

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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VERNA PETERSON  
COURT REPORTER

## Voir Dire

afternoon. I will have something to add to what  
he said by way of argument but basically those are  
5 the reasons.

Now, we'll move ahead with the - the Crown  
are prepared to go on with new witnesses?

MR. WALSH: We had a witness on the stand that we had  
finished direct on on Thursday, My Lord, Constable  
10 Michel Page. He was on the stand, we finished our  
direct examination. Mr. Furlotte indicated that  
he perhaps wished to delve into areas of cross-  
examination that we would probably take objection  
to and that he would want your ruling on it.

15 THE COURT: Page, he was -

MR. WALSH: He testified, My Lord, on Thursday with  
respect to the taking a person by the name of  
Lewis Murphy to the Miramichi Hospital to have  
blood samples taken from him. We had a Marshall  
20 Cook testify just after him. He was stood aside  
and Marshall Cook, a technician at the hospital,  
testified as to taking blood from this particular  
person, Lewis Murphy. We had finished that  
particular aspect of our direct examination and  
25 Mr. Furlotte before cross-examining Constable Page  
indicated that he may want to get into an area  
that perhaps the Court should rule on.

THE COURT: Yes, I recall now. Did you have anything to  
raise, Mr. Furlotte, in that connection?

30 MR. FURLOTTE: Well, My Lord, it's Mr. Allman who, I  
believe, advised me last week that they would be  
taking objections to certain evidence or certain  
cross-examination of Constable Page, and maybe  
the Crown Prosecutor would be best to explain it  
35 rather than myself. It's his objection, not mine.

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MR. WALSH: No, we just indicated to Mr. Furlotte that  
we were going to insist that he comply with the  
5 rules associated with examination and cross-exam-  
ination, legal rules have been developed over the  
centuries, and we decided that we would force him  
to comply with those particular rules and as a  
result we suggested to him not only this  
10 particular witness but any witnesses that he  
intends to delve into the hearsay knowledge of or  
anything associated therewith that he should seek  
your ruling before he drops it in front of the  
jury and forced us to object in front of the jury  
15 and then have the jury taken out, so if he feels  
that he is going to get into a particular area,  
particularly associated with hearsay knowledge or  
any evidence that other courts have ruled inad-  
missible in the past, we would like to know what  
20 they are before the jury hears them so that we  
can at least address our legal argument on it.

THE COURT: Just fill me in on one thing, what was the  
status of Murphy, was he a suspect?

MR. WALSH: A suspect.

25 THE COURT: He was a suspect?

MR. WALSH: That's correct, My Lord. We elicited that  
fact from the constable at the time as to who  
this person was and he's testifying.

THE COURT: Was his blood subsequently exposed to DNA  
30 testing or -

MR. WALSH: Yes, that's correct, My Lord.

THE COURT: Yes, but he was, as I recall from the  
earlier voir dire - was he the gentleman who  
appeared on the -

35 MR. WALSH: The first blot, he was the suspect sample on

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the first blot, yes.

THE COURT: Well, are you aware, Mr. Furlotte of your -  
5 will your cross-examination extend into any area -

MR. FURLOTTE: Yes, my cross-examination of Constable  
Page, I expected to get into him as to whether or  
not they were able to eliminate Lewis Mursphy as  
a suspect during their regular police investiga-  
10 tions, and as you recall, for police purposes  
David Tanasichuk was eliminated as a suspect and  
the Crown brought evidence forth to that elimina-  
tion, or at least the witness was allowed to bring  
forth, and that was Corporal Kevin Mole, that  
15 David Tanasichuk was able to be eliminated as a  
witness as the results of a polygraph test. Lewis  
Murphy - at least I have reports from the police  
that as a result of the polygraph test he was not  
able to be eliminated and I believe the Crown is  
20 probably scared that I'll solicit this information  
out of Constable Page, and where they didn't mind  
it coming out for David Tanasichuk, reference to  
the results of a polygraph test now they want to  
restrict that and not allow it in in results to  
25 the suspect Lewis Murphy. I don't think the Crown  
should be allowed to have their cake and eat it,  
too. They don't mind hearsay evidence going in  
when it suits them but yet when there's hearsay  
evidence of the same nature and it doesn't suit  
30 them, they don't want it in to assist the defence.

THE COURT: Well, I will only say this, I'll give the  
defence pretty broad -

MR. WALSH: Yes, I would like to address the issue, My  
Lord, on that particular aspect.

35 THE COURT: All right, you speak to it, then.

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MR. WALSH: The issue that Mr. Furlotte has raised and occurred earlier in this particular trial is now more focussed and it's more acute. If Your Lordship remembers, when this whole issue came up in relation we had asked or suggested that this should go into a voir dire and our position with respect to the mention of a polygraph examination. It's Mr. Furlotte who wanted to get into the fact that there was a number of suspects, who they were and that aspect, not us. We take the position that for a number of reasons he is not entitled to elicit evidence from a witness that is hearsay and/or associated with the polygraph, and I would make my argument as follows, My Lord.

Past experience at this trial in relation to the Flam homicide investigation has shown that the defence wants to delve into the hearsay knowledge of police officers and witnesses generally. Constable Mole, Constable Charlebois, and the evidence of Nina Flam is an example of that. In this regard the Court has been lenient to Mr. Furlotte and has given him some leeway. The jury now knows something about police investigations; that is generally how suspects are identified and the process generally for attempting to eliminate such suspects. He has also been permitted to elicit the names of certain former suspects. In this regard we can see the need for the jury to know that the person Lewis Murphy whose blood is being introduced at this trial was at one time a suspect. This has already been elicited as being within the direct knowledge of the officer. However, it is the Crown's position that we object

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5 most strenuously to the cross-examination of the officer on why he was a suspect for a number of reasons, any one of which would not permit, we would suggest, My Lord, that particular line of questioning.

10 First of all, it violates the hearsay rule pure and simple, why he was a suspect in the first place or anything associated therewith, and I would refer Your Lordship to McWilliams on Evidence, under the exclusionary rules and exceptions, Pages 8-6 under that particular chapter of the hearsay rule. "The rule also  
15 applies equally to answers given on examination and in cross-examination", and he goes on to the next page to say after reviewing the law and the rationale associated with the development of the hearsay rule for courts:

20 "All of the foregoing are sometimes said to provide an assurance that the best evidence is produced. It is evident from the foregoing that the concerns which underlie the hearsay rule are several: the insincerity of a declarant, inaccuracy, depreciation arising from inaccurate transmission, repetition, or recording of the  
25 statements",  
30

so the hearsay rule applies applies with equal force to cross-examination as it does to examination.

35 In addition, and separate and by itself, this particular rule would prohibit this particular line of question. Secondly, and again by itself, the polygraph. In the course of elimination Mr. Murphy a polygraph examination was conducted.  
40 The results of this examination or the fact one was even conducted is not admissible, in the Crown's submission, for a number of reasons.

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5 First of all, any knowledge this officer has  
is hearsay associated with that particular  
examination. As well, he is not an expert in the  
operation of such a device upon which he could be  
permitted to express an opinion as to the results  
and to permit it would be to violate the opinion  
evidence rule. That's just another particular  
avenue added on to the hearsay rule. Even if he  
was the actual polygraph examiner, My Lord, he  
would not be permitted to express an opinion for  
the reasons given by the Supreme Court of Canada  
In Filion vs. The Queen, and if you would permit  
10 me, I have a short quote. It's taken from Beland  
and Phillips, which is the other decision of the  
Supreme Court of Canada. Filion and The Queen was  
decided in 1978 and Beland and Phillips in 1987 by  
the Supreme Court of Canada. In Beland and  
20 Phillips they refer to their previous decision in  
Filion at Pages 403 and 404, and they state:

25 "The leading case in this court  
concerning the admissibility of  
polygraph evidence is Filion vs.  
The Queen in which it was held that  
such evidence should be rejected.  
Speaking for the majority Mr. Justice  
Ritchie expressed the view that such  
evidence offended the hearsay rule",  
30 and he refers to Mr. Justice Ritchie's judgment  
and part of it he said, "His opinion" - and he's  
referring to the actual polygraph examiner,  
35 "however, was not based on the statements made by  
the appellant but on his own expertise in inter-  
40 preting the recordings of the particular machine".

45 Even apart, My Lord, from the reasons I've  
given you, the Supreme Court of Canada has held  
that the polygraph does not have a place in the  
criminal trial process, and again that's the

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5 authority of Beland and Phillips, and I would  
suggest no mention should be made of it in court,  
it is a police investigative aid pure and simple.

10 The other additional factor, My Lord, is  
that the evidence that Mr. Furlotte is intending  
to raise seems to me to be related to collateral  
type issues, issues not directly related to  
whether this particular man committed this crime.  
They're collateral aspects associated with that.  
An enormous amount of time has already been spent  
15 on these types of issues.

What does the jury now know, My Lord? The  
jury knows that there were other suspects, the  
jury knows that the Crown's position is that  
Legere was a party to those offences. That is the  
20 issue. Whether or not there was other suspects is  
not an issue and if any of those suspects were  
involved as well that is not an issue. The only  
issue for the trial is whether Legere was a party.

The jury also knows generally there are  
25 various investigative procedures that the police  
use in suspect elimination. The jury knows  
generally how suspects are identified, the jury  
knows that Lewis Murphy was at that time one such  
suspect. The jury knows that blood was taken by  
30 the police from Lewis Murphy and it's the Crown's  
intention to prove to the jury that he was  
eliminated using what this Court and other courts  
in North America, and in the world, for that  
matter, have held to be an accepted technique for  
35 use in courts, and that is DNA typing.

It is our respectful position, My Lord, but  
it is strongly made, that this Court is bound as a



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matter of law not to permit the kind of cross-examination that Mr. Furlotte wants to delve into. It would be valueless to the jury and it would put the Court in an extremely difficult position, an almost impossible position, to tell them how to approach or how to address that particular evidence.

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10  
15  
20  
If I could be blunt, the reason, and the only reason, Mr. Furlotte wants to refer to the polygraph taken by Mr. Murphy is to divert the jury's attention away from the evidence against Legere, and he wishes to do so, we suggest, in a manner that is not permitted by law. He should not be allowed to follow that particular course of evidence, and as I suggest, My Lord, and respectfully suggest, that you are bound as a matter of law to prohibit that particular form of cross-examination. Thank you.

THE COURT: Mr. Furlotte, what do you have to say by way of reply?

MR. FURLOTTE: Well, My Lord, as the Crown has already stated in their opening address, the evidence against Mr. Legere is simply circumstantial and all the defence has to do is raise a reasonable doubt as to whether or not the evidence tends to prove beyond a reasonable doubt, although it be circumstantial, that Mr. Legere is guilty of this offence. There were other suspects in this case. The Crown's position is that they were able to eliminate them all, and the Crown's contention is that they are able to eliminate this suspect, Lewis Murphy, as a suspect through the results of DNA testing. As you're well aware, the results of

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35

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DNA testing may only suggest that Lewis Murphy did not leave any semen at the scene of the crime.

5           However, there are other police investigative methods which have been used and establish that it's not necessary that if somebody, say, had sexual intercourse or some kind of sexual contact with the victims - one, it's not necessary that  
10           they killed the victims or beat the victims. It's not necessary that anybody having sexual contact with anybody leaves semen, they might not necessarily ejaculate. That again would not prevent that person from killing their victim.

15           The Crown's contention is that their only issue here in this trial is that Legere is a party to the offence, but my position is if the Crown has evidence that would suggest more strongly that somebody else did the actual killing or more  
20           strongly that somebody else was involved rather than Mr. Legere, I think then that is a position for the jury to decide whether or not Mr. Legere was a party with the other suspect who the police may have more evidence against.

25           As you recall, Corporal Charlebois - I believe it was Charlebois or Kevin Mole, I just forget which right offhand - stated all other suspects were eliminated from the Flam incident for police purposes. Now, police purposes is a  
30           very broad term, and if for police purposes is to get a conviction against Mr. Legere, then maybe yes, they would eliminate all of the suspects for police purposes. Lewis Murphy was also a suspect in the Flam incident and I have evidence before me  
35           that how they eliminated David Tanasichuk was

because of the results of a polygraph test. They  
were not able to eliminate Lewis Murphy as a  
5 suspect as a result of a polygraph test. As a  
matter of fact, it no doubt enhanced their  
suspicions.

THE COURT: They were only suspects for police purposes,  
though, weren't they?

10 MR. FURLOTTE: Well, as I say, for police purposes -

THE COURT: For police purposes they were suspects, and  
they were eliminated for police purposes.

MR. FURLOTTE; For police purposes. That would be  
eliminated as probably that, well, we are not  
15 going to lay charges because we don't have enough  
evidence against this suspect to lay charges.  
That could be for police purposes.

Again the position of the defence is that  
the Crown has extremely little evidence against  
20 Mr. Legere in any of the cases, but nevertheless  
they feel it's necessary for police purposes to  
bring the charges against Mr. Legere. Again, if  
the police are not going to bring as witnesses  
police officers to court that can assist the  
25 defence in cross-examination, rather they bring  
the ones who have the information through hearsay  
evidence from their other police officers which I  
will not be able to get at, and again this may be  
a tactical procedure on behalf of the Crown to  
30 prevent me from soliciting evidence from the  
police officers' investigation which would assist  
Mr. Legere.

Again, the Crown had no objections, and as a  
matter of fact from my recollection it was their  
35 preference to have the police officer eliminate

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David Tanasichuk and to bring forth to the jury's attention that he was eliminated because of the results of a polygraph test, so therefore they were quite confident that Mr. Tanasichuk did not have anything to do with the Flam incident. What I want to be able to ask this witness is what did they do for police purposes to eliminate Lewis Murphy as a suspect and if there was any evidence differing from David Tanasichuk which did not enable them to eliminate Lewis Murphy as a suspect. Lewis Murphy from the police investigative report, it's not just the results of the polygraph test but neither did his alibi for the Flam incident - it did not check out nor did his alibi for the Daughney incident check out. It did not only not check out on a polygraph test, it did not check out any other way, so I mean there's more than just the polygraph tests which made Lewis Murphy a suspect, and my position is that Lewis Murphy could not be eliminated as a suspect in the Daughney case and probably not in the Flam case, and it's not just as a result of the polygraph tests because the polygraph tests they could not exclude him. They're saying that, well, they could exclude him as a suspect because of DNA testing, which I would submit the DNA testing has little - I won't say nothing, but it has little and could be inconsequential as to who actually committed the murders of the Daughneys or the Flam.

THE COURT: Thank you very much. May I ask you, Mr. Walsh, the evidence so far from Constable Page, is it, was that Murphy was a suspect and was

eliminated?

MR. WALSH: No, he was just simply - because Mr. Murphy's  
5 blood was being taken from him it was important  
this is direct knowledge to the officer that he  
was a suspect, period. It was important for the  
jury to understand that aspect and we will later  
in the trial attempt to prove that he was  
10 eliminated using an acceptable process in court.

Mr. Furlotte's position is that he wants to  
delve into -

THE COURT: Does Page have any knowledge that -  
presumably there may have been other reasons for  
15 eliminating him or that could be advanced -

MR. WALSH: No, but all his information would be -

THE COURT: But the DNA capped it off, I gather, in  
Murphy's case, the results of the DNA?

MR. WALSH: Well, yes, his blood was -

20 THE COURT: Would Page have had knowledge that -

MR. WALSH: Not direct knowledge, it would be hearsay  
knowledge, my understanding of Constable Page's  
testimony. Everything that he would have  
associated with why he was a suspect in the  
25 first place, any discussion with respect to alibi,  
those all as aspects would be hearsay knowledge of  
the officer.

I wish to clarify one thing, My Lord, and  
that is Mr. Furlotte seems to indicate that we  
30 want our cake and eat it, too, we want to allow  
the good evidence and not the bad. Our position  
was that we should not delve into that at all.  
Once he delved into it, was permitted to delve  
into it, then our position was we should have been  
35 entitled to elicit all the evidence associated

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with it.

THE COURT: That's all, I'm not asking you to re-argue  
5 the thing.

MR. WALSH: Fine, My Lord, I just wanted to clarify that  
point. I didn't want it to be left.

THE COURT: Well, look, my instruction is this, or my  
10 decision is this. Mr. Murphy isn't on trial here.  
It has come out in evidence that he was a  
suspect. Mr. Furlotte, if you want to ask the  
witness if he was eliminated as a suspect, to his  
knowledge, if he can speak for the police  
generally, you may ask that question and he may  
15 give the answer. If you want to ask him why he  
was eliminated as a suspect, I will permit you to  
ask that question. I'm not going to permit the  
examination, the cross-examination, to go on and  
on to determine what the results of polygraph  
20 tests were and so on. I have no knowledge of what  
the witness will say. He may say, well, a poly-  
graph was administered. We're not going to get  
into polygraph tests. As Mr. Walsh has pointed  
out, they are a tool used by investigating  
25 officers which have no status in the courts what-  
ever. Evidence isn't permitted of the results.  
I think in an earlier voir dire I illustrated  
how - I believe I did illustrate how the adminis-  
tration of a polygraph test had been used and  
30 evidence was permitted of it but only to show what  
was leading up to certain confessions made by an  
accused in that particular case. However, that's  
by the way here.

This isn't a trial of Mr. Murphy. If the  
35 defence has evidence that Mr. Murphy was

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implicated in these offences, these homicides, or  
was responsible for them or otherwise involved in  
5 them, it's open to the defence to call evidence  
when its turn comes to show that he was the one,  
perhaps, who committed the offence and not the  
accused, or that he was involved in some way in  
the thing. That is open to the defence but it  
10 can't be done in this fashion.

MR. FURLOTTE: Can I ask this witness, My Lord, whether  
or not Lewis Murphy's alibi for the Flam and the  
Daughney incidents checked out?

THE COURT: Can you what?

15 MR. FURLOTTE: Can I ask the witness if Lewis Murphy's  
alibi for Daughneys and Flam checked out?

THE COURT: Does he know whether he had any alibi?

MR. FURLOTTE: According to his report - let me see.  
I guess the reason for the polygraph test was  
20 that his alibi didn't check out, so therefore -

THE COURT: Why don't we stay off the polygraph test  
completely?

MR. FURLOTTE: Yes, well, I won't mention the polygraph  
test but I'm allowed to ask the witness whether  
25 or not Lewis Murphy's alibi checked out.

THE COURT: I won't permit that. I won't permit that,  
we're putting Murphy on trial here and I'm not  
going to permit him to be put on trial. O.K.,  
bring the jury in. You're putting this gentle-  
30 man back on the stand straightaway?

MR. WALSH: Yes.

THE COURT: You're sworn already, Constable Page.

CONSTABLE PAGE: That is correct, My Lord.

(JURY CALLED - ALL PRESENT.)

5 THE COURT: And you're recalling Constable Page to the stand, Mr. Walsh?

MR. WALSH: Yes, I've finished my direct examination, My Lord.

10 CONSTABLE MICHEL PAGE resumes stand.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Constable Page, you testified that you had taken some blood samples or at least arranged to have blood samples taken from Lewis Murphy?

15 A. That is correct.

Q. And what was the purpose of taking those blood samples?

A. It was to use at a later date in comparison tests.

Q. In comparison tests. Was Lewis Murphy a suspect?

20 A. Yes, he was.

Q. In the Daughney case?

A. That is correct.

Q. Was Lewis Murphy also a suspect in the Flam case?

A. No, he wasn't really a suspect in the Flam murder case, no.

25 Q. And I believe you said that Lewis Murphy appeared to cooperate with you?

A. He was very cooperative throughout the investigation, yes, he was.

30 Q. Out of your dealings with Lewis Murphy were you able to eliminate him as a suspect?

A. Myself personally, no, but based on conversation that I had with other officers -

Q. Well -

35 A. Well, that's the situation, my belief would be



based on conversations with other officers, My Lord.

5 MR. FURLOTTE: Well, I think he's getting into something that I wanted to get into and that the Court wouldn't allow.

THE COURT: We're getting into hearsay there. This witness really doesn't know. You say that as far  
10 as you're concerned he was eliminated, or what do you say?

A. Well, he was - the time that I was in Newcastle -

THE COURT: I don't want to know what you were told by others.

15 A. Well, the time that I was in Newcastle, My Lord, he was a suspect, but at one point I was transferred back to Bathurst and I no longer worked on that file but I later had conversations with the officers and based my beliefs on those  
20 conversations.

THE COURT: Which led you to believe that he had been eliminated, I gather is what you're saying?

A. That is correct, My Lord.

MR. FURLOTTE: But up until the time that you finished  
25 your personal investigation with Lewis Murphy he had not been eliminated as a suspect in your mind, had he?

A. That's correct.

MR. FURLOTTE: I have no further questions.

30 THE COURT: Re-examination?

REDIRECT EXAMINATION BY MR. WALSH:

Q. Just briefly, Constable Page, you have told him  
35 that you were on that investigation but you went back to Bathurst. Were you on for the whole - was

5 your investigation completed when you went back to  
Bathurst or did you have to leave the investi-  
gation for any other reasons?

A. I had to leave the investigation.

Q. Because of a family matter?

A. That is correct.

Q. Associated with your wife being pregnant?

10 A. That's correct.

MR. WALSH: O.K., I just wanted to clarify that. I have  
no further questions.

THE COURT: Thank you very much, Constable. Now, you  
have another witness?

15

SERGEANT WAYNE LOCKE, called as a witness, being  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

20 Q. Please state your full name and your occupation  
for the Court, witness.

A. Sergeant Llewellyn Wayne Locke. I'm a member of  
the Royal Canadian Mounted Police, Forensic  
Identification Section. I'm presently stationed  
in Yellowknife in the Northwest Territories.

25 Q. And in the Forensic Identification Section is  
there a particular area in which you specialize,  
sir?

A. No, I've pretty well covered the field in forensic  
identification. I do have some experience and  
30 expertise in specific fields over and above the  
normal forensic identification duties.

Q. Are you familiar with an identification system  
known as the laser light, sir?

A. Yes, sir, I am.

35 Q. Could you please relate to the jurors and to the

Sgt. Locke - Direct

Court what this laser light system is, sir?

A. Basically what the laser light system is is a  
5 lighting tool that we use in forensic science to  
help us locate various items of physical evidence.  
For an example, we can use it to locate finger-  
prints, hairs, fibres, staining components, to do  
physical matches between items. The laser equip-  
10 ment itself is a very technical piece of equipment  
and to consider oneself an expert in the field of  
laser would be to consider oneself a physicist.  
Someone with a doctorate in the field would be  
more in tune with the techniques and the operation  
15 of the machine itself. My expertise or my field  
of knowledge concerns using the laser apparatus as  
a source of light to aid me in the examination of  
items for physical evidence.

Q. O.K. By a laser apparatus, however - which I take  
20 you have some familiarity with the laser apparatus  
itself?

A. Yes, sir, I do.

Q. Could you briefly relate to the Court the means by  
which you came to be familiar with this particular  
25 apparatus?

A. In the early 1980's in this country some research  
had been begun in Ontario with respect to using  
the laser in forensic science. I had heard about  
some of these developments in Ontario, mainly  
30 through the Ontario Provincial Police, and began  
some research of my own in Halifax, Nova Scotia.  
I acquired the use of a laser unit at the  
University of Dalhousie and worked with their  
Chemistry Department and began conducting experi-  
35 ments in the field of laser operation with respect

to my field.

Q. What were you particularly interested in when you  
5 began conducting those experiments? You were  
stationed in Halifax, I take it, at that time?

A. Yes, I was stationed in Halifax. My main concern  
at that time was to use a laser to find finger-  
prints on items which we normally did not have  
10 much luck in locating fingerprints; for an example  
on papers, some plastic exhibits, on rough items.  
That was how the research initially began, but we  
very quickly in 1985 began to realize that the  
laser had a lot more applications to science, to  
15 the forensic science field, than we first realized  
and we continued on.

Q. For instance?

A. We found that certain components luminesced,  
actually shone under the laser light of their own  
20 validity with no further treatment or nothing,  
just shine a laser light on it and these items  
would luminesce, glow, you could see them where  
you would not be able to see them with normal  
light or with the unaided eye.

Q. And what sort of things would luminesce in that  
25 fashion when you use a laser light on them?

A. Some chemical compounds, some things normally  
found around the house, some cleaners would  
luminesce. Some ladies' and gentlemen's hair  
30 products, hair dyeing, hair staining products,  
luminesced. Some organic things such as body  
fluids, some body fluids luminesced.

Q. Any particular body fluids that you noticed in  
your experiments?

A. There was some luminescence from salivas from  
35

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5 certain people. There was a noted luminescence of seminal staining. Those are basically the ones from the body.

Q. So you have just related that in 1985 you were doing this work on your own. Were you a member of the Forensic Identification Unit in Halifax at that time?

10 A. Yes, sir, I was.

Q. And following what you were doing then in cooperation with Dalhousie what did you then proceed to do? Was there any special training that went on after that, or advanced, more formal training?

15 A. Yes, in the next few years we coordinated the people who were doing some research across Canada and we all met in Ottawa in early 1986 where we sat down and we realized that this research was going somewhere and had very important implications for our field. We sat together for a week  
20 and learned a lot from each other. As I have said before on numerous occasions, that's when we began to write the book on the use of laser in forensic science.

25 Q. What do you mean by write the book, please, Sergeant?

A. We began from the very basement and had to work up. There was no other research being done at this time and we began the science in Canada.  
30 Some of the people involved in the early stages of the research have since moved on to the United States and have begun research projects down there but at that time we were beginning, we didn't know where the laser technology was going  
35 to take us.

Sgt. Locke - Direct

- Q. Was there any more formal system then set up for training or for testing to develop a database, if you will, at that time, during those years?
- 5
- A. Yes, several articles in books have been published and are recognized in science fields on laser technology with respect to forensic identification. In 1988 I attended a course at the Canadian Police College in Ottawa. This was a formalized advanced laser training course.
- 10
- Q. And what sort of things were studied in that advanced laser course, sir?
- A. That was the use of different chemicals and dyes with respect to raising fingerprints on, before, very difficult articles to get fingerprints on. We covered some examinations of human remains and we explored different research ideas for future development.
- 15
- Q. Now, you earlier said, you said at the outset of your testimony, that you were not going to try and testify as a physics professor or the like, but how large a machine are we talking about, this particular light, the earlier ones, perhaps, and the more recent type that might be available?
- 20
- 25
- A. In the early years our laser unit, the distance, the unit itself would cover the top of your respective desk there. It's a very long unit itself, it's quite cumbersome. That is the actual laser unit itself, but beside that you need a water cooling capacity. It means 60 to 65 pounds of water pressure per minute just to keep the item cool and it needs its own electrical outlet, so the laser unit itself at that time needed its own room, it was not portable, it was a large piece of
- 30
- 35

Sgt. Locke - Direct

5 equipment and a very expensive piece of equipment.  
Since then, though, we have taken that technology  
down to something that could fit in a good-sized  
suitcase and is portable.

Q. O.K., does that more portable one now used have a  
special name of its own?

A. Yes, it's called a lumalight.

10 Q. Now, in October of 1989 what type of system was  
available within the Maritimes?

A. The only one that was solely devoted to forensic  
science was the unit I had in Halifax at the  
Crime Lab. We had gone out and purchased our own  
15 by this time after our initial research at  
Dalhousie University and it was located at the  
Forensic Lab in Halifax under the auspices of the  
Royal Canadian Mounted Police.

Q. And it was which one, the large or the smaller?

20 A. It was the large unit and required a whole room  
of its own.

Q. And how much light are we talking being given out  
by this particular system?

A. The light put out by this particular unit, we  
25 refer to it in wattage, is 22 watts. Now, that  
doesn't sound like much when you talk about light  
bulbs. People would normally think of a 60 watt  
or a 100 watt light bulb, but we're talking 22  
watts of pure energy. That is quite a lot  
30 condensed into a very small area, so much so that  
it could actually go through a cinder block in a  
matter of a couple of minutes, that is how strong  
the light is. What we're dealing with here is a  
beam of light very strong. What we do is at the  
35 head of the laser where the beam would actually

5           come out we have set up a diffusing lens so the  
light is immediately diffused as it leaves the  
laser, and then it is passed through along fibre-  
10           optic coil and that again diffuses the power, the  
wattage of the light again, so we've gone from 22  
now probably down to 15 or 12 watts. By the time  
it comes out of the end of the fibre optics  
15           through what we call a laser wand which looks like  
a pencil you're dealing perhaps with five or six  
watts of light but still very intense light, and  
you are looking at a light source that doesn't  
spread out, it covers an area - if for example the  
20           end of the wand was five inches from the subject  
to be examined you're looking at something perhaps  
two and a half to three-inch diameter circle, an  
article something - if I may demonstrate - like  
this area, two or three inches in diameter, so  
25           when you're examining an item with the laser light  
you hold the wand in one hand and you have to move  
the source of the light over a small area and  
examine it relatively closely.

Q.           What if any protection would you have to use for  
25           your eyes while conducting this sort of examina-  
tion?

A.           We do wear goggles. They are an argon filtered  
goggles, they look sort of orange. That has two  
purposes. It blocks out the ordinary light.  
30           Because the laser light is stronger it allows you  
to see the effects of that laser light. Also  
because it's such a high intense light you have to  
be careful of it refracting back into your eyes  
and it could do damage to your eyes.

Q.           How do you actually conduct the examination, say,



Sgt. Locke - Direct

of a body using the laser light system?

5 A. The laser light is a non-destructive method of  
examining something. It is merely passing a light  
over an object or over a body. That is one of the  
first considerations of doing an examination.  
What we would begin to do would be to examine the  
body from head to toe beginning on one side and  
10 actually moving the wand back and forth over the  
body as you progressed down one side of the body  
and proceed to the other side.

Q. Sergeant, I'm passing to you in front of the  
jurors a device they have seen several times in  
15 the preceding days, it's a laser pointer of sorts.  
How would that compare, say, with the type of  
device you're using?

A. The end of it, the laser wand end, is very  
similar, perhaps more round, and of course from  
20 the opposite end you would have the fibre optic  
leading back to the laser unit. There is a switch  
on it similar to this one here where you can turn  
the laser beam on. Now, this is called a  
directional light and of course it is not  
25 diffused, much the way the laser beam would come  
out of the unit. The laser beam would look like  
this, but because we've diffused it the beam at -  
for example, this would be expanded now about  
four or five inches because we are diffusing the  
30 strong beam.

Q. O.K., and you would then do what with that?  
Perhaps you could just give a demonstration  
holding your hand out what you would do.

A. If this was the object to be examined the beam  
35 would be - we would have the goggles in place and

Sgt. Locke - Direct

5 we would begin a slow process in one direction  
first up and down until the entire surface had  
been covered. Now, remember the beam of light  
would be covered. Just then to doubly check we  
would begin what we call cross-check, cross marks  
the other way, up and down the body. That would  
ensure that because you're dealing with such a  
10 small area that all the areas are covered.

Q. Now, I'm going to ask you to go back in your mind  
to the 14th of October of '89. Did you have  
occasion then to perform an examination using your  
laser light that you wish to relate to these  
15 jurors?

A. Yes, sir, on the 14th of October in the afternoon  
at approximately 2:00 p.m. I received a call from  
Sergeant Chiasson of the Bathurst Ident. Section  
and he requested some assistance in an investiga-  
20 tion that was being conducted in New Brunswick.  
Later that day, that evening around 8:00 p.m.,  
Corporal Leo Roy and Constable Lefebvre arrived at  
Halifax Laboratory with the remains of two female  
bodies. These were taken to my laser room for  
25 examination by myself, and the two members, of  
course, had control and continuity of the bodies.  
I was required to become a - I was more of a  
technician turning the machine on, showing them  
how it operated, and assisting in that capacity.  
30 We began our examination around 8:00 p.m. of both  
bodies.

After starting the machine up and making  
sure that we had proper laser power and laser  
light and the rooms were secured we had our  
35 goggles in place and I began to examine the bodies

Sgt. Locke - Direct

with the laser as just previously demonstrated.  
Under the laser light hairs and fibres and some  
5 staining were noted on both bodies.

Q. Before you commence this examination was there any  
treatment of the bodies of any kind by yourself?  
Were they chemically treated in any way?

A. No, they were not chemically treated at all.

10 Q. What if any effect would the use of the laser  
light have on - you mentioned earlier bodily  
fluids that might be found on a body?

A. I have done some research in that particular  
15 field working in close conjunction with the  
laboratory system of the Royal Canadian Mounted  
Police. I have conducted experiments on blood,  
semen, and on some oils, bodily oils, sweats and  
that type of thing, and I have found that the  
laser light is still just a light source and does  
20 not alter these substances in any way. I have  
also worked on actual cases where, for an example,  
I have received items that they wished checked for  
fingerprints using the non-destructive method of  
the laser examination, for example knives or  
25 weapons, other weapons that also have blood on  
them that have required a serology examination,  
and I have done my laser examination looking for  
fingerprints, turned the exhibits back to the  
laboratory people, and there has been no altera-  
30 tion of the exhibit in any way by laser examina-  
tion.

Q. Now, these bodies which you examined, did you also  
make an examination for fingerprints at that time?

A. There was a cursory examination made of the bodies  
35 for fingerprints by myself and Corporal Leo Roy.

5 Corporal Roy is a member of the Forensic Identification Section stationed, I believe, at the time in Moncton, New Brunswick. It was concluded at that time that a fingerprint examination would be of no benefit.

Q. Why would that be so, sir? Why would it not be any benefit?

10 A. There are several reasons. It's just a natural property of fingerprints. They do not readily adhere to human bodies. These bodies had also been subjected to temperature change, a great deal of heat. Temperature change, of course, results  
15 in changes in the atmospheric conditions around the body, a heating, a cooling, a condensation and an evaporation process. That pretty well concluded, you know - we decided no, not to continue to look for a fingerprint examination in  
20 these cases.

Q. I have placed in front of you two photo booklets, P-34 and 35, P-34 earlier identified as being of a Donna Daughney. First of all, you said there were - an examination made by yourself and there  
25 were things noted. By whom, again, please?

A. Who were the things noted by?

Q. Yes.

A. I requested that Corporal Roy and Constable Lefebvre make notes of anything that I mentioned  
30 during the course of the examination.

Q. O.K., and P-34, Donna Daughney, do you recall having performed an examination of that person shown on those photos?

A. Court Exhibit P-34, those photographs, shows one  
35 of the female bodies that I examined at the Crime

Lab using the laser light.

Q. And what was noted on her and where?

5 A. All over the - especially the upper part of the  
body were noted hairs and fibres. These, once  
under the laser light, luminesced pretty well of  
their own accord, you could see them distinct from  
10 the body. I requested that they be taken as  
exhibits and those were all over, especially on  
the upper part of the body. Also on this  
particular body I noted some staining in the  
genital area and in the area of the lower abdomen.

15 Q. O.K., now, could you indicate perhaps on photos 2  
and 3 for the jurors and then for the Court where  
you mean by the genital area and lower abdomen  
where you found the staining?

20 A. In photograph #2, the lower abdomen, there is  
noted a red mark, and I consider the lower  
abdomen anywhere from the navel down in that  
particular area, and what I'm referring to as the  
genital area is actually where the pubic area and  
the thigh area and the inside.

Q. O.K., photos 2 and 3, then?

25 A. That's photograph 2, and again - in photograph 2  
that would be the area that's in the centre of the  
photograph, more in the right centre of the photo-  
graph, and photograph 3, again it's in the right-  
hand side but in the pubic area below the navel,  
30 pubic area, and the inner thigh area.

Q. The fluid that you saw there, was it a fluid that  
you were able to recognize or which would  
correlate in any way to examinations which you had  
made in the past?

35 A. This wasn't the fluid that you can see, it was a

10

Sgt. Locke - Direct

5 staining. You can't see anything with the unaided eye. when I noted the staining I noted to the two members who had brought the bodies down to me that this was - that I had seen staining like this before. I had done research on seminal staining and noted similar properties in this type of staining and I brought it to their attention.

10 Q. O.K., I'd ask you then to turn if you would, please, to photo booklet 35.

A. Court exhibit -

THE COURT: Just on that point for clarification -

Q. - P-35. Sorry, My Lord.

15 THE COURT: When you talk about stainings are you talking on photograph 2 of the oval-shaped red surround near the navel or what are you talking about?

A. No, My Lord, that red area by the navel seen in photograph #2 and a little in photograph #3 is not the staining, that is an actual burn area of heat concentration. The staining is not visible to the unaided eye.

Q. Would you be able to indicate, though, roughly, the area where the staining would have been found on the abdomen, if you can? If you can't -

A. Not with great accuracy, no.

Q. All right, if you would then please turn to P-35 which is a photo booklet earlier identified as being photos of Linda Daughney.

30 A. Court Exhibit P-35, booklet of photographs of a body that was brought to my lab for examination by the laser and identified to me at that time as the body of Linda Daughney. Again on this body an examination, and in some of the clothing we found hairs and fibres by the use of the laser and I

35

Sgt. Locke - Direct

- 5 instructed at that time Constable Lefebvre and  
Corporal Roy to take possession of these items.  
Again on this particular body there was some  
staining noted but it was confined mainly to the  
inner - closer to the genital area, the pubic  
area. There was no staining noted on the upper  
part of the body.
- 10 Q. O.K., by genital area you mean where?  
A. In the pubic area, right in the pubic area.  
Q. O.K., and having noted this staining, what was  
done by yourself or those other two persons who  
were with you?
- 15 A. Well, at that time there was no samples taken of  
that area and I asked both members to note them,  
to mark them, and when they had begun post mortem  
examination or an autopsy that samples be taken  
from this area by someone trained in that  
20 particular field.  
Q. Those instructions were given by whom?  
A. By me to Corporal Roy and Constable Lefebvre.  
MR. SLEETH: Thank you very much, Sergeant.

25

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Sergeant Locke, aside from the body fluids which  
you mentioned which would show under the laser  
light I believe you mentioned seminal fluids and  
30 saliva?  
A. Some salivas will luminesce from some people, yes,  
sir.  
Q. And blood, did you mention blood?  
A. Blood will not luminesce under the laser.  
35 Q. What about urine?

Sgt. Locke - Cross

- 5 A. The tests I've done with urine were inconclusive in that if there was semen present it will have some luminescence, but no, normally urine unless it's carrying something else like a medication or - will not luminesce, my tests have shown.
- 10 Q. What about some stomach fluids, say somebody vomits and there's some vomit on the body? Will that show up under laser light?
- 15 A. The only one test that I've ever done inside of the stomach content has been inconclusive, there was no luminescence. What I would - I had not been able to break down what was in there to see if there was things in it that would luminesce.
- Q. O.K., so you've only tried one study on stomach contents?
- 20 A. That's correct, yes, just one.
- Q. Anything else you can think of?
- A. That would luminesce?
- Q. Yes.
- A. There are some things that do luminesce naturally in the environment.
- 25 Q. I'm thinking more of body fluids.
- A. Of body fluids? We have found a very small percentage of people's fingerprints will naturally luminesce without any chemical treatment whatsoever, a very small percentage, and I'm not
- 30 convinced that is natural, I'm thinking that perhaps there may have been a contaminant on the hands. My tests in that area have shown that some people do - I do sometimes find fingerprints without any pre-treatment which would indicate
- 35 that some bodily sweats from some people will



33

Sgt. Locke - Cross

luminesce.

5 Q. That could have been like from either saliva or sweat?

A. Exactly.

Q. Some people's sweat will luminate?

A. Exactly.

MR. FURLOTTE: I have no further questions.

10 THE COURT: Re-examination, Mr. Sleeth?

MR. SLEETH: No, My Lord.

THE COURT: Thank you very much, Sergeant Locke, and you're excused.

15 MR. SLEETH: My Lord, I wonder if we might take a break at this stage before calling my next witness, Dr. MacKay? I imagine he will be fairly lengthy and there are a couple of matters I also wish to check.

THE COURT: Do you propose this be the mid-morning break?

20 MR. SLEETH: Yes, My Lord.

THE COURT: All right, then, but let's make it short.

Let's make it 15 minutes.

MR. SLEETH: Thank you, My Lord.

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(JURY WITHDRAWS.)

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0                   (BRIEF RECESS - COURT RESUMED AT 11:00 a.m.)  
                  (JURY CALLED - ALL PRESENT. ACCUSED IN DOCK.)

DR. JOHN MCKAY, recalled, having already been  
sworn, testified as follows:

5                   DIRECT EXAMINATION BY MR. SLEETH:

Q.               Dr. McKay, you testified earlier, you were sworn,  
                  and you were qualified as an expert witness as a  
                  pathologist. I would ask you, you conducted  
10               autopsies, I understand, on a Donna Daughney and a  
                  Linda Daughney. Can you tell us, please, the date  
                  on which these were conducted?

A.               I did an autopsy on Donna Daughney on the 15th of  
                  October beginning at two in the afternoon and on  
                  Linda Lou Daughney the following day, the 16th of  
15               October, 1989.

Q.               All right. If you would, please, then, Doctor,  
                  could you start with the autopsy of the 15th of  
                  October, Donna Daughney?

A.               My Lord, if I may I'm going to make occasional  
20               reference to my notes because there are two cases  
                  here and I want to be sure we keep them separate.  
                  The first autopsy which I did was on Donna  
                  Daughney who was the older of two ladies, she was  
                  45 years old, and the body was identified to me by  
25               Constable Lefebvre and Corporal Leo Roy of the  
                  R.C.M.P. They attended both the Daughney autop-  
                  sies and were present through the proceedings.

                  The body identified as Donna was that of a  
                  middle-aged white female looking approximately 45  
30               years of age as was stated. There was a little  
                  bit of rigor mortis, it had pretty well  
                  disappeared, and it was dressed only in a light  
                  blue bloodstained T-shirt. There were three holes  
                  in the front of the T-shirt but they didn't appear  
35               to relate to any injury on the body.

Dr. McKay - Direct

It's important to begin by saying there was no significant disease process present, she did not suffer from any illness of any consequence. There had been an appendectomy some years in the past, it was irrelevant.

I will try and summarize the findings for you. Firstly there were a great number of superficial scrapes and bruises on the legs and on the trunk. None of these was serious but it did indicate that she had been, in one way or another, knocked about, fallen down, dragged, pushed, grabbed, but no very specific pattern to these except they were mostly in the lower part of the body. The principal injuries were as follows. There was a single stab wound on the left front of the neck where I point on myself, just over the Adam's apple. This was sort of a courtesy stab wound. Stab wound in pathology is a technical term. A stab wound is a wound made with a sharp instrument which is deeper than it is wide. This was strictly speaking not deeper, it was not quite an inch wide and it was not quite an inch deep, but it was more like a stab than anything else. This injury penetrated the voice box, the cartilage of the larynx, and it caused a little bit of hemorrhage in the soft tissues of the neck. It also was associated with a condition called surgical emphysema in which air is forced into the soft tissues from violent efforts to breathe the air, instead of simply passing easily in and out of the normal passageway is forced because of some excessive pressure or defect into the soft tissues.

There were three other superficial cuts on

Dr. McKay - Direct

the face. They were all trivial, just minor but definite incised wounds as opposed to blunt wounds.

5           There was quite a lot of bruising on the right side of the neck and this was associated with small little scratch marks. The appearance is very suggestive of the neck being held or squeezed and in the course of struggling there were little scratch marks made by fingernails.

10           Now, the second group of injuries were a group of fractures. The jawbone, the mandible, was broken on either side towards the back. The maxilla, the upper jaw, was broken so that if you took the front teeth you could move them back and forth because that upper jaw had been broken across. The nose was fractured and there was some rib fractures. The 9th rib on the right side and from the 3rd to the 6th rib on the left side had been broken.

15           The next group of injuries relate to the face. There was marked swelling and bruising of the face and in particular of the soft tissues around the eyes, she had very marked black eyes.

20           There was some hemorrhage in the - or overlying the white part of the right eye, the conjunctiva, conjunctival hemorrhage. That is significant because it can be the result of a blow, in fact sometimes it happens spontaneously, but it's very typically seen in an asphyxial death in people who are struggling to breathe, and we'll return to that later.

25           Finally, there were contusions and lacerations, which are just fancy words for tears and bruises, on the inside of both upper and lower

30

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Dr. McKay - Direct

level, indicating that she had been struck in the  
mouth and the tear occurred on the inside of the  
lips.

5

Now, moving on to the next major finding,  
there was obstruction of the right main bronchus,  
The windpipe comes down and divides into two, the  
right and the left main stem. The right is a  
little straighter than the left and things tend to  
get stuck in it, and Donna Daughney had aspirated  
gastric content present, aspirated stomach  
content, again filling that right main stem  
bronchus.

10

15

There was an examination of the brain, of  
thin and diffuse subarachnoid hemorrhage. That  
means a little bit of bleeding in one of the thin  
membranes covering the brain and it was almost  
over the entire surface, it was not localized.  
This is a finding suggestive of some kind of blow  
to the head or blows to the head which has caused  
a rapid acceleration and you get minute damage to  
the blood vessels and a little thin layer of  
bleeding, not in itself particularly dangerous, it  
would probably give you a headache, but as  
evidence of the fact that the head had been  
struck, and that really summarizes the important  
findings.

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Because there was evidence that the body had  
been exposed to a fire we did examination for  
carbon monoxide which was normal, there was no  
carbon monoxide present, so therefore it would  
appear that this woman had been subjected to a  
severe beating resulting in extensive damage both  
to the soft tissue of the face and to the bones of

Dr. McKay - Direct

5 the face. She had also been stabbed once in the side of the neck and there were several superficial cuts about the face.

Based on these observations it was my opinion that the mechanism of death was shock and asphyxia arising as a result of these blows.

10 Perhaps I could speak just for a minute about shock. It's a word that's thrown around a lot and it's not very specific in its meaning. Well, I should say it is specific depending on who's using it. There's two kinds of shock. There is what's called primary shock which is the result of pain  
15 or of a blow which causes a transient fall in the blood pressure, and then there's what's sometimes called secondary shock, I prefer hypovolemic shock, in which there is a lot of blood loss, but in either case shock is really - the defining  
20 mechanism of shock is there's a disparity between the amount of blood and the capacity of the blood vascular system. That can either be because you're bleeding a lot or because the blood vessels have lost their tone. Now, people sometimes  
25 compare the blood system to a plumbing system but the difference is in a plumbing system the pipes are fixed and so the pressure depends entirely on the pump. In the blood vascular system the pressure depends on the heart, on the pump, but it  
30 also depends on the tension in the walls of the vessels which can relax or contract, so shock is not really all that difficult a concept, it simply means that basically you've lost blood pressure and this can cause you in varying degrees to be  
35 grey and shaky and sweaty and cold, it can cause

Dr. McKay - Direct

you to be unconscious and it can cause death, and  
it can be brought about either from loss of blood,  
5 I don't think that was involved in this case,  
there was a lot of blood around when you look at  
the body but I don't believe that was the primary  
cause of death, but the shock would have been due  
essentially to pain and the loss of blood pressure  
10 compounded with the fact that this woman had  
aspirated, had inhaled vomitus, and this had  
totally blocked the right lung, so I believe that  
the basic cause was a beating which resulted in  
extensive and painful injuries to the face which  
15 caused some loss of consciousness as is suggested  
by the beating around the brain, and this resulted  
in inhalation of vomit and then in death from  
asphyxia.

20 Q. Doctor, you have before you a photographic booklet  
which is P-34. It contains some ten photographs  
and I wonder if you could hold that booklet and  
indicate to the jurors the significant points and  
details contained in those photographs you'd wish  
to draw to their attention.

25 A. Looking at booklet P-34 and opening we come to  
photograph 1 which is of the back view of the body  
lying on a trolley. We are taking a measurement  
and it shows a number of the small injuries that  
I mentioned to you. I think you can see on the  
30 legs and on the right buttock minor scrapes and  
bruises.

Q. How could those have been caused, Doctor?

35 A. I'm not sure. The little ovoid bruising are  
suggestive of pressure with a finger. The various  
scrapes could be from dragging something rough

Dr. McKay - Direct

5 over the body or dragging the body over something  
rough. Again in photograph 2 you can see a little  
scrape, two or three little scrapes, in fact, down  
by the right knee. You can also see in photograph  
2 near the navel, the umbilicus, an ovoid super-  
ficial injury which looks like a scald mark. I'm  
really at a loss to account for that except that  
10 the body had been exposed to a fire and this looks  
like a superficial burn. It's just the top layer  
of the skin has been damaged and so you see the  
sort of red surface underneath. The plastic bags  
on the hands were placed there by the police  
15 pending further examination of the hands.

Moving to photograph 3, a view of the left  
side of the body, you can see some soot staining  
on the right foot and you can see some little cuts  
and scrapes, the left knee and the left lower leg  
20 on the outside.

Photograph 4 with the ruler is a close-up of  
the right shoulder, and there you see what is  
technically an incised wound, it's a cut, it's  
very superficial. I suppose a scratch would be a  
25 fair description of that wound, but made with  
something sharp.

Photograph 5 shows what I call the stab wound  
on the left side of the neck, and as you can see  
from the ruler it measures just a little bit over  
30 two centimetres or, for the old-fashioned among  
us, a little bit less than an inch, and that  
extended also a little bit less than an inch down  
through the cartilage of the larynx but it did not  
actually penetrate the underlying mucosa, but that  
35 is definitely a cutting type of wound.



Dr. McKay - Direct

Q. How painful would such a wound be?

A. I would think it would be extremely painful.

5 Now, photograph 6, if you turn it around so that  
it's upright, in mine it's sort of upside down in  
the book, you can - this is again a view of the  
front of the body, of the neck area, looking from  
the right so you can see the wound shown in photo-  
10 graph 5. It again appears on the lower righthand  
corner - well, it depends how you're holding it.  
Let's hold it as I've got it with the 6 in the  
upper righthand corner just as it is in the book.  
Then if you move across to the left you can see  
15 the stab wound, the lower side of the left neck,  
above the left shoulder. Coming to the centre of  
the photograph what it's intended to display is an  
area of bruising associated with innumerable  
little scratches, and such a picture is highly  
20 suggestive that someone has grabbed this woman by  
the neck and has tried to either choke her or at  
least to subdue her or hold her still and there's  
been some struggle resulting in these scratches  
and in the bruising.

25 Q. Doctor, I call your attention on the lower left-  
hand side, what appears to be then the right side  
of the chin, and there seems to be some sort of  
incision or cut. What is that?

A. This is another incised wound. I said there were  
30 three, I think, in the facial area. This is the  
deepest of them. You can see that it's incised  
quite similar to the one in the lower left side of  
the neck. This went into the jawbone and you can  
see leading up from it towards the lip, which is  
35 seen just at the lower lefthand corner, a little

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5            tiny scratch, and that again indicates that some sharp pointed object which made the injury has then moved upward very superficially and caused that little scratch in the skin going up from it.

10            Turning the page to photograph 7 we see another very superficial incised wound on the left cheek just below the left eye measuring, as you can see, approximately four centimetres.

Q.           This would have been caused by what?

A.           Again, something sharp. That is very superficial, it could have been a fingernail, could have been a broken bit of glass, but again when seeing this in  
15            conjunction with the other two stab wounds, then we're talking, I think, in all probability, about a knife or a knife-like object. Sometimes people make a great thing about I can't say it was a knife, and I can say no, but I can say that it was  
20            a hard object with a sharp edge and a point on it, so whatever that may have been.

              Photograph #8 is a straight-on view of the face and this shows a constellation of injuries. We can just go through it quickly. There is over  
25            each eye what's sometimes called a brush burn or a brush abrasion. All that means is it's a scrape and you can see vertical linear marks on either side indicating that something struck this person a glancing blow or was dragged or scraped force-  
30            fully across it, or conceivably that she was dragged forcefully across something. It merely indicates a blunt object and that it moved in a vertical direction. Two very severe periorbital ecchymoses, which are probably more familiar as  
35            black eyes. You can see, I think, just from the

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5 photograph, that the nose is broken, deformed and  
pushed to the left. You can see some superficial  
bloodstaining on the face and you can see the  
superficial cut on the left cheek, another tiny  
little one below that, and then the somewhat  
deeper cut on the lower right part of the jaw just  
to the right of the chin, the lower jaw, and then  
10 looking further down to the neck you can see the  
bruising and the scratches on the left side and  
the stab wound on the right.

15 Going to photograph 9, really, you're seeing  
the same things again from a different view, this  
time from the left side of the face. I don't  
think there's any additional information there.  
The whole face is markedly swollen, incidentally,  
and in 10, a close-up of the scrape that we saw in  
the earlier two photographs showing it to be about  
20 four by four centimetres, and again showing some  
indication of linearity, of some glancing blow  
running up and down.

Q. Doctor, how severe would that beating have been?

A. Well, if anybody is interested in prize-fighting  
25 you observe people punch each other in the face  
all the time and they don't normally sustain  
fractures, sometimes they do, so I think the  
fracturing indicates forceful blows, but I think  
the real indication of the severity is that it led  
30 directly to death, and I think that is probably  
more critical than the actual amount of force that  
was involved. There was certainly force  
sufficient to break bones, to cause bruising, to  
cause swelling, to cause beating of the brain  
35 which usually takes a fairly good crack, and to

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cause a combination of pain and loss of consciousness that resulted in the aspiration.

5 Q. You also made mention of all these cuts, Doctor. Were any of them life-threatening?

A. No.

Q. How painful would they have been?

10 A. Unpleasant. The one in the neck and the one on the jaw certainly would - those were deep cuts and they would certainly have been painful.

Q. Would they all have had to have been deliberate?

15 A. Well, forensic pathology is the study of patterns, and when you say is a cut deliberate, a cut can be caused accidentally. You have to look not at one cut but at several cuts, several cuts in association with a whole pattern of other trauma. It would have to be a most unfortunate victim who accidentally cut herself three or four times in  
20 the same night when she was savagely beaten, so I think it is a reasonable conclusion that these cuts were deliberately inflicted.

Q. And these deliberately inflicted cuts, not life-threatening, would be consistent with what?

25 A. Well, it would seem that it was an attempt to intimidate this individual by means of causing pain and fear by cutting her. They did not appear to be intended to kill her. If they had been I think the question you have to ask is why,  
30 if someone is armed with a sharp object, do they not use it to kill the victim instead of beating them, and once again it is obviously an opinion, it is an opinion that it was intended to cause fear and pain.

35 Q. I wonder, Doctor, if we could now turn to Linda

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Daughney.

5 A. Linda Daughney was identified to me by the same  
two officers, Constable Lefebvre and Corporal Leo  
Roy, and she was autopsied the following day,  
namely the 16th of October, beginning at 9:30 in  
the morning in the morgue at the Regional  
Hospital.

10 This body was again that of a middle-aged  
Caucasian female. She was partially dressed, the  
upper part of the body was clothed, and she also  
had traces of rigor mortis, but pretty well worn  
off. There were here also evidence of early  
15 decomposition which was consistent with the  
passage of some 50 hours from the supposed time of  
death to the time when I did the autopsy.

20 This body showed more smoke staining. There  
were only traces on the body of Donna but Linda  
Lou had widespread smoke staining and there were  
superficial thermal burns on the right leg and on  
the upper face. There was some singeing in the  
scalp hairs as well, and there's a small lacera-  
tion on the bridge in the nose.

25 There were again some minor external injur-  
ies. There were some geographic scald marks.  
That's a little bit technical, too. A scald mark  
is a mark similar to that which you get from a hot  
liquid, and by geographic I just mean it had an  
30 irregular border, it wasn't square and it wasn't  
round but it was irregular, on the right hip and  
the outside of the lower right leg. There was a  
small oval kind of scrape on the right side of the  
back and there was a faint - what I've described  
35 as a chatter abrasion on the left buttock. All

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5 abrasions are just scrapes. A scrape is just a  
common word, an abrasion is a little fancier word,  
the skin surface is slightly scratched, and a  
chatter abrasion simply means there are little  
skip areas in it. Once again it means something  
has been dragged across it and it will pick up the  
skin and then it will tear it and then it will let  
10 go and tear it again and you see little tiny  
irregularities in the skin. I couldn't make any  
particular interpretation of that, I'm just  
describing it.

15 There was a semi-circular pattern contusion,  
pattern bruise, on the left breast. It's vague  
but it is the kind of bruise that one sees over  
and over again and very commonly on the breast,  
and it is in my opinion a bite mark. It is not a  
perfect bite mark but I believe it is - the  
20 impressions are those of teeth.

Once again bilateral periorbital hematomas,  
black eyes, both, and once again there was a -  
sorry, not once again. That's why I need to look  
at these notes because the two are very similar in  
25 many ways. There was a small bruise at the back  
of the scalp where I point on my own head.

Internal examination, again no significant  
disease process. An old surgical scar noted in  
the lower abdomen. Could not determine what that  
30 had been done for, but in any case not relevant to  
our findings.

The lungs were congested, means they were  
full of blood. They were edematous, they were  
heavy with fluid, and there were some focal  
35 hemorrhages. Cut surfaces were bright red. There

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5 was soot present in the windpipe and in the  
bronchial tree down to the level of the second  
division of the bronchial tree. Once again the  
soft tissues in the front of the neck exhibited  
the surgical emphysema suggesting violent respira-  
tory effort. Once again there was hemorrhage in  
the membranes of one of the eyes. Remember I said  
10 earlier that indicates, or may indicate, some  
interference with breathing.

Now, in this case we again did toxicology,  
and because of the history of being exposed to a  
fire, to carbon monoxide specifically, and this  
15 was reported at a level of 23%, so we also had in  
this patient fractures of the nose, fractures of  
the upper jaw and of the lower jaw, a pattern, as  
you can see, extremely similar to that of the  
first sister, Daughney.

20 It was my conclusion that the cause of death  
was the blunt trauma, the blunt injuries to the  
facial area, associated with carbon monoxide  
poisoning and asphyxia. The carbon monoxide level  
of 23% is not usually associated with death,  
25 usually you're getting up towards 50%. However,  
I became interested in this because I wondered if  
there had been a previous report of death from 23%  
and in looking up the literature there has been a  
fatality associated with a level this low. I  
30 would not expect that carbon monoxide level alone  
to have killed a healthy woman in middle life, but  
I think we have in addition to that the soot  
inhalation. Carbon monoxide is a by-product of  
incomplete combustion of carbon and it is toxic in  
35 itself, it's poison, but over and above that, when

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5 you have a fire oxygen is consumed, so you can  
assume that someone who is in a fire is going to  
be deprived of oxygen because there isn't any  
oxygen there, as well as the carbon monoxide  
poisoning, and the soot in itself would - I mean,  
I leave it to your imagination, if you inhale  
enough soot, I'm talking about particulate matter,  
10 to coat your entire upper respiratory tract,  
you're going to have a lot of trouble breathing.  
If you add that to the fact that you have been  
beaten so that you have facial bones broken and  
you're probably going to be functioning in pain,  
15 maybe in shock again, maybe in loss of conscious-  
ness, so put these things together and - perhaps  
I shouldn't even talk about it but many people  
become confused between causes and mechanisms, and  
I think in this it's a fairly straightforward  
20 sequence. The woman was beaten, as a result of  
the beating she was in pain, in shock, in loss of  
consciousness. She was then exposed to a fire, in  
the course of which she inhaled soot. Her access  
to oxygen was diminished and she inhaled toxic  
25 carbon monoxide fumes and these resulted in her  
death.

Q. How severe would the beating have been in this  
instance, Doctor?

A. Very similar to that of Donna's. Again we have  
30 black eyes, swollen face, fractured bones.

Q. Doctor, I have just placed before you P-35,  
photographs on the autopsy of Linda Daughney, and  
I would ask you again to relate to the jurors -

A. Looking at P-35, photograph #1 is the body in the  
35 condition in which I received it, as you can see,



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5 with some clothing of the upper body, and socks,  
and that was all. The upper photograph shows  
several blades of grass over the right buttock  
and I don't know the significance of that but I  
presume that you've been told by other witnesses  
where this body was found.

10 Item 2 shows the same body of Linda Lou  
Daughney turned over and now we're looking at the  
front. You can see the clothing on the upper part  
of the body which has been pulled up, obviously  
after the fire had started, because you observe  
the soot staining starts at the lower waist and  
15 that was because it couldn't reach the skin of the  
upper part because of the clothes, so the clothes  
were pulled up some time after the fire, I have no  
idea by whom. Heavy soot staining of the lower  
abdomen, the trunk, and of the socks.

20 Photograph 3 indicates the face of Linda Lou  
Daughney. You can see carbon staining, you can  
see superficial burning. The end of the nose and  
the upper lip and the front of the left cheek show  
second degree burns, exposure to heat. I think  
25 even here you can see at the bridge of the nose  
there's a laceration, a little tear on the left  
side, and you can see that that nose is moved out  
of alignment, it's obviously damaged, and even  
without feeling the fracture. I think you can  
30 see that there are also black eyes here, particu-  
larly on the right but the left has a little  
bruising as well, and some general swelling of the  
face.

35 Photograph #4 is the left breast, the nipple  
area in the centre, and you'll see some irregular

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5 patchy red marks which I think is postmortem  
lividity. That means a change in colour of the  
skin caused by pooling of the blood. The pattern  
mark is because of pressure against clothing. You  
notice it is reddish in colour and that is consis-  
10 tistent with the presence of carbon monoxide, but  
that isn't the purpose of the photograph. The  
purpose of the photograph is to show the pattern  
bruise lying above the numerals 8, 9 and 10 on the  
ruler and below the nipple, and you will see a  
semi-circular area containing a series of, oh,  
15 between five and eight small round bruises. They  
sort of fade off so it's difficult to number them  
exactly. This circular pattern is consistent with  
and suggestive of a bite mark, and finally photo-  
graph #5 shows the right side of the face which  
shows the extensive soot staining. It also shows  
20 a small earring in the right ear lobe, a little  
tiny metal earring, and you can see the ear has  
been pierced and there is another pierce mark, a  
vertical little slit down further in the lobe of  
the ear.

25 Q. Thank you, Doctor. Doctor, I have now placed  
before you an item which is marked for identifi-  
cation as W. Can you identify that for us,  
please?

A. This is a cotton-tipped swab which was taken from  
30 the vagina of the deceased and which I placed in  
this swab and have initialled it at the time of  
the autopsy.

Q. This was from Donna Daughney, was it?

A. This was from Donna Daughney.

35 Q. X?

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- A. And this is also a swab taken from Donna Daughney from the right leg area on the skin and this again  
5 I have initialled at the time that it was sealed in the morgue.
- Q. As you had with W?
- A. Yes.
- Q. Y?
- 10 A. Y is - Y appears to be a vial of blood. The reason I'm hesitating - oh, here it is. These specimens have gone through several hands since I saw them, and the reason I was hesitating was that the vial is inside another vial which was con-  
15 cealed under the label, but here it is and this I have also identified with the post mortem number, 89225, and my initials, J.S.M.
- Q. From Donna?
- A. From Donna Daughney.
- 20 Q. And you turned it over to whom?
- A. I turned this over to the R.C.M.P. members present, being Constable Lefebvre and Corporal Leo Roy.
- THE COURT: What area was that, do you recall?
- 25 Q. This is blood, I think you said.
- A. This is a specimen of blood taken in a grey-stoppered tube and then subsequently transferred to another tube.
- Q. Z?
- 30 A. Z is another swab - sorry, these labels are slightly the worse for wear.
- Q. Take your time.
- A. Not the time, but the label has actually been obscured, 89-10 - well, it has my identification  
35 mark on it and it is a swab which I took, but I

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can't make anything more out of it than that other than it's one of the swabs taken from the vagina.  
5 I can't make out the date, 89-10-something. It's been damaged.

Q. And this would have been turned over by yourself to -

A. By myself to Leo Roy.

10 Q. AA?

A. AA is another swab which again I have initialled, and this would have been taken from the skin area of Linda and given to Corporal Roy.

Q. Perhaps by looking at that AA from Linda and Z,  
15 which you looked at a moment ago, are you now able to say from whom that one would have been from?

A. Well, no. They're both skin swabs, they're both identified to me. There was one taken from each victim. Unfortunately I do not have the autopsy  
20 number identifying the mark on here. Sorry about that. There are so many identification marks here that I can't -

Q. You do remember turning over Z and AA to the persons you mentioned a moment ago?

25 A. Oh, yes.

Q. At an autopsy?

A. Yes, and the autopsies were done at separate times so that there could be no possibility of them being confused. It's just that I don't see the  
30 identification number marked on them now, but the autopsies were done on separate days.

THE COURT: But you said just now both Z and AA were skin swabs, but I think earlier, just a moment ago, you said Z was a vaginal swab.

35 A. I took both vaginal swabs and skin swabs from each

20

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victim, and this one is marked as a vaginal swab  
and it has my initial and this is number QB, so  
5 QB is a vaginal swab taken by myself.

Q. Thank you, sir, and you are referring to Z for  
Identification?

A. Well, there's QB and there's Z, there's a whole  
alphabet on it.

10 Q. BB for Identification?

A. BB is again blood, and again it has my initials on  
it, and again I'm sorry, I cannot - well, it's  
identified here as Linda Daughney. I can't see my  
own mark because it's inside another tube and it's  
15 wrapped around with paper, but this is a vial of  
blood which has my initials on it and such a vial  
of blood was taken from the body of Linda Daughney  
and given to Corporal Roy.

THE COURT: When you say taken from Linda Daughney, is  
20 this blood found externally or was this extracted  
from veins or -

A. This would be taken from the venous system inside  
the body during the autopsy.

Q. DD?

25 A. DD is also a vial of blood taken from Linda Lou  
Daughney by myself. It's identified by my  
initials and given to Corporal Roy.

Q. If you would, please, Doctor, EE.

A. EE is also a vial of blood, also from Linda Lou  
30 Daughney, and identified by my initials.

Q. FF?

A. FF is yet another vial of blood, this one from  
Donna Daughney, p.m. 2:25, and identified by my  
initials.

35 Q. GG?

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- A. GG is a further vial of blood, p.m. 2:25, which is also Donna, and identified by my initials.
- 5 Q. And if you could, please, CC.
- A. CC is the earring which was shown in an earlier photograph of - in the right ear of Linda Daughney, and it was removed and given to Corporal Roy.
- 10 Q. So just to recapitulate, your testimony was all these items you've just identified were removed at the two autopsies and turned over to police officers?
- A. That is correct.
- 15 Q. Now, you said moments ago when you were talking about Linda Daughney that certain of the injuries - there was much very similar in what had happened to her with what had happened to Donna Daughney. Would you be able to relate to the
- 20 jurors the features which you find common with Linda, Donna and Annie Flam, about whom you testified the other day, for instance with respect to their jaw conditions, of all three?
- A. All three of these people suffered a fractured
- 25 jaw. In the case of the Daughney sisters they also suffered a fractured nose and a fractured upper jaw. Much of the appearance of Annie Flam was obscured by the fire, but in the case of the Daughney sisters it was not so obscured and they
- 30 were very similar; very, very similar indeed to the pattern of injuries, black eyes, bruising of the face, soft tissues, broken jaw, and of course the fact that fire was set in all three cases, so it is really a remarkably similar pattern, even
- 35 indeed the mechanism of death which was identical

55

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in Flam and Donna Daughney but not in Linda, who died of the soot inhalation and carbon monoxide.

5 MR. SLEETH: Thank you very much, Doctor.

THE COURT: Cross-examination, Mr. Furlotte?

MR. FURLOTTE: My Lord, I think I'll hold off cross-examination of this witness until he is recalled.

THE COURT: This witness will be back?

10 MR. SLEETH: Yes, My Lord, I'd ask that he be stood aside. He will be recalled one more time.

THE COURT: Right, you're stood aside, then, Dr. McKay, and you shouldn't, of course, discuss this aspect of your testimony with anyone until all your testimony is completed, as you well know.

15

A. Yes, My Lord.

THE COURT: Thank you very much. Now, you have another witness, Mr. Sleeth?

MR. ALLMAN: The next witness is mine, My Lord. If you  
20 look at the witness list you'll see the next should be 88, Gary Verrett. He has to be somewhere else this morning so we're going to have to proceed and insert him back in the order later on, so I'm going to call Sandy Lumgair, or  
25 recall, I should say, Sandy Lumgair.

SANDRA LUMGAIR, having already been sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

30 MR. ALLMAN: My Lord, just for the jury's benefit, they will recall Mrs. Lumgair was declared an expert in serology?

A. Serology, yes.

THE COURT: And serology was what?

35 MR. ALLMAN: I'm not going to say it, Mrs. Lumgair will

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say it.

THE COURT: You did describe it earlier but we may have  
5 forgotten since then.

A. Yes, sir. My work in serology involves the  
examination of articles for the presence of human  
blood, the identification of that blood according  
to various blood groups, substances or proteins,  
10 and the examination of articles for other body  
fluids, primarily seminal fluid, more rarely  
saliva or fecal matter; family identification of  
materials as well.

Q. Did you have occasion to perform that type of  
15 examination on a number of items in connection  
with the deaths of the Daughney sisters?

A. Yes, sir, I did.

Q. I'm going to show you now an item that's been  
20 marked 'T' for Identification. What can you tell  
us about that, including reference to any  
markings that you can observe upon it?

A. Item 'T' is pieces of nylon which I received on  
the 22nd of November, 1989, at the Forensic  
Laboratory in Sackville from Gary Verrett. I was  
25 asked to examine this article for the presence of  
human blood. I found human blood to be present on  
it. I was unable to type that blood.

Q. What in general terms and in particular terms so  
far as this item is concerned would cause you to  
30 be unable to type something that you could never-  
theless say is human blood?

A. Could be due to any number of things. It could be  
due to the quantity of blood available. It could  
be due to the contamination by any number of  
35 substances, dirt, bacteria. It could have been



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5 left wet which would cause the degradation of the proteins involved in identification, heated, any number of factors.

Q. So for some reason or other along those lines you were only able to say it's human blood?

A. Yes, sir.

Q. Give us no more details than that?

10 A. Yes, sir.

Q. You say you received that from Gary Verrett. That is the gentlemen from the lab who was to have been the witness previous to you?

A. As I understand it, yes.

15 Q. After you had performed your examinations upon it what did you do?

A. This particular exhibit was retained in my sole possession until the 17th of May, 1990, at which time it was turned over to Constable Davis at the Forensic Lab in Sackville.

20 Q. That's Constable Davis, a previous witness?

A. He was here before, yes.

Q. Subject to any objection I believe continuity has been proved up. I would ask that item be entered as an exhibit.

25

THE COURT: Yes, so that would become exhibit number -

MR. ALLMAN: My learned friend points out quite rightly that continuity hasn't been proved up on this, of course. Mr. Verrett should have been put on before this witness. I don't know what my learned friend wants to do about that, whether to hold it in abeyance until I've inserted Mr. Verrett -

30

MR. FURLOTTE: I'll agree to allowing it in now.

MR. ALLMAN: I would be much obliged to my learned friend.

35

THE COURT: But this is subject to your calling  
Constable Verrett on it, so 'T' then becomes  
5 P-41.

Q. I have placed before you another item marked  
'U' for Identification. What can you tell us  
about that, including reference to any markings  
upon it?

10 A. Item 'U' is a piece of nylon which I received on  
the 22nd of November, 1989, at the Forensic  
Laboratory from Gary Verrett. I was asked to  
examine this article for the presence of blood  
and seminal fluid. I did not find either  
15 substance to be present.

Q. And subsequent to your examination what did you  
do with that item?

A. I retained it in my sole possession until I turned  
it over to Constable Davis at the Forensic Labora-  
20 tory in Sackville on the 17th of May, 1990.

Q. With the exception of Mr. Verret's evidence, My  
Lord, I believe this has been proved up and I  
understand that Mr. Furlotte has no objection to  
this item going in subject to my undertaking to  
25 call Mr. Verrett.

THE COURT: So this would be P-42, and that is 'U' for  
Identification. I might just take a word here to  
explain to the jury some of this tedious business  
of proving that something was passed from one  
30 officer to another to somebody at the Crime  
Detection Lab and to somebody else, some other  
expert or something. The purpose of course of  
this is that if something like, for instance, this  
article here is found at the scene, it's turned  
35 over to someone who is normally the exhibits

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officer of the police so that there will be some  
continuity in possession as has been explained to  
5 you, and then it's taken to the Crime Detection  
Lab and so on. It's marked for identification at  
the start because the onus is on the Crown if  
they're going to show that some examination was  
made of that object and something was found or was  
10 not found or whatever they have to trace it  
through to show that the article was safeguarded,  
that it wasn't exposed or wasn't interchanged with  
something else or wasn't added to or subtracted  
from along the way. In other words, the onus is  
15 on the Crown to show that the article was in  
essentially the same condition when it was  
examined for blood or whatever as when it was  
originally found and that it hasn't been tampered  
with, that's the purpose of this, and I am  
20 required as the presiding judge to rule upon the  
admissibility of it when it's tendered in  
evidence. When you've reached that point where  
the examination has been completed, then the  
Crown says, well, we've proved continuity through  
25 to that point and we tender it in evidence. I  
have to determine whether continuity has been  
sufficiently proven and whether it's been  
sufficiently established that it hasn't been  
tampered with to allow it into evidence as  
30 having some probative or proof value, and that  
is why usually it's not a great problem involved.  
You people won't as jurors be terribly concerned  
about that turnover process and all that business  
along the way, although you should pay attention  
35 to it, of course, as the evidence is given along

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the way. This is just by way of explanation.

5 I pointed out earlier that if some object -  
I think I used the illustration before just in a  
hypothetical case of homicide, if somebody  
testifies that a person died through being struck  
with a blunt heavy object and some witness says,  
here is a sledgehammer that was found beside the  
10 body which quite obviously is capable of causing  
that blow to somebody's head - this is not this  
case but a hypothetical case - you don't have to  
prove that that sledgehammer was passed from one  
officer to another, it can simply be tendered as  
15 an exhibit right there, and it's up to the jury,  
of course, to decide whether that was the weapon  
that caused the homicide or not, but there isn't  
a necessity there for proving the continuity of  
possession unless of course there's blood found  
20 on the sledgehammer and so on and that's analyzed  
later.

This is just by way of explanation to help  
you understand why things are done a certain way  
in the case.

25 Now, sorry to interrupt you, Mr. Allman.

MR. ALLMAN: No, I'm obliged, My Lord, because it helps  
the jury understand why we're going through what  
certainly is not a very stimulating exercise.

THE COURT: I say this not just for the benefit of the  
30 jury but for the benefit of police officers  
present and the benefit of the public and even  
the benefit of counsel.

MR. ALLMAN: Always obliged. Item Q is the one you have  
before you, I believe, at the moment?

35 A. Yes.

Q. Can you tell us anything about that including reference to any marks?

5 A. May I use my notes, please, just to refresh my memory?

Q. They're notes referred to before in your own writing taken at or shortly after the time you're referring to?

10 A. Yes.

Q. May she refer to them, My Lord?

THE COURT: Yes.

A. Court Exhibit 'Q' is a small piece of blue cloth woven rope which I received on the 22nd of  
15 November, 1989, at the Forensic Laboratory from Gary Verrett. I was asked to examine this exhibit for the presence of human blood. I did find human blood to be present on it. My attempts to type that blood were unsuccessful.

20 Q. I take it the same kind of reasons you've already explained to the jury?

A. Yes, sir.

Q. Did you find anything else on it or just human blood?

25 A. No, I didn't find any other body fluids.

Q. After you'd completed your examination and found human blood on it what did you do with it next?

A. I retained it in my sole possession until I turned it over to Greg Davis on the 17th of May,  
30 1990, at the Forensic Lab.

MR. ALLMAN: Subject to my undertaking to call Mr. Verrett I'd ask to enter this as an exhibit.

THE COURT: So this would be P-43. What was the identification number of that?

35 MR. ALLMAN: 'Q'.

THE COURT: Blue cloth cord.

5 Q. I'm showing you now an item marked by the Court as  
'V' for Identification. What can you tell me  
about that, including any reference to any  
markings?

10 A. Court item 'V' is a pair of navy pantyhose that  
have been cut and tied. I received them on the  
22nd of November, 1989, from Gary Verrett at the  
Forensic Laboratory in Sackville. I was asked to  
examine this article for the presence of human  
blood and for seminal fluid. I found human blood  
to be present on this exhibit. I typed that blood  
15 and my findings indicated based solely on one  
system that that blood could have come from either  
Donna or Linda Daughney.

20 Q. How many blood typing systems are there, if you  
can go through all of them on a really good  
specimen of blood?

25 A. There are eight of them that we use routinely in  
the Forensic Laboratory and I was only able to  
type one area on this article I typed in two  
systems. I didn't have the second system from the  
sisters, therefore I only had one system which I  
could use for comparison. It's fairly common so  
not that significant.

Q. So it could but that's really about all you can  
say?

30 A. Yes, sir.

Q. And what did you do with that item after you had  
found human blood to be present and typed in that  
fashion?

35 A. I retained this exhibit in my sole possession  
until turning it over to Constable Davis at the

Forensic Laboratory on the 17th of May, 1990.

MR. ALLMAN: This is the last of the items that I would  
5 ask to enter as an exhibit subject to calling -  
my undertaking to call Mr. Verrett.

THE COURT: Excuse me, on that last one the witness said  
that she was asked to examine it for blood and  
seminal fluid?

10 A. Excuse me, not seminal fluid, sir, just blood.  
My error, sorry.

Q. I'm showing you now court identification 'W'.  
What can you tell me about that, please,  
including reference to any markings?

15 A. Court Item 20 is -

Q. Is it Item 20?

A. Excuse me, 'W', Court Item 'W' is two swabs  
reportedly of vaginal origin which i received on  
the 17th of October, 1989, from Constable Greg  
20 Davis at the Newcastle R.C.M.P. Detachment. I was  
asked to examine Item 'W' for the presence of  
seminal fluid. I did not find seminal fluid to be  
present. I retained this exhibit in my sole  
possession. I actually stored it in a freezer  
25 until I turned it over to Constable Robin Britt  
on the 25th of October, 1989, at the Forensic  
Laboratory.

Q. And you indicated that was reportedly a vaginal  
swab?

30 A. Reportedly, yes, sir.

THE COURT: May I ask, Mr. Allman, just for convenience  
of recollection in future, did that purport to  
come from Donna or Linda?

MR. ALLMAN: That purports to come - I'm just checking.  
35 My understanding is it was Donna and it does

purport to come from Donna, yes.

THE COURT: From Donna.

5 Q. I'm showing you now Court Item 'X'. What can you  
tell us about that, including again reference to  
any markings?

A. Court Item 'X' is a swab reportedly from the body  
of Donna Daughney which I received on the 17th of  
10 October, 1989, at the R.C.M.P. Detachment in  
Newcastle from Constable Davis. I was asked to  
examine this article for the presence of seminal  
fluid. I did find seminal fluid to be present on  
Court Item 'X'. I retained this article in my  
15 possession storing it in the freezer until it was  
turned over to Constable Robin Britt at the  
Forensic Laboratory on the 25th of October, 1989.

Q. So just to repeat, if I understand you correctly,  
you did not find seminal fluid to be present on  
20 what was reported to be a vaginal swab, you did  
find seminal fluid to be present on what was  
reported to be the body swab?

A. Yes, sir, I did.

Q. I show you now Court Identification 'Y'. What  
25 can you tell us about that, and from now on I'm  
not going to ask you every time to say anything  
about markings, I assume you'll do that.

A. Court Item 'Y' is a vial of blood, one of seven  
which I received from Constable Davis at the  
30 Newcastle Detachment of the R.C.M.P. on the 17th  
of October, 1989. I did not do any testing with  
this particular exhibit. I stored it in my  
freezer and turned it over to Constable Britt on  
the 25th of October, 1989.

35 Q. Where would that be, at the Forensic Laboratory?



- A. Yes, sir, it was.
- Q. I guess I should have asked, did you put any  
5 markings on that that indicate -
- A. Yes, sir, I did.
- Q. 'FF' for Identification, what can you tell us  
about that, including the markings?
- A. Item 'FF' is another of the seven vials of blood  
10 reportedly from Donna Daughney which I had  
received on the 17th of October, 1989, at the  
R.C.M.P. Detachment in Newcastle, New Brunswick,  
from Constable Davis. I did not test the blood  
contained in this particular exhibit. I turned  
15 it over to Raymond Robichaud of the Toxicology  
Section at the Forensic Laboratory in Sackville on  
the 6th of November, 1989.
- Q. Just while we're on it, I take it that sometimes  
the police come to the lab with items, let's say,  
20 for the toxicology, you're the person there so  
they give them to you until they get into  
Toxicology's hands, is that the way it happens?
- A. That could happen, yes. I might occasionally if  
I only have one vial of blood, I will use what I  
25 need and pass the remains on to Toxicology or  
Alcohol.
- Q. With regard to this particular vial, however, you  
didn't do any tests on it, you simply handed it  
over to Mr. Robichaud?
- A. That's correct.
- Q. 'GG' for Identification, anything you can tell  
us about that, including the markings?
- A. Item 'GG' is another, the last or the seventh of  
these vials of blood reportedly from Donna  
35 Daughney that I received at the R.C.M.P.

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5 Detachment from Constable Davis on the 17th of  
October, 1989. This exhibit as well I did not  
test personally. I passed it to Raymond  
Robichaud of the Toxicology Section on the 6th of  
November, 1989, in Sackville.

Q. And there are markings on that that indicate what  
you've just told us?

10 A. Yes, sir.

Q. You said that those last three items, which is  
'Y', 'FF', and 'GG', they came from a total of  
seven vials?

A. Yes.

15 Q. Did you make any markings on the vials, and in  
particular the ones that are in those items, for  
future use? I mean as opposed to on the bag or  
anything else?

A. I have identified each of those three articles by  
20 the markings that were placed on the label  
directly on the vial itself.

Q. '2' for Identification, what can you tell us about  
that, including reference to the markings?

A. Item '2' is two swabs reportedly of vaginal origin  
25 from Linda Daughney which I received on the 17th  
of October, 1989, at the R.C.M.P. Detachment in  
Newcastle from Constable Davis. I was asked to  
examine this exhibit for the presence of seminal  
fluid. I did not find seminal fluid to be  
30 present. I retained this exhibit in my sole  
possession stored in a freezer until I turned it  
over on the 25th of October, 1989, to Constable  
Robin Britt at the Forensic Laboratory in  
Sackville.

35 Q. And again I take it you can confirm that by

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reference to the markings that you see upon that item?

5 A. Yes, on the side of the vial itself.

Q. Thank you. I'm going to show you 'AA' for Identification. What can you tell us about that, including reference to the markings, if need be?

10 A. Item 'AA' is a swab, one swab, reportedly from the body of Linda Daughney which I received on the 17th of October, 1989, at the R.C.M.P. Detachment in Newcastle, New Brunswick, from Constable Greg Davis. I was asked to examine this article for the presence of seminal fluid. I did find seminal  
15 fluid to be present on Item 'AA'. I retained it in my sole possession, storing it in a freezer until turning it over on the 25th of October, 1989, to Constable Robin Britt at Sackville.

Q. And again if I can just attempt to summarize, tell me if I'm wrong in what I'm saying, the  
20 vaginal swab reportedly from Linda Daughney, you didn't find semen to be present on, the body swab reportedly from Linda Daughney, you did find semen to be present on?

25 A. Correct.

Q. Court Item 'BB', what can you tell us about that, including markings?

A. Court Item 'BB' is a vial of blood, one of two which I received from Constable Davis at the  
30 R.C.M.P. Detachment in Newcastle, New Brunswick, on the 17th of October, 1989. I typed the blood contained in this exhibit. The remainder of the blood I retained in my sole possession storing it in a freezer until it was turned over on the 25th  
35 of October, 1989, to Constable Robin Britt at

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Q. 'HH', can you go through the process with that one, please?

5 A. 'HH' I received on the 19th of October, 1989, from Constable Davis at the Forensic Laboratory in Sackville. It contains two vials of blood reportedly from Lewis Murphy. I typed the blood contained in one of the vials. I did not type  
10 the material in the second vial. Both of these were retained in my sole possession until the 25th of October, 1989, at which time I turned them over to Constable Robin Britt at the Forensic Laboratory in Sackville.

15 Q. I take it the point of this is that you have two vials, both reported to be blood, both reported to be from this individual. You test one of them to see if it is blood, is that correct?

A. Yes.

20 Q. And then it would seem to follow that the other one is also going to be blood, if they come from the same place?

A. I only need one vial, the typings from one vial, to do my comparison. I don't bother with the  
25 second.

THE COURT: Mr. Allman, is this typing of significance, and the only reason I raise this is I don't want you to discover a week down the line that you should perhaps have asked the witness.

30 MR. ALLMAN: No, it's not. The basic factor is its being human blood.

THE COURT: All right.

MR. ALLMAN: I have no other questions.

THE COURT: Now, cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

- 5 Q. Yes, My Lord. Now, Mrs. Lungair, I understand from your reports, lab reports, that you did conduct a lot of blood analysis?
- A. Yes, I did.
- Q. With different exhibits that were handed to you by the police?
- 10 A. Correct.
- Q. And out of all the tests you have conducted with the exhibits that were bloodstained you weren't able to type that with any of the known suspects, or were you?
- 15 A. Do you mean is there any possibility that any of the blood that I found could have come from any of the suspects?
- Q. Yes.
- A. Yes.
- 20 Q. And you mentioned there was blood in item marked 'HH' for Identification, there was blood from Lewis Murphy?
- A. Reportedly from Lewis Murphy, yes, I believe.
- Q. And as far as you know Lewis Murphy was a suspect?
- 25 A. As I understood, yes.
- Q. And the blood tests that you conducted on suspects, how many suspects were there?
- A. Twenty-two.
- Q. Twenty-two? Now, I understand the vaginal swabs that were taken from Linda Daughney and Donna Daughney that there was - you couldn't find any seminal fluids on those swabs?
- 30 A. That's correct.
- Q. And seminal fluid is what, sperm?
- 35 A. Seminal fluid as I use the term is a combination

- of seminal plasma which is the liquid portion of seminal fluid as well as the spermatozoa which are the cellular components.
- 5 Q. Now, when you say you found seminal fluid on the body swab of Linda Daughney and a body swab of Donna Daughney, was there any spermatozoa on there or just -
- 10 A. That's what I identified, yes.
- Q. You identified it as sperm?
- A. Yes, I did.
- Q. And how is that test conducted?
- A. It's a microscopic examination that I did.
- 15 Q. You just do a microscopic examination of the whole swab?
- A. What I did was to cut off a small portion of the cotton batting that was on the end of the swab, you place it on a microscope slide with a drop of distilled water, the threads are teased apart and you examine the liquid portion from the swab itself, from the small amount that you had placed on the slide.
- 20 Q. And are you able to obtain any kind of a sperm count with that test?
- 25 A. If I see a sufficient number to satisfy myself that there are spermatozoa there I do not do a sperm count.
- Q. So it's just if you see a sufficient number to identify it?
- 30 A. That's correct.
- Q. Now, you mentioned after you checked the swabs for seminal fluid you stored them?
- A. Yes, sir.
- 35 Q. And where did you store them?

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- A. In a freezer.
- Q. And do you know what the temperature of that  
5 freezer would be? Would it be a freezer or a  
refrigerator?
- A. No, I stored them in a freezer. I believe it's  
supposed to be about minus 20 degrees Centigrade.  
I haven't personally tested that freezer.
- 10 Q. Now, I believe you had checked Exhibit 106C for  
police purposes, their investigation, which was,  
I understand, the right fingernail of Donna  
Daughney's?
- A. That's correct.
- 15 Q. And you found a human substance on that finger-  
nail?
- A. 106C?
- Q. 106C.
- A. Contained human substance.
- 20 Q. And what would that human substance be, could you  
tell?
- A. No, sir.
- Q. How would you know it's human substance?
- A. Because you conduct an anti-human test on it  
25 which indicates whether or not it is of human  
origin.
- THE COURT: I'm sorry, was that Donna or Linda?
- MR. FURLOTTE: It was Donna. That would have been under  
the right fingernail, one of the right finger-  
30 nails?
- A. I don't know. I could possibly tell you if I  
went through my notes.
- Q. Do you have your notes with you?
- A. Yes, I do.
- 35 Q. Page 6 of your notes, or your report.

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A. 106A was from the thumb. 106B I cannot really tell you, it just says 13R. 13C again says 13R.  
5 D, again I can't really tell you, and D, I'm sorry, I don't have any indication.

MR. FURLOTTE: You don't have it there, O.K. I have no further questions.

10

REDIRECT EXAMINATION BY MR ALLMAN:

Q. Just a couple of questions. The process that you used when you were looking for semen or seminal fluid which you explained included plasma and the spermatozoa, is that the same process as you used  
15 and explained to the jury in the Flam incident?

A. Yes, sir, it would be.

Q. When you talked about blood, Mr. Furlotte asked you and you indicated that it was correct that the blood that you typed could have come from a number  
20 of suspects?

A. On some of the articles, yes.

Q. Some of the articles. Why do you use the word could?

A. Because some - on some of the articles you might  
25 only get one or two of the eight proteins that we use to identify blood. Some of those proteins might match with corresponding proteins found in some of your accused. The broader number of people that you're looking at the more likelihood that you will have that some of those proteins  
30 will be the same between them. I have no way of knowing whether or not that blood was from one of the victims or from one of the suspects.

Q. So as a result of your tests you couldn't get  
35 beyond that proposition, you don't know whether



the blood came from the victims or the suspects?

A. In some cases no.

5 Q. Are there tests now that you know of or that you have heard of that are more specific than the old blood testing that used to be performed and still is performed?

A. Yes, sir.

10 Q. What would that be?

A. DNA fingerprinting.

MR. FURLOTTE: Well, My Lord, I think we're getting into hearsay evidence here.

15 MR. ALLMAN: This witness is an expert in serology. I'm certain that she keeps herself up to date on developments involving human body fluids.

THE COURT: Yes, well, I think so.

20 MR. FURLOTTE: Well, My Lord, I've been restricted from obtaining information from witnesses who may have gotten it from some other police officer or from lab reports, but the Crown can.

THE COURT: Well, this isn't hearsay, Mr. Furlotte, it comes within her expertise, or I would think it would.

25 MR. ALLMAN: I understand that an expert is entitled to refer to hearsay insofar as it comes from other learned articles, scientific developments, and so on. They're not restricted to the tests they've done themselves.

30 MR. FURLOTTE: Only in her own field, My Lord.

MR. ALLMAN: Well, it seems to me that testing of blood and similar samples would come within her field.

THE COURT: What do you have to say about your expertise or whatever?

35 A. I just finished a molecular genetics course which

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5 is the forerunner for doing DNA testing and I have read Kirby's book on DNA fingerprinting. I know a little bit about the field.

MR. ALLMAN: Well, given the limited nature of the question I asked which didn't seek to delve into any details I would submit that's a proper question.

10 THE COURT: Your question was?

MR. ALLMAN: Is she aware of a technique for testing blood that's more specific, or reportedly more specific than the type of blood testing that used to be done and indeed still is done.

15 THE COURT: And your answer is?

A. Yes, DNA fingerprinting.

MR. FURLOTTE: May I ask one question, My Lord?

THE COURT: Yes.

MR. FURLOTTE: Did you do DNA testing on the human substance found underneath the fingernail?

20 A. I did not, no.

THE COURT: No re-examination on that?

MR. ALLMAN: No.

THE COURT: Thank you very much, Mrs. Lungair, you're stood aside, I believe, so you shouldn't discuss this aspect of your evidence until all of your evidence is completed. Thank you. You haven't got any exhibits you're inadvertently taking away?

25 A. No.

THE COURT: Now, we'll stop there. You have another witness ready to go, I gather, Mr. Allman?

MR. ALLMAN: Yes.

THE COURT: We'll stop here, though, for lunch and we'll come back at two o'clock and carry on then.

(LUNCH RECESS - COURT RESUMED AT 2:00 p.m.)

(ACCUSED IN DOCK.)

MR. FURLOTTE: My Lord, before the jury comes in, Mr.

5           Legere would like me to put on the record before  
the - do this before the jury comes in as part  
of the voir dire that - wants to put on record  
that he objects strongly again to the Court  
appointing Mr. Kearney to assist the Court and  
10           myself because as far as Mr. Legere is concerned  
because Mr. Kearney had been a Crown Prosecutor  
for 23 years prior to his representing Mr. Legere,  
he's never acted as a defence counsel since he  
acted as a Crown Prosecutor, and this being his  
15           first case acting as a defence counsel and because  
Mr. Legere voiced his concerns and his doubts  
about Mr. Kearney's motives or attitude towards  
this case that there would be an apparent conflict  
of interest if Mr. Kearney continued to represent  
20           Mr. Legere in any capacity whatsoever, and it's  
not so much - you know, we don't doubt the  
integrity of Mr. Kearney but the appearance here  
I don't think would be proper for Mr. Kearney to  
continue representation in any capacity.

25           THE COURT: Just to allay any suspicions or feelings in  
that regard my instructions to Mr. Kearney is he  
is not to represent the defendant in any way  
unless the defendant or his counsel request his  
assistance in some respects. If there's no  
30           request then Mr. Kearney is not to represent, he  
is to make - as he understands, he is to make no  
use of any material that he obtained in the course  
of his - when he was counsel representing Mr.  
Legere. He's to make no use of that, he's to make  
35           no divulgence of that to anyone without your

Voir Dire

permission, Mr. Furlotte, or that of the accused.  
I further instruct Mr. Kearney that he is not to  
5 have discussions except as I may require from time  
to time, and I can't foresee it happening, with  
Crown counsel. He is to remain aloof from them,  
if I may put it that way. That doesn't mean that  
you can't be cordial just as Mr. Furlotte - Mr.  
10 Furlotte has to discuss matters with Crown Counsel  
and vice versa, and Mr. Kearney may wish to do the  
same from time to time, ask to borrow a document  
or something to see it, but that is not frater-  
nizing with the Crown Counsel.

15 MR. FURLOTTE: O.K., My Lord, one other matter then, that  
Mr. Legere had prepared notes and comments to  
myself on the Flam case and the Smith case and I  
had provided Mr. Kearney with a copy of those  
notes for his preparation, and maybe we could have  
20 those returned.

THE COURT: You have those, Mr. Kearney? Will you give  
those back at the first opportunity to Mr.  
Furlotte, please?

MR. KEARNEY: Yes, My Lord.

25 MR. FURLOTTE: O.K., My Lord, I guess I just had a  
message here that I had an emergency phone call.  
Now, what somebody else considers emergency I  
don't know.

THE COURT: For you?

30 MR. FURLOTTE: For me. Maybe if I could have -

THE COURT: Yes, we'll just sit here while you - and  
we'll say nothing until you return rather than  
go out and so on.

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MR. FURLOTTE: It's O.K., My Lord.

THE COURT: It wasn't an emergency by your standards?

5 MR. FURLOTTE: Not by my standards.

THE COURT: But I mean there's nothing that you want to attend to?

MR. FURLOTTE: No, I don't have to address the Court any further.

10

(JURY CALLED - ALL PRESENT. ACCUSED IN DOCK.)

J. R. ROBICHAUD, called as a witness, having already been sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. ALLMAN:

Q. And just for the record for the jury, Mr. Robichaud, could you again remind them, you were qualified as an expert at your first appearance; an expert in what?

20 A. In the field of toxicology.

Q. Toxicology being what to the layman?

A. The toxicology is the science or the study of the effects of drugs and/or poisons onto living tissues or into persons and it's the examinations of various exhibit material for the presence of drugs and/or poisons.

25

Q. And you were based and are based at the Crime Laboratory in Sackville?

A. Yes, I am a civilian member with the Royal Canadian Mounted Police. I am stationed at the Forensic Laboratory in Sackville, New Brunswick, and I am a member of the Toxicology Section.

30

Q. I'm showing you now an item that has been marked 'FF' for Identification. Can you look at it and tell us anything you know about it, including

35

J. R. Robichaud - Direct

any markings?

5 A. Court Exhibit 'FF' was an exhibit received from  
Sandra Lynn Lungair of the R.C.M.P. Forensic  
Laboratory. She is a member of the Serology  
Section. This exhibit was received on the 6th of  
10 November, 1989, at the laboratory. I performed  
examinations on the contents or portions of the  
contents of this vial. I examined this for the  
presence of cyanide. A normal residual amount of  
cyanide was detected. This exhibit was then  
15 transferred to D'arcy Randall Smith on the 22nd of  
December, 1989. D'arcy Smith is a member of the  
Alcohol Section at the Forensic Laboratory in  
Sackville, New Brunswick.

MR. ALLMAN: Subject to any objection I believe -

20 A. If I may say, this exhibit was returned on the 3rd  
of January, 1990, to myself by D'arcy Smith. I've  
had that exhibit in my possession since then and  
it was introduced as a court exhibit last week.

Q. O.K., that was 'FF', I believe. My Lord, subject  
to any objection I'd ask to enter this as an  
25 exhibit. I'm going to be calling D'arcy Smith as  
the next witness but I wanted to get this in  
because this witness referred to what he did with  
it.

THE COURT: This will be P-45, formerly 'FF'.

30 Q. You indicated with regard to what is now Exhibit  
#45 that you found normal levels of cyanide. I  
think you went into this a little bit previously  
but could you again just very briefly indicate to  
the jury what that finding might be?

A. Cyanide can originate - or I should say, cyanide  
35 is present in every person as they are in the

J. R. Robichaud - Direct

5 court room now. There is trace amounts of cyanide  
in everyone's blood and it comes from the break-  
down of cellular products. However, in the case  
of a fire there is also the presence of carbon  
monoxide and cyanide may be present in the gasses  
from that combustion. It can originate from  
various materials such as carpeting or various  
10 floorings and perhaps certain stuffing in let's  
say couches and chairs and beds, and this cyanide  
once it's liberated into the atmosphere, if one  
breathes the cyanide-containing gasses it will  
then be absorbed into the lungs and will then  
15 bind to the hemoglobin of one's blood.

Q. With regard to Item 45 reportedly relating to  
Donna Daughney, you said a normal amount of  
cyanide is found in the blood; what does that  
mean?

20 A. In toxicological terms there are three levels for  
any substance that may be in the body. There is  
what we call a normal or a therapeutic or back-  
ground level. In this case -

Q. So when you use the word normal what -

25 A. Normal means that it is normally there, it is  
present. The level was within that range. A  
higher level would be a toxic level and this  
where side effects may be present, and then the  
final third level would be lethal, which could be  
30 life-threatening if left exposed to this substance  
for any amount of time.

Q. And in this case the expression you used was the  
normal?

A. In this case it was a normal or background level.

35 Q. Item 'GG', can you look at that and tell us what

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you know about that, including reference to any markings?

5 A. This exhibit was received by myself from Sandra Lynn Lumgair of the R.C.M.P. Forensic Lab, the Serology Section, on the 6th of November, 1989. This exhibit is one of five that I received. It was reportedly or purportedly containing blood.  
10 It originated from Donna Daughney. This exhibit was then subjected to an examination for the presence of carbon monoxide.

Q. And what was the result of that test?

A. The result of my examination for the presence of  
15 carbon monoxide was again a normal or background level of carbon monoxide in the blood from this vial.

Q. Again my understanding from your previous testimony is that a certain level of carbon  
20 monoxide you would expect to find in anybody or everybody?

A. Everybody has a residual or background carbon monoxide in their blood right as we speak. If one is exposed to even slight amounts of carbon  
25 monoxide the level quickly rises where it can cause toxic effects, and again, if one is exposed to even more carbon monoxide the level then becomes life-threatening. This last one is in the order of 45 to 50 per cent. The toxic range  
30 would be in the order of 15 to as much as 35 per cent carbon monoxide saturation.

Q. The carbon monoxide gets into the system through breathing when you inhale?

A. That is correct.

35 Q. And in the present case you indicated there's no



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more than the normal level in blood purported to come from Donna?

- 5 A. The level of carbon monoxide here was normal or residual.
- Q. After you had performed your test for the presence of carbon monoxide on that item what happened to it?
- 10 A. Once I completed my examination this exhibit as well as others were placed in my locker. These exhibits were retrieved on the 3rd of September at which time they were wrapped, and this exhibit was introduced into the Court last week as a court
- 15 exhibit.

THE COURT: Strictly it was, what, marked for identification?

- MR. ALLMAN: It was introduced by the police officer, I take it, to whom you had handed it over after your
- 20 period of storage?

A. That is correct. That is when I last seen that exhibit.

- MR. ALLMAN: I would ask that that be declared an exhibit, My Lord, I don't think there's anybody
- 25 else to add up on continuity on that one.

THE COURT: It will be P-46, and that is 'GG' we're talking about.

- Q. I have handed you now Court Identification 'DD'. Can you tell me anything about that including
- 30 reference to any markings that are on it?

- A. This exhibit was received from Sandra Lynn Lungair on the 6th of November, 1989, at the Forensic Laboratory in Sackville, New Brunswick. This exhibit was then transferred to D'arcy
- 35 Randall Smith on the 22nd of December, 1989. He

J. R. Robichaud - Direct

- 5 returned that exhibit to myself on the 3rd of  
January, 1990. I kept this exhibit in my  
possession until again it was introduced into this  
Court last week.
- Q. And what if any tests did you perform upon 'DD'?
- A. This exhibit was examined for the presence of  
carbon monoxide.
- 10 Q. Now, that purports to come, I understand, from  
Linda Daughney?
- A. This exhibit is reportedly from Linda Daughney.
- THE COURT: And what from Linda Daughney?
- A. This Court Exhibit 'DD'.
- 15 THE COURT: It's a vial of blood?
- A. Yes.
- MR. ALLMAN: 'DD', a vial of blood purporting to come  
from Linda Daughney?
- A. That is correct.
- 20 Q. And you indicated that you did a test for carbon  
monoxide upon that item; with what result?
- A. The result that I obtained was a 23 per cent  
carbon monoxide saturation in the contents of this  
vial.
- 25 Q. You explained about the ratings, if that's the  
right expression, that you use for different  
levels of carbon monoxide. Where would a level of  
23 come?
- A. The level of 23 per cent would fit in the toxic  
30 range. Symptoms associated with the toxic range  
or toxicity would include a headache - or could  
include, I should say, headache, nausea, muscular  
weakness, and perhaps disorientation or dizziness.  
These are the symptoms that a person could have if  
35 they had a 23 per cent carbon monoxide level in

their body.

Q. O.K., and what was the range above that?

5 A. The range above that is in the order of 45 to 50 per cent, and that range is consistent or compatible with being life-threatening or causing death.

10 Q. In the ordinary course, and I realize that there are exceptions to almost every rule, but in the ordinary course would you expect a level of 23 to be life-threatening?

A. No, under normal circumstances, no. If I may add -

15 Q. Yes.

A. - on the level that I quoted earlier are for what scientists refer to as normal healthy adults. Now, in this case, having heard Dr. McKay's evidence this morning, there was some trauma and there was other things that had occurred and this, as Dr. McKay had quoted, let's say would not cause death by itself but it may be a contributing factor.

20 Q. Let me put it another way, in an adult who had not been subjected to a beating or an injury of some kind would you expect a level of 23 to be toxic - sorry, to be fatal?

A. No, you would not.

30 MR. ALLMAN: I'd ask that this item be entered as an exhibit, My Lord, subject to calling D'arcy Smith who's my next witness.

THE COURT: This will be P-47, 'DD'.

35 Q. I show you now an item 'EE'. What can you tell us about that including reference to any markings that are on it?

85

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A. Exhibit 'EE' was received from Sandra Lynn Lumgair on the 6th of November, 1989. Sandra Lumgair is a member of the Serology Section at the R.C.M.P. Forensic Lab in Sackville, New Brunswick. This exhibit as well as the others I recognize by the fact that I have placed my initials, the laboratory case number, and the date of receipt as well as the exhibit number on the label affixed to each vial. This exhibit was examined for the presence of cyanide. This exhibit was then placed in my locker and it was retrieved on the 3rd of September, 1991, and it was introduced in court here last week.

Q. So this item didn't go on to D'arcy Smith?

A. This exhibit was kept by myself after receiving it from Sandra Lumgair.

MR. ALLMAN: I'd ask that that be entered as an exhibit.

Q. We don't have to call D'arcy Smith to deal with this one.

THE COURT: But what is this, now, a vial, is it?

A. This is reportedly a vial of blood from Linda Daughney.

THE COURT: This will be P-48.

Q. You told us that P-48 was examined and tested by you for the presence of what?

A. This was examined for the presence of cyanide.

Q. And what were the results of that examination?

A. The result of my examination were that I found a normal or a residual amount of cyanide present in that vial of blood.

Q. And that's normal used in the same sense as you've been explaining to the jury on the other occasion?

A. That is correct.

MR. ALLMAN: Thank you.

THE COURT: Cross-examination, Mr. Furlotte?

5

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Robichaud, I believe you stated that the 23 per cent level of carbon monoxide was not sufficient to cause death?

10 A. That would be correct.

Q. Under normal circumstances?

A. Under normal circumstances.

Q. And I believe you gave an opinion, rightly or wrongly, that death would have been caused as a combination between the carbon monoxide level saturation and the beating?

15 A. Well, I am not a pathologist but I was here during Dr. McKay's testimony this morning.

Q. But you said that level of saturation by itself -

20 MR. ALLMAN: I don't think he used the word saturation. Maybe I stand to be corrected. Saturation to me from my recollection of chemistry means completely filled with something.

MR. FURLOTTE: Would you call it a 23 per cent level of saturation?

25 A. It is a 23 per cent carbon monoxide saturation, if you wish. Carbon monoxide, if you were to take or to count the amount of hemoglobin protein present, 23 per cent of them have been, let's say - have a carbon monoxide attached to them. At that time they cannot carry oxygen and the remaining 72 per cent could still carry oxygen, of 72 per cent of the hemoglobin protein.

30 THE COURT: 77.

35 A. Or 77, I'm sorry.

- Q. O.K., you mentioned some of the effects would be headache?
- 5 A. A person could have headaches. They could have nausea, muscular weakness.
- Q. Disorientation?
- A. Disorientation.
- Q. Now, when you say nausea, that could cause a person to vomit?
- 10 A. It could cause them to vomit.
- Q. Could that level cause them to lose consciousness?
- A. I don't know. As I say, I am not a doctor, I do not know if it would cause them to lose consciousness.
- 15 Q. But you were doctor enough to say that it could cause headache, nausea, muscular weakness and disorientation?
- A. This information was taken from literature data or reference manuals that we have at work. I have no clinical experience as to certain levels of carbon monoxide and the actual effects that they may cause on a person.
- 20 Q. But it definitely could cause somebody to vomit?
- 25 A. Yes, it could.
- Q. You also, I understand, have done similar tests on James Smith?
- A. Similar tests?
- Q. Tests for levels of carbon monoxide and toxicology tests on James Smith?
- 30 A. Yes.
- Q. And did you find any common drugs in the blood of James Smith?
- A. Yes, I did.
- 35 Q. And what did you find?

A. I found the drug, diltiazem. The trade name is  
Cardizem. It is an anti-anginal agent. It is  
5 indicated for persons who may exhibit cardiac  
pains or pains at the heart, and this is indicated  
to alleviate such pains.

Q. And it was in a therapeutical range?

A. The level that I detected or that I found was in  
10 the normal or therapeutic range.

MR. FURLOTTE: I have no further questions.

REDIRECT EXAMINATION BY MR. ALLMAN:

Q. Just one, My Lord. You were asked about James  
15 Smith and the word therapeutic level was used.  
What does therapeutic mean?

A. Therapeutic is a level that is referred to by -  
there's three levels, there is the therapeutic,  
there is the toxic, and then there is a lethal.  
20 Now, in the case of pharmaceutical preparations  
such as Cardizem there is no background or normal  
residual level, so the word therapeutic is that  
this is within a range where beneficial psycho-  
logical or physiological benefit occurs. Now, if  
25 the level is higher then it would reach a toxic  
level, and again if it is higher then one would  
reach a potentially fatal or life-threatening  
level.

Q. See if I've got this right; therapeutic, you said,  
30 is beneficial?

A. It's beneficial, it's the normal level. A doctor  
would prescribe this medication for anginal pains  
and if the level - the level that I obtained was  
within this range, this normal therapeutic range.

35 MR. ALLMAN: Thank you. I have no re-examination other

D'arcy Smith - Direct

than that.

THE COURT: Thank you very much, Mr. Robichaud.

5 MR. ALLMAN: I think we're through with Mr. Robichaud  
now.

THE COURT: Yes, and you're excused, and thank you very  
much.

10 D'ARCY R. SMITH, called as a witness, being duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Could you state your name and occupation, please?

A. My name is D'arcy Randall Smith. I'm a civilian  
15 member of the Royal Canadian Mounted Police  
presently stationed in the Alcohol Section of the  
Forensic Laboratory in Sackville, New Brunswick.

Q. And what's your specific area of involvement  
there?

A. The Alcohol Section, we're involved in cases such  
20 as this in the analysis of body fluids and tissues  
for the presence of alcohols and other volatiles.

Q. How long have you been employed in that capacity?

A. I have been a member of the Forensic Laboratory  
25 system since January, 1987.

Q. And what are your qualifications when it comes to  
that area?

A. I have a Bachelor's Degree in physiology and a  
Master's Degree in pharmacology toxicology.

30 Q. Have you previously been declared an expert in  
courts in this province?

A. Yes, I have.

Q. Entitled to give opinion evidence, and in what  
area have you been declared an expert?

35 A. I've been declared an expert in the areas of



D'arcy Smith - Direct

5                   physiology, which is the absorption, distribution  
                  and elimination of alcohol in the human body, in  
                  the areas of pharmacology which is the effects  
                  alcohol has upon the human body, in the areas of  
                  the analysis of body fluids and tissues in the  
                  human body, and analyze them to see for the  
                  presence of alcohols, in various fields dealing  
10                   with breathalyzer impaired driving charges.

Q.               My Lord, that's rather a lengthy sphere. I would  
                  propose to simply have him declared an expert in  
                  the field of blood alcohol as just set out. I  
                  believe there's no objection.

15               THE COURT: Any questions?

MR. FURLOTTE: I have no questions and no objections.

THE COURT: What type of opinion are you actually seeking  
                  here?

MR. ALLMAN: I'm going to ask him to say how much alcohol  
20               he found in samples of blood and comment upon what  
                  that amount means.

THE COURT: Yes. Well, I declare the witness an expert  
                  for the purpose of this trial in blood alcohol  
                  content, determining blood alcohol content, and in  
25               the results.

MR. ALLMAN: I'm showing you now an item that's been  
                  marked 'DD'. What if anything can you tell us  
                  about that, including reference to any markings  
                  that are found upon it?

30               A.               This is a vial of blood that I received by hand  
                  from Raymond Robichaud on the 22nd of December,  
                  1989. I recognize it by the case file number  
                  assigned to it, my initials, and the date upon  
                  which I received it.

35               Q.               And what happened - what did you do with that

item?

- 5 A. This item was analyzed on the 29th of December, 1989, for the presence of alcohol. The result of that analysis was that a blood alcohol level of 15 milligram per cent was found to be present.
- Q. I'll come back to that in a moment. After you had completed your analysis what did you do with that item?
- 10 A. This item was then kept in my possession until the 3rd of January, 1990, at which time I transferred it back to Raymond Robichaud of the Toxicology Section.
- 15 Q. That's the previous witness?
- A. That is correct.
- MR. ALLMAN: I believe we've proved continuity up in this matter, My Lord. This is one of the items that I said we'd have to call -
- 20 THE COURT: What was that number?
- MR. ALLMAN; That was 'DD'.
- MR. WALSH: Exhibit P-47 now.
- THE COURT: P-47, yes, but again just to fix in our mind or to help in the recollection, that was what?
- 25 What did it purport to be, rather?
- MR. ALLMAN: That purports to be blood from Linda Daughney, now P-47. You indicated that with regard to P-47 you found a level of what?
- A. Fifteen milligram per cent or 15 milligrams of ethyl alcohol in 100 millilitres of blood.
- 30 Q. What if anything does a finding like that indicate to you in terms of its effect and what it would take?
- A. A level of 15 milligram per cent in the blood
- 35 would be equivalent in a female of the size that

D'arcy Smith - Direct

I've heard described of approximately an ounce of wine present in the blood, or half an ounce of liquor. Essentially it would be having no effect pharmacologically upon that individual; that is, the alcohol would not be altering the person's reflexes, their thought processes, or how they were reacting to situations.

10 Q. I take it when you said a glass of wine that's just an example, it could be some other -

A. That is correct, the equivalent to about an ounce of wine or half an ounce of hard liquor, a third of a bottle of beer.

15 Q. I'm going to show you now P-45, 'FF'.

A. P-45 is a vial containing blood which I again received from Raymond Robichaud of the Toxicology Section on the 22nd of December, 1989.

Q. That, I understand, purports to come from Donna?

20 A. That is my understanding, yes.

Q. And again that's one of the items that you dealt with, then handed back to Mr. Robichaud?

A. That is correct. After I performed my analysis on the 29th of December, 1989, it was kept in my possession until the 3rd of January, 1990, at which time I transferred it back to Raymond Robichaud.

Q. And again, My Lord, that's one of the items that we entered as an exhibit subject to our undertaking to call Mr. Smith, which we're doing now. Did you perform any tests upon that exhibit?

30 A. Yes, again on the 29th of December, 1989, I performed an analysis upon this exhibit and the blood alcohol level obtained was 12 milligram per cent, or 12 milligrams of ethyl alcohol in 100

35

millilitres of blood.

- 5 Q. Very slightly less than the level you'd found in  
Linda's?
- A. That is correct.
- Q. Would there be any material difference in your  
comments and observations on that from on the 15  
that you found in the other lady?
- 10 A. No, there would be no difference in my opinion of  
the effects of that level of alcohol.
- Q. Either in terms of what it would take to get that  
into your blood or in terms of what effect it  
would have upon you?
- 15 A. That is correct.
- MR. ALLMAN: Thank you.

CROSS-EXAMINATION BY MR. FURLOTTE:

- 20 Q. Mr. Smith, how does time come in as a factor in  
relation to as to when the blood sample was taken  
as to when it was analyzed?
- A. Time can be a factor in exhibits which have been  
contaminated by bacteria or other micro-organisms.  
If this contamination occurs and the blood sample  
25 is not in what is known as a vial containing a  
preservative, the alcohol level that may be in  
that sample at the time it was taken may be  
altered by the activity of micro-organisms. The  
micro-organisms may alter it in three ways. They  
30 may produce no change in the alcohol level, they  
may produce an increase in the alcohol level, and  
they may produce a decrease in the alcohol level.  
The vials that I received these samples in were  
grey-stoppered vials. The grey-stoppered vials in  
35 the laboratory setting generally contain or do

D'arcy Smith - Cross

- 5 contain an anticoagulant which keeps the blood fluid, and a preservative which prevents, even if the sample did get contaminated, the micro-organisms from having any effect upon the alcohol level in that blood sample.
- Q. O.K., and I also understand that you ran similar tests on James Smith?
- 10 A. That is correct. I did do analysis on samples that had been obtained from James Smith.
- Q. Do you recall your results in those tests?
- A. I do not recall my results offhand. I do have the file in my briefcase that I could look at my notes and tell you what the results were from that.
- 15 Q. O.K., would you please do that?
- A. With the James Smith file I had received two exhibits, one which was a vial of urine and one which was a vial of blood. Which would you like the result from?
- 20 Q. Both.
- A. From both? The vial of blood was found to contain 35 milligram per cent, the vial of urine was found to contain 12 milligram per cent.
- 25 THE COURT: Sorry, the last figure?
- A. The vial of urine was found to contain 12 milligram per cent.
- Q. Could you explain why the urine would have only one-third the amount of alcohol?
- 30 A. Well, alcohol in the human system is distributed amongst tissues in proportion to their water content. Urine has a higher water content so it should have a higher alcohol level. However, if the subject had recently voided, that is removed the urine from their bladder, it then takes time
- 35

5 for urine to be formed and for the alcohol level to rise again. In a case where the blood alcohol level is 35 and the urine is 12 my opinion would be that the subject had probably voided recently and that is why the urine is less. The bladder is probably not full, it is just starting to be refilled from the kidneys.

10 Q. O.K., and the level of 35 milligrams of alcohol, what would that be equal to in liquor content, I suppose, wine or hard liquor?

15 A. Depending upon the individual's weight, which I don't have, but if he was, say, a hundred and fifty pound man, 35 milligram per cent would be just slightly over one bottle of beer in his system or an ounce and a half of hard liquor or a four-ounce glass of wine.

MR. FURLOTTE: I have no further questions.

20 MR. ALLMAN: I have no re-examination.

THE COURT: One question I wanted to ask. You talked about deterioration, you're talking about deterioration from the time it's put in the vial with a preservative and an anticoagulant. It would be well-preserved?

25 A. Once it has been put into the vial if there is the preservative in there, then there should be no further change in the alcohol level in that sample. In bodies which have been laying around outdoors or in a house or that for several days bacteria may contaminate the system at that point and so you may be dealing with a contaminated sample before it's put in the vial. The level would not change from the time it's been put in  
30 the vial to the time of analysis. However, as I  
35

5 say, in bodies which have generally been laying  
around for several days under non-sanitary  
conditions the level may change within the body  
before the samples are collected.

10 THE COURT: But if a blood sample is not taken, say,  
until 24 hours after death, does that indicate the  
blood rating at the time of death was the same as  
it was when the blood sample was taken?

15 A. Well, the breakdown of alcohol within the body  
continues while the body is living. Once death  
has occurred the alcohol will not be being broken  
down by the body itself as the liver is the organ  
of metabolism in the body that breaks alcohol down  
into other components. If the body has been  
contaminated by bacteria, if they have gotten into  
the bloodstream or that, then the alcohol level  
may be affected. However, what we'll generally  
20 see when you're doing our analysis upon it, if the  
sample has been contaminated before the sample is  
collected, there will be other volatile substances  
that appear in our analysis that indicate to us  
that there is a putrefaction problem with that  
25 sample. In this case of the two blood samples  
from the Daughney I did not notice any of those  
other peaks.

THE COURT: Any questions, Mr. Allman?

30 MR. ALLMAN: No, the only question I was going to ask he  
answered in the last comment.

THE COURT: That's completed, then, Mr. Smith is free to  
go? Thank you. You haven't got any exhibits?

A. No, I do not, My Lord.

35 THE COURT: I'm not suspicious. Sometimes witnesses  
inadvertently carry exhibits away. Then we

wonder for days where they are.

5

SERGEANT GILLES TURGEON, called as a witness,  
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

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

10

A. My name is Gilles Turgeon. I'm a member of the  
Royal Canadian Mounted Police, I'm presently  
stationed in Regina, Saskatchewan.

Q. What are you doing in Regina, Saskatchewan?

A. Firearms instructor.

15

Q. And Sergeant Turgeon, would you tell the Court,  
please, and the jury, your involvement related to  
this matter beginning with the date, the time and  
the town that your involvement occurred?

A. On the 24th of June, 1986, I was involved in the  
investigation of -

20

Q. O.K., you were involved - sorry, in June, 1986,  
you were in what town?

A. In Newcastle, New Brunswick.

Q. I see. Were you a member of the Royal Canadian  
Mounted Police at that time?

25

A. Yes, I was.

Q. And did you have occasion - would you tell the  
Court what if anything you did related to this  
matter, without getting into the details?

30

A. O.K., I was one of several people that approached  
a person and asked him for a sample of hairs which  
we were -

Q. Who was this person?

A. Allan Legere.

35

Q. Is he present in court today?



Sgt. Turgeon - Direct

- A. Yes, he is.
- Q. Where is he?
- 5 A. Sitting between the two uniformed officers in the prisoner's docket.
- Q. The gentleman wearing the white shirt?
- A. That's correct.
- Q. For the record, My Lord, it would show that
- 10 Sergeant Turgeon has pointed to the accused. You approached him on that particular date?
- A. I with other people, yes.
- Q. I see, and other people I take it are other police officers?
- 15 A. That's correct.
- Q. And what was your purpose of approaching him?
- A. To obtain samples of scalp hairs, mustache and beard.
- Q. And was he in fact wearing a beard at that time?
- 20 A. Yes, he was.
- Q. And was he in fact wearing a mustache at that time?
- A. Yes, he was.
- Q. And what if anything did you do after approaching
- 25 him? What did you actually do?
- A. A conversation took place. He was given a telephone to phone his lawyer. I have no idea what the conversation was on the phone.
- Q. Did you in fact end up taking hairs from Mr.
- 30 Legere?
- A. Later on, on the early morning of the 25th, at 1:44, I did obtain samples, yes.
- Q. O.K., would you describe for the jury, please, how you obtained the samples and what if anything you
- 35 did with them?

Sgt. Turgeon - Direct

- A. Samples were taken by combing the scalp area and then I plucked and I cut.
- 5 Q. O.K., when you say combed the scalp hair, you're referring to the hair on top of the head?
- A. That's correct.
- Q. And what comb did you use, was it one of yours or was it -
- 10 A. No, no, it was a clean one. We bought a bunch of clean combs from a store, fine-toothed comb, and we combed the area, put that in a bag.
- Q. Put what in a bag?
- A. The hairs that stuck to the comb.
- 15 Q. And what bag are you referring, would you explain?
- A. It was an item bag or exhibit bag that we used and again these were clean bags, they were not contaminated whatsoever from any other substance.
- Q. So you combed the hair and you put hairs in that
- 20 bag?
- A. Yes.
- Q. Then what did you do next?
- A. I plucked some and I cut some.
- Q. O.K., would you tell the jury what you mean by the
- 25 term plucked?
- A. It means I took my hands and pulled some hairs out of his scalp area.
- Q. And what did you do with those hairs?
- A. Put them in the same bag.
- 30 Q. With the hair that you had combed?
- A. Yes.
- Q. And then what was the next thing you did?
- A. I cut some with scissors.
- Q. And where did you put those hairs?
- 35 A. In the same bag.

100

Sgt. Turgeon - Direct

- Q. And what did you do with that bag?
- A. I sealed it, put my initials and item number on it.
- 5 Q. And what was the initials and item number that you put on that bag?
- A. My initials are JGT, the date, which was the 25th of June, 1986, and the time, 1:44, and GT56.
- 10 Q. GT56 being your initials -
- A. A number that's assigned, that was assigned to the exhibits.
- Q. And what did you do with that particular bag?
- A. I held it in my possession, or I had a sealed bond room which I was the only one that had a key for it, until the next morning at 10:30 I went down to Sackville and hand delivered it to Duff Evers.
- 15 Q. And Sackville is Sackville, New Brunswick?
- A. Yes.
- 20 Q. And that's where the Forensic Crime Laboratory is?
- A. That's correct.
- Q. And Duff Evers is a member of the -
- A. He's a civilian member there, yes.
- 25 Q. And you hand delivered that particular bag to him?
- A. Yes.
- Q. And at the time you handed the bag to them was there anything in the bag?
- A. There were the hair samples.
- 30 Q. I see, and did you have occasion to see that particular bag after that time?
- A. Yes, on the 7th of August I received it through the registered mail system.
- Q. From whom?
- 35 A. From Sackville, the lab.

101

Sgt. Turgeon - Direct

- Q. And was there anything in the bag at the time that you received it back?
- 5 A. No, there wasn't, it appeared to be empty.
- Q. And how could you tell it was the same bag that you had delivered previously to Duff Evers?
- A. Because they have my initials, date and time, and GT56.
- 10 Q. O.K., other than that particular item that you've just described, did you have occasion to receive any other item related to this matter here from anyone?
- A. Yes, on the 27th of June Constable Brennan, at the  
15 time Constable Brennan -
- Q. Of the R.C.M.P.?
- A. Of the R.C.M.P., G.I.S Section, Moncton, who was involved in this investigation -
- Q. O.K., and what did he do?
- 20 A. He gave me a bag containing what appeared to be hair samples again, and I put my initials, date and time that I seized them, as well as GT69.
- Q. GT69 representing your initials and the exhibit number assigned to it?
- 25 A. That's correct, yes, that was on the 27th of June.
- Q. 1986?
- A. 1986.
- Q. And was this bag sealed?
- A. Yes, it was. Yes, when he gave it to me it was  
30 sealed and I just put my initials on the exhibit sticker.
- Q. And the exhibit sticker was on the bag?
- A. Yes.
- Q. And then what did you do with that particular  
35 item?

Sgt. Turgeon - Direct

- A. I took it down to Sackville on the first of July.
- Q. Between the time that you received it and the time  
5 you took it to Sackville was it in your  
possession?
- A. Well, it was in the bond room in question. There  
was a bond room there like I explained earlier  
10 where I had several exhibits involving that case  
and I was the only one in possession of a key.
- Q. I see, and who did you take that item to on the  
date you mentioned?
- A. Again I took it down to Duff Evers on the first of  
July.
- 15 Q. And did you have occasion to receive that item  
back?
- A. Yes, on the 7th of August I received it back, as  
well as GT56.
- Q. At the same time?
- 20 A. Yes.
- Q. Now, was there anything in the bag when you  
received it back?
- A. No, the bag appeared to be empty.
- Q. And how could you identify it as being the same  
25 bag?
- A. Again it had my initials and date and time when  
I had seized it.
- MR. WALSH: I have no further questions, My Lord. Thank  
you.
- 30 THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. When you took the scalp hairs from Mr. Legere do  
you recall how many you took?
- 35 A. Well, normally we take approximately a hundred.

I did not count them as such but I would say it would be approximately one hundred hairs.

- 5 Q. And I believe you said you received another exhibit which you marked GT69 from -
- A. - Constable Ray Brennan.
- Q. Constable Ray Brennan?
- A. Yes.
- 10 Q. Did you check the contents of that bag?
- A. No, but it was a clear bag. I could see the contents.
- Q. And what could you see?
- A. What appeared to be hair samples again.
- 15 Q. The hair samples you took from Mr. Legere in '86 was scalp hair, you said?
- A. On the 25th at 1:44 p.m., yes, I took scalp hairs as well as beard and mustache, but all three were put in three different bags.
- 20 Q. And what colour were those hairs?
- A. Brown.
- Q. Brown?
- A. Yes.
- Q. Light brown?
- 25 A. Well, brown, I -
- Q. Same colour as it is today?
- A. Well, I think he's got a few more white hairs than in 1986, but they were dark brown hair.
- Q. And what colour were the hairs in the bag you
- 30 received from Constable Brennan?
- A. They appeared to be brown as well.
- Q. They could be brown as well?
- A. Yes, they appeared to be, yes.
- Q. Same colour as his hair, the scalp hair?
- 35 A. I couldn't say. I would assume they were, yes.

MR. FURLOTTE: No further questions.

THE COURT: Re-examination?

5 MR. WALSH: I have no further questions.

THE COURT: Thank you very much, Sergeant Turgeon, and  
that finishes you, I guess, as a witness. Thank  
you very much.

10 CORPORAL RAYMOND BRENNAN, called as a witness,  
being duly 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 Raymond Joseph Brennan. I'm a  
member of the Royal Canadian Mounted Police  
presently stationed in Saint John, Saint John  
County, Province of New Brunswick.

Q. And would you tell the Court, please, in your own  
20 words, and the jury, your involvement in this  
matter beginning with the date, the time, and the  
town that you would have been in and explain what  
you did?

A. Yes, the date was June 26, 1986. I was working in  
25 Newcastle, the County of Northumberland, Province  
of New Brunswick.

Q. And what did you have occasion to do in relation  
to why you're testifying?

A. On that particular day at approximately 1:55 p.m.  
30 myself and then Constable Michel Seguin, he's now  
Sergeant Seguin, met with Allan Legere.

Q. Allan Legere, is he present in court today?

A. Yes, he is.

Q. Would you point him out for us, please?

35 A. He's on the far wall between the two R.C.M.P.

Cpl. Brennan - Direct

officers. He's wearing a white shirt, open neck.

MR. WALSH: My Lord, I'd like the record to show that

5 he's pointed to the accused and he's pointing to  
the same person that Sergeant Turgeon did, and you  
approached this man?

A. Yes, I did.

Q. And what if anything did you do?

10 A. Well, at that time I advised Mr. Legere that I was  
there to obtain some hair samples, pubic hair  
samples.

Q. Pubic hair samples?

A. Yes.

15 Q. O.K., we won't get into any conversation. Did you  
in fact have occasion to take pubic hair samples?

A. Yes, I did.

Q. From Mr. Legere?

A. Yes.

20 Q. And would you describe for the jury and the judge,  
please, how you went about that and what you did?

A. Basically after identifying myself and Sergeant  
Seguin and explaining our purpose, Mr. Legere was  
wearing sweat pants at the time, dropped the front  
25 portion of the sweat pants just to expose the  
upper portion - or he exposed the upper portion of  
the pubic area. I provided him with a fine-  
toothed comb and asked him to use the comb to  
brush out samples of the pubic hair.

30 Q. Did he do that?

A. Yes, he did.

Q. Where did you get this comb from?

A. This comb was purchased at a local store, it came  
in a sealed plastic envelope.

35 Q. And did he in fact comb hairs out?



- A. Yes, he tried but he wasn't having much success.
- Q. O.K., and what happened?
- 5 A. After we determined that it wasn't going to work that way we asked him to try plucking it out himself with his hand.
- Q. Did he in fact do that?
- A. Again he attempted to and only managed to get one
- 10 or two, maybe three at the most, three single hairs.
- Q. And where did those hairs go?
- A. They went into a clean plastic bag that I had brought into the room with us.
- 15 Q. Clean plastic bag, what did you mean by that? Was there anything in it before?
- A. No, there wasn't.
- Q. And what happened next?
- A. After that failed I asked Sergeant Seguin to go
- 20 out into an outer office and get a pair of scissors, and with the scissors we were going to clip some hair.
- Q. And did you use scissors to clip the hair?
- A. Actually, Sergeant Seguin used the scissors to
- 25 clip. Allan pulled on the pubic hair, pulled it out exposing the hair for Sergeant Seguin to clip.
- Q. And this scissors, where did they come from?
- A. Sergeant Seguin got them in the outer office, I'm not sure exactly where.
- 30 Q. And where did those hairs go?
- A. They went into the plastic bag that I brought in with me.
- Q. I see, so when you used the scissors these would have been cut hairs that went into the bag, not
- 35 pulled hairs?

Cpl. Brennan - Direct

A. No, they went in with the one or two or three at most pulled hair. They all went into the same bag, but Sergeant Seguin took three clippings from Mr. Legere.

Q. Were you present through this whole time?

A. Yes.

Q. And what if anything did you do with the bag with the hair in it?

A. We were in the room with Mr. Legere for approximately ten minutes. After leaving the room I locked the hairs up and I kept them in my locker until the following day.

Q. Anyone else have access to your locker?

A. No.

Q. And was the bag sealed or closed? Did you close the bag?

A. Yes. Yes, it was sealed.

Q. And then what did you do the following day?

A. The following day at approximately 12:07 p.m. or seven minutes after noon, I gave the bag of hair to Sergeant Turgeon, the previous witness.

Q. And did you yourself see this bag after that time?

A. No, I haven't seen it since.

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

THE COURT: Cross-examination, Mr. Furlotte?

30 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Brennan, how many hair would you have clipped in all?

A. How many hair were clipped?

Q. Yes, you say you combed out about three single hair?

- A. Roughly, yes. No more than three.
- Q. And how many would you have cut?
- 5 A. Somewhere between 50 and 100.
- Q. And did you pull any, pluck any?
- A. Did we pull any?
- Q. Yes.
- A. No, Mr. Legere did the pulling.
- 10 Q. Mr. Legere did the pulling?
- A. Yes.
- Q. And they were all put in the same bag?
- A. Yes.
- Q. Do you recall what colour Mr. Legere's pubic hair  
15 was?
- A. Dark colour.
- Q. Dark colour? Black?
- A. I'm looking at it en masse. I would say dark.  
I didn't examine the individual hair but I would  
20 say dark.
- Q. Closer to black than brown?
- A. I'd say about halfway between, en masse.
- Q. What colour was Mr. Legere's scalp hair at that  
time?
- 25 A. It would be dark, between brown and black.
- Q. The same as it is today?
- A. Well, there's more grey in it there today.
- Q. More grey in it today. Would you mind taking a  
walk over to Mr. Legere and having a look at his  
30 scalp hair and see what colour you think it is?
- A. Sure.
- THE COURT: If you'd care to. You only need go as far as  
to determine the answer.
- Q. Aside from the white, what can you see?
- 35 A. Dark brown.

Q. Dark brown? What colour is your hair, Mr. Brennan?

5 A. Medium to dark brown.

Q. Medium to dark brown. Mr. Legere's hair darker than yours?

A. I'd say a bit.

Q. You'd say it is, eh?

10 A. A bit, yes.

Q. Would his pubic hair also be darker than yours?

A. Pardon me?

Q. Would his pubic hair be darker than the colour of your scalp hair?

15 THE COURT: We won't get into that. No.

A. Would his -

Q. I'm asking if Mr. Legere's pubic hair is darker than this officer's scalp hair.

20 THE COURT: Oh, oh, I misunderstood the question totally here. Yes, that's fair enough. That's a fair enough question.

A. It's kind of hard for me to say. I guess it would be - that's five years ago and my hair has changed a lot over the last five years.

25 Q. No, I'm talking about the colour of your scalp hair today. Is Mr. Legere's pubic hair blacker than what the colour of your scalp hair is today?

A. I guess it would be about the same. I can't really say for sure, positively.

30 Q. So you're not sure?

A. In that regard.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination?

MR. WALSH: No, I have no more on that.

35 THE COURT: Thank you very much, Corporal Brennan. I

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Mr. Evers - Direct

guess you're through so that excuses you.

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ADOLPHUS JAMES EVERS, called as a witness, being  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- Q. Could you give the Court your name, please, and your occupation?
- A. Adolphus James Evers, I'm in charge of the Hair and Fibre Section at the Forensic Laboratory, Sackville, New Brunswick.
- 10 Q. I see, and Mr. Evers, would you tell the Court, please, in your own words, your involvement in this particular matter beginning with the date, the time and the place?
- 15 A. On the 25th of June, 1986, I received a number of articles from Constable Gilles Turgeon. One of these articles was a scalp hair sample which was identified to me as Exhibit #GT56. On the first
- 20 of July, 1986, I received an additional hair standard from Constable Turgeon. The hair standard was a pubic hair standard identified as GT69.
- Q. What were they in when you received them, GT56 and GT69?
- 25 A. Both of the articles were in clear plastic bags which were sealed and identified with tags. The hair was removed from each of these articles and the empty bags were returned via registered mail on the 5th of August, 1986, registered mail #639.
- 30 Q. Would you tell the Court and the jury, please, what you did with the hairs that you received or took out of the bag that you've identified as being received, GT56?
- A. From Exhibit GT56 I removed 75 human scalp hairs.

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Mr. Evers - Direct

These scalp hairs measured up to 12 centimetres in length. The hairs were mounted on microscope slides, 13 altogether, the empty bag was then returned.

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MR. WALSH: My Lord, I have an item here I wish to have identified.

THE COURT: II for Identification.

MR. WALSH: I show you the item II for Identification

10

which I have taken from the possession of the Clerk.

A. I identify the container by my initials, my date and case number. This is the package which I put the 13 slides in. I identify each of these slides in the container with my initials, also with the case number. These are the 13 slides which I mounted the hairs from court exhibit GT56. These slides were retained in my possession until the 22nd of April, 1991, when I brought them to court.

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Q. Did you do anything with these particular slides? Did you do anything in terms of the hairs that were on those slides at any time after when you first put them there?

25

A. I examined the hair microscopically. On the 24th of October, 1989, I removed three hairs from the slides. The hairs were removed from slides #10 and 12. The hair roots were removed from the slides, they were put in a pill box, the pill box was marked and was given to Constable Robin Britt on the 25th of October, 1989, at 8:17 in the morning.

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MR. WALSH: I have an item here, My Lord, I wish to have marked for identification, please.

THE COURT: JJ.

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MR. WALSH: I show you the item that's been marked on

112

Mr. Evers - Direct

this hearing JJ for Identification. Would you look at it for me, please, and tell me whether you can identify it?

5 A. I identify the container by my initials, date and case number. This is the container which I removed the three hairs from the slides and put in this container. The container was given the number GTA - I'm sorry, 56A.

10 Q. 56A?

A. Yes. This was given to Constable Robin Britt on the 25th of October, 1989.

Q. If I understand your testimony correctly, you took the hairs that you put in that particular  
15 container from this slide box marked II?

A. That is correct.

Q. And this slide box has been in your possession since the time the hairs were put in it until the time they were brought to court?

20 A. The slide box was not, the slides were.

Q. The slides were?

A. Yes.

MR. WALSH: My Lord, at this time I would move that the item II for Identification could be entered as an  
25 exhibit directly from Mr. Evers's testimony.

THE COURT: Yes. You had received those hairs that were - when did you put them on the slides?

A. I did not record the date, it would be sometime after the 25th of June, 1986.

30 THE COURT: In 1986?

A. Yes.

THE COURT: And then you retained them until 1989?

A. That is correct, My Lord.

THE COURT: This was in your line of work, I gather?

35 A. It was the policy that the slides be retained,

A. Yes.

THE COURT: Yes. II, then, would become P-49.

5 MR. WALSH: So just to be clear, then, this item that's  
been marked JJ for Identification you gave to  
Constable Robin Britt, having put hairs in there  
first?

A. That is correct, hair root sheaths.

10 Q. Hair root sheath?

A. Yes.

Q. Do you remember how many of them you put in there?

A. Three.

15 Q. Now, did you have occasion after you gave this  
particular container to Constable Britt - did you  
have occasion to see this particular container  
after that?

A. No, I did not.

Q. Other than associated with court proceedings?

20 A. Yes.

Q. And with respect to GT69, those are the hairs in  
a plastic bag purportedly to be pubic hairs?

25 A. Yes. From court exhibit GT69 I removed all of the  
hairs, the hairs were human pubic hairs. I put  
these hairs, the majority, on microscope slides.  
A number of the hairs I did not put on slides, I  
put in an additional pill box. I initialled the  
pill box and gave it Exhibit #69. This pill box  
was retained in my possession until the 22nd of  
30 April, 1991.

Q. And you would have put these hairs in that pill  
box back in 1986?

A. That is correct.

35 MR. WALSH: I have an item here, My Lord, I wish to have  
marked for identification.



Mr. Evers - Direct

marked for identification.

THE COURT: KK, round container.

MR. WALSH: I show you the item that's been marked KK for

5 Identification. Would you look at that for me,  
please, and tell the Court and the jury if you can  
identify it?

A. I identify the container by my initials, case  
number and exhibit number. This contained a  
10 number of pubic hairs which I removed from an  
exhibit GT69 which I received from Constable  
Gilles Turgeon. The contents of this exhibit were  
retained in my possession. On the 24th of  
October, 1989, I removed three human pubic hairs  
15 from the pill box. These three human pubic hairs  
were again put in an additional pill box. They  
were given to Constable Robin Britt on the 25th of  
October, 1989.

Q. Mr. Evers, before we get to the pill box that you  
20 gave to Constable Britt, this pill box contained  
hair that you put in in 1986 from GT69?

A. Yes.

Q. And you kept that in your possession until when?

A. I kept the contents and the container in my  
25 possession until the 22nd of April, 1991, when I  
brought it to court.

MR. WALSH: My Lord, I believe that this item, KK for  
Identification, could be entered directly as an  
exhibit from Mr. Evers's possession.

30 THE COURT: All right, P-50.

MR. WALSH: I have another item, My Lord, I wish to have  
marked for Identification.

THE COURT: LL.

MR. WALSH: I show you an item that's been marked LL for  
35 Identification. Would you look at that for me,

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Mr. Evers - Direct

5 please, and tell me whether you can identify it,  
and if so, would you tell the jury under what  
circumstances you can identify it?

10 A. I identify court exhibit LL by my initials, date,  
and case number. This is a pill box which I put  
the three human pubic hairs which I removed from  
the previous exhibit. I put them in this pill  
box, I sealed the pill box and gave it to Consta-  
ble Robin Britt on the 25th of October, 1989. I  
gave it Exhibit #69A.

Q. And did you have occasion to see that after that?

A. No, I did not.

15 Q. Other than associated with court proceedings?

A. Yes.

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

THE COURT: Cross-examination, Mr. Furlotte?

20

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Evers, are there any hairs left in any of  
these exhibits that we put in here, these boxes?

25 A. I don't know what is in the pill boxes marked 56A  
and 69A as I did not receive them back. The hairs  
are on the slides on 56A, and I believe there are  
some hairs still present in the pill box 69.

Q. 69A, this one - no, that's the one with three  
pubic hairs?

30 A. That is correct, it would be 69.

THE COURT: GT69, I think it was called, wasn't it?

Q. Exhibit #50, that's pubic standard?

A. Yes.

35 Q. So would you check and see if there's any hairs  
left in there?

- A. Yes, there are some hair in here.
- Q. Now, Mr. Evers, once hair are cut would they tend  
5 to lighten up with time, lose their colour?
- A. Not with my experience. As long as they're in a  
pill box like that they should be fine.
- Q. And those are the pubic hairs?
- A. Yes.
- 10 Q. Now, as a hair analyst, when you're comparing  
hairs do you also note the colour of hairs when  
you're making your comparisons?
- A. Yes.
- Q. And you would have those in your notes?
- 15 A. Yes.
- Q. And would you have your notes on you, by any  
chance, from when you made those comparisons in  
'86?
- A. Yes, I do. Yes.
- 20 Q. And would you check to see what colour you noted  
as scalp hairs?
- MR. WALSH: If I might, I'd certainly have no objection  
to the question, My Lord. I'd just suggest that  
perhaps for the jury's benefit we could have Mr.  
25 Evers declared an expert in the field that he's  
so ably - formerly declared in.
- THE COURT: Yes. Up till now there's been nothing turn  
on expertise, I believe.
- MR. WALSH: That's correct, My Lord.
- 30 THE COURT: But if you're going to get into expertise can  
we agree that Mr. Evers is an expert in - are you  
going to be asking opinions, Mr. Furlotte?
- MR. FURLOTTE: Yes, I will be.
- MR. WALSH: I could lead that out of him, if you wish. I  
35 could lead his qualifications, My Lord.

THE COURT: Well, why not leave it to Mr. Walsh here to lay a foundation for the expertise?

5 MR. FURLOTTE: That would be fine.

MR. WALSH: You are in charge of the Hair and Fibre Section of the Sackville Forensic Laboratory, is that correct?

A. That is correct.

10 MR. WALSH: And how long have you been a civilian member of the R.C.M.P. in relation to the Hair and Fibre Section?

A. Since 1967.

15 MR. WALSH: I see, and where did you begin your particular field of expertise?

A. I began my understudy in the Ottawa Laboratory. That was followed by three years in the Vancouver Laboratory as a hair and fibre examiner, and the remaining time was spent in the Sackville Laboratory as a hair and fibre examiner.

20 MR. WALSH: Would you explain to the jury, please, your field of hair comparison?

A. What it is is the examination, identification and comparison of hair. The hair is examined off of various articles such as clothing, weapons, etc., this hair is mounted on slides and it's compared to a known sample. A known sample is a number of hairs presumably from one particular source. The hairs are examined microscopically with a comparison microscope that allows one to examine both the unknown and the known hair at the same time. The examination is an internal examination of the hair, the internal features. If the hair is similar in all respects, as a hair examiner one can state that the hair is consistent with the

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5 known sample. If there are dissimilarities one  
can state that the hair did not originate from the  
same source as the known sample.

MR. WALSH: And the theory in relation to similarities,  
what is the theory behind hair comparison? What  
I'm trying to determine is would you tell the  
jury whether or not it constitutes positive  
10 identification when you're talking about simi-  
larities?

A. With a hair comparison it is not a positive  
identification. If all of the features are  
consistent we can state that the hair is consis-  
15 tent in all respects to the known sample. If  
there are any varying differences, you can state  
that it is not consistent with the known sample.

MR. WALSH: And does hair change over time?

A. Yes.

20 THE COURT: I'm sorry, the last question was?

MR. WALSH: Does hair change over time was the gist of  
the question I wanted. You're talking about the  
external characteristics of the hair?

A. The external and the internal features of the  
25 hair change over a period of time. For example,  
on the scalp all of the hair is lost over a  
period of four years and is replaced. This is a  
natural replacement of the hair. The hair varies  
as it is growing. Also as one ages the types of  
hair, the amount of graying on the head changes.  
30 There are other features that occur. These are  
not quite as - or are much more subtle. For  
example, as one ages the intermediate hair is  
replaced with terminal hair.

35 MR. WALSH: What do you mean by intermediate?

10

Mr. Evers - Cross

A. This would be in pubic hair samples. As one reaches puberty the intermediate hair on the pubic region is replaced by terminal hair which is much coarser, darker, thicker.

MR. WALSH: Would all my hair change at the same time?

A. No, on the human head one loses approximately 100 hairs out of your head every day. These hairs are in a resting stage in the scalp. As the hair is replaced these hairs are lost and you will find hair on clothing, on bedding, in caps. These are dead hairs that have fallen out of the scalp.

MR. WALSH: And the transferability of hair, can you explain something to the jury about that?

A. Well, hair is readily transferred. A hair basically can be compared to a lead pencil. You have the length of the hair like the length of a lead pencil. You have the thickness of the hair like the thickness of a lead pencil. The eraser of the hair is much like the root of the lead pencil. The tip of the lead pencil would be like the tip of the hair. This varies since one had his last haircut, combing, brushing, external characteristics. The paint of the lead pencil could be compared to the cuticle of the hair, and the cuticle is one cell thick. This is made up of cuticular scales like the scales on a fish. This gives the hair the ability to adhere to articles of clothing. Inside the cuticle is the wood of the lead pencil which is like the cuticle or cortex of the hair. These are made up of cortical cells varying in size, distribution and shape. Inside the cortex like inside the wood of the lead pencil you have the medulla or lead of the lead

pencil. The medulla has medullary cells varying again in size, distribution and shape. The colour of the hair is contributed by the cortex, the number of cells, the size of the cells, cortical pigment. Then one has things like thickness of the hair or the medullary index which is the thickness of the hair over the thickness of the medulla, so in order for hair to be consistent, all of these features together with the colour of the hair must be consistent.

MR. WALSH: And have you given testimony before in courts in this province or in any other province?

A. Yes, I have.

MR. WALSH: Expert testimony?

A. Yes.

MR. WALSH: How many occasions would you have provided expert testimony, Mr. Evers?

A. I have given evidence in the courts of British Columbia, the Yukon, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, in the examination, identification and comparison of hairs. I have approximately 650 court appearances.

MR. WALSH: But just so I understand, it's not considered a positive identification type of a forensic field, is that correct?

A. Not at all.

MR. WALSH: I would move that he be declared an expert in the field of hair comparison.

THE COURT: You have no -

MR. FURLOTTE: I would consent to that, My Lord.

THE COURT: - no questions, yes. Well, I declare you for how many times is it now, an expert in the field

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Mr. Evers - Cross

of hair comparison. You were just a boy when I started off as an expert.

- 5 MR. FURLOTTE: O.K., Mr. Evers, I believe you said that characteristics of hair can change over time?
- A. Yes.
- Q. And does that just mean from - I believe you gave one example of pubic hair from a child reaching into the stages of puberty pubic hair would get darker?
- 10 A. Yes, darker, coarser, longer.
- Q. Darker, coarser and longer. What about once you're an adult in your 30's, 40's, 50's?
- 15 A. Well, then I think the basic changes are colour changes, basically.
- Q. The other characteristics aside from colour don't change all that much?
- A. The cortex of the hair does change because this is what gives the hair basically its colour, so you would lose cortical cell colouration in the hair, so there are changes within the cortex that take place over a period of time.
- 20 Q. Would they necessarily change every four years in everybody or just some of the people or -
- A. Everyone loses hair, approximately a hundred hairs out of their head every day. It's replaced at different rates. Four years is an average. It is not everyone on the fourth anniversary lose all their hair. This is basically a range.
- 30 Q. O.K., aside from that, now, if you were to check the characteristics of my hair, say today, and five years from now you were to check it again, would you be able to tell they come from the same - not necessarily the same individual but
- 35



would they still be similar?

5 A. Yes, we have done tests where we've tried to  
determine whether one or two hair cycles would  
make a difference in hair comparisons, and it is  
possible to compare a hair after the four or one  
year, one cycle, and still determine that the hair  
is consistent.

10 Q. Now, in older people in your 30's, 40's, or 50's,  
would your hair as at your stage of puberty  
necessarily get darker or coarser?

A. I think that the hair has a tendency to get  
grayer. I have not noticed any other change.

15 Q. So as age or time goes by your hair is more apt  
to get lighter in colour rather than darker?

A. Yes, I would think graying. There are other  
changes which affect the colour of hair and this  
would be environmental. For example, in the  
20 summertime your hair will lighten up with the sun.  
Of course there are other artificial colourations  
that one can put in hair, dyeing, bleaching.

Q. I'm sure we're all aware of that, don't have to be  
an expert.

25 THE COURT: We don't all use them, though. Are you  
speaking for yourself, Mr. Furlotte?

MR. FURLOTTE: No, I ought to use it, but not yet, My  
Lord.

30 THE COURT: I just dye my hair gray, you know, to make me  
look older.

MR. FURLOTTE: Now, since you had seized the hairs in  
1986 what kind of environment did you keep them  
in?

35 A. They were retained in the microscope slides and  
also in the pill box.

Q. And also in the pill box, and where were the pill boxes kept?

5 A. In my locked exhibit locker.

Q. In your exhibit locker. That is not a freezer, by any chance?

A. No.

Q. Just room temperature?

10 A. Yes.

Q. Subject to temperature changes as the room temperature changes?

A. Yes.

Q. And that was from 1986 until you gave some to Constable Britt in 1989?

15

A. Yes, and also until I brought them to court in 1991.

Q. How many hair samples out of the hairs that you had since 1986 - how many times did you give hair samples to either Constable Britt or somebody else in 1989?

20

A. There was at least two occasions.

Q. O.K., the scalp hairs two occasions?

A. Yes.

25 Q. And do you recall what dates those were on again?

A. I can check my notes.

Q. Check your notes.

A. Are you referring now to Exhibit 56 and 69?

A. Yes, both of them. We could take one at a time.

30

Take 56 first and then we'll go to 69.

THE COURT: 56 were the scalp hairs taken from Mr. Legere in 1986?

MR. FURLOTTE: 1986, yes.

35 A. The scalp hair, 56, I gave three hairs to Constable Britt on the 25th of October, 1989, and also

15

Mr. Evers - Cross

from 56 I gave five scalp hairs to Constable Ron Charlebois on the 12th of June, 1990.

5 Q. And how about #69?

A. Number 69 there was just the one occasion. I gave three pubic hairs to Constable Britt on the 25th of October, 1989.

10 MR. FURLOTTE: I have no further questions at this time, My Lord.

MR. WALSH: My Lord, I had got Mr. Evers declared an expert at the point where Mr. Furlotte had asked him if he had his notes with respect to hair colour comparisons he had made back in '86 and I'm  
15 wondering if he wants to follow that up. If he doesn't - I just wanted to remind him of that, that was the reason we had him declared an expert in the first place.

MR. FURLOTTE: I got sidetracked, My Lord.

20 THE COURT: Do you want to continue?

MR. FURLOTTE: Yes, do you have your notes as to the hair colours?

A. Yes, I do.

Q. Kindly check them, please.

25 A. O.K. Exhibit 69 I did not examine microscopically as I had no pubic hairs at that particular time. 56, which was the scalp hair sample, the colour ranged from a medium brown to a dark brown to a dark medium gray-black.

30 Q. Medium gray-black.

A. And gray as in charcoal, not as in whitening.

Q. Is there any set standards as to how you distinguish between these colours or is that purely subjective as to the examiner doing it?

35 A. That would be subjective, and since we're

- observing both the unknown and the known at the same time the colour of the hair becomes very critical when you're doing the comparison. It is much less critical when one is recording the colour that you're observing since there are only a limited number of colours you can note.
- 5
- Q. O.K., so is it possible, then, that whatever you would consider to be black somebody else would consider to be dark brown or vice versa?
- 10
- A. I would think, yes.
- Q. That would depend on the individual?
- A. And also I should state that the colours that I'm observing are microscopically observed. These are not the colours that one would observe on the scalp or on the pubic region.
- 15
- Q. Which would be more intense or less intense? If you were going to see something as brown, dark brown, through a microscope, but somebody was to look at it just on somebody's hair or scalp, would it look more darker?
- 20
- A. When one is observing colours in the microscope the colours are usually lighter, appear lighter.
- 25
- Q. Appear lighter in the microscope?
- A. Yes.
- Q. So therefore they would appear darker on the scalp?
- A. I should state that there are qualifications to that since the colour on the scalp or on the body would appear different with the length of the hair, dirt on the hair, where the hair is examined in the light, the refractive properties of the light and the hair, so there are variables but generally the hair observed microscopically is
- 30
- 35

lighter.

MR. FURLOTTE: I have no further questions.

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

THE COURT: Thank you, then. You come back again, Mr.  
Evers, I guess?

MR. EVERS: Yes, My Lord.

10 THE COURT: I think we will have a short recess, just a  
15-minute recess here. It's twelve minutes to, so  
we'll come back at three minutes after four and  
then we will finish on the dot at 4:30 or very  
close to it. Who have you got now, Mr. Walsh?

15 MR. WALSH: Constable Robin Britt will be our next  
witness, My Lord.

THE COURT: He'll be very short, I gather, would he?

MR. WALSH: The jury will be happy to know it will be  
identifying certain items on the table there, My  
Lord.

20 THE COURT: Yes, but I mean it's continuity?

MR. WALSH: Just continuity, yes.

THE COURT: And are you going to get into another witness  
before 4:30 or -

25 MR. ALLMAN: I have a lady who's been here since Thursday  
and she'd like to get on and off. I'll discuss  
with Mr. Walsh the timing, the situation. We  
might put her on out of order, I'm not sure yet.

MR. WALSH: I forgot about that witness, My Lord, yes.

THE COURT: Will a half an hour do?

30 MR. ALLMAN: She wouldn't be very long and as I say,  
she's a civilian witness and she's been here quite  
a while and I'd like to get her on and off.

THE COURT: Well, you better get her on and get finished,  
perhaps, first.

35 MR. ALLMAN: I think we can probably do her and Constable

Margaret Murray - Direct

Britt but in the reverse order.

THE COURT: All right, so fifteen minutes.

5

(BRIEF RECESS - RESUMED AT 4:10 p.m.)

(JURY CALLED - ALL PRESENT. ACCUSED IN DOCK.)

10

MARGARET MURRAY, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Could you state your name, please?

A. Mrs. Margaret Murray.

15

Q. And, Mrs. Murray, where do you live?

A. I live at 140 - well, I live in Newcastle.

Q. Did you know Linda and Donna Daughney?

A. Yes, I did.

Q. How did you get to know them?

20

A. Well, after we moved to Newcastle we - you know, they lived next door naturally, and so we would talk across the fence and that sort of thing, that was just - and we'd see them coming and going and that sort of thing. Well, my husband knew, you know, Donna and Linda before I did because he's a native of Newcastle.

25

Q. When did you become next-door neighbours of Donna and Linda?

A. Six years ago.

30

Q. So that would be 1985, or six years before -

A. '85, yes.

Q. If you look at D-7, the evidence is that the Daughney residence is the blue house to which I'm pointing now?

35

A. Yes.

Margaret Murray - Direct

Q. Could you just point to me and then I'll show the jury and the judge which is yours?

5 (Witness pointing.)

You're pointing to the white house with the red door?

A. Yes.

Q. And the black roof?

10 A. Yes.

Q. Immediately to the left of the Daughney's as we look at the picture?

A. Yes, mm-hmm.

THE COURT: I'm sorry -

15 MR. ALLMAN: My Lord, D-7, she's pointing to the house

I'm pointing to now immediately to the left of the Daughney residence as you look. Yes, that's the one. If we also look at a book of photographs, this is called P-33, and there are two photographs in particular, numbers 1 and 2. Can we see your residence on P-33, pictures 1 and 2?

20

A. Yes.

Q. O.K., I'll leave that there with you because you might want to make reference to some of the parts of your house there. Do you remember the morning and the day upon which the discovery occurred about what had happened to the Daughneys?

25

A. Yes, I do.

Q. And do you remember the night before?

30

A. Yes, I was in the den, my husband and I were in the den, we were watching television, and I went out to the kitchen shortly after eleven and -

Q. Let me stop you there because the jury, see, don't know where these rooms are. Is the window - any of the windows that you can see -

35

- A. No, it's all on the further side of the house.
- Q. O.K., so you're on the other side of the house  
5 from the windows that we can see in #1?
- A. That's right.
- Q. I'm sorry, I interrupted you. You were saying  
that you had been in the den?
- A. Yes, and went to the kitchen to prepare a lunch  
10 for my husband and I and -
- Q. What do you call lunch?
- A. Well, night lunch, my husband likes to eat before  
going to bed so I was preparing a lunch.
- Q. So by the expression lunch you're referring to a  
15 light meal before going to bed?
- A. That's right.
- Q. About what time of day or night would it be that  
you would have been preparing his light lunch?
- A. It would be eleven or after.
- 20 Q. p.m.?
- A. Yes.
- Q. So for that purpose you left the den and you went  
into the kitchen?
- A. Yes, and I heard a noise at that time and - well,  
25 I knew the wind was blowing because I could hear  
it in the den, but then when I got to the kitchen  
it was worse and -
- Q. What, the wind or the noise?
- A. Well, the noise, and so I went out to - or I went  
30 to the door and first of all I turned off the  
kitchen light and I looked out but I couldn't see  
a thing, everything was black.
- Q. I'm going to keep interrupting you because we have  
to take it slowly. After you'd turned off the  
35 kitchen light and looked out, in what direction



130

Margaret Murray - Direct

- would you be looking relative to the Daughneys?
- 5 A. Straight across, right over to their house like  
from - well, our kitchen door which you really  
can't see, it would be in here, but it would -
- Q. How about on picture #5, is that any help, 4 or 5?
- A. No - oh, there's the kitchen door there.
- 10 Q. O.K., you're looking at picture 5 and you're  
pointing to the red - well, red or brown door, and  
it's got like a - what's that -
- A. Little window or canopy.
- Q. Canopy above it. Members of the jury can see that  
canopy. O.K., so you turned out the light?
- 15 A. Yes.
- Q. And looked out that door?
- A. Mm-hmm.
- Q. And you would be looking in which direction?
- A. Straight across to the Daughney house which would  
20 be on -
- Q. If you can imagine where the person who took the  
photograph is on picture 5 where would you be  
looking?
- A. Well, I would be looking on this side of the  
25 house.
- Q. O.K., you're pointing to the side that's on - the  
end that's on the right as you look at picture 5?
- A. Now, just a minute, no - yes. Yes, this side.
- Q. O.K.
- 30 A. There was just one window facing our house and -
- Q. You turned out the light in the room that you were  
in?
- A. Yes.
- Q. And you looked out because you heard the noise?
- 35 A. Yes, and I thought I could, you know, perhaps see

Margaret Murray - Direct

something if I turned out the light.

Q. O.K., did you see anything?

5 A. I didn't see a thing, everything was pitch black, and it must have been the wind blowing, but then the following day -

Q. I'm going to take you very slowly, Mrs. Murray. You said when you looked out everything was pitch  
10 black?

A. Yes.

Q. You can see at the back of picture 5 over the door of the Daughney residence, that's the door where the screen door is open -

15 A. Right, yes.

Q. - what appears to be a light fixture. When you looked out of your window, the one with the canopy, do you remember if there was any light coming from that Daughney rear light fixture?

20 A. I don't believe so because as I recall now everything was so pitch black that I just turned on the light and I just, you know -

Q. So you heard the noise, you turned off your light, looked out the window, and what if anything did  
25 you see?

A. Not a thing, and so I -

Q. Did you think any more about it that evening?

A. No, not really, just thought it was the wind blowing hard, you know.

30 Q. The next day I gather there would have been a number of people around the Daughney house?

A. Yes.

Q. What sort of people would be around during the course of the next day after the discovery?

35 A. Well, neighbours and - well, my husband and I were

Margaret Murray - Direct

5 in bed when it happened and we - well, first of  
all I smelled smoke, then I heard a lot of loud  
talking which is sort of unusual for our street on  
a Saturday morning, and so I was going to tell my  
husband that I had smelled some smoke but I  
thought, well, he might think I was imagining it,  
so I thought well, I better not say that, so  
10 anyway, I said, "I hear some loud talking". Well,  
he didn't do anything about it and I didn't do  
anything about it until I said it the second time.  
Then he jumped out of bed and he said, "Oh, my  
goodness", he said, "somebody's house is on fire",  
15 so we went running to all the windows until we  
found the house that was on fire.

Q. So you didn't observe, see or hear anything  
between the noise that you heard -

A. Not a thing.

20 Q. - and the time you woke up and there were other  
people around?

A. No. No.

Q. During the course of the next day while people  
were in and around the Daughney residence did you  
25 hear anything that meant anything to you?

A. Yes, the Mountie was around with a tracking dog  
and as he was leading the dog around the house he  
came around to this part of the house where the  
oil tank is and a ladder, a step-ladder, was  
30 standing up against the house, and he moved that,  
and when he moved that it clicked, I remembered  
that was the type of noise that I had heard the  
night before.

Q. The noise that you heard the Mountie with his dog  
35 make, how did that compare with the noise that had

Margaret Murray - Direct

attracted your attention the night before?

5 A. Well, I mean, that was the sound, I knew it was  
sort of like a ladder sound, but when the Mountie  
moved that away so the dog could get in and sniff,  
you know, then I realized that that was the noise  
I heard, but there were two other ladders on the  
ground, you know, but the wind could have just  
10 been blowing that step-ladder, it's hard to say.

Q. I just want to turn to a slightly different area  
now. I asked you a little earlier about the porch  
light at the Daughney's and you said that you  
didn't believe it was on that night when you  
15 looked out after you had turned your lights out.  
Do you know from your observation of the Daughney  
residence during the year or months preceding this  
day, was there any normal practice for them about  
that porch light?

20 A. Well, they always left it on until, you know, the  
last one was in, so to speak, and then it was  
turned off from inside.

Q. Did you see either of the Daughneys that evening  
at all?

25 A. I saw Donna around, oh, about five o'clock, I  
think. I was bringing in clothes from the clothes  
line and so Donna had had windows installed and so  
she was a perfectionist and she just had to have  
everything just so, so she was in the room facing  
30 our house, it would be like on this side, and so  
as I went to go in the door with my basket of  
clothes, well, she - you know, I could see her at  
the window painting and -

Q. The side that you're talking about on picture one  
35 is the left side as you look at it?

A. Right, yes.

Q. You can't actually see it?

5 A. No.

Q. O.K., but you would be looking then, I gather,  
from one of the the windows of your house?

A. No, I was just coming in from around the side of  
the house there.

10 Q. But the window that Donna was at was on the left  
side as we're looking at that picture?

A. Yes, and she was painting the windows.

THE COURT: Photo 6.

MR. ALLMAN: Six? I'm obliged, My Lord. Yes, the one in  
15 #6?

A. Yes.

THE COURT: I'm sorry, I missed what you said she was  
doing.

A. She was painting around the windows. Her windows  
20 had been installed and so she painted around the  
windows because she wanted to get everything just  
so. She was that type of person, a perfectionist.

MRS. ALLMAN: Thank you, Mrs. Murray. I have no other  
questions of this witness.

25 THE COURT: Mr. Furlotte, any cross-examination?

MR. FURLOTTE: I have no questions.

THE COURT: Thank you very much, Mrs. Murray, that's the  
end.

MR. WALSH: My Lord, we have another very short witness,  
30 if you would permit, Terri Mazerolle.

5                    TERRI MAZEROLLE, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- Q.            Would you give the Court your name, please?
- A.            Terri Lee Mazerolle.
- Q.            And you presently work in the Fredericton area?
- 10            A.            I go to school there.
- Q.            You go to school?
- A.            Yes.
- Q.            Are you familiar with the Newcastle area?
- A.            Yes, I lived there. Well, that's where I was
- 15            born.
- Q.            Pardon?
- A.            That's where I was born, in Newcastle.
- Q.            O.K., and are you familiar with the residence of Linda and Donna Daughney?
- 20            A.            Yes.
- Q.            Would you tell the jury, please, what you know of this matter, if you would?
- A.            Well, I was coming back from Chatham that night, like Friday night.
- 25            Q.            O.K., what night would this be?
- A.            It was Friday night, it was about three or four o'clock in the morning.
- Q.            Now, would that be Saturday morning?
- A.            Well, late Friday night, early Saturday morning,
- 30            it was three or four o'clock a.m.
- Q.            O.K.?
- A.            And we were coming from Chatham and we drove by the house and I said to Jack - like, he was driving and I said, "That's strange", I said, you
- 35            know, the light was on in the house, and I told

Terri Mazerolle - Direct

5 him to slow down a little, I said I could look,  
and I was looking and nothing seemed peculiar  
except that the porch light wasn't on, I noticed  
that, and he just kept on going and dropped me off  
and I went in the house, and then when I woke up  
the next morning and I found out that the house  
was on fire and I told my mother that I saw the  
10 light on -

Q. O.K., we won't go into that, just what you saw.

A. O.K.

Q. I'm going to ask you, if you would, members of the  
jury, the booklet of photographs, it's Exhibit  
15 P-33 - I'll find you a good photograph that you  
can see the house. I'll show you the photographs  
1 and 2. Do you recognize the house in that  
particular photograph?

A. Yes.

20 Q. I see, and is that Linda and Donna Daughney's  
home?

A. Yes.

Q. Can you see the window in which you noticed the  
light on when you drove by in that particular  
25 photograph?

A. It was the top one on the lefthand side.

Q. You're referring to this particular window here  
that appears to be broken out?

A. Yes.

30 Q. Right here, My Lord. Why would you take note of  
a light in that house?

A. Well, because they were always quiet and they were  
always in bed early and I didn't think anything of  
it because I didn't know whose room it was or  
35 anything, so I didn't -

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Terri Mazerolle - Cross

Q. O.K., and this would have between what time?

A. Three and four o'clock.

5 Q. In the morning?

A. Yes, early Saturday morning.

Q. And do you live in that particular area?

A. Yes, I live just up the street.

MR. WALSH: I have no further questions.

10 THE COURT: Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Miss Mazerolle, did you see anybody outside the building or on the street at any time?

15 A. No, nobody at all.

Q. Didn't notice anybody at all?

A. No.

Q. Was that the only light you noticed on in the house?

20 A. Just that one light out in the corner.

MR. FURLOTTE: I have no further questions.

THE COURT: I'm sorry, you said you lived across the street?

A. I live up the street, like on Pond Street.

25 THE COURT: Oh, up the street?

A. Yes, just like when I look out my kitchen window I can see the Daughney house is just right through a few yards, like.

THE COURT: Any questions?

30 MR. WALSH: No, My Lord.

THE COURT: Thank you very much. Now, it's approaching half-past four.

MR. WALSH: We don't have a witness, My Lord, that we could get within the five-minute period.

35 THE COURT: No. Well, I think the jury does want to



leave definitely, doesn't it? Say yes quick. So  
we will adjourn now. There's just one thing I  
5 want to say before you go. The press have made -  
the media have made representations to me about  
some of the restrictions I imposed earlier and  
I've had discussion with representatives of the  
media, and I'm changing the regulations and I  
10 believe I told the jury what these were because it  
affected the jury to some extent. I did earlier  
say there would be no photographs - videotaping or  
audiotaping done on this level. I'm going to  
alter that slightly. I'm going to say that on  
15 this level of the property there can be video-  
taping two days a week on Tuesdays and Thursdays.  
There will be no audiotaping and the videotaping  
will be done only in the morning in the area of  
nine o'clock, half-past eight till nine o'clock.  
20 The video cameras will be removed and out of the  
way before the jury arrives and there will be no  
audiotaping on this level.

There will be no videotaping or audio  
recording of the jury or any members of the jury,  
25 and you're not to be molested at all as far as  
photographing goes, and there will be no video-  
taping on this level after nine o'clock in the  
morning or after that area, none in the evening.  
The other times the cameras, television cameras,  
30 will be confined to the lower level, and that  
doesn't mean the driveway in front, it means the  
lower level.

I was asked about witnesses. As far as  
Mounted Police witnesses or, rather, police  
35 officers are concerned, they're fair game for

video cameras and this is one of the things they  
get paid for and the T.V. people can take pictures  
of the police witnesses if they want - as far as  
5 I'm concerned if they want to, no oppressive  
photographing, but as far as civilian witnesses  
are concerned I've asked the T.V. people, the  
media representatives, to use discretion in that.  
I was disappointed the other day to see video-  
10 taping done of one of the Crown witnesses, Mrs.  
Nina Flam. I thought that was unnecessary really.  
They'll use their discretion with other witnesses.  
Witnesses who are called off the street who happen  
to find themselves involved in this type of thing  
15 don't do it by choice and I think it's unfair to  
be oppressive toward them, but I realize the  
public, I suppose, watching T.V. news and so on do  
have some desire to be informed as to who was  
testifying and the like, but -

20 Lawyers, they asked about lawyers. I said,  
"I'm not going to protect the lawyers, you can  
take all the pictures you want to of them", and  
I'm not even going to restrict shoving microphones  
in their faces. If the lawyers are foolish enough  
25 to talk into microphones and to make comment on  
the cases, well, they know the results of that and  
they won't do that. Lawyers don't try cases out  
of court, so the T.V. people or the media are  
wasting their time trying to get statements out of  
30 the lawyers. None of them are very handsome  
individuals so why they'd want to take their  
pictures at all I don't know.

What else can I say? I guess those are the  
main things that I imposed. This seems to have  
35 satisfied the media people. Caricatures in the

court room, they do a terrible job on you jury members but you can tolerate it, I guess, we all can.

5           There was one other suggestion I made to the media people and that was they did have an opportunity earlier, both the T.V. media and the print media, and radio if necessary, had the opportunity to take pictures for file purposes of the court room here with no one in, and I believe some may have taken advantage of that. I have no objection, I told them to, perhaps, say, tomorrow noon under the supervision of the Clerk and the Sheriff's officers, taking pictures here when the court room is unoccupied and when no one else is present, taking pictures for file purposes from the rear of the court room and even panning the front of the thing so as to show for the public the easels and the screen here, the motion picture screen, and whatever else is in evidence, perhaps a display of exhibits. They're not to zero in on anything to show any detail. This is merely to get a general impression of what the court room looks like so that the curious public, if there are curious members of the public, can see on T.V. or in the newspapers what the court room looks like. That isn't restricted simply to still pictures. The television cameras can pan the room, but no individuals, no one, the Clerk or any one else in the room at the time. So I say to counsel if you have papers on your desk that you want to turn over before that noon recess before they come in, do it, but leave a pile of books there, Mr. Walsh, so they'll have something to photograph.

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Well, I explain this to the jury so that  
you'll know and it's also an opportunity to  
instruct the jury. Someone advised me just as I  
5 was coming in from the recess, well, they've got  
the cameras already set up out here on this level  
out in the driveway. I hope they haven't, because  
- they're gone. If they break these rules that  
I'm imposing everything goes back to square one  
10 and we'll start over again in deciding what  
pictures can be taken.

So, will the jury then please retire and  
we'll see you tomorrow morning at 9:30.

15 (JURY WITHDRAWS.)

(COURT ADJOURNS TO 9:30 a.m., SEPTEMBER 17, 1991.)

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(COURT RESUMED AT 9:30 a.m., SEPTEMBER 17, 1991.)

(ACCUSED IN DOCK.)

5 THE COURT: All right, we'll have the jury in.

(JURY CALLED - ALL PRESENT.)

THE COURT: Now, you have another witness?

10 GARY VERRETT, recalled, having already been  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Your name is Gary Verrett?

A. That's correct.

15 Q. Just to refresh the jury's memory, where are you  
employed?

A. I'm presently employed in the R.C.M.P. Central  
Forensic Laboratory in Ottawa, Ontario.

Q. And where were you employed previous to that?

20 A. Previous to that I was in the Hair and Fibre  
Section of the R.C.M.P. Forensic Laboratory in  
Sackville, New Brunswick.

Q. And were you there in 1989?

A. Yes, I was.

25 Q. In Sackville?

A. Yes, I was.

Q. I'm going to show you an item that was marked R  
for Identification. Would you look at that,  
please, and tell the jury whether you can identify  
30 it?

A. Yes, item marked R identified by my markings on  
the red R.C.M.P. exhibit tag which I affixed to  
the bag contains the file number, the date, and  
the item number. It was received personally from  
35 Constable Greg Davis on October 19, 1989, at the  
Forensic Lab in Sackville.

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Q. And what if anything did you do with that particular item?

5 A. It was examined and it was returned via registered mail to Constable Davis on the 16th of January, 1990.

Q. And when was the next time you saw that particular item?

10 A. Moments ago.

MR. WALSH: My Lord, at this time I believe the continuity has been proven up on this item. We'd move to have it entered as an exhibit, and if you wish I can give a brief description of what it is and where it was found.

15

THE COURT: Yes, well, you're going to examine this witness on his examination of this?

MR. WALSH: No, this is for purposes of the continuity only, My Lord.

20 THE COURT: I see. Well, would you tell us what that item is by reference to the earlier evidence?

MR. WALSH: My Lord, generally - I'm not going to be able to quote directly from the evidence but generally it's a knotted fibre material that was found in the Daughney residence and my understanding, it was found in the back southeast corner, found in debris.

25

THE COURT: That would be, then, Exhibit P-51. In the back room?

30 MR. WALSH: A back southeast corner, I believe, My Lord, was where it was found.

THE COURT: In the Linda Daughney bedroom. I think we can safely refer to that room as - there is evidence to that effect?

35 MR. WALSH: That's correct, My Lord.

THE COURT: All right.

5 Q. I show you an item that's been marked CC for  
Identification. Would you look at that item for  
me, please, and tell me whether you can identify  
that.

10 A. Yes, item CC marked for Identification bears the  
red tag with my markings on it. It was received  
from Constable Greg Davis on October 19, 1989. It  
consists of one brown vial with a white lid and  
inside the vial is one earring.

Q. And what if anything did you do with that item  
after you received it from Constable Davis?

15 A. The item was stored in my personal exhibit  
locker until such time as I returned it to  
Constable Davis on January 16, 1990, by regis-  
tered mail.

20 Q. And when was the next time you saw that particular  
item?

A. Moments ago.

25 MR. WALSH: My Lord, I would move to have this particular  
item entered as an exhibit. It purports to be an  
earring, a heart-shaped earring, removed from  
Linda Daughney's right ear during the autopsy at  
the Saint John Regional Hospital.

THE COURT: That would be P-52.

30 Q. I'll show you an item that has been entered as an  
exhibit on this particular hearing. It's Exhibit  
P-41. Would you tell us whether or not you've  
ever seen that item before?

35 A. Yes, Exhibit P-41 bears my markings on the red  
label, case number, date received, initials and  
number of the item. It was received personally  
from Constable Greg Davis on October 19, 1989, at

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Gary Verrett - Direct

5 the Forensic Lab in Sackville. It was retained in  
my possession in my personal exhibit locker until  
such time as it was turned over to Mrs. Sandy  
Lumgair of the Serology Section on November 22,  
1989.

10 MR. WALSH: This, My Lord, for the jury's reference, has  
been previously identified as a knotted nylon  
stocking found in the interior of the Daughney  
residence on the fourth stair. I show you an  
Exhibit P-42. Would you look at that for me,  
please, and tell me whether you can identify  
that?

15 A. Exhibit P-42 bears my markings, case number,  
initials and date. It was received on October 19,  
1989, from Constable Greg Davis at the Forensic  
Lab in Sackville. It was given personally to  
Sandy Lumgair of the Serology Section on  
20 November 22, 1989.

Q. And when did you next see that item?

A. Just moments ago.

25 MR. WALSH: My Lord, for the record and for the jury,  
this was previously identified as being a nylon  
stocking taken from the interior of the Daughney  
residence on the fourth stair. I'm showing Mr.  
Verrett these items, My Lord, pursuant to Mr.  
Allman's undertaking yesterday to prove it up  
after Mrs. Lumgair. I show you Exhibit P-43.  
30 Would you look at that item for me, please, and  
tell the jury whether you can identify that?

A. Exhibit P-43 bears my initials, case number and  
date. It was received on October 19, 1989, from  
Constable Greg Davis at the Forensic Lab in  
35 Sackville. It was given personally to Sandy



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Lungair of the Serology Section on November 22,  
1989.

5 Q. And when did you next see that item?

A. Moments ago.

Q. And again to refresh the jury's memory, My Lord,  
it purports to be previously identified as a blue  
knotted cord found in the Daughney residence, the  
10 right front bedroom under a pile of linen on the  
bed.

THE COURT: Right front bedroom.

MR. WALSH: The right front bedroom. I take that -

THE COURT: The spare bedroom?

15 MR. WALSH: I took that to mean the - I'm not sure on the  
record on that, My Lord.

THE COURT: The left front bedroom. I don't -

MR. WALSH: It just depends on - the description I have  
written down would depend on whether you're  
20 referring to the bedroom inside - if that was the  
right front bedroom if you were inside the house  
it would be Donna's bedroom.

THE COURT: But just for recollection, was it the - the  
Donna Daughney bedroom, the evidence is, was at  
25 the front of the house.

MR. WALSH: That's correct.

THE COURT: I would have said on the left side but -

MR. WALSH: If you were inside the house it would be on  
the -

30 THE COURT: But was this from the - was the evidence that  
this was from the Donna bedroom? There was no  
pile of clothing in the spare bedroom that I can  
recall.

MR. WALSH: I understand it's Donna, My Lord, Donna's  
35 room.

Q. I show you Exhibit P-44.

5 A. Exhibit P-44 identified by my initials, case number and date was received personally from Constable Greg Davis on October 19, 1989. It was given personally to Sandy Lungair of the Serology Section on November 22, 1989.

Q. And when did you next see this item?

10 A. Moments ago.

Q. It previously has been identified as being taken from the Daughney residence, it's one nylon stocking, blue, knotted, found in a pile of linen removed from the bed in the front bedroom. I take it that would be Donna's bedroom. I have no further questions, My Lord.

15 THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

20 MR. FURLOTTE: Mr. Verrett, - do you want him also - I'd like to have Mr. Verrett declared as a hair and fibre expert. Has he been done so in the Flam -

MR. WALSH: I believe when he was first called in the Flam matter he was declared an expert in hair comparison.

25 THE COURT: Were you declared an expert then?

A. Yes, I was.

MR. WALSH: Perhaps if I could just elicit one more piece of information, what are your present duties, Mr. Verrett?

30 A. Presently I'm employed in the Biology Section of the Central Forensic Laboratory in Ottawa. My main purpose is to do the forensic applications of DNA typing on various exhibit materials.

35 MR. WALSH: You're one of several people who do that now?

A. Correct.

THE COURT: And your other expertise generally extended  
5 to what, comparing hairs and fibres and so on?

A. Yes, My Lord, it was the examination, identifica-  
tion and comparison of hairs and fibres.

MR. FURLOTTE: Mr. Verrett, in your laboratory report of  
10 January 5, 1990, in this case I see where you have  
done a lot of hair comparisons with hairs found at  
the Daughney scene and you compared those hairs  
with Mr. Legere's?

A. That's correct.

Q. And I see in your report, that report which was an  
15 11-page report, is that you only made those hair  
comparisons with Mr. Legere's although you had  
hairs of many other suspects?

A. Yes, that's correct. I had known samples from the  
two victims also that I made comparisons with.

Q. Yes, in this report, so you made the comparisons  
20 of the known two victims and Mr. Legere?

A. That's correct.

Q. Did you make any comparisons with the other  
suspects at any time?

A. No, I did not.

Q. Do you recall how many other suspects you would  
25 have had hair samples from?

A. I believe it would be in the vicinity of approxi-  
mately 35.

Q. Approximately 35. Out of all the hair samples  
30 that were found or the hair evidence that was  
found at the scene, was there hair - did you find  
hair aside from hair belonging to the victims?

A. I found hair that matched the victims and I found  
35 hair that didn't match the victims.

- Q. And out of the hair that didn't match the victims how many other people maybe would that hair have belonged to, different characteristics?
- 5 A. That would be difficult to say. There were hairs that could have come from several individuals.
- Q. I understand from your report that you did find hair that was similar to Mr. Legere's?
- 10 A. That's correct.
- Q. That was found at the Daughney scene?
- A. Some were found at the scene and some were from autopsy.
- Q. Some were found on the bodies of the Daughney girls?
- 15 A. That's correct.
- Q. Some was found on a housecoat of a Daughney girl?
- A. That's correct.
- Q. And this hair was similar to Mr. Legere's?
- 20 A. It was consistent with the known sample from Mr. Legere.
- Q. Consistent with the known sample from Mr. Legere. I understand you also conducted laboratory tests for hair comparison analysis in assaults that were taken on Mr. and Mrs. Russell in Newcastle and also on Morrissey Doiron?
- 25 A. That's correct.
- Q. And in the Russell incident there was hairs by the assailant left at the scene of the offence?
- 30 A. I'm not sure which incident we're talking about. I don't have my file with me but there was one of these two incidents, yes, there was hair.
- Q. There was hairs found in a cap left at the Russell incident?
- 35 A. That's correct.

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Gary Verrett - Cross

- Q. Something like about nine hairs? Maybe if I showed you a copy of your report, Mr. Verrett.
- 5 A. This is a reproduction of the report that I filed for this particular case and it refers to a previous report also.
- Q. And what was the purpose of that?
- 10 A. In this particular report the purpose of my analysis was to compare human scalp hairs removed from a series of exhibits that are described in a previous report to the known hair samples reportedly from the victims and a suspect.
- Q. O.K., was it also a purpose of that - that's in this report here?
- 15 A. That's correct.
- Q. Yes, and in another report did you also compare those same hair samples with standard hair samples from Allan Legere?
- 20 A. Reportedly from, yes.
- Q. Reportedly from Allan Legere, and what was your finding?
- 25 A. Off the top of my head, I don't have my notes here to refresh my memory, but there were hairs removed from a baseball cap that were found to be consistent with having originated from the same source as the known hair sample.
- Q. And there's also one of those hair samples found on the housecoat of Mrs. Russell?
- 30 A. If my memory serves me correctly, yes.
- Q. Mr. Verrett, I understand the R.C.M.P. conducted a study some years ago as to how to calculate the probabilities of somebody else having hair similar to a known sample?
- 35 A. Yes, that's correct.

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Gary Verrett - Cross

Q. And I believe the R.C.M.P. study revealed that there was only one chance in 4,500 that that hair could belong to somebody else than, say, if you found hair similar to a suspect, as Mr. Legere in this case, that there would only be one chance in 4,500 that that hair sample would belong to somebody else?

5 A. That is basically what the paper said, yes.

Q. Do you know whether or not either the Newcastle police or the R.C.M.P. did a thorough investigation of the -

MR. WALSH: Objection, My Lord, asking a civilian member of the R.C.M.P. whether another police force did a thorough investigation is -

15 THE COURT: He wouldn't know the answer to this, no.

MR. FURLOTTE: Well, do you know whether or not any other police forces did an investigation?

MR. WALSH: Objection, My Lord, again that would be hearsay knowledge on behalf of a civilian member of the R.C.M.P.

THE COURT: Well, what is the rest of the question, Mr. Furlotte, anyway? Investigation of what?

MR. FURLOTTE: The question would be does he know whether or not any police force investigated the assaults on the Russells, Mr. and Mrs. Russell.

THE COURT: Oh, aren't we getting too far afield here? What's the Russell case got to do with this? Who are the Russells? I don't know.

MR. FURLOTTE: It will come out in the end, My Lord, believe me.

THE COURT: Well, let the witness answer if he can.

A. Could you repeat your question, please?

35 Q. Do you know whether or not any police forces

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Gary Verrett - Cross

investigated the alleged assaults on Mr. and Mrs. Russell?

5 A. Yes, I received a submission from the Newcastle Town Police on this particular case.

Q. Do you know whether or not anybody was charged on that?

10 A. I am aware of, yes, some charges being laid on that.

Q. Is there any reason why you didn't compare in the Daughney case the hair found at the scene of the Daughneys with the other suspects?

15 A. At the time of the investigation I received several known samples from a number of suspects. As a result of a conversation with the investigating officers I was told to basically compare the hair samples at the scene to one known sample.

20 Q. O.K., so it's simply because you weren't instructed to do so?

A. That's correct.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination, Mr. Walsh?

25 REDIRECT EXAMINATION BY MR. WALSH:

Q. The hairs that you compared at the Daughney residence that Mr. Furlotte has elicited from you that were consistent with Allan Legere, did you know what if anything was going to be done with those hairs, what if any further testing was to be done with those hairs?

30 A. At a later date a request was put in to look at the possibility of having DNA typing done on these hairs.

35 Q. And could you tell the jury, please, what if

- anything the Hair and Fibre Section of the R.C.M.P. is now used for in relation to DNA typing?
- 5
- A. Basically at this moment in time the hair and fibre examination is used as a screening tool for future DNA typing tests if the need be.
- Q. We had the evidence yesterday of Mr. Evers. He explained the theory behind hair comparison. Is the standard hair comparison technique positive evidence of identification?
- 10
- A. No, microscopic hair comparison is not a positive means of identification.
- Q. And Mr. Furlotte refers to a study of one in 4,500. Is that a study that you actually follow in your practice in hair comparison?
- 15
- A. It is a published study. It dates back to the mid-1970's. We have our own study that we have carried out personally when doing our hair comparisons and I have personally carried out this study at the Sackville Forensic Lab to which I have successfully identified one individual to the exclusion of 199 based on hair comparisons.
- 20
- Q. Is the study of one in 4,500 - has that received a complete acceptance in the scientific community or has there been any controversy associated with that?
- 25
- A. There have been some arguments and controversies associated with this particular study, yes.
- 30
- Q. That the probabilities are too high or too low?
- A. They're too optimistic.
- Q. Have you ever during the period - how long were you with the Hair and Fibre Section?
- 35
- A. I was with the Hair and Fibre Section for four



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Gary Verrett - Redirect

years.

- 5 Q. Have you ever at any time in a court of law said  
or stated that hair comparison was positive  
identification of an individual?
- A. No, I have not.
- 10 Q. Which in your experience, Mr. Verrett, is the more  
powerful forensic method of identification at this  
time?
- A. Without a doubt the more individualizing technique  
is DNA typing.
- MR. WALSH: Thank you. I have no further questions.
- THE COURT: Thank you very much, Mr. Verrett.
- 15 MR. WALSH: That's it for this witness, My Lord.

CONSTABLE ROBIN BRITT, having already been sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- 20 Q. Constable Britt is being recalled for the second  
or third time. Constable, do you remember?
- A. Third or fourth.
- Q. O.K., and to refresh the jury's memory, you have  
testified previously that you were the exhibit  
25 custodian with respect to the Annie Flam matter?
- A. That's correct.
- Q. Constable Britt, I'm going to show you an item  
that's been marked 'JJ' for Identification. Would  
you look at that for me, please, and tell me  
30 whether you can identify it?
- A. Yes, I can recognize it with my initial, date and  
time and place. It was on October 25, 1989, at  
the Crime Detection Lab in Sackville, New  
Brunswick. I received personally from civilian  
35 member Duff Evers of the Hair and Fibre one sealed

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Cst. Britt - Direct

metallic box containing hair.

- 5 Q. Did you open the box when you received it from  
Duff Evers?
- A. No, I did not.
- Q. And was in fact the lid closed when you received  
it?
- A. Yes, it was.
- 10 Q. And was it sealed in any fashion?
- A. It was sealed with a tape around the edge of the  
container.
- Q. And where were you when you received that item?
- A. In Sackville, New Brunswick.
- 15 Q. And that was on what date?
- A. October 25, 1989.
- Q. And what if anything did you do with that  
particular item?
- A. Later on that day it was turned over to Dr. John  
20 Bowen at the Central Forensic Lab in Ottawa,  
Ontario.
- Q. And did you deliver it yourself?
- A. Yes, I did.
- Q. And when did you next see this particular item?
- 25 A. It was in April of 1991 at a voir dire.
- Q. And Dr. John Bowen is associated with which  
particular lab?
- A. The Crime Detection Lab in Ottawa, the Serology  
Section.
- 30 Q. And you received this back when, this item?
- A. No, sorry, I received that back personally from  
Dr. Bowen on March 25, 1991, at Moncton, New  
Brunswick.
- Q. And in whose possession has that item been since  
35 that time?

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Cst. Britt - Direct

- A. It was in my possession until April, '91, at which time it was introduced at a voir dire.
- 5 Q. It was introduced at a court hearing, is that correct?
- A. Yes.
- Q. I show you an item that's been marked 'LL' for Identification.
- 10 A. Again I can recognize it with my initial, date, place where I received it. It was on October 25, 1989, in the Crime Detection Lab in Sackville, New Brunswick. I received personally from civilian member Duff Evers one sealed metallic box contain-
- 15 ing hair.
- Q. And you say sealed; did you open the box at any time?
- A. I did not.
- Q. And what if anything did you do with that item in your hand?
- 20 A. It was turned over personally by myself on the 25th of October, 1989, at the Central Forensic Lab in Ottawa. It was turned over to Dr. John Bowen of the Serology Section.
- 25 Q. And when if any did you see that item next?
- A. It was on March 25, 1991, at which point I received it personally from Dr. John Bowen in Moncton, New Brunswick.
- Q. And what happened to that item after that?
- 30 A. It was in my possession until April, 1991, for a court hearing.
- Q. And during the time that you had these items - from the time you received it from Mr. Evers until the time you turned them over to Dr. Bowen who else had access to those items?
- 35

Cst. Britt - Direct

A. Only myself.

5 Q. I'm going to show you an item that's been marked  
'C' for Identification. This was some time ago,  
My Lord. To refresh everyone's memory, 'C'  
purportedly refers to a vaginal swab taken from  
Nina Flam.

10 A. Yes, I do recognize it, again with my initial,  
date and time and place. It was on October 25,  
1989. Again it was retrieved from the - if I can  
go back, this item was first received in a sealed  
lunch can - or a can, on May 29, 1989. It was  
15 received from Constable Derek Carnahan. It was  
kept in my possession until May 31, 1989, at which  
point in time it was turned over to civilian  
member Gary Verrett at the Crime Detection Lab in  
Sackville, New Brunswick.

20 Q. You've already testified to that aspect before, I  
believe, Constable Britt, haven't you?

A. Yes, and then on July 7, 1989, item marked for  
identification 'C' was received personally from  
civilian member Sandy Lungair of the Crime  
25 Detection Lab in Sackville, New Brunswick. Same  
was secured into the freezer at the Moncton  
General Investigation Section in Moncton, New  
Brunswick. It was secured there under locked key.

Q. Who had access to that freezer at the time you  
secured it?

30 A. Only myself, and then on October 25, 1989,  
Identification 'C' was retrieved from the freezer  
and it was turned over personally to Dr. John  
Bowen at the Central Forensic Lab in Ottawa,  
Ontario, for the Serology Section.

35 Q. I take it, then, from your evidence you delivered

Cst. Britt - Direct

- 5 that item at the same time you delivered the two previous items marked 'LL' and 'JJ' for Identification?
- A. That's correct.
- Q. And when did you next see that particular item?
- A. It was received personally from Dr. John Bowen in Moncton, New Brunswick, on March 25, 1991.
- 10 Q. And in whose possession has it been since that time?
- A. Until it was introduced in court it was in my possession.
- Q. And that's introduced in court at this hearing, marked at this hearing?
- 15 A. Yes.
- Q. And I'll show you 'D' for Identification, and again, My Lord, that purports to be a vaginal swab taken from Nina Flam.
- 20 A. Yes, I do recognize it again. This particular item was - followed the same chain of events, if I could say. It was received in a sealed lunch can, received personally from Constable Derek Carnahan, on May 29, 1989. It was later then turned over to
- 25 civilian member Gary Verrett of the Hair and Fibre Section on May 31, 1989, in Sackville, New Brunswick. I later then received it personally from civilian member Sandy Lungair of the Serology Section. I received it in Sackville, New
- 30 Brunswick, and then on the same day, 7th of July, 1989, it was secured into the freezer at the Moncton General Investigation Section, and later it was retrieved on October 25, 1989, at which point in time it was turned over personally to Dr.
- 35 John Bowen of the Central Forensic Lab in Ottawa,

Ontario.

Q. And when did you next see that particular item?

5 A. I received it personally from Dr. Bowen in  
Moncton, New Brunswick, on March 25, 1991.

Q. And it's been in your possession up until the time  
it was brought to court?

A. That's correct.

10 Q. Between the time you had taken possession of it  
until the time you had given it to Dr. Bowen did  
anyone else have access to that item?

A. No.

15 Q. I show you an item that's been marked 'W' for  
Identification. My Lord, my understanding is that  
it's been previously identified. It purports to  
be a vaginal swab of Donna Daughney.

THE COURT: Taken at the autopsy?

20 MR. WALSH: Yes, that would be the time that that was  
taken, if my memory serves me correctly.

A. Yes, I do recognize item 'W' for Identification.  
I recognize it, it was on a red R.C.M.P. exhibit  
tag with my initial, date, October 25, 1989. It  
was received personally in Sackville, New  
25 Brunswick, from civilian member Sandy Lungair of  
the Serology Section, and on the same date,  
October 25, 1989, it was turned over to Dr. John  
Bowen of the Central Forensic Lab in Ottawa,  
Ontario, and he's with the Serology Section.

30 Q. I take it that again you're delivering that item  
at the same time you delivered the other items  
you've identified here?

A. That's correct.

Q. And when did you next see that particular item?

35 A. It was received personally from, again, Dr. John

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Bowen, on March 25, 1991, in Moncton, New Brunswick.

5 Q. And whose possession has it been since that time?

A. It was in my possession until the 10th of September, 1991, at which point in time it was turned over to Constable Ron Charlebois.

10 MR. WALSH: My Lord, I understand for the record, Mr. Furlotte will, I believe, agree with this, Constable Britt had a court matter in Newcastle last week, I believe it was. He had to leave to go to Newcastle for a jury trial there. As a result, Constable Britt turned over the items he was holding to introduce to Constable Charlebois  
15 so we would have them available for other witnesses, and Mr. Furlotte has agreed not to force us to call Constable Charlebois to put in that aspect.

20 MR. FURLOTTE: That is correct, My Lord.

THE COURT: That's agreed, thank you.

Q. I show you an item that's been marked 'X' for Identification and that purports to be previously identified as a body stain swab taken from Donna  
25 Daughney at her autopsy.

A. Item 'X' for Identification, I do recognize it as I had put my initial, date and time on a red R.C.M.P. exhibit. It was received personally from civilian member Sandy Lungair of the Crime  
30 Detection Lab in Sackville, New Brunswick. It was received on October 25, 1989, and later that day it was turned over to Dr. John Bowen of the Central Lab in Ottawa, Ontario, with the Serology Section.

35 Q. You delivered that again with all the other items

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that you've previously identified here?

A. That's correct.

5 Q. And when did you see that item next?

A. It was received personally from Dr. John Bowen in Moncton, New Brunswick, on March 25, 1991.

Q. And what if anything did you do with that item after that?

10 A. It was in my possession until September 10, 1991, at which point in time it was turned over to Constable Ron Charlebois.

Q. And that was for the purpose of this trial here?

A. That's correct.

15 Q. And again this item, during the time that you had possession of it did anyone else have access to that item?

A. No.

20 THE COURT: I'm sorry, the initials on that, the identification?

MR. WALSH: - is 'X'.

THE COURT: 'X', and that's a swab from -

MR. WALSH: That's a body stain swab purported - it's been previously identified as a body stain swab taken from Donna Daughney at her autopsy. I show you an item that's been marked 'Y' for Identification. My Lord, it purports to be a blood standard taken from Donna Daughney at her autopsy. Would you look at that item for me, please, and tell me whether you can identify that?

30 A. Yes, I can identify it because I had imposed my initial, date and time on the R.C.M.P. sealed envelope. It was received personally in Sackville, New Brunswick, on October 25, 1989, it was received from civilian member Sandy Lungair,

35



- and later on that day it was turned over to Dr. John Bowen of the Central Forensic Lab in Ottawa, Ontario, with the Serology Section.
- 5 Q. By you?  
A. Personally.
- Q. You delivered that item with the other items you've identified here?
- 10 A. That's correct.
- Q. And when did you come in possession of that after that?
- A. It was on March 25, 1991, I received it personally from Dr. John Bowen in Moncton, New Brunswick.
- 15 Q. And what if anything did you do with that item after that time?
- A. It was in my possession until September 10, 1991, at which point in time it was turned over to Cosntable Ron Charlebois.
- 20 Q. For this trial?  
A. That's correct.
- Q. And during the time that you would have had the item in your possession did anyone have access to this item?
- 25 A. No.
- Q. I'll show you an item that's been marked previously 'Z' for Identification. It's been previously identified as Linda Daughney's vaginal swab taken at her autopsy. Would you look at that item for us, please, and tell the jury whether you can identify it?
- 30 A. Yes, item 'Z' for Identification, I do recognize it. The same was received personally from civilian member Sandy Lumgair on October 25, 1989, in Sackville, New Brunswick. It was later on
- 35

turned over to Dr. John Bowen of the Central Forensic Lab in Ottawa, Ontario.

5 Q. You delivered that item again with the other items you've previously identified?

A. That's correct. It was later on received personally from Dr. John Bowen on March 25, 1991, in Moncton, New Brunswick. It's been in my  
10 possession until September 10, 1991, at which point in time it was turned over to Constable Ron Charlebois.

Q. For purposes of this trial?

A. That's correct.

15 Q. And while that item was in your possession did anyone else have access to that item?

A. No.

Q. I show you an item that's been marked 'AA' for Identification. My Lord, it purports to be a body  
20 stain swab taken from Linda Daughney at her autopsy. 'AA' for Identification, would you tell the jury if you can identify that, please?

A. Yes, I can recognize 'AA' for Identification. Same was received personally from civilian member  
25 Sandy Lungair in Sackville, New Brunswick, on October 25, 1989. Later on that day it was turned over personally to Dr. John Bowen of the Central Forensic Lab in Ottawa, Ontario.

Q. Again you delivered that item with the other items  
30 you've identified here?

A. That's correct. It was later on received personally from Dr. John Bowen on March 25, 1991, in Moncton, New Brunswick. It's been in my  
35 possession until September 10, 1991, at which point in time it was turned over to Constable Ron

Cst. Britt - Direct

Charlebois for the purpose of this trial.

5 Q. And during the time that you had possession of that item did anyone else have access to it?

A. No.

10 Q. I show you an item that's been marked 'BB' for Identification. It's previously been identified as a blood standard of Linda Daughney taken at her autopsy. Would you look at that for me, please, and tell me whether you can identify that.

15 A. Yes, I can recognize item 'BB' for Identification. It was received personally from civilian member Sandy Lumgair in Sackville, New Brunswick, on October 25, 1989, and later on that day it was turned over personally to Dr. John Bowen at the Central Forensic Lab in Ottawa, Ontario.

Q. And again you delivered that item with the other items you've identified here?

20 A. That's correct.

Q. And when did you see that item next?

25 A. I received it personally from Dr. John Bowen on March 25, 1991, in Moncton, New Brunswick. It's been in my possession until September 10, 1991, at which point in time it was turned over to Constable Ron Charlebois for the purpose of this trial.

Q. And during the time you had that item in your possession did anyone else have access to it?

30 A. No.

35 Q. I'll show you an item that's been marked 'HH' for Identification. It's been previously identified as purporting to be a blood standard from a person by the name of Lewis Murphy. Would you look at that item for me, please, and tell me whether you

can identify that?

5 A. Yes, I can recognize item 'HH' for Identification.  
The same was received personally from civilian  
member Sandy Lungair in Sackville, New Brunswick,  
on October 10, 1989. Later on that day it was  
turned over to Dr. John Bowen at the Central  
10 Forensic Lab in Ottawa, Ontario, along with the  
previous items I had mentioned. I received this  
particular item back personally from Dr. John  
Bowen on March 25, 1991, at Moncton, New  
Brunswick. The item has been in my possession  
until September 10, 1991, at which point in time  
15 it was turned over to Constable Ron Charlebois for  
the purpose of this trial, and it's been in my  
possession, nobody had access to this except  
myself.

20 Q. The items that we've identified and including the  
'JJ' and 'LL' for Identification, the two  
containers purporting to hold hair of Allan  
Legere, did anyone have access to these items  
while they were in your possession?

A. No.

25 Q. The final question, Constable Britt, so perhaps  
we'll be sure, all of these items that you've  
identified were taken to Dr. Bowen in Ottawa at  
the same time, is that correct?

A. That's correct.

30 MR. WALSH; I have no further questions, My Lord.

CROSS-EXAMINATION BY MR. FURLOTTE:

35 Q. Constable Britt, aside from site security at the  
Daughney residence and aside from continuity of  
these items which were transferred to Dr. John

Bowen, what other part did you take in the investigation?

- 5 A. That was my involvement in those particular matters.
- Q. That's your complete involvement?
- A. Yes.
- Q. Did you have anything to do in searching for  
10 evidence on the morning that the fire was discovered?
- A. Which one you would refer to?
- Q. Of October 14, 1989?
- A. If I recall correctly, I was not involved.
- 15 Q. You were not involved. Do you know anything about a 10-speed bicycle?
- A. Yes.
- Q. What do you know about a 10-speed bicycle?
- A. If I recall correctly, that bicycle was turned  
20 over to myself at the time I was doing site security at the Daughney -
- Q. It was turned over to yourself?
- A. Yes.
- Q. By who?
- 25 A. I wouldn't recall at the present time.
- Q. Do you have it in your notes?
- A. I imagine it was in the continuation sheet we did at the end of the day and I would have put down who but I would have to look into it.
- 30 Q. Would that bicycle have been kept as an exhibit by the exhibit man in this case?
- A. I do believe so it was.
- Q. So other than somebody giving you the bicycle - and what did you do with the bicycle once whoever  
35 gave it to you?

A. It was kept in my possession until I was relieved from the scene.

5 Q. Until you were relieved from the scene?

A. Yes.

Q. And who did you give the bicycle to?

A. Constable Davis, if I recall correctly.

10 Q. Do you know anything about a vehicle that was checked at the Daughney scene that morning?

A. No.

Q. Do you know whether or not there a dog man on the scene and whether or not anything was found?

A. I couldn't recall.

15 Q. You don't remember anything else of your involvement, that's the extent of your involvement?

A. That's correct.

MR. FURLOTTE: No further questions.

THE COURT: Re-examination?

20

REDIRECT EXAMINATION BY MR. WALSH:

Q. Just to be clear for the jury, you were the exhibit custodian for the Flam matter, is that correct?

25 A. That's correct.

Q. Apart from delivering some of the Daughney items to Ottawa to Dr. Bowen did you have any part in being the exhibit custodian associated with the Daughney matter?

30 A. Except for the scene security.

Q. O.K., and who was the exhibit custodian for the Daughney matter, to your knowledge?

A. Constable Greg Davis.

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

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THE COURT: Thank you very much, Constable. That's all  
for you. You're not recalling Constable Britt  
again?

5

MR. WALSH: No, My Lord. My Lord, at this time I would  
like to call another witness. I'll call Faye  
Hachey.

10

FAYE HACHEY, called as a witness, being duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

MR. WALSH: I think this might be another one of our  
nervous witnesses, My Lord.

15

THE COURT: She's not nervous, are you? Oh, don't worry,  
it will all be over in half an hour.

MR. WALSH: Would you give the Court your name, please?

A. My name is Faye Hachey.

Q. And where do you live, Mrs. Hachey?

20

A. Newcastle.

Q. I see, and did you know Donna and Linda Daughney?

A. Yes, I did.

Q. How long did you know them?

A. I've known them for about five years.

25

Q. I see, and of the two girls who would you have  
considered yourself closest to?

A. Linda.

Q. And would she be considered a girlfriend?

A. Yes.

30

Q. With respect to the incident that happened on this  
particular occasion, or regarding this incident,  
what involvement did you have? Just take your  
time at the beginning.

A. Excuse me?

35

Q. O.K., did you see Linda Daughney the night or any

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Faye Hachey - Direct

- A. I was with Linda that night, yes.
- Q. O.K., would you tell the jury, please, where you  
5 were with her and at what approximate time?
- A. I was working at Zellers. She had come in and she  
asked me what I was doing. I was putting out  
stock and I had asked her if she wanted to go for  
coffee. She said, "O.K., give me a call", but I  
10 didn't know where she went after she left the  
store.
- Q. O.K., now, what I want you to do, Miss Hachey,  
would you tell the jury whether you saw her,  
actually saw her after that time?
- 15 A. You mean after she left the store?
- Q. Yes, when was the next time you saw her after  
that?
- A. The next time I saw her was when she came to my  
door and - like came to my place because I was  
20 supposed to have called her.
- Q. And what time would that have been at?
- A. When I called her?
- Q. Yes.
- A. The first time I called was at ten after nine  
25 because I worked to nine.
- Q. No, what I'm saying is what time did she come to  
your door, I'm sorry.
- A. About nine-thirty.
- Q. And that would be in the evening?
- 30 A. Yes.
- Q. And would this be - in relation to when their  
bodies were discovered when would this be? Was  
this the night before, two nights before?
- A. No, this was the night before, Friday night.
- 35 Q. And she came to your door. How did she appear to



Faye Hachey - Direct

you to be at that time?

A. Fine.

5 Q. And did you go anywhere?

A. We went to Tim Horton's for a coffee.

Q. I see, and when did you go there, approximately?

A. It would probably be about before ten because it was about twenty to ten before I left our place.

10 Q. O.K., and what did you do at Tim Horton's?

A. Just normally what we'd do any time we went was we just sat down. Like, I went and got coffee and brought it.

15 Q. And did you meet any friends there or see anyone you knew or anything of that nature?

A. Before we went in I had met Mary Geikie.

Q. And who is Mary Geikie, so the jury will know?

A. Mary Geikie is a friend of the Daughneys, too.

20 Q. And does she live anywhere near where the Daughneys live?

A. Just practically like across - like where their house is and just across from it.

Q. I see, and did you meet anyone else?

25 A. I just met a girl, one of the girls that I worked with at the store, she had sat down with us. She only talked for a couple of minutes. She left and then two other friends had sat down with us and we just sat and talked and then normally just went home after.

30 Q. What time did you leave to go home, do you remember?

35 A. I had asked Linda what time it was, she said it was eleven o'clock, so we got up and we left Tim Horton's, went down from the street onto King George Highway where the Texaco is. Well, it's an

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Faye Hachey - Direct

Ultramar now.

MR. WALSH: O.K., My Lord, with your permission what I  
5 would like to be able to do, I'm going to give  
Miss Hachey a grease pencil. I have an aerial  
photograph, it's filed as an exhibit marked D-4.

THE COURT: This is a copy, is it, of D-4?

MR. WALSH: That's correct, My Lord, and what I'm going  
10 to do, with your permission I'm going to ask Miss  
Hachey - with the grease pencil I'm going to get  
her to mark where the Tim Horton's is and then  
with the grease pencil just trace her route to  
where she left - she last saw Linda Daughney.  
15 Just take your time till you get yourself  
oriented with the picture. Take this here and the  
first thing I'm going to ask you to do is to  
circle where you see, if you do on that photo-  
graph, the Tim Horton's.

20 THE COURT: Put a doughnut around it.

MR. WALSH: I just want you to circle where the Tim  
Horton's is so I can show it to the jury and they  
will have a point of reference. Just make a real  
good mark so they can see it. Just keep tracing  
25 over it. O.K., thank you, so I'm just going to  
show to the jury first, Miss Hachey, so they have  
a point of reference, My Lord.

THE COURT: All right, and that's the King George High-  
way, is it, through there or -

MR. WALSH: This particular street that runs in front  
30 here, what's the name of that?

A. That would be King George.

THE COURT: And that's a rink, I take it, is it? An  
arena, a rink?

35 A. Yes, well, that's the civic centre, yes.

Faye Hachey - Direct

- 5 Q. For the record, you're referring to the large building in the bottom righthand corner with the white-coloured roof?
- A. Yes, that's the civic centre, yes.
- Q. And the building next to it with the blue sides and the white-coloured roof?
- A. That's the Rec Centre.
- 10 Q. The Lindon Recreation Centre?
- A. Yes.
- Q. What you've circled is the Tim Horton's Donut, is that right?
- A. Yes.
- 15 Q. O.K., Miss Hachey, just take your time and I'm going to ask you to just using your grease pencil follow the route as best you can that you took with Linda Daughney up until the point where you left her.
- 20 A. Right here.
- Q. O.K., and I want you to circle -
- A. - where I live?
- Q. Is that where you left her, where you live?
- A. Mm-hmm.
- 25 Q. All right, circle where you live, and this particular circle would be more towards the centre of the photograph?
- A. Mm-hmm, that's like an apartment house.
- Q. Now, would you be able to point out in that particular photograph where the Daughney home is?
- 30 A. You mean you want me to draw -
- Q. No, just find the Daughney home, don't bother -
- A. O.K., I'm sure that's it right there.
- Q. O.K., I'm going to get you just if you would -
- 35 would you just put an 'X' in that particular

Faye Hachey - Direct

- location of the Daughney home, a real good one so that everybody can see it. Thank you. O.K., now
- 5 I'm just going to ask you, you say you left the Tim Horton's and you followed that particular route. Did anything unusual happen while you were following the route?
- A. I never noticed anything, no.
- 10 Q. And you say you left her where you live there?
- A. Yes.
- Q. And what would be the most direct route? To your knowledge where was she going when she left you?
- A. When she left me she was going home.
- 15 Q. And where would be the most direct route to go from your place to her place? Would you just point it to me, please?
- A. O.K., there's my place there, she would go right straight down. She'd have to cut across the
- 20 street and go right straight to her place.
- Q. So just for the record, she would go from the street where your house is on?
- A. Yes.
- Q. Down across that other cross street?
- 25 A. Yes, you have to cross the street.
- Q. And do you know what the name of this street is that you would cross?
- A. It's Pleasant.
- Q. And then what is the street that you would
- 30 connect up to on the other side? Do you know the name of that?
- A. I think it's Pond Street, I think.
- Q. And you would go down that to where you see the 'X'?
- 35 A. Yes.

Faye Hachey - Direct

- Q. How long would it take to go from your home to the Daughney home walking?
- 5 A. It wouldn't take very long. Do you mean roughly?
- Q. Yes, just roughly.
- A. I'd say maybe five minutes, if that.
- Q. And did you have any knowledge of what time it was when you actually left her? Was there anything
- 10 that you can reference?
- A. No, we had left Tim Horton's at eleven o'clock and then we walked down and went to my place and that's -
- Q. How long would it take you to get to your place?
- 15 A. Five minutes.
- Q. Could you tell the jury, please, if you remember what Linda Daughney was wearing that particular night?
- A. That night she had a jean - knee-length jean
- 20 jacket, blue jeans, a knitted burgundy sweater, she didn't have a purse, and I imagine socks and shoes.
- Q. Would she have been wearing glasses?
- A. Yes, she always wore her glasses.
- 25 Q. And could you tell us anything - what if any jewellery she would have been wearing that night, or do you remember?
- A. If I can remember, she always wore her earrings and her rings.
- 30 Q. Do you have any independent recollection of that particular night what kind of jewellery she would be wearing, if any?
- A. I never really noticed how many -
- Q. Perhaps if you would just explain to the jury what
- 35 her habits were normally like associated with the

wearing of jewellery. What kind of jewellery would she wear and where would she wear it?

5 A. Just mostly - like that I can remember is rings on her fingers, and she always wore earrings in her ears.

Q. O.K., now, when you say earrings in your ears, I see that you have one earring in each ear, is that  
10 what she would -

A. No, she has three.

Q. She had holes for three?

A. Mm-hmm.

Q. Do you know how many earrings she would have been  
15 wearing that night?

A. She usually wore - usually always had them filled.

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

THE COURT: Cross-examination, Mr. Furlotte? Presumably  
20 you're going to offer this plan as an exhibit, are you? That's a copy of -

MR. WALSH: Oh, yes, My Lord, I went and picked up my copy off the desk. I would move to have that entered as an exhibit or I could retrace it.

THE COURT: I'd put it in as a separate - I think  
25 it should go in as a separate exhibit. It would be P-53.

MR. WALSH: I apologize, My Lord, I should have picked up the exhibit one and I picked mine off the desk.

THE COURT: That's all right. P-53 is the same as - what  
30 was the exhibit number for the other one, D-4?

MR. WALSH: P-32(4).

THE COURT: P-32(4), same plan but with the added writings on it.

35 MR. WALSH: That's correct, My Lord.

CROSS-EXAMINATION BY MR. FURLOTTE:

- 5 Q. Miss Hachey, I just have a couple of questions.  
You mentioned that Linda was wearing a jean  
jacket, jeans, burgundy sweater, is that right?
- A. Yes.
- Q. And what type of a sweater was it that she had on?
- A. Like a burgundy knitted sweater.
- 10 Q. Knitted sweater, long sleeved?
- A. Mm-hmm.
- Q. Did Linda have any boyfriends or was she seeing  
anybody?
- A. Pardon me, she had - no, not that I know of.
- 15 Q. Was she seeing anybody else that you know of?
- A. No, she had talked about a Ralph but that was  
just - it wasn't a boyfriend.
- Q. It wasn't a boyfriend that you know of?
- A. No.
- 20 Q. And I believe that was - so you would have left  
her around 11:05. How long would it take you to  
go up from Tim Horton's to your place?
- A. It would probably be about five minutes.
- Q. About five minutes, and then maybe another five  
25 minutes for her to get home?
- A. Yes, it wouldn't take her very long to go home,  
no.
- MR. FURLOTTE: I have no further questions.
- MR. WALSH: No redirect, My Lord, thank you.
- 30 THE COURT: Thank you very much, Miss Hachey. That  
wasn't too bad?
- A. Oh -
- THE COURT: Want to do it again?
- A. No.
- 35 MR. ALLMAN: I have one short witness, My Lord, we could

William White - Direct

dispose of before the break and then there's  
something else we have to discuss in any event.

5 THE COURT: All right.

WILLIAM WHITE, called as a witness, being duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

10 Q. State your name, please.

A. William White.

Q. Where do you live, Mr. White?

A. 137 Mitchell Street, Newcastle.

15 Q. In 1989 were you acquainted with Donna and Linda  
Daughney?

A. Yes, I was.

Q. How did you come to know them?

A. I knew them all my life.

20 Q. At that time where were you living in relation to  
the Daughney sisters?

A. 137 Mitchell.

25 Q. I'm going to show you P-32, #7, which is also  
marked on the front as D-7. Can you take a moment  
to look at that? Locate the Daughney residence -  
do you have the Daughney residence on there?

A. Yes.

Q. And then locate your residence.

A. Right here.

30 MR. ALLMAN: O.K. My Lord, he's pointing to the house  
right across the street from the Daughneys to the  
left of the little blue car.

THE COURT: Yes.

35 MR. ALLMAN: I'll just show the jury. He indicated the  
Daughney residence, his residence right across the  
street slightly to the left, as you look at the



- 5 photograph, of a bluish car. Do you remember the day you heard the news about what had happened to the Daughneys?
- A. Yes, I do.
- Q. Do you remember the night before you heard that news?
- A. Yes, I do.
- 10 Q. Did you see either of the Daughneys on that evening, that would be the evening before?
- A. Donna Daughney.
- Q. Where would you have seen her?
- A. She was painting.
- 15 Q. What was she painting?
- A. She was painting her window.
- Q. I'm going to show you a bundle of photographs this time, P-33. Would you just look at the first few photographs and see if you can tell me which
- 20 window it was that she would be painting?
- A. This one, they're all the same.
- Q. On pictures #1 and 2, which is the same view, you're pointing to the lower lefthand window, lefthand as you look at it?
- 25 A. That's correct.
- Q. Is that the way you'd be looking at it, basically, from your house?
- A. Yes.
- Q. Was she inside or outside painting that window?
- 30 A. Inside.
- Q. About what time would you have first seen her doing that?
- A. This would be anywhere between 8:00 and 8:15.
- Q. In the evening?
- 35 A. In the evening, yes.

- Q. Did you see her again after that?
- A. Periodically, yes. What I mean by that is my  
5 front door is directly across and I'd look out  
periodically just to see if she'd still be there,  
and she'd be there and -
- Q. As best you can figure or - O.K., let me put it  
another way, what time would you have gone to bed  
10 or stopped going out your front door?
- A. Well, between 10:00 and 10:15, somewhere around  
that area.
- Q. So between 7:00 or 8:00 when you first saw her and  
10:00, 10:15, when you went to bed, I gather you  
15 would have seen her off and on?
- A. Yes, as I said, periodically, yes.
- Q. What would she be doing whenever you did see her?
- A. Well, she'd be still painting, you know, because  
she was painting the inside.
- 20 Q. Still inside the house?
- A. That's correct.
- Q. Do you remember what if anything she was wearing?
- A. I can't really say what she was wearing but she  
was fully clothed, to the best of - from what I  
25 could see.
- Q. Did you have any words with her, speak to her at  
all?
- A. No, I didn't speak to her but I made a gesture and  
she made the same.
- 30 Q. What was the gesture?
- A. Well, just nod of the head and -
- Q. And what did she -
- A. She reciprocated by the same.
- Q. I gather - you said you don't really remember at  
35 all what she was wearing, just that she was

wearing something?

A. That's correct.

5 MR. ALLMAN: Thank you.

MR. FURLOTTE: I have no questions.

THE COURT: Just one, Mr. White, you saw her painting at  
8:15, was it - about eight o'clock?

A. Between 8:00 and 8:15, yes.

10 THE COURT: Was it dark then?

A. No, it wasn't dark but I mean -

THE COURT: It got dark shortly after that, I gather?

A. Well, yes.

THE COURT: No questions arising out of that?

15 MR. ALLMAN: No.

THE COURT: Thank you, Mr. White, very much. Well, your  
next witness is -

MR. ALLMAN: Before the jury come back there's a matter  
we're going to have to discuss in their absence  
20 so what I would respectfully suggest is send the  
jury out until such time as they're recalled. If  
we can go and have a short break and then come  
back and dispose of this matter in their absence.  
It's a matter that we've mentioned before.

25 THE COURT: Oh, yes. Well, will the jury retire and we  
will call you back in twenty minutes or so.

(JURY WITHDRAWS.)

THE COURT: Do you want to discuss the other matter now?

30 MR. ALLMAN: It doesn't matter. We could take a break  
and then come back and discuss it or we can  
discuss it and then take a break. Whatever Your  
Lordship fancies.

THE COURT: Well, let's come back. It will just entail a  
35 few minutes?

MR. ALLMAN: I don't think it will take very long.

THE COURT: No. Well, let's come back and do it. We'll take just fifteen minutes, though.

(BRIEF RECESS - COURT RESUMED.)

(ACCUSED IN DOCK.)

THE COURT: Yes, Mr. Allman?

10 MR. ALLMAN: My Lord, you'll observe that Mr. Walsh is out. A witness just arrived that he needs to interview. If you require him in I can get him summonsed back here. Otherwise, we can deal with this matter in his absence.

15 THE COURT: That's all right.

MR. ALLMAN: Fine, My Lord. Although I'm calling this a voir dire I don't think it's necessary to call evidence on it. What this relates to is a matter that I mentioned to Your Lordship even before the jury address. We have two witnesses, a Mr. Ken Black and a Mr. Joseph Hubert Hawkes. I can indicate to you what their statements say and what I expect them to say.

20 THE COURT: I should just say this is a voir dire and nothing said here, of course, should be reported in the press.

25 MR. ALLMAN: Ken Black's statement is so short I can read the entire statement.

30 "I used to work at the Fitness Warehouse from October or November, 1985, when it opened, until about November, 1986. Donna and Linda Daughney had membership at the club. Allan Legere also had a membership. He was observed helping Donna with some of her exercises and also giving her advices. He used to talk about her built" - I take it that's built - "she was built for comfort. He was fantasizing about her, how good she would be in bed, how he would like to get a hold of her.

## Voir Dire

5 Another lady, short, was hanging around  
with them at the gym. Allan would only  
comment about Donna, I didn't notice else."

10 THE COURT: This is a witness who would be testifying to  
this effect?

MR. ALLMAN: Yes.

15 THE COURT: And the date there was -

MR. ALLMAN: The time frame is October or November, 1985,  
20 until about November, 1986. That's when he was a  
member of the Fitness Warehouse, and it's some-  
where in that time frame that the observations and  
25 the remarks that he will be saying or referring to  
were supposedly made. The other gentleman is Mr.  
Joseph Hubert Hawkes. His is rather longer, I  
30 don't propose to read the entire thing, just  
portions of it. He sais that back in 1986, before  
the Glendenning murder, and of course I wouldn't  
35 get into that through that witness, I'd just get  
the date:

40 "I was a member of the Fitness Warehouse  
where Allan Legere used to work out.  
During my exercise periods I used to run  
into Allan Legere quite often. In fact,  
45 during breaks he'd speak to me. It should  
be mentioned that on several occasions  
while Allan Legere and I were exercising  
the Daughney sisters were also there.  
Legere had quite an interest in Donna. I  
50 know this because of the comments he used  
to make in her regard. He seemed to be  
interested in her sexually. I know this  
because he used to make the following  
sexist remarks. While Donna was exercising  
55 on a machine she'd have her legs up. Legere  
would make the comment, 'Wouldn't you like to  
chew the ass off that? Boys, I'd like to  
bury my face into that'. He also said in  
order to get at her he would have to get" -

60 MR. LEGERE: Holy old fuck that's making me mad. Lying  
snake cocksuckers.

THE COURT: Go ahead, Mr. Allman.

65 MR. ALLMAN: I'll continue addressing the Court, My  
Lord.

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5 "He also said in order to get at her he'd  
have to get the little one out of the way,  
meaning Donna's sister, because they,  
according to him, were like Mutt and Jeff."

10 MR.-LEGERE: Who is this guy, anyway?

15 MR. ALLMAN: According to this witness something like  
this occurred on about six occasions, and then  
there's some other evidence which I don't propose  
to relate or get into but it's in the statement  
and Mr. Furlotte has seen a copy of it.

20 My submissions on this matter are as follows.  
The references I'm going to be making are all to  
25 Canadian Criminal Evidence, McWilliams, 3rd  
Edition. We start with the proposition, first  
quoting from Paragraph 3.10110 -

30 THE COURT: I'm sorry, three what?

MR. ALLMAN: 3.10110.

35 "The first and general requirement of  
admissibility is relevance, Cloutier  
and The Queen, 1979, 48 C.C.C., 2nd,  
1 Supreme Court of Canada."

40 They quote statements from cases as far back as  
1837 and 1862, the latter being in a case called  
45 Milne, Seville and Leisler. I don't think the  
citation is necessary because it's an old English  
case but what it says is, "The courts, so far as  
50 they can, are disposed to receive in evidence  
whatever can throw any light on the matter in  
issue and advance the search after truth".

55 It is true that there is a judicial  
discretion to exclude evidence. That is set out  
60 at length in Paragraph 3.10900, and I don't  
propose to read the whole thing because it gets  
into some other areas that have developed lately,  
65 but the main quotation that I want to refer to  
there is this. In Noor Mohamed against The King,  
70 1949 Appeal Cases, 182, Lord Dupark said:

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5 "The judge ought to consider whether  
the evidence which it is proposed to  
adduce is sufficiently substantial,  
having regard to the purpose to which  
it is professedly directed, to make it  
10 desirable in the interests of justice  
that it should be admitted. If, so far  
as that purpose is concerned, it can in  
the circumstances of the case have only  
trifling weight, the judge will be right  
to exclude it. To say this is not to  
15 confuse weight with admissibility. The  
distinction is plain but cases must occur  
in which it would be unjust to admit  
evidence of a character gravely prejudicial  
to the accused even though there may be  
20 some tenuous ground for holding it  
technically admissible. The decision must  
then be left to the discretion and sense  
of fairness of the judge."

25 That case was quoted in - followed with  
approval in The Queen against Ray, 1970, 4 C.C.C.,  
1 Supreme Court of Canada.

30 The point I want to emphasize on that is  
this, that proposition is sometimes very briefly  
stated as an epigram, the evidence is excluded if  
35 the prejudicial effect outweighs the probative  
value. That's not correct, you don't balance the  
40 two and if there's a little bit of a difference in  
the scale you exclude. It is only when the  
45 evidence is gravely prejudicial and the ground for  
holding it admissible is tenuous.

50 This evidence in the Crown's submission does  
a number of things. It links in a relationship of  
some kind Mr. Legere with the two Daughneys, just  
55 as we have already linked him in a relationship or  
an awareness of some kind with the two Flams. It  
may, this is a matter for the jury, be some  
60 evidence of a motive. Certainly sexual attraction  
is a longstanding motive, and I don't think I need  
65 to go into that, the Court can take judicial  
notice that sex is one of the mainsprings of  
70 criminal activity.

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5 In addition, in relation to Linda, there's  
also the remark that to get at the one he fancied  
he'd have to get through the other one, or get rid  
of the other one, which again the Crown submits is  
very relevant on the point of motive. Motive has  
always been regarded as an admissible matter in  
courts. Whether in fact the evidence in question  
10 is the motive, that's a matter for the jury. We  
mustn't confuse the proposition whether this is  
true, and if true, whether it's the motive. Those  
are matters for the jury. It's evidence that's  
capable, at least, of bearing that meaning.

15 There are a number of quotations on motive  
again in McWilliams. They're rather long, they  
begin at Paragraph 18.10321, and there's also a  
note further on motive, 21.10210, which I'll just  
quote briefly because it's very short. "Motive  
20 has already been discussed as a circumstance  
tending to prove identity" - that's the point I've  
already been making.

25 "It will now be discussed as a circumstance  
tending to prove intent... Proof that a man  
had an unlawful motive for doing an act,  
when followed by his commission of the act,  
lends to the inference that, in doing the  
act, he was motivated by the motive."

30 So that that also, we would submit, would be a  
relevant consideration.

35 So far my submission basically is this, the  
thrust of this evidence, that Mr. Legere was  
acquainted with the Daughneys, had a sexual  
attraction for Donna Daughney and thought he  
40 would have to get Linda out of the way to get  
involved with Donna, is admissible.

45 I turn now to the last question which is if  
it's admissible or can we only put it in terms of



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a general nature, in other words, could I only  
elicit from the witness something like, what was  
5 Mr. Legere's attitude towards Donna Daughney;  
answer, he found her sexually attractive, or  
should the witness put the specific words that as  
best he can recall were uttered. In that regard,  
again in the same book, Paragraph 3.10300, the  
10 author states: "Wigmore states as a general rule  
that verbal utterances must be taken as a whole,  
not by fragments or by summary". He uses verbal  
in the sense of consisting in words, whether  
spoken or written, and then he goes on to a  
15 lengthy quotation from Wigmore, the bottom line to  
it all being that if you summarize a statement,  
that's in a sense a conclusion and may be taking  
it away from the jury. The jury are entitled to  
hear the words and then they can conclude whether  
20 that's sexual attraction or what it is. Any  
ruling which said that the jury should be given a  
watered down version of this or a summarized  
version of this inevitably leads to inaccuracy and  
to some extent speculation on the part of the  
25 witness. We therefore submit that this evidence  
is relevant and is admissible in the form that Mr.  
Black and Mr. Hawkes would give it, that is to  
say the words as they recalled them. It is  
substantial probative value. Its prejudicial  
30 effect, if any, in this day and age is limited.  
I do not believe, it's a matter for Your Lord-  
ship's judgment, that anybody on the jury is going  
to say Mr. Legere made sexist remarks about these  
two girls, what a shocking thing to do, therefore  
35 we convict him. I think that in this day and age

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men and women understand that there's nothing in  
itself wrong or surprising in a man making a  
5 remark about a woman that he says to the effect -  
maybe rather a vulgar one, he probably wouldn't  
make that remark in -

MR. LEGERE: The only thing you haven't done yet is prop  
the bodies up there. You've got away with every-  
10 thing else.

MR. ALLMAN: The only thing that - you know, men do do  
that sort of thing and they probably make it  
slightly different in the presence of a woman  
from what they would do in the presence of a man,  
15 but I'm sure the jury are men and women of the  
world and would not be so shocked or horrified by  
those words, which are not that bad, that they  
would say we should convict Mr. Legere because of  
those.

20 THE COURT: Just before you finish, there are the two  
witnesses, Mr. Black and Mr. Hawkes?

MR. ALLMAN: Yes.

THE COURT: It was Mr. Hawkes who gives the more  
explicit account?

25 MR. ALLMAN: Well, in terms of the sexual attraction  
aspect I think they're both about the same.

THE COURT: But I just forget what the thrust of Mr.  
Black's testimony would be.

MR. ALLMAN: There's two parts, Mr. Black says that when  
30 Mr. Legere saw Donna he made remarks expressing a  
sexual attraction. Mr. Hawkes says that when Mr.  
Legere saw Donna he made remarks expressing a  
sexual attraction and the additional remark that  
to get to her he'd have to - I don't want to risk  
35 reading inaccurate -

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THE COURT: Well, get rid of Linda or get Linda out of the way or something?

5 MR. ALLMAN: There was some reference to the other sister, so in terms of explicitness of the remarks about the sexual aspect I think that they're pretty much the same. The additional aspect of Mr. Hawkes is the reference to the other  
10 sister.

THE COURT: Now, Mr. Furlotte, what do you have to say about that?

MR. FURLOTTE: My Lord, I think this type of evidence, although one might have to reach far back to argue  
15 that it is relevant but I suppose there is some argument to the Crown's position that there is some degree of relevance to this evidence and, you know, not regarding the credibility of the evidence. If the evidence is considered to be  
20 true there might be some slight degree of relevance, and that slight degree of relevance, I believe the Court has to take into consideration as to how long ago was that remark made. This remark was supposed to have been made sometime in  
25 1985 or '86. How long - if these remarks are true, just what kind of an effect would this remarks have in relation to, I would say, motive? There's no doubt that evidence can come in of some kind of link or relationship between the accused  
30 and the Daughneys, that they both worked out at the Fitness Warehouse. We have no problem with that, they can show that Mr. Legere somehow had slight acquaintance or familiarity with the Daughney sisters.

35 As to motive, on one hand the Crown is saying

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5 that these comments could go towards motive  
to show that there was some kind of sexual desire,  
but yet on the other hand, the Crown admits that  
the jury is not going to be shocked by such  
comments because, heck, all men make sexual  
comments towards women and no doubt the women  
towards men, so it is a very common occurrence, so  
10 on the one hand he's trying to use this to show  
that Mr. Legere has motive for committing such  
brutal murders of the Daughney sisters, but on the  
other hand he's saying that, well, heck, all men  
would have the motive to do the same thing. When  
15 you're looking at cause and effect or motive and  
intention and what's going on in a person's mind,  
I can't think of anything so removed from the  
thought of motive. The fact that the Crown admits  
that the jury is not going to be shocked by such  
20 comments because probably every damned one of them  
made that comment themselves at one time or  
another in their life and I'm sure they didn't go  
out and kill anybody, they didn't go out and  
sexually assault anybody, then they're not going  
25 to be shocked by such a comment.

That brings us back to the first thing that -  
or at least the second thing that Mr. Allman  
referred to. He said that under Paragraph  
3.10110 it's a question of relevance. Well, I  
30 will admit there's a very slight degree of  
relevance. Then under Paragraph 3.1099 it's in  
the trial court's discretion to exclude it even if  
it is relevant if it only has trifling weight.  
Well, I can't think of any comments that would  
35 have any less trifling weight than such comments

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as is being suggested by the Crown Prosecutor that everybody does. If everybody does it, then you  
5 can't place any weight on it whatsoever, even though you can attach some slight degree of relevance to it.

I would submit that in this case it's not simply balancing the relevancy against the  
10 prejudicial effect that it might have on Mr. Legere's case because of all the publicity, because the jury whether or not they can erase from their minds their prior prejudice or thought that Mr. Legere was guilty and they have to base  
15 their decision just on the evidence before the Court to bring this type of very low degree of relevancy, I would submit, My Lord, that it would have a high degree of prejudice against Mr. Legere. When somebody wants to do something they  
20 don't need much of an excuse to do it, and if the jury wants to convict Mr. Legere they're not going to need much of an excuse to do it.

This would be grossly prejudicial against Mr. Legere. It's not just simply balancing it out,  
25 that it is a little more prejudicial than it is relative. I would submit that the circumstances in this case, that it would have very trifling weight and it would be highly prejudicial, given - if the evidence was in fact true, given the fact  
30 that these witnesses probably themselves are prejudicial towards Mr. Legere and believe Mr. Legere guilty, how much of an exaggeration can we expect from these witnesses as to not just coming to court and giving a general comment as to what  
35 Mr. Legere may have made towards the Daughney

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sisters but because of the years gone by. I believe Mr. Black's statement was given on  
5 October 18th, Mr. Hawkes's statement was given on  
June 18, 1991, just a few months ago. How good are their memories? How much are they going to believe that Mr. Legere said something when it may have been a passing comment which may not have  
10 even had any sexual connotations. Witnesses are like anybody else, they will believe what they want to believe, and given the fact that it is of such trifling weight I would submit, My Lord, that this evidence should not be admitted at all, let  
15 alone be it detailed in specifics or of some general comment nature, and I would submit, My Lord, that while it is in the Court's discretion to exclude it, I would ask this Court to use its discretion wisely and exclude this evidence.

20 THE COURT: Thank you very much.

MR. ALLMAN: I have a few brief comments, My Lord.

First of all, so far as Mr. Furlotte's remark that the jury wants to convict Mr. Legere, I don't think that's a proper observation and I don't  
25 propose to reply to it. So far as his observation that the witnesses want to convict Mr. Legere, I don't think that's a proper observation and I don't propose to reply to it. So far as the statement that their memory - how good are their  
30 memories, that's what he can cross-examine about. So far as the fact that Mr. Hawkes's statement was given rather late, that's true, but I understand that the information was given to the police a good deal earlier. Those, I think, are trifling  
35 matters that really are not worthy of serious

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comment.

5           There are two things he said that I do want  
to comment on, and here's the first one. The fact  
that I say the jury won't be shocked by this  
evidence doesn't mean I think the jury won't be  
interested in or find it potentially of value.  
What I'm saying is they won't go and say, listen,  
10 this is so - it's such a disgusting thing to say  
that we should convict him just because he said  
it, if they find that as a fact; that's all I  
meant by that.

15           The second thing is this, it is probably true  
and I'd agree that men do make these remarks, but  
if a hundred men found Donna Daughney attractive,  
if only one of them left his semen behind or semen  
exactly the same as his behind at the scene, then  
it becomes relevant. Motive in and of itself, as  
20 Your Lordship knows, doesn't prove a case, it's  
motive combined with a lot of other things, so  
it's only because we have additional evidence  
pointing to Mr. Legere that his motive, if any,  
if the jury find it to be a motive, becomes  
25 relevant.

THE COURT: Well, in deciding what is going to be done I  
want to reflect on something that happened in my  
experience earlier. I tried the Ambrose,  
Hutchinson case in Moncton back in 1975, that was  
30 16 years ago, and Hutchinson and Ambrose had  
killed two policemen and were charged with their  
murder. Evidence was given at the trial which I  
allowed that Hutchinson had said in Ontario where  
he was living at the time about two years  
35 earlier - he had told a brother-in-law or a

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relative of some sort, cousin or something, that  
he was going to kill a policeman, and I allowed  
5 that. I felt that that perhaps would express an  
attitude toward policemen, I felt it was  
properly admissible. I allowed the evidence.  
Both the New Brunswick Court of Appeal and the  
Supreme Court of Canada, while they upheld the  
10 jury verdicts and the outcome of the case, they  
criticized me very strongly for having allowed  
that evidence, and I feel that if evidence here  
were given in the explicit terms I would be  
subjected to the same criticism by the New  
15 Brunswick Court of Appeal or by the Supreme Court  
of Canada in this instance as well, because there  
seems to me to be quite a parallel between the two  
things.

Now, there is a certain relevance, perhaps,  
20 in some of this information, and what I'm going to  
do, I'm going to forbid the giving on direct  
examination of the evidence of Mr. Hawkes, this  
business about, how would you like to eat the ass  
off that, or whatever the words were, and the  
25 equivalent statements were given. It is relevant,  
I'm sure, to this case, that the accused knew  
Donna and Linda Daughney, or at least had the  
opportunity of knowing them, if that's what the -  
if these statements are accepted as truthful, and  
30 that's up to the jury, of course, that he knew  
them before that, and even though it goes back to  
1985 or '86, if you know someone then you  
continue to know them or know who they are. I  
think that's relevant.

35 I think also, and despite the observations



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you've made, Mr. Allman, in respect of  
generalizing something, I feel that it would not  
5 be out of place here for either of these two  
witnesses - I gather that the extent of Mr.  
Black's evidence and certainly Mr. Hawkes'  
evidence could be confined to saying that the  
circumstances under which the accused and the  
10 Daughney people associated or met was in the  
atmosphere of a physical fitness club or physical  
fitness machine or whatever the name of the place  
was, a club anyway, a health club, and it would  
also be relevant, in my view, that the accused may  
15 have in conversations with either one or both of  
these gentlemen indicated a physical attraction  
toward Donna Daughney, but I think the statements  
should stop there, but I would permit that to be  
given. Is there any -

20 MR. ALLMAN: Just one other thing, and this seems to me  
to be actually perhaps almost the most important  
part, what about the comment to Mr. Hawkes that  
either in a vague way or in the specific words -  
sorry, I've lost it, just let me find the page.

25 THE COURT: Getting her apart from the sister?

MR. ALLMAN: To get to Donna he'd need to -

THE COURT: I wouldn't allow that, I wouldn't permit  
that.

MR. ALLMAN: O.K., then, I won't ask that.

30 THE COURT: Well, that is my ruling in this matter. Now,  
insofar as Mr. Black's evidence, it seems to me  
that is -

MR. ALLMAN: That's it.

THE COURT: That's it, anyway. I mean that would have  
35 been his evidence, essentially.

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MR. ALLMAN: Yes, that he knew them, where he knew them,  
and that he expressed physical - I think the words  
5 Your Lordship used were physical attraction  
towards Donna.

THE COURT: A physical attraction toward Donna. The  
other - Mr. Hawkes would confine what he says to  
those things. Now, if on cross-examination Mr.  
10 Furlotte - I'm sure he's not going to here, or at  
least shouldn't, but if he were to say to Mr.  
Hawkes, well, how did he express a physical - or  
how did you gather that he expressed a physical  
attraction, and forces out of him what he  
15 actually said, well, it's the defendant then who's  
bringing that out, but -

MR. ALLMAN: I understand the limits Your Lordship is  
putting.

THE COURT: But it shouldn't come out unless - I mean Mr.  
20 Furlotte may still want to examine the witness in  
a general way as to, well, this was three or four  
years ago and how do you know, how many people  
were there in this body shop or whatever it is,  
fitness shop.

MR. ALLMAN: Could I perhaps impose upon Your Lordship,  
25 then, to just give me about two minutes so that -  
I believe both witnesses are in court, I've no  
doubt they've heard this dialogue, but I want to  
speak to them just to make clear that I don't -

THE COURT: I think that would be desirable for you to do  
30 that, and why don't we take just two minutes here.  
We'll sit here. Can you do it while we wait? We  
won't say anything while you're gone for two  
minutes. Take the witnesses outside and just make  
35 sure they understand what I've said.

(SHORT BREAK.)

MR. ALLMAN: My Lord, they heard the dialogue, they  
5 understood the limits, and I just made absolutely  
clear -

THE COURT: I just want to add for purpose of the record  
here that in coming to this decision I am having  
regard to the fact that these statements were made  
10 perhaps as much as four years before the events in  
question here, or in issue in this lawsuit, which  
is quite an appreciable time. I also have regard  
for the fact that while that type of remark, if in  
fact those remarks were made, they're extremely  
15 chauvinistic and sexist and I don't acknowledge  
that they - I acknowledge that there are probably  
quite a few males, perhaps females too, who are  
capable of making that type of remark, and they do  
reflect a rather, perhaps, perverted attitude  
20 toward the opposite sex, but I don't acknowledge  
that they would generally be made by males, or  
females either.

MR. ALLMAN: I don't think I ever said generally.

THE COURT: No, however - now, are you ready to bring  
25 back the jury and call - who are you calling here  
now?

MR. ALLMAN: Mr. Black and Mr. Hawkes. We were going to  
call Mel Vincent, Lawrence Clark, and Blair  
Carroll, but the late-arriving witness about whom  
30 I spoke is Mel Vincent, so Mr. Walsh is just  
running through the final stages with Mel Vincent  
so what I would like to do is call Mr. Black, call  
Mr. Hawkes, and then we'll have Mel Vincent,  
Lawrence Clark, Blair Carroll.

35 THE COURT: I do want to say that I'm not going to brook

Kenneth Black - Direct

5 any interference on the part of the accused or  
 anyone else with the testimony of these gentlemen  
 when they testify, and there should be nothing  
 said at all. Anything, you know, said by - any  
 exclamations by the accused could only be preju-  
 dicial to him in front of the jury, and surely he  
 understands that. All right, we'll have the jury  
 10 back.

(JURY CALLED - ALL PRESENT.)

(ACCUSED IN DOCK.)

15 THE COURT: Now, you have another witness, Mr. Allman?

KENNETH BLACK, called as a witness, being duly  
 sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

20 Q. Can you state your name, please?  
 A. Kenneth Black.  
 Q. What town do you reside in, Mr. Black?  
 A. I live in the Village of Douglastown, County of  
 Northumberland.  
 25 Q. How long have you lived there?  
 A. All my life.  
 Q. Were you ever acquainted with the sisters, Donna  
 and Linda Daughney?  
 A. Yes, I was.  
 30 Q. Were you ever acquainted with Allan Joseph Legere?  
 A. Yes, I was.  
 Q. Is Allan Joseph Legere in court now; if so, where?  
 A. Yes, he is, sitting there between the two  
 officers, short-sleeved shirt.  
 35 Q. Let the record indicate he's pointing in the

Kenneth Black - Direct

- direction of the prisoner's dock. How did you become acquainted with the Daughney sisters?
- 5 A. Well, in 1985 I was an employee of the Fitness Warehouse, it's a weight training club in Newcastle, and they were members there.
- Q. And that's how you got to know them?
- A. That's right.
- 10 Q. How long did that Fitness Warehouse operate?
- A. How long was I an employee there?
- Q. Yes.
- A. Approximately a year.
- Q. So from sometime in '85 until -
- 15 A. Till the latter part of '86, around November.
- Q. How and when did you become acquainted with Allan Joseph Legere?
- A. The latter part of 1985 at the Fitness Warehouse.
- Q. The same place?
- 20 A. Yes.
- Q. Do you know from your own observation whether there were ever any occasions upon which the Daughneys and Mr. Legere would be at the Warehouse at the same time or were they always there at
- 25 different times?
- A. Several occasions they would be there at the same time.
- Q. On those occasions, and I don't want the exact words, what if anything did Mr. Legere express to
- 30 you - I say what if anything, first of all about Linda?
- A. Linda, if she was the shorter of the two ladies, expressed no interest in her.
- Q. What if any kind of a thing did he say about
- 35 Donna, the taller of the two ladies?

Kenneth Black - Direct

A. He had expressed a physical attraction for her.

5 Q. On how many occasions, and I realize you wouldn't have counted this, but give me a rough idea of how many occasions he would have expressed that physical attraction.

A. I would say on several occasions.

10 Q. How many occasions would you have met with Mr. Legere, talked with Mr. Legere, at times when one or other of the Daughneys were present?

A. It would be on several occasions, I was a full time employee there.

15 Q. Were there occasions when you talked to Mr. Legere and the Daughneys were present and he didn't make any comments?

A. It's possible, I couldn't recall.

20 Q. But in general terms, then, the comments would have been - what was the expression you used, how many occasions?

A. Several occasions.

25 Q. Do you know if in addition to speaking to you on that topic - do you know if Mr. Legere ever had any conversation personally with either Donna or Linda or both?

A. He would approach them and offer them assistance in doing exercises.

MR. ALLMAN: Thank you.

30 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Black, you say you were an employee there?

A. That's correct.

Q. So you would have been there most of the day?

A. Depending on the shift, but 40 hours a week.

35 Q. Now, Mr. Black, people making comments about

physical attractions towards the opposite sex,  
it's not uncommon?

5 A. No, it's not.

Q. And in the Fitness Warehouse it's not uncommon?

A. I would say not, no.

Q. Have you ever made comments yourself or had such  
thoughts yourself?

10 MR. ALLMAN: Well, that's two questions. Separate them.

Q. Have you ever had such thoughts of physical  
attraction yourself towards members of the  
opposite sex?

A. Yes.

15 Q. And have you ever expressed them?

A. I would say yes.

Q. Now, you mentioned that at least on one occasion  
you saw Mr. Legere offer to assist both Daughneys  
or one of the Daughneys with their exercises?

20 MR. ALLMAN: I don't think he said on at least one  
occasion. I stand to be corrected about that.

THE COURT: Well, he said on some occasions so it must  
have been at least one occasion.

MR. FURLOTTE: On some occasions? Well, that's at least  
25 once. Some is at least one.

MR. ALLMAN: The statement isn't the same.

MR. FURLOTTE: Are you sure there's more than one  
occasion?

A. Positive, yes.

30 Q. That you remember?

A. That's correct.

Q. That would be on the - on what machine was that?

A. Pardon me, what machine?

Q. Do you know which machine it was that he offered  
35 assistance?

- A. It wouldn't have been during a particular exercise, it would have just been in general terms as far as their being in attendance at the same time.
- 5
- Q. Do you know whether or not he gave her instructions how to use a machine?
- A. Yes.
- 10
- Q. So it's not uncommon for people to ask other people for instructions how to use the machine?
- A. That wouldn't be uncommon, no.
- Q. What was Mr. Legere's routine? What time would he get there in the day, the same time every day?
- 15
- A. I couldn't recall. It would be probably early afternoon.
- Q. Early afternoon or morning maybe?
- A. No, I'd say early afternoon.
- Q. Did he usually work out with one individual?
- 20
- A. By himself.
- Q. Usually by himself?
- A. Yes.
- Q. Was there anybody else that was there usually the same time that he was?
- 25
- A. Oh, there would be people in attendance, sure.
- Q. And that people would attend at the same time usually every day?
- A. I couldn't say, it would vary.
- Q. It would vary, but it wasn't common for Mr. Legere to work out with other people, be they male or female? He would go in, do his exercises, and leave; is that right?
- 30
- A. Correct, yes.
- Q. Other individuals would - and including men, would go in, do their exercises, and hang around to
- 35



watch other people?

5 A. I couldn't say if they would go in to watch other people. They would go in and do their thing and leave, I would assume.

Q. But some of them would hang around after they finished their workout?

A. Quite possible, yes.

10 Q. Mr. Legere was not one of them?

A. He didn't seem to, no. He would do his stuff and leave.

Q. Did you know Mr. Legere's girlfriend at the time, Christine Seeley?

15 A. I know of her.

Q. She'd have basically put most of the women there to shame regarding fitness and physical -

A. Pardon me?

20 Q. She'd have basically put most of the women that was at the Fitness Warehouse, say, to shame, or as far as physical fitness or attraction went? She was a good-looking girl?

THE COURT: He hasn't been qualified as an expert.

MR. FURLOTTE: This is purely subjective, My Lord.

25 THE COURT: I'll let the question go anyway. Who are we talking about here, Christine somebody?

MR. FURLOTTE: What's her name, Christine who?

A. I'm not - you're going to have to tell me.

MR. LEGERE: Searle.

30 Q. Searle?

A. She wasn't hard to look at if that's what you're getting to, yes.

Q. She was better to look at than most, you could also put it that way?

35 A. Pretty general terms there, yes.

Joseph Hubert Hawkes - Direct

Q. You said you worked there about a year?

A. That's correct.

5 Q. It was only open about a year or did you just work there -

A. Oh, no, it's still open now. I was just employed there for a year.

MR. FURLOTTE: I have no further questions.

10 MR. ALLMAN: I have no re-examination.

THE COURT: Thank you very much, Mr. Black, you're finished. You have another witness?

15 JOSEPH HUBERT HAWKES, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

A. Joseph Hubert Hawkes.

Q. What town do you reside in?

20 A. Village of Douglastown, New Brunswick.

Q. That's near Newcastle?

A. Yes.

Q. And how long have you resided there?

A. Since '83.

25 Q. Were you ever acquainted with two ladies the name of Donna and Linda Daughney?

A. Yes, I was.

Q. Where were you acquainted with them?

30 A. I used to be a member of the Fitness Warehouse in Newcastle.

Q. The jury heard from the previous witness but you just tell us, too, what was or is, for that matter, the Fitness Warehouse?

A. It's a spot where you go and weight train.

35 Q. Whereabouts?

- A. It was on Henry Street in Newcastle, downtown.
- Q. O.K., and you were a member there?
- 5 A. Yes, I was.
- Q. And what about Donna and Linda Daughney, what were they?
- A. They were also members.
- Q. And about what time frame are we talking when you would have seen or become acquainted with them in that context?
- 10 A. Around the winter, like in '86, the spring and winter in '86.
- Q. Are you acquainted with Allan Joseph Legere?
- 15 A. Yes, I am.
- Q. Where is he now?
- A. Seated over between the officers in the docket.
- Q. You're pointing to the prisoner's box, O.K., and how and where did you become acquainted with Mr. Legere?
- 20 A. Through working out at the Fitness Warehouse.
- Q. I'm sorry, could you just explain what you mean?
- A. Well, people go in and work out together there and as you do routines you just bump into and chat to people as you go.
- 25 Q. So what would Mr. Legere be doing with the Fitness Warehouse in that time frame?
- A. Weight training.
- Q. During those occasions when you had encountered Mr. Legere at the Fitness Warehouse would there ever be any occasions to your knowledge, from your observation, when he would be present at the same time as Donna or Linda or both of the Daughneys?
- 30 A. Yes.
- 35 Q. On those occasions what if anything has Mr. Legere

Joseph Hubert Hawkes - Direct

ever said to you, and I don't want the exact words, I want the thrust of what he would say.

- 5 A. Mr. Legere expressed a physical attraction towards Donna Daughney.
- Q. Only Donna?
- A. Yes.
- Q. When you would have these conversations with Mr. Legere - you were in court when the previous
- 10 witness, Mr. Black, gave his evidence?
- A. Yes.
- Q. Was he present at these conversations or are these separate and additional conversations?
- 15 A. These would be separate. We would be over weight training on the machines and there would be a desk where you would check in and Kenny would be over there unless he was out helping someone with the machine.
- 20 Q. So when Mr. Legere was talking to you on this topic would Black be a part of that conversation?
- A. No.
- Q. Again I'm sure that you haven't counted these things, but can you give me a word that describes
- 25 how often you would have conversations of that kind with Mr. Legere?
- A. About a half-dozen.
- Q. About a what?
- A. Half-dozen, about six.
- 30 Q. Would there be occasions when you and Mr. Legere exchanged conversation and this topic did not come up?
- A. Oh, yes.
- Q. So it's not - thank you, Mr. Hawkes.
- 35 THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

- 5 Q. Mr. Hawkes, how often would you attend the  
Fitness Warehouse?
- A. I usually trained around four or five times a  
week.
- Q. Four or five times a week?
- A. Yes.
- 10 Q. Maybe I'll ask you the same question I asked Mr.  
Black. Have you in your mind ever formed a  
physical attraction for the opposite sex?
- A. Yes.
- Q. And have you ever expressed any comments about it?
- 15 A. Yes.
- Q. Pardon?
- A. Yes.
- Q. And have you heard anybody else - aside from what  
you say you heard Mr. Legere say have you heard  
20 anybody else in the physical warehouse - Fitness  
Warehouse - about physical attraction towards  
members of the opposite sex?
- A. Yes.
- Q. So it's not uncommon?
- 25 A. No.
- Q. Now, that's how far back ago, back in the spring  
of '86?
- A. Yes.
- Q. Could it be back in 1985?
- 30 A. I joined the Fitness Warehouse in February of '86.
- Q. You joined in February of '86?
- A. Yes, early in February.
- MR. FURLOTTE: I have no further questions.
- MR. ALLMAN: I have no re-examination.
- 35 THE COURT: Thank you very much, Mr. Hawkes. That's all

Lawrence Clark - Direct

for you, thank you. What number were they?

MR. ALLMAN: They were 191 and 192. And incidentally,  
5 while we're on the subject of witness list, one of  
the witnesses, #117, Corporal Louis Dorais, he has  
recently undergone an operation and he's only a  
continuity witness and Mr. Furlotte has been kind  
enough to indicate that we don't require him.

10 THE COURT: Now, you have another witness?

MR. WALSH: Yes, My Lord. I believe we'll start this  
afternoon, if you wish, with Mel Vincent, the  
Fire Marshall, he might be longer, but I would  
like to recall Lawrence Clark.

15

LAWRENCE CLARK, called as a witness, having  
already been sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

MR. WALSH: I believe, My Lord, to refresh the jury's  
20 memory, Mr. Clark, you were declared an expert as  
a heating technician and in residential oil burner  
mechanics. I believe that was the general title?

A. Yes, I was.

Q. Mr. Clark, you did an inspection at the Flam  
25 residence and you so testified to that.

A. Yes.

Q. Did you also do a similar inspection at the  
Daughney residence?

A. Yes, I did.

30 Q. I see, and the Daughney residence, you're familiar  
with that particular residence?

A. Yes, I am.

Q. And I'll refer you to Exhibit P-33, photographs 1  
and 2. Is this the particular residence you're  
35 referring to?

A. Yes, it is.

Q. Would you tell the jury, please, in your own  
5 words, your involvement and how you went about  
your inspection and your conclusions?

A. Yes, on October 16, 1989, I was contacted by the  
R.C.M.P., a Sergeant Dan Chiasson, and asked if I  
10 would do an inspection on the heating system in  
the Daughney residence, which I did, and the first  
thing that - of course the heating system again  
was located in the basement of the building, and  
as I moved into that area the first thing, of  
course, is to take a general view of the equipment  
15 itself to determine if there's been any tampering  
or anything, you know, with the system itself, and  
I could find nothing with the exception that the  
electrical service switch at that time was on the  
off position. Now, because of the time of the  
20 year I could only assume that perhaps it was  
turned off during or just after the fire was  
extinguished.

Q. Now, what kind of a heating system was there in  
that house?

A. It was a forced air, oil fired heating system.

Q. O.K., now, would you continue, please, with your  
inspection?

A. Yes. The general condition of the furnace itself  
was good. There didn't appear to be anything  
30 wrong with it, it looked to be well maintained,  
and there was no indication that there was any  
problem with it. I then inspected the fan  
compartment, the area of the furnace that circu-  
lates the air through the house, and I looked at  
35 the air filters themselves, the fan, the fan belt,

Lawrence Clark - Direct

5 the compartment itself, the return air ducts, to  
see if there was any sign that in fact it had been  
operating during the fire, and I could find no  
such evidence. There was, of course, small  
charred pieces of wood and debris in the filter  
which I determined had come down through the  
system from the water itself used in the fire-  
10 fighting process. These charred items left no  
effect on the filter at all. They hadn't burned  
so in fact they had been out when they reached the  
filter.

15 The fan controls, combination fan limit  
control, was all in operating condition, there was  
no reason to indicate that it had malfunctioned in  
any way.

20 The burner itself and the controls that  
operate the burner were examined. Again I could  
find no sign that it had malfunctioned in any way,  
it was all in good condition.

25 The next thing I looked at was the fuel tank  
and the fuel lines leading to the tank. The tank  
was located at the rear of the home. It was in  
good shape, there was no problem with it, and the  
fuel lines were in good shape, there was no leaks,  
there was no evidence of any oil leaking that  
would perhaps aid in the fire.

30 At that time I - there's usually a shut-off  
valve on a tank and at that time I turned the  
valve off, O.K., before I left. The smoke pipe,  
the barometric draft control, and the chimney  
were examined and found to be in good working  
condition. Again no problem with them that would  
35 determine or that would lead to a fire. The



Lawrence Clark - Direct

5 surrounding area was checked for signs of charring  
and that is to say the area surrounding and above  
the heating system, and I could find no signs of  
charring in that area. There was of course a lot  
of debris that came into the basement. Again -  
usually, I think, in this case it would come by  
way of the water used by the fire department  
10 during the extinguishing the fire. There was also  
one water line that was broken and this in itself,  
the water was running into the basement at that  
time.

15 The furnace itself, after the inspection my  
conclusion was that the furnace did not start nor  
did it aid in the fire on this residence in any  
way.

Q. Anything associated with the heating equipment -  
in your opinion was there anything associated  
20 with the heating equipment at all that could have  
aided or caused the fire?

A. No.

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

THE COURT: Cross-examination, Mr. Furlotte?

25 MR. FURLOTTE: I have no questions.

THE COURT: Thank you very much, Mr. Clark. I think  
that's all for Mr. Clark?

MR. WALSH: That's all.

THE COURT: You're excused. Thank you.

30

BLAIR CARROLL, called as a witness, having already  
been sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Mr. Carroll, you've testified previously in this  
35 particular trial?

- A. Yes, I have.
- Q. You did an inspection of the Flam residence?
- 5 A. I did so, yes.
- Q. And you were declared an expert in the field, I believe, generally of electrical building inspection?
- A. Yes, I was.
- 10 Q. You work for the Province of New Brunswick and that is one of the things you actually do do, is that correct?
- A. That's correct.
- Q. Would you please tell the jury in your own words what if anything you did with respect to the
- 15 Daughney residence?
- A. On October 15th I received a call from the R.C.M.P. to carry out an electrical inspection.
- Q. That's 1989?
- 20 A. That's 1989, at the Daughney sisters, 136 Mitchell Street, Newcastle, County of Northumberland, and I asked them if they wanted it done right at that day and they said, well, it wasn't urgent, so on October 16th I proceeded, arrived at the scene
- 25 there at 136 Mitchell Street.
- Q. O.K., I'll show you Exhibit P-33, photographs 1 and 2. Is that the residence?
- A. That's the residence.
- Q. All right, just speak up a little bit more, Mr.
- 30 Carroll, and explain to the jury what you did.
- A. Anyhow, proceeding, when I entered the building I found they had a 100 amp. service entrance controlled with a 100 amp. switch which was fed with a condu nipple installed between the switch
- 35 and it was a 12 circuit panel with a range block.

Blair Carroll - Direct

5 In examining the panel I dismantled the cover and checked over all connections. All connections appeared to be tight. I took out all the fuses, checked for any bridging or by-passing inside, no indication of any bridging or by-passing in the fuses.

10 After examining that I proceeded to carry out my inspection in the house on the electrical. On examining the electrical throughout the house I proceeded upstairs and went through the both rooms, the room to the left I guess was Donna Daughney's. I found nothing in there that would attribute to the electrical and that's by examining the light switches and receptacles that were in the room.

15 Also at the top of the stairs to your right was Linda's room. I proceeded there and done an examination as well and I found nothing to indicate anything of an electrical nature there.

20 Q. Did you check the other rooms?

A. I checked other rooms. Bathroom I looked into but there was no damage done so I didn't proceed there any farther. I checked down back of the fridge which was located underneath in the kitchen area which is kind of adjoining the laundry room, and there was just evidence of a partial of the ceiling had fell down. Whether it was related to the fire in the room above is not for me to say, but I found nothing of electrical nature in that area.

25 Q. Did you have occasion to check the basement?

A. Yes, I did, I proceeded and - the entry of the basement, by the way, was a - there was a pantry

30

Blair Carroll - Direct

5 under the stairwell, you had to go in, open the  
door, and then there was an access hatch to go  
down below. I went down underneath and it was  
quite muddy at the time, I suppose due to the  
water, because it was only a sandy base for there  
was no cement, and I found nothing there because a  
lot of the branch circuits that fed from the panel  
10 were run underneath the bottom of the - under the  
side of the joist, so you know, my estimation, I  
couldn't, you know, contribute anything electric-  
ally as to the fire.

Q. That is your opinion, there -

15 A. That's my opinion.

Q. - was nothing about the electrical system that  
would in your opinion contribute or have aided or  
caused the fire?

A. That is correct, yes.

20 MR. WALSH: I have nothing further, My Lord.

MR. FURLOTTE: I have no questions.

THE COURT: Thank you very much, Mr. Carroll, that's the  
end of you, I guess. You're not required to come  
back.

25 MR. WALSH: My Lord, I would suggest that perhaps this  
might be an appropriate time to take lunch. Our  
next witness would be Mr. Vincent and he'll be  
somewhat longer.

30 THE COURT: All right, so we'll retire now for lunch,  
thank you. Two o'clock.

(JURY WITHDRAWS.)

0 (COURT RESUMES AT 2:00 p.m., SEPTEMBER 17, 1991.)  
(ACCUSED IN DOCK.)

THE COURT: And the jury?

5 (JURY CALLED - ALL PRESENT.)

THE COURT: And you have a witness, Mr. Walsh?

10 MELVIN VINCENT, recalled, having already been  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

THE COURT: You're still under oath, Mr. Vincent.

MR. VINCENT: Yes, sir.

15 MR. WALSH: You are Melvin Vincent, you've testified  
previously in this particular trial?

A. Yes.

Q. You're Fire Marshal for the Province of New  
Brunswick, or Acting Fire Marshal for the  
Province of New Brunswick?

20 A. Yes.

Q. You've been previously declared an expert during  
this trial at your first appearance in the fields  
of chemistry of combustion, fire technology, and  
fire investigation procedure?

25 A. That's correct.

Q. Mr. Vincent, you have in fact conducted an  
investigation with respect to the fire at the  
Linda and Donna Daughney residence, is that  
correct?

30 A. Yes.

Q. I refer you to Exhibit P-33, photographs 1 and 2.  
Is this the residence that you conducted the  
investigation at?

A. Yes.

35 Q. Would you tell the jury, please, in your own

Mr. Vincent - Direct

words, your involvement in this particular matter?

A. Yes, on October 14, 1989, as a result of a phone  
5 call to my office I proceeded to Newcastle, New  
Brunswick where I had a meeting and discussion  
with the chief and officers of the Newcastle Fire  
Department. Later that day I proceeded to the  
10 Newcastle Detachment of the R.C.M.P. on Chaplin  
Island Road where further discussions and meetings  
took place and I was asked if I would do a fire  
scene examination of a fire incident occurring at  
136 Mitchell Street in the Town of Newcastle,  
Province of New Brunswick.

15 On October 15th I proceeded to the fire  
scene, met with certain members of the R.C.M.P.  
of whom I was acquainted with, introduced myself  
to those members I were not acquainted with, and I  
proceeded to carry out a fire scene examination on  
20 a two-storey wood frame dwelling located at 136  
Mitchell Street, Newcastle, New Brunswick. I  
toured the surrounding grounds outside the  
building and when I completed that I entered the  
building, carried out a walkabout tour of the  
25 various areas of the residence, and as a result of  
that preliminary examination of the building I had  
noted that there were two areas in the building  
where fires had occurred. They were on the second  
floor of this building at the previous located  
30 address and if I were facing the building from  
Mitchell Street they would be on the second floor,  
lefthand side of the building.

Q. O.K., at this time, Mr. Vincent, I'm going to ask  
you to utilize these diagrams, I'll just get them  
35 in place for the jury and the Court. All right,

Mr. Vincent - Direct

Mr. Vincent, are you familiar with these particular diagrams?

5 A. Yes. Yes, I am.

Q. O.K., utilizing that particular diagram would you explain to the jury what you did?

A. This fire drawing would be the ground floor of the building at 136 Mitchell Street in the Town of Newcastle, and the drawing closest to me would be the floor area of the second floor. After having toured the ground area, first floor level, and the second floor level, I journeyed up a set of stairs in the centre of the building and came up to a landing area where I'm pointing the laser pointer and I first went into a bedroom through a door here, into this bedroom which was identified to me as Linda Daughney's bedroom. The components of the room were what you would normally expect to find in a bedroom, dressers, the bed. In particular the closet area that I've pointed to was the area that showed the greatest in depth or seated burn in that particular bedroom. There was alligating on the interior walls of the closet. The floor of the closet had been burned out, I later found out it had been actually kicked out by a firefighter, and it was evident to me from the examination of what was left of the closet that the fire had burned the hottest in that area and had lasted the longest in that area, and after having examined other areas of the bedroom I came to the conclusion that the point of origin of a fire occurring in Linda's bedroom was in fact the closet.

35 There had been a flash-over in this bedroom,

Mr. Vincent - Direct

and a flash-over means that the conditions within  
that bedroom were such that a complete combustion  
5 occurred. There was sufficient air, fuel or  
oxygen there, and temperature to a level where  
everything in there was capable of being ignited,  
and that's most likely due to the fact that the  
room was fairly enclosed and rather tight. That  
10 flash-over occurred and simply was an extension of  
the fire in the closet where the hot ball of red  
fire singed the surface of a lot of the content of  
that room as compared to it being burned in depth  
throughout. That's a frequent occurrence that  
15 happens, there's nothing strange or unusual about  
the flash-over.

I then left the bedroom identified to me as  
Linda Daughney's bedroom and proceeded across the  
hallway into a bedroom at the front of the  
20 residence on the second floor which was identified  
to me as Donna's bedroom. This bedroom wasn't as  
well furnished as the bedroom at the rear but  
there were dressers and there was a bed and also a  
closet. A fire had occurred in this bedroom but  
25 didn't cause anywhere near the amount of internal  
structural damage as occurred in Linda's bedroom.  
Closer examination of this bedroom, I examined  
again the closet and I found a point of origin of  
fire in this bedroom to be the closet that I'm  
30 pointing to. There was evidence of hangers on a  
rack, evidence of some remnants of what appeared  
to be clothing, ladies' shoes, a box of pantyhose,  
and other ladies' apparel, all of which had not  
been destroyed, allowing me to identify some of  
35 the items that I've just mentioned.



Mr. Vincent - Direct

5                   The fire in this closet burned the inside of  
the door, which was open, and that was determined  
because the hinges on the door had been smoked on  
both the jamb and door side indicating the fire  
and flame had access to it, had the door have  
been closed it would not have been damaged, but  
the fire came out of the closet and rolled along  
10 the wall, over the ceiling of the bedroom, but  
caused very little other structural damage.

                  After I concluded this was the point of a  
separate and second point of origin from that of  
the first one I previously identified I deter-  
15 mined that there was no connection between the  
fire occurring in this bedroom and the fire  
occurring in this bedroom (indicating). There  
was no evidence of any burn here; smoke spread,  
carbonization, blackness, but no fire damage to  
20 connect those two fires.

                  I then went back into the rear bedroom  
and examined more closely the fire that in my  
opinion was the point of origin in the closet, and  
the fire had gotten into the partition and spread  
25 across this bedroom and around this corner and  
burned through the wall on the inside where I'm  
flashing the light. It was difficult to determine  
if the heat had radiated from that wall to this  
mattress, and I can't positively say but I would  
30 point out that the bed mattress in this location  
might have been the possible site of a second  
point of origin, but because of the flash-over  
that occurred from the fire here, with everything  
being singed, because of the fire spread through  
35 the partitions and then into this bed on that

Mr. Vincent - Direct

side, I can't say for certain that that in fact was a second point of origin.

5           When the fire burned in this closet and in  
burning the floor out of the closet and later  
being advised that a member of the Newcastle Fire  
Department had actually caused the bottom of the  
closet to be removed by kicking it out, a lot of  
10       the content of this closet that had burned had  
fallen through the floor of the closet down into  
the wall of the kitchen in this area here on the  
first floor. Those hot brands and embers had  
actually burned through the interior wall of the  
15       kitchen and landed on the floor in this area.  
They sat there for a period of time and then  
started the fire down there again and it burned  
back up the interior wall of the kitchen perhaps  
four or five feet, but the fire, I'm satisfied,  
20       originated here, went through the floor of the  
closet, down into the floor below, smoldered, and  
then burned back up the interior wall.

As is normal it was then my responsibility as  
requested to determine the cause and point of  
25       origin, points of origin I had established by the  
evidence I'm giving now, and the fire cause  
required me to endeavour to remove all of the  
natural causes that I was aware of. I could find  
no natural causes for the two separate points of  
30       origin. I asked to have a competent electrical  
inspector and a qualified heating inspector check  
out the electrical wiring and the heating  
appliances in the home, which is a standard  
practice, and as a result I have concluded that  
35       the two points of origin were in the two closets

Mr. Vincent - Direct

in Linda and Donna's bedroom. The fire extended from there throughout Linda's bedroom and partially throughout Donna's. In the absence of natural causes it is my opinion those fires were incendiary in nature; that is to say, they were set.

5

Q. What if any evidence do you have of accelerants being used like gasoline or anything of that nature?

10

A. There was no evidence both in the manners in which the fires occurred, more particularly in the manner in which they spread, there was no evidence of accelerants having been used in those two fires.

15

Q. And do you have an opinion as to the kind of materials that would have been used to ignite the fires in either closet?

20

A. Certainly in Donna's bedroom there was a fair amount of material left that I could recognize what the fuel was. That type of fuel can be ignited with a cigarette lighter, cardboard match, wooden match, and I would suspect in my opinion that's what might have caused those fires, because of the absence of any other source of ignition.

25

Q. Are you able to express an opinion to the jury as to the length of time that either of the fires in either closet were burning?

30

A. Yes, I examined the content of Linda's bedroom, and there have been studies conducted and statistics available that determines through laboratory analysis how long it takes certain types of materials to burn, and after having examined the scene I would suggest that the fire in Linda's

35

Mr. Vincent - Direct

5 bedroom could have been burning as short a time as  
an hour, perhaps two hours. That does not mean  
that there couldn't be extensions on the lower  
side or the higher side. It's impossible for  
someone to reconstruct that bedroom, to put an age  
on the materials that are inside, an age on the  
wood, the moisture in the wood and all of those  
10 factors, and give you a guaranteed accurate time.  
As I examined the room I'm satisfied the materials  
in there would reasonably fall within the realm of  
an hour to two hours.

15 Q. And do you have an opinion with respect to the  
point of origin in Donna's bedroom, in that  
closet, as to the length of time that fire had  
been burning?

20 A. Yes, as I mentioned earlier there was very little  
damage to this bedroom, very little damage to the  
closet itself. The duration, the length of time  
of this fire burning, would be much less than that  
of the fire that occurred in Linda's bedroom, and  
I would more likely say perhaps 10, 15 minutes as  
an estimate of how long the fire in Donna's  
25 bedroom lasted.

Q. With respect to Donna's bedroom are you able to  
express an opinion to the jury as to when during  
that night that fire would have been burning in  
that 10 to 15-minute period?

30 A. No, I can't answer that question.

Q. Do you have, Mr. Vincent, anything else you wish  
to add with respect to that?

A. No.

35 Q. You have conducted an investigation and given  
testimony with respect to the fire at Annie

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Flam's, is that correct?

A. Yes.

5 Q. Are you able from your examination of the fire at Annie Flam's and the examination of the fire at Linda and Donna Daughney - able to express any opinions with respect to a comparison between them in relation to any similarities?

10 A. A comparison between the Daughney fires and the Flam fires?

Q. Exactly.

A. Well, yes. May I refer to previous evidence at the Flam fires?

15 THE COURT: Oh, yes.

A. The Flam fires, both of the fires I investigated there were in fact on the second floor. They were both in bedrooms. The Daughney fires points of origin as determined were both on the second floor and both in bedrooms. I found no accelerants or no reason to believe accelerants were used in either of those fires. I did determine that the points of origin were similar in the Flam fires in that the points of origin were established as  
20 being in the closets in those bedrooms. The points of origin in the Daughney fires were in the closets of their bedrooms. Through the assistance of the two technical resource people they have ruled out the possibility of electrical involve-  
25 ment in the fires, as well as the possibility of any heating appliance or heating apparatus as being a cause of the fires. The materials ignited, certainly not the same because it's different homes, but were class A, ordinary  
30 combustible materials, clothing, perhaps dresses,  
35

Mr. Vincent - Direct

5 blouses, sweaters, maybe a jacket. The material  
ignited in both residences in the four closets in  
the four bedrooms was the same type of material in  
each instance, bearing in mind it was different,  
but the same type of material.

10 Q. What if any similarities were there between both  
fires in terms of the type of ignition, kind of  
ignition?

A. I can only respond to that by saying that we ruled  
out to our satisfaction any natural cause and the  
feeling of this investigator is that the same  
types of ignition probably applied to all fires.

15 Q. And in relation to accelerants?

A. There was no accelerants that we identified at  
all.

Q. In either case?

A. In either case.

20 Q. Mr. Vincent, if you would be so kind, please, as  
to take this grease pencil, and I would like you -  
as you did in the Flam matter, would you circle  
the points of origin of the fires that you were  
able to identify?

25 (Witness marking.)

THE COURT: I'm sorry, Mr. Walsh, that was circle the  
points of origin?

30 MR. WALSH: Yes, that he was able to identify. Now, as  
you did in the Flam matter you've circled an area  
that was a possible source of another point of  
origin. You have given evidence today, I would  
like you to circle the area where you had indica-  
35 ted was a possible source of another origin of  
fire and put a question mark within it as you did  
in the Flam one - inside the circle.

(Witness marking.)

MR. WALSH: Thank you. Just for the record, My Lord, he  
5 has made those circles on Exhibit P-29. I have no  
further questions.

CROSS-EXAMINATION BY MR. FURLOTTE:

10 Q. Mr. Vincent, the fire in Linda's bedroom, how did  
it appear to be extinguished?

A. In Linda's bedroom? To the best of my knowledge  
it was extinguished by the Newcastle Fire Depart-  
ment.

Q. And how about the fire in Donna's bedroom?

15 A. I was under the impression initially that that  
fire had been extinguished by the Newcastle Fire  
Department. I'm advised now that it perhaps  
wasn't. The only deduction I can make from that  
is that the fire most probably burned itself out  
20 as a result of being extinguished.

Q. So you didn't personally investigate as to the  
possible cause of extinguishment?

A. No. No.

25 Q. So it could have been that one of the Daughney  
girls would have put the fire out themselves?

A. It's possible.

MR. FURLOTTE: No further questions.

THE COURT: Re-examination?

30 REDIRECT EXAMINATION BY MR. WALSH:

Q. With respect to the possible extinguishment of  
that fire, who would you rely on, whose evidence  
would you rely on, to determine that?

35 A. If I was to investigate the extinguishment  
process I would rely on the evidence of the Chief

of the Newcastle Fire Department.

Q. And which firemen would be the most important ones  
5 to listen to with respect to that?

MR. FURLOTTE: My Lord, I think we're getting into hear-  
say evidence on this matter.

MR. WALSH: I'm just trying to point out, My Lord, that  
10 if you were going to that particular aspect, he's  
been qualified in fire investigation procedure and  
I would like to know whose evidence he would rely  
on in assisting you in determining the possible  
causes of extinguishment. Who would be the most  
important people to talk to associated with that?

MR. FURLOTTE: My Lord, if he's going to be allowed to  
15 get into this I'd like the ability to cross-  
examine again.

MR. WALSH: I don't want the contents, I'm just asking  
Mr. -

20 THE COURT: Well, no, you can't get into -

MR. WALSH: I don't want the contents, I just want to  
identify the people that would be involved.

THE COURT: All right. Presumably the answer is going to  
be the fellow who put the fire out.

25 A. Could I have the question again?

MR. WALSH: Who would be the most important people to  
rely on in terms of trying to determine who  
extinguished the fire, or how it was extinguished?

A. The first person to enter the building on the  
30 scene.

MR. WALSH: The first, O.K., fine. Thank you, I have no  
further -

THE COURT: Do you want to ask a question about that, Mr.  
Furlotte?

35 MR. FURLOTTE: Yes, My Lord. Mr. Vincent, you stated the



Mr. Vincent - Re-Cross

fire in Linda's bedroom lasted one to two hours?

A. Yes.

5 Q. And the fire in Donna's bedroom lasted 10 to 15 minutes?

A. That's my opinion.

10 Q. So if the firemen would have put it out, the fire in Donna's bedroom would have had to start at least an hour after the firemen arrived there?

A. It would have had to start an hour after the firemen arrived?

15 Q. Well, if the firemen would have put out both fires and one lasted one to two hours and the other lasted 10 to 15 minutes, then it appears that the fire in Linda's bedroom would have been burning from one to two hours before the fire in Donna's bedroom would have been started.

A. I think that's correct, yes.

20 Q. So it would be more reasonable to conclude that somebody else would have put the fire out rather than the firemen, would it not?

A. Yes, on that basis, unless the fire burned itself out.

25 Q. Unless the fire burned itself out.

A. Yes.

Q. But we don't know if the fire burned itself out or somebody put it out?

A. That's correct.

30 Q. And if somebody put it out it would be more reasonable to assume that one of the Daughney girls put that fire out?

A. I can't say that. I can't say that.

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

35 THE COURT: You have the final word here on re-examina-

tion. Do you want to exercise it again?

MR. WALSH: No, My Lord, that's fine.

5 THE COURT: We won't go back and forth all afternoon  
but -

MR. WALSH: No, I just wanted to clarify that point for  
the jury, My Lord.

10 THE COURT: O.K., everybody is happy on that. Now, thank  
you, Mr. Vincent. Are you through with Mr.  
Vincent?

MR. WALSH: Yes, I am, My Lord. Thank you.

THE COURT: You're excused. Thank you.

15 MR. SLEETH: My Lord, the next witness will be Michel  
Fournier.

MICHEL FOURNIER, called as a witness, being duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

20 Q. Mr. Fournier, would you please state your full  
name and your occupation for the jurors?

A. My name is Gerald Michel Fournier. I'm a member  
of the Royal Canadian Mounted Police. I'm a  
police officer, my rank is constable. I'm  
25 presently stationed at the Bathurst Drug Section  
in New Brunswick. I'm also since 1988 a police  
artist for the Division. Since that date I've  
been involved in 43 criminal investigations where  
as a police artist where I give assistance to  
30 investigators for the R.C.M.P. and other police  
forces in the Province of New Brunswick.

Q. As a police artist giving assistance in this  
investigation what do you do, sir?

A. The role of a police artist, it's to provide to  
35 the investigator a sketch or a composite drawing

of the suspects. That sketch had been obtained by witness description.

5 Q. Could you relate to these jurors, please, the techniques which you employ in the preparation of this particular sketch? It's a composite drawing, I believe it's referred to?

10 A. Yes. First I have to mention that the sketch is an investigation tool. The sketch will be used by a police investigator for elimination purposes or for actual positive identification of suspects. To answer to your question, the procedure that I used through the year is the following. First I  
15 meet with the witness in the office. The first meeting with the witness is very important. The first meeting is done in an open portion of the Detachment office. At that time with the witness without having the witness knowing that I will  
20 choose a person in the room, normally there is other people in the room during that first meeting - without having the witness knowing what I will do I will choose one person and with that person I will try to get as much information on  
25 that person. For example, the age, race, height, weight, colour of hair, colour of eyes, dress.

Q. You get this information about that person from whom, please?

30 A. For myself. It will be a person present in the room. I make sure that the witness can see that person also. From there the witness and I will go in an interview room and then we start the actual process of having the sketch done. After a few  
35 minutes of small talk in the interview room - of small talk, I start with small talk with the

witness -

Q. To ease the witness.

5 A. And after I ask the witness to give me to the best of his knowledge a description of that person that I chose earlier in the open area of the office.

Q. The one you were talking about a moment ago, height, colour of hair, and visible to the  
10 witness?

A. Yes. The reason why I do this is to be able to rate that witness on his power of observation. The rate will be on a scale of 1 to 10. The average person that - average witness that I have  
15 dealt since 1988 will score in 5, 6 and 7. Sometimes it's higher, sometimes it's lower.

Q. What do you do if it's lower?

A. If it's lower I don't continue on with the composite drawing or the sketch, and from there  
20 if the score is high enough I will ask the person to give me a verbal description of the suspects. When the verbal description is done I will show the witness several pictures. I put together about 40 pictures of normal people, they're  
25 just - they're not suspects, they're just normal people, different race, different age group, different facial features. The reason why I do this is just to help me to start the sketch with something, and usually people will pick at least  
30 one picture. Sometimes they will pick one or two or three. It's just to start the drawing with something and from there I will start the sketch having the person sit just beside me on my left. I'm righthanded so having the person sit just  
35 beside me on my left very close he can see all the

work that I do.

Q. I'm going to ask you if you recall the name  
5 William Skidd?

A. Yes, I do.

Q. And how is it that you can tell the jurors here  
that you recall that name?

A. O.K., on the 31st of November, 1989, I met Mr.  
10 William Skidd for the first time in the R.C.M.P.  
Detachment in Newcastle, and with Mr. Skidd I was  
able to obtain from his descriptions a composite  
drawing.

Q. O.K., can you describe, then - you've related to  
15 the jurors in general terms the system you go  
through. Can you relate to the jurors what you  
did in relationship specifically to Mr. William  
Skidd?

A. I remember that I have done the same procedure  
20 with Mr. Skidd. I don't remember the person that  
I choose in the open area of the office but I  
remember that I followed the exact same procedure  
with Mr. Skidd.

Q. What rating did you give Mr. Skidd with relation  
25 to power of observation on your scale you were  
talking about earlier of 1 to 10?

A. The power of observation that I give to Mr. Skidd  
at that time was - on a scale from 1 to 10 was  
between 7 and 8.

Q. How long did it take you then to prepare your  
30 composite with Mr. Skidd? How much time was  
involved?

A. I spent approximately three hours with Mr. Skidd  
before I was able to obtain a sketch from his  
35 descriptions.

- Q. O.K., were there any particular problems encountered in the preparation of that sketch at the time?
- 5
- A. Well, some point - normally I don't use example for nose or eyes or mouth. In that particular case I remember that Mr. Skidd had problem with describing the eyes and nose and lips so I used -
- 10 I have a book, Ident-a-Kit, so I used that book and I had Mr. Skidd look through that book and Mr. Skidd was able to pick out example of eyes and nose and lips, what to him would be the closest to the suspect.
- 15 Q. O.K. Now, you refer to an Ident-a-Kit. What exactly are you talking about as you mention that to the jury?
- A. O.K., I have an example, an approximate example.
- Q. Can you relate it in words?
- 20 A. O.K., it's a small book. The side of it will be approximately 8 x 9, and it's got, that book, pictures of eyes, different types of eyes, different types of nose and chin, hairstyles and -
- 25 Q. And this Ident-a-Kit is furnished to you by whom, please?
- A. By the R.C.M.P.
- Q. And do you know who actually prepared that Ident-a-Kit, by whom it is published?
- 30 A. It's published by Smith and Wesson. I don't remember the name of the person prepared the Ident-a-Kit.
- Q. Is this a routinely used device for police artists across North America?
- 35 A. It is.

Q. Do you recall for sure what was the date on which you met with Mr. Skidd, please, the first time?

5 A. The first time I met with Mr. Skidd was the 31st of November - excuse me, 31st of October, 1989.

Q. Thank you very much, sir. Was that the only occasion when you saw Mr. Skidd?

10 A. I met with Mr. Skidd in other occasion on the 5th of November, 1989, again at the R.C.M.P. Detachment in Newcastle.

Q. Do you have with you the sketch which you prepared in October?

A. Yes, I do.

15 MR. SLEETH: My Lord, I'd ask this item be marked. I believe it should be MM.

THE COURT: All right.

20 MR. SLEETH: My Lord, my learned friend informs me he has no objection to this going into evidence immediately. That would be, I believe, 54. The last exhibit was P-53, a duplicate of P-32(4).

THE COURT: P-54, all right, so we won't use MM.

25 MR. SLEETH: Thank you, My Lord. Just to be quite sure, witness, P-54, an exhibit presently before you, can you relate to us when that was prepared, by whom, and on whose directions?

30 A. The item marked P-54, it's a drawing that I have done on the 31st of October, 1989, from the description given by Mr. William Skidd. I got a verbal description of the suspects. Also on the sketch my name and my signature.

Q. It was prepared by yourself?

A. Yes.

35 MR. SLEETH: Thank you very much. I have no further questions, My Lord.

THE COURT: Cross-examination, Mr. Furlotte?

MR. FURLOTTE: My Lord, I do not wish to cross-examine  
this witness at this time. I would like to defer  
5 that cross-examination to a later date, if  
necessary, with the agreement of the Crown  
Prosecutor.

THE COURT: Do the Crown have any objection to producing  
the witness again?

10 MR. SLEETH: No, we have no problem with that, My Lord,  
and we will produce the witness, so we'd only  
ask, perhaps, there be some reasonable time  
notification from Mr. Furlotte. The witness is  
involved with other matters.

15 THE COURT: You're in Bathurst now, Constable?

A. Yes, My Lord.

THE COURT: Will you undertake to give some sort of  
appropriate notice, Mr. Furlotte?

MR. FURLOTTE: Oh, yes, My Lord.

20 THE COURT: Is it after some other witness testifies?

MR. FURLOTTE: It will probably be after some other  
witness testifies. I'm not sure about that.

MR. SLEETH: No problem for us, My Lord, as long as -  
some reasonable opportunity for Constable  
25 Fournier to be able to make himself available.

THE COURT: All right, and you shouldn't, of course,  
discuss this matter with anyone until all of  
your testimony is completed.

A. Yes, My Lord.

30

MARK A. MANDERSON, called as a witness, being  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name?

35 A. My name is Mark Anthony Manderson.



- Q. And where do you live, what town, Mr. Manderson?
- A. I live in the town of Bushville.
- 5 Q. Whereabouts is that in relation to the Newcastle-Chatham area?
- A. That is in between Newcastle and Chatham.
- Q. On the 14th of October, 1989, where were you employed?
- 10 A. Miramichi Pulp and Paper.
- Q. Whereabouts is that?
- A. That is in Newcastle.
- Q. And what time were you due to start work on that date?
- 15 A. At 6:00 a.m., sir.
- Q. In order to get from your residence to the mill where you were working what route did you have to take and in particular what bridge did you have to go over?
- 20 A. Well, I proceeded in a northerly direction across the Morrissey Bridge. After I crossed the bridge I take a lefthand turn on Mitchell Street.
- Q. I'm going to show you a couple of photographs. The first one is P-32, #4. If you look at P-32, #4, you can see in the middle lefthand what appears to be the end of a bridge?
- 25 A. Yes.
- Q. Is that the bridge you're talking about?
- A. That is the bridge I took, yes.
- 30 Q. Can you just trace for me and then I'll show the jury the route you take after you come off the bridge?
- A. O.K., here and I took a left right here on Mitchell Street.
- 35 MR. ALLMAN: My Lord, he's indicating straight up from

5 the bridge and then the first left which I think  
other witnesses have identified as Mitchell  
Street.

THE COURT: O.K.

MR. ALLMAN: I'll show the jury, straight up from the  
bridge and then the first left which is Mitchell.  
Is this a route that you're familiar with?

10 A. That is a route I take every day.

Q. I'm showing you now another photograph. This one  
is P-32, #7, which is also D7.

A. Mm-hmm.

Q. Do you recognize what that shows?

15 A. Yes, I do.

Q. The street that's emerging from the left and  
running across centrally as you look at the  
picture, what street is that?

A. That is Mitchell Street.

20 Q. And would you have continued on your route up to  
the end of Mitchell Street?

A. Yes, I would have.

Q. And then what would you have done?

A. I would have veered right and travelled northerly.

25 Q. So now you're heading on the picture at a 90  
degree angle towards the bottom of the picture?

A. That is correct, yes.

Q. Or putting it another way, you'd turn right just  
about where that blue car is?

30 A. Yes.

MR. ALLMAN: Does Your Lordship have that?

THE COURT: Yes.

MR. ALLMAN: He's indicating, members of the jury, along  
Mitchell, turning right where the blue car is.

35 THE COURT: What was the name of that street? Park, was

it?

5 MR. ALLMAN: I've forgotten now, My Lord. Turning right  
at the street that runs to the bottom of the  
picture.

THE COURT: Maybe the witness knows.

10 MR. ALLMAN: Do you know the name of that street, the one  
that you turned off when you'd gone up from  
Mitchell?

A. No, I don't. No, I'm sorry.

Q. Now, you said that you wanted to - I'll leave that  
with you and make reference to it at appropriate  
times when it assists you to -

15 THE COURT: Davidson Street.

Q. In order to get to your place of employment at six  
o'clock, approximately what time would it be when  
you were passing along Mitchell Street up to that  
turn?

20 A. Approximately 5:45.

Q. a.m.?

A. Yes.

25 Q. Can you tell us in your own words, please, what  
if anything you saw and where you saw it, and  
perhaps you can use as a reference point the turn  
where the blue car is. In other words, if you're  
describing something that you see, relate it to  
the blue car or whatever object suits your  
recollection.

30 A. O.K., should I hold this up?

Q. Yes, perhaps you can show it to -

35 A. As I veered right onto Davidson Street I came  
around the corner and it was dark out. When I  
came around the corner an individual appeared on  
my righthand side in my lights.

- Q. Let me stop you there. You say it was dark out?
- A. It was dark, yes.
- 5 Q. Was there any illumination from houses, telegraph poles, anything of that kind?
- A. I do not think so, no. I don't think there were streetlights.
- 10 Q. So as you're proceeding down Mitchell Street in a straight direction your lights would be pointing straight ahead, in other words, over to the right of the picture, you indicated that you turned right where the blue car is so now your headlights would be making a change in their direction?
- 15 A. Mm-hmm.
- Q. O.K., tell us again what it was you saw as you proceeded to do that.
- A. O.K., there was an individual walking in a northerly fashion on the right side of the road.
- 20 Q. That's the left as you look at it?
- A. Yes, well, as I turned around.
- Q. Left as you look at it on the picture.
- A. Yes, the left as you look at it, my right.
- Q. As you saw it that day?
- 25 A. As I saw it that morning.
- Q. Whereabouts when you first saw him would this individual be, again perhaps in relation to the two houses and the blue car?
- A. Approximately right here.
- 30 Q. O.K., if you look at the picture there's what appears to be a little discoloration on the road.
- A. Yes, a bit farther up, maybe.
- Q. Further down the picture?
- A. Yes, just a bit.
- 35 Q. O.K., maybe you could just put a little 'X' on

there to show as best you can where the person was when you first saw him?

5 A. As memory serves me best it would be approximately, oh, about right here. That would be O.K., can you see that?

Q. Yes, I'll show the judge and the jury. It's very small, My Lord.

10 THE COURT: Right.

Q. Just again, maybe so we can get this on the record and for reference points to the jury, there's a white house with a black roof, not the one right on the corner, the next one there.

15 A. Yes.

Q. You're putting your 'X' on the sidewalk right across from the lower, as we look at it, side of that house?

A. Mm-hmm.

20 Q. And there's also what looks to be some object just a little bit -

A. A telephone pole.

Q. Again I'll show the jury the telephone pole or what he believes to be the telephone pole, so the telephone pole or whatever that object is is just a little bit below on the photograph from where you believe you first saw this person?

25

A. Yes.

THE COURT: You said sidewalk, Mr. Allman, there's no -

30 MR. ALLMAN: Yes, the side of the road.

THE COURT: The side of the road.

Q. What, if anything, was it that attracted your attention to this person?

A. Well, first of all, I - travelling that road for approximately a period of about a year I had

35

Mark Manderson - Direct

never recalled seeing an individual on that road  
at that time in the morning when I was going out  
5 to my morning shifts. That kind of surprised me.  
As well, when I rounded the turn and my headlights  
made contact with his back he turned around half-  
way and, mind you, I was paying attention to the  
road because I was driving my vehicle, and he  
10 turned around this way to his right as my car was  
going by him. His shoulders were hunched up a bit  
like that (indicating), and he was like that  
keeping with me but not showing me his whole face.

Q. The effect of what he was doing was what?

15 A. Well, I became -

Q. I'm not asking you why he was doing it, I'm just  
asking what -

A. I became very suspicious. May I continue or -

Q. Yes.

20 A. O.K., it was my opinion that there was a possi-  
bility that this -

Q. I don't want to get into opinions, I just want to  
stick with the facts.

THE COURT: Well, your reaction.

25 Q. Yes, as a result of what you've just described,  
how did you react?

A. I went by him and I stopped my car.

Q. Let's just go back again a moment to the original  
sighting. You said you saw him as your headlights  
30 focussed on him and that he then turned and that's  
in the fashion you just described. What was the  
effect of his turning and bending in terms of your  
ability to see him?

A. It severely limited my view of his face.

35 Q. This period of time, the time when you're coming

Mark Manderson - Direct

- up to him in your headlights and he's turning and bending, how long a period of time are we talking about?
- 5
- A. A matter of seconds, two seconds, perhaps - two and a half, three seconds.
- Q. Essentially it would be the time that it would take your vehicle to cover from the corner where your lights turned to the location where you put the 'X'?
- 10
- A. Yes.
- Q. After this initial sighting and your reaction to it, I think you said - what did you do?
- 15
- A. I slowed my car down and brought it to a stop.
- Q. How far away - I'll start again. When you brought your car to a stop what did you do?
- A. I looked in my rearview mirror.
- Q. Could you see anything in your rearview mirror?
- 20
- A. No.
- Q. What did you do after you couldn't see anything in your rearview mirror?
- A. I turned around in my seat like this (indicating).
- Q. You're making a motion as though you're quite literally turning your body in your seat, so now what would you be looking out on?
- 25
- A. Well, basically I was looking at his back, he had turned around, looking out of my rearview window of my car.
- Q. So you inside your car are looking through and out of your car's rearview window?
- 30
- A. Yes.
- Q. Could you see anything at that time?
- A. Yes, I could see a figure standing there.
- 35
- Q. Where was that figure in relation to the man, or

Mark Manderson - Direct

the person, I should say, that you passed in your headlights before?

5 A. Approximately between 50 and 100 feet.

Q. Just listen to the question. Perhaps it's sometimes a little confusing. You'd seen a man at a certain location, the 'X' on the -

A. Yes.

10 Q. The person that you're now seeing through your back window, was he in that position or a different position?

A. He was in a different position. In a sense where - he was in the same spot but he had positioned his body differently

15 Q. O.K., what do you mean by he was in the same spot?

A. Well, when he seen my car he stopped walking, started to turn. When I went by him he was still standing there stopped.

20 Q. And what about when you turned in your vehicle and looked back through the window?

A. He turned away or had already turned away from me.

Q. What I'm trying to get at is had he walked up the street in either direction, as best you could tell?

25 A. No.

Q. How far would the distance be, and I realize you didn't measure any of this, but from where you were or where your car was when you looked out the back window of your car to where this person was at that time, what distance?

30 A. Approximately between 50 and 100 feet.

Q. What if any lighting was there at that location?

35 A. Virtually none, it was very dark out. Just the moonlight, perhaps.



Mark Manderson - Direct

- Q. What, if anything, was between you and this individual that you're now looking at through your back window?  
5
- A. I can't recall anything being between us.
- Q. When you looked out your back window 50 to 100 feet away, what did you see this time?
- A. What I seen was an individual with his back turned towards me, head canted towards the ground, feet stationary yet his arms were a bit out, his upper body was bobbing a bit and weaving from side to side, and his head was down.  
10
- Q. O.K., and how long did you remain looking through your back window?  
15
- A. Perhaps about four or five seconds.
- Q. And during those four or five seconds did this person that you'd seen do anything else apart from the movement that you just described?
- A. No.  
20
- Q. What's the next thing that happens after that?
- A. I put my car in drive and proceed to go to work.
- Q. So after those four or five seconds looking out the back window did you see anything else?
- A. Not really. If I did see anything it was initially when I made a righthand turn and he was in my headlights.  
25
- Q. See if I've got this clear in my own mind. Basically there are two sightings. There's the one when you see a person in your headlights, and there's another one when you're looking back through your window?  
30
- A. That's correct, yes.
- Q. Based on those moments of observation are you able to give any description of the person in terms of  
35

Mark Manderson - Direct

physical appearance?

A. You mean clothing, right? O.K., anything at all?

5 Q. Anything and everything, clothing, height -

A. O.K., yes, I am. The first thing that I noticed was the hat. The man was wearing a hat; not a ball cap, more like a pilot's hat, you know, with the ears that come down like that?

10 Q. You were making a gesture as you said that.

A. Yes, that was kind of odd when I noticed that, you know, so it was like a hat liner, warmer, you know, that you use in a hard hat for construction or whatever.

15 Q. So that's what's on his head.

A. I noticed that his clothing appeared to be quite baggy.

20 Q. In terms of a fit, could you give me an adjective that describes how well or ill-fitting his clothes were?

A. They didn't fit - well, they didn't fit very well, they were quite baggy.

25 Q. Anything specific about the clothing? What items of clothing apart from the hat you've already mentioned did you notice?

A. Well, I noticed that the cuffs of his pants were tight as if he had hauled - or she had hauled that person's socks up or if they were narrow. I noticed that the jacket or sweater or shirt that they were wearing -

30 Q. The top garment?

A. The top garment, was loose around the bottom. It could have been a shirt, a thick shirt, or something like that.

35 Q. Did you have any impression as to how many items

of clothing he was wearing from the skin out?

5 A. I would suggest that the clothing appeared to be layered.

Q. What does that mean?

10 A. Well, it was a cold morning. It looked to me like this individual had put on a series of clothing, and like I said before, it appeared to be baggy and loose.

Q. O.K., you've told us about the hat, you've told us about the baggy clothing, you've told us about the pants that I think you said looked either tucked in or tight at the - which area?

15 A. The ankles.

Q. Did you have any impression as to the quality of the clothing?

A. I would say it was poor quality.

20 Q. Do you remember anything about the colour of any item of clothing?

A. No, I don't.

Q. O.K., do you recall if he was wearing anything on his hands?

A. I think - I think he was wearing a pair of gloves.

25 Q. You said I think with a certain stress on I think. What does that mean?

A. It means everything happened very quickly and the lighting was very limited.

30 Q. Anything else you can think of about the clothing before we start coming on to the person within the clothing?

A. No, sir.

35 Q. O.K., I'm going to turn then to the person wearing these clothes. First of all, did you form an impression as to the sex of the person we're

talking about?

A. Yes.

5 Q. What did you think it was?

A. I'm convinced that it was a male.

Q. Did you form any impression as to the age?

A. Well, judging by his agility I would suggest he wasn't an old man.

10 Q. What do you mean by his agility? What was your impression of his agility?

A. Well, he was - it was quite a spectacle to see. His feet were remaining basically - like, he was standing in the same spot but he was like literally bouncing, his upper body.

15 Q. So I gather you felt his agility was what?

A. Quite good.

Q. What about his - O.K., that's age, sex, what about height?

20 A. I would suggest about five-ten; not that tall or not too short, but average.

Q. Given the descriptions that you've given us earlier that when you first saw him in your headlights he bent and turned and that when you saw him through the back of the window he was bouncing around, would you make any comment on that in respect of your further observation that he was five-ten or thereabouts?

25 A. I would say that in both instances where I measured his height in my own mind he appeared to be about five-ten.

Q. What about his build within the clothes?

A. I had the impression that he was slight, not literally skinny. However, he didn't have a pot belly or he wasn't fat.

35

Mark Manderson - Direct

- Q. What about his face? First of all, perhaps I could ask you this, did you ever see his face full on?
- 5 A. No, sir.
- Q. What angle of the face did you see?
- A. I very briefly had a silhouette in my headlights as he was turning.
- 10 Q. Based on that what, if anything, can you tell us about his face?
- A. Well, basically really the only thing I'm sure of was that he had a prominent nose.
- Q. Prominent in - can you give me any more explanation of what you mean by prominent?
- 15 A. It was large.
- Q. Again recognizing the brevity of the time you had to observe this person do you have any impression or opinion as to the shape of the nose? If you don't, just say so.
- 20 A. Not really, no, just a fairly straight bridge, but prominent. I'd like to say something else, if I could.
- Q. Yes, sure, please.
- 25 A. It happened a long time ago and trying to remember certain facts along with the hat, there wasn't a uniformity about the head. It appeared to me that the head was a bit bunchy on the side.
- Q. O.K., you've mentioned that he had a hat on. What if anything can you tell us about the hair, if any, on the person's head?
- 30 A. It appeared to me that his hair wasn't cut very tight into the side of his head, it was rather bunchy.
- 35 Q. And when you said that you were putting your hands

Mark Manderson - Direct

out towards the side of your head?

A. Yes.

5 Q. Getting back to the hat or the object on the head, do you know what it was or can you just give us some ideas of what it resembled?

A. Like I said before, in my mind it resembled a pilot's hat.

10 Q. Any other things that people wear on their heads that it resembled?

A. Seeing that I was working during the construction phase for Miramichi Pulp and Paper I had an opportunity to see hat liners. Well, once again, a hat  
15 liner comes across like that and down to the neck area and around the back. It seemed similar to that as well.

Q. Would you be able to tell us anything about the colour of his hair? If you can; if not, just say  
20 so.

A. No.

Q. Now, subsequent to this incident when, if ever, did it become of any significance to you? When did you next think about this?

25 A. A couple of days later. To be quite honest with you, even though I took the Mitchell Street road I had never looked at the sign, Mitchell Street. I didn't even know where Mitchell Street was. Neither did I know that this was Davidson Street  
30 as well.

Q. O.K., you knew the roads but not the names?

A. Yes. It became significant to me -

Q. I don't want to get into - it became significant to you a couple of days later.

35 A. Yes.

35

Mark Manderson - Direct

- Q. I'm going to show you now a sketch that's been marked P-54. Have you seen that before?
- 5 A. Yes, I have.
- Q. Who showed it to you?
- A. A constable, I forget his last name.
- Q. Do you remember the date on which he showed it to you, just approximately?
- 10 A. Approximately a year ago, perhaps, a year and a half.
- Q. Can you make any comment in terms of that sketch and a comparison with the individual whom you saw the morning we've been talking about?
- 15 A. Well, no, I really can't, other than the hat and - if I had a profile I might be able to comment on it more accurately but no, sir -
- Q. But we don't so let's stick with that. Apart from the hat is there anything else you can tell us?
- 20 A. No.
- MR. ALLMAN: Thank you, Mr. Manderson.
- THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

- 25 Q. Did you ever tell anybody, Mr. Manderson, that P-54 closely resembled the person you saw?
- A. Have I ever told anybody?
- Q. Yes.
- A. Yes, once I did, yes.
- 30 Q. And are you taking that back today?
- A. When that individual showed me this picture I thought about it. I seen a - this individual has a large nose, it appears, a prominent nose.
- Q. Long nose?
- 35 A. I see the hat. I said, "Yeah, that looks a bit

like him.

5 Q. Did you read your statements that you gave to the police before you came to court today?

A. I read it a couple of days ago.

Q. You read it a couple of days ago?

A. Yes.

10 Q. Do you recall whether or not you gave a hair colour in your original statement?

THE COURT: Well, your proper use to make of that, Mr. Furlotte, is to read out the part in which he deals with the hair colour and -

15 MR. FURLOTTE: Well, I'm asking him if he recalls whether or not he gave a hair sample but I thought I'd let him answer the question first.

THE COURT: No, no, the proper way is to read the -

MR. ALLMAN: Whether he recalls now doing something doesn't matter. The question is -

20 THE COURT: Yes, is to read what he said before and say, you've said now you don't recall the hair and why do you - how do you account for the difference.

MR. FURLOTTE: I believe you stated on direct examination that you can't say anything about the hair colour today?

25

A. Mm-hmm.

Q. Do you recall whether or not you had an opinion as to his hair colour back when you gave the statement?

30 THE COURT: No, that's not the right question.

MR. ALLMAN: If he had one, put it to him.

THE COURT: Yes, if he said something in the statement, remind him about the statement so that he knows what you're talking about and then say -

35 MR. FURLOTTE: I have your statement here of October 18,



1989.

MR. ALLMAN: And also just before it's read I'd like the  
5 whole portion of the conversation put to him.

MR. FURLOTTE: How far back would you like me to go, Mr.  
Allman?

MR. ALLMAN: Well, you tell me where you're going to  
start and I'll tell you when to finish.

10 MR. FURLOTTE: I'd like to tell you where to go, but  
that's besides the point. You stated that he  
appeared -

THE COURT: Have you got a copy of the statement?

MR. ALLMAN: Yes.

15 THE COURT: Why don't you give a copy to the witness or  
let the witness have a copy, or perhaps he can  
follow along on yours.

MR. FURLOTTE: How about the answer at the top of the  
last page, Mr. Allman, would that suit you or do  
20 you want me to start down farther or -

MR. ALLMAN: Come and show me where we're talking about.

MR. FURLOTTE: It would be much better if the Crown did  
my cross-examination for me.

JUROR LANCASTER: Could the jury have a brief recess?

25 THE COURT: Yes, you'd like a recess? Well, we'll have  
a -

MR. ALLMAN: We can solve this problem, too.

THE COURT: Yes, well, you people talk about this in the  
meantime. We'll have a recess for fifteen  
30 minutes. Well, let's have our mid-afternoon  
recess, twenty minutes, and we'll stand this  
witness aside until after the jury has come back.

(JURY WITHDRAWS.)

(BRIEF RECESS - RESUMED AT 3:45 p.m.)

(ACCUSED IN DOCK.)

5

THE COURT: Counsel have had an opportunity to discuss the matter?

MR. ALLMAN: Yes.

THE COURT: We will have the jury back.

10

(JURY CALLED - ALL PRESENT.)

THE COURT: I'm sorry, I didn't realize it was getting so hot in here, so any time the jury feel it's oppressively hot or anything, just speak up. We'll make a run for it now till, what, half-past four, and see what we can do. It is oppressively hot outside today which I think contributes to the heat in here to some extent.

15

20

Now, Mr. Furlotte, you were continuing your cross-examination?

MARK MANDERSON RESUMES STAND:

CROSS-EXAMINATION BY MR. FURLOTTE CONTINUES:

Q. Mr. Manderson, just to get back again, you stated in direct examination that you couldn't say anything about his hair. When Mr. Allman asked you the question about colour you couldn't say anything.

25

A. Mm-hmm.

30

Q. Could you say whether or not his hair was light or dark?

35

A. I'll tell you where my confusion arises from. I don't know how far his hat was coming down, all right? I'm under oath and I have to tell you from my heart that I cannot state a definite hair

colour, I just can't.

Q. O.K., do you recall whether or not you stated a  
5 definite hair colour when you gave a statement?

A. I think - when I gave a statement about a year and  
a half ago, perhaps, or something like that?

Q. You gave statements on October 17th, '89, and  
October 18th, '89.

10 A. O.K., I believe I stated that it appeared to be or  
might have been brown. I wasn't sure.

Q. O.K., I have your statement of October 18th where  
you state: "It appeared he had longish hair and  
looked lighter", and I believe again on your first  
15 statement of October 17th - I believe you state  
again that his hair looked bunchy at the sides and  
light-coloured.

MR. ALLMAN: That's the part I wanted read in its  
entirety.

20 MR. FURLOTTE: Assuming that -

THE COURT: Yes, well, read what, how much do you want  
read? I mean a couple of sentences or -

MR. ALLMAN: Down to certainly - no, I'm sorry, down to  
"hat".

25 MR. FURLOTTE: Well, My Lord, I think maybe Mr. Allman  
could do my cross-examination for me and I could  
go home for a couple of days and get some rest  
here. Mr. Allman has the opportunity to redirect.

THE COURT: I just want to make sure the witness is  
30 getting the thing in context and - however, you  
can clear it up on re-examination. You go ahead,  
then.

MR. FURLOTTE: So, again, in both statements you stated  
it was light-coloured, at least your impression at  
35 that time?

- A. Yes.
- Q. O.K., now you're not so sure. Would that be  
5 because you weren't sure then or because your  
memory is failing you?
- A. I would say that it is because I am unable to make  
a distinction as to where his hat ended or started  
on the sides. As well, it has been about two  
10 years now.
- Q. O.K., so you're saying maybe it was the hat that  
was light-coloured rather than the hair?
- A. It could have been, yes.
- Q. O.K., and this is the P-54, and also in P-54  
15 would there have been that much hair showing?
- A. I would suggest that perhaps more hair, bunchier.  
Like I said before, I'm unable to distinguish how  
far down the hat went.
- Q. O.K., and to be in all fairness, this is not the  
20 composite drawing you did, this is a composite  
drawing somebody else did?
- A. That's correct, yes.
- Q. And you're just comparing the composite drawing  
which you remember of having seen, is that  
25 right?
- A. Yes.
- Q. Now, you also stated that he had a prominent nose.
- A. Yes.
- Q. And could you give a description of what you mean  
30 by a prominent nose? Could you give a description  
of the nose you saw?
- A. He had a larger than average nose.
- Q. A larger than average nose?
- A. Yes, at least that's what I seen in the profile.
- 35 Q. And you saw him as a profile?

- A. Yes, as he was turning, yes.
- Q. Just from the side?
- 5 A. That's correct, yes.
- Q. And do you recall how you described the nose in your statement of October 17, 1989?
- A. No, I do not.
- Q. Your statement of October 17th you state here, "He  
10 had appeared to have sharp facial features with a long hawklike nose". Would that be a fair description?
- A. That would be a fair assessment, yes.
- Q. And today you're not sure as to what age he was  
15 except that you said he wasn't an old man?
- A. I don't believe he was an old man, no.
- Q. Do you recall how old you thought he was on October 17, 1989?
- A. Yes, I believe I had stated that it was my  
20 opinion by his agility that he appeared to be in his 20's, or late 20's, perhaps.
- Q. Mid-20's to late 20's?
- A. Would that be correct?
- Q. Yes, that would be correct.
- 25 A. Once again, understand that I was operating a motor vehicle at the time when I did get a glance as -
- Q. That's right, but you actually stopped the motor vehicle and you looked behind?
- 30 A. Yes, I did, yes.
- Q. You were not driving any more when you were looking behind and saw this individual?
- A. No, I wasn't, no.
- Q. Now, if you had a - if the police were able to  
35 provide you with a photo line-up do you believe

maybe you could pick him out?

5 A. If he was acting the way he was acting that morning, yes.

Q. And you could probably pick him out of - also because of his appearance, not just the way he was acting?

10 A. Not so much his appearance, sir, but the way he was bobbing up and down and his physical expression with his arms and hands.

Q. Did you feel at the time that you would be able to pick him out in a crowd of one in a hundred?

15 A. If he was obviously - when that statement was made it was in the context of him acting like he was acting that morning, bobbing up and down, arms out like this (indicating) and going back and forth, that is what I was making reference to.

Q. And also by his appearance?

20 A. Like I just stated, not so much his appearance, sir, but the way he was acting.

Q. Was he wearing glasses?

A. I don't think so.

Q. Did he have a beard?

25 A. I don't think so.

Q. Now, you admit that at one time you were ready to come to court and say that the individual you saw closely resembled P-54?

30 A. There were certain features that - like the hat, the nose, O.K., and as I just stated, I didn't have a profile.

Q. And did he have a long face besides the long nose?

A. It's difficult to say.

MR. FURLOTTE: I have no further questions.

35 THE COURT: Re-examination?

REDIRECT EXAMINATION BY MR. ALLMAN:

- Q. I'd like to show Mr. Manderson the remaining  
5 portion of the statement. Mr. Furlotte was using  
a copy so I take it he has no objection to my  
doing likewise.
- MR. FURLOTTE: No objection.
- MR. ALLMAN: Could you just read over this portion  
10 starting from "His hair", and down to there, O.K.?  
Just read it to yourself.
- A. O.K.
- Q. Does that refresh your memory as to what you told  
the police regarding his hair and his hat?
- 15 A. Yes, it does.
- Q. What did you tell the police regarding his hair  
and his hat?
- A. I told them that I was unable to distinguish what  
part was his hair and what part was his hat.
- 20 Q. And that was the statement that you gave on the  
17th of October?
- A. That's correct, yes.
- Q. I think Mr. Furlotte may have made this clear but  
I just want, in case there's any doubt about it -  
25 when you venture an estimate upon this indi-  
vidual's age what is it that causes you to venture  
that estimate?
- A. What caused me to guess his age was, as I had  
stated earlier, his agility, the way his body  
30 movements.
- MR. ALLMAN: I have no other questions.
- THE COURT: Thank you very much, Mr. Manderson. That's  
all for you, thank you, and you're excused if you  
wish to be.

Cst. Davis - Direct

CONSTABLE GREGORY DAVIS, called as a witness,  
having already been sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. WALSH:

Q. Constable Davis, this is your second trip to the  
stand, I believe?

A. Yes.

10 Q. And just to refresh the jury's memory, and correct  
me if I'm wrong, you're the exhibit custodian for  
the R.C.M.P. associated with the Daughney homicide  
investigation, is that correct?

A. That's correct.

15 Q. And you have brought some items with you to the  
stand today, I see?

A. Yes, I have.

Q. O.K., I'm going to first of all - I have an item  
here, My Lord, I wish to have marked for identifi-  
cation.

20 THE COURT: MM, I think that was the next number.

MR. WALSH: Yes, My Lord. I'm showing you an item that's  
been marked MM, as in Mary, for Identification.  
Would you look at that for me, please, and tell  
the jury whether you can identify it and what it  
25 is?

A. Yes, I can identify this by my initials, the date  
and time being the 24th of November, 1989, at 8:59  
a.m., in the morning. It's one rifle magazine  
with five .308 calibre shells which I received  
30 personally from Corporal Ron Godin of Bathurst  
Ident. at South Nelson.

Q. And what if anything did you do with that particu-  
lar item when you received it?

A. I kept it in my possession until I turned it over  
35 to Constable Mark Proulx of the Moncton G.I.S. on



Cst. Davis - Direct

the 3rd of January, 1990, at quarter after three  
in the afternoon.

5 Q. Did you ever see that item after that?

A. Yes, it was returned to me. I received it from  
Constable Proulx the 17th of April, 1990, at 2:59  
p.m.

10 Q. And what did you do with it after you received it  
at that time?

A. It has been in my possession since that time.

Q. And you've brought it to court today, obviously?

A. Yes.

15 THE COURT: That was described as one rifle magazine, was  
it?

A. Yes, Your Honour.

MR. WALSH: And shells, My Lord. There's five, and I  
believe the officer said - what calibre did you  
say, Officer?

20 A. .308 calibre.

MR. WALSH: I have another item to mark for identifica-  
tion, My Lord.

THE COURT: NN.

25 Q. You have checked this particular weapon,  
Constable Davis, and it's harmless, I take it,  
at this point?

A. Yes, it's safe.

30 Q. I show you an item that's been marked NN for  
Identification. Would you look at it for me,  
please, and tell the jury whether or not you can  
identify it?

35 A. Yes, I can identify it by my initials that were  
placed on the bag which it was enclosed in. The  
date is the 24th of November, 1989, at 9:00 a.m.  
I received it personally from Corporal Ron Godin

of the Bathurst Identification Section.

Q. And what is it?

5 A. It's a .308 calibre rifle with the barrel sawed off and the stock sawed off as well.

Q. And at the time you received that item was it contained within that larger bag you have in your hand?

10 A. I placed it inside that large bag.

Q. When you received this particular item did you receive it in the condition in which you're holding it there or was it in this particular bag?

15 A. No, I received it like this and then I placed this item into the plastic bag.

Q. I see. Did you ever have occasion to give that particular item to any other police officers or any other witnesses after that?

A. Yes, I did.

20 Q. And when you gave it to another witness did you use this particular bag to give it to him in?

A. Yes.

Q. All right, you received it from Corporal Godin and what if anything did you do with that item after that time?

25 A. I kept it in my possession until I turned it over to Constable Marc Proulx of the Moncton G.I.S. Section on the 3rd of January, 1990, at 3:15 p.m.

Q. And did you have occasion to see that item after that?

30 A. Yes, it was returned to me on the 17th of April, 1990, at 2:59 p.m., and it's been in my possession ever since.

Q. You've obviously brought it to court with you?

35 A. Yes.

Q. O.K., would you put that back in the bag for me,  
please? I have another item to mark for identifi-  
5 cation, My Lord.

THE COURT: OO.

Q. That particular item, My Lord, is a plastic bag  
and appears there's glass in the bag and the glass  
appears to be broken. Do you know what that glass  
10 is, Constable?

A. I believe it was removed from some portion of the  
weapon during the examination from the Crime  
Detection Laboratory of Sackville.

Q. And there's a little split in the bag, My Lord,  
15 and I thought perhaps some had come out on the  
floor when I was walking. Constable, could I ask  
you to come over here for me, please? I'm going  
to ask you to put that back in the particular bag  
so we don't lose anything else out of it, and  
20 would you tell the jury, please, whether you can  
identify it and under the circumstances if you can  
identify it?

A. Yes, it's a .22-250 calibre rifle with the barrel  
and the stock sawed off of it. I came into  
25 possession of this item on the 11th of October,  
1990, when I was assigned to be the exhibit bonds  
keeper at the Newcastle Detachment.

Q. And who was the bonds keeper at that particular  
time?

A. That was turned over to me from Constable Mark  
30 Bridges.

Q. And Constable Bridges was a bonds keeper?

A. Yes, he was.

Q. And would you explain to the jury what a bonds  
35 keeper is, please?

- A. It's the member of the detachment who's assigned to keep all the exhibits in his possession for continuity purposes.
- 5 Q. And this was just one of the items? Was he the bonds keeper for all of these items or just -
- A. No, just this one particular item.
- MR. WALSH: I have another item to be marked for identification, My Lord.
- 10 THE COURT: PP.
- Q. I show you an item that's marked PP for Identification. Would you look at it for us, please, and tell the jury if you can identify it?
- 15 A. Yes, it's one empty rifle box. It has markings of Browning on the front of it. It's black in colour.
- Q. And could you tell us when you came in possession of that and what if anything you did with it?
- 20 A. I received it personally from Corporal Ron Gosselin of the Jacquet River Detachment of the Royal Canadian Mounted Police. I received it on the 18th day of July, 1991, at 8:43 a.m. in the morning.
- 25 Q. And what if anything have you done with that particular box since that time?
- A. I have kept this in my possession since that time.
- MR. WALSH: I have another item, My Lord, for Identification.
- 30 THE COURT: QQ.
- Q. I show you QQ for Identification. Would you look at it for us, please, and tell the jury whether or not you can identify it, and if so, under what circumstances did you come in possession of it?
- 35 A. It's one empty rifle box. It has the markings of

Cst. Davis - Direct

5                   Browning, Model 81, VLR Lever Action Rifle, on the  
front. I came into possession of this item on the  
18th of July, 1991, at 8:43 a.m. in the morning,  
personally from Corporal Ron Gosselin of the  
Jacquet River Detachment of the Royal Canadian  
Mounted Police.

10                   Q.       And what if anything did you do with it after you  
received it from Corporal Gosselin?

A.       I have kept that in my possession since that time.

Q.       And you brought it to court?

A.       Yes.

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

THE COURT: Cross-examination, Mr. Furlotte?

MR. FURLOTTE: My Lord, again I would like to cross-  
examine this witness on this matter whenever he is  
recalled again as, I believe, witness #214.

20                   THE COURT: He is being recalled later?

MR. WALSH: Yes, he's being stood aside at this time to  
be recalled later, yes.

THE COURT: Yes, well, there's no reason why Mr. Furlotte  
shouldn't have the privilege of cross-examining  
25                   then?

MR. WALSH: Oh, no, My Lord, we have no objection to  
that.

THE COURT: So you're stood aside now, and not to talk  
about this aspect of your evidence with anyone  
30                   until all your testimony is finished.

MR. WALSH: My Lord, I have another witness, Constable  
Laurent Houle, recall.

CONSTABLE LAURENT HOULE, called as a witness,  
having already been sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. WALSH:

Q. You've testified before, Constable Houle?

A. Yes, I have, twice already.

Q. And you've testified, I believe, correct me if I'm  
10 wrong, with respect to scene security at the Nina  
Flam residence?

A. That's correct, also the Daughneys.

Q. With respect to this particular matter you have  
brought something to court with you, is that  
correct, on this time?

15 A. Yes, I did.

Q. And you're going to be testifying later as well?

A. That's correct, yes.

Q. Do you have the item that you were asked to bring  
to court with you?

20 A. Yes, I have.

MR. WALSH: I have an item to mark for identification.

THE COURT: RR.

Q. I show you an item that's been marked RR for  
25 Identification. Would you look at that for me,  
please, and tell the jury whether you can identify  
it, and if so, under what circumstances you came  
in possession of it and what if anything you did  
with it?

A. Yes, this is a black knife in a black - this is a  
30 hunting knife in a black case. I came in  
possession of it on the 28th of June, 1990. I  
received it from the Sackville Crime Detection  
Laboratory, Serology Section.

Q. Do you know who from?

35 A. Sandy Lumgair, via registered mail.

Cst. Houle - Direct

- Q. And what if anything did you do with it after you received it?
- 5 A. I kept it in my possession until the 18th of January, 1991, at which time it was turned over to Corporal Tremblay, Bathurst G.I.S. Section.
- Q. That's Corporal Clairmont Tremblay?
- A. That's correct, yes.
- 10 Q. And did you have occasion to see that item after you turned it over to Corporal Tremblay?
- A. Yes, it was turned over to me on the 24th of January, 1991, at 9:35 a.m., again from Corporal Tremblay.
- 15 Q. And you took possession of it at that time again?
- A. That's correct.
- Q. And what if anything did you do with that item since that time?
- A. It has been in my possession since.
- 20 Q. And you obviously brought it to court with you?
- A. Yes, I did.
- THE COURT: What was that, a black hunting knife or -
- MR. WALSH: It's a black knife in a - it's a hunting knife in a black case. I have no further
- 25 questions. Thank you, My Lord.
- THE COURT: Cross-examination, Mr. Furlotte?
- CROSS-EXAMINATION BY MR. FURLOTTE:
- Q. Is that the only involvement you've had with this knife?
- 30 A. Yes.
- Q. You have received it from Sandy Lungair?
- A. That's correct, via registered mail.
- Q. And you gave it to whom?
- A. To Corporal Tremblay of Bathurst G.I.S.
- 35 Q. And what was the purpose of giving it to you

Cst. Houle - Cross

before it went to Tremblay?

A. It was returned from the lab to me because I was  
the exhibits custodian for the Father Smith  
murder case.

Q. You were the exhibit custodian?

A. That's correct.

Q. For which file?

A. Father Smith homicide case.

Q. For the Smith file or for the Daughney file?

A. Smith.

Q. Smith file, and this would have been exhibit  
number what in the Smith file?

A. In the Smith file it would be exhibit 89548,  
item #100.

Q. Item #100?

A. That's correct.

Q. You were the exhibit custodian?

A. That's correct.

Q. Did this go to you before it went to Sandy  
Lungair?

A. No.

Q. The first time you saw it was when it came back  
from Sandy Lungair?

A. That's right.

MR. FURLOTTE: No further questions.

THE COURT: Re-examination?

MR. WALSH: No, My Lord. Thank you.

THE COURT: Thank you, Constable Houle. You're back  
again, aren't you?

A. That's correct, My Lord.

THE COURT: Thank you. There's about twelve minutes  
left. Do you want to use it on perhaps some  
civilians?

MR. ALLMAN: I was talking to Mr. Furlotte about my next



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witness and he things we can get him completed in twelve or fifteen minutes so on that understanding I'll call Joseph Antoine Guitard.

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J. ANTOINE GUITARD, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

- Q. What is your name, please?
- A. Antoine Guitard.
- 10 Q. And where do you live?
- A. Jacquet River.
- Q. On the 28th of October, 1989, where were you residing that evening?
- A. At the Morada Motel in Chatham.
- 15 Q. The Morada Motel in Chatham. Why were you at the Morada Motel in Chatham?
- A. We were on a hunting trip and we usually stay there overnight.
- Q. Whereabouts in the hunting season would the 28th be?
- 20 A. 28th of October? It would be on a Saturday.
- Q. Any more Saturdays after that in that year's hunting season?
- A. I don't - no, couldn't be.
- 25 Q. Were you by yourself or had you gone on this hunting trip with others?
- A. No, there was about nine of us.
- Q. About nine of you. Were you all staying at this Morada Motel?
- 30 A. Yes.
- Q. About what time would you get to the Morada Motel?
- A. We got there about one o'clock in the afternoon.
- Q. And what transportation, how had you got there?
- A. We got there with our vehicles.
- 35 Q. What kind of vehicle was your vehicle?

J. Antoine Guitard - Direct

A. A half-ton Chev truck.

Q. So you got there at one o'clock and when you got there where did you leave your vehicle?

5 A. Left our vehicles in the front of the hotel room.

Q. What did you do for the rest of the day?

A. Drank beer.

Q. In the woods or in Chatham?

A. In Chatham.

10 Q. In Chatham, O.K. What time did you get back from that part of your hunting trip?

THE COURT: That was right there, they didn't have to get back from that.

15 A. Well, we left the motel and we went to the club around nine o'clock that evening.

Q. O.K., when would you get back to the motel again?

A. There was myself and another guy, we left early. We got packed - or we left the club around midnight.

20 Q. How long would it take you to get back to the motel from the club?

A. That night I don't remember.

Q. What do you remember after you got back to the motel?

25 A. Well, when we got out of the taxi I noticed that a vest was hanging out over the truck so I went and I checked the box and we looked -

Q. Let me stop you, a vest was hanging out over what?

A. Over the side of the truck.

30 Q. What truck?

A. The truck that we had.

Q. The truck that you had got there in?

A. Mm-hmm.

Q. What sort of vest?

35 A. A hunting vest.

J. Antoine Guitard - Direct

- Q. Had it been that way when you'd gone off hunting for beer?
- A. No.
- 5 Q. What did seeing the vest hanging out cause you to do?
- A. Well, I checked the box to see what was missing.
- Q. What's the box?
- A. We had a large wooden box in the back of the box.
- 10 Q. What had been in that box earlier?
- A. It was all kinds of hunting gear.
- Q. Such as?
- A. Rifles, knives, compass, some food, beer.
- Q. When you checked that box after you'd come back what did you discover had happened?
- 15 A. I figured - then I noticed that somebody had broken in when all my gear was missing.
- Q. Did you check specifically so that you could figure out what actually was missing?
- 20 A. That night I checked it enough to know some of the items.
- Q. Do I gather from that you checked it again later?
- A. Yes.
- Q. When would that be?
- 25 A. Oh, we checked that again whenever we got at the Pond's Chalet and then Boiestown.
- Q. What did you find as a result of your checks was missing that belonged to you?
- A. To myself there was two rifles missing.
- 30 Q. What sort of rifles?
- A. .308 Browning Winchester lever action and a .22-250 lever action.
- Q. O.K., so those two rifles were missing. Anything else connected with the rifles?
- 35 A. There was shells missing.

J. Antoine Guitard - Direct

- Q. That would be the ammunition for the rifles?
- A. Yes.
- Q. Anything else?
- 5 A. Hunting knives.
- Q. Did you say knife or knives?
- A. Knives.
- Q. Knives; how many?
- A. I had two of my own missing and my chum had one
- 10 missing, too.
- Q. So far as the ammunition that was missing, were you able to calculate how much was missing, what was gone?
- A. Yes, like the following day when we got to the
- 15 Pond's Chalet we noticed then how much was missing.
- Q. And what was missing in terms of ammunition?
- A. There was about 30 shells missing.
- Q. Where had they been?
- 20 A. There was ten on a bullet holder on a belt, three into the - there's a small pouch on the strap, there was three in there, and the rest were loose in a box into another case.
- Q. The two rifles that had gone missing, what
- 25 condition - how were they stored in the box? Were they in anything else?
- A. Yes, they were in a gun case.
- Q. Gun cases, what's a gun case?
- A. Just an ordinary rifle case, like, a zipper.
- 30 Q. Made of what?
- A. There was one made of sort of a plastic and the other one was cotton.
- Q. Had their containers gone missing as well or just the rifles?
- 35 A. Those were missing as well but I received them the

J. Antoine Guitard - Direct

next day.

Q. Can you describe your rifles, first of all what the .22-250 was like?

5 A. Well, it's a Winchester Browning lever action.

Q. How old?

A. At that time it would have been about two years old.

Q. What about the .308?

10 A. The .308 is pretty well the same. It's the same type of a rifle, just a little more powerful, with a scope on it and a strap.

Q. When you'd bought these rifles what had they come in?

15 A. Come into boxes for the purpose or -

Q. I'm going to show you now an item that's been marked NN. I'm going to ask you - one of these has glass in it so be careful, but just take out NN. Can you take a moment to look at that and  
20 tell me what it is? Just a moment, I see you're looking at a piece of paper.

A. Yes.

Q. Let's not look at the piece of paper until -

A. O.K., well, the .308 and the .22-250, they're  
25 both the same rifles from here, just that it's different -

Q. Do you know which one that is? Is that the .308 or the .22-250?

A. If the strap hasn't been changed it's the .308.

30 Q. How does that strap compare with the strap that was on when you last saw that rifle at the Morada?

A. It's the same type of strap.

Q. O.K., apart from that, how does the dimensions of the rifle itself compare with the rifle that you -  
35 the .308 that you lost from the Morada Motel?

J. Antoine Guitard - Direct

A. A lot shorter.

Q. O.K., I'm showing you now QQ. Look at that and tell me what that is.

5 THE COURT: That's how long it was.

MR. ALLMAN: Well, I would suppose, yes.

A. O.K., it's marked .308 Winchester, 20-inch barrel.

Q. And what box is it, do you recognize the box?

A. This is the box for the .308.

10 Q. The one that you were talking about earlier?

A. Yes.

Q. Is there any writing on that item that contains any numbers that you can relate to any markings on the actual rifle itself?

15 A. Yes.

Q. O.K., could you just do that?

A. O.K., it's 11663PT227, that's the serial number on the box, matches the serial number on the gun.

20 Q. The serial number on the gun, those two items that you had before you at that time?

A. Mm-hmm.

THE COURT: Was the glass in this box here?

MR. ALLMAN: I think it's in the other one.

25 THE COURT: Was that the one with the pouch for three cartridges on the strap?

A. Yes.

Q. Is that pouch still on there, did you see, or not?

A. Yes, it is.

30 Q. Maybe I could just come back to that for one second. Have a look at the pouch and tell me if there's anything in it.

A. There's three shells in it.

35 Q. How does that compare with the way it was when you last saw it at the Morada Motel?

- A. That's the way it was.
- 5 Q. I'm showing you now OO. Can you have a look at that and tell me anything you can about it? You indicated that you had another rifle stolen. How does that compare with the other rifle that was taken from you?
- A. I can't tell anything about this one.
- 10 Q. O.K., what about the length of that one compared with the length of the one that you - the other rifle that was stolen?
- A. A lot shorter.
- Q. I'm showing you PP. Can you tell me what PP is?
- 15 A. Where is this?
- Q. PP? It's on there. Just take a look and tell me what it is.
- A. For the serial number?
- Q. No, no, just tell me first of all what the box is.
- 20 A. Oh, what the box is, I'm sorry. It's for a .22-250 Browning lever action.
- Q. How does that relate to the box that you got, you indicated that your .22-250 came in?
- A. Yes, in a box similar to this.
- 25 Q. O.K., can you look at the writing on the end of that and see if there's any writing or markings, I suppose I should say, on the rifle, and if there's any comparison between them?
- A. This rifle belonged in this box.
- 30 Q. How do you know that?
- A. Serial numbers are the same.
- Q. Where is the serial number written on the box?
- A. Written right here.
- Q. On the end?
- 35 A. Yes.

- Q. What is it?
- A. 12401PR227.
- 5 Q. And where does that number appear on the rifle?
- A. Right here.
- Q. You're pointing to a place just at the end?
- A. Yes, on like above the trigger.
- Q. Just above the trigger?
- 10 A. Yes.
- Q. O.K. Now, you mentioned that you also lost a couple of knives. Can you give me a description of any one of those knives?
- A. One was a buck knife, a black handle, into a black
- 15 leather pouch which covers the knife completely when it's in.
- Q. Were there any marks on the knife itself, I mean the blade or the handle?
- A. The only marks that would have been on it would
- 20 have been on the blade from using the wrong type of stone to sharpen it.
- Q. Just explain what you mean by that.
- A. Well, it will scratch it. It will scratch it a lot.
- 25 Q. What sort of thing had you been using to sharpen your knife that was in a black case?
- A. It wasn't a proper stone because it scratched it.
- Q. What had that done to the blade of your knife that had been in your -
- 30 A. It left scratches on both sides.
- Q. I'm going to show you now - the Clerk has removed from RR an object. Can you look at that and tell us what that is?
- A. It's a hunting knife.
- 35 Q. Well, the part that's actually in your hands that



you can see now is what?

- A. It's a black leather case.
- 5 Q. Open it up. What do you find inside?
- A. A knife.
- Q. What kind of knife?
- A. It's a hunting knife, it's a buck, approximately five-inch blade.
- 10 Q. Could you look at that knife and see if there's anything on the blade of that knife that has any meaning to you?
- A. Just that the scratches.
- Q. How do the scratches that you can see on the blade
- 15 compare with the scratches that you can remember on your knife?
- A. Well, when I sharpened my knife I had left scratches something like this on it.
- Q. And apart from the scratches, the knife itself,
- 20 blade, handle and sheath, how do they compare with the blade, handle and sheath of the knife that went missing?
- A. It's the same kind of knife that was missing from me.
- 25 Q. Missing from the box?
- A. From the box, yes.
- Q. When you said it's the same kind of knife, what about the sheath?
- A. Pardon?
- 30 Q. You said that the knife I just showed you, RR, was the same kind of knife as went missing from your box.
- A. Yes.
- Q. How does the sheath that it's in or the case that
- 35 it's in compare with the case that your knife had

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Antoine Guitard - Direct

been in?

A. Well, it's the same type of case.

5 Q. Just with regard to the boxes, did you ever have occasion to give those into somebody else's custody or somebody else's care?

A. Those boxes there?

Q. Yes.

10 A. Yes, I did.

Q. Who did you give them to?

A. To the Jacquet River Detachment, R.C.M.P.

MR. ALLMAN: Thank you, Mr. Guitard.

15 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Guitard, just in relation to the knife, you call it a buck knife. Is there a name on the knife or the sheath?

A. No, when you go and usually buy them that's what  
20 they call them there.

Q. They call them a buck knife?

A. Yes.

Q. Probably for cleaning the big bucks you're going  
25 to get. There's no other way that you can identify it except from the scratches?

A. No. Well, that's all I know. It's the same type of knife that I had.

Q. And where did you buy the knife?

A. I don't recall where I had bought that one.

30 Q. But there would have been other knives similar to that one wherever you bought it?

A. Oh, yes.

Q. I also noticed in direct examination you mentioned  
35 about the number of shells that were missing, you said about 30 in all?

- A. Mm-hmm.
- Q. Would that be for both rifles?
- 5 A. No, there was none for the .22-250.
- Q. There was none for the .22-250?
- A. No, we had none with it.
- Q. So that was just in relation to the .308, then?
- A. The .308, yes.
- 10 Q. And you say there was 30 stolen or 30 that you had altogether before?
- A. That was 30 we had altogether that was missing.
- Q. That was missing?
- A. Missing, yes.
- 15 MR. FURLOTTE: I have no further questions.
- MR. ALLMAN: I have no re-examination and Mr. Guitard, I believe, is to be excused.
- THE COURT: They're called a buck knife because that's what you pay for a tin of beer. One question, Mr.
- 20 Guitard, you said the cases were missing as well for your two rifles but you got them back the next day, you said?
- A. I got them back the following morning.
- THE COURT: From?
- 25 A. From the Chatham Police.
- THE COURT: The police found them somewhere, did they?
- A. Yes.
- THE COURT: That's all. No questions arising out of that?
- 30 MR. ALLMAN: No.
- THE COURT: Thank you very much. Well, now, that is all we'll do tonight and we've run a little overtime, I'm sorry, jury, but we'll start again at 9:30 tomorrow morning and we'll adjourn till then.
- 35 Thank you very much.

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(JURY WITHDRAWS.)

(COURT ADJOURNED TO 9:30 a.m., SEPTEMBER 18, 1991.)

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