What date are you looking
for?

MR. FURLOTTE: The 31st.

THE COURT: We should get the setting here. This is two days
30 after she was seriously injured. She is lying
on her back in a hospital bed, probably still
almost dead.

Cpl. Mole - cross

MR. FURLOTTE: I better fill my water glass if I'm going to
read 26 pages. You start off Cpl. Mole by
stating: Okay, can we start at the beginning
5 that evening, where you had gone, what time
you came home? Nina says I don't know. You
then asked: Had you gone out to visit? Nina
says I went out somewhere. (it's inaudible.)
I came back around 9.30 I think.

10 Q. Where was Annie?

A. Annie was in the store.

Q. Annie was in the store?

A. I didn't see her.

Q. You didn't see her when you came home?

15 A. No, no, I don't know. It couldn't have been
11.30 when the guy came in.

Q. Okay.

A. I had my back to him. I was in bed and he
put his hand over my mouth and he said don't
20 speak.

Q. Okay.

A. He said don't scream, I wont hurt you.

Q. Okay, was the light on in your bedroom?

A. Nods her head.

25 Q. The light was on in your bedroom?

A. I was reading.

Q. Was it a lamp - was it a ceiling light or a
lamp?

A. No, there was two - two bedside lamps.

30 Q. You had both bedside lamps on?

A. Uh huh.

Cpl. Mole - cross

- Q. Okay, you had your back to him when he came in and and you didn't see him when he came in at all?
- 5 A. No, just heard him.
- Q. Okay, if at any time you want to stop to take a rest you tell me, okay?
- A. I want to hurry up.
- Q. Okay, okay. So he came in the room and what did you say he did again?
- 10 A. He put his hand over my mouth.
- Q. Okay.
- A. And he said don't speak and I wont hurt you.
- Q. Okay. Did you see him at that time?
- 15 A. No.
- Q. No, you still----
- A. No I couldn't see him at all. He had a pillow over my face.
- Q. Okay, did he put a pillow over your face?
- 20 A. At all times.
- Q. When he first came in the room---
- (Answer was coughing)
- Q. Was the pillow beside you like---
- A. Yes.
- 25 Q. And he just put it over your head?
- A. (nods her head)
- Q. Was your face down or were you facing up?
- A. Well I was on my side.
- Q. Uh huh. What did he say after that?
- 30 A. He said where do you keep the money.
- Q. He said where do you keep the money?
- A. Yes. Where does Annie keep the money.

Cpl. Mole - cross

- Q. Where does Annie keep the money, - and what did he say?
- A. I don't know.
- 5 Q. Okay, and what did he say after you said I don't know?
- A. I don't remember.
- Q. Okay, okay, you don't remember. Did he do anything then - did he grab you or anything then?
- 10 A. (gestures to her left cheek) - He punched me.
- Q. He punched you? He punched you on the left side of your face. Did he say anything then?
- A. He asked me about my money.
- 15 Q. He asked you what?
- A. About my money.
- Q. He asked you about your money.
- A. I didn't have any.
- Q. You told him you didn't have any? Then what did he do?
- 20 A. He wanted to see my bank book.
- Q. He wanted to see your bank book?
- A. I told him where it was.
- Q. Where was your bank book?
- 25 A. It was in my purse.
- Q. And your purse was in the bedroom?
- A. (Nods)
- Q. Was it on the dresser? No?
- A. It was on the chair.
- 30 Q. You told him it was on the stair - did he stay on the bed with you there or did he leave the bed then?

Cpl. Mole - cross

- A. Well, he tied me up.
- Q. Okay, do you know what he tied you up with?
- A. No I couldn't say.
- 5 Q. Okay, do you recall how he tied you up?
- A. He tied my arms together.
- Q. He tied your arms together in front of you or
in the back of you?
- A. In the back.
- 10 Q. In back of you - you still had your face
sideways?
- A. All the time. I was on the bed.
- Q. Uh huh.
- A. Then he said 'if you don't tell me I'm going
15 to rape you.'
- Q. Okay, is that before or after he went to your
purse? Can you recall that he went to your
purse at all?
- A. Yeah.
- 20 Q. After you told him?
- A. I couldn't see. He didn't seem to be making
any noise.
- Q. He didn't seem to be making any noise?
- A. (coughing)
- 25 Q. Okay, so then he went to - he left you for a
minute?
- A. Yeah, several times he left me and went
downstairs. He had my arms tied and my legs
tied. When he went downstairs he tied me to
30 the bed.
- Q. He tied you to the bed - he tied your arms to
the bed or your legs?

33

Cpl. Mole - cross

A. No, my legs.

Q. Your arms. Okay.

A. And he went downstairs several times.

5 Q. Okay, did he go downstairs - are you okay?

A. (nods)

MR. FURLOTTE: Maybe I could break at this time My Lord and --

10 Q. Cpl. Mole, when you asked 'he tied you to the bed - he tied your arms to the bed or your legs', she answers 'no, my legs' and you come back at her 'your arms, okay'. Now is that a misprint or are you trying to lead her to tell her that her arms were tied?

15 A. My Lord I probably heard her say 'arms'. When I listened to the tape she said 'legs' so I - it's transcribed as it was spoken. But there was a great difficulty in hearing Mrs. Flam speak. She was on a respirator and I had to---

THE COURT: On a respirator - what do you mean?

20 A. She wore a - she had a mask for oxygen and she had a drip.

THE COURT: She was talking through this respirator?

25 A. Yes My Lord, and the machine that was there that was providing oxygen to her was making quite a bit of noise. You can determine, or it is obvious from the statement that I have to continually repeat what she said so that I will be able to register at least an answer because her voice is a mere whisper. Myself, I was dressed entirely in hospital costume with a hat
30 over my head and a mask over my face and rubber

Cpl. Mole - cross

5 gloves and cloth covers over my footwear. It was very difficult for me to hear her with the cap I had on and the noise the machine was making and the difficulty she was having in speaking My Lord. That's probably a mistake on my part.

MR. FURLOTTE: Mistaken - okay, thank you.

Q. Okay.

A. He wanted to know where Annie's money was.

10 Q. He wanted to know where Annie's money was.

A. I told him I didn't know.

Q. Okay.

15 A. He said 'it's in the safe'. I said 'she doesn't have a safe'. He said 'well that's ridiculous'.

Q. Okay, he said 'it's in the safe'?

A. He said 'it's in the safe' and I said 'there is no safe'.

Q. Okay.

20 A. He said what's that big blue thing and I told him it's for 6-49 tickets and he said well how do you open it and I told him.

Q. How did you tell him to open it?

A. At first I told him to push to open.

25 Q. Uh huh.

A. He came back and said it wouldn't.

Q. Okay.

A. He said go back and turn it on - I said go back and turn it on.

30 Q. You told him to turn it on?

A. (nods her head)

Q. Okay.

Cpl. Mole - cross

- A. I told him how to turn it on.
- Q. You told him how to turn it on.
- A. And he came back (inaudible) 'it doesn't go
5 on' he said. 'Well if it's not a safe I don't
want it'.
- Q. He said if it's not a safe I don't want it.
- A. (nods her head)
- Q. Okay, and then what happened?
- 10 A. That's when he started to rape me.
- Q. That's when he started to rape you. Do you
think you are going to be able to tell me
about that?
- A. No.
- 15 Q. It's pretty important. It may help us find
out who may be responsible.
- A. No.
- Q. Can you remember what he did first?
- A. Yes, yes. While my hands were behind my back.
- 20 Q. You had your night dress on?
- A. Yes.
- Q. Did you wear panties to bed?
- A. (shakes her head)
- Q. No panties?
- 25 A. No, he---
- Q. Did----
- A. He tried for a little while, then he go
downstairs, then he came back and (inaudible)
me again.
- 30 Q. Okay, he tried for a little while and then he
went downstairs. Did he say why he was going
downstairs?

Cpl. Mole - cross

- A. He said he was going down there - he told me he was going down to see Annie.
- 5 Q. Going down to see Annie. Do you know how long he left for - you can't recall how long it could be that he was gone?
- A. (shakes her head) Each time he left me he went to another bedroom. He'd look all around.
- 10 Q. He'd go into another bedroom and he'd call out for Annie?
- A. No, no.
- Q. No?
- A. Look around.
- Q. Oh, he'd look around.
- 15 A. In my house.
- Q. In your house. Could you hear him doing things, making any noise at all?
- A. No.
- Q. But you knew he was looking around, going in all the bedrooms?
- 20 A. Yes.
- Q. Okay, what did he do next? Did he say anything to you about---
- A. (Answer inaudible).
- 25 Q. He said as soon as he got the money he was going to leave?
- A. (Inaudible)
- Q. So you told him there was no money?
- A. He said 'don't tell me' (inaudible).
- 30 Q. Don't tell me that on a Sunday there's no money?
- A. Yes.

37

Cpl. Mole - cross

MR. FURLOTTE:

- 5 Q. I am assuming Cpl. Mole that where the machine
wasn't able to pick up what she was saying, you
were, because your question says 'don't tell me
that on a Sunday there's no money' but the answer
ahead of that was inaudible.
- A. I would be repeating what Mrs. Flam said.
- 10 Q. You would be repeating what Mrs. Flam said. So
it appears at times that you can pick up what the
machine can't and then there's other times that
the machine can pick up what you can't, which
might not be all that unusual.
- 15 A. No, she was just speaking in barely a whisper My
Lord and I didn't want to put the tape recorder
right on her chest where she'd been injured and
that. I had to stay back quite a ways, so---
She was in a burn unit there. So the tape player
would pick my voice up as I was repeating what
20 she said.
- MR. FURLOTTE: That's understandable.
- 25 Q. Okay, well the problem Nina is that your
machine is making a lot of noise and I just
want to make sure that I can hear, so I just
don't have to ask you the questions again,
okay.
- A. (and then the nurse said something which the
machine didn't pick up either).
- 30 Q. Yeah, that would be okay because she is really
not using the mask anyway. (The nurse turns
the oxygen machine down).

Cpl. Mole - cross

MR. FURLOTTE:

- Q. If I understand, you were getting assistance from the nurse at that time to help clear up the noise from the machine?
5
- A. That's correct.
- Q. Okay.
- A. So he said to me that what he was going to do was set fire to the house.
- 10 Q. Okay.
- A. He said it will just look like as though the fire started and it will also seem like smoke inhalation. Then he said 'well if there's no money in here, it's five o'clock and I can't waste all night, I am going' and when I got up to the hospital they told me it was four.
- 15 Q. Okay, so he told you it was five o'clock?
- A. Yes.
- Q. Okay, and he said 'I can't waste all night' and that was when he was almost ready to leave?
20
- A. Yeah.
- Q. Okay, is that before he---
- A. (answer inaudible)
- 25 Q. ---started the fire or after, can you recall?
- A. Before.
- Q. Before he started the fire?
- A. I don't know I couldn't see.
- Q. Uh huh.
- 30 A. He had a pillow over my head.
- Q. Uh huh.

Cpl. Mole - cross

- A. And I don't know what he put on his side of the bed.
- Q. On your left side of the bed?
- 5 A. My right.
- Q. On the right side of the bed?
- A. This side here.
- Q. Okay, I'm sorry.
- A. And he opened my closet doors and I don't know
- 10 what he started - used to start it. Flames were coming from there.
- Q. Okay.
- A. And around my bed.
- Q. Okay, did you hear anything like a lighter?
- 15 A. No I didn't.
- Q. Or matches or anything like that?
- A. No.
- Q. You wouldn't be able to recall?
- A. No, no. I just had to get over to the other
- 20 side of the bed and I got - he had a nylon tied around my foot. (and she said something that was inaudible)
- Q. Uh huh.
- A. And I knew I could get them loose so I just
- 25 kept quiet and I thought he was gone so I opened the door and went out too. That's when he shoved me back in the fire - shoved me back and shut the door.
- Q. Uh huh.
- 30 A. And - then I got out again and I ran down the hall to another bedroom.

Cpl. Mole - cross

- Q. That's the bedroom on the right when you come out of your bedroom?
- A. Yeah.
- 5 Q. You got to the right on the landing there okay?
- A. No, down the hall.
- Q. Oh, you went straight down the hall?
- A. I went straight down the hall.
- 10 Q. Okay.
- A. That's the last I saw of him.
- Q. Okay.
- A. He must have thought that when I went down the long hallway I wouldn't get out.
- 15 Q. Okay.
- A. So I got out.
- Q. How long did you stay down in that other bedroom, do you remember at all?
- A. A minute or a second. I don't know. And I
- 20 came out and I got as far as the landing and then I can't remember.
- Q. Are you feeling okay, do you want some air, some oxygen?
- A. No, hurry up.
- 25 Q. Okay, was there any money box in the house or in the - you used to work in the store, was there a money box? We're looking in the house there right now and we want to make sure.
- A. In Annie's house?
- 30 Q. In Annie's house, yes.
- A. Well there could have been a few hundred dollars.

41

Cpl. Mole - cross

- Q. A few hundred dollars. Where would Annie usually keep that?
- A. I'm not sure.
- 5 Q. We did find some money and that. I just want to be sure that it's---
- A. It's in the bottom dresser drawer.
- Q. In her bottom dresser drawer?
- A. Not hers.
- 10 Q. Not hers?
- A. The other bedroom.
- Q. Which dresser?
- A. There's only two in Annie's.
- Q. In her other bedroom, okay, upstairs - when
- 15 you go upstairs on the left-hand side?
- A. No, straight ahead.
- Q. Okay.
- A. Well---
- Q. Okay, Annie is in here, dresser to the right,
- 20 did she have a deposit from---
- A. I don't know.
- Q. From her day's receipts normally would she?
- A. Yeah, she'd have something.
- Q. And what would be with the money in the
- 25 dresser?
- A. Well I don't know. Annie never told me that or--
- Q. Okay, did she used to go to the bank quite often, do you know?
- 30 A. Once a week.
- Q. Okay, and what was usually on that day?
- A. Wednesday.

42

Cpl. Mole - cross

Q. Wednesday. So she probably would have had money in the house for four or five days. Would you have a rough idea - you worked Nina

5 - how much money there would be?

A. No.

Q. Okay

MR. FURLOTTE: 'Allain states - did you check the doors there' who's Allain?

10 A. In the index at the beginning there, Constable Allain Houde was the first member to interview Mrs. Flam in Fredericton and he brought me on the 31st of May to the hospital and introduced me to Mrs. Flam and he was present during this

15 particular interview. He's an R.C.M.P. member.

Q. He's an R.C.M.P. member?

A. At the time stationed in Fredericton, New Brunswick.

20 A. I wasn't there that night. I don't know how he could have gotten in. I was just wondering after if maybe he got in before she closed the door (inaudible) and she'd never know.

Q. In the store?

25 A. Maybe.

Q. What time does she usually---

A. Eleven

Q. Eleven on Sunday night?

A. Yes.

30 Q. When you come home Nina that night do you recall if you locked your doors?

A. Yes.

Cpl. Mole - cross

Q. Both front and back doors, and your front door has a dead-bolt?

A. Yes.

5 Q. You recall that, and that was locked when you went to bed?

A. Yes.

MR. FURLOTTE: We are on page 11. It will be a little while yet.

10 THE COURT: I think we better have a recess at this point and then continue after the recess. You are still on the stand Cpl. Mole and you shouldn't discuss the matter with anyone. We'll take fifteen minutes now.

15 (RECESS)

Court resumes - Jury polled, all present.

THE COURT: Mr. Furlotte.

MR. FURLOTTE: My Lord, continuing from page 11 --

20 Q. Now the back door, that has a slider. Was that locked as well in the kitchen?

A. Yeah.

Q. Okay, all your windows are always locked. Do you know anything about the window that was broken in Annie's porch, like behind the kitchen there is a pane - you know how the door in her kitchen is nailed?

25

A. Yeah.

Q. There is a little porch there and it has a window broken out with a - has that been broken out for very long, do you know or---?

30

A. I didn't know.

Q. You didn't know about that. Okay, if---

Cpl. Mole - cross

A. About your money, where did you used to keep your own money, in your purse or somewhere else?

5 MR. FURLOTTE: That's under an answer with - sorry that's the other police officer questioning - Allain. Allain puts a question - "about your money, where do you used to keep your own money, in your purse or somewhere else in the house?

10 A. In my purse.

Q. In your purse. Did you have any money in your drawers?

A. Not really, no.

15 Q. No? Did you tell the man that came in your house - did you tell him anything about money that you had in your purse?

A. I said I have sixty dollars.

Q. Okay.

20 A. And he said that's impossible. But I only had sixty dollars.

Q. Okay, now can you try to give me a little bit of a description of him - how much you can recall. I know you have already told several.

A. No, I never told nobody.

25 Q. No. Can you remember how much about his voice?

A. No but oh, when he first came in he said "do you know my name"?

Q. He asked if you knew his name?

30 A. Yeah. I said no. He said I'm Gerald.

Q. He said what?

A. Gerald.

Cpl. Mole - cross

Q. Gerald?

A. (nods her head) He said "I live down by Kerr's".

5

Q. Live down by Kerr's?

A. And he said my girl friend needs an abortion and I need three hundred - three thousand dollars.

Q. He said my girl friend needs an abortion?

10

A. And I need three hundred dollars - three thousand dollars.

Q. Three thousand dollars. That's when he first came in?

A. Yes.

15

Q. Okay.

A. And then he said - uh he said "you've had a good life and you must have more than three thousand dollars, I mean more than sixty dollars" he said. I said "no I haven't".

20

Q. Nina you are doing real good. You are being a big help.

A. So - and he asked me, he said "you have one daughter"?

Q. Uh huh?

25

A. And I said "no, I have five daughters". Then I was sorry I said five daughters.

Q. Did he seem like a young man or an older lad to you?

30

A. Well to me he just seemed just like a young lad.

Q. How young would a young lad be, do you know?

A. To me, probably in his thirties.

46

Cpl. Mole - cross

Q. In his thirties, okay. Can you remember much about him - was he a big strong guy or---

MR. FURLOTTE: And before she answered, or before you finished
5 your question Cpl. Mole she answered "no he didn't seem to be".

Q. No.

A. Because I only saw his mask once.

Q. Okay.

10 A. Or twice. That's all. I think I just saw - I think, I'm not sure, but I think he had taken off all of his clothes.

Q. Taken his clothes off, okay.

A. But not all of them, just part of them.

15 Q. Okay, like?

A. His pants.

Q. He would have taken his pants off or just down?

A. Off.

20 Q. Taken them off altogether?

A. (nods her head)

Q. Okay. Can you remember at all in your mind if you might have heard his voice before?

A. Well---

25 Q. Would it have been someone who might have been in your store?

A. The name he mentioned ----

MR. FURLOTTE: Sorry, I'm getting mixed up here. There's two
30 different police officers asking questions.
Cpl. Mole says:

Q. Would it have been someone who might have been in your store?

47

Cpl. Mole - cross

MR. FURLOTTE: And then Constable Allain stated - asked -

Q. That name he mentioned?

A. Gerald.

5 Q. Do you know that guy?

A. No.

Q. No, okay.

A. He said my name is Gerald but he said "the bad
guy will be blamed for it - for doing this".

10 Q. The bad guy would be blamed for doing this?

A. For doing this, yeah.

Q. Yeah. Who do you think he meant when he said
the bad guy?

A. Well I assumed he meant Legere because he's---

15 Q. Okay.

A. He's on the loose.

Q. Okay.

A. So I don't know.

MR. FURLOTTE: And the nurse was administering a needle,
20 correct?

Cpl. MOLE: That's correct.

25 Q. At the back door and just near your kitchen
they found the ball cap and it says 'tropical
painting' on it. Do you know anything about
that at all - a blue ball cap?

A. (inaudible) and inside.

30 Q. I believe it is near your back step or
somewhere in the kitchen, I'm not sure. Would
have had one in the kitchen somewhere - any
ball caps?A. Yeah there might have been a few because the
girls used to collect them.

Cpl. Mole - cross

- Q. Who was collecting them?
- A. The girls.
- Q. Oh, your daughters?
- 5 A. But my back door was locked.
- Q. Pardon?
- A. My back door was locked.
- Q. Your back door was locked?
- A. Yes. Because somebody broke in through it.
- 10 Q. Yeah, the policeman broke your door in when he came in to get you. I was wondering, in the living room of your house, the policemen that are there that are going through your home now they found a small brass vase or pot and it is sitting on your chair just before you go into
- 15 the door to go into the store. Can you recall where that had been?
- A. How big?
- Q. I think it is just a small one. Do you recall
- 20 having anything like that?
- A. Yeah.
- Q. Do you know where that normally might be?
- A. On the hall table.
- Q. On the hall table. Which hall is that?
- 25 A. At the bottom of the stairs.
- Q. The hall at the bottom of the stairs, okay, I know where that is there, and you don't recall ever moving it into the living room anywhere?
- A. (shakes her head)
- 30 Q. Okay. Now the policemen that are at your house there now, they have looked in the hall

Cpl. Mole - cross

5 in between the store and your living room,
okay, and I think there is a shelf there. Is
there a shelf at the far end on the wall? Can
you recall, in baetween the store and your
living room?

A. A shelf - I don't think so.

Q. Okay, they say in that area there they found a
brown paper bag with some chips in it and a
10 bottle of pop. Do you know any reason why
that would be there?

A. (shakes her head).

Q. No, you don't recall ever putting anything
like that there yourself?

15 A. (shakes her head)

MR. FURLOTTE: Shaking her head, I assume that was a 'no' she
didn't remember?

CPL. MOLE: If it was a 'yes' I would put 'nods her head'.
If she shook her head it was to say 'no'.

20

Q. Okay, so you don't have any reason to?

A. No.

Q. No - Nancy wouldn't have put it there this
weekend or anything when she was there?

25 A. I don't think so.

Q. Okay, when the lad was in your house there did
you smell any liquor off him, or---

A. Oh yes, one time he said "I just had a drink
of whiskey".

30 Q. He said, I just had a drink of whiskey. Did
you smell, or did he just---

A. Yes.

Cpl. Mole - cross

Q. --tell you that?

A. No, I smelled it.

5 Q. Did he seem to be acting to you like he had
been drinking a lot or---

A. Well he wasn't drunk.

Q. He wasn't drunk. Okay, that's good.

A. I don't think so.

10 Q. You are being a real big help, you are. You
are being a big help to me. If you want to
rest now Nina, we can rest for a few minutes
if you want.

A. No, just hurry up.

Q. Okay. In your bathroom upstairs there---

15 A. Yeah.

Q. Did you have above the toilet there - did you
have anything there - what did you keep up in
there - can you recall?

20 A. Oh, talcum powder, dusting powder. I think
there was suntan lotion, maybe toilet tissue,
I don't know.

Q. Okay. Was there any sprays - aerosals?

A. Yeah.

25 Q. Hair sprays, yeah. I've got a ring, a little
ring that they found outside your house. If I
showed it to you do you think you might be
able to remember if it is yours or could you
recall if it is Annie's?

A. Let me see.

30 Q. I'm not sure if it belongs from the house or
not, but it's one we found in the back yard.

51

Cpl. Mole - cross

Have you ever seen that before, this little thing there?

A. (examines ring) does it have a few stones?

5 Q. No it doesn't appear to have any stones in it at all.

A. It's silver?

Q. Oh no.

10 MR. FURLOTTE: I'm sorry, I'm getting into double questions here. Cpl. Mole states "No it doesn't appear to have any stones in it at all, and Constable Allain says "it's silver", and the answer is "oh no".

Q. It's not yours eh?

15 A. Silver?

Q. Silver colour.

A. Well I can't tell anyway.

Q. Yeah it's silver.

A. No.

20 Q. No, it's not yours, you don't recall if it might be Annie's or---

A. Oh, I never thought of Annie.

Q. Pardon?

25 A. I never thought of Annie. Let me see (examining the ring) - it's silver. I don't know.

Q. Okay, you don't recognize it.

A. You know - I know Annie - Annie wore one with garnets and I thought it was gold.

30 Q. I see.

A. It's with diamonds.

52

Cpl. Mole - cross

- Q. Okay, she wouldn't have had any ring in her drawers or anything like that?
- A. Yes it would be in her drawer.
- 5 Q. In her drawer, but you don't recall any like that?
- A. Not silver.
- Q. Okay. When you came home that night, can we just go back a little bit there - when you came home that night and you don't recall where you had been right now---
- 10 A. What?
- Q. That Sunday night you came home---
- A. Yes, I went over at Pearl Marr's.
- 15 Q. You were over at Pearl's, okay good.
- A. And I came right home.
- Q. Okay.
- A. She wasn't home.
- Q. Pearl wasn't home?
- 20 A. She was working at the funeral parlour. I wasn't there, she wasn't home.
- Q. She wasn't home - you don't recall telling Dr. Losier that you had gone playing cards, but you don't recall?
- 25 A. Me?
- Q. Yeah?
- A. Oh he must have misunderstood. I don't play cards.
- Q. Okay, okay, so when you came home you went in your kitchen. Did you have a lunch or anything before going up to bed?
- 30 A. Yes.

53

Cpl. Mole - cross

Q. You did, and you went to bed you think around ten thirty?

A. No, I know it was ten thirty.

5 Q. You know it was ten thirty. Is there a clock radio in your room or anything like that?

A. (nods her head)

MR. FURLOTTE: Could you tell what that nod was?

CPL. MOLE: Nod would be she would signal 'yes'.

10 Q. Can you recall that any time after the man came in your house or came into your room there, looking at that clock?

A. No I can't.

Q. You can't?

15 A. He kept me covered up.

Q. Okay, so you didn't see the clock at all and you only think you know the time was what he told you?

A. It was five o'clock.

20 Q. He told you it was five o'clock?

A. (coughs)

Q. Can you - at one time you say you looked and you saw a mask?

A. Yes.

25 Q. He had a mask on?

A. Yes.

Q. Okay. Can you tell me anything about the mask at all?

A. Well it was either black or navy.

30 Q. Black or navy?

A. And it was cut out all around the face (gestures from chin to forehead and around).

Cpl. Mole - cross

Q. It was all - the whole face was cut out?

A. Yeah.

5

Q. Like the eyes, the nose, it was all one big circle?

A. I think so.

Q. Okay.

A. And it came down to the bottom here.

Q. It came down to the bottom of his neck?

10

A. I seen that.

Q. Okay, on the top of his head did you notice anything at all?

A. No.

15

Q. Nothing. Did he look like he had a lot of hair or not much hair?

A. I don't know. I couldn't see too well.

Q. Oh, but the light was on in your bedroom when this happened or had he turned the lights off then?

20

A. First he turned the bright one off and then he turned the lighter one off.

Q. Okay.

25

A. I - the reason that I had two lights on was because when I normally read it had burnt out so I put a forty in.

Q. Okay.

A. So I had forty on this side, the right, and a sixty on that side, the left.

Q. Okay.

30

A. So he turned the bright one out.

Q. Did he do that right away or did he do it---

A. After a while.

55

Q. After a while?

A. Yeah.

(Then the nurse asked Nina if she wanted some water and she took a drink of water and she said she was okay.)

5

Q. Are you feeling okay?

A. No.

Q. Do you want to keep going and get this over?

A. Well how much more.

10

Q. Oh just a few more minutes.

A. Okay.

Q. Can you remember very much about the store, like the policeman wanting to know about the newspapers at the store - where did you used to store the newspapers - do you know where Annie used to put them after they were---

15

A. Yeah.

Q. ---they couldn't sell them any more. Where did she put them?

20

A. At her - at the bottom of her stairs.

Q. At the bottom of the stairs?

A. Her stairway.

Q. Her stairway, okay. Underneath there - is there a little closet or something underneath the stairway?

25

A. Yeah.

Q. She put them in there?

A. Some.

Q. She put some there. Where would she put the other ones?

30

A. Up front on the door.

Cpl. Mole - cross

Q. Okay. You don't know - was your furnace working lately?

A. Yeah.

5 Q. Do you know if you had it on during the week or so?

A. Oh yes, it's always on.

Q. It's always on and it was working and everything?

10 A. Uh huh.

Q. You had no problem with it?

A. (shakes her head)

MR. FURLOTTE: Which would be a no, as you stated?

CPL. MOLE: That's correct.

15 Q. Okay, after he came in your room and he wanted - the first thing he told you about when he came in your room is he wanted money?

A. Yeah.

20 Q. And he told you that his name was Gerald and he said he was from Kerr's?

A. He lived down by Kerr's.

Q. He lived down by Kerr's and you know where Kerr's is?

25 A. (inaudible) well I know where Kerr's Construction is.

Q. Okay.

A. I know where Fraser Kerr's house is.

Q. Okay, that's down towards Loggieville uh?

A. Yeah.

30 Q. Yeah, so after he told you that he had asked you for some money and you told him what you had in your purse---

57

Cpl. Mole - cross

A. (nods her head)

Q. Okay, and then did he tie you up then or had he tied you up before?

5

A. (inaudible)

Q. He already had you tied up, okay. Well we'll leave that for now.

A. Okay.

10

Q. Okay, do you remember your saying you thought maybe that he didn't have his pants on at one point there. Do you remember, and I know this is a hard question, but do you remember if he had pants with a belt with a zipper or if he had---

15

A. No I don't.

Q. No you don't recall if he had like jogging pants or---

A. No, but he had a chain around his waist.

Q. He had a chain around his waist?

20

A. (nods her head)

Q. What kind of chain would it be, can you remember at all?

A. I don't---

25

Q. I know these are hard questions but you are doing really good, you really are.

A. I don't know. It was a chain. I couldn't---

Q. Okay.

A. Couldn't see without my glasses.

30

Q. Okay, so you saw the chain. That would have been when he had his pants off?

A. (nods her head)

Cpl. Mole - cross

Q. Okay, when he had his pants off - you couldn't see this chain if he didn't have his pants off?

5 A. I don't think.

Q. Okay, you can tell me. I don't want to go into too much detail but can you tell me basically what happened when he assaulted you?

A. No.

10 Q. You don't have to go into a lot of detail. Can you just basically tell me what happened then? I talked to Dr. Losier and the nurses Mrs. Flam and it's not---

A. Well I think he used the chain to---

15 Q. Used - pardon?

A. The chain. I think he used the chain.

Q. He used the chain?

A. (nods her head)

Q. And what did he do with the chain?

20 A. Well I'm not quite sure but it felt like the chain up---

Q. Okay, okay. Did he try to push the chain inside you?

A. (nods her head)

25 Q. Was it just the chain or was there a charm on it or a medal or anything like that, or---

A. I don't know.

MR. FURLOTTE: Now here this last question Cpl. Mole 'was it just the chain or was there a charm on it or a medal or anything like that, or---' - You were about to describe a waist chain that inmates usually wear, were you not?

30

59

Cpl. Mole - cross

CPL. MOLE: No I was not.

Q. Why were you asking her if there was a charm on it or a medal or anything like---

5 A. Well throughout most of the statement you can see that a lot of the things that I'd ask Mrs. Flam about My Lord were things that she had already related to other policemen or nursing staff or whatever. The mention of the chain on this page
10 - 21 I believe - was the first time that she'd spoken to it to my knowledge to anyone.

THE COURT: Speak toward the jury so they can hear.

A. Yes My Lord. And when she mentioned the chain I had no - at that point - at that particular point
15 of the investigation I hadn't really thought about whether or not an inmate would be involved who would be wearing a chain. Really to answer that question, I just wanted some way to identify the chain other than just to say it was a chain.

20 MR. FURLOTTE:

Q. How big a chain would it have been. It was a small chain like that (and you made gestures) or a big chain or can you kind of show me a little bit there?

25 A. Maybe - (and she gestures)

Q. Maybe about an inch - all the links would have been about half an inch, do you think?

MR. FURLOTTE: Now when you gestured that it was a chain as to what size, how big a gesture did you make - half
30 an inch?

60

Cpl. Mole - cross

CPL. MOLE: I repeated half an inch because that's basically what I was gesturing and I repeated it so that it would be captured on the audio tape.

5 Q. And how big are the waist chains that inmates usually wear?

A. Basically about half an inch.

MR. FURLOTTE:

10 Q. Maybe about half an inch - all the links would have been about half an inch, you think?

A. Maybe, I don't know.

Q. Would the lights have been on then or had he---

A. Yeah.

15 Q. ---turned them---

A. Yeah.

Q. Okay, the lights were on then?

A. Yes.

20 Q. Okay, would that have been like a light coloured chain or a dark coloured chain?

A. I don't - it wasn't dark.

Q. Okay, it was a medium coloured chain. Did he ever take the chain right off?

A. I don't know.

25 MR. FURLOTTE:

Q. What colour are the inmate chains?

A. I believe they are a silver colour - shiny silver chrome coloured chain - through my experience.

30 Q. Okay, it was a medium coloured chain. Did he ever take the chain right off?

A. I don't know.

Cpl. Mole - cross

- Q. You don't remember but you know he had it on?
A. (nods her head)
Q. Okay, did he try to have sex with you?
5 A. (nods her head)
Q. Did he put himself inside you?
A. (nods her head)
Q. Okay. Is the first thing that he did to
you---
10 A. He tried it without the chain.
Q. He puts himself inside of you without the
chain?
A. Yeah.
Q. And then afterwards he put himself inside you
15 again with the chain, or just the chain?
A. No, both.
Q. Both, okay.
A. I think.
Q. Okay. Now when this was happening, and I know
20 this is very difficult for you, when this was
happening did he say anything at all?
A. He---
Q. Did he hit you or pull your hair?
A. He hit me quite a few times.
25 Q. He hit you quite a few times. Did he hit you
when he was doing this?
A. Yeah, oh yes before - like before he started
the fire.
Q. Uh huh.
30 A. Two or three times he came back and put his
hands over my mouth. He put his hands over my
mouth the first time. The second time he put

62

Cpl. Mole - cross

his hands over my mouth and one on my throat and one time he thought he choked me.

Q. One time he thought he choked you?

5 A. I think he did. I don't know.

Q. How many times would he have tried that now?

A. Two or three. I'm not sure which.

Q. Okay, was that after he had assaulted you, like sexually?

10 A. Yes, yes after.

Q. Okay. I think you have already told me about when he put himself inside you with the chain. Did he do anything else?

A. Oh yes, the grosser part.

15 Q. I know it is not very nice but we have to know.

A. He put it in my mouth.

Q. Uh huh. Did he say anything at all when he did that?

20 A. Yes.

Q. What did he say?

A. He said he wanted it hard.

25 Q. He said that he wanted it hard. Do you ever remember at all Nina that it - that he was hard for him?

A. No.

MR. FURLOTTE: I'll repeat that question. 'He said that he wanted it hard. Do you ever remember at all Nina that he was hard for him?'

30 Q. Now would that question be 'that it was hard for him'?

CPL. MOLE: That's probably what I said.

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Cpl. Mole - cross

Q. Probably what you said, that it was hard for him?

A. Yes.

MR. FURLLOTTE: And she answered 'no'.

5 Q. He was never, that you can remember?

A. That I can remember, no. He slapped me around
a few times.

Q. He said that you had been around?

A. No, he slapped---

10 Q. Oh, he slapped you around?

A. Yeah.

Q. Okay Nina you are doing really really well.

Do you recall now at all ever hearing his
voice before?

15 A. Well he sounded familiar but I don't know.

Q. Okay, did you used to work in the store?

A. Yes.

Q. Okay, did he call you Nina?

A. Yeah.

20 Q. Did he call you that all the time?

A. Yeah, he either called me Nina or Mrs. Birney.

Q. He called you Mrs. Birney?

A. Yeah.

Q. Or Nina?

25 A. Both.

Q. Did he ever call you - and I assume it means
call - did he ever call you Neena?

A. I don't think so.

Q. You don't think so?

30 A. I don't know.

Q. Okay, sometimes, even us we make a mistake and
if you don't know if it's Neena or Nina---

Cpl. Mole - cross

A. I don't know. I answer to both. I hear both.

Q. So you are not sure what he called you?

A. No.

5 Q. But he might have called you Mrs. Birney too?

A. He did.

Q. He did call you Mrs. Birney?

MR. FURLOTTE: The answer was a cough, and then the nurse spoke up "do you want to take a (inaudible)".

10 Q. (from yourself) Okay, we'll take a break for now.

A. I don't want this in the newspaper.

15 Q. You are doing real well. Everything you say, it is so you can help us. This doesn't go in the paper or anything like that.

A. Or to court.

20 Q. Well when we catch the guy we'll talk about that then, okay? But it's not - nobody is going to force you to do anything you don't want to do. What we are going to do is we are going to get as much information as we can and we are going to catch this guy and we'll worry about court later, okay. The most important thing is you are okay and we have to catch the

25 Q. Well when we catch the guy we'll talk about that then, okay? But it's not - nobody is going to force you to do anything you don't want to do. What we are going to do is we are going to get as much information as we can and we are going to catch this guy and we'll worry about court later, okay. The most important thing is you are okay and we have to catch the guy right now, and you think he was probably in his thirties. Could he have been older?

A. I don't know, I couldn't tell. He had a mask. I had no glasses and my head was turned over.

30 Q. Okay. (and the nurse gives Mrs. Flam another needle).

Q. Okay, I'm going to leave you now. We talked about an awful lot of things here today and

Cpl. Mole - cross

there's a chance that maybe after I leave you
might remember because we talked about it.
There it might jog your memory a bit there.
5 If you do remember something else is it okay
if we come back to see you here?

A. I don't know. You can ask but I don't know.

Q. Okay, you did really well today and we're
really proud of you, honest we are. You did
10 real real well. Can I ask you one more thing
about Annie - can you recall how Annie dresses
to go to bed?

A. Pyjamas.

Q. She wears pyjamas. Does she wear like a
15 nightie?

A. No.

Q. She doesn't wear a nightie. Does she wear
panties to bed, do you know?

A. No.

Q. Just like pyjamas pants and a shirt, and she
20 always wears the same clothes to bed?

A. Yeah.

Q. Like pyjamas.

A. She might wear a house coat or robe over it.

Q. She might have worn a robe over her pyjamas?
25

A. She could have.

Q. Okay, would she normally go right to bed after
she closed the store?

A. No, not always.

Q. No?
30

A. Sometimes she does her books.

Cpl. Mole - cross

Q. She does her books. Sunday night would she have done her books?

A. I don't know.

5 Q. She didn't have any routine or anything like that?

A. Well I don't think so because she usually does them Sunday afternoon.

Q. Sunday afternoon?

10 A. Or Sunday evening, I don't know.

Q. Okay, we are going to leave you now. It is ten after two. I'm going to go back to Chatham now and I hope we'll catch him right away. We don't want you to have to worry about this any more. We want you to get better. Is there anything we can do for you - is there anything you want to know about the house - about anything at all?

15

A. Yeah, how much is left of it?

20 Q. The house was badly damaged but a lot of your personal stuff is still there. (interview terminated at 14.15 hours).

MR. FURLOTTE: My Lord that was the questions and answers on the statement given I believe on May 31st.

25 CPL. MOLE: May 31st, that's correct.

MR. FURLOTTE: I feel that - to continue this My Lord there is another statement that was given after which is - actually there's two other statements given after. One is 29 pages and the other is about 6 pages.

30

THE COURT: Mr. Furlotte what is your purpose in reading this statement?

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Cpl. Mole - cross

MR. FURLOTTE: Well My Lord it is the Crown that requested this, not myself.

5 THE COURT: But as a result of your commencing or starting to suggest that this witness has put pressure on Miss Flam to change her story, and---

MR. FURLOTTE: No, I never made that accusation My Lord. It wasn't to change her story. I suggested that this witness would have asked leading---

10 THE COURT: Not to change her story, sorry, but to invite answers.

MR. FURLOTTE: ---questions which would have suggested the answers.

15 THE COURT: But there is no suggestion of that in this 27 pages you have read, and as a matter of fact the account given by Mrs. Flam then which was two days after the incident corresponds very largely to what she said here on the witness stand.

MR. FURLOTTE: My Lord I---

20 THE COURT: There are certain things mentioned here that she wasn't asked about today which you can't blame her for not - but I mean what has been accomplished by referring to this statement?

25 MR. FURLOTTE: Well My Lord in that - okay, I'll answer that question. In that particular statement at page 21 the question was put by Cpl. Mole "was it just a chain or was there a charm on it or a medal or anything like that?" and rather than asking a witness to describe the chain and everything about the chain I feel that the Cpl. was putting suggestions and ideas into the witness's head,
30 and this is a leading question.

68

Cpl. Mole - cross

THE COURT: Well he's given his answer on that and you can't blame an investigating officer who is trying to find a person who has perpetrated this crime; you can't blame him for suggesting every - putting every possible question, but there's no suggestion in these questions and answers that he was putting any pressure on her to say one thing or another.

MR. FURLOTTE: My Lord I have come across a lot more leading questions in the statements that follow than in this particular one, and this is the first one that I had addressed. I feel there's a lot more leading questions in the ones that follow and I believe that Cpl. Mole did not know that Mr. Legere had escaped without a waist chain and I believe that Cpl. Mole believed that Mr. Legere had a waist chain on him when he escaped and he was leading this question----

THE COURT: Are you trying to undermine Mrs. Flam's evidence or are you---

MR. FURLOTTE: I'm not---

THE COURT: ---trying to undermine---

MR. FURLOTTE: I'm not trying to undermine Mrs. Flam's testimony, I'm trying---

THE COURT: Well what is the purpose of this?

MR. FURLOTTE: --- to verify so that the jury can have full benefit of Mrs. Flam's testimony, is one reason why I don't mind all the statements being read into evidence, to show when Mrs. Flam very shortly after---

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Cpl. Mole - cross

THE COURT: So far it has just been a duplication of what Mrs. Flam said, and I suppose it tends to improve, if that were possible, the quality of what she said.

5

MR. FURLOTTE: Well My Lord I just wanted to get into Cpl. Mole the questions where I felt he was leading the witness where it is not proper for a police officer to lead the witness to get suggested answers.

10

THE COURT: Well are we going to apply to have him fired for overdoing it, or---

MR. FURLOTTE: No, no, no. Look, again it is Mr. Walsh that suggested that I read the whole statement to the court and I have no objections to that.

15

THE COURT: Well if you were going to raise a question of his putting pressure on Mrs. Flam, Mr. Walsh was of course entitled to have the whole thing read so the jury could see the whole thing in context and see whether he in fact did put pressure on her

20

MR. FURLOTTE: Right.

THE COURT: Look, may I suggest this, just to sort of terminate this matter tonight. It's getting late and I would like to release the jury for the night. Could counsel not get together, now or after we retire here today, and you Mr. Furlotte indicate to Crown counsel, to Mr. Walsh or whatever, what areas you might want to cross examine on and perhaps you could limit that. If Mr. Walsh and the Crown feel that that would be to take the whole thing out of context and

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Cpl. Mole - cross

5 require the whole of the statements read, well so
be it. Perhaps the Crown would agree to, or
would waive that and perhaps let you cross
examine on particular questions or sections; but
you might discuss that with the Crown in advance.
Is that a reasonable suggestion?

MR. WALSH: Oh yes very much so My Lord. We will do anything
we can to facilitate the matter, but at the same
10 point we want the context of it.

MR. FURLOTTE: Well that's reasonable My Lord. I was just
trying to facilitate the Crown in this position.
He's the one that requested it, not myself.

THE COURT: All right, you can sit down for a minute. We'll
15 stand this witness aside until tomorrow morning
at 9.30. You are not to discuss anything with
Crown counsel or anybody else in the meantime.

(Off the record discussion re election day and
20 voting hours on September 23, 1991.)

(COURT ADJOURNED AT 17.00 HOURS)

SEPTEMBER 10, 1991, 0930 hrs.

25 JURY POLLED - All present.

THE COURT: Constable Mole is on the stand, and you have some
further questions on cross examination Mr.
Furlotte.

MR. FURLOTTE:

30 Q. Cpl. Mole, rather than read through the next 29-
page statement maybe I could ask you just a few

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Cpl. Mole - cross

5 questions. In relation to the description of the chain that Nina Flam said this intruder had around his waist, do you feel at any time you were maybe leading Mrs. Flam into identifying that chain as the type of a chain that inmates are usually restrained with around their waist?

A. No I did not.

10 Q. You did not or you don't believe you may have, or it was not your intention?

A. I did not - it was not my intention.

Q. You did not and it was not your intention?

A. Correct.

15 Q. Cpl. Mole, when I read the statement to you yesterday and you had asked - Nina Flam had mentioned something about a chain around the intruder's waist, and you asked if there was anything, something like a charm or - excuse me, I don't want to misquote anything here - "was there a charm on it or a medal or anything like that" and Nina Flam answered "I don't know". Is that right?

20 A. I believe that's correct.

25 Q. By the time you finished taking statements from her, at least on June 8th - that was May 31st - on June 8th she believed that there may have been a charm or a square thing or something like a padlock hanging from that chain. Is that right?

A. This was ten days after the - roughly ten days --

30 Q. May 31st to June 8th.

A. May 29th to June 8th, and I visited Mrs. Flam at the hospital and during our conversation she

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Cpl. Mole - cross

mentioned I believe about a square thing on the - she described a square article attached to the chain.

- 5 Q. Now I believe that day you actually brought a waist chain that inmates are usually restrained with, is that right?
- A. That's correct.
- Q. And you showed that to her?
- 10 A. I eventually showed that to Mrs. Flam, yes.
- Q. And you pointed out the padlock on it to her and you asked her if it would have been something like that she saw. Is that correct?
- A. I eventually would have shown Mrs. Flam the
- 15 padlock, that's correct.
- Q. And you would have asked her if it was something like that that she saw on the chain?
- A. After she had mentioned seeing a square metal or square object on the chain, yes I did show her
- 20 the remainder of the chain.
- Q. But in her statement of May 31st she told you that she didn't know if there was anything like that on the chain.
- A. That's correct.
- 25 Q. Cpl. Mole when there is a witness to a crime and you are looking for identification - well first of all maybe I should ask you don't you think that the procedure that you went through by showing the inmate chain, the waist chain, that
- 30 that was somewhat leading to get her to identify the chain as an inmate chain?

73

Cpl. Mole - cross

A. I at no time showed the entire chain to Mrs. Flam. I never identified it to her as an inmate chain. I - if I may My Lord - I discussed the chain with Mrs. Flam. She had raised it I believe in that particular interview on at least a couple of occasions and subsequent to that I showed a portion of the chain to Mrs. Flam to compare it with the size of the one she had described to me, and the colour. At that time I did not show Mrs. Flam any other portion of the chain, either the shackles, the hand shackles or the padlock. Later on in that conversation with regard to the chain I did show Mrs. Flam the padlock but I did not show her the shackles that was in a manilla paper bag and I just extracted portions of the chain as our conversation continued.

Q. When you showed her the padlock, was the padlock attached to the chain?

A. Yes it was.

Q. Back again Cpl. Mole - whenever you have somebody as a witness at a crime scene and may be able to identify an individual would you normally just show them a picture of the accused or would you show them what you call a photo lineup?

A. Normally you would show a - where you have no suspects you would normally show a photo lineup, yes, correct. Normally it would consist of approximately eight photographs - similar photographs of different people.

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Cpl. Mole - cross

Q. Where you had no suspect or where you had a suspect?

5 A. Where you have - well in most circumstances have an identified person that's - a description of a person, in some instances people can only recall blue eyes and blond hair, so I'd look for eight people with blue eyes and blond hair. If you had no suspect at all but you believe the witness may have seen but doesn't recall, then you may just shown them---

10

Q. A police mug book?

A. That's right, that's correct.

15 Q. When you have a suspect and you have his photograph and you want to see if the witness can identify the suspect out of a photo lineup you show the witness the photo or the picture of the suspect together with I believe you said maybe seven other pictures who look similar to the suspect to see if he or she can identify the suspect?

20

A. On that one particular slide you would, yes.

25 Q. And in that way you are attempting not to mislead the witness into identifying the suspects unnecessarily are you?

A. Each situation is different. Some situations you would hope that the photograph may jog the memory or whatever, but yet no attempt to mislead, that's correct.

30 Q. It wouldn't be proper for you to just go to the witness and show them a photograph of your

75

Cpl. Mole - cross

suspect and say "here, does he look like this".

Is that correct?

A. It wouldn't be proper, no.

5 Q. That wouldn't be proper. Now I understand you did some kind of voice comparisons with Mrs. Flam?

A. On the 29th of June 1989 at the Burn Unit at the Dr. Everett Chalmers hospital yes I did some type of voice comparison, correct.

10 Q. And how many voice comparisons did you have Nina Flam listen to?

A. Four.

Q. And one of those was Allan Legere?

15 A. That's correct.

Q. And one of those was John Marsh?

A. That's correct.

Q. And then there was two other individuals?

A. That is correct.

20 Q. And out of the voice comparisons what was the results of that test?

A. Mrs. Flam did not recognize the two other persons you mentioned and she did not recognize Mr. Legere and she thought that the voice of Mr. Marsh was familiar.

25 Q. Was familiar to the one that she had heard?

A. That's correct.

Q. Did you think to bring different size chains to show Mrs. Flam?

30 A. Different size chains - the thickness of the chain, or---

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Cpl. Mole - cross

Q. Rather than just bring an inmate waist chain did you thing to bring other ones to show her?

5 A. I brought a chain that I thought was similar in size to the one that she had described to me, but I hadn't thought to bring other chains, no.

Q. You sure you weren't bringing a chain that you had hoped she would recognize, because you thought Mr. Legere had one around his waist when he escaped?

10 A. My Lord I don't know how to answer the question.

THE COURT: I think the evidence was that he didn't show the chain to Mrs. Flam. He showed the padlock portion.

15 MR. FURLOTTE:

Q. You showed a portion of it, not the whole thing, the size of it, and the padlock?

A. That's correct My Lord.

Q. Were you hoping she would identify that chain as the one similar to the one she saw around the culprit's waist?

20 A. That's correct.

Q. That's correct. And did you not think at the time that Mr. Legere had a waist chain around his waist when he escaped?

25 A. I was aware that Mr. Legere had escaped and I was aware that Correctional Service had reportedly recovered the chains.

Q. At that time?

30 A. I was aware of it at that time yes.

77

Cpl. Mole - cross

Q. I thought I asked you yesterday, and I may be wrong but I thought I asked you that yesterday and you said you didn't know.

5 A. On the 8th of June I was aware - on the 8th of June during the interview I was - this is the interview that you are referring to?

Q. Uh huh.

10 A. On the 8th of June following my 31st of May 1989 interview with Mrs. Flam the topic of the chain came up. I made inquiries regarding Mr. Legere and his escape and subsequent to that I visited Mrs. Flam on the 8th of June and I showed her portions of the chain.

15 Q. You can correct me if I'm wrong Cpl. but I thought I asked you yesterday as to whether or not you knew whether or not Mr. Legere had a waist chain around his waist when he escaped and I thought your answer was that either 'no you didn't know, or that you did have' and then I brought it to your attention that the first witness Robert Winters testified that the waist chain was left behind. Do you recall that - my questioning you about that?

20
25 A. I believe My Lord if I can recall correctly the question was whether or not I had any evidence that a waist chain - that Mr. Legere escaped with a waist chain and I believe my reply at that time My Lord was that I had no evidence to support that.

30

THE COURT: Yes, well let's get on with it Mr. Furlotte.

78

Cpl. Mole - cross

Q. So now today you are saying you knew that he didn't have a waist chain around his waist when he escaped?

5 A. I'm saying that yesterday when you asked me that question if I had evidence that he had escaped with a waist chain I replied no, and today I'm saying that on the 31st of May when I interviewed Mrs. Flam I wasn't aware or hadn't made
10 inquiries. As a result of that interview I had made inquiries and I visited Mrs. Flam and showed her the portion of the chain.

Q. Was John Marsh also a suspect?

A. Mr. Marsh was identified as a possible suspect,
15 that's correct.

Q. Because of the description given to you by Nina Flam, or was there some other reason?

A. Mrs. Flam in her statement advised that the voice was similar - she felt that she'd heard the voice
20 before and she thought that his voice, for a moment - for a brief moment when the attacker first came in the home that the impression she had at the time of entering the home that it may have been John Marsh, just by his voice.

25 Q. And also because of the size?

A. And I think further to her saying that I asked about his appearance. I'm not sure, but he had a similar size, that's correct.

Q. And has John Marsh been eliminated as a suspect
30 for police purposes?

79

Cpl. Mole - cross

A. A similar procedure was carried out with Mr. Marsh as what I had identified yesterday to eliminate Mr. Marsh for police purposes.

5 Q. And was part of that the hair analysis?

A. That's correct.

Q. His hair was checked with the hair found at the Flam scene?

A. That is correct.

10 Q. Do you know which particular hairs that he - that Mr. Marsh's hair was checked with - which hairs found at the Flam scene were they checked with?

A. I had requested - or the request had been made that the hair provided to the lab from Mr. Marsh, both head and pubic hair, be compared with all of the hairs found at the Flam fire scene. That would include both residences; any hair that would have been found.

20 Q. That would in particular also be the hair found in Annie Flam's chain?

A. I believe that would be correct.

Q. And facial hair found on her bed?

A. I believe that would be correct as well.

25 Q. And a couple of scalp hairs found in Nina Flam's room?

A. That would be correct. Any hair found at the scene.

Q. So that helped you exclude John Marsh?

A. Yes, yes it did.

30 Q. Mr. Legere's hair samples were also checked with those hairs?

A. That's correct.

80

Cpl. Mole - cross

Q. Did that help you exclude Mr. Legere?

A. No it didn't.

Q. No it didn't. Why not?

5 A. The investigative avenues pursued include a variety of procedures. With all our suspects we would not rely on any one particular item to totally exclude a person or eliminate a person for police purposes from an investigation. If

10 your question is whether the hair was compared while Mr. Legere was at large and found to be not similar or consistent or whatever the scientific term is and would that eliminate Mr. Legere, my answer would be no My Lord. For police purposes.

15 Q. Isn't it true Cpl. that after a month or two of investigation of the Flam - after the eliminations of the hair samples; after you had taken statements from Nina Flam; that Mr. Legere was no longer considered a suspect in the Flam

20 killing?

A. Are you asking if he was still considered a suspect by the investigators?

Q. Yes. Was there reports that Mr. Legere was no longer considered a suspect in the Flam---

25 A. I am not aware of that report, or any report.

Q. Cpl. Mole, the hairs that were found at the scene, the one in Annie Flam's chain - neck chain - the one on her bed and hairs found in Nina's room, the police believe that those hairs come -

30 or at least they believe that those hairs come from Nina Flam's attacker. Is that correct?

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Cpl. Mole - cross

A. I wasn't aware that that statement had been made.
I certainly didn't make it.

5 Q. Do you recall when Mr. Legere was arrested that
you took a hair off of him and you said - held it
up and you said "ah, a red hair - look what we
got, a red hair" telling everybody, to implicate
Mr. Legere with the Flam---

A. You are asking me in 1989, November 24th---

10 Q. November 24th.

A. And I said that?

Q. You don't recall picking a red - what you claimed
to be a red hair and getting all excited about
it, that you felt you had the evidence?

15 A. I don't recall ever saying that.

Q. Cpl. Mole I understand you later on---

20 THE COURT: Mr. Furlotte if you are going to raise that sort
of graphic picture shouldn't you tell Cpl. Mole
where it occurred, where it happened or
something?

MR. FURLOTTE:

Q. It was when you were taking hair samples from Mr.
- did you take hair samples from Mr. Legere?

25 A. That's correct, on the 24th of November 1989 I
removed both head and public hair samples from
Mr. Legere at the Newcastle Detachment cells.

Q. You don't recall making any conversation with Mr.
Legere that you found a reddish hair on him?

A. I don't recall making that statement, no.

30 Q. Tell me if I'm correct Cpl. Mole - it is my
understanding that you would - at least when you

82

are recalled that you intend to give evidence that you took pubic hair samples off Mr. Legere?

A. That's correct.

Q. And you intend to give evidence that Mr. Legere has light brown pubic hair?

5

A. That's correct.

Q. Are you telling the court that Mr. Legere has light brown pubic hair today?

A. I have no way of knowing what Mr. Legere's pubic hair is today.

10

Q. Oh, I'm sorry, I misstated that. Are you saying today that when you took the samples when Mr. Legere was captured, November 24, 1989, - are you saying today that Mr. Legere had light brown pubic hair?

15

A. I'm saying that I was very surprised to find that yes Mr. Legere had light brown pubic hair and yes I did seize that hair.

Q. You did seize the hair and when you seized the hair, Mr. Legere's pubic hair was light brown?

20

A. That's correct.

Q. Do you know whether or not that it was checked at the lab to see if there was any dye in it?

A. I - it's not a request that I would have made but I'm sure that there are other witnesses that can probably - scientific evidence could probably relay that. I'm not aware of it.

25

Q. Without doubt scientifically we could establish whether there was dye in his pubic hair on November 24th?

30

A. I could only guess that probably yes you are correct.

83

Cpl. Mole - cross

- Q. Did you ever have the opportunity to speak to Nina Flam again?
- A. Yes, that's correct.
- 5 Q. Did you by chance in conversation with Nina Flam ever told her that Allan Legere had light brown pubic hair?
- A. Yes, that's correct.
- 10 Q. So maybe when Nina Flam testified in court the other day that when now she is sure it was light brown pubic hair and not blond or not light grey like she had given in her statement, that maybe she has been influenced by that?
- A. Prior to November 24th Mrs. Flam had advised me that she could recall her attacker having light brown pubic hair. Upon Mr. Legere's arrest I visited with Mrs. Flam and I explained to her what avenues we were pursuing and I---
- 15 Q. You advised her that Mr. Legere had light brown pubic hair?
- 20 A. I advised her that her identification of the attacker was, from what I had found on the 24th of November including the pubic hair, was very similar to what she had described.
- 25 Q. So when she appeared in court it appeared anyway that she had backed off from her statement that the pubic hair could have been blond or light grey?
- A. Uh huh.
- 30 Q. Light brown to blond to light grey. It appears she backed off of that didn't she?

84

Cpl. Mole - cross

A. My Lord I don't want to speak for Mrs. Flam but her recollections of what had occurred and her description appeared grow stronger for a certain period of time and prior to November 24th I was - it was an accepted fact that she had recalled light brown pubic hair, and on November 24th I advised her that Mr. Legere's hair was in fact light brown and that it was---

Q. I also notice Cpl. Mole that while Nina Flam was testifying you were standing up at the back of the courtroom where you could keep eye-to-eye contact with her all the time weren't you?

A. I stood at the back of the courtroom, that's correct.

Q. And you kept eye-to-eye contact with her continuously didn't you?

THE COURT: Mrs. Flam really didn't see anybody in the courtroom here when she was testifying except that---

MR. FURLOTTE: Mrs. Flam pointed out Cpl. Mole to me standing back there when I mentioned Cpl. Mole's name.

THE COURT: If you asked her and directed her attention to him, yes.

MR. FURLOTTE: Big smile on her face, as I recall.

MR. WALSH: Perhaps Mr. Furlotte is going to testify soon but I would think that he should please My Lord restrict himself to asking specific questions as opposed to testifying as to what he did or didn't see.

85

Cpl. Mole - cross

MR. FURLOTTE:

- 5 Q. Cpl. Mole you were standing in the back of the courtroom as she pointed out that you were standing up there and the only one standing up there. Is that right?
- A. I believe My Lord advised the court that I was the only person standing at the back of the court.
- 10 Q. Besides myself of course. I was standing.
- A. You asked me to identify myself and I raised my hand.
- Q. When she mentioned your name that you were standing up there, did she tend to smile?
- 15 A. I don't recall. Mrs. Flam has a nervous smile. I would think that she probably would have been nervous.
- Q. Now the obvious question Cpl. Mole. Why were you standing up there?
- 20 A. If I may My Lord, the - since the 31st of May 1989 I have been the only police officer to deal with Mrs. Flam exclusively and I believe, if I'm not presumptuous, is that she has confidence in her security if I was present, and the fact that
- 25 I stood at the back of the courtroom I believe and I felt from my conversations with her that she would feel secure being in the courtroom as long as I was here and she could see me.
- Q. Were her daughters in court?
- 30 A. No they weren't.
- Q. So she could feel secure in the testimony she had given. Is that what you are saying?

86

Cpl. Mole - cross

MR. WALSH: He never said that My Lord.

CPL. MOLE: So that she could feel secure in the courtroom.

MR. FURLOTTE:

5 Q. You also did some kind of a photo lineup with Mrs. Flam?

A. That's correct.

Q. You did a voice analysis?

A. A voice comparison.

10 Q. Four different tapes. You did photos with different pictures?

A. That's correct.

Q. Is there any reason why you wouldn't have done a photo lineup of men's pubic hair?

15 A. Other than - I really don't know how I could do it. I'm not really - it's not something that I've ever done before or heard tell of being done. I'm not really sure where I'd find people to photograph.

20 Q. One point on the waist chain Cpl., if on June 8th when you brought the waist chain for Nina Flam to view, if on June 8th you knew that Allan Legere did not have a waist chain on him when he run away and if you knew that David Tanasichuk did not have a waist chain on him when he ran away - those were two suspects at the time because they both had been unlawfully at large, why did you bother bringing it in (inaudible)?

25 A. I was aware that Correctional Services Canada had a record that they had retrieved a body chain and shackles from Mr. Legere. I did not - I don't recall saying in my testimony to this point that

30

87

Cpl. Mole - cross

I knew Allan Legere escaped without any restraints.

5 Q. So it is possible that on June 8th that you did not know that Allan Legere escaped without a waist chain?

A. I am saying to this day I'm not sure if he did or he didn't.

10 Q. I'm getting confused here Cpl. because I thought earlier you said in your testimony that on June 8th when you brought the waist chain you knew that Allan Legere didn't have a waist chain around his waist.

15 A. My Lord I believe my evidence was that I had no evidence to indicate that he did escape with a waist chain.

20 THE COURT: Well I - I did understand you to say constable that you had made inquiries early on June 8th or at some in the day and after making those inquiries that you had established in the course of those inquiries that the accused had escaped without - or had left behind the chains and that you were aware of that fact when you interviewed Mrs. Flam later on that day. That's what I understood you - that's how I have it written down.

25 CPL. MOLE: If I may My Lord - I was aware that Mr. Legere had escaped and that it wa reported that he had escaped and the restraint devices were left
30 behind, prior to my interview of June 8th.

88

Cpl. Mole - cross

MR. FURLLOTTE:

- 5 Q. So you were led to believe that when Mr. Legere escaped he may have still had the waist chain around his waist?
- A. I'm saying that it's my personal belief that the attacker had a waist chain at the time of the attack and I believe Mrs. Flam when she says that.
- 10 Q. Cpl. Mole have all the suspects been eliminated in the Nina Flam - in the Annie Flam case?
- A. All suspects identified in that investigation have been eliminated for police purposes.
- 15 Q. For police purposes. Now for police purposes, does that mean that because you don't have enough evidence to charge them or because you're totally satisfied in your mind there's nobody else that could have done it?
- A. I'm totally satisfied in my mind that no one else could have done this.
- 20 Q. Or that nobody else could have even been there as a party to the offence, as the Crown Prosecutor put it in his opening address?
- A. I wasn't present when the opening address - but My Lord anything is possible.
- 25 Q. I believe the Crown said in his opening address that they're not trying to prove---
- MR. WALSH: He was not present during the Crown's opening address. This line of questioning My Lord, I don't see how it is relevant or helping the jury
- 30 to make the decisions that they have to make.

89

Cpl. Mole - cross

THE COURT: The Crown made the point in the opening address that it was immaterial from the Crown's point of view whether anyone else was involved in this or any of the other incidents and---

5

MR. ALLMAN: Well just - since I made that opening address I would like to add that I also said expressly - expressly not stating that we believed somebody else was involved.

10

THE COURT: Well, get on Mr. Furlotte, but let's not pursue that too far here.

MR. FURLOTTE:

Q. Cpl. Mole, is the R.C.M.P. still investigating the Annie Flam case, exclusive of Mr. Legere?

15

A. The investigation will continue as long as questions have been answered. Today should someone call with information, that information would be investigated. I don't presently work on the investigation and I haven't really for the last eighteen or so months but I understand that what information has to be investigated the present investigators are pursuing it.

20

Q. Let me put it a different way. For police purposes are the R.C.M.P. still pursuing other possible suspects?

25

A. I'm not aware that any other possible suspects have been identified. Like I'm not presently involved in the investigation.

Q. Oh, you are not present involved in the investigation any longer?

30

A. No, I haven't been assigned to those duties for some eighteen months.

90

Cpl. Mole - cross
- redirect

5 Q. Do you know who is personally involved in the investigation?

A. The Moncton General Investigation Section continues to work on that file and the persons attached there are Sgt. Vincent Posinier and Cst. Ron Charlebois and they would be at liberty to discuss the present investigation status.

10

MR. FURLOTTE: I have no further questions of this witness at this time.

THE COURT: Re-examination?

MR. WALSH: Yes My Lord, thank you.

15

REDIRECT EXAMINATION BY MR. WALSH

Q. Cpl Mole would you describe to the jury please - you did to some degree on the cross examination of Mr. Furlotte - would you describe to the jury please what kind of condition Mrs. Flam was in and where she was when you first were introduced to her? I say that because I note in the transcript referred to you yesterday by Mr. Furlotte you had used the word 'coughing' at times interspersed throughout. Would you explain to the jury about how you were taking the statement and her condition?

20

25

A. On the 31st of May 1989 when I attended the hospital - at the Burn Unit at the Dr. Everett Chalmers hospital - Mrs. Flam was in a room by herself. It's a room to avoid bacteria. The public would be excluded or any family or - it's highly contagious. In the room herself she was laying on her back. She used an air or oxygen mask to breathe. She appeared to my opinion to

30

91

Cpl. Mole - redirect
be sedated. She was on an intravenous drip. She
had quite a bit of difficulty in speaking. She
had, I understand from what she had told me that
5 she had damaged her throat and as a result - the
fire damaged her throat and as a result she would
continue to bring up a yellow bile, poison, from
in her lungs and that would happen frequently and
she would have to stop to cough and remove the
10 bile and quite often there would be long pauses.
On the transcript it shows just the word pause in
brackets but actually the pause may go for maybe
90 seconds before Mrs. Flam would continue. It
was very difficult to hear above the sound of the
15 oxygen machine and I would continually repeat
what she had said to me so that it could be
registered on the tape. If I made a mistake, as
I did on occasion, actually on several occasions,
if I made a mistake in what I had repeated that
20 she had said, she would normally correct me. I
would say she would always correct me. She was -
I wouldn't think that she was alert. She was
very fearful; she appeared very fearful and and
the room was guarded. R.C.M.P. members guarded
25 her room and it was very difficult to speak to
her because she would continually be wanting to
know who was behind me. There was a curtain
around her bed and the room was - to avoid
contamination there was a little cubicle between
30 the actual room the hallway in which you would
have to dress and put on the hospital garb.

92

Q. How many interviews did you conduct with Mrs. Flam in the hospital?

A. I visited Mrs. Flam on the 31st of May for the initial interview where I was introduced to her. She was reluctant to discuss the matter. I solicited the help of the family and I returned on the 8th of June and---

5

Q. Did you return with anyone?

A. I was summoned actually to the hospital by her daughter, Susan Flam, and we sat with Mrs. Flam for a while and the second interview took place. Subsequent to that - I promised Mrs. Flam at that time that I wouldn't bother her for a while, so normally I restricted my visits after that period until the 29th of June to - I'd drive from Newcastle and check her condition and normally I wouldn't see her. I would just drive back to Newcastle so it would be just a five-minute stay.

15

Q. Did you notice any change in Mrs. Flam over the times that you were interviewing her at the hospital?

20

A. She became - the longer she stayed in the hospital the more alert she became. She was still restricted in what she could do and even on the 29th of June which would be one full month following the assault she continued to have difficulty speaking. She didn't require the air apparatus any more but she paused a lot and she coughed a lot and she wasn't able to get around from her bed.

25

30

93

Cpl. Mole - redirect

Q. What if any change did you notice, or any improvement or worsening of her memory with respect to the events of that night?

5 A. I found that following my first interviews with Mrs. Flam and once I was able to take my mask off and - so that she would be more comfortable with myself, I found that she became more comfortable with me and more alert and able to recollect better.

10

Q. You said she would correct you?

A. She would often correct me.

Q. In what way - why would she be correcting you?

A. I would misunderstand things that she said or on several occasions there were things that she wanted to tell me and I misunderstood because she would go through the story about what happened to her again, and I would try to console her that she didn't have to repeat it because I had already had that information, but she would correct me and say "no, there's something else". So as I continued to interview Mrs. Flam over the a two-month period there would always be some little thing more that she could recall and she felt more comfortable stating, for whatever reason.

15

20

25

Q. When - over the interviews that you had with Mrs. Flam, the information that you were getting from her, was the information coming in the order in which the events happened that night or was the information coming in different sequences in relation to what happened that night?

30

94

Cpl. Mole - redirect

A. It would normally - at the beginning it would normally - she would bounce around. From a lot things that she would say that I understand - that I understood later happened earlier in the evening, she would tell me at the same time that she was telling me about later in the evening when the fire was started, and---

10 Q. Would you give an example to the jury of that?

A. There was a point where - I believe that at one point in our interview she had made reference to a bad guy - the bad buy would be blamed for that - and I understood for the first few interviews that that statement had been made - the attacker had made that statement to her.

MR. FURLOTTE: My Lord I don't know if we are getting into proper redirect examination here. The Crown is asking this witness to I suppose speculate somewhat on the conversations of what Mrs. Flam meant by certain expressions and I think we are going astray.

25 THE COURT: I think here Mr. Walsh you are painting the general picture of her condition at that time. I think you should limit it to that perhaps. We don't want to get into----

MR. WALSH: The reason - just so the Court understands why I am doing what I'm doing. Mr. Furlotte yesterday and again today questioned Cpl. Mole on the - with a view I expect to attempting to show she was influencing or pressuring Mrs. Flam and the questions he was asking were perhaps leading -

95

Cpl. Mole - redirect

5 that type of thing. What I was attempting to
show the jury that the officer would be getting
information not normally in sequence and what if
anything he would have to do to try and fathom
for himself where these things fit and - that is
the reason why I have asked the officer to
proceed in this fashion. I wanted the officer to
give the jury the example of what he exactly is
10 talking about. I think it is important that the
jury understand the circumstances he was
operating under.

THE COURT: Let's give one illustration and confine it to
that.

15 CPL. MOLE: At one point I was unclear about - in regards to
a comment that the attacker had reportedly made
that "the bad guy would be blamed for this" or
words to that effect and I had understood earlier
in the interviews that that reference pertained
20 to later in the evening around when the fires
were set. It wasn't until subsequent interviews
and conversations with Mrs. Flam that I realized
that comment had been made by the attacker when
he first came into the home and identified
25 himself as Gerald and wanting money and telling
her that she would be okay as long as he got the
money.

Q. What if any influence, pressure or coaching did
you give Mrs. Flam to in any way add something,
30 take something away, change the sequence of
anything during that whole time that you were
interviewing?

96

Cpl. Mole - redirect

A. I've never done that.

Q. Mr. Furlotte had made much in his cross
examination about these chains - the chain that
5 you brought to the hospital. Did you know
anything about the chain up until the point that
Mrs. Flam mentioned it to you?

A. I had no knowledge that Mrs. Flam had ever spoken
of a chain to anyone prior to the 31st of May
10 1989 when she mentioned it to me.

Q. What about the description of the chain that Mrs.
Flam gave you on May 31st that would lead you to
take a chain - a prisoner's waist chain - what
about that description on May 31st----

15 MR. FURLOTTE: My Lord again, the chain was brought up on
direct examination and it is not something new
that I brought up in cross.

THE COURT: Well this other business about the inmate's chain
came up on cross examination, so go ahead, but
20 look we don't want to get into this thing in
depth surely?

MR. WALSH: No My Lord - again, I just want to touch a few
things just so that the jury from the Crown's
point of view is clear as to what this officer
25 was doing and why he was doing it.

THE COURT: All right.

MR. WALSH:

Q. I'll repeat the question. What if anything about
the description of the chain that Mrs. Flam gave
30 you on May 31st would lead you to bring this
particular piece of chain to the hospital on June
8th?

97

Cpl. Mole - redirect

- A. On June the 8th - the size of the chain, the colour of the chain and the amount of chain - the fact that it could be - there was a portion of the chain that could be used to - I understood 'wrap it around the attacker's penis and still remain on his waist'.
- 5
- Q. Led you - led you to do what?
- A. To search out a body chain from the prison.
- 10
- Q. What if any need - Mr. Furlotte asked you yesterday about sending - whether or not you sent any bodily substances of David Tanasichuk for the DNA typing - Cpl. Mole what if any need did you see to send any bodily substances of David Tanasichuk for DNA typing as a result of the investigation, for police purposes?
- 15
- A. I was satisfied in my mind that David Tanasichuk had been eliminated for police purposes and I didn't see the requirements to request DNA analysis.
- 20
- Q. In your mind was Mr. Legere still considered a suspect for police investigation purposes after a couple of months following the Flam homicide?
- A. Throughout the investigation Mr. Legere has remained a suspect.
- 25
- Q. Mr. Furlotte asked you about the pubic hair that Mrs. Flam described. What was the first - when was the first time that Mrs. Flam mentioned to you about the colour of her attacker's pubic hair, do you remember?
- 30
- A. I believe it would be on the 31st of May but I'm not certain.

98

Cpl. Mole - redirect

- Q. If it wasn't the 31st - and you are not certain about it - when would be the next time - when would be another possible time?
- 5 A. June 8th.
- Q. What was the first colour that Mrs. Flam mentioned to you?
- A. She said his pubic hair was light - a light brown.
- 10 Q. Did you in any way attempt to influence, pressure or coach Mrs. Flam as to the colour of any particular - any particular colour?
- A. No I did not.
- Q. At the time you were interviewing Mrs. Flam, May 15 31st or June 8th, were you aware of the colour of Allan Legere's pubic hair?
- A. No I was not.
- Q. When was the first time you became aware of the colour of Allan Legere's pubic hair?
- 20 A. The 24th of November 1989.
- Q. Many months after you were first told by Mrs. Flam?
- A. Six months after.
- Q. I want to just clarify something with respect to 25 your views on the chain, particularly in relation to his Lordship making a statement to you. My understanding - correct me if I'm wrong Cpl. Mole - is that you initially have testified that you have no evidence that Mr. Legere escaped with a chain. Is that correct?
- 30 A. That's correct.
- Q. Who were you relying on for that information?

99

Cpl. Mole - redirect

A. Correction Services Canada - Penitentiary Services.

5 Q. Mr. Furlotte asked you questions about a voice comparison that you did with Mrs. Flam, is that correct?

A. That's correct.

10 Q. Do you remember the exact words that Mrs. Flam used to comment each time - you said there was four voices?

A. That's correct.

Q. Do you remember the exact words that were used?

15 MR. FURLOTTE: I would object to this testimony My Lord. This is - again I think we are getting a little too far into the hearsay evidence. I questioned Nina Flam on the voice comparison tests herself and I think the court should be stuck with her answers and not something that Cpl. Mole understood her to say. Especially after admitting there was a lot of stuff he didn't understand that she was saying.

20 THE COURT: Well on cross examination, you elicited Mr. Furlotte from Cst. Mole the advice that she identified the voice, tentatively or at some stage or temporarily or whatever the case was, of Mr. Marsh and I think it is proper---

25 LEGERE: Brainwash.

THE COURT: I think it is proper on redirect that Mr. Walsh should be allowed to ask that.

30 MR. WALSH: Thank you My Lord.

100

Cpl. Mole - redirect

Q. Cpl. Mole do you remember the exact words she used when she was asked to comment on any of the four voices?

5 A. I believe on three of the subjects she just said no that she didn't recognize the voice. On the fourth voice she said that it sounded familiar but she wasn't sure.

MR. WALSH: Thank you My Lord. I have no further redirect.

10 THE COURT: Thank you very much Cpl. Mole.

MR. WALSH: He is being stood aside My Lord.

THE COURT: Yes, so you wont discuss this aspect of the case with anyone until your testimony is complete.

1

Her Majesty The Queen and Allan Joseph Legere
September 10, 1991.

- 5 THE COURT: Who is your next witness?
MR. WALSH: My next witness is Constable Robin Britt
THE COURT: Is he----
MR. WALSH: He is being recalled.
- 10 THE COURT: Very long at this point?
MR. WALSH: No, I would hope not My Lord. I expect that - he
is for purposes of - he is exhibit custodian My
Lord.
THE COURT: Yes. You were on before weren't you Constable?
A. Yes I was My Lord.
THE COURT: You are still under oath of course.
- 5 ROBIN BRITT having been previously sworn testified
as follows:
DIRECT EXAMINATION BY MR. WALSH
- Q. Constable Britt, to refresh the memories of the jury - I
10 expect they remember, but you are the exhibit custodian
relating to the Flam homicide, is that correct?
A. That's correct.
Q. And you have explained that your responsibility is to
take control of some of the items that are seized during
15 the course of that particular investigation or after that
homicide, is that correct?
A. That's correct.
Q. In this regard I am going to show you an item that has
been marked 'F' for identification. Would you look at it
20 please and tell the Court whether you can identify it?
A. Yes, it's a pair of eye glasses. I recognize it. I
received it personally from the previous witness, Cpl.
Mole. I received it on June 5, 1989 at 4.56 p.m. at the
R.C.M.P detachment of Newcastle.
- 25 Q. And what if anything did you do with that particular
item?

2

Cst. Britt - direct

A. It was in my possession until the 6th of September 1991 at which time it was turned over to Cst. Charlebois.

30 Q. And did you take possession of this item after you turned it over to Cst. Charlebois?

A. No I did not.

Q. You have some other items with you there?

A. That's correct.

35 Q. I am going to show you this particular--- I will have it marked first for identification.

(Invoice marked 'G' for identification)

Do you recognize it?

40 A. Yes I recognize it. It's an Ocean Optical Limited invoice.

Q. From whom did you receive that?

A. I received it from Cst. Ron Charlebois on the 21st of January 1991 at 4.50 p.m. at the Newcastle R.C.M.P. detachment, New Brunswick.

45 Q. Where has it been since then?

A. It has been in my possession since that date.

Q. This document, does it have any - is there a number of copies?

50 A. Yes there is a - the first copy on top, white; what appears to be in the middle a yellow copy; and in the back a pink one.

Q. So it constitutes three pages of paper?

A. Yes.

55 MR. WALSH: I have another item My Lord which I wish to have marked for identification.

THE COURT: 'H'.

(Prosthesis Form marked 'H' for identification)

Q. Do you recognize it?

60 A. Yes, it is a prosthesis and appliances form which I received personally from Cst. Ron Charlebois at the

Cst. Britt - direct

Newcastle detachment of the R.C.M.P. on the 21st of
January 1991 at 4.50 p.m.

Q. In whose possession has it been since that time?

65 A. My possession only.

Q. How many pieces of paper are there?

A. One page.

Q. Did you put any identifying number on this particular
document?

70 A. No I did not, except I put my initial, date and time I
received it.

Q. Is there a police identification number on that
particular package?

A. Yes there would be 'item, police' - item would be 136,
75 case---

Q. That's fine. I'll show you 'G' which you previously
identified. Would you just tell the jury what the police
identification number is on that one?

A. It would be 135.

80 MR. WALSH: I have another item My Lord I move to have marked
for identification.

THE COURT: The letter 'I'.

(Ocean Optical pink copy marked 'I' for identification)

MR. WALSH:

85 Q. This is an item which is marked 'I' for identification.
Would you look at it for me please and tell me whether or
not you can identify it?

A. Yes, it's an Ocean Optical Limited pink copy which was
received personally, again from Cst. Ron Charlebois on
90 the 21st of January 1991 at 4.50 p.m. at the Newcastle
detachment of the R.C.M.P. and it has been in my
possession since that date.

Q. And the police identification number that would be on
that?

95 A. 137.

4

Cst. Britt - direct

Q. And that constitutes one page of paper?

A. Yes.

MR. WALSH: I have another item My Lord.

100 THE COURT: 'J'.

(Paper marked Prosthesis - 'J' for identification)

MR. WALSH:

Q. I have an item marked 'J' for identification. Would you
look at it for me please and tell me whether or not you
105 can identify it?

A. Yes I can. Again it is a white sheet of paper marked
Prosthesis and Appliances which was received personally
from Cst. Ron Charlebois on the 21st of January 1991 at
4.50 p.m. at the Newcastle R.C.M.P. and it would be item
110 138 for a police exhibit.

MR. WALSH: I have another document My Lord which I move to
adopt for identification.

(Yellow sheet of paper marked 'K' for identification)

Q. I show you a document marked 'K' for identification.
115 Would you look at it for me please and tell me whether or
not you can identify it?

A. Yes. It appears to be a yellow folded sheet of paper.
It was received personally on the 8th of August 1991 at
9.50 a.m. at the Newcastle R.C.M.P. and it was received
120 personally from Cst. Ron Charlebois. It has been in my
possession since that time and it would be item 139 for
police exhibit.

MR. WALSH: Another document My Lord I move to adopt for
identification.

125 (White piece of paper marked 'L' for identification)

Q. I show you a document marked 'L' for identification.
Would you look at it please and tell the jury whether you
can identify it?

5

A. Yes, it is a white cardboard-like piece of paper with different markings on it. It was received on the 21st of August 1991 at 3.20 p.m. It was received from Cst. Ron Charlebois at the Newcastle R.C.M.P. and it would be item number 140 for police exhibit. It has been in my possession since that date.

MR. WALSH: I have another document My Lord I move to have marked for identification.

(White piece of paper marked 'M' for identification)

140 Q. I show you a document that has been marked 'M' for identification. Would you look at it for us please and tell the jury whether you can identify it?

A. Again it is a white piece of cardboard-like paper which I received personall from Cst. Ron Charlebois on the 21st of August 1991 at 3.20 p.m. It has been in my possession since that day and it would be item - it appears to be number 140 - maybe if I could see the previous one--

Q. I show you the previous one marked 'L'.

A. Okay, the previous one would have been 140 which I mentioned. This one would be 141.

MR. WALSH: I have no further questions My Lord. Thank you.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. No questions on the evidence you gave today Cpl. Britt. However I believe when I was cross examining you when you appeared in court before there was one issue left untouched and that was item number 86, the Pepsi can. You were going to find out for me where that item was seized?

160 A. Yes that's correct. It was seized as I recall correctly mentioned - it was seized by Cpl. Gaetan Germain who is with the police dog section in Moncton, New Brunswick. It was turned over to me to have the item checked for fingerprints on it which was done on June 21st, 1989 at

6

165

Cst. Britt - cross

the Bathurst identification section and it was done by I do believe, Sgt. Chiasson and there was no fingerprints found, but maybe Sgt. Chiasson should be asked that question if there was in fact any fingerprints or not or whatever found on the bottle.

170

Q. You received it from Cpl. Germain?

A. Cpl. Gaetan Thomassin.

Q. Do you know where he found it?

A. I do believe in Loggieville, New Brunswick.

175

Q. Loggieville?

A. Yes.

MR. FURLOTTE: Thank you.

THE COURT: Re-examination?

MR. WALSH: I just have one for the jury, who perhaps are not familiar with the area.

180

Q. Would you tell the jury please where Loggieville is, just so---

A. Loggieville is the neighboring village from Chatham which would be in the westerly direction from Chatham. It is approximately three or four kilometres as you are leaving Chatham, in a westerly direction.

185

Q. Just for the jury's sake, would you turn around please - previous evidence has indicated I believe that this would be Newcastle area; this would be the Chatham area; in which direction would you go to go to Loggieville?

190

A. This would be Wellington Street and as you follow up it is going to lead you to Loggieville.

Q. For the record you are pointing from the Chatham area up towards the right-hand corner of the map?

195

A. That's correct.

Q. That would be I believe - just to be correct, towards the east?

A. The top is north?

MR. WALSH: Yes. I have nothing further My Lord.

THE COURT: Cst. Britt is just stood aside?

205 MR. WALSH: That's correct My Lord.

(short break)

Jury polled - all present.

THE COURT: Your next witness Mr. Walsh?

MR. WALSH: Cst. Ron Charlebois My Lord.

210

1

Her Majesty The Queen and Allan Joseph Legere
Portion of the proceedings - September 10, 1991

5

Evidence of Cst. Ron Charlebois

10 CST. RON CHARLEBOIS having been called as a witness testified as follows:

15 DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please and your occupation?

A. Yes, my name is Ron Charlebois. I'm a regular member of the
20 Royal Canadian Mounted Police. I have been a regular member
since 1979; am presently stationed in Moncton with the General
Investigation Section; I've been stationed there since October
15, 1989.

Q. And in relation - you are going to be testifying a number of
times, is that correct?

25 A. That's correct.

Q. With respect to the matters that we're presently dealing with,
I'm going to show you a number of items and ask you whether or
not you can identify them for the jury. I show you the item
that has been marked 'F' for identification. Do you recognize
30 that item?

A. Yes, I recognize these as a pair of eye glasses I would have
received from Cst. Robin Britt at 2.50 p.m. on the 6th of
September 1989.

Q. 1989?

35 A. Excuse me, 1991.

Q. That's this year?

A. That's correct.

Q. And who brought those eye glasses - what appear to be glasses
to the court?

40 A. I would have brought them to the court.

2

Cst. Charlebois - direct

Q. I show you an item that has been marked 'G' for identification. Would you look at it for us and tell us whether you can identify that?

5 A. Yes, I identify this as an invoice from Ocean Optical. I would have received this invoice on the 21st of January 1991. I seized it from the Atlantic Institute, commonly known as the Renous Penitentiary, pursuant to a search warrant that I obtained from Judge Lampert on the 18th of January 1991.

10 Q. And what if anything did you do with it after you received it?

A. After I received it I put an R.C.M.P. exhibit sticker identifying the item number, the file number, the exhibit number. It also bears my signature and the date and time that I received it; and this form when I received it had, and still
15 does have, three copies to it - a white, a yellow and a pink copy.

Q. And what particular office of that institution did you----

A. That would have been seized directly from Allan Legere's medical file at the Institute hospital, Atlantic Institution
20 in Renous, New Brunswick.

Q. I show you this document that has been marked 'H'. Do you recognize that?

A. Yes, I would have seized this document at the same time on the 21st of January 1981 - 1991, excuse me, at 2.20 p.m. from the
25 same medical file. It's a prosthesis and appliance form.

Q. Pursuant to the same search warrant?

A. Pursuant to the same search warrant that I received from Judge Lampert.

Q. And what if anything did you do with this document after that?

30 A. I kept that document and the other document - the first document - in my possession until I turned it over to Cst.

3

Cst. Charlebois - direct

Robin Britt at, I think it was 16.50 hours on the 21st of January, 1991.

Q. I refer you to Item 'I'.

5 A. This would be another Ocean Optical Limited invoice that I received - that I seized pursuant to that same search warrant from his medical file at the Atlantic Institute Institution hospital. I would have kept this same document in my possession until I turned it over to Cst. Robin Britt at 16.50
10 hours. I must add that this particular invoice relates to - it is dated the 17th of October 1986. The other invoice that I referred to was dated July of 1986, and there's just one copy there, the pink copy.

Q. I show you this document that has been identified as 'J' for
15 identification.

A. This is an additional document, a prosthesis and appliance form that I seized at the same time at the Atlantic Institution, Renous, New Brunswick, pursuant to the warrant I received from Judge Lampert on the 18th of January 1991.
20 There again I kept this document in my possession up until the time that I turned it over to Cst. Robin Britt on the 21st of January.

Q. And 'K' for identification?

A. This is an additional copy of an Ocean Optical invoice that I
25 would have received on the 6th of August 1991 at 16.38 hours. I received this invoice from Mr. Claude Brunet who is the president of Ocean Optical Limited in Moncton. He would have given me this document on that date. Now I kept that document in my possession up until the time that I turned it over to
30 Cst. Robin Britt on the 8th of August 1991 at 9.50 hours.

Q. And 'L' for identification?

4

Cst. Charlebois - direct

A. Okay, 'L' - I recognize this document as being a prescription card that I seized on the 19th of August 1991 at 3.05 p.m. I would have seized this document from Dorchester penitentiary located in the village of Dorchester, New Brunswick, pursuant to an additional warrant that I received from Judge Rice that same day. I kept that document - this particular document which is dated July 3, 1986 in my possession until the 21st of August when I turned it over to Cst. Robin Britt at Newcastle detachment.

THE COURT: Sorry, the date of the document was?

A. The document itself is dated July 3rd, 1986.

MR. WALSH:

Q. And 'M' for identification?

A. This is a second prescription card dated October 7, 1986 that I would have seized on the 19th of August 1991 at 3.05 p.m. This document was also seized via the search warrant that I received from Judge Rice that same day. I would have kept this document in my possession up until the 21st of August when I turned it over to Cst. Robin Britt at Newcastle detachment and this document, as I mentioned, dated October 7th, 1986.

MR. WALSH: My Lord at this time I am going to ask that the items that have been identified, beginning with 'F' be entered as an exhibit. I am going to begin with 'F'. I can make a motion to include them all, 'F' through to 'M' inclusive. I am moving that they be entered as an exhibit.

THE COURT: Well all right - what do you have to say in support of each one? Perhaps you would deal with each one?

MR. WALSH: Well My Lord what I am suggesting is that these particular glasses - the continuity of these particular items has been proven up until this particular point, the time they

5

were seized or found by Lloyd Hanna and the various witnesses. I'm suggesting that the continuity of these glasses has been proven and I wish to enter them as an exhibit at this time. They'll be subject to being testified to later with respect to any analysis that was conducted.

5

THE COURT: How are they related to the trial - the issues in this trial?

MR. WALSH: I'm sorry My Lord. I misunderstood your position earlier. I thought that---

10

THE COURT: Well I said if counsel indicated that they were going to be related to other evidence---

15

MR. WALSH: That's correct My Lord. They are going to be - we are going to have other evidence - there is going to be other evidence that these glasses were looked at by other individuals and there will be comparisons made between these glasses and - I don't want to get into evidence My Lord but they'll be compared with maybe between these glasses and the accused's.

20

THE COURT: Well do you have any objection on the glasses Mr. Furlotte?

MR. FURLOTTE: My Lord I submit they can't be put in as an exhibit until they are connected somehow to the accused and so far they have not.

THE COURT: Well let's - now the other items?

25

MR. WALSH: They are also connected to - they are the documents associated with previous prescriptions for glasses associated with that particular----

THE COURT: Well hadn't you better leave those for the time being?

30

MR. WALSH: Well My Lord that was my original intention. I'm sorry, I misunderstood your question yesterday. My Intention was to wait until such time as we reached the point where I was going to have these items looked at. I thought from your

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Cst. Charlebois - direct
directions yesterday I should do it as soon as I finished at
least the continuity aspect.

THE COURT: Well I was speaking in terms of the glasses and I'm not
5 so sure that perhaps the glasses might be admissible at this
stage.

MR. WALSH: Fine My Lord.

THE COURT: But let's leave them all - the other documents I think
they've got to be tied in a little better.

10 MR. WALSH: Yes fine. That was our original intention. I
misunderstood what you said yesterday. I was jumping ahead.

THE COURT: One of these days we'll start talking the same
language.

MR. WALSH: Thank you My Lord. I will withdraw my motion at this
15 time and I will be tendering those items at a later time.

Q. In relation to this items Officer Charlebois, did you have any
other - did you handle them in any other fashion other
than what you what you have testified?

A. No I did not.

20 MR. WALSH: I have no further questions.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. Cst. Charlebois I understand from Cpl. Mole's testimony that
25 you are now one of the chief investigators or file
coordinators on the Flam case?

A. Yes, of the Flam, the Daughney and Smith, yes.

Q. Was it the R.C.M.P's position that Mr. Legere attended court
December 5, 1989 - in 1990 in answer to these charges, am I to
30 understand that it was the R.C.M.P's position that they
were going to give full disclosure for the defence?

7

Cst. Charlebois - cross

MR. WALSH: My Lord I don't understand the relevance of this. The R.C.M.P.'s position---

5 THE COURT: They have no position at all Mr. Furlotte. It is the Crown - the Crown Prosecutors are responsible for whatever disclosure is made and this witness has nothing to do with that. He's a functionary, if I may use that expression.

MR. FURLOTTE: Do you know Cst.----

10 MR. WALSH: My Lord I just wish to make one point before he continues. If he is dissatisfied with the information that we have provided him, please tell us. We've been telling him that for a year - please tell us.

15 THE COURT: Well this matter of disclosure is not something that should be discussed here at this trial. If you have problems with disclosure, as I have made clear for the last nine months, counsel can discuss about it and it can be ironed out and those difficulties raised, but this man here on the witness stand doesn't have the conduct of the prosecution in this case. He is an R.C.M.P. investigating officer.

20 MR. FURLOTTE: But he is working hand-in-hand with the Crown Prosecutors.

THE COURT: I suppose he would answer yes to that probably.

MR. FURLOTTE:

25 Q. Cst. Charlebois in the presentation of the evidence before the court in this case are you working hand-in-hand with the Crown Prosecutors?

A. Most definitely.

Q. Were you in court when the hair and fibre expert Gary Verrett testified?

30 A. Yes I was.

8

Cst. Charlebois - cross

Q. And you are aware that Mr. Verrett testified in court that the hair samples found at the scene and the hair in Annie Flam's necklace; the facial hair found in Annie Flam's bed; and
5 the other two hairs found in Nina Flam's bed - do you recall that he testified they were not consistent with Allan Legere's?

A. That's correct.

Q. Was I given Gary Verrett's lab report on that matter?

10 MR. WALSH: Objection My Lord.

MR. FURLOTTE:

Q. Did you give me Gary Verrett's lab report on that matter?

MR. WALSH: Objection My Lord.

15 THE COURT: Well I don't care what this man may have given or what he didn't give. Are you saying that the Crown has failed to disclose something to you Mr. Furlotte or what are you getting at?

MR. FURLOTTE: I want to establish when the Crown----

20 MR. WALSH: Perhaps My Lord so we - so the jury's time is not wasted on these particular matters we could discuss the issue in the absence of the jury to just determine what it is that's the concern and see if we can assist in any way without wasting the time on this - us objecting and trying to find out what is going on here in relation questioning. I
25 would like to see the relevance of it. That's what I would like.

THE COURT: Well do you want to pursue - you are going to pursue this Mr. Furlotte - I mean you want to pursue this?

MR. FURLOTTE: I intend to pursue it My Lord.

30 THE COURT: Then I would ask the jury to go out for a few minutes.

(jury retires)

9

THE COURT: Now what is it?

MR. FURLOTTE: My Lord the position of the defence is simply that
on December 5, 1990 when Mr. Legere attended court to answer -
his first appearance to answer these charges I was led to
5 believe, at least I believe - I remember being led to believe
by the Crown Prosecutors that while they were preferring a
preferred indictment to bypass the ability of the preliminary
hearing that in lieu thereof they were providing defence with
full disclosure, all the evidence they had against Mr. Legere
10 and even disclosure of the evidence that they did not intend
to use, i.e. meaning all the statements of witnesses
interviewed but of which they have no intentions to call as
witnesses and if I intended to call that evidence myself then
I would be able to. Through the course of my studying the
15 mass of files I was able to detect that there was nothing in
the files where the labs had compared the hairs found in
question at the Flam residence to Mr. Legere. I inquired from
Cpl. - sorry, Cst. Charlebois, I believe it was sometime in
August of this year, a month ago, while Mr. Charlebois was in
20 my office as to whether or not the police investigated into
either comparing the hairs of Mr. Legere with those hairs from
the Flam residence. Mr. Charlebois, if I understand
correctly, had nothing in his file at that time. He called
Gary Verrett in Ottawa to find out if Mr. Verrett had done the
25 comparison - the analysis - and Mr. Verrett I believe advised
him on my telephone in my office that he had in fact provided
the police with his lab report and told him what number it was
and where to find it. Shortly thereafter Mr. Verrett was able
to tell Cst. Charlebois what the conclusions were in his
30 report and Mr. Charlebois told me what the conclusions were
and that he would provide me a copy with the report. In view
of the fact that the Crown or the police have not disclosed

10

Cst. Charlebois - cross

all the information to me, which might help Mr. Legere, I want to be able to ask this witness if there is any other evidence out there that may assist Mr. Legere that they have not disclosed to the defence.

5

THE COURT: Well the person to ask that question to is Mr. Walsh or Mr. Allman or Mr. Sleeth.

MR. FURLOTTE: Well I don't know---

MR. WALSH: He better be careful My Lord how he asks me.

10

MR. FURLOTTE: My Lord, in all fairness I don't know whether the Crown had ever been provided with this report. One of the Crown's complaints is while yes they would love to give full disclosure to the defence, unfortunately there is no rules at law which requires the R.C.M.P. or any police force to disclose all their information to the Crown. I just want to establish here as to whether or not this was - just an oversight? You never know, they may argue that, or whether it was purposely not disclosed by the Crown or purposely not disclosed by the R.C.M.P. to the Crown.

15

20

THE COURT: Well now Mr. - why don't we hear from Mr. Allman.

MR. ALLMAN: I am going to deal with this because disclosure falls primarily under my sphere. First I find myself in a difficult situation. Mr. Furlotte just testified for about five minutes. I'm not sure whether it is appropriate for me to get into the details of this. My basic position is that the entire question of disclosure is a question between Crown and the defence. If the defence is dissatisfied with disclosure; feel it is inadequate during the course of the proceedings up to or including trial they can make applications to the Court; they can write us letters; they can do anything they want. None of that has been done except that I gather Mr. Furlotte asked for some item of further disclosure and that was

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Cst. Charlebois - cross

provided. I'm saying that based on what he says. I'm not saying anything about it. My position is that this is not a question for the jury. It is a question entirely between Crown counsel and the Court. Assuming it is true, assuming that some further disclosure was given to Mr. Furlotte in response to some request of Mr. Furlotte's, and that may well be - assuming it is true, it is still not a matter for the jury. It's simply not.

5
10 THE COURT: Do you have anything Mr. Allman to say though about this particular report?

MR. ALLMAN: Do you wish me to indicate the situation about that?

THE COURT: Yes.

MR. ALLMAN: Fine. My understanding is this ----

15 THE COURT: This is something normally that I would hash over with counsel perhaps in chambers or something and not even in a courtroom.

MR. ALLMAN: I didn't want to get into it, pending Your Lordship's direction, but I will. My understanding of the situation is this. We gave Mr. Furlotte full disclosure of everything we had - that is to say positive or negative. I'm sure Your Lordship will appreciate that in a file of this size - and I believe there's eight or nine volumes - it is possible there are items that are not included in there. From time to time, since December to this date, we have either provided Mr. Furlotte with additional evidence or items as they come up and whenever we contacted Mr. Furlotte we have said "please, if you discover something that we have inadvertently omitted to give you, let us know". It may well be, and I think it probably is the case that this matter about the hair and fibres was something that Mr. Furlotte raised and in response thereto we provided him with it. If we provided it too late

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Cst. Charlebois - cross

then he could have made that point - he could object to something of that kind. But the fact that he had that information before Gary Verrett gave evidence, he elucidated from Mr. Verrett what - the evidence that he wanted, about the hair and fibres not being consistent with Mr. Legere's. Now I don't think I have any objection to this question, a general question - Cst. Charlebois do you know of any other evidence that might assist Mr. Legere? I don't know what the answer to it would be but I don't think I object to that; but I do object most strenuously to getting into the ongoing activities between the police, the Crown and the defence during the months between December and the opening of trial. That is not, in my respectful submission a matter the jury should consider.

THE COURT: Well counsel will recall that when I first sat on this case at Newcastle on December 5th the Crown brought in great huge cartons they had sitting off to one side of the courtroom and the Crown endeavoured to have it recorded I guess in the records that they were transferring that in the presence of the Judge and court and so on to the defence counsel, and I said then, as reference to the transcript will show, that I was not the slightest bit interested in what disclosure was made or where it was made, and the courtroom wasn't the proper place to make it. This was a matter between Crown counsel, and defence counsel and this should be arranged separately between them. I made that point I think or something to that effect anyway. I did make the point that if there were dissatisfaction on the part of the defence at any time as to disclosure it was a matter that could be brought to me and if counsel couldn't iron the matter out between themselves then I would intervene and if necessary give whatever directions

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were necessary. I've never had any complaint. I think perhaps the matter of disclosure has come up incidentally at some of our pre-trial hearings, but never in any serious way and I've been under the impression that counsel on both sides
5 have been cooperating and cooperative and have been getting what they want. It's not a matter for the jury, this matter of what disclosure has been made and I'm not going to have all this - this is just a red herring as far as the jury is concerned, or if they were to hear it, it would be, and I'm
10 not going to have discussion of this matter. This witness is, as I say, a functionary in this case. I don't use that term in any bad sense but he - it's the Crown counsel who have the conduct of the case. It may be here that through an oversight or something a copy of this report wasn't put in the hands of
15 the defence counsel, but defence counsel are perfectly aware of it. They are aware of it through Verrett's testimony; the result, the result is favourable to the defence. I don't accept that there was any deliberate effort on the part of the Crown to cover anything up.

20 MR. FURLOTTE: Well My Lord, for the record part of the defence in this case and its argument to the jury, I'm sure maybe the Crown is aware of this, they assume that I've been aware of so much, that there will be just reason to mistrust some of the evidence that is being put in by the police department for
25 various reasons and something like this again I believe the jury ought to know because it gives them the opportunity to assess not only the investigation by the police but also its motives or sincerety or even credibility for bringing certain evidence to the court and leaving others out. It all goes to
30 weight---

THE COURT: My ruling is that I will permit no questions with regard to disclosure before the jury.

14

Cst. Charlebois - cross

MR. ALLMAN: Can I just raise one other point---

MR. FURLOTTE: Am I going to be able to ask the witness then under
those - what you have just stated - am I going to be able to
5 ask the witness if there is any other evidence out there which
may tend to exclude Mr. Legere?

THE COURT: Mr. Allman has indicated he is not objecting - will not
object to that and really I can see no reason why you
shouldn't be able to.

10 MR. FURLOTTE: It's just that that does have something to do with
whether or not they have given me full disclosure.

THE COURT: No mind you, whether he knows - you say any other
evidence. I don't know how the witness is going to know
exactly what you know----

15 MR. FURLOTTE: Well that's the problem when you just put it in such
vague terms, it's easy to allude. If I can't---

MR. ALLMAN: Well there's no problem. I mean maybe you can tell us
what the question's to be. He asks that question; if the
witness says no, then I presume he says "well I suggest to you
20 this item of evidence, or that item of evidence, or the other
item of evidence" and then Cst. Charlebois can deal first with
the general proposition and then with any specific matter that
Mr. Furlotte wants to raise. There is one other thing I want
to raise when----

25 THE COURT: If there are follow-up questions, I don't want embodied
in these questions sort of snide reference to failure to
disclose this and failure to disclose that. I don't want any
reference to disclosure before the jury. This is a matter
between counsel and the Court----

30 MR. ALLMAN: There is one other matter I want to raise My Lord.
This is again a repetition of a similar thing that's happened

15

Cst. Charlebois - cross

before. Mr. Furlotte starts getting into lines of questioning which certainly is apparent to me improper. I gather Your Lordship's ruling is it's improper. The question is dropped
5 before the jury and the jury then come back and the question is not pursued. Something may be left in the jury's mind about this. I would respectfully request that if Mr. Furlotte in the future intends to get into lines of questioning that may be controversial or difficult or debatable that he would
10 request a voir dire first. That's what we do. When we are coming to areas that we've identified as sensitive or open to debate we send the jury out and we get into - we don't start dropping the question and then make the other side object and then get a ruling on it. It's a reprehensible practice is my
15 submission.

MR. FURLOTTE: My Lord just one aspect, I don't consider it reprehensible because when I defended Patrick Mailleux in Moncton for Murder I was allowed to question the Moncton police force on full disclosure and in cross examination I
20 uncovered that the Moncton police force hid two witnesses from the defence who could have given---

THE COURT: Look, I'm not really concerned about the Mailleux case. I don't know--

MR. FURLOTTE: ---who could have given evidence which favoured the
25 accused.

THE COURT: I don't know----

MR. FURLOTTE: That was done before the jury and they were also grounds of appeal and nobody until today has said that that aspect was reprehensible.

30 THE COURT: I would never have permitted it as a judge myself. I don't know who the judge was on the case or what the

16

Cst. Charlebois - cross

circumstances were, but I wouldn't have permitted it, I'll tell you that, and it is no precedent as far as I'm concerned. Now we'll have the - you understand the parameters that I've imposed in this regard Mr. Furlotte. Let's have the jury back.

5

Jury polled - all present.

10 THE COURT: You have some other questions Mr. Furlotte on cross examination?

MR. FURLOTTE:

Q. Const. Charlebois, again Cpl. Mole stated that you were now one of the chief investigators of the Flam case?

15 A. Yes that's correct.

Q. And has the police excluded all other possible suspects or are you still investigating other suspects in the Flam case?

A. I am satisfied that all the suspects that were identified prior to my arrival had been concretely eliminated and to date we do not have any additional suspects, but you can rest assured that if information is received that warrants follow-up, investigation will be conducted.

20

Q. Are you saying that as far as you are concerned after this trial the case is closed?

25 A. Most definitely not.

Q. Cst. Charlebois are you aware - just an example, like the lab report of Gary Verrett excluding Mr. Legere from those hair samples - are you aware of any other evidence which may assist Allan Legere?

30 A. Assist is a very subjective thing. None of the - to answer your question I am not aware of any evidence that we have in our possession that would assist him.

17

Cst. Charlebois - cross

Q. In your opinion?

A. That's correct.

5 Q. Do you have any evidence that maybe in somebody else's opinion
it may assist him?

A. Quite possibly in your own opinion.

MR. WALSH: Objection My Lord. This is becoming too far removed.
I don't know how the officer is going to be able to delve into
that particular area. Certainly he can ask him for himself
10 but----

MR. FURLOTTE: My Lord Mr. Walsh keeps interfering so to try to
avoid from the witness having to answer the question.

MR. WALSH: That is not correct My Lord. I am objecting because I
have an obligation as counsel to ensure that I do object when
15 I believe that from a legal point of view he is not complying
within the rules. It's for you to decide that My Lord. It is
certainly not - I just want to make sure the jury hears
admissible evidence.

THE COURT: You've asked your question and what's your answer here?

20 MR. FURLOTTE: My Lord my position is the Crown has admitted---

THE COURT: No, where are you going from here. What's your next
question?

MR. FURLOTTE: Well it all depends on what his answer is, what my
next question is. I may not have another one.

25 THE COURT: And he says he can't answer it.

MR. FURLOTTE: Well it's Mr. Walsh who says he can't answer it.
It's not the witness that said that.

THE COURT: Ask him again.

MR. FURLOTTE:

30 Q. Cst. Charlebois does the R.C.M.P. have any knowledge or
evidence which in my opinion that I may possibly think that it
may assist Mr. Legere?

18

Cst. Charlebois - cross

A. The R.C.M.P. has disclosed all the information that we have in our possession to our Crown prosecutors and also to yourself that we feel could be of any assistance to you. We're not
5 hiding any evidence.

THE COURT: I think that might be left right there.

MR. FURLOTTE: I have no further questions.

MR. WALSH: I have one on redirect.

10

REDIRECT EXAMINATION BY MR. WALSH

Q. Is any case ever closed for the R.C.M.P.?

A. No.

MR. WALSH: Thank you.

15

THE COURT: Thank you very much. Cst. Charlebois you are subject to recall so you shouldn't discuss this aspect of the case with anyone.

8

Peter Roberts - direct

THE COURT: You have another witness?

240 MR. SLEETH: I call Mr. Peter Roberts My Lord.

PETER ROBERTS having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

245 Q. Mr. Roberts would you please for the jurors and for the record indicate your full name and your occupation?

A. My name is Peter Darrel Roberts. I am presently employed by the Correctional Services of Canada as the Institutional Preventive Security Officer at Renous -
250 Atlantic Institution, Renous, New Brunswick.

Q. And what does the Institutional Preventive Security Officer do sir?

A. I have several duties that I carry on. Part of my duties is to carry out in-house inquiries into security matters -
255 - problems between staff, among inmates. I also do the -
I'm a liaison officer between our institution and other institutions across the country when it comes to security matters also.

Q. Do you know the accused in this matter, Mr. Allan Legere?

260 A. I do.

Q. Can you tell me of your own knowledge what the initials F.P.S. stand for in relation to the operations of your institution?

A. The initials F.P.S. to me stand for Fingerprint Section.

265 Q. And of what particular significance does that have for you within your institution and your operations within the institution?

A. Every individual who is incarcerated in a federal institution is assigned an F.P.S. number or a fingerprint section number as a result of either the conviction that
270 he is being incarcerated for or perhaps a prior conviction.

Q. And that follows him throughout the length of his time in the institution within your system?

9

275

Peter Roberts - direct

A. Yes it does.

Q. Would you know of your own knowledge what the F.P.S. number for Allan Legere would be?

A. Yes I do. It's 112120A - as in Allan.

280

MR. SLEETH: My Lord I spoke earlier with counsel for the accused on this and I'm moving into an area which I believe consists of non - they feel is uncontroversial. I would ask permission to lead on the next series of questions.

285

THE COURT: All right.

MR. FURLOTTE: Well we didn't say it was uncontroversial but we allowed that - we agreed that he could ask these questions.

THE COURT: All right.

290

MR. SLEETH: A rose by any other name.

Q. Are you aware of your own knowledge the date of birth of Mr. Allan Legere, from your consultation of records?

A. As far as the Correctional Services of Canada is concerned Allan Legere was born on the 13th day of February 1948.

295

Q. Where?

A. In the province of New Brunswick.

Q. Do you know his race?

A. He is caucasian.

300

Q. Height?

A. Approximately five foot nine.

Q. Weight?

A. Approximately 185 pounds

Q. Hair colour?

305

A. Brown.

Q. Do you know the date - sometime recently I understand he was admitted to your institution. Do you recall the admission date?

10

Peter Roberts - direct

110 A. Mr. Legere was first admitted to our institution - I'm not sure exactly what date but it was the month of June 1987.

Q. While within your institution what sort of clothing and footwear would be issued to people within the penitentiary?

315 A. Upon arrival at the institution an individual is issued working clothes, i.e. a green coloured work-type pants and shirt; he is also issued underclothing; he is issued footwear in the form of slippers and also a pair of running shoes - they are a basic canvas-type running shoe.

Q. What colour would they be normally?

A. Black and white.

Q. When inmates are removed from the institution, for instance for attendance at hospital facilities what would they normally be - how would they normally be removed - what equipment would be placed on them?

A. As far as equipment goes?

Q. Yes?

330 A. For an escort outside of our institution an individual is placed in leg shackles or leg irons as they are referred to commonly and a body belt.

MR. SLEETH: Thank you.

THE COURT: Cross examination Mr. Furlotte?

335 CROSS EXAMINATION BY MR. FURLOTTE

Q. Mr. Roberts you said that Mr. Legere is five foot nine?

A. Approximately, yes.

Q. Approximately. Did you measure him yourself?

A. I've had numerous occasions to speak with Mr. Legere personally and I am just under five foot nine and he is just a little taller than I am.

340 Q. So it's an assessment - it's a personal assessment on your part as to how tall he is?

11

Peter Roberts - cross

- 145 A. No, that's my personal - as far as ---
Q. As I said, that's your personal assessment as to how tall---
A. He has been measured but not by myself.
Q. There is a record of his measurement?
350 A. That's right.
Q. Do you know what they are?
A. In metric form they are I believe 177 cm.
Q. 177 cm.?
A. I believe so.
355 Q. This is - you got this off a security card?
A. Yes.
Q. And the date that this was revised was what?
A. I believe it was - it was 1990 I believe.
Q. August 27, 1990?
360 A. Possible.
Q. That sound familiar - and his weight is 86 kg?
A. Yes.
Q. And his hair is brown?
A. Yes.
365 Q. Now on the security card or inmate---
MR. SLEETH: I object to this My Lord and ask that - there's a legal matter I would like to raise with the Court at this stage.
THE COURT: In the absence of the jury?
370 MR. SLEETH: Yes My Lord.
THE COURT: Well I'll ask the jury to go out for another few minutes and we will be bringing you back shortly.
(Jury retires)
THE COURT: What is your objection here Mr. Sleeth?
375 MR. SLEETH: My concern My Lord is the same one that has been that of Crown counsel throughout as Mr. Furlotte attempts his cross examinations. There is a

Peter Roberts - cross

0 security card in existence; a copy was furnished to
my learned friend. It concerns certain details
under a heading entitled and referred to only as
security information. I submit My Lord that all
the references contained in that security
385 information rubric are in fact highly prejudicial
to the accused, in addition to other portions
contained within that security card which go into
relations for various offences, all highly
prejudicial to the accused. My learned friend is
390 now seeking responses that are getting directly
into that area. He is alluding to this particular
area which I submit leads (a) to the following
danger - if there is reference to what is contained
in those particular sections, current offences
395 sections and security information section, this is
highly prejudicial to the accused with no special
probative value here; very dangerous with the
continuing of the trial process. Secondly it is
unfair to one of the parties to the litigation, in
400 this case the Crown, in that there will be a
reference made to something mysterious and yet no
continued follow-through to show that this
mysterious thing in fact is, for the very good and
simple reason that it is so highly prejudicial. We
405 have a role My Lord as Crown counsel which is to be
fair to the accused in the conduct of this trial
and to be alert to those matters which might be
unfairly and improperly prejudicial to him in the
conduct of his trial. My learned friend is
410 stepping close to a mine field My Lord and if this
is unveiled - the details of that are unveiled - it
would work an unfair prejudice even to his own
client.

13

Peter Roberts - cross

THE COURT: This is all included in what - what do you call this, a security card?

MR. SLEETH: It is a security card My Lord, also known as a
5 keeper card. It contains information so that the persons who are handling the inmate once he arrives in a particular institution be it Stoney Mountain or whatever---

MR. LEGERE: That's a lie. That's a lie - they never took that
10 card - my original card I'm five foot ten and a half as I've always been and I weigh 200 pounds since I joined that institution on June 8, 1986.

MR. SLEETH: My Lord I will continue addressing the Court. The fact remains My Lord---

MR. LEGERE: Prefab - they decided to mock up a prefab. The
15 ex-R.C.M.P. Mr. Peter Roberts is behind a lot of it.

THE COURT: My patience is being tested. Go ahead.

MR. SLEETH: May I continue My Lord?

THE COURT: Yes please.
20

MR. SLEETH: Thank you. Those are the basics My Lord. My
learned friend has made an allusion to an item. The jury is now left in a situation where they must be pondering in there, 'what is this thing', and yet if we go into this thing that he has made
25 allusion to, serious harm may be done in terms of the trial process in that the jury will be made aware of that which would be highly prejudicial to the accused, which the Crown has no intention of introducing. Indeed in discussion earlier with my
30 learned friend and his counsel I indicated the Crown would specifically not, at the time that I was considering introducing possibly a photocopy of this card, that it would be an edited version that

35

14

Peter Roberts - cross

would not contain these to me repugnant elements.
That's why I asked to go by way of viva voce
evidence.

5 THE COURT: Mr. Furlotte what information is there - I think it
is improper unless the card is going to be put into
evidence, to be referring to the card. If you want
to cross examine this witness on it, are you in
fact sure that the hair of the accused is brown?

10 MR. FURLOTTE: My Lord I think it is about time the Crown
prosecutors are prescribed some valium or something
because---

THE COURT: I haven't got a clue Mr. Furlotte - what are you
going to ask from this card?

15 MR. FURLOTTE: I'm going to ask this witness as to what
information was on prior security cards in relation
to the evidence that he has given in direct
examination. This one is dated August 27, 1990---

20 THE COURT: I'm not - we are not interested in security cards
here are we? What are you trying to get at, that
he was - the height isn't properly recorded or
what?

MR. FURLOTTE: I'm trying to get at that the colour of the hair is
improperly recorded and possibly the height also.
25 They have down here as Mr. Legere having brown
hair. Mr. Legere's previous inmate profile cards
has him down as having black hair---

THE COURT: This security card isn't in evidence. There's
nothing before the jury to show that----

30 MR. FURLOTTE: I don't know what Mr. Sleeth is all riled up about.

THE COURT: Well I don't want any more reference to the
security card. If you want to ask this gentleman
"how long have you known the accused - has his
hair--". The accused's hair is brown - I don't

15

Peter Roberts - cross

know whether that's right or not. That's an estimate, these things are all a matter of degree I suppose when you assess colour. You can ask if you want to, "how long have you known him - has his hair always been the same colour as it is now" and "look at the accused, and is his hair brown" and so on. On the height of five foot ten or whatever, "are you sure about this - has he ever been taller or shorter" - I'm not concerned with what the security card says at all in that regard. I'm not interested in that.

5

10

MR. FURLOTTE: I want to---

15

THE COURT: If you are going to refer to it it will have to go in to evidence.

20

MR. FURLOTTE: The only thing I'm concerned about, when he is testifying that Mr. Legere's hair is brown, I want to know whether he is getting it off this security card or whether - and what the information was on other security cards.

25

THE COURT: I don't want him to get it off any security card. If you ask him what colour his hair is he will give his estimate.

30

MR. FURLOTTE: May I ask him to go over and look at Mr. Legere's hair?

35

THE COURT: Well he can see it from there or wherever he wants to.

MR. FURLOTTE: Well I would like to have him get a---

MR. LEGERE: Don't come too close.

THE COURT: The witness will stay where he is. I don't believe in this prancing around the courtroom - look at public hair or head hair - but I don't want any more - any reference to security cards.

MR. LEGERE: Five foot ten and a half Your Honour. I weigh 200 pounds. It's on the card.

35

16

Peter Roberts - cross

MR. FURLOTTE: I understand the Court's---

THE COURT: You understand what I'm saying. Feel free to ask
"are you right about this estimate of height" and
5 so on but we are not going to get into what is
recorded on the security card. Call the jury back
Mr. Pugh.

(Jury returns - polled and all present)

THE COURT: Okay Mr. Furlotte.

10 MR. FURLOTTE:

Q. Mr. Roberts, how do you know that Mr. Legere's hair is
brown?

A. By sight.

Q. Eyesight?

15 A. Yes.

Q. When you look at Mr. Legere what colour is his hair?

A. He is greying some now.

Q. Greying some now, but other than the grey hair what
colour is it.

20 A. To me it is brownish.

Q. You think it is brownish. Have you ever been closer to
Mr. Legere than this?

A. I've been very close to Mr. Legere on occasion.

Q. And in your opinion it is still brown?

25 A. Brownish, yes.

Q. Do you wear glasses?

A. Never had to, no.

Q. Are you colour blind?

A. No I'm not.

30 MR. FURLOTTE: I have no further questions My Lord.

THE COURT: Re-examination Mr. Sleeth?

MR. SLEETH: No.

THE COURT: Thank you very much Mr. Roberts. You are free to
go - that's the last for this witness?

35

17

Regis Cormier - direct

MR. SLEETH: Yes My Lord, and with the strike he is much needed
back at the institution. I would ask that he be
excused. I wonder My Lord now that we've reached
effectively 12.30 and almost break time and we are
moving toward a new area - earlier you were asking
about some glasses and we are entering an area
where we will have much to do with those glasses
and now would be a good time to break for lunch.

10 THE COURT: Well we are going to break now anyway, regardless.

(Lunch break)

2.00 p.m. Jury polled - all present

THE COURT: Mr. Sleeth, another witness?

MR. SLEETH: Yes My Lord. I call Mr. Regis Cormier

15 REGIS CORMIER having been called as witness
testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

Q. Mr. Cormier could you please for the record state your
20 full name and your occupation?

A. Regis Cormier. I am a financial control officer---

THE COURT: Speak right up Mr. Cormier please.

A. My name is Regis Cormier and I am a financial control
officer at Dorchester penitentiary.

25 Q. How long have you been occupying that position sir?

A. Almost nine years.

Q. And what sort of work does that consist of?

A. I do accounting and I exercise the payment authority for
Dorchester penitentiary.

30 Q. Payment authority for what kind of things?

A. For any purchases or services rendered to the inmates or
to the institution.

Q. Mr. Cormier I am just placing in front of you now items
marked 'I', and 'K' for identification and 'G' for
35 identification. Do you recognize those type of
documents?

A. Yes I do.

18

Regis Cormier - direct

Q. And how is it here today that you are able to tell the jurors that you recognize those documents - that type of document?

5 A. Well those are forms usually used by the suppliers to invoice us for services rendered or supplies for the institution or the inmates.

Q. And when those documents are received by yourself in your section what sort of procedure do you then go through?

10 A. Usually when we receive those statements or those invoices we will send them to the department concerned who in effect will then verify that the items have been received; that the price on it is accurate. They will then certify this - it is usually certified by the manager - then they will return it to the finance section who will process for payment.

15

Q. Now you have also with you another document you were specifically asked to bring today. Is that correct?

A. Yes I do.

20 Q. You referred to these as invoices. I would ask you to go through your file for the documents.

A. Okay. What I have here is simply our payment file and in it I have the original we paid Ocean Optical---

Q. Do you have an invoice?

25 A. Yes I do.

Q. Please remove that from those stapled portions.

MR. SLEETH: I have two pieces of paper My Lord that I would like to have marked for identification. I believe we have just concluded with 'M'.

30 THE COURT: This will be 'N'.

(Piece of paper marked 'N' for identification)

Q. Again Mr. Cormier I have just placed before you 'N' for identification. I would ask you to quickly compare that for 'I' and 'K' for identification. Is there a
35 similarity, without saying what the contents of them are?

19

Regis Cormier - direct

A. This here is the original which is number 'N'.

Q. 'N' in your right hand, yes?

A. And item 'I' is the pink copy of the same invoice.

5 Q. And 'K'?

A. 'K' is folded, but from what I can see it's another copy of the same invoice.

Q. And upon receipt of those you make payment, is that correct?

10 A. Yes it is.

MR. SLEETH: Thank you very much. I have no further questions of this witness My Lord.

MR. FURLOTTE: I have no questions My Lord.

15 THE COURT: Thank you very much Mr. Cormier. You are free to go.

MR. SLEETH: If I may take a moment My Lord to put these in order.

THE COURT: Yes, gather up your materials.

20 MR. SLEETH: My next witness My Lord will be Dr. Creighton Marney.

CREIGHTON C.E. MARNEY having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

25 Q. Dr. Marney would you please give your full name and your occupation to the jurors?

A. My name is Creighton C.E. Marney, Amherst, Nova Scotia. I am an Optometrist.

30 Q. And I will mention to you now Dr. Marney that that microphone will not enhance the speaking, so if you would just speak loud for the jurors - get comfortable, you don't have to lean towards it.

A. Okay.

Q. How long have you been an optometrist?

35 A. Since 51. That makes what - 40 years.

Q. And could you tell us briefly then Dr. what is optometry - what does an optometrist do?

20

Dr. Marney - direct

A. Optometry is testing eyes for eye glasses and recognizing
disease and when we do so - we are not qualified to treat
disease but to recognize it - refer them to an
5 Opthamologist.

Q. For corrective measures of some sort?

A. No, for medical reasons. I'm talking about when there's
eye disease.

10 Q. Now in order to arrive at the point where you are doing
that you have to undergo some manner of training I would
take it, some courses?

A. We sure do.

MR. SLEETH: My Lord I would ask permission of the Court to lead
the witness through his curriculum vitae.

15 THE COURT: Yes.

MR. SLEETH:

Q. Dr. it is my understanding that you graduated---

THE COURT: You are seeking to have him declared an expert?

20 MR. SLEETH: I will be My Lord, ultimately, and I will introduce
to the Court now, my proposal to have him qualified
as an expert witness in optometry, particularly in
the identification of lens parameters and frame
parameters of eye glasses. Shall I continue on?

THE COURT: Sure.

25 MR. SLEETH: Thank you My Lord.

Q. It is my understanding you completed a first year of
Bachelor of Science course at Acadia University in
Wolfville, Nova Scotia, in 1948?

A. That's true.

30 Q. And then went to the Ontario College of Optometry at the
University of Toronto in Toronto, Ontario in September fo
1948 until May of 1951, graduating from there?

A. That's true.

21

Q. You are a graduate of that college and now associated also with the University of Waterloo in Waterloo, Ontario?

A. Yes. I have taken several courses there too.

5 Q. You are a member - you are licensed to practice optometry in which provinces sir?

A. Nova Scotia and New Brunswick both.

Q. And for how long have you been qualified to practice in those two provinces sir?

10 A. Forty years.

Q. In the course of those forty years you have been required to go through upgrading and continually refreshing yourself in the field?

A. According to the by-laws of both provinces we are
15 required to take X-hours of upgrading every three years.

Q. And you are also - you also - there is literature I assume in your field with which you remain current?

A. Yes.

Q. Now in terms of the courses which you have undergone
20 since that time, which you repeat, I understand one of them would be ocular pathology?

A. Yes.

Q. What is that?

A. That's disease of the eye - like I said at first you use
25 an ophthalmoscope and look inside the eye and outside the eye externally, and it's - and that's what it is all about. It's exploring the eye pathology.

Q. I also understand you have also taken upgrading and
, training further in something called tonometry. What is
30 that?

A. Tonometry is the measuring of the pressure in the eye. There's - if you want me to explain it, there's fluid coming in the eye all the time and this fluid must go out and should that little channel clog where it escapes the

22

pressure will be elevated there and destroy the receptors in the back of the eye.

Q. And the receptors in the back of the eye do what?

A. They take the message to the brain which is the area of the brain which receives at the back of your head, occipital lobes.

5

Q. Low vision?

A. Low vision is - there are some people born with low vision; there's some people acquire low vision by trauma, and it is up to you - or to us to develop use lenses that correct this.

10

Q. Ophthalmic pharmacology?

A. That is - that's using drugs in touching the eye. Like in tonometry in order to touch the eye you have to freeze the outside in order to take the pressure of the eye.

15

Q. Visual field?

A. Visual field means how far you can see to the right and you also test areas within that field that might be blind.

20

Q. Occular pathology relating to learning problems in children, detection and diagnosis of glaucoma. What is glaucoma?

A. Glaucoma is just what I described. It's the result of the tension; it's the build-up of pressure within the eye that will destroy your sight.

25

Q. It would be one of the things you studied along with tonometry then?

A. Yes. They go hand in hand.

Q. And aniseikonia?

A. Aniseikonia. This is a different one. This - as you look at a finger, supposedly, that impression goes - you see two - you see one with this eye and one with this eye. Should you wear a strong lens on one side it will magnify one finger larger than the other. So aniseikonia really is the over large image going up to the brain and

35

23

Dr. Marney - direct

you have to develop a lens that will equalize those images going to brain because the brain will not accept one large image there and one small one.

5 Q. I understand further Dr. that you have been a director of the Nova Scotia Optometrical Society?

A. Yes.

Q. And you are a member of the board of examiners - were for two terms of the Nova Scotia Optometrical Society?

10 A. That's true.

Q. And you continue to be a member of the New Brunswick Optometrical Society?

A. Yes.

MR. SLEETH: My Lord I would ask that this witness be qualified,
15 as requested earlier, as a witness entitled to give opinion evidence in the field of optometry and ultimately I will be asking as well for the area of lens and frame parameters - perhaps to complete the foundation -

20 Q. As part of your work during the last forty years do you occasionally - have you had occasion when you have to identify particular lenses and the parameters of lenses - unknown lenses?

A. Quite often if somebody comes to your office that's
25 strange to you they might come in with a piece of glass that large and you can put that piece of glass in a lensometer and find a prescription without knowing it from paper.

Q. And in the course of your deciding to issue eye glasses
30 to someone, what significance is the frame size to you over your forty years' experience.

A. The frame size?

Q. Yes?

35

24

Dr. Marney - direct

A. Well it is more or less a cosmetic thing. It isn't important whether you see or can't see. It's sort of a cosmetic thing. If you want to enhance your business you don't want to send somebody down with a child's pair of glasses on or I think your future clients will shy away from you.

Q. In your forty years you have become familiar with the various frames manufacturers and their product?

A. Yes.

THE COURT: Any questions?

MR. FURLOTTE: I have no questions My Lord.

THE COURT: Well I declare the witness an expert in the field of optometry. I wonder if that doesn't adequately describe it?

MR. SLEETH: Thank you My Lord.

THE COURT: I think it does. The other things you have described, that comes all under optometry?

MR. SLEETH: Yes My Lord. My Lord before embarking more directly into that particular area I have a series of diagrams My Lord which illustrate the human eye and I have spoken with Mr. Furlotte during the recess and the copies I have available are over with the Clerk now in the red folder. The first would be one of what would be the normal human eye. I put a copy as well before the Court and would asked that - these three be marked in evidence right now for the witness to use as demonstrative aids.

THE COURT: What's our next number?

MR. SLEETH: P-15 My Lord.

THE COURT: So what is P-15? Perhaps you could just describe it briefly for the record Mr. Sleeth.

MR. SLEETH: In my updating My Lord I note there was P-14.

MR. WALSH: The last item My Lord that you are requesting?

25

Dr. Marney - direct

THE COURT: Yes.

MR. WALSH: The last item was P-14 I believe. Correct if I'm wrong Mr. Clerk - sexual assault kit?

5 MR. SLEETH: Sexual assault kit, yes that's correct.

THE COURT: So this is P-15.

(Sketch showing normal eye marked Exhibit P-15)

MR. SLEETH: The next is one of a myopic eye.

THE COURT: A sketch showing a myopic eye?

10 MR. SLEETH: Yes My Lord.

(Sketch showing myopic eye marked Exhibit P-16)

MR. SLEETH: And P-17 My Lord is what is described as near-sighted eye, corrected.

THE COURT: Sketch showing near-sighted eye, corrected.

15 (Sketch showing near-sighted eye, corrected marked Exhibit P-17)

MR. SLEETH: No My Lord as I pass these to Dr. Marney to take a quick look at at the outset I would ask that the Clerk check to be sure there are in fact six copies of each of these before him in order to pass those to the jurors, because as we were passing back and forth, in some of them there may not have been six full copies.

20 THE CLERK: I only have five of P-15. I have six of P-16 and I have six of P-17.

MR. SLEETH: Thank you Mr. Clerk. I also have copies for the Court itself which I will pass to the Clerk if the Court wishes to have them.

30 THE COURT: The only thing is those copies for the jurors don't have the numbers put on do they?

MR. SLEETH: No they don't My Lord.

THE COURT: Can you scratch them on there fast some way? Just up in one corner. You want the jury to have those copies Mr. Sleeth?

35

26

Dr. Marney - direct

MR. SLEETH: Yes My Lord while we are dealing with Dr. Marney I think they will be of some assistance.

5 Q. Dr. Marney you have before you P-15. I would refer you to that first, and I have been referring to that as showing an amyotrophic eye - I have probably mispronounced it.

A. Amyotrophic, that's correct.

10 Q. To you as an optometrist then, what particular things do you want to relate to jury members that are demonstrated by P-15?

A. What is demonstrated in this particular diagram is two - well maybe they are not -

15 THE COURT: That's the one that says amyotrophic eye at the top?

A. Yes. We are talking about P-15. It is demonstrated in there that these two parallel lines in front of the eye, through the eye, through this lens just inside the eye and come to a pinpoint focus on the retina and that's the perfect eye. That's where it should - in order to get the maxium vision it should come to pinpoint focus right in the back of the eye and this inside circle there is the retina.

20 Q. And that area of the retina is the area that you called the receptor as well?

25 A. Yes, there are receptors there that take the message to the brain.

Q. The rays that are shown on P-15 would be rays of what?

A. Pardon?

30 Q. Those rays or lines that you refer to in P-15, the ones that are coming in?

A. They're light.

Q. Light?

A. Light coming in, yes.

35 Q. And that would result in a?

27

Dr. Marney - direct

A. In an image.

Q. Correct image.

A. Yes.

5 Q. Now I see reference there to what is called axial length and refractive power. What do those terms mean?

A. Axial refractive power?

Q. Axial length---

10 A. It's the bending of the light as it comes in. That's what refraction means.

Q. Okay, and axial length?

A. That's the distance of that ray from the front to the back.

Q. Within the eye?

15 A. Yes.

Q. I would ask you then to turn to P-16 if you would.

A. In P-16 we are talking about the myopic eye - you're near sighted; you can't see far away; but you - we are talking about without glasses. You can see up close but you can't see far away. It means the eye is too long and the pinpoint focus comes in front of the retina, out in the centre, well not the centre but much short of the retina anyway.

20 Q. With what result?

25 A. Blurred vision.

Q. Can you just, if you will please, turn the sketch that you have in a fashion so that the jurors can see it and perhaps illustrate as well to His Lordship. We are talking once more about P-16. Could you please show them what you are referring to?

30 A. Show to them, the jurors - do you want me to show His Lordship?

Q. Yes.

THE COURT: I saw it through the back of the paper.

35 A. Oh, okay. Sorry sir.

Dr. Marney - direct

THE COURT: Right in focus too.

A. No, it's in focus in front but it should be back here.

MR. SLEETH:

5 Q. Now, in order to correct that condition which is demonstrated in P-16 what would you as an optometrist recommend to a patient who comes to see you?

A. This is the---

Q. The myopic.

10 A. To correct P-16. A minus lens which is faced out in front of the eye here pushes that pinpoint focus back on the retina and gives you the maximum vision you could possibly have.

Q. You made reference just a moment ago to a thing called
15 the minus lens. What do you mean by that?

A. A minus lens diverges rays. It's thin in the centre - thinner in the centre and thicker on the outside. That describes a minus lens.

Q. And its purpose to do what with the incoming rays?

20 A. To open up these lines here so it will come to a pinpoint focus on the retina as opposed to coming to a pinpoint focus in front of the retina.

Q. Okay, now it opens up the lines on the diagram you have there by a refractive effect?

25 A. It diverges the rays.

Q. Causing them to rise higher against the eye?

A. Yes.

Q. And lower?

A. Yes.

30 Q. You made a gesture with your hands?

A. It will come to a pinpoint focus further back inside the eye.

Q. Dr. there are number of expressions I would like you to define and explain to the jurors if you would please. As

29

an optometrist when you are referring to a thing called sphere, what are you referring to?

A. I'm talking about a lens that has the same power all the way round the lens.

5 Q. When reference is made to cylinders what are you referring to there?

A. When we talk about a cylinder we're talking about area of lenses again. It has power in just one meridian. It might not necessarily be in the vertical, it could be an oblique position but it just has power in one direction.

10

Q. And by power you mean what?

A. Focusing power.

Q. And this focusing power for a cylinder is to correct what?

15 A. To correct astigmatism in the eye. Now we're talking about the eye. Astigmatism meaning that the eye is not perfectly round; if you want to exaggerate it would be like a football and this lens is put on the opposite axis and consequently you have a total system in your eye as a sphere again.

20

Q. What would be axis of eye refraction or axis eye refraction?

A. The axis?

Q. Yes?

25 A. The axis of a lens I think you are referring to, would be the direction you place that cylinder on the eye.

Q. And what do you mean by that?

A. Well there's 180 degrees from zero around to 180 and you can place that lens to correct the astigmatism in any one of those degrees.

30

Q. Dr. I have just placed in front of you 'G' for identification. Do you recognize what you see there?

A. I recognize an invoice or an order form going to Ocean Optical to fill a prescription.

30

Q. I am now placing before you 'L' and 'M' indentified.
First of all, 'L' please?

A. These cards I had in the Dorchester institution. When I
was doing my examinations I would record each finding on
5 these cards and after I arrived at the final prescription
this is what I did on one side and then I turned the card
over and I put my file prescription on the other side
with the - were you talking about the prescription only
or talking about the frame yet?

10 Q. I'm talking about the prescription. What you have before
you which is 'L', do you recognize that individual
document?

A. It's in my handwriting.

Q. And do you recognize the date of that particular item?

15 A. July the 3rd, 86.

Q. And you prepared it in the course of your work at what
location please?

A. I prepared it - I made the final diagnosis of reading
here on this card and I copied that on a small Rx sheet -
20 do you want to know the procedure?

Q. Not just yet Dr. The last, 'L' is a prescription card
that you filled out yourself?

A. Yes.

Q. You filled it out on July 3rd of what year?

25 A. 86.

Q. It was a card for who, please?

A. Mr. Legere.

Q. First name?

A. Allan Legere.

30 Q. The person for whom you prepared that card, that
prescription card, is he present in this courtroom today?

A. Yes.

Q. Where is he please?

A. On my left with the white shirt - or the striped shirt,
35 white collar---

31

Dr. Marney - direct

Q. In the prisoner's dock?

A. Yes.

MR. SLEETH: My Lord I would ask that the record show he has
5 just identified the accused.

Q. And that prescription card was for what please?

A. For eye glasses.

Q. And are you able to tell by examining that card what type
of glasses - what type of eye condition you were treating
10 Mr. Legere for at that time?

A. He was near-sighted or he had myopia.

Q. And you were prescribing for corrective lenses?

A. Yes.

Q. And was there a particular frame involved at the time?

15 A. Yes, in this particular case.

Q. Which was?

A. Do you want to know the name of it?

Q. Yes?

A. It's a Guardian 101. The colour is a grey haze. The
20 size 56 20 145. The 56 meaning the horizontal width of
the lens; the 20 the DBL, the distance between the two
lenses; and the 145 is from the lens back to the tip of
the ear.

MR. SLEETH: Now at this stage My Lord I would move that the
25 item marked 'L' for identification be accepted now
in evidence. The witness indicated that that
prescription card was made entirely by himself and
I believe that the earlier testimony from the
various police officers followed the continuity
30 trail of that particular object.

THE COURT: Well this I take it - these prescriptions have
importance insofar as in reference to the eye
glasses?

MR. SLEETH: Yes My Lord. We will be coming to that.

35 THE COURT: Any questions on this point Mr. Furlotte?

Dr. Marney-direct

MR. FURLOTTE: Well is it---

THE COURT: What are you offering now, 'L' and---

MR. SLEETH: 'L' My Lord.

5 THE COURT: Just 'L'.

MR. SLEETH: The last one identified by this witness.

MR. FURLOTTE: Is it just to put in an exhibit or are you finished
with this witness?

10 MR. SLEETH: Oh no, I just made the motion My Lord that the item
be accepted now in evidence.

MR. FURLOTTE: Well I have no problem with that My Lord.

THE COURT: So 'L' becomes P-18.

(Prescription card marked Exhibit P-18)

MR. SLEETH:

15 Q. If you could please now Dr. Marney, if you would refer to
'M' which I believe I placed before you a moment ago?

A. Yes, I have it.

Q. Do you recognize that?

A. I do.

20 Q. And what is it that you say you can recognize it?

A. It is again a prescription card where it records my
records as I was examining his eyes, the patient's eyes.

Q. The eyes of?

A. Allan Legere.

25 Q. Is it done in your own handwriting?

A. Yes.

Q. What was date, do you recall the examination?

A. The date was October 7, 86.

30 MR. SLEETH: My Lord I would move that the item 'M' for
identification now be placed in evidence - accepted
in evidence.

THE COURT: Yes. What, Mr. Sleeth, does this purport to be -
what was the date of the other one?

MR. SLEETH: July 3rd My Lord.

35 THE COURT: Is this another examination?

33

MR. SLEETH: Yes My Lord. Perhaps I didn't make that as clear as I should have.

THE COURT: Why don't you ask something about that?

THE WITNESS: You didn't ask me the prescription.

5 MR. SLEETH:

Q. No. What was the date of this examination referred to in the item 'M' which you have before you?

A. Yes, and do you want the prescription?

Q. Not at the moment, just the date.

10 A. The date, October 7, 86.

Q. And the purpose of that second examination of Mr. Legere was to do what?

A. Okay. He returned to the office and he found the former prescription was a little strong for his eyes we re-examined him and we found exactly the same as he was wearing. However sometimes patients are more comfortable under-corrected than they are with, so we gave him the benefit of the doubt and we reduced the strength of the glasses by one unit in each eye.

20 Q. By one unit in each eye - what are you referring to now, what do you mean there?

A. Well I don't know, they talk about the speedometer, one click - is .25 of a diopter - that's the smallest unit you move a lens.

25 Q. What's a diopter?

A. A diopter - a parallel - it's a ray of light coming towards lens and if it bent at one metre, touched the axis of the lens then that would be one diopter. That's the strength of that lens.

30 Q. Okay, so this lens was reduced somewhat in strength is what you are saying?

A. Yes.

Q. And that was at the request of who?

A. Mr. Legere.

34

Dr. Marney - direct

MR. SLEETH: My Lord my motion is before the Court that 'M' be
accepted into evidence.

THE COURT: Yes. Well that will become--- do you have any
5 questions Mr. Furlotte?

MR. FURLOTTE: I have no questions.

THE COURT: It will become P-19.

(Prescription card marked Exhibit P-19)

MR. SLEETH:

10 Q. Dr. I have just placed before you three items which have
been marked in identification and you have just finished
referring to a series of two items which are now in
evidence, being P-18 and P-19. Once you have completed
the preparation of those prescription cards which are now
15 in evidence as P-18 and P-19, what was your procedure,
what system did you employ to turn around and actually
acquire corrective lenses as prescribed by you in
accordance with those prescription cards?

A. We'll start from (a) - I copied them off these
20 prescription cards here onto an Rx pad, took them home to
my office. Then my wife who is my secretary, she would
copy them on an Ocean Optical order form and I would
check her work over to make sure it is accurate. They in
turn would be sent to Dorchester Institution and they -
25 well I shouldn't speak for them - I would assume they in
turn sent them to Ocean Optical. Ocean Optical filled
the prescription and sent it back to Dorchester and it
would be given to the patient.

Q. You however made use of the documents that are shown in
30 'G', 'I', and 'K' in your regular business?

A. Not - I didn't deal with Ocean Optical.

Q. The items that you have there, you had them in your
office?

A. Yes, oh I had these. I had a supply of them, yes.

35

Dr. Marney - direct

Q. And in the course of your business you normally use those?

A. All the time.

5 Q. They are a standard document?

A. Yes, the only ones.

Q. And prepared, actually written and filled out by whom?

A. By my wife.

Q. And examined and verified for accuracy by whom?

10 A. By me.

Q. I would ask you to just take a moment if you would please and look at them all and can you identify the handwriting on all of them?

A. It doesn't take me long to identify my wife's writing.

15 Q. Is it on all of those?

A. Yes.

Q. Can you tell us - now take your time about it Dr. - I know you are a little nervous there---

A. Do you think?

20 THE COURT: Nervous? He's not nervous.

MR. SLEETH:

Q. The actual preparation of the document, how many duplicates - how many actual papers would there be as she prepared them?

25 A. I'll be truthful, I never count them. I just use - they come as a package and I would assume there were three with these.

Q. Yes, there was more than one?

A. Oh yes.

30 Q. And as you---

A. There's a minimum of three.

Q. As you filled out the top one what would happen with the copies beneath?

A. It was carbon through, right through. The whole sheet got copies.

35

36

Dr. Marney - direct

Q. So as the top one was filled out and pressed down with a pen, what would the result be?

A. It would have the same record on the last page.

5 Q. I would ask you to look if you would please at 'N'. Do you recognize the handwriting on that?

A. My wife's handwriting.

Q. And does that item 'N' relate to the other ones that you have before you - the other invoices?

10 A. This only relates to one.

Q. Okay, which one is it marked as on the back? 'N' relates to which of the---

A. This was the pink---

Q. Which is marked for identification as 'I'?

15 A. Where's the 'I' - oh right here, right.

Q. Just to confirm that, you see the 'I' yourself, not my leading you?

A. Yes I see the 'I' now.

Q. Now at the time that the second visit took place that you have referred us to, it resulted in the second prescription, P-19, what was done with the frames - what sort of frames were going to be used with the second one?

20 A. When the - on that particular visit he left his frame with me. I took it to my office and we made out a new prescription here, which is this one, wrapped the frame up in it and sent it to Dorchester penitentiary and they processed it through to Ocean Optical and that's the prescription he'd be wearing.

25 Q. Okay, so there was a change in the lens prescription but not---

30 A. Not in the frame. This is his only frame. It's the frame he had acquired on the other visit.

Q. Now just to be sure of a couple of other details, if you would please Dr.---

37

Dr. Marney - direct

THE COURT: Just on that point, are you talking about the first visit or the second, for the frame?

A. This is the second - the first visit he received the frame and lenses My Lord and the next one he received - he would receive lenses only.

Q. You are talking about the first visit then for the frame?

5 A. Yes.

MR. SLEETH:

Q. Dr. the invoice that you see there marked 'G'?

A. Yes.

Q. That is what date?

10 A. That would be the July 3rd date.

Q. It corresponds then to P-18, your prescription for that date?

A. Yes.

Q. The invoice 'I'?

15 A. Right here, yes.

Q. It is for what date?

A. That's for October 7th.

Q. That corresponds then to P-19, your prescription?

A. Yes that corresponds to P-19.

20 Q. 'K' - the thing that is marked 'K' for identification? Please open it up to make sure. Perhaps the clerk would open it up for you.

A. I need an opener

THE COURT: Would you open it up Mr. Pugh, please?

25 MR. SLEETH:

Q. That corresponds to P-19?

A. This corresponds to - yes, yes.

Q. And finally Dr., - would you just put that one back into the plastic bag - another one of your invoices - corresponds to which prescription P-18 or P-19?

30

A. 19.

38

Dr. Marney - direct

Q. Now Dr. that you have your prescriptions out there and can refer to the invoices out there, I place before you 'F' for identification, a pair of glasses. You had occasion to examine those recently?

5

A. Yes.

Q. And the examination took place where please?

A. In my office.

Q. Where is that?

10

A. In Amherst.

Q. And what were you using to conduct your examination of the lens?

A. A lensometer.

15

Q. And about the examination which you may have made, which you made at the time of the frames, you examined those visually?

A. Yes.

Q. And was comparison made by you at that time with your prescription and your invoices?

20

A. They both were similar.

Q. Similar Dr.?

A. Similar to the prescription of the lenses on October 7, and the frames similar to the frame on July 3rd.

Q. And when you said similar, in what ways were they similar sir?

25

A. In colour and when I examined them that particular day this - they are identified by the stamp on the glasses of that 5620 and also identified by the name on the temple and the temple length.

30

Q. Okay, now they are identified by the name stamped on it - you are talking about what, the lens or the frame?

A. I'm talking about the frame - we're talking about the frame.

Q. Okay, and the frame was identified as being what manufacturer?

35

39

Dr. Marney - direct

A. Well I just - not the manufacturer - a Guardian frame.

Q. That was the name of the frame?

A. Yes.

5 Q. When you prescribed on P-18 and P-19 an invoice, and the invoice you have scattered in front of you, what type of frame?

A. A Guardian.

10 Q. Does it have a particular model number, the Guardian frame?

A. There's a 101 on them. I don't think that's important. It's a Guardian, that's all.

15 Q. At the time as well you examined with a lensometer the actual lenses themselves they were same as the lenses you prescribed the second time?

A. The second time, yes.

MR. SLEETH: Thank you Dr.

CROSS EXAMINATION BY MR. FURLOTTE

20 Q. Dr. Marney how many times would you have examined Mr. Legere's eyes since you have attended---

A. It's just a guess, I haven't gone over the records. I would say at least three times, maybe four times.

Q. Maybe even five times between 1983 and 1986?

A. I think - yes, I wouldn't doubt.

25 Q. And you basically handled all the inmates in Dorchester?

A. Seventeen years.

Q. Seventeen years?

A. Yes.

Q. And---

30 A. Except for the ones I referred for pathological reasons.

Q. What about Westmorland County Institution?

A. Yes I did all them too.

Q. What about Springhill Institution, Nova Scotia?

A. I took them for 21 years.

35 Q. 21 years?

40

Dr. Marney - cross

A. Yes.

Q. How common are the prescription lens which were used to correct Mr. Legere's eyes?

5 A. No more common than any other lens I wouldn't think.

Q. No more common?

A. No.

Q. And out of all the glasses that you prescribed at the penitentiary for different inmates approximately how many would have had the same prescription as Mr. Legere?

10

A. I would say none.

Q. None?

A. I would say none - not the same prescription. It's out of the question.

15 Q. Well maybe I'm asking it wrong - the same prescription for each eye?

A. I'd say none.

Q. Mr. Legere's would be the only one that---

A. The only one wearing that particular prescription I would imagine.

20

Q. Now when I say prescription I'm talking about the---

A. I'm talking about the lens.

Q. The lens - are you talking about the shape of the lens or the---

25 A. I'm talking about the power of the lens.

Q. The power, which---

A. There's a difference.

Q. In July 83 it was 1.25 for the right eye?

A. Yes.

30 Q. And 100 for the left eye?

A. That's right.

Q. And in October 86 you reduced it to 100 for the right eye and .75 for the left eye?

A. That's one unit less for each eye.

41

Dr. Marney - cross

Q. Now of all these glasses, the eye tests that you have conducted on other people, nobody else had that same---

A. I don't remember that, not in that institution.

5 Q. Not in that institution.

A. And I don't know - there's so many combinations of prescriptions that it is just unbelievable, you know, how many there would be - if they used those odds in the Lotto you would never win.

10 Q. So you are saying it is just about impossible for anybody else to have that same strength prescription?

A. Highly unlikely.

Q. Highly unlikely?

15 A. The same on both sides; the same frame - the same size frame and the odds would be great.

Q. I'm not talking about the frames, I'm talking about the prescription---

A. Okay.

Q. Let's not confuse it.

20 A. Okay.

Q. You are saying just the power of his lens, nobody else would have that power?

A. Oh I wouldn't say nobody, but--

25 Q. Of all the glasses issued at the penitentiaries you are saying nobody else would have had them?

A. Not to my knowledge.

Q. And it is highly unlikely is it?

A. Highly unlikely I would think.

Q. Mr. Legere is a unique individual.

30 A. What is the---

Q. Mr. Legere is a unique individual as far as his eye strain---

A. Oh no, it is not unique - you wouldn't rate those as strong lenses you know.

42

Dr. Marney - cross

Q. As an optometrist do you know anything about colour blindness?

A. Do I?

5 Q. Yes.

A. I've done a lot of colour blind testing.

Q. You do colour blind testing?

A. Yes.

10 Q. And colour in blind testing - people who are colour blind, which colours do they normally get mixed up?

A. Red, green - several colours. There's some particular people with colour blindness in that.

Q. Now people who are colour blind might mistake say maybe even red and brown?

15 A. Red and brown?

Q. Yes?

A. Not necessarily.

Q. What about black and brown?

20 A. Black and brown - I've never even - we actually don't test for black and brown. We have a colour chart that we use which is designed professionally and there's certain standards on there we test for and if they can pass that we give them a rating on it.

25 Q. If somebody was colour blind could they mistake - could they mistake black and could they see it as being brown?

A. I can't supply the answer for that I don't think.

Q. You can't supply the answer?

A. No.

30 Q. How about the difference between black and light brown, or black and yellow?

A. Black and yellow - well again there would be such a difference - for black and yellow?

Q. For black and yellow, yeah.

35 A. Black and yellow, I would think they would be able to tell that.

43

Dr. Marney - cross

Q. You think they would be able to tell the difference between black and yellow?

A. Yes.

5 Q. How about---

A. There are some people totally colour blind.

Q. How about black and blonde?

A. Black and blonde?

Q. Yes.

10 A. You think if they're colour blind they might - they might have some difficulty, yeah.

Q. How about---

A. I've never made any - to be honest with you I never made a study of these particular colours you mentioned.

15 Q. How about black and white?

A. Black and white - I imagine you could---

Q. Can they distinguish between black and white?

A. I would imagine. They'd be in pretty bad shape if they couldn't.

20 THE COURT: They couldn't read the newspaper.

MR. FURLOTTE: I'll take a rest My Lord.

THE COURT: Any re-examination?

MR. SLEETH: Just a short one My Lord.

REDIRECT EXAMINATION BY MR. SLEETH

25 Q. My learned friend was asking you, after you mentioned the lottery chance, and took you directly to lenses. What would the chances be with this combination of lens strength and frame, other than the accused?

A. I'd hate to guess the odds. Just personally you know.

30 MR. SLEETH: Thank you.

THE COURT: Thank you very much Dr. You are free to go to Nova Scotia. You are not taking anything with you?

A. No.

MR. SLEETH: My Lord Dr. Marney is being recalled for one other
35 matter.

44

Claude Brunet - direct

THE COURT: So he is being stood aside - but not today?

MR. SLEETH: Later on. I call Mr. Claude Brunet.

CLAUDE BRUNET having been called as a witness
testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

5

10

Q. Mr. Brunet would you give your full name and your occupation to the jurors?

A. My name is Claude Brunet. I am the owner and president of Ocean Optical Limited in Moncton.

Q. And your occupation in addition to being the owner of this particular outfit is what?

15

A. I am also a licensed optician.

Q. How long have been an optician for sir?

A. I have been licensed in the province of Ontario since 1966 and in the province of New Brunswick since 1975.

20

Q. And in addition to that type of work - perhaps at this stage My Lord I would like to - permission from the Court to lead this witness. My intention is to have him qualified as an expert optician - qualified to particularly give evidence with respect lens parameters and frame parameters.

25

THE COURT: As an optician?

MR. SLEETH: As an optician, yes My Lord.

THE COURT: Well, opticianship or whatever you call it, does that embrace the parameter business?

A. Yes - opticianry training, yes.

30

MR. SLEETH: -

Q. Perhaps you would then - the previous witness was describing to us what optometry consisted of - if you would start by telling us what an optician is?

35

A. An optician is a person who is licensed to dispense eye glasses. He is also qualified to make eye glasses. He can interpret the optometrist's or ophthalmologist's

45

Claude Brunet - direct

prescription and produce a pair of eye glasses that will give the required effect to solve the patient's eye problems in terms of vision.

5 Q. And in doing this you would be dealing with lenses and what else?

A. With lenses and frames.

Q. And the frames could be made of what kind of substances?

10 A. The frames are made of acetate which we more commonly term a plastic frame, or a metal frame and in some rare cases there are some wood frames they are more of a cosmetic value.

Q. And your training in order to arrive at this type of work consisted of what please sir?

15 A. Opticianry in Ontario was learned through a correspondence course but it was supervised and sponsored by the Ryerson Institute and the Ontario Opticians Association of course. It involved two years of correspondence course under the tutorship of an
20 optometrist or ophthalmologist and a series of practical exams.

Q. You graduated from all of those?

A. Yes I did.

Q. And you started practicing in which area please sir?

25 A. I first dispensed practice optician tuition in Ontario, in Ottawa.

MR. SLEETH: At this stage My Lord I would renew or open my request that I be entitled to lead this witness and take him through it very rapidly.

30 THE COURT: Sure.

MR. SLEETH:

Q. I understand that upon your graduation as well you were a laboratory technician for American Optical in North Bay and Ottawa Ontario for a period of three years.

35 A. That's correct.

46

Claude Brunet - direct

Q. What sort of work did that consist of?

A. That consisted in the making of eye glasses.

Q. You were then a laboratory supervisor I understand for
5 American Optical Company of Ottawa for a further two
years?

A. Yes I was.

Q. How many people would you have been supervising?

A. I believe it was nine or ten people at that time.

10 Q. You also were a dispensing optician during that time?

A. Yes, I dispensed for the retail arm of American Optical.

Q. You subsequently became, as I understand it, the manager
of purchasing and inventory for Select Optical Services
a subsidiary of American Optical in Toronto for a period
15 of three years?

A. That's correct.

Q. And that involved the purchasing of eye glass frames for
a chain of some 24 stores?

A. That's correct.

20 Q. As a result of that you were quite familiar I would take
it with eye glass frames from the various manufacturers?

A. Yes I am.

Q. I understand as well you became responsible - at one
stage you were the area manager and responsible for the
25 operation of five laboratories in Quebec and Ontario for
America Optical?

A. That's correct.

Q. And you are also - in addition became responsible for the
operation of six laboratories in Atlantic Canada region
30 for America Optical?

A. That's correct.

Q. Your own company now goes under what name please?

A. Ocean Optical Limited.

Q. Ocean Optical is an optical laboratory founded when?

35 A. It was founded in October of 1976.

47

Claude Brunet - direct

Q. How many glasses frames would you put out?

A. At the present time we put out on average one thousand a week.

5 Q. And how many employees?

A. I have 56.

Q. I also understand sir that you have a company known as Dynoptics Incorporated, a certain development company?

A. Yes.

10 Q. And what sort of development does it involve?

A. Dynoptics is a research and development company. Our work involved developing computerized equipment to help in the dispensing and the processing of optical lenses. Ophthalmic eye glass lenses.

15 Q. Is there computer work involved with this?

A. Yes there is.

Q. And as a result of this you are - what improvement does this bring about?

20 A. I have - my engineers and myself have developed a machine that we are able to place in the optometrist's office that enables the optometrist to network with his laboratory and we are able to exchange information between the optometrist's office and the laboratory and a good portion of the processing of the eye glasses at the laboratory level is computerized through a machine
25 that we have built.

Q. How many people do you have involved under your guidance and under your employment in this operation Dynoptics Research and Development Corporation?

30 A. Dynoptics has 16 people.

Q. I also understand you have a branch in Dallas, Texas as well?

A. I have a sales office in Dalls, Texas.

48

Claude Brunet - direct

MR. SLEETH: My motion is before the Court My Lord that this witness be qualified as indicated earlier, to give opinion evidence in the field of - as an optician especially in the field of lens parameters and frame parameters, based on his experience and his training.

THE COURT: Questions?

MR. FURLOTTE: I have no questions.

THE COURT: A thousand pair a week - my gosh you must be rich.

A. No I'm not sir. The profits aren't made at the wholesale level.

THE COURT: All right, I declare the witness an expert in the field of opticianry.

A. Opticianry My Lord. Counsel I believe - I believe it is as an expert in the field of opticianry.

THE COURT: Opticianry - that's good enough and that includes the other as well.

A. My Lord I can give you perhaps a good explanation of what an optician is. We are - like a pharmacist if an optometrist were an M.D.

THE COURT: Good.

MR. SLEETH: Thank you My Lord and thank you Mr. Brunet. Before questioning Mr. Brunet any further My Lord I have a motion which is that item 'F' a pair of eye glasses be marked in evidence at this time.

THE COURT: They would become---

MR. SLEETH: We have testimony from a series of witnesses as to the item 'F' having been found at a location in Chatham and it has been updated by a series of witnesses since then and the continuity I believe has been maintained.

THE COURT: That would become P-20.

(Pair of eye glasses marked Exhibit P-20)

35

Claude Brunet - direct

MR. SLEETH:

- Q. I am also placing before you now Mr. Brunet an item which is marked 'G' for identification. Do you recognize the documents there?
5
- A. Yes I do.
- Q. The business record of what company please?
- A. This is an invoice from my company made out to Dorchester Penitentiary.
- 10 Q. A standard form which you use?
- A. A standard form, yes.
- Q. I show you an item which is marked 'I' for identification at this time.
- A. Yes.
- 15 Q. Do you recognize that item?
- A. Yes this is the last copy of the order form. It becomes the customer's record of having made the order. These forms serve two purposes. They are an order form and then become an invoice. It's a multi-part order form.
- 20 Q. The item which has been marked 'K' for identification?
- A. Yes.
- Q. It is a document of what company?
- A. That would be our copy of the invoice. After we send the glasses to the customer, in this case the penitentiary,
25 we would retain one copy.
- Q. And 'N' for identification?
- A. 'N' once again is an order form - it's an invoice order form from my company to Dorchester penitentiary.
- Q. How long have you been having - has your company been
30 having dealings with Dorchester penitentiary sir?
- A. Since June of 1985.
- Q. And that came as a result of a contract for what?
- A. To supply eye glasses to the inmates of the penitentiary.
- Q. Were you present in this courtroom a little earlier when
35 Dr. Marney was speaking about frames and glasses---

50

Claude Brunet - direct

A. Yes I was.

Q. And he referred to a frame known as the Guardian lens?

A. Guardian frame.

5 Q. Guardian frame, yes. Do you know who was the supplier of Guardian frames for this area?

A. Yes, I am the sole supplier for that frame throughout Atlantic Canada.

10 MR. SLEETH: My Lord I would move at this stage that the items which have been marked for identification, 'G' 'I', 'K', 'N', be accepted in evidence. I believe they have been brought up in terms of continuity and they have been identified now by two witnesses, two successive witnesses as being basically business documents employed by them. The two witnesses are
15 Dr. Marney who indicated it was one standardly employed by him in his operation and secondly just a moment ago, just now in fact, by Mr. Brunet indicating as well that these are from his particular records.
20

THE COURT: They would be P-21; 22; 23; and 24.

(Copy of Ocean Optical invoice marked Exhibit P-21)

(Prosthesis & Appliance form marked Exhibit P-22)

(Copy of invoice marked Exhibit P-23)

25 (Copy of invoice order marked Exhibit P-24)

MR. SLEETH:

Q. Mr. Brunet I have just placed before you Exhibits 20 and 24, - 20 being a pair of eyeglasses and 24 being an invoice. You recently had occasion I understand to look
30 at Exhibit 20.

A. That's correct.

Q. Where was this done sir?

A. At my laboratory.

Q. And when was it done?

35 A. It was done last Saturday, I believe was September 7.

51

Claude Brunet - direct

Q. And what sort of examination did you conduct at that time?

A. I examined the strength or the power of the lenses using first a computerized lensometer which gives a print-out of the prescription which I - then I examined them using the conventional lensometer for the same reason.

Q. Now if you would please Mr. Brunet, could you tell us what the lens power was in the right eye of (inaudible).

10 A. The lens power in the right eye of the glasses that I examined was -1 diopter sphere.

Q. And that means?

A. It means - diopter is a unit of measurement. It means that it was a minus lens or a concave lens or a lens that was placed in the frame to correct someone who had near sightedness.

Q. Looking then at 24, the invoice prepared by Dr. Creighton Marney's wife on his instructions - what is the lens power for the right eye in that?

20 A. The lens power for the right eye is a -1 diopter sphere.

Q. When you conducted your examination at your laboratory of the lens power of the left eye in item 20 before you, the glasses, what was the strength in the left eye?

A. The strength in the left eye was a -.75 or minus 3/4 of a diopter sphere.

Q. Looking then if you would please at 24 which is the invoice used following the prescription of Dr. Creighton Marney, what was the lens power for the left eye in that?

A. Minus .75.

30 Q. Now I am going to turn to a term of decentration. What is decentration?

A. A decentration refers to locating the optical centre of a lens directly in front of the pupil of the eye. In this instance the lens is a concave lens so there is a -

Claude Brunet - direct

meaning that it is thinner on the centre than on the edge and there is a point in that lens in which light does not refract or change direction. It flows straight. In order for the patient to get comfort it is important that that point in the lens be located - situated directly in line with the pupil of the eye. Since the frames are larger than the eye, invariably the optical centre will be moved inward to line up with the pupil of the eye. Moving the optical centre is called decentration.

Q. Does it have any relation to pupillary distance?

A. Yes. Pupillary distance is the distance between the two pupils of the eye and obviously that is where we want the optical centres.

Q. And when you examined Exhibit 20, the eye glasses before you, you found the decentration pupillary measurement to be what please?

A. I found it - the decentration or pupillary distance to be 64 millimetres.

Q. And the invoice which you have there as 24, based on the prescription of Dr. Marney?

A. The prescription calls for decentration of 64 - or a pupillary distance of 64 millimetres.

Q. Now of what type of materials can lenses be made?

A. Lenses can be made in glass, plastic, (inaudible) more commonly called plastic or polycarbonate. The most popular lenses are either glass or plastic.

Q. Now, did you examine the glass material - the lens material then for Exhibit 20 in your laboratory?

A. Yes I did.

Q. And you determined the lens material for these to be what?

A. Plastic.

Q. And what was being sought in the invoice of the purchasing?

53

Claude Brunet - direct

A. Plastic was requested.

Q. And plastic divides into what types of material?

5 A. Plastic divides into a high index plastic that has more ability to bend light, if you wish, or a standard CR 39 lens and in this instance a standard plastic lens was ordered and was sold to the penitentiary.

Q. Which would be CR 39?

A. CR 39.

10 Q. I also understand there are things referred to as lens coatings. Can you tell me - tell the jury what a lens coating is and why it might be sometimes used?

A. A lens coating can serve several purposes. The most common would be to serve as a scratch resistant protection. There are other lens coatings that are coloured and serve to tint the lens for sun glasses or for cosmetic purposes. Those are the two most common.

15 Q. When you conducted your personal verification and examination in your laboratory of item 20, the glasses before you, was there lens coating?

A. No there was no coating of any kind on the lens.

20 Q. And Exhibit 24 which is the invoice, the order form based on the prescription of Dr. Marney, was there a request for lens coating?

25 A. No there was no request.

Q. Tinting of glasses you referred to - what is tinting?

A. Tinting refers to colouring the lens for either cosmetic reasons - sometimes to reduce eye strain caused by bright lights or for sun glasses.

30 Q. When you examined Exhibit 20 before you, the eye glasses, was there tinting of the lens?

A. No there was none.

35 Q. And they were on the order form, which is 24 before you, based on the prescription of Dr. Marney for Dr. (sic) Legere?

54

Claude Brunet - direct

A. There was no tint requested.

Q. Now could you - you heard the testimony given a moment ago - this was an order form for Mr. Allan Legere, is that right?

5

A. Yes.

Q. The testimony by Dr. Marney----

THE COURT: You said Dr. Legere.

MR. SLEETH: Yes I did My Lord. That's why I tried to correct it.

10 Q. You heard the testimony given a few minutes ago by Dr. Marney when he referred to cylinders?

A. Yes.

Q. Did you examine the glasses which you have before you, Exhibit 20, for cylinders?

15 A. There was no - yes, there was no cylinder in either lens. There is no cylinder in either lens.

Q. And the prescription form, the order form, based on the prescription by Dr. Marney for Mr. Allan Legere is there reference to a cylinder?

20 A. There is no cylinder prescribed in either eye.

Q. Now the frame in Exhibit 20 is a frame from what - what type of frame is it?

A. It's a plastic frame. It's a frame that my company buys from an importer based in Toronto. The frame is used predominately for - as a safety frame in industry and I use that frame - I sell that frame to the penitentiary as part of the selection of frames that we offer them.

25

Q. Does it have a particular distributor's name and model number or anything like that on it?

30 A. The model number or the frame name is called the Guardian.

Q. Did you examine that for eye size?

A. Yes, the frame is a 5620145 as ordered.

Q. The 56 refers to?

35 A. Refers to the horizontal width of the lens size.

Claude Brunet - direct

Q. The eye piece then?

A. The lens itself.

Q. 20 refers to?

5 A. 20 refers to the distance between the lenses or commonly referred to as the bridge size.

Q. 145?

A. 145 refers to the temple length. This is the part that goes over the ear.

10 Q. Okay, you have been referring throughout to Exhibit 20, and what comparison does that have then with Exhibit 24?

A. On Exhibit 24 the size of the frame is not indicated because the frame was enclosed with the order because in this instance we replaced - we put new lenses in the same frame, the existing frame.

15 Q. Now your supplier gave you or provided you with frames in what different sizes for instance with relation to the eye, the bridge and the temple? Were there different sizes?

20 A. Yes. Normally a frame of that type comes in three different eye sizes, lens sizes, two different bridge sizes and usually three different temple lengths.

Q. You mentioned as well you had a contract - you were supplying the penitentiary. How many of these Guardian frames would you have supplied to them with eye pieces in them?

25 A. We did a study of our records in the last few days and have determined that we have supplied 79 pair of eye glasses to the penitentiary using this model frame. However, only 15 orders were - 16 orders, pardon me, were filled using this size and colour and model frame.

30 Q. And with respect to lenses themselves - lens power?

A. With respect to lenses we did an analysis of every prescription that was filled for Dorchester penitentiary

56

Claude Brunet - direct
- cross

and there was only one pair that was filled that matched this prescription.

5 Q. And comparing Exhibit 20 to the invoice based on the prescription of Dr. Marney, being Exhibit 24 before you, what relationship then would you say is there between Exhibit 20 and that invoice, No.24?

10 A. The lenses in the frame in Exhibit 20 are the lenses that were ordered on that invoice.

Q. The same?

A. The same.

MR. SLEETH: Thank you.

15 THE COURT: Cross examination Mr. Furlotte? Oh, just on that last point, you mean ordered or supplied?

A. Ordered and supplied.

CROSS EXAMINATION BY MR. FURLOTTE

Q. Mr. Brunet, as an optician you didn't have to be an optometrist beforehand, right?

20 A. No.

Q. So you don't have any study in the field of optometry as an optometrist?

25 A. Not as an optometrist but we do considerable amount of study on the pathology and physiology of the eye, more to understand the workings of the eye as opposed to the medical aspects of it.

30 Q. Just out of curiosity, the prescription strengths that Mr. Legere had, for the right eye minus one and for the left eye minus .75, does that normally reflect somebody that was beginning to lose their eyesight in their old age?

A. No.

Q. No?

35 A. No, it's a condition called myopia or near sightedness and that is a condition that happens that people just

57

Claude Brunet - cross

develop at a young age and it usually progresses until they reach the age of maturity, late teens 20's, and then it levels off and it stays there and your eyes do not normally change again until you are at a stage where you need reading glasses - help to read.

5 Q. Is this a common phenomena?

A. You are referring to the part where you need help to read?

10 Q. Well for - like Mr. Legere's eyesight to start deteriorating the way it has.

A. Yes, people who wear eye glasses, they have a visual deficiency. It don't - I wouldn't call it deteriorate so much as it is just a condition, like some people are six feet tall and some people aren't. It doesn't mean that - there's a visual deficiency but not a medical deficiency.

15 Q. You stated that you were in court when Dr. Marney testified?

A. Yes.

20 Q. And the prescription strength that was prescribed for Mr. Legere, is that as unique as Dr. Marney thinks it is?

A. Yes. Yes, absolutely.

Q. We're talking just about prescription strength?

A. Yes.

25 Q. Is it safe Mr. Brunet to ask you if you know anything about colour blindness?

A. I know the difference between black and white.

Q. You know the difference between black and white?

A. I know something about colour blindness but I'm not - I wouldn't prefer to be an expert on it and I would rather not be challenged to any degree on it. I understand it. It was certainly part of our course.

30 Q. To your knowledge Mr. Brunet, can a person who is colour blind be able to distinguish the difference between black and white?

35

58

Claude Brunet - cross

A. Yes.

Q. Black and yellow?

5 A. If colour blind the yellow would probably appear as an off white or - the difference between black and white is one extreme to the other so I guess the yellow would probably appear more as into the light spectrum. It would be a light colour, but there is no colour. He is colour blind. He sees different densities.

10 Q. Are they blind to all colours?

A. Some people are blind to only certain colours; some people are colour blind in varying degrees. Very few people are totally colour blind.

15 THE COURT: May I ask Mr. Furlotte, is there going to be some evidence here - and I may ask the Crown too - somebody involved is colour blind?

MR. FURLOTTE: I don't know.

THE COURT: Well why are we bothering to go into colour blindness?

20 MR. FURLOTTE: Well My Lord I think from the evidence, the colour of hair in this case might be in dispute and arguable in submissions to the jury and I'm trying to help the jury as much as I can.

25 THE COURT: Yes, but the deficiencies involved in colour blindness are only pertinent to people who are colour blind and if there is going to be no evidence that anybody is colour blind, it is totally irrelevant. Anybody can misjudge colours, you know even people who aren't colour blind. I think that's what we are concerned with here. There is no suggestion anyone is colour blind.

30 MR. FURLOTTE: I don't know what arguments the Crown will be putting before the jury. I'd like to---

35 THE COURT: Well I assume it wouldn't be that anybody is colour blind.

Claude Brunet - cross

MR. FURLOTTE: I'll see what I can do to clear things up for the jury rather than confuse them in arguments.

THE COURT: Well let's not confuse them with colour blindness then.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination?

REDIRECT EXAMINATION BY MR. SLEETH

Q. You were asked by my learned friend on cross examination what the strength of the lens are, what do you call them, strong lens?

A. No it's not really a strong lens.

Q. A person wearing these lenses could function without them then too?

A. Oh yes.

MR. SLEETH: Thank you.

THE COURT: Thank you very much Mr. Brunet. That's the only occasion on which Mr. Brunet is being called?

MR. SLEETH: I would ask that he be excused My Lord in order that he can keep on with his many employees for the province.

THE COURT: Now we will have a recess for 15 minutes.

(Jury polled - all present)

THE COURT: Mr. Sleeth you have a witness?

MR. SLEETH: I call Elizabeth Whiting.

ELIZABETH WHITING having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

Q. Would you state your full name for the Court witness?

A. Elizabeth Mary Whiting.

Q. And your maiden name was?

A. Kirby.

Q. And you are referred to as Elizabeth Lapointe in the witness list.

60

E. Whiting - direct

A. That was my last name of my previous marriage.

Q. Your present occupation please?

A. At the moment I'm unemployed.

5 Q. Your occupation as of July 1986?

A. Registered nurse. I was working for CSC at Dorchester penitentiary.

Q. By CSC you mean what please?

A. Corrections Service Canada.

10 Q. And that's a division of what office?

A. Solicitor General.

Q. A ministry of the government of Canada?

A. Yes.

Q. I have just placed before you a document which is marked
15 'H' for identification. Are you able to in examining that document identify it?

A. Yes, it's a standard prosthesis and appliance form.

Q. There is a signature on that?

A. It has my signature as witness.

20 Q. And what is that standard prosthesis form - what do you mean by that?

A. It's a form used in health care at Dorchester penitentiary when issuing artificial aids to inmates, such as glasses, dentures, or artificial limbs for
25 example.

Q. Without referring any further, do you know the date of that particular item marked 'H'?

A. July 19, 1986.

MR. SLEETH: I would ask My Lord that at this stage the item
30 marked 'H' for identification having been identified by Cst. Charlebois and now identified by this witness as bearing her signature in her own handwriting on the document be entered in evidence.

THE COURT: That will be P-25.

35 (Prosthesis and Appliance Form marked Exhibit P-25)

61

E. Whiting - direct

- Q. Referring you again to what is now P-25, an exhibit, can you describe the circumstances under which you would have completed that document - what was being done at time that led you to complete that?
- 5
- A. I was issuing Mr. Legere with prescription glasses and a case.
- Q. And how are you able to say that this was issued to a Mr. Legere - on what basis?
- 10
- A. On the form it says 'issued to 1121208 Legere.
- Q. Okay, and 1121208 refers to what?
- A. The FPS number.
- Q. That is the number assigned to inmates in the institution?
- 15
- A. Yes.
- Q. So upon receipt of some corrective aid such as glasses, you in your capacity as a what - what was your occupation at that time?
- 20
- A. Registered nurse.
- Q. You would have done what with the object in question?
- A. I would have issued the object had the inmate signed the receipt of such an object. In this case I would have issued glasses. Prior to issuing the glasses I would have had the inmate sign that he was accepting responsibility for them.
- 25
- Q. And by examining P-25 you can say this was done on what date?
- A. July 1986.
- 30
- Q. And it was for what type of object?
- A. Prescription glasses and a case.
- MR. SLEETH: Thank you --
- Q. I'm sorry witness. How many signatures are there in fact on that document?
- 35
- A. There are two signatures.
- Q. Yours and who else?

62

E. Whiting - direct
Cecile Allain - direct

A. A. Legere.

MR. SLEETH: Thank you.

5 MR. FURLOTTE: I have no questions of this witness.

THE COURT: Thank you very much.

MR. SLEETH I would ask that this witness be excused My Lord.

THE COURT: Yes.

MR. SLEETH: I would now call Cecile Allain.

10 CECILE ALLAIN having been called as a witness
testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

15 Q. Would you state your full name for the jurors please
witness?

A. Cecile Allain, and I'm a registered nurse.

Q. And in October of 1986 what was your occupation?

A. I was a registered nurse at Correctional Services in
20 Dorchester.

Q. And you had at that time been working in that capacity
for how long please?

A. November 85 until January 87.

Q. I place before you an item which has been marked 'J' for
25 identification purposes. Are you able to identify that
item?

A. It is a prosthesis and appliance form.

Q. And is there some way by which you personally are able to
identify that particular one, 'J'?

30 A. Yes. I have my signature on the bottom as a witness.

Q. And by prosthesis and appliance form you mean what type
of paper?

A. A form that an inmate would sign saying that he has
received his glasses or dentures or---

35 Q. And once more, the object which you presently have in
your hand, 'J' for identification, is signed by yourself?

A. Yes it is.

Q. The form itself is a standard one used by Correctional
Services Canada at that time?

63

Cecile Allain - direct

A. Yes it is.

MR. SLEETH: My Lord I would ask that this item also be accepted
into evidence at this time, identified by the
5 witness and earlier identified by Cst. Charlebois
when he testified.

THE COURT: This relates to what - what was received?

MR. SLEETH: Glasses My Lord.

THE COURT: Does it indicate that on there?

10 MR. SLEETH:

Q. Does the form indicate what was received?

A. One pair of eye glasses.

THE COURT:

Q. On what day?

15 A. October 22, 1986.

THE COURT: You are offering 'J' and - you are offering?

MR. SLEETH: At this time, 'J' My Lord.

THE COURT: That will be P-26.

(Prosthesis and Appliance form marked Exhibit P-26)

20 MR. SLEETH:

Q. Now that is marked as an exhibit, would you please look
at the document again please - I realize these events
took place some five years ago - from that you are able
to relate to this court that you would have what by
25 signing that document?

A. That I would have - that I would have issued a pair of
glasses to the said inmate.

Q. Okay and is it indicated a number or any such thing for
that inmate?

30 A. Yes, 1121208.

Q. Which would be what type of number?

A. His FPS number.

Q. What would the name of the inmate be if it is indicated
on the document?

35 A. Allan Legere

64

Cecile Allain - direct

Q. And the date of the issue?

A. October 22, 1986.

Q. And the item?

5 A. One pair of eye glasses.

Q. Immediately underneath 'indication one pair of eye glasses' there is some other writing. What does that say?

A. Change lenses.

10 Q. What signatures are on that document?

A. Mr. Legere and myself.

Q. When you at that time as a nurse turned over eye glasses or any other corrective aids to inmates, you completed forms like this and had them signed, is that correct?

15 A. Yes.

Q. From your examination of that you can say you did those things?

A. Yes.

MR. SLEETH: Thank you.

20 THE COURT: Cross examination?

MR. FURLOTTE: I have no questions of this witness.

THE COURT: Thank you very much Mrs. Allain.

MR. SLEETH: I would ask that this witness be excused My Lord.

THE COURT: Yes.

25 MR. WALSH: My Lord I will be calling the next witness. Mr. Kenneth Walls?

KENNETH WALLS having been called as a witness testified as follows:

30 DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the Court your name please and your occupation?

A. My name is J. Kenneth R. Walls. I reside at Duke Street in the town of Chatham, province of New Brunswick. I am
35 self employed as a professional photographer.

Q. How long have you been self employed as a photographer?

A. Ten years.

65

Kenneth Walls - direct

Q. Have you brought something with you to the court today
Mr. Walls?

A. Yes I have.

5 Q. What you have handed me is a number of photographs. I
take it they are duplicates?

A. They are.

Q. What size photograph would this be?

A. It is an 8 X 10 black and white photograph.

10 Q. And who took this particular photograph?

A. I did.

Q. When did you take this photograph?

A. January 1987.

Q. And who is this photograph of?

15 A. Allan J. Legere.

Q. And is this particular person Allan J. Legere is he - can
you identify him?

A. Yes. He is in the centre of the prisoner's box.

20 Q. Who has possession of the negative from which this
photograph was developed?

A. I do.

Q. And is this an accurate depiction of Mr. Legere at that
time in 1987?

A. Yes it is.

25 Q. And this is a different size photograph. What size is
this?

A. That would be a 3 X 5 photograph.

Q. And is this - could you compare the two please and tell
me whether or not they---

30 A. They are the same photograph.

Q. Just a different size?

A. Just a different size.

Q. And they were developed from a negative in your
possession?

66

Kenneth Walls - direct

A. They are developed from the same negative that's in my possession.

Q. Who actually developed the photographs?

5 A. I did.

MR. WALSH: My Lord at this time I am going to ask that this particular photograph, both of them, the smaller version and the larger version be entered as an exhibits direct from the possession of Mr. Walls.

10 THE COURT: This is of significance for what reason?

MR. WALSH: The significance of this My Lord is that the photograph is for the purposes of showing the person he has identified as wearing glasses and what if any comparison the jury can make between the glasses that have been entered as Exhibit P-20 and these two particular photographs.

15

THE COURT: January 1987?

MR. WALSH: January 1987.

THE WITNESS: That's correct.

20 THE COURT: Where?

MR. WALSH:

Q. What town?

A. Newcastle.

Q. And that's Newcastle in this province?

25 A. That's correct.

THE COURT: Cross examination Mr. Furlotte?

MR. FURLOTTE: I have---

THE COURT: Are-you through - you are not through yet?

MR. WALSH: I'm through. I just want to move this into evidence My Lord.

30

MR. FURLOTTE: I have no objection.

THE COURT: So the large photo will be P-27 - let's make them P-27 (1) and (2). (1) is the large one and (2) is the small one.

67

Kenneth Walls - direct

MR. WALSH: My Lord I asked Mr. Walls to bring a number of the
duplicates of the large one that has been entered
and I don't know whether or not you wish to give
5 these to the jury or just use the ones that have
been entered into evidence.

THE COURT: Are you going to ask further questions?

MR. WALSH: No I have no further questions.

10 THE COURT: Well let's finish with this witness and then we
will decide when we give that - whether now or --
to the jury.

MR. WALSH: Fine My Lord.

THE COURT: You are going to - somebody keep the copies - Mr.
Pugh can keep the copies.

15 MR. WALSH: These copies which I have put in this particular
envelope, they are identical copies to the blown-up
photograph that has just been entered into
evidence?

THE WITNESS: Yes they are.

20 THE COURT: And you are all through with this witness?

MR. WALSH: Yes I am My Lord, thank you.

THE COURT: Cross examination?

MR. FURLOTTE: I have no questions of this witness.

25 THE COURT: You are excused Mr. Walls. Who is your next
witness Mr. Allman?

MR. ALLMAN: Well I am going to seek your guidance and
instructions on the situation right now. We have
now finished with this aspect of the evidence
relating to the Flam count. As I indicated in
30 opening to the jury we will be calling evidence
during the Daughney and Smith matters which we
believe will relate back to the Flam matter,
including the DNA aspect, but the specific purely
Flam evidence is now covered. We would propose

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5 therefore now to move into the specifically Daughney
evidence. What we would normally have done is call
Cpl. Godin and Sgt. Chiasson to do in respect of
the Daughney incident, the same video and
10 photographic kind of evidence as they did for the
Flams. As you recall, that took the better part of
the day and there is no point therefore in starting
them now. We would be moving at some point in time
when we are doing the Daughney situation to calling
15 the site security police officers in the same
fashion as we did for the Flams. We have got them
here. At least a couple of those witnesses are
required to be in Newcastle tomorrow to testify in
another trial. We have one, two, three, four,
20 five, six, seven, eight scene security people. One
of them is injured or has a back problem. I have
been discussing that with Mr. Furlotte who is
considering the situation. We would like to call
either the seven we have here or if you feel that
25 would take too long, at least a couple who are
required to be in Newcastle tomorrow. It's a
little out of order but it will accommodate their
requirements.

THE COURT: Well it's twenty after four. Why don't you start -
25 can you start a little out of order with the two
who have to be in Newcastle tomorrow and we'll see
if we can get rid of them anyway and I'll have to
consult with the jury here in court of course to
see if we are prepared to go any further beyond
30 that. May I - just before you do that may I ask -
I haven't got - if you look at number 21 and 22,
Cpl. Ron Godin and 22, Dr. Pete Christiansen - I
havn't got them checked off. Was that an oversight
on my part?

35

69

Cpl. Girard - direct

MR. ALLMAN: Cpl. Godin - I think what happened there, he was recalled and stood aside out of order for some reason or other; a matter of mutual agreement I believe. Certainly Cpl. Godin as number 2 and Cpl. Godin as number 21 have been completed. Dr. Christiansen, he was agreed - his evidence was agreed.

THE COURT: So Christiansen is out - that's eliminated.

10 MR. ALLMAN: Godin as number 21 was his evidence respecting the jawbone photographs, so he is complete as number 2 and as number 21.

THE COURT: Christiansen is out.

MR. ALLMAN: Christiansen is agreed so we don't require him.

15 THE COURT: All right, we'll go ahead with your next one.

MR. WALSH: I call Cpl. Rosaire Girard.

ROSAIRE GIRARD having been called as a witness testified as follows:

20 DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court please your name and your occupation?

A. I'm Cpl. Rosaire Girard presently employed with the R.C.M.P. in Newcastle, County of Northumberland, province of New Brunswick.

Q. Would you tell the jury please in your own words your involvement in this particular matter; and again I understand officer that you have been involved in the Smith matter as well?

30 A. Yes I have.

Q. I just wanted to restrict your testimony to the matter of the Daughneys. Would you tell the jury in your own words your involvement?

A. On the 16th of October, 1989, I proceeded down to 136
35 Mitchell Street in Newcastle - it's in the county of

70

Cpl. Girard - direct

Northumberland, province of New Brunswick - to assume scene security until eight o'clock the next morning.

Q. And that would be scene security at a particular residence at that location?

5

A. That was the Daughney residence.

Q. I see, and this scene security, would this be inside the house or would you do it from outside the house?

A. No, we were sitting in a marked cruiser.

10

Q. Was there somebody with you?

A. Yes there was.

Q. Who was the other person?

A. Cst. Mike Leblanc.

Q. And what was the purpose of having you in that particular location?

15

A. Just to secure the scene and make sure it was not touched.

Q. And during the period of time that you were there was there, to your knowledge any unauthorized entry to either the residence or the grounds surrounding the residence?

20

A. No there wasn't.

Q. Did you have any further involvement in this particular matter?

A. No I didn't.

25

Q. Who did you turn the scene over to?

A. Cst. St. Laurent I believe.

Q. Would you tell the jury or the judge right now, what you know of Cst. St. Laurent - his physical condition at this time?

30

A. Back in November 1990 we were involved in a motor vehicle accident. As a result he injured his back and has been off duty since May of 1991 and he has to attend therapy twice a week.

MR. WALSH: I have no further questions.

35

THE COURT: Mr. Furlotte?

71

Cst. Britt - direct

MR. FURLOTTE: I have no questions of this witness.

THE COURT: Thank you very much Cpl. Girard

MR. WALSH: I am asking that that witness My Lord be stood
5 aside.

THE COURT: All right. You shouldn't discuss this aspect of
your evidence with Crown counsel or anyone else
until all your evidence is completed.

MR. WALSH: I will call - recall Cst. Robin Britt My Lord.
10 Cst. Britt will be - after his testimony I will be
asking that he be stood aside. Cst. Britt has been
sworn My Lord and I will proceed from there if that
is all right.

THE COURT: Yes.

15 CST. ROBIN BRITT having been previously sworn
testified as follows:

DIRECT EXAMINATION BY MR. WALSH

20 Q. You are Cst. Robin Britt who has been on the stand a
couple of times already, is that correct?

A. Yes that's correct.

Q. You are a member of the R.C.M.P.?

A. Yes.

25 Q. And in 1989 you were stationed at the Newcastle
detachment, is that correct?

A. That's correct.

Q. With respect to this particular matter, that is the
Daughney scene security aspect, would you tell the jury
30 please in your own words, beginning with the date, the
time and the place what your involvement was?

A. It was on October 15, 1989 at 11.08 in the morning I
patrolled to 136 Mitchell Street in the town of
Newcastle, county of Northumberland, province of New
35 Brunswick, at which time I relieved Cst. Luc Charlebois
and I went there for scene security. I was there until

72

Cst. R. Britt - direct

8.27 p.m. on the 15th of October 1989 at which time the scene was turned over to Cst. Mike Leblanc.

Q. And during this period of time I take it scene security was from outside the premises?

5

A. That's correct.

Q. And during this period of time did you note if anyone was inside the premises?

A. There was nobody except authorized police officers.

10

Q. And did you have any other direct involvement in relation to scene security at the Daughney scene?

A. No.

MR. WALSH: I have no further questions My Lord.

THE COURT: Cross examination?

15

MR. FURLOTTE: I have no questions of this witness.

THE COURT: Thank you very much Cst. Britt. You are stood aside subject to recall. The same restrictions apply. Several of these other persons that you mentioned Mr. Walsh are they just short - their involvement is similar?

20

MR. WALSH: They are the same as these individuals here My Lord.

THE COURT: Well, it's four twenty-seven. Shall we go ahead and clean up the other five perhaps, if it can be done quickly?

25

MR. WALSH: I'll call witness No.77 on the indictment list, My Lord, Cst. Michel LeBlanc.

MICHEL LEBLANC having been called as a witness testified as follows:

30

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the court your name please and your occupation?

35

A. Joseph Michel Antoine LeBlanc. I am a peace officer, member of the R.C.M.P., presently stationed in

Cst. LeBlanc - direct

Fredericton, New Brunswick and previously stationed in Newcastle, Northumberland county, New Brunswick from June of 1987 until August of this year.

5 Q. Constable you're to testify later during this trial, is that correct?

A. Yes.

Q. I just wish you to restrict your evidence to the Daughney matter. Would you tell the jury please in your own words, beginning with the date, the time and the place, what your involvement was?

10 A. Yes, My Lord I was involved in the site or scene security aspect of the Daughney residence. Beginning with the 15th day of October 1989 I was directed to the Daughney residence on Mitchell street in Newcastle, Northumberland county, Province of New Brunswick.

Q. Did you attend with anyone?

15 A. Yes, I was accompanied by Cst. Yvon Lafontaine. Arriving at the scene at two a.m. I relieved Cst. Luc Charlebois. Cst. Lafontaine and myself remained there until 8.18 a.m. the following morning at which time we were again relieved by Cst. Charlebois.

Q. During that period of time did anyone enter into those particular premises or ---

25 A. None.

Q. ---or on the land surrounding the premises?

A. No there were no people there. That was the purpose of our being there.

Q. Did you have occasion to attend back at this particular place for scene security after that?

30 A. Yes I did. Later on the same day at 8.26 p.m. I relieved Cst. Robin Britt at the same residence, same location and I remained there until 8.13 a.m. the following morning at which time I was relieved by cst. Laurent Houle.

74

Cst. Leblanc - direct

Q. And did anybody accompany you - did you have a partner during that period of time?

5 A. I was joined later on in the evening by Cst. Kerr for a short period of time.

Q. And during the period of time that you were there was there anyone into that particular residence or on the grounds surrounding it?

A. No there were not.

10 Q. Did you have occasion to attend at that particular premises after that?

15 A. Yes I did. Later on the same day, which would be the 16th of October 1989, I accompanied Cst. Rosaire Girard who previously testified - Cpl. Rosaire Girard, excuse me, who previously testified and did the same shift with him from 8 p.m. until 8 a.m. the following morning where we were relieved by Cst. St. Laurent.

20 Q. And during the period of time that you were there with Cpl. Girard did anyone enter into the residence or onto the grounds surrounding the residence?

A. No, no one did.

Q. Did you have occasion to attend at that particular area after that?

25 A. No, that was the sum of the site security shifts for myself.

MR. WALSH: Thank you My Lord, I have no further questions.

MR. FURLOTTE: I have no questions of this witness.

THE COURT: Thank you very much.

MR. WALSH: I would ask that he be stood aside My Lord.

30 THE COURT: Okay, and you are not to discuss this aspect of your evidence with anyone until your testimony is completed.

MR. WALSH: I would call Cst. Laurent Houle. I recall Cst. Houle I should say. Cst. Houle My Lord has been
35 sworn previously.

75

Cst. Houle - direct

LAURENT HOULE having been previously sworn testified
as follows:

5

DIRECT EXAMINATION BY MR. WALSH

Q. You are a member of the R.C.M.P.?

A. Yes I am.

Q. And in 1989 you were stationed at the Newcastle
10 detachment of the R.C.M.P., is that correct?

A. That's correct.

Q. Would you tell the jury please, in relation to the
Daughney matter what if any connection you had with
respect to scene security?

15 A. Yes, on the 14th of October 1989 I was assigned to do
scene security at 136 Mitchell Street, Newcastle, county
of Northumberland, province of New Brunswick, and I
relieved Cst. Charlebois at 6.55 p.m. until 8.35 p.m.
Then I went to supper and Cst. Charlebois took over the
20 scene at 8.35 p.m. I returned at 21.00 hours, 9 p.m., at
which time I took the scene over again from Cst.
Charlebois and Cst. Charlebois left for supper and a
meeting. Cst. Charlebois returned at 11.20 p.m. and we
were together until two a.m.

25 Q. During these periods of time that you were there did you
notice whether anyone went into the premises or on the
grounds surrounding the premises?

A. No unauthorized personnel.

Q. When you say unauthorized, who---

30 A. I mean only police officers and investigators.

Q. Did you have occasion to attend there after those times?

A. Yes I did.

Q. When?

A. The following - the 16th which would have been two days
35 after - on the 16th of October 1989 at 08.15 in the
morning I took over the scene from Cst. Leblanc and I
remained there until 8.10 p.m. and then the scene was
turned over to Cst. Leblanc and Cst. Girard.

76

Cst. Houle - direct
Cst. Charlebois - direct

Q. And during that period of time was there any unauthorized entry?

5 A. None.

Q. Did you have occasion to attend on the premises after that?

A. No.

MR. WALSH: My Lord I have no further questions.

10 MR. FURLOTTE: I have no questions of this witness.

THE COURT: No cross examination, and this witness is---

MR. WALSH: Stood aside My Lord.

THE COURT: The same applies to you Cst. Houle.

MR. WALSH: I would call, with your permission My Lord, Cst.
15 Luc Charlebois.

LUC CHARLEBOIS having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

20

Q. Would you give the court your name please and your occupation?

A. Joseph Luc Halle Charlebois, member of the R.C.M.P. presently stationed in Sussex, province of New Brunswick.

25 Q. Would you tell the court please in your own words your involvement in this particular matter in relation to the Daughney scene security?

A. Yes, on the 14th of October 1989 I was instructed to proceed to 136 Mitchell Street and take over the scene
30 from the Sussex town police.

Q. Sussex - you said Sussex town---

A. Newcastle town police.

Q. And who did you take - do you remember the police you took--

35 A. Yes I replaced - I took the scene over from Sgt. Sam Williamson.

Q. And what did you do after you took the scene over?

Cst. Charlebois - direct

- A. I took the scene over from him at 2.39 in the afternoon and remained on the scene until two o'clock in the morning, the 15th of October 1989.
- 5 Q. During the period of time you were there did you note whether anyone was entering the premises or on the grounds surrounding the premises?
- A. Only authorized personnel were allowed inside the grounds or the premises.
- 10 Q. Did anyone that would not have been authorized - what do you mean by authorized personnel?
- A. Police officers and forensic people - ident people.
- Q. Was there any unauthorized entry?
- A. No there wasn't.
- 15 Q. How long did you stay there?
- A. I stayed there until two but I was relieved by Cst. Houle during the evening at 1855, or 7.55 p.m. I was relieved by Cst. Houle until 2035 hours thereupon at - until 2100 hours I stayed on the scene. From 2100 hours until 23.20
- 20 I was away from the scene and came back at 2320. From 2320 to 0200 hours I was on the scene.
- Q. During the time that you were away had somebody replaced you?
- A. Cst. Houle, the previous witness.
- 25 Q. Did you have occasion to attend the scene again after that?
- A. Yes, the next morning at 8.18 the 15th of October 1989 I was back on the scene and replaced Cst. Leblanc.
- Q. And how long did you remain there?
- 30 A. I remained there until 11.08 when I was replaced by Cst. Britt.
- Q. 11.08 in the morning?
- A. In the morning.
- Q. And during the period of time that you were there was
- 35 there to your knowledge any unauthorized entry?

78

Cst. Charlebois - direct
Sgt. Williamson - direct

A. No there was no person unauthorized allowed into the building.

5 Q. Did you have occasion to attend the premises after that?

A. No I did not.

MR. WALSH: I have no further questions My Lord.

MR. FURLOTTE: I have no cross examination.

THE COURT: Okay you are excused. Is this witness coming back?

10 MR. WALSH: No My Lord. My last witness on scene security or at least of these witnesses I wish to call now, is Sgt. Sam Williamson.

SAM WILLIAMSON having been called as a witness testified as follows:

15

DIRECT EXAMINATION BY MR. WALSH

Q. Would you give the court your name and occupation please?

A. My name is Sam Williamson. I live at 113 David Street, Newcastle. I'm employed by the town of Newcastle as a police officer and have been for the last 23 years.

20

Q. Would you tell the court please in your own words your involvement matter beginning with the date, the time and the place?

A. On the 14th of October 1989 I was so employed by the town of Newcastle and arrived on duty at eight o'clock in the morning. Upon my arrival at the office I was requested to answer assistance to the Newcastle fire department at 136 Mitchell Street, in the town of Newcastle, county of Northumberland, province of New Brunswick.

25

30 Q. What if anything did you do?

A. I made patrol to that residence on Mitchell Street which I recognized when I arrived on this street as the Daughney residence. The fire department were there in the process of extinguishing the blaze that was the purpose of being there. I arrived at about 8.08 a.m. and I remained at that residence until 2.39 p.m. in the afternoon at which time I turned the residence and scene

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79

Sgt. Williamson - direct

over to constable Luc Charlebois of the Newcastle
R.C.M.P.

- Q. What was your particular duty there during that period of
5 time?
- A. At first it was to assist the police department and then
at 9.38 when the fire department had left the scene I was
more or less the security from that time until I turned
it over to the R.C.M.P.
- 10 Q. Was there any unauthorized entry into the building or on
to the grounds during the period of time you were there,
to your knowledge?
- A. No unauthorized into the premises or the residence while
I was there.
- 15 Q. And you turned that over to who?
- A. Cst. Luc Charlebois of the Newcastle R.C.M.P.
- Q. Did you have occasion to return to do any scene security
after that?
- A. No I did not.
- 20 MR. WALSH: I have no further questions My Lord.
THE COURT: Cross examination?
- CROSS EXAMINATION BY MR. FURLOTTE
- Q. Sgt. Williamson you are a member of the Newcastle town
police?
- 25 A. Yes I am.
- Q. Did you assist at all in the investigation of the
incident at the Daughney residence?
- A. No I did not.
- Q. Do you know whether or not the Daughney residence -
30 somebody stole anything from the Daughney residence a few
weeks prior to October 14 - was there a reported theft at
the Daughney residence prior to October 14?
- A. Not to my knowledge.
- MR. FURLOTTE: No further questions.

35

Sgt. Williamson

THE COURT:

Q. When you say no unauthorized persons entered, you are
excluding the fire department - they were in and out I
gather?

A. That is correct, yes.

Q. Until what time?

A. 9.38 when they left - when they had determined that the
fire was out they left the scene. No one entered in
there from that until when I left.

THE COURT: Any questions based on mine or any re-examination?

MR. WALSH: No My Lord.

THE COURT: Thank you very much Sgt. You are all through with
Sgt. Williamson?

MR. WALSH: Yes My Lord. I understand from Mr. Furlotte that
No.80 on your indictment list, Cst. J.P. St.
Laurent, he would be the officer that Cpl. Girard
mentioned is injured, that they do not require his
attendance. For this particular purpose he is
stood aside. He will be testifying later.

THE COURT: Right. We'll adjourn now until 9.30 tomorrow
morning.

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HER MAJESTY THE QUEEN - and - ALLAN JOSEPH LEGERE

A portion of the proceedings of September 11, 1991. - 0930 hours.

THE ACCUSED:

Your Honour before the jury enters I would like to say that on account of Michael Ryan quitting my case and Mr. Furlotte and I had only time to study the Flam case - we have not gone over the other two cases - when I hired Mr. Bill Kearney, he has since refused to meet with me at any time, or Mr. Furlotte to go over any of the cases so I can't see any purpose so I am going to dismiss him. He refused to meet with me. I have asked him several times.

THE COURT: You are dismissing - who is being dismissed?

THE ACCUSED: Mr. Kearney. I have no choice because he is not meeting with me.

THE COURT: Well Mr. Kearney I appoint you an amicus curiae to carry on in this case and assist Mr. Furlotte.

THE ACCUSED: And also he is talking too much to the Crown Prosecutor and I cannot trust him because Mr. Furlotte and I talked about it yesterday - he has carried back stories and they are using him as a go between.

THE COURT: Well fine. You are an amicus curiae. Call the jury please.

THE COURT: I would like to - I want to advise the jury that Mr. Kearney is no longer representing the accused. He has been discharged by the accused. I have appointed him an amicus curiae, which means 'a friend of the court' to assist Mr. Furlotte; to assist the accused; to assist the court in the conduct of the defence. It's pretty much a technical change. Now we'll go ahead. You have another witness Mr. Allman?

MR. ALMOND: Yes My Lord. I recall Cpl. Ron Godin.

THE ACCUSED: I don't want him on my case Your Honour.

- THE COURT: He is not on your case. He is helping the court.
- THE ACCUSED: Yes but he has access to my files and everything.
- THE COURT: Start Mr. Allman please.
- MR. ALLMAN: Cpl. Godin you are already under oath and you have already been sworn?
- A: Yes.
- Q: You have already testified to the jury that you are with the R.C.M.P. Identification Department?
- A: That is correct.
- Q: And you have explained to the jury the things the identification people do?
- A: Correct.
- Q: You have explained your participation as an identification officer in connection with the scene of the Flam deaths - death I should say?
- A: Yes.
- Q: On the 14th of October 1989 did you have occasion to attend a residence to perform the same sort of tasks there as you had performed at the residence of Annie and Nina Flam?
- A: Yes My Lord. On the 14th of October 1989 I had occasion to patrol to 136 Mitchell Street in the town of Newcastle, County of Northumberland, New Brunswick.
- Q: That was for the purpose of examining the scene reported to you as being the residence of who?
- A: The residence of Donna and Linda Daughney.
- Q: Would you take the blue pin and place it in the aerial photograph behind you at the location where - to which you are referring.
- A: Where I am putting the pin My Lord it's - as you cross the Morrisey Bridge in Newcastle you are on Jane Street - that's in the town of Newcastle. The first intersection you come to is the intersection of Jane and Mitchell. Once you get to that

intersection you turn left on to Jane and you drive down to the end of Mitchell. Mitchell will meet with Davidson Street and the residence is on the left side of Mitchell. The last residence on the left side on Mitchell Avenue.

Q. In the course of your activities during that day - I remember that at the Flam residence you prepared some plan drawings. Did you do the same thing at the Daughney residence?

A. That is correct.

Q. Do you have those with you?

A. I do.

Q. Would you give them to me please?

THE ACCUSED: Your Honour, Mr. Furlotte and I talked about----

THE COURT: Mr. Furlotte - should we have a recess here?

MR. FURLOTTE: I think we should have a recess My Lord.

THE ACCUSED: Your Honour he knows about---

THE COURT: I would ask the jury to - would you take the jury out Mr. Sears - Mr. Pugh would you take the jury out please?

(JURY RETIRES)

THE COURT: Mr. Furlotte, what do you want to do. Do you want do - do you want to have a recess and talk to your client, or do you know what the situation is?

MR. FURLOTTE: I don't know My Lord - I would like to ask the Court for instructions also at this time. For the record My Lord Mr. Kearney was hired by Mr. Legere and not myself and as a matter of fact Mr. Kearney was hired against my advice. I didn't think it would be a good idea for Mr. Kearney to represent Mr. Legere. However I told Mr. Legere and I also informed Mr. Kearney before he was hired as to what my position was. It wasn't because I thought Mr. Kearney - that there would be a conflict because he was a Crown Prosecutor. I didn't think Mr. Kearney

would be giving information to the Crown or working with the Crown against Mr. Legere and I still don't think that is the case. However, against my advice Mr. Legere was convinced by someone else that Mr. Kearney would be a good person to represent him because of his vast experience. My position at the time was that I didn't think Mr. Kearney would be a good choice of solicitor to represent Mr. Legere because as you know, Mr. Kearney's case - because of the publicity and the stay of proceedings in his case - in the Fredericton area with the jury - I think the jury ought to have the greatest respect for Mr. Legere's solicitors and under Mr. Kearney's case I think that would be highly unlikely and it would be almost suicidal to have Mr. Kearney represent him. However I gave in to Mr. Legere - well I didn't give in, I had no choice - Mr. Legere is entitled to hire whichever solicitor he wishes, but I advised Mr. Kearney of my position before hand and Mr. Kearney still agreed to take the case with Mr. Legere. I advised Mr. Legere and I told them both that "well if you want to hire Mr. Kearney I will do my best to work with Mr. Kearney". Since Mr. Kearney has been on the case Mr. Legere has been asking me "well how's Bill doing" and I said "well I don't know. We have to give him a chance" and Mr. Legere wanted to meet with Mr. Kearney right away. I said "well you better give him a chance to read the police briefs so he gets to know - gets the big picture of the case before he even meets with you. It's pointless until he knows the big picture". After a long weekend from Friday to Monday, - the week we were off from Friday on the long weekend and we came back Tuesday - that's four days. I asked Mr. Kearney how he made out and he

told me that well he read through the brief of the Flam case. He said he spent ten hours on it. When Mr. Legere asks me how Mr. Kearney is doing and how is he coming along with the case I have to advise Mr. Legere what Mr. Kearney what Mr. Kearney is telling me and in the four days that Mr. Kearney had, he spent ten hours on the case. Mr. Legere does not think that's enough. I, because I know the case, and the case that Mr. Kearney has to meet - I know it is not enough time to spend on this case in order to be half prepared. I have advised the court that there's no lawyer can come in at this point in time anyway and prepare but at least I think it is worth an effort. When Mr. Legere asks me my opinion I have to give it to him honestly and also Mr. Kearney advised me that as far as for working on the case, because of his age he is not going to pull a Weldon Furlotte and kill himself trying. Again I have to advise this - when Mr. Legere asks I have to advise him about his counsel. It seemed that whenever Michael Ryan - well for medical reasons was unfit to continue to represent Mr. Legere that you blamed me for it because I didn't keep an eye on Michael Ryan and advise Mr. Legere as to what Michael Ryan was or wasn't doing, so I----

THE COURT: Well that's not right. I didn't blame you for what Mr. Ryan may have done or may not have done.

MR. FURLOTTE: Well I thought---

THE COURT: I said that had I been you I think I would have kept in touch more with Mr. Ryan to see just what he was doing.

MR. FURLOTTE: Yeah but I thought at the time you said I was senior counsel and it was my responsibility.

THE COURT: Well you were senior counsel.

MR. FURLOTTE: Under the circumstances I mean Mr. Legere knows darn well that there's no new lawyer that can come in, I don't care whether it's Mr. Kearney with his vast experience or anybody that can pick up and provide Mr. Legere with full answer in defence, which is a must, but I think and Mr. Legere things that he should have at least a lawyer coming in that's going to put a little more effort into it. I have to tend to agree with Mr. Legere in this case that the amount of time that Mr. Kearney is able to put into it because of his age, because he wants to look after his health, it's definitely not sufficient; but even if he was able to put full time in it wouldn't be sufficient and both myself and Mr. Kearney, and Mr. Legere know this. But again as Mr. Legere - I've told Mr. Legere many times to "well talk it over with Bill. You're the one that hired him and - you know I'll work, do the best I can with Mr. Kearney. You hired him, you talk to him". Mr. Legere advises me that he requests Mr. Kearney to go and talk to him and Mr. Kearney doesn't want to talk to him.

THE COURT: Well what is your position now. You are looking for someone to take the place of---

MR. FURLOTTE: That is the background. Now my position is you have appointed Mr. Kearney to assist me. I have to take instructions from my client who tells me "don't tell him anything". What am I supposed to do?

MR. WALSH: Tell him about yesterday though about the Crown prosecution talking back and forth and using you as a go-between. I didn't like that and that's why I sort of got all excited.

THE COURT: Well come on now----

MR. FURLOTTE: That's a matter if the Crown wants to get messages to me, they inform Mr. Kearney and Mr. Kearney informs me. I basically feel that the Crown feels they have more influence over Mr. Kearney - Mr. Kearney, to influence me for something and then the Crown gets what they want.

THE COURT: Well----

MR. FURLOTTE: It's nothing drastic or nothing prejudicial to Mr. Legere's case, I agree with that. I don't think the Crown is doing anything wrong and I don't think Mr. Kearney's doing anything wrong but the appearance is there that Mr. Kearney's great friends with the Crown Prosecutors.

THE COURT: Tell me, you want to look now for another lawyer to replace Mr. Kearney as an assistant for yourself?

MR. FURLOTTE: My Lord another lawyer at this point in time is totally useless and - that was my position when I requested the adjournment on July 26 and I'm going to try and get through this trial the best I can but I know at the end Mr. Legere will not have had full answer defence regardless as to what this court does at this time, whether Mr. Kearney stays on - I don't know what he is going to do. I've gotten instructions from my client not to tell him anything or not to confide with him or to get him to assist me - the Court appoints him to assist me. Am I to listen to Mr. Legere or am I to listen to yourself?

THE COURT: He will assist you----

MR. FURLOTTE: I think - that's what I don't know---

THE COURT: He will assist you only as much as you request that he assist you.

MR. FURLOTTE: Pardon?

THE COURT: He will assist you only as much as you request that he assist you. If you don't want him to assist you

at all he will sit there and he will make notes and keep abreast of what's going on in the trial. If you come along and say I have another solicitor I want to engage - another counsel I want to engage as assistant counsel in this case, to help me, to keep notes to keep exhibits in order, to provide all the other 101 functions that an assistant counsel could be providing then I will - he will be appointed or he will appear as counsel in the case and I'll make a decision at that time as to what Mr. Kearney's status is. For the present time he will merely be an amicus curiae and he will be in a standby position keeping abreast of the case as it goes along. Now I haven't - I want to speak to Mr. Kearney about this. Mr. Kearney you have heard this discussion, what comment do you have to make on it? You know I'm not so sure that even this discussion in public here in court - if I know it's a Voir Dire it can't be published of course - and I'm not sure that this is the proper place for this type of discussion. It should perhaps be held in chambers with just the counsel involved.

MR. FURLLOTTE: Well I think it's the type of discussion that has to be held in front of Mr. Legere My Lord.

MR. ALLMAN: I hate to interrupt and I realize you are about to speak to Mr. Kearney but I would like to make just two comments. The first is that this matter has risen rather suddenly. It might be appropriate to give counsel five or ten minutes to go away and consider their position and come back. That's just a suggestion. It is up to Your Lordship. The second is with regard to the remark by Mr. Furlotte. He said that he attributed no blame to Crown counsel but then he sort of said some other things that I thought seemed to indicate otherwise.

I want to make it quite clear for the record, when Mr. Furlotte is available and around and we have things to say we've said them to Mr. Furlotte. I had a ten-minute discussion with Mr. Furlotte in my office this morning because he happened to be the defence counsel who I happened to bump into. When Mr. Furlotte isn't around, and he frequently isn't because he is talking to Mr. Legere, we have passed messages on or had communication with Mr. Kearney. That is the sum, extent and total of it and I am not friends with Mr. Kearney. I don't mean by that that I am enemies either but I resent the suggestion that we have in any way been using Mr. Kearney improperly.

MR. FURLOTTE: You told Mr. Kearney to shut up didn't you?

THE COURT: Now Mr. Kearney what do you have to say about your own position?

MR. KEARNEY: Yes My Lord. Coming on to this case and being retained by Mr. Legere, the comments I was hearing from my friend Mr. Furlotte was that they're burnt out - that everybody's burnt out, and as a matter of fact this was said in open court. So we had great discussion on how you have to pace yourself and this was where I was telling Mr. Furlotte that is exactly what I intended to do in order that I didn't become burnt out. That was the reason; and my mind isn't fully addressing this case all the hours of the day but the actual sitting down at the table - I was telling him about the hours that I put in - he asked me and I told him. I have never refused to see Mr. Legere at any time. I have told Mr. Legere that it is best that I watch what is going on so that I can get a hold on the case and find out what it is all about. As far as discussions with Crown counsel that is completely

proper because we are all officers of the court and I was only trying to aid - if they had something I would pass it on to Mr. Furlotte, where he was doing the Flam homicide cases and had to do with witnesses being not called because of the type of evidence they would be giving and so on, and I would pass that on and see if it - which is completely proper. So this takes me by surprise My Lord. As of 9.30 it is the first I had knowledge of this.

THE COURT: Are you agreeable to my appointing you an amicus curiae perhaps temporarily - I'm not sure how long it will continue?

MR. KEARNEY: Yes My Lord. Until at least I have time to assess this whole situation.

THE COURT: Well this will be a temporary arrangement.

MR. FURLOTTE: My Lord my client wishes to - advises me to advise you, because you don't want him talking to you, that Mr. Legere made his mind up yesterday when he saw Anthony Allman speak over when Mr. Kearney was speaking up on our behalf when I was cross examining the witness, Cpl. Mole. He observed Mr. Allman telling Mr. Kearney to shut up.

MR. KEARNEY: Well My Lord on that point that's unfortunate but what happened is that I was whispering something to Mr. Furlotte and I was seated, and I have what is known as a low voice and it carries. Mr. Allman just motioned me to keep quiet, which I have done to counsel too when they whispered, and I take no offense to that.

MR. ALLMAN: I did it to protect Mr. Legere. I could hear what Mr. Kearney was saying and I didn't want to intimidate him.

MR. KEARNEY: No, I'm not intimidated very easily. Thank you My Lord. That's all there was. I didn't take any umbrage to that.

THE COURT: I find nothing wrong with that.

MR. KEARNEY: Because my voice does carry, even in a whisper.

THE COURT: Well, shall we get the jury back and go on with the case? I want to point out that I have tolerated a lot of interventions by the accused here; I've reached just about the end of my tether as far tolerating those interventions goes; and when it comes to the point, and it may come very soon if there are other interventions, but if this trial can't proceed in an orderly fashion with the accused present then he will be excluded from the courtroom and will listen to what we are doing on a loud speaker out in the cell and that is - this is the fourth time since this trial started or since the hearing started on April 22nd, that I've been obliged to say this. I find it disagreeable to be pointing this out to anyone. It is not in the nature of a threat. I am charged with the duty of conducting this trial and conducting it through to a conclusion and I'm determined that I will do that and I'm going to remain in charge of the trial right through; and I'm not going to tolerate practices in the court that I've never tolerated before. Now having said that we'll have the jury back and proceed.

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(Jury returns - polled - all present).

5 THE COURT: Now Mr. Allman you have - you are going to continue
with this witness?

MR. ALLMAN: Yes My Lord.

Q. I believe you indicated you prepared sketches of the
Daughney scene, the same kind as you prepared for the
10 Flam one?

A. That is correct.

Q. I understand on this occasion you prepared three
sketches?

A. That is correct.

15 MR. ALLMAN: Could I have these three sketches marked?

THE COURT: No objection Mr. Furlotte?

MR. FURLOTTE: No My Lord, I consent to them being admitted.

THE COURT: That will be P-28 - any particular order you want
those?

20 MR. ALLMAN: No My Lord.

THE COURT: P-28 is what?

MR. ALLMAN: Exterior sketch - the back yard and the outside of
the house.

THE COURT: Sketch of the Daughney property?

25 MR. ALLMAN: The Daughney property, yes.

(Sketch of Daughney property marked Exhibit P-28)

MR. ALLMAN: P-29 My Lord is a sketch of the second floor of the
Daughney residence.

30 (Sketch of 2nd floor of Daughney residence marked
Exhibit P-29)

THE COURT: And the third one is?

MR. ALLMAN: A sketch of the ground floor.

(Sketch of ground floor of Daughney residence marked
Exhibit P-30)

35 Q. This is a sketch of the ground floor Cpl.?

A. That is correct.

THE COURT: Do you have copies of those?

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MR. ALLMAN: Yes I do. My Lord I have six copies of each for the jury.

Q. Do you also have copies for the Judge and yourself?

5 A. I do.

Q. Let's deal first of all with P-28. Could you give me a copy for the Judge?

A. Yes.

10 THE COURT: Could you take a pen and put P-28 on the corners of the copies you give to the jury?

MR. ALLMAN: Yes My Lord.

Q. Cpl. Godin, in addition to the sketches - plan drawings I suppose I should call them - did you also as at the Flam residence do a scene video?

15 A. Yes I did.

Q. Do you have that with you?

A. I do.

Q. Would you produce it please? My Lord I would ask that this be entered as an exhibit.

20 THE COURT: This is the video tape?

MR. ALLMAN: Yes.

THE COURT: P-31.

(Video tape marked Exhibit P-31)

25 MR. ALLMAN: Cpl. I am going to ask you again to follow the same practice as you did before - I am going to ask you to play the video and using the laser light - if you want to stand between counsels' desk and move from the video to the sketches so that you can relate the one to the other.

30 THE WITNESS: I would like to point out one thing My Lord prior to showing the video, there is two instances where I video taped the outside of the premises at 136 Mitchell on the evening of the 14th and on the morning of the 15th, so there's two showings of the scene outdoor.

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MR. ALLMAN: When you come to that point you can indicate these are the items that you videoed on a separate date. My Lord I understand the video is about half an hour to thirty-five minutes and I'm not going to be questioning this witness. I'm going to just ask him to follow the practice as in the Flams, so perhaps I could sit down during that time.

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THE WITNESS: As you will see here, the date and time, October 14, 1989 at 6.05 p.m. I am now standing on the north side of Mitchell Street, town of Newcastle, county of Northumberland, New Brunswick. The house that we see here, blue in colour and black - with a black asphalt roof - is 136 Mitchell, the residence of Linda and Donna Daughney. Here we see the front and side - the front on the north side and here we are looking at the west side of the residence. The white shed can be noted at the back of the residence. You will see here on the plan drawing the shed is at the back of the residence on the south side. Again a different view of the front of the residence, a little closer view; and again the west - or the east side, excuse me, of the residence. Side showing Mitchell Street and Davidson which is located at the corner of the two streets again the residence of Linda and Donna Daughney. Now looking at the west side of the residence showing a window, a door and another window; now panning to the second floor. This would be the side that we see here along the driveway of the residence. Another view of the west side of the residence, again showing the door. If we look at the second plan drawing these are the two doors here that we see on the west side. Panning towards the back of the residence showing

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the white shed and boxes of siding on the ground.
I am showing an area here where a large pool of red
substance which I believed was blood at the time on
5 the ground and you will notice some red stain on
the box. This I believe was believed to be blood
at the time of examination. This would be located
in this area here in the back yard of the
residence. A closer view of the red dot and there
10 is some more staining that we see on the box. I am
showing a stain here that is hard to depict on the
video itself, some transfer stains reddish in
colour. Now panning from the box of siding towards
the shed at the back of the residence. Now as
15 previously mentioned this is the shed here on the
plan drawing. Now I am zooming into an area
between the house and the shed and the door or
window that was against the shed, I'm panning to
this area here. You will note the cigarette butts
20 and that's right next to the window that's against
- or the door that's against the shed. Now panning
along the fence towards the back of the residence
we can now see an oil tank and the back steps. If
you look at the second plan drawing you will note
25 an oil tank and the back steps. This is on the
south side of the residence. Here I am panning
towards the second floor on the south side. You
will note some structural damage caused by the
fire; windows are broken. Now this is the window
30 to Linda's bedroom on the south-east corner of the
residence. The door we see here is the back
entrance to the residence which would be located
here on the plan drawing on the south side.
Panning down towards the steps to an area at the
35 bottom of the steps, we have here some staining

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again, reddish in colour. This was believed to be
blood. Again panning slightly to the left - to the
right, excuse me, we have a cigarette butt and some
5 more red stains believed to be blood. Now this is
directly in front of the first step leading to the
back entrance. You will note that there's five
steps leading to the landing. Now panning down to
the one of the steps here, now zooming in, here you
10 will note a reddish stain again which was believed
to be blood by myself. Now panning up to the back
entrance, showing that there is an inside door and
an outside door. Now panning to an area on the
east side of the residence which would be up in
15 here between the residence and the picket fence.
As you have seen, the house is undergoing
renovations and these are all pieces of siding and
debris from the workers. Again we're still at the
back of the residence panning from right to left
20 towards the gravel driveway. Now I am going to
zoom into an area in here - you will note a rock
to the left; now I'm zooming into this area right
here. You will note that there is a lens - a
prescription lens - that's broken in the driveway
25 in this area right here. Now I'm panning to the
west side. You will note the picket fence all
along the property and residences in the back.
This is the fence that we see here that we are
looking at now on the west side. Again panning
30 from right to left towards the back corner of the
lot and you will note that there is another
residence at the back of the property, again the
picket fence all around the back. Now on the 15th,
the next morning, 9.22 a.m. 1989, I am now at the
35 corner of James Street which comes from the bridge

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over to downtown Newcastle, and Mitchell. Here is
another view of Mitchell from the highway, James
Street. You will note here that there is a wood
5 mill which be depicted later in some more
photographs. I am looking in a westerly direction
towards the residence at 136 Mitchell. Now I am
standing a little further down Mitchell - straight
looking down and I am zooming in and you will note
10 a van at the end - that would be right at the
junction of Mitchell and Davidson in front of the
Daughney residence. Again a view of the Daughney
residence the next morning, 136 Mitchell. Again
the north side of the residence, four windows - two
15 at the bottom floor, two at the top floor. Now the
- I'm standing at the end of Davidson panning
toward the left towards the residence. Mitchell
and Davidson join here at the corner. I am
standing in the back corner of the property panning
20 from right to left showing you the picket fence on
the west side of the residence and here giving you
a view of the surrounding area. I would be
standing in this area approximately - again I'm
panning back towards the picket fence and you will
25 note that the picket fence is not straight as
demonstrated in the plan drawing. There is a
slight curve in it. You will note that the back
yard has been covered with a large sheet to protect
the evidence. Again the white shed at the back;
30 another view of the back of the residence panning
from left to right. Now I am showing you the
surrounding area on the east side now of the
property. Again the picket fence is noted and
again the picket fence at the back of the property.
35 From the south, east and west side of the property

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a picket fence and part in the front also, except
for the opening for the driveway. Again showing
the south side of the residence and the area
5 between the picket fence and the house on the east
side. Now we'll view coming in through the
entrance of the residence here and we'll be looking
at the kitchen area. Now the window that we see
here and the counter is the window here and the
10 counter which is on the west side. I'm panning
towards the living room area - we have an archway,
living room, and then we have the staircase to the
right, the same opening that we see here, and the
staircase. Now I'm looking at the back entrance
15 again, now panning along the west wall showing the
counter once again - the same counter that we see
here along the west wall. You will note on the
counter when you turn right here you see stacks of
quarters, rolled quarters. There will be a close-
20 up of that. You will see here. There was eighteen
rolls of quarters neatly stacked on top of the
counter. Now panning from that area to the left -
excuse me, to the right, you will note a door here.
This is the side entrance that we see here on the
25 west side and we can see the archway to the living
room area. We have here a plastic bag with
material inside the bag. Now I'm still in the
kitchen, the same archway to the living room. You
will note the staircase. I'm panning from left to
30 right showing you - you will note here we have an
archway. This is a pantry and also a door that
leads to the basement. This would be located in
this area here just below the steps from the
kitchen area - this opening here. I'm showing you
35

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the inside of the pantry and you will note to your left here there is a trap door that's open, and I'm giving you a view of the basement showing the steps leading down to the basement floor. You will note that the basement is full of water. Now from the pantry I will go inside the storage area right here. The door is immediately to the left - excuse me, to the right in the video. You will note that everything is in order, nothing appears out of place and inside the storage area now showing you the contents. You will note a freezer right against the wall. I'm panning from the door of the storage area to the right for the laundry. I'm panning to this area now. You just noted the stove and then you have an entrance to the laundry area. You will note a washer - excuse me, a dryer and I'm showing you the debris on the floor. Now I'm inside the laundry area showing you a view of the dryer and the debris on the floor. Now I'll be panning along this wall here, the east wall, showing you the dryer and the washer. This is the area, the corner right here showing you damages to the ceiling - washer and dryer, the hamper and a mat with three pairs of sneakers. Now I'm outside the laundry area now. I'm standing in this area here. That was a close-up of that item on the floor here. Panning to the right now to a corner in the kitchen area. This would be the corner right here which would be the south-east corner of the residence. Looking towards the ceiling you will note the charred wood along the top here in the ceiling area and a lot of water dripping from the second floor. You will note that there is burning from the floor up to the ceiling. We are

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now looking at the debris on the floor. I'm
panning from this corner towards the back entrance
again. You will note the fridge in the middle of
5 the floor. Again you will note the counter and you
will note the flower pot hanging just at the edge
of the staircase. The same flower pot - I am now
panning up the staircase leading to the second
floor. I'm panning now to an area around the
10 bannister, this area right here - you will see a
close-up in a sec - showing you some red staining
which appeared to me to be blood again. Now I'm
panning from the bannister down to the wall along
the staircase. Again we have some staining - some
15 transfer stain, reddish in colour, again which
appeared to be blood. Now panning over to the
stair itself, panning down to the bottom of the
staircase and the same staircase depicted on the
middle plan drawing. This is the area I'm panning
20 to now. You will note some pantyhose and you will
note that there's some knots in the pantyhose.
This is located on the fourth step from the bottom.
Again you can see the pantyhose. I'm panning down
to a piece of clothing that's over two steps. This
25 is a pair of blue jeans that's turned inside-out
and you will note some red staining also on the
jeans, again which appeared to be blood. Panning
down to the bottom of the stairs we have another
blue piece of clothing which is a blue jean jacket
30 at the bottom of the stairs. Now I'm panning
towards the living room area. This is the area
here that we are going to be looking at. We have a
couch on the north wall and window, two little
tables and a lamp on the other side; coffee table,
35 the same as depicted on the plan drawing, between

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the little table, couch, coffee table. Now looking
at the east wall we have a chair, then we have a
cabinet on the south wall - as we see here, a chair
5 and a cabinet. Now again I'm panning through the
archway leading to the staircase and kitchen. The
chair that we see here at the entrance to the
living room is the chair that is depicted here on
the plan drawing. The coffee table - you will note
10 that everything is neatly in its place. Now
panning to the north-east corner of the residence
which is another storage room - this room here
that's lit up from the outside light. Now I'm
inside this particular storage room, showing you
15 the contents. You will note that there's a closet
which is spotted here on the plan drawing. Panning
down to the floor area. You will note everything
appears to be in its place in this room also. Now
I'm back inside the living room area showing the
20 same entrance to the storage room, panning along
the east wall of the living room and now back into
the archway and now showing you the staircase
leading to the second floor. Now we have completed
the first floor and we'll now be going up the
25 staircase. I'm showing you the top of the
staircase. You will note a cabinet, just the top
of it along here. Now I'm at the top, the second
floor now, showing you the staircase and the same
cabinet. If you look at the plan drawing here,
30 this is the cabinet I'm talking about here. You
will note on the floor to the left of the cabinet
the jewellery box and there's also a purse which we
can't see too well. Now I'm panning to the right
here to a bedroom at the south-east corner of the

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residence. Now this is the bedroom we are going to
be looking at right here. I was advised at that
time that this was the bedroom of Linda Daughney,
5 the back bedroom. You will note considerable
damage to the door. What we see here is the box
spring and mattress as depicted here on the plan
drawing. It's a fairly small room; there's only a
couple of feet between the wall and the bed on the
10 east side. Now we're looking along the east wall
here and the front of the mattress and we can just
barely see the door to your left. Again
considerable amount of damage to the room. You can
see here the headboard and a window. Now that
15 would be the window here on the south side. I'm
panning from the window to the right and you will
see the remains of a closet. You can see a wall
here and here. This in here was a closet, and this
is the closet that we see here in Linda's bedroom.
20 A dresser along the wall here. I'm panning to the
ceiling area, again showing the damages sustained
by fire. A different view of the same closet from
the ceiling down, and you will note that you can
see through the floor and you can see the wall
25 paper in the kitchen area. There's actually a hole
burnt through the floor to the kitchen area. Now
starting from the top to bottom along the edge of
the bed and the dresser. You will note a
considerable amount of debris. Now I'm back in the
30 hallway, this area here, and I'm panning from
Linda's room to the right towards the bathroom
which would be this area of the residence at the
back on the south side. You will note the
bannister, the staircase and the entrance to the
35 washroom, the bathtub, the toilet and I'm panning

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along the back wall, the south wall. You will note
the sink and you can just barely see the window at
the top of the sink. Again a different view
5 showing the east wall in the bathroom, a shelf for
linen and again the door to the bathroom. Panning
now to the floor area, again very little out of
place in this room. Now I'm back along the
staircase, the bannister - we also have the
10 bathroom - I'm panning from left to right. You
will note two dressers on either side of the
window. These are the same two dressers that we
see here on either side of the window. Now we are
looking along the west wall and you will note now
15 to the right we have an archway. That's the
archway to this bedroom here at the front of the
residence. There's a big piece of furniture that's
been sort of dropped to one side. I'm actually
inside the bedroom now, showing the dresser tilted
20 to its side and you'll see a box spring and
mattress. The window that we see along here is on
the north side of the residence which would be the
window that we see here on the third plan, on the
north side. I am showing you the floor area. You
25 will see the dots on the floor here where the
cabinet was standing up during the fire. Now
panning from this bedroom to the right to another
bedroom which now is Donna's bedroom at the north-
east corner of the residence, actually on the north
30 side. I'm panning from the floor area now - you
can see the bannister at the top of the stairs and
the archway and doorway to Donna's bedroom. You
will note the box spring, mattress inside the
bedroom and a different view of the bedroom from

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the outside, you will note a dresser and a big pile
of clothing on the floor. Now panning to an area
on the floor, this area here showing a watch. Back
5 from that area I'm panning in upwards towards the
pile of clothing. Now this would be in this area
right here as you enter the bedroom. The dresser
that we see here along the west wall is the dresser
that we see here. You will note that the dresser
10 drawer was open and that's the way it was found.
You will note that the top drawer was a drawer for
lingerie or under garments; showing the top of the
dresser. Now panning from left to right, again you
will note the dresser and the drawer - top drawer
15 open, and panning to area here you can just barely
see the door to the closet area which is behind
this little table here. Again we have a little
night table and we have some under garments
sticking out of the drawer. And now panning
20 towards the closet area which is at the north-west
corner of the residence, this closet here. The
video doesn't show it; there is structural damage
in this closet as you will note also on the
ceiling. Back down to the small night table -
25 again the same night table and the door and closet.
You can just barely see the window at the top of
the screen here, which is the front window on the
north side. Again you can see the window; now you
see the headboard and the mattress. You will note
30 some staining in this area here which was believed
to be blood, and also on the pillow case. What we
see here is a pillow case with staining on its
surface; nylon stockings; a large red stain. Now
here we have three pairs of panties, you have pink

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coloured ones, red coloured ones with some staining, red
in colour which appeared to be blood and I believe this
is another pink coloured pair of panties, all on the top
5 of the mattress. Now I'm panning to an area between the
front of the mattress and you will note that there is a
little cedar chest, and I'm looking at the wall. This
area is right here.

THE COURT: Sorry - again?

10 A. Right here My Lord between the mattress and the cedar
chest. What we saw was another stain on the wall which
appeared to be blood; and I'm panning to an area on the
floor - the video doesn't show it too well but there is
a contour - something that was on the floor during the
15 fire - the photograph will show it much better. This is
the area where Linda was found and Donna was found on the
mattress - the box spring mattress in this bedroom also.
Again the same area between the bed where Linda was found
on the floor, the cedar chest along the south wall of the
20 bedroom and the door, which is in the closed position.
Again on the wall we have some stains, red in colour
which appear to be blood and you can see barely the
outline of soot that was - looks like it was touched,
removed from the surface, in this area right near the
25 door. I'm panning to a dresser along the south wall,
right of the door. Now the contents on the top of the
dresser, you will note a pair of glasses. Panning down
to the large pile of clothing - same pile of clothing,
now the door to the bedroom is now open and I am now
30 panning outside the door. You will note the ceiling and
jewellery box and purse on the floor at the top of the
stairs. Again the jewellery box and its contents on the
floor. Now I'm looking straight down the staircase. You
can see part of the front door and the archway to the
35 kitchen area. You will note that it is now 10.33 a.m.

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and we're on the 15th of October 1989. I am now panning
towards the back entrance along the west wall. This
concludes the video My Lord.

5 THE COURT: Thank you very much. Now I think we will take a
recess. The jury might take with them to the jury
room those plans. They may want to go over them
during the recess. There were some items put in as
10 exhibits yesterday afternoon which the jury hasn't
had a chance to examine yet - the glasses, the
order forms and there were two photographs.
Normally we would pass that among the jury. I
don't want you to take an item like the glasses to
the jury room but at some time later today we will
15 give you an opportunity to examine those exhibits.

(Jury retires)

(Recess)

Jury polled - all present

THE COURT: Mr. Allman?

20 MR. ALLMAN:

Q. Cpl. Godin, in the case of the Flam residence you took a
number of aerial photographs. Did you have occasion to
do the same with respect to the Daughneys?

A. I have.

25 MR. ALLMAN: I understand there is no objection to these going
in as exhibits. Could you give me one set to put
in as exhibits? These are numbered D-1 to D-8.
That's the police numbering.

THE COURT: P-32. 1 to 8. Mr. Allman could you have one of
30 your colleagues perhaps number---

MR. ALLMAN: I am going to give six sets to the jury. I hope
I'm going to give six sets.

THE COURT: We'd like them marked.

(Series of photos - 1 to 8 - marked Exhibit P-32)

35

17

Cpl. Godin - direct

MR. ALLMAN:

Q. I show you now aerial photographs P-32, 1 to 8 - 1
through 8 in other words - which I understand are marked
5 by you for your purposes, D-1. Can you look at each one
giving us the exhibit number and your number and then
explain to us what they show?

A. Yes My Lord, starting at Exhibit 32-1 which is identified
as D-1 on the front top right hand corner, we have here
10 an aerial photograph of the town of - part of the town of
Newcastle, county of Northumberland, New Brunswick. If
you look on the left side you will see a body of water.
This is the Miramichi River, and also you will note the
end of the bridge, the Morrisey bridge that crosses the
15 Miramichi from Chatham Head to Newcastle. As you come
across the bridge the street that you see from the bridge
down into the centre of town is called Jane Street. If
you follow Jane and you come to the first intersection
which is in this area here My Lord, this would be the
20 intersection of Jane and Mitchell. Now if you were to
turn left on Mitchell in a westerly direction - now we're
looking west - if you follow Mitchell you will see a
curve to the right slightly and then you can go right
down to the end of the street.

25 Q. Let me just stop you there for a moment. Mitchell you
say curves to the right?

A. That's right.

Q. What would happen if you turned to the left?

A. If you turn to the left you will note that there is a V
30 and there is a gravel road that goes along the railroad
track to the left of Mitchell.

Q. Mitchell Street and the dirt road enclose two sides of a
triangular area of land?

28

Cpl. Godin - direct

- A. That is correct. Now if we stay on the paved portion and then we curve slightly to the right we come to the end of Mitchell and you will note that the street continues to the right. Now this would be Davidson. Now right at the corner now if you look to the left, the last house on your left at the end of Mitchell you will see a residence there with a black shingled roof. That there is 136 Mitchell the residence of Linda and Donna Daughney.
- 5
- Q. I believe the jury can probably see what you are pointing to, but just - because that's such a long shot - do you want to get up and come down here and get good and close to the jury so they can see where your finger is pointing to and then point it out?
- 10
- A. As previously mentioned as you follow the street, Jane Street, to the first intersection, you turn left in a westerly direction and you will note that the street sort of curves to the right but there is also a gravel road that goes to the left here. This is the triangular shape that we mentioned by Mr. Allman. As you come to the end of the street, and the house on the left-hand side, the last house on the left you will see a black roof and that's the roof to the residence of the Daughneys at 136 Mitchell.
- 15
- 20
- Q. Do you want to show the Judge too?
- 25
- THE COURT: I see.
- MR. ALLMAN: Defence counsel to point it out.
- Q. And if you look at the aerial - just do the same thing with the aerial - what would you - you can see the bridge or the bottom, the last bit of the bridge.
- 30
- A. There is the Morrisey bridge going into the town of Newcastle. Here we have Chatham Head. As you cross the river, the Miramichi River the first intersection you

29

Cpl. Godin - direct

come to is the intersection of Jane and Mitchell. If you turn left you come down to 136 Mitchell in this area right here.

5 Q. Thank you very much Cpl. Anything else of any significance on D-1?

A. I can probably point out the wood mill or the saw mill you can see just above Jane Street. You can see the lot here. I'll be referring to this lot as a point of
10 reference for the other aerial photographs.

THE COURT: I'm sorry, I didn't---

A. The wood mill you see here. I'll be pointing out to this wood mill for a point of reference with other aerial photographs. Now looking at aerial photograph 32-2,
15 identified as D-2, top right corner, we are now directly over the area previously mentioned in D-1. If you start to the left of the aerial photograph you will note the start of the triangle - you will note that the bottom street is paved and then you will note a gravel road sort
20 of making a triangle in this area here. Now the street that we see here that is paved, that is Mitchell and you will note that when you come to the end of Mitchell which joins with Davidson, you will note the residence on the south side or left - on the left side you will note the
25 blue/white with a black roof residence, the same one as depicted in the video. That is 136 Mitchell, the residence of Linda and Donna Daughney. You will note in the back yard, the white shed and you will also note the debris or the boxes of siding just next to the white
30 shed; and again you will note the body of water which is part of the Miramichi and also the wood mill.

MR. ALLMAN: Does the jury want the officer to come over and point those more closely - I guess the answer is no. I think they can all see where they are on
35 that one. Okay.

30

Cpl. Godin - direct

A. Exhibit 32-3, identified as D-3 in the top right corner. Another view of Mitchell from a different angle. Here we're looking directly in a westerly direction. Again

5 you will note the triangle previously mentioned, with Mitchell Street which starts at the bottom centre, goes up towards the centre and you will note at the bottom that there is a fork in the road - gravel road going towards the left, so you have a triangular shape. You

10 come to the end of Mitchell again, which joins with Davidson. You will note that the last house on the left - you will note that it is blue in colour with a black roof; again that's 136 Mitchell.

Q. That's a rather high-up picture, so again just in case

15 could you go close to the jury and point to the house that you are talking about?

A. Again, Mitchell starts from the bottom of the photograph going towards the centre. We have here a gravel road that forks to the left and this is the triangle

20 previously mentioned. You go to the last residence on your left on Mitchell, the south side, which will be 136 Mitchell, the residence of Linda and Donney Daughney. That would be D-3.

MR. ALLMAN: Does Your Lordship want---

25 THE COURT: I have it.

MR. ALLMAN: Fine. There seems to be some problem My Lord. I don't think the witness should be talking---

THE COURT: I don't think we should have a conversation between the witness and the jury. What was the---

30 A. I believe there are some pictures that are numbered differently, like two and three are numbered differently, but it is the same angle of view. This is the one that I have here Your Honour, D-3.

31

THE COURT: Yes, well would you hold that picture up - wait now, that's D-3. That's not the one I have for D3.

MR. ALLMAN: They may have gotten mixed up in transfers from D numbers to P numbers.

5 THE WITNESS: This is D-4 here.

MR. ALLMAN: Not on mine. That's D-3 on ours.

THE COURT: D-3 and D-4 seem to have got transposed.

MR. ALLMAN: Yes. So we're talking now about the picture you are looking at - I think the witness is changing the numbers on his My Lord, so it will reflect it.

10

THE COURT: Are those the originals?

MR. ALLMAN: Yes.

THE WITNESS: This would be D-3, similar to yours Your Honour?

THE COURT: But you were talking about D-4. Why don't you finish with that?

15

A. The last aerial photograph I was explaining would be D-4.

THE COURT: Do you want to show that up close?

MR. ALLMAN: Show it to the jury and make sure that everybody----

20 THE COURT: Just point to the house.

A. Again, as previously mentioned from the bottom centre you work your way up to the centre of the photograph which is Mitchell Avenue looking westerly and if you look at the last residence on your left you will note a residence blue in colour with a black roof and you will also note a white shed at the back of the residence. This would be 136 Mitchell.

25

THE COURT: Does that correspond to D-4 on all your pictures?

JUROR: My Lord some of these numbers are correct. There's just a couple of them wrong. With your permission we will change the numbers.

30

THE COURT: Yes, those copies you can change them as you go along.

32

MR. ALLMAN: I'm just wondering maybe whether we should break and give the witness the opportunity to check and make sure that all the numbers are correct.

THE COURT: I think we better do that because we seem to be--

5 MR. ALLMAN: Yes, there seems to have been a mix-up and if we try and do it right here and right now it might make it worse.

THE COURT: Would the jury mind putting their copies on the front rail there and leaving them. We'll take the jury out and call you back in about five minutes and we'll get these checked in the meantime.

(Jury retires)

(Jury returns - polled -all present)

THE COURT: Mr. Allman?

15 MR. ALLMAN:

Q. Cpl. Godin, just for the benefit of the jury - you took the chance while they were away to check out and I gathered the problem was that your No.3 is their No.4 and their No.4 was your No.3. They got switched in the copies.

A. That's correct.

Q. I am going therefore to ask you to go briefly again through what we have already been through, just to avoid any possible confusion. I don't know that you need to go into quite as much detail but let's start with D-1.

25 THE COURT: Well I think we've got 1 and 2.

MR. ALLMAN: No.1 and 2, yes. Perhaps 1 and 2 we don't need to.

Q. Could we go over again - you changed the numbers on the jury copies?

30 A. Yes.

Q. Well let's look at D-3 and let's make sure the D-3 with the jury is your D-3. Okay. Can you tell us on D-3 what we see?

A. On D-3 My Lord, again we are looking in a westerly direction. You look at the paved street at the bottom,

35

Cpl. Godin - direct

5 centre of the aerial photograph and going towards to the
centre curving slightly to the right is Mitchell Street
which joins with Davidson at the top in the curve. You
will also note at the bottom a gravel road that leaves
Mitchell Street to the left and sort of forms a triangle.
Now if we take Mitchell right to the end you will note
that the last residence on your left, which would be the
south side of Mitchell, you will note a blue residence
with a black top and a white shed at the rear. This is
10 136 Mitchell, the residence of Linda and Donna Daughney.

Q. And over to the left is the building or the---

A. The wood mill - the saw mill.

Q. That you have been using as a point of reference?

15 A. That's right.

Q. Okay, D-4 - your D-4 - let's make sure that your D-4 is
the the jury's D-4. Take us again to D-4.

A. Again D-4 - we look at the top of the photograph. We
have the body of water which is the Miramichi River.
20 Across the river is Nelson Miramichi. Again you just
barely see the bridge at the left centre - the start of
the bridge and the start of Jane Street. Again if you
come to your first intersection off Jane you will have
the intersection of Jane and Mitchell. Again if you
25 follow the road you will come to the end of Mitchell in
this area here and again you will note on the south side
of the street the blue and white residence with a black
top - can you note it at the end of Mitchell on the south
side?

30 MR. ALLMAN: I see the jury all nodding so I take it they are
all able to locate that.

A. And again the wood mill can be seen just to the top of
that. And aerial photograph 32-5 identified as D-5---

Q. Let's - every time show it to the jury just to make sure
35 their D number is your D number.

34

Cpl. Godin - direct

- A. D-5 at the top right corner. Here we have a view looking in a south-east direction. If you look at the body of water and you follow it to the left and it curves, you will note another bridge across the river in this area here at the top of the photograph. This is the Centennial bridge that crosses the Miramichi from Douglastown to Chatham, right at the top of the photograph.
- 5
- Q. Just stop there for a moment. Effectively then that photograph depicts basically the course of the river that we can also see on the aerial photograph up to the Centennial bridge?
- A. That's correct. That would be around this area here with the helicopter looking in this direction. The bridge that we see here that crosses the Miramichi, the Centennial bridge and the Morrisey is down here. D-5 depicts both bridges.
- 15
- Q. Thank you.
- A. Again if we can use the Morrisey bridge, as you note as we crossed the river you follow Jane Street for the first intersection and then you follow it to the right and it bends towards the centre of the photograph. Along Mitchell Avenue again, if you come to the end of Mitchell you will note the blue and white with black roof residence, 136 Mitchell - in this area here.
- 20
- Q. I don't know if the jury would like you to come close and point that one out to them. Maybe you should, just in case.
- A. Again if we start with the Morrisey Bridge, at the end of the bridge we have Jane Street and we come to the first intersection which is the intersection of Jane and Mitchell, if you follow it down slightly towards the centre you come to the end of Mitchell. Again if you note just to the south of Mitchell, that blue and white
- 25
- 30
- 35

Cpl. Godin - direct

building with the black roof. Shall I point it to you My Lord?

THE COURT: No, thank you.

5 MR. ALLMAN: I take it if either His Lordship or Mr. Furlotte requires it pointed out they will indicate it I'm sure.

A. Exhibit P-32-6, identified as D-6 on the front top right corner---

10 Q. Which I gather is also the jury's D-6, yes?

A. Again the body of water at the top of the photograph, the Miramichi River. We will also note the Morrisey Bridge. Again as we follow the bridge down to Jane Street and come to the first intersection; you turn to your right, looking at the photograph, towards the centre of the photograph - you follow Mitchell and you come to the end of Mitchell where it joins with Davidson. Again you will note the same blue and white with black roof, residence, 136 Mitchell.

20 Q. And you can see the shed that you have indicated just behind the residence?

A. The white shed, yes.

Q. And again the lumber yard in the background?

A. Correct.

25 Q. I don't think it is necessary to go up to the jury and show them that.

A. Now we have the closer view, P-32-7, D-7, top right corner. Here it depicts the corner of Mitchell and Davidson quite clearly - paved road. You will note from the left towards the centre - you will note the gravel road that forms the triangle and the wood mill at the top. Now if we follow Mitchell from left towards centre and the last house on the south side, blue and white with the black roof and the white shed at the back, 136 Mitchell, the residence of Linda and Donna Daughney.

30

35

Cpl. Godin - direct

Q. Over to the right as you look at the picture - to the right of the residence there's what appears to be a black tarpaulin or something of that kind. What's that?

5 A. That is a tarp that was placed there by the fire department on the evening of the 14th of October 1989 to protect the scene until the morning until we got a closer look at it.

Q. Okay, anything else on D-7 or can we go on to D-8?

10 A. That's pretty well it My Lord.

THE COURT: One explanatory word I'd like there - the front door of the residence and the rear door as illustrated on the sketch P-30---

A. Yes?

15 Q. Would you indicate where they are on that?

A. There is no front door My Lord. There is a side door and a back door. The side door, if you note the driveway - the gravel driveway - to the right of the residence. Now the side door would be on that side of the residence.

20 Q. On the driveway side?

A. On the driveway side, yes, which would be the west side of the residence, and the back entrance is at the back of the residence.

Q. And the video showed no steps to the side entrance.

25 A. That is correct. But there is steps at the back of the residence.

Q. Well the one entrance that was effectively used then was the back entrance?

A. That is correct.

30 MR. ALLMAN:

Q. Go ahead please.

A. Exhibit 32-8 -- P-32-8 - D-8, top right-hand corner. Again a view of basically the same area looking in a south-west direction. At the bottom of the aerial photograph you will note the saw mill and then you will

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Cpl Godin - direct

note the gravel road from bottom centre going towards the right which joins with Mitchell. You will note also Jane Street to your left - to your right - again if you follow Jane Street to your first intersection it would be Mitchell; you would turn left on Mitchell and follow it down to the end and again I'm pointing out the blue and white residence with the black roof and a white shed at the back. Now we are looking at the south side and west side of the residence from this aerial photograph.

5 Q. And the door - what you I think called the back door with the steps, you can see the back door on that wall?

A. Yes it's in the white area to the right. It's sort of brownish in colour. That would be the rear entrance.

15 Q. Can you see the steps?

A. Yes the steps are - you will note that the steps are moved off from its position, the original position.

Q. I take it that would be in the course of (inaudible).

A. That's correct.

20 Q. It take it basically we are complete with the aerial photograph that you dealt with. Is that correct?

A. That's correct, yes.

Q. Besides aerial photographs did you have occasion to take two ordinary photographs?

25 A. I did.

Q. And what happened to those two - when are they going to be presented?

A. They have been placed in the booklet of photographs that will be introduced by Sgt. Chiasson.

30 Q. The majority of photographs in that booklet I gather are taken by Sgt. Chiasson?

A. That's correct.

Q. So when Sgt. Chiasson comes to explain his photographs he can indicate which of the two you took?

35 A. Yes he would.

38

Cpl. Godin - direct

Q. And the two you took you have seen them in that booklet?

A. I have.

Q. And do they accurately represent the scene that you
5 photographed?

A. They do.

MR. ALLMAN: Could I get this marked please for identification?

THE COURT: I don't believe the witness indicated what date he
took the aerial photographs.

10 MR. ALLMAN: I'm sorry My Lord, I thought he did.

THE COURT: Perhaps he did.

MR. ALLMAN: I thought he did. I'll check.

THE WITNESS: They were taken on the 17th of October 1989 at
approximately 12.30 in the afternoon.

15 Q. What date were the two photographs that are in Sgt.
Chiasson's booklet taken?

A. They were taken on the 14th of October 1989 at
approximately 1500 hours - three o'clock in the
afternoon.

20 Q. Cpl. Godin I show you now an item that has been marked
'0' for identification. Can you look at that and tell me
what you can about it, including any markings or anything
on it that mean something to you?

A. Yes My Lord, this is an earring that was recovered on the
25 14th day of October 1989 at approximately 1502 in the
driveway at 136 Mitchell, county of Gloucester, town of
Newcastle, New Brunswick in the area that we see here -
in this general area.

Q. You are talking now about P-28?

30 A. Yes.

Q. And on the plan P-28 which the jury has small copies of,
there's an X and next door to it the word - among other
markings the word 'earrings'?

A. Yes, but this one here, this particular earring here is
35 not the same as this one here.

39

Cpl. Godin - direct

Q. Okay, that's why I wanted to clarify that. The earring that you were talking about, where would that be found in relation to the X and the---

5 A. It would be just ahead of it in this area right here.

Q. When you say ahead, actually as you are pointing at the - you are pointing over towards the left of the X?

A. Yes, north of the X to the left, yes.

Q. Just so the jury are quite clear about that, the earring that you are talking about now is to the left of the X, not where the word 'earrings' appears to the right of the X?

A. That is correct.

Q. You can identify that by some---

15 A. Yes, I have put my initials JRG which stands for Joseph Ronald Gaudet and this is the earring that I seized at the scene and turned over to Cst. Greg Davis of the Newcastle R.C.M.P.

Q. Where and when did you turn it over to Cst. Greg Davis?

20 A. At that particular time - approximately 15.02, which is 3.02 in the afternoon of the 14th of October 1989.

MR. ALLMAN: Could I have this marked please?

(Small box marked P for identification)

Q. I show you now an envelope containing a small gold-coloured box that has been marked P for identification. What can you tell us about that including any markings on it that have meaning to you?

A. Could I open the container My Lord?

MR. ALLMAN: If you require to do that, yes please.

30 A. Yes My Lord this is the earring that I found and recovered again on the same date, the 14th day of October 1989, in the gravel driveway of the residence of Linda and Donna Daughney at 136 Mitchell. The earring was found where I have the X on Exhibit P-28. It was found
35 in a pool of blood. I can identify this piece of

40

Cpl. Godin - direct

evidence with my initials JRG on the back which stands for Joseph Ronald Gaudet and the item was turned over again to Cst. Davis of the Newcastle R.C.M.P.

5

Q. And that would be found - you said actually where the X is?

A. That is correct. This particular area was measured in relation to the house and shed.

10

THE COURT: The little round box, that's just something you have used for convenience to put it or did you find that there too?

15

A. No, that particular earring which is gold and heart-shaped was turned over to Cst. Davis and I believe he is the one that would have put it in the metal container and the bag.

THE COURT: But there was no box there when you found it - it wasn't in a box?

A. No My Lord.

20

MR. ALLMAN:

Q. How was it when you found it - I mean the heart-shaped earring you just described?

A. By itself under the blades of grass.

MR. ALLMAN: Could I have this marked please?

25

(Envelope and contents marked Q for identification)

Q. I show you now an envelope containing a blue object. The envelope has been marked Q for identification. What can you tell us about the contents of that envelope and any reference to any writing that has meaning to you?

30

A. Yes My Lord, this is a blue-coloured string with a knot in it. I can identify that by my initials JRG which stands Joseph Ronald Godin. This particular item was seized and recovered on the 15th day of October 1989 on the second floor fo the Daughney residence, the north-east corner bedroom. I will point with the laser here.

35

41

Cpl. Godin - direct

If we look at this one here which is the residence -
excuse me, the bedroom of Donna.

Q. You are pointing to P-29?

5 A. P-29, and I'll refer back to the video where I pointed out
a pile of clothing on the floor left of the entrance to
the bedroom in this area here - we had a big pile of
clothing. This is where this item was recovered.

10 Q. Just so we can get this on the record, you are looking at
P-29?

A. That's correct.

15 Q. You're looking at the room at the lower left-hand corner
as you look at P-29 and you are pointing to an area in
the almost central between cedar chest, dresser, the end
of the bed and the other dresser?

A. That is correct, this area here, under the pile of
clothing.

Q. And I think you said, but I'm just going to make sure,
when did you say you found that or that that was seized?

20 A. This was on the second day - the 15th day of October
1989. The item in questioned was seized and turned over
again to Cst. Davis.

Q. On the 15th?

A. On the 15th, yes.

25 MR. ALLMAN: Could I have one more item marked for identification?
(Envelope and contents marked R for identification)

30 Q. I show you an envelope and its contents that has been
marked R for identification. What can you tell me about
that including reference to any writing that has meaning
to you?

A. All I can say about this item My Lord is that it appears
to be similar to a piece of nylon material with a knot in
it that was found in Linda's bedroom at the back of the
residence, the south-east corner between the bed and the

Cpl. Godin - direct

dresser. If you remember looking at the video, this area was extensively damaged and there was a lot of debris, so on the 17th Sgt. Chiasson and myself we sifted through the debris with a screen and as we were sifting through the debris this is - appears to be what we have found, a piece of nylon material in a know, again in the area between the bed and the dresser in this area here.

5

Q. That's on P-29, the room depicted in the top left-hand corner and you pointing your laser up in the area as you said between the bed and the dresser on the right side?

10

A. That's correct.

Q. I say that because there is another dresser below the bed.

15

A. It's the one on the right-hand side.

Q. And what did you do after that had been obtained from the sifted rubble?

A. The item itself, I had to call Cst. Davis to the scene to turn the item over to him, which I did, on the 17th day of October 1989 at 136 Mitchell in Newcastle, to Cst. Davis.

20

Q. Why were you handing these items - after you found them why were you handing them over to Cst. Davis?

A. In this case here Cst. Davis was designated as exhibit man and all the exhibits seized at the scene outside and inside was turned over to him.

25

Q. The four items that you have just gone through and that you found and seized and handed over to the exhibit man, Cst. Davis, do they represent all the items that you found?

30

A. No, there was a considerable amount more of exhibits that was found.

Q. You did tell us but I have forgotten I'm afraid - how long you have been an identification officer?

35

A. I have been so employed since August of 1980.

43

Cst. Godin - direct

Q. So I take it you have attended a considerable number of scenes of crimes?

A. I have.

5 Q. From your experience, when you go looking at scenes of crimes how does it work in terms of the number of items that you find and seize in relation to the number of items that later on turn out to be of assistance?

A. Well when we first go to a scene it's the unknown.
10 Anything that we feel could be relevant to the scene we seize and in a lot of cases later on there's items that are put aside that are not relevant to the particular scene but once you go to the scene, a scene that has been protected since the time it was found, and we go through
15 the scene systematically and we seize anything that might be pertinent to the crime.

Q. Is that what happened in this case, that you seize everything and then you work through it?

A. That is correct.

20 Q. For example I just - I remember when you were showing the video, you showed a number of cigarette stubs?

A. Yes.

Q. Were they seized?

A. I am not sure. I believe they were. They weren't seized
25 by myself.

Q. Is that the sort of thing that might be seized?

A. Yes.

THE COURT: Just a word to the jury here. The police use this
- I was going to say ridiculous expression - I
30 think that's what it is - 'seized' - you know when you seize something you sort of conjure up a vision of somebody grabbing somebody and shaking them or seizing something and carrying it away. What they really mean is they pick it up and they take it.
35 There's nothing mysterious about the seizure. I've

Cpl. Godin - direct

often wondered - well I suppose they've got to use some word and common expression and that's the word they happen to use.

5 MR. ALLMAN:

Q. When you were showing the video you showed among other things, also depicted on the aerial photographs, the portion of the building which My Lord referred to a moment ago - I think you called it a back door---

10 A. This area here?

Q. Yes, and behind the back door on P-30 you've got the word 'porch'?

A. That's correct.

Q. And then going up from - on the pic - on the sketch from
15 the porch you've got another straight line which I take it represents the steps?

A. That's correct.

Q. What if any illumination, lighting fixture is there in the area of that door and that porch?

20 A. From what I recall of the scene I believe there's one light bulb - a bare light bulb with a socket on the outside just - I could be wrong here but I believe it was to the left of the doorway. There was a light bulb.

Q. Above, at the same level as the door, or what?

25 A. At about - I would say slightly above eye level, - five to six feet up from the porch.

Q. Did you make any observation about the condition of this fixture at the time?

30 A. At the request of one of the investigators I examined this particular light bulb for finger prints with the brush and powder method and the result of the examination was negative.

Q. You took the light bulb I gather, you just said for the purpose of fingerprinting?

35 A. That's correct.

Q. Where was the light bulb at the time you took it?

A. It was still in the socket.

Q. In what condition - if you can remember?

5 A. From what I can recall the reason we examined it, the light bulb had been turned off - turned counter clockwise slightly to prevent it from having contact and no electricity going to it.

10 Q. When you were saying that you were making a motion with your hands of a screwing or unscrewing motion.

A. Yeah, light bulbs are screwed in clockwise and to unscrew it you turn it counter clockwise, and this light bulb was turned counter clockwise and it was not making contact. There was no power going to it.

15 Q. You said it was a bare light bulb. From your observation could you tell us whether there would normally be a globe or a surround for the bulb?

20 A. I believe it was the type that there could have been a globe there that could have fitted over it but I'm not too sure at this time.

Q. I gather that when you looked at it there wasn't in fact a globe or glass surround around the light?

A. No, the bulb was bare.

25 THE COURT: Bare in the sense it was not frosted or - what do you mean by bare?

A. There was nothing covering it. There was no globe over the light bulb.

MR. ALLMAN:

Q. This is a light bulb that hangs down from the fixture?

30 A. That's correct.

Q. Or goes up?

A. It hangs down.

Q. So if it had a globe, you would have the light hanging down and the globe around the light?

35 A. That's correct.

46

Cpl. Godin - cross

MR. ALLMAN: That's the end of my direct examination of this witness My Lord. I notice it is twelve twenty-six.

THE COURT: Well I think we'll stop there and then we'll start the cross examination after lunch. You shouldn't discuss this aspect of your evidence with anybody.

5

2.00 p.m.

(Jury polled - all present)

THE COURT: Mr. Furlotte you were going to cross examine Cpl. Godin?

10

MR. FURLOTTE: Yes My Lord.

CROSS EXAMINATION BY MR. FURLOTTE

Q. I'll start off with one of your last questions on direct examination - your answers I should say. You mentioned the light bulb that was at the back entrance?

15

A. That's correct.

Q. And you said it was unscrewed, or somebody unscrewed it?

A. Somebody - it was unscrewed.

Q. It was unscrewed. You can't say somebody unscrewed it?

20

A. No.

Q. All you can say is---

A. But it was.

Q. ---that it was backed off a bit?

A. That's right.

25

Q. How much was it backed off?

A. Oh that I can't recall.

Q. You can't?

A. It was still in the socket but it was backed off slightly.

30

Q. And you removed it I assume for fingerprints?

A. At one point I did but I believe I did some dusting at first without touching it, but then when the areas that I did examine, if there was nothing there I would handle the bulb by that area first because I couldn't take it out without having to touch the light bulb. So I would

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47

Cpl. Godin - cross

dust an area first and make sure that there's no prints in that particular area, then unscrew it and finish dusting the remainder of the bulb, and it was negative.

5 Q. Did you dust it for fingerprints?

A. I did.

Q. And were there any fingerprints?

A. There was not.

10 Q. Did the light bulb work - was it a good light bulb - did you try it?

A. As far as I can recall we tried it and it didn't work.

Q. As far as you can recall?

A. Yes.

15 Q. How high would that light bulb have been - did you need a ladder to reach it? It looks - it looked from the video anyway that it seemed to be quite high over the door.

20 A. I can't remember the height of it. I'm sure I was able to reach it and turn - like take it off to examine it; but as to the height, I can't recall.

Q. You don't recall whether you used a ladder or a chair or something to stand on?

A. I can't recall using anything to take it off.

25 Q. Now I noticed that there was construction going on at the house, there was new siding being put on?

A. There was, yes.

Q. So could it be that the construction workers would have removed the globe?

A. That's very possible, yes.

30 Q. Is it possible that the light could have backed off from them hammering on the building?

A. I don't know.

Q. It's anybody's guess as to how - why the light was kind of backed out of the socket?

35 A. That's correct.

48

Cpl. Godin - cross

Q. You also mentioned that there was more exhibits found but these are the only ones that were put into evidence - at least that you are putting in?

5 A. That's correct, yes.

Q. How many other exhibits would you have picked up yourself?

A. Could be fifteen.

Q. Do you have any notes on you to say what you picked up?

10 A. Yes I do.

Q. Maybe you could tell the Court what exhibits they were?

A. One after the other?

Q. Yes.

A. Well first of all I can start with the outside My Lord.

15 THE COURT: If you want to follow your notes in doing it, you may, or you might not need them.

A. I have a pretty good idea what they were. While we did our first search of the premises outside on the evening of the 14th, the initial day of the call, personally I found near the pool of blood that we have in Exhibit P-20 28, the X that we have here and it is identified blood, an earring. In the circle of the red substance which appeared to be blood, several hairs were seized along with a piece of red fibre. That was seized and turned over to Cst. Davis.

25

MR. FURLOTTE:

Q. The red fibre, you mean a piece of clothing?

A. No, just a small little red fibre from what I can recall. It was seized. At the time, as previously mentioned, we didn't know if it was relevant or not, but it was seized. It was a small little piece of red fibre in the pool of the red substan. On the siding, the boxes of siding, I believe I seized five hairs in different places on the boxes of siding. That was seized, taken by myself and

30

Cpl. Godin - cross

5 turned over to Cst. Davis. I believe there was another hair seized, or picked up by myself, from one of the steps leading up to the porch. Again that hair was turned over to Cst. Davis; and apart from the other two earrings that's already into evidence that was pretty well it for the outside of the residence. Inside, as we go to the stairs leading up to the second floor, if you recall seeing a pair of jeans that was turned inside-out, there was one hair seized underneath the pair of jeans once the jeans was removed. If you recall the---

- 10 Q. You seized that hair?
- A. I seized that hair and that hair was turned over to Cst. Davis.
- 15 Q. But you didn't seize the jeans?
- A. I did not. They were seized but not by myself. They weren't handled by myself.
- Q. Any particular reason why you would seize the hair and not the jeans - pick up both at the same time?
- 20 A. Well there were certain items - as I mentioned previously we do things systematically - certain things were removed and then we searched the area with a fine-tooth comb, so once a particular exhibit was seized or removed then we have to get in on our hands and knees with powerful lights and look for minute physical evidence.
- 25 Q. When you took the video---
- A. Yes.
- Q. Had you seized items first, or which procedure do you follow? Take the video first and then look for items?
- 30 A. The only items that were seized, removed from the scene prior to any photographs or video taken, was the first earring, the exhibit that was introduced in court today around the---
- Q. The one where the X is or the---

50

Cpl Godin - cross

- A. That's right. The other one ahead of the X in this area here. I was initially called back to the scene by the dog man that was searching the scene, the perimeter, with his dog and this was I believe around 14.52 - 2.52 in the afternoon that I got called to the scene. The items were shown to me. Once they were shown I photographed the item, the earring - the gold earring with the white insert - and then I removed it. This brings me again to - there was one thing I forgot that was seized also. There was three coins that was found near the earring. There was a quarter, a dime and a nickel I believe, right in the same vicinity as the first earring, so that's another exhibit that was seized in the same area as the first earring. That was seized and again turned over to Cst. Davis. Apart from those two exhibits, the coins and the earring, the scene was not disturbed from the time we arrived to the time we photographed and put it on video.
- Q. The whole scene was not disturbed?
- A. That's right.
- Q. Just to mention the two earrings that were found, were they a matching set, or---
- A. No they were not.
- Q. They were not. They had posts for pierced ears?
- A. Yes, there is two studs. There's posts at the back of them, yes.
- Q. Do you know whether or not one of the Daughney sisters had ears pierced for more than one earring on each ear?
- A. That I don't know.
- Q. Okay, is there anything else you seized there?
- A. Now we are inside the residence. As I mentioned there was hair found underneath the pair of jeans; one found under the pantyhose on the fourth step. I don't know if you recall, there was pantyhose with a knot in it on the

Cpl. Godin - cross

fourth step. There was one hair seized there. On the -
I believe the eighth step, the last one before the top of
the staircase, there was a piece of what looked to be a
5 rope or it could have been a lace, blue in colour. That
was seized. Near the bannister - if you recall the
video, on the bottom part of the bannister there was a
smeared red substance which appeared to be blood. In
that particular area there was another hair seized.
10 There was a piece of carpet from the staircase - I forget
exactly where on the staircase - leading up to the second
floor. There was staining on one of the stairs and that
was cut out. Again it was turned over to Cst. Davis.
The smeared blood that you saw on the wall to your left
15 going up the stairs, that was cut out. If I remember
correctly that was wall paper and that was cut out and
seized. Now upstairs in the pile of clothing in Donna's
bedroom at the north-east corner of the residence on the
top floor, in this area here, if you remember we had a
20 big pile of clothing to the left as you went in, apart
from the one exhibit that has been introduced already in
evidence, the blue cord, there was one hair recovered on
a bra inside the pile of clothing and I believe there was
one more hair found on a dish cloth, again inside the
25 pile fo clothing. There was three pillow cases removed
and turned over to Cst. Davis. I believe there was two
on the box spring and mattress - again we are talking
about the same bedroom. On top of the box spring and
mattress there was two pillow cases that again had a red
30 substance on them which appeared to be blood. That was
seized. There was one at the foot of the bed on the
floor that was also seized. The three pair of panties on
the top of the box spring mattress, they were also seized
and turned over to Cst. Davis. I believe if we look at
35 the dresser right at your left - or right at the door,

52

Cpl. Godin - cross

right there, - in the video you will note that there's a dolly and a pair of glasses and next to the pair of glasses there's a bra. If I remember correctly the bra had been seized and the reason for it being seized at the time, I believe there was a red stain on the bra and that was seized.

- 5 Q. Did you seize the glasses that were on the dresser?
A. Personally, no I did not.
- 10 Q. Do you know whether or not they were seized?
A. That I don't know.
- Q. How about the - I believe you mentioned there was a jewellery box on the table at the head of the stairs?
A. Yes. In the area - you have the staircase here and when you are at the top of the staircase there was a jewellery box. The contents and the box was around this area here.
- 15 Q. Was that seized?
A. Not by myself.
- Q. Just to mention the clothes you found, a pair of jeans and I believe it was a blue blouse at the bottom?
A. From my recollection it looked like a blue jean jacket.
- 20 Q. A blue jean jacket?
A. Yes.
- Q. Now this video that you took, and you saw those clothes, that was after the fire was out?
A. That's correct.
- Q. After the bodies were removed?
A. That's correct.
- Q. So there's no way of telling when those clothes were put on the steps. They could have been washed down with the water that was being used by firemen?
A. Very possible.
- 30 Q. Could have been kicked down by a firemen or the police carrying the bodies out?
A. It could have.
- 35

53

Cpl. Godin - cross

Q. So you don't know how these clothes---

A. I do not know.

Q. So you have no knowledge as to how much things were
5 disturbed in the house before you took the video?

A. That's correct.

Q. I noticed on the video there was another pair of glasses
sitting on the coffee table, down stairs?

A. Yes.

10 Q. There was one pair of glasses upstairs in the bedroom?

A. There was.

Q. And there was one pair of glasses downstairs on the
coffee table?

A. Yes.

15 Q. Were those glasses seized?

A. That I don't know off hand.

Q. I also noticed that when you were taking the video that
you mentioned there was a prescription lens out around
the driveway?

20 A. There was.

Q. That would have been somewhere close to the earrings that
were found?

A. We had the earrings and the blood - or what appeared to
be blood - and then we had the other earring around this
25 area here and just at the last part of the driveway, I
would say in this area here, - again we are looking at P-
28 - on the right-hand side of the driveway, at the end
of the driveway in this area here, the lens - that's where
it was found, the broken lens. So the distance would
probably - the second earring was probably found about
30 three feet away from this area, and probably another
three or four feet the lens was found.

Q. Did you seize that broken lens?

A. No I did not.

35 Q. Could we have a look at that lens again on the video?

54

Cpl. Godin - cross

A. We could, yes.

THE COURT: Is it going to be an exhibit later?

MR. FURLOTTE: It's an exhibit now My Lord.

5 THE COURT: Pardon?

MR. FURLOTTE: The video is an exhibit now.

THE COURT: I mean the lens itself.

MR. FURLOTTE: I expect it will be, yes.

THE WITNESS: It will take a few seconds to find the exact point.

10 THE COURT: Okay. Can you stop it on the lens?

A. Yes.

MR. FURLOTTE:

Q. Maybe just to mention the lens - you didn't seize the lens yourself?

15 A. I did not.

Q. Aside from taking this picture with the video, did you get down and inspect it like you did the - or anything like you did the earrings?

A. I saw it there. It was picked up and seized and taken by
20 Cst. Davis, but it wasn't---

Q. It wasn't you?

A. It wasn't me. I presume it was Sgt. Chiasson but I'm not sure, that would have turned it over to Cst. Davis.

Q. Was there only the one lens in the area?

25 A. From what I can recall there was a broken lens and there was other pieces next to it.

Q. A broken lens and other pieces next to it?

A. Yes, consistent to belonging to the one lens - the smaller pieces.

30 Q. Now you mentioned at the top of the stairs there was the jewellery box and the purse?

A. Yes.

Q. And was there jewellery in the jewellery box?

A. There was some jewellery if I remember correctly, yes.

35 Q. And there was money in the jewellery box?

55

Cpl. Godin - cross

A. That I can't recall.

Q. Now the dresser drawers that you found open that there was lingerie and undergarments in, were the drawers open whenever you took the pictures or---

5

A. Which one are we talking about now, which room?

Q. In Donna's room?

A. Looking at P-29, the dresser that we see here on the west wall, the way we found the scene as shown on the video would be top drawer is open, and it's a lingerie drawer and I know it is not shown on the plan drawing, there is a small little night table. The reason we did not - I did not measure it, because that night table had been moved by the firemen but that particular night table that was in front of the door to the closet, the drawer was open and I believe a slip that was sort of hanging from the drawer.

10

15

Q. Did you - when you were viewing the area did you notice any bicycle in the area - a 10-speed bicycle, something like---

20

A. Around 136 - no, I can't recall.

Q. You can't recall?

A. There was some mention about it from what I can recall - there was some mention about a bicycle being stolen.

25

Q. And found around the Daughney residence?

30

A. That I can't remember. I know I had to go and examine a vehicle, from what I can recall, - it was at the back of the residence. If you can recall the triangle, we have Mitchell and we have the gravel road where it veers off to the left. Right at the back there I was instructed to examine the outside surface of a vehicle parked in the driveway there.

Q. A vehicle?

35

A. Yes. And from what I can recall it had something to do with a bicycle but it's vague in my mind at this time.

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Cpl. Godin - cross

Q. Both the vehicle and the bicycle, or just---

A. No, I know I examined the vehicle but I can't remember -
it is vague as to why I had to examine the vehicle and it
5 was only the outside surface but it seems to me now that
you have mentioned a bicycle, it sort of---

Q. What kind of a vehicle was it?

A. That I can't recall.

Q. Was anything followed up on the vehicle, as to the owner
10 or---

MR. ALLMAN: If he's asking this witness if he followed anything
up I have no objection. If he is asking this
witness what other people did, I do object.

MR. ALLMAN: Well I'm not asking for hearsay evidence. I'll put
15 it this way -

Q. Cpl. Godin do you know whether or not that vehicle was
followed up in the police investigation?

A. That I don't know.

Q. Did you view the bodies at all?

20 A. Yes I did.

Q. So you were there before the bodies were removed?

A. No I was not.

Q. You didn't view the bodies while they were in the house?

A. No.

25 Q. So there's a lot of stuff in your - in your police report
there's a lot there that is hearsay evidence - that you
got the information from other police officers?

A. That is correct.

Q. Now the partial footwear impressions that were noted on
30 the surface of cardboard boxes, did you observe that
yourself or is that hearsay evidence?

A. I observed it. I saw it there. If you remember when I
was showing the video I was zooming in on a particular
area, I know you couldn't see it too well but there ws a
35 partial footwear impression on the box of siding, the

57

Cpl. Godin - cross

cardboard, but personally myself, that was my only involvement.

Q. That was your only involvement?

5 A. Yes.

Q. Now you mentioned in your report that there was very few areas that were not contaminated by smoke. Is that your own observation?

A. Could you repeat that again?

10 Q. Very few areas that were not contaminated by smoke?

A. Yes, in other words what I am saying here is that there was smoke damage throughout the house.

Q. And it says there was---

15 THE COURT: Just a minute Mr. Furlotte. I think you are misusing the notes. These notes - this presumably is a copy of the statement of this officer which was given to you by the Crown as a disclosure. This isn't in evidence and the jury doesn't know what this statement is. It will never be put in
20 evidence. You should use any information you get in that to ask questions if there is something in there that is mentioned; but please don't read from the statement and say it says here so and so. If there's information in that disclosure statement
25 that you want to ask a question about, you ask him the question but let's not refer to the statement. Do you understand the point I'm making?

MR. FURLOTTE: Yes I understand My Lord.

30 Q. Cpl. did you make patrol to the residence of Tom Morris on Pleasant Street with Sgt. Gatto?

A. Can you repeat that?

Q. Did you make patrol to the residence of Tom Morris on Pleasant Street?

35 A. I remember making a patrol on Pleasant Street but the name doesn't say anything to me right now.

58

Cpl. Godin - cross

Q. Okay,---

A. But I did make a patrol to a particular residence on---

Q. What was the purpose of that?

5 A. That particular visit was to do a video.

Q. To do a video?

A. Yes.

Q. Of where?

A. Of the funeral home across the road from that particular
10 residence.

Q. Okay. And that was it?

A. Yes.

Q. When did you do that?

A. I believe that would have been on---

15 Q. Maybe if I refresh your memory from the notes here----

A. I believe it's on the 17th.

Q. On the 17th of?

A. October 1989.

Q. And that was to make a video of the funeral home?

20 A. I was instructed video the funeral home for people who
were coming in and leaving the funeral home.

(Video shown of Daughney property)

Q. Is this the--

(Portion of conversation totally inaudible)

25 Q. What are those other things that were---

A. I believe that's pieces of fibreglass insulation.

Q. Was there any blood in that area also, or close to it?

A. Where the lens was seen?

Q. Yes?

30 A. Not in any great amount except for what we see here on P-
28.

Q. Where the X is?

A. Yes.

Q. That lens, as you said, would have been right around this
35 end of the driveway?

59

Cpl. Godin - cross

A. Around this area here, yes. I figure maybe ten feet away from the pool of blood approximately.

MR. FURLOTTE: I have no further questions of this witness.

5 THE COURT: Re-examination?

MR. ALLMAN: Just one question on re-examination My Lord

RE-DIRECT EXAMINATION BY MR. ALLMAN

Q. You said that you went to video people entering Adams Funeral Home. I assume the jury can figure this out for themselves, but that in connection with any particular funeral?

10

A. Yes it was the funeral of Linda and Donna Daughney.

Q. Apart from the glass that you were just dealing with at the very end there, was anything else of an optical nature found at that location?

15

A. No there wasn't.

MR. ALLMAN: Thank you.

THE COURT: Thank you very much Cpl. Godin, and you are stood aside until the next time. Another witness?

20 MR. ALLMAN: Sgt. Daniel Chiasson.

THE COURT: You have been sworn already Sgt. Chiasson?

A. That is correct My Lord.

DANIEL CHIASSON having been previously sworn testified as follows:

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DIRECT EXAMINATION BY MR. ALLMAN

Q. Just to refresh the jury's memory, you are also with the Identification Section of the R.C.M.P., and have been for a good many years?

30

A. Yes I have.

Q. And in connection with the Daughney matter with which we are now dealing, what part did you play? First of all as it relates to the photographs?

A. On the 14th of October 1989 I had occasion to patrol to 136 Mitchell in the town of Newcastle, county of Northumberland, province of New Brunswick, where I came into contact with Cpl. Godin, the previous witness, and as a result of that I took a series of photographs.

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40 Q. Do you have those photographs with you?

A. Yes.

60

Sgt. Chiasson - direct

MR. ALLMAN: Any objection to these going into evidence Mr. Furlotte?

MR. FURLOTTE: I have no objections.

5 MR. ALLMAN: I understand there's no objection to this going in as an exhibit My Lord.

THE COURT: P-33 would be the next one.

MR. ALLMAN: It's a collection of 79 photographs.

THE COURT: Are they numbered 1 to 79?

10 MR. ALLMAN: Yes.

THE COURT: So these will become P-33 - 1 to 79.

MR. ALLMAN:

Q. There are six copies?

A. That is correct, yes.

15 Q. I am showing you what has become P-33, a series of 79 photographs. Could you just go through them please and where it is appropriate to do so, cross reference to the plans that are in evidence?

20 A. Yes, first of all this booklet of 79 photographs was taken throughout the dates of the 14th, 15th and 16th of October 1989. They all pertain to the interior and the exterior and the property at 136 Mitchell Street, also known as the Daughney residence and there's two photographs in here that were - they were all taken by myself in the exception of two photographs which were taken by Cpl. Godin.

25 Q. You already indicated that to the jury and perhaps when you come to those particular two you could make a point of noting which they are.

30 A. To begin the booklet, photographs number 1 and number 2 - these are exterior photographs taken on Mitchell Street in a southerly direction and viewing the residence at 136 Mitchell Street, or the Daughney residence. In photograph number 1 you can see Mitchell Street running on the bottom of the photograph and you can also see that the blue residence just on the other side of the brown picket fence is 136 Mitchell Street. This is the north wall that we see, plus we see the driveway area just to the right of that residence. Photograph number 2, very much like photograph number 1, but a closer view of the north wall, or a south view of that residence. We can once again see the driveway, the house, and also we can see boxes of vinyl siding or construction type material at the foot of the driveway. In photograph number 2, if you draw your attention to the upstairs portion of the north wall you will see that there's a broken window on

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61

Sgt. Chiasson - direct
the left side of the photograph - the upstairs left
window.

Q. Could you just stick with photo 2 for one moment -
5 there's a point that My Lord may - half way down the side
wall, there's a window and what looks to be a door and
another window. Is that in fact what they are?

A. Are you referring to the west side of the drawing - on
the driveway side of the house?

10 Q. The driveway side of the house, right.

A. That's correct, yes, there is a window on the bottom
level, a door and another window just past that door.
But once again, photograph number 2, the broken window,
we will be referring to that as we go through the
15 photographs. Photograph number 3 has to be viewed in the
vertical position, up and down. This is a photograph of
the driveway area which we previously saw in photographs
1 and 2. I am now standing at the foot of the driveway;
the door that Mr. Allman referred to can be seen just at
20 the side of the west wall of the Daughney residence. The
two windows are there as well, and we can see perhaps all
of the construction material - boxes of cardboard and so
forth; the ladders which are used for the renovations on
the house. Photograph number 4, an exterior photograph
again of the property at 136 Mitchell. In this
25 photograph I've moved towards the rear of the dwelling
and I'm standing very close to the boxes of cardboard
that we saw in photograph number 2. In fact - pardon me,
in photograph number 3 - if you look at photograph 3 you
30 see a pink square there on the construction site
material. I'm standing right beside that to take
photograph number 4; and in photograph 4 you can see the
shed or the small storage area at the rear of the
property. You can see the rear steps that lead to the

62

Sgt. Chiasson - direct

back door and you can also see the rear back door or the aluminium door that's in an open position. Photograph number 5---

5 Q. Is that the light on the---

A. Pardon me My Lord?

Q. Is that the light on the floor?

A. That's correct. The globe is on the floor area of the back step there, and the step - the light is as you go past the door - on the wall you can see it above that. Photograph 5, 6, and 7 would be going completely around the exterior of the dwelling at 136 Mitchell. In photograph 5 I'm showing the west wall which Mr. Allman referred to as where the door and the two windows are. You can also see the south wall which is actually the rear of the dwelling. You see the back door - two back doors, an aluminium door which is open; the wooden door. You can see the steps that lead to the back door plus you can see the back of the house which as of yet has not been replaced by the new vinyl siding. Photograph number 6, I've gone to the other corner of the dwelling. You can still see that same back of the house, same south side of the house with the back door, the aluminium door, and now you see the east side of the dwelling with its one window.

25

Q. Can I just interrupt you for one second and ask you to go back to number 5 - if you look at the door, it doesn't matter the aluminium or the wooden door, what is the object up just above and to the left of the door?

30 A. Just above and to the left of the door would be the exterior rear light.

Q. And the globe that My Lord referred to, where is that on photo 5?

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- A. In fact on photograph 5 with the nice white contrast you can see it just sitting on the floor of the step which is near the corner of the house, which would be right here. If you look right down - right down in there on the step, there's a little lump there. That's the globe. Photograph number 6 shows the east side and the rear side once again plus the renovations that are being done to the house; and finally in photograph number 7, I'm back on Mitchell Street viewing the side, the north side that faces Mitchell Street and on this particular view you can still see the north side with the broken window upstairs and you can still see the east side where the window - and you can see the electrical outlet. The meter and so forth is on that particular side of the dwelling. Photograph number 8 and photograph number 9, these photographs you view in a vertical position, up and down, and photograph number 8, I've taken a photograph showing the rear entrance, the two doors - in fact the rear light you can see it above the door - and the step area. In photograph 9 I have zoomed in or depict the area on the ground just below that first step and the purpose of that, you can see the small scale in the photograph, was to show two areas of red stained soil which we believed at that time to be blood.
- 25 Q. That's on either side of the---
- A. The small grey scale that's present. That's correct, yes. And photograph number 10, once again an exterior photograph of the area. In this photograph I am depicting the construction material that we previously saw on the ground in photograph 1, 2, 3 and 4; and in this photograph if you look at the pile of cardboard boxes, you will see there's a small V-shape in the grass where the boxes sort of split. In photograph number 11 we're going to look at the cardboard boxes that are just

Sgt. Chlasson - direct

to the left of that V. In other words in photograph
number 10 there's a V right here where the boxes split.
To the left of that V, those first pile of boxes which
5 are the boxes we see in photograph 11. Now photograph 11
once again is a close-up photograph of the vinyl boxes
that we have just seen, but your attention here is drawn
to the top of the boxes. You see a small grey scale and
on top near the grey scale you see some red splattering
10 which we at that time believed to be blood. In the front
of the boxes where the flaps are you can see another
small grey scale in photograph 11 and also on that flap
there's some red staining which we believed to be blood.
In photograph number 12, another photograph taken of the
15 front of the cardboard vinyl boxes that we see in
photograph 11. You can see the grey scale we saw in
photograph 11 near the flap, but also in front of the
red-stained flap we have an area of grass which is also
soaked in blood. There's another scale on the ground
20 there as well. It is in this area here previously
referred to that coins and red fibres and hairs and backs
of earrings and so forth were removed. Photographs 13
and 14 were the photographs taken by the previous witness
Cpl. Godin. In photograph 13 that depicts the same area
25 in front of the cardboard boxes we see in photograph 12
but now in photograph 13 we have backed up a little bit
to another area and if you look in the centre of the
photograph in photograph 13 you can see another muddy
area through the grass and in that muddy area you can see
30 a small white line. That in fact is a cigarette butt and
just below that white line you see a circular item -
that's a coin. In that area between the coin, the
cigarette butt and the cardboard boxes the item we see in
photograph 14, which is a small stud earring, it was in
35 that area that it was found and there's a scale, Cpl.

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Godin's scale, we can see it in the photograph placed
beside the stud earring. Photograph number 15 is an
exterior photograph once again of the rear door, the rear
5 entrance to the dwelling at the Daughney residence or 136
Mitchell. It's the same door that we saw in photograph
number 8 - the same aluminium door I should say that we
saw in photograph number 8. The wooden in this case has
been opened. Now photographs 16, 17, 18, and 19 - you
10 are going to have to turn your books this way - put the
number on the lower right hand corner and you will be
viewing these photographs in a vertical position.
Photograph number 16 is a photograph or a close-up of the
inside handle of the aluminium door we just saw in
15 photograph number 15. Also in photograph 16 you have the
aluminium door handle but you also have the plastic plate
or catching device which is used to secure that door. In
photograph 16 we can see that that has been broken.
Something has happened to that piece of plastic. In fact
20 the piece of plastic which is usually between the two
screws is gone; it's missing. And if you look just below
to photograph 18 you can see what that piece of plastic
should look like if it weren't in a damaged condition;
and the photograph 18, that's the other aluminium door
25 which we previously saw in the photograph, you can see
that door is okay. The piece of plastic has not been
damaged. When you move to photograph 17 the aluminium
door handle is now pressed into that piece of plastic
that we saw in photograph 16 and as you can see there is
30 no more security; there is nothing there to hold that
door shut once that piece of plastic is removed. While
looking at photograph 19, with the piece of plastic
intact and unbroken you can see how secure the door would
be. It would clasp in fact just inside that plastic
35 groove.

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THE COURT: What is 18 and 19 of - what door is that?

A. The other aluminium door My Lord, in the same dwelling.

THE COURT: The back door?

5 A. The side door, which would be the west side. If you refer to photograph number 5, the door that we see My Lord on the west side of the dwelling, it's that aluminium door.

THE COURT: So 16 is the back door then?

10 A. Number 16 is the broken one on the back door. That's correct My Lord. And so is 17.

MR. ALLMAN:

Q. And I take it the purpose of these pictures is to contrast 16 and 17, the condition of the back door with
15 18 and 19, the condition of the side door?

A. That's correct, yes. To show one broken and one not broken. Photographs 21 and 23, you have to turn your books completely around this way that the number is on the upper left-hand corner - up here. Photograph number
20 20, and 21 for that matter shows the inside wooden door frame for the back wooden door that we saw in photograph number 8. In photograph number 8 we saw the wooden door that's behind the aluminium door. This is the same wooden frame for that particular door and in these
25 photographs you can see that the wooden frame is split completely. In fact the striker plate is even gone. In photograph number 20 the wood is at its maximum separation while in photograph 21 it has been put back in the proper position but you can still note the primary
30 fracture line coming right down the wooden door frame. Photograph 22, that is actually a photograph of the door knob mechanism of that same wooden door that belongs to the back door of the Daughney residence that we saw in the previous photograph. In 22 you can see that the

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plunger or the knob that comes out is jammed right inside the door and the door frame is cracked as well - the door frame of the door is cracked as well. This particular door is in a locked position and yet that plunger is jammed right inside the door.

5

Q. What does that do, a combination of all those pictures as it relates to the back door, in terms of somebody being able to go into the house?

10

A. It certainly would offer no resistance to enter through the rear entrance. Now photograph number 23 again viewed in a vertical position, up and down, I am now standing in the rear doorway just about ready to enter into the residence and when you enter from the rear doorway you enter into the kitchen area. These areas are seen on the video. In photograph number 23 you can see the kitchen area, the counter area, the chairs. Directly in front or in the background on the photograph 23 we have the archway that leads into the living room area. Then when you move to photograph 24 you see the same counter area just to the left of the chairs that we saw in photograph 23, the same cupboard, the same counter area, and in photograph 24 we can see the rolls of quarters, the eighteen rolls of rolled up quarters that we saw in the video. We see a kettle, coaster, cook books, a butcher block with knives in it and so forth. Photograph number 25 and photograph 26, again two photographs taken in the kitchen area - the same chairs, the back of the chairs we see in photograph 25 are the same backs of the chairs we saw in photograph 23; and on the bottom of 24, the same archway that goes into the living room area but in this photograph we can now see the only access to the upstairs and that is a set of stairs located right in the middle of the kitchen, or in the house area in fact. We see the kitchen table, or a table plus underneath the stairway we

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see a small opening that leads to a pantry or storage area, plus another room just to the right of that pantry or storage area where there's a storage room. And in 25 we can also see the corner of the stove. Therefore
5 photograph 26 is a close-up of that pantry or storage area that's underneath the stairway that we saw in photograph 25, and we see pots and pans and other items hanging up in there; plus if you look on the floor of the pantry area you can see there's a corner of what looks
10 like a square - that in fact is a trap door that leads into the basement area which is a dirt floor, unfinished type basement. Again to the right we see the door that we saw in phtograph 25 - that's to the right of the pantry area, and we can see a small storage area there
15 with a deep freeze and we can also see a small television and there's a trunk on the floor. Photograph number 27 - we're still in the kitchen area in photograph 27 and when you look at the photograph, the doorway you see to the left is the same doorway we just saw with the deep
20 freeze and the storage trunk in photograph 26; and now we see the full view of the stove and when you go by the stove there's another room in there and that's the laundry room. Now we are at the back of the dwelling, the south-east corner of the dwelling and if you look in
25 the doorway of photograph 27 you can see the corner of the clothes dryer, which when you come to photograph 28, which is viewed in a vertical position, you can see the clothes dryer plus you can see the corner and ceiling area of that room. This particular area has a great deal
30 of debris that has come down from above. As you can see, it is black and all the debris is on the floor and this is as a result of the fire. There is no burning in the kitchen area, just water damage but there has been burning above that which caused that debris to come down.
35 And photograph 29, it's the same photograph - taken of

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the same area I should say, in the laundry room. You can see the debris that's come down and the condition of the ceiling just above the window. In photograph number 30, I'm still in the kitchen area and the two doorways you see, first of all the doorway on the left is the doorway that we just came out of which was the laundry room. We have the refrigerator in the middle of the floor and now you can see the rear entrance we had previously come into with the aluminium door and the wooden door. The area behind the refrigerator, which you will see in photograph number 31, is the only area in this room that suffered any kind of burning and you can see the charcoal - alligator charred remains and this is as a result of the burning that occurred just above this kitchen area which is a bedroom identified to us at that time as Linda Daughney's bedroom. So the burning has come down from above and burnt down that wall. Now in 31 there is debris on the floor and photograph 32, and you view that vertically up and down, the debris has been cleared and removed so you can see the actually burning that went right into the wood. Same area, one is cleaned; one is not. Photograph 33, and you view that up and down with the number in the upper left-hand corner, is a photograph again in the kitchen area and this photograph is a photograph of the light switch which if you look at photograph number 30 you can see just beside the rear entrance, just beside the door. It's underneath the small mirror just to the right side of the photograph. This is a close-up of that light switch and it shows both light switches in the off position. Photograph number 34 and photograph 35, we've now turned around and we're standing in the archway that we saw when we looked at photograph number 25. If you look at photograph 25 you see the archway at the foot of the stairs that goes into

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the living room. In photograph number 34 I'm standing in
that archway and I'm looking into the living room. As we
saw in the video you can see chairs and couches and
5 coffee tables and lamps; and also at the back of that
photograph 34 you see another small doorway. This
doorway leads to a storage area and if you look at
photograph number 36 you can see that's a small storage
area that goes through that doorway in photograph 34.
10 Photograph 35 as you can see is just a view of the
remainder of that living room showing the same chair we
saw in photograph 34, the television, books and cabinet
and so forth. Photograph number 37 - I'm in the kitchen
area now and I'm still photographing the foot of the
15 stairway that we saw when we came in through the door in
photograph number 25. We saw the stairway going upstairs
with the items on the floor and on the stairway I'm
standing right beside that small table. In photograph 37
I'm photographing the floor while in photograph 38 I'm
20 kind of zooming in on an item that's noted on the floor
at the foot of the stairs in photograph number 37.
Photograph number 38 you can see it's a bluish type
jacket. Photograph 39, and that's to be viewed in the
vertical up and down position - this is a photograph of
25 some of the stairs that lead to the upstairs position.
In fact in photograph 39 it's a view of the first five
stairs and on the first, second and third stair there's
another blue item there and if you go just past that blue
item on the next stair there seems to be some brownish
30 items on the top of that stair. In photograph number 40
and in photograph number 41 I zoom in on these areas; and
in photograph 40 you can see it is a pair of denim type
jeans turned inside out and in photograph number 41 you
can see it's nylon stockings with - one has a knot in it
35 and the other one is just a piece of nylon.

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MR. ALLMAN:

Q. Just - that's hard to see. Maybe if you just get up a moment and point to the jury where the knot is in that nylon on 41.

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A. In fact it is right on the corner near the wooden area of the stair. Photograph 42, again---

THE COURT: 41 is - did you say two nylon stockings?

10

A. That's correct My Lord. One has a knot and one is just a piece of nylon.

MR. ALLMAN:

Q. There's long one with a knot in it on the extreme left and then up above that there's what look to be two separate little bits of nylon.

15

A. That's correct, yes.

THE COURT: Are they part of the same stocking? They're separate aren't they?

20

A. Yes they are. Photograph number 42 - photograph 42 now shows the complete stairway as it leads upstairs. The items we saw in 39, 40 and 41 are still there, they haven't been removed, but in photograph 42 your attention is drawn to the wallpaper just above the light switch near the top of the stairs, and if you view that photograph up and down, it's in this area here on the white wallpaper. In photograph number 43, in fact 44 and 45, you can see in photograph 43 that little patch of wallpaper and there's a red stain on it; but as we look up past the red stain on the wallpaper to the wooden railing are you can see there's some red staining on the wooden railing as well. Therefore photograph 44 with a scale shows a close-up view of the same red stain we see in photograph 43 and photograph 45 shows a close-up of the stain on the brown railing with a scale as we see in photograph number 43. They are just close-up views of those stains. Photograph 46, I'm now standing at the

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very top of the stairs and I'm looking at a brown cabinet
as well as some items on the floor just in front of that
brown cabinet. In photograph 47 I take a close-up
5 photograph of those items on the floor that we saw in
photograph 46. In fact what those items are is a purse
with the contents dumped out and a jewellery box. Now in
photograph number 48 I am now looking into the first
bedroom located on the north-east side of the dwelling.
10 If you recall photograph number 2 - go back to photograph
number 2 - I referred to the broken window on the upper
left-hand area of the dwelling. In photograph number 48
that's the window we're now looking through, and this
bedroom was identified to us as being the bedroom of
15 Donna Daughney. The purse and items that we saw in 47
you can just see on the bottom right-hand corner of the
photograph 48, and the stairway is just to the left of
that. Photograph 49 and 50 - you view that in a vertical
position, up and down - I am standing in the doorway
20 going into Donna's bedroom or the same bedroom we just
saw in photograph 48. The first thing that catches our
attention is the pile of clothing just on the floor just
inside the doorway and in photograph 50 a close-up view
of that pile of clothing is taken. As you can see
25 there's red staining on various items of clothing in that
pile. Also, just for your attention photograph 50, the
dresser on the other side of the pile has that drawer
open. Just to - adjacent to that dresser there's a
closet door that's open and then just almost in front of
30 the closet there's a small night table with its top
drawer in an open position. Photograph number 51 - this
is a photograph taken in that bedroom where we saw we
were entering in photograph 58, it's a close-up view of
that pile of clothing we see in photographs 49 and 50,
35 but it's taken from a different angle. I'm taking it

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inside the bedroom - inside the bedroom and you can see
just the corner of the bedroom door sill there if you
look just past that bedroom - that pile of clothing, and
5 again it shows the red staining through various pieces of
clothing. In photograph number 52, again in the same
bedroom area just underneath that pile of clothing
there's a small table which you can just barely see in
photograph 51. This is the other side of that small
10 table and on the floor underneath the clothes we found a
set of dentures and a small blue cord with a knot in it;
and this is what photograph 52 depicts. Plus also in 52,
it looks like a dish towel or a hand towel with some red
staining there as well. Photographs 53 and 54, these are
15 photographs taken - again you view these in a vertical
position - they are taken inside the bedroom which we are
in now, Donna's bedroom, and this hope chest that we see
in photograph 53 is just inside the doorway. You can
still see the corner of the doorway; you can still see
20 that pile of clothes, and this is just inside the
doorway. If you look at photograph number 50 you can see
the corner of that dresser as you enter the door and this
is the same dresser we see here. It has a pair of
glasses on top, a sweater and so forth. In photograph
25 54, this is a close-up view of the dresser we saw when we
came into the bedroom. That dresser can be more clearly
seen in photograph number 50 with the top drawer open.
This is the same dresser we see in photograph 54, and
with the drawer open you see there's woman's underthings,
30 lingerie and so forth in that top drawer plus the items
sitting on top of the dresser. In photograph 55 and 56
and in fact 57 and 58, these are all photographs taken in
that same bedroom, we haven't left that bedroom, but
these are photographs of the closet area that we saw when
35 we came in the door. Now that doorway which I referred

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- to you could see it in photograph 49; as we walked into the bedroom you could see in the background on photograph 49 the closet door in an open position. This is the same closet door that we can now see in photograph number 55.
- 5
- Q. Would you be able to indicate where we are on the diagram in relation to that closet?
- A. Okay, the closet I'm referring to is right there. We viewed it coming in here and now we're going to show some photographs pertaining to that closet area of the bedroom of Donna Daughney. In the particular bedroom, as we were going around the bedroom we could see there was a degree of smoke damage and some water damage but now in this closet we can see there's been some actual burning. You can see in photograph number 55 the top of the door is all peeled and also right inside the closet the walls are all black and charred; and if you look at photograph 56, a close-up of the top of the door can be seen, plus the coat hangers where heat and so forth has melted and caused a great deal of black and smoke and so forth.
- 10
- 15
- 20
- Q. 55 and 56 - 56 is a close-up of an area in 55?
- A. That's correct. It's a close-up of the inside of the closet door that we see in photograph 55.
- Q. Is it lighter in 56 than in 55 because of the photographic situation?
- 25
- A. Because of the flashes - correct, yes.
- Q. In photograph 57 and in photograph - photograph 57, first of all I'm looking at the floor now of this closet that we see in photograph 55. In photograph 58, turn your books to the horizontal position with the number in the upper right-hand corner and you are in fact looking right down to the floor area and all the debris that has come down onto the floor that we saw in photograph 57. It's just a different view of the floor of the same closet
- 30
- 35
- that we saw in photograph 57. Now in photograph 58, as

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you look down you can see the baseboard that runs along the back of the closet and there's a baseboard on the left side of the closet, but when we removed the items on the floor for the baseboard on the right side of the closet we found this item you see in photograph number 59. So in other words when all that debris was removed from the floor of the closet we found that item in photograph 59.

10 Q. Where is that, is that at the back of the closet as you look in 58, or the side?

A. If you look in 58 it is on the right side of the photograph, just underneath the number 58, on the floor area there, inside the door frame. Photograph number 60, 15 we're still in the same bedroom area, the Donna Daughney bedroom, and this time the photographs depict a bed that is located in that bedroom. You can see the headboard, the mattress and the box spring and certain items of clothing and bed material that is on top of the bed. In 20 photograph 51 we close-up or zoom into the top portion of the bed and we can see there's a sweater; there's a pillow case at the bottom right-hand corner; there's a nylon sitting on top of the mattress; a pillow that's soaked in a red substance and beside that there's a red stain on the mattress as well, plus in the back there 25 seems to be another item of clothing all bunched up and thrown in the corner. Photograph 62---

Q. Can we just go back to 61 - what's the brownish object to the right of the large red stain in the middle of the picture? Do you know?

A. To the right?

Q. I'll show you what I'm pointing at and you can tell me if you know.

A. That's a nylon - a woman's nylon. Is that what you are 35 referring to?

75

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Q. Yes.

A. Yes it is a woman's nylon just above the pillow case which we see - that bluish piece of clothing.

5 THE COURT: Well, are there two there - I'm looking at that and that. Is that anything there?

A. Yes My Lord, that's just the corner of the pillow.

Q. The end of the pillow, and that's the nylon?

A. That's the nylon Mr. Allman was referring to.

10 MR. ALLMAN:

Q. What condition is that nylon in?

A. It's straight in this particular photograph. There's no knot in it or anything.

Q. That's what I wanted to get at.

15 A. In photograph 62 we're going to the foot of the bed, the same bed we see in photograph 60 and in photograph 62 we see there's three items of clothing; there's some staining from the soot and smoke and so forth; and those three items of clothing are three pairs of women's
20 underpants and of course the one at the back of - or if you view the photograph up and down, the corner of the mattress, the pink pair at the end is stained with a reddish substance. The red pair in the middle is also stained and the other pink pair which we see just towards
25 the middle of the bed is stained with a reddish substance as well. In photograph number 63 and 64, and you can view this up and down in the vertical position, I'm still in the same bedroom located in the north-east corner, Donna Daughney's bedroom, and in this photograph 63 you
30 can see the edge of the mattress that we just saw in photograph number 62. But on the floor between the edge of the mattress and what appears to be a hope chest against the wall there's a silhouette on the floor in the carpet. Something has been laying there where the smoke
35 and soot have fallen around and left that outline on the

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5 carpet. And just above that on the paneling on the wall
you can see a red stain. But first of all if you look at
the mattress area, just into the silhouette area, just at
the edge of the mattress which is right here, you can see
there's an item and what that item is in number 64, it's
another pillow case that's just sitting on the floor
there. That pillow case also has red staining on it.

10 Q. Can I interrupt you for just one second - with 63, the
area where there's a clean patch on the floor would be
where on any of the sketches?

15 A. It would be in this area right here. That would be all
clean right here. Just at the foot of the bed that the
second pillow case is located on. And you can see
there's a nylon there as well in the photograph near the
pillow case. Now go back to 63 just for a moment. On
the paneling you see what I referred to as a red stain or
a transfer or smudge and in photograph 65 that transfer
stain can be seen with a scale on it. It's made of a
20 reddish type substance and it seems to be coming down the
wall.

Q. Just for the benefit of the jury, does the expression 'a
transfer stain' have some meaning in identification work?

25 A. The expression transfer stain means it was put on there
as a result of contact with another object, be it a
sleeve, a hand - it was on something else which touched
something else which made that mark.

Q. Okay, thank you.

30 A. In photograph number 66 we are still in the same bedroom
area but now we're standing near the window we saw in
photograph number 2 when we first entered into the
doorway. We are looking back in fact towards the doorway
and we're looking at the door in a closed position. The
same dresser we saw when we first came in; the same hope
35 chest we just saw in photograph 63; all that is visible,

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5 but in this photograph your attention is drawn to what
appears to be hand-marks. If you look at the door you
can see in the dirt and in the smoky deposits some kind
of scrapings or hand marks and if you look at photograph
67 and photograph 68 you can see those marks. Both
photographs 67 and 68 are taken in that area and there's
a scale that's put just beside them to show the hand
marks as such on the wall and on the door. In photograph
10 number 69---

THE COURT: 68 is on the wall; 67 is on the door?

A. That's correct My Lord, yes. In photograp 69 I have now
come out of the bedroom we were just in, the bedroom
known as Donna Daughney's, and I'm looking at the west
15 wall from inside. Now if you refer to photograph number
- just for a moment - photograph number 5, photograph
number 5 being an exterior photograph of the west wall,
that only window we see as a second-storey window above
the aluminium door is the same window that we're looking
20 at now in photograph number 69. That's the part of the
house that we are in. You can still see the railing that
leads to the downstairs are and you can see a door on the
left of the photograph which is a bedroom door; you can
see two dressers, the window and there is a doorway just
25 along the right side of the photograph which is a spare
room. In photograph number 70---

MR. ALLMAN:

Q. Just let me interrupt here. Where on the plan is that
window, the one that's shown in 5 and 69?
30 A. That would be right there. That's the window. This is
the west wall and there's the window right there.
Q. Thank you.
A. Two dressers, the bathroom door and of course the door
leading to the spare room. You can hardly see that one
35 in this photograph. In photograph number 70, it is just

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5 a photograph taken and looking through the doorway and
showing that indeed that's the bathroom area. You can
see there's been some smoke damage in this area on the
10 floor. In photograph number 71 you can see again two
doorways. The one on the right is the one we just looked
through when we took a photograph of the bathroom area
and on the left side of the photograph there's another
doorway. This doorway you can also see in photograph
15 number 72 if you view it in a vertical position. This
doorway is the doorway that leads to Linda Daughney's
bedroom and once again if you refer to the exterior
photograph number 6 the second-storey window, the second
window above the oil tank, that's the same window we can
see when you look through the doorway in photograph
number 72.

Q. And where is that doorway and the room the other side of
it in the plan?

A. This would be the upstairs area - it would be right here.
20 That's the window we can see, the one we see in this
photograph number 72.

Q. And the doorway down below?

A. We're standing right here and looking right straight
through.

25 Q. Thank you.

A. And as you look into the doorway on photograph 72 you can
see there's been some burning in this area as well. The
first thing that catches your eye is the bed, the foot of
the bed. You can see the headboard in the background.
30 The window is broken, plus there's a variety of debris
and items on top of the bed. In photograph number 73,
this photograph is taken as showing the actual bed and
the items and the debris that's on top of the bed. Also
in this photograph you see there's a dresser drawer
35 that's been pulled out just in the lower right-hand

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corner of the photograph and there's debris on the floor here as well. In photograph 73 on the left side of the photograph you can see a little corner sticking out and that's the corner of a dresser and you see that dresser in photograph number 74. It's the dresser that just situated off the foot of the bed. In photo 74 we can see the door handle, the same door that we just went through in photograph 72; see the dresser, and you also see the far east wall or that particular east wall of Linda's bedroom. This is the bedroom identified to us as Linda Daughney's bedroom. And in photograph 75 I just keep following down that wall you see in photograph 74 and I come to again the south wall - you can see the corner of the bed and you can see where there's been some burning here on the wall and debris is on the floor as well. In photograph 75 - and you view that looking up and down with the number in the upper left-hand corner - this is a photograph of the debris that's on the bed which we saw in photograph 73 but now the debris - what we've done here, we've kind of separated it, we started pulling it apart and you better identify items that are on the top of the bed. You can see a plaid shirt; you can see a hair brush in the background; a red blanket; some sheets and so forth. Photograph 77, and you view that either up and down or in a horizontal position because what that is actually is the piece of sheet underneath this debris that we see that was on the bed on photograph number 73. It's a piece of sheet that was protected by the debris, in 73, and we can see there's some red staining on it. In photograph 78 and 79 we are still in the bedroom at the south side of the bedroom identified to us as being Linda Daughney's bedroom and in this photograph - you view that in an up and down vertical position - you can see the corner of the bed we were just discussing;

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another dresser with the top drawer missing; and in the background or in the centre of that photograph used to be a clothes closet area and as noted in the photograph it suffered some burning and so forth, in fact to the degree that when you look at photograph number 79 the whole floor has gone out and you can actually see the wall paper that was located behind the fridge in the kitchen that we noted in photograph - when we entered the house, photograph number 30. The wallpaper we see in photograph number 30. You can see right through the closet wall.

Q. If you look at the two plans first of all maybe you can show us where we're looking down on the upstairs floor and then what bit of downstairs floor we can see through the hole, if you see what I mean?

A. Okay, the closet I'm referring to is right here. The floor area here is completely burnt through and eventually you end up in this corner here behind the refrigerator. That wall we were looking at in photograph 30 and 31 is the wall paper area we can see.

Q. You took a number of pictures of the kitchen area, basically they range from 23 through to - well effectively, 32. In general terms how was the kitchen area?

A. In general terms the kitchen area suffered a degree of water damage. When we arrived there was a water pipe that had broken and it was running on a continual basis. We had some problems in turning it off, but there was no fire damage except for that small portion of the wall behind the refrigerator.

Q. Which you gathered was where something had fallen down from above?

A. Yes that's correct.

Q. If you could look just for a moment at 58 and 59. In 58 you can't see the floor for the mess, is that right?

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A. That's correct.

Q. In 59 you removed the mess?

A. That's correct.

5 Q. What condition was the floor in underneath that mess?

A. Well in photograph 59 you can see actually a piece of the carpeting that's on the floor. When the debris from above - and I refer to above perhaps when the coat hangers and all came down on the floor as we see it in
10 photograph 58 - it literally protected the flooring underneath it, and so once those items were removed the flooring was in pretty good condition.

Q. If we could go back to picture 5 for a moment, 5 is probably as good as any, you mentioned that the globe of the light fixture is down on the corner - by the corner
15 of the house. Did you make any observations about the light fixture itself and the bulb in the light fixture or was that Cpl. Godin did it?

A. No, observations were made that - as you mentioned the globe is first of all on the back porch area. The light bulb was indeed loose but when we tightened it after Cpl. Godin examined it we found it to be in a working condition. That's the observations we made of the light.

Q. If you look at the photographs 16 and 17 which depict the break in the back door that you then went on to compare with the side door in 18 and 19 - do you have any comment on the break in 16 and 17 - maybe you can tell us about that by looking at it?
25

A. When we first noted the damaged condition our first inclination was to attempt to determine how old that might be and of course, you look at photograph 16, again viewed in a vertical position with the number in the lower right-hand corner, you can see that the top of that plastic catch or strike plate or whatever it is, has got paint stains on it and it's dirty and so forth. So when
30
35

83

Sgt. Chiasson - direct

we examined the actual - the prime refraction and the actual break inside we didn't find it to be that dirty which led us to believe that it was fairly recent.

5 Q. What was fairly recent?

A. The break - the actual---

Q. The break of that mechanism or whatever one wants to call it?

A. Yes.

10 MR. ALLMAN: Could I have this marked please for identification?

THE COURT: You are going to be a little while yet Mr. Allman?

MR. ALLMAN: I believe I wont be very long My Lord. I only have four items to put in for identification and a brief discussion of one other topic - two other topics. I should be about five minutes.

15

THE COURT: The small round gold-coloured box will be 'S' for identification.

(Gold-coloured box marked 'S' for identification)

MR. ALLMAN:

20 Q. I show you now item 'S' for identification, an envelope containing a small gold round box. What can you tell us about that, including reference to any writing on it?

A. This item marked 'S' is small back of an earring - of a small pierced earring type stud that we found on the grassy area just at the end of the driveway where the boxes of vinyl siding were located - on the ground in that grassy clump that was referred to in the photographs as being a bloody spot. My initials and the date, 14 October 89, are on the bag.

25

30 Q. Are you looking at a photograph that shows that area?

A. Yes, that area can probably more clearly be seen in photograph number 12 and in photograph number 12 it is the area of grass just in front of the cardboard boxes - the flat that's stained in a reddish substance.

34

Q. And you opened the gold box to look at that, so I take it that the object wasn't inside a gold box. The gold box was your storage?

A. That's correct.

5 Q. How does the item that's contained in 'S' appear to you to relate to the item that's contained in 'O' - do you know whether they fit or not?

A. I don't know. Certainly item 'S' would be adaptable to item 'O', yes.

10 THE COURT: What is item 'O'?

MR. ALLMAN: Item 'O' is the other - another part of a ladies earring. It's not strictly speaking an exhibit, so---

15 THE WITNESS: ----- it can be more clearly seen in one of the photographs.

THE COURT: Mr. Allman, the witness---

MR. ALLMAN: Yes I heard that.

Q. Could you just go into that for me?

18 A. Just to assist the jury, photograph 14, that in fact is item 'O' near the small grey scale.

Q. You identified item - item 'S'?

A. Yes.

Q. What did you do after you had taken it into your possession?

22 A. Once we retrieved it from the grass we turned it over to Cst. Davis for retention. He retained it.

Q. When did you do that?

A. At that very moment - at the same time.

MR. ALLMAN: Could I have this marked for identification?

28 THE COURT: That will be 'T'.

(Item marked 'T' for identification)

MR. ALLMAN:

30 Q. I show you now item marked 'T' for identification. What can you tell me about that, including any reference to
35 any markings on it that mean something to you?

85

Sgt. Chiasson - direct

- A. Item 'T' is an item that I seized on the 15th of October 1989, and to show where it was located, if you refer to the photographs, item P-33, and more specifically photograph number 41, we have in photograph 41 on the fourth step a brown nylon in a knotted condition. This item here, item 'T' is that brown nylon in a knotted condition. My initials and the date and so forth are on the back.
- 5
- 10 Q. And what did you do with that after you found it?
A. That was turned over to Cst. Davis.
Q. At the time?
A. At the time.
- THE COURT: Is the knot still in it, or---
- 15 MR. ALLMAN:
Q. Do you want to open it and look and see if it is still knotted, or can you see through the plastic?
A. I will have to open it to make sure My Lord. It seems to be there but - yes My Lord it is still there.
- 20 THE COURT: The other two pieces of nylon aren't in the same envelope?
A. No My Lord.
- MR. ALLMAN:
Q. I show you what has been marked 'U' for identification. What can you tell us about that, including reference to markings if any?
A. Item 'U' is an item which I seized on the 15th of October 1989. Once again if you refer to photograph number 41 that we just looked at and Exhibit P-33, we see in photograph 41 the long knotted nylon, but just beside that there's another nylon and this is what this item is.
- 30
- Q. And are your markings on that?
A. Yes, my initials and the date and so forth are on it.
Q. After you seized it what did you do with it?
A. I turned it over to Cst. Davis.
- 35

86

A. Yes, my initials and the date and so forth are on it.

Q. After you seized it what did you do with it?

A. I turned it over to Cst. Davis.

Sgt. Chiasson - direct

5 Q. I should say after you found it I guess.

A. Yes.

Q. At the time?

A. Yes.

MR. ALLMAN: One more item My Lord.

10 THE COURT:

Q. There are two pieces I gather on the last one?

A. I'm not sure. I would have to check more closely. It is certainly one of the nylons. Do you wish me to open it My Lord?

15 Q. Yes.

A. No My Lord. It is just the bigger piece. We can see it in photograph number 41. It's the bigger of the two little pieces there.

MR. ALLMAN: May I have this item marked for identification My
20 Lord?

THE COURT: It will be 'V'.

(Nylon with knot in it marked 'V' for identification)

MR. ALLMAN:

25 Q. I am showing you 'V' for identification. What can you tell us about that including reference to any markings?

A. Item marked as 'V' was seized by me on the 15th of October 1989. What in fact it is, is a blue nylon with a knot in it and if you refer to again Exhibit P-33, photograph number 51 which shows the pile of clothing
30 that we saw in Donna's bedroom when we first came in; photograph 51 viewing from inside the bedroom. It was within that pile of clothing that this item 'V' was located.

87

Sgt. Chiasson - direct

Q. I gather it can't see it because it's inside or at least you can't see it clearly because it's inside the interior of that bundle?

5 A. That's correct. That pile of clothing we slowly began to separate and so forth, and this is one of the items we found, and the knot is still visible in it.

Q. The knot is still visible, and that (inaudible)---

A. Yes.

10 Q. And your initials and markings and dates are on that?

A. Yes, the date and my initials appear on the paper.

Q. After you located it what did you do with it?

A. I turned it over to Cst. Davis.

Q. Right there and then?

15 A. Right there and then.

(Short recess)

JURY POLLED - ALL PRESENT.

THE COURT: You have completed your direct examination of the witness?

20 MR. ALLMAN: Yes My Lord.

THE COURT: Mr. Furlotte you are going to commence your cross examination?

MR. FURLOTTE: Yes My Lord.

CROSS EXAMINATION BY MR. FURLOTTE

25 Q. Sgt. Chiasson, the exterior light on the back porch over the back door, I think you mentioned that the globe was down on the floor?

A. Yes that's correct.

Q. Was that checked for fingerprints?

30 A. I can't recall. It's quite possible - there was four of us there and it is quite possible one of my colleagues might have checked it, but I can't recall.

Q. Well was that put in as an exhibit, or was it seized - you didn't seize it as an exhibit did you?

35 A. No I did not, no.

88

Sgt. Chiasson - cross

Q. And do you know whether or not it was seized?

A. I don't know for sure.

Q. Page 4 of exhibit - whatever - Exhibit P-33?

5 A. Yes.

Q. What was that for - you can see the globe on the verandah?

A. Yes that's correct.

10 Q. Aside from the globe on the verandah do you also a fixture attached to it? Isn't that a whole light fixture, a new light fixture, probably to replace the old one?

A. Yes there seems to be something attached to the back of it or very close to it.

15 Q. Very close to it?

A. Yes.

Q. And again if you check on photograph number 5 you can see the black fixture part?

A. Yes.

20 Q. Which would attach to the wall - you see the black one on the - the one that's up now?

A. Yes.

Q. Do you see that black part?

A. Yes I do.

25 Q. Doesn't that look like a whole new fixture laying on the verandah?

A. Yes, in fact in photograph number 6 as well, if you look you almost see the back of it.

Q. You can see the back of it?

30 A. That's correct, yes.

Q. So that's not a globe that was removed off the one that was there ---?

A. No it doesn't appear to be, no.

35

Sgt. Chiasson - cross

- Q. I also notice in photograph 29 - I don't know whether it has any significance or not Sgt. but it just seems to be something out of place there. Two milk cartons sitting on top of the dryer. Were those full?
- 5
- A. Yes they were, yes.
- A. They weren't in the fridge - or did somebody remove them from the fridge or was that like that when you took the picture?
- 10
- A. It was like that when I took the picture.
- Q. How close is the fridge to that dryer?
- A. If you look in photograph number 30 - now you can see in the doorway just the corner of the dryer in the background, and mind you that fridge is pulled out but that fridge would be in that corner right behind that door there. Right beside the door frame.
- 15
- Q. It looked as if those milk bags were there for some time because the roof seems to have caved in on top of them.
- A. That's correct. There's pieces of debris on top of the bags.
- 20
- Q. And again in photograph number 50 I see on the dresser with the open door - you'll see that in photograph 50 and photograph 54---
- A. Yes?
- 25
- Q. Is that a jewellery box on top of that dresser, do you know?
- A. It appears to be, and there's a small blue one in the back as well.
- Q. A small blue one?
- 30
- A. Yes. It appears to be a jewellery box.
- Q. Were those checked to see if any jewellery was missing?
- A. No I didn't personally check it.
- Q. You didn't personally check it?
- A. No.
- 35
- Q. They look undisturbed?

90

Sgt. Chiasson - cross

- A. They do, yes they do.
- Q. In photograph 47, I believe that's a jewellery box on the floor?
- 5 A. Yes that's correct.
- Q. And did you check the contents of that?
- A. There certainly items in the jewellery box but it would be impossible for me to tell if anything had been removed.
- 10 Q. Right, but had you checked the items that was in that box?
- A. I'm sorry - for fingerprints?
- Q. In 47?
- A. Yes, photograph 47.
- 15 Q. Had you checked the items that remained in that jewellery box?
- A. I'm sorry, checked them for?
- Q. Was there any jewellery in the jewellery box?
- A. Oh yes there was certain items inside, yes.
- 20 Q. What are those little containers - they look like plastic capsules?
- A. If memory serves me correct they were small perfume-type bottles.
- Q. Perfume?
- 25 A. Yes.
- Q. Was there any other valuables in that jewellery box besides jewellery? Was there money in there?
- A. I can't recall.
- Q. And that black thing by the jewellery purse - jewellery
- 30 box, is that a purse?
- A. That's a purse, yes.
- Q. Was there any money in the purse?
- A. I can't recall - I wouldn't say.
- Q. Did you check the purse?

31

Sgt. Chiasson - cross

- A. Yes I did. I checked the purse to see who owned the purse and---
- Q. Who owned the purse?
- 5 A. I believe it was Linda's. I'm just going by memory now, I can't recall for sure.
- Q. Would you normally take notes as to whether there was money in the purse or not?
- A. Yes. I can't - I don't remember writing it down.
- 10 Q. You don't remember writing it down?
- A. No.
- Q. Photograph 53, with the pair of glasses there - whose bedroom is that?
- A. That's in the bedroom of Donna Daughney.
- 15 Q. Donna?
- A. Yes.
- Q. In photograph 54 alongside that jewellery box, is that a set of keys - house keys or car keys?
- A. It's a set of keys, yes that's correct.
- 20 Q. Do you know what kind of keys they are?
- A. No. I recall they were seized but I don't recall if it was a house key or a car key or office keys, or what keys that were there.
- Q. Do you know whether or not the Daughneys owned a car?
- 25 A. No I do not know that.
- Q. There was no car in the driveway?
- A. Not when we got there - there was no car.
- Q. Photograph 62 - a pair of red undergarments on the mattress?
- 30 A. Yes.
- Q. There appears to be something just to the left?
- A. Yes that's correct.
- Q. At the top left of those undergarments?
- A. Yes.
- 35 Q. What would that be?

Sgt. Chiasson - cross

- A. That in fact is a small plastic cover and you refer to photograph number 76 - in photograph 76 which is on top of the bed in the Linda Daughney bedroom you can see a small blue hairbrush with a white end to it?
- 5 Q. Right?
- A. That particular cap fits on the end of that brush.
- Q. In two different bedrooms?
- A. Yes that's correct.
- 10 THE COURT: Sorry, where was that item that you're talking about?
- MR. FURLOTTE: In 62.
- THE COURT: In 62?
- THE WITNESS: In 62 - it's right there My Lord. Right there.
- 15 It's a long plastic cover with red staining on it.
- THE COURT: Oh yes. Would you point that out to the jury?
- A. Yes My Lord.
- THE COURT: And you said that's the end of the hair brush in the other bedroom?
- 20 A. That's correct My Lord, and seen in photograph 76.
- MR. FURLOTTE:
- Q. Did you observe the bodies before they were taken out of the house?
- A. No. By the time I arrived the bodies had been removed.
- 25 Q. Now in photographs 66, 67, 68, I imagine that there were handmarks on the doors and walls?
- A. In 67 and 68 that's correct yes - and 66 as well.
- Q. Any fingerprints taken?
- A. They were certainly examined for fingerprints but there was no ridge detail. There was nothing we could do with those prints. They were just marks.
- 30 Q. Again in photograph 78---
- A. Yes?
- Q. This time this would be Linda's bedroom?
- 35 A. That's correct, yes.

93

Sgt. Chiasson - cross

- Q. And is that a jewellery box on the dresser?
- A. Yes it is.
- Q. Did you check the contents?
- 5 A. No I did not.
- Q. Do you know if anybody did?
- A. I don't know for sure.
- Q. Now you mentioned in photograph 16 and 17, the back door
- the break-in - it appeared to be fresh?
- 10 A. Yes that's correct.
- Q. And that was after the - you just examined that after the
firemen entered the building?
- A. That's correct, yes.
- Q. You don't know whether the firemen could have caused that
15 damage to enter?
- A. No that I don't know.
- Q. Do you know anything about a bicycle that was found in
the area?
- A. Yes I do.
- 20 Q. Did you see the bicycle?
- A. Yes I did.
- Q. Was that seized as an exhibit?
- A. I do believe it was, yes.
- Q. Did you seize it?
- 25 A. No. I had occasion to examine it for fingerprints at the
Newcastle detachment of the R.C.M.P.
- Q. Was there any fingerprints on it?
- A. Just water-stains. It had been in the rain and there was
nothing on it.
- 30 Q. What kind of a bicycle was it?
- A. It was a - I believe it was a 10-speed - a black 10-speed
bicycle. I'm just going by my memory. I'm not sure.
- Q. And where was it found?

Sgt. Chiasson - cross

- A. That I don't know. It was brought to my attention by Cst. Britt who requested that I go to the detachment and examine the bike.
- 5 Q. So you just examined ----
- A. I don't know----
- Q. ---the bike after ---
- A. At the Newcastle R.C.M.P. detachment, yes.
- Q. Do you know anything about the automobile that was being
10 checked?
- A. No I don't.
- Q. You didn't check that yourself?
- A. No I didn't.
- Q. Do you know anything about footprint impressions found on
15 boxes?
- A. Yes I do.
- Q. Were you part of that discovery?
- A. Yes I was.
- Q. Did you check them out?
- 20 A. Yes. On top of those cardboard boxes where the vinyl siding was located at the edge of the driveway there were six two-dimensional type of what we call positive impressions, and that's a footwear impression where residue has been deposited on top of the surface and it
25 made a footprint. There were six of those which we found.
- Q. Were you able to eliminate any of them?
- A. Yes, four of the six were eliminated to the crew that was working on the renovations on the house at the time.
- 30 Q. What about the other two?
- A. The other two, which is a portion of the heel and a portion of the front part of a running shoe I have never eliminated.
- Q. Were you able to tell anything about that print - size -
35 foot size?

95

Sgt. Chiasson - cross

A. The foot size, not enough. It would have been at the best just a pattern design and perhaps left or right foot.

5 Q. The broken eye glass that was found near the driveway or in the driveway, did you seize that?

A. Yes I did.

Q. And how many pieces was it?

A. There was one big piece and three smaller pieces.

10 Q. Did you find any other parts of eye glasses?

A. No there was just this one lens.

Q. Do you have a copy of your report on you?

A. Yes I have - in my briefcase.

Q. On page five of that report---

15 THE COURT: What were you going to ask Mr. Furlotte?

MR. FURLOTTE: It was---

THE COURT: Has he said something---

MR. FURLOTTE: I believe I asked him earlier as to whether or not he remembers the contents of the jewellery box and whether there was money in it - in the jewellery box.

20

THE WITNESS: This is the jewellery box at the foot of the stairs?

Q. At the foot of the stairs yes, and the woman's purse.

25 A. I can't recall if there was any quantity of money, no. I know there was some costume jewellery in it but that's all.

Q. Would you mind checking your notes to refresh your memory?

30 A. On page 5 Mr. Furlotte?

Q. Yes, on page 5 at the bottom - last paragraph on page 5.

A. My page 5 must be different - you have typed notes?

Q. I have typed notes, yes.

A. Which are probably more condensed than mine. May I look at the entry - what dates you have there?

35

Sgt. Chiasson - cross

THE COURT: Well Mr. Furlotte why couldn't you show Sgt. Chiasson the copy you have and let him read it? You indicate to him the portion.

5 THE WITNESS: Yes I see - your typed version is cut off there.

MR. FURLOTTE:

Q. Yes, the R.C.M.P. did a poor job of photocopying that for me.

10 A. But it appears to read 'at foot of stairs a woman's purse with contents as well as a small wooden jewellery box was noted. Nothing appeared to be stolen. Jewellery box cover was open.' I take it that's---

Q. I'll take it back Sgt. It was probably myself that did the poor job of photocopying when I copied it for my client.

15 MR. ALLMAN: I have a copy that is perfectly legible Mr. Furlotte.

MR. FURLOTTE: Thank you.

20 THE WITNESS: 'Nothing appeared to be stolen. Jewellery box cover was open and money was visible in box'.

Q. Okay, thank you. You don't recall how much money was in there?

A. No I don't.

MR. FURLOTTE: I have no further questions.

25 THE COURT: Re-examination?

MR. ALLMAN: Just three, possibly four very short questions.

Q. On photograph 62 is there any stain or coloration on that top bit of a brush?

30 A. Yes there is. In photograph 62 just at the base of it there's a red stain on the plastic cover.

Q. You were asked questions about foot impressions, four of them you said you traced back to the worken. One you said was a running shoe. What do you mean by a running shoe?

35 A. A running shoe?

Sgt. Chiasson - redirect

Q. Yes, a sneaker or running shoe type of footwear.

Q. How many items in all did you seize yourself, either exactly or approximately?

5 A. Approximately thirty some items - thirty-one or so.

Q. Besides yourself and Cpl. Godin how many other people from the identification sphere were working on this scene?

10 A. We had two other members from the Fredericton identification section. They were assisting us at the time.

Q. You were asked some questions about whether jewellery had been removed or not. In the absence of knowing what was in a box previously how if at all would you be able to know if something had been taken?

15 A. It would be literally impossible. We could open a box; we could look at a box and there's items in it; it would be impossible for us to tell what was in there prior to our arrival.

20 MR. ALLMAN: I have no other questions.

THE COURT: Thank you very much Sgt. Chiasson. You are excused for now. You are being recalled I believe. You shouldn't of course discuss this aspect of it until all your testimony is finished. Now, a quarter to five - twelve minutes to five---

25 MR. WALSH: My Lord if I could impose on the Court, we've finished witness number 65 on our indictment list. The next several witnesses are firemen and a policeman and then there's an ambulance attendant.
30 No.72 is Dr. Basil Blanchard. He is a general practitioner from the Miramichi area. He has been here all day and is due back on duty I think at four o'clock today and if we could indulge the Court and could put him on now I would appreciate it.
35

98

Dr. Blanchard - direct

THE COURT: Just the one. You'd like to get through them all, I know.

MR. WALSH: I'd like to get through them all and I was hoping
5 to get through Dr. Blanchard for sure so I could get him back.

THE COURT: Well I think the jury would probably agree to getting the Dr. away.

JUROR: Excuse me My Lord. We have a juror who needs to be
10 out no later than five due to a previous commitment.

THE COURT: Well that gives you ten minutes. You're not going to be long Mr. Walsh?

MR. WALSH: No My Lord. Dr. Blanchard please.

15 DR. BASIL BLANCHARD having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. WALSH

20 Q. Dr. you are a general practitioner medical doctor?

A. That's right.

Q. And you have been a medical doctor for how many years?

A. Over three years.

MR. WALSH: My Lord at this time I understand there is no
25 objection - I would move that the doctor be declared an expert as a medical doctor who has been in the practice of medicine.

THE COURT: In the practice of medicine, all right.

MR. WALSH:

30 Q. Would you tell the Court please - your name is Dr. Basil Blanchard?

A. That's correct.

Q. And where do you practice?

A. Newcastle, New Brunswick.

35 Q. Would you tell the Court please in your own words, beginning with the date, your involvement in this particular matter?

A. October 14, 89, I was on call. It was a Saturday I believe. I was called at home to go to the hospital
40 where I met Cst. or Cpl. Charlie Barter, and---

Q. He is a member of the Newcastle town police?

Dr. Blanchard - direct

- A. That's correct. And there was an ambulance attendant as well amongst other people there - the last name escapes me there - but in any event I was informed there had been
- 5 a house fire and there were two sibling sisters who were found dead in the house. They were transported to this morgue at the hospital.
- Q. That's the Newcastle hospital?
- A. That's right. And foul play was suspected.
- 10 Q. Okay, without getting into more detail of what you might have been told, what did you actually do?
- A. What I did was to ask which victim fit which name and was informed that one of the victims was called Linda and one was called Donna and I made some brief notes based on
- 15 that and examined the patients from that point.
- Q. What was your - what if anything did you pronounce as a result of your examination?
- A. Both victims were found dead. The one that I had listed as Linda I noted had two shirts on - T-shirts or sweater
- 20 or something of that nature. There was a large amount of smoke damage to the bodies - to her body especially below the level of the T-shirt and the sweater.
- Q. Were there any clothes on below the T-shirt?
- A. No, no clothing at all outside of the two shirts I
- 25 mentioned and there was some smoke damage I believe to the face as well. There was a lot of swelling and contusions around the eyes in particular and what appeared to be a fractured nose.
- Q. And Dr. did you do in your estimation a completely
- 30 thorough examination?
- A. No it wasn't - as soon as I was satisfied that foul play was probably involved it was my intention to not disturb the bodies as much as I possibly could, knowing that other people would be carrying on more thorough
- 35 investigation.
- Q. What was your purpose of actually being there?
- A. Just to pronounce them dead.

100

Dr. Blanchard - direct

Q. And what about the other---

A. The other victim, called Donna, she also had a lot of peri-orbital or soft tissue swelling and---

5 Q. That's around the eye?

A. ---and bruising around the eye and there appeared to be on the left side of the neck and the right side of the chin what appeared to be stab wounds or puncture wounds and also it looked as though she had a disfigured nose and probably a fractured nose and as well she only had on 10 a T-shirt and no other clothing; and there was some bruising - there was bruising around the forehead area and around the knees, as well as other markings but I didn't note them specifically. I knew that again it would be a matter of further investigation.

15

Q. And again you - would you have done what you would have considered a completely thorough examination?

A. No.

Q. What was their state at the time you actually attended - was there anything covering them or were they - other 20 than their bits of clothes you have described?

A. If I'm not mistaken they were on separate stretchers, one to my left and one to my right as I went in to the situation in this sort of make-shift morgue in the hospital basement area, and I don't believe they were 25 covered or if they were it was something that could easily be removed.

Q. And you, I take it Dr., pronounced the second person that you were identified to as dead. Is that correct?

30 A. Yes.

MR. WALSH: I have no further questions My Lord.

THE COURT: Cross examination Mr. Furlotte?

MR. FURLOTTE: I have no questions.

THE COURT: Thank you very much then Dr. You are excused.

35 MR. WALSH: He is stood aside My Lord - sorry.

THE COURT: Well that is the end of our proceedings for today.
We will start tomorrow morning at 9.30.