

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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Proceedings of September 23 & 24, 1991

Dolores Brewer,  
Court Reporter.

1 COURT RESUMES - 9:30 A.M. (Accused present in prisoner's  
dock.)

MR. WALSH: My Lord before you bring the jury in, we have  
the issue or the matter of the autopsy photographs  
of Father Smith that we dealt with at some degree  
5 on the last occasion when we were dealing with the  
Daughney matters, and at this time we wish to have  
you review the photographs. I don't know if you have  
a copy or not My Lord.

THE COURT: I don't now. I did see those earlier?

10 MR. WALSH: Yes, I believe so, My Lord.

THE COURT: Were there any in contention? There was only -  
there was one photograph that I recall wondering  
about but it was pointed out to me that actually it  
was a picture of the --

15 MR. WALSH: Defensive wound in the hand I believe.

THE COURT: The victim's hand.

MR. WALSH: Yes, My Lord.

THE COURT: And it had appeared to me as something else.

20 MR. WALSH: Yes, I can understand why.

THE COURT: As an internal sort of operation thing but that  
sort of cured that. I think I expressed the view be-  
fore that I didn't feel that these pictures were out  
of keeping with the standard that has been followed  
25 in this and other courts. Do you have any observation  
to make Mr. Furlotte?

MR. FURLOTTE: You have the book of photographs with 34  
pictures in it? That's what we're dealing with here?

THE COURT: 34, right.

30 MR. LEGERE: I think the jurors have had enough shock  
treatment.

1 MR. FURLOTTE: Well again, My Lord, I would object to the  
first six pictures where none of the blood has been  
washed off. I don't see any point in those pictures.  
The other ones after the blood is washed off I can  
5 understand the Crown's position when they want to  
show the wounds that were sustained by Father Smith.  
The first six pictures don't depict anything except  
a lot of dried blood.

THE COURT: Do you have any observation to make Mr. Walsh?

10 MR. WALSH: Well, My Lord, I do believe that the first six  
pictures have relevance. They have relevance in  
terms that the jury have a right to see the body as  
it would have presented itself at that particular  
time. I will point out to the Court that we have  
15 removed photographs - close-up photographs of Father  
Smith's face before it was washed off. In fact just  
to give you an example, My Lord, of what we did in  
fact remove, this is an example of the photographs  
that we did remove from the book. I show you those  
20 two. We wanted to show by the first six photographs  
the view of the body - all aspects of the body before  
anything was done to it, before anything was removed  
from it. We specifically did not include close-up  
25 photographs of the face, however, it was necessary to  
enter photographs of the face to depict certain marks  
which would not be readily apparent with the blood on  
it and as a result the photographs with the blood  
washed off were included, but we felt it was important  
30 since the jury would have -- It's important that the  
jury see the various aspects of the body from a  
distance, certainly not in any close-up fashion, to

1 show the various aspects of the body before it was  
actually - the clothes were removed or the face was  
washed. I think that's important - important to  
them. And then the other photos with the face washed  
5 Mr. Furlotte has expressed his opinion about those.

There is no intent here to inflame otherwise the  
crown would have certainly left in the close-up photo-  
graphs of the face before it was washed off, but it  
does give the jury a distance picture associated with  
10 the body in the position it's shown there. And  
considering the other photographs that were entered,  
I don't see how these photographs would certainly  
shock or inflame the jury, unduly, compared to the  
other aspects. It's reality. It's what exactly  
15 happened.

THE COURT: Well, you have said enough Mr. Walsh.

MR. WALSH: Thank you My Lord.

MR. FURLOTTE: My Lord maybe if I can make just one last  
20 point. The Crown has already voluntarily taken out  
some of the pictures, as he mentioned. Close-up  
pictures of all the blood splatter all over Father  
Smith's face because they thought it might be in-  
flammatory but then again these he doesn't think they  
are inflammatory, or not to a significant degree any-  
25 way. So I think the Crown does admit to some point  
that the fact that there is dried up blood it does  
kind of exaggerate the situation somewhat. I think  
all we have to do to prove that is to go back to a  
30 newspaper article that when the jury was viewing the  
photographs of the Daughney sisters I believe the  
newspaper mentioned something that the jury glared

1 at Mr. Legere for a couple of minutes after viewing  
the photos. So I think that's proof right there that  
those pictures, such are inflammatory, and I guess  
I'm concerned too is that if they were presuming Mr.  
5 Legere innocent what in the heck were they glaring  
at him for after viewing the pictures. So it's  
either inflammatory which does cause prejudice to Mr.  
Legere or the jury has not been able to erase from  
their mind that Mr. Legere is innocent.

10 THE COURT: Well if the ones with the blood on were  
eliminated would that change the jury's reaction  
Mr. Furlotte? You know there's no question here but  
what the jury are going to come to the conclusion, and  
no one possibly could do otherwise, then that this man  
15 was killed in a most vicious assault. That's not  
saying the accused did it. The accused isn't tied  
in and, you know, there's no way anybody can fool the  
jury into believing that it was other than a most  
vicious assault.

20 MR. FURLOTTE: I can't see how the jury can conclude other-  
wise.

THE COURT: No. And, also, these pictures reflect the  
situation as it was when the police officer found the  
body. They reflect further the condition of the body  
25 when the assailant last saw the body, whoever the  
assailant was, and I don't think it's going to have  
any inflammatory thing. I suppose the reaction of  
the jury might be that well look, if the accused was  
the man who did it we feel very strong against him,  
30 but that doesn't - the fact that they should be  
repulsed by the pictures they see doesn't mean that

1           they are going to find anybody more likely guilty or  
not guilty.

MR. LEGERE: They get so mad they won't even listen to the  
evidence.

5 THE COURT: This depicts what the assailant saw when he  
left the body and it's admissible as far as I'm con-  
cerned. Well, you are at freedom to tender those.  
Who are you going to do that through, the pathologist?

MR. WALSH: Corporal Roy. He will be the first witness  
10 this morning.

THE COURT: Okay, bring in the jury, please.

(Jury in. Jury called, all present.)

THE COURT: Mr. Walsh you have --

MR. WALSH: Yes, My Lord, I recall Corporal Leo Roy.

15

CORPORAL LEO ROY, recalled to the stand, previously  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. To refresh the jury's memory and everyone's memory,  
20 you are Corporal Leo Roy; you are a member of the  
R.C.M.P.; you're assigned to the R.C.M.P. Identificati  
Section; and you are presently stationed in Moncton,  
is that correct?

A. That's correct, sir.

25 Q. And one of your previous duties that you testified to  
is that you attended the autopsy of Linda and Donna  
Daughney and took certain photographs, is that correct?

A. That's correct.

Q. And I understand, Corporal Roy, that you performed  
30 the same function with respect to James Smith?

A. Yes, sir, I have.

- 1 Q. Would you relate to the jury your involvement in this matter, please, beginning with the date, the time and the place?
- A. At approximately 6 P.M. on the 17th of November, 1989
- 5 I accompanied Constable LeFebvre and Lorne Jay of Adams Funeral Home to Saint John Regional Hospital, Saint John, New Brunswick.
- Q. Where did you first meet Constable LeFebvre?
- A. In Chatham Head, New Brunswick.
- 10 Q. Was he in the rectory or outside the rectory?
- A. Outside the rectory.
- Q. And where was the body at this particular time when you first met him?
- A. The body was inside the rectory.
- 15 Q. Okay, continue.
- A. I observed the body being taken out of the rectory and into the funeral director's vehicle. Constable LeFebvre and myself followed, again, in the same manner, the funeral director to Saint John, New
- 20 Brunswick.
- Q. In the same manner. Would you just relate it again, please? In another vehicle?
- A. In a police vehicle we followed the funeral director
- 25 all the way to Saint John without losing sight of the vehicle. Once in Saint John we locked up the body inside at the morgue inside the hospital. Then at 8:30 A.M. on the 18th of November, 1989 myself and Constable LeFebvre attended the autopsy of Reverend
- 30 Smith performed by Doctor MacKay.
- Q. Who was present during that autopsy?
- A. Myself, Constable LeFebvre, Doctor MacKay and his assistant.

1 Q. And what, if any, function did you have at that particular autopsy?

A. My function there was to take photographs of the body, the entire body, as we saw it, and right through  
5 the autopsy, again taking photographs of the different wounds of the body.

Q. Under whose direction were you taking these particular photographs?

A. Under the direction of Doctor MacKay.

10 Q. And have you prepared certain photographs for entering into this particular hearing?

A. Yes, sir, I have.

Q. I will show you this booklet of photographs. Please  
15 would you look at them and tell me whether or not they are some of the photographs that you actually took at that autopsy?

A. All the photographs in this booklet numbered 1 to 34  
20 are photographs that I took at the autopsy on the 18th of November, 1989 and they truly depict what I saw at the time.

Q. These photographs were taken under the direction of Doctor MacKay?

A. That's correct.

25 Q. My Lord at this time I wish to enter a booklet of photographs numbered 1 through 34 as a crown exhibit.

THE COURT: That will be exhibit P-64, 1 to 34.

(Clerk marks booklet of photographs exhibit P-64.)

MR. WALSH: And I have a booklet for the jury, My Lord, with  
30 your permission. I have six booklets.

THE COURT: You have checked those? They are the same as--



1 MR. WALSH: Yes, My Lord. And Corporal Roy you prepared the  
six booklets for the jury, is that correct?

A. Yes, I did, and they are all similar. They are all--

Q. Are they identical to the one that is being entered  
5 into evidence?

A. Identical, yes.

THE COURT: They don't have any exhibit number on them.  
Perhaps the jury would mark 'copy P-64' on the out-  
side.

10 MR. WALSH: Corporal Roy if you would, please, would you  
identify to the jury what the photographs depict in a  
general fashion?

A. Yes, sir. Exhibit P-64, if we look at photograph  
number 1, that was taken at the Saint John Regional  
15 Hospital just prior to the autopsy. In photograph  
number one we can see the body of James Smith taken  
from the left side. As you will notice, if you will  
notice in the photograph, in the center of the photo-  
graph you will see he is fully clothed, his back  
20 pocket is turned inside out.

Q. Was that done by any officers or anyone at the  
autopsy?

A. No, sir, that is how I saw the body when I first saw  
25 the body.

Q. So the body has been transferred from the stretcher  
to this particular table at this time, is that right?

A. That's correct, but he was exactly like that when I  
first saw him.

30 Q. Continue, please.

2340

1 A. Photograph number 2 would show the right side of the  
body. The white material that we see on his trousers  
was from debris from the house, from the rectory.

5 Photograph number 3 is a close-up of the right  
side. Here we see his clothing. What you see on the  
neck area, the white portion, would be the Roman  
Collar. Here it was difficult to see the bruises and  
contusions on his face on account of the blood - or  
the red substance that I believe to be blood.

10 Photograph number 4, again the lower part of  
James Smith's body, here we see around the right knee  
area in the center of the photograph is where the  
trousers were ripped.

15 Photograph number 5 is a close-up of photograph  
number 1, the part where we see the left back pocket  
turned inside out and also ripped.

20 To properly view photograph number 6 you have  
to turn it to the right to have the number always on  
the top right corner. This photo was taken from the  
head towards the feet. Again depicts what I saw at  
the time.

25 Photograph number 7 was taken after the body was  
washed and the clothes were taken off. Here we see  
the right side of James Smith's face. You will notice  
in the center of the photograph on the right cheek a  
cut going from the center of the face towards the back  
of the neck. On his right forehead you will see also  
a contusion in that area.

30 Photograph number 8 shows the same contusion only  
this time in a close-up with a scale. If we turn the  
booklet again a quarter of a turn to the right you can  
see the cut on his right cheek in a close-up.

- 1 Q. That's in photograph number 9?
- A. In photograph number 9, sorry. Also with a scale.  
Photograph number 10 --
- Q. Photograph number 9, is that the cut that's shown in  
5 photograph number 7?
- A. That's correct. Photograph number 10 shows a small  
cut to the left back of James Smith's head. Photo-  
graph number 11, again if we turn the booklet a  
quarter turn to the right to have the number on the  
10 top right corner, is a superficial cut on the left  
side of his neck, also here with a scale.
- Q. Is that cut shown anywhere in photograph number 10?
- A. Yes, it is. On the extreme left of the photograph  
we can see a cut on the neck on the - below the ear  
15 on the left side of the neck.
- Q. And photograph 11 is a close-up of that particular  
cut?
- A. It is, sir. And photograph number 12 is a close-up of  
20 the cut to James Smith's head, shown in photograph  
number 10.
- Photograph number 13 shows a contusion on the  
- just above his left eye and also some redness and  
black on his left eye.
- 25 Photograph number 14 is a close-up of a contusion  
shown in photograph number 13 which is above his left  
eye.
- Photograph number 15 shows a superficial cut at  
the center of James Smith's neck. Also this is shown  
with a scale.  
30
- Photograph number 16 shows a small puncture-like  
wound. This would be on the left side of his cheek  
close to the ear. It is also shown with a scale.

1            Photograph number 17 is a wound on his right  
shoulder.

            Photograph number 18 is a close-up of that same  
wound that we see in photograph 17.

5    Q.    When you refer to the right shoulder I take it in  
         photograph 17 that's a photograph from behind Father  
         Smith, or Reverend Smith, James Smith, as he is laying  
         down on his back and this wound is on the top of the  
         right shoulder?

10   A.    That's correct. I had to crouch down and look at the  
         body from the head towards the toes, towards the feet,  
         in order to take this photograph.

            Photograph number 19 is a photograph of his left  
            lower arm, the wrist area. In the center of the  
15           photograph we see an area where it's whiter where a  
            person usually wears a watch. There was no watch  
            found by the way.

            Photograph number 20 is a photo of the inside  
            of his left wrist. This would be on the radial side  
20           of the wrist.

            Q.    When you say radial, for the jury which part of the  
            wrist are you referring to on the photograph 19?

            A.    On the thumb side. Photograph number 21 is a photo  
25           of his left index finger. There's a cut in the center  
            of the finger, the middle of the index finger rather,  
            and there is also a small cut on his left thumb, we  
            see on the left of the photo.

            Photograph number 22 is a photograph of his  
30           right hand. Also at the center of the photograph  
            inside the hand above the thumb we can see a large  
            cut. Photograph number 23 is a close-up of that same  
            cut on the inside of his hand.

1                    Photograph number 24 shows the different wounds  
to the back area.

                  Photograph number 25 is a close-up of these  
wounds.

5    Q.    What particular part of his back would photographs  
25 and 26 be showing?

          A.    Would be the lower part of the back. We can actually  
see these wounds in photograph number 24 in the lower  
part of the back, and photographs 25 and 26 are  
10               simply close-ups.

          Q.    In photograph 25 there's two red marks in the center  
of the photograph underneath the - or on top of the  
ruler. What is that that's shown there?

          A.    Just skin. Just the epidermis had been scraped.

15               Photograph number 27 also is a close-up of photograph  
number 24. Seems to be a puncture wound.

          Q.    That, again, is in the back area?

          A.    In the back area. What we see in photograph number  
27 is also shown in photograph number 24 and 25, only  
20               this time in a much closer.

                  Photograph number 28 shows the left leg of James  
Smith with wounds on the knee and lower leg area.

25               Photograph number 29 is a close-up of the wound  
that we see on the knee in photograph number 28.

                  Photograph number 30 is a close-up of the wound  
that we see in photograph number 28 on the lower part  
of the leg almost to the ankle, just above the ankle.

30               Photograph number 31, again, is a close-up of  
the lower left leg. The wound we see in photograph  
number 31 is also shown in photograph number 28.

1 Photograph number 32 is a photo of James Smith's  
right leg. Here we see a wound on the right side of  
his right knee and also on the lower leg.

5 Photograph number 33 is a close-up of photograph  
number 32 in the area where the scale is shown in  
photograph number 32.

Photograph number 34 is a close-up of the wound  
seen in photograph number 32 on the right side of his  
right knee.

10 Q. Apart from taking photographs did you have any other  
duties at the autopsy Corporal Roy?

A. No, sir, I did not. I observed Constable LeFebvre  
taking different exhibits handed by - taken by Doctor  
MacKay and handed to Constable LeFebvre, and I also  
15 took some fingerprints and palm prints of the hands  
of James Smith.

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

THE COURT: Any cross-examination Mr. Furlotte?

MR. FURLOTTE: One minute, My Lord. (Pause.) I have no  
20 questions.

THE COURT: This witness is being stood aside I gather. He  
is being recalled?

MR. WALSH: That's correct My Lord.

THE COURT: So you mustn't talk about this aspect of your  
25 testimony until all your evidence is completed.

MR. WALSH: My Lord I recall Constable Pierre LeFebvre.

CONSTABLE PIERRE LEFEBVRE, previously sworn, testified  
as follows:

30 DIRECT EXAMINATION BY MR. WALSH:

Q. Again, to refresh the jury's memory, you are Constable  
Pierre LeFebvre; you are a member of the Royal

1 Canadian Mounted Police; you are stationed in  
Newcastle; that in 1989 you were stationed as well  
in Newcastle; that you have given testimony with  
respect to the continuity of the body of Annie Flam;  
5 in respect to the continuity of the body of Linda and  
Donna Daughney; and I believe, Constable LeFebvre,  
that you also performed the same duties with respect  
to James Smith, is that correct?

A. That's correct.

10 Q. Would you tell the jury, please, in your own words,  
beginning with the date, the time and the place,  
your involvement.

A. 17th of November, 1989, approximately 5 o'clock in  
the afternoon, I took custody of the body of Reverend  
15 James Smith at the rectory where it was found in  
Chatham Head, Northumberland County, Province of  
New Brunswick. Present with me was Corporal Leo Roy  
of Moncton Ident.

20 Q. At the time that you took custody of the body, I just  
want to determine the position of the body when you  
first -- Exhibit P-60 would be the large book of  
photographs, 1 to 83. I am going to show you photo-  
graphs 53 and 54. Now, when you took custody of the  
25 body where was James Smith at the time that you  
actually took custody of the body?

A. He was in the rectory's office.

30 Q. Now, in relation to those two photographs can you  
tell how they relate to the position James Smith  
would have been in at the time you took custody?

A. At the time I took custody the body was as is on  
photograph number 53, and he was rolled over to be  
put in the body bag as depicted on picture 54.

1 Q. And how was he actually removed from the rectory?

A. He was removed inside the body bag.

Q. On a stretcher?

A. On a stretcher.

5 Q. And where was the stretcher with the body put?

A. The stretcher with the body was placed inside the Adams Funeral Home coach.

Q. Under whose supervision?

A. Under my supervision.

10 Q. Then what, if anything, happened?

A. After the body was placed inside the funeral coach we proceeded to Saint John Regional Hospital.

Q. What did you do with the body at the Saint John Regional?

15 A. We secured -- Once at the Saint John Regional Hospital I secured the body inside the morgue at the hospital.

Q. And then what, if anything?

20 A. The following day, approximately 9:30 in the morning on the 18th of November, 1989, I unlocked the body from the Saint John Hospital's morgue and took the body to the autopsy room where Doctor MacKay performed the autopsy.

25 Q. Were you present during that time?

A. I was present during the whole autopsy. So was Corporal Roy.

Q. Corporal Roy took photographs during the autopsy?

A. Yes, he did.

30 Q. And did you take possession of any items during that particular autopsy?

A. Yes, I did.



- 1 Q. Various items?
- A. Various items.
- Q. Generally what types of items?
- A. Pieces of clothing and normal hair, fiber samples
- 5 and body parts - body fluids.

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

THE COURT: Cross-examination Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

- 10 Q. Constable LeFebvre was there any fingerprints lifted from any parts of the blood smudges on the body, either the collar or any of the clothing?
- A. There was fingerprint smudges on the white collar that the priest had.
- 15 Q. Do you know if those fingerprints were checked with Mr. Legere?
- A. I believe they were checked but it was just a smudge so it didn't turn out. It was not identifiable.
- Q. Constable LeFebvre when you testified in the Daughney
- 20 incident I reserved cross-examination until you were called at this time. Now, when you were attending the autopsies of the Daughney sisters I believe there was a mark noticed on I believe it was the left breast of Linda.
- 25 A. That's correct.
- Q. And do you know whether or not that portion of Linda's breast was sent to the lab for analysis?
- A. All I can say with regards to that is all exhibits I
- 30 seized during the autopsy were turned over to Constabl Davis and I have no knowledge of what he did following that.

1 Q. Do you know whether or not -- Did you form the opinion at the time that maybe that mark on Linda's left breast was caused by a rifle barrel or a shotgun barrel?

5 A. That would be my personal opinion, yes.

Q. There was no opinion formed at the time of the autopsy that it may have been a bite mark, was it?

THE COURT: Well, he could only speak for himself.

MR. FURLOTTE: At least for yourself.

10 A. For myself it looked like a tube mark. Something that could be the shape of a gun barrel or something like that.

Q. Okay. But that skin area was taken as an exhibit?

A. That's correct.

15 Q. To be sent to the lab for analysis, is that right?

A. Yes.

Q. What else did you seize as exhibits at the autopsies of the Daughney sisters? You received the body evidence.

20 A. Well, My Lord, I have the --

Q. Do you have your notes on you?

A. My notes pertaining to the Daughneys' autopsies are in the police office there. If I can have an instant I can go retrieve them.

25 Q. Pardon?

A. All the notes pertaining to the Daughney autopsies I don't have them with me right now on the stand. They are outside the courthouse.

30 Q. Outside the courthouse.

THE COURT: The courtroom.

A. Courtroom, I'm sorry.

1 THE COURT: He said he's prepared to go and get them.

MR. FURLOTTE: I would like this witness to go and get his  
notes.

THE COURT: Would you go and get them then, please.

5 (Pause.)

MR. FURLOTTE: You have your notes?

A. Yes, I do.

Q. And your notes - or maybe in case you don't have to  
refer to your notes, do you remember where the body  
10 swabs were supposed to be taken off the bodies?

A. If I remember where?

Q. I believe there was a check with a laser light in  
Halifax. You were present?

A. Yes, I was.

15 Q. And there was what appeared to be some kind of fluid  
on the bodies?

A. That's correct.

Q. And where did that fluid appear to be?

A. From my recollection there was some stain on one of  
20 the victim's chest, and another stain near the - in-  
side one of the victims' inner leg.

Q. Do you recall which was which?

A. No, I don't.

25 Q. Can you find that in your notes?

A. I don't think I have that in my notes either.

Q. If you will check page 3 of your notes under subject  
Donna Daughney.

A. Yes.

30 Q. Does that mention that the seminal fluid was taken --  
Appeared to be a seminal fluid stain in the navel  
area.

A. Yes, that's correct, on Donna Daughney.

1 Q. But yet in Halifax that stain appeared to be in the chest area?

A. Well, when I wrote these notes I was referring to the thorax area.

5 Q. Aside from the swabs that were taken what other exhibits were taken off the bodies? And the blood. Aside from the swabs and the blood samples that were taken what other exhibits did you seize from the bodies?

10 A. At the time of the laser examination?

Q. No, at the time of the autopsy.

A. At the time of the autopsy there was hair samples, some fibers from the body.

THE COURT: Which body? There were two autopsies and two  
15 bodies.

A. I am talking about Donna Daughney first. There was hair standards or hair samples, right hand fingernail scrapings, blue fiber from Donna's left hand, fingernail scraping from Donna Daughney's left hand.  
20 There was a hair seized from Donna Daughney's - one of her arms. I don't have which one here. There was some stomach content. There was blood samples. There was vitreous fluid and all the rape kit exhibits. And, of course, all their clothing.

25 Q. I see in your notes you got -- I don't know what page number it is, we have number 119 to 123 not pertinent to autopsy but it doesn't list what those are. Do you recall what those would be?

30 A. I believe Constable Houle would be able to help you out on that one. I have no idea what they are. I don't have them listed in any of my notes.

- 1 Q. But those would have been items seized at the autopsy?
- A. Those that you just referred to? 119 to --
- Q. Yes, 119 to 123.
- 5 A. Yes. It would be pertaining to the autopsy and the laser examination as well.
- Q. It appears as if Constable Houle's exhibit list does not refer to anything for those numbers taken at the autopsy.
- 10 A. It does not?
- Q. No, it does not. So you wouldn't have it in your notes?
- A. What you just referred to as my notes were actually a list of exhibits that I made out for the investi-
- 15 ators. That was not done at the scene. And I made that list from the master - from the original exhibit reports. And these items 119 to 123 would normally be listed on the R.C.M.P. exhibit reports, but these items do not pertain to the autopsy or the laser
- 20 examination.
- Q. Okay. I understand. Did you seize any jewelry from the body of Donna Daughney?
- A. I don't believe I did.
- Q. You say you did or didn't?
- 25 A. I didn't seize any jewelry.
- Q. What about from the body of Linda Daughney?
- A. Yes, I did, My Lord.
- Q. And what did you seize from her?
- 30 A. I seized a gold watch; I seized a heart-shaped gold earring.

- 1 Q. Is that all?  
A. That's all, yes.
- Q. You didn't seize any rings?  
A. From Linda Daughney I didn't seize any rings.
- 5 Q. You don't recall any jewelry being on either Donna Daughney or Linda Daughney except for the watch on Linda and the one earring on Linda?  
A. That's correct.
- Q. Are you saying Doctor MacKay never gave you any rings  
10 that he took off Linda Daughney?  
A. No, he did not.
- Q. You didn't turn any rings over to Constable Houle, the exhibit man?  
A. No, I did not.
- 15 Q. And you have no recollection of you being in possession of any rings from the body of Linda Daughney?  
A. No, I did not.
- Q. If Doctor MacKay had seized jewelry off the bodies of either one of the Daughney girls who would have  
20 taken possession of the jewelry?  
A. I would.
- Q. It would have been your position to take that? Take possession.  
A. That's correct.
- 25 Q. I show you exhibit P-54. Do you recall anybody you may have arrested in the past who looks similar to that?  
A. No, I do not.
- 30 Q. Would you say that that looks similar to Larry Howard?  
A. It doesn't look similar to Larry Howard to me.

1 Q. Not to you.

A. Definitely not.

Q. Would you have arrested Larry Howard in the past?

A. Yes I have, My Lord.

5 Q. For break and enters?

A. For break and enter.

Q. Have you ever made any deals with Larry Howard in the past?

MR. WALSH: Objection, My Lord. I don't see the relevance  
10 of this particular matter. Mr. Furlotte has shown him a photograph. He doesn't resemble Larry Howard. Now Mr. Furlotte wants to delve into an area on cross-examination and I just don't even know where he's going with it and what the benefit of it is.

15 THE COURT: Well, may I ask you this Mr. Furlotte? Is there going to be other evidence tying Larry Howard, whoever he is, into this matter? I mean we can't be bandying about the names of people who may have had no connection with this matter.

20 MR. FURLOTTE: Well, My Lord, I can't guarantee I'm going to be able to call evidence to connect Larry Howard because I don't know if I am going to have time.

THE COURT: Well should you really be bandying Mr. --

25 MR. WALSH: Perhaps, My Lord, it would be best if we wanted to address the issue to do so in the absence of the jury and we can resolve where he's going with it, if you think that might be preferable.

30 THE COURT: Well, perhaps that would be appropriate really. I don't want to get into bandying about some person's name who may or may not be connected with the thing unless there is going to be some evidence to bring him into it. You say you can't give any assurance

1           that you are going to follow the matter up.

MR. FURLOTTE: I can't, because I don't know how much time  
I am going to have to prepare Mr. Legere's defence  
during the process of this trial and I -- I hope  
5           to be able to but whether I am going to have time  
within the time constraints I don't know.

THE COURT: Well, may I suggest this?

MR. FURLOTTE: I have a defence to prepare but I know I  
can't do it all.

10 THE COURT: May I suggest this? Is Corporal LeFebvre being  
brought back?

MR. WALSH: No, My Lord.

THE COURT: This is his final appearance, is it?

MR. WALSH: Yes.

15 THE COURT: Well, perhaps we should ask --

MR. FURLOTTE: My Lord there's more circumstances too that  
maybe we could set Corporal LeFebvre aside for further  
cross-examination if the crown would consent to that.

20 MR. WALSH: I'm certainly prepared to certainly have  
Constable LeFebvre available for cross-examination  
on anything that's relevant. I certainly see no  
reason to prohibit it.

THE COURT: Well, let's do this. Let's not pursue that  
25           matter at the moment and Corporal LeFebvre will be  
stood aside when his cross-examination on relevant  
matters is completed and we can explore this perhaps  
in a voir dire and, if necessary, Corporal LeFebvre  
can be brought back. That's agreeable with you Mr.  
30           Walsh?

MR. WALSH: Oh yes, very much so My Lord. I just wanted the  
relevance of it, that was all.



1 THE COURT: And that's agreeable with you Mr. Furlotte,  
that procedure?

MR. FURLOTTE: That will be fine. (Pause.) Are you sure  
you recall obtaining two body swabs from Doctor  
5 MacKay, one each from Linda Daughney and one from  
Donna Daughney?

A. That's correct.

Q. Are you sure there wasn't just one?

A. One from each victim.

10 MR. FURLOTTE: One from each victim. Okay, My Lord, I have  
no further questions on this issue and subject to  
recall I'm finished with Constable LeFebvre at this  
time.

THE COURT: All right then, re-examination on this --

15 MR. WALSH: Just a few questions My Lord.

REDIRECT EXAMINATION BY MR. WALSH:

Q. So I take it from the examination of Mr. Furlotte  
you know that there was a stain that came from the  
20 inner thigh of one of the girls and from the stomach  
area of another of the girls, is that correct?

A. That's correct.

Q. You're just not sure which --

A. Which one.

25 Q. -- girl connects to which. Is that correct?

A. That's correct.

Q. Constable LeFebvre Mr. Furlotte asked you a question  
with regard to your personal opinion as to a mark on  
the body. You are offering a personal opinion. You  
30 are not an identification expert or you have never  
given that sort of opinion with respect to physical  
comparisons, is that correct?

1 A. I have never. It's just my own opinion.

Q. Just a clarification point. You referred to Constable Houle perhaps having those numbers. Are you referring Constable Houle as the exhibit custodian of the Daughneys, or who was the exhibit custodian of the Daughney matter, do you remember?

A. Of the Daughney matter was Constable Davis. And it would be Constable Davis who would have the answer.

Q. So when you referred to Constable Houle --

10 A. It's anything pertaining to Father Smith's.

Q. Is Constable Houle.

A. Is Constable Houle.

Q. Now, these numbers that Mr. Furlotte referred you to and you indicated they didn't pertain to the autopsy, who assigns the numbers? As a police officer if you were to take an item and you were going to mark it who would you go to for a number?

15 A. To the exhibit custodian.

Q. And he would have many more exhibits associated with the matter, is that correct?

A. Exactly.

Q. He would tell you whether a particular number was available or not?

A. Yes.

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

THE COURT: Thank you very much Constable. You're stood aside subject to - you have heard it explained today, and you may be recalled. Thank you. Now, another witness.

30 MR. SLEETH: Call Doctor John MacKay. Recall.

1           DOCTOR JOHN MacKAY, having been previously sworn,  
recalled, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q.       Doctor MacKay you are the Chief Forensic Pathologist  
5           for the Province of New Brunswick and earlier on you  
were qualified as an expert witness in forensic  
pathology entitled to give opinion evidence. You  
have also testified earlier, just to remind us all  
here and for the record, about autopsies which you  
10           performed on Annie Flam, Linda Daughney and Donna  
Daughney, and I would ask you now to turn your  
attention to Father James Smith. I believe you --

THE COURT: Just before you start, Mr. Sleeth, it is my  
responsibility of course to pass upon the expertise  
15           of a witness, and I have done earlier. There was one  
question that occurred to me, Doctor MacKay, you used  
an expression the other day and I would like to ask  
you about it in connection with your expertise to  
establish that, or otherwise. You used the expression  
20           'rigor mortis'. You may have pronounced it rigor  
mortis, did you?

A.       I pronounce it rigor. It's the same mentality as call  
it MacKay instead of MacKay. It's in the vowels.

THE COURT: I defer to your pronunciation. But rigor mortis  
25           does the knowledge of rigor mortis fall within your  
expertise and, if so, what is it?

A.       Yes, My Lord. Rigor mortis is a change in the muscles  
of the body after death. The cause of this change is  
subject to a lot of opinion and not very much good  
30           evidence but it seems to be a change in the configura-  
tion of the molecule that makes up the muscle protein

1           which sets because of a consumption of a product  
          called adenosine triphosphate which disappears and  
          can't be replaced. The point of it is that it has  
          an onset some hours after death. It is rigid. The  
5           muscles become rigid and then it slowly passes off.  
          It has been used as a very crude marker of the time  
          of death but it is so variable that it is really most  
          unreliable for that.

          THE COURT: Is there anything in terms of hours or timing  
10           or are there general rules?

          A. There are averages My Lord. The books will say that  
          rigor mortis starts within 5 or 6 hours of death.  
          It approaches a maximum at 12 hours. It remains at  
          a maximum for 12 to 24 and slowly passes off until  
15           it disappears in 36 to 48. Those are averages of a  
          large number of cases but they are subject to  
          variation depending, first of all, on the muscle mass.  
          A big muscular person will have a much stronger rigor  
          mortis than a frail person. There is some evidence  
20           that violent activity at the time of death causes  
          rigor to have an earlier onset. There's some evidence  
          that the temperature - the environs may affect it. So  
          if, for instance, you found a person in full rigor  
          mortis, stiff as a board, and someone said that they  
25           had died 30 minutes ago I would say the findings are  
          inconsistent with that. It is sometimes useful in  
          challenging an opinion of a witness. Or if they said  
          the person has been dead for a week and they were full  
          rigor mortis I wouldn't believe that. But in terms of  
30           setting the time of death, a person died at 2:15 A.M.,  
          it can't be done.

1 THE COURT: Are some corpses subject to more stiffening or  
more pronounced stiffening than others?

A. Yes, precisely, My Lord. Both the amount of stiffening  
and the timing of the stiffening are highly variable.

5 THE COURT: Well, this is all just in connection with  
expertise that I'm asking these questions. Do  
counsel have any -- Well, you can follow it up if  
it's pertinent. It may not be pertinent at all.

All right, Mr. Sleeth, you carry on with your  
10 direct examination.

MR. SLEETH: Yes, My Lord. Going back then, Doctor, to the  
18th of November I believe you performed an autopsy  
on Father James Smith?

A. Yes, sir, on the morning of the 18th of November,  
15 1989 in response to a Coroners Warrant I attended  
the morgue at the Regional Hospital and there I  
carried out a post mortem examination on the body  
that was identified to me as Father James Smith.  
Identification was by two members of the R.C.M.P.,  
20 Constable LeFebvre and Corporal Leo Roy. They  
attended this autopsy and stayed throughout. Corporal  
Roy took a series of photographs and Constable  
LeFebvre received a number of exhibits.

Q. Okay. This autopsy took how long to perform Doctor?

A. I didn't make a note of the ending but it would have  
25 taken all morning. We began at about 9:45 and it  
would have lasted throughout the morning.

Q. And the findings which you made as a result of that  
30 autopsy, sir?

1 A. The body of Father Smith was that of an elderly white  
male. The stated age was 69 and the appearance of  
the body was consistent with that. Father Smith was  
5 foot 9 inches measured height; weighed an estimated  
5 175 pounds so that he was a little bit overweight.  
Otherwise, in relatively good health.

To deal with natural disease process first,  
there were two disease processes present. He had a  
number of gallstones which might or might not have  
10 caused him some trouble in life. Probably not. It  
is commonplace to find gallstones at autopsy in people  
that never had any trouble with them. And he had  
some coronary atherosclerosis. This is a disease in  
which material, primarily cholesterol and calcium  
15 salts, is laid down in the lining of the arteries  
that supply the heart. As everybody knows I'm sure,  
today, this is a very common disease, particularly  
in the western world, particularly in men, particularly  
in older people. So the presence of this was not very  
20 surprising but it should be noted. Otherwise there  
were no significant diseases.

There were a long list of injuries which I will  
go through in outline form. First there was a  
25 fracture of the nose; there was a fracture of the  
upper jaw which extended into the orbit, the bony  
socket of the left eye. There were many rib fractures  
Six ribs were fractured on the left side of the chest  
and seven on the right. Bear in mind there are 12  
30 ribs on each side so half were fractured on the left  
and one more than half on the right.

1           There was a fracture of the right cornu, the  
horn of the hyoid bone. Now, the hyoid bone is a  
famous structure in forensic pathology. It's a tiny  
little bone which has a general resemblance to a  
5           chicken's wishbone. It's smaller than that and  
serves quite a different function. A chicken's wish-  
bone replaces the clavicles, the collarbone in the  
chicken. The hyoid bone is much higher up in the  
neck where I point on myself, and it's thin, about the  
10           diameter of a wooden match stick, and it has two sides  
and there's a front part and the front part is in  
front and the two sides go back, and the purpose of  
this little bone is to provide an anchor point for a  
whole series of little muscles, the names of which I  
15           can never remember, that assist in swallowing. Its  
forensic interest is that, particularly again in older  
people, it is fairly easy bone to fracture by pressure  
on the neck and therefore is one of the classic signs  
of manual strangulation meaning strangulation with the  
20           hands as opposed to a rope or an instrument. In any  
case there was such a fracture present in the right  
side of the hyoid bone in Father Smith. There were  
also some hemorrhages into the muscles on the right  
side of the neck, the right sternal mastoid, that is  
25           prominent muscle on the side of your neck here goes  
from your sternum to your mastoid process and it turns  
the neck. It's the strongest muscle in that movement,  
turning and bending the head. There was some bleeding  
into that and also into the strap muscles, little flat  
30           muscles that lie on the outside of the voice box.

1 So you put this package together. You have bleeding  
into the muscles on the right side of the neck and  
the fracture of the hyoid is very compelling evidence  
that someone attempted to strangle Father Smith.

5 There were some superficial incised wounds of the  
neck.

Maybe I should stop here just to go through  
these three terms. I am sure that the jury has heard  
more than they want to about them but so you get them  
10 straight. An incised wound or an incision is a cut.  
It's made with a sharp instrument. A contusion is a  
bruise. It's made with a blunt instrument or a fist  
or an elbow or a boot, anything blunt, and it is  
simply bleeding into the soft tissues caused by a  
15 blow that doesn't cut or break the skin but that  
tears the little tiny vessels so you get bleeding  
underneath and a little bit of swelling. For con-  
tusion read bruise, because I occasionally move back  
and forward in these words. I try to use the same  
20 language but temptation to use a synonym. And the  
other one is laceration. A laceration is a tear.  
It looks at first glance like a cut but it is  
actually a blunt force injury and it happens in the  
skin primarily, you can lacerate other organs as  
25 well, but it happens where the skin is stretched over  
a bone, it's struck with a hard object and there is  
nowhere for it to go and so it tears, commonly seen  
over the skull but can be seen elsewhere. If you  
30 imagine in your mind - in fact you can conduct the  
experiment yourself, if you take and peel an orange,  
if you cut it with a kitchen knife that's an incised



1 wound, it's clean, it's sharp. If you were to take  
that orange peel, put it over a stone, hit it with  
a hammer or with a stick it will tear. It will be  
divided but you will see it will be ragged. So  
5 there's nothing mystical about these terms. Incised  
wounds or cuts; lacerations or tears; contusions or  
bruises; and an abrasion which is just a scrape. And  
very, very often a scraping and bruising goes to-  
gether and when we talk about an abraded contusion  
10 or a contused abrasion we're talking about a scrape  
and a bruise from a glancing blow of a blunt object.

So when I say superficial incised wounds of the  
neck these were cuts on the neck. Incised defensive  
wounds of the hand, the left finger where I point on  
15 myself, the front part of the finger, and the fleshy  
part of the base of the thumb on the right hand, so  
one on each hand. Cuts in those positions very  
strongly suggestive of an attempt to grab or deflect  
or protect yourself from a knife injury. There were  
20 multiple contusions and lacerations of the face,  
bruises and tears, and there was bruising inside the  
lip. As I think I mentioned earlier, it's very un-  
usual to get that from anything except a direct blow.

25 There was aspiration of blood and gastric con-  
tents. Once again, the tubes in the lungs, the  
trachea and bronchi, the breathing tubes, contained  
large quantities of stomach content. The stomach  
was full with recognizable partly digested food and  
30 some of that had made its way inside the trachea-  
bronchial tree, the breathing tubes.

1           There was hemorrhage in the little membrane  
covering the whites of both eyes and also in the  
anterior chamber of the left eye. That means just  
under the lens in front of the pupil. You may recall  
5 I mentioned in previous testimony that these little  
hemorrhages can be due sometimes to a direct blow.  
They can also be due to struggling for breath against  
some resistance, and that is true in this case. As  
well, however, the bleeding into the eye itself behind  
10 the lens, argues very strongly in favor of a direct  
blow.

          There was some bruising of the left temporal  
scalp where I point on myself. The front part of the  
side of your head is the temporal area, and there was  
15 a laceration, a tearing of the scalp, on the left  
parietal, again where I point on myself. So the tear  
was a little bit behind the bruise.

          Incidentally, these words that I have tried for  
20 20 years - first you spend 10 years learning them and  
then you spend 20 years trying to forget them. Parietal  
means the wall so it's the wall on the side of your  
head. Temporal means tempus time and when you get  
older your hair moves back with time to reveal the  
25 temple so you see all these words made sense to the  
old people that named them, but the side of the head  
for our purposes. And there was a little bit of a  
diffused subarachnoid hemorrhage on the right temporal  
lobe of the brain. This is inside now. Just a little  
30 bit of bleeding. And that goes along with what appear  
to be a blow on the left side of the head. It's commo:  
place to have a little bit of bleeding on the opposite

1 side of the brain. Without going into all the theories  
of why this happens the brain is floating around in-  
side the skull and so you hit it and it tends to  
bounce a little bit. It's even more characteristic  
5 of a fall. When you fall from a height and you hit  
your head the brain tends to bounce like that and you  
may find an injury on the opposite side. So there's  
nothing unusual about finding a scalp injury on one  
side and a little bit of hemorrhage on the other.  
10 Now that injury in itself was trivial.

So that's a summary of the findings. It was my  
conclusion that this person had suffered multiple  
blunt injuries in all respects consistent with a  
severe beating; that this was therefore by definition  
15 a homicide in the sense that the beating was ad-  
ministered by somebody else. It was not a suicide;  
it was not an accident. It was administered by some  
other person. And that the mechanism of death was  
asphyxia, again, lack of oxygen. There are a com-  
20 bination of factors that would have caused that.  
First, there was evidence that he was strangled.  
Secondly, there are multiple rib fractures. Now, if  
you have ever broken one rib, as many people do,  
falling on the ice or something, you know that it is  
25 very painful, it's hard to breathe. You can imagine  
trying to breathe if you had 13 fractures in total of  
your ribs. It would be almost impossible. You would  
tend to breathe very, very shallowly and with diffi-  
30 culty. And then, finally, we have this terminal  
aspiration of gastric content. And further evidence  
of the asphyxial nature of the death is the hemorrhage

1 into the whites of the eyes.

So I think that is the mechanism but the  
mechanism is not really so important as the cause  
and the cause was this beating which in turn gave rise  
5 to all the other findings.

Q. Doctor, earlier you spoke of indicia that led you to  
believe there was compelling evidence of strangulation.  
How compelling would you place this?

A. I cannot think of any other mechanism that would  
10 cause a bleeding into the muscles of the neck in  
association with a fracture of the hyoid bone, in  
association with general signs of asphyxia. It's  
to me inconceivable there could be any other cause.

Q. Doctor, I have just placed in front of you exhibit  
15 P-64, a photo booklet, and I would call your  
attention to, just quickly, the first series of  
photos 1 through 6 which show the condition of Father  
Smith I understand from a previous witness as the  
autopsy began, or just before the autopsy began.  
20 Are there particular factors relating to these photos  
which you wish to draw to the attention of the jurors  
at this time?

A. The first 6 photos in exhibit P-64 are those of the  
25 man identified to me as Father Smith at the time of  
the autopsy. They show the clothes. He was wearing  
a black shirt, dark blue slacks, grey socks, and one  
black shoe on the right foot. In the first photo-  
graph number 1 you can see the clerical collar that  
30 he was wearing has been torn loose and is projecting  
on the right side of the body, and you can see the  
left rear pocket which has been turned inside out and  
torn. You can also see some white powder on the

1 front of trousers in both pictures 1 and 2. I was  
told that that was gyproc powder like in wall plaster  
and that's what it resembled, and also that the  
clothes are blood stained as is the face. Turning  
5 to 3 and 4 they are simply close-ups of the same  
thing showing the blood staining on the face, the  
torn clerical collar, heavy blood staining of the  
shirt in photograph 3, and in 4 blood staining on  
the right hand, the right sock, front of the trousers,  
10 and this white powder on the trousers. Photograph 5  
is to indicate the tearing and inside out pocket on  
the left side of the trousers. And photograph 6,  
another general view of the body showing the blood  
staining of face and shirt and hands.

15 Then beginning with number 7 the body has now  
been cleaned in order to demonstrate the nature of  
the injuries. Looking at photograph 7, right side  
of the face overview, you can see above the right eye  
on the forehead is a small bruise and abrasion. One  
20 of those that I mentioned earlier, an abraded con-  
tusion. It's a scrape and a bruise combined. Photo-  
graph 8 just below it shows a close-up with the ruler  
showing it's not quite a centimeter across, and going  
back to 7 you can sort of quickly go over a catalog  
25 of the injuries. There's a black eye on the right.  
There's a little bruise at the bridge of the nose.  
That nose was fractured by the way. There's a scrape  
and a bruise on the upper right cheek in front of the  
ear. A little bruising of the right ear itself. And  
30 then there is a line across the right cheek. If  
you go now to photograph 9, just cross the page,

1 you will see that same mark with a ruler laid on it.  
You can see it's about 7 or 8 centimeters long.

That's an incised wound. That is a superficial cut  
of the right cheek made with a sharp object, again  
5 I say a knife but obviously it could have been a  
broken piece of glass or the top of a sardine can or  
any other sharp instrument.

Q. Something with a sharp edge such as a knife?

A. Something with a sharp edge.

10 Q. Doctor if I could just for a moment, photograph  
number 7, what condition was the jaw in?

A. The lower jaw, the mandible was intact. It was not  
broken. The fracture was of the upper jaw, the maxilla  
where I point on myself, and by holding the upper  
15 teeth you could move that quite easily and feel the  
grating sound. It was also confirmed by x-ray.

Q. Okay, thank you Doctor.

A. Proceeding then to photograph 10, left side of the  
head you see above the ear and towards the back there  
20 is a small wound. You can see blood staining of the  
hair. And I think if we turn over to photograph 12  
you will see a close-up of that showing it's about 2  
centimeters long and that was a fairly deep wound  
going through to the skull. The skull was not  
25 fractured. This wound went through the skin and the  
underlying tissue.

Q. What would cause that Doctor? What could have caused  
it?

30 A. That is a blunt instrument injury. That is a blow with  
a blunt object.

1 Q. With what? What sort of blunt object are we talking about here?

A. I can't say. There was no imprint so one presumes it wasn't a hammer or an axe or something. I see  
5 no imprint at all so a flat blunt object like a board or a stick or just can't say. Any flat blunt surface.

Q. Could it be done simply with a hand or --

A. It could. It's possible. I would think it more likely that some instrument was used but certainly,  
10 yes, a hand could do it.

Q. Photograph number 11 if you would, please.

A. Number 11 is another very superficial cut, again, sharp, pointed or edged instrument. That is similar to the one in photograph 9 but it's on the opposite  
15 side. Photograph 9 is on the right cheek; photograph 11 shows the left - the side of the left neck running around a little bit towards the back.

Now, come to photograph 13 and we are now on the left side of the face. Once again the overview shows  
20 swelling and bruising of the entire upper face, pronounced black eye, some bruising of the upper lip and swelling, and some tearing injuries over the left eyebrow. Going down to photograph 14 with the ruler you can see there are two of these tearing injuries,  
25 the upper one about 2 centimeters is roughly triangular and the one below that just above the eyebrow is more linear. These are, again, blunt force injuries from a blow being delivered and, as I say,  
30 it's just like the orange peel over the stone, you have got the skin over the bone and if it's struck with a hard object and the force is great enough it's

1 compressed and it tears.

Q. In determining what would have caused those injuries  
does the shape have any effect, Doctor?

A. No, it really isn't very helpful. Both linear and  
5 triangular injuries are common. It depends as much  
on the shape of the object as on the exact curvature  
of the underlying bone and I couldn't come to any  
conclusion as to the shape of the object from those.  
But you see that there are the two tears and then  
10 there's also the swelling and the bruising of the  
soft tissue of the eye underneath it and then the  
whole left cheek as I recall it.

Turning to 15 here is a third transverse cutting  
injury of the front of the neck and you can see from  
15 the ruler it's about 6 centimeters or somewhere  
between 2 and 3 inches long. Just barely goes through  
the skin as you can see. It's divided there but only  
just, and that is similar to - I think we showed two  
previous cuts of that sort.

20 16 is a small wound, 4 or 5 millimeters below  
the lobe of the left ear. That I would judge to be  
a puncture wound, again, very superficial and again  
with some sharp object.

25 17 and 18 show the same injury. This is the back  
of the right shoulder. If you look in photograph 17  
you can just see the hair and the right ear resting on  
the head block and between my hands you see that  
irregular bruise. Again, it's a scraping bruise, an  
30 abraded contusion. Once again there is no clear  
pattern. I have no idea what caused it other than it  
was blunt force injury. It could have been a blow



1 from a fist; it could have been a kick; it could  
equally have been from falling against an object or  
being struck against some hard object.

5 Photograph 19 shows the outside of the left fore-  
arm, wrist area, back of the hand, and you can see  
some pallor about the wrist area which is suggestive  
of a watch having been worn and removed. In photograp  
20 it shows another abraded contusion, another bruise  
with a little scrape mark just below the ruler, and  
10 that is on the inside of the same wrist. If you go  
back up to photograph 19, follow up that white area  
on the wrist in the center and just turn over the top  
of the wrist where I point on myself, that's where  
that bruise is. Suggestion is that this was acquired  
15 when a watch was forcefully removed but, you know,  
probably there could be other explanations but the  
watch was missing, the bruise was there in the same  
area, and that certainly comes to mind as an explana-  
tion.

20 Photographs 21 and 22 are the two what I call  
defensive wounds. They are both cuts, although the  
first one is a bit ragged, but the margins are sharp.  
I believe they were both done with a sharp instrument.  
25 Figure 21 is the palmar aspect, the front if you like,  
of the first phalanx, the first joint of the index  
finger on the left hand. Figure 22, as you can see,  
is the fleshy part of the base of the thumb on the  
right hand. Now, you again could argue could any-  
30 thing else have caused these and the answer is  
certainly. They could have been caused from opening  
a can of sardines. They could have been caused by  
falling on broken glass. They become defensive wounds

1 when they are found in the constellation of injuries  
which we have seen - which we see here. It is very  
suggestive of injuries received in seeking to grab  
or deflect a weapon.

5 Q. Such as what type of weapon?

A. Such as a knife. Figure 23 is a close-up of figure  
22. Doesn't really add anything except to see the  
very sharp edges and the very sharply defined skin  
cut.

10 Figure 24 is a photograph of an overview of the  
back and it shows 2 or 3 little small scrapes down  
towards the lower back below the waist and above the  
buttocks, and in figure 25 you see these closer.  
Just above the ruler you will see some slippage of  
15 the epidermis, the outer layer of the skin. This I  
believe to be evidence of early decomposition. It  
was some 50 hours after death that the autopsy was  
carried out and in that time the skin becomes a little  
more fragile and I suspect it's because of that.  
20 This is a postmortem injury is really what I'm  
trying to say. There's no reddening; there is no  
bleeding; there is no evidence of any vital reaction  
at all and that is a postmortem injury in a body  
which is more or less two days postmortem.

25 Q. The small injuries, however, shown in photographs  
24, 25 and 26, the reddish marks, would have been  
caused by what?

A. The reddish marks are injuries. They are anti-  
30 mortem, they happened before death, and you see two  
reddish scrapes and a little bit of bruising just in  
the lower center back just above the buttocks area,

1 and then you see in figure 25, and a larger view of  
that in 27, a round superficial rather nondescript  
kind of scraping injury. Once again, I really have  
no idea what caused those. The body may have been  
5 dragged or may have been knocked down or may have  
been struck or some combination of those.

28, 29 and 30 are injuries to the left leg.  
28 is the overview showing the leg and you can see  
a little scrape on the knee and that's enlarged in  
10 29. You can see a scrape on the front of the shin  
down near the ankle and that's enlarged in 30. And  
then some other little injuries of the skin in the  
mid shin and they are enlarged in 31. And I think  
just to finish off, 32 is the right leg and once  
15 again there are two injuries shown in the overview.  
The first up on the right side of the knee is en-  
larged in 34 and the second, just above the ruler in  
32, is enlarged in 33. Now, none of these injuries  
is very specific. They suggest that perhaps the per-  
20 son fell to his knees at some point or stumbled into  
something. They are all at the knee or below. I  
can't really be more specific than that.

Q. If you would, please, Doctor, would you go back to  
25 photograph number 24. That appears, as I look at it,  
there seems to be discoloration or swelling of the  
middle portion of would be the left side of the body  
that is shown there. You can see the back.

A. Yes. I think that is a little bit of shadowing. I  
30 was not persuaded that that was actually a bruise in  
itself.

- 1 Q. The incised wounds that you say were demonstrated in  
photographs 15, 11 and 9 would be consistent with a  
deliberate application of what type of instrument?
- A. A knife or knife-like object which appears to have  
5 been drawn across the skin in order to produce a  
light cut.
- Q. Were they life-threatening?
- A. The injuries were not life-threatening, no.
- Q. The presence of -- Would they have had to have  
10 been deliberate from location and the nature of the  
cut?
- A. I believe they were deliberate.
- Q. Then what would you consider as a pathologist with  
considerable experience in the field the presence of  
15 these non-threatening but deliberate injuries in-  
flicted with a knife-like instrument in three and  
other locations on this body? What do they indicate  
to you?
- A. The conclusion that I would reach is that they were  
20 inflicted in order to create fear and pain in the  
victim.
- Q. And that in turn would be consistent with?
- A. Torture.
- Q. I am now placing before you photo booklet P-34, the  
25 autopsy of Donna Daughney. If you could please, by  
placing them side by side, photographs 7, 8 and 9 in  
the Daughney series which is P-34 on your left, with  
photos 7 and 9 in P-64, the Smith photos.
- A. Yes, that's 7, 8 and 4, photographs of Donna Daughney?
- 30 Q. Excuse me, thank you very much Doctor, but I would  
like the jurors also to have their copy. I thought  
they all were still here. I was wrong on that.

1 (Pause.)

MR. SLEETH: Again, Doctor, I would ask you to refer to  
P-34, specifically photographs 7, 8 and 9 which were  
the autopsy photos of Donna Daughney, and to align  
5 those with the photos in P-64, Father Smith,  
particularly photos 7 and 9, and do you see any  
similarities in what is depicted there in the two  
sets Doctor?

A. Yes. 7, 8 and 9 of Donna Daughney, P-34, photograph  
10 7, the superficial cut in the left cheek shown in  
7, in 8 you see an overview with the cut in the left  
cheek and the left side of the neck, and photograph  
9 was the stab wound in the left side of the neck  
which I said penetrated about as deep as it was long  
15 into the cartilage of the voice box. So we have here  
two incised wounds or cuts in the face and neck area  
which were deliberately inflicted and not life-  
threatening. In Father Smith, photographs 7, 8 and  
20 9, you see, again, two linear - well actually 7, 8  
and 9 all show the same injury but 10 shows another  
one, and there was a third which was depicted in  
photograph 15. In each of these two cases you have  
the deliberate infliction of cuts in the face and  
25 neck area and, once again, it is an identical pattern  
of deliberate torture.

Q. I would ask you to refer to photographs 5 and 6 in  
P-34. Those are on your left, the Daughney photo-  
graphs.

A. 5 and 6. 5 shows the stab wound and 6 shows the  
30 marks on the right side of the neck which consist of  
a series of small scratches associated with bruising,

- 1 and I said at the time that that was consistent with attempted manual strangulation. You get bruising from the pressure on the soft tissues and you get the little scratches from fingernail marks.
- 5 Q. And the breaking of the hyoid in Father Smith was consistent you say with --
- A. And the breaking of the hyoid in Father Smith was likewise a classic finding for manual strangulation. So someone has attempted in my opinion to strangle
- 10 each of these people by hand.
- Q. Without leaving 5 and 6 of the P-34, the Daughney photographs, if you would, please, just briefly turn to photos 11 and 15 of P-64, the Smith photos. Both depict the neck area or throat area.
- 15 A. Yes.
- Q. And what similarities, if any, or what features do you note in common about both these?
- A. I'm sorry, let me understand the question. This is 11 and 15?
- 20 Q. 11 and 15 of Father Smith, exhibit P-64.
- A. And those are the ones showing the incised injuries, the cuts, one on the left side of the neck and one directly in front.
- 25 Q. And is there a relationship of any kind with the photo in Daughney, P-34, 5 and 6?
- A. Yes. The relationship, once again, is that they are-- They are trivial in terms of their effect on survival but they are similar in the fact that they appear to have been deliberately inflicted with no purpose
- 30 other than to cause pain.

- 1 Q. I refer you, if you would please then, to photos 7  
and 8 in the Donna Daughney series which is P-34 on  
your left-hand side, and photos 13 and 14 in the  
Smith series, P-64, on your right. I would ask you  
5 to pay particular attention to the eyes. Is there a  
relationship there, or a comparison?
- A. Well, again, we are dealing with both victims had  
black eyes. Both had swelling about the upper part  
of the face. Both have a broken nose. Both have  
10 been struck repeatedly in the face.
- Q. Doctor, you earlier gave your conclusion about what  
the presence of these deliberate instrument inflicted,  
non-life-threatening injuries on Father Smith would  
have been. Would you make the same comparison in the  
15 case of Donna Daughney?
- A. I think there's no doubt that the victims were  
severely beaten and also that they were deliberately  
tortured.
- Q. Doctor, I ask you now - and with reference to the  
20 expression 'blunt injuries', the death of Annie Flam,  
Donna Daughney, Linda Lou Daughney and Father Smith,  
what comparison would you make there? Or  
similarities.
- 25 A. All of these people suffered blunt injuries. All of  
these people were beaten. Three of them, the two  
Daughney sisters and Father Smith, had a fractured  
nose. Two of them, that is Donna Daughney and Father  
Smith, had these cutting injuries. These knife  
30 injuries. All suffered blows to the face. Annie  
Flam had a fractured mandible; Father Smith had a  
fractured maxilla. The mechanism of death in three

1 of them, that is Annie Flam, Donna Daughney and  
Father Smith, was asphyxia as a result of inhalation  
of blood and/or stomach content which in turn was the  
result of fear, pain, reduced consciousness, inability  
5 to - the reflexes were impaired from the result of the  
beating. The only one that had a different mechanism  
was Linda Lou and she was similarly beaten and abused  
but was still alive and died as a result of being  
exposed to the fire.

10 Q. And how similar would you consider all of these  
incidents Doctor?

A. Forensic pathology is the study of patterns. What I  
am offering you is an opinion. It is in the same way  
that art critics can study paintings and pronounce  
15 them to be the work of one person. They can be  
wrong. For what it is worth it is my opinion that  
these four people died by the same hand and in the  
same way.

20 Q. Just to conclude, Doctor, in the case of Father  
Smith and Donna Daughney there was fracturing of  
ribs. How much force would have been required to  
have broken the ribs of those persons?

A. Considerable. It is difficult to break several ribs  
25 in a person that's standing up. I mean everybody has  
watched Rocky and you know that prize fighters can  
break a rib but it's not common. What is far more  
likely is that these persons were lying down. When  
you are lying down you can't move away from the blow.  
30 You are compressed against the floor and, therefore,  
it is relatively easy to break the ribs. Once, again,  
possibly from one or more blows. More likely from



1 someone being jumped on or sat upon. This would be  
the probable mechanism. But one has the impression  
that these people did not die quickly or easily. It  
is not easy to kill a person with blunt force. It is  
5 not easy.

MR. SLEETH: Thank you Doctor.

THE COURT: It's half past 11. Were you going to have any  
cross-examination Mr. Furlotte?

MR. FURLOTTE: Yes, I am, My Lord. I have yet to cross-  
10 examine him on the Daughney incident also.

THE COURT: Well, I think we'll have a recess at this point.  
I would suggest that the jury in this case not take  
the photographs to the jury room for the present. You  
have probably seen enough of them for awhile. And you  
15 shouldn't discuss the case, Doctor MacKay, with any-  
one, of course, until your testimony is finished.

A. Yes, My Lord.

(RECESS - 11:30 - 11:50 A.M.)

COURT RESUMES: (Accused present in prisoner's dock.)  
20 (Jury called, all present.)

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

MR. FURLOTTE: My Lord before I begin cross-examination I  
would like to voice an objection to an opinion given  
by Doctor MacKay in one of his last statements. He  
25 said that he was of the opinion that the victims had  
basically all died from the same hand and basically  
because of the same type of beating which took place.  
My Lord that's an opinion for the jury and the jury  
alone. This is an ultimate question to be answered  
30 by the jury. The opinion given by Doctor MacKay  
would be simply that if for some reason or other

1 the jury was to find Mr. Legere guilty on one account  
then his opinion is that Mr. Legere would be guilty on  
all counts, and I do not believe that this witness was  
declared an expert to give opinion evidence as to who  
5 or how many people may have caused the death of these  
victims, and I believe the proper instruction would  
be to the jury at this time to totally disregard that  
remark.

MR. SLEETH: My Lord my learned friend voices an objection  
10 at this stage in front of the jurors which probably  
should have been made before the jurors ever returned.  
Secondly, if he has an objection to any opinion  
stated by this expert on the stand it is one which  
he can cross-examine on. He will have his opportunity  
15 just shortly to go into the comments made by the  
witness. Thirdly, as my learned friend knows and  
knows full well, and it's another one of the reasons  
why this should not have been dealt with the jury  
present, it should have been dealt with another way  
20 and Mr. Furlotte knows that too, they will be in-  
structed to use their own --

THE COURT: Let me put an end to this present discussion  
just in this way. That I will of course be -- I  
25 took it that what the witness was saying in effect  
was that because of the similarities in the circum-  
stances, the natures of the injuries, the wounds,  
the similarities in the causes and the mechanism of  
death and so on, that it would indicate that very  
30 possibly and in his opinion the same person or one  
person did commit all of the homicides. I will be  
instructing the jury that that is their preserve to

1 make the decision on that point and they will be,  
when they retire, eventually, at the end of the case,  
they will be required to determine whether the same  
person may have done it. There may be other evidence  
5 at that point, there may not be other evidence, but  
it will be up to them to make that, and I'm sure, and  
I instruct the jury now, to accept that as evidence  
of the fact that there were similarities between the  
four deaths and not any conclusive finding that one  
10 person may have done them all. That is a decision  
that you will have to make after you consider all the  
evidence. I think that explains the matter as best  
can be explained. The objection is noted. The  
opinion has been given. It's on the record. The  
15 jury have heard it. I can't do any more than to give  
that explanation on it.

MR. SLEETH: Thank you, My Lord, for your explanation.

THE COURT: Now, would you like to go ahead with your cross-  
20 examination?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. From the last opinion you gave, Doctor MacKay, your  
opinion that they died from the same hand, did I  
understand the testimony in the Flam incident that  
25 Annie Flam, her cause of death, or whatever caused  
her to vomit and choke on her own vomit was that it  
could have been from the pain of a broken jaw?

A. Yes.

Q. Or it could have been from fear?

30 A. Yes.

Q. So it's possible that Annie Flam either saw an  
intruder and became frightful and vomited, that's  
one possibility?

1 A. Yes.

Q. And it's also possible that Annie Flam through - because of her heart condition she may have vomited and choked on her own vomit?

5 A. Yes. You are left with the assumption that someone broke her jaw immediately after this happened and before she died which is stretching things a bit.

Q. Well, we can assume certain things. There's different assumptions that can be drawn from the evidence, is there not?  
10

A. She had a broken jaw, that's a fact. She aspirated, that's a fact. The aspiration was the cause of death. that is a fact. The broken jaw occurred while she was still alive, that is an opinion supported by  
15 three independent experts. To say that she died of the aspiration unrelated to the fracture --

Q. I don't believe there was any evidence --

MR. SLEETH: Objection, My Lord. The witness is trying to answer and Mr. Furlotte is interrupting.  
20

THE COURT: Yes, let the witness answer Mr. Furlotte.

MR. FURLOTTE: I don't recall any evidence given Doctor --

THE COURT: Well, let the witness answer that last question.

MR. FURLOTTE: I'm sorry.  
25

A. What I was trying to say is that I believe the vomiting followed the fracture and death followed the vomiting. Or the aspiration. She would have died very quickly after the aspiration. So in trying  
30 to say could she have been frightened, vomited, aspirated and died, that is theoretically possible but you would have to say that the jaw was fractured

- 1 in the few seconds between those happening and that seems to me very unlikely. I think by far the more reasonable conclusion is that there was a fracture followed by the vomiting.
- 5 Q. The jaw could have been fractured then during a fall once she fainted?
- A. That she faints, falls, breaks her jaw and then aspirates?
- Q. Yes.
- 10 A. I think that is so improbable that I would personally not accept it. I don't believe it.
- Q. But it's possible?
- A. Now let me understand what you are asking as possible. She hears an intruder; she is frightened; she then vomits and/or faints; falls and breaks her jaw by striking it in a particular manner against a hard object; and then she dies. Once again, I suppose that is theoretically possible.
- 15 Q. When you did your autopsy and you formed your opinions in your autopsy report did you check with Nina Flam's family physician?
- 20 A. No.
- MR. SLEETH: Excuse me, My Lord, there is no evidence whatsoever that Nina Flam is dead.
- 25 MR. FURLOTTE: I'm sorry, Annie Flam.
- A. I didn't check with any of the attending physicians, no.
- Q. So you don't know what medication she was on?
- 30 A. I don't know what medication was prescribed. There was -- Sorry, I didn't think we were going to go back to Annie. May I just, My Lord, with the Court's

1 indulgence, check to see the toxicology reports.  
As I recollect the toxicology was negative of Annie  
Flam.

THE COURT: Doctor MacKay was, I think, cross-examined  
5 after his Flam testimony.

MR. FURLOTTE: Yes, My Lord, but it was brought up in  
direct examination just a few minutes ago that he  
was comparing all the deaths.

THE COURT: Yes, I'm not going to stop you but I just  
10 wanted to refresh my own memory. You had conducted--

MR. FURLOTTE: I had cross-examined him on the Flam  
incident. I had not cross-examined him on the  
Daughney incident.

THE COURT: Not on the Daughney?

15 MR. FURLOTTE: No. I reserved cross-examination on the  
Daughney incident.

THE COURT: But you can still go back to Flam. The Flam was  
brought up by comparison. I don't want you to get  
20 into it in the same depth as you did before.

MR. FURLOTTE: Oh no, I don't intend to.

A. Well then to answer your question Mr. Furlotte, I  
did not speak to the family doctor on this, on the  
Annie Flam case or any of the cases. We did toxicolog  
25 at the R.C.M.P. Forensic Lab in Sackville. Their  
conclusion on examination of the blood of Annie Flam  
was that there were normal or background amounts of  
carbon monoxide. Everybody can have 3 or 4% carbon  
monoxide, from smoking, from fires, from polluted  
30 air, and cyanide, again, normal backgrounds are trace  
amounts from the atmosphere. So that was considered  
to be negative. No common drugs were exhibited -  
were found in her blood, and they point out that

- 1 the disclaimer does not include common drugs, does  
not include antibiotics, hormones, metals, cannabis,  
lysergides - that's LSD, cardiac glycosides, and  
vitamins.
- 5 Q. Right. So that test would not have revealed any  
nitroglycerin pills that Annie Flam may have been  
taking?
- A. Nitroglycerin is not strickly speaking a glycoside.  
I don't know if their test would include -- It's  
10 not specifically excluded but you may be right. Maybe  
it would not have.
- Q. But I believe the toxicologist testified that a  
person subject to taking nitroglycerin pills, that  
kind of a heart condition, although it might not  
15 show as her taking a heart attack it itself could  
cause her to vomit, become nauseated and vomit?
- A. Yes, almost any drug can cause you to vomit.
- Q. So, Doctor, if such events have occurred it's  
possible that Annie Flam's death could have been  
20 accidental and not necessarily caused by the same  
hand who may have caused Father Smith to die?
- A. In my considered professional opinion Annie Flam was  
murdered and I think it very likely she was murdered  
by the same person as murdered the other three.
- 25 Q. Yes. Let's go back to Linda Daughney. As I under-  
stand -- Maybe before we get to the Daughneys we  
will finish with Father Smith here. How long could  
Father Smith have been dead before the body was dis-  
covered?
- 30 A. My understanding from the investigators is that he wa  
last seen alive at about 7 in the evening and he was

1 found 24 hours later so there's a 24 hour lapse.  
That is the understanding of the investigators. Now,  
when I saw him he had been dead for 40 to 60 hours  
and, as I say, the autopsy findings with respect to  
5 time of death are extremely unsatisfactory but rigor-  
mortis had largely worn off, I believe I have comments  
to that effect, and there were early signs of de-  
composition. Yes, rigor had dissolved entirely.  
There was a little bit of dependent rigormortis, early  
10 signs of decomposition. I was told death had occurred  
about 40 to 60 hours before the autopsy and that is  
consistent with the condition of the body. As to how  
long he died -- Or during that period you mean when  
he died. Between that -- My information was, and  
15 this was what was told to me of course, not autopsy  
information, he was found at about 7 o'clock on the  
16th, he was last seen alive about 7 o'clock on the  
15th, a 24 hour period. The only contribution I can  
make to that is the condition of the stomach contents  
20 in which there were recognizable food stuffs. The  
stomach was - I use the word 'distended' meaning  
stretched, with a large quantity of partly digested  
food, recognizable corn, onions, apple skin, mush-  
25 room and carrot. That suggests to me a dinner rather  
than a breakfast. Although the time it takes for  
food to disappear is, again, very variable 90% of the  
time we are talking 2 - 3 hours when you can find  
digestible food. That suggests to me that he died 2  
30 or 3 hours - 4 or 5 at the most, after having eaten  
a hearty meal, a dinner type meal or supper type  
meal. If he took his supper at about 6 then it seems



1           likely he died about 10 or 11 that evening. In  
          there.

Q.       And that would be about 10 or 11 of the evening of  
          the 15th?

5       A.       The evening of the 15th rather than later. But,  
          again, this is extremely variable. One of the things  
          that could confound that, for instance, was suppose  
          that he was in fact assaulted at 10 or 11 in the  
          evening and was held prisoner for some length of  
10       time. Well documented that stress and fear of that  
          sort will basically stop digestion all together.  
          So, of course, I have no information on that what-  
          soever.

Q.       Now, we will go back to the Daughneys. You mentioned  
15       that Linda had been still alive at the time of the  
          fire.

A.       Linda, I believe, was alive at the time of the fire  
          based on evidence that she had inhaled soot and that  
          she had carbon monoxide.

20       Q.       But not enough to kill her - the smoke?

A.       As I say, the 23% is on the borderline. In researching  
          the literature there are cases on record of people  
          dying at that level. This was a reasonably fit  
          middle-aged woman. I would expect her to have re-  
25       covered from that alone.

Q.       It's a possibility then that -- Because of the  
          evidence I suppose there's a possibility that Donna  
          Daughney may have been outside and went, after her  
          beating, went inside the house to rescue her sister  
30       and died while trying to rescue her sister.

A.       Sorry?

- 1 Q. She died as a combination of a beating and --
- A. Linda.
- Q. Linda.
- A. Died from the - I think I said shock and carbon
- 5 monoxide poisoning as a result of a beating. It was  
Linda, yes. Donna died more directly from the --
- Q. From the blows?
- A. Yes. Forgive me, I have lost track of your  
question.
- 10 Q. It's possible then that Linda then may have been out-  
side at one point and went inside the house to rescue  
her sister and was overcome by smoke?
- THE COURT: You said Donna before.
- A. You said Donna, okay, I understand.
- 15 THE COURT: But it is Linda you are referring to.
- A. Okay, it was Linda. You mean then -- I take it  
that there's no dispute that Linda was beaten.
- MR. FURLOTTE: No.
- A. But that she might have been beaten but not
- 20 sufficiently to kill her and that at some point she  
reentered the house and was overcome by the fumes?
- Q. Which caused her to vomit.
- A. No, she didn't - I don't think she aspirated. Linda  
died from carbon monoxide poisoning.
- 25 Q. Would you check your report again on Linda? I be-  
lieve your report said she aspirated.
- A. Well now we're talking about Linda. I said the  
carbon monoxide level was not sufficient to be fatal
- 30 in itself, that's in this particular patient, but  
does indicate the victim was exposed to fire. The  
most likely sequence was incapacitation by pain and  
shock from blows to the face. The effects of these

1 have been responsible for a degree of asphyxia which  
combined with the carbon monoxide resulted in death.  
I think she was the only one who didn't aspirate  
food stuff. She had soot way down into her second  
5 order bronchi and the lungs were soft and bright red  
and so on and so forth. She alone of the three did  
not actually aspirate food. She died from the effects  
of the fire. Then the issue really -- I say the  
effects of the fire. Carbon monoxide poisoning plus  
10 soot plus inhaling hot gases is asphyxia. Now, why  
didn't she escape from the fire? I believe because  
she wasn't able to because of the beating. If you  
were to say could she have been beaten up and then  
ran in and was overcome I guess that is possible.

15 Q. There was evidence that there was a struggle outside?

A. Yes.

Q. There was evidence that Linda was found at the foot  
of the bed of her sister, Donna, in Donna's bedroom,  
not her own bedroom.

20 A. Yes. And in fact Linda was the one on whom I found  
some grass particles which supports the fact that she  
was at some point outside.

Q. That's a possibility, is it not, Doctor?

A. Yes.

25 Q. When you were taking vaginal swabs, blood samples,  
body swabs off the victims, Linda and Donna Daughney,  
are you sure you took body swabs off of both girls?

A. Yes.

30 Q. I believe if you check your notes --

A. I neglected to record the fact that there was a body  
swab from Donna, that is correct. That is an omission.

- 1 Q. You only reported in your notes that you provided a swab off of one of the girls.
- A. That's right.
- 5 Q. And, again, you testified in direct examination that you thought the circular mark around the left breast of Linda Daughney was a bite mark.
- A. Yes.
- Q. There is no such indication or opinion in your notes, is there?
- 10 A. I don't remember.
- Q. I believe you mentioned --
- A. 'Semi circular pattern injury, left breast, below and lateral to nipple about 3 centimeters diameter, faint interrupted bruise, semi circle, open towards
- 15 nipple, center pale, to R.C.M.P.' No, I have not identified it in my notes as a bite mark.
- Q. So you did not identify it as a bite mark? As a possible bite mark.
- A. I did not write it down in those notes as a bite
- 20 mark.
- Q. And I believe you cut that piece of flesh off?
- A. Yes.
- Q. As an exhibit?
- A. Yes.
- 25 Q. To send it in to the lab?
- A. Correct.
- Q. And do you know the reason it was being sent into the lab for examination?
- 30 A. I would have expected the identification people would have examined it to see if they had any opinion as to its cause.

1 Q. I notice in P-34, exhibit number 6 - photograph number  
6 in P-34, that was the autopsy of Donna Daughney, I  
believe on direct examination you testified last week  
or so that those were fingernail marks?

5 A. Well, that is certainly the mechanism that comes to  
mind.

Q. So therefore whoever would have strangled or choked  
or made those marks would not have been wearing  
gloves, would they?

10 A. Probably not. I don't see how you could get finger-  
nail marks that clearly if you were wearing gloves.

Q. And there are I believe no such marks on Father  
Smith?

15 A. No. Father Smith he showed bruising but no individual  
scratch marks. That's correct.

Q. Now, these killings were highly publicized. I'm sure  
you are aware of that, when they occurred.

A. Yes.

20 Q. So anybody that's maybe going to do a crime might  
kind of act as a copycat to make it look like the same  
person.

A. Yes.

25 Q. So when you say that in your opinion it come from the  
hand of one person it might be that some person  
wanted it to look like that, would it not?

30 A. Absolutely. I think I used the example to the jury  
that art critics can identify a painting without the  
signature. It's also true people make a living  
forging works of art and fooling the experts. So I  
freely concede that these could have been done by 1,  
2, 3 or 4 people all trying to imitate the pattern  
of the first.

- 1 Q. Would you say that Father Smith was more severely  
beaten than any of the women?
- A. I think he was although it's - there's not a good  
quantitative scale, but I believe the injuries in  
5 Father Smith in general are perhaps more severe.
- Q. Did you remove any jewelry from the women, Linda  
Daughney and Donna Daughney?
- A. Linda Daughney was wearing a small gold heart-shaped  
pierced earring in her right ear, a diamond cluster  
10 ring on her right ring finger, and when I say diamond  
I cannot distinguish diamond from zircon, from glass.  
They look like diamonds to me. A three jewel ring  
on the left ring finger, and a thing that looked like  
an opal stone ring on the right middle finger, and  
15 then a sort of gold ring on the left middle finger.  
I do not know what became of those items of jewelry.  
I identified them but whether the R.C.M.P. seized  
them I truly do not remember. I think we discussed  
them and they said that they didn't wish to use the  
20 rings. That's a choice of the investigator what  
specimens and samples he wishes to take and not take.
- Q. Were you in court when Constable LeFebvre testified?
- A. Yes.
- 25 Q. And he said that if you were going to turn the rings  
and jewelry over it would have been to him that you  
would have turned it over.
- A. Correct.
- Q. Do you recall whether or not you turned it over to  
30 him?
- A. He said that he did not receive them and I have no  
note saying that I gave it to them so it would appear  
they were left and not seized.

- 1 Q. Okay. You do not have it in your notes that you took the body swab off both women, is that right? You only have it in your notes that you took a body swab off of one of them.
- 5 A. Linda Daughney we took -- I think it was Linda. No.
- Q. I believe you have in your notes that you took a body swab off of Donna Daughney.
- A. Yes. A skin swab from right thigh in Donna Daughney and I do not have anything in the notes on Linda but
- 10 I do recollect there was a swab taken somewhere in the abdomen. I don't know where it was in relation to. Umbilicus or rib cage.
- Q. Could you have removed jewelry of Donna Daughney and not have it in your notes seeing as you didn't put
- 15 everything in your notes?
- A. Oh, absolutely. I am very human and quite subject to error. Just a moment. We haven't checked on Donna with respect to jewelry. I have no reference to jewelry being present.
- 20 Q. But it is possible you would have removed jewelry from Donna and forgot to mark it in your notes?
- A. Oh, it is possible. Jewelry -- I'm not even sure I should make notes of these things since it really is not basically my concern but I usually write it
- 25 down, and I have no recollection at all of jewelry on Donna Daughney.
- Q. And just to finish off, you have no idea what happened to the jewelry that you did seize?
- A. Apart from the earring.
- 30 Q. Right. Apart from the earrings and the watch.

1 A. No. From the rings, as far as I know they were re-  
leased. I don't know that they were seized.

MR. FURLOTTE: I have no further questions.

THE COURT: Reexamination?

5 MR. SLEETH: A couple, My Lord, questions that arose during  
cross-examination.

REDIRECT EXAMINATION BY MR. SLEETH:

10 Q. Counsel for the accused gave you a possibility in-  
volving Anna (sic) Flam being startled by an intruder  
and vomiting. Based on your years that's a possi-  
bility, but based on your extensive experience as a  
pathologist and as chief forensic pathologist do you  
find that reasonable?

15 A. No. When you are faced with what could theoretically  
happen, the example I like to use is do I know with  
absolute certainty the sun will rise tomorrow and the  
answer is no I do not, but I firmly believe that it  
will.

20 Q. The many possibilities that were put to you by my  
learned friend do you find them reasonable?

A. No, I do not think it is reasonable to believe that  
these people died from any other than deliberate  
homicide.

25 Q. My learned friend questioned you on the fact that  
Father Smith may have received a more severe beating  
than others who were there. Would you say on the  
basis of your extensive experience --

30 MR. FURLOTTE: My Lord I think the beating to Doctor (sic)  
Smith was well covered in direct examination. It's  
not something new that I brought up on cross.



1 MR. SLEETH: Not that question, My Lord, if I may continue.  
The question put by my learned friend to you delved  
strictly into the issue of whether or not there was  
further extensive - whether or not the damage done,  
5 the injuries to Father Smith, exceeded those done to  
other persons. That was not brought out in direct  
examination. It was brought out for the first time  
during cross-examination.

THE COURT: Yes, I think you are right.

10 MR. SLEETH: Would such further beating be in your opinion  
consistent with Father Smith having resisted more  
than the other persons?

THE COURT: Well that's being a little leading I'm afraid,  
but apart from that the question is all right.

15 MR. SLEETH: Would there be any special reason why you would  
think of that would explain why the injuries sustained  
by Father Smith might exceed those of the three  
persons before him?

A. Well, may I just say that one can almost in terms of  
20 the severity of the injuries I can make two statements.  
Number one: they were very similar. Number two: I  
would think that the most severe or extensive were  
Father Smith's followed by Donna and then somewhat  
25 less with Linda Lou and least with Annie Flam, partly  
of course because much of the evidence was destroyed  
in Annie Flam. So you can, if you wish, grade them  
like that, and the assumption which I think is  
reasonable to make is that Father Smith, although  
30 elderly, was a male of average size and he does have  
defensive cuts indicating there was some sort of  
struggle, and so he probably was harder to subdue  
than the women.

1 Q. Doctor, during cross-examination counsel for the  
accused put before you for the first time the possi-  
bility of Linda Daughney having come to the rescue  
of her sister, Donna Daughney. I would ask you to  
5 turn to exhibit P-35, photographs from the autopsy  
of Linda Daughney, specifically photograph #3. You  
earlier testified as to the injuries which she had in  
fact sustained, the nose, bloodied eyes and the jaw.  
The person depicted in that photograph, would it be  
10 reasonable that person could ever have come to the  
rescue of anyone?

A. I think it's extremely unlikely, certainly. Let me,  
if I may, just look at the summary of her injuries  
for my own memory as well as everybody else's, and  
15 we have said that she had smoke damage, the ovoid  
abrasion on the back, left buttock, the semicircular  
contusion of the left breast, and the black eyes,  
fractures of the nose, the mandible and mouth hamulus  
that is both sides of the lower jaw and the upper jaw.  
20 Now, I believe the hypothesis put to me by counsel  
for the defence was that she had received those in-  
juries, recovered sufficiently to go in the house and  
was overcome by the smoke. Once again, yes,  
25 theoretically people can walk around with three  
fractures of their jaws and their eyes shut and so  
forth and so on. Do I believe it reasonable, no.

MR. SLEETH: Thank you.

THE COURT: Doctor, wouldn't it just be more reasonable to  
30 describe Father Smith as rapidly outgrowing middle  
age rather than elderly?

A. Yes, I have increasing sympathy for that point of  
view.

1 THE COURT: Thank you. Now, it is 25 minutes after 12 and  
I think we'll stop there and have lunch and then come  
back at 2 o'clock.

You are through with Doctor MacKay?

5 MR. SLEETH: Yes, My Lord.

THE COURT: You are excused then Doctor. All right, we will  
come back then at 2 o'clock.

(NOON RECESS - 12:30 - 2 P.M.)

COURT RESUMES. (Accused present. Jury called, all present

10 THE COURT: Now, another witness Mr. Sleeth.

MR. SLEETH: My Lord the Crown will be calling Sergeant  
Victor A. Gorman. Perhaps, however, before having  
him sworn, I have a series of photographs My Lord, a  
booklet. I have spoken with Mr. Furlotte and I don't  
15 believe there will be any objection to these being  
marked in evidence at this time.

THE COURT: Those are in connection to what? How many  
photographs?

20 MR. SLEETH: 25 My Lord.

THE COURT: These are what Mr. --

MR. SLEETH: The next witness to be called, My Lord, will  
be presenting evidence relating to blood splatters.

THE COURT: At the Smith rectory?

25 MR. SLEETH: Yes, My Lord.

THE COURT: They are all photographs on that subject, are  
they?

MR. SLEETH: Yes, My Lord, they are.

THE COURT: This will be exhibit P-65, 1 to 25.

30 (Clerk marks book of photographs exhibit P-65.)

1 MR. SLEETH: Perhaps, My Lord, while the Clerk is doing  
that I could call Sergeant Gorman. It would be my  
intention ultimately to make a motion before you to  
have him given expert qualifications and I will have  
5 to go through a routine.

THE COURT: Mark them up copy P-65 while that's happening.

SERGEANT VICTOR GORMAN, called as a witness, having  
been duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. SLEETH:

Q. Would you please state your name and occupation for  
the court?

A. Yes, my name is Victor Alexander Gorman. I am a  
Staff Sergeant with the Royal Canadian Mounted Police  
15 I am in charge of the Regional Forensic Identification  
Support Section working out of the Halifax Regional  
Forensic Laboratories.

Q. And is there a special area in which you function,  
sir?

20 A. Yes, I am a crime scene examiner and blood stain  
pattern analyst.

Q. In terms of crime scene examination is there any  
particular thing that you do in terms of reconstructio  
or the like?

25 A. Yes. I attend crime scenes and with the aid of crime  
scene processing techniques and blood stain pattern  
analysis reconstruct physical events that occurred  
at these crime scenes.

30 MR. SLEETH: My Lord I am going to move at this stage - I  
am going to request permission of the court to lead  
this witness with a view ultimately to making a  
motion before the court that he be qualified as an

1 expert in crime scene reconstruction and in particular  
in crime blood stain pattern analysis for the purpose  
of crime scene reconstruction.

THE COURT: All right. I believe the thing we're interested  
5 in is in knowing what he can do that the rest of us  
can't do.

MR. SLEETH: Yes, My Lord. May I direct in that fashion  
then. Again, permission to lead My Lord. Starting  
off, Sergeant Gorman, I understand that your  
10 educational background included studies at the  
Diploma of Food Technology in the Institute of  
Fisheries at Saint John's, Newfoundland in 1970, a  
three year program?

A. That is correct.

15 Q. That included studies in physics, biology, chemistry  
and mathematics?

A. That's correct.

Q. And these are of importance, I understand, to blood  
stain analysis. Could you indicate to us why these  
20 particular sciences, physics, biology, chemistry and  
mathematics, are so important in that particular  
area?

A. Well particularly with mathematics and physics, the  
25 fluids in motion which is what blood is, you use  
certain mathematical formulas in trigonometry and  
geometry to determine locations of blows in the third  
dimension, and also biology and chemistry with the  
make-up of blood and blood substance.

Q. When you completed that particular course you also  
30 took courses in surveying principles and techniques  
at Carleton University in 1978?

A. That is correct.

1 Q. Again, this involved plan drawings and mathematics?  
The use of mathematics.

A. That is correct.

Q. And what significance would that particular type of  
5 training have in terms of blood pattern analysis,  
sir? Blood stain analysis.

A. Well, gave me certainly a better understanding of  
how the principles of mathematics and terminology  
used in plan drawings and particularly if we had  
10 blood stains that had to be projected back in the  
third dimension it gave me an understanding of those  
principles related to surveying.

Q. I further understand that you initially joined the  
Royal Canadian Mounted Police in 1970, performed  
15 regular duties for some five years, and then in 1976  
you undertook an Identification Method and Techniques  
Courses at the Canadian Police College in Ottawa, is  
that correct?

A. That is correct.

20 Q. That involved crime scene processing methods?

A. It did.

Q. That would include photography, fingerprint, and  
physical evidence recognition, collection and com-  
25 parison?

A. Yes. And I might add at this time that all of these  
processing techniques assist the identification  
technician in gathering of physical evidence at crime  
scenes which in turn you have to reconstruct the crime  
30 scene to gather the physical evidence, and the more  
physical evidence gathered the more reconstruction.  
So one goes hand in hand with each other.

1 THE COURT: Mr. Sleeth we are letting you speed the witness  
through this but we have got to insist that you speak  
a little more slowly because some of us have very  
slow brains and we have to understand this as you are  
5 talking. You are speaking very quickly.

MR. SLEETH: On your direction, My Lord, I will slow down.

THE COURT: For the benefit of me and others like me.

MR. SLEETH: Perhaps the echo in my own ear My Lord.

I understand also that in 1977 you completed a one  
10 year understudy course at the R.C.M.P. Forensic  
Identification Section in Thompson, Manitoba?

A. Yes, I did.

Q. And this covered theoretical and practical application  
of what?

15 A. Of crime scene method techniques and reconstruction  
to gather physical evidence.

Q. Were you at that time awarded any special qualification  
or certification?

A. Certified as a crime scene examiner.

20 Q. I understand further that you have since that time  
attended and processed over three thousand crime  
scenes?

A. Yes, I have.

25 Q. You have attended forensic identification workshops  
in Manitoba, Saskatchewan, New Brunswick and Nova  
Scotia.

A. That is correct.

Q. You attended, as well, the Advanced Forensic Identifica-  
30 tion Course at the Canadian Police College?

A. I have.

- 1 Q. You have also attended a Forensic Pathology Course  
in Toronto, Ontario?
- A. That is correct.
- Q. And you have lectured to crime scene examiners on  
5 various aspects of crime scene processing.
- A. And reconstruction.
- Q. Now, I take you into July, 1989 into the area of  
blood stain pattern analysis. I understand you then  
completed a 10 month undergraduate program at the  
10 Police Forensic Laboratory in Ottawa?
- A. That is correct.
- Q. Would that have included coverage of various literature  
available on the subject?
- A. Yes, it did. All available literature on blood stain  
15 pattern analysis. There's quite an extensive --
- Q. You studied with the Serology Section on the serologica.  
aspect of blood?
- A. Yes, I did.
- Q. What do those two mean, serology and serological aspect  
20 of blood?
- A. Well, the make-up of blood and what types, how blood  
can be typed to give an indication who the blood may  
belong to. My understanding is that they can't make  
25 positive identification but it's consistent with a  
certain population or frequency in the population.
- Q. And you also at that time studied and practiced  
methods of preservation and collection of blood stain  
pattern evidence?
- A. Yes, I did.
- 30 Q. I would understand, as well, you conducted experiments  
on aspects of blood stain pattern analysis?
- A. I did.



- 1 Q. Did that include conducting experiments on flight characteristics of blood?
- A. Yes.
- Q. Included subjecting blood to various types of impact conditions?
- 5 A. Yes.
- Q. To different velocities?
- A. Yes.
- Q. To different distances of falling?
- 10 A. Yes, that's correct.
- Q. And you use these patterns to do what in terms of a crime scene?
- A. To reconstruct the crime scene.
- Q. You yourself conducted seminars in this particular area with blood stain for other investigators?
- 15 A. I have done many of them, yes.
- Q. About how many death investigations would you in fact have investigated?
- A. Death investigations?
- 20 Q. Yes.
- A. Hundreds. I can't give you an exact number.
- Q. You testified on the geometric interpretation of blood stain patterns?
- 25 A. Yes, I have.
- Q. On how many occasions would we be talking about?
- A. Eight.
- Q. You made a study of blood characteristics?
- A. Yes, I have.
- 30 Q. And is this based basically on the laws of physics and mathematics?

1 A. Yes. Blood stain interpretation actually is - if I  
can explain a little bit what it is My Lord - is the  
examination of blood shapes, locations and distribution  
patterns in order to better understand what happened  
5 at an actual crime scene. There are actually two  
types of examinations that occur. The first type of  
examination is the objective examination. The  
objective examination deals with blood in flight.  
Now blood in flight, like any other fluid, adheres  
10 to the law of physics and fluids in motion, and by  
measuring blood stains or water stains or whatever  
you can actually determine where they originated from  
Within this objective examination we deal with certain  
patterns. We deal with what we call a low velocity  
15 impact pattern. If I can just get away from blood  
for a second and look at, say, water. If I took water  
and put on this nice flat surface and I stepped into  
it the stains that would emanate from it would be a  
low impact. We would have larger stains. By  
20 measuring those stains you can project them back to  
this location. Now, the second type of impact would  
be called medium velocity impact splatters. If I  
took a fist or I kicked or took a baseball bat or  
some other type of weapon and hit into that little  
25 pool of water then the stains would be smaller. They  
would radiate out into a certain pattern. That's  
called a medium velocity impact pattern. Thirdly,  
if I took a high velocity projectile such as a fire-  
arm and fired into that pool of course you are going  
30 to have more velocity and the pattern that's created  
is called a high velocity impact pattern, and it's

1 sort of an aerosol effect. So the more force applied  
the smaller the stains. These are all characteristics  
of this objective examination. Other patterns in  
objective examinations are cast-off stains. If I  
5 had blood or water on my hands and I swung it over my  
head the excess fluid will take flight and you can  
determine where that originated from.

These are patterns that are looked at in the  
objective examination. The second type of examination  
10 is called the subjective examination. Subjective  
examination deals with patterns that would always  
repeat themselves such as if I had water or fluid or  
blood on the palm of my hand and I went over and  
touched that wall it will leave an impression of the  
15 palm of my hand consistent with the palm of my hand.  
Virtually, if I had it on the soles of my feet, foot-  
wear, it will leave an impression of itself. Other  
types of transfer stains would be a wipe, and we have  
all done it is clean a window. You spray a little  
20 bit of spray on it, you take a cloth and you wipe it  
around. That's called a wipe. You are actually  
trying to clean it but you are also spreading that  
fluid around. And another type of transfer is called  
a swipe. Now if I have a fluid on my arm or hand and  
25 I hit against a surface then I just leave a swipe.  
You can't really tell what type of impression it is,  
we just say it's a swipe.

So we deal with these types of patterns in  
30 trying to determine what these patterns at crime  
scenes are for.

1           Another type of subjective examination would be  
passive stains. Now, if I cut the tip of my finger  
and stood here and let this drop at 90° and hit a  
flat surface then I'd get a nice round circle in-  
5           dicative of hitting at 90°. Now, if I started walking  
towards you people I can determine the direction of  
travel of the bleeder because on the side of travel  
there would be a rotation. And this always happens,  
it's a repeatable pattern. You're standing still,  
10           the stain is hitting at 90°, they're circles; if  
someone is travelling you can determine the direction  
of travel.

          Another type of subjective patterns are diluted  
blood stains. If someone has blood on their person  
15           and they are trying to wash it off the stains that  
are left behind are not true blood looking but they  
are sort of pinkish and they are kind of diluted.  
And this is standard type of patterns that are left.  
And with the aid of this subjective examination and  
20           objective examination you can process a crime scene  
and come up with some type of reconstruction of that  
crime scene.

Q.       And in addition to assist you in doing these kinds  
25           of things my understanding as well is that you have  
analyzed mock crime scenes to reconstruct the events  
that occurred employing these techniques?

A.       I have, yes.

Q.       And you attended crime scenes with senior specialists  
30           before you began doing it yourself, analyzing and  
reconstructing blood stain patterns?

A.       Yes, I have.

1 Q. You have completed a course on the mathematics and  
physics involved in blood stain pattern analysis at  
Carleton University in Ottawa?

A. I have. And I should mention at this time that the  
5 course was not only for training but was also to  
verify the mathematics and the physics involved in  
blood stain pattern analysis, and this verification  
was done through computer analyzation of the  
experiments that were done and it confirmed that the -  
10 actual techniques in mathematics and physics were  
confirmed.

Q. And you have attended workshops, at least one workshop  
in particular, in Dallas, Texas on Advanced Blood  
Stain Pattern Analysis?

15 A. Yes, I have.

Q. This then is a technique which is employed by police  
forces in Canada and the United States both?

A. Throughout the world.

Q. You have lectured to crime examiners, senior police  
20 managers, lawyers and coroners on blood stain pattern  
analysis on crime scene reconstruction?

A. Yes, I have.

Q. You are affiliated, as I understand it, as well, with  
25 an International Association of Blood Stain Pattern  
Analysts?

A. I am a member of that Association.

Q. You mentioned that you keep current on the literature.  
Would that include texts by authors such as Herbert  
30 Leon McDonald?

A. Yes.

- 1 Q. There is a specialized literature then in this area  
which is available?
- A. There is lots of literature. Herbert McDonald is of  
Elmira, New York, and he has done extensive studies on  
5 blood stain pattern analysis, has given evidence both  
in Canada and the United States on blood stain pattern  
analysis and has written many articles on it. But  
there are a lot of other people also that have  
written articles that are actually giving courses and  
10 training in this area, and some of these people are  
Terry Laber, he's out of Minnesota, the State Lab  
there; Barton Epstein, he's out of Minnesota also;  
Henry Lee out of Connecticut. There has been a major  
study done out of Sanford Laboratories in Pensacola,  
15 Florida by a syndicate of blood stain people.
- Q. And you keep current on this literature and the  
studies?
- A. Yes, I do.
- 20 Q. And you mentioned a moment ago in answer to one of  
my questions about experiments which you have con-  
ducted, this would have included such things as  
bloody shoe trails?
- A. That's correct.
- 25 Q. Contact patterns?
- A. That's correct.
- Q. Impact spatter patterns?
- A. That's correct.
- Q. Impact angle and stain shape?
- 30 A. Yes.
- Q. Diameter stain as a function of origin?
- A. Yes.

1 Q. And you attend annual seminars in this subject?

A. Yes, I do.

MR. SLEETH: My Lord based on the qualifications recited by  
the witness, and his related experience, plus his  
5 own relation of experiments which have been conducted,  
and his description and now his description of the  
field of blood stain analysis, I would move that the  
witness be qualified as an expert entitled to give  
opinion evidence as so requested earlier.

10 THE COURT: Do you have any questions to put to the witness  
Mr. Furlotte?

MR. FURLOTTE: You state, Sergeant Gorman, that you examined  
over three thousand crime scenes?

A. Yes, I have.

15 MR. FURLOTTE: And you have testified in court on 8  
occasions?

A. I have examined over three thousand crime scenes as  
a crime scene examiner, not as -- That's part of  
my job also as a crime scene examiner and blood stain  
20 pattern analyst. Blood stain pattern analysis I have  
done 60 crime scenes regarding blood stain pattern  
analysis.

MR. FURLOTTE: How many times have you had to testify in  
court?

25 A. 8.

MR. FURLOTTE: 8.

A. Yes.

MR. FURLOTTE: I have no further questions on this.

30 MR. SLEETH: My Lord arising just out of that last series  
of questions there is one subject I -- In those  
occasions when you testified those 8 times were you  
qualified as an expert?

1 A. Yes.

Q. In what category, please?

A. Crime scene reconstruction of blood stain pattern analysis.

5 Q. And courts of what province, please?

A. Provincial Court in Ontario; Provincial and Superior Courts in Nova Scotia; Provincial and Queen's Bench, Trial Division, in New Brunswick.

MR. SLEETH: My Lord.

10 THE COURT: May I ask this of you, Mr. Sleeth, before the witness - before I deal with this matter. Your application of this witness, his expertise, is to show what may - where Father Smith may have been wounded originally and his path and what happened to him.

15

MR. SLEETH: We will be directing our attention, My Lord, through this witness to places where there would have been blood-letting blows and the position in which the body of Father Smith would probably have been at the time those blood-letting blows took place. These would be keyed, My Lord, on the concepts of deliberateness and intent.

20

THE COURT: You say the body - where the body of Father Smith may have been, you mean either live or dead?

25

MR. SLEETH: Yes, My Lord.

THE COURT: Body meaning live or dead.

MR. SLEETH: That's right.

30

THE COURT: Well, I find that your expertise has been sufficiently established in the field of crime scene reconstruction with particular reference to the analysis of blood stain patterns. Does that describe it adequately?



1 A. Yes, My Lord.

THE COURT: This doesn't make you an expert except for the purpose of this trial you know. As I have told the jury earlier, they may accept what you have to say and they may say you don't know what you are talking about.

A. I realize that. My wife says that continuously.

MR. SLEETH: Sergeant Gorman I have just placed a photo booklet before you which is P-65 in evidence. Copies, six, are presently in the hands of the jurors. I would like you first of all to tell us generally these photos, these 25 different photographs depict what, please?

A. Yes, exhibit P-65, booklet of photographs, 1 through 25, are photographs which I took on the 18th and 19th of November, 1989 in Chatham Head Roman Catholic Rectory located in that town.

Q. And they show the interior of what building, please?

A. They show the interior of the rectory of the Roman Catholic Church Rectory.

Q. Okay. Perhaps you could start then with photograph number 1 and show what area we are talking about, where your angle was, and what it depicts. Take your time.

A. Yes. Photograph number 1 I'm coming in through the back porch area looking west into the kitchen. What we have in the foreground are transfer stains of a wiping type of pattern. Also transfer stains on the corner of a mat in this location. More transfer stains on another green mat in this location. Impact spatters against a short wall on the west wall. And the general debris that's throughout the scene.

- 1 Q. What do you mean by impact stains and transfer stains?
- A. These types of patterns in this back portion are medium velocity impact spatters. They have originated  
5 from some type of blow either with a fist, a foot or some type of weapon like a baseball bat, a knife, some type of instrument of that nature. Photograph number two, again referring back to photograph number 1, number 2 would be on my immediate left. As you  
10 enter the kitchen to my immediate left you could see that a table has been overturned, a chair has been overturned, and we have transfer impressions of a boot impression.
- 15 Q. If you could just a moment, Sergeant, before going on with that photograph, on your right, P-57, which is the nearest to the wall, the far wall, shows a diagram of the residence. You are talking about what area now in relation to photographs 1 and 2? You referred to a kitchen.
- 20 A. Yes, photograph number 1 this would be the kitchen. This door is actually opened a little wider. The photograph is looking in a westerly direction, taken from this location.
- 25 Q. Now, completing then, if I could, please, with photograph number 1, you referred to transfer stains which are located where?
- A. Actually, on the floor in this location and along the floor against a northern wall in front of a door here  
30 and in front of a heating radiator.
- Q. How much pooling of blood was there on that floor in the photograph number 1?

1 A. Number 1?

Q. Yes.

A. Well actually there's two areas of pooling and  
pooling is an area that we deal with subjective  
5 examination. If a person lies in an area and the  
floor is level and they are bleeding then the blood  
will pool. And what we have in this particular  
photograph near the chair, one under the chair, and  
just to the right are two small pools of blood.

10 Q. This is the chair which has a pepsi bottle in it in  
photograph number 1 in P-65.

A. That is correct. There's a pepsi bottle underneath  
it. Two small pools of blood. In my estimation  
that's not a tremendous amount of blood. It just  
15 means that someone is bleeding, has laid in those  
areas for a period of time, I can't tell you how  
long, but they have been stationary bleeding in those  
locations.

Now, on to photograph number 2.

20 THE COURT: I'm sorry, just on that, when you say two pools  
of blood where precisely are you --

A. If you see these - one is under the pepsi bottle.  
There's a dark, dark stain. Appears to be a dark  
stain. As blood dries, particularly if there is a  
25 quantity of blood dries, it will blacken as it dries.  
It will turn blacker and blacker and eventually almost  
to the point where it's very, very dark. Brownish.  
If you look at the transfer stains as opposed to the  
small pooling stains these are more reddish, and they  
30 pretty well remain in that state. They don't really  
darken up. So when there's a quantity of blood in a

- 1 location and it starts to dry and it's coagulating  
then it will darken up. That's characteristic of  
blood drying out.
- Q. Now, did you have something more to add at that  
5 point, sir?
- A. No, that's fine.
- Q. The transfer stains to which you have been referring  
us in photograph number 1 are indicative of what?
- A. Indicative of someone that has been bleeding and  
10 now they are rolling around in that blood causing  
the blood to be transferred and wiped.
- Q. Earlier you referred as well to impact stains on a  
particular location. Are you able to show those on  
the diagram P-57 where they would have been found?
- 15 A. Right against this little western wall.
- Q. And they would have, according to your analysis,  
arrived at that spot as a result of what?
- A. As a result of a blow to a blood source. When we say  
20 a blood source, blood that's either on someone's  
person or clothing.
- Q. Are you able because of your skill to tell us how  
violent the blow would have had to have been to cause  
the particular impact stain you observed?
- 25 A. Consistent with a blow from the fist, a foot, or some  
type of instrument.
- Q. Would you have been able as a result of your expertise  
to tell us at what level the body would have been or  
the blood-letting source have been at the time it was  
30 struck?
- A. If I can refer you to photograph number 8 in the  
booklet I have a close-up of this particular area

1 actually. There are two blood-letting blows in this  
area. The first one at approximately 12 inches above  
the floor in this location about --

Q. Perhaps you could turn it as well so His Lordship can  
5 see it.

A. Approximately 12 inches above the floor in this  
location about 5 inches out from the wall, or there-  
abouts. The second blow would have occurred further  
down the wall, approximately 6 inches from the floor,  
10 and again 3 to 4 inches out from the wall. A minimum  
of two blood-letting blows, and I use the word  
'minimum' because there may have been more blows in  
this area and if the victim hasn't moved the stains  
will all project in one pattern type and it's very  
15 hard to distinguish the number of blows. But in this  
particular one it's a minimum of two blood-letting  
blows.

Q. Now, I had interrupted you. You started off on  
20 photograph number 2.

A. Yes. Photograph number 2 we're looking on the floor  
we're looking at footwear impressions in blood. A  
Greb type of boot. And also a piece of paper has the  
transfer stains of a partial boot impression also in  
25 this area. It indicates that someone has blood on  
the soles of their footwear and is walking throughout  
that area.

Q. Okay. Now, I can see a stove on the left-hand side  
of that photograph which is number 2 in P-65. Where  
30 is this area then on the diagram P-57 using your laser  
light there. If it's easier to go over and actually  
look please feel free.

- 1 A. Well this is the stove right here. The footwear  
would actually all be along the floor in this location.
- Q. While you are up there could you possible using this  
red pencil put in capital letters 'BL' for the  
5 location where you seen the blood that you have in that  
photograph.
- A. All these photographs?
- Q. On photograph number 2 at the moment.
- A. Okay. I have marked it twice here but actually it's  
10 throughout here, these transfer stains.
- Q. All right. Could you put underneath that the number  
2 in brackets? Before you leave that location, in  
photograph number 1 you had indicated impact pattern.  
Could you put 'BL' and in brackets underneath 1.
- 15 A. This wall you are talking about?
- Q. Yes. You indicated that earlier in reference to  
photograph number 1.
- A. 1.
- 20 Q. Thank you. Would you then please continue, if you  
wish, with number 2 if there's more you wish to re-  
late to us.
- A. We will continue with photograph number 3. It's a  
little dish mop that was in the sink area, and the  
25 number 24 is the number that I have used to assist  
me with identifying certain areas and you will see  
them in various photographs throughout the booklet.  
They are just for my note taking. When I examined  
this little mop there appeared to be some red stains  
30 on it or it appeared to be soaking a little bit in  
blood and I conducted a hemostick examination. A  
hemostick is just a presumptive test for blood. It

1 turns green if it's positive. Now I might add that  
it's also positive for other things other than blood.  
But if it doesn't turn green then I just disregard  
it and go on. It just gives me an idea of whether I  
5 am dealing with blood or some type of substance. If  
it's negative then I don't deal with it. It's just  
an aid at the crime scene.

Also in this photograph, and they're a little  
difficult to see, but there's a little stain right  
10 here, little blood stain right here. Back in the  
sink there's three or four little lines of staining  
coming down the sink. These are consistent with  
diluted stains and I tested them with the hemostick  
and they were positive presumptive for blood. Also,  
15 in this area there's another little diluted stain in  
that sink. And we refer to photograph number 4, again  
marked area 24, we have another diluted blood stain  
on the sink - the top of the sink here.

20 Q. At the bottom of photograph number 4 in P-65 there  
is what looks like tissue paper or some sort of  
paper and I would ask is there a relationship between  
that and the paper or object shown in photograph  
number 2 which is at the --

25 A. That is the same piece of paper with blood stains on  
the bottom - or on the surface of it.

Q. And also seen on the left-hand side of photo number  
5?

30 A. Seen on the left-hand side of photo number 5, that's  
correct. Photograph number 6, again, we're moving  
along in the kitchen area. I'm showing here there's  
a broom that's on the floor, there's a table that's

1 overturned, there's a chair that's overturned, and  
there's also a few bloodied transfer impressions on  
the floor, Greb type of footwear. Also Greb type of  
6 footwear on a piece of white paper in these locations,  
and other footwear beneath and around this piece of  
white paper. They are all transfer stains. Someone  
has blood on the bottom of their footwear and it has  
transferred to these locations. This occurs as they  
are walking along and they're depositing the blood on  
10 to those surfaces.

Photograph number 6, again, this is the kitchen  
taken a little further into the room looking towards  
the west. I'm actually close to this chair when I've  
taken this. You can see more of the blood staining  
15 on the right, more of the transfer wiping type of  
stains, and more of the debris. Now, I should point  
out, it's hard to see, but up against the wall in  
this location there is actually a pooling of blood,  
a larger pooling of blood, which means that the victim  
20 has been laying there for a longer period of time as  
the blood is running from their person on to the  
floor.

Q. By looking at photograph number 7 which is the one  
25 immediately below are you able to point out that  
pooling a little better possibly?

A. Actually it's right under this paper. Right under  
this paper there's a pooling of blood in there.

Q. So just going back for a moment, earlier you had  
30 indicated a lying near the chair in photograph number  
1 because of the pooling there.



- 1 A. There's two small pools of blood. Very small.
- Q. Which were consistent with?
- A. With the victim laying there bleeding.
- Q. And in photograph number 6 then, the pooling would
- 5 be indicative of the victim lying there?
- A. Bleeding.
- Q. Away from the chair?
- A. Away from the chair. This is the one against the
- 10 actual -- This is the north wall in front of the heater. Also mixed in with this pooling of blood of course is the transfer staining that's been wiped through indicative that there has been some type of struggle in that location wiping the stains as the struggle is ongoing.
- 15 Photograph number 7, again, I have just moved a little into the room behind that chair as a focal point and what I really want to identify here is the medium velocity impact spatter just east of that heater against the wall and actually against the rear
- 20 wall of this heater. Now, we should move on to photograph number 9. That is the same impact spatter. We're not looking at it directly as we were in that other photograph but we are looking at it from the side view. You can see the impact spatter against
- 25 the side of the heater and actually against the door frame itself. And if you look closely at these blood stains you can see they all have little tails on them, and you can determine their direction of travel by their tails. It's just like an arrow. The arrow
- 30 will indicate their direction of travel. Now, again, by measuring these things and using trigonometry and

1 geometry we can determine where this blow originated  
from, and this particular blow originated just out  
front of the stains and I would rather you refer to  
photograph number 7. Right in this location, just  
5 to the right of that door frame. Actually a little  
bit on the door side approximately 5 to 6 inches  
above the floor level is where that blow originated  
from.

Q. And resulting in the blood-letting in the pattern  
10 that was left here, is that right?

A. That's right. As a result of a blow from a fist,  
a boot, or some type of instrument that would create  
that medium velocity impact pattern.

Q. Again taking that red pencil could you mark on P-57  
15 the location then of this blood splatter as 'BL' and  
give it number 3.

A. Right in this location we had medium velocity impact  
splatter against this surface, against this surface and  
a little against this surface in here.

Q. Now, what would the position of the blood-letting  
20 source, the body, have been in that case?

A. Certainly close to the floor if not laying on the  
floor.

Q. But what height from the floor?  
25

A. That impact splatter originated from about five inches  
above the floor so if I were hit in the head my head  
would probably be laying against the floor.

Q. All right, photograph number 8.

A. We have already dealt with photograph number 8 prior,  
30 the impact spatters. Photograph number 9 - let's go  
on to photograph number 10. I want you to refer to

1 the area I have marked 6 in the center of the doorway  
leading into the dining room. It's in this area of  
photograph number 6. I will refer to photograph  
number 11 -- Or area number 6, photograph 10. Now  
5 we go to photograph number 11 and it's a close-up  
view of these impact splatters. Again, these are  
medium velocity impact splatters. Most of these  
splatters are hitting at 90°.

Q. That means?

10 A. That means they're at right angles. That means that  
the blow has originated directly out in front of that  
door. Measuring these stains, they're circles, you  
would get an angle 90° or very close to 90°, whereas  
if we refer back to photograph number 9 and look at  
15 one of these elongated stains --

Q. These are the stains down by the hot air register or  
the heater?

A. That's correct. If I measured these stains the angle  
would be acute. These ones come in at about 30°. The  
20 impact angle would come in at about 30° whereas the  
90° - or the circular angles are hitting at 90°.

Q. Okay. And, again, what significance do these angles  
have in terms of the blood-letting source?

25 A. We can establish where they originated from by  
measuring these stains.

Q. And in relation then to the photographs 10 and 11  
showing the impact - medium velocity impact in area  
6?

30 A. Yes. In area 6 the blow originated below 12 inches.  
12 inches or below which would mean certainly 12  
inches above the floor level. The exact location

- 1 cannot be determined because they are hitting at 90°  
and it's difficult to project the amount unless you  
have these more acute angles. But it's out in front.  
The blow has occurred out in front of this door  
5 maximum height of about 12 inches.
- Q. Again, using that pencil could you mark on P-57,  
please, 'BL(4)' which would be in the area shown in  
photographs 10 and 11.
- A. Approximately right here. Approximately in the  
10 center of that door. This location.
- Q. Thank you.
- A. I will refer you back to photograph number 10 and you  
see area number 7. That's east of the door leading  
into the dining room, area number 7, in this location  
15 Now we refer to photograph number 12. These are the  
medium velocity impact splatters against this surface.  
The maximum height of this blow is approximately 14  
to 15 inches from the floor. Now that's the maximum  
height that it could have occurred.
- 20 Q. And that would mean that the blood-letting source, the  
body, would have been --
- A. Laying on the floor or very close to the floor.
- Q. Are you able to indicate then as 'BL(5)' the location  
25 that's shown in photographs 12 and 13, or at least in  
photograph 12?
- A. I'm sorry, could you --
- Q. Okay, I'll go back. Are you able to show on the  
diagram 57 the location shown in photograph number 12?
- 30 A. Yes. 5 would be against this little wall right here.
- Q. Please continue Sergeant Gorman.

1 A. Photograph number 13 is transfer stains of a swipe nature approximately 1.6 meters from the floor and they're -- This door is the door leading from the kitchen out towards the office of the rectory.

5 Q. Could you indicate that, please, on diagram 57, exhibit 57? You don't have to mark it at the moment at all.

A. It's in this area right here.

10 Q. Thank you very much. And you say a transfer of a swipe. What do you mean by that?

A. Well there's blood on an object and the object has come in contact with that surface and deposited blood on this surface, the door and the door frame.

15 Photograph number 14 is a photograph taken looking into the office of the rectory - or the rectory in Chatham Hill (sic) Roman Catholic Church. What I am describing or showing in this photograph are the blood stains on the safe door, blood stains on a short wall in area number 14, and hair transfer stains against the heater in area number 15, and a large pooling of blood on the floor in area number 20 11.

25 Q. Okay, could you go back over that again for us? You have various numbers that I see here. 11 on photograph number 14. You have the number 11 there on the ground.

A. It's the large pooling of blood on the floor, area number 11.

30 Q. Indicating to you?

A. That someone has laid in this area for an extended period of time bleeding.

- 1 Q. Again, in photograph 14 of P-65 the number 12  
appears.
- A. Number 12, that's showing a medium velocity impact  
splatter, and if you refer to photograph number 15,  
5 directly below 14, you can see this medium velocity  
impact splatter.
- Q. And that medium velocity impact splatter means what  
then to you in your domain of expertise?
- A. Means that someone has received a blood-letting blow  
10 either from a fist, a kick or some other type of  
instrument and this blow originated from the floor  
level and the person that received this blow was  
laying on the floor in that location.
- Q. Photograph number -- Number 13 shown in photo-  
15 graph 14.
- A. That is a partial hand transfer and a swipe. Looks  
like someone has either fallen up against it or be  
pushed up against that location and deposited these  
transfers on the safe door. And these other ones -  
20 they are smaller little stains indicative of some  
type of force. Not very much force where someone has  
fallen against this door and these are little cast-off  
stains that as a person hits this wall they have got  
25 blood on them, or the safe door, and this blood just  
falls off and it's running down towards the floor.
- Q. I also notice there is a number 14 on the right side  
of what appears to be a safe. What is that?
- A. That is a left hand palm impression.
- 30 Q. That would have been caused by what?
- A. The transfer if someone has blood - the victim has  
blood on their left palm and they are either falling  
and they are trying to catch themselves against that

- 1 wall or they are laying on the floor and they are  
trying to support themself or pull themself up and  
that's a transfer stain.
- Q. And then there is a number 15 which appears to be on  
5 some sort of heater on the middle right side of photo-  
graph 14 in P-65. What is that?
- A. That is a hair wipe. There is actually --
- Q. What is a hair wipe?
- A. Let me explain what a hair wipe is. It's another  
10 transfer stain. You have got blood in your hair and  
you touch the surface you will deposit the character-  
istics of the hair on to that surface, and in this  
there was actual hair right in that hair wipe transfer  
So it means that the victim has fallen against that  
15 area hitting his head, depositing transfers of his  
hair and actual hair fibers.
- Q. I believe you said a moment ago that the number 12 in  
photograph 14 would indicate another area of blood-  
letting.
- 20 A. Yes, which I have identified in photograph number 15.
- Q. Could you mark on exhibit P-57 then the location with  
'BL' and I think we are to number 6.
- A. It's right in the center of the safe door, floor  
25 level.
- Q. You are pointing again - or were pointing a moment  
ago at P-57, the area marked as the safe?
- A. That is correct.
- Q. Were there any other blood-letting locations you  
30 discovered in that office area?
- A. There was all kinds of little stains all over that  
area but nothing that I could really measure to

1 determine where other blows occurred.

Q. And would you continue then, please, Sergeant?

A. Yes. Photograph number 16 at the top of the stairs  
5 leading down to the basement we have transfer stains  
of footwear, Greb type, and these are photographs of  
these transfer stains, one right here and another one  
10 right at this location. There are also two or three  
other transfer stains going down the stairs which I  
didn't photograph them all but it indicates a trail  
or direction of travel that someone has taken. So  
they start at the top of the stairs and they are  
heading down the stairs.

Q. Okay, using that laser light could you indicate,  
15 please, to the courtroom where you are talking about  
when you refer to these stairs that are found in  
photograph 16 on P-65?

A. Going down there to the basement.

Q. Thank you. The stairs on P-57. Then would you  
20 continue, please, then Sergeant.

A. Photograph number 18 looking at a transfer stain of  
a boot impression, Greb type, is in the laundry room  
in the basement level. Referring back to the plan  
drawing again --

Q. I think you will find that's the one nearest you.

25 A. It would be in this area right here, right about that  
area of the floor.

Q. And this is an impression left by?

A. A Greb - my impression a Greb type of boot which has  
30 blood on it and has transferred that blood to that  
location. Photograph number 19, again, a transfer  
type of impression. Can't distinguish the type of



1 impression here. There is just no ridge detailed in  
on it but there is blood, and this is in a cold room  
and there's a deep freeze, and it's right in on this  
floor.

5 Q. You are using the light, again, on the area shown in  
the diagram of the basement area.

A. Right in this location. Area 20 is on the floor  
heading out towards -- I should stand up if you  
don't mind. And it's right in about this area. I  
10 call this a rec room area but I see they call it an  
office here so I don't know, but it's right in around  
this area. And you can see there's a footwear  
impression here. You can actually just see a little  
bit of the Greb design, and also up in this location  
15 another little bit of the Greb design.

THE COURT: Would you just repeat that, please?

A. A little bit of a Greb design here in this location  
and actually another piece up in this location also.  
Area number 20 - or photograph number 20, I'm sorry,  
20 again we're showing a blood stain transfer from a  
boot in this area. Staining is on this piece of two  
by four.

MR. SLEETH: Which bears number 21 I believe on it.

A. Which bears the number 21, that's correct. And also  
25 there is a little bit of transfer here but it's very  
hard to distinguish what it is.

Q. That's near the curled up carpet, or what looks like  
a curled up carpet?

A. Yes, just in front of it there. And some little  
30 stains here that are consistent with transfer also  
that were positive with the hemostick.

- 1 Q. Photograph 21 then, please.
- A. Photograph 21 is further in the storage area in  
around this location.
- Q. You are indicating nearing the door to the garage in  
5 the exhibit showing the basement?
- A. Exhibit --
- Q. It's on the lower right-hand side I think you will  
find it.
- A. P-56, the plan drawing. Again, we got pieces of  
10 blood stain transfer in this location and in this  
location here also. Here and here. Photograph 22  
this is the back door area. Referring back to P-57  
it would be in this area over here and there's a  
mat - actually there's a mat on the floor in this  
15 location and there's a couple pieces of transfer  
stain. You can see there's a white little strip  
there. That's a hemostick, and right where that  
marker is there were two small transfer stains with  
nondescript -- they were just transfer stains. Either  
20 they could have been drips that had fallen off a  
person but they were - or something on a footwear  
that's been transferred, but nondescript types of  
transfers.
- 25 Photograph 23 we're looking at a transfer stain  
on the inside. That's a swipe. A very small amount  
of blood that's been transferred there. And another  
little bit of blood up here that's been transferred.
- Photograph number 24 would be the outside door  
30 frame right in around this area.
- Q. On P-57.

1 A. On P-57. Right here. I am describing this area  
below marker 25. That is a transfer stain. Someone  
has hit up against that area depositing blood stains  
on the front surface of the metal and also on the  
5 wooded area. My impression is that it looks like  
there's one stain that someone has hit and deposited  
that one stain on both locations.

And photograph number 25 we have a transfer  
stain out here in this area, a small transfer stain,  
10 swipe type of stain, very small amount of blood  
against this wall.

Q. Throughout the course of your testimony you referred  
at times to pools of blood and these could be con-  
sistent with a body lying at rest at certain points  
15 in time, is that right, and bleeding?

A. Yes, there's stationary and whether they are laying  
or standing - they could be standing upright and  
depositing blood down there, but I would expect to  
see more splashing of blood if they're upright as  
20 opposed to there is very little splashing. There is  
lots of transfer indicative that someone is rolling  
around in the blood causing these wipes.

Q. How many such significant pools did you locate on  
those premises on the --

25 A. There were three in the kitchen; two small ones near  
the chair -- one under the chair and near the chair  
and one up in front of the heater.

Q. Could you put those by taking perhaps, again, a black  
30 pencil or pen - that's blue, that's good enough, and  
perhaps make a 'P' with a circle at the three  
locations you are talking about.

- 1 A. This one is a little bigger. There's more quantity of blood here.
- Q. Okay. That's the kitchen.
- A. That's the kitchen.
- 5 Q. Were there other locations where you found pools of blood significant that you wish to note?
- A. A significant pool of blood was this one in the office of the rectory.
- Q. If you would, please, mark it.
- 10 A. And a large pool of blood where the victim has laid there for an extended period of time bleeding.
- Q. No other significant pools of blood found by you?
- A. No, there was not.
- Q. Now, you referred to blood-letting. There were blood-  
15 letting sites. There were how many that you located?
- A. There was a minimum of five blood-letting blows in the kitchen. Two against this small wall; one at the east end of that heater adjacent to the door frame; one in the center of the door; and one on this short  
20 wall just east of the door.
- Q. And on the lower portion?
- A. They are all on the lower part. They were all being consistent with the victim either laying on the floor or being very close to the floor when they received  
25 those blood-letting blows. Now, I might add that's five blood-letting blows but in order to bring blood to the surface of a victim there has to be an initial blow so really we're talking about six blows.
- 30 Q. And in any areas other than the kitchen where did you find significant blood-letting blows?

- 1 A. There was one blood-letting blow in front of the safe in the office of the rectory and the victim would have been laying on the floor when that blood-letting blow occurred.
- 5 Q. Do you remember looking earlier at archive boxes such as this one?
- A. Yes.
- Q. And making a measurement of one?
- A. Yes.
- 10 Q. Do you recall what the depth of one was?
- A. The depth of that box is 12 inches.
- Q. How high would that come up say on a person's shin or kneecap, normally?
- A. 12 inches I guess. I don't know. Not very high.
- 15 Q. Very low.
- A. Very low.
- Q. The conclusions that you arrived at then as a result of these various pools and the blood-letting sites which you have related at such lengths to us.
- 20 A. Yes. The conclusions are in the kitchen area there was a major struggle. Blood-letting occurred in the center of that kitchen. There was a struggle on or near the floor, up against a wall where a minimum of five blood-letting blows occurred bearing in mind
- 25 that one blow had to occur before to start the bleeding. The assailant then - and the victim then went out to the office area where the victim received another blood-letting blow while he was on the floor in front of the safe. At some point in time he either
- 30 fell up against that safe or was pushed against that safe and then fell against a heater depositing a hair

1 wipe against that heater and then subsequently laid  
in the position he was found and subsequently died.

It appears to me that the assailant at some  
point in time returned to the kitchen area and  
5 attempted to clean blood off his person or off some-  
thing because of the diluted blood stains, and sub-  
sequently went downstairs, out through the storage  
area. The blood stains at the back door I had diffi-  
culty with those because there's no indication of a  
10 struggle out there. My first impression of those  
types of stains were that they were transferred by an  
investigator who was in and out of that scene because  
they're just basic transfer stains.

15 Q. And the transfer stains which you found throughout  
the basement area and which you refer to as the latter  
series of photographs in the photo booklet you have  
before you indicated wandering through what portions  
of the basement?

20 A. Yes. Down the stairs into the laundry room, in through  
the cold room and out into the storage area towards  
the rear exit of the basement. Refer to P-56, out in  
this area.

Q. You just pointed towards the garage area.

25 A. Yes, towards the garage.

Q. Headed towards the garage.

A. Yes.

MR. SLEETH: Thank you.

30 THE COURT: Cross-examination Mr. Furlotte. I was just  
wondering, do you want to - should we have a recess  
now? Would you prefer to do this after a recess?

MR. FURLOTTE: I would prefer to have a recess now.

(RECESS - 3:10 - 3:35 P.M.)

1 COURT RECONVENES. (Accused present. Jury called, all  
present.)

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

5 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Sergeant Gorman your testimony was very impressive  
and I would like to thank you for your assistance,  
both for the Court and the Jury. I find in under-  
standing expert witnesses that basically all we can  
10 do is use our common sense approach which would be  
reasonable, would it not?

A. Yes.

Q. And from your testimony basically it would appear  
that Father Smith when he was being beaten he was  
15 mostly on the floor.

A. On or near the floor.

Q. On or near the floor.

A. Yes.

Q. And it was a good chance that a lot of these blood-  
20 letting blows that you described were kicks rather  
than punches?

A. Well, I can't say that. I can't say that they are  
kicks or punches or not but they occurred near the  
floor.

25 Q. Now, according to the evidence so far, there's evident  
of possible entry into Father Smith's home either  
through the back door of the porch area leading into  
the kitchen and through the basement area, through  
the garage door. According to the reconstruction of  
30 the scene you would say the fight began where?

A. I would think it happened in the kitchen.

1 Q. That's where initially it began?

A. From the blood stains that are there. Now it could  
have happened out in the hallway, it could have  
happened in the basement and Father Smith was taken  
5 upstairs without any blood-letting occurring, so I  
don't know exactly where the altercation would have  
started.

Q. But if Father Smith was the type of person to say -  
if he heard somebody breaking in he would go and  
10 investigate to see what was going on, there's a chance  
that the initial point of entry was the back door yet  
the fight and the blood scene seems to --

A. I'm not sure --

Q. -- give the impression that the fight began in the  
15 kitchen. You're right there.

A. Which back door? What are you talking about? The  
back door. The garage door or --

Q. This back door.

MR. SLEETH: My Lord I have to object to that. I don't mean  
20 to be too picky about this but that is not in the  
area of this witness's expertise, the point of entry.

MR. FURLOTTE: I believe this expert's --

THE COURT: Well, these are sort of hypothetical questions.

MR. FURLOTTE: -- attempting to reconstruct the crime scene,  
25

THE COURT: I'll permit you to go ahead Mr. Furlotte.

MR. FURLOTTE: There's evidence that this door had been  
forced open.

A. On this side. The church side you mean?

Q. Well, I don't know if that's the church side or not.  
30 This porch door that was forced open.

A. And the question is?



- 1 Q. The question is if Father Smith was the type of person that if he heard a noise that he would go and investigate it --
- A. Um-hmm.
- 5 Q. So is there a good chance that because the fight began in this area that he would have met his assailant for the first time in the porch area?
- A. That's possible. There was no - certainly no indication of any struggle in that porch area other than the little bit of blood that was - and that other door which was transfer. There were no impact splatters.
- 10 Q. But there was no indication of any struggle from this area all the way up into the kitchen?
- 15 A. No, there was not.
- Q. Now, in P-65, photograph number 1, I believe you mentioned that the blood stains there was kind of a - there was a few pools of blood.
- A. There's a couple of small --
- 20 Q. Two.
- A. Yes, two small pools of blood.
- Q. And the other was of a white type blood transfer smear?
- A. All these are wipes throughout, yes.
- 25 Q. And did it indicate that any of the clothes - I see a towel there and maybe a shirt on the other side of the chair, that blue thing on the other side of the chair in number 1 --
- 30 A. Yes.
- Q. Was there any indication that those pieces of cloth were used to wipe blood?

1 A. Well, there was on this particular blue towel there  
was transfer stains, and there was also transfer  
stains on those other two articles, the shirt and  
the other towel but I didn't get the impression looking  
5 at them at the scene that they were used to wipe any  
blood up. My impression was that these transfers  
occurred as a result of a struggle as opposed to a  
wiping type of action.

Q. But there are cloths in the area that -- Is it  
10 possible that somebody attempted to wipe a few of the  
footprints off that area?

A. Anything is possible, yes.

Q. And photograph number 3, the one with the dish mop,  
I believe you mentioned there was a few blood stains  
15 on top of the sink?

A. Yes.

Q. And along in the back were diluted blood stains which  
kind of dripped down the back.

A. Yes, they were just streaks down the back, they were.

20 Q. Were you able to detect any blood at all from the  
dish mop?

A. Yes, around this edge here there was a positive re-  
action with the hemostick.

Q. But all of that brown staining in the sink --

25 A. That's not blood.

Q. That's not blood.

A. No, it isn't.

Q. Is there any way that you can tell how long it was  
30 before -- Let's go on the presumption that the  
blood stains were made in the kitchen first. Is there  
any way you can tell how long it took for the blood  
stains to be made in the office area between times?

- 1 A. Impossible.
- Q. Whether it was 5 minutes apart or a couple of hours apart.
- A. You can tell sometimes from coagulation. If someone  
5 got a blow to the face and the nose bleeds and there is no other action blood will coagulate. It will start to coagulate at about three minutes. Depending on atmospheric conditions it could coagulate in 15 to 20 minutes. And then if they received a second  
10 blow then you would get this coagulated blood in flight and they are irregular stains. There was no indication of that at this particular crime scene of the time frame.
- Q. Is there any way you can tell as to when these - how  
15 long after these blood transfers occurred?
- A. Well, obviously the blood would have to be a fluid when the shoes walked into it but I can't give you a time, no.
- Q. You say a fluid. You mean not coagulated?  
20
- A. Not coag -- Mind you, you could still, if blood coagulates, and you know what coagulated blood is like, it's like a gel, and if I walked into it then I can transfer it but when I transfer it there would  
25 be pieces of coagulated blood in that transfer. I didn't observe any of those.
- Q. How about in photograph 16?
- A. Photograph 16.
- Q. On the metal strip.
- A. On the metal strip. Those little pieces?  
30
- Q. Those little pieces. Are they blood clots?

- 1 A. No, they're not. When I observed them at the scene  
I didn't consider them to be blood clots. They're  
probably dried blood.
- Q. What about in photograph number 2?
- 5 A. Photograph number 2.
- Q. Aside from the boot prints does there appear to be  
little blood clots or coagulated blood stains?
- A. You are referring to this stain here or this stain  
here?
- 10 Q. Yes, at the bottom of the white paper on the floor.  
MR. SLEETH: Which stain are we referring to My Lord?
- A. This stain right here and this stain up here. Again,  
I don't remember them as being clots. I didn't con-  
sider them clots. I would consider them dry. Dried  
15 stains as opposed to a clotting stain.
- Q. But once the blood is coagulated it is much more  
difficult to transfer the stains, is that what you  
are saying?
- A. Well, if it's still in sort of a liquid state it's  
20 not difficult, it's like a gel. If you step into it  
you are going to transfer the blood from one object  
to another. It's just that the coagulated stains  
would be sort of irregular.
- Q. So if we look at photograph 22 --
- 25 A. Yes.
- Q. There's a blood stain transfer on the mat.
- A. A couple of small transfer stains there, yes.
- Q. Going out the back door?
- A. Yes.
- 30 Q. And, again, there is a transfer stain in photograph  
23 on the outside of the door?

- 1 A. Yeah, that's a swipe.  
Q. That's a swipe.  
A. Yes.  
Q. That would be out this door here?
- 5 A. That's correct.  
Q. And in photograph number 24 --  
A. That's a transfer stain.  
Q. That's another swipe transfer stain?  
A. Kind of a swipe, yes. It's a transfer.
- 10 Q. So that would have been on this door jamb in here?  
A. Right in that location you are pointing.  
Q. In that location..  
A. Yes.  
Q. Down at about maybe --
- 15 A. 19 inches from --  
Q. Hand level when you are walking out. If somebody was walking out that door and had blood on the back of their hand could they transfer it that way?
- 20 A. Well, it was 19 inches from - if I can stand up - from my side.  
Q. That was 19 inches.  
A. About 19 inches from the floor.  
Q. You don't have a ruler on you I don't suppose.
- 25 A. I do. 6 - 12 - 19 inches. Right there.  
Q. So maybe about knee level?  
A. My impression was that it wasn't a hand transfer. It was sort of a leg or something leaning up against it at about this height.
- 30 Q. But it would have been blood that the person or whoever transferred it would have picked up inside the house?

1 A. Well, picked up certainly somewhere inside the house,  
whether from some other object or blood or the victim

Q. Now, there appeared to be some sort of a struggle  
going on inside?

5 A. In the kitchen area?

Q. In the kitchen area.

A. Definitely a struggle in the kitchen area. Very much  
so.

10 Q. And there could be let's say more than the victim's  
blood inside the kitchen area and the office area.  
There could be the assailant's blood also?

A. I don't know that.

Q. Well I'm just saying there could be.

15 A. I guess there could be, yeah. I don't know that for  
sure, no.

Q. And it's logical to conclude that most of this blood  
inside came from the victim but it doesn't necessarily  
all come from the victim, does it?

20 A. No, well again, I don't know that. I'm just assuming  
that it is all from the victim.

Q. Now, you concluded that whoever was inside, the  
assailant, after the beating took place, that he  
made his exit out through the garage. Out through  
a storage area and out the garage door.

25 A. Yes. I'm assuming that from the foot where it's  
leading down the stairs, searching in the laundry,  
the cold room, and out the storage area. There's no  
indication of any trail coming back up the stairs.

30 Q. Is there any reason why the person who made the foot-  
prints in the blood could not have made his entry  
through the garage door here, come up into the kitchen  
area? Where would he be coming - through here?

- 1 A. Yeah, right where --
- Q. Come up through here?
- A. Yes, that's the location.
- Q. Could have tramped in through the blood and then
- 5 walked back out again that door?
- A. You mean -- Correct me if I understand the question. That Father Smith has been assaulted; there's blood all over the scene; someone has entered the basement; gone up to that scene and tramped all
- 10 over it.
- Q. And then left again through the basement.
- A. The only thing I disagree with that is that I think within some of these transfer or wipings there's bits of this boot all over which would mean that whoever
- 15 walked here would have to walk all over the blood.
- Q. Oh yes, yes.
- A. Well, I guess that's conceivable, yes.
- Q. Conceivable. If there was blood in here, somebody was in here, and apparently somebody transferred
- 20 blood and left it on the mat out here.
- A. Two small stains.
- Q. Two small stains. And left some blood on the door and on the door frame.
- A. That's right.
- 25 Q. So it would appear as if somebody went out this back door, would it not?
- A. At some point in time that's correct.
- Q. And according to yourself this blood supposedly would have to be wet to a certain degree to get transfers.
- 30 A. Yes.

- 1 Q. Then the stain on the door must have been made relatively close in time of the assault.
- A. When the blood was still in a fluid type of condition Or sometimes blood doesn't dry within 10 minutes, as  
5 you can well imagine. I was at that crime scene on the 18th of November, and the 19th, and you could still transfer some of that blood because the underneath portions were -- the top surface had dried out -- were still damp.
- 10 Q. Still wet.
- A. Still wet.
- Q. So maybe like walking in it with boots that might be possible, by heavy weight, to go through the pools of blood? Like there's a lot of pools of blood on  
15 the floor.
- A. Um-hmm. Well --
- Q. So somebody walking in that could have got the underneath - the boots wet --
- A. Could have broken through that crusty area and picked  
20 up some blood.
- Q. Onto their boots and then tracked it around. But the person who would have walked out this back door and left some -- Well, again, the back could have been caused by boots.
- 25 A. There was no other trail of blood. There didn't seem to be any boot impressions or any type of struggle or anything out there. My impression, when I am doing the scene and that sort of was unusual that you would  
30 have transfer at that back door and nowhere else. There was no transfer on this -- There was no transfer on this door, either the inside or outside.



1           There was no indication. So my impression was that  
          someone has picked blood up and then transferred it  
          to that location.

Q.       That door may have been left open. Whenever the  
5           assailant came in left that door open but to get out,  
          escape, he would have to open this back door to get  
          out.

A.       It's possible.

Q.       Did you say something that the transfer in that area  
10           almost looked as if it was dropped like it was  
          liquid, dropped on the mat?

A.       Well, it could have been a passive stain that's  
          fallen off a hand or a piece of -- Again, you know,  
15           when you are dealing with two stains you don't want  
          to draw too many conclusions one way or the other.

Q.       If the blood stain on this door here was let's say  
          for argument sake matched the blood type of the  
          victim --

A.       Um-hmm.

Q.       So you would assume that this person transferred the  
20           victim's blood out here whenever they left, is that  
          correct?

A.       Well someone. I'm not saying - The assailant or some-  
          body transferred it.

Q.       When someone came out of this area and went out this  
25           door they would have left the victim's blood there?

A.       Yes.

Q.       Now what if also on that door frame there was blood  
30           that did not belong to the victim. You could clearly  
          exclude the victim. Then it might be blood left from  
          the assailant. That the assailant was injured.

- 1 A. It's quite possible, or someone else. My impression of that stain - again I don't know the blood type - my impression was one pattern transfer.
- Q. That's what it looked like.
- 5 A. Yes.
- Q. But if somebody was fighting with the victim and punching them and himself - I'm going to say him because it probably looks more like the work of a man than a woman - got cut in the fight and it was
- 10 his blood on his hand and the victim's blood on his hand and made a smear as he went out the door, opened the door and got out, then there would be both blood stains - there might be both blood stains on that door?
- 15 A. There possibly could, yes.
- Q. And it would more look as if the assailant, whoever did the fighting, left this way rather than out through the basement and this way. That's assuming there's only one person involved, Sergeant.
- 20 A. Yes. That's right. Again, that's - hypothetically I guess that's true.
- Q. If a person came in this way, had the fight, tracked all over the place, and then as you suggest, left
- 25 out through here through the storage area and out the garage, he wouldn't have to smash the door down to get out, would he? He would be able to flip the dead bolt back and open the door and get out.
- A. Well, I don't know. I don't know what that door --
- 30 Q. You didn't check the door to see how it opens?
- A. Not really. I was just looking basically for blood splatters. I walked throughout the scene, exterior

1 and interior, but I didn't check -- I can't tell  
you what the mechanism - the locking mechanism was  
like on that particular door.

Q. Okay. So just to review possibilities again, if  
5 this door was broken in to get in, a fight ensued  
in here leaving all the blood stains and the killing,  
there's evidence that maybe somebody left here  
through out this door --

A. Yes.

10 Q. -- dropped blood stains on here which is consistent  
with the victim and some stains which was not con-  
sistent with the victim, and it's quite possible who-  
ever come in did the fight and left this area.  
Granted that --

15 A. Yeah, I could give you that, yes, that's quite  
possible.

Q. Now, it appears that maybe Father Smith was dead  
anywheres from 12 to 24 hours, 20 hours or so before  
20 the body was discovered. Is it possible in the mean-  
time somebody could have broke in that back door,  
chopped it down with an axe, break the dead bolt and  
everything, come in, find the scene, look around,  
tramp through the blood tracks and then leave again?

A. It's possible.

25 Q. Photograph number 10, I don't know if this has any  
significance or not, but up to the right of the door  
frame there, up in this area, and then I think again  
on that jamb here, there's some little like markings  
- pencil marking Ds. Were those put there by police  
30 investigators?

1 A. I am only assuming because I don't know. I don't know if I can comment on that.

THE COURT: What photograph was that?

MR. FURLOTTE: Number 10. Up along the wall and the door  
5 jambs. On each side of the door jambs there's about 3 Ds there. Two on the right side and one on the left-hand side.

A. I'm assuming that they have fingerprinted or examined that area and they write a 'D' on it for it's done.

10 Q. Done.

A. Done. I don't know. I'm just --

Q. It would almost look as if maybe they maybe even lifted fingerprints off that area.

A. I don't know. I didn't get involved in any of that  
15 other physical evidence. I know they were working.

Q. Would that be a good height for somebody who would be say kicking Father Smith to be leaning against a wall while they are kicking?

A. I don't know. I don't know what that height is.  
20 What are these markings here? Me see. About 2 meters to -- Oh, about 6 foot, 6½ feet.

Q. Well, not 6½ feet. Now, come on. It is only about the middle of the door. Here is the door height  
25 here.

A. 6 feet --

Q. We have the door area here. If a person was going to -- You say Father Smith was laying down maybe.

A. And this one is about here.

Q. Yes.  
30

A. That's about 6 feet.

Q. How tall are you?

A. 5 feet 8½.

1 THE COURT: Where have they gone to?

MR. FURLOTTE: Hiding in the back corner. We're having a  
private trial here. It is possible, Sergeant, that  
somebody could be leaning against the wall or the  
5 door while they are kicking Father Smith in the head.

A. That is possible but I don't know if there were any  
fingerprints or anything --

Q. You don't know if any fingerprints were lifted in  
that area?

10 A. I don't know, no.

Q. But for a reconstruction of a crime scene if there  
were fingerprints lifted in that area it would be  
a good possibility that they would belong to the  
assailant?

15 A. I don't know. Someone can touch that area without  
having kicked Father Smith. You know. The thing  
is I don't know if there were prints there, if they  
were left. There were certainly no transfer prints  
in blood or fingerprints.

20 Q. Not in blood, no. But I am just trying to use common  
sense. You are the expert. Would common sense  
dictate that there would be a good possibility that  
if there are fingerprints they would be the finger-  
prints of the assailant leaning against the wall  
25 while kicking the priest?

A. Again, depending on the height of the assailant I  
guess. I don't know, if I were going to lean against  
a wall I think I would have my hands a little lower  
down and kick somebody as opposed to - you know -  
30 Again, I have never done that so I'm just guessing.

- 1 Q. But you are not trying to kick somebody to death?  
A. No, I'm not. I have never done that.  
Q. So you don't know what you would do, do you?  
A. No.
- 5 Q. And, again, there was no signs of a struggle out in  
the porch area as you stated?  
A. No, there was not.  
Q. So therefore those transfer stains were most likely  
made by somebody leaving the scene of a crime rather  
10 than coming in?  
A. That was my -- They were going out.  
Q. Going out, yes. And those stains would have had to  
have been made shortly after the assault took place?  
A. Well, I don't know shortly after, but certainly --  
15 Q. Well not days after.  
A. No. Certainly while the blood was in a sort of a  
fluid type of --  
Q. Fluid type. And that would stay in a fluid type for  
how long?  
20 A. Depending on atmospheric conditions. Like I say, I  
was there on the 18th and 19th and some of it was  
still in a fluid state at that time.  
Q. So then that same thing then could happen for the  
boot marks?  
25 A. That's conceivable, yes.  
MR. FURLOTTE: I have no further questions.  
THE COURT: Re-examination Mr. Sleeth.

REDIRECT EXAMINATION BY MR. SLEETH:

- 30 Q. Did I understand you to say in response to questions  
by my learned friend that there was no indication of  
any struggle in the porch area?

1 A. There was not.

Q. You were asked about a struggle by my learned friend  
and exit by the attacker through the porch area  
shortly - presumably after that attack. Would you  
5 normally then have expected to find transfer stains  
in the porch area following such an attack?

A. I would expect to find boot transfer stains. If the  
assailant has walked in the blood and he has exited  
that location I would expect to find boot transfer  
10 stains.

Q. When yourself and counsel for the accused disappeared  
around the corner over by that door and he was  
demonstrating for everyone's delight how it might be  
possible to inflict kicks on someone while holding  
15 your hand up against a door, would you expect to  
find fingerprints on that door if the assailant was  
wearing gloves?

A. No, I would not.

20 Q. You said, I believe, in response to a question by  
my learned friend that there was no coagulated blood  
discovered on any of the transfer points?

A. I did not find any, no.

Q. At what height was this smear - the transfer stain  
25 that you found on the door frame on the porch? What  
height off the ground was it?

A. Which one are we -- Oh, the one at the back?

Q. Yes.

MR. FURLOTTE: 19 inches.

30 MR. SLEETH: I'll get the answer out of the witness if you  
don't mind my learned friend.

A. The maximum height was 48 centimeters.

1 Q. Okay, I'm old-fashioned, what's that work out into,  
roughly, in inches?

A. 19 inches.

Q. If they were struggling they had to be struggling  
5 down around the ground.

A. If they were struggling they would have been low,  
yes.

Q. Purely then, from your physical observations, and you  
went through the scene, from your physical - purely  
10 from your physical observations then, and your visual  
observations, how many persons would you say other  
than Father Smith were in that house, on the basis  
of your visual observations?

A. Just the assailant and Father Smith. I didn't --

15 Q. Thank you.

A. In my opinion I didn't see, notice or thought that  
there was anybody else.

THE COURT: A couple of little questions that I thought the  
jury might want to ask, and one is if a person lay in  
20 the kitchen could he, if wounded say in the hand and  
the head or in two separate places, could you create  
two pools of blood at the same time?

A. Yes, you can.

25 THE COURT: If there are three pools of blood it doesn't  
necessarily mean that the injured person --

A. If there were an artery or arterial bleeding coming  
from the hand, you know, that there had to be some  
artery severed there, and a person's hand is laying  
30 in that location for a period of time there is going  
to be a pooling if the blood is flowing sufficiently  
to cause a pool. Again, you would have to know.



1           And I don't know what the pathologist said about that  
cut. You would have to have sufficient blood flowing  
from that hand to form a pool. But if there is  
sufficient blood flowing then you can form one or  
5           two pools, one from the hand and one from the head,  
if he is bleeding from the head.

THE COURT: The other question was in your photograph there,  
number 14 in that exhibit P-65, where the body was  
found just near the safe, the transferred blood as  
10           opposed to the pool of blood which I am indicating  
here seems to be scraped or seems to be in lineal  
fashion. What is the significance of that?

A.       What we have here, you can determine direction of  
travel also from what we call -- If I had a bloody  
15           mat I can tell you the direction of travel that that  
blood will travel by pulling the mat and it will  
feather out in the direction of travel. So what we  
have here, Father Smith has been taken away, my  
opinion, by the ambulance people and he has been  
20           pulled out from the wall causing this feathering  
effect of the pool.

THE COURT: That's from the body bag then?

A.       From the body bag. It has nothing to do with the  
actual crime scene other than the fact that they have  
25           created these transfer stains when they removed  
Father Smith from the scene.

THE COURT: Any questions arising out of those two, firstly  
Mr. Furlotte?

30       MR. FURLOTTE: No, My Lord.

THE COURT: And Mr. Sleeth?

MR. SLEETH: No, My Lord.

1 THE COURT: Thank you very much then. And this is the last  
of this witness?

MR. SLEETH: Yes, My Lord, I would ask he be excused.

THE COURT: So you are excused Staff Sergeant. Well, we  
5 have time for one more anyway.

MR. ALLMAN: Yes, My Lord, we are going to depart from the  
order that appears on the witness list to accommodate  
some civilian witnesses who have some problems. We  
are going to proceed down to Robert Blair Hancock,  
10 155. Mr. Furlotte advised me that we could go that  
far on the list.

ROBERT HANCOCK, called as a witness, having been  
duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. ALLMAN:

Q. What's your name, please?

A. It's Robert Blair Hancock.

Q. What town or city do you live in Mr. Hancock?

A. I live in Toronto, Ontario.

20 Q. On the 16th of November, 1989 where did you live?

A. I lived in Chatham Head, New Brunswick.

Q. And what was your occupation on that date?

A. I was driving a taxi.

Q. Would you be familiar with the rectory which Father  
25 Smith was a priest?

A. Yes, I would be.

Q. Would you also be acquainted with in the sense of  
to some extent with Father Smith?

A. I was not a member of the parish but yes I knew who  
30 he was.

Q. Would you be able to recognize him for instance?

A. Yes.

- 1 Q. I am going to show you picture S-7 which is P-59,  
number 7. I would ask you if you recognize the area  
that aerial photograph shows?
- A. Yes, I do. That's the Morrissy Bridge.
- 5 Q. And do you recognize where the rectory and the church  
are?
- A. That's --
- Q. You are pointing to them also?
- A. Yes.
- 10 Q. Can you tell us about anything you saw at any of  
those locations and perhaps also tell us what time it  
was that you saw this?
- A. I was returning from Newcastle.
- Q. So you would be coming over the Morrissy Bridge?
- 15 A. I was coming across the Morrissy Bridge in this  
direction. Came to a set of lights which is not  
pictured here and --
- Q. An intersection just up and to the left of that  
picture?
- 20 A. Yes. Right about - it would be right here. I turned  
left and drove past the church on my way back to the  
taxi stand.
- Q. So you would be approaching the church and when you  
got to the church it would be on your right-hand  
25 side?
- A. Yes.
- Q. About what time of day was this?
- A. About 6:45 P.M.
- 30 THE COURT: This is what day?
- MR. ALLMAN: The 16th. Take us on as you are coming up  
that road towards the rectory and the large parking

- 1 lot and tell us what you see.
- A. Okay. After I made my turn I started to accelerate to go back to the taxi stand and I got to about this location.
- 5 Q. You are pointing to an area almost in the middle of the road --
- A. Approximately, yes.
- Q. -- portion of the rectory parking lot?
- A. Yes, it's a rather wide parking lot.
- 10 Q. So somewhere in there your taxi would have come and then what?
- A. There was a vehicle that pulled out in front of me. It was a light blue Impala or a Caprice. I pulled up behind it.
- 15 Q. When it pulled out which way -- It pulled out in front of you you say?
- A. Yes.
- Q. And turned to go in which direction?
- A. The same direction I was heading, towards Chatham.
- 20 Q. Would you show the jury so we have got it quite clear.
- A. In this direction. I'm not sure if --
- Q. It would turn to its right then?
- A. Yes.
- 25 Q. So now the situation is the car is ahead - the light blue Chev Impala or what was the other one?
- A. Or Caprice or something similar to that.
- Q. Caprice. You said it pulled out in front of you. Pulled out from where?
- 30 A. From the church yard.

- 1 Q. If you look at the church yard on that photograph  
and you go back a ways you can see the rectory and  
to the right as you look at it a garage. If a  
vehicle had come out of the garage and kept going  
5 straight where would it be in relation to this  
vehicle that came out of the rectory in front of  
you?
- A. I'm sorry, ask me that one more time.
- 10 Q. Suppose a vehicle comes out of the garage and the  
rectory and heads down the rectory parking lot.
- A. Towards Main Street?
- Q. Towards Main Street. How would that compare with  
what the vehicle you saw was doing?
- 15 A. It could be the same thing.
- Q. After the vehicle pulled out in front of you then  
what happened?
- A. I had to slow down and there was a moment there  
where the vehicle in front of me was accelerating  
20 and I was slowing down and then it took off in front  
of me.
- Q. Can you give us any description of the way in which  
it accelerated?
- A. Quite rapidly.
- 25 Q. Did you manage to catch any glimpse of anybody in  
the vehicle?
- A. There was one person driving.
- Q. Could you see whether there was anybody in either the  
front passenger seat or the rear passenger?
- 30 A. I couldn't tell. I didn't see anybody there.
- Q. You didn't see anybody. How close up behind the car  
would you have come?
- A. 10 feet.

1 Q. What would be the illumination into the car ahead of you?

A. It was fairly light outside.

5 Q. From the glimpse that you got of the driver did you have any impression at all, for instance, as to sex?

A. No. It didn't look like a female. Didn't have long curly hair or anything else, and I just assumed it was a male. I didn't --

Q. That was your impression.

10 A. Yes.

Q. Any idea what color the hair was?

A. It was a darker color. It wasn't light.

15 Q. Do you have any - or did you at the time form any judgment on the question of whether it could be Father Smith driving the vehicle?

A. No, I didn't at the time.

Q. Would you explain what you mean by that?

20 A. Afterwards, after I found out what had happened, I could tell you like after the 15 or 20 minutes from when the police came to the taxi stand and what not after I told the gentleman I had seen the vehicle, I could tell you that it wasn't Father Smith driving.

25 Q. Sitting there in the witness box now and reflecting upon the events of that evening do you believe it was Father Smith driving the vehicle?

A. No, I do not.

Q. When you last saw the vehicle what was it doing?

A. Driving away from me.

30 Q. Still in the same direction?

A. Yes.

MR. ALLMAN: Thank you.

1 THE COURT: Cross-examination Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Did I understand you to say, Mr. Hancock, that you  
5 were positive it was Father Smith's car?
- A. No, I didn't say that.
- Q. So you are not sure whether it was Father Smith's  
car?
- A. No, I said it was a light blue Chevy Impala or  
10 Caprice. Something very similar to that.
- Q. But you know Father Smith?
- A. Yes, I do.
- Q. And you feel that it definitely wasn't him driving?
- A. No, it was not him driving.
- 15 Q. Aside from it not being Father Smith driving all you  
saw was the back of this person's head?
- A. Yes.
- Q. And from what you saw, dark colored hair?
- A. Darker colored hair. I wouldn't say --
- 20 Q. How long was it?
- A. Medium length. A little longer than mine.
- Q. What do you mean by medium length?
- A. Longer than mine.
- Q. How much longer? Shoulder length?
- 25 A. Just a little bit below the collar I guess.
- Q. Below the collar.
- A. Like --
- Q. Sitting on top of the shoulder?
- A. No, it wouldn't be sitting on the shoulder.
- 30 Q. But a little below the collar?
- A. Like here. Not hanging down on the shoulder but  
like over the collar.

- 1 Q. Over the collar. And did you say it was curly or not?  
A. Well, I wouldn't be able to say that it was curly.
- Q. And you said you only saw one person in the car?  
A. Yes.
- 5 Q. Did you say it was fairly light out?  
A. It wasn't black.
- Q. What time of day was this again?  
A. 6:45 P.M.
- Q. 6:45. You are sure of the time?  
10 A. No, not exactly like to my watch 6:45. It was approximately 6:45.
- Q. Now, this was on November 16th?  
A. Yes.
- Q. We don't have daylight saving time any more.  
15 A. Yes, I imagine we do.
- Q. On November 16th time had already changed, would it not?  
A. I believe it changes in October sometime, yes.
- Q. Do you do any hunting?  
20 A. Yes.
- Q. Did you ever hunt in November?  
A. Yes.
- Q. Do you recall what time you have to quit hunting the middle of November?  
25 A. No. It's been a long time since I've been hunting. I know the time changes every day.
- Q. Is it usually very dark at 6 o'clock the middle of November during hunting season?  
A. I wouldn't say it was.  
30 Q. Usually gets dark around 5 o'clock.  
A. Are you telling me or asking me?



1 Q. I'm asking you. Do you recall it getting dark  
around 5 o'clock in the middle of November during  
hunting season?

A. It could start to get dismal. Like the sun wouldn't  
5 be shining I don't believe.

MR. FURLOTTE: I have no further questions.

THE COURT: Redirect?

MR. ALLMAN: A couple arising out of those questions.

10 REDIRECT EXAMINATION BY MR. ALLMAN:

Q. Do you remember if you had your headlights on or  
not?

A. No, I don't. Well, yes, I would say I did. I drive  
with my headlights on all the time.

15 Q. And you were asked a question about whether you  
know - I think you were asked if you knew Father  
Smith's car. Do you know what model - make or model  
Father Smith's car was?

MR. FURLOTTE: My Lord that evidence was all brought up in  
20 direct examination. Just rehashing old stuff.

THE COURT: Well no, he wasn't actually.

MR. ALLMAN: No, it wasn't.

THE COURT: It wasn't, because I recall and I wondered why  
it hadn't been. You said, I believe Mr. Furlotte,  
25 you suggested to the witness that he recognized the  
car but he didn't say it was Smith's car. You can  
ask that.

MR. ALLMAN: I think in examination-in-chief he said it  
was like a Chevy --

30 THE COURT: He said it was a light blue Impala or Caprice.  
Capri or Caprice.

1 MR. ALLMAN: And then Mr. Furlotte asked him if he could  
specifically recognize this - the Priest's car I  
think was the question.

THE COURT: Yes, that's right.

5 MR. ALLMAN: Do you know what the priest's car was?

A. It was a Chevy Impala.

Q. Do you know -- The jury may know this, but what  
large company manufactures Chev Impalas?

A. Chevrolet.

10 Q. There are other cars similar to Chev Impalas?

A. Caprice I believe would be similar.

Q. What about other GM products?

A. Not that I can think of offhand.

MR. ALLMAN: Thank you.

15 THE COURT: Do you want to ask a question about that Mr.  
Furlotte on the car?

MR. FURLOTTE: No, I think the evidence will come out what  
kind of a car it was. I don't have to get it out of  
this witness.

20 THE COURT: Thank you Mr. Hancock and that's all for you.  
Go back to Toronto.

MR. ALLMAN: I have three ladies. Maybe I could do one of  
them. Katherine Johnston. This is the lady who al-  
ready got started and was put off. She was sworn in.  
26 KATHLEEN . JOHNSTON, called as a witness, having been  
previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What's your name?

A. Kathleen Johnston.

30 Q. What town do you live in?

A. In Chatham Head, New Brunswick.

- 1 Q. How long have you lived there?
- A. Since '55. Well, '55, yes, we lived in Chatham Head.
- THE COURT: You're not that old.
- A. Oh yes.
- 5 MR. ALLMAN: Would you have a look at S-4, that's P-59(4).  
Do you need glasses or anything?
- A. Oh, I haven't even got them. They're home.
- Q. Hold it wherever you want to. Do you recognize the  
rectory and the - the church and the rectory on that?
- 10 A. Yes, that's on the side right here.
- Q. Do you remember driving by -- Do you drive by  
there regularly?
- A. Yes. Well anytime going into town we have to go by.  
15 So on Wednesday night, well we was going to bingo at  
the Rec Centre so we have to go by it, and I noticed  
as we were going by there was no lights on in the  
rectory and --
- Q. Okay, what day was it that you drove by and noticed  
20 there was no lights on?
- A. On November 15th, '89.
- Q. About what time would it be when you drove by and  
noticed the absence of lights?
- A. Around 7.
- 25 Q. 7 P.M.?
- A. Yes.
- Q. And the absence of lights was where? Where was it  
that you noticed there were no lights?
- A. In the rectory and there was darkness all like the  
30 yard and the garage door was closed completely.
- Q. That's the next question I was going to ask you  
about. You said that there were no lights in the

- 1           rectory.
- A.       No.
- Q.       The next thing I am going to ask you about is another  
          photograph, number 2 in P-60. Okay. You see the two  
5       garage doors there?
- A.       Yes.
- Q.       Do you remember those doors?
- A.       They were closed completely.
- Q.       And that's at 7 P.M. on the 15th?
- 10       A.       Yes.
- Q.       How do you know about what time it was when you went  
          there?
- A.       Because I'm a person that when I'm going somewhere  
          I'm either going before or later and at this time  
15       we weren't going as early as we used to. We would  
          avoid going because there was such commotion going  
          on up that way, you know, that we didn't go as early.  
          Like, you know, we were afraid to go out. Just go  
          and come back as quickly as possible. That's why I  
20       know the time.
- Q.       Can you tell us from your driving by there on other  
          occasions would there usually be lights on in the  
          rectory at that time of day or not?
- A.       No, this was at night like before 7. Just around 7  
25       at night. Yes.
- Q.       Take your time. Normally if you drive by there at  
          7 o'clock in November would you expect there to be  
          lights on or not, or maybe you don't know?
- A.       At night? Well, any time that we did go by, well I'm  
30       not, you know, going steady I mean, but when I have  
          been going by there I did notice, yes. I noticed  
          lights any time we did go by in the evening.

- 1 Q. Was there any particular reason why you would glance  
in the direction of the church and the rectory?
- A. Yes, there is.
- Q. Why?
- 5 A. I always pay my respect by making the sign of the  
cross on my forehead going by the church.
- Q. When you saw that there were no lights on and the  
garage door was closed what did that mean to you?
- A. Well, I thought he might have been like away and  
10 didn't get back in time.
- Q. Do you remember making the same trip on another  
occasion the next day?
- A. Yes, on Thursday.
- Q. Tell us about that.
- 15 A. After 6 it was. The garage door was -- It was the  
same. The garage door was closed and there was no  
lights in the rectory that night.
- Q. You say after 6. Do you know how much after 6 that  
was?
- 20 A. I would say around 10 after.
- Q. So basically it was still the same situation. No  
lights and the garage door closed.
- A. No. No.
- 25 Q. What time would it be when you came back?
- A. Oh I would say about 10 to 8 when we returned.
- Q. What was the situation in the rectory parking lot  
then?
- A. There was a lot of cars in the yard but we -- My  
30 husband drives and I mentioned look at the cars in  
the yard so we both thought it was like they used to  
have meetings there for the truckers and we thought  
nothing more of it.

MR. ALLMAN: Thank you.

1 THE COURT: Any cross-examination Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mrs. Johnston did you notice whether or not there  
was a ladder up against the garage?

5

A. No. There was none that I noticed.

Q. You didn't notice any?

A. No.

Q. On either night?

10

A. No.

Q. Wednesday or Thursday?

A. No, there was none.

Q. There was none or you just didn't notice?

A. I didn't notice any.

15

Q. You didn't notice any.

A. No.

MR. FURLOTTE: I have no further questions.

THE COURT: You know on Friday when I suggested that Mrs.  
Johnston go on the stand I thought probably when she  
completed her direct testimony that there wouldn't  
really be any substantial cross-examination anyway  
and I think perhaps I was right. Unfortunately you  
might have got away on Friday. I'm sorry you had to  
come back.

20

A. That's all right Your Honour.

THE COURT: You are excused. What about the other two  
ladies here now? Are they --

MR. ALLMAN: I'm in Your Lordship's hands on that.

THE COURT: Will they be very short?

30

MR. ALLMAN: I think they will be about the same length as  
Mrs. Johnston, I don't know.

1 THE COURT: Is their evidence sort of touching on the same  
type that --

MR. ALLMAN: Touching on the -- It's the same type of  
evidence around the same angle but --

5 THE COURT: What do the jury say? Are we going to let  
them get away. Yes, all right then, you call them.

MR. ALLMAN: Anna May Chevarie.

ANNA MAY CHEVARIE, called as a witness, being duly  
sworn, testified as follows:

10

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Could you state your name, please?

A. Anna May Chevarie.

Q. And where do you live?

15

A. In Chatham Head, New Brunswick.

Q. And how long have you lived there?

A. All my life, but I have been living in the Brown  
Road for 35 years.

20

Q. I won't ask you how long that was. I wasn't going  
to ask you anyway.

A. Quite a few years.

Q. On photograph S-8 can you just take a moment to look  
at that. There's what has been identified as the  
church and there's the rectory.

25

A. Yes.

Q. Would your house be on that picture somewhere?

A. Yes, it is.

Q. Whereabouts?

A. Right here.

30

Q. Have I got my finger on the right one?

A. Yes.

- 1 Q. I'll show the Judge and then Mr. Furlotte and then  
I'll show the jury. That's the one she is referring  
to. (Pause.) Just for the record, if you take the  
road that runs across the middle of the picture, the  
5 bottom of that road --
- A. Yes.
- Q. -- starting from the left there's a little bit of a  
house. You can see a bit of it.
- A. Yes.
- 10 Q. And then another house?
- A. Yes.
- Q. And then is yours the next one?
- A. Yes. Let me see that.
- Q. You want to check that out?
- 15 A. I want to check that out, yes. Yes, this is MacArthur  
house and ours is next. Yes, that's ours.
- Q. Okay, thank you. I'll just leave it there. Do you  
remember the day that they discovered the body of  
20 Father Smith?
- A. Yes.
- Q. Do you remember the night before, the evening before  
they discovered the body of Father Smith?
- A. Yes, I do.
- 25 Q. Do you remember doing something that night?
- A. I was -- My daughter was over for supper and she  
left at 20 after 8 and she drove around towards -  
like she was going to Chatham, and when she got home  
about 10 to 9 she phoned and told me that there was  
30 cops --
- Q. Let me just interrupt you. We're not going to get  
into the conversation what your daughter has told  
you, but your daughter called you around 10 to 9 in



- 1 the evening?
- A. Yes.
- Q. And you and she had a talk?
- A. Yes.
- 5 Q. Okay, what's the next thing that happens after that?
- A. My husband was upstairs and he told me that Father --
- Q. Again, we can't get into what people tell you.
- A. I'm sorry. Okay.
- Q. You had a talk over the phone with your daughter?
- 10 A. Yes.
- Q. And a talk in the house with your husband?
- A. Yes.
- Q. What's the next thing you do and see yourself?
- A. I go upstairs and I see -- I looked at the clock
- 15 and it was 9 o'clock, and I went upstairs in the window and I seen Father Smith on his patio.
- Q. Now, you would be looking then from one of the windows in your house?
- A. Yes.
- 20 Q. Over towards the patio?
- A. The upstairs window, yes.
- Q. The patio that's on top of Father Smith's garage?
- A. Yes.
- 25 Q. Tell us exactly what you could see.
- A. I see Father Smith looking down.
- Q. What makes you believe it was Father Smith given the distance and time?
- A. Because I know Father Smith.
- 30 Q. How long have you known him?
- A. For 19 years.

- 1 Q. Was there anything in the position or pose of the person that caused you to believe that?
- A. Yes. He always stood with his hands behind his back.
- Q. Just stand up and show the jury how he used to stand.
- 5 A. All right. This. And there was a light. There was a post light right up flashing on to the patio, and he stood this way. And I --
- Q. You are standing there with your hands behind your back?
- 10 A. Yes. He was standing staring right up towards the light.
- Q. I think you said -- You can sit down now, sorry, thank you very much. You said that he appeared to be looking in a certain direction.
- 15 A. Before he stood up he was looking down around and he looked down towards the garage.
- Q. Would that be the front of the garage? The garage doors or one of the sides?
- 20 A. Around the garage door. Like - yes.
- Q. So you could see him looking in the direction of the garage doors?
- A. Yes.
- Q. Did he look anywhere else besides towards the garage door?
- 25 A. No. He stood up then and he - that's when he stood up in front of the light with his hands behind his back.
- Q. Do you remember the date that this occurred?
- 30 A. That was on the 15th.
- Q. Of?
- A. November, 1989.

1 MR. ALLMAN: Thank you.

THE COURT: Cross-examination Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

5 Q. And this would have been on a Wednesday evening?

A. Yes, sir.

Q. About 9 o'clock?

A. Right.

Q. Were there any lights on in the house?

10 A. At Father Smith's?

Q. At Father Smith's, yes.

A. Yes, there was.

Q. There was. And in which rooms would the lights have been on?

15 A. It was in the patio - patio doors, but the --

Q. Patio door lights?

A. Yes, but --

Q. What about the kitchen area? Were you able to see the kitchen area from your house?

20 A. No. No, you couldn't. You weren't able to see the kitchen, just the patio. Patio doors.

Q. So basically you are looking at the end of Father Smith's house?

A. Yes.

25 Q. That would be this end here. Yes, this end here would it be?

A. Yes.

Q. These are the garage doors here?

30 A. No. Like say this is the patio. He was like here and he walked over here and he looked down, and that's where the garage door is, this side, from my house. From our house.

1 MR. ALLMAN: That's the basement that we are looking at  
there My Lord.

THE COURT: Yes. If you look at the other --

MR. ALLMAN: Which is going to get --

5 THE COURT: You will see his living room shows there.

MR. FURLOTTE: You see his living room here. So this is  
the patio doors here.

A. Yes.

Q. This would be the garage doors over here.

10 THE COURT: No, no, that's not right.

MR. FURLOTTE: That's not right?

A. Not from my house.

MR. FURLOTTE: Not from your house.

A. No. My house --

15 THE COURT: The patio extends up beyond outside those doors.  
It's not marked on there. The garage and --

A. No.

MR. FURLOTTE: Oh, I'm sorry, the patio is out here.

20 A. The patio would be on this side from my house. On  
this side. The patio doors are here. And when I  
come out he was about here and he walked over and he  
was looking all around on the way over and when he  
got there he looked down towards the garage doors  
25 right in here. That's where he was looking.

Q. Okay. Let's try and get a little clearer --

THE COURT: I think Mrs. Chevarie is just twisted around a  
little there but --

30 MR. FURLOTTE: I believe this is a diagram of the garage  
and not the basement but -- Yes, this is the base-  
ment area here.

A. Is this is on the Main --

1 Q. This is on the main.

A. Main Street. Well I don't live on the main street.  
I live on the Brown Road in the back of the patio.

Q. Okay, we have the diagram here.

5 A. Yes, here it is here. Okay, this is Father Smith's  
house here.

THE COURT: Mr. Allman or somebody go up and show both Mr.  
Furlotte and -- Mrs. Chevarie just pay attention  
to this for a minute. Mr. Allman is going to show  
10 where the patio - on the basement plan here, show  
where the patio doors are there Mr. Allman.

MR. ALLMAN: The patio doors are there.

A. Yes.

MR. ALLMAN: If you walk out of the living room you go  
15 out the patio doors.

THE COURT: Now, Mrs. Chevarie's house is where? Way up  
there.

MR. ALLMAN: Over there.

20 THE COURT: Up there. You're up in the ceiling.

MR. ALLMAN: I think she's finding the plan difficult My  
Lord. I think it's easier to just stick with the  
photographs.

A. Our land - from our land - the back of our land  
25 connects to Father Smith's and his patio is facing  
our --

THE COURT: His patio door faces your house?

A. Yes. That would be the side of the house. Wouldn't  
be the front.

30 MR. FURLOTTE: Basically, I believe, Mrs. Chevarie, the  
plan would go like this. This is Father Smith's  
rectory, this is your house over here.

- 1 A. This is the main street?  
MR. FURLOTTE: That's the main street.
- A. Yeah, okay, this is the Brown Road. Okay, that would  
be our house there.
- 5 Q. That would be your house here?  
A. Yes.  
Q. And you would be looking at this end into his patio  
doors?  
A. Yes.
- 10 Q. Is that right?  
A. Yes.  
Q. And over here is - the garage is underneath the  
patio deck?  
A. Yes, it is.
- 15 Q. Now, which side of the garage did you see Father  
Smith looking on?  
A. He looked on the side door to the main street.  
Q. The side doors to main street.  
A. Yes.
- 20 Q. Okay, that would be over here. This is the back of  
the house.  
A. Okay.  
Q. Just to try and get things straight for everybody.  
A. Yes, okay, we're all confused.
- 25 Q. And from where you were you would not be able to tell  
whether or not there was a ladder up against the  
front of the garage door?  
A. Yes, I could, because where he was looking down that'  
30 where the ladder was. I seen the ladder afterwards  
there.

- 1 Q. And you could see the ladder from your house?  
A. Afterwards.  
Q. Afterwards.  
A. Yes. Not that night.
- 5 Q. And it looked as if he was looking down as to where  
the ladder was then?  
A. Yes.  
Q. That's the area?  
A. Yes.
- 10 Q. Okay, that's fine. Can you say how long he stayed  
out on the patio?  
A. Well once he stood under the light I was - I got kind  
of nervous because I - I come downstairs. I don't  
know. I didn't see him go back in or where he went.
- 15 Q. How long did you see him out there?  
A. I would say for about 3 or 4 seconds.  
Q. Just 3 or 4 seconds?  
A. Yes.
- 20 Q. And you could definitely see lights on in through the  
patio doors?  
A. Yes, but the curtains were closed.  
Q. Did it appear as if he went out to check for noise or  
something?
- 25 A. Yeah. It looked like it. He gave you the impression  
that he heard something.
- MR. FURLOTTE: I have no further questions.
- THE COURT: Reexamination?
- MR. ALLMAN: No, My Lord.
- 30 THE COURT: Thank you Mrs. Chevarie, and you are all through  
MR. ALLMAN: Now, this is the last witness, Clara Ramsay.

1            CLARA RAMSAY, called as a witness, being duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q.        What is your name, please?

5        A.        Clara Ramsay.

Q.        What town do you live in Mrs. Ramsay?

A.        Chatham Head, New Brunswick.

Q.        Did you live there on the 16th of November, 1989?

A.        Yes, I did.

10        Q.        Were you a worshiper at the Church of the Nativity  
          of the Blessed Virgin Mary there?

A.        Yes, I was.

Q.        Which was the church Father Smith was the priest at?

A.        That's right.

15        Q.        And do you remember going there to that church that  
          evening?

A.        Yes, I do.

Q.        To go to a service.

A.        Yes.

20        Q.        About what time would it have been when you arrived  
          to go to the service?

A.        Well I left the house around 6:35 so it only takes  
          me about 2 or 3 minutes to get there.

25        Q.        So shortly after 6:35. When you got there what  
          condition was the church in from a point of view of  
          inside lights. Were there any on?

A.        There was no lights on in the church at all.

Q.        Did you do anything about that?

30        A.        No. I went to the church and went in in the darkness.

Q.        Did somebody come later on and turn the lights on I  
          take it?



- 1 A. Later on the lights came on.
- Q. Did you happen to make any observations about the rectory, if there were any lights on there at that time?
- 5 A. Yes, I noticed a ladder.
- Q. I am going to show you picture number 2 in P-60. You can see there a ladder.
- A. Yes.
- Q. How does the position and appearance of the ladder  
10 in that photograph compare with the ladder that you saw when you arrived that evening?
- A. Looks to be the same.
- Q. Had you ever seen that ladder in that position before?
- A. No.
- 15 Q. You went into the church, you sat there, and what's the next thing that happens?
- A. The lights came on in the church.
- Q. What time was the service due to start?
- A. 7 o'clock.
- 20 Q. Did it start at 7 o'clock?
- A. No.
- Q. Did Father Smith show up?
- A. No.
- 25 Q. Who, if anybody, went to make any inquiries about that situation?
- A. Someone came. A lady came in and mentioned to Ignatius Veriker that Father never came over from the house.
- 30 Q. You told us that the church was in darkness. What about the rectory? Do you remember if there were any lights on inside the rectory?

1 A. There was lights on in the -- There was lights on  
in the rectory.

Q. Do you remember which or just that there were lights?

A. Just that the house was lit up.

5 MR. ALLMAN: Thank you.

THE COURT: Cross-examination Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. What time again, was it, that you first noticed that  
10 the ladder was up against the house?

A. I left my house at 6:35 so it only took me two to  
three minutes to get up to the church and I noticed  
it.

Q. And did you notice lights on at that time at 6:35?

15 A. Yes.

Q. And then from there you what - you went over to the  
church?

A. Went across to the church, yes. I was driving my  
car so I parked it and I went across to the church.

20 Q. Did you look back at the rectory at any time after  
that?

A. Yes.

Q. When was the next time --

A. Because the ladder was bothering me. I took about  
25 two or three steps from the car and I turned around  
and looked at the ladder again.

Q. You didn't see anybody out around the rectory?

A. No, I did not.

MR. FURLOTTE: I have no questions.

30 MR. ALLMAN: I have no re-examination. This witness could  
be excused.

1 THE COURT: Did you have the lights on in your car?

A. Yes, I did.

THE COURT: Was it very dark at the time? Or how dark  
would you say it was, or perhaps you don't recall.

5 A. I don't recall how dark it was.

THE COURT: Thank you very much. Any questions? Thank  
you very much Mrs. Ramsay and you are excused.

Well, I think we will call it a day there and  
we will adjourn until 9:30 in the morning. I just  
10 remind the members of the jury who haven't voted yet  
that there may still be an opportunity before the  
polls close at 8 o'clock.

(COURT ADJOURNS - 4:50 P.M.)

15 SEPTEMBER 24, 1991, 9:30 A.M.

(Accused present. Jury called, all present.)

THE COURT: Now, Mr. Walsh.

MR. WALSH: Recall Constable Laurent Houle.

20 CONSTABLE LAURENT HOULE, recalled, having been  
previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. You have testified before in this trial Constable  
Houle?

25 A. Yes, I have.

Q. You are a member of the Royal Canadian Mounted Police  
and in 1989 you were stationed at Newcastle, is that  
correct?

A. That's correct, yes.

30 Q. And with respect to the matter of James Smith would  
you tell the jury, please, the role that you played  
in this particular matter? Your main role.

- 1 A. Yes, the exhibit custodian.
- Q. You were the exhibit custodian for --
- A. Father Smith.
- Q. And would you just explain briefly to the jury as a  
5 refresher what the role of an exhibit custodian is.
- A. Yes. It is to take possession of all exhibits,  
maintain maintenance and continuity of all exhibits.
- Q. I am going to show you an item that's been marked  
P-63, two Bacardi Breezer bottles. Would you look at  
10 this for us, please, and tell the jury whether or not  
you can identify it?
- A. Yes, I can identify this exhibit because of the  
R.C.M.P. exhibit tag bearing my initials, date and  
15 time.
- Q. And how did you come into possession of that  
particular item?
- A. This was turned over to me by Sergeant Chiasson on  
the 19th of November, 1989 at 3:05 P.M.
- 20 Q. And what, if anything, did you do with it after you  
received it from Sergeant Chiasson?
- A. It was kept in my possession all that time until last  
week when it was introduced in court here.
- Q. I see. You brought this particular item to court,  
25 is that correct?
- A. Yes, sir, I did.
- Q. I am going to show you an item that has been marked  
'XX' for identification. Would you look at that for  
us, please, and tell the jury whether you can --
- 30 A. Yes, I can identify item 'XX', again, because of the  
R.C.M.P. exhibit tag which bears my initials, date  
and time. I received this article from Sergeant

- 1 Chiasson on the 18th of November, 1989 at 12:45 P.M.
- Q. What, if anything, did you do with the item after you received it from Sergeant Chiasson?
- A. On the 27th of November, 1989 I turned it over to
- 5 Duff Evers of the Hair and Fiber Section of the Sackville Central Detection Lab.
- Q. And did you have occasion to see that item after you turned it over to Duff Evers?
- A. Yes, it was returned to me on the 21st of December,
- 10 1989 via registered mail from the Sackville Lab, again from Mr. Evers.
- Q. How does that item compare between the time you turned it over to Mr. Evers and the time you received it back from the Sackville Lab?
- 15 A. It's the same.
- Q. And during the time that this item has been in your possession has it been in your sole possession?
- A. Yes.
- Q. And who brought this item to court?
- 20 A. I did.
- THE COURT: That item, Mr. Walsh, is the --
- MR. WALSH: It purports to be part of a steering column found in the rectory - in the garage area of the
- 25 rectory of James Smith.
- I show you an item marked 'YY' for identification. Would you look at that for us, please, and tell the jury whether you can identify it.
- A. Yes. I can identify 'YY' because of, again, the
- 30 R.C.M.P. exhibit tag bearing my initials, date and time, the 19th of November, 1989, 10:25 A.M. This was received from Sergeant Chiasson.

- 1 Q. And what, if anything, did you do with the item after  
you received it from Sergeant Chiasson?
- A. On the 27th of November, 1989 I turned it over to Mr.  
Evers of the Hair and Fiber Section, Sackville Crime  
5 Detection Laboratory.
- Q. And did you have occasion to see that item after that  
time?
- A. Yes, I did.
- Q. When and under what circumstances?
- 10 A. It was returned to me via registered mail on the 28th  
of June, 1990, again from the Sackville Lab, and this  
time it was returned to me by S. Lungair of the  
Serology Section.
- Q. That item is contained within an envelope. When you  
15 turned it over to the Sackville Lab was it in that  
envelope at the time you turned it over?
- A. Yes, it was. Also I had sealed the envelope with my  
initials, date and time.
- 20 MR. WALSH: My Lord that purports to be a piece of wooden  
door casing taken from the north back entrance door  
frame of the rectory. That would be in this  
particular location here.
- I will show you '22' or 'ZZ' for identification.
- 25 Tell me, please, if you can identify that item.
- A. Yes. I can identify '22'. There, again, it bears  
my date, time and initial on the R.C.M.P. exhibit  
tag, the 19th of November, 1989, 10:25 A.M. This  
was turned over to me by Sergeant Chiasson.
- 30 Q. And what, if anything, did you do with that item  
after you received it from Sergeant Chiasson?

1 A. On the 27th of November, 1989 I turned it over to Mr. Evers of the Hair and Fiber Section, Sackville Lab.

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

5 A. Yes. It was returned to me on the 28th of June, 1990 via registered mail from the Sackville Lab, again from the Serology Section, S. Lumgair.

Q. And who brought that item to court?

A. I did.

10 MR. WALSH: My Lord that purports to be a piece of aluminum door frame taken from the same area that the previous item was taken from.

I have no further questions, My Lord, thank you.

15 THE COURT: Cross-examination Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Constable Houle as exhibit man I understand that you at one time or other seized five hairs that were  
20 found inside bread bags.

A. No. I received an exhibit but I didn't seize any hair.

Q. You didn't seize the hair yourself.

A. No.

25 Q. Did you receive them as an exhibit?

A. I believe I did, yes.

Q. Can you give me the particulars of how you come about to seize those hairs found in the bread bags?

A. Do you have the exhibit number?

30 Q. Number 82.

A. Could I refer to my exhibit flow chart My Lord?

- 1           Okay, exhibit number 82 would have been one con-  
          tainer containing hairs taken from inside of the  
          bread bags found inside the boots found at a con-  
          struction area at Keddys Motel in Bathurst, New  
5           Brunswick.
- Q.       How many hairs were there?
- A.       I didn't -- I believe it was four or five but I  
          didn't mark it here.
- Q.       You haven't marked what color they are or anything?
- 10       A.       No.
- Q.       All you have is hairs?
- A.       That's right.
- Q.       And you received them from who?
- A.       From Sergeant Chiasson on the 22nd of November, 1989  
15       at 16:40 hours.
- Q.       And what did you do with them?
- A.       On the 23rd of November, 1989 at 11:23 hours I turned  
          them over to Doctor John Bowen of the Central  
20       Forensic Laboratory in Ottawa, personally.
- Q.       And how many items do you have marked for exhibits?
- Total.
- A.       Total I would have 136, and I have plus 10. Be about  
          146.
- 25       Q.       How many?
- A.       Almost 146.
- Q.       146.
- A.       Yes. I would have to count it to be exact. I can  
          if you wish.
- 30       Q.       Could you tell me what items you have after number  
          136? 137 on.
- A.       I don't have 137 and 138.



- 1 Q. You don't have 137. Did you ever have a 137 and  
138?
- A. 137 and 138 I believe is coming up because one of the  
investigators asked me to reserve those two numbers.
- 5 Q. Somebody asked you to reserve those two numbers?
- A. That's correct.
- Q. So you were expecting more exhibits?
- A. 137 and 138, yes.
- Q. What do you have for 138 and 139?
- 10 A. I don't have 138 and 139.
- Q. But I understand you said - you said you had some-  
thing like a 146.
- A. I have a 136 and there's two reserved, 137 and 138,  
and there's 121 to 130. There's 121X to 130X.
- 16 Q. Okay. That's where you get the extra ones?
- A. That's correct, yes.
- Q. Who is supposed to provide you with 137 and 138?
- A. Constable Charlebois I believe.
- Q. Constable Charlebois?
- 20 A. Um-hmm.
- Q. You don't have any idea what they are?
- A. No, I wasn't told.
- MR. FURLOTTE: No further questions of this witness.
- 25 THE COURT: Thank you. Any --
- MR. FURLOTTE: I believe he's being recalled.
- MR. WALSH: Just a point of clarification.

REDIRECT EXAMINATION BY MR. WALSH:

- 30 Q. Constable Houle when you assign a number you give  
other officers numbers if they seize items, is that  
correct?
- A. Yes, I do.

1 Q. Do you necessarily have to take possession of the  
item?

A. No, I don't.

MR. WALSH: I have no further questions.

5 THE COURT: Thank you very much. This witness is being  
stood aside?

MR. WALSH: That's correct, My Lord. My Lord I recall  
Duff Evers.

10 DUFF EVERS, recalled, having been previously sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. You have previously testified in this particular  
trial?

15 A. Yes, I have.

Q. And to refresh the jury's memory you are Duff Evers;  
you are in charge of the Hair and Fiber Section at  
the R.C.M.P. Forensic Laboratory at Sackville, New  
Brunswick?

20 A. Yes, I am.

Q. And you were so employed and you were a member of  
that particular lab in 1989, is that correct?

A. Yes, I was.

25 Q. In relation to your -- You are to testify later  
in this particular trial, is that correct?

A. Yes, I believe I am.

30 Q. I am going to at this time show you a few items, Mr.  
Evers. The first one has been identified as 'XX',  
purporting to be part of a steering column. Would  
you look at that for us and please tell us whether  
you have seen that item before.

1 A. I identify court exhibit 'XX' by my initials, date  
and case number. I received this from Constable  
Houle on the 27th of November, 1989. I examined  
this article and returned it via registered mail,  
5 number 324, on the 20th of December, 1989 to the  
Newcastle Detachment, attention: Constable Houle.

MR. WALSH: My Lord at this time continuity of this item  
has been proven up and I would move to have it  
entered as an exhibit.

10 THE COURT: That was 'XX'. That will be exhibit P-66.  
(Clerk marks portion of steering column P-66.)

MR. WALSH: I will show you this item that is identified  
as 'YY' purported to be a piece of a wooden door  
casing.

15 A. I identify court exhibit 'YY' by my initials, date  
and case number appearing on the red laboratory tag  
as well as the envelope. I received this from  
Constable Houle on the 27th of November, 1989. I  
examined this article and gave it to Mrs. Lumgair  
20 of the Serology Section on the 13th of December,  
1989.

Q. Did you take possession of that item at any time after  
that?

25 A. No, I did not.

Q. I show you an item that has been marked 'Z2' or 'ZZ'  
for identification. Would you look at that. It  
purports to be a piece of an aluminum door casing  
from the same area.

30 A. I identify court exhibit 'Z2' by my initials, date  
and case number appearing on the red laboratory tag,  
as well as the brown envelope. I received this from

- 1 Constable Houle on the 27th of November, 1989.  
I examined this article and gave it to Mrs. Lumgair  
of the Serology Section on the 13th of December,  
1989.
- 5 Q. Did you have occasion to come into possession of that  
item after that time?
- A. No, I did not.
- MR. WALSH: I have no further questions My Lord, thank you.
- THE COURT: Cross-examination Mr. Furlotte.

10

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Mr. Evers I believe you have already been declared  
as an expert in hair and fiber in this proceeding,  
have you not?
- 15 A. Yes, I have.
- Q. When you testified earlier. This question about the  
probabilities of one hair, hair say off my scalp or  
off my person, matching the hair off of anybody else  
out there, figures were brought up of 1 in 4500.
- 20 A. There has been literature published which states  
that.
- Q. And that literature - or the test procedures have  
been conducted by the R.C.M.P.
- A. They were conducted by a member of the R.C.M.P., yes.
- 25 Q. Now, I understand in order to get this 1 in 4500 that  
the R.C.M.P. has used kind of a data base using 200  
samples.
- A. I don't believe that's the way they obtained it.  
I could be wrong. I was not involved in the --
- 30 Q. You weren't involved in the study.
- A. -- testing myself, no.

- 1 Q. Have you personally been involved in any kind of tests?
- A. Yes, I have.
- Q. And you have used 200 samples?
- 5 A. Yes, I have.
- Q. So basically what you did, you went out and collected 200 random samples to see if you could find a match off of a known standard?
- A. What I have done, and members of my section, what - we  
10 have taken 200 individuals, we have taken one unknown hair from one of these individuals and we have identified the donor of that particular hair on a number of occasions.
- Q. On a number of occasions. And out of those 200  
15 samples you couldn't find any others to match it?
- A. That is correct. We could eliminate the remaining 199 people.
- Q. But because you could eliminate the other 199 I mean  
20 if you had collected a thousand samples you could have ended up with the same thing. You could have eliminated 999?
- A. It is possible I could have eliminated 999. It is also possible that I could have found half a dozen or  
25 a dozen people with hair consistent.
- Q. By chance? Like winning a lottery.
- A. Yes.
- Q. But in the test conducted by the R.C.M.P. they feel that they would have to go out and collect 4500 random  
30 samples to come up with one that would match.
- A. The testing that was done by Mr. Gaudet, I believe you are quoting, states that if one finds one unknown hair consistent with an individual the chances of

1 finding a second person and randomly taking a hair  
from their head and finding it to be consistent is  
one in 4500. I do not follow those statistics  
and I have never supported them. I find them  
5 optimistic.

Q. Now, even though those statistics say 1 in 4500 when  
you testify in court that say out of the evidence you  
found a hair sample that was similar to an accused  
person - that happens many times, does it not?

10 A. Yes.

Q. And any time you testify in court you can't even come  
to court and say that it probably come from the  
accused person, isn't that right?

A. That is correct.

15 Q. All you can say is that it's consistent and you cannot  
eliminate the accused person.

A. That is also correct.

Q. So 1 in 4500 doesn't even give you a probability.

20 A. I don't follow them. If the situation is brought up,  
such as you have done, I state that there is literature  
published, I do not support it, I find it optimistic.

Q. Now, I understand you conducted tests in the Smith  
case yourself?

25 A. Yes, I did.

Q. And you conducted tests on hair samples?

A. Yes.

Q. And you conducted a test on a pulled hair that was  
found on Father Smith's leg?

30 A. Yes.

Q. As exhibit number 16?

A. It was my exhibit number 16, yes.

1 Q. Your exhibit number 16. And your test revealed  
that that hair was similar to the hair by Allan  
Legere?

A. That is correct. It was consistent with the standard  
5 purportedly from Mr. Legere.

Q. And under the R.C.M.P. tests which were conducted  
years ago there is only one chance in forty-five  
hundred that that hair would be from someone other  
than Allan Legere?

10 A. I would not state that.

Q. No, but that's the test conducted by the R.C.M.P.?

MR. WALSH: That's a test conducted by one person in the  
R.C.M.P. by the name of Mr. Gaudet. Again, this is  
the case he's using the term 'we'.

15 MR. FURLOTTE: I am sure the crown prosecutor will have  
redirect examination and he can bring up the point  
then.

MR. WALSH: Well I just don't want Mr. Furlotte mis-  
representing what this witness is saying. I  
20 certainly can redirect to clarify things but I think  
it's important that we clarify certain things at the  
beginning because what he has done is he has taken  
the one person, Mr. Gaudet, and now he has turned it  
into the R.C.M.P. and 'we'.

25 THE COURT: Well, did Gaudet do a comparison on this hair -  
these hairs?

MR. WALSH: No, My Lord.

THE COURT: The only place Gaudet enters into it is he did  
30 this one over forty-five hundred, or prepared that  
statistic.

A. That is correct, My Lord.

1 THE COURT: This is the only man who compared these hairs?

MR. FURLOTTE: Yes.

THE COURT: And he doesn't adopt the -- He refutes the  
one over forty-five hundred, or at least he says he  
5 doesn't agree with it.

MR. FURLOTTE: Is Mr. Gaudet also an expert in hair and  
fiber who wrote the book?

A. Mr. Gaudet was an expert or at least he was in the  
hair and fiber section. He was a hair and fiber  
10 examiner. He was also the Chief Scientist, Hair and  
Fiber Section.

Q. Chief Scientist, Hair and Fiber?

A. Yes.

15 Q. Now, the hair that you checked, the pulled hair on  
Father Smith's leg, you checked it and you found it  
similar to the hair of Allan Legere's. Do you have  
reason to believe that it is not Allan Legere's?

A. Other than work that I have done by means --

20 Q. Other than works you have done.

A. Yes, I have been told that the hair in fact did not  
belong to Mr. Legere.

THE COURT: I'm not just sure what hair you are talking  
about. You mean the hair that is supposed to belong  
25 to the specimen, or the other hair?

A. The hair that I am speaking of, My Lord, I found to  
be consistent microscopically, consistent with the  
hair standard purportedly from Mr. Legere. If I can  
state, there were tests done in Ottawa, I believe it  
30 was by DNA, they found that this hair in fact did not  
belong to Mr. Legere.



1 Q. And that was a pulled hair that was found on Father Smith's leg?

A. Yes. It was a pulled hair. Had a hair root sheath present.

5 Q. Now, when you are checking hair samples you can compare scalp hairs, right?

A. To other scalp hairs.

Q. To other scalp hairs. And pubic hairs?

A. To pubic hair samples.

10 Q. And what about say chest hairs, hairs from the nose or arms or legs? Can all hairs be checked out?

A. Yes. We can identify the body origin of the hair as being eyebrow, eyelash, nasal, rectal, scalp, pubic, etc. Then in order to do a comparison we must com-

15 pare the unknown hair or questioned hair to a standard of similar type so that I would be comparing a questioned pubic hair to a known pubic sample.

Q. And can you also tell right offhand whether the hairs would be from a male or female?

20 A. No. I can state the body origin; I can state the racial origin, Mongolian, Negroid or Caucasian. I can also state the condition of the hair as to whether it has been pulled, broken, cut or whether it has fallen out of the scalp. And then I can state  
25 whether the hair is consistent or not consistent with the standard.

Q. Aside from the one pulled scalp hair - or was it a scalp hair that was on Father Smith's leg?

30 A. It was a scalp hair that I'm referring to, yes.

Q. Aside from that one hair that was found to be similar to Allan Legere's on the Smith file, were there any other hairs found on the Smith scene similar to the

1 one say of either Allan Legere or similar to the  
one that was found on his leg?

A. Of all the exhibits that I examined at the scene  
and from the autopsy and I believe from an auto-  
5 mobile, I found a total of 120 scalp hair. Of the  
120 scalp hair I found 109 consistent with Mr. Smith;  
I found 9 hairs consistent with Mr. Legere; and I  
found 2 hairs that were dissimilar to both Mr. Smith  
and Mr. Legere. Of the 9 I found to be consistent  
10 with Mr. Legere I can state a reported area, if you  
wish, as to where they had been found or removed  
from.

Q. Yes, would you, please.

A. One of the hairs was reportedly removed from the  
15 left leg of Father Smith. This was a pulled hair  
that I was referring to. A second hair, it was in  
a broken condition, had been removed from under the  
body, purportedly from under the body of Mr. Smith.  
20 A third hair was removed from a blue jacket pur-  
portedly worn by Mr. Smith. A fourth hair was found  
on the floor. It was in an atrophic condition. It  
was found reportedly in front of the safe. Two  
atrophic scalp hairs had been removed from the right  
25 floor mat reportedly from a car. Two scalp hairs in  
an atrophic condition had been removed from the right  
front seat of a car. And the remaining scalp hair  
was removed from a black nylon type jacket. Again,  
this hair was in an atrophic condition consistent  
30 with Mr. Legere.

Q. But out of all the hairs consistent with Mr. Legere  
there was only one tested for DNA?

1 A. Actually, they were all tested for DNA. There was  
insufficient material to arrive at a conclusion on  
the remaining hairs.

5 Q. So out of the hairs that were consistent with Mr.  
Legere there was only one that was able - which DNA  
that was able to be extracted from it and that proved  
that it did not belong to Mr. Legere?

A. Correct.

MR. FURLOTTE: No further questions.

10 THE COURT: Re-examination?

MR. WALSH: My Lord I have a few questions on what has been  
raised by Mr. Furlotte.

REDIRECT EXAMINATION BY MR. WALSH:

15 Q. Mr. Evers Mr. Furlotte has - you pointed out to Mr.  
Furlotte that you compared these 9 hairs with known  
standards of Legere, is that correct?

A. That is correct.

Q. What were the known standards that you used?

20 A. I used two different samples. I used a scalp hair  
sample which I identified as exhibit 56 and which I  
previously identified in court.

Q. That's the scalp hair purported to have been taken  
from Mr. Legere in 1986?

25 A. That is correct.

Q. And what was the other standard you used?

A. The other standard was my exhibit number 84 which I  
received from Constable Houle on the 27th of  
November, 1989.

30 Q. And when you say standard what do you mean by a  
known standard?

1 A. A standard is a number of hairs purportedly from  
one particular individual. We assume that these hairs  
came from one person and we use that as a sample.  
All unknown hairs are compared to the particular  
5 sample.

Q. You assume that these hairs have been taken by some-  
one right directly from that person?

A. That is correct.

Q. What were the color of the known standards, both in  
10 1986 and in 1989?

A. If I may refer to my notes I can tell you.

Q. With Your Lordship's permission.

A. The scalp hair, exhibit 84, which I received in 1989 -

Q. Purported to come from Mr. Legere.

15 A. Yes. Was medium grey brown and continued medium  
brown to dark brown.

Q. Various colors. Is that a normal --

A. It would be difficult to identify the color of each  
20 particular hair. What we do is identify the range of  
colors and the range of colors would be a medium grey  
brown and continuing up the shaft to a medium to dark  
brown.

Q. And how did the colors -- Okay, that was on what  
25 standard? That was on the hairs taken in 1989?

A. Yes.

Q. And the hairs taken --

THE COURT: No. No. Did you say '86 or '89?

A. '89 My Lord. The scalp hair that I examined in 1986  
30 was dark brown to dark grey brown with a red hue.  
That means that the hairs had a reddish hue to the  
cortex.

- 1 MR. WALSH: First of all, is that a different -- The  
hairs that you reported to come from Legere in '86  
and the color you have just described, from the hairs  
purporting to come from Legere in '89 and the color  
5 you have purported to describe, is there a difference  
in the color between the two?
- A. Perhaps there would be a difference in the way that  
they would be reported in the particular standards.  
There was a time lapse involved. It could have been  
10 a difference in the way that I recorded them. Also,  
hair is not unique from one hair - or it is not  
identical from one hair to the next hair. There are  
variations within the scalp. This is why we require  
a sample. This is why we require 50 to 180 hairs.
- 15 Q. The color that you observed from the standard purports  
to be taken from Legere in 1989, how would that appear  
on the scalp of a person?
- A. Simply dark. Dark hair.
- Q. And in 1986 how would that color appear on the scalp?
- 20 A. Again, dark hair.
- Q. How did the color that you observed on the standards,  
both the ones taken in 1986 and the ones taken in  
1989, how did that color compare to those 9 hairs  
that you compared? 9 unknown hairs.
- 25 A. When we compare an unknown hair we simply determine  
whether the hair - whether we can find a hair in our  
sample that is consistent with the unknown hair. In  
both of these instances I was able to find hair in  
the samples that were consistent with my unknown hair.
- 30 Q. In terms of color?
- A. In terms of color and other characteristics, but  
color as well.

- 1 Q. You made comparisons to how many hairs? There were  
8 or 9 that were consistent with Legere's standard?
- A. I found 9 hairs consistent with Mr. Legere's hair.
- Q. And one of those hairs was determined by DNA typing  
5 not to actually have come from Mr. Legere, is that  
correct?
- A. That is correct.
- Q. The fact that DNA has eliminated one of those hairs  
that you had found to be similar does that mean that  
10 your findings of similarity on the remaining hairs  
are any less valid?
- A. Based upon the evidence that I have got the hairs are  
still consistent and I would still state that the  
hairs could have come from Mr. Legere or a sample  
15 having characteristics consistent with Mr. Legere.
- Q. At any time have you ever at any time in court ever  
alleged that your similarities of hair comparison was  
positive evidence?
- A. No.
- 20 Q. As a forensic examiner why would you send hairs found  
to be similar using standard hair comparison technique  
for DNA typing?
- A. Well, microscopic comparisons of hair is not a  
25 positive identification. In cases where DNA can be  
done, DNA is a positive identification, and it would  
be incumbent upon me to either eliminate or identify  
these hairs more specifically.
- Q. And more specifically you mean by DNA typing?
- 30 A. That is correct.

- 1 Q. Mr. Furlotte asked you questions about this study of Gaudet for 1 in 4500 and you have indicated that you don't support that study. You haven't supported that study.
- 5 A. No.
- Q. Are you the only one that doesn't support that study?
- A. No.
- Q. Could you tell the jury something about whether or not there was any controversy associated with that study?
- 10 A. Yes, there was a great deal of controversy.
- Q. From other experts in hair comparison?
- A. Other experts, yes, both in the R.C.M.P. and outside the R.C.M.P.
- 15 Q. And your words were that you found that to be too optimistic?
- A. Yes. I could not support them. I knew that if a hair was compared microscopically and found to be consistent that the next person to come along would not be the 1 out of 4500 or 4500 people later for sure.
- 20 Q. Mr. Furlotte asked you a number of questions as to what you can say about hairs, whether they are from a male or a female, what part of the body. Can the hair with the -- Would you describe that hair on the leg? You say that it had root sheath to it?
- 25 A. Yes. It was a pulled hair. It had a root sheath present.
- 30 Q. Can you say that that particular hair went directly from a person's scalp directly onto the leg of James Smith?

- 1 A. No, I could not determine how it got on the leg.
- Q. What, if anything, about that kind of hair that makes  
it less likely or more likely to be transferred?
- A. I think in my previous examinations I stated that  
5 hair is transferred. That it is made up of scales and  
these scales tend to adhere to articles such as  
clothing. When one is dealing with a pulled hair  
there is also the hair root sheath which is usually a  
soft sticky area and, again, this type of area will  
10 adhere to clothing, etc.
- Q. Does that make it easier to transfer from one  
location to another or from one person to another, or  
harder?
- A. I don't know whether it would make it easier or  
15 harder to transfer. It would make it certainly  
easier to adhere.
- Q. Do you have any way of determining based on your  
experience as to where that hair actually came from  
or how long it had been there?
- 20 A. No.
- Q. Could that hair have been in the house days before?
- MR. FURLOTTE: Well, My Lord, I think he's getting into an  
area now which common sense rules and this witness  
25 does not have the expertise to give that opinion.
- MR. WALSH: I don't see that point My Lord.
- THE COURT: I would think it would fall within his  
expertise. Yes, he may answer.
- MR. WALSH: If he's entitled to answer - he has given the  
30 answer. I don't have any further questions.
- THE COURT: Well I didn't hear the answer.
- A. I have no idea how long the hair was there My Lord.



1 THE COURT: Are there any -- There was a fair re-  
examination and although I'm not sure you are en-  
titled to it, Mr. Furlotte, do you have other questions  
you want to ask on this?

5 MR. FURLOTTE: No.

THE COURT: I have one question out of idle curiosity I  
think, and that is if you disagree with Mr. Gaudet's  
1 over 4500 figure, and you have carried out a test  
of your own of 1 in 200 which satisfies you that that  
10 is correct, why have you not gone on and conducted a  
test of say 1 out of 400?

A. It is difficult to get that many samples My Lord. I  
have been accumulating hair samples trying to achieve  
exactly that. Getting the time to do it as well.

15 THE COURT: No questions presumably arising out of that.  
Thank you very much. Are you being called back?

MR. WALSH: Yes, he is, thank you My Lord.

THE COURT: Now, another witness Mr. Walsh.

20 MR. ALLMAN: Yes, My Lord, Sandra Lumgair.

SANDRA LUMGAIR, recalled, having been previously  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Just to refresh the jury's memory you have already  
25 been sworn and given evidence in this case?

A. Yes, I have.

Q. And your name is Sandra Lumgair?

A. Sandra Lynn Lumgair, yes.

Q. And you are with the Serology Section, Sackville  
30 Forensic Laboratory?

A. I am.

- 1 Q. And serology means, just to remind us all?
- A. My work primarily involves the examination of articles  
for the presence of human blood or seminal fluid,  
more rarely other body fluids such as saliva or fecal  
5 matter, family identification material.
- Q. And also within the area of blood aspects of this, it  
includes typing blood?
- A. Yes, it does.
- Q. And you have been declared an expert already in these  
10 proceedings in serology I believe, is that correct?
- A. I have been allowed to testify as such, yes, sir.
- Q. I am showing you now an item that has been marked by  
the court identification 'YY'. What can you tell us  
about that, including any markings on it?
- 15 A. Identification item 'YY' is a small piece of metal  
which I received -- excuse me, wood, which I received  
on the 13th of December, 1989 at the Forensic  
Laboratory in Sackville from Duff Evers of the Hair  
and Fiber Section. I retained this in my possession  
20 following my examinations until forwarding it via  
security mail to Constable Houle of the R.C.M.P. in  
Newcastle, New Brunswick.
- Q. And both those persons whom you named, Constable  
25 Houle and Duff Evers, have previously given evidence  
just shortly before you?
- A. I saw Mr. Evers do so, yes.
- MR. ALLMAN: I believe continuity of that has been proved  
up My Lord. I would ask to enter 'YY' as an exhibit.
- 30 THE COURT: That would be exhibit number P-67.  
(Clerk marks bag containing piece of wood exhibit P-67)

1 MR. ALLMAN: I am showing you now court identification 'ZZ'.  
What can you tell us about that?

A. Court item 'ZZ' is a small piece of metal which I  
received on the 13th of December, 1989 at the  
5 Forensic Laboratory from Mr. Evers of the Hair and  
Fiber Section. I retained this in my possession  
until returning it via security mail to Constable  
Houle of the R.C.M.P. in Newcastle, New Brunswick.

Q. And, again, that basically is the same continuity as  
10 the previous item, My Lord. I believe that has been  
proved up. I would ask to enter that as an exhibit.

THE COURT: Exhibit P-68.

(Clerk marks bag containing piece of metal P-68.)

MR. ALLMAN: Now, I understand that you performed tests  
15 upon 'YY'. Do you actually need them in front of  
you to give your comments?

A. No.

Q. I'll leave them here and if you need them maybe you  
can just say so. I understand you performed tests  
20 in accordance with your line of expertise on both  
'YY' and 'ZZ'. Could you outline what the nature of  
the tests was and what the purpose of the tests was?

A. I examined both items for the presence of human blood  
25 and I attempted to type the blood that I found in a  
number of systems. The systems that I chose to type  
the limited amount of blood found on each of the two  
items was based on the systems that I had found to be  
present in Father Smith's blood - the blood standard.

Q. You were given a sample of what you were advised was  
30 blood from Father Smith?

- 1 A. Yes, sir, I had received that and that was to be my point of comparison.
- Q. Sorry, I interrupted you. Could you go on then and tell us what you did.
- 5 A. Yes. The blood that was on item 'YY' I had typed in two systems, the ABO and the PGM system. That was based on limited quantities. The ABO system was an A; the PGM was a type 2. Both of those systems were the same as the two corresponding systems that I had
- 10 found in Father Smith's blood, therefore, the blood on item 'YY' could have originated from Father Smith.
- Q. When you say could have could you just elaborate upon that a little bit, please?
- 15 A. With conventional serological examinations and the typing that's available to us we never say that it could have or it definitely did. We always say it could have originated from. We can cite a frequency of occurrence for a given blood or combination of
- 20 factors that are found in the blood but those are in no way indicative beyond a frequency for that group of characteristics as to whether or not it actually did come from one person or another.
- Q. So if I understand you right, and correct me if I get any of this wrong ever, there's a difference
- 25 between saying that the blood could come from somebody and saying the blood did come from somebody?
- A. Very much so, yes.
- Q. And if I could use it from this angle, there are strengths of could, or some coulds are stronger than
- 30 other coulds. Is that what -- I'm afraid I'm --

1 A. If you wish to do that with the frequencies, yes.

Q. You mentioned a moment ago that in respect of this  
you chose to type it in certain systems.

A. Yes.

5 Q. Could you just explain to the jury about these  
systems, how many there are and what the differences  
are?

A. There were a number of systems that were typed in  
Father Smith's blood. There were two of the systems  
10 that were quite rare or rarer than others. Better  
terminology. The PGM, the phosphoglucomutase, which  
is one of the proteins I study, in Father Smith's  
blood was a type 2. About 6.8% of an average New  
Brunswick population will have that PGM type 2. The  
15 other was adenosine deaminase type 2-1 which occurs  
with a frequency of about 7.5. In other words in the  
case of the PGM less than 7% of the people or 7 out  
of 100 people will have that, and in the case of the  
adenosine deaminase, or the ADA, a little less than  
20 8 out of 100 people will have that. Therefore, they  
are fairly rare. If the quantity of blood that I had  
available to me permitted those were the two that I  
looked at first. Because in the case of item 'YY' I  
25 didn't have quite as much blood as I would have liked.  
I chose to do the rarest, the PGM, and then the ABO.  
The ABO I chose because it is fairly long-lived in  
samples. It's an antigen that you can find fairly  
commonly. It doesn't degenerate as quickly as some  
30 of the others. It's a choice that I make based on my  
experience over the years and those were the two in  
that case that I chose.

1 Q. In this particular case. In another case if there  
was let's say a larger quantity of blood how many  
systems in the best of all worlds would you go  
through?

5 A. We would go through 8 different systems.

Q. And the more systems you are able to go through what  
does that do to the opinion you expressed that this  
blood could come from that source, if you go through  
all 8 and they are all consistent?

10 A. Well, just to give you the example, from the typing  
on Father Smith's blood all of the systems that I  
obtained in that occurred with a frequency of 0.03%  
which translates into about 3 in 10,000. That's not  
a bad breakdown for conventional serological examina-  
15 tions. With just the two systems that I was able to  
do on item 'YY' the frequency was 2.84 I believe.  
It's not all that rare. There is the difference.  
If I had been able to do more systems I would have been  
able to take that frequency lower.

20 Q. But there wasn't enough blood so you couldn't go on  
with the later tests?

A. Yes, sir, correct.

Q. So just to --

25 THE COURT: When you say 2.84 what do you mean? Is this a  
percentage?

A. Yes, sir, excuse me. Frequency. Those two systems  
can be found together in about 3 in 100 people.

30 Q. So to come back to where we started a moment ago, so  
far as 'YY' which is now P-67 is concerned, what's the  
bottom line based on the two tests that you were able  
to do?

- 1 A. That the blood on P-67 could have originated from the same - or could have originated from Father Smith.
- Q. With the qualifications you just --
- A. Yes, sir.
- 5 Q. Did you perform similar tests on 'ZZ' which is now P-68?
- A. Yes, sir, I did.
- Q. Can you tell us about that? How many tests you were able to do and take us on.
- 10 A. In the case of exhibit P-68 I had slightly more blood. I chose, therefore, to go with the systems PGM and the ADA that I mentioned before. The PGM result on P-68 was a type 2-1. The adenasine deaminase or ADA result was a type 1. The adenasine deaminase typing
- 15 is done at the same time as two other systems: the erythrocyte acid phosphatase or EAP, and the adenylat/kinase or AK. I was able to obtain an AK result which was a type 1; not an EAP result. Therefore what I was left with were three systems for court exhibit
- 20 P-68. Those were, again, the PGM, type 2-1, the AK, type 1, and the ADA, type 1. Two of those systems, the PGM and the ADA, the two rarest from Father Smith did not match the blood on court exhibit P-68. That
- 25 is what is known as a double exclusion. The blood did not come from Father Smith.
- Q. And that's the blood on the aluminum or the metal - what otherwise was the metal part on door casing?
- A. Yes.
- 30 Q. Is there a difference between an -- The first one you were talking about could come from Father Smith, and the second one you are talking about did not come from Father Smith. Is there a difference there?

- 1 A. One is stating a possibility that something could happen, or stating that it is possible that something did happen. The other is saying that it did not. A possibility as opposed to definite.
- 5 Q. The second is what is a positive-negative. Something did not happen?
- A. That's correct.
- Q. Is there any way in respect of either of the blood, either the blood on the wooden or the blood on the metal portion of the frame, of knowing when they got there? From your knowledge.
- 10 A. Not really, no, sir. We don't age blood in any way.
- Q. Is there any way of knowing the sequence in which they got there? In other words, whether the blood got on the metal first and the wood second or the wood first and the metal second, or both at the same time?
- 15 A. No.
- Q. I want to put a hypothetical to you. Could a drop of blood have gotten on one of those objects, lets say the metal, and I'm just choosing that at random, and then another piece of blood have gotten smeared across over the bit that was already on the metal? Is that a -- I'm not saying did that happen; I'm asking if that could happen?
- 20 A. Anything could happen, yes.
- Q. Sorry, what was the answer to that?
- A. Yes, anything like that could happen.
- 25 Q. I don't know if you were in court yesterday when Sergeant Gorman gave evidence with regard to blood splatter and blood smears and so on.
- 30 A. No, I wasn't.



- 1 Q. Well, I'll indicate to you what his evidence was and  
I can certainly be corrected if I get anything wrong,  
but he indicated that there was a smear at the locatio  
in question which he believed to be one smear. Are  
5 you in any position to comment on that in light of  
what you say which is that, as I understand it, the  
blood on the aluminum wasn't Father Smith's, the  
blood on the wood could have been Father Smith's.  
Is there anything you can add to that?
- 10 A. His field of expertise is different than mine. I  
requested when I saw Sergeant Gorman outside to see  
an exact picture of the area in question. As I say,  
my field isn't his but I didn't really think that it  
had to be one smear.
- 15 Q. You are talking now about visual observations?  
A. Yes, sir.  
Q. So far as the area that is your sphere is concerned,  
you are still of the opinion that the blood on the  
aluminum was not Father Smith's?  
20 A. Yes, sir.  
Q. The blood on the wood could have been?  
A. Yes, sir.  
Q. Did you perform any tests of a serological nature on  
anything else related to Father Smith?  
25 A. A number of things, yes.  
Q. Could you just give us an outline of what other  
matters you dealt with?  
A. May I refer to my notes?  
Q. These are the notes that you have been referring to  
30 previously, are they?  
A. Yes.

1 MR. ALLMAN: May she refer to those again My Lord?

THE COURT: Yes.

A. I had looked at, among other things, two pairs of  
boots, a postcard, several areas of flaking, some  
5 buttons. I also looked at oral and anal swabs. A  
couple of chains. Clothing. Other items of  
clothing. Two knives. A knife sheath. A lighter.  
Some matches. Some laces. Some unknown material.  
Pairs of glasses. In addition, later exhibits that  
10 were received were some ski pants and other pants.  
Gloves. Another pair of sweat pants. Overalls.  
Sweater. Some rope. Socks. Pair of gloves. And a  
couple more socks.

Q. When you were performing tests on the other items,  
15 and specifically I'm concerned now with any items  
that were located - or were reported to you as being  
located within the Smith residence, were you per-  
forming the same type of tests for the same purpose?  
In other words to see if the blood was consistent with  
20 Father Smith's?

A. Yes.

Q. Without going through them in detail what was your  
finding with regard to the items that purportedly  
25 came from inside the house and blood that you found  
on any of those items?

A. The blood that I found on any of the other articles  
and was able to type could have originated from  
Father Smith.

Q. Could, bearing the same meaning as you have already  
30 explained?

A. Yes, sir.

MR. ALLMAN: Thank you.

1 THE COURT: All right. Now, cross-examination Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Miss Lungair as Mr. Allman mentioned on Sergeant  
5 Gorman's testimony yesterday was that his opinion  
was that the blood on the wood and the aluminum  
probably came maybe from one smear. One swipe which  
deposited blood there. So you, I believe, say that  
that is one possibility?

10 A. I have no real way of refuting that. That's not my  
field of expertise.

Q. That's not your field of expertise. I believe  
Sergeant Gorman also testified on redirect examination  
that in his reconstruction of the crime that he could  
15 only find evidence of one other person being there  
besides Father Smith. Now, you were able to eliminate  
one portion of the blood on exhibit - which one is  
it - P-68, double elimination of Father Smith, is  
that right?

20 A. Yes.

Q. So there is no doubt in your mind that there was  
blood there that did not belong to Father Smith?

A. That's correct.

Q. And were you also able to eliminate Allan Legere?

25 A. I have no way of knowing. I didn't ever receive  
blood from Allan Legere.

Q. Did you not run a test on blood that was found off a  
knife that Allan Legere was stabbed with?

A. No, I did not.

30 THE COURT: You are speaking about another occasion Mr.  
Furlotte, are you?

1 MR. FURLOTTE: Did you attempt to type blood off a knife  
that Allan Legere was stabbed with?

A. No, sir, not me.

Q. And there was no attempt on your part whatsoever to  
5 check the blood on exhibit P-68 with the blood type  
of Allan Legere?

A. I didn't have the blood type of Allan Legere.

THE COURT: We're injecting evidence in here about Mr.  
Legere being stabbed with a knife. I think it  
10 should be clarified as to what occasion are we  
talking about.

A. I can clarify that for you if you wish.

MR. FURLOTTE: Maybe you could clarify something for me.  
Maybe I can find it in your report. I can't find it  
15 in this report just yet but I think maybe, My Lord,  
we could have a break and I could find that report.

THE COURT: Can the witness help you with it? Is it one of  
her reports Mr. Furlotte?

MR. FURLOTTE: Well, Miss Lungair, I have from the police  
20 brief what you were going to testify to today and  
what the witness can say, and in the police brief it  
says that "The witness can say that from this com-  
parison she found that the blood group systems of  
item number 54 did not match the blood group systems  
25 of the knife, item F, which was allegedly used to  
stab Legere."

A. I cannot say that.

Q. Do you know anything about that?

A. I cannot say that. I don't --  
30

Q. You can't say that?

A. No.

- 1 Q. Do you know anything about a knife that was used to stab Legere?
- A. Yes, I do.
- Q. Did you check that knife at any time for to do blood analysis?
- 5 A. I personally did not, therefore I cannot testify to that.
- Q. You personally did not?
- A. No.
- 10 Q. Do you know anybody who did?
- A. Yes, I do.
- Q. Who did that?
- A. Ludmilla Parnell.
- Q. That person male or female?
- 15 A. Female.
- Q. Is that person going to be a witness in court?
- A. I have no idea.
- Q. The blood you found on item 54 - or on P-68 which did not match Father Smith, did you check that with any other suspects?
- 20 A. For this particular case I had received no suspect blood whatsoever for comparison purposes. The only blood standard that I had received and what I was asked to compare all blood on all other exhibits to
- 25 was Father Smith.
- Q. Now, I have here - you had blood comparisons for suspects in the Daughney case?
- A. Yes, I did.
- 30 Q. Did you check the type of blood that was found on exhibit P-68 with the suspects of the Daughney case?
- A. I was not requested to do so. No, sir.

- 1 Q. Is that unusual for you not to be requested to do that?
- A. No. I was asked to see if I could find anyone else's blood or compare the blood on the various exhibits to  
5 the victim himself. There was no mention ever made to me that I recall to compare blood from any other murder in the area to anything of Father Smith's.
- Q. Do you have the record of the blood typing of the suspect in the Daughney case with you?
- 10 A. Yes, I do.
- Q. Could you check that with the blood typing you found on exhibit P-68 and tell me how many suspects you cannot eliminate?
- 15 A. As I had mentioned earlier, there were 22 blood samples received from various people which were received in connection with the Daughney murders and I looked at those earlier anticipating this question. The possible matches from those various people to the  
20 blood on exhibit 54 were people that I cannot exclude as a possible source.
- Q. Yes, I don't need their names; just the numbers, please.
- A. 8.
- 25 Q. Just the numbers. Did you say there was how many?
- A. 8.
- Q. 8?
- A. Yes.
- Q. God, you did that awful quick. You never did it before?
- 30 A. Yes, I just said I did.
- THE COURT: She said she anticipated your question.

1 MR. FURLOTTE: So that's 8 out of 22?

A. Yes, sir.

Q. That could not be excluded.

A. Correct.

5 MR. FURLOTTE: My Lord since I have been misled somewhat  
that this witness could answer a particular question,  
I would ask the court to order the crown to provide  
the witness stated as Miss Lumgair for cross-examination

MR. ALLMAN: We have no problem with that. I have an  
10 alternative suggestion that I have been trying to tell  
Mr. Furlotte for the last couple of minutes but he was  
in the middle of his cross-examination so I didn't  
want to interrupt him. There is another way we can  
accommodate his needs. If we wanted to take a break  
15 now, it's 5 to 11, we will have 15 minutes and I be-  
lieve I can solve any problem Mr. Furlotte has.

THE COURT: Well, let's give that a try.

MR. FURLOTTE: Well maybe the crown will admit it as a  
fact, I don't know.

20 THE COURT: There is one thing I want cleared up by some-  
body or other here is this matter of the knife. I  
will leave it to counsel to do that.

Your discussions won't involve any discussion  
with the witness?

25 MR. ALLMAN: No.

THE COURT: So we will recess now for our morning recess.

(RECESS - 10:55 - 11:20 A.M.)

COURT RESUMES. (Accused present. Jury called, all present.)

30 THE COURT: Now, cross.

MR. ALLMAN: Just before Mr. Furlotte resumes I just wanted  
to put something on the record. The situation that

1           arose - there has apparently been a miscommunication  
          about some of the information in our possession which  
          we understood Mr. Furlotte was aware of.  Apparently  
          that got miscommunicated somehow.  We did try during  
5           his cross-examination to explain the situation but  
          he was in the middle of his cross-examination and we  
          couldn't get to interrupt him.  We did during the  
          adjournment discuss what the problem was.  I think  
          there is no argument about it, it was a misunder-  
10           standing.  We have also advised him of how he can  
          resolve this problem.  The method he is going to use  
          is he is going to ask this witness about some hear-  
          say evidence and we won't object to it.  Basically it  
          was a minor problem.  Miscommunication I think, and  
15           Mr. Furlotte I think accepts that that's the position.

THE COURT:  Thank you.

MR. FURLOTTE:  Okay now, Miss Lumgair, it is my under-  
          standing there now that based on a previous serologica  
          report which was prepared by Ludmilla Parnell dated  
20           December 2nd, 1986 you used that report in order to  
          compare the blood sample you found on item 54 with  
          Mr. Legere?

A.  Sir, I did not.

25           Q.  You did not?

A.  No.

Q.  Okay, would you tell the Court what happened and how  
          you believe you have excluded Mr. Legere from P-68?

A.  Sir, I have not done so.

30           Q.  Did you check the report of Ludmilla Parnell which  
          she conducted on December 2nd, 1986?

A.  I forwarded copies of that report to - I think more  
          than once - to Constable Ron Charlebois.  I was asked



1 to see if I could locate the knife so that it could  
be forwarded for DNA typing to Ottawa. That is my  
connection with this.

Q. Did you compare the blood group systems on item 54  
5 or P-68 with the report of Ludmilla Parnell?

A. If I did it was in a very offhand conversation. I'm  
not -- No report was written. I do not testify on  
other specialist's results.

Q. Do you have a copy of the Ludmilla Parnell report?

10 A. No, sir, I do not.

Q. Do you know whether or not the blood on the knife  
that was used to stab Mr. Legere that the PGM was 1  
and the AK was 1?

A. No, I do not recall, sir. This is not my work.

15 MR. LEGERE: Let's get Parnell here.

MR. FURLOTTE: Well, My Lord, maybe the crown can come up  
with another suggestion how we can short-circuit this.

MR. ALLMAN: Well, I have two suggestions. One is that if  
20 he wants to stand this witness aside. I understood  
that a comparison had been made at one stage. She  
could certainly make that comparison now. Of course  
that will necessitate us being permitted - or Mr.  
Furlotte being permitted to speak to her apropos the  
evidence she has given. We have no objection to that.  
25 We want this issue clarified as much as anyone. The  
other alternative -- And I would prefer that because  
otherwise we're going to have to get into a long  
number of witnesses culminating in Ludmilla Parnell  
30 on another issue which I don't think is in anybody's  
interest, including Mr. Furlotte's, to get into. We  
want to resolve this shortly and simply. We don't

1 want to do it in a long fashion. If it takes a long  
fashion we will do it, it will be resolved, but if Mr.  
Furlotte wants to stand this witness aside and talk  
to her and find out what the situation is and get her  
5 back, I have no objection to that. If that doesn't  
work then we will do it the long way.

MR. FURLOTTE: I guess that's what we will do then My Lord.

THE COURT: Why wouldn't that be a good thing? Is there  
any -- Could you complete your cross-examination  
10 apart from that aspect of it, or do you want to leave  
it Mr. Furlotte?

MR. ALLMAN: I understand - this is not directly on point -  
but she is coming back later and he can either deal  
with this when she comes back later or we can put an  
15 additional appearance in. Whatever is required we  
will do it.

THE COURT: When does - is it Miss or Mrs.?

A. Ms.

MR. ALLMAN: 218.

20 THE COURT: Which is down the line quite a bit yet. Well,  
why don't we stand Ms. Lumgair aside now and counsel  
try to resolve this point, and when she comes back  
again, or if you want to insert her again somewhere  
in the line-up, shortly, like even later today if you  
25 can get it cleaned up then, but if there are further  
tests to be conducted. I'm not going to create a  
precedent in this trial for any delays or anything  
of that nature.

30 MR. ALLMAN: That wasn't what was being suggested.

THE COURT: Well, counsel can work this out, surely, between  
them. There's one point I feel should be made and I

1 prefer perhaps counsel to make it, but I gather that  
I'm correct in saying that the knife that has been  
referred to as stabbing Mr. Legere has nothing to  
do with any of the counts involved in the present  
5 trial. This is a 1986 incident somewhere which  
we're --

MR. ALLMAN: It doesn't, and that's what I was referring to  
a moment ago when I said that we don't want to get  
into a separate incident that carries with it a whole  
10 train of additional questions and witnesses.

THE COURT: I am not going to permit this trial to become  
a trial as to why someone got stabbed or what the  
result of stabbing was.

MR. LEGERE: My blood comparison was eliminated from the  
15 door frame, that's all there is to it.

THE COURT: Will you stand down then, Ms. Lungair, please.  
Now, you have another witness Mr. Allman or Mr.  
Walsh?

MR. WALSH: Yes, My Lord. You will remember last week we  
20 were dealing with the - the jury remember we were  
dealing with a long list of scene continuity members  
associated with Father Smith. One of the officers  
who testified, Corporal Lessard, indicated that he  
had left on a couple of occasions during the time he  
25 was there. He was accompanied by a Constable Walsh  
and Corporal Lessard had left on a couple of occasions;  
once for lunch and then once he left early before they  
switched it over. As a result of that information  
we contacted Constable Walsh and we seek - Mr. Furlotti  
30 is aware of this, we seek your permission to insert  
Constable Walsh at this point just to fill in any  
possible gaps.

1 THE COURT: All right. What number are you giving him, or  
at least can you give him a number for --

MR. WALSH: Well, we could probably give him a number back  
where the --

5 THE COURT: Well let's call him 145A. Corporal is it, or  
Constable?

MR. WALSH: Constable, I believe, correct me if I'm wrong.  
I would call him at this point.

10 CONSTABLE RANDALL WALSH, called as a witness, having  
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Could you give the court your name, please, and your  
occupation?

15 A. I am Constable Randall Patrick Walsh. I am a member  
of the Royal Canadian Mounted Police presently  
stationed at Saint John in my capacity in the Saint  
John Drug Section.

Q. And would you tell the court, please, your involvement  
20 in this particular matter, the matter of James Smith,  
beginning with the date, the time and the place.

A. On the 27th day of November, 1989 I was assigned to  
site security with then Constable Dan Lessard. I  
arrived at Father Smith's residence at 9 o'clock in  
25 the morning and approximately 10:10 Constable  
Lessard, Dan Lessard, left the scene for a short  
period of time to go get his heavy winter jacket.  
He returned shortly thereafter. I stayed at the  
scene during the whole time. The only people going  
30 to and from the residence were the members from the  
Forensic Identification Sections.

1 Q. Was there any unauthorized entry into the premises?

A. No, there was not.

Q. From the time he left. Continue, please.

A. At approximately quarter to twelve Constable Lessard  
5 left again with members of Ident for lunch. He re-  
turned approximately 15 minutes later, approximately  
20 minutes to 1, at which point in time I stayed as  
the sole person for site security, but at the same  
time there were members of Ident going to and from,  
10 and the exhibit person, Constable Laurent Houle, had  
been present, not in the house, but just adjacent to  
the scene.

Q. Was there any unauthorized entry during that period  
of time?

15 A. No, there was not.

Q. That is to the rectory of the Father James Smith  
premises.

A. That is correct.

20 Q. Continue, please.

A. Following that I left myself for lunch at approxi-  
mately quarter to 2 and I came back approximately a  
half hour later during which time when I left and when  
I returned Constable Lessard had been the only person  
there. Later on that afternoon at approximately 4:10  
25 P.M. Constable Lessard left for the day and I was the  
only person there for site security during which time  
the members of the Forensic Ident Section were still  
there as well as the different investigators. Again,  
30 no unauthorized entry. And myself I left at 8:10  
P.M. I turned over continuity of the scene to Constable  
Davis and a Constable LeBlanc.

1 Q. Did you return to the premises after that time?

A. After that time? No, I did not.

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

5 THE COURT: Thank you.

MR. FURLOTTE: I have no questions.

THE COURT: No cross-examination. Thank you Constable  
Walsh; you are excused. Now, another witness.

MR. ALLMAN: Yes, My Lord, Peter McCafferty.

10

PETER McCAFFERTY, called as a witness, having been  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What's your name, please?

15 A. Joseph Peter McCafferty.

Q. And what town do you live in Mr. McCafferty?

A. Chatham Head, New Brunswick.

Q. And did you live there on the 15th of November, 1989?

A. Yes, I did.

20 Q. On that day did you have occasion to go somewhere  
that relates to this matter that we are talking about?

A. Yes. On Wednesday, November the 15th, I had come home  
from school and my grandmother asked me to run an  
errand for her.

25 Q. What was the errand to be?

A. The errand was to run an envelope over to the rectory  
to Father Smith. The envelope was to pay for masses.

Q. Had you been over to -- You knew where the rectory  
and Father Smith were?

30 A. Oh yes, definitely.

- 1 Q. And you were indicating that it was the concrete steps  
you walked up?
- A. Um-hmm.
- Q. Did you notice if there was any light on either inside  
5 or in the porch outside? The outside porch area of  
the house?
- A. The porch area was lighted.
- Q. And after you had done that you would go through the  
aluminum door that you could see in --
- 10 A. Yes, and then I rang the doorbell on the inside door.
- Q. And what happened?
- A. Father Smith answered the door and I -- He knew  
what I was there for so he took the money and he  
nodded his head and he said he knew what it was for,  
15 and he seemed perfectly fine.
- Q. How did Father Smith seem when you had this brief  
conversation with him?
- A. Perfectly normal.
- Q. Did you get to go in the kitchen at all or just wait  
20 in the doorway?
- A. I just - I stepped inside and just waited right be-  
side the door.
- Q. How many steps into the kitchen would you have taken?
- A. Maybe two.
- 25 Q. And you waited there while Father Smith did what?
- A. He just went to the kitchen table, set it on the  
kitchen table, and he said that will be fine.
- Q. How did the kitchen look in terms of normality or  
unusualness?  
30
- A. It -- Like I was never in there before. That was  
the first time I had ever been inside the door.

1 Q. When you saw the kitchen did you notice anything that  
attracted your attention in any way?

A. I took a real good look around because it was the  
first time I was in there. I just seen the kitchen  
5 table, the sink, the cupboards. Stuff like that.

Q. What I wanted to know is did it look unusual? Did  
anything --

A. No. Not to me anyway.

MR. ALLMAN: Thank you.

10 THE COURT: Cross-examination?

MR. FURLOTTE: I have no questions.

THE COURT: Thank you Mr. McCafferty. That's all for you,  
thank you.

MR. ALLMAN: Marvin Muzzeroll.

15

MARVIN MUZZEROLL, called as a witness, having been  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

A. My name is Marvin Edward Muzzeroll. I live in  
20 Chatham Head, 194 Brown Road.

Q. Did you live there in the month of November, 1989?

A. Yes, I did.

Q. I am going to show you photograph P-59(8) which is  
S-8 on the front. Do you recognize the photograph,  
25 including the rectory and the church?

A. Yes.

Q. Could you indicate to me and then I'll indicate to the  
jury if your house is on that picture?

A. My house is on that picture right here. The house  
30 and garage and small shop.



- 1 Q. There's the house and two smaller buildings behind it?
- A. Two small buildings, a garage and a shop.
- Q. Have I got my finger in the right place?
- 5 A. Yes.
- Q. I'll show the judge and then I'll show Mr. Furlotte and the jury. He's indicating those three buildings there My Lord. In the month of November, 1989 did you have occasion to discover something missing?
- 10 A. I did. One half of my extension ladder was missing. I didn't find -- I didn't know it was missing until the 17th of November.
- Q. Let's go back into that a little bit more. You had an extension ladder. What was it made of?
- 15 A. It was made of wood.
- Q. And you said one-half of it. Was it in two pieces separated or --
- A. It was in two pieces hanging on the side of the garage.
- 20 Q. Inside or outside the garage?
- A. Outside the garage.
- Q. So on the outside of the garage in November you had two separate pieces of an extension ladder hanging there?
- 25 A. An extension ladder.
- Q. And you said that on the 17th of November you discovered something. What was that?
- A. I discovered that the ladder was missing.
- Q. The one part of it.
- 30 A. One part of it.
- Q. How did you come to make that discovery?

1 A. I happened to be looking -- I had heard that there  
was a ladder and they were looking to find out whose  
ladder it might be, and I was looking out my back  
door and I just noticed that half of my extension  
5 ladder was gone, and I said to my sister, I said  
'That might be my ladder. Half of my ladder is gone.'

Q. If you look at the picture P-60, and particularly  
picture number 2, you can see a ladder propped up  
against the garage of what's been identified as the  
10 rectory. How does that look compared to the ladder  
that you discovered on the 17th had gone missing?

A. That looks like the same ladder.

Q. Are you able to tell us when it went missing?

15 A. No. No, I'm not. I was working Thursday night and  
I was off - I was off Friday. I didn't notice it  
missing.

Q. So it may have been missing for what? How many days  
do you think?

20 A. Could have been missing for several days.

MR. ALLMAN: Thank you.

THE COURT: Cross-examination.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Muzzeroll do you own a dog?

25 A. Yes, I do.

Q. You did at the time?

A. Pardon?

Q. In November of 1989 you owned a dog at that time?

A. Yes.

30 Q. How long did you own the dog, that particular dog?

A. About 12 years at that time.

- 1 Q. At that time about 12 years. Is your dog vicious?  
A. No.
- Q. Were you concerned that it might be somebody who knew  
the dog who took the ladder because the dog didn't  
5 create a fuss?  
A. Well, the dog - the dog is getting old and he's a  
bit deaf and his eyesight is poor. He's old for a  
German shepherd.
- Q. So it's a German shepherd.  
10 A. It's a German shepherd.
- Q. Were you concerned at one time that it might be some-  
body who knew the dog to be able to come and steal  
your ladder?  
A. Not really, because the dog is tied, by the way, he's  
15 tied in front of the garage and he couldn't reach  
around to the side of the garage anyway. He's on a  
20 foot chain.
- Q. Had you voiced that concern to anybody at the time?  
A. No.
- 20 Q. I would like to show you your statement, Mr. Muzzeroll  
dated November 17th, 1989 just to refresh your memory.  
It's very short so maybe you could read the whole  
thing. So, again, did you think at the time that  
25 maybe it was somebody who knew your dog because your  
dog looked vicious and somebody who knew your dog  
wasn't vicious.  
A. It could have been. There are neighbors all around  
handy.
- 30 Q. But just to repeat, that was a concern of yours at the  
time. You thought maybe it was somebody who knew the  
dog who stole your ladder.

1 A. Well, I just thought maybe they knew that the dog was  
tied, that he couldn't go anywhere. I keep him on a  
20 foot chain, and he's always tied by the way. He  
never runs loose.

5 MR. FURLOTTE: No further questions.

REDIRECT EXAMINATION BY MR. ALLMAN:

Q. Not that I want to devote a lot of time to the dog, but  
is the dog chained outside all the time or what happen  
at night?

10 A. Yes, at night in the cold weather in winter I always  
put him in the garage at night. When I come home from  
work, probably that's usually between 12 and 2 o'clock

Q. So at night he wouldn't be outside on the chain. He  
would be inside the garage.

15 A. Not in cold weather.

MR. ALLMAN: Thank you.

THE COURT: He would be 84 years old in man years.

A. He's about 14 now. That's old for a German shepherd.

THE COURT: Thank you very much.

20 MR. ALLMAN: Judy Ann Murdock.

JUDY ANN MURDOCK, called as a witness, having been  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

25 Q. What is your name, please?

A. Judith Ann Murdock.

Q. Where do you live?

A. I live in Chatham Head, New Brunswick.

Q. On the 16th of November, 1989 where did you live?

30 A. In Chatham Head, New Brunswick.

1 Q. And did anything happen that evening - afternoon or evening that may have some connection with what we are talking about now?

A. Well, about - I looked at the clock and I said to my  
5 husband 'It's quarter to 7, I think I'll go and get some groceries.'. So my daughter and I proceeded out to the car. When we are about to get into the car we heard a horn honking. My daughter said 'Why is Father Smith honking his horn?'.  
10

MR. FURLOTTE: I object to hearsay evidence.

MR. ALLMAN: It's not being put in for the truth of it.

It is just being put in for the fact that this alerted this witness to a situation.

A. All I said, well, he's --

15 MR. ALLMAN: Okay, let's not get into conversation to avoid any problems with Mr. Furlotte and his objection. Do you want to take just a second and look at the photographs. I have got two photographs here, S-2 and S-3. We will start with S-2. Do you recognize the  
20 rectory and the church on that picture?

A. Um-hmm.

Q. Is your house visible on that picture?

A. Yes, it's right here.

THE COURT: That was number what?

25 MR. ALLMAN: S-2. I wasn't sure which was the preferable house on - the preferable photograph. I think S-2 is quite all right.

A. This is my house here.

30 Q. It's got like a red barn at the back of it?

A. Yes.

- 1 Q. And a deck right adjacent to it.  
A. Right.
- Q. I'll just show the judge, the jury and Mr. Furlotte.  
When you heard the noise of the car horn honking and  
5 you had a conversation resulting from that with your  
daughter whereabouts in your house would you be?  
A. We were outside by the car ready to get into the car.
- Q. Well, where would the car be then?  
A. The car would be right in front of the deck.
- 10 Q. To get into your house it's like an ell shape.  
A. Yes.
- Q. Is it you come off the street?  
A. Right.
- Q. And then you turn left and if you kept going straight  
15 you would crash into the deck?  
A. Right.
- Q. And you are indicating that your vehicle was parked  
in that part of the ell that's right in front of the  
deck?  
20 A. Right.
- Q. You heard the noise of a car honking. Where did that  
noise seem to come from?  
A. It seemed to come from Father Smith's garage.
- 25 Q. And after you had heard the noise and had a con-  
versation with your daughter what did you do?  
A. We got in the car and we went to the grocery store.
- Q. Did you see anything in addition to hearing anything  
when --  
30 A. When we glanced over after we heard the honking we  
seen like a red - it seemed like the brake lights of  
the car.

- 1 Q. Okay. Now, I am going to show you another lot of pictures. You said that you glanced over. In what direction did you glance over?
- A. Well our car would have been probably like here and  
5 if I glanced in that direction it would be towards the garage.
- Q. Towards the garage of what?
- A. Father Smith's. The rectory.
- Q. And you recognized the garage of Father Smith's  
10 rectory shown in picture 2 on page --
- A. Right.
- Q. -- photographs, bundle 60?
- A. Um-hmm.
- Q. Okay. And then you said that you saw lights. What  
15 sort of lights?
- A. Well, it looked like brake lights from the car.
- Q. And as best you can recall whereabouts would the brake lights be in relation to the opening where the  
20 garage doors -- On that picture the garage doors are closed. Where would the brake lights be in relation to that?
- A. It looked like for the most part that the car was in the garage and the brake lights were right as you  
25 would come out of the garage.
- Q. Are you in a position to say whether the vehicle whose lights you saw come on was in fact in motion?
- A. No.
- Q. Are you in a position to say of your own knowledge  
30 whether it was going in or coming out of the garage?
- A. No.

- 1 Q. How many times did yo see the brake lights come on?  
A. Well actually we just glanced over and seen them once.  
Q. So just the one time?  
5 A. And then we got into the car.  
Q. You said earlier that you had heard the car horn honk. How many times, as best you can recall it, did you hear the honking sound?  
A. We thought it was roughly 4 to 5 times.  
10 Q. 3 - 4 - 5 times. Okay. I take it that given the location-- I'll rephrase that. Given the location where the vehicle was when you said that it seemed to be mostly in the garage, did you have any opportunity to see who was inside the vehicle?  
15 A. No, I didn't.  
Q. Now, you said that prior to going off grocery shopping you looked at the clock and it was 6:45.  
A. Right.  
20 Q. How long would have passed from the time you looked at the clock and said gee, it's 6:45, let's go grocery shopping, until the time when you heard the horn honking?  
A. Probably a second or two.  
Q. It was almost the same time.  
25 A. Um-hmm.  
Q. And you said that -- Or you didn't say. You intended to go grocery shopping; is that what you did? You and your daughter went grocery shopping.  
30 A. We did.  
Q. How long would you be grocery shopping?  
A. Oh, about 45 minutes.



1 Q. What time would it be, roughly, when you got back home?

A. It was about 20 to 8.

Q. And what was the situation at the rectory, the church  
5 and the rectory parking lot by the time you got back?

A. The church parking lot was filled with cars. Police cars were there and there was a lot of commotion.

MR. ALLMAN: Thank you.

THE COURT: Cross-examination.

10

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mrs. Murdock I believe at the time you gave your statement for the time you observed the car that appeared to be Father Smith's car you thought it  
15 was going into the garage, did you not?

A. No, I didn't say that.

Q. You didn't say that?

A. I didn't know whether it was going in or coming out. For my information I figured it was just stopped with  
20 the brake lights on.

Q. The garage door was open?

A. Yes, it was.

Q. And the car was in the garage you say?

A. For the most part.

Q. I'll show you a copy of your statement that you give  
25 on November 16th, 1989. Right here. Would you read that?

A. "I looked over and saw the car going into the garage."

Q. So at that time you thought you saw the car going  
30 into the garage.

A. It was into the garage. Well, for the most part the car was in the garage and the brake lights were on so I figured it was going in.

1 Q. The garage door was wide open?

A. Yes, it was.

MR. FURLOTTE: I have no further questions.

THE COURT: Reexamination?

6 MR. ALLMAN: No.

THE COURT: How dark was it?

A. Well, it gets pretty dark around quarter to 7 right  
as of now, so it could have been dark enough that I  
couldn't see the car - the color of the car, only  
10 the lights.

THE COURT: Did you see the headlights on?

A. No, I didn't see the headlights on. Just the brake  
lights.

THE COURT: No questions?

15 MR. ALLMAN: No.

THE COURT: Thank you very much Mrs. Murdock. And another  
witness.

MR. SLEETH: Call Corporal Robitaille, Denis Robitaille.

20 CORPORAL DENIS ROBITAILLE, called as a witness,  
having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

MR. SLEETH: Before going through testimony from this  
witness, My Lord, I have packets consisting of three  
25 aerial photographs and a photo booklet containing 22  
photographs, copies of which were furnished to  
counsel for the accused earlier, and I don't believe  
there is any objection to these going into evidence  
right now.

30 THE COURT: One group of three photographs?

1 MR. SLEETH: Yes, My Lord, firstly a group of three aerial  
photographs presently marked in the upper right hand  
corner S-9, S-10 and S-11.

THE COURT: So, we will call those exhibit P-69, and let's  
5 keep the 9, 10 and 11 designations.

(Clerk marks group of photographs exhibit P-69.)

THE COURT: Those are of what area?

MR. SLEETH: Those show the area around Keddys Motor Hotel  
in Bathurst, New Brunswick, My Lord. The witness  
10 will be testifying to these.

Secondly, My Lord, a photo booklet containing  
22 photographs showing various aspects of a motor  
vehicle in the first 20, and of Keddys, and photograph  
21 and 22 I should mention in fairness at this time,  
15 these were taken by - the last two were taken by a  
person other than this witness, but I will be linking  
that up later with witness 231, Corporal Chiasson,  
when he is recalled.

THE COURT: All right. So this would be exhibit P-70, sub-  
20 numbers (1) through to (22).

(Clerk marks booklet exhibit P-70.)

MR. SLEETH: I have, as well, copies of all these for the  
court which I will leave with the clerk.

25 THE COURT: Copies for the jury too?

MR. SLEETH: Yes, My Lord. The clerk might want to take a  
few moments to mark these so --

THE COURT: Oh, let's make the jury do some work and let  
them mark them themselves.

30 MR. SLEETH: They have been working hard through continuity  
My Lord.

THE COURT: If you wouldn't mind just putting on one of the  
photos, perhaps on the back, copy P-69 on the aerial

1 photos and be sure to put 'copy' so they don't get  
confused with the originals. And then on the booklets  
you have them --

MR. SLEETH: Copies, as well, My Lord.

5 THE COURT: And the booklets if the jury wouldn't mind  
writing - someone write P-70. Copy P-70.

MR. SLEETH: Corporal please state your full name and your  
occupation for the jurors.

A. Joseph Claude Denis Robitaille. I am a member of the  
10 Royal Canadian Mounted Police and I am stationed in  
Bathurst, New Brunswick with the Identification  
Section.

Q. How long have you been engaged in that type of work,  
sir?

15 A. I have been with the Identification Section for 3½  
years.

Q. And your duties with the Identification Section would  
consist of what type of work?

A. Would consist of examining scenes of crime or other  
20 items of evidence for fingerprints, photograph those  
items, prepare charts or drawings, as well as photo-  
graphs to present as evidence.

Q. And specifically in relation to the matter presently  
25 before this court your duties or your operations as  
an identification officer consisted of doing what?

A. Taking photographs and examining a motor vehicle for  
any type of physical evidence that could be found to  
be of value in the case.

30 Q. Corporal, I am now placing before you exhibit P-69,  
a series of aerial photographs, three in number, each  
one bearing in the upper right-hand corner a

1 designation S-9, S-10 and S-11. I wonder if you would  
just start, please, by indicating to the jurors and to  
the court what those photographs depict. What they  
show.

5 A. All three photographs depict the Keddys Motel in  
Bathurst, New Brunswick. Starting with S-9 the view  
we have here, this is the front of Keddys which would  
be facing north, and to your left looking at the  
10 photograph is the east side of the Keddys Motel  
building in Bathurst, and looking the right side  
shows the west face of the building and also this  
part of the Bathurst basin here which is on the rise  
at this time.

15 Q. Could you possibly take this red marker or crayon and  
mark north, west, east on that. These photographs  
would have been taken by whom and when, please?

A. This photograph was taken by myself on January 8th,  
1990 using the R.C.M.P. helicopter for transportation.

20 Q. Is there anything else you wish to refer us to then  
on S-9 at the moment?

A. No, there is nothing at this time.

Q. If you would then, please, S-10 of P-69.

25 A. S-10, again, shows a view there of Keddys Motel which  
is located here which is kind of a "U" shape or horse-  
shoe shape in a sense. The foreground of the photo-  
graph there are some other buildings. This is  
Douglas Avenue here. This here you are looking at the  
east of Keddys Motel, the north being to the right  
30 pointing slightly upwards, and the west side being  
at the far in the top of the photograph in this one.

Q. Could you please repeat what you did a moment ago and  
using that red crayon again indicating the north, the

1 west and the east. These are taken from different  
angles as I understand it.

A. Yes, they are. Photograph S-11, again, is a photo-  
graph of Keddys Motel in Bathurst. The photograph  
5 shows the rear of the building, some construction  
area as well as a parking lot which would be on the  
south side of the building. Would you like these  
marked as well?

Q. If you would, please, yes. Now, what was the reason  
10 why you on the date you earlier mentioned you took  
photographs of Keddys Motel by means of taking aerial  
photographs?

A. The reason for taking aerial photographs was to show  
the better relation between the building and sur-  
15 rounding area where a vehicle belonging to Father  
Smith had been found on the evening of November 16th,  
1989.

Q. I am now placing before you a photo booklet in a blue  
20 binder as P-70 containing 22 photographs. Before  
going in detail into those could you relate to the  
jury generally what are shown by the first 20 photo-  
graphs in P-70, please?

A. In the item marked P-70 just briefly, the first four  
25 photographs show a blue Oldsmobile in the location  
where it was found on the evening of November 16th,  
1989 and this is the location where I photographed  
this vehicle in the parking lot at Keddys Motel in  
Bathurst, New Brunswick.

30 Photographs number 5 to 16 are photographs taken  
at the Bathurst City Police Identification Section of  
the same vehicle. Again, it shows through different

1 steps the damage to the vehicle, the condition it  
was found in, items that were found inside the  
vehicle.

5 Photographs numbered 17 to 20, inclusive, were  
taken in the afternoon of November 17th, 1989 at the  
south side of the Keddys Motel in Bathurst showing  
the parking lot and the rear of the building, again  
to put some relation to where the blue Oldsmobile had  
been found the evening before and to the building it-  
10 self. There would be some items coming into play  
later for photographs number 19 and 20, I believe, to  
show a different area of the Keddys Motel. And I  
said earlier photographs 21 and 22 were not taken by  
myself.

15 Q. Okay. Could you then go back, if you would, please,  
now to photographs 1 and 2 now that you have generally  
set the scene through these series of photographs.  
What does photograph number 1 and 2 show us?

20 A. Photograph 1 and 2 show a blue Oldsmobile as it was  
found in that parking lot on the south side of Keddys  
Motel in Bathurst. Photograph number 1 shows the  
front and right side of the vehicle. Photograph  
number 2 shows the rear and right side of that vehicle.  
25 Then going to photographs number 3 and 4, again in  
number 3 is the rear of the vehicle and the left side.  
Photograph number 4 shows the front of the vehicle,  
again, as well as the left side of that same vehicle.

30 Q. Okay. Did you at the time note the registration  
number or the license plate number for that vehicle?

A. Yes, I did, as well as the serial number.

1 Q. And they were?

A. I would have to refer to my notes. The license number was AKW 479, and for the serial number I would have to refer to my notes.

5 Q. The license number would be for the moment okay. If you would then, please, photographs 5 and 6.

A. Photograph number 5 is a photograph of the right rear door of the same vehicle. It shows a broken window. It is a small vent type window on the side in the door. It shows the damage. This window has been broken out.

Photograph number 6 was taken through the rolled down window of the driver's door which would be the left front door of the vehicle. The steering wheel in the center of the photograph shows fairly extensive damage as it appears the center hub has been removed or broken. Depicts the hat on the front seat. There is part of an umbrella showing. A plastic bag hanging from the right of the steering wheel.

20 Q. Did you examine the contents of that plastic bag?

A. Yes, we did later, sir. Photograph number 7 is a close-up of the steering wheel, again, to show the damage done to it as the center had been broken out of it. Photograph number 8 was taken with the left door open and you see basically the same as in photograph number 6 and showing some portion of the floor, shows the floor mat in place, as well as in the foreground on the driver's seat is two small black pieces of plastic.

30 Photograph number 9 shows the left front floor area. There's the floor mat being in the foreground.



1           Actually it should show this way. It would be easier  
to follow. Also, the same bag hanging from the right  
side of the steering wheel and to the top of the  
photograph you have some damage showing to the  
5           steering column. Photograph number 10 was taken with  
the right front door open and it shows a view inside  
the vehicle from the right-hand side. Approximately  
in the center of the photograph is the same plastic  
bag hanging. There is the hat on the seat showing  
10           to the left of the photograph. In the right front  
floor area is a floor mat and pruning shears leaning  
against the central hub.

Q.       Did I hear you say pruning shears?

A.       It looks like there was pruning shears there.

15       Q.       This is the lower portion of the photograph number  
10 in P-70?

A.       That's right.

Q.       Photograph number 11 then in P-70.

20       A.       Photograph number 11 is a close-up of number 10,  
again depicting the floor mat area, pruning shears.  
Coming out from under the seat there is what looks  
like a blue plastic bag and a screwdriver protruding  
from under the seat. Photograph number 12 is a close-  
25           up of a steering column viewing from the right-hand  
side. You can see the damage to the ignition area  
where everything had been broken and pulled out.

Q.       In fact large portions missing, just not there.

A.       Yes, they are missing, yes. Been broken.

30       Q.       Not seen in that photo.

A.       No.

- 1 Q. Photo 13, please, in P-70.
- A. Number 13, again, is a photograph of the right front floor area of the same car. The floor mat has been removed and approximately in the center of the photo-  
5 graph there is a key.
- Q. Do you know what type of key that was?
- A. It's a GM type or a key for a General Motors' product vehicle.
- Q. Do you have any personal knowledge of that particular  
10 key? How it might have been used or tested?
- A. No, sir.
- Q. Okay.
- A. Photograph number 14 is taken with the left rear door open. Shows the back seat of the vehicle. In the  
15 foreground is a telephone directory - telephone book. As you can see on the seat in the far side there is some broken glass and various debris on the floor.
- Q. If I could just stop you there for a moment, please,  
20 Corporal. You mentioned glass and debris in photograph 14 in P-70. I would ask you to go back to photograph 5. Is that generally the same area or the area that would be seen in by looking through the broken window you referred to earlier in photo 5?
- A. Yes. At the top of photo number 14 is a small window  
25 here and this is the same window that's depicted in photograph number 5 as being broken.
- Q. Thank you very much.
- A. Which is the right rear door of the car.
- 30 Q. Please continue.
- A. Photograph number 15 is taken with the right rear door open. Again it shows the rear seat of the vehicle. There's some glass particles on the seat.

- 1 The telephone book is at the far end of the seat and  
there is some debris and grass - dirt on the floor  
area on the right-hand side.
- Q. We would be looking in from the same side as where  
5 the broken window was shown on photo 5 referred to by  
you earlier?
- A. That's correct. Photograph number 16 is taken of the  
trunk of the car. The trunk was open and this is the  
contents as they were found. Some plastic bag, boxes,  
10 there was the four liter container of windshield  
washer, a number of other items in plastic bags.
- Q. Also shows the license, does it not?
- A. Yes, it does.
- Q. Photos 17 and 18 then if you would, please.
- 15 A. Photograph number 17 is a photograph taken on  
November 17th in the afternoon of the rear of Keddys  
Motel in Bathurst, New Brunswick. The photograph  
depicts part of the south wall on the east wing,  
if we can call it that, as shown earlier on the  
20 aerial photographs. There is the parking lot area  
behind the motel. Photograph number 18 is taken from  
a location slightly west of number 17 and, again, it  
shows the parking area as well as inside of the 'U'  
25 shape of the building. There is some construction  
going on in the middle of the photograph as you can  
see.
- Q. And what particular significance does that particular  
area shown in those two photos 17 and 18 of P-70  
30 have in relation to the vehicle we have been just  
looking at in photos 1 through 16?

1 A. There were some items turned over to me and reported  
as having been found in an area shown behind number -  
in photographs 18, 19 and 20, and with photograph 17  
you can see where the car had been found the evening  
5 prior.

Q. Are you able to indicate then, using that red crayon,  
where the vehicle would have been found the prior  
evening?

10 A. As you look at photograph number 17 approximately in  
the middle of the photo on the right-hand side the  
first vehicle is a stationwagon with a wood grain  
type side paneling. The next vehicle to it, you can  
only see the rear of it although it does appear to  
be of a brighter red color vehicle, and this would  
15 have been the approximate location of Father Smith's  
vehicle on the evening of November 16th, 1989.

Q. Could you just using that red crayon make an arrow  
then pointing towards the spot where you believe it  
was approximately located. Did it come through?  
20 Mark it on the photograph itself. Now that you have  
that safely within the plastic holder would you  
indicate again to the jurors the location you were  
talking about, and also to Mr. Furlotte, counsel for  
the accused.

25 A. The location referred to, again taking photograph  
number 17 in exhibit P-70, would be the location of  
the second vehicle as you look in the center of the  
photograph towards Keddys Motel, the first vehicle  
30 being a stationwagon with the brown side paneling on  
it, the second car in - we can only see the rear of  
the brighter red vehicle, which would be the second  
parking stall going into that location which is the

1 place where Father Smith's car was found on the  
evening of November 16th.

Q. Photograph 18 then, please, shows what?

A. Photograph 18, again, is a view of this parking lot  
5 which would be slightly west of the area seen on  
number 17 and looking inside of the 'U' shape made  
by the construction of the motel. Photograph number  
19 is a closer view. A closer view inside this 'U'  
shape where some construction was taking place.

10 Again, the grey vehicle in the foreground is the same  
as shown in photograph number 18 which would be the  
first vehicle you are looking at in the approximate  
center of the photograph. And photograph number 20  
is a view from the inside of the construction area  
15 shown in the center of photograph number 19 which  
would be this area here, this corner here, is viewed  
from the inside on photograph number 20.

Q. Photographs 21 and 22 do you have personal knowledge  
of those although they were taken by another officer?

A. Yes, they are a pair of boots that I am familiar  
20 with. I recognize the tag on it with the date, time  
and my initials.

Q. All right, if you would now please, Corporal, I would  
25 like you to turn to photograph S-10 of P-69, and would  
you be able to indicate to the jurors the location  
you were earlier referring to, photographs 17 and 18,  
or particularly 17 in P-70, the location of the  
vehicle. Could you indicate on S-10 the location  
30 where that vehicle was found?

- 1 A. Looking at photograph S-10 the east of the building,  
or looking at the east face of the building going  
towards the south or to the left of the photograph,  
in the approximate center of the photograph there is  
5 the small group of three cars looking like a blue one  
on the left, a blue and grey one in the center and a  
white one on the right. The approximate location  
would be where this car in the middle is.
- Q. Would you then make a circle around that vehicle,  
10 please, using your red crayon on S-10, P-69. I  
wonder if you might now turn to photograph S-11.  
Would you be able to indicate there on that photo-  
graph the approximate location where the vehicle  
15 you have been describing contained in photos 1 through  
16 was found?
- A. In this photograph you are looking at it from the  
south end of the building into the parking lot area.  
There's the 'U' shape of Keddys Motel and the vehicle  
20 had been found approximately in this location here  
which would be roughly the center of the photograph  
and slightly to the right.
- Q. If you would please, Corporal, could you make again  
a little circle with that red crayon. It's an  
25 approximate location at all times.
- A. Yes, approximate location. These were taken quite a  
while later and there's snow on the ground.
- Q. Now, moments ago you were referring when you had the  
blue booklet in your hand, P-70, to photograph 19,  
30 and you referred in photographs 19 and 20 you referred  
to a place where there was construction underway.

1 Looking now at photograph S-11 is there a link you  
can make between the construction shown in photograph  
19 and what we can all observe here on S-11?

A. The area in photograph 19 can be found on S-11 in  
5 the center of the photograph, this area which now  
shows a roof and has been covered up and the walls  
have been completed since photograph 19 was taken.

Q. How far apart in time was the taking of photographs  
in the blue booklet from the time we have them in the  
10 aerial photos of P-69?

A. Approximately 7 weeks.

Q. Finally, Corporal, if you could turn to aerial  
photo S-9 of P-70. Are you able to inform us where  
approximately the vehicle found in photo booklet  
15 P-70 and in photos 1 through 16 would be located on  
that photo?

A. On photograph S-9 the front of the building faces  
north, the east side being to the left, and as you  
go past the end of the building there would have  
20 been I believe the fourth parking stall past the  
building so it would be approximately in here, but  
it's a little harder to describe on this photograph  
due to the angle of the photo.

Q. Are you able to make with an arrow pointing towards  
25 the location where it was found?

A. Just past the end of the building itself.

Q. Just to refresh our memory if you would, please,  
Corporal, the date on which the photos in photo  
booklet P-70 were taken?  
30

A. Photo booklet P-70, photographs were taken on it  
would have been the very early hours of November 17th

1 as I arrive at Keddy's at approximately midnight on  
November 16th, 1989. The photographs were taken  
shortly after, photographs 1 to 4. Photographs 5 to  
16 were taken at the Bathurst City Police Identifica-  
5 tion Section facility. Were taken inside later on  
that night after the vehicle had been towed in. That  
would have been, again, very early hours of November  
17th, 1989. Photos numbered 17, 18, 19 and 20 were  
taken in the afternoon, approximately 2 to 2:15 P.M.,  
10 of November 17th, 1989. The photographs in exhibit  
P-69, items number S-9, S-10 and S-11, were taken on  
January 8th, 1990.

MR. SLEETH: My Lord I wonder if it would be possible to  
break at this time. We have hit 12:30. I expect to  
15 be some considerable time still with this witness.

THE COURT: I think we could stop here. So you shouldn't  
discuss the matter with anyone, Constable, until your  
testimony is all finished.

A. Very well My Lord.

20 (NOON RECESS - 12:30 - 2 P.M.)

COURT RESUMES. (Accused present. Jury called, all present.)

THE COURT: Now, Constable Robitaille.

MR. SLEETH: At the time we broke, My Lord, Corporal  
Robitaille was on the stand.

25 MR. FURLOTTE: My Lord before we finish with the examination  
of Corporal Robitaille I would ask the Court to order  
the exclusion of Antoine Guitard until the completion  
of Corporal Robitaille's evidence.

30 MR. ALLMAN: My Lord I am prepared to discuss this but I  
think it should be in the absence of the jury. Mr.  
Furlotte has made an application and I'm prepared to



1 deal with it but I think that --

THE COURT: Yes. Well, I think we will have to ask the jury to go out again for a few minutes.

(Jury excused.)

5 MR. SLEETH: My Lord if it please the Court, before counsel for the accused and Mr. Allman embarks on whatever they may be embarking on I would ask that my witness be excused, to step down for a moment.

THE COURT: Step down?

10 MR. SLEETH: I don't believe that whatever motion Mr. Furlotte has on the floor would involve the witness. I would ask that he just be out of the line of fire for a few minutes and resume the stand when the jury comes back.

15 THE COURT: Well, no, let's keep him in the line of fire here. You don't mind his sitting here?

MR. FURLOTTE: I would like Mr. Guitard be excused while we discuss this.

20 MR. ALLMAN: I have no problem with that. If Mr. Guitard is sitting in the back there if he could just wait outside the court for a couple of minutes.

THE COURT: Mr. Guitard was the man who testified the other day and was to be subject to recall.

25 MR. ALLMAN: Yes.

THE COURT: What was the point here Mr. Furlotte?

30 MR. FURLOTTE: Well, My Lord, I believe that this witness is going to testify as to where he found a knife which was later - which has already been identified by Mr. Guitard as being his knife. I do not want Mr. Guitard to know where the knife was found before I finish cross-examination of him because I believe

1           it may influence my ability or inability to get him  
to recant on some of the testimony he has already  
given in direct examination. Basically, I think it  
would add credibility to his testimony. I think if  
5           he has already formed say the opinion as a witness  
that Mr. Legere is guilty of this and that if he  
thinks that some of his evidence could help convict  
Mr. Legere he may -- I don't know. He may not give  
evidence --

10       THE COURT: Oh, I don't know.

MR. FURLOTTE: -- that is truly supported by what he knows.

THE COURT: May I suggest this? Why wouldn't it be a good  
idea to stand this witness aside, call Mr. Guitard,  
let him finish his testimony, and then let him go  
15           home, back to Jacquet River. His examination is very  
short. You are just going to cross-examine on the  
ownership of --

MR. FURLOTTE: That is correct, on the ownership of the  
knife.

20       THE COURT: -- of the knife I think. Why not do that?

MR. ALLMAN: No, I have no problem with that at all.

MR. FURLOTTE: That would be great.

MR. ALLMAN: It hadn't been suggested until this witness  
was on the stand. Yes, now that - I think Your  
25           Lordship, with respect, I think it's a good idea.

THE COURT: Yes, and then Mr. Guitard can go home.

MR. ALLMAN: Then Mr. Guitard can go. He's been here a day  
and a half in addition to his other time. I'm sure  
30           he would like to get back.

THE COURT: And this man can be here when Guitard testifies.  
I am not persuaded that this witness's evidence is  
going to be affected by being present and hearing

1 Guitard, or he can stay or not as he likes.

MR. ALLMAN: As I say, I think with respect Your Lordship  
has hit upon a happy solution to the situation.

THE COURT: Well, shall we do that Mr. Furlotte? Is that  
5 agreeable to you? Are you ready to cross-examine  
Guitard?

MR. FURLOTTE: Yes, I'm ready to cross-examine him. And,  
My Lord, maybe just before the jury comes back, the  
crown is always asking that the jury be dismissed  
10 while we argue points not necessarily of law but  
just as procedure here, and in Coxs' Criminal  
Evidence - Handbook on Criminal Evidence at page 95  
it talks about the exclusion of the jury and under  
the general rule it says: "Generally, counsels'  
15 arguments as to the admissibility of evidence should  
be done in the absence of the jury," - and that's the  
admissibility of evidence - "however, there are  
limitations on the general rule which states where  
the accused might be prejudiced in his defence to  
20 have the jury absent during counsels' arguments as to  
admissibility of evidence the jury shall remain."  
And they state cases and citation there. It also  
states: "The jury should not be asked to leave except  
25 at the request of or concurrence with the defence."  
And I would submit, My Lord --

THE COURT: Oh well, as far as I'm concerned --

MR. FURLOTTE: I don't see why the jury has to be excluded  
for arguments such as this.

THE COURT: Well, just in general I don't think this poses  
30 any great problem but just in general I frown on the  
idea of discussing matters of evidence and who is

1 going to be excluded from the courtroom and that sort  
of thing in the presence of the jury. I don't think  
it's a proper thing for them. I think everything that  
the jury does should flow along naturally and easily  
5 and we should discuss this sort of matter before they  
come in I think. I think it would have been proper  
here Mr. Furlotte. I am not criticizing you for it  
but I think it would have been better practice perhaps  
for you to have raised this matter before they came  
10 in. I don't want to be hassling over, you know, who  
goes first and making these propositions and proposals  
that this witness be stood aside and so on in front  
of the jury.

MR. FURLOTTE: Well, My Lord, I have never seen a jury  
15 excused so often. It's almost as if we're having  
two trials, one in front of the jury and one without  
them.

THE COURT: I never have either. I agree with you. I never  
20 have. But I have never seen a judge confronted with  
so many - I was going to say petty problems. I won't  
say petty problems, I'll say problems, in the course  
of a trial. I have never seen so many. You know.  
Counsel usually get together and normally in a trial,  
25 in a criminal trial, I get counsel together usually  
in my chambers before a trial starts - I'm talking  
about a three or four day, or a six day trial, and  
say look, what problems are going to arise here over  
voir dices and they usually agree then and say well  
30 we are going to need a voir dire on this statement or  
that bit of evidence or something and it's all worked  
out, you know, at the start, and you never do have  
to exclude a jury. You may exclude them for an hour

1           some day and everything is dealt with and then you  
go sailing through. But here, you know, there seems  
to be an incessant, constant bunch of problems arise  
that I think counsel could if they got together settle  
5           some of these things. So it is abnormal to be sending  
a jury in and out but, just like now, this could have  
been avoided if someone had just mentioned this before  
they came in in the first place.

10           Now, you stay there for the moment. We'll bring  
the jury in.

(Jury in. Jury called, all present.)

THE COURT: All right, the jury will recall that the other  
day we had - a few days ago, last week sometime toward  
the end of the week, Mr. Guitard from Jacquet River  
15           testified. He was down hunting, you remember, at  
Chatham and then came on to Boiestown and so on and  
he lost certain things I think out of the box of his  
truck. And he was stood aside, I believe you will  
recall, I think it happened in front of you, that he  
20           would be recalled, subject to recall to be examined  
on a hunting knife that he said, I believe, he had  
lost or something. And he is back today I am told  
and what we are going to do is stand this witness  
25           aside for a few minutes and ask him just to wait un-  
til Mr. Guitard testifies and then Mr. Guitard can  
go home. He had testified. It was a question of  
completing his cross-examination, but the cross-  
examination would be limited to the matter of this  
30           knife. I believe I'm correct in saying that. So,  
will you stand down Constable Robitaille, please, for  
a moment.

1 MR. WALSH: My Lord may I be excused for a moment. I have  
a couple of witnesses --

THE COURT: Yes. Welcome back Mr. Guitard. Now, you were  
going to be reexamined -- No, you didn't know this  
5 I don't think. When you went away you thought you  
were through but later the question came up as to  
further questions that the defence counsel wanted to  
ask you which Mr. Furlotte had missed in going over  
his notes or something and the crown said well we'll  
10 get Mr. Guitard back so you're back to submit to a  
few more questions. So Mr. Furlotte will ask you  
some questions. It's confined to your hunting knife  
or whatever.

15 ANTOINE GUITARD, recalled, having been previously  
sworn, testified as follows:

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Guitard just in relation to the hunting knife  
that - one of the knives that you had missing and in  
20 particular the one that you identified in court the  
last time you were here as one that looked like the  
one that you would own, do you recall how many state-  
ments you gave to the police in relation to their  
investigation?

25 A. On the knife?

Q. On the knife.

A. On the knife itself?

Q. Yes.

A. I think there was two.

30 Q. You think there was two. And those statements would  
have been given approximately when? Do you remember?

- 1 A. No.
- Q. Would November 29th, 1989 be approximate?
- A. Yes.
- Q. And maybe again on December 5th, 1989?
- 5 A. Possibly.
- Q. When the police first questioned you on the knives that you had been missing was it your belief at that time that you would only be able to identify one of them?
- 10 A. Yes.
- Q. And which one was it that you thought you would be able to identify?
- A. A folding knife.
- Q. A folding knife. With a brown wooden handle?
- 15 A. Yes.
- Q. So at that time you did not think you would be able to identify the knife that was in a black pouch?
- A. No.
- 20 Q. And in your statement of December 5th do you recall describing the knife that was in the black pouch? Do you recall the description that you gave to the police?
- A. Yes.
- 25 Q. And what did you think the knife looked like at that time?
- A. I described the knife as a - I told them I think it was a five inch blade on to it. Had a black handle. And it fitted into a case that had a flap on that hid the knife completely.
- 30 Q. Right. And you also told them that you thought 'buck' was marked on the black leather case.
- A. Yes.

- 1 Q. Or on the knife, or both?
- A. No, I had said on the case.
- Q. On the case. Now, I believe the police officer who  
questioned you and took that statement also showed  
5 you a picture of the knife.
- A. Yes.
- Q. And it was what? - your opinion that the picture of the  
knife looked something like the knife that you had?
- A. Looked like the one I had.
- 10 Q. Now, aside from what you thought at the time 'buck'  
being marked on the black sheath or the case that the  
knife was in, was there any other markings maybe on  
the knife that you could remember?
- A. No.
- 15 Q. Any other markings on the pouch, the sheath, that you  
could remember?
- A. No.
- Q. I am going to show you exhibit - if I can find it -  
marked 'RR' for identification, the knife which you --
- 20 MR. ALLMAN: That can be made an exhibit if Mr. Furlotte  
wishes.
- MR. FURLOTTE: Yes, I believe the next witness was going to-
- MR. ALLMAN: Yes.
- MR. FURLOTTE: Well, we can make that an exhibit now.
- 25 THE COURT: Shall we make it an exhibit? P-71. So 'RR'  
becomes exhibit P-71. Black handled knife and black  
case.  
(Clerk marks knife exhibit P-71.)
- MR. FURLOTTE: Now, you don't recall any other markings on  
30 the pouch except that you thought it was marked 'buck'  
on it.
- A. No.



- 1 Q. And you were shown a picture of the knife. I believe  
you were shown a picture of both the pouch and the  
knife or just the knife?
- A. No, the knife alone.
- 5 Q. Just the knife alone. Do you recall whether or not  
your pouch had been damaged?
- A. No, it wasn't damaged at the time that I had lost it.
- Q. I see the pouch now looks to be cut or unsewn. That  
wasn't like that at the time you lost it?
- 10 A. No.
- Q. Now, I believe you stated after you had lost your  
knife you went looking for another Buck knife?
- A. Yes.
- Q. And the Buck knives that you looked for had 'Buck'  
15 marked on the pouches?
- A. That's right.
- Q. I believe you also stated in your examination that  
you thought you were able to identify the knife be-  
cause of scratches on it from it being sharpened.
- 20 A. There was a chance of that, yes.
- Q. Now, I don't imagine you are the only person who  
sharpenes knives?
- A. I hope not.
- Q. When you were shown the knife to identify if you  
25 could possibly identify it, do you recall when that  
would have been?
- A. No, not really.
- Q. January 18th, 1991.
- 30 A. Okay, yes.
- Q. And the last time you saw your knife was on --
- A. October 28th, '89.

- 1 Q. So almost a year and a half later?
- A. Right.
- Q. Would it be safe to say, Mr. Guitard, it would be  
5 hard to recognize scratches on a knife that was used  
from sharpening it? There is no particular scratches  
on it.
- A. Yeah, but I am not saying I recognize the knife on  
account of scratches on it. That knife it looks the  
same as the one that was missing from my vehicle.
- 10 Q. But you are not recognizing it because there's  
scratches on it?
- A. No.
- Q. Okay. You never noticed any numbers engraved on the  
back of the case when you owned it?
- 15 A. No.
- Q. And you never noticed any numbers engraved on the  
front of the case when you owned it?
- A. Yes, I did. I only recalled that after I seen the  
case.
- 20 Q. After you seen the case?
- A. Yes.
- Q. But you don't recall the number nine ten being on the  
back of it, engraved?
- 25 A. Yes, that number too, nine ten, and ninety-six  
number.
- Q. That's after the police officer showed it to you?
- A. After they showed me.
- Q. There was no mention of that in your statement though  
30 to the police officer?
- A. No.

- 1 Q. You never mentioned that.  
A. No, there wasn't.
- Q. And you never mentioned that in court last week?  
A. No.
- 5 Q. But today you are mentioning it, that you recognize it?  
A. I recall it.
- Q. When you were asked to identify the knife you were only shown a picture of one knife?  
10 A. Yes.
- Q. Were you told where the knife come from?  
A. No.
- Q. You don't know where this knife was obtained?  
A. Not at that time, no.
- 15 Q. You don't know where they obtained this knife. If the police had showed you a knife with "Buck" engraved on the sheath you would probably have identified that as being your knife too, would you?  
A. Not the knife, no. Maybe the case.
- 20 Q. The case but not the knife. I guess one last question. When you went out looking for a knife to replace it you noticed that the knives similar to the one that you had had "Buck" marked on the sheath.  
A. And the case.
- 25 Q. And on the case, yes. So there were a lot of knives out there similar to the one that you owned?  
A. Yes, there was.
- Q. Were you able to find them in different stores also?  
A. Yes.
- 30 Q. So the most you can say is that that knife is similar to the one that you owned?  
A. Yes.

1 Q. You cannot say it's your knife?

A. No.

MR. FURLOTTE: No further questions.

THE COURT: Reexamination on those points?

5

REDIRECT EXAMINATION BY MR. ALLMAN:

Q. I want to see if I can clarify something about the  
statements. You gave a statement to the police in  
which you gave a description of a knife and the  
sheath that had been stolen from you, correct?

10

A. Yes.

Q. At that time did you have the knife and the sheath  
that are now an exhibit in front of you?

A. No.

15

Q. You subsequently gave a statement to the police at  
which time you did have that item - or you had seen  
that item, is that right?

A. I had the knife, yes.

20

Q. With regard to the knife itself, not the sheath, and  
forgetting for the moment any scratches that are on  
it, how does it compare with the knife that was  
stolen from you?

A. It looks the same as the knife that has been stolen  
from me.

25

Q. With respect to the fact that this particular knife,  
the one that I am showing you has some marks on the  
blade, what if any meaning does that have to you in  
relation to the knife that was taken from your  
vehicle?

30

A. The only thing I can say about that is I used the  
wrong type of stone to sharpen it and it scratched  
all over but anybody could have --

- 1 Q. That's what happened to the one that you had stolen?
- A. Yes.
- Q. And there are scratches on this that I am showing you now?
- 5 A. Um-hmm.
- Q. With regard to the sheath, purely and simply the sheath, I understand that at one time you told the police, Mr. Furlotte elicited this from you, he --
- MR. FURLOTTE: My Lord I believe the knife and the sheath
- 10 was all covered in direct examination the first time Mr. Guitard testified and we are just, again, rehashing.
- MR. ALLMAN: That's true, and they were also cross-
- 15 examined in detail. We agreed to Mr. Furlotte recalling this witness to clarify some points. It seems to me that I should have the right to clarify Mr. Furlotte's clarification.
- THE COURT: Both of you go on and ask Mr. Guitard every
- 20 possible question you can about this knife because we are not going to have him back again. You go ahead Mr. Allman; I'll give you a turn again Mr. Furlotte.
- MR. ALLMAN: You gave a description of the knife sheath.
- 25 A. Um-hmm.
- Q. Not the knife but the sheath itself. And Mr. Furlotte had elicited from you, and this was not elicited earlier, that you told the police you believed it had the word 'Buck' written on it.
- 30 A. Yes.
- Q. Okay. Can you tell us why you believed that that was so at the time you gave the first statement to the police?

1 A. Well shortly after that I went shopping around to  
look for a knife the same and all the ones I came  
across they all had 'Buck' written on the case. So  
I just assumed that mine had and I never paid  
5 attention.

Q. Did you specifically recollect that it had the word  
'Buck' written on it?

A. Yes.

Q. Sorry?

10 A. Yes.

Q. When you were talking to the police and you gave them  
your first statement why did you think it had 'Buck'  
written on it?

15 A. Like I just said, whenever I went out shopping around  
to look for one the same and all the ones I came across  
had 'Buck' written on them.

Q. Mr. Furlotte asked you today about the numbers on the  
back. Stamped on the back. Okay?

A. Yes.

20 Q. On the back of the black sheath, correct? Did any-  
body ask you anything about that to your recollection  
the last time you were here?

A. No.

25 Q. If they had asked you would you have said something  
about it?

A. Yes, I would have.

MR. ALLMAN: I have no further questions.

30 THE COURT: Mr. Furlotte, not to prolong the matter, you  
have nothing more?

MR. FURLOTTE: I have nothing more.

1 THE COURT: You have our solemn undertaking we won't get  
you back again. Thank you very much.

Now, Constable Robitaille back.

MR. SLEETH: Yes, My Lord, if I may I would like to call  
5 Corporal Robitaille.

THE COURT: Constable or Corporal now?

MR. SLEETH: Corporal.

THE COURT: We will change that on the list.

10 CORPORAL DENIS ROBITAILLE, recalled, previously sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Corporal, when you testified before the lunch break  
you had before you photographs 69 and 70, a photo  
15 booklet and a series of aerial photographs. Photo  
booklet P-70 which you identified and is in evidence  
at the moment, a series of photographs taken by your-  
self by Keddys, the first four of those photographs  
were taken at what time?

20 A. 1 through 4 were taken approximately midnight on the  
evening of November 16th, 1989.

Q. And just why did you go to that particular scene out-  
side Keddys to take those photos? On someone's  
instruction?

25 A. That's correct.

Q. Who?

A. Staff-Sergeant Hadley.

Q. And the next series of photographs starting with 5  
seem to be at a different location.

30 A. That's correct.

- 1 Q. Where were those photographs taken, that series of  
the vehicle?
- A. The next set was taken in a bay at the City of  
Bathurst Police Identification Section.
- 5 Q. City of Bathurst, not R.C.M.P.?
- A. Yes, it is the City Section.
- Q. And how did that vehicle get to that location and why  
was it taken there?
- A. The vehicle was towed there by Causeway of Bathurst.  
10 The vehicle was taken inside for examination for  
evidence.
- Q. And it would have been taken to that location at what  
time, please?
- A. Was approximately 12:30 A.M. on the 17th of November.
- 15 Q. And you said it was taken there for an examination.  
What sort of examination was conducted of it?
- A. It was examined for physical evidence and finger-  
prints, hair, fiber, anything that we felt could be  
of value or assist in the investigation.
- 20 Q. I have here a plastic bag and contents I would like  
marked for identification at this time. I believe  
it would be 'BBB'.  
(Clerk marks bag and contents Identification 'BBB')
- 25 MR. SLEETH: Corporal, I am passing to you now a plastic  
bag with something contained inside. A plastic  
object of some sort. Do you recognize and can you  
identify that?
- A. These are two pieces of plastic. One is a drawing  
or a silver impression of what looks like a horn.  
30 It's in one of our R.C.M.P. exhibit bags. It has the  
date, time, my signature on it, as well as the  
location marked on the bag.



- 1 Q. The date, time, your signature and location tell you what about that object 'BBB', please?
- A. That tells me I recovered this from the front seat of the car shown in the booklet of photographs P-70.
- 5 Q. Would you be able looking at P-70 to indicate with a little more precision where on that front seat on one of those photos 'BBB' would have been taken?
- A. If you refer to photograph number 8.
- Q. Photograph number 8 in P-70?
- 10 A. In P-70 yes, sir. You will see there are some pieces of plastic on the front seat on the driver's side here. This would have been --
- Q. Would you hold that up for the jurors to see and then for His Lordship to see as well, please.
- 15 A. See number 8 to the foreground some pieces of plastic on the seat here and this would be where these items would come from. These plastic black items in the seat.
- THE COURT: Two?
- 20 A. There are two here that is visible. I believe there may have been another two or three small chunks as well.
- MR. SLEETH: Could you please just raise your voice a little bit Corporal. I now show you an item which has been
- 25 transmuted from 'RR' to P-71. We all saw that a few moments ago but do you recognize that?
- A. On the bag I recognize my exhibit tag on this bag with the date and the numbers making reference to my
- 30 file and exhibit number, and this is a knife in a black sheath which was recovered or found under the front seat of the vehicle.

- 1 Q. All right. Referring then to the blue photo booklet  
which you have in front of you, P-70, could you  
indicate to the jurors if there is a particular  
photograph which would highlight for them, visually,  
5 where you located that item P-71?
- A. Again, the best photograph would likely be number 8  
where the foreground is a view of the front seat, the  
driver's seat of the vehicle, and the knife was found  
underneath that seat with other items.
- 10 Q. On which side? The driver or passenger side, please?
- A. The driver's. The left side of the vehicle.
- MR. SLEETH: I have another item, My Lord, that I would  
like, if possible, be marked for identification by  
the clerk at this time, and that should be I believe  
15 'CCC', a plastic bag and contents.  
(Clerk marks bag and contents identification 'CCC'.)
- MR. SLEETH: I am now passing to you 'CCC', a plastic bag  
and contents. Do you recognize that object?
- 20 A. Again, I recognize the exhibit tag, dated, signed by  
myself, as well as file and exhibit numbers on the  
same tag which refers to a GM car key, and referring  
to booklet exhibit P-70, photograph number 13, this  
key came from the right front floor area of the car.  
25 Once the floor mat was removed the key was found as  
shown in the photograph here. It's approximately in  
the middle of the photograph, a shiny object.
- Q. Now, Corporal, before we conclude with 'BBB' and  
'CCC' they would have been found by you roughly when?
- 30 A. On the 17th of November, 1989.
- Q. At about what time?
- A. Somewhere in the 1 - 1:30 A.M. range.

- 1 Q. Once you had found those items which are before you now, 'BBB' and 'CCC' which you have identified, what did you do with them?
- A. They were placed in bags and tags were subsequently  
5 made up and attached to them. The bags sealed and exhibit tags attached to the bags.
- Q. And were they then turned over to anybody else? What was done with them afterwards by you?
- A. They were kept in my possession until it was November  
10 27th when Constable Houle of the Newcastle Detachment came to our office in Bathurst and these items were turned over to him.
- Q. By yourself?
- A. By myself, yes, sir.
- 15 Q. And P-71, the knife and sheath, what was done with them after you found them?
- A. Again, this item was bagged and tagged and was examined for fingerprints. Later on in December it was forwarded to the Crime Detection Laboratory in  
20 Sackville for further examination.
- Q. How was it forwarded to that laboratory?
- A. Sent via registered mail.
- Q. Sent to whose attention, do you recall?
- A. To the Hair and Fiber Section as far as I can  
25 remember.
- Q. Do you know Mr. Duff Evers at the laboratory?
- A. Yes, I do.
- Q. Who sent it out?
- A. I did. I packaged it and sent it.  
30
- MR. SLEETH: A plastic bag and contents My Lord. I would ask that this be marked for identification also, be 'DDD' I believe.  
(Clerk marks bag and contents Identification 'DDD'.)

- 1 MR. SLEETH: Corporal, I am just placing before you a large plastic bag with contents. It's presently 'DDD' for identification.
- A. I recognize this bag. It is one of our exhibit bags  
5 and I recognize my writing, the date and our file numbers on the label of the bag in red pen. And this was received on November 17th, 1989 at approximately 1:25 P.M. from Constable O'Neil of the City of Bathurst Police Department.
- 10 Q. All right. It was received by whom from Constable O'Neil?
- A. Myself. I received it from him, sorry.
- Q. And where did you receive it, please?
- A. This was at our Identification Section in Bathurst,  
15 New Brunswick.
- Q. And was there anything in particular you noticed about that object? What is it first of all, do you know?
- A. It's a winter coat. It's black/red trim. It was  
20 wet - soaking wet when I received it, and I slit the bag to let it air out. I did not want moisture or mold to form on the item. When I slit the bag a very strong smell of smoke came out of it.
- Q. How strong? How powerful?
- 25 A. It was very strong. I don't know how to describe it.
- Q. So you received it from Constable --
- A. Constable O'Neil.
- Q. And he's with what department? What police force?
- A. He's with the City of Bathurst Police Department.  
30
- Q. And you would have received it around what time on what day, please?

- 1 A. On November 17th, 1989 at approximately 1:25 P.M.
- Q. Once you received it what did you do with it from that  
time on?
- A. I kept it in my possession. I had it vented out to  
5 dry, for the moisture to come out of it. Some  
polaroid photographs were taken and handed over to  
our GIS Section.
- Q. These are the photographs, not the coat itself?
- A. Not the coat. Just a polaroid photograph. Quick  
10 polaroid was taken of it. And I kept it in my  
possession until I turned it over to Constable Houle  
on November 27th with other items.
- MR. SLEETH: Another large plastic bag My Lord.
- THE COURT: 'EEE'.
- 15 (Clerk marks bag and contents Identification 'EEE'.)
- MR. SLEETH: Corporal, I have now placed before you 'EEE'  
for identification. Do you recognize the object in  
that large bag?
- A. I recognize a tag again with my initials, date and  
20 time on the tag here present. They have gone through  
some modification since I have seen them but this is  
a pair of boots I received from Constable O'Neil on  
November 17th, 1989 again at the Bathurst Identifica-  
25 tion Section. When I received these boots they were  
all complete in one piece. They were very wet. I  
slit the bag, again, to allow the boots to dry and the  
bag to air out so mold wouldn't form on them.
- Q. How wet were they?
- A. Soaking wet. Just wet.
- 30 Q. What else, if anything, did you notice about the boots  
when you received them from Constable O'Neil? What

- 1 else did you see in them or about them?
- A. I recognized them as a Greg work type boot.
- Q. Greb?
- A. Greb. Yes. Sorry. I did not examine them all that  
5 much at the time, however I had a good look at them  
and they appeared to have been washed or had been  
cleaned somehow. Had been in an awful lot of water.  
Somebody had walked in water well above the boot  
line.
- 10 Q. I see. And in addition to that was there anything  
else you saw in the boots?
- A. There were plastic bags which I believe were some  
type of bread bag or a bag along those lines from a  
loaf of bread. There was one bag in each boot.
- 15 Q. Now, having received these things then from Constable  
O'Neil what did you then proceed to do with the boots  
and the bags in them?
- A. The boots and the bag -- The bag had been slit  
20 open for to allow for the boots to dry, were placed  
in a fuming hood and the door locked and kept in my  
possession.
- Q. The boots and contents then were in your possession?
- A. In my possession, yes.
- Q. From then until when?
- 25 A. Until the boots were turned over to Sergeant Chiasson  
on November 22nd at the Bathurst Identification  
Section.
- Q. The boots and their contents?
- 30 A. Yes, sir.
- Q. Nothing was ever removed by you?
- A. No, I did not.

1 Q. Corporal, this morning while you were testifying  
you related the license number of a vehicle which you  
photographed and is shown in P-70. You also made  
mention of a serial number for that vehicle.

5 A. Yes, I did.

Q. Are you able to tell us what the serial number was or  
do you have to do so by referring to notes?

A. I would have to refer to notes My Lord in order to.

10 MR. SLEETH: My Lord I am going to ask this witness be  
allowed to refer to notes but, first, witness, the  
notes to which you would be wanting to refer, are  
these notes that you made in your own handwriting?

A. Yes, sir.

15 Q. You made them at that time contemporaneous with the  
time that you made the observation of the serial  
number?

20 A. Yes, sir. The notes I have with me presently is my  
file and those notes were transcribed from notes I  
made at the time and I just rewrote them. I did not  
keep the original foolscap paper. I just put every-  
thing down on the file in order and the exhibit re-  
port that's where I have the serial number on.

25 Q. From those initial notes that you took at the time  
when you found it?

A. Yes, sir.

MR. SLEETH: My Lord I would ask that the witness be allowed  
to refer to this for --

THE COURT: Yes, go ahead.

30 MR. SLEETH: Thank you My Lord.

1 A. The serial number of the vehicle is 1G3AY69Y - it's  
either 0 or zero - E9740482, and this was a two tone  
blue Oldsmobile.

MR. SLEETH: Thank you very much Corporal.

5 THE COURT: Cross-examination Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Corporal I believe you stated the automobile was a  
blue Oldsmobile?

10 A. That's correct.

Q. Not an Impala or a Capri or --

A. No.

Q. Now, you mentioned when you referred to your notes to  
get the serial number off the car that you would put  
15 everything down in your notes as you were investigating  
through the car?

A. As I go along I was keeping track of the work being  
done, what was being found, yes.

Q. And as you would find something you would put it in  
20 your notes?

A. And make a note of it, yes.

Q. And make a note of it and then you would transfer it  
on to your file afterwards?

A. That's correct.

25 Q. Could I see your notes? There's nothing in there I  
shouldn't be looking at, is there?

A. Not that I know of. I think you got a copy already.

Q. I don't have a copy of the exhibit reports but your  
notes --

30 A. This is the report itself.

Q. These are the report itself.

A. And this is what I made up after.



- 1 Q. And you made up this report from notes that you had  
taken at the time?
- A. That's right.
- Q. And where are the notes that you had taken at the  
5 time? You don't have that?
- A. No, I discarded them, sir.
- Q. And you put in your report everything that was in your  
notes?
- A. Yes.
- 10 Q. Would you check your notes and tell me what you found  
underneath the front seat?
- A. The only place I have a notation of something under the  
front seat is my exhibit report.
- Q. Now, Corporal, in your report on page 4 you state  
15 what was seized from the front seat, right? Bottom  
of the page.
- A. On the bottom of page 4, sir, I have - it describes  
the trunk and the contents of the trunk of the car.
- Q. Bottom of page 4 in your report?  
20
- A. Page 4?
- Q. Yes. Oh, I have the typed version. You have the  
written version, I'm sorry. Basically in your report  
- well let's start on page 4 of the typed version.  
25 You say the driver's window was up only 4 1/2 inches.  
Should be just after that diagram I believe. First  
observations: driver's door window down three-  
quarters. You got three-quarters there but here it  
says 4 1/2.
- 30 A. I believe I measured it later and it shows later on,  
sir.

THE COURT: No secret conversations between you two. The  
jury have got to hear what both of you are saying and  
we have all got to hear. You speak up then.

- 1 A. What I said is the discrepancy here may be that I measured how much the window was left up later on and that's likely why it appeared in the typed version of the report.
- 5 Q. Okay. You state that you found a hat and umbrella on the front seat?
- A. Yes, sir.
- Q. Clumps of grass on the back seat?
- A. Yes, sir.
- 10 Q. Some stuff between the left rear door and the back of the seat?
- A. That's correct.
- Q. And there was a phone book on the back seat?
- A. That's right.
- 15 Q. The vehicle was quite dirty inside?
- A. Yes.
- Q. Plastic bag hanging from the radio knob with various items in it?
- A. That's right.
- 20 Q. Tools and garbage on floor and underneath front seat.
- A. Yes, that's what it says.
- Q. That's what it says. You found tools and garbage on the floor and underneath the front seat, right? Tools and garbage underneath the front seat.
- 25 A. Right. Well --
- Q. And also, if you skip a paragraph - or did you want to say something?
- A. I was going to say I don't recall specifically tools underneath. The way I wrote it here may lead to confusion. Tools were on the floor as well as there was some garbage and some garbage had been put under the front seat.
- 30

- 1 Q. And also you state, if you skip a paragraph, that you seized from the front seat an umbrella, a hat, an oil spout.
- A. That's correct. A box --
- 5 Q. Box of tic-tac?
- A. Yes.
- Q. Plastic pieces from the steering wheel?
- A. Right.
- Q. And you described everything you found in the trunk.
- 10 A. I believe so.
- Q. When you say the trunk was opened, didn't appear to have been opened or used by whoever took the car, is that correct?
- A. That's what I said.
- 15 Q. And in the trunk was a checkered shirt?
- A. Yes. Two plastic bags of donation envelopes from the church; a box of assorted tools; windshield washer; etc.
- 20 Q. You say nothing appears of any value to the investigation. The vehicle was photographed. And on page 6 of the typed report you state "Under the front seat of the vehicle were a number of items such as candy wrappers, comb, pocket book, etc. which had been discarded there over a period of time from their
- 25 appearance.". It should be in here, under the front seat.
- A. Under the front seat. That's correct.
- Q. Now, the obvious question, Corporal, is in your report why didn't you mention the knife in a black
- 30 sheath being found?
- A. I don't know. I wrote my exhibit report as coming from there with the markings on it and it's obviously been left out in the report.

- 1 Q. And you stated in your report that other than what  
you reported there was nothing of any value.
- A. I'm not quite with you on this here.
- Q. They're both under when you discussed about what you  
5 found in the trunk.
- A. I was referring to the trunk of the vehicle only.
- Q. Right. Okay. So the trunk of the vehicle only you  
said there was nothing of any value. I believe maybe  
in your report also when you discussed about what you  
10 found underneath the car you found nothing of any  
value?
- A. All I can recall on the - you mean the undercarriage  
of the car?
- Q. Yes.
- 15 A. Was a clump of grass which was photographed.
- Q. Now, when you say you found this knife under the front  
seat was it just like this or was it in a bag or was  
it wrapped up in clothing or --
- A. No, it just had been in the black sheath. It wouldn't  
20 have been in this bag.
- Q. And do you know of any reason why you would not put  
that in your report if you found that knife under  
there?
- A. No, I can't think of any reason.
- 25 Q. Now, the exhibits that you did seize from the car  
you turned some of them over to Corporal Houle?
- A. Constable Houle of the Newcastle Detachment.
- Q. Constable Houle. And on what date was that that you  
turned that over?
- 30 A. November 27th.
- Q. November 27th. Did you give that knife to Constable  
Houle on November 27th?

- 1 A. I had examined that knife for fingerprints and the  
knife was later sent to the Crime Detection Laboratory  
in Sackville for examination.
- Q. Why wouldn't you give the knife to Constable Houle on  
5 November 27th with everything else?
- A. I can't recall the reason at this time but it was  
likely to be sent forward.
- Q. So you say you found this knife on November 17th?
- A. Yes.
- 10 Q. Underneath the front seat of Father Smith's car?
- A. Yes.
- Q. And how long did you have that knife in your  
possession before you turned it over to anybody?
- A. I would have to say approximately three weeks unless  
15 I refer to my notes to find more accurate dates.
- Q. Please refer to your notes.
- A. I had the knife in my possession for one month before  
I sent it to the laboratory in Sackville on December  
18th, 1989.
- 20 Q. Had you turned other articles over to the lab in  
Sackville before you turned the knife over?
- A. I don't believe so.
- Q. Did you send the car mats in to Sackville?
- A. I sent it via registered mail.
- 25 Q. When?
- A. On December 18th.
- Q. That was before you sent the knife in?
- A. Pardon me. Oh, maybe I missed -- This is the date  
I sent the knife in was on December 18th.
- 30 Q. On December 18th. Okay, when did you send the car  
mats in?

- 1 A. The floor mats were turned over to Constable Houle  
on November 27th.
- Q. On November 27th. And you have no explanation as to  
why the long delay in turning this exhibit, the knife,  
5 over?
- A. I kept it to examine it for fingerprints. That's the  
only possibility that comes to mind that having com-  
pleted the fingerprint examination by the time  
10 Constable Houle received the other exhibits, once  
that was completed I would have sent it ahead.
- Q. Now, you mentioned you found a lot of tools in the  
car.
- A. I don't believe I said a lot of tools. Some tools.
- Q. Some tools in the trunk.
- 15 A. Right, tools. I report a box with assorted tools.
- Q. Were there any tools in the car, front seat, back  
seat area?
- A. A screwdriver and pruning shears on the right front  
20 floor area.
- Q. I believe you also claimed to have found another  
knife under the front seat besides that one, besides  
the one in the exhibit. Did you find another knife?
- A. No, nothing that I had taken myself.
- Q. Nothing that you had taken.
- 25 A. There was nothing that I know of.
- Q. Did you find under the front seat of Father Smith's  
car a book entitled "Right of Anointing and Pastoral  
Case of the Sick"?
- 30 THE COURT: Surely it would be Pastoral Care of the Sick,  
wouldn't it?

- 1 MR. FURLOTTE: Well, I didn't type this out My Lord. It  
says 'Case' here.
- A. Yes, I did. I see here a notation of other items  
from under the front seat.
- 5 Q. Did you also find under the front seat any mention  
of a kitchen knife?
- A. Yes, it's here.
- Q. So now you remember finding another knife --
- A. Yes, sir. It is like a --
- 10 Q. What did that kitchen knife look like?
- A. Just your average silvery kitchen knife. Had been  
stained - had been there for - what I recall, it  
showed signs of having been there for a while from  
the stains and the dirt on it, a kitchen knife.
- 15 Q. There was also found there a cassette box, "Solid  
Gold Country Hits"?
- A. Yes.
- Q. 7 candy wrappers?
- A. Yes.
- 20 Q. Plastic bag with brass colored hinges and screws.
- A. That's correct.
- Q. And in that part of your notes is there any mention  
of the knife?
- A. This is where it says here kitchen knife.
- 25 Q. Item marked 'DD' for identification, I believe that's  
this black jacket you mentioned with red trim, were  
you able to obtain a size off of that jacket?
- A. I don't recall looking for the size, sir.
- 30 Q. And I believe -- You didn't find this yourself.  
You obtained this from --
- A. This was passed over to me, yes.

- 1 Q. By Constable O'Neil.
- A. That's correct.
- Q. Who passed you the boots at the same time.
- A. That's right.
- 5 Q. And you mentioned the boots when they were handed to you - did I hear you say -- what kind of condition were they in? They weren't in this condition. They appear to be torn apart.
- A. No, they were in one piece. Like the boot was
- 10 attached to the sole.
- Q. The laces were all cut or tied?
- A. They were tied.
- Q. According to the photo.
- A. If we refer to P-70 this is the condition I received
- 15 the boots in on item 21, 22 and there's a tag in - I can even read the date, the time, and my initial on the exhibit tag in the photograph.
- Q. Did you mention the jacket was wet whenever you received it?
- 20 A. Yes.
- Q. And were the boots wet also?
- A. Yes, the boots were wet as well.
- Q. Soaking wet?
- A. Soaking wet.
- 25 Q. And the jacket was soaking wet?
- A. Yes.
- Q. Was the car checked for fingerprints?
- A. Yes, it was.
- 30 Q. Did you do it yourself or did somebody else?
- A. Myself and Detective Gervais of the Bathurst City Police.



1 Q. Was there a small set of fingerprints found on the  
inside of one of the windows?

A. Yes, there was.

Q. And was that close to the broken out window?

5 A. If I remember correctly this was on the opposite  
window, the broken being on the right-hand side and  
the small print on the left-hand side.

Q. Did it look as if it was to push the door open?

A. Something like that.

10 Q. Do you know whether or not those prints matched Mr.  
Legere?

A. They did not.

Q. They did not. So they were not the same as Mr.  
Legere?

15 A. That's correct.

MR. FURLOTTE: I have no further questions.

THE COURT: Reexamination Mr. Sleeth?

REDIRECT EXAMINATION BY MR. SLEETH:

20 Q. Corporal, these reports which you make, the reference  
was made in the course of cross-examination to a  
knife and my learned friend took you through a  
lengthy report of yours. You have a report - a  
continuation report for the 31st of July, '91 con-  
25 tained there, a copy of which was furnished to my  
learned friend?

A. Yes, I do.

Q. I ask you then the same question by my learned  
friend. Is there anything in your report indicating  
30 the finding of a hunting knife?

1 Q. Yes. This was following a conversation I sent this  
report. Would you like me to state what I have  
written here?

Q. What does it say?

5 A. It says on November 17th a blue Oldsmobile bearing  
New Brunswick license AKW 479 --

MR. FURLOTTE: My Lord I never brought that report up in  
cross-examination --

MR. SLEETH: Certainly not.

10 MR. FURLOTTE: -- -- so I would like the opportunity to  
cross-examine on it again.

MR. SLEETH: My Lord my learned friend took this witness  
at great length through that report, through the  
reports before him, insinuating that there had been  
15 no mention made in any of these reports of a hunting  
knife. My learned friend was furnished with a copy  
of this report.

THE COURT: This is a different report?

20 MR. SLEETH: It's a continuation of the same report by this  
officer My Lord.

THE COURT: Okay, let's hear you on this.

MR. FURLOTTE: I would just like to be able to cross-examine  
again on this.

25 THE COURT: Well, we'll consider that as soon as we are  
finished here.

A. "New Brunswick license AKW 479 recovered behind the  
Bathurst Keddys Hotel was examined. A knife in a  
black sheath was found under the front seat in the  
left side and this knife is referred to as item  
30 number 16 in exhibit report 89-3089."

1 Q. What is that exhibit report that's referred to then?

A. This is the exhibit I have at the back of the report here that was made subsequent to the examination of the vehicle.

5 Q. And that would have been made when?

A. Made late November 17th.

Q. So there was a report?

A. Yes, I have it sandwiched here between a copy of the registration - mail registration and a fax sheet.

10 Q. Now, that exhibit report forms a part of the report which you prepared at the time? Forms part of your continuation report?

A. The exhibit report itself?

Q. Yes.

15 A. Yes, it all goes in as one.

THE COURT: Do you really want to ask anything about that?

MR. FURLOTTE: Yes, My Lord. This report that --

MR. SLEETH: Excuse me, My Lord, I would ask perhaps that the jury be excluded while I would like to raise a matter with My Lord that has arisen because of the exchange that has taken place between Mr. Furlotte and myself at the moment.

20

MR. LEGERE: What exchange?

25 THE COURT: Well, look, let's do this. We are going to have a recess now for the afternoon and we'll all take a recess and you people try to get this resolved in the meantime. I'm going to ask one question first. When you found the knife you put your own police exhibit number on it?

30

A. That's correct.

1 THE COURT: And it was consecutive to something else you  
found the same day?

A. That is correct.

THE COURT: Consecutive to what?

5 A. What I did, all exhibits were listed. It was con-  
secutive to a blue plastic bag which was item 16 being  
the knife, item 15 being a blue plastic bag, number  
14 being the pruning shears, number 13 a screwdriver,  
number -- It goes from there.

10 THE COURT: Well, doesn't that answer the question. We  
will recess now. The jury will go out.  
(Jury excluded.)

MR. LEGERE: I'm getting chafed from running back and forth.

(RECESS - 3:30 - 4 P.M.)

15 COURT RESUMES. (Accused present.)

MR. SLEETH: My Lord before the return of the jurors there  
had been indication and a request by yourself that  
possibly Mr. Furlotte and I speak briefly about the  
subject that led to our little contretemps which had  
20 taken place before the jurors. The position of the  
crown remains that the area that was initially  
probed by my learned friend, the putting of questions  
to this witness based on a report which had not been  
gone into in the course of direct examination, con-  
25 stituted the end of his rights under the cross-  
examination. I already made my comment about the  
fact that he had in his possession and has had since  
the disclosure was allowed, the full contents of the  
reports of this officer. I would submit, My Lord, it  
30 would be inappropriate to permit further cross-  
examination because this comes eventually to the

1 point where it starts contaminating the process.  
Just how long does it continue, a direct, a redirect,  
a cross, a further cross. I submit that the issue  
has been relatively well canvassed now before the  
5 jurors: was there mention in a report. It has now  
been established that there was, and the subject now  
ends. I don't believe it would be appropriate, again,  
My Lord, that there be a further cross-examination on  
the point that has been dealt with.

10 THE COURT: I am perhaps being a little overly generous  
when I suggest to Mr. Furlotte that he might ask  
further questions, but do you really find it  
necessary Mr. Furlotte? What do you have?

15 MR. FURLOTTE: Yes, My Lord, as you will remember I objected  
to the redirect of Mr. Sleeth because I stated that  
what is in the Corporal's file and his report there  
now was brought up on direct examination when Mr.  
Sleeth mentioned about - asked him about his notes  
and from his notes he said yes, and from his notes  
20 that he had put everything on file in order in his  
report. And then Mr. Sleeth asked him about the serial  
number of the vehicle. But it's Mr. Sleeth that  
brought up the notes and the report in direct examina-  
tion and that's why I objected to Mr. Sleeth being  
25 able to redirect on something that he raised in  
direct examination. You have allowed him to go  
through with the redirect examination on a report  
that was given on July 31st, 1991, and that's less  
than a month before this trial. I didn't feel that--  
30

THE COURT: But, you know, what we are after is a search  
for the truth in any criminal trial --

1 MR. FURLOTTE: Yes, My Lord.

THE COURT: And isn't the fact here, as the witness has  
just brought out in response to a question I put to  
him which surely clears this matter up, he says the  
5 knife was number 16, the plastic piece off the  
steering wheel was 14 and something else in between  
number 15. They were all taken at the same time.  
If he didn't mention this in his original report  
it's so obvious that it was an oversight on his part  
10 that, you know, how --

MR. FURLOTTE: I want to make sure if it was just an over-  
sight.

THE COURT: Are you accusing the witness - or suggesting  
the witness is lying about this?

15 MR. FURLOTTE: I am not accusing the witness of anything.

THE COURT: Or inventing things. You know, he didn't pull  
the knife out of the air. He numbered it number 16  
after he numbered something 15 and 14 and 13 and so  
on.

20 MR. SLEETH: My Lord if it please the court, the witness  
is not in a position to be able to respond for him-  
self to that slur but - and I submit that was a  
slur just came from my learned friend - but the  
additional feature, My Lord, my learned friend says,  
25 Mr. Furlotte says, that in the course of direct  
examination this report was gone into. This report  
was only referred to once in the course of direct  
examination. The only time it even surfaced as a  
report was when the question was put to this witness  
30 could he tell us a serial number. He indicated he  
was not able to. He didn't have notes but using his  
notes he had made a lengthy report of kinds and he

1           could then refer to that to come up with the serial  
number. That was the only reference made. It was not  
as if there was some long, lengthy examination of a  
report, a continuation report or any exhibits. Nothing  
5           of the kind took place. My learned friend then,  
despite the fact that he was in full possession of  
the document which clearly indicated that the report  
made by this man showed that he had done - discovered  
this hunting knife proceeded to behave in front of  
10          the jurors as if this man were some sort of fabricator  
- late moment fabricator of things. He has made  
another slur here in the absence of the jury and I  
submit that has to come to an end sometime, and I  
would submit it comes to an end now.

15          THE COURT: If you were permitted to ask two questions,  
Mr. Furlotte, what questions would you ask?

MR. FURLOTTE: I would ask -- This witness already  
testified I believe in redirect examination and in  
questions from yourself which evidently I am entitled  
20          to ask questions after you have asked this witness  
questions so that --

THE COURT: Yes, I --

MR. FURLOTTE: That would allow me back in regardless of  
what Mr. Sleeth says. This witness has stated --

25          MR. SLEETH: I never disputed that.

MR. FURLOTTE: This witness has stated that in his exhibit  
report he mentions these knives, one as number 16 and  
the other items that he mentioned to yourself, but I  
want to be able to ask this witness did he give that  
30          witness list to anybody at all before --

THE COURT: Witness list?

1 MR. FURLOTTE: I'm sorry, the exhibit list, to anybody at  
all before July 31st, 1991, because it is apparent  
not only was I not aware of it before - well this was  
in July, I was not aware of it before last month, in  
5 August, the month that the trial was starting that  
this witness was going to come to court and say that  
he found the knife underneath the front seat. Not  
only was I not aware of it, even the police in-  
vestigating the essential - I suppose the person who  
10 has access to all the files did not even know where  
in heck this knife come from. They didn't even have  
any information about it. In the will say statement--

THE COURT: Let's put it on this basis. We will call the  
15 jury back. You ask this witness, if you want to go  
on with your reexamination, ask this witness why he  
did not before July 31st, 1991 refer in a written  
report to the knife that he had found, and then hear  
what he has to say about that. The other thing that  
you may examine on are the answers that he gave in  
20 response to my question. I said surely this would  
have been given an exhibit number and he said yes,  
this was exhibit number 16 I believe, or whatever it  
was, and I said it would follow consecutively after  
other items and he said yes, it followed consecutively  
25 after 15 and 14, and 14 was the plastic - piece of  
plastic off the steering wheel and 15 was something  
else found at the same time under the seat. If you  
want to ask questions about that, why it's numbered  
30 16 --

MR. FURLOTTE: May I ask one more question in reference to  
his will say?



1 THE COURT: What is that?

MR. FURLOTTE: The crown's will say statement. That there  
is nothing in the will say statement that says that  
he found the knife underneath the front seat.

5 THE COURT: No, you ask the one question that I said I  
would permit and that is why did he not before July  
31st, 1991 make mention in a statement - in his re-  
port of the finding of the knife.

MR. FURLOTTE: Either to myself or the investigating police  
10 officers?

THE COURT: No, in the report to the - whatever report he  
put in. These will say statements these are some-  
thing between lawyers you know. My gosh, a few years  
ago there were no such things as will statements.  
15 You went to court and the crown called its witnesses.  
Now with all this disclosure business the crown can  
make mistakes. I don't know if this is a mistake or  
perhaps it's a deliberate mistake, I don't believe  
that because there doesn't seem to have been any  
20 effort by the crown in anything that -- I've been  
connected with this case since last December 5th and  
I haven't seen any evidence that the crown has tried  
to mislead in any way.

MR. SLEETH: My Lord as a matter of fact, and as my learned  
25 friend also well knows as a matter of procedure, the  
will say statement is not normally made by the wit-  
ness himself, it is made by another investigating  
officer of what he anticipates from the witness.

THE COURT: That's right. Well it's purely a matter between  
30 counsel as far as I'm concerned.

1 MR. SLEETH: The other thing I would note, My Lord, so that  
my learned friend does not become all alarmed is that  
I had not concluded my redirect examination. I had  
started to sit down as I normally do when an objection  
5 is there or my friend was starting to dance about, and  
wait upon his objection. I had several more questions  
of this witness arising from questions put by my  
learned friend on cross-examination. And I would  
note that I have checked with the court stenographer  
10 about this and I had not indicated closing. I thought  
I hadn't. The second thing I would note, My Lord, is  
I --

THE COURT: I thought you had completed actually.

15 MR. SLEETH: I was under the -- I had not, My Lord. My  
recollection was that --

THE COURT: Well you sat down and I thought you had  
abandoned the floor and surrendered it to Mr.  
Furlotte.

20 MR. SLEETH: Excuse me, My Lord, I apologize, I was  
starting to interrupt you and that I should never  
do. My learned friend had posed an objection and,  
again, it's my habit if somebody poses an objection  
I let them have the floor for a while, and my  
25 recollection is the objection was on the floor, Mr.  
Furlotte had his points to make, and I then rose to  
that particular occasion, well or ill, and I still  
have some questions on redirect.

30 THE COURT: You should be like Mr. Furlotte, never get off  
his feet. I have to tell him to sit down from time  
to time.

1 MR. SLEETH: You don't have to do that with me, My Lord,  
I'm more than happy to.

MR. FURLOTTE: There's no problem sitting down, My Lord,  
the problem is when I have to get back up.

5 MR. SLEETH: I would just note, My Lord, that I do propose  
to continue with a couple of short questions on  
redirect.

THE COURT: Well, where do we stand now? We're not re-re-  
examining again. You haven't finished your --

10 MR. SLEETH: Conclusion of redirect by the crown which will  
be brief, then as I understand it there is a question  
which My Lord has indicated he will permit Mr.  
Furlotte to do on a re-cross, or call it whatever we  
will for the purpose of this particular hearing.

15 THE COURT: Well, I am going to do it in this way instead,  
because you are going to wind up with the right of  
reexamination at the end of this whole thing, so I  
am going to permit Mr. Furlotte now to put the  
question to this witness why did you not - if that's  
20 essentially what you want to know isn't it?

MR. FURLOTTE: My Lord you brought up in questioning this  
witness, again, his exhibit list that he had and I  
feel I should be allowed to ask this witness any  
number of questions which refers to that exhibit list.

25 THE COURT: That's a different thing. Your 14, 15, 16, the  
consecutive numbers of these things. You can ask  
questions pertaining to that.

MR. FURLOTTE: Just in relation to 14, 15 and 16.

30 THE COURT: Yes. But apart from that you can ask him the  
one question that I sense you want to ask him is why  
did he not before July 31st, 1990 make reference in a

1 written report to the finding of the knife. Now, he  
may be able to direct attention to some place where  
he has mentioned it, I don't know what the answer -  
I'm not concerned. Then we will go over to Mr.  
5 Sleeth and he can complete his reexamination, in-  
cluding reexamination on these points. Okay. Jury  
back.

(Jury in. Jury called, all present.)

THE COURT: Now, Mr. Furlotte, you had a few questions to  
10 ask of this witness.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Corporal Robitaille since Mr. Sleeth mentioned about  
a report of July 31st, 1991 could you tell me why you  
15 did not make reference to the knife in question in  
any of your reports before July 31st, 1991?

A. While you were having a discussion I reviewed the  
pages of my report. On December 11th, 1989 the knife  
is referred to but only as exhibit item number 16  
20 which may not mean much if the exhibit report is not  
in your possession. However, again on December 13th  
there is a comment about the knife, about it being  
forwarded to the Crime Detection Laboratory in  
Sackville for examination, and I just have one brief  
25 note saying on date of December 18th, 1989 that a  
knife was sent forward to the Crime Lab.

THE COURT: Now, you had some other - arising out of the  
questions I asked the witness just before the jury  
went out, Mr. Furlotte.

30 MR. FURLOTTE: Questions that you asked him?

THE COURT: Yes. Well, about the number of this exhibit.

1 MR. FURLOTTE: Okay. I believe you said that this knife in  
question is marked as exhibit number 16 in your list  
of exhibits.

A. That is correct.

5 Q. You never give anybody a copy of that list of exhibits

A. A copy of this should have went out with the report.

Q. But it did not.

A. I have no explanation. It is just a practice that a  
copy goes out. Whether or not it did - it would be a  
10 gross oversight on my part if it didn't, however I  
do not have access to the copy I sent out so I don't  
know if it's attached to it or not.

Q. But as far as you know nobody got a copy until July  
31st, 1991?

15 A. No, I assume that somebody had a copy of it. It is  
just a practice that a copy of the exhibit report  
goes out with the report to the investigator.

THE COURT: Well, does that complete your further privilege  
of cross-examination?

20 MR. FURLOTTE: Maybe one last question. But as far as you  
know, as of July 31st, 1991 nobody knew where that  
knife come from except yourself?

A. Well someone must have known before that. As I said,  
25 it was discussed earlier in December of '89 about  
sending that to the Crime Detection Laboratory for  
examination. This was through a conversation with  
Corporal Bonnell.

Q. Okay, and that was on December 18th?

30 A. December 13th, 1989. I take it from that that there  
was some knowledge of the knife.

MR. FURLOTTE: I have no further questions.

1 THE COURT: Now, reexamination. You had reexamined earlier  
up to a point and you are completing it now.

MR. SLEETH: If I may, My Lord.

5 REDIRECT EXAMINATION BY MR. SLEETH:

Q. As a result of the questions just put with respect  
to your exhibit report that exhibit report was pre-  
pared when?

A. November 17th, 1989.

10 Q. And what were numbers 15, 16 and 17 on that exhibit  
report?

A. Number 15 shows a blue plastic bag; number 16 is the  
knife in a black sheath referred to as an exhibit  
earlier.

15 Q. Would you please relate entirely what's written  
there?

A. It says knife in black sheath under front seat, left  
side, and then I have the quote "9-1-0" engraved in  
leather on the back, and "G-96" on front. This re-  
20 fers to some of the engraving, the leather sheath  
itself. Number 17 is a number of items listed as a  
group here: the book "Right of Anointing and  
Pastoral Care of the Sick"; a casset box "Solid Gold  
Country Hits"; there was a kitchen knife; 7 candy  
25 wrappers; a plastic bag with brass colored hinges and  
screws as well from under the front seat.

Q. And these exhibit reports would have been sent by you  
to where?

A. This -- At the time everything was run out of the  
30 office we opened in Newcastle called Major Crime Unit  
and a copy of everything was sent to them. I assume  
Corporal Bonnell got a copy of this.

- 1 Q. Now, you referred - you were asked earlier by Mr.  
Furlotte, counsel for the accused, about finger-  
prints and glove marks on a door or a window in the  
vehicle which you examined that is shown in P-70.
- 5 You recall that question being put to you by him?
- A. Yes, about some fingerprints on the rear window.
- Q. And do you recall examining and making mention - and  
I refer you to your own report on page 5 - of examina-  
tion for fingerprints, and what examination did you  
10 make?
- A. I have the notation at the lower portion of the  
page saying "The vehicle examined for fingerprints  
and glove marks were quite evident on the rearview  
mirror as well as on the chrome moldings, driver's  
15 doors and right rear door where window was broken."
- Q. Thank you. Just one last for fingerprints. Are you  
able to tell even when you do locate them when they  
might have been placed there?
- A. No, we can't.
- 20 MR. SLEETH: Thank you. Conclusion, My Lord, of redirect.
- THE COURT: Thank you very much then. Now, you have another  
witness Mr. Allman?
- MR. ALLMAN: Your Lordship will recall -- Yes, this  
witness will be completed. He is going to be recalled  
25 I meant.
- THE COURT: Oh, I'm sorry, yes, but he's being stood aside?
- MR. ALLMAN: He's to be recalled.
- THE COURT: He is subject to recall?
- 30 MR. WALSH: Yes he is, My Lord.
- THE COURT: You shouldn't discuss this portion of your  
testimony with anyone until all your evidence is  
completed. Don't take away any of the exhibits with  
you.

1 MR. ALLMAN: My Lord you may recall from I think it's this  
morning, time passes so quickly, that Ms. Lungair was  
on the witness box. A problem arose, I believe, from  
the manner in which - or the nature in which the  
5 questions were framed. Mr. Furlotte framed questions  
slightly differently. Those questions are acceptable,  
I understand from Ms. Lungair, and she is available  
for those questions to be asked.

THE COURT: Yes, all right then. This was on the cross-  
10 examination.

MR. ALLMAN: Cross-examination. And there was a problem  
that arose, I believe, out of the formulation of the  
questions and we discussed it. Reformulated them.

THE COURT: So you are recalling Miss Lungair - Ms. Lungair  
15 You are still under oath Ms. Lungair. Now, Mr.  
Furlotte you had a few questions in further cross-  
examination.

SANDRA LUMGAIR, recalled, previously sworn, testified  
20 as follows:

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Now, Miss Lungair, are you aware of a report of  
serologist Ludmilla Parnell dated November 2nd, 1986  
which was performed on a knife?

25 A. Since testifying this morning I have since obtained  
a copy and become aware of the report more fully,  
yes.

Q. In that report that knife was alleged to have been a  
knife which was used to stab Mr. Legere in 1986, is  
30 that correct?

MR. ALLMAN: This witness doesn't know that, My Lord,  
obviously, but the crown is prepared to accept that



1 the knife in question was allegedly used to stab Mr.  
Legere in '86.

THE COURT: This was not an incident that had anything to  
do with anything before the court now.

5 MR. ALLMAN: No, and as I indicated earlier, that's one of  
the reasons why we weren't getting into that.

MR. FURLOTTE: Now, have you been able to make a com-  
parison of the findings on that knife, the blood on  
that knife, those findings, with the findings that  
10 you found on the blood smear which was found on a  
piece of aluminum, exhibit P-68, which was in the  
Smith case?

A. The blood findings as listed in the report written  
by Ludmilla Parnell and comparison of my results on  
15 exhibit P-68 indicate that the blood could not have  
originated from the same source.

Q. So basically if the blood on the knife was Mr.  
Legere's blood then the blood on the outside of the  
door frame of the Smith residence could not have been  
20 Mr. Legere's? Is that what you are saying?

A. Hypothetically, yes, sir.

THE COURT: Reexamination?

REDIRECT EXAMINATION BY MR. ALLMAN:

25 Q. Did I understand you to say when you were talking to  
Mr. Furlotte earlier that you did not have available  
to you a sample of Mr. Legere's known blood taken  
direct from him?

A. That's correct.

30 Q. In the absence of such a sample are you in a position  
to say whether the blood or any blood on that knife  
came from any individual person?

1 A. I will not say so, no, sir.

MR. ALLMAN: Thank you.

THE COURT: Thank you very much Miss Lumgair and that I  
think releases you at least for today. Is Miss  
5 Lumgair coming back again?

MR. WALSH: Yes, she is, My Lord.

THE COURT: So you are stood aside. Now, another witness.

MR. WALSH: Yes, My Lord, I would call Stewart Killam.

THE COURT: We are sort of approaching the end of the day.

10 Have you got people you would like to get rid of  
especially? I'm not inviting you to go to 5 o'clock  
or anything.

MR. WALSH: No, My Lord, I appreciate that. In terms of  
the order of the witnesses Mr. Killam would fit in  
15 this particular time place. I can't guarantee that  
I would be done by 4:30 however.

THE COURT: Well, within a half a minute.

STEWART KILLAM, called as a witness, having been duly  
20 sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court your name, please?

A. Stewart Hiram Killam.

Q. And your occupation Mr. Killam?

25 A. I am an automobile mechanic.

Q. And who do you work for?

A. Lounsbury Company Limited, Motor Branch, in Moncton.

Q. And how long have you worked there?

A. 22 years.

30 MR. WALSH: My Lord at this time with your permission I  
would like to lead Mr. Killam through his background.

1           Eventually I will be asking that he be declared an  
expert in the field of motor vehicle mechanics,  
particularly as it pertains to Oldsmobile motor  
vehicles.

5           THE COURT: Okay.

MR. WALSH: Mr. Killam you attended trade school in 1967-  
1968 and received a course - you passed a course in  
motor vehicle repair, is that correct?

A.       That's correct.

10          Q.       And after graduating from Trade School in 1968 you  
worked at a Ford car dealership doing general auto-  
motive repair?

A.       That's correct.

15          Q.       And in the spring of 1969 you went with Lounsbury's  
Chev Olds dealership in Moncton and you have been  
there since?

A.       That is correct.

Q.       Now, you started off in that particular job doing  
general automotive repairs, is that correct?

20          A.       That's correct.

Q.       And then you went into the electrical and air con-  
ditioning work associated with vehicles?

A.       That's correct.

25          Q.       And you have a journeyman's license in motor vehicle  
repair?

A.       I do.

Q.       And you have attended numerous General Motors courses  
at the GM training centre associated with the repair  
and the electrical work of particularly Oldsmobile  
30       motor vehicles?

A.       I have.

1 Q. Would you explain to the jury, please, what kind of cars are sold and that you work on at that particular dealership?

A. Our particular dealership we sell and service  
5 Chevrolet and Oldsmobile vehicles. As well, now we have a line of - they're a Japanese line. They're Sprint I guess they call them. But mainly Chev Olds.

Q. Chev Olds. That has an umbrella of a General Motors product?

10 A. Yes.

Q. That's the particular manufacturer?

A. Yes.

Q. And they manufacture both Chevrolets and Oldsmobiles?

A. They do, yes.

15 Q. And does your experience incorporate the mechanical aspect in electrical circuitry of the steering column of Oldsmobile motor vehicles?

A. Yes.

20 MR. WALSH: My Lord at this time I would ask that he be declared an expert in the field of motor vehicle mechanics as it pertains to Oldsmobile motor vehicles. That's General Motors' products generally but in particular Oldsmobiles.

25 THE COURT: Any questions you want to --

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

THE COURT: Well, he is an expert then. You can ask them to double your pay tomorrow.

30 MR. WALSH: Does General Motors produce Chevrolet Impalas or Caprice vehicles?

A. Yes, they do.

- 1 Q. Have you worked on such vehicles?  
A. Yes, I have.
- Q. Are you familiar with such vehicles?  
A. Yes, I am.
- 5 Q. How would a Chevrolet Impala or a Caprice compare to an Oldsmobile Delta?  
A. An Oldsmobile Delta up until the year of 1985 and a Chev Caprice or Impala would be very similar in size and shape.
- 10 Q. Would you be able in your experience to tell the difference?  
A. Yes, I would.
- Q. How would you tell the -- Apart from any name that's on it how would you actually tell the difference  
15 between the vehicles? What would you use?  
A. Quite possibly from the front I would be able to tell by the grille assembly or from the rear end probably the taillights and how they are situated. Their shape.
- 20 Q. But apart from that you are saying that they do look in some respects alike?  
A. Pretty well, yeah. Very much alike. They have the same size. They are the same size.
- 25 Q. I am going to show you exhibit P-70 which is the booklet of photographs taken in Bathurst. I will ask you to look at photographs 1, 2, 3 and 4. The first 4 photographs. Are you able to tell the jury from your observations of those particular photographs what kind of car that depicts?  
30 A. Yes, that's a full-sized Oldsmobile sedan, four door.

- 1 Q. And with a car of that particular type would that look like, according to what you said before, a Chevrolet Caprice or Impala?
- A. Similar in some aspects, yes.
- 5 Q. You have also seen a series of photographs with respect to the interior of that car, is that correct?
- A. Yes, I have.
- Q. You have not actually yourself had an opportunity to look at that car?
- 10 A. No, I just --
- Q. Other than through the photographs.
- A. Just photographs.
- Q. And you have seen these photographs that are set out, particularly photographs 6, 7, 8, 10 and 12, is that
- 15 right?
- A. That's correct.
- Q. I'll give you P-70, the court exhibit, and just ask you to take that in your hand and we will go through these. Would you look at photographs 6, 7, 8, 10 and
- 20 12 and tell the jury what, if any, damage you can see with respect to the steering wheel or steering column in those photographs.
- A. Photograph number 6 the center pad is missing from the steering wheel. It also looks like there's one
- 25 little button missing on the horn. The button it would be on our left looking at it.
- Q. Perhaps if you look at photograph 7, I think that's a close-up, a closer picture.
- A. Yes.
- 30 Q. And what area are you referring to a button missing - a horn button missing? Is that what you are referring to?

- 1 A. It looks like one of these buttons in this area is missing.
- Q. Okay, you will have to speak up. I am standing close to you.
- 5 A. It looks like a button in this area is missing.
- Q. Would you just point to it for me, please, where the button would be missing.
- A. I would say the upper one right here.
- Q. Referring to this area right here My Lord.
- 10 THE COURT: Yes. Show that to the jury.
- Q. And what other damage can you see in this particular photograph?
- A. In number 6? I'm sorry.
- 15 Q. Or any of the photographs. Just go through them. 6 - 7. Anything that you can -- In photograph 7 what would be missing in that photograph?
- A. The center pad again is missing. This particular vehicle looks like it has a telescopic wheel. Looks like the knob is missing from that.
- 20 Q. And there appears to be some kind of a -- I won't say what I think it is, but this item here.
- A. Oh that. This wire sticking up here is a horn wire. It would probably be hooked to the button that was in the middle.
- 25 Q. That's not in --
- A. To the pad that was in the middle.
- Q. That's not in its normal position in this case?
- A. No, it's not. No, it has been detached.
- 30 Q. Would you please tell the jury what you would normally expect to find in that area and associated with the horn? How would you activate the horn in that

1 particular vehicle from in that general area, photograph 7?

A. Photograph 7 you should be able to activate the horn by pushing either one of the two horn buttons on the side in this area.

Q. You are referring to here and here?

A. Here and here. As well as the pad that's missing I believe had a horn contact in it too.

Q. And this wire, what connection would this wire have to the horn contact?

A. To the one that's missing I would say. But it would be connected to that.

Q. So you would be able to sound the horn by either pushing either one of those buttons or the center of this steering column?

A. I believe so.

Q. Okay. Perhaps we will continue and look at photograph 12. What if any damage do you see in that particular photograph in relation to the steering wheel or the steering column?

A. The steering wheel you can see the horn wire sticking up there again and it looks like there's a part missing.

Q. You are referring to this area here?

A. Yes, I am, yes, be on our left.

Q. Continue.

A. And just below that the key locking switch is missing. The whole housing is broken away. Damaged to quite an extent. The key lock itself is missing.

Q. And you are referring to the damage shown on the steering column and directly in the center of that photograph number 12?



- 1 A. Yes, I am.
- Q. Okay. Would you please tell us what you refer to as the -- what was that, locking --
- A. A key --
- 5 Q. Key locking --
- A. Key lock switch, yes.
- Q. Okay. We perhaps all know that but perhaps would you just tell us what you are referring to?
- A. Well, this is where you put the key in. It's a  
10 round cylinder shaped object with looks like wings on the side of it that sticks into this housing.
- Q. And that's missing from this photograph.
- A. That is missing completely. The housing itself - there's a big part of that housing itself missing.
- 15 Q. I see some what appears to me to be different color - to me it looks like wires. Is that --
- A. On the bottom side of the steering column itself, yes there is a wiring harness coming up through there.
- Q. Okay, what would that wiring harness involve? What  
20 parts of the motor vehicle would this be operating?
- A. That would continue on up to our left from where you see it. It goes up to your signal light switch. Your signal light operation, your four way flasher  
25 operation is taken from that area. Also your horn wire. It comes up with that same harness. Comes up to that area and is connected to the one that's up above by means of a slip ring assembly.
- Q. Could you tell the jury, please, what if any other  
30 ways could you activate the horn in that vehicle other than pushing the two buttons in the center in the normal case? Considering the damage you have seen are you able to relate to the jury what other

1 ways damage of this sort could actually operate the  
horn of that vehicle?

A. Yes. If the wire leading up to the horn button was  
damaged, severed with something and shorted to  
5 ground, it would cause the horn to blow. Or I  
believe in the area of where this white - it looks  
like white plastic.

Q. You are referring to this area here?

A. Right. Yes. In that area there would be a contact  
10 of some sort that if it was touched or shorted across,  
shorted to ground with a metal object in some way  
closing that circuit the horn would blow again.

Q. Now, in that particular case how would -- I am not  
15 going to ask you to mimic the sound of the horn, but  
would it blow intermittently or would it be one long  
blow continuous sound?

A. As long as the circuit was complete the relay would  
be activated and the horn would blow continuously,  
20 yes.

Q. And if the contact was removed or whatever was doing  
that was removed what would happen?

A. It would stop if it was removed.

Q. Let's go back to photograph number 7. The center of  
25 the steering column. Now, considering the damage  
that you see there what, if any, effect could damage  
of this sort have on the horn, or activating the  
horn?

A. I don't believe that would blow the horn as it stands  
30 right there from what I can see. It looks like the  
horn should not be activated in that state.

1 Q. In this particular state here?

A. Right. In that --

Q. What, if anything, could affect the horn in actually  
5 making that damage? If a person was actually making  
the damage as shown there could that have any effect  
on the horn?

A. Oh yes. If it was forced in some way and caused this  
wire contact to ground these -- These metal parts  
that you see in the middle of the steering wheel, any  
10 of those if it's touched to ground, that wire touched  
on there, that will form your circuit and it will  
blow the horn.

Q. And if the wire was moved?

A. If the wire -- Again, if it was touched on ground,  
15 if it was not pulled apart, not just pulled apart to  
activate the horn but if it was forcefully moved  
against that metal in some way, it would cause the  
horn to blow definitely, or if there was an object  
of some sort, a screwdriver - in my trade we use  
20 screwdrivers - if that was shorted across yes it  
would blow.

Q. And if you remove that object from it it would -  
would the horn continue to blow or would --

A. As I see there it should be not blowing. It should  
25 be stopped.

Q. Now, if a person wasn't very particular about how he  
was going to start the vehicle and he didn't have a  
key, and considering the damage that you have seen  
30 in these photographs, particularly in photograph  
number 12, could you tell us what part of the vehicle  
would you access to actually start the vehicle?

- 1 A. Not being particular I would say that's the way to do it right there.
- Q. You're referring to what photograph?
- A. Photograph number 12 with the housing broken away.
- 5 Q. Okay, would you explain to us how you could do that? How could you start the vehicle by causing the damage shown in photograph 12?
- A. Okay. If you look just below the white plastic you will see what looks like a circle with a narrow bar
- 10 going diagonally.
- Q. Here?
- A. In this area right there, yes.
- Q. Continue, please.
- 15 A. And that what looks like a narrow metal bar in this particular one I would say if it was turned mechanically somehow it would do two things: it would unlock your steering wheel and it would also start the vehicle.
- 20 Q. Now when you say turned mechanically what do you mean? Would I be able to do that with my hands?
- A. I don't believe you could, no.
- Q. Okay, what would I need to do something of that to start the vehicle and unlock the steering column in
- 25 that area when you say mechanically?
- A. I would say a pair of pliers or something similar to that.

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

THE COURT: Cross-examination Mr. Furlotte.

1 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. If somebody is looking to hot-wire a car which was obvious here could you tell me what the purpose was of tearing out the horn pad?

5 A. I have no idea, sir.

Q. It doesn't make any sense, does it, tearing out the horn pad to hot-wire a car?

A. Not to me it doesn't, no.

10 Q. So it might be somebody who has very little experience with cars and doesn't know what they are doing?

A. Could be.

15 Q. Now, you mentioned that in order to hot-wire a car, start a car, that you mentioned that according to photograph number 12 that not being particular that's the way to do it. How would you do it if you were being particular?

20 A. Well, if you are going to be real particular I would suggest that you take the steering wheel off and take the assembly apart and pull the key lock switch itself out which takes time and tools.

Q. I would assume then that this type of steering wheel is the lock type?

25 A. Yes, it is.

Q. Locks in one position unless you turn the key?

A. Yes, it is.

30 Q. And in these lock type steering wheels, is it true that a good yank on the steering wheel will break the locking mechanism?

A. It would have to be a real strong one, sir.

1 Q. It would have to be real strong?

A. Yes.

Q. In this Oldsmobile does the ignition have to be turned on in order to blow the horn?

5 A. No, I don't believe it does.

Q. It will blow without turning the accessories on?

A. Yes.

MR. FURLOTTE: I have no further questions.

THE COURT: Reexamination?

10

MR. WALSH: Yes.

REDIRECT EXAMINATION BY MR. WALSH:

Q. If you wanted to take your time and you had the tools how much time would you take and what kind of tools would you need?

15

A. You could probably take that particular one apart inside of a half an hour.

Q. What kind of tools would you need to do that?

20

A. You would need tools to take the nut off of the center. As I stated earlier, in photograph number 7 this black round object thing in the middle looks like it has a telescopic wheel, and by that you can turn this mechanism and pull the steering wheel towards you or push it down. You need to take that mechanism apart and insert a holding tool in there to keep the column from I call it going limp when you take the wheel off. You need a puller to pull the wheel itself off, the steering wheel itself. You need a tool, as I said, to hold the shaft itself stationary so that you can collapse -- Down inside there's a very strong spring tension. You have to take that ring, that locking ring off. You need a

25

30

1 tool for compressing that. Other than that it's  
pretty straightforward, screwdrivers and pulling  
switches out of the road and getting into the  
locking cylinder itself.

5 Q. Mr. Furlotte asked you about someone not having  
experience. You couldn't hot-wire a car by tearing  
out the center of the steering column, is that what  
you were getting at?

A. No, you can't, no.

10 Q. If you were starting the car as in photograph number  
12 from the side, the picture in photograph number  
12, and you have indicated that you could short the  
horn going in there.

A. Yes, it's possible, yes.

15 Q. By smashing the center of the steering column could  
you jar the short?

A. It's possible, yes.

MR. WALSH: Thank you, I have nothing further.

20 THE COURT: Thank you very much Mr. Killam. You are  
excused. I think we will call it a day there.  
It's 20 to 5. I just warn the jury about talking,  
again, to anyone about the case. So we will come  
back again at 9:30 tomorrow morning.

25 (ADJOURNED 4:40 P.M. TO SEPTEMBER 25, 1991, 9:30 A.M.)

30