

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

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ALLAN JOSEPH LEGERE

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

APPEARANCES:

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

Weldon J. Furlotte, Esq., for the Accused.  
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September 30th and October 1st, 1991.

GERALD TURNBULL  
COURT STENOGRAPHER

PORTION OF PROCEEDINGS - R. v. ALLAN J. LEGERE

September 30, 1991 - 0930 hrs.

THE COURT: The Crown has another witness?

MR. SLEETH: Yes My Lord. I call Mr. Morley Thompson

MORLEY THOMPSON having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

- Q. Mr. Thompson would you please state your full name and your occupation for the jurors?
- A. Morley Thompson. I purchase jewellery, gold, silver and precious stones.
- Q. And where is your place of business?
- A. Montreal. 1117 Ste. Catherine St. W.
- Q. And under what names does your business operate?
- A. Thompson and Wetstone
- Q. And you are the Thompson. There is a Wetstone I take it?
- A. That's right.
- Q. What's his full name?
- A. William Bruce Wetstone.
- Q. You are partners in the operation of this business?
- A. We are.
- Q. How long have you been working at this business?
- A. Between 12 and 13 years.
- Q. In the operation of this business are you required by police or others to maintain any special sort of ledger or records?
- A. We are.
- Q. What sort of ledger or records are you required to maintain?
- A. Well, everything that's purchased has to be put on what is called the police report, the goods have to be held for two weeks and then it has to be put into a bound ledger to be retained by us permanently.

Mr. Thompson - direct

- Q. I am placing before you an exhibit - a bag containing a blue ledger. It's Exhibit P-73. Would you please just first of all go through that very quickly and tell me if you recognize P-73 please?
- 5 A. Yes it's our ledger.
- Q. And it contains on the inside cover the name of your company?
- A. Yes it does, that's our stamp there, yes.
- Q. And that ledger is written by whom and made out by whom?
- 10 A. My associate, Bill Wetstone.
- Q. And he would do so because of purchases he made or purchases made by yourself?
- A. That's right.
- Q. How would he know what purchases would have been made by you?
- 15 A. Well I submit them to him plus he can tell by my handwriting easily.
- Q. Okay, and you would give a form or something like that to him?
- 20 A. Yes we would. The form is made up.
- Q. Would you please turn to pages 48-49 of that book?
- A. Okay.
- Q. I would ask you to look at the foot of the page. There's a transaction there, 938, do you recall that?
- 25 A. Yes I do.
- Q. Would you tell us what the date of that transaction was and from whom you were purchasing items?
- A. November 20th, twelve o'clock - Fernand Savoie.
- Q. Is there an address required and indicated on that ledger?
- 30 A. Yes there is. Box 194, Kent County, New Brunswick.
- Q. And is there a name of a village or town?
- A. Rural Route 3, Buctouche.

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Mr. Thompson - direct

Q. Is there a further description of this Mr. Savoie - further identification or anything about him?

5 A. There's his birth date, 1948, 1-31, five foot eleven 160 pounds, electrician by trade.

Q. And the transaction 938 continues onto the next pages 50 and 51?

A. Yes it does.

10 Q. Could you just go back if you would please to page 48-49, and can you just hold that book in a fashion so the jurors can see where this transaction 938 is located? Just angle it a bit further please, the jurors at the end are not seeing it.

A. At the bottom here.

15 Q. Okay, and pages 50-51?

A. Over here.

Q. Now you said on November 20th around noon - of what year please?

A. I guess it's 1990.

20 Q. Well just take your time.

A. It must be - or 89, I'm not sure which year it was. It must be in the book. I'll take a look. 89. 1989.

25 Q. All right. Could you tell me how far your business premises on Ste. Catherine St. are from the Queen Elizabeth hotel?

A. Four or five blocks - a five minute walk.

30 Q. When you purchase goods from other persons, what is the next procedure? You mentioned having to retain it for a period of some 20 days or two weeks, whatever. What's done with the purchase after that?

A. If they are salable they are re-sold or they are broken up or they're scrapped. In other words the precious stones are taken out and the gold is sold off for melt.

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Q. Okay, if you would again - to the foot of pages 48 and 49 and the top of pages 50-51 on the far right-hand side there is additional writing, besides transaction 938?

A. Yes.

5 Q. They are for what outfit - what company?

A. House of Coins.

Q. And what does that indicate to you as you look at that transaction?

10 A. Well it indicates to me that when the goods will be broken up most of it will be sold to the House of Coins as, you know, as precious metal will be.

15 Q. While you have P-73, the ledger, in front of you I am going to ask you if you would please, look at Exhibit - or pardon me, item for identification 'GG' which I am now placing in front of you and I am going to ask you do you recognize that item or do you find an entry corresponding to that item on those papers?

A. Yes, two loose diamonds, seven points each.

Q. All right, and where is that located?

20 A. On the bottom of page 49, first item - second item, excuse me.

Q. And as a result of examining then 'GG' and what is written on the bottom of that document are you able to say now that you can identify 'GG' before you?

25 A. I can identify them as two diamonds, yes, of that size.

Q. I am now placing before you 'HHH'. I would ask you the same thing, are you able to identify 'HHH' and is there a corresponding entry for that?

A. It's a link chain---

30 THE COURT: I'm sorry, what did you say?

A. It's a box link chain. It's the third item down on page 51.

5

Mr. Thompson - direct

MR. SLEETH:

- Q. I wonder if you could please, on the ledger - I see it's in blue ink - in black ink indicate 'HHH' at the point corresponding to this item on the ledger? And if you could as well please, on the ledger indicate the corresponding entry to 'GGG', the two point.
- 5
- A. (witness indicates)
- Q. I am now passing to you 'III'. I would ask again do you recognize that and is there a corresponding entry on P-73?
- 10
- A. Yes I recognize it. The fourth item down on page 51.
- Q. Would you indicate please and would you tell the jury what that is?
- A. It's an nefrititi pendant - Queen of Egypt, and broken.
- 15
- Q. Would you mark 'III' then on the corresponding entry on P-73?
- A. Yes.
- Q. Now I'm placing two before you. They are 'JJJ' and 'KKK'. Do you recognize these and is there an entry corresponding on P-73?
- 20
- A. It's hard to recognize but there are entries here. It's a man and a woman's pair of wedding bands.
- Q. Would you please enter - make a notation then on P-73, 'III'---
- 25
- A. No, I just---
- Q. 'JJJ' and 'KKK'.
- A. Yes.
- Q. I am now placing before you 'LLL'. Do you recognize 'LLL' and is there a corresponding entry on P-73?
- 30
- A. Yes. It's the last item on page 51 purchase, the last item of the lot purchased. I recognize it, yes.
- Q. Would you please indicate 'LLL' in the corresponding point on the ledger then?
- 35
- A. (witness indicates).

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Mr. Thompson - direct

- Q. I'm placing before you 'MMM'. Do you recognize 'MMM' and is there a corresponding entry on the ledger please?
- A. I can't recognize it but I - but there is a corresponding entry to it here.
- 5 Q. What does the corresponding entry say?
- A. Lady's cocktail ring with thirteen diamonds, fifteen point total.
- Q. And you would describe the item which you have in your hand, 'MMM' visually as being---
- 10 A. Yes.
- Q. A lady's---
- A. A lady's cocktail ring with thirteen diamonds, fifteen points.
- 15 Q. Okay, could you please indicate 'MMM'?
- A. (Witness indicates).
- Q. Mr. Thompson, if you would please, I would ask you to look at 'NNN' as in Norah, for identification. Do you recognize it and is there a corresponding entry on P-73?
- 20 A. Yes it's on page 49 at the bottom, it's a green stone ring. I recognize it, yes.
- Q. Thank you very much sir. Would you please indicate then by writing 'NNN' on the corresponding entry?
- A. (witness indicates)
- 25 Q. I now place before you 'OOO' for identification. Do you recognize that item and is there a corresponding entry on P-73 for it?
- A. Yes there is. The first item on page 49 of the list here. It's a lady's ring with a red stone.
- 30 Q. All right. Would you please make the corresponding entry then for 'OOO' on P-73?
- A. (witness indicates)
- Q. I am now placing before you 'PPP'. Do you recognize that item and is there a corresponding entry on P-73?

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Mr. Thompson - direct

- A. Yes it's the first item, a lady's ring with a purple stone. I recognize it.
- Q. Okay, if you would please then make a corresponding entry in the appropriate location 'PPP' on P-73?
- 5 A. (Witness indicates)
- Q. Thank you. Finally, 'QQQ', if you would take your time please and look at that - do you recognize it and is there a corresponding entry to be found on P-73?
- 10 A. I can't recognize it but there is a corresponding entry here on the page. Lady's ring with a green stone.
- Q. All right then. Visually examining that last item, do they correspond?
- A. Yes they do.
- 15 Q. Please make the appropriate additional annotation then.
- A. Which number is this one?
- Q. That one I think you will find is marked 'QQQ'.
- A. Thank you.
- Q. Now you said at the start of your testimony that you
- 20 purchased a number of items on the 20th of November according to that?
- A. Yes sir.
- Q. Can you describe the circumstances under which this purchase took place?
- 25 A. Well the door bell rang - I have a monitor on my desk and I look in it and see whose there. I was by myself in the office. A gentleman was at the door; I opened the door and he came in and we sat down in the front where I do most of my transactions. I looked at the jewellery, I
- 30 made him an offer - he wanted a little more. He wanted about \$500 and I told him I could only pay him that amount of money which was \$450. We agreed upon it and then I paid him in cash. He came me the identification when I asked him and I filled it all in and put into my -



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Mr. Thompson - direct

into a small slip which I have at the desk, which is then put on to a police report and entered into the ledger.

Q. Using that, the entry on the ledger is made as well then, using that slip?

5

A. I say - first on the police report then into the ledger, right, using that slip.

Q. And the slip was in your handwriting?

A. Oh yes.

Q. And the entry using that, is then made by your business partner?

10

A. Yes I gave it to him and asked him to do the entry.

Q. Is this a common mode of operation?

A. Yes.

Q. And you are required to maintain that ledger by law?

15

A. Oh yes, in a bound ledger like this.

Q. Why particularly a bound ledger?

A. So nothing can be taken out or changed.

Q. What other entries do you make besides the identification of the person selling - do you put in weights and values?

20

A. Yes we put down the weights.

Q. Okay, if you could then please, opening P-73 to page 48 and 49, and perhaps you might hold this in a fashion so the jurors when they get an opportunity to examine this book will be able to understand. There's writing here---

25

A. This says 10 - that's the carat weight of the gold; and 3.48 is the weight of the item - 3.48 grams.

Q. And that is to be found on page 48-49?

A. No---

Q. 50-51?

30

A. Yes.

MR. SLEETH: I just want the jurors to have a quick opportunity to see this.

THE COURT: The jury will have a better chance later to examine the book. They can take it to the jury room.

35

Mr. Thompson - direct

MR. SLEETH:

- Q. Now these - all these items, 'GGG' and the others and the ledger itself were turned over to the police I understand?
- 5
- A. To the R.C.M.P.
- Q. And all of the items that are referred to on pages 48 and 49 as transaction 938 and pages 50 and 51, they were all turned over to---
- 10 A. An R.C.M.P. officer, right.
- Q. Do you remember the name of the R.C.M.P. officer?
- A. Marc - I have his card if you want his name.
- Q. Do you have his card with you?
- A. Yes, it's in my briefcase. May I - --
- 15 Q. Yes.
- A. Marc Proulx.
- Q. And since the time that the ledger and the jewellery was turned over to Mr. Proulx this is the first time you have seen the ledger and jewellery?
- 20 A. Yes.
- Q. Would you be able to describe the person that sold this jewellery to you - size, weight?
- A. Well as I stated before, he wasn't too tall; he wasn't too heavy - five ten, five eleven, 150-160 pounds.
- 25 Q. I would ask you to refer to page 48 at the foot of the page on P-73. At the time you bought these items from the vendor he gave you his name as? At the foot of page 48?
- A. Fernand Savoie.
- 30 Q. And you noted his weight and height at that time to be?
- A. Five foot eleven, 160.
- Q. Do you see that person in this courtroom today or anybody that corresponds to him?
- A. No sir.

10

Mr. Thompson - direct

- MR. SLEETH: My Lord I am going to move that the items which are presently marked for identification as 'GGG' through to 'QQQ' I believe, inclusive, be accepted in evidence at this time. They have been identified through a line of continuity and now identified by this witness as corresponding to the items contained in his normally maintained business record, P-73.
- 5
- THE COURT: Well the next number is P-79 so 'GGG' would become P-80---
- MR. FURLOTTE: My Lord for the record I would like to object to these items going in to exhibit because there is no proof that they have in any way been connected to the accused.
- 15
- THE COURT: What do you have to say Mr. Sleeth?
- MR. SLEETH: Well they have been connected to the accused My Lord by virtue of the identification given of the individual who sold the jewellery being Fernand Savoie of Buctouche, New Brunswick, earlier identified by two chambermaids at the Queen Elizabeth Hotel as being the accused sitting in the dock here today.
- 20
- THE COURT: Well I think Mr. Furlotte they have been adequately - it is up to the jury whether they accept these as having been sold by the accused to Mr. Thompson or not, but as far as their admissibility into evidence goes, that has been sufficiently established on evidence - by the evidence so far and they will be admitted. 'GGG' will be P-180 - and what are the other numbers?
- 25
- MR. SLEETH: 'HHH' My Lord.
- THE COURT: 'HHH' would be P-181; 'III' will be P-182; 'JJJ' is P-183; 'KKK' is P-184; and so on down to 'QQQ' -
- 30

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they'd be numbered consecutively down to - '000'  
would be P-190. I'm sorry -

REPORTER: 190 or 90?

THE COURT: 190 - oh I'm sorry---

5 THE CLERK: P-90.

THE COURT: P-90 - oh, I had - strike out the one. It's not  
181 it is just 81.

MR. SLEETH:

10 Q. Mr. Thompson, about how many people would you ahve dealt  
with, selling you silver and you purchased the silver,  
and jewellery and the like from, since November 1989?

A. 1,500.

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

15 THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. Mr. Thompson you recall meeting with Marc Proulx and  
giving him the jewellery?

A. That's right.

20 Q. And he paid you \$450 to take the jewellery?

A. He did.

Q. Did he also have a search warrant?

A. Yes he did.

25 Q. So basically he was going to take the jewellery whether  
you paid him - whether he paid you \$450 or not? Is that  
the case?

A. I don't know, he just---

Q. How many meetings did you have with Marc Proulx?

A. Two.

30 Q. On the first meeting he was inquiring about jewellery?

A. Yes.

Q. And you were not able to find it in your records?

A. He inquired under another name.

Q. He inquired under another name?

35 A. The name of Leger.

12

Mr. Thompson - cross

Q. Under the name of Legere?

A. Legere, yes.

Q. And that's the reason you couldn't find it. Do you  
5 recall what date that was?

A. Oh it was just a few days earlier. It wasn't too long -  
maybe within a week.

Q. About a week before?

A. Something like that.

10 Q. I believe he seized the jewellery from you somewhere  
around January?

A. He called me and he told me to hold it and he came and  
picked it up. I don't know the exact date, it's under  
the seat.

15 Q. So the first time he would have seen you would have been  
somewhere around the end of December?

A. Before that I think it was. Just before Christmas some  
time.

Q. Just before Christmas?

20 A. It had to be before Christmas yeah. I think it was. I'm  
quite sure.

Q. Now I understood you to say that before you put it in the  
ledger you have a different record again?

A. Yes, when we purchase it, we purchase it on a small form.

25 Q. A small form, and then a couple of weeks later you put it  
in a ledger?

A. No, no, no.

Q. No?

A. Same day, by law.

30 Q. Same day by law?

A. It must be.

Q. Now you were shown a photo line-up or - you say whenever  
the door bell rang you looked through a monitor?

A. Yes I have a small TV monitor for my camera out in the  
35 hall.

Mr. Thompson - cross

Q. And you saw one person out there?

A. I did.

Q. And how was the person dressed?

5 A. I can't remember. It must have been reasonable because it didn't strike me as odd or anything.

Q. It didn't strike you as being odd or anything?

A. No.

Q. Do you recall anything that the individual was wearing?

10 A. No sir.

Q. Or whether he had a hat on?

A. I can't remember sir.

Q. Okay, you were shown the photo line-up and you were not able to identify anybody in here as being that person?

15 A. That's right.

Q. Are you able to say that that person was not anybody in this picture?

A. No. I just wasn't sure.

Q. You weren't.

20 THE COURT: For the record you are referring to--

MR. FURLOTTE: To the photo line-up, P-72.

Q. Now by law you are required to get identification of people you are buying jewellery from?

A. That's right.

25 Q. Do you also have to get their signature?

A. No, not necessary.

Q. Did you get the signature of this individual?

A. No. I never get any signatures.

Q. You never get any signatures?

30 A. No.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination Mr. Sleeth?

MR. SLEETH: I have no questions on redirect My Lord. I would ask that the witness be excused.

35 THE COURT: Thank you Mr. Thompson, you are excused.

Mary Anne Geikie - direct

MR. ALLMAN: Mary Anne Geikie?

MARY ANNE GEIKIE having been called as a witness testified as follows:

5

MR. ALLMAN: My Lord Mr. Furlotte has raised a matter with me that he just wants to check out. I'm sorry to have to ask you to send the jury out, but it is something Mr. Furlotte wants to look into.

10 THE COURT: All right, we'll ask the jury to retire for a few minutes.

(Jury retires)

MR. ALLMAN: Just excuse me for one minute. I can check this matter out that Mr. Furlotte is concerned with.

15

(Jury returns - polled - all present)

DIRECT EXAMINATION BY MR. ALLMAN

Q. Would you give the Court your name please?

A. Mary Anne Geikie

Q. Where do you live?

20

A. 119 Mitchell Street.

Q. Where is that in relation to where the Daughneys used to live?

A. Across the street.

Q. How long did you know them?

25

A. 34 years. After their parents passed away they sort of got to rely on us for whatever help we could give them.

Q. How often would you see them?

A. Quite often.

Q. Would they ever come to your house?

30

A. Yes.

Q. Would you ever go to their house?

A. Yes.

Q. What sort of things did you do together?

A. Many things - anything.

35

Q. What about your husband and your children?

A. We were all good friends.

Q. What can you tell us about Linda and Donna?

A. Well Linda was a jewellery freak I would call her.

Q. What kind of jewellery?

40

A. Well she was very fond of rings.

Q. And Donna?

A. Yes she liked jewellery.

Q. I show you a number of items that are contained in plastic bags. Please take your time and look at all of these items, and tell me if you recognize any of them?

45

A. Yes, there is one ring. It is the only one like it I have ever seen and Donna had one identical to it.

15

Mary Anne Geikie - direct

Q. How does it compare to the one Donna had?

A. It is identical.

Q. How many times would have seen that ring on Donna?

5 A. Very often.

Q. Did you and Donna have any conversations about the ring?

A. Oh yes, often.

Q. Do you know where she got it?

A. No, I never asked.

10 Q. Are there any other items there that you want to speak about?

A. Yes, that diamond cluster ring. She had purchased a ring like that just lately.

Q. Where was it purchased, do you know?

15 A. At Towers in Newcastle.

Q. Who purchased it?

A. Donna. I would say it is one just like it.

Q. Would you just explain what you mean by that?

A. Like it is identical, but I have seen other rings like that around.

20

Q. How would you describe that stone?

A. An oval stone with a couple of chips on each side.

Q. Do you recognize that ring?

A. It is one like Linda might have worn.

25 Q. What do you mean?

A. She wore a ring similar to that.

Q. The red ring - I call it ruby, now I don't whether it is - the red ring - as we know, the Daughneys died in 1989 - how many years approximately or roughly speaking would you have been viewing a ring identical to that on Donna? How many years do you think she'd had that?

30

A. It had to be over ten years.

Q. What about - you mentioned about the diamond cluster - the other item - the one that you said---

35 THE COURT: P-86.



Mary Anne Geikie - direct

MR. ALLMAN:

- Q. The one you said she bought one like that from Towers.  
Do you remember how long before she bought one like that  
5 from Towers?
- A. I don't know - I can't be sure of the date.
- Q. Okay, well if you can't be sure---
- A. No I can't.
- Q. I know what you mean. Now I understand there is evidence  
10 before this Court that a police officer, Cpl. Mole  
attended at your residence, I think it was on December  
20, 1989, to show you a number of items?
- A. Yes.
- Q. How was that set up - I mean how did you know he was  
15 coming?
- A. He made an appointment.
- Q. Who was he expecting to see when he came?
- A. My husband and myself.
- Q. Did he give you any prior information before he arrived?
- 20 A. No sir.
- Q. When he actually did arrive, who was there?
- A. My husband and myself and one of my daughters.
- Q. Which one?
- A. Deborah, the second oldest.
- 25 Q. Sorry?
- A. The second oldest, Deborah.
- Q. The second oldest, Debby or Deborah, okay. And was Cpl.  
Mole expecting, do you know, that Deborah would be there?
- A. No he didn't know.
- 30 Q. And did anybody else come and join you?
- A. Right at that time?
- Q. Then, or in the---
- A. No.
- Q. Did somebody come afterwards?
- 35 A. Well my youngest daughter came in a while later.

Mary Anne Geikie - direct

Q. And I gather you were shown items?

A. Yes we were.

Q. Were you shown them in any particular fashion or in any  
5 particular approach?

A. No sir, he just said that he had something that he wanted  
us to look at.

Q. What did he do.

Q. He put them out on the table and he didn't say anything.

10 Q. The way in which he put them out on the table, would that  
be different or the same as I put those items out in  
front of you?

A. Somewhat like this.

Q. How long have you lived in Newcastle, or how long on the  
15 banks of the Miramichi?

A. Practically all my life.

Q. Did you ever know Allan Legere and Allan Legere's family?

A. I knew Allan Legere as a child; his family more so.

Q. What time frame are we talking about now?

20 A. Up to a point where he was about nine years old - ten  
years old.

Q. And what years would those be, as best you can remember?

A. Up to about 56.

Q. And during those years when Mr. Legere was from zero to  
25 nine, how would you know his family?

A. They lived right across the street from where I lived  
before I was married.

Q. Where did you live before you were married?

A. In Chatham Head.

30 Q. In Chatham Head, okay. So you lived in Chatham Head in  
those years and the Legere family lived right across the  
street from you?

A. Across the street, yes.

Q. Could you just take a - have you ever looked at an aerial  
35 photograph like P-1 before?

18

Mary Anne Geikie - direct

A. Yes.

Q. See if you can approximately where you used to live.

A. Well we lived like on this side of the street. Mr.

5 Legere lived about there.

Q. Put the yellow pin in there please, where you used to live, and I gather Mr. Legere was right across the street?

A. Practically across the street. There it is.

10 Q. Would you put No.18 beside the yellow pin that shows where you lived, across from Mr. Legere?

A. There.

Q. During those years when Mr. Legere was a small child, how old would you be?

15 A. In my teens.

Q. In your teens, okay.

THE COURT: You don't have to go any farther than that.

THE WITNESS: Don't want to.

MR. ALLMAN:

20 Q. What did the Legere family consist of?

A. His mother, an older brother, two sisters.

Q. Any others?

A. Not to my knowledge, no.

25 Q. Do you think it possible there would be any other brothers or sisters you wouldn't have seen or known of?

A. No sir.

Q. You mentioned an elder brother. Do you know what happened to him?

A. Unfortunately he was killed.

30 Q. Did you attend any service in connection with his death?

A. Yes I did.

Q. Do you remember, roughly speaking, when that was - what decade for instance?

35 A. Somewhere around the late fifties - 59, somewhere around there.

19

Mary Anne Geikie - cross

MR. ALLMAN: Thank you Mrs. Geikie.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

- 5 Q. Mrs. Geikie, just to get it straight in my mind, you recognize the ruby ring or the red-stone ring as being identical to one belonging to Donna Daughney?
- A. That's right sir.
- Q. And that's because that's the only one you've ever seen
- 10 like it?
- A. That's right sir.
- Q. There's no markings on the ring that was brought to your attention?
- A. No sir.
- 15 Q. And as far as you know she had the ring for approximately ten years or over ten years?
- A. That I'm not really sure of but I would say somewhere around there, or maybe not that long. I'm not really sure on that.
- 20 Q. And how often would you have seen the ring?
- A. Fairly often.
- Q. Fairly often?
- A. Yes.
- Q. And I believe you also mentioned that you - the diamond
- 25 cluster ring?
- A. Yes.
- Q. You say it looks identical to hers also, but there's more of them around?
- A. That's right sir.
- 30 Q. So you can't say that that is her ring?
- A. I can't say that that specific ring is hers, no sir.
- Q. And you believe that she bought that ring maybe one, two, three years prior to 89?
- A. Yes sir, that's right.

20

Mary Anne Geikie - cross

Q. I also understand she didn't wear that particular ring, the diamond cluster, very often?

A. Except for to go out or to work.

5 Q. To go out and to work. Do you know what other rings Donna owned besides those two?

A. A few others.

Q. How many others?

10 A. She wasn't really a ring freak. I'm not sure sure. I know she had signet rings, graduation rings.

Q. Now you mentioned that one of the rings - P-89, Exhibit P-89, the one with (inaudible) - Linda may have wore one like that?

A. May have, yes sir.

15 Q. Which one is that?

A. This one here sir.

Q. Kind of a purple stone ring?

A. Yes, mauve purple.

20 Q. Was there one other ring at the time of your first statement that you thought may have belonged to Linda also?

A. No sir.

Q. What about a white stone ring - do you recall mentioning that maybe a white stone ring belonged to Linda?

25 A. No sir.

Q. I'll show you your statement. It's been a while, so like the rest of us, memories don't work that well. You mentioned purple stone ring, tag number 131 and the white stone ring, tag 132, appeared to be Linda's rings, but  
30 I'm not certain of that?

A. That was a mistake. I meant Donna's ring that one, the diamond cluster.

Q. Oh. You meant which one, the diamond cluster?

A. Yes. Which would be a white stone ring.

21

## Mary Anne Gelky - cross

- Q. Okay. So is that the same diamond cluster you identified as being Donna's?
- A. Identical, yes sir.
- 5 Q. You didn't - you thought maybe that may have been Linda's for awhile?
- A. No, that was a mistake. Maybe I said Linda but it was definitely Donna's.
- Q. Okay, would you describe the rings that Linda owned? She  
10 used to wear---
- A. She would alternate them once in awhile but mostly - she wore a slave ring here, a pearl ring here most of the time; she wore a diamond cluster here; an opal here and a signet ring on her little finger.
- 15 Q. Did Linda own a diamond cluster ring also?
- A. Yes.
- Q. How was her diamond cluster in comparison to---
- A. Much smaller.
- Q. How long did Linda own her diamond ring?
- 20 A. Approximately the same time as Donna got hers.
- Q. Do you know where she bought hers?
- A. Towers.
- Q. Did Linda sometimes wear Donna's jewellery?
- A. Earrings.
- 25 Q. Earrings. How about rings?
- A. Not to my knowledge sir, no.
- Q. Have you ever seen Linda and Donna with their diamond cluster rings on at the same time?
- A. Yes.
- 30 Q. As far as you know they both bought them at Towers?
- A. Yes sir.
- Q. Just a few years prior?
- A. Yes sir.
- Q. Do you know how much they paid for them?
- 35 A. No sir.

22

Mary Anne Geikie - cross

- Q. Now you mentioned that in the Legere family there was -  
in relation to Allan there was his mother, an older  
brother and two sisters?
- 5 A. Yes sir.
- Q. What about his father?
- A. His father I never knew. Mrs. Legere was separated.
- Q. Did Linda have any boy friends?
- A. Not to my knowledge sir.
- 10 Q. Was she seeing a male friend or anybody at the time?
- A. Not to my knowledge.
- Q. Do you know whether or not she gave any male friend her  
unlisted phone number?
- A. I couldn't say sir, no. Do you mean as a friend or any  
15 boy friend?
- Q. Well a male friend or - somebody she was interested in.  
Did she express interest in anybody?
- A. Not necessary so but she did go out a couple of times for  
coffee with another couple and a male friend - a male,  
20 whatever.
- Q. Right. Was she going out to any clubs during the past  
couple of months before her death?
- A. Not to my knowledge, no.
- Q. Do you know what the Dominos is?
- 25 A. That's a club.
- Q. That's a club?
- A. In Newcastle, yes.
- Q. I show you a statement of October 14th, 1989. The first  
statement you had you stated at the top of the page - you  
30 state "Linda had no boy friend but she went for coffee  
about two months ago with a male friend and I think she  
told me she gave him her unlisted phone number".
- A. Sorry sir, I don't remember that.

23

Q. You don't remember. And then down at the bottom you say "Linda went to Dominos a couple of times in the last couple of months, I think with Nancy".

A. Not in the last couple of months.

5 Q. Not in the last couple of months?

A. No sir. To my knowledge Linda didn't go to the Domino for quite a few months before that. As a matter of fact the Domino closed.

MR. FURLOTTE: I have no further questions.

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

THE COURT: Thank you very much Mrs. Geikie. You are excused.

MR. ALLMAN: Kelly Geikie?

KELLY GEIKIE having been called as a witness testified as follows:

15

DIRECT EXAMINATION BY MR. ALLMAN

Q. Could you state your name and address please?

A. Kelly Geikie, 119 Mitchell Street, Newcastle.

Q. Could you keep your voice up good and loud Kelly, because  
20 it is hard to hear.

THE COURT: Not Kelly. Call her Miss Geikie. I don't like this first name basis. You don't want to be called - do you know him that well that you want him to call you by your first name?

25 A. I'd rather have it by my first name.

THE COURT: No he's not going to. You're Miss Geikie.

MR. ALLMAN:

Q. The previous witness, what's her relationship to you?

A. She's my mother.

30 Q. Did you know Donna and Linda Daughney?

A. Yes I did.

Q. How many years did you know them?

A. As long as - 22 years.

Q. Somebody coughed and I couldn't hear that. Say it again.

35 A. As long as I've been alive - 22 years.

Q. And what was your relationship with them?

A. Really close friends. They were-----



24

Kelly Geikie - direct

Q. Sorry?

A. They were just like sisters.

Q. Like sisters?

5 A. Yes.

Q. How often would you see them?

A. I'd see Linda just like clockwork at supper time every day, and Donna she wouldn't be over as much but she'd be over just as often.

10 Q. What sort of things would you and the Daughneys done together over the years?

A. We went shopping together; we barbecued together; we went swimming together.

15 Q. I want you to take a look at the assorted items in front of you and see if there is anything there that you feel you could tell us something about. Look at them all before you start saying anything.

A. Yes there's two.

20 Q. Okay, give me the one you want to start with first. You're looking at P-881, which is a ring with a red stone. What can you tell me about that in relation to any jewellery you may ever have seen in possession of either of the Daughneys?

25 A. That was Donna's ring. She wore it often but not as much as Linda wore hers - her rings. I've never seen one like it before anywhere and we used to joke about it. I used to tell her when she died I wanted it.

Q. How often would you have had that sort of conversation with Donna?

30 A. Practically every time she wore it because it was so different that we used to tease her about it.

Q. What's so different about it?

A. The size of the stone, the way it's shaped and there's indentation on the side of it.

25

Kelly Geikie - direct

- Q. Indentations - where were the indentations in relation to the stone?
- A. In the side of it - there's squibbly lines or something.
- 5 Q. Immediately on either side of the stone?
- A. Yes.
- Q. When you were talking about inheriting it or that, was that a serious or joking conversation?
- A. We just joked about it.
- 10 Q. Do you know how long Donna had had a ring like that?
- A. For as long as I can remember.
- Q. Do you know where she got it by any chance?
- A. I don't have any idea.
- Q. How often would she wear her red stone ring?
- 15 A. Whenever she went out or at work, or just maybe sometimes around the house, not very often.
- Q. You said I think there was more than just that one item. Was there any other item you wanted to tell us anything about?
- 20 A. The diamond cluster.
- Q. Okay, you are looking at P-86. What can you tell us about P-86 in relation to any jewellery that either of the Daughneys may have possessed?
- A. It's Donna's or something close to it. She had the exact
- 25 same one.
- Q. Do you know where Donna got the ring that resembled that one?
- A. No I just heard them talking about wherever she got it. I didn't pay much attention to it.
- 30 Q. Do you remember approximately, bearing in mind they died in 1989, how many months or years Donna would have had the item that was the same as P-89?
- A. It was just a couple of years before.
- Q. What about Linda - what did she used to wear in terms of
- 35 rings?

26

A. She used to wear at least between four and five between each hand. She had a slave ring and she had a cluster like mine except for a different colour stone; she had a pearl ring and then she had some other ones that she just had on her dresser that she'd change around every now and then.

5

Q. Are there any objects on the table in front of you that you can make any comment about as it relates to Linda?

A. Not really. I'm not sure enough.

10

Q. With regard to the diamond cluster, P-89, how often would Donna wear the item that was the same as that?

A. She'd wear it less often than the red ruby but she would wear it when she was going out anywhere or especially if she was going to work.

15

Q. With regard to the red ring, P-88, do you have any interest in jewellery?

A. I have. I love rings.

Q. Do you ever look at rings on other ladies fingers or in other places?

20

A. Every chance I get I compare them to the ones I wear.

Q. Have you ever seen a ring that resembles P-88?

A. Never.

Q. What about P-86 the diamond cluster, have you ever seen a ring that - have you ever seen rings that resemble that?

25

A. Yes. Donna had the exact same one, if that's not hers.

Q. If that's not hers what?

A. That she had the exact same one like it.

Q. Now I understand that on the 20th of December 1989, a police officer called Cpl. Mole attended at the Geikie residence. Were you there when he arrived?

30

A. No.

Q. Did you arrive - did you come home when he was there?

27

Kelly Geikie - direct

A. I came home, it must have been around supper time because I had just received my marks from Community College for my Christmas term.

5 Q. Were you expecting to see a police officer there?

A. No.

Q. What happened when you came into the house, who was in there?

A. When I walked in Mole was sitting at the end of the kitchen table. Dad was there, so was mum and Debbie and when I walked over to the table there was jewellery spread out like this.

10

Q. I don't want to know what you said, but did anybody say anything to you?

15 A. No, nothing was said.

Q. What did you do?

A. As soon as I walked and I seen what was on the table so I just took a look.

Q. And after you looked what was the effect of what you saw on you?

20

A. I knew in my heart that was Donna's ring and I took---

Q. How did you feel?

A. Upset.

MR. ALLMAN: I have no other questions.

25 THE COURT: Any cross examination Mr. Furlotte?

MR. FURLOTTE: Yes My Lord, I just want a moment.

CROSS EXAMINATION BY MR. FURLOTTE

Q. I understand from your testimony today that you say Donna had wore her red ruby or stone ring quite often and that she wore the diamond cluster ring not as often but - how many times did you say, every time she went out?

30

A. The majority of time that she went to work she had it on because she dressed up a lot more when she went to work.

Q. When she dressed up to go to work?

35 A. Pardon?

28

Kelly Geikie - cross

Q. You say when she dressed up to go to work, or---

A. Well when she went to work she usually dressed up which meant she wore her jewellery.

5 Q. And how often did Donna work?

A. As far as I know she used to work on six months terms.

Q. Six months terms?

A. Work six months and then - like it was an every day of the week job, Monday to Friday.

10 Q. Maybe I'll let you read your statement and you can tell me what you---- your statement of February 20, 1990, the second page - question 'Did you see Donna wearing her cluster ring---

MR. ALLMAN: I think the appropriate thing is to let the witness  
15 read it herself and then see if she has a comment on it.

THE COURT: Well let her read it and look it over first.

THE WITNESS:

A. Well when she dressed up to go to work, I said that she  
20 would wear it on special occasions like when she dressed up but also when she dressed up to go to work she'd wear it.

MR. FURLOTTE:

Q. But you said that she didn't wear her cluster ring often?

25 A. Not as often as the red one.

Q. When the question was put to you, 'did you see Donna wearing her cluster ring often?' - and what was your answer?

A. On the statement there I said no, not often.

30 Q. And I believe also on the other rings you may have saw one ring that looked similar to a ring that Linda had, do you recall which one that would be?

A. I'm not sure but I think it - I don't want to say for sure because I'm not sure right now.

29

## Kelly Geikie - cross

- Q. You're not certain, but you thought one belonged to Linda?
- A. Yes. But I'm not - I can't say for sure.
- 5 Q. Now the ring with the red stone, you're certain of that one?
- A. That one's Donna's.
- Q. Is that what you are saying today?
- A. Yes. If it is not hers then she had the exact same one  
10 like it and I've never seen one before except for the one she wore.
- Q. By getting your statement of - are you one hundred per cent certain today?
- A. Over what?
- 15 Q. Over the red ruby ring?
- A. Yes.
- Q. Were you a hundred per cent certain when you gave your statement on February 20, 1990?
- A. In my statement I was nervous; the ring wasn't in front  
20 of me and I referred to the ring as having two diamonds on the side. I meant the indentations on the side.
- Q. Indentations on the side. And you are saying that up until you saw the ring again on - up until you saw the ring that day that the police officer had on the table  
25 you believed there was two diamonds on the side of that?
- A. I wasn't sure if it was diamonds or indent - or something that resembled - like indentations, because when you look at it real quick there's indentations and it looks like there's something there - a squiggly line.
- 30 Q. But at the time you thought there was two diamonds on the side of it?
- A. At the time I wasn't sure. I said I thought - but at the time I gave my statement I didn't have the ring in front of me.

30

Kelly Geikie - cross

Q. Right. So once you are shown the ring then it is easy to identify?

A. No I wasn't shown - I noticed the ring right away when I first walked in and then the statement was taken afterwards.

Q. What was your first impression when you saw the diamond cluster?

A. That Donna had the exact same one.

10 Q. Was your first impression that you first thought it was Linda's?

A. No because Linda had one like mine, exactly like this one except she had a different coloured stone in hers, and this one is smaller than that one.

15 Q. Where did you buy your ring?

A. I got it as a gift. It's from (inaudible).

MR. FURLOTTE: I have no further questions.

MR. ALLMAN: No re-examination.

THE COURT: Thank you very much Miss Geikie. You are excused.

20 (recess)

Jury polled - all present.

THE COURT: Another witness?

MR. ALLMAN: Deborah Geikie.

25 DEBORAH GEIKIE having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN

Q. What's your name please?

30 A. Deborah Geikie.

Q. And what town or city do you live in?

A. I live in Fredericton.

Q. Did you formerly live in Newcastle?

A. Yes I did.

35 Q. And are you the daughter of Mrs. Geikie who gave evidence this morning?

A. Yes I am.

31

Deborah Geikie - direct

- Q. And the sister of Kelly?
- A. Of Kelly.
- Q. How well did you know Linda and Donna Daughney?
- 5 A. I knew them all my life.
- Q. And how close to them were you?
- A. Very close. They were like family.
- Q. What sort of things would you and they have done together over the years?
- 10 A. Well the normal family things, barbecues, go to the beach, go down town together - family things, occasions - Christmas, Easter. We spent those together mostly.
- Q. When did you move to Fredericton?
- A. Labour Day weekend last year.
- 15 Q. So at the time the Daughneys died where were you living then?
- A. I was living on 136 Elm Street in Newcastle.
- Q. In Newcastle - that's what I meant.
- A. That's right.
- 20 Q. Would you look at the items which I just put before you which have been marked as exhibits, I think it is 80 to 90. Just take your time; look at them all and then tell me when you're ready.
- A. Okay.
- 25 Q. Is there any of those items that you particularly want to speak about?
- A. There's three.
- Q. Which one do you want to talk about first?
- A. Might as well start with the red one.
- 30 Q. Point to me which one.
- A. This one right here.
- Q. You want to talk first about P-88?
- A. Uh huh.



32

Deborah Geikie -

Q. In relation to P-88 what can you tell me as it relates to any jewellery you may have seen in the possession of either of the Daughney sisters?

5 A. Donna has an identical one and I would swear that was Donna's. She's had it for five years that I know of.

Q. How would you have seen it - under what circumstances?

A. Well she wore it when she got dressed up, like she was going down town or she was going to work, that sort of thing. She never wore her jewellery around the house because she always a miss fixit - she was always into something and you can't wear jewellery when you're doing that sort of thing.

10 Q. Would you and she ever had any conversation or discussion about the ring or just seen it?

15 A. No, we discussed it.

Q. Why would you have discussed it?

A. Because it was so big and gaudy.

20 Q. What sort of attitude did you take towards Donna when you would be talking about the big gaudy red ring?

A. Well I tormented her about it because I told her it made her look like a hooker because it was like - you know, your stereo-type hooker sort of ring, it was big and gaudy.

25 Q. Are you interested in rings yourself or not?

A. Yeah I love them.

Q. What's that?

A. I love them.

30 Q. How many have you got on at the moment, just as a matter of interest?

A. Six.

Q. Six?

A. Yeah.

35 Q. Have you ever seen a ring, either in a store or on another lady's finger or any place else----

33

Deborah Geikie - direct

A. No, never.

Q. ---that resemble the item we've just been discussing?

A. No. That ring is very distinctive. I've never seen one  
5 that even remotely resembles that one.

Q. Any other - I think you said there were three - any other  
items there that you want to mention?

A. Yeah, there was one - 128.

Q. It is now marked 86. What can you tell us about P-86?

10 A. That Donna had one identical to it but since there's so  
many of them you can't say this one's Donna's.

Q. One identical to it?

A. Identical, yes.

Q. Do you know when and where the one that Donna possessed  
15 came into her possession?

A. Not for sure no, but they bought all their jewellery at  
Towers in Newcastle basically with very few exceptions.

Q. The ring that you say Donna had that was identical to  
that one, where and when would she wear that item?

20 A. She would have more or less worn that when she was like  
going out - like not just down town but she would have  
worn it like if she was going to work or if she happened  
to have a date - any time you wanted to get dressed up -  
really dressed up.

25 Q. How long - I'm not sure if I asked you this about the  
other one, the red ring - do you know how long Donna had  
that?

A. I would say about five years - that I know of.

Q. And what about the second item - yes, that you know of -  
30 and the second item, P-86?

A. That would have been anywhere between two and three  
years.

Q. That's the diamond cluster, right?

A. That's not the one. This is it.

35 Q. I gave you the wrong one did I?

34  
A. Yes.

Q. My mistake, thank you. And how long did you say she had that one?

A. Between two and three years that I know of.

5 Q. And you said there was a third item you wanted to make some reference to?

A. Yes, P-90.

Q. P-90. That's a small ring?

A. Uh huh, with a light yellowish coloured stone - well  
10 almost clear actually.

Q. What comment do you have about that item?

A. I would say it was Linda's. Linda had several rings. There was most of the ones that she wore all the time, but then she had others she interchanged when she felt  
15 like wearing something different I guess and that was one of the ones she would have worn just sometimes.

Q. How sure are you about that item?

A. Not as sure as the others.

Q. Now I understand that there was a day in December 1989  
20 when Cpl. Mole visited your parents' residence?

A. Yes he did.

Q. Were you there when he arrived?

A. Yes I was.

Q. Had that been by pre arrangement or just happened that  
25 way?

A. No, but I wanted to be there, so I was.

Q. What did Cpl. Mole do?

A. He come in and he talked to my parents. He didn't talk  
30 to me; I kept in the background since I wasn't supposed to be there in the first place, and he talked to Mum and Dad. I don't even remember what about, and then he said he had some pieces of jewellery he wanted them to see and he put them down on the table much like you would put them down, like a game of goldfish - you know, cards -  
35 and I got up to look at them too.

35

Deborah Geikie - cross

MR. ALLMAN: Thank you.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLLOTTE

- 5 Q. Miss Geikie, in relation to the red stone ring, you felt that Donna had that approximately five years?
- A. Yes, that I can remember.
- Q. That you can remember?
- A. Uh huh.
- 10 Q. You have known her all your life basically?
- A. 33 years, yes.
- Q. How much had Donna worked in the past two years before her death?
- A. She worked on - she worked at Social Services and they had this six month thing. You worked six months, you were off six months. So that's basically what she did.
- 15 Q. Now you say she never wore her jewellery around the house?
- A. Very seldom - very seldom around the house.
- 20 Q. Neither the red stone ring or the diamond cluster then?
- A. No.
- Q. And you also mentioned a small ring which you - it is believed this was it, but you can't be certain?
- A. No. There's no way I could be certain. There's probably a thousand of them but I've never seen another like it.
- 25 Q. You've never seen another like it?
- A. No I haven't.
- Q. If I were to tell you that when Dr. McKay did the autopsy on Linda that she had a handfull of rings?
- 30 A. She always wore a handfull of rings.
- Q. She always wore a handfull?
- A. Yes.
- Q. And if he had described a ring similar to this then would you say it probably is not Linda's ring?
- 35 A. No, I would say it is probably still Linda's ring.

36

Deborah Geikie - direct

Q. Probably still Linda's ring?

A. Because I've never seen another, so---

Q. As far as the red stone ring, if the police officer would  
5 have---

A. This is it right here.

Q. Okay, if the police officer would have put half a dozen  
rings similar to this - not identical but similar to this  
one, even with the stone turned up like that - the  
10 highest stone turned up like that, do you think you still  
would have been able to identify it?

A. Definitely. It's got very distinctive markings on either  
side of the stone. It looks like a faded out flower on  
either side - a little hole with etchings coming out from  
15 all around the hole.

Q. Right. You've never mentioned that distinctive marking  
in any of your statements to the police did you?

A. I told them there was etchings on the side. I never  
probably accurately described them but I did tell them  
20 there was etchings on either side of the stone cut into  
the gold.

Q. And you've never seen rings like that with that size of  
a stone before?

A. Sure, that size.

Q. That size.  
25

A. But not that setting, not that shape, not that gaudy,  
a lot of times; and I work with senior citizens and I've  
seen a lot of jewellery.

Q. Were you home on the evening of the 13th?

A. I was at my home. I wasn't on Mitchell Street but I was  
30 at my home.

Q. You were at your home. You don't live on Mitchell Street  
then?

A. I did, but I lived on Elm Street when this episode  
35 happened.

37

Johanne Johnston - direct

MR. FURLOTTE: No further questions.

MR. ALLMAN: No re-examination My Lord.

THE COURT: Thank you very much Miss Geikie.

5 MR. FURLOTTE: All these witnesses My Lord are being excused I  
take it?

THE COURT: Yes.

MR. FURLOTTE: My Lord before we excuse these witnesses, the  
Geikies, maybe I would have a request to the Court  
10 and maybe the Crown would prefer me to do it in the  
absence of the jury.

THE COURT: Well look, I don't want to have to spend the whole  
day----

MR. ALLMAN: I have a suggestion to make. I suspect I know what  
15 it is about. Could we perhaps continue with our  
witnesses for the rest of the morning and we can  
discuss it at the lunch hour?

THE COURT: Yes.

MR. ALLMAN: I'll make sure there's no problem with regard to  
20 this matter.

THE COURT: Well all right.

MR. ALLMAN: I'm just making arrangements to ensure there is no  
problem.

THE COURT: Well Mrs. Geikie and her two daughters will hold  
25 on, in case it involves them. You have another  
witness?

MR. ALLMAN: Yes, Joanne Johnston.

30 JOHANNE JOHNSTON having been called as a witness  
testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name?

A. Johanne Johnston.

35 Q. What town do you live in?

A. Newcastle.

Q. Did you know or - I should have asked you were you  
related to Donna and Linda Daughney?

A. Yes, second cousin.

Joanne Johnston - direct

- Q. Did you have an aunt who was also related to them?
- A. Yes.
- Q. What was her name?
- 5 A. Alice Daughney.
- Q. Would you look at the items in front of you; take your time and see if there is any of them that you have anything you want to tell us about?
- A. Yes.
- 10 Q. You have picked up one item. That's item P-88?
- A. Right.
- Q. What is it you can tell us about P-88?
- A. It looks like the ring that belonged to my aunt.
- Q. In what respects does it resemble the ring that belong to your aunt - that's Alice eh?
- 15 A. Right.
- Q. How does it resemble it?
- A. Well it was a ruby. We called it a ruby but it probably wasn't a real stone; square - rectangular in shape, cut
- 20 stone in a gold setting.
- Q. Do you know how long your aunt Alice had had that ring?
- A. Approximately 20 years - 25 years.
- Q. And where had you seen it?
- A. She lived with my grandmother and that's where I saw it.
- 25 Q. How often would you have seen it over the years when aunt Alice lived with your grandmother?
- A. Two or three times a week. Whenever she went out she wore it.
- Q. Do you know what was supposed to become of that ring when
- 30 aunt Alice died?
- A. It was to go to the Daughneys.
- Q. When did aunt Alice die?
- A. In 1982.
- Q. And do you know what did in fact happen to her
- 35 possessions?

39

Joanne Johnston - direct

- A. Everything went to the Daughneys, Donna and Linda.
- Q. Was that under a will or just a---
- A. It was a verbal agreement. She had no will.
- 5 Q. Did you ever see the ring again after it left aunt Alice's possession?
- A. No.
- Q. How much did you used to see of the Daughney sisters in the latter half year?
- 10 A. Once a month maybe.
- Q. What is your occupation?
- A. I'm a nurse.
- Q. Any particular age-group of patients or just general?
- 15 A. Medical patients - adults.
- Q. In the course of that do you ever have occasion to view ladies' hands?
- A. Yes.
- Q. And what do you see on their hands?
- 20 A. Rings.
- Q. How many years have you been a nurse?
- A. 25.
- Q. In the cours of those 25 years can you make any comment in relation to your viewing ladies' rings over those 25
- 25 years and P-88?
- A. I've never seen one like it.
- Q. Are there any other items on that table that you want to make any comment about or not?
- A. There's one here but I'm really not sure about that.
- 30 Q. Okay, just so we can get the situation, you are talking about P-90 which is a ring with a - when you hold it up to the light it's almost white and when you take it away it is kind of green. What comment can you have about that?



40

Joanne Johnston - cross

A. I thought aunt Alice had that as well but I can't be sure.

THE COURT: Cross examination Mr. Furlotte?

5

CROSS EXAMINATION BY MR. FURLOTTE

Q. You mentioned the last time you would have seen the red stone ring would have been when your aunt Alice had it?

A. Correct.

Q. Or at least a ring similar to that. You haven't seen it since that time?

10

A. No.

Q. And your aunt Alice died in 1982?

A. Right.

Q. How long before 1982 would it have been that you had seen the ring?

15

A. 20 to 25 years. She's had it as long as I remember.

Q. She had it as long as you could remember?

A. Yes.

Q. Did she wear the ring or did you see the ring up until the time she died? I believe that's what I'm asking.

20

A. Yes I did.

Q. So you haven't see the ring for roughly nine years?

A. Right.

Q. And since your aunt Alice died you saw the Daughneys approximately once a month?

25

A. Yes. We weren't close.

Q. And in seeing the Daughneys once a month you never see Donna or Linda ever wear that ring?

A. No.

Q. And would you have seen the other one that you identified that may have been your aunt's - P-90?

30

A. Yes.

Q. Had you ever seen that one after 1982?

A. No.

Q. Have you ever seen any rings like that one?

35

41

Joanne Johnston - cross  
Diane Wetmore - direct

A. Pardon?

Q. Have you seen anybody else with rings like that one?

5 A. No.

Q. P-90. Of course you weren't looking were you?

A. No.

Q. Did you ever see Linda or Donna wearing diamond cluster rings?

10 A. No.

MR. FURLOTTE: No further questions.

THE COURT: Any re-examination?

MR. ALLMAN: No My Lord.

THE COURT: Thank you very Ms. Johnston. Another witness?

15 MR. ALLMAN: Diane Wetmore.

DIANE WETMORE having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN

20

Q. What is your name please?

A. Diane Wetmore.

Q. What town or city do you live in?

A. Saint John.

25 Q. Where did you live before you lived in Saint John?

A. Newcastle.

Q. Did you know Donna and Linda Daughney?

A. Yes I did.

Q. How well did you know them?

30 A. I knew them very well. I moved there when I was five. Donna was my best friend all my life.

Q. Donna was your best friend all your life. What about Linda?

A. I knew Linda very well too. She was a friend. Donna was  
35 my best friend.

Q. How many years would you have lived in Newcastle and been on best friend and friend relationship with the Daughneys?

42

Diane Wetmore - direct

A. Oh---

Q. Roughly?

A. 15 years or so.

5 Q. After you moved to Saint John did you continue to see either Donna or Linda or both of them?

A. Donna. Donna moved down two years after I did and she worked in Saint John for a number of years before she went to Toronto.

10 Q. And then in later years after she wasn't living in Saint John any more would you continue to see her from time to time?

A. Even when she was in Toronto she used to visit and then she moved back home to Newcastle and we visited all the

15

Q. What was Donna like as regards jewellery?

A. She didn't wear a lot of jewellery. She just wore her rings and earrings.

Q. What about Linda?

20 A. Linda wore a lot of rings and different earrings.

Q. Could you look at the items in front of you and just take your time please and then tell us if there's any of those items that you want to tell us anything about?

A. These two here.

25 Q. We'll have to take them one at a time. You are handing me now an item which has been marked P-88, a red ring?

A. Right.

Q. Red stone I should say. What can you tell us about that in relation to anything Donna or Linda may have possessed?

30

A. That's a ring that Donna used to wear.

Q. In what respect does it resemble the ring that Donna used to wear?

A. Well it's the same identical ring as far as I can tell, that she wore.

35

43

Diane Wetmore - direct

Q. Do you know how she got that ring?

A. Yes. She told me it was left to her by her aunt Alice when she died.

5 Q. Do you know approximately when she got it?

A. She had it I'd say for around seven or eight years.

Q. Have you ever seen a ring in Linda and - in anybody else's possession that was the same as that one?

A. No.

10 Q. Are there any other - you said there was another ring you wanted to speak about?

A. Yes, this diamond cluster ring. It's identical to the one she wore.

15 Q. That's P-86 now. That's identical to the ring that who wore?

A. Donna wore.

Q. Do you know where Donna bought the ring you're talking about?

A. She bought it at Towers in Newcastle.

20 Q. How do you know that?

A. Well we first saw the ring at Towers in Saint John. She was down and we were out shopping. She saw the ring and she liked and she said "I'll decide when I go home". Then I was talking to her a week later and she told me she laid the ring away.

25 Q. And subsequent to that discussion did you ever actually see it?

A. Oh I saw it on her finger after I was up there, after she had got it.

30 Q. And about when would that have been in relation either to now or to their death?

A. It was probably a couple of months later when I went up.

Q. How long would that be before the day they died in 1989?

A. The day that what?

44

Diane Wetmore - direct  
- cross

- Q. How many years before her death had she bought the ring  
5 at Towers?
- A. I figured it was probably - I think she had it around  
three or four years. I can't remember exactly what year  
it was she bought it.
- Q. Did you and she ever - obviously you talked about the  
10 diamond ring because you just explained about that - did  
you ever talk about the red ring with her?
- A. Yes.
- Q. Make any comment on it?
- A. Yeah, I used to say it was, you know, an attractive ring  
15 and she said she got a lot of comments on it.

MR. ALLMAN: Thank you.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

- Q. How often would you have seen Donna after she supposedly  
20 got a red ring from her aunt in 1983?
- A. I'd say usually three or four times a year.
- Q. Three or four times a year?
- A. Uh huh.
- Q. And she'd be wearing the red ring every time?
- 25 A. Not when we were just in the house. Like she'd - if I  
was up there for a week and she was working, she would  
wear it to work or if she was down visiting she usually  
wore it down.
- Q. The diamond cluster ring that you identified as like the  
30 red ring being identical to the one that Donna wore. How  
often would she wear that ring?
- A. She wore it when she went out. She wore it sometimes to  
work.
- Q. Did she ever offer to lend you the ring?
- 35 A. She told me I could wear it whenever I wanted.
- Q. The diamond cluster---

45

Diane Wetmore - cross

- A. When she first got it she said "you can have it if you want it, I don't wear it much".
- Q. Do you know whether or not Linda ever wore it?
- 5 A. Linda wore Donna's ring?
- Q. Yes?
- A. I don't think so.
- Q. Do you wear jewellery?
- A. Rings.
- 10 Q. How old are your rings?
- A. Well I got these since Donna died. Of course I had my wedding band and my engagement ring for years.
- Q. Do you have any rings there that are maybe two or three years old?
- 15 A. Yes, this one here.
- Q. How often do you wear your rings?
- A. I wear them any time except when I'm around the house doing house work.
- Q. So you wear your rings a lot?
- 20 A. Yes.
- Q. Much more than Donna would wear hers?
- A. I think I wear mine more than she did, I would say.
- Q. Take the diamond cluster out of the bag and can you tell whether or not a ring is well worn?
- 25 A. Well---
- Q. Tell me whether or not that ring looks well worn, compared to your own.
- A. I wouldn't say it looks really well worn.
- Q. Not really well worn?
- 30 A. No. Not like my diamond is that I've worn for years. It's worn down.
- Q. I believe you said you had one ring on your finger that you had for a couple of years?
- A. Yes. I think I've only had this one for a couple of
- 35 years. Two years, this one here.

46

Diane Wetmore - cross

Q. Does the ring look well scratched or anything - discoloured?

A. No I don't think it does.

5 Q. You don't think it does?

A. Not really. I don't know, I'm not really a jeweler.

Q. Did you ever see Linda with a diamond cluster ring?

A. She had a tiny one, yes.

Q. She had a tiny one?

10 A. Very small.

Q. Do you know where Linda bought hers?

A. I really don't know where she bought hers.

MR. FURLOTTE: No further questions.

THE COURT: Re-examination?

15 REDIRECT EXAMINATION BY MR. ALLMAN

Q. On the topic of the diamond cluster, can you compare Linda's with Donna's diamond cluster?

A. Well the only thing I can really say, it was a lot smaller than Donna's diamond cluster.

20 Q. Mr. Furlotte asked you I think if you ever wore P-86 or the ring that----

A. I tried it on before. I never wore it.

Q. Why did you try it on before?

A. I don't know. She just got a new ring and I just tried  
25 it on.

Q. And what did you find when you tried it on?

A. Well it almost fitted my finger. It was just a slight shade - maybe a slight shade larger.

Q. Almost fitted but maybe a slight shade larger?

30 A. Yes.

Q. Do you want to try that one on, P-86, and see how it feels? On the finger you would have tried it on.

A. It was this finger. I didn't have this ring then.

47

Diane Wetmore - redirect  
Mary Susan Gregan - direct

Q. I'll take that one because that one is yours and we don't  
5 want to get it confused with the others. How does it  
feel?

A. It's a slight bit large; the way it was then.

MR. ALLMAN: I have no other questions.

THE COURT: Thank you very much Mrs. Wetmore.

10 MR. ALLMAN: My Lord the next two witnesses on the list were Ken  
Black and Joseph Hawkes but they have already been  
called.

THE COURT: Well have you another witness?

MR. ALLMAN: I have one witness who, judging by the last number  
15 of witnesses should take us just conveniently up to  
the lunch adjournment.

THE COURT: Fine.

MR. ALLMAN: Mary Susan Gregan?

20 MARY SUSAN GREGAN having been called as witness  
testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

A. Mary Susan Gregan.

Q. You've got a very quiet voice Mrs. Gregan. Mary Susan  
25 Gregan?

A. Yes.

Q. Where do you live?

A. Chatham.

Q. What street?

30 A. 4 Nicol Street.

Q. Were you living there on May 10, 1989?

A. Yes I was.

Q. Could you turn around - turn right around - take your  
time looking at the plan, the aerial photograph P-1, and  
35 see if you can put a yellow mark in there on your  
residence?

A. Yes.



48

Mary Susan Gregan - direct

Q. Could you put a 19, I think it is, 19 beside where your residence is?

A. Uh huh.

5 Q. Did you ever known Allan Legere the accused in this case?

A. Yes I did.

Q. How did you know him?

A. Well I lived in Chatham and I knew him from the area. I also worked in the Bank of Montreal and he was a customer at the Bank of Montreal.

10

Q. At one time when you were living in the Chatham area do you know where Mr. Legere was living then in relation to where you were living?

A. Yes, when we first - it was 16 years ago we lived in Kerr's trailer park on the Loggieville Road in Chatham and he lived in the street behind us in the same trailer park.

15

Q. Can you take another yellow pin and if it is on the map, show us where the trailer park that you and Mr. Legere both lived in would be located?

20

A. It's away down here. I'm not sure if that's the exact trailer park area.

Q. Approximately there?

A. Yes. It should be right here.

25 Q. Could you put a number 20 beside that? Okay?

A. Uh huh.

Q. By the way where was the - I'm not going to bother you to put a pin in - but the bank that you used to work in that Mr. Legere was a customer at, where was that?

30 A. It was on Water Street in Chatham.

Q. On Water Street in Chatham?

A. Yes.

Mary Susan Gregan - direct

- Q. You told us that on the 10th of May 1989 you were living at 4 Nicol Street and you have indicated where that house is. Can you tell us about the events of that morning - the night before and the morning of May 10th?
- 5 A. Yes, I was out playing bridge on Wednesday May 10th and I came home from a neighbour's home, it was around 12.30 in the evening and---
- Q. So now it would be after midnight?
- 10 A. Yes. And I came in the house and went down the hall and past both my boys' bedrooms and went into my bedroom to get ready for bed and I took off at that time, a 24-inch gold chain with a nefrititi.
- Q. A nefrititi - what's a nefrititi?
- 15 A. It's an Egyptian goddess.
- Q. In what form or shape did the Egyptian goddess that you took off come - what was it?
- A. It was a head, a lady's head.
- Q. Attached to the chain or---
- 20 A. It was attached to the chain.
- Q. Where did you put it?
- A. I put it in my jewellery box.
- Q. Where was your jewellery box?
- A. On my bureau in my bedroom.
- 25 Q. Where would that be in relation to any windows in the bedroom?
- A. My bureau is in front of my bedroom window.
- Q. So you took of this item and you were preparing to go to bed. What happened?
- 30 A. I got ready for bed and I was watching the hockey game. It was the Stanley Cup playoff.
- Q. You were watching it in your bedroom?
- A. Yes. I also took off my ring. Did you---
- Q. I want you to tell us in your own words everything that
- 35 happened.

50

Mary Susan Gregan - direct

- A. After I took off my nefrititi I put it in my jewellery box with my diamond ring. I have a diamond ring; it's a cluster; it has 31 stones in it; and I put that as well  
5 at the same time in the jewellery box and I got ready for bed and the Stanley Cup was on and so I watched the game and it was around two o'clock in the morning when the game was over and I turned off the television and I could hear water running and I thought - I thought at the time  
10 when the water was running - I thought my boys got up and they went downstairs and they were watching the hockey game.
- Q. Were they supposed to do that?
- A. No. So anyway that was the first thought that I had when  
15 I heard the water. So I went out of the bedroom and down the hall to listen to downstairs and I couldn't hear anything, so I walked back down the hall and when I got close to my oldest son's bedroom, which is on the front of our house, I could hear the hose running; but I could  
20 also hear real funny noises. It sounded like - it sounded like an animal caught in bushes - like a really funny sound.
- Q. The sound that you heard resembled in your mind an animal caught in the bushes?
- A. Uh huh. I thought it was an animal.
- Q. Where did it seem to be coming from?
- A. It was coming from the front of the house. We have all shrubs in front of our house and it was right there in the window area I heard the noise. That's where our hose  
30 is. I heard the water running, I heard a lot of scuffling and these funny sounds and I thought it was a dog caught in the bushes because of the noises. So I walked across the bedroom floor and I was about three feet when all of a sudden a head came up in front of me.

Mary Susan Gregan - direct

- Q. The height of your bedroom and the window of your bedroom, could an adult person standing up be visible or some portion be visible through your window?
- 5 A. From here up.
- Q. You are indicating from the chest up?
- A. Yes, from here - the top shoulder area up.
- Q. And on this particular occasion I gather from what you are saying that some portion of a person appeared?
- 10 A. Yes.
- Q. Where were you at that moment?
- A. Three feet from the window - three feet from the person.
- Q. And where was the person in relation to the window?
- A. Right in front of the window. I also had - it was May 15 10th, I hadn't had my screens on yet and I have mini-blinds on my windows and my windows were wide open. It was a beautiful night and they were wide open, so the only thing between this and myself was this mini-blind which you can see right through - they're very clear.
- 20 Q. What lighting - I mean obviously at two o'clock in the morning it's dark outside - what lighting would there be shining on the - if any - shining on the person outside the window?
- A. Not a great deal of lighting. I could see the figure 25 real clear.
- Q. I was going to say what part of the person did you see?
- A. I saw the head and the shoulders.
- Q. From the front or from the back or the side?
- A. The back.
- 30 Q. How long would you have seen the back after this bit of the person appeared?
- A. Well I remember at the time - probably about four seconds.

52

Mary Susan Gregan - direct

Q. Now recognizing that it was only for four seconds you were only seeing the person in the fashion you described, did you think anything at that time?

5 A. Yes.

Q. What did you think?

A. I thought it was Allan Legere.

Q. What did you do at the end of the four seconds?

A. I quietly got down because I was really nervous when I  
10 saw the head come up and the wiry hair - the dark wiry hair. I think it was just - it was the noise, the hair, everything. When I saw it I thought 'oh My God I have to be real quiet' so I got---

Q. Did you have the impression that he seen you as well as  
15 you seen him?

A. No.

Q. You hadn't seen him?

A. I didn't - no, not then.

Q. So what did you do?

A. I got down on the floor and I crawled out of the bedroom  
20 and crawled down the hall, and all my windows in the house were open and all our phones are in a close area to one another - to the bedroom and I was going to phone the police and I thought no, he'll hear me if I phone the police, so I went to the - downstairs and I went down to  
25 my husband's desk and I called - first I got the operator because I didn't know the first number, and I told the operator who I was because I was afraid - I didn't know if I'd have time to talk to the police. I was really  
30 nervous, and she hooked me up to the Chatham police and I told them who I was and---

Q. You had a conversation with the Chatham police?

A. Yes, and I hung up the phone and it was like - thank  
35 goodness I got hold of them - so then I just went 'oh, my kids are upstairs alone'. So I went back upstairs and I

Mary Susan Gregan - direct

crawled back down through the kitchen and down the hall and sat outside my two sons' bedrooms and waited for the police car to come.

- 5 Q. And I take it the police did eventually arrive?  
A. Yes.  
Q. And there was no further trouble that evening?  
A. No. Well what I did I got the police to wait for me and I went out - I got our sons ready and I went away with them but we locked all our windows and all our doors and everything before we left the house that night.
- 10 Q. In the days after this incident - you told us that on this particular day you had left the windows open, it was a lovely evening and so on, what if any precautions did you take after that regarding your windows and your doors?  
A. It was all locked. It was well locked.  
Q. And was there anything else that happened - what happened the days after May 10th?  
A. Yes I went on Sunday, that Sunday - I got up and I was getting ready to go to church and just before I left I went to put my chain on with my nefrititi and it wasn't there.
- 15 Q. When had you last seen the chain with the nefrititi on it?  
A. May 10th.  
Q. Where?  
A. In my jewellery box.  
Q. And this day, the day that you went to church on a Sunday would be how many days after May 10th?  
A. Four.  
Q. In the interval of time had you ever had occasion to see whether Nefrititi was still there or not?  
A. No.
- 20  
25  
30

- 54
- Q. So when you came to put it on to go to church on the Sunday it wasn't there?
- A. Right.
- Q. Was anything else missing that you couldn't locate at that time?
- 5 A. My ring.
- Q. And the nefrititi includes the chain?
- A. Yes. The chain and the nefrititi.
- Q. Could you take a look at the items that are spread in front of you and see if there is anything there that you can make any comment on for us?
- 10 A. I have two items here.
- Q. You picked up a number of items. Give me one of them, whichever one you want to deal with first.
- 15 A. Right.
- Q. You have given me P-85. What can you tell me about P-85?
- A. That's my diamond ring. I had it for approximately 11 years. I wore it for an engagement ring up until - in February of 89 my husband had given me another ring so until then I wore this one every day all the time with my wedding band.
- 20 Q. Looking at the ring that is now in front of you comparing it with the ring that you wore every day for those 11 years or whatever it was, what is your comment?
- 25 A. That's my ring. It's a size 5. I have a really small finger. And it's my ring.
- Q. The other item you showed me was P-82. What's P-82?
- A. A nefrititi.
- Q. How does that nefrititi compare with the nefrititi you were talking about?
- 30 A. The same as my nefrititi.
- Q. Did anything happen to that particular nefrititi since you had it on your - or one like it on your jewellery box?
- 35 A. Yes it's been broken at the neck.

55

Mary Susan Gregan - direct

Q. When you had the one the you've been talking about was it broken at the neck then?

A. No.

5 Q. Apart from that how does that nefrititi which is P-82 compare with the nefrititi that went missing?

A. It's the same.

Q. Where did you get that item?

A. My husband bought it for me. I should mention as well  
10 with this ring---

Q. P-85?

A. Yes. It's a people's ring and it's an anniversary ring. I can remember the 50th anniversary they had a limited number that they made and they sent to each store - each Peoples - that's what I was told and that was all that  
15 they were going to sell for this anniversary.

Q. It was sold as such and you don't know whether that is right or not?

A. That's what they had told us, yes. And I had never seen  
20 another ring ever like this one.

MR. ALLMAN: Thank you.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. If I understand it, you said you were about three feet  
25 from some head and shoulders that you saw out through your window?

A. Yes.

Q. And did you say you saw that person running after?

A. Pardon?

30 Q. Did you say you saw that person running after you saw him?

A. No I didn't.

Q. You just ducked down?

A. Yes.



56

Mary Susan Gregan - cross

- Q. So that person was still there as far as you know whenever you ducked down?
- A. Yes.
- 5 Q. And you thought that person was Allan Legere?
- A. Yes I did.
- Q. Right immediately?
- A. Yes I did.
- Q. Because he had - it was reported he had escaped from
- 10 lawful custody?
- A. No, just the size, the hair - just to me it was Allan Legere.
- Q. What was the lighting like?
- A. The lighting was - it's not real bright, there's posts -
- 15 there's a lamp post right by our - across the street from us. It lights up. I saw a real good clear - it's dark but it was clear.
- Q. You couldn't see what he was wearing?
- A. I can't remember at the time - or now. At the time I
- 20 thought it was a red jacket but I can't say that that's exactly what it was.
- Q. Did you see what colour his hair was?
- A. It was dark.
- Q. You never saw the side of his face at all?
- 25 A. No I didn't.
- Q. Now Exhibit P-82 the nefrititi, you say it's the same as the one you own?
- A. Yes.
- Q. And is there anything different about it at all?
- 30 A. Yes it's broke.
- Q. It's just that it's broke?
- A. Yes.
- Q. When you put it away was there a chain with it?
- A. Yes there was.
- 35 Q. What size was that chain?

57

Mary Susan Gregan - cross

A. 24-inch.

Q. 24-inch?

A. Yes.

5 Q. You didn't notice your chain in that jewellery that you've been shown?

A. No I didn't.

Q. And this would have been on May 10th?

A. Yes it was.

10 Q. That you noticed this incident, and you noticed your jewellery missing four days later?

A. Yes I did.

Q. So you believe your jewellery was stolen on May 10th or sometime in between?

15 A. I don't know when it was stolen. It was in that time.

MR. FURLOTTE: I have no further questions.

MR. ALLMAN: No re-examination.

THE COURT: This bureau in the bedroom, is that ground floor or upper floor?

20 A. Ground floor.

Q. Ground floor?

A. Yes. All our windows are ground floor and then we have a downstairs.

Q. So one could reach in standing on the ground - a tall  
25 person, through the window.

THE COURT: Questions?

MR. ALLMAN: No.

THE COURT: Thank you very much Mrs. Gregan. Do you have anyone else on jewellery?

30 MR. ALLMAN: No, we've finished that aspect.

THE COURT: Do you want to pass any of that - what about the jury seeing this - I'm wondering if it should be done now or---

MR. ALLMAN: It might be appropriate to let the jury take with  
35 them - I think you indicated the book, the ledger,

and perhaps all the jewellery. I would sooner they take all the jewellery so it's not a particular item singled out.

5 THE COURT: Well we'll recess now until 2.30 this afternoon. There was one question I had---

MR. ALLMAN: 2.30 or 2.00 My Lord.

THE COURT: Two o'clock, sorry. You had indicated, or someone had indicated earlier that there were two  
10 additional witnesses to come after 1897

MR. ALLMAN: Yes. It was inconvenient to call them earlier. We were contemplating calling them awhile ago but we are proposing in fact to call them the first thing this afternoon.

15 THE COURT: All right. Well, two o'clock.

2.00 p.m.

MR. FURLOTTE: My Lord I would ask permission to have Mary Geikie and Kelly Geikie returned to the stand for further  
20 cross examination. I apologize to the Court but I missed a couple of points in cross examination, not anything which has to do with the jewellery but rather their observations of the scene the night the killings took place, and that's on October 13th  
25 which has reference to do with the lighting in the house and on the outside of the house.

THE COURT: Well that would be Mary Anne Geikie - that's Mrs. Geikie -

MR. FURLOTTE: Mrs. Geikie, and the daughter Kelly.

30 THE COURT: Was she home at the time?

MR. FURLOTTE: According to her statement she did observe what the lighting was like.

THE COURT: Well does the Crown have any objection to this?

MR. ALLMAN: Well I'm not very happy with it. I mean it's  
35 happened one time before and I understood Mr.

Furlotte's problem then, but when the two Geikies -  
I don't see how he could be unprepared. He had all  
weekend to get prepared for them. What he wants to  
5 ask them about are matters that are in their  
statements and I confess I'm not very happy about  
it. There's one other thing too which he mentioned  
to me talking about Kelly Geikie. Not merely - he  
wanted to ask her not merely about the lighting  
10 situation, which is what he was addressing you  
about, but also about a drawing she was shown which  
in my submission is a matter that is completely  
irrelevant and has nothing to do with this case at  
all. So I'll object (a) on the grounds that this  
15 is not coming by surprise and secondly certainly  
more specifically with the grounds - I object to  
any questioning about the drawings she was shown,  
on that reason and on the reason it is irrelevant.

THE COURT: Well it is rather extraordinary of course to call -  
20 to recall a witness to allow someone to conduct  
further cross examination, but I am inclined to do  
it in this case. It is very easy to overlook  
something and the Crown may find the shoe is on the  
other foot perhaps with some witness and---

25 MR. ALLMAN: Well if that's understood then I'm probably not  
so---

THE COURT: Well I'm not making any bargains nor I am sure is  
Mr. Furlotte.

MR. ALLMAN: Well as Shakespeare said "it will be recorded for a  
30 precedent".

THE COURT: Okay, we'll allow you to bring it up Mr. Allman,  
but I'm prepared to do that. This matter of the  
sketch though, you haven't mentioned that Mr.  
Furlotte?

60

Mary Anne Geikie - cross

MR. FURLOTTE: I don't think I have to get into that issue with this witness.

THE COURT: All right.

5 MR. FURLOTTE: Although - I'll forego that point.

THE COURT: Well the examination then will be - cross examination - further cross examination will concern only the matter of events and conditions on the night of November 13th - Friday the 13th.

10 These witnesses are available Mr. Allman?

MR. ALLMAN: Yes. I asked them to remain over the lunch hour.

THE COURT: Okay, we can call the jury in.

Jury polled - all present.

THE COURT: I would like to say to the members of the jury that  
15 we've kept you waiting a little longer than necessary but it hasn't been time wasted. I met very briefly in chambers with counsel and we were sort of plotting out the scheduling of witnesses for the balance of the trial and I think the time  
20 was well spent and it certainly won't delay the conclusion of the whole thing. Another matter has come up since we reassembled here and that is that the defence counsel has requested permission to ask a couple of other questions of two of the  
25 witnesses, Mrs. Geikie and her daughter Kelly Geikie, which he had overlooked this morning and I have given him permission to do that. So we will start out with those two witnesses first. Would you call Mrs. Geikie back?

30 MR. ALLMAN: I will recall Mrs. Mary Geikie simply for the purpose of Mr. Furlotte asking questions.

CROSS EXAMINATION BY MR. FURLOTTE

Q. Mrs. Geikie did you have the occasion to see Linda Daughney on the evening of October 13, 1989?

35 A. Yes I did.

61

## Mary Anne Geikie - cross

Q. And where did you see her?

A. I met her outside of Tim Horton's.

Q. And what - approximately what time would that have been?

5 A. Along between quarter after and twenty after ten.

Q. And earlier before you saw Linda at Tim Horton's when you I assume left your home, did you know what the lighting conditions were at the Daughney residence?

A. I left my house about ten after ten. The living room  
10 light was on. The outside light was off.

Q. The outside light was off?

A. Yes.

MR. FURLOTTE: I have no further questions.

THE COURT: Any re-examination?

15 MR. ALLMAN: No.

THE COURT: Thank you very much Mrs. Geikie. That's all for  
you.

MR. ALLMAN: I will now recall Miss Kelly Geikie for the same  
purpose.

20 CROSS EXAMINATION BY MR. FURLOTTE

Q. Miss Geikie I believe you had been out the evening of  
October 13?

A. Yes.

Q. Could you tell me approximately what time you arrived  
25 home?

A. It was about twenty to eleven or a quarter to  
eleven - between there.

Q. And what did you notice about lights at the Daughney  
residence?

30 A. When I came home there was - the reason I looked is  
because they were working on the house and there was no  
lights on. It was just - I don't know, it was just total  
darkness when we drove by.

Q. And there was no outside lights on either?

35 A. There was no lights on at all.

Kelly Geikie - cross

Q. And that was at about a quarter to eleven or ten to eleven, somewhere around there?

A. A quarter to or so.

5 MR. FURLOITE: Thank you, I have no further questions.

THE COURT: Re-examination?

REDIRECT EXAMINATION BY MR. ALLMAN

MR. ALLMAN:

10 Q. If Linda was out and Donna was home what would be the usual situation regarding the outside light?

A. Well to my knowledge it was usually left on.

Q. Until when?

A. Until Linda came home.

MR. ALLMAN: Thank you.

15 THE COURT: Thank you very much Miss Geikie. That's all for you.

MR. ALLMAN: I take it these are excused?

THE COURT: Yes they are excused or free to stay if they wish.

MR. ALLMAN: Joseph Wayne Williams?

20 JOSEPH WAYNE WILLIAMS having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name please?

25 A. Joseph Wayne Williams.

Q. Joseph Wayne Williams?

A. Yes.

Q. Keep your voice up please Mr. Williams. Where do you live - what town?

30 A. Millerton, New Brunswick.

Q. Where is that in relation to Newcastle?

A. About six, eight miles out of Newcastle.

Q. On the morning of the 14th of October 1989 where were you working that day?

35 A. Gold Line Transport.

Q. And what was your job?

63

Jos. Wayne Williams - direct

A. I was hauling from Acadia Mill in Nelson to Repap in Newcastle.

Q. To do that do you have to cross the Miramichi River?

5 A. Yes.

Q. What bridge do you go over across the Miramichi River?

A. Morrisey Bridge.

Q. What time would you have started working?

A. Six thirty in the evening.

10 Q. And you would work until when?

A. Six thirty in the morning.

Q. Can you tell -

MR. ALLMAN: My Lord I'm not going to get the copies out. I just want this witness to look briefly at one of the pictures from P-53.

15

Q. Would you take a moment to look at that picture P-53 and there's been evidence that indicates the bridge you can see at the bottom there is the Morrisey Bridge?

A. Right.

20 Q. Do you recognize that as what you drive over?

A. Yes.

Q. Would you just leave that there. When you are explaining what happened you can refer to that if need be. Did something happen that you want to tell the Court about that may have some connection with this matter?

25

A. Yes, I was - I come across the Morrisey bridge that morning about ten after five and I saw a man standing near the railroad track.

Q. Now let me stop you there because this would be a good point I think to start using the photograph. Take the photograph and take my pen and point to the location approximately where you would encounter this man.

30

A. Right about behind that car.



64

Jos. Wayne Williams - direct

Q. Okay. I'll just show the Judge, Mr. Furlotte and the members of the jury. He indicated just behind that car  
My Lord.

5 THE COURT: Okay. Isn't the best way to have the witness mark that in some way Mr. Allman?

MR. ALLMAN: I will ask him to put an X there.

THE COURT: He doesn't even know whether you are indicating the same car that he indicated to you.

10 MR. ALLMAN:

Q. Would you put an X with this red pencil underneath car that you were just talking about

THE COURT: Or an arrow perhaps pointing to it.

MR. ALLMAN: Or an arrow pointing to it? Point up to the car.

15 A. It was right about here.

Q. So you would be coming over the bridge. Which side would this man be on, your left or your right?

A. On my left.

Q. What speed would you be doing as you were coming up towards the man?  
20

A. Well there's a railroad track there - I'd say probably ten to fifteen miles an hour.

Q. And what opportunity did you get to see the man?

A. Well I noticed somebody there and as I got up to him I took a look out my side window and as well as I could follow the man.  
25

Q. So you are looking as you are driving towards him and then as you're driving by?

A. Yes.

30 Q. What lighting would there be that would enable you to see him?

A. Well the headlights on my truck lined out at that spot pretty well and it was lit up there too.

Q. What was he doing if anything?

- 65
- A. He wasn't doing anything. He was standing looking at the street - kind of a slight bend to his knees.
- Q. Maybe you could just show the jury what you mean and then we'll get it described. You are indicating slightly
- 5 knees bent and slightly crouched over?
- A. Yes.
- Q. Can you give us a description of the man, what his appearance was?
- A. He had a - dark hair, long hair and a beard.
- 10 Q. Was there anything in particular about the long dark hair that attracted your attention?
- A. Yes, the left - to the left side of his head looked like it was wet or dirty or matted or something like that. It didn't look like in a (inaudible).
- 15 Q. Sorry, it didn't look like?
- A. Like clods of hair, like in junk.
- Q. In junk?
- A. Yes, junky.
- Q. And you said wet or matted?
- 20 A. Yes.
- Q. How long would the hair be?
- A. It would be about two inches.
- Q. What about at the back, could you see the back - the hair at the back?
- 25 A. It was heavy at the back.
- Q. And you mentioned about the hair on the head, what about the facial hair, was there any facial hair?
- A. What do you mean?
- Q. Any hair on this individual's face?
- 30 A. Yes.
- Q. What sort of facial hair?
- A. A beard.
- Q. Did the beard include a moustache or not include a moustache?
- 35 A. I could not say.

66

Jos. Wayne Williams - direct

- Q. What sort of a beard, how long, how many day's growth?
- A. It was a fairly heavy beard.
- Q. Was he wearing anything on top of his head?
- 5 A. Not that I know of.
- Q. What description can you give us about his build?
- A. I'd say at that time his build seemed to be about 200 - 210, like his frame eh.
- Q. Yes?
- 10 A. But at that time I'd say it weighed about 170. He looked run down for the size of his body, the size the frame, seemed to be lighter.
- Q. I understand what you are saying, he looked run down?
- A. Well lighter than the frame - the frame was bigger.
- 15 Q. Do you remember what sort of clothing he was wearing?
- A. Dark clothing.
- Q. What sort, I mean what garments?
- A. I don't know.
- Q. Did you - again you mentioned that he had his knees a bit bent - did you get any estimate of his height?
- 20 A. I'd say about five nine.
- Q. And any estimate of his age?
- A. 40 to 45.
- Q. How many trips do you make across that bridge normally in a day?
- 25 A. I do about four trips.
- Q. And how many years had you been doing that on this particular day?
- A. A couple of years.
- 30 Q. Have you seen people at that location near the tracks before?
- A. Yes, lots of times.
- Q. Why is that, is there a particular reason?
- A. Well they usually come from town there and there's a lot
- 35 of people stand there to hitch-hike.

67

Jos. Wayne Williams - direct

Q. Did you see any other people that morning who attracted your attention other than that one?

A. No.

5 Q. After you go by him, obviously you would lose sight of him unless you looked in your mirror. Did you look in your mirror?

A. Y - no.

Q. So what would be the last you saw of him?

10 A. I'd - well I'd catch out the side window.

Q. Do you have a son?

A. Yes.

Q. What's his name?

A. Roddy.

15 Q. Roddy?

A. Yes.

Q. And does he do the same kind of work as you or different work?

A. The same kind.

20 Q. That morning was he doing the same kind of work as you or different?

A. The same kind.

Q. You say it's the same kind of work. For the same company?

25 A. The same company.

MR. ALLMAN: Thank you.

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. How long would you have seen this person in your---

30 A. Fifteen to twenty seconds.

Q. Fifteen to twenty seconds. How fast were you driving?

A. Ten to fifteen mile an hour.

Q. How far would you travel in ten to fifteen seconds - ten to fifteen miles an hour, any idea?

35 A. I don't know, no.

58

Jos. Wayne Williams - cross

- Q. You wouldn't have him right straight off the side - you were looking over your left shoulder to look at him?
- A. I (inaudible) him when I come to him. I looked at him through the side window and then as I passed.
- 5 Q. You didn't stop to look at him?
- A. No.
- Q. You wouldn't have viewed this person for any more than a couple of seconds?
- 10 A. I don't know.
- Q. When you saw this person what thoughts come to your mind?
- A. Well I don't know - I thought it was Mr. Legere at that time.
- Q. So actually before you - did you just think it was Mr. Legere after you recognized him or just because you saw a person standing there?
- 15 A. No, I've seen lots of people standing there you know.
- Q. Do you usually see lots of people standing there?
- A. Yeah, well there's usually a lot of people standing there when you go back and forth.
- 20 Q. When you saw this person he didn't run or anything, just stayed right there?
- A. Yeah.
- Q. And you weren't able to tell what type of clothes this man was wearing?
- 25 A. No.
- Q. Were you asked to do a composite drawing?
- A. Yes.
- Q. Did you do one?
- 30 A. No.
- Q. Were you shown any pictures by the police, or photos?
- A. Yes.
- Q. And what were you shown?
- A. I don't know - a few pictures.
- 35 Q. Photographs or sketches or what?

## Jos. Wayne Williams - cross

- A. I'm not sure. I think they were photographs.
- Q. You think they were photographs. Were you shown any artist's sketches?
- 5 A. I don't recall.
- Q. Do you know whether or not your son Roddy did a composite drawing for the artist?
- A. Yes.
- Q. Did you look at that one?
- 10 A. Yes.
- Q. And what was your opinion as towards that one?
- A. It looked pretty well like a---
- Q. Similar?
- A. Similar.
- 15 Q. Did you also see a photograph or a picture of an artist's sketch that was printed in the Newcastle newspaper, somebody at the (inaudible).
- A. I'm not sure.
- Q. You're not sure.
- 20 MR. ALLMAN: If anything is going to be shown to the witness it should be put in as an exhibit.
- THE COURT: Yes, it would have to be.
- MR. FURLOTTE: I would like to put this in as an exhibit.
- THE COURT: But are you going to----
- 25 MR. FURLOTTE: I'm going to show it to him.
- THE COURT: But I mean are you going to - is he going to be able to say yes he saw this, or he didn't, or---
- MR. FURLOTTE: Well the Crown wants me to put it in even before I show it to him, so---
- 30 THE COURT: Well it's got to be connected in some way. You've got to ask the witness---
- MR. FURLOTTE: That's what I mean.
- MR. ALLMAN: If the witness looks at it and identifies it as something he's seen then it should be in as an
- 35 exhibit. That's all I'm saying.

70

Jos. Wayne Williams - cross

THE COURT: Well mark it for identification.

(Copy of newspaper marked ZZZ for identification)

MR. FURLOTTE:

5 Q. I show you a copy of the Miramichi Leader Weekend. Did you ever notice that composite drawing in the paper before?

A. I probably did.

Q. You probably did?

10 A. Yes.

Q. Did the person you had seen that morning look anything like this composite drawing?

A. I'm not too good on sketches.

Q. Would you say it is similar?

15 A. Similar, yes.

Q. Similar to the person you saw?

A. Yes.

Q. And how is it similar?

A. Well the hair and the - it was a darker beard, like it would be darker on---

20 Q. The beard might be a little longer?

A. I couldn't say it was him.

Q. When you saw him the beard might be a little longer?

A. Could be.

25 Q. You don't recall anything that person was wearing?

A. No I don't.

Q. Why do you say---

MR. FURLOTTE: I would have this marked as an exhibit now My Lord.

THE COURT: I suppose it can be marked as an exhibit and go in.  
30 It doesn't seem to me to accomplish very much one way or the other.

MR. ALLMAN: I don't know what's inside there, there may be---

MR. FURLOTTE: Well we'll just put the front page in, just the picture.

71

Jos. Wayne Williams - cross

THE COURT: Is there anything else compromising on that - show it to Mr. Allman there. The whole thing pertains to the situation at Newcastle at that time. Better take a photocopy and take this picture of the R.C.M.P. officer off the front. That will be exhibit P-91.

5

(Photocopy of newspaper marked Exhibit P-91)

MR. FURLOTTE:

10 Q. Mr. Williams, again you said the individual you saw would have looked similar to this composite drawing?

A. Yes.

Q. And you also mentioned that this individual had a frame for about 200 to 210 pound man?

15 A. Yes.

Q. And maybe he weighed 170 pounds?

A. Yes.

Q. Why do you say that?

A. He looked lighter eh. The frame looked like 210 and it wasn't there. I don't know why.

20

Q. You couldn't see what clothing he had on, you can't tell---

A. Dark clothing.

Q. Could you tell the colour of his eyes?

25 A. No.

Q. Whether they were light or dark?

A. I don't know.

Q. Do you know how long his beard was?

A. Heavy.

30 Q. Heavy beard?

A. Yes.

Q. Heavier than this one?

A. Yes.

Q. Could you tell if he had a round face like that?



Jos. Wayne Williams - cross

A. I don't know.

Q. So what in particular makes you say that he had a 200 to  
210 pound frame but that he only looked to weigh 170  
5 pounds?

A. Well he couldn't have looked right in the clothes or  
something.

Q. That he was tall and skinny or---

A. Yeah, well he looked lighter. He looked run down. He  
10 looked lighter than the frame.

Q. What do you mean by looked run down?

A. Well he looked lighter than the frame.

Q. Now when you thought at the time that this fellow may be  
Allan Legere or looked like Allan Legere, I just forget  
15 what you said - did you say you thought it might be or  
that it looked like him?

A. It looked like him.

Q. Kind of looked like him.

A. Yes.

20 Q. Was there a reward out for Allan Legere at that time?

A. I don't know.

Q. Any reason why you didn't call the police when you  
thought this might be Allan Legere?

A. I was going to - if I had seen the police that night I  
25 was going to stop.

Q. You were going to stop, but you didn't think it was  
important enough to stop and call the police out?

A. Well no. I went on in to the mill. If I had have seen  
a policeman I was going to stop but I never seen one.

30 MR. FURLOTTE: I have no further questions.

REDIRECT EXAMINATION BY MR. ALLMAN

Q. There was a little bit there where you were talking and  
Mr. Furlotte was talking at the same time and I thought  
I heard you say something. I just want to see if I got  
35 it right. He was showing you the picture which is P-91

Jos. Roddy Williams - direct

and I thought I heard you say that it could be the same person you saw but you couldn't say. Did you say that or did I heard you say something like that?

5 A. Yeah I said that.

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

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

MR. ALLMAN: The next witness is Joseph Roderick Williams.

10 JOSEPH ROCKERICK ALLAN WILLIAMS having been called as  
witness testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN

Q. What is your name?

A. Joseph Roderick Allan Williams.

Q. And where do you live Mr. Williams?

15 A. R.R.1 Millerton.

Q. The same as the previous Mr. Williams?

A. No.

Q. The same general area?

A. Yes.

20 Q. You are the last Mr. Williams' son?

A. Yes.

Q. You were here when he gave evidence. He indicated that on the 14th of October 1989 he was hauling something like wet lath?

25 A. Yes.

Q. And that in order to do that he had to go over and across the Morrisey bridge?

A. Yes.

Q. What were you doing that morning?

30 A. I was hauling wet lath too.

Q. Were you in the same truck as him or another truck?

A. Different truck.

Q. And he said that he made a trip over the bridge at about ten past five. Did you make a trip over the bridge  
35 around that time too?

Jos. R. Williams - direct

- A. Yeah around five thirty.
- Q. 5.30 a.m. on the same morning?
- A. Yes.
- 5 Q. What if anything did you see as you came off the Morrisey bridge?
- A. When I come off the bridge I noticed a man standing beside the railroad tracks at the intersection of Mitchell and Jane Streets.
- 10 Q. Would you just look at the photograph that is in front of you, which is 32, No.1, and it is hard to see but your father drew a - put a little red mark - can you see the little red mark?
- A. Yeah.
- 15 Q. In relation to that mark where would you locate the person you saw?
- A. Right there.
- Q. Right there?
- A. No, on the other side of that.
- 20 Q. The other side of the tracks?
- A. Yeah.
- Q. Mr. Walsh says that a circle works better than a cross so could you put a circle where you think you - indicate you saw him?
- 25 A. Yeah.
- Q. So describe how you come to see him. I take it your bridge - your vehicle come off the bridge?
- A. I came off the end of the bridge and the railroad tracks are pretty rough there so you had to slow down quite a
- 30 bit and I noticed---
- Q. You slowed down to what speed?
- A. Oh 15 to 20 kilometres and I noticed a man standing by the railroad tracks by the railway sign there and he looked pretty scruffy and shaggy. Like his hair was all

75

0

Jos. R. Williams - direct

matted up on top. I noticed it right off the bat and I watched him.

Q. What was the thing that made you first notice this individual?

5

A. He was standing at the back of the sidewalk and his hair appeared to be all matted up. I was wondering wht he was doing.

Q. Apart from being matted can you give us any other description of his hair in terms of colour or length?

10

A. He had dark hair and a shaggy beard. It wasn't cut or nothing, and a moustache.

Q. Do you remember how long the head hair was?

A. Appeared to be a little longer in the back and it was all matted up. It was hard to say how long it really was.

15

Q. Was he wearing anything on his head that you can recall?

A. No.

Q. What position was he standing in, in terms of body posture?

20

A. He was standing with his legs bent.

Q. Legs bent - bent where?

A. Bent at the knees, sort of slouched down.

Q. About how tall - given that he had his knees bent how tall do you think he would be?

25

A. Between five eight and five nine.

Q. Do you remember anything he was wearing at all?

A. He had a jean jacket and jeans on and a white plaid shirt, or it appeared to be a lighter colour shirt on.

Q. Do you recall if he wore any glasses?

30

A. No he had no glasses on.

Q. What was he doing apart from standing there with his knees bent?

A. He was standing toward the back of the sidewalk and he was - when I was going by he was watching me and I was

Jos. R. Williams - direct

watching him and he didn't appear to be hitch-hiking or nothing.

Q. Is that a location where hitch-hikers can be found?

5 A. Yes.

Q. How often would you drive over that bridge on a daily basis?

A. Oh five or six times.

Q. And I gather you've seen hitch-hikers there?

10 A. Yes.

Q. What about that time of day?

A. Not usually that time of morning.

Q. What would be the lighting that would enable you to see this person?

15 A. It's fairly good. The wharf and stuff on the other side of the road is lit up quite good.

Q. Would he come at all within the beams of your vehicle lights?

A. Yes, a little bit.

20 Q. How long do you think, and I know you didn't time this, but how long do you think you would have seen him?

A. Oh five or six seconds going by.

Q. Now this occurred at five thirty and your father described the incident as five ten. Had you had any chance to discuss the five ten incident with your father?

25

A. No.

Q. When you drove over the bridge at five thirty did you know if your father had seen anything when he drove over?

A. No.

30 Q. Apart from the one individual you have described did you see anybody else in that general area that attracted your attention in any way?

A. No.

35 Q. Did you form any opinion, and if you didn't just say so, as to this individual's age?

77

Jos. R. Williams - direct

A. 35 or 40.

Q. And any opinion as to his build, weight?

A. About 170 - 180 pounds.

5 Q. You mentioned that he had a beard. What sort of beard are we talking about, from a two day's growth, somebody who hasn't shaved right down to a real magnificent beard?

A. Oh quite a beard but it was all shaggy. It didn't appear to be a real full beard or nothing. It was---

10 Q. Shaggy?

A. Yeah, it wasn't trimmed up or nothing.

MR. ALLMAN: Thank you.

THE COURT: Cross examination?

CROSS EXAMINATION BY MR. FURLOTTE

15 Q. Mr. Williams you mentioned that you didn't have the chance to discuss this five ten incident with your father, what he had seen. Was that before - when you said that you mean before you saw the individual or at any time?

20 A. Before I seen him.

Q. But you had discussed it with your father after?

A. Yeah, a couple of days after.

Q. And did you discuss it with your father before you actually contacted the police?

25 A. Probably. I can't remember.

Q. When did you call the police?

A. It was a couple of days after I think.

Q. And you gave a statement to the police also, a written statement?

30 A. Yeah.

Q. On October 23rd?

A. I'm not sure when I did the statement.

Q. I have a copy here of what purports to be your statement, dated on top October 23rd. Is that basically what your statement looked like?

35

78

Jos. R. Williams - cross

A. Yeah.

Q. I show you Exhibit P-91. Have you seen that composite drawing in the newspaper?

5 A. Yes.

Q. I notice this is dated October 20, 1989. So you would have given your statement after you saw this?

A. Yes.

10 Q. How closely did the person that you saw on this corner, or by the railroad tracks, resemble this?

A. A little bit.

Q. A little bit?

A. Fair - not too much. His face was narrower.

15 Q. His face was narrow. Of course you only got a quick look at this individual that you saw, so it might be that the person you saw, his face was actually a little rounder than you could remember?

A. No, it was sort of narrow.

20 Q. Now when you were giving your statement and giving the description of the individual you saw to the police officer did the police officer ask you if this person looked like Allan Legere?

A. I'm not sure.

Q. You're not sure?

25 A. No. I don't know.

Q. Okay, I'll show you a copy of your statement again. Down here it says: Q. Did you think this fellow looked like Allan Legere? And what was your answer?

A. A little, but I did not say one way or the other.

30 Q. Did you ever see Allan Legere before?

A. No not personally.

Q. That was the first mention of Allan Legere in your statement to the police - him asking you if you thought it might be Allan Legere?

79

Jos. R. Williams - cross

- A. Yes.
- Q. You mentioned this guy was about five foot eight, five foot nine?
- 5 A. Yes.
- Q. 35 to 40 years old?
- A. Yes.
- Q. How much did you say he weighed?
- A. Between 170 and 180.
- 10 Q. Between 170 and 180. And he had quite a beard but it was shaggy?
- A. Yes.
- Q. What colour were his eyes?
- A. They appeared to be dark.
- 15 Q. Dark eyes. Did you prepare a composite drawing yourself?
- A. Yes.
- Q. And how many did you prepare?
- A. Two.
- Q. Were you shown any composite drawings before you actually prepared your composite drawings - by the police officer?
- 20 A. No.
- Q. And the composite drawing you prepared was from your memory of the person you saw by the railroad tracks?
- A. Yes.
- 25 Q. Nothing to do with this composite drawing I showed you as P-91?
- A. No.
- Q. Now you said you did two composite drawings. Would you explain why you did two of them?
- 30 A. The first one he did and it really didn't get the---
- Q. The picture?
- A. A real good picture of him.
- Q. And what about the second one?
- A. It did a fair resemblance.



80

Jos. R. Williams - cross

Q. A resemblance. Percentagewise how good would you think the second one was?

A. 60%.

5 Q. How much?

A. 60%.

MR. FURLOTTE: Could I have this marked for identification?

THE COURT: 4A.

MR. ALLMAN: I believe that's a copy and we've got the original  
10 if you would prefer the original.

MR. FURLOTTE: That would be better.

(Composite drawing marked 4A for identification)

Q. I show you composite drawing Mr. Williams marked 4A for  
15 identification. Would that be the second composite  
drawing that you prepared?

A. Yes.

Q. And that basically looks as it had looked when you were  
finished with it?

A. Yes.

20 Q. I see here it is marked about 80%. You say today maybe  
60 or---

A. Well we had a hard time with his hair. Like his hair was  
matted.

Q. So this kind of unmatted the hair, is that what you are  
25 saying?

A. Pardon?

Q. This composite drawing it was an attempt to unmatt the  
hair?

A. (reply inaudible).

30 Q. It must have been. His hair didn't look quite like that?

A. No. It was all matted up on top. His face looks fairly  
good.

Q. I believe you identified this as being a jean jacket this  
man was wearing. Dark eyes?

35 A. Yes.

91

Jos. R. Williams - cross

Q. And here you said 160 pounds to 170 but today you are saying 170 to 180. So it's difficult to tell?

A. Well I'm not really sure.

5 Q. So when I show you 4A marked for identification and P-91 which was a composite drawing in the newspaper, now what similarities do you see?

A. It would have been---

Q. Quite similar?

10 A. Yeah, quite similar.

Q. Except that the hair in the one you saw was longer?

A. Yes. Matted up.

Q. Matted up, the head hair, but the beard is longer?

A. Yeah.

15 Q. A couple of more weeks growth I would imagine?

A. Yeah.

Q. Both individuals have a plaid shirt on?

A. Yeah.

MR. FURLOTTE: I would put this in as an exhibit My Lord.

20 THE COURT: 4A becomes P-92.

(4A for identification entered as Exhibit P-92)

THE COURT:

Q. P-92, the second one, that was a sketch prepared by the artist with your direction. P-91 was - that's not the first sketch, P-91?

25

MR. FURLOTTE: P-91 is the one that was in the newspaper.

THE COURT: It was in the newspaper but it had nothing to do with---

MR. FURLOTTE: Nothing to do with this witness.

30 Q. Mr. Williams I show you Exhibit P-54 and is there any way that the person you saw on the corner could have been this person?

A. No.

Q. It doesn't look anything like him?

35 A. No.

## Jos. R. Williams - cross

Q. Mr. Williams when were you asked to testify in this trial?

A. A couple of weeks ago.

5 Q. After the trial started, right?

A. Yes.

Q. Do you know of any reason why you weren't asked to testify before that?

A. No.

10 Q. Did police officers ever talk to you about the possibility of you---

MR. ALLMAN: It seems to me we are getting in to hearsay evidence of what police officers may have said to him and what he may have said to them. I also think we are getting in to---

15

THE COURT: He wouldn't know that know---

MR. FURLOTTE: Well he would know if police officers talked to him about the possibility of testifying before he was actually asked to.

20 THE COURT: Well suppose Mr. Allman comes on on re-examination and says "have you ever been asked by the defence to testify on their behalf"? You are getting into the other side's arrangement of their case. This witness says he was asked two weeks ago to testify. He doesn't know why he was asked two weeks ago and not a year ago or six months ago.

25

MR. FURLOTTE: My Lord, since this witness come on as a surprise witness for the defence (sic) after the trial started---

30 THE COURT: Are you suggesting that he's changed his story?

MR. FURLOTTE: No, no I'm not suggesting this witness changed his story.

THE COURT: Well he knows nothing about why the Crown counsel decided to call him.

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MR. FURLOTTE: I'm not asking him about Crown counsel, I'm asking him about police officers, if it was ever discussed with him before he was actually asked a couple of weeks ago that he might be a witness for this trial.

5

THE COURT: Well I don't know what concern that is of ours or the jury's or anyone else.

MR. FURLOTTE: Well I expect to make it quite an issue later on.

THE COURT: Well, tell us why. Are you suggesting - if you are suggesting this man has changed his story well put it up to him.

10

MR. FURLOTTE: No, no, no I'm not suggesting this man changed his story. I'm suggesting as to why the Crown is changing its position in the middle of the trial as to who they want to say Mr. Legere is either P-92 or is Mr. Legere P-54. They can't have it both ways and I want to know why they are changing their story in the middle of a trial.

15

MR. ALLMAN: This is an interesting argument which should not be conducted in the presence of the jury and which no doubt Mr. Furlotte can discuss at length in his summation or through other witnesses. The question he is asking this witness is one he has already answered "I don't know the answer to it". It's an irrelevant and improper question in my submission.

25

THE COURT: Ask your question again and if the witness doesn't know he'll say so.

MR. FURLOTTE:

Q. Mr. Williams was there any discussion with police officers before they told you that you were going to be a witness a couple of weeks ago, - before that did they ever mention to you that you might be a witness in the Allan Legere trial?

30

A. I don't know. I'm not sure.

MR. FURLOTTE: I have no further questions.

35

84

Jos. R. Williams - redirect

THE COURT: Redirect?

REDIRECT EXAMINATION BY MR. ALLMAN

Q. The item P-92. There are some observations - first of  
5 all one of the observations is 80%. Do you know what  
that refers to?

A. No not really.

Q. Do you know whether it's - did you put that there or did  
somebody else put that there?

10 A. I think the officer put it there.

Q. The description underneath, is that your description,  
your father's description or a mix of the two?

A. A mix of the two.

Q. The description underneath "heavy built (not in good  
15 shape, round down) would that be yours or your father's?

A. Both of ours.

Q. Both of yours?

A. Yes.

Q. Was that your observation also then?

20 A. Yeah, he looked run down.

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

THE COURT: Thank you very much Mr. Williams.

MR. ALLMAN: Yes there is one very minor matter and I'm sure my  
friend wont mind my rising to ask this one?

25 THE COURT: Well yes, we allowed him that privilege so now  
we've got to extend it to you.

MR. ALLMAN:

Q. You mentioned that it was a couple of days before you got  
around to reporting to the police. What did you do in  
30 those couple of days?

A. We just finished our shift that night and was home and  
slept most of that day probably and we never really heard  
about it until either that night or the next day.

Q. So you got home, you sleep, and you hear about something.  
35 What is it you hear about?

85

Jos. R. Williams - redirect

A. About the murder of the Dagny sisters.

Q. What did that cause you to do?

A. Well I think about the man that I seen standing there.

5 It was a couple of days later when I was out home we  
found out really where the murder took place.

Q. When you woke up and heard about the murders and where  
they took place what did you do then?

A. We phoned the R.C.M.P.

10 MR. ALLMAN: Thank you. No other re-examination.

THE COURT: Thank you Mr. Williams. We will take a recess now.  
Do you have other witnesses Mr. Allman?

MR. ALLMAN: We have other witnesses, yes My Lord.

15

20

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1 MR. ALLMAN: My Lord, Mr. Furlotte just drew to my  
attention the fact that he indicated earlier when we  
5 had Constable Michel Fournier on, that's the artist  
who drew the sketches, if subsequently he chose to  
put the sketch in that he has put in he would want to  
question Constable Fournier, and Constable Fournier is  
available.

10 THE COURT: Do you want to examine him further?

MR. FURLOTTE: I think this would be a good time to examine  
him, yes.

THE COURT: All right.

15 CONSTABLE MICHEL FOURNIER, having already been sworn,  
testified as follows:

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Now, it's my understanding, Constable that in direct  
examination - you prepared the composite sketch, P-54?

20 A. That's correct.

Q. And this was the description given to you by William  
Skidd?

A. That's correct.

Q. And you also have prepared the composite drawing of  
25 P-92?

A. Yes, that's correct.

Q. And that was prepared - a description given to you by  
Roddy Williams?

A. That's correct.

30 Q. And the composite drawing which is in P-91 which  
basically is in a newspaper, Miramichi Leader Weekend,  
of October 20, 1989. Do you recall whether or not you

1 did that composite drawing?  
A. It's not the original but it looks similar than the -  
Q. It's a copy of the original?  
A. Yes, it is.  
5 Q. I believe this composite drawing was done in relation  
to the Russell case -  
A. That's correct.  
Q. Mr. and Mrs. Russell had been assaulted in their home  
and -  
10 MR. SLEETH: Objection.  
THE COURT: Yes, we're not really getting into why the -  
Q. In relation to the Russell incident this is one  
composite drawing -  
MR. SLEETH: Objection again, My Lord.  
15 THE COURT: I think we can forget about talking about the  
Russell incident at all, that's not what this trial is  
about.  
MR. SLEETH: It's a whole collateral issue.  
THE COURT: If you want to ask him who gave you this  
20 description, I suppose you can, whose description this  
was based on, but -  
Q. Do you recall who provided you with this description?  
A. I will have to refer to my notes.  
Q. Please do.  
25 THE COURT: You're talking now about P-91?  
MR. FURLOTTE: P-91.  
A. I received a description by a Mr. Sean Branch on the  
11th of October, 1989.  
Q. And how many composite drawings would you have done  
30 for Mr. Sean Branch?  
A. With Mr. Branch?  
Q. With Mr. Branch.



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- 1 A. Two.
- Q. And did you do any other composite drawings of the alleged same individual from other witnesses?
- A. I also have a description given by Mr. Russell
- 5 himself.
- Q. Mr. Russell himself?
- A. Yes.
- Q. And how many composite drawings did you do by Mr. Russell himself?
- 10 A. Only one.
- Q. Only one?
- A. Only one.
- Q. And were there any other composite drawings you did besides for Sean Branch and Mr. Russell, description
- 15 from Sean Branch and from Mr. Russell, any other witnesses?
- A. About the incident -
- Q. About the incident at the Russells?
- A. No, only two - I met with a third witnesses but the
- 20 witness was not good enough to provide me with a composite drawing.
- Q. And the other composite drawings that you've done, are they similar to P-91 and P-92, the ones from Mr. Russell?
- 25 A. You're asking me my opinion?
- Q. Yes.
- A. You mean the other sketches that I have done in connection with the Russell -
- Q. Yes, the Russell incident.
- 30 A. There is a resemblance with the -
- Q. Close resemblance?
- A. I would think so, yes.

1 Q. With both these two?

A. Yes.

MR. FURLOTTE: My Lord, I wonder if the Crown would object  
to the other composite drawing done by Constable  
5 Fournier being put in as an exhibit?

THE COURT: Well, they should if they don't, but let's see  
what they do.

MR. SLEETH: Oh, we'd certainly object to that, My Lord.  
We're wandering very far afield. I think we've been  
10 reasonable enough with Mr. Furlotte to date but now  
he wants to take us off into a strange unembarked  
course to great distance.

THE COURT: I don't know where we're going, whether it's to  
try to show that the same suspect may have been  
15 involved in this other thing?

MR. FURLOTTE: My Lord, I'd like to show the relevancy -

MR. SLEETH: My Lord, before we go further, perhaps the  
jury should be excluded. I hate doing this but Mr.  
Furlotte keeps creating the situation.

20 THE COURT: I think I will ask the jury if you wouldn't  
mind going out, please, for a few minutes and we'll -

(JURY WITHDRAWS.)

THE COURT: Mr. Furlotte, where are you trying to go here,  
25 anyway?

MR. FURLOTTE: My Lord, I believe we can tie this in as a  
collateral issue in the fact that the composite  
drawings describing the attacker of Mr. and Mrs.  
Russell are a collateral issue because they go to give  
30 a possible face to the person who assaulted the  
Russells. As already into evidence in this court,  
hair found at the Russell scene, in the Russell  
residence in the hat which was left behind by this

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1 so-called individual, there were hairs found in the  
hat which were similar to Mr. Legere's, that's already  
into evidence, through Gary Verrett, hair and fibre  
expert. There's evidence -

5 THE COURT: Well, Mr. Walsh has said he is going to - if you  
bring that out he's going to have an officer or  
someone bring out that this accused is a suspect in  
the Russell case, and I may say that this is a voir  
dire and nothing we say here should be reported in any  
10 way - that he will bring out that - and would be  
obliged to bring out that he's a suspect.

MR. FURLOTTE: I have no problem with that.

THE COURT: Would I not be in a position, too, that I  
would have to point out to the jury that in a murder  
15 case where murder, either first or second degree, is  
charged, no other charge can be coupled with it, and  
are you really doing anything more than proving that -  
or suggesting, really, by all this that Mr. Legere is  
a suspect, perhaps a prime suspect, from the identifi-  
20 cations in the Russell case, even though that's not  
before this Court but -

MR. FURLOTTE: My Lord, I was - no, I know it's not before  
this Court.

THE COURT: Well, isn't that what you're really doing, isn't  
25 that where you're ending up here?

MR. FURLOTTE: No, My Lord, I was the solicitor representing  
Allard Vienneau who was charged with the Russell  
incident, O.K.?

THE COURT: I don't care about that.

30 MR. FURLOTTE: I've been led to believe that I have been  
given complete disclosure in the Russell incident.  
Now, I know of no other evidence to tie Mr. Legere

1 with the Russell incident other than that the hair  
similarities. The hair found in the Russells are  
similar to Mr. Legere's. However, is that sufficient  
to give the police warrants at the first of the trial  
5 to suspect Mr. Legere, because there's hair found  
similar at the scene? I have no problem with that.  
There's hair found similar at the scene in the Smith  
case and DNA has proved that it's not Mr. Legere's  
hair.

10 THE COURT: Yes, but you say the DNA isn't admissible so  
aren't you between a rock and a hard place on that?  
How are you going to rely on DNA and at the same time  
not rely on DNA?

MR. FURLOTTE: There are portions of the DNA evidence that  
15 I am not going to be argue is admissible, and that is  
an exclusion. An exclusion is - there's nobody, not  
even any defence witnesses, will argue about an  
exclusion.

THE COURT: You're going to say for hair it's all right but  
20 for semen it's not all right, is that -

MR. FURLOTTE: No, it's not for hair or for semen it's all  
right. When you have an exclusion in DNA evidence,  
when you have an exclusion in just the hair and fibre  
analysis, when you have an exclusion in blood analysis,  
25 that's absolute, that's with certainty that they can  
be excluded, but when it's questionable as to whether  
or not you can positively identify somebody through  
hair and fibre or through blood or through DNA -

THE COURT: Yes. Well, anyway, we're getting too far  
30 afield there for the purpose of this argument.

MR. FURLOTTE: Yes, O.K., but the basic issue is the Crown's  
case is purely circumstantial. We are going to be

1           arguing as part of our defence that somebody other  
          than Mr. Legere killed Father Smith. That somebody  
          other was likely the person who left his hair sample  
          behind which was proven - on Father Smith's leg, which  
5           was proven not to be Mr. Legere's. That other person  
          is somebody who left a blood sample behind on the door  
          frame which we will be arguing that the evidence is  
          sufficient to support the fact that it is not Mr.  
          Legere's blood, and here by the collateral issue this  
10           person who has hair similar to Allan Legere is running  
          around beating up old people in their homes and this is  
          the likely person who killed Father Smith and not  
          Allan Legere. I believe there is a causal connection,  
          there is a logical connection, relevant connection,  
15           and it's a collateral issue, and if it's collateral I  
          can cross-examine on those issues, I can raise it in  
          direct examination, and the only reason why this Crown  
          should deny me any cross-examination of such collateral  
          issues is that it is not relevant. I can't think of  
20           anybody who would say that this is not relevant. To  
          deny me this cross-examination would be denying me full  
          answer and defence. I do not just have the right to  
          provide full answer and defence in direct examination,  
          I have the right to provide full answer and defence in  
25           cross-examination, and any time I can weaken the  
          Crown's evidence that it's proper to do so. I don't  
          think I have to cite any case law on that issue, it's  
          common knowledge.

30       THE COURT: Fine. Mr. Sleeth?

MR. SLEETH: I'd only say briefly, My Lord, the Crown is  
          not in any way interfering with the right to full  
          answer and defence. It's trite law that my learned

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1 friend has the right to do so in cross-examination.  
It is equally clear, My Lord, that there is an  
abundance of jurisprudence that establishes very well  
that the arrival, for instance, of the Charter has not  
5 altered our common law principles with respect to the  
procedure and conduct of a trial.

One of the key issues on conduct on the  
presentation of any trial is to avoid a multiplicity  
of issues. That means it becomes important that the  
10 trial be conducted in a fashion which focusses on the  
issue which is before the triers of fact, which is the  
guilt or innocence of the accused on these four charges,  
which are the only ones before the Court. There is no  
charge before this Court with relation to Doran Russell.  
15 There is no trying of anybody with relation to Doran  
Russell. It is a wholly separate and totally different  
incident. It does not involve - it is not something  
which should be probed and left to lead the jurors in  
a situation where they might feel that there is some  
20 issue in dispute probed here where in fact it is  
violating those principles that have always guided us  
in terms of avoiding multiplicity of issues before the  
Courts. My learned friend asserts a number of things  
as if they were facts, he gives things as if it were  
25 evidence, when in actual fact there is nothing more  
than a slight indicator possibly of some hair standard  
in some other place which would be a wholly unrelated  
issue that might have a standard that might be similar,  
possibly, to that of Mr. Legere. There is no indicator  
30 to the jury at this point what sort of relevance that  
might possibly have and I would defy my learned friend  
to say it has a clear-cut relevance to the issue before

1 this Court which is the guilt or innocence of the  
accused on the four matters before the Court, not  
matters for which there is no charge and which are  
not being tried here.

5 THE COURT: Well, my ruling is this, I'm not going to  
permit further cross-examination or any cross-examina-  
tion of this witness on the question of the suspects  
in the Russell matter. The Russell matter is not in  
issue before this Court and we're getting too far  
10 afield when we get into that, so that's my ruling.

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

THE COURT: Can we have the jury back?

(Jury called - all present.)

15 THE COURT: Do you have any more cross-examination of this  
witness, Mr. Furlotte?

MR. FURLOTTE: Constable Fournier, in your direct  
examination a week or two ago you mentioned the  
20 purpose of doing sketches is either to eliminate or  
positively identify an accused person or a suspect?

MR. SLEETH: He did not say that, My Lord, he didn't say  
positively exclude or -

MR. FURLOTTE: Maybe Mr. Sleeth's memory is better than  
25 mine.

MR. SLEETH: I have no doubt it is.

THE COURT: Well, let the witness -

MR. FURLOTTE: O.K., the sketch as an identification tool,  
would you explain again what it is?

30 A. What I said the other day, it's to help investigator  
to eliminate some suspect or to actual positive  
identification of a suspect.

1 Q. O.K., on the sketches you prepared, as you stated,  
in the Russell case, is there anything -

THE COURT: I don't want to hear any more mention of the  
Russell case, period. I don't want to hear the name  
5 mentioned again. If you want to ask the question  
based on the Legere case, this case, fine, Mr.  
Furlotte.

MR. LEGERE: Can I hire you for a lawyer, Your Honour?

THE COURT: I think the time has come for me to make an  
10 order under Section 650 of the Criminal Code.

MR. LEGERE: You're telling him what to do. Christ, you  
can't - nobody else is excluded, you don't want to  
know if anybody else would be guilty.

THE COURT: Would you take the accused, please, to the -  
15 I'm going to order him expelled from the court room  
for the present. Would you take him to the cell,  
please, and rig up the video camera here, Sheriff,  
and the accused can watch from there.

MR. LEGERE: I don't want no video camera, you can bring  
20 it home with you, you watch it home. You're just a  
prejudiced old fart anyway, should be off the bench  
ten years ago.

THE COURT: We'll recess for just a few minutes here. It's  
25 going to take a minute, perhaps, to get the  
television camera rigged up and so on so we'll  
recess for five minutes and then we'll resume  
briefly.

(BRIEF RECESS)

30



1 (COURT RESUMES.)

(Jury called - all present. Accused in holding cell.)

THE COURT: I want to say just a few words to the jury here  
at this point. I'm sorry firstly to be keeping you  
5 a little beyond the 4:30 deadline this afternoon but  
we have had some difficulties, as you know, and we  
have a little evidence we want to hear yet this  
afternoon, very little. We'll get you away as soon  
as possible. Now, you've seen me make an order  
10 expelling Mr. Legere, the accused, from the court  
room for the time being. Section 650 of the Criminal  
Code provides, subject to subsection (2):

15 "An accused other than a corporation  
shall be present in court during the  
whole of his trial",

and then subsection (2) says:

"The Court may (a) cause the accused to  
be removed and to be kept out of court  
where he misconducts himself by  
interrupting the proceedings so that to  
continue the proceedings in his presence  
would not be feasible",

20 and then there are certain other provisions which I  
needn't read which pertain to permitting an accused  
to be absent in certain circumstances and so on,  
which aren't applicable here, but it is my considered  
opinion that certainly for the time being it would be -  
25 to continue the proceedings in the presence of the  
accused would not be feasible, and therefore I've  
exercised my discretion in ordering him removed from  
the court room. There is a camera installed here  
30 which covers this area of the court room and which is  
shown - or the view is shown on a projector or on a  
receiver, on a television set, in the cell in which  
the accused is confined outside, and he is watching

1 that now and can see our proceedings in here on that  
camera, and that will continue until I rule otherwise

I want to say to you that you've seen some  
evidence of the accused's behaviour during the trial  
5 here. There was one chap testifying the other day  
when there were three or four exclamations, unsavory  
exclamations, made. It almost appeared that there  
was an effort being made to intimidate the witness  
on that occasion, there have been other minor things.

10 I've tried to turn a blind eye to it, as very  
possibly you've noticed along, I haven't been looking  
for trouble, I've tried to be patient in the matter.  
I want to say this, that I have very great sympathy  
for an accused person in a trial, particularly a  
15 trial - a capital offence or - non-capital offence,  
but a murder trial, in any event. An accused must in  
a trial like this suffer a great many frustrations.  
This man, as you know, is imprisoned in any event for  
a period and he therefore has to be confined, other  
20 restraints have to be utilized. He certainly doesn't  
enjoy the freedom that the rest of us enjoy, and that  
must indeed be frustrating to an accused person and  
we all have got to make certain allowances for that  
situation. I'm not making excuses for the accused  
25 for what he's done. In fact, I want to point out to  
you and I feel should point out to you that these  
aren't the first occasions when this has happened  
through the trial. I've presided in this trial over  
a six-week voir dire which involved certain aspects  
30 of this trial with which you're not really concerned,  
admissibility of evidence and so on. That took six  
weeks back from April 22nd through to June 7th of this

1 year. There have been other sittings as well. The  
second day of that initial voir dire there was an  
outburst on the part of the accused when a certain  
witness was testifying. I told the court on that  
5 occasion, and the accused of course had the opportunity  
to hear what I said, that an accused has two options  
in a trial like this, he can either obey the rules  
of the Court and submit himself to the jurisdiction  
of the Court or he can go outside and - oh, the  
10 screen's gone off. The machine isn't working so  
we'll stop here just for a moment till we get advised  
that it is on.

Well, I don't think there was too much that I  
said - I was pointing out that this isn't the first  
15 time it's happened. In the second day of the voir  
dire earlier there was an outburst on the part of the  
accused and I pointed out to the court at that time  
that an accused has two alternatives, either he obeys  
the rules of the Court and he observes the proper  
20 code of conduct within the court or the second  
option is he can elect to sit outside in that little  
cell out there and watch what we're doing in here  
through the television monitor, or alternatively,  
listen to what we're doing through a loudspeaker  
25 concealed in the ceiling up above, and it was up to  
him and I must say that - and I do say very much to  
the credit of the accused that his conduct for the  
next six weeks, as I recall, was almost exemplary, I  
think it was exemplary, there were no further  
30 difficulties that I recall, perhaps I did have to  
give some small warning on some occasion or other,  
but they were relatively minor. In this case, since

1 we've started, since you were selected as the jury,  
there have been occasions during a voir dire when  
you've been excluded when there have been what one  
might call little displays of temper tantrum put on  
5 and we've had to deal with those, and again I've  
turned a blind eye to quite a bit of it, it hasn't  
been, perhaps, too serious. There was one disgusting  
little display on Friday morning of - Thursday  
morning just past, and I must say that my patience  
10 had been tested. I had earlier pointed out and had  
warned the court again or advised the court again  
of what the accused's options were, and the accused  
can't say that he's not fully aware of my position  
and the position of the Court in the matter.

15 I don't propose to have my order for his  
exclusion continue for any great period of time if  
he's prepared to give an undertaking through his  
counsel that he will obey the rules of the court and  
behave himself in the court, and perhaps in the  
20 morning, or probably in the morning, I will be  
asking Mr. Furlotte if he can give an assurance, or  
give the accused's assurance, I'm not asking Mr.  
Furlotte to give any assurance because he can't, but  
if he can convey to me the accused's assurance in the  
25 morning that he is prepared to obey the rules of the  
court then he will be permitted in again. If he  
isn't, or if there's any recurrence of intimidation  
of witnesses or outbursts or anything else that is  
embarrassing to the conduct of the trial, then out  
30 he will go again, and of course if there are  
repetitions of that, the periods of exclusion will be  
longer and longer until finally it becomes permanent,

1 but I hope that point will never be reached.

I will be explaining to you, and I've explained  
this to the court and the accused has heard me give  
this explanation when you haven't been present before,  
5 that when I deliver the judge's charge at the close  
of the trial one of the things I will be instructing  
you on is the fact that not only are you entitled to  
take into account the evidence that you hear from  
witnesses and take into account the arguments that  
10 you hear from counsel, but you're also entitled to  
consider what you have observed of an accused person  
during the trial, physically, appearance-wise,  
height-wise, beard-wise, mustache-wise, hair-wise,  
colour-wise, all these other things, and you're  
15 entitled to observe that sort of thing, and you're  
also entitled to take into account anything an  
accused has said in court. We had an example earlier  
of one of the witnesses, a police witness from  
Chatham, testifying he didn't know something and the  
20 Crown were trying to elicit certain information out  
of him and the accused came forward and provided the  
answer, and I'm sure it wasn't to the accused's  
benefit to do that but he apparently didn't know any  
better than to do that, and he prejudices his own  
25 case by doing it. Well, that's not determinate of  
guilt or innocence necessarily, but I point that out  
as he is hearing now, he's hearing me say this again,  
not for the first time but for the second or third  
30 time.

You will also be entitled to assess whether the  
conduct he displays in court suggests that perhaps  
he isn't capable of the type of self-discipline that

1 would mean that he wouldn't be a totally law-abiding  
citizen or not. I don't want to put too much  
emphasis on that, the guilt or innocence of the  
accused is not going to be determined on his conduct  
5 in court, merely because he makes himself offensive on  
some occasion or other isn't going to tell you that  
he's guilty naturally of whatever he's charged with.  
It will get down to the evidence and your application  
of the law, but I will be telling you that these are  
10 factors that you are entitled to consider.

That's all I have to say on that matter, please  
don't attach too great importance to all this. I  
mean, it's something we take in stride. I say we  
take it in stride, I've been at this business for, I  
15 think, 27 years now, and it hasn't happened before,  
at least to this extent, in any trial I've ever been  
connected with, so it's a rather unusual thing, but  
however, it happens.

I'm going to ask Mr. Furlotte now if he has  
20 further questions to ask in cross-examination of this  
witness. He may have some questions, then there will  
be re-examination which will - none of it should take  
very long. The Crown have a very short witness they  
want to put on to enter an aerial photograph, I  
25 believe, which should take a couple of minutes, and  
I will ask your indulgence if we might do that  
tonight so that that peace officer can be got away  
and then we'll excuse you till tomorrow morning.

Now, Mr. Furlotte, you have further questions  
30 in cross-examination of this witness?

1 MR. FURLOTTE: Again, Constable Fournier, Exhibit P-92,  
it's a composite drawing you did from the description  
given by Roddy Williams, and what was the date that  
you did that composite drawing?

5 A. I received the description on the 19th of October,  
1989, from Mr. Williams.

THE COURT: Speak right up, please, so the jury can hear.

A. I received the description from Mr. Williams on the  
19th of October, 1989.

10 Q. And once you completed that composite drawing, P-92,  
what did you do then? Whose attention did you bring  
it to?

A. I returned the final sketch to an investigator, I  
don't remember - I kept the original with me and I  
15 gave photocopies of the sketch to investigators.

Q. Who?

A. To the police investigators.

Q. I'm sorry, I'm not catching the last word.

THE COURT: Police investigators.

20 Q. Investigator. Do you know his name?

A. No, I don't remember who he was.

Q. Do you recall discussing this with any other police  
officers besides the one you gave a copy to?

A. I remember that I spoke with Sergeant Poissonnier  
25 over the sketch, yes, I remember.

Q. And how soon did you discuss the sketch with Sergeant  
Poissonnier?

A. After I completed the sketch with Mr. Williams.

30 Q. So that would be in 1989?

A. Yes.

Q. Now, aside from P-92, and I believe you did P-54  
also?

- 1 A. That's correct.
- Q. Aside from doing sketches from identifications by Roddy Williams and William Skidd, did you do any other composite drawings with descriptions given to you by other witnesses?
- 5 A. In relation with -
- Q. In relation to either the Flam incident, the Daughney incident, or the Smith incident.
- A. No, those two were the only ones that I have done.
- 10 Q. So that's it, there's no more?
- A. There is no -
- Q. By yourself?
- A. No.
- Q. Do you know if any other artist did any?
- 15 A. No. There is other sketches but there were the one that I have done with the witnesses.
- Q. O.K., other sketches but with the same witnesses, you mean?
- A. Yes.
- 20 Q. There's no other witnesses that you attempted to do sketches with?
- A. No.
- MR. FURLOTTE: I have no further questions.

25

REDIRECT EXAMINATION BY MR. SLEETH:

- Q. Just very quickly two quick questions, the police officer that you initially turned over P-92 to, the bearded man, would that have been Corporal Lockhart?
- A. It's possible.
- 30 Q. Also on P-92 in the lower righthand corner there's a figure there, 80%. That would indicate what?



1 A. After I finish a sketch with a witness, at the end  
always ask that witness to give me a percentage of the  
resemblance with that picture and the picture that  
they have in their mind of the suspects, and that day  
5 Mr. Williams gave me 80% resemblance with the picture  
he had in his mind.

Q. So you and Williams are in agreement, it's not an  
exact likeness of whoever -

A. No, it's not.

10 MR. SLEETH: Thank you. No further questions on redirect.

THE COURT: Thank you very much, Constable Fournier, that's  
all for you.

MR. SLEETH: I'd ask the witness be excused, My Lord, he is  
done with us.

15 THE COURT: Yes.

20

25

30

1

MR. SLEETH: I would now ask to recall Cpl. Lockhart - excuse me, Denis Robitaille. He appeared earlier I believe My Lord as number 154. He was cross examined on his aspects at that time. I have three  
5 aerial photographs; I don't believe there is any problem with these going into evidence at this time?

MR. FURLOTTE: No.

MR. SLEETH: I would ask that they be marked as exhibits My  
10 Lord.

THE COURT: The three photographs would be Exhibits 93A, B, and C. Do you want separate numbers on them?

MR. SLEETH: They have numbers actually on them My Lord, S.12, S.13 and---

15 THE COURT: P-93-12, 13 and 14 then.

(Photographs marked P-93-12, 13 and 14 as Exhibits)

CPL. DENIS ROBITAILLE - recalled

DIRECT EXAMINATION BY MR. SLEETH

Q. I am now presenting to you Exhibit P-93-12 Cpl.  
20 Robitaille. Would you please relate to the jurors, holding it up possibly, the area that is shown in that photograph and when the photograph was taken?

A. This photograph was taken on August 16, 1990. Going  
25 across the river - it's the Matapedia river going through the photograph from top to bottom. The highway on the right hand side of the photograph is highway 132 in Quebec and this is a railroad line which travels in a more or less east to west direction crossing the river at the railway bridge.

30 Q. Using this marker, indicate north on that please.

A. North would be somewhat pointing to the top right corner of the photograph.

Q. Toward number 13?

A. S-12.

35 Q. I am now placing before you S-13.

Cpl. Denis Robitaille - direct

- A. S-13 was taken the same day, August 16th, 1990. It's a closer view of the railway bridge crossing the Matapedia river in Quebec and going from right to left through the middle of the photograph is highway 132 in Quebec. Again the north would be approximately towards the top of the photograph.
- Q. Could you again make an arrow pointing north please? Now Cpl., S-14?
- A. S-14 was also taken on August 16, 1990. It's a close-up photograph of the east end of the railway bridge depicted in photograph S-12 and S-13. The highway would be somewhere over here and north being again towards the top right hand corner of the photograph.
- Q. Could you again please indicate with an arrow? These photographs were taken by you around what time of the day please?
- A. They were taken in the afternoon, approximately two thirty to three p.m.
- Q. And who was with you at the time those photographs were taken?
- A. There was the pilot of the aircraft and Cst. Larry Emery and Cyril (inaudible).
- MR. SLEETH: Thank you very much Cpl.
- MR. FURLOTTE: I have no questions.
- THE COURT: Thank you very much Cpl. Robitaille
- MR. SLEETH: I would ask that this witness be excused My Lord.
- THE COURT: Yes. Well that is the last witness for today and we'll adjourn now until 9.30 in the morning.

9.30 a.m. October 1, 1991.

THE CLERK: The twelve jurors are present My Lord. Mr. Legere is located in the prisoner's cell. The monitor is running and he is observing from there.

3

Cpl. R. Godin - direct

THE COURT: Thank you. Now I think we will go along with the next witness and I have under consideration when I should make any - some revision of the order I made yesterday for the exclusion of the prisoner from the - or the accused rather, from the courtroom but I don't think it is timely yet for me to make any such order and I will perhaps something further to say about that later in the morning. Will you call you call your next witness?

10

MR. ALLMAN: Cpl. Ron Godin.

Q. Just to refresh the jury's memory, you are Cpl. Ron Godin. You have given evidence on more occasions that I care to recall, in this case?

15

A. That's correct.

Q. In a capacity as an identification officer?

A. That's right.

Q. And in regard to the matter you are now being called about I understand you have a number of items that you wish to present to the Court?

20

A. I have.

Q. Could you hand them to me one at a time and I'll get them marked for identification?

THE COURT: 4B this will be.

25 (Plastic bag and contents marked Exhibit 4B for identification)

MR. ALLMAN:

Q. I show you now an item that has been marked 4B for identification. Can you tell me anything about that, including reference to any markings on it?

30

A. Yes, this particular item is a plastic exhibit bag containing a credit card, an American Express credit card. This particular item was given to me at Bathurst, New Brunswick at our section - our office - by Cst. Ron Charlebois who is a member of the R.C.M.P. at the General

Cpl. R. Godin - direct

Investigation Section in Moncton. This particular item was given to me for fingerprint examination on the 30th day of August 1990. It was examined for fingerprints with negative results. The card itself is an American Express credit card in the name of of Rev. James V. Smith and has an expiry date January 1989.

5

Q. I show you now a plastic envelope which contains a number of objects and it has been marked 4C. What can you tell me about that please?

10

A. Again, 4C is a plastic exhibit bag containing two cards and one plastic folder. These items were turned over to me by again Cst. Ron Charlebois on the 30th day of August 1990 for fingerprint examination. Examination was conducted, again with negative results. The two cards, one of them is an N.B. Tel calling card in the name of Rev. James V. Smith and the card number is 50662227364801 and the second card is a CIBC Visa credit card in the name of James V. Smith, expiry date January 88 - excuse me, the tenth - it must be the tenth month, 1990. These exhibits along with the other---

15

20

Q. There's a third item in there I think besides the two cards. What is that?

A. That's a plastic folder.

25

THE COURT: I'm sorry, I didn't get the date on the Visa card.

A. It looks like October 90 is the expiry date My Lord.

Q. And the third item?

A. The third item is a plastic folder.

Q. Suitable for holding what inside it?

30

A. It would suitable for holding these cards - the same size.

Q. And you indicated you received those from Cst. Charlebois?

5

Cpl. Godin - direct

A. Yes, I have received these on the 30th day of August 1990 and they have been in my possession in my personal locker ever since.

5 Q. I'm not sure if I asked you, I think I did, but just to make quite sure, with regard to the American Express card that is 4B. You received that from Cst. Charlebois. Where has that been since?

A. In my personal locker since the 30th of August 1990.

10 MR. ALLMAN: Thank you.

THE COURT: Cross examination?

MR. FURLOTTE: I have nothing.

THE COURT: Thank you very much----

MR. ALLMAN: It says on the witness list, recall. It doesn't  
15 say stand aside but in fact it is to stand aside because you will see he is on again.

THE COURT: Okay. So you shouldn't discuss this aspect of your testimony with anyone until all your testimony is complete. Now, you have another witness?

20 MR. WALSH: Yes My Lord. We recall Cst. Ron Charlebois.

DIRECT EXAMINATION BY MR. WALSH

Q. You are Cst. Ron Charlebois; you testified previously in this particular trial?

A. That's correct.

25 Q. Cst. Charlebois I'm going to show you - first of all I'm going to show you a couple of items. They have been marked 4B and 4C on this particular trial. Will you look at them and tell the jury please if you can identify them?

30 A. Yes, 4B is the American Express credit card. It's in the name of Rev. James V. Smith. I would have received those cards on the 8th of August 1990 from Cst. Larry Emery in Campbellton.

Q. He is a member of the R.C.M.P.

6

Cst. R. Charlebois

A. That is correct. He is stationed at Campbellton detachment.

Q. Okay, and the other item there, 4C?

5 A. Item 4C contains two cards. One is an N.B. Tel calling card, there again in the name of Rev. James V. Smith, and it also contains a Visa credit card also in the name of James V. Smith and it also contains a clear plastic billfold. I would have received those items from Cst.  
10 Emery on the 8th of August 1990 at approximately nine o'clock at Campbellton detachment.

Q. What if anything did you do with those cards after you received them?

A. After I received those cards I turned them over to Cpl.  
15 Ron Godin on the 30th of August at the Bathurst Ident Section in Bathurst, New Brunswick.

Q. That's the previous witness?

A. Yes that's correct.

Q. Did you have possession of those cards after that?

20 A. I have not.

Q. Would you explain to the jury under what circumstances you came into possession of those cards from Cst. Emery, without getting into the details of any conversations you had obviously?

25 A. Yes, on the 7th of August 1990 I received a call at our office in Moncton from a Rev. Jerry White who was Father Smith's replacement. Subsequent to that telephone conversation I spoke to a Richard Walker who I was advised was a bridge inspector with the C.N. Further to  
30 those conversations I got in touch with Cst. Emery of Campbellton detachment and requested that he meet with Richard Walker and Serge Delarosbil, two C.N. bridge inspectors, at the C.N. office in Campbellton and it was subsequent to those conversations and additional

7

conversations that I had with Cst. Emery that I travelled up to Campbellton the next day where I met with Cst. Emery.

Q. Did you have occasion, apart from going to Campbellton in relation to this line of inquiry, - did you have occasion to attend any other place?

A. Yes, the morning of the 8th I departed Moncton early and travelled - I was accompanied by Sgt. Poissonnier - we travelled to Campbellton where we met with Cst. Emery of the detachment. As I mentioned, at approximately nine o'clock he turned over the cards to me. After that we departed the detachment and we followed Cst. Emery to a section along the train tracks. That section along the train tracks would have been approximately 25 miles west of Campbellton on the Quebec side. We parked our vehicle along the side of the train tracks.

Q. Along the side of the train tracks?

A. That's correct. We turned left off highway 132 and we parked our vehicle along the roadside, in between the roadside and the train tracks. We walked down a little hill a few hundred feet and that brought us to the train tracks. Then we walked from that point to a bridge which was identified as the Mill Stream bridge to me.

Q. How long did it take you to walk - from the time you reached the train tracks how long did it take you to---

A. It took us approximately ten minutes to walk to that point, to the bridge itself.

Q. And what was your purpose of being there?

A. The purpose of us being there was to - for Cst. Emery to point out to us the area in which Serge Delarosbil and Richard Walker had informed him that they had found these cards.

MR. WALSH: Perhaps it would be appropriate now My Lord - we have a number of the photographs - the three



8

Cst. R. Charlebois - direct

photographs that were marked yesterday, P-93, 12 to 14 inclusive - perhaps with your permission we could distribute them to the jury at this time?

5 THE COURT: All right.

MR. WALSH:

Q. I am going to show you P-93-12. Would you look at that photograph please and explain to the jury what if any relevance that has to what you have just testified to?

10 A. Okay, this highway here to your right would be highway 132. If you cross the bridge in Campbellton you join up - after a couple of miles you join up with highway 132 and as I mentioned we travelled 25 miles - approximately 25 miles along that highway until it brought us to this  
15 area. Now if you look at the bottom right corner you will see a little dirt road that veers off the highway on your left-hand side. Now that's where we exited the highway and we parked our vehicle. There's a little opening there just a few hundred feet from the tracks.  
20 We parked our vehicle there and we walked down to the tracks and along the tracks for approximately ten minutes and this brought us to a bridge which as you can see was only accessible by foot. So this is the bridge - I'm led to believe this is the bridge where the bridge inspectors  
25 found the cards in question. It would be at the bottom side of the bridge there.

Q. You didn't cross over the bridge?

A. No we didn't.

Q. I show you S-13.

30 A. This would be another angle aerial shot of the same bridge. It would be from the south side of the river. This river by the way is called the Matapedia river and the bridge I'm led to believe is called the Mill Stream. I may be wrong on that but that is what I was advised.  
35 The cards in question, as I mentioned were found on this

Cst. Charlebois - direct

side of the bridge.

THE COURT: Yes, that's hearsay isn't it? You don't know that from your own knowledge?

5 A. No.

MR. WALSH: I didn't think the matter - I knew it was hearsay My Lord and I didn't think the matter was a contentious issue. That's why I didn't---

THE COURT: Well, you've got other witnesses?

10 MR. WALSH: Yes My Lord.

THE WITNESS:

We were brought to this area of the bridge by Cst. Emery.

Q. And the final photograph is S-14.

A. This would be an aerial shot above the area where Cst. Emery brought us on the 8th of August 1980 (sic) - this area right here.

Q. You are referring to the approach to the bridge?

A. The approach to the bridge - actually it was the abutment where we were concentrating on.

20 Q. There appears to be a sign there in that photograph. Is that correct?

A. That's correct.

Q. Is that sign shown in photograph S-12?

A. Yes, on S-12 you can just barely see the white dot

25 Q. Just before the bridge?

A. Yes.

Q. Did you have occasion to do any - while you were in that particular area did you have occasion to do any searching yourself?

30 A. Yes, we conducted a cursory search of that area but we did not find anything else.

Q. You say cursory search, did you arrange to have a more extensive search conducted?

10

Cst. Charlebois - direct

A. Yes. I had requested that after Cst. Emery had identified the area where the cards were found that he organize a thorough search of the area with other  
5 R.C.M.P. members and I think he brought the dog with him.

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

THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. In photo marked No.12 can you see where you parked your  
10 car?

A. Yes I can. It's right there.

Q. And then you walked up to the bridge?

A. That's correct.

Q. I understand this would have been August of 1990?

15 A. That's correct.

Q. And from November of 89 it would have went through the winter and on into next summer?

A. That's correct.

MR. FURLOTTE: I have no further questions.

20 THE COURT: Re-examination?

MR. WALSH: No My Lord, thank you.

THE COURT: Thank you Cst. Charlebois. This witness is being---

MR. WALSH: Stood aside My Lord.

25 THE COURT: Right.

MR. SLEETH: My Lord the next witness scheduled is Cst. Emery. Cst. Emery, due to misfortune in the family is not available. I understand it has been explained to Mr. Furlotte. He will be required only for  
30 purposes of continuity. I understood there was no problem with him not being called at this time.

THE COURT: Well you are waiving---

MR. FURLOTTE: For the time being I don't think I'll request him at all. I'll do some further research into my

11

briefs and see whether or not I will need him at a later date.

THE COURT: Well what are you agreeing on insofar as his direct examination? He got something from somebody and passed it over to---

5

MR. SLEETH: That's correct My Lord. He kept possession of the various items, BBBB and CCCC for continuity only.

THE COURT: But he received them from someone and gave them to Cst. Godin?

10 MR. SLEETH: Yes My Lord - Richard Walker.

THE COURT: Cst. Charlebois - Cst. Godin?

MR. SLEETH: He received them from Richard Walker and Delarosbil, two witnesses who will be following My Lord.

15 THE COURT: Well are you agreeing on that aspect of it at this point in time - is it agreed that he got these from Mr. Walker and gave them to Cst. - turned them over to Godin?

MR. FURLOTTE: Yes I can agree on that. I don't think I will need him for any cross examination but I want to reserve the right in case there's something else set out.

20

THE COURT: But he would be available at some later time. This is a temporary difficulty is it?

MR. SLEETH: I understand so, yes My Lord.

25 THE COURT: And he would be available---

MR. SLEETH: Some time later, yes. We'll check ourselves to see just how soon.

THE COURT: Now you have another witness?

MR. SLEETH: Yes My Lord. I would like to call Mr. Richard Walker. I am just reversing the order slightly. He will be followed by S. Delarosbil.

30

RICHARD WALKER having been called as a witness testified as follows:

35

DIRECT EXAMINATION BY MR. SLEETH

Q. Mr. Walker would you please state your full name and your occupation for the Court?

12

Richard Walker - direct

A. Richard Brian Walker, a bridge inspector for CN Rail.

Q. How long have you been engaged in that type of work sir?

A. I have worked for CN for the last sixteen years and the  
5 last three years as an inspector.

Q. And what are your duties as a bridge inspector sir?

A. My duties is to check all aspects of the bridge, take  
measurements, sizings, check the conditions, and things  
like this.

10 Q. For safety purposes?

A. That's right.

Q. And which region do you operate in?

A. The region from Moncton to Mont Joli and all sidelines,  
all spurs.

15 Q. Were you so working in 1989 - 1990?

A. That's right.

Q. I am going to show you a photograph which is P-93, S-12  
in the upper right-hand corner. I am going to ask if you  
recognize the place that's shown in that photograph.

20 A. That's right. That's the bridge at mileage 23.9 on the  
Mont Joli sub between Campbellton and Mont Joli.

Q. Do you know the name of that bridge?

A. Millstream Bridge.

Q. And that's in what province it is located?

25 A. Quebec.

THE COURT: That mileage, what did you say? I'm sorry.

A. 23.9 is the exact mileage.

MR. SLEETH:

Q. By 23.9, it's 23.9 miles from where?

30 A. From Campbellton. This is track mileage eh, not highway.

Q. How many routes are there - how many train tracks are  
there from northern New Brunswick to Montreal?

A. There's only the one.

Q. That one?

35 A. That one there.

13

Richard Walker - direct

Q. I show you P-93 photograph number 13 -S-13. Do you recognize that is shown there?

A. This is the Millstream Bridge again from the south side  
5 looking north.

Q. How many spans is that bridge?

A. Four.

Q. And you would be examining that bridge for again what purpose?

10 A. For maintenance and safety checks and things like this.

Q. I am going to show you P-93-14.

A. This is the east end of the Millstream Bridge, 23.9.

Q. And are there particular things related to that end of that particular bridge that you wish to relate to these  
15 jurors today?

A. It was in the approach - before you get onto the bridge itself that is what we call the approach - the first part of the bridge is your first (inaudible). It was underneath this section that we found two credit cards  
20 and a plastic folder.

Q. Okay now could you just back up for a moment please - what was the date and who are 'we' you are talking about?

A. Okay, August 7, /90; myself and my partner who is Delarosbil.

25 Q. Okay, if you would just hold the photograph if you would please, because you were looking at certain things. What area are you talking about where you were examining?

A. Just this area right here.

Q. Okay. You are again holding up P-93 photo S-14, and was  
30 it on the top there, on the track level or underneath that you were examining?

A. No, my partner was underneath; I was on top. I was taking notes, he was giving me measurements and so forth and he told me - he said "I found a credit card". So I  
35 reached down and took it from him, looked at it and

14

Richard Walker - direct

when I looked down at him again I seen another one behind him on the ground.

Q. When you saw that other one did you say anything about that?

5

A. I said "there's another one behind you" and he turned around---

Q. Okay just what he did, not what he said.

A. He turned around and he picked it up, looked at it and passed it to me.

10

Q. Was there anything else then passed to you or handed to you at that time?

A. Shortly after that was the plastic folder, the kind that was used for credit cards.

15

Q. I am now placing in your hands a plastic bag with contents identified moments ago by Cpl. Godin. It is 4C.

A. There's the NB Tel calling card in the name of Rev. James V. Smith and a Visa card, James V. Smith, and a plastic folder. I would say they are the ones that I - that we found that day.

20

Q. And once you had found those cards what did you do?

A. Well when we returned to our office around lunch time - before lunch time I tried calling the number on the calling card. There was no answer so I tried I believe it was around one thirty in the afternoon and got an answer from a priest in the - apparently it was Chatham or Newcastle.

25

Q. You spoke to a person?

A. Yes.

30

Q. What do you understand that person's name to be, not relating conversation? Can you remember?

A. I can't recall.

Q. As a result however of speaking with that person other things then took place?

35

A. Well he informed me---

15

Richard Walker - direct

Q. After you spoke with him.

A. ---after I spoke with him he informed me that certain members of the R.C.M.P. were looking for this evidence or these cards and that I would be contacted shortly; to wait in the office in Campbellton and I would be contacted.

Q. Okay, and were you?

A. I was contacted, yes.

10 Q. By whom, do you recall?

A. I believe it was Cst. Charlebois from Moncton and then Cst. Emery from Campbellton.

Q. Okay, and once - you said Cst. Emery, you have just finished identifying in 4C a series of two credit cards and a holder that was in that plastic bag. What did you do with them once you met with Cst. Emery?

15 A. I turned them over to him.

Q. Now I would like you if you would please to just take a moment and lift up again the first of this series of photographs, P-93, the one marked S-12 on the upper right-hand side. Now this particular location is how many miles again from Campbellton? You said it earlier.

20 A. The exact bridge mileage is 23.9.

Q. And as you look at that photograph I notice there is what appears to be a road or a highway on the - on what I would call the right side of the photograph?

25 A. That's right. That's the main highway between Campbellton and Mont Joli, Quebec. It's highway 132.

Q. And there is a location, what appears to be a small road in the lower right-hand corner.

30 A. That's right.

Q. Could you possibly turn the photograph you are holding so the jurors can see it as well?

A. Yes, it's down here. It goes down to a small parking lot. It is used apparently by fishermen. There's a

35



Richard Walker - direct

lodge here. There's a fishing lodge here and it's used by the fishermen to park their vehicles.

5 Q. Okay. In order for you to get to that bridge that is shown in S-12 what would be the two methods that you would reach that bridge by?

A. Two methods, either walk or by train.

Q. Now if you are going walking, where would you have to enter?

10 A. Well you down to this - park you car down here at this place and walk down to the track and then up to the bridge along the track.

Q. The area that is closest to the bridge itself, how steep are the slope that is shown there?

15 A. Oh it's - how steep - are you talking about it being feet-wise?

Q. Steep - how sloped?

A. It's fairly steep. Too steep for us to climb.

20 Q. And you yourselves arrived at that location by train I take it or - you yourselves arrived by way of the track?

A. That's right yeah. We always have, yeah.

Q. The location where---

THE COURT: Just before you go on, would you indicate to me where the fishing lodge is?

25 A. You can see what appears to be something green. Either that's the lodge or it's boats. I'm not sure, but the lodge is there somewhere.

THE COURT: Oh yes, I see it.

A. It's only a small cottage actually.

30 MR. SLEETH:

Q. Could you please, using this pencil, make a small X at the location where you believe this lodge or cottage might be, on P-93 S-12?

A. Right there.

17

Richard Walker - direct

- Q. Now you have in front of you P-93, S-14. It's the one directly in front of you Mr. Walker. That's the photograph of the bridge itself. Holding up that again
- 5 can you indicate on this the - where underneath that bridge these cards would have been found?
- A. If you are looking towards - this is the east end, you are looking west, it would be on the right-hand side of the track directly below the ties right here.
- 10 Q. The section underneath that - is there an abutment underneath?
- A. There's a stone and cement abutment.
- Q. Is it a particular peculiar shape in that location?
- A. It's a - yes, because the bridge itself is made up of
- 15 four steel girders and sets on what we call bearing plates which are approximately two feet high and so you have from the girders down to the stone or cement you have a two feet area in which my partner was working at the time. He was working underneath there when he came
- 20 across the cards.
- Q. And you also saw the location where they were found?
- A. Oh yes, definitely.
- Q. Would you just make a circle please showing the general area on S-14 of P-93 where these cards were found?
- 25 A. Right.
- Q. Okay, you made a circle with that red or orange marker?
- A. Uh huh.
- Q. You yourself would have travelled by train I would imagine a fair number of times?
- 30 A. A number of times, yes.
- Q. In order to dispose of cards from a mobile train---
- MR. FURLOTTE: Objection. That calls for speculation and there's no evidence that the cards were disposed of from a moving train.

Richard Walker - direct

- THE COURT: Well I suppose what you are getting at Mr. Sleeth is 'could the cards have arrived in that position if thrown from a moving train', is that what you are after?
- 5
- MR. SLEETH: Yes My Lord.
- MR. FURLOTTE: It's a very leading question My Lord.
- MR. SLEETH: My Lord I will accede to my learned friend's objection to that question as stated and I will state another question.
- 10
- Q. Yourself Mr. Walker, if you were to throw objects from a train how would you---
- MR. FURLOTTE: My Lord that is still a very leading question.
- THE COURT: Well----
- 15
- MR. SLEETH: This may be a leading question My Lord but it is not inappropriate. It's a leading question---
- THE COURT: Well go ahead and ask it Mr. Sleeth.
- MR. SLEETH: It leads the witness to give the answer.
- Q. How would you go about it?
- 20
- A. There's really only two ways.
- Q. They are?
- A. It's out the doorway because the windows do not open on a train, on a passenger train, or through a toilet.
- Q. Okay, now you said earlier that these cards were located underneath the main level of the tracks on an abutment?
- 25
- A. That's right.
- Q. You have checked these tracks and these bridges for a period of how many years?
- A. Well I've been working for the CN over fifteen years now.
- 30
- Q. When objects would fall on the track level how could they get down to the abutment level if they were left - if they fell there say during the winter or fall?
- A. How would they arrive down there?
- Q. Yes?
- 35
- A. There would be a number of ways.

19

Richard Walker - direct

MR. FURLOTTE: My Lord is this witness to be declared some kind of  
an expert to give opinioned evidence?

THE COURT: Oh well that's physical observation. I don't think  
5 that there's expertise----

THE WITNESS: Would you repeat the question?

MR. SLEETH:

Q. Okay, from your - based on your experience that you  
related earlier when working for the train company, how  
10 would an object which might have fallen say on to the  
track level wind up on the abutment level if they were  
dropped say in the fall or winter?

A. Could be a number of ways I would imagine. Probably the  
wind, snow removal equipment might move them to that  
15 level.

Q. Snow removal equipment. What type of snow removal  
equipment did you - would be employed in this area?

A. Ploughs.

Q. And if removed by the snow removal equipment what would  
20 happen to the object that had fallen once it landed on  
the abutment?

A. I would say it would be buried, temporarily anyway.

Q. Is there sand and gravel used as well?

A. There's gravel in that area, yeah.

25 MR. SLEETH: Thank you very much.

THE COURT: Cross examination?

CROSS EXAMINATION BY MR. FURLOTTE

Q. Mr. Walker you say you travelled by train many times in  
that area?

30 A. In that area and other areas.

Q. And how about by car?

A. By car often too.

Q. To the bridge where the cards were found, how close would  
it be before we get to, say the first crossing either

20

Richard Walker - cross

where the road crosses the track or a bridge cross over the track?

A. How close?

5 Q. Yes?

A. About ten miles east of there I would say.

Q. Ten miles east of there. That brings you almost into Matapedia?

A. That's right, yeah. I believe that would be the first---

10 Q. For quite a ways from Matapedia up to say Routhierville, the road follows the track?

A. Follows the track, yes.

Q. And it would be no problem say if something was thrown out of a car then the wind could blow it over in the track area?

15

A. You're talking about quite a ways here, trees, large trees---

Q. No, no. This is where the bridge is you are talking about trees?

20 A. Yeah, correct.

Q. But down closer to Matapedia from here going east, if you look at number 12 here, you are going more to the west - northwest, but when you go in this direction towards Matapedia the road and track follow pretty close together and there's no trees?

25

A. Oh no, it's much similar. The area is pretty well all the same as you see in the photo, all the way down.

Q. It is?

A. Fairly well.

30 Q. The track follows between the river and the road all the way to Matapedia?

A. Yes. This is where it changes. Then your river comes in between the track and the road.

Q. The new road crosses the river where?

Richard Walker - cross

A. Oh, quite a ways up above there. I'm not sure of the mileage.

5 Q. There's not trees in between the track and the road all the way to Matapedia though is there?

A. Yes I would say there is. All the way.

Q. All the way?

A. You're talking about ten miles, yes.

10 Q. Aside from throwing the objects from the train out through the door or flushing them out the toilet or aside from these objects landing on the track directly from the train, you mentioned something about also how they could get off the track down onto the embankment by wind?

A. Wind or like I said, snow removal.

15 Q. Snow removal, okay. I notice at the top of the picture, one area at least, the train - or the road is pretty close to the river?

A. Yes.

20 Q. And the winds in that area are prevailing westerly winds, blowing right down the river?

A. I can't say, I don't know. I'm not from that area.

Q. You're not from that area?

A. I've worked there but I'm not from there.

Q. Where do you live?

25 A. Down the Gaspé coast.

Q. Down the Gaspé coast----

THE COURT: Excuse me just a minute. The voices aren't picking up on the monitor. (brief pause).

MR. FURLOTTE:

30 Q. Mr. Walker I was talking about where the road comes pretty handy to the river up here. If something was thrown from a car up here it could very easily land, in the wintertime in the ice, blow down the river and come and get caught in this embankment here and kind of blow  
35 up the bank a little bit?

## Richard Walker - cross

- A. You're asking me if that's possible?
- Q. Yes.
- A. I can't tell you that. I'm not an expert at that kind of  
5 thing.
- Q. Sorry. You were an expert a while ago but now you're not.
- A. No, but we're not talking about the same thing.
- Q. Well you mentioned the wind could blow it off the track.
- 10 A. No, I was asked if - if I remember correctly I was asked if it dropped on the track could something move it.
- Q. What could move it?
- A. I said the train.
- Q. And you mentioned the wind?
- 15 A. The wind, yeah.
- Q. How about the winter time, how's the snowmobiling in the winter time there?
- A. Up there there's lots of snow.
- Q. Good snowmobiling?
- 20 A. I would imagine, yes.
- Q. And they use the river to snowmobile on?
- A. I can't tell you that. I'm not from around there.
- Q. And I believe you also mentioned snow ploughs?
- A. That's right.
- 25 Q. In your journeys as bridge inspector have you observed the CN snow ploughs in the winter time?
- A. Yes I have.
- Q. There's usually a lot of snow that sticks on to the wing-back?
- 30 A. Usually?
- Q. Yes?
- A. Again I can't say if that's usual or it's unusual. I don't know. I've seen it but whether it is usual or not, that I can't say.

23

Richard Walker - cross

- Q. Just like when you are shoveling snow in the winter time in the winter time, the snow wants to stick to your shovel---
- 5 A. Yeah, exactly.
- Q. ---as the shovel is made of aluminium?
- A. I suppose, yeah.
- Q. And the snow plough the same thing, when it's ploughing snow the snow wants to stick to it?
- 10 A. Sure.
- Q. And the accumulation of snow will come up and stick on to the trains and the running boards?
- A. That's right.
- Q. Underneath the trucks?
- 15 A. That's right, yeah.
- Q. And up underneath the traction motors in locomotives?
- A. That's right.
- Q. So it is not uncommon for the trains and the snow ploughs to pick up snow in one area and have it fall off in another area?
- 20 A. I suppose that could happen, yes.
- Q. So technically that snow plough could have passed over a crossing, twenty miles - fifty miles from an area and later on dropped the snow off some place else?
- 25 A. It's possible I suppose.
- Q. Or somebody running by on a snowmobile could have dropped it?
- A. If you're asking my opinion I can't say yes or not. It's possible.
- 30 Q. I believe in the area there's a fishing camp. In number 12 here there's a fishing camp and a little road with parked cars here?
- A. That's right.
- Q. Could it be possible that they use that fishing camp as a snowmobile club in the winter time?
- 35



24

Richard Walker - cross

A. Could be. I don't know.

Q. So although Mr. Walker one might say that while it is reasonable to conclude that somebody may have thrown these cards off the train when the train was going by. Still the other possibilities are there, are they not?

A. Possible.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination Mr. Sleeth?

10 REDIRECT EXAMINATION BY MR. SLEETH

Q. Mr. Walker could you, as the result of the question put by my learned friend, would you please - we'll start with the one which he showed you---

THE COURT: Would you put your voice up so that it will carry?

15 MR. SLEETH: I am My Lord. I think it has been carrying My Lord.

Q. S-12. Would you turn that to the jurors?

A. Yes.

Q. Mr. Furlotte earlier was having you look at an area which he said was denuded of trees and talking about winds, and he started you off around here---

MR. FURLOTTE: My Lord I don't think I covered anything in cross examination that wasn't covered in direct examination. All the possibilities. The Crown raised that on direct examination as to how the cards might get on the track.

THE COURT: Well they did but I think Mr. Furlotte you brought up the question - you are talking about the wind catching the cards up here---

30 MR. SLEETH: Exactly My Lord. That was not raised on direct.

MR. FURLOTTE: Yes that's raised on direct but---

MR. SLEETH: No it's not.

MR. FURLOTTE: I can raise - in issues that are brought up in direct examination I'm allowed to cross examine them. The only time the Crown is allowed to re-

35

Richard Walker - redirect

direct is when I open up a new area, different issues. Then they can come in and redirect on those.

5 THE COURT: In cross examination Mr. Furlotte the possibility that the cards blew from up here down, or that they were carried fifty miles was it or forty miles, by a snowmobile - snow plough, or by snowmobile or by fishermen, these are things that were brought up on  
10 cross examination.

MR. FURLOTTE: It was the Crown who brought up on direct examination how the cards may have got on the track area in that area and I---

15 THE COURT: If you are taken by surprise - I'll watch and ensure that Mr. Sleeth is kept within the bounds of what is proper for re-examination. If there are new matters brought out that I deem you should be given a further chance to cross examine on I'll give that opportunity to you Mr. Furlotte.

20 MR. SLEETH: Thank you My Lord. As I started to say earlier, this whole business about 'the wind she blow on Lac St. Pierre' was opened by my learned friend and not by myself.

Q. Going to the point where my learned friend took you to  
25 when he was standing beside you pointing where a card might have dropped, down to where that bridge is, how far is it, roughly?

A. Roughly three quarters of a mile to a mile.

Q. And that bridge would be how high up over the water?

30 A. Thirty feet normally.

Q. My learned friend also mentioned something about snowmobilers. If you could please, looking at S-14 - would a snowmobiler have to stop and crawl under to reach the abutment on S-14?

35 A. A snowmobile machine or a snowmobiler?

26

Richard Walker - redirect

Q. A snowmobiler.

A. Yes he would have to stop and crawl.

Q. My learned friend also brought up a question of snow  
5 ploughs that would be used by your - by Via Rail to clear  
the tracks?

A. Yes.

Q. And his question put to you was that the snowmobile  
plough could have picked up some cards say at a crossing.  
10 This would also however always be on the railway tracks  
wouldn't it?

A. Right.

Q. So all snow that would have been left over and dropped  
over this bridge would have had to be snow ploughed from  
15 railway tracks?

A. That's right.

Q. Have you ever seen a card go three quarters of a mile and  
leap thirty feet off the ground in a wind storm sir?

A. No sir.

20 MR. SLEETH: Thank you.

THE COURT:

Q. There's one question I want to put. The ties on the  
bridge, are they tight together or is there a space?

A. There's a space between every tie, and on this particular  
25 bridge if I recall, it's six inches between each tie.

THE COURT: Any cross examination on this last point Mr.  
Furlotte or Mr. Sleeth?

MR. FURLOTTE: No My Lord.

MR. SLEETH: No My Lord. I would ask that this witness be  
30 excused.

THE COURT: Yes. Thank you Mr. Walker, that's all for you.  
Another witness?

MR. SLEETH: My Lord I would call Serge Delarosbil. He will  
wish to testify in French I do believe.

35

S. Delarosbil - direct

SERGE DELAROSBIL having been called as a witness testified as follows: (with interpreter)

5

DIRECT EXAMINATION BY MR. SLEETH

Q. Witness would you please state your full name and your occupation please?

A. My name is Serge Delarosbil. I am a bridge inspector for the Canadian National.

10

Q. How long have you had this job?

A. This year is my third year.

Q. And generally and briefly of what do your duties consist as a bridge inspector?

15

A. To check the state of the bridge. Everything that has to do with deck and the steel plates on the cement.

Q. Witness I am placing in front of you three aerial photographs. They are Exhibit P-93, photos S-12, 13, and 14. I would ask you to take up photograph S-12. It is the one on your left. Do you recognize the bridge shown there?

20

A. Yes it is the Millstream Bridge on the Quebec side. The mileage is 23.9.

Q. This 23.9 is 23.9 miles from where?

A. It's from the CN station in Campbellton.

25

Q. How many train routes are there from northern New Brunswick to Mont Joli, continuing to Montreal?

A. One only. This one is the only one.

Q. Where is the nearest town to that bridge that you see in S-12?

30

A. On the east side or the west side?

Q. Let's start with the east.

A. Matapedia.

Q. How many miles would that be?

A. Ten miles - ten or eleven miles.

35

Q. And to the west?

A. Routhierville.

Q. How many miles might that be?

S. Delarosbil - direct

- A. It must be seven or eight miles. I don't recall exactly.
- Q. All of these, including the bridge, are in the province of Quebec?
- 5 A. Yes, exactly.
- Q. You heard the testimony a moment ago by Mr. Richard Walker?
- A. Yes.
- Q. I am showing you a bag marked 4C. Do you recognize the contents of that bag?
- 10 A. Yes. The NB Tel calling card with the name Rev. James V. Smith and the Visa card as well.
- Q. How is it that you can tell us you recognize those cards?
- A. I was working underneath the bridge and first thing I found the NB Tel calling card. I gave it to Mr. Walker and Mr. Walker said "behind you is another card".
- 15 Q. What did you do after Walker spoke to you?
- A. Speak of what?
- Q. You said Walker spoke to you?
- 20 A. Yes, he said there was another card behind me.
- Q. What did you do then?
- A. I picked up to the card and gave it to Mr. Walker again.
- Q. And this second card was what card?
- A. It was Visa.
- 25 Q. Did you look around and find anything else?
- A. Yes a plastic folder.
- Q. Is that before you?
- A. Yes, here.
- Q. In the plastic bag 4C?
- 30 A. Yes.
- Q. I wonder if you could please pick up P-93, S-14. It's the one on your far right. Do you recognize that location?
- A. Yes.
- 35 Q. And you recognize it as?

S. Delarosbil - direct

A. It is the Millstream bridge at 23.9. This is the east end.

Q. The east end is important to you because?

5 A. I found the card on the east side on the right-hand side of the track.

Q. Could you please hold the photograph up so that the jurors here can see where you are talking about? Just point with your finger. You are putting your finger on an orange or redish circle, is that right?

10 A. Yes.

Q. On S-14 of P-93?

A. That's right.

MR. SLEETH: Thank you very much.

15 THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. Now you mention you heard the testimony of Mr. Walker?

A. Yes.

Q. And you heard the discussion of drifting snow in the winter time?

20 A. Yes.

Q. Do you ever travel the track area in the winter time?

A. You mean travel in which manner, by train or by truck?

Q. By train.

25 A. Yes.

Q. Do you ever inspect the bridges in the winter?

A. Not this one.

Q. What about other bridges?

A. Normally in the winter time we don't inspect the bridges.

30 Q. Do you know whether or not there would be sloping snowbanks from the river up to the top of the bridge?

A. I don't understand your question.

Q. On redirect examination the Crown Prosecutor asked Mr. Walker something to the effect that had he ever seen the wind blow a card thirty feet up in the air.

30

S. Delarosbil - cross

MR. SLEETH: My Lord I think in fairness to the witness the entire question must be put to the witness as well. He is referring to something said earlier which was  
5 have you ever seen a card blown three quarters of a mile and then thirty feet up in the air. If he wants to put a question, not only half it, all of it.

THE COURT: Well let's go ahead anyway. You ask your question.

10 MR. FURLOTTE:

Q. Have you ever seen the wind blow a card three quarters of a mile and then thirty feet up in the air?

A. Myself I never saw this.

Q. Have you ever seen the wind blowing paper along the road  
15 or a riverbed?

A. I never happen to see this. It could happen but I never happened to see it.

Q. Have you ever seen the wind blow anything along?

A. You are speaking of the tracks or are you speaking of the  
20 roadway?

Q. Roadway, anything. Anything along a flat surface.

A. I imagine, yes.

Q. So have you ever seen the wind blow anything up a gradual sloping snowbank?

A. It could happen but it depends on the slope and the  
25 height.

THE COURT: Isn't this more a matter of argument Mr. Furlotte when the appropriate time comes rather than examination of a witness?

MR. FURLOTTE: I kind of thought so before Mr. Sleeth raised the  
30 issue on redirect examination. I just felt it was a ridiculous point he brought out on redirect examination and now I want to try and show exactly where that point belongs.

MR. SLEETH: My Lord the----

35

S. Delarosbil - cross

THE COURT: You seem to me to be carrying it to the point of  
ridicule though perhaps.

MR. FURLOTTE: Him or myself?

5 THE COURT: Well no, I mean the subject.

MR. FURLOTTE: It would probably be a meaningless point anyway My  
Lord.

THE COURT: I don't want you to - I'm not trying to cut you  
off. If there is anything meaningful you can ask.

10 MR. FURLOTTE: It's a common sense argument and I'm sure it  
doesn't even have to be----

Q. One other issue. You mentioned that there is only one  
train from Campbellton to Montreal?

MR. SLEETH: I object to that My Lord. That's not what the  
15 witness said. The witness said there's one track.

THE WITNESS: One track.

MR. FURLOTTE:

Q. One track?

A. Yes.

20 Q. Now on that one track, different trains travel?

A. Yes.

Q. Now the train that goes say from Bathurst, Campbellton,  
to Montreal, that also joins a train going from Gaspé to  
Montreal?

25 A. Yes.

Q. Now the train that travels from say Bathurst to  
Campbellton to Montreal, that same train and same cars  
also travels from Montreal to Halifax?

A. Yes.

30 Q. So if somebody was going to say flush these cards down  
the toilet, they may get caught on to the under-gear of  
the coach?

A. It could be possible.

Q. And it could fall off at a later stage?

35 A. It's possible.



S. Delarosbil - cross

- Q. Now if somebody got on the train say in Campbellton or Bathurst or Moncton and went to Halifax and those cards got caught on the under-gear or in the snow that's bound to the train, those cards could fall off when the train goes back on its way to Montreal, could they not?
- 5
- A. It could happen but I don't know about that enough; but it could happen.
- Q. A train going from Montreal to Halifax, do you know whether or not the snow is cleaned off all the train once it reaches Halifax?
- 10
- A. I don't know.
- Q. So you don't know whether or not if a train picked up a card on its way to Halifax, that it may have dropped it off on its way back to Montreal?
- 15
- A. I don't know.
- Q. But it's possible?
- A. I don't know.
- MR. FURLOTTE: I have no further questions.
- 20 THE COURT: Re-examination Mr. Sleeth?
- MR. SLEETH: I have absolutely no redirect examination My Lord.
- THE COURT: Thank you very much Delarosbil. We will now have a brief recess but before we excuse the jury I think - I indicated yesterday that I wasn't going to keep the accused out of the courtroom any longer than is necessary. I certainly don't feel comfortable myself as a presiding judge with an accused sitting outside the courtroom, and I indicated yesterday that if the accused could, through his counsel, give an undertaking that he would observe the normal code of behaviour in a courtroom that I would have no objection to his returning. Mr. Furlotte if you would please consult with your client during the recess and when we reassemble
- 25
- 30

here and before the jury is brought in I'll perhaps ask you what his views are on the subject. If he is prepared to give that undertaking through you I would be quite prepared at this point to have him resume his position here.

MR. FURLOTTE: I have already discussed it with Mr. Legere.

THE COURT: You have discussed it?

MR. FURLOTTE: Yes. Do you want the answer now My Lord?

THE COURT: Well you'd better consult with him again. His attitude may have changed this morning.

MR. FURLOTTE: It was positive the last time I talked to him.

THE COURT: Well I'm not suggesting it has changed but we'll have the recess and I'll check with you again at that time when we come back and we'll have the accused brought back in to the courtroom. I'm not looking for apologies or anything like that. I don't believe in apologies. I once was told by a judge because I had committed some small misdemeanour that - sending witnesses home before they were excused by the Court. I didn't require - who was it, Mr. Sleeth or one of the Crown counsel here apologize - didn't apologize - said that he was sorry he had sent some witnesses home the other day and my memory went back to an experience I once had in court where a very senior judge, when I was a very junior lawyer, chastised me because I told one of the jurors - one of the witnesses, he could go home. The judge later noticed that the witness was missing from the courtroom and said he wanted to ask him a couple of more questions and would I please bring him back and he was 100 miles away by then and I was made to apologize to the judge. I'm not sure whether I really did or not but anyway I have never since asked anyone to apologize for

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anything and I don't ask the accused here to apologize for his behaviour. If he is worthy of being kept in the courtroom he can demonstrate that. If he persists in temper tantrums then he'll have to be treated like a child and kept outside. We presumably have most of the bugs ironed out of the video machine here now, the monitor, and perhaps it can be put in better condition if it has to be used again. So now the jury may wish to take with them to the jury room, the photographs you have just been looking at if you feel it's necessary. There were the - what was it hanging over from yesterday? There was the jewellery, someone had suggested that - perhaps that can be left until a little later can it? And there were some other items before that, photographs or something.

5  
10  
15  
MR. ALLMAN: I believe it was mentioned at one time that they might take with them the jewellery and the ledger.  
20 THE COURT: And the ledger.  
MR. ALLMAN: I'm not asking for it. It was just an item.  
THE COURT: Well let's do that during the recess this afternoon rather than now. So the jury can retire now.

(Jury retires)

25 THE COURT: Before we retire, are you through with this Matapedia aspect now or are there---  
MR. SLEETH: There will be one more witness on that.  
THE COURT: All right.

(short recess)

30 Jury returns - polled - all present.  
THE COURT: Now what is the verdict here?  
MR. FURLOTTE: Yes My Lord. Mr. Legere wishes me to express - you don't want an apology yourself - you don't have to accept it but he does apologize to yourself and especially to the Court for his outburst yesterday.  
35

35

After he went in he realized that he was wrong and he voiced to me immediately after that you had every right to throw him out of court and he deserved it. Again he expresses his apology and he would like the opportunity to return to Court and he will restrain himself from any further outbreaks or comments.

5

THE COURT: Well that's fine. Crown counsel have no comment to make on the procedure I am following?

10 MR. ALLMAN: No My Lord.

THE COURT: Well we'll have Mr. Legere back now, and the jury.  
Jury polled - all present

THE COURT: Now the Crown has another witness to call?

MR. SLEETH: Yes My Lord. Cst. Marc Suprenant.

15 MARC SUPRENANT having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

20 Q. Constable would you please state your full name and your occupation for the jurors please?

A. My name is Marc Suprenant. I am a peace officer with the Royal Canadian Mounted Police, presently stationed in Perth Andover, previously stationed in Campbellton city.

25 I have been a peace officer for a period of six years.

Q. I am placing before you three aerial photographs which are P-93 and specifically photographs S-12, S-13, and S-14. Do you recognize the area shown in S-14?

A. Yes I do.

30 Q. And you recognize it as being what area?

A. It's in Quebec. It's what they call the Millstream bridge.

Q. And how is it that you particularly identify in this courtroom today that particular bridge?

35 A. Because I was - on the 7th of August 1990 I was called by Cst. Emery from the county detachment in Campbellton. He called me and asked me to----

36

## M. Suprenant - direct

- Q. As a result of that you did certain things?
- A. Yeah.
- Q. What did you do?
- 5 A. He called me and told me that---
- Q. You had conversation with another police officer and as a result of the conversation you had with the police officer you did certain things?
- A. I searched the immediate area and under the bridge I
- 10 started moving gravel and I found a credit card, an American Express credit card.
- Q. Now if you would just backtrack for a moment please. You would have arrived at that bridge around what time of the day please?
- 15 A. It was around 1700 hours - five in the afternoon.
- Q. Five o'clock in the afternoon. And who all was there when you arrived at that bridge which is shown in S-12?
- A. Who---
- Q. Who were the other persons who were there?
- 20 A. There was Cst. Larry Emery; there was Cst. Seaborne. There was two CN workers.
- Q. Do you remember the names of the CN workers?
- A. No I don't.
- Q. I'm showing you an item which is a plastic bag and a card
- 25 which is 4B. Do you recognize that?
- A. Yes I do. It is the credit card I found at the location where I was searching.
- Q. You found that how soon after you arrived at the location where you were searching?
- 30 A. At 17.15 - five fifteen in the afternoon I found that credit card.
- Q. Would you please pick up the photograph furthest to your right which is photograph S-14 of P-93. You see a photograph there with a red circle; do you recognize that
- 35 area?

37

## M. Suprenant - direct

A. Yes it is the area I searched under the bridge.

Q. Could you hold that up please for the jurors to see whee you are talking about and point at it with your finger.

5 A. That's the area I searched for the credit card.

Q. And you mentioned something about gravel. This was under how much gravel?

A. There was about two inches of gravel. There was also some dirt.

10 Q. Once you had found that under the gravel what did you do with it?

A. I took some pictures with the CN camera and I gave - turned it over to Cst. Emery.

Q. And by it, you mean the card?

15 A. Yes, this card.

Q. Which is in what - what lettering and numbering does it have? It's 4B?

A. 4B, yeah.

MR. SLEETH: My Lord I am going to move that the items 4B and 4C  
20 be received in evidence at this time with the understanding as well that after Mr. Furlotte has reviewed his notes and Cst. Emery can be made available he will be recalled.

THE COURT: Yes. You say they've been tied into the trial on  
25 what grounds?

MR. SLEETH: We've already had several witnesses My Lord - we've  
had Cst. Godin and Cst. Charlebois together with  
this witness dealing with what is 4B the American  
Express card and we have had two witnesses,  
30 Delarosbil and Walker as well as Godin and Charlebois dealing with 4C My Lord. The one person missing in this is Cst. Emery. The continuity is there and as for relevance My Lord there before the Court the name of the individual, it's the name of

M. Suprenant - direct

5 the same person earlier established by other  
evidence as having been murdered in the Chatham  
area and on a train track which would have been  
used by an individual apparently by the name of  
Bernard Savoie, also identified as being the  
accused earlier by other witnesses. I submit the  
continuity, subject to the aspect of Mr. Emery, has  
been established and the relevance has been  
10 established.

THE COURT: Well those - you have no serious objections?

MR. FURLOTTE: No My Lord but just - well I do have an objection.  
While there is some relevance here there is again  
no evidence connecting these cards to the accused.

15 THE COURT: Well thats a matter for argument later. That's a  
matter of weight to be attached, but as far as  
their admissibility is concerned they have been  
sufficiently identified with the issues to be made  
admissible. They are - it is evidence that should  
20 - that the jury will have to consider. P-94 and P-  
95. 4B would become P-94 and 4C would become P-95.

MR. SLEETH: I have no further questions of this witness then My  
Lord.

THE COURT: Fine. Cross examination?

25 CROSS EXAMINATION BY MR. FURLOTTE

Q. Just one question. I understand when you found this card  
you found it underneath the ground?

A. Yeah.

MR. FURLOTTE: No further questions.

30 THE COURT: Re-examination?

MR. FURLOTTE: I don't know how he can re-examine on that one My  
Lord.

THE COURT: Thank you very much Constable.

MR. SLEETH: I would ask that this witness be excused My Lord.

35 THE COURT: Yes.

R. Gomke - direct

MR. ALLMAN: I have the next witness My Lord, Ronald Gomke.

RONALD GOMKE having been called as a witness testified as follows:

5

DIRECT EXAMINATION BY MR. ALLMAN

Q. What's your name please?

A. Ronald Gomke.

Q. What city do you live in Mr. Gomke?

10 

A. Saint John.

Q. What is your occupation?

A. I drive cab.

Q. On the 23rd of November 1989 what was your occupation at that time?

15 

A. Drove cab for A.B.C.

Q. And did something happen to you on that evening that you are able to tell the jury about?

A. Yes.

20 

Q. Whereabouts were you working that evening - what part of Saint John?

A. I was on Prince William street.

Q. What sort of an area is Prince William?

A. Downtown.

Q. And about what time of day are we talking about?

25 

A. 9.50 p.m.

Q. That's at night. Very well, tell us in your own words what happened as you were downtown Saint John about 9.50.

A. On November 23 I was travelling down Prince William street at 9.50 p.m.---

30 

Q. Would you keep your voice up, it is hard to hear with extraneous noises? You said you were travelling down Prince William.

35 

A. I was flagged down by a passenger wanting to go to Moncton. I called in dispatcher and said that I had a passenger going to Moncton. The dispatcher then said the fare will be \$100 and came back and said to get the cash up front.



40

R. Gomke - direct

- Q. Your instructions from your dispatcher were that it was \$100 and to get it in cash?
- A. Yes.
- 5 Q. Would the fare, the person that flagged you down, been in the car at the time you had this conversation with your dispatcher?
- A. Yes.
- Q. Would he be able to hear that conversation?
- 10 A. Oh yes.
- Q. What happened after you had received and your fare had heard those instructions?
- A. Uh---
- Q. What's the next thing that happened?
- 15 A. The next thing - I pulled over to the side of the road to give him time to dig out the money and I wasn't paying attention to his movements; I was looking out the window.
- Q. Voice up.
- A. I wasn't paying attention to his movements; I was looking out the window and he said "we're going to Moncton" and I turned towards him to say what---
- 20 Q. I'll interrupt you. In what tone of voice did he say "we're going to Moncton"?
- A. Stern.
- 25 Q. After he said that you turned and look at him and what did you see?
- A. There was a rifle sitting on his lap pointing towards my direction.
- Q. What sort of rifle?
- 30 A. It was a short sawed-off rifle.
- Q. What was your reaction to that?
- A. I was scared.
- Q. Just take us on from there then.
- A. From that point he said he was the one they were looking for; that he was Allan Legere.
- 35

41

R. Gomke - direct

Q. Did he say what they were looking for him for?

A. For the murders in the Miramichi.

Q. When did he say that - I mean at what stage of your  
5 encounter if you can remember?

A. We were still in the city.

Q. Did you have an opinion on that? I mean did you believe  
it or not?

MR. FURLOTTE: I have an objection to that, it's----

10 MR. ALLMAN: I think it goes to the witness's reaction

THE COURT: Well---

MR. ALLMAN: I wont press---

THE COURT: It goes to frame of mind.

MR. ALLMAN: I won't press the point.

15 Q. Okay, was the vehicle in motion by this time?

THE COURT: You could ask him was he still scared.

MR. ALLMAN: I don't like to ask questions when the answer is so  
obvious.

Q. Had anything happened to change your mind about being  
20 scared?

A. No.

Q. Were you in motion at the time of this conversation?

A. No we hadn't started yet.

Q. What happened after that?

25 A. He said he wanted to go to Moncton so we went on to the  
highway heading for Sussex and during the travel he  
stated he didn't want to hurt me and wished that I didn't  
have to be involved.

MR. ALLMAN: There's a small portion of the witness's statement  
30 that I want to lead him on My Lord and Mr. Furlotte  
knows why. I believe it is in his interests.

THE COURT: Fine.

MR. ALLMAN:

Q. There was some other conversation relating to further  
35 incidents I believe?

47

R. Gamke - direct

A. Uh---

Q. Don't tell me what it was, but there was other conversation?

5 A. Yes.

Q. About other incidents?

A. Yes.

Q. I don't want to get into that but was the other conversation in general terms between Saint en route up to Sussex?  
10

A. Yes.

Q. Do you remember very much of that conversation?

A. No.

Q. Why not?

15 A. I was too afraid. I didn't know what was going to happen.

Q. When you continued on the route up from Saint John to Sussex there's a town called Petitcodiac along there is there not?

20 A. Yes.

Q. Did you get as far as Petitcodiac?

A. Yes, we passed it.

Q. Tell me what happened after you got past Petitcodiac?

A. Well at that time we got in between a truck and a car. The car had its hazards on. We were doing approximately 60 to 70 kilometres.  
25

Q. What sort of day was it?

A. Stormy.

Q. Storm - what sort?

30 A. Big snow storm we had that night.

Q. Okay, so you were doing 60 to 70 and you come up behind this vehicle with its hazards on?

A. The car behind us had its hazards on.

Q. So what happened then?

35 THE COURT: Had what on?

R. Gomke - direct

THE WITNESS: Hazard lights.

THE COURT: Lights on.

MR. ALLMAN:

5 Q. Just in case anybody doesn't know what hazards lights are?

A. Four ways - four-way flashers.

THE COURT: Oh, hazard lights.

MR. ALLMAN:

10 Q. And they were on?

A. They were on, yes.

Q. So what happens between you and the person - your fare?

A. He said it was making him nervous going that slow in between the two vehicles and for me to pass them and to do the speed limit. So I did, I passed. The posted speed limit was 100 kilometres. Up the road a ways the car started spinning and sliding. He then grabbed the wheel saying for me not to ditch the car. The car was sliding still and he jerked the steering wheel to the right. The car went into a spin and we went into a snow bank.

15

20

Q. What was his reaction to that?

A. He said "you've done it now" and you know I didn't know what was going to happen. He said "you really screwed up the plans now".

25

Q. What did in fact happen?

A. He thought for a minute then instructed me to get out of the car. I climbed out the passenger side because the driver's door was jammed in the snowbank.

30 Q. What about your passenger, what did he do?

A. He got out ahead of me.

Q. So now we've got both of you out of the car and the car in the ditch?

A. Yes.

35 Q. What's the next thing that happens then?

44

R. Gamke - direct

- A. He flags down a small car heading towards Moncton.
- Q. You mentioned that when you had that initial conversation you had not been paying any attention but after he said
- 5 "we're going to Moncton" you turned and looked at him and you saw what you described as a sawn-off gun pointing towards you. During the trip after that, up to this point where the car went off the road, where was this gun?
- 10 A. Sitting on his lap.
- Q. Pointing what way?
- A. Towards me.
- Q. After you got out of the car when it was in the ditch and he flagged down another vehicle, did you see where the
- 15 gun was at that stage?
- A. He had it hidden.
- Q. Hidden where?
- A. Under his coat.
- Q. What happened when you flagged down or attempted to flag
- 20 down this small car?
- A. She had stopped.
- Q. She, being who?
- A. Michelle Mercer, a constable.
- Q. The small car stopped?
- 25 A. Yes.
- Q. And was the driver male or female?
- A. Female.
- Q. Did you later on learn the name of that female?
- A. Yes.
- 30 Q. What was it?
- A. Cst. Michelle Mercer.
- Q. At the time that she stopped, this lady stopped, how was she dressed?
- A. Plain clothes, civilian.
- 35 Q. And at that stage were you aware of who she was?

45

R. Gomke - direct

A. No.

Q. After she stopped what did you and your passenger do?

A. He pushed me into the back seat and tried to squeeze in  
5 himself but there was a lot of luggage there. The driver  
then spoke up and said there was room up front for him so  
he got up in front.

Q. And then what?

A. He asked where she was going - what direction she was  
10 going.

Q. Did the small car start moving right now or was it still  
by the roadside picking you up?

A. No, we started driving.

Q. You started driving and then what?

15 A. He asked her where she was going. She said "to the  
nearest motel" and he said "okay".

Q. Which direction were you now heading, towards Saint John  
or towards the north?

A. Towards Moncton. A ways up the road he discovered he had  
20 lost his teeth.

Q. How do you know he discovered that?

A. This is what he said.

Q. Okay.

A. He wanted to turn back. At that - the time before that  
25 Michelle had identified herself as an R.C.M.P. officer.

Q. So when the passenger said that he wanted to go back and  
get his teeth, what was Michelle's - the driver, the lady  
driver's response to that?

A. She protested. She said she'd drop us off and let  
30 someone else take us.

Q. How was the weather, was it still the same or had it  
improved any?

A. Yes it was still the same.

Q. So she protested and said she'd drop you off and what was  
35 the passenger's reaction to that?

46

R. Gomke - direct

- A. He then said "I'm afraid you are going to have to do as I say" and shuffled around again, I guess producing the rifle, identifying himself as the one they're looking for, Allan Legere.
- 5 Q. Did he in fact have to go back for his teeth or were they found?
- A. Well we had turned around and headed back towards the cab and he discovered them in his pocket.
- 10 Q. Some time around this stage you indicate that he showed the gun and identified himself?
- A. Yes.
- Q. What happened after that?
- A. After he found his teeth he got us to turn back and head towards Moncton again. We got past Forestall's truck stop---
- 15 Q. Where is Forestall's truck stop in relation to Moncton?
- A. I think it is just outside of Moncton.
- Q. So you got past that truck stop, then what?
- 20 A. We were going down the hill and the car started sliding and started to go out of control but she gained it back under control and stopped. He then stated if we had have gone up the road he would have had to get rid of one or both of us.
- 25 Q. But that hadn't happened so what did happen?
- A. We started driving again. He instructed us to turn towards Magnetic Hill.
- Q. Where would that be taking you if in fact you complied with those orders - where would you be heading towards?
- 30 A. I don't know.
- Q. What actually happened when he gave those orders?
- A. Well we headed in that direction and somehow we got turned around and discovered that we were heading towards Fredericton. We had passed the cab and ---
- 35 Q. Whose cab?

47

R. Gamke - direct

- A. My cab.
- Q. So you had gotten so far back that you got back to where you started from?
- 5 A. Yes. And there was a sign saying that we were headed for Fredericton.
- Q. So what did the passenger say then?
- A. He said "you're screwing me around".
- Q. Which way did he want to go?
- 10 A. He wanted to head for Chatham.
- Q. And was that in fact done - I mean head back that way?
- A. Yes we turned around again. That time he came up - he had another idea. If he had more money he would proceed to Edmundston.
- 15 Q. How was he going to get more money?
- A. I don't know how he - where he thought he would get it but Michelle offered her bank card and the car just to drop us off and he could take it.
- Q. What was his response to that suggestion?
- 20 A. He got us to turn around and head back to Fredericton.
- Q. To Fredericton?
- A. To Fredericton and then that would take us on to Edmundston.
- Q. Where did you get to?
- 25 A. Just outside of Sussex she noticed we were getting low on fuel.
- Q. Who noticed that?
- A. Michelle.
- Q. Did she say anything about that?
- 30 A. She said we would have to stop to get gas somewhere.
- Q. And what was the reply of the passenger?
- A. Okay - in order to get away he'd have to have fuel. Have to have fuel in the car.
- Q. So what did she do?



R. Gomke - direct

- A. We stopped at Four Corners Irving just outside Sussex or in Sussex.
- Q. And at this time what would be the position of the three people in the car? Who would be driving?
- 5 A. She was driving.
- Q. Who was sitting in the front passenger's seat?
- A. He was.
- Q. You'd be sitting in the back?
- 10 A. I was.
- Q. What had been - do you know what had been happening to the gun during this time?
- A. No.
- Q. Carry on. Just take us from there - you've stopped at the gas station.
- 15 A. He took the keys out of the ignition, received money from Michelle to get gas. He got out, pumped the gas; Michelle had another set of keys. When he went inside---
- Q. Let me just stop you for a moment. He - the passenger is now inside the service station?
- 20 A. Yes.
- Q. There's a conversation between you and Michelle Mercer?
- A. Yes.
- Q. Which the passenger couldn't have heard?
- 25 A. Right.
- Q. Don't tell us what she said, but what did she do in the absence of the passenger?
- A. Started the car and took off.
- Q. With what?
- 30 A. The keys.
- Q. Where did she get these keys from? You told us that the passenger had taken the keys.
- A. She found them in her purse.
- Q. Started the car and then what?
- 35 A. She took off.

49

R. Gomke - direct

Q. Did you see the passenger again?

A. He came running out of the store but---

Q. What did she do?

5 A. Just kept on going.

Q. Where to?

A. I directed her, she didn't know the area. I had to direct her to the R.C.M.P. station in Sussex.

10 Q. How far away is the R.C.M.P. - how long did it take you on that particular night - because it was snowing I guess - how long did it take you to get to Sussex R.C.M.P. from the gas station?

A. It seemed like forever. Ten minutes, I don't know.

15 Q. And I take it at the R.C.M.P. station you and she would have conversation with officers there?

A. Yes.

Q. What was the last you saw of the passenger?

A. He had come running out of the store.

20 Q. Sitting there in the witness box today are you in a position to say for sure whether the person you picked up and you've been telling us about is in court or not, here today?

A. No I'm not sure.

MR. ALLMAN: Thank you.

25 THE COURT: Cross examination Mr. Furlotte?

CROSS EXAMINATION BY MR. FURLOTTE

Q. I understand Mr. Gomke from your testimony you stated that this individual told you that he didn't want to hurt you but just that he wanted to go to Moncton?

30 A. Yes.

Q. And basically on the drive to Moncton even from the time he picked you up in Saint John until you got past Petitcodiac he just had the rifle - the cut-off rifle sitting on his lap?

35 A. Sitting on his lap holding it.

50

R. Gomke - cross

Q. He wasn't pointing it at your head?

A. No.

Q. Did you also tell him that you had to take care of your  
5 mother?

A. Yes.

Q. Just idle conversation, and he told you not to work that  
you weren't going to be hurt?

A. Yes.

10 Q. Did he also tell you that he was upset because now they  
were blaming the murder of the priest on him?

A. I can't recall.

Q. Do you recall him telling you that he wasn't guilty of  
killing the priest?

15 A. Yes.

Q. He told you that?

A. (no reply)

Q. Were you able to smell any alcohol on him?

A. Yes.

20 Q. So he had been drinking?

A. Yes.

Q. Do you know whether or not he had any drugs?

A. He offered me a cigarette. I don't know what it was -  
what type of cigarette. He sat there and made it himself  
25 in the car.

Q. Do you know whether or not it was a regular cigarette or  
if it was marijuana?

A. I can't tell. He offered me a smoke and I don't smoke.

Q. This man just wanted a drive to Moncton?

30 A. Yes.

Q. He never told you he was going to rob you or take your  
money or anything like that?

A. At one point he did ask me how much money I had and I  
only had about forty bucks and he figured---

51

R. Gomke - cross

Q. Was that after the time talking about maybe going to Edmundston?

A. No, this was before.

5 Q. Before?

A. Yes.

Q. Would you say this man appeared nervous at times?

A. At times, yes.

10 Q. And did you offer Mr. - or this person, the forty dollars?

A. Yes. I said he could have the money and take the car.

Q. He didn't take your money; he didn't want it?

A. No.

15 Q. Do you recall when the lady police officer was in - you were in her car, that she questioned him about smoking a joint of marijuana, that the smell was offensive to her?

A. Yes.

Q. So because the smell was offensive to this lady police officer what did Mr. Legere do with the joint?

20 A. He threw it out the window.

MR. FURLOTTE: No further questions.

THE COURT: Re-examination?

REDIRECT EXAMINATION BY MR. ALLMAN

Q. Did he say why he didn't want the money? .

25 A. It wasn't enough for what he needed it for.

Q. And in answer to a question of Mr. Furlotte you said that he told you that he wasn't guilty of murdering the priest I think?

A. Yes.

30 Q. Did he mention any other offences of which he wasn't guilty? That you can remember? If you can't---

A. I can't remember.

MR. ALLMAN: Thank you.

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

35 Another witness?

Cst. Mercer - direct

MR. SLEETH: I call Cst. Mercer My Lord.

5 MICHELLE MERCER having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

10 Q. Would you state your full name and your occupation for the jurors witness?

A. My name is Jean Michelle Mercer. I am a peace officer, a regular member of the R.C.M.P. currently stationed in Alberton, P.E.I.

15 Q. How long have you been a member of the R.C.M.P. for?

A. Approximately two and a half years.

Q. Always stationed in P.E.I.?

A. Yes.

Q. You heard the testimony given a few moments ago by Mr. Gomke I believe?

20 A. I did.

Q. And he referred to a woman police officer. You are the police officer that he was referring to?

A. I was.

25 Q. Would you then please in your own words relate your involvement in the incident to which he made reference while he was testifying, beginning with the date?

30 A. Okay, it would have been the 23rd of November and just before midnight, about ten before midnight. I was near Moncton, approximately 20 kilometres or so outside of Moncton. There were two male figures - what looked to be male figures - on the road ahead of me. It was a stormy night and there was also a car in a snowbank on the side of the road. One person was in front of my path of the car waving his arms, motioning for me to stop. At that point I did stop. Mr. Gomke - I later learned he was Mr. Gomke - entered my car through the rear passenger side - it is a 4-door car - the other person tried to push in

35

Cst. Mercer - direct

5 there with him as well. There was not room for the two  
of them because there was luggage and things on the back  
seat. I advised the other person that there was room in  
the front seat for him and he then took the front seat.  
We proceeded - we proceeded right away towards Moncton.  
There was some conversation between us. I began to feel  
uncomfortable with these people; I had asked both their  
names; Ron Gomke had replied from the back seat. The  
10 other individual did not reply. Then Mr. Legere - a  
person later who I found out was Mr. Legere - found out  
that he had lost his false teeth or did not have them  
with him he didn't feel. He wanted to turn around to go  
back. At this point I didn't know who he was. I refused  
15 to turn around; it was stormy; it was not in my best  
interests to turn around when I was heading towards  
P.E.I. and I would be going in the opposite direction.  
Because I felt these two - I was not sure who these two  
men were and I thought they may try to take advantage -  
20 some advantage of the situation I felt it was in my best  
interests to advise them of what I did as an occupation  
as a deterrent for my own protection. We did end up  
turning around once the man in the front - he insisted I  
turn around and when I again refused a couple of times he  
25 pulled out a rifle and he said "please do as I say, I'm  
the one they're looking for". At this point I felt he  
was Allan Legere. I did turn around to head back towards  
the taxi cab.

Q. Okay.

30 A. Just after we had got turned around he found somewhere  
his teeth in one of his pockets, I don't know where. He  
then instructed me to turn around again and head towards  
Moncton once more. His idea was that we were going to go  
to Chatham and the idea was to hijack a plane to Iran.  
35 That's what I was informed.

Cst. Mercer - direct

Q. By?

A. By the person who said he's the one they're looking for, who I felt at that time was Allan Legere. I was not familiar with the area, this trip had been my first time driving through New Brunswick. I advised him I was not familiar, I did not have any idea how to get to Chatham. He said he would do the directing. We got near a turn-off to Magnetic Hill and he advised me to take this turn-off which I did, or which I thought I did. Some time later there was a sign advising that Fredericton - we were headed towards Fredericton. He became a little agitated at this point and accused me of trying it and again I explained to him that he was the one that was from the area not myself. At this point we turned around again. He wanted us to turn around again and head back - again we were going to Chatham. We turned around a couple of times after that, I'm really not sure how many times we turned around because I was very confused and disoriented. The signs were all snow covered that night, there was a snow storm; the roads were not good and there was mostly only tractor-trailers on the road. Eventually we began to discuss about money and what we were going to do. He did say he wished it hadn't been me that night because he liked me. He said he didn't want to hurt me. I offered him keys, car, basically anything like that that I could offer him for to release both Ron Gomke and myself. We ended up finally running low on gas after turning around so many times. We decided among ourselves that we needed gas and went to a place out - it was Four Corners near Sussex. Ron Gomke directed us to this gas station. We pulled in. The full-service was closed I guess due to the hour - it would have been before two a.m., just before probably. The full-service was closed. There was a bit of a discussion among ourselves as to how

M. Mercer - direct

one of us, or whoever, was going to get this gas and get it into the car - which one would be the one who would pump it. I offered myself to get out and pump it; I  
5 offered Ron to get out and pump it but the person rejected this. I had - the key was in the the lock position which you have to press a button to remove the key from the ignition. The car was shut off and he said "how do I get that key out" and I took it out and handed  
10 it to him. At this point he did tell us not to make any motion or any signs or anything or he'd have to kill us. He told Ron Gomke to lie down in the back and pretend he was asleep, not to make any sign. The passenger from the front got out, left the passenger door open, went around to the driver's side and pumped the gas. While he was  
15 out there was another key somewhere in my possession in one of my pockets which I realized and then had conversation with Mr. Gomke about same as I didn't want him to be startled when something happened because I had planned to leave without the other person. When - the  
20 person shouted and said "is \$15 enough" and I said "that's fine". He came around; I had put a twenty dollar bill on the passenger's seat. He took the twenty dollars and headed towards the gas station itself. I waited as long as - as soon as I saw him put his hand on the door  
25 I felt - I started the car at that point and left the gas station and Ron Gomke directed me to the Sussex R.C.M.P.

Q. And it would have taken you about how long to get there?

A. Well it seemed a long time due to the circumstances but  
30 I think it was probably only about five minutes.

Q. I am showing you a plastic bag which is WWW for identification and I would ask if you recognize any of the contents of that bag and if so would you please relate to the jurors what you are referring to?



Cst. Mercer - direct

- A. Okay, this key case here, a Buxton key case, has a Toyota key chain on it, a Toyota key on the key chain; several house keys; a suitcase key. This was my keys which I was using that night which the person took.
- 5
- Q. And the person who took those keys and who had this weapon, do you see him in the courtroom today?
- A. I do. He is seated to my left wearing a yellow shirt, between the two police officers, glasses, dark hair and moustache.
- 10
- MR. SLEETH: I would ask My Lord that the record show that the witness has just identified the accused sitting in the prisoner's dock.
- Q. You referred at the outset or part way into your testimony to a weapon. Could you describe this weapon to the jurors please?
- 15
- A. It was a sawed-off rifle as far as I could see. I didn't - I didn't want to make him nervous or myself nervous by staring at it so I didn't look at it a lot. When he did get out and take it when we got the gas or when he got out to pump the gas, it fit in a plastic bag similar to a plastic bag you would find at Sobeys, that size, and it fit angleways sort of in - and then wrapped the rest around it and put it underneath his jacket. That was about the size of it.
- 20
- Q. While you were in the vehicle after it had been first pointed at you was there any discussion of that weapon or anything additional you saw in relation to that weapon?
- A. He did at one time - at the beginning again - pass me a clip with bullets in it. I did have it in my hand and he said "it's loaded" so he proved to me that it was loaded and I then gave it back to him.
- 25
- Q. You say he proved it to you that it was loaded?
- A. By showing me the bullets in the clip and then he snapped it back in the gun.
- 30
- 35

57

Cst. Mercer - direct

Q. In all this travelling back and forth in the various directions that you took, it would have taken how long in time?

5 A. Approximately two hours.

Q. And how bad was it storming in that area as you drove back and forth?

10 A. I was planning on stopping in Moncton because the road conditions - I was hoping to make the one o'clock ferry which would be the last sailing to P.E.I. and I knew that was approximately an hour from Moncton. I knew it was ten to twelve and I was going to be pushing it to get there.

15 Q. Were there motels in the area that you were passing through, back and forth?

A. I believe there were but I wasn't paying attention.

Q. You mentioned earlier about going to Chatham for a plane?

A. Uh huh.

20 Q. Was there any discussion about stop before going or staying anywhere before going to Chatham?

A. The person was confused in my mind to what we were going to do. The plan changed many times. There was hijacking a plane to Iran; there was also - could have went to Florida the day before but didn't have an ID; maybe should just go to the States; maybe should go to Edmundston. I suggested first off when we were going to - or when he planned on hijacking a plane to Iran from Chatham, that we were right in Moncton, why not do it there and because of security reasons he advised me that he didn't want to do it there. Again the plans changed. I did offer him money; the car; just to let us go. There had been some talk maybe of pulling off the road and waiting til morning to go to Chatham. There was also some conversation about maybe if he had some money he

25

30

Cst. Mercer - direct

could tie both of us up and leave us there; somebody would find us eventually. Several things - he had lots of ideas.

5 Q. Finding money, how might that have been done? Was there a discussion about you might go about obtaining money?

A. Yes. A bank machine - we were looking for a bank machine. I offered to get him some money; he said he needed about \$600. He joked with me saying "don't worry about it, you'll get it back from the Force" at that time.

Q. On your way then to get this money - you were on your way to a banking machine I take it at one point?

A. I felt we were - we were headed in that direction but then the gas situation came up and it diverted our attention.

Q. While on your way to go and get the money though was there further discussion on the other subject matter?

A. We discussed several things. We discussed the fact that he - he said he was vey as relating to the newspaper and media were - and the R.C.M.P. were accusing him and it was printed that he had killed a priest. This he denied. He said at one time he had entered a house - broken into a house - he later found out when he got in there that it was a priest's house. He didn't say how. When he started looking in the drawers for money and things he found some porno books as he referred to them. He stated that he spread those on the bed and left. Whether he found any money, I'm not sure.

25 Q. Was there a discussion by Mr. Legere at any stage, the man you have just identified, about a priest who had recently been slain and if so what was the nature of the discussion?

59

Cst. Mercer - direct

- A. Yes he indicated that again it was being said that the priest had helped him. He said this was not true, that he had met him once or had occasion to see him once and had told him something to the effect that it was a sin - he thought he was a sinner or it was sin that he had bingo in the church hall - that the priest had conducted bingo in the church.
- 5
- Q. Was there any discussion about where Mr. Legere might have been prior to meeting you on that stormy night?
- 10
- A. Yes, he indicated that he had been living in a tent - where I don't know, he didn't indicate - but it had gotten too cold to live in a tent any more.
- Q. We know that he encountered you in the general Sussex-Moncton area. Was there a discussion where he had been immediately or recently before then?
- 15
- A. Yes, he had been in Montreal for a couple of days. He indicated that he had to go there to get a set of eye glasses - a pair of eye glasses.
- 20
- THE COURT: You said for a couple of - I didn't catch it?
- A. A couple of days.
- MR. SLEET:
- Q. Was there further discussion about any other involvement he might have had with this priest who he said he had not---
- 25
- A. Not that I recall.
- Q. At the time there was discussion of the tent?
- A. I asked - at one point I asked a question to him, where he had been in Montreal and he kind of laughed and said "I can't tell you that, you're a cop". So I didn't press him with any other questions knowing that he wouldn't really answer and it might agitate him.
- 30
- Q. I believe you mentioned a few moments ago about some talk of his going somewhere else but not having ID. Where was that he was talking about?
- 35

60

Cst. Mercer - direct

A. He mentioned that he could have gone to Florida the day before but he didn't have an ID. I was of the opinion he felt he needed an ID to get there.

5 Q. Was there mention at any stage then around that time of where he might be working - Mr. Legere, did he indicate to you---

A. Where he had been working?

Q. Yes?

10 A. No. He referred to himself throughout the conversation as Allan. Quite frequently he used his own name when he, you know said Allan this or Allan that. He referred to life in prison.

Q. When he told you that he had been living in a tent did he  
15 indicate why he stopped living in a tent?

A. That it was beginning to get too cold.

Q. And did he indicate the - anything further of what occurred during the time he was living out in a tent?

A. Other than the fact that he said he's never even killed  
20 an animal, and----

Q. Anything further then?

A. Squirrels were his friends. He made some kind of noise which I guess was like a squirrel. He imitated a squirrel to me.

25 Q. When he referred to the break at a home of a priest was there mention at any stage of - by him of any robbing of a priest?

A. He had broken in and I presumed that was the reason he had broken in, to rob the priest but that was probably my  
30 presumption rather than him actually saying it.

MR. FURLOTTE: My Lord I believe one witness before the Crown jumped me when I used the term rob rather than break and enter, so maybe the Crown would be pleased to clarify the point again?

35 MR. SLEETH: Okay, I will. Thank you very much Mr. Furlotte.

61

Cst. Mercer - direct

Q. Robbing. Was there a discussion of robbing the priest by Mr. Legere?

5 A. There was discussion of breaking and entering a priest's house.

Q. What sort of voice was Mr. Legere addressing at any time that he spoke about that?

10 A. He was calm most of the time except when he felt that I was trying to fool him up in the driving or again when we went backwards down a hill when I did lose control at one time, he kind of got a little agitated that I was losing control of the car and at that point he did say "I can't take three hostages so I got to do away - I got to start getting rid of some". If we had gone off the road he would have to pick up someone else.

15 Q. At the time the mention was made of the breaking in to the priest's was there any discussion by Mr. Legere of any involvement who might have had with the priest at that time?

20 A. No. I don't know - a priest and then again - he was referring to the priest that had been murdered, that he was being - it was said that he had done. He also referred to a priest that he had broken into the house and he found that it was a priest's house. Whether that was the same priest I don't know.

25 Q. Was there any discussion in relationship to this and to killing a priest?

A. He said he hadn't killed the priest that he was being accused of.

30 MR. SLEETH: Thank you very much.

THE COURT: Are you going to be long in cross examination Mr. Furlotte?

MR. FURLOTTE: I think I can finish by twelve thirty My Lord.

THE COURT: All right.

35

62

Cst. Mercer - CROSS

CROSS EXAMINATION BY MR. FURLOTTE

- Q. Cst. I believe you stated that Mr. Legere had also identified himself to you as Allan Legere?
- 5 A. No I did not.
- Q. You did not?
- A. I stated that he said "I am the one they are looking for". He also referred to himself as Allan; he referred to life in prison. I knew that he was Allan Legere.
- 10 Q. Okay, but he didn't say he was Allan Legere, just Allan?
- A. No.
- Q. Now you mentioned that he had a sawed-off rifle?
- A. Uh huh.
- Q. But he never actually pointed the rifle at you did he?
- 15 A. It was pointed in my direction---
- Q. In your direction?
- A. --when it first came out, it came out and here it is more or less and then it was laid on his lap pointing in my direction.
- 20 Q. So he brought out the rifle to use it as some kind of tool for persuasion?
- A. To get me to do what he wanted me to do.
- Q. But he actually didn't point it at you and threaten to shoot you or anything?
- 25 A. At times he did, yes.
- Q. At times he did?
- A. He did threaten that he would have to kill us, yes. As I stated, at the gas station not to make any motion or he would have to kill us. When we lost control, if we went
- 30 off the road he would maybe have to do away with us because he couldn't take three hostages.
- Q. Right. So he was trying to convince you to do what he wanted you to do?
- A. Yes.
- 35 Q. But other than that he was basically pretty nice to you?

53

Cst. Mercer - cross

A. Yes he was.

Q. As a matter of fact when he lit up a toke you told him you didn't like the smell of it?

5 A. I did.

Q. Right. And he abided by your wishes and he threw it out the window.

A. Yes, he agreed that it did smell bad and he did throw it out the window.

10 Q. So he didn't want to offend you any more than he had to?

A. I can't say.

Q. At least that's what it appeared to be?

A. It appeared.

Q. And the talk about the money, he just mentioned that if he had money he could go some place else rather than go back to Chatham. Is that when you offered him the six hundred dollars?

15 A. I offered him the six hundred dollars - he was talking about possibly the States. He was in my mind confused and didn't know where he was going, and therefore I was confused and didn't know where he wanted to go.

20 Q. He didn't know whether to make a run for it or just give himself up?

A. There was no indication----

25 MR. SLEETH: Objection, there was nothing stated about that.

MR. FURLOTTE:

Q. Did he mention anything about---

THE COURT: Well, the answer was?

A: There was no indication of ever giving himself up. As a matter of fact there was indication to the contrary. He said that while we were travelling if we were stopped by a police - one of the reasons he wanted to pull off the road was because I guess only a certain few people were on the road that night and it was mostly truck drivers. It wasn't fit to be on the road. He had indicated maybe  
30  
35



64

Cst. Mercer - cross

we'd pull off the road and wait until morning. That wouldn't draw any attention to ourselves by being the lone car from P.E.I. I guess on the road. He-- Can you repeat your question?

5

MR. FURLOTTE:

Q. No.

A. Okay, he indicated that we would pull off and be the loan - because - okay---

10 Q. My original question was did he at any time mention that he was thinking of giving himself up?

A. Okay. No he didn't. At that point he said if we had been stopped by the police he would have to blow them away because he could be recognized.

15 Q. Did he tell you why he had escaped to begin with?

A. Yes, he indicated that he more or less been dared by the guards, you "c'mon Allan, bet you can't do it" sort of thing.

20 Q. So he escaped just to show them he could do it; that's what he told you?

A. He escaped to prove himself.

Q. And he kept insisting to you and Mr. Gomke that he didn't want to hurt you?

25 A. Yes he did say he didn't want to hurt us. At times he also said that he would have to do away with us at times.

Q. Any mention to you also that he was getting blamed for - something to the effect that he was getting blamed for all the killings on the Miramichi?

30 A. The priest I mainly remember. I don't remember a conversation about the others.

Q. He was more incensed about the priest than the others at the time?

A. Yes, it was the most recent.

35 Q. And I believe you said he told you that he's never even killed an animal in his life?

55

Cst. Mercer - cross

A. Yes.

Q. And he mentioned something about the squirrels being his friend?

5 A. Uh huh.

Q. Now the priest's home - he had broken into a house and once he got into the house he realized it was a priest's house?

A. Uh huh.

10 Q. He discussed this with you?

A. Uh huh.

Q. And then searching the house for something to steal I suppose he come across some porno magazines?

A. Yes.

15 Q. And just to show the priest, he spread them all over the bed to show that he know what the priest was doing?

A. Yes.

Q. As kind of a joke?

A. I don't know why.

20 Q. You don't know why. And he didn't tell you where this was or when?

A. Not that I recall.

Q. But he did tell you that he didn't know the house was a prest's house?

25 A. Yes.

Q. He didn't mention that this place was in Moncton?

A. No, not that I recall.

30 Q. But you did at the time realize that he was talking about the priest that was killed, and broken into a priest's house. He was talking about two different priests altogether wasn't he?

A. I was not sure if it was a priest, the priest---

Q. But at the time you figured he was talking about two different priests?

66

Cst. Mercer - cross

MR. SLEETH: No, that's not what she said My Lord. I have to object to the way that question is phrased.

THE COURT: Well I think she answered the question rather  
5 explicitly. She didn't know whether he was talking about a priest; the priest; and then you interrupted to say "but you say so-and-so" which wasn't quite---

Q. Do you want to answer the original question?

10 A. Whether or not it was the same priest I don't know.

MR. FURLOTTE:

Q. You mentioned something about he mentioned his name was Allan and that he had been in prison?

A. Uh huh.

15 Q. And did he also tell you he was stabbed in the neck by somebody he was going to testify against?

A. That's not the way I understood it. I ---

Q. That's not the way you understood it?

A. I understood it that he was stabbed in the neck and  
20 refused to testify against the person who had stabbed him.

Q. And refused to testify against the person who stabbed him.. I want to show you this statement that you gave, taken at Sussex on - fancy that, the day before Mr.  
25 Legere was arrested.

A. It was taken on the 24th.

Q. But it says - it's marked here on the 23rd but it must have been taken on the 24th.

A. Yes it was.

30 Q. At five fifty-five. That would be five to six in the morning?

A. Uh huh, yes.

Q. On page three in the middle you stated "he told me that he---

67

Cst. Mercer - cross

- MR. SLEETH: Excuse me My Lord, I believe I object to that. The procedure set out in section 10 of the Canada Evidence Act would require for the witness to take an opportunity to sit down and read over a point. My learned friend can draw her attention to a particular point indicating with his finger; she can read; and then he can ask her.
- 5
- THE COURT: You are quite right. Section 10 of the Canada Evidence Act covers the procedure Mr. Furlotte. Show it to the witness.
- 10
- MR. FURLOTTE:
- Q. Would you read that portion of your statement?
- A. Uh huh.
- 15 Q. Now I'll ask you again, did Mr. Legere tell you that he was stabbed in the neck by the guy he was supposed to testify against?
- A. If that's the way it reads, it reads incorrectly. It was meant that he had been stabbed in the neck by a guy - it was my understanding - and he refused to testify against this guy in court although he had been stabbed by this person. That was my understanding. Whether that can be twisted, I don't know.
- 20
- Q. Is it possible that he told you both things, but only one---
- 25
- A. I don't believe so, no.
- Q. ---factor got into the statement, no?
- A. No.
- MR. FURLOTTE: I have no further questions.
- 30 THE COURT: Re-examination Mr. Sleeth?
- MR. SLEETH: I have no redirect of this witness My Lord.
- THE COURT: Thank you Constable, and you are excused I guess.
- MR. SLEETH: I'll make that motion My Lord.
- THE COURT: We will now recess until two o'clock this afternoon.
- 35

2.20 p.m. October 1, 1991

- 5 MR. FURLOTTE: My Lord Sgt. Poissonier was on the original witness list and I notice on the new witness list provided by the Crown that he is taken off that list. I would like directions from the Court, or the Court to direct the Crown Prosecutor to provide Sgt. Poissonier for cross examination if they don't want to call him for their own purposes.
- 10 THE COURT: Well was he on the original list?
- MR. ALLMAN: He was on one of the witness lists. As Your Lordship knows this witness list has changed from time to time. Ultimately on the witness list which was provided to my learned friend for trial, he is not on. We have determined he has no evidence that he can give that is necessary for the prosecution of this trial. He is essentially a background, a co-ordinating person who knows a lot about many things but in terms of active involvement of evidence he can give to the jury for the prosecution he is not required in any way and I would respectfully say that if Mr. Furlotte wants Sgt. Poissonier he should be obliged to call him. The circumstances under which - if Your Lordship wants I could do some little research on this. It was only mentioned to me this morning. Circumstances under which the Court can direct the Crown to produce witnesses that the Crown does not feel it needs are fairly obscure and pretty unusual. My basic position is that the Court should not direct us to produce a witness we do not require. He's available, Mr. Furlotte can subpoena him.
- 20
- 25
- 30
- THE COURT: Well his name was on the witness list.
- 35 MR. ALLMAN: Not the witness list for trial.

THE COURT: Pardon?

MR. ALLMAN: Not the witness list that was provided for trial.

MR. FURLOTTE: My Lord, this trial I believe you had originally  
5 scheduled for February, whatever date, and the  
witness list I had for that trial was January - I  
had it faxed in January 25th with the Crown  
Prosecutor in Newcastle with Sgt. Poissonier's name  
on the list. Also in the police brief I have the  
10 'will say' statement of what Sgt. Poissonier - the  
evidence he was going to give in the 'will say'. I  
believe it was every intention of the Crown at that  
time to provide Sgt. Poissonier---

THE COURT: Well on the list itself - have you a copy of the  
15 list of the Mr. Furlotte?

MR. FURLOTTE: I have a copy of the list yes, dated January 25th.

THE COURT: It is my recollection that when the indictments  
were preferred originally there were no witness  
lists provided with the thing, as there should have  
20 been, with the indictment and counsel for the Crown  
acknowledged that at the time and undertook to  
provide immediately, either then or - well yes,  
that day in court - undertook to provide the lists  
which would be affixed to the back of the  
25 indictment, and that was provided within two or  
three days. Now I don't know if Poissonier's name  
was on that list or not.

MR. ALLMAN: I believe Sgt. Poissonier's name was on that list.  
I can't confirm for sure but I can check.

MR. FURLOTTE: No.167. Witness No.167.

MR. ALLMAN: That was a provisional witness list. As Your  
Lordship knows it is not uncommon for witness lists  
to increase or decrease. I would appreciate the  
opportunity to do a little legal research on this  
35 because---

70

THE COURT: Well let's give - I gather that the timing of his appearance wouldn't be crucial. I mean later this week---

5 MR. FURLOTTE: Yes later this week would be fine. I don't him called immediately.

THE COURT: And he is available I gather, in the province?

MR. ALLMAN: This week is an inconvenient week for him actually but whatever Your Lordship's ruling is. If you  
10 want that we produce him he could be available next week.

THE COURT: Well let's say this, either tomorrow or the next day Wednesday, I'll hear representations. You have requested the opportunity. I may say that  
15 basically I always felt that when the Crown provided a list of witnesses attached as a backing on the indictment that that was a binding list. If the Crown didn't want to call people on that list that was their privilege to do so. But those  
20 witnesses once named must still be made available for cross examination and prima facie I would stick to that interpretation of the rule. If you can convince me otherwise Mr. Allman---

MR. ALLMAN: I will endeavour to do so.

25 THE COURT: ---I'll hear what you have to say. And if he convinces me otherwise then if you can convince me back again Mr. Furlotte, I may swing to you.

MR. FURLOTTE: Oh I'll attempt it.

THE COURT: Prima facie I would say that the defence are  
30 entitled to have him made available for cross examination. We will discuss this on say Wednesday morning. Now, you have another witness? We'll have the jury back.

Jury polled - all present

35

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THE COURT: Sorry to have held you up members of jury, but I had a chance to discuss with counsel in chambers very briefly the matter of scheduling of witnesses and some of the problems that come up about transportation and so on and we're - I think it was all put to good effect, our conversation. Mr. Sleeth you may want to announce some change from your list do you, and then call your first witness for this afternoon?

MR. SLEETH: That is correct My Lord. The next witness was to have been a Mr. Brian Golding. It is my understanding he is wending his way here gradually from Newfoundland and will be arriving late in the day. So I would ask leave of the Court My Lord instead to skip over Mr. Golding for the moment and for him to appear first thing tomorrow morning. We would now be heading in the direction of Cpl. Terry Barter. Prior to presentation of Cpl. Barter however we wish to Cst. Greg Davis who will present a number of items before the Court.

COURT: All right, you can call Cst. Davis.

MR. WALSH: I recall Cst. Greg Davis. My Lord he requires he requires his control sheets. He just noticed he didn't have them with him and he's just gone to get them. It's going to take a couple of minutes. Cst. Davis is due to testify as witness 214. He has a number of items that he has to bring to court. What we're doing by asking that Cst. Davis be permitted to testify at this time is to introduce some of those items and when he testifies again as 214 he will introduce the balance of them. It will make the evidence more understandable.

THE COURT: Just while we are waiting for him I might explain to the jury that there are about - other than the



5 six witnesses the Crown has indicated they will be  
calling on the D.N.A. aspect of the case, expert  
witnesses, there are approximately thirty-two or  
thirty three, or something of that order, other  
witnesses left and counsel have discussed this with  
me just now and they have indicated that probably  
those witnesses would all be finished up - I'm  
sorry, out of those 35 witnesses there are about -  
there are five who wont be available until next  
10 week. The other 30 would all be disposed of this  
week and we might even be finished on Thursday with  
those witnesses. The other witnesses called next  
week may involve a voir dire into some aspect of  
that evidence. If that were the case we would  
probably send you home on Thursday or whenever we  
15 finish with these witnesses and tell you to come  
back perhaps on Tuesday of next week and Monday we  
would have our voir dire here and dispose of  
anything else. It would then take two or three  
days next week and then the following week we would  
20 be into the DNA aspect which will take about a week  
or a week and a half, and we are getting down  
toward the end of it now. But this seems like a  
reasonable scheduling and I'm just telling you that  
we can see the end of the tunnel here and this  
25 looks like a good thing. It will give you a few  
days break there along the way. So, now you are  
ready with your witness?

MR. WALSH: Yes I am My Lord. I recall Cst. Davis.

30 CST. GREG DAVIS - recalled

DIRECT EXAMINATION BY MR. WALSH

Q. You are Cst. Greg Davis and you have given testimony  
previously in this trial?

A. Yes.

73

Cst. Davis - direct

Q. You are an exhibit custodian associated with one of these homicides?

A. Yes, the Daughney homicide.

5 Q. In addition to that did you take into your possession any items other than that - at the scene of the Daughney matter did you have occasion to take any items after that time?

A. I received some items from the investigators at the time  
10 that Allan Legere was captured.

Q. Did you bring some of those items to the stand with you today?

A. Yes.

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

THE COURT: 4D.

(Plastic bag and contents marked 4D for identification)

MR. WALSH:

Q. I show you what has been marked 4D for identification.  
20 Could you look at that for us please and tell the jury if you recognize it?

A. Yes, it is one sealed plastic bag containing one Iowa tape player, grey in colour complete with Sony headphones seized from Allan Legere.

25 Q. And who - who did you receive that item from?

A. I received that personally from Cpl. Barter.

Q. Cpl. Terry Barter?

A. Yes, and that was on the 24th of November 1989 at 10.18  
30 a.m. in the morning and it has been in my possession since that time.

THE COURT: What did you call that? I'm sorry I didn't get it.

A. It's an Iowa tape player My Lord.

THE COURT: A tape player.

74

Cst. Davis - direct

MR. WALSH:

- Q. I show you an item that has been previously marked XXX and purports to be a Queen Elizabeth room receipt. Would you look at it please and tell me if you can identify that?
- 5
- A. Yes I can identify that by my initials and date and time which was the 24th of November 1989 at 10.18 a.m. I received it from Cpl. Barter and it was in my possession up until the time it was entered into court.
- 10
- Q. As was the previous item?
- A. Yes.
- Q. I show you an item that has been marked P-79 - excuse me, it has been entered as an exhibit P-79.
- 15
- A. It is a sealed plastic bag containing one glass case, brown in colour, seized from Allan Legere. It was received from Cpl. Barter again on the 24th of November 1989 at 10.18 a.m. I then turned that over to Duff Evers at the crime detection laboratory at Sackville on the 29th of November 1989 at 11.45 a.m.
- 20
- Q. And when did you next see that item?
- A. It was returned to me on the 9th of August 1990 at 8.00 a.m. in the morning.
- Q. And where has it been since it was returned to you?
- 25
- A. It's been in my possession since that time.
- Q. I'm just going to take you back to XXX which purports to be a Queen Elizabeth room receipt. What dates are they associated with - the receipts associated with?
- A. The receipt is dated from November 17th until November 21st.
- 30
- MR. WALSH: I have another item My Lord that I wish to have marked for identification.
- THE COURT: It will be 4E.
- 35 (Plastic bag containing Insurance card and vehicle registration marked 4E)

75

Cst. Davis - direct

MR. WALSH:

Q. I show you an item that has been marked for identification 4E. Would you look at that for us please and tell me whether you can identify that?

5

A. I can identify this again by my initials, the date and time which is the 24th of November 1989 at 10.18 a.m. I received it personally from Cpl. Barter and kept it in my possession since that time.

10

Q. What does that purport to be?

A. It is one insurance card and a vehicle registration which is in the name of Fernand Savoie.

Q. Is there anything else in that bag?

15

A. There is also another plastic bag in which these two documents were found.

MR. WALSH: I have another item here My Lord which I wish to have marked for identification.

THE COURT: 4F.

(Certificate marked 4F for identification)

20

MR. WALSH:

Q. I show you 4F for identification. Would you look at that for us please and tell the jury whether or not you can identify it?

25

A. I can identify this by my initials, date and time being the 24th of November 1989 at 10.18 a.m. It was received from Cpl. Barter and it has been in my possession since that time.

Q. What does that item purport to be?

30

A. It is one apprenticeship and trade certification from the Alberta Career Development Employment in the name of William D. Wilson.

THE COURT: D. what?

A. D. Wilson.

35

76

Cst. Davis - direct

MR. WALSH:

Q. I show you an item that is marked UUU. Would you look at that for me please and tell me whether you can identify it?

A. I can identify this by my initials and the date and time, 24th of November 1989 at 10.18 a.m. It was received personally from Cpl. Barter. It was turned over to Cst. Proulx of the Moncton GIS section at the Newcastle detachment on the 14th of November 1990 at 1.53 p.m.

Q. And in whose possession has it been since that time?

A. It was returned to me on the 29th of January 1991 at two o'clock in the afternoon and it has been in my possession since that time.

Q. You in fact brought them to court earlier?

A. Yes.

THE COURT: What is that?

MR. WALSH: It purports to be a hotel key My Lord.

THE COURT: A hotel key?

MR. WALSH: A hotel key, yes. Excuse me My Lord perhaps it has been marked and I missed it on the -- no. I have another item here I wish to have marked for identification.

THE COURT: 4G.

MR. WALSH:

Q. I show you an item that has been marked 4G for identification. Would you look at that for us please and tell the jury whether you can identify it?

A. I can identify this by my initials, date and time being 24th of Novemer 1989 at 9.03 a.m. It's a plastic bag which contains one red Swiss army knife and one small black Bic lighter.

(Plastic bag and contents marked 4G)

Q. How did you come into possession of it and what did you do with it?

77

Cst. Davis - direct

- A. I received those personally from Cpl. Godin from the Bathurst identification section. I then turned this item over to Duff Evers of the Crime Detection Laboratory at Sackville on 29th of November 1989 at 11.45 a.m.
- 5 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 from Cst. Proulx on the 17th of April 1990 at 2.59 p.m. and it has been in my possession since that time.
- 10 Q. The item that you received - you say you received that from Cpl. Godin, is that correct?
- A. Yes.
- Q. The items that you received from Cpl. Barter, how did you receive them, were they individual items as you demonstrated here; were they contained in one container; do you remember?
- 15 A. They were handed to me all in one bag and they were separated out afterwards.
- 20 Q. Cpl. Barter handed you the bag?
- A. Yes.
- Q. And the items were contained within a bag and you took the items out to separate them?
- A. That's correct.
- 25 Q. And the item that has been marked 4E, that purports to be two cards in the name of Fernand Savoie and you say there's another bag inside that. Where were these cards in relation to the bag that's inside it when you received them?
- 30 A. They were inside of that second bag.
- Q. You had to open this bag to get these cards out?
- A. Yes.
- MR. WALSH: Thank you My Lord. I have no further questions.
- THE COURT: Cross examination Mr. Furlotte?

35

## Cst. Davis - cross

MR. FURLOTTE: My Lord I believe I have yet to cross examine this witness on the evidence he gave in relation to the Daughney file when he was on earlier. I delayed cross examination.

5

Q. Cst. Davis I show you X marked for identification. Would you tell me what that is?

A. I would have to refer to my notes.

Q. Do you have your notes here with you?

10 A. Yes. It is one clear plastic bag containing one container with stain swab from Donna Daughney's inner leg.

Q. When did you receive that?

15 A. I received that from Cst. LeFebvre on the 17th of October 1989 at 1.19 p.m.

Q. On the 17th?

A. Yes.

Q. On your exhibit list in the Daughney file can you tell me what your item number 3 is?

20 A. Item number 3 is one sealed plastic bag containing four pieces of broken eye-glass lens.

Q. And do you know where that was found?

A. It was found----

Q. Who turned that over to you?

25 A. ---it was found on the ground outside the Daughney residence.

Q. Do you have as an exhibit the eye glasses who belonged - which may have belonged to the Daughneys?

A. Can you repeat that please?

30 Q. Were there any glasses given in as an exhibit which may have belonged to the Daughney girls which was, say seized at the residence?

A. No.

Q. And item number 78 that you have?

35

Cst. Davis - cross

- A. It's one sealed plastic bag containing one pair of broken eye glasses.
- Q. And do you know where that was found?
- 5 A. I'll just to have to check another place here if you don't mind. I have a note in here that it was found in a clump of high grass by the tracks near the Daughney residence.
- Q. Now, item number 136?
- 10 A. I have here it is one clear plastic bag containing a gold-coloured Citizen lady watch removed from Donna Daughney - or, from Linda Daughney.
- Q. Item number 148?
- A. It's one dark plastic bottle marked number 23 containing
- 15 a heart-shaped gold earring removed from Linda Daughney's right ear.
- Q. Do you have - were you given any other jewellery in relation to either Donna Daughney or Linda Daughney which was seized at the time of the autopsy?
- 20 A. Not that I can recall.
- Q. This is the only jewellery that you have been given which was taken from the Daughney sisters?
- A. Yes I believe so.
- Q. I show you Exhibit P-35, photograph number 2, which were
- 25 photographs taken at the autopsy of Linda Daughney. In photograph number 2 can you see any rings on the left hand of Linda Daughney?
- A. Yes there appears to be at least one ring there that I can see.
- 30 Q. To the best of your knowledge you did not receive any rings as an exhibit?
- A. No.
- Q. Exhibit 182 - or item 182 I should say?
- A. That's a 110-speed man's bike a Velo-Sport, black in
- 35 colour.



80

Cst. Davis - cross

Q. Does it have a serial number?

A. Yes, it's number 5428536 and I have it noted that it was seized behind 85 Davidson Lane in Newcastle.

5 Q. Could you state the serial number again?

A. 5428536.

Q. I have on my copy SY28536. Does that correspond, or---

A. I believe it's a five.

Q. Okay. So on yours it looks like 54 and my copy it looks like SY?

10

A. Yes. These are my original notes.

Q. Those are the originals?

A. Yes.

Q. That would most likely be a 5-4?

15

A. Yes.

Q. And who seized that?

A. That was seized by Cst. Britt on the 19th of October 1989 at 2.20 p.m.

20

Q. And do you know what investigative procedure was done in relation to that bicycle?

A. The only thing I can recall that was done it was fingerprinted and the fingerprints came back negative.

Q. Was there any attempt to find the owner?

A. I don't believe anything came up.

25

Q. And item 184?

A. It's one sealed plastic bag containing one black leather sheath, a buck - with a buck knife inside.

Q. What colour was the handle?

A. I can't recall - it has a black handle.

30

Q. And that had Buck written on the sheath?

A. I believe so.

Q. And do you know where that was seized?

A. That was seized by Cst. Belliveau on the 20th of October 1989 at 8.25 p.m. and it has been found - or seized from a George Sonier.

35

81

Cst. Davis - cross

- Q. By George Gagner?
- A. No, it was seized by Cst. Belliveau from George---
- Q. From George Gagner?
- 5 A. No, George Savoie - George Sonier. S-O-N-I-E-R.
- Q. Okay. Savoie?
- A. No, Sonier.
- Q. Sonier - oh, I'm sorry. Item 233?
- A. Yes, it's one baseball bat, black in colour.
- 10 Q. And where was that found?
- A. It was also found near the tracks near the Daughney residence in the town of Newcastle.
- Q. And 234?
- A. No. 234 is one sealed plastic bag containing one pair of
- 15 panties, white in colour.
- Q. And where was that found?
- A. It was found in the town of Newcastle at a ball field near the Daughney residence.
- Q. Item 339?
- 20 A. Item number 339 is one sealed plastic bag containing a plastic bag containing one bill of sale pertaining to the purchase of a diamond cluster by Linda Daughney.
- Q. And who was that seized by?
- A. That was seized by Sgt. Poissonier of the Moncton GIS
- 25 section. I received that from him on the 5th of April 1990 at 11.06 a.m.
- MR. FURLOTTE: My Lord I wonder whether the Crown has any objection to having that item put in as an exhibit?
- MR. WALSH: What item?
- 30 MR. FURLOTTE: Item 339.
- THE COURT: Diamond - or bill of sale---
- MR. FURLOTTE: Bill of sale---
- THE COURT: A bill of sale pertaining to a diamond cluster.

Cst. Davis - cross

MR. WALSH: My Lord the reason that ---- many of these items  
that Mr. Furlotte is referring to, I'm not going to  
allow him to conduct the prosecution of this case.  
5 Many of the items that Cst. Davis has referred to  
is a list of many many items, in excess of three  
hundred he's been given a copy of. The reason why  
these items are not entered in is that we have not  
got a connection, or we have not been able to find  
10 a connection between any of these items. There was  
a large search conducted. We cannot find a  
connection between those items related to these  
particular offences. They are items that were  
simply found and have no other connection. You  
15 will note that the bill of sale pertains to Linda  
Daughney. The evidence previously purports to  
identify jewellery of Donna Daughney and we see no  
relevance of this particular matter in association  
with Linda Daughney. I can't - from the Crown's  
20 point of view - Your Lordship can order me  
otherwise - but I can't from the Crown's point of  
view permit Mr. Furlotte to decide how we're going  
to conduct the prosecution of this case, which he  
seems to be wanting to do by forcing us to enter  
25 things in that have no relevance to this matter.

THE COURT: Well Mr. Furlotte the defence of course can't tell  
the Crown what evidence to put in and what not to  
put in. The Crown puts in what evidence it wants  
to which it feels is necessary for its case. If  
30 something comes up in cross examination Mr.  
Furlotte that you feel should be put in or has some  
relevance you can tender it as an exhibit of your  
own. For instance this invoice, if you feel it has  
- if it can be produced - I don't know where it is,  
35 perhaps it is not even here, I don't know.

Cst. Davis - cross

MR. FURLOTTE: I don't---

THE COURT: It's mentioned on a list.

MR. WALSH: It's a list of - 310 to be correct - it is a list  
5 of approximately 374 items.

THE COURT: Well this is one of the difficulties that this  
disclosure business leads to in trial.

MR. WALSH: Well we've provided everything to Mr. Furlotte and  
we've made these decisions because it's not that  
10 we're picking and choosing what we think is  
beneficial to us---

THE COURT: The Crown isn't bound in any way to put everything  
on its - every one of those three hundred items  
into evidence.

MR. WALSH: We're simply trying to find the relevance of any  
15 item that comes into court. We don't pick and  
chose to exclude for us. We pick and - we  
determine what - we hope to determine what is  
relevant. That doesn't stop Mr. Furlotte.

MR. FURLOTTE: My Lord there was questions as to when certain  
20 jewellery was purchased from Towers; there's  
questions as to the rings that were purchased at  
Towers either by Donna Daughney and Linda Daughney.  
One of the Crown witnesses has already testified  
25 that they bought item number 128, I forget which  
exhibit number it is there now, the diamond cluster  
ring, from Towers; they inquired at Towers as to  
when either Donna Daughney or Linda Daughney had  
purchased rings - this was brought out already in  
30 examination - the evidence was that this police  
officer found out that there was one of the  
Daughney sisters bought a ring at Towers.

MR. WALSH: Well that's not in fact correct My Lord. I think  
the evidence that he cross examined the officer on  
35 was to the effect that Linda Daughney purchased a

Cst. Davis - cross

diamond and charged it to Donna Daughney's account, if I remember correctly.

5 THE COURT: They each got a diamond cluster ring in any event from Towers did they not?

MR. WALSH: From the evidence - at least from the evidence that was presented before, there was two diamond clusters involved. Apparently Linda had one and Donna had the other. There is reference through those jewellery witnesses to Donna, not to Linda, so the relevance with anything connected with - associated with Linda, Mr. Furlotte has pointed out the rings on Linda's finger at the autopsy. We're not - there's no relevance here and he is trying to force us into producing stuff that we do not see any relevance of.

10 THE COURT: Well if he sees relevance and wants to put it into evidence he can. I'm not just sure though how the bill of sale for the purchase of that ring can be put in through this witness. He merely says he received it from somebody else.

MR. FURLOTTE: This witness has the bill of sale. I can't put it in through anybody else.

20 THE COURT: Is the bill of sale around Mr. Walsh - where is the bill of sale now?

MR. WALSH: Could I put a question to Cst. Davis or you could put a question to him? I don't know where any of the other items would be.

THE COURT: No I don't suppose - do you know where it is now?

25 THE WITNESS: I turned it over to Cst. Laturus and he still has it.

MR. WALSH: Cst. Laturus testified and Mr. Furlotte cross examined him on it - on that aspect.

MR. FURLOTTE: Lucky I didn't figure it out.

Cst. Davis - cross

THE COURT: Well do you want it brought back - I mean do you want the invoice produced?

5 MR. FURLOTTE: Well as long as the Crown guarantees that Cst. Laturnus wont leave the country I suppose I can bring him back later on.

MR. WALSH: Well---

THE COURT: Well he's testified now and been excused hasn't he?

10 MR. WALSH: Cst. Laturnus testified. He was cross examined by Mr. Furlotte; he has given a list of all these exhibit items; one of them was the actual item he has referred to. Now I don't exactly know what he wants to do. He wants to put a piece of paper into the court, for what purpose I have no idea. I can't see the relevance of it and I do not want to be forced---

15 THE COURT: Well could not everybody agree that Linda Daughney purchased a diamond cluster ring from - who is it from, it doesn't say there - from Towers or whatever?

20 MR. FURLOTTE: Well I wanted---

THE COURT: I think it came out earlier that she had a diamond--

25 MR. FURLOTTE: It came out with Cst. Laturnus I agree, but what didn't come out with Cst. Laturnus was the date that the ring was purchased. Cst. Laturnus also found out - testified that in his examination he found out that item 128, the diamond cluster ring was identical to the one purchased by Linda Daughney, not the one purchased by Donna Daughney. Of course there was no record of Daughney having purchased a ring at Towers.

30 MR. WALSH: That again I would respectfully suggest is not correct. My understanding is that Cst. Laturnus testified that the person that Towers couldn't -

Cst. Davis - cross

5 from the description on the piece of paper that he gave - the receipt that he gave - couldn't say whether or not in fact that was the ring, or whatever ring - associate it - she couldn't from that particular piece of paper. Now what the evidence is then to date is associated with the jewellery of Donna Daughney, at least that's my understanding of the identification - of the 10 purported identifications by the previous witnesses. I don't see the relevance of this particular piece of paper.

MR. FURLOTTE: My Lord I have reason to believe that the diamond cluster ring---

15 MR. WALSH: I hope he's not going to testify in front of the jury. I don't get an opportunity to cross examine him on these points but I don't want him testifying in front of the jury whatever he believes in his mind is the relevance of this item.

20 THE COURT: Well can this matter not be left until recess and counsel thrash this out between them or see what you can agree on or not. There seems to me to be so little hang on this matter. You may see something in it Mr. Furlotte that I don't, but---

25 MR. FURLOTTE: I think it is crucial whether that ring is one similar belonging to Linda Daughney or one similar belonging to Donna Daughney.

THE COURT: What ring?

MR. FURLOTTE: The one - the diamond cluster ring that's an exhibit there now. I just forget the number. 30

THE COURT: Well by the evidence hasn't it been tied in as---

MR. FURLOTTE: From the evidence so far from Cst. Laturus is that he took the diamond cluster ring to Towers and he attempted to find out when either of the Daughney girls had purchased the ring. The only thing on 35

Cst. Davis - cross

- 5 record at Towers was that Linda purchased a ring on Donna's account and also that through investigation that it was similar or identical to the ring purchased by Linda but there was no way they could prove that it was the ring purchased by Linda because they had sold similar rings or that they were a common ring. And I want it as to the date the ring was purchased.
- 10 THE COURT: Well what you want now, you want to see this invoice again?
- MR. FURLOTTE: Pardon?
- THE COURT: You want to see this invoice again now?
- MR. FURLOTTE: I would like the invoice put in as an exhibit.
- 15 MR. WALSH: I can give him the invoice My Lord. I'll accept whatever direction you give me on this.
- THE COURT: Well why don't you give - provide the - produce the invoice. Is it immediately available?
- MR. WALSH: I'll produce the invoice; we'll produce anything
- 20 that he wants but - I've got a photocopy here apparently.
- THE COURT: Oh put it in. Don't -
- MR. WALSH: This photocopy?
- THE COURT: Photocopy. Well no, don't you put it - I mean you
- 25 don't have to put it in.
- MR. WALSH: Well I'm walking around the table to give it to him My Lord. I've got enough job here with prosecution and I don't want to be doing Mr. Furlotte's job.
- MR. FURLOTTE: And you only have a third of the job I got.
- 30 THE COURT: Now you ask him if that's a copy of what he had in his possession Mr. Furlotte. Put it in. D-1 we'll call it. I'm not sure this witness knows what it is all about except he got it from somebody or other.



Cst. Davis - cross

MR. FURLOTTE: This witness doesn't have the original. It's hard for him to compare a copy.

THE COURT: Oh well, try him.

5 MR. FURLOTTE:

Q. Cst. Davis do you think this is a fair copy of the original invoice you had as an exhibit?

A. It looks similar to the one I received but as far as any of the contents on it I wouldn't be able to say whether  
10 it was the same or not.

MR. WALSH: We'll accept it's the same.

MR. FURLOTTE: Are you sure you don't want to---

MR. WALSH: No, I'll accept it. I'll give him the original if that's what he wants.

15 THE COURT: Have you got it there?

MR. WALSH: I don't think I have access to it. Perhaps tomorrow. I could make some arrangements over night somehow to get it, wherever it is.

THE COURT: Well let's----

20 MR. FURLOTTE: Well I'll settle for a copy, I'm not fussy.

THE COURT: Let's make this Exhibit D-1.

(PHOTOCOPY OF INVOICE MARKED EXHIBIT D-1)

THE COURT: This Mr. Furlotte is - on its face what does it purport to be? Invoice of---- Will you try to get  
25 the original Mr. Walsh?

MR. WALSH: Yes My Lord. I'm not attempting to be difficult, it is just that, you know, with 370 some items items if he starts this---

MR. FURLOTTE: Purports to be an invoice for a cluster ring.

30 THE COURT: Diamond cluster or just cluster?

MR. FURLOTTE: It just says cluster.

THE COURT: Cluster ring; and who is it made out to?

MR. FURLOTTE: It's on the - well maybe we can get the constable to - it's made out to Donna Daughney and signed as  
35 being received by Linda Daughney.

Cst. Davis - cross

THE COURT: And the date?

THE WITNESS: It says November of 1986 - excuse me, November 22,  
1985.

5 MR. FURLOTTE:

Q. And Cst. Davis, that is on somebody's charge card? Is  
that what it looks like?

A. It appears to be on some kind of a card imprint.

Q. And the card imprint is made out in whose name?

10 A. Donna A. Daughney.

Q. And the person who signed for the ring - as having  
received the ring is who?

A. Linda Daughney.

Q. What was the price of the ring?

15 A. The total came to - including tax, to \$220.89.

THE COURT: Why don't we let the jury look at that during the  
recess rather than take up the time now? Don't  
bother to pass it around now. We'll get on with  
something else.20 MR. FURLOTTE: Fine My Lord. I have no further questions My Lord  
except---

Q. Item number 7?

A. One sealed plastic bag containing one cannister  
containing five black hairs.

25 Q. Could you tell me where they come from?

A. They were found by Cpl. Godin in the back yard of the  
Daughney residence on the boxes of vinyl siding.

Q. Item number 92?

A. One sealed plastic bag containing a knife with brown  
30 wooden handle.

Q. And where was it found?

A. It was found by Sgt. Chiasson of the Bathurst  
identification section in the front bedroom closet of the  
Daughney residence.

35 Q. And number 93?

90

Cst. Davis - cross

A. Number 93 is one sealed plastic bag containing one knife complete with sheath, wooden handle.

Q. Where was it found?

5 A. It was found by Cpl. Godin in a tool tray in the laundry room of the Daughney residence.

Q. Number 315?

A. 315?

Q. Yes?

10 A. One sealed plastic bag containing three rolled cigarettes seized from Allan Legere.

Q. Do you know what those cigarettes were?

A. They appeared to be cannabis.

Q. Appeared to be cannabis?

15 A. Yes.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination Mr. Walsh?

MR. WALSH: Just a few My Lord.

REDIRECT EXAMINATION BY MR. WALSH

20 Q. When you use the term 'seized' from someone - you used the term something was seized from George Sonier - you are not talking about physically removing it from someone as opposed to taking possession?

A. Just taking possession - receiving it from.

25 Q. Receiving it from someone?

A. Yes.

Q. So this person could have actually found an item and you would say you seized it from him. Is that correct?

A. That's correct.

30 Q. And when Mr. Furlotte showed you the autopsy picture to show the ring on the finger of one of the girls, it was Linda Daughney that he showed the picture of, is that correct?

A. I believe so.

35 Q. It was not Donna Daughney?

91

Cst. Davis - redirect

A. No.

Q. On the receipt that Mr. Furlotte had marked as a defence exhibit, from that description of the item on there would  
5 you be able to identify any particular item based on that description alone?

A. I can't positively identify it without my - without my initials and date and time written on it.

Q. No, what I'm saying is, from the writing on the actual  
10 item, it refers to a cluster ring, would you be able to identify a ring based on that description alone?

A. No.

MR. WALSH: I have nothing further.

THE COURT: Thank you very much and you are stood aside I guess  
15 Constable Davis.

MR. SLEETH: My Lord the next witness Cpl. Barter, and I hope the one we might get through after, Cpl. Lutwick, I would expect to be some little while and it might well prove to be some little while, I wonder if  
20 this might be a good time to take our afternoon coffee break?

THE COURT: Yes I think we will take a break now. There are two or three items we shouldn't get too far behind on. One is that invoice; another is another of the  
25 photographs of the bridge area; another is the various items of jewellery. There was some other item before that?

MR. WALSH: Ledger My Lord.

THE COURT: Yes, the ledger. So perhaps - counsel have no  
30 objection to those items going to the jury room for a quick perusal?

MR. FURLOTTE: There's the composite drawings were items asked.

THE COURT: The composite drawings. Let's do that tomorrow. So Mr. Pugh would you help gather those items up

Cpl. T. Barter - direct

and send those out with the jury? Please don't take the jewellery items out of the bag.

(short recess)

5 Jury polled - all present.

THE COURT: Another witness Mr. Sleeth?

MR. SLEETH: Yes My Lord. I call Cpl. Barter.

10 TERRENCE MICHAEL ARCHIE BARTER having been called as a witness testified as follows:

DIRECT EXAMINATION BY MR. SLEETH

Q. Cpl. would you please state for the jurors your full name  
15 and your occupation?

A. My name is Terrence Michael Archie Barter. Barter is spelled B-A-R-T-E-R. I am a peace officer. I have been a member of the R.C.M.P. since the 6th of February 1967 and a member of the R.C.M.P. Police Dog Services since  
20 the 20th of February 1971. I am presently stationed at Chiliwack, County of Westminster, Province of British Columbia where I am in charge of the Chiliwack Sub Division Police Services Dog Unit.

Q. You heard the witness that preceded you, Cst. Davis,  
25 around three o'clock or so this afternoon when he began his testimony?

A. Yes I did.

Q. And he referred to a number of items which would have been turned over to him by you. Do you recall the date  
30 that occurred?

A. Yes, it was on Friday, November 24, 1989 and these items were turned over to Cst. Davis at the Newcastle R.C.M.P. office at ten fifteen in the morning.

Q. You just finished stating however that you are presently  
35 stationed at Chiliwack, B.C. How was it you happened to be in New Brunswick at that time to turn these over to Cst. Davis?

93

Cpl. Barter - direct

A. I was directed to attend with another member of the R.C.M.P. from British Columbia to assist in a manhunt for an escaped criminal.

5 Q. Moving directly then to the 24th of November, there were incidents which involved you which I believe you wish to relate now. Would you begin so beginning with the hour that you went on duty?

A. Yes, at approximately five a.m. this date we were placed  
10 on duty by the member in charge of the emergency response team that day. It was Tom Spink. We were called down and briefed at our place of residence in a hotel in Newcastle and were advised that the suspect we were looking for was possibly coming towards Newcastle.

15 Q. As a result of that briefing you proceeded to?

A. As a result of the briefing Cpl. Gary Lutwick and myself were teamed together with the police service dog Echo and we went in an unmarked suburban police car out to a roadblock location which was already being manned on highway  
20 126 which is a back road to Moncton. We took up a location at the roadblock for a while just sitting back. The weather that night was clear and cold. There was a storm in southern New Brunswick earlier that night. You could see the storm line in the sky. The cloud line was  
25 there. But the weather around Newcastle was clear and cold and minus 12 degrees. There was a bit of snow on the ground in places; the snow was hard from freeze-melt cycles. The snow was quite hard; the snow was still there. Cpl. Lutwick and myself were advised sometime  
30 approximately five twenty in the morning, it was still dark, that a semi-trailer unit had been seen on the lower Bonny Rift road which was a 'no truck route' and shouldn't have been there. This information came as a result of a conversation with another truck driver and we  
35 were dispatched down to this area to check it out. We

Cpl. Barter - direct

drove towards Moncton on the highway number 126 for a short distance and we turned right onto the 118 road and as we turned right I confirmed on the radio with some of the members more knowledgeable of the area just confirming I was on the right road. They advised me it was the next road down but as they did this I saw a set of headlights up ahead of me and it was a tractor unit for pulling a trailer, a semi-trailer. It was just an air tractor unit travelling ahead of us and we elected to go and check this vehicle. We pulled up behind it - accelerated and pulled up behind it; put on the emergency equipment in the police car which consists of grill lights, red and blue, flashing alternately and a red light in the dash board and we advised the members we were going to check this vehicle; and it didn't stop. It knew we were there, it quite obvious. It continued along about 40 to 50 kilometres an hour for about a minute to forty seconds. We advised the members of this. The vehicle wouldn't stop; we couldn't get a license plate number as it was obscured by snow that had blown up behind the wheels. Finally the vehicle stopped after about half a minute. It came to stop; we stopped behind it and radioed that the vehicle had stopped and called for backup. There was nothing happened for a period of time, maybe perhaps ten seconds and then a person exited the driver's door of this tractor unit - it was an orange tractor unit, we were able to pick that out. When he hit the ground the person coming out of the driver's door came running back shouting - he had long hair, about thirty years old. Lutwick and I both exited the vehicle. Lutwick covered him with the rifle and I had a rifle too. The person was yelling "it's him, it's him, he's got a gun". He was very upset, almost sobbing. We patted the

Cpl. Barter - direct

fellow down, not knowing exactly what we had. We put him behind the police suburban and at this time Lutwick went towards the right-hand side - we were parked about fifty feet behind the tractor unit. He went to the right-hand side of the vehicle; I went to the left-hand side of the vehicle and out into the ditch. There is a paved two-lane road and this is in the area approaching South Nelson, Northumberland County, Province of New Brunswick. By going out a considerable distance I could also keep an eye on the other person who was behind the suburban and it afforded me the cover of the ditch, and I had a rifle at that time as well.

Q. What type of rifle did you have?

A. It was an M16 rifle - M16A1.

Q. Cpl. Lutwick?

A. He had a Hecron Croc MP5. In addition to that I had a service revolver. Lutwick - I could hear Lutwick yelling at someone in the cab of the semi-trailer. I don't know his words; and after what seemed like a couple of minutes whoever was in the vehicle had obviously moved over to the left into the driver's seat and put their hands out upon the door-frame of the vehicle in a position like that-- The truck was still running. They were then told to throw a weapon out if they had any guns. I do recall Lutwick saying words to that effect, and shortly after that a very short sawed-off rifle with a strap on it came out the driver's window on the ground to the side of the truck. I put the rifle down then that I had and I took out my snub-nose service revolver and at this time came up - I came right up beside the truck in the ditch. The ditch was very shallow, perhaps two feet deep, and I yelled at the person to get out of the truck and I assume that Lutwick was at the left rear of the vehicle at this time. My attention was totally focused on the driver's



Cpl. Barter - direct

side of the vehicle. The subject started coming out. He says "I'm all right, you got me, I'm all right". And this is as he was coming out. I was telling him to come  
5 out and lie face down on the ground. I yelled at him "shut up and lie down you cocksucker" and he said "I will, I am". He was scared; he was a scared man at the time. He came out, he lay down on the asphalt over on the other side of the road. Cpl. Lutwick came up and was  
10 covering him. I ran back to the police car to get a set of handcuffs and he was told to like there with his hands out in front of him and remain still. With Lutwick covering him I ran back to the police car, got the handcuffs and I came around to the front of him. He was  
15 lying with his hands away from the truck at this time. As I began to bend down to put the handcuffs on him the subject came up - brought his arms back in real fast and started getting up, like in a semi-pushup position just as I was bending down and I kicked him in the head at  
20 that time - I hit him in the head; he went right back down fast. I got my handcuffs on behind his back and radioed to the other members then that we had a suspect in custody. Through radio conversation I was asked if it was Allan Legere and I didn't know, I had never seen  
25 Legere before. And they asked me this a couple of times and the suspect on the ground finally said "you got me, I'm Allan Legere". I then confirmed that we did have Allan Legere. The time of this arrest was about twenty-five to six - 5.35 in the morning. It was still dark.  
30 Following this I read Allan Legere, this person who identified himself - he was clean shaven at the time; he had shorter hair than he does now and he was wearing a work-type ski jacket. He had a tuque that was off, work boots and I believe he had a pair of dark jeans on; and

Cpl. Barter - direct

he is seated in the witness box here today between the two R.C.M.P. members, in the yellow shirt.

Q. You mean the prisoner dock?

5 A. Yes. Right there in the nice yellow shirt. And I read him the standard police warning we were required to read to prisoners when we take people into custody. I advised Mr. Legere that he was under arrest for escaping lawful custody; that he was not required to say anything and that anything he did say could be used in evidence. I asked Mr. Legere if he understood this warning and he said "yes I do". I then read to him the section of the Canadian Charter of Rights which we are required to advise people upon being taken into custody, and this was  
10 - the words are 'you have the right to retain and instruct counsel without delay' and again I asked Mr. Legere if he understood this and he said that he did. The time at this time was 5.45 hours because it was necessary for me to ask someone the time as I didn't have my wrist watch with me that morning. Legere - I stood him up and I was conscious of - some other police presence had arrived then, I believe Cst. Dugas had arrived right around this time. I walked him - he was  
15 - he was walked over to the front of our police car where - on the ground after handcuffing him I took his belt off. There was a couple of pouches on the belt and there was a knife, a red Swiss army knife on his upper body. And took him over to the vehicle where he was standing in front of the suburban - at the front of the suburban, and  
20 at this time I emptied all of his pockets. I removed his boot laces. He had a glass case and there was a small dark coloured Walkman; there was some papers wrapped in plastic and an Alberta tradesman card, expired, in the name of Wilson; a tube of vaseline and one or two other  
25  
30

Cpl. Barter - direct

items. I placed all these items in a day pack which I had retrieved from the police car, emptied of its contents - any other contents - placed into this bag and  
5 back into the police car. While I was searching Mr. Legere after he was handcuffed, and I believe leg irons were put on him before walking over there by another member who had attended. At this time Legere's demeanor changed from a sniveling type of person and he regained  
10 his composure and I feel regained some of his macho. He said "why did you hit me, you didn't have to. You're as bad as me, you're just an animal" he said to me. I didn't make any comment. He asked me my name and I told him my name was Cpl. Barter. He asked me where I was  
15 stationed and I advised him that he would have to obtain this under the Freedom of Information Act.

Q. Did he say anything else after that?

A. I don't believe there was any other conversation. Shortly after this he was placed in the back of the  
20 marked police car with Cst. Luc Bolduc of the J Division emergency response team.

Q. Okay, you mentioned earlier at the start of your testimony that you are with the Dog Services section?

A. Yes that's correct.

25 Q. Was there other members of the Dog Services section from British Columbia operating in that area at the time?

A. Not the immediate area. Cpl. Rick Kovat was - had come out with me. He was on another highway on this particular night at this particular time. He was on the  
30 main road that goes through Chatham, I believe - the main highway.

Q. Of your own knowledge were dogs employed in the search in that area?

A. Yes we were extensively employed over a two-week period  
35 having arrived on the 14th of November from Vancouver.

99

Cpl. Barter - direct

- Q. During the time that you were with Mr. Legere was there mention by him of dogs or police officer's dogs?
- A. Yes, I'm sorry, there was further conversation. After asking me my name and stuff he said "I'm no problem", he says "I never hurt any of you guys. I could have hurt the police woman and I could have hurt the guy's dog and the guy with the dog". He says "I'm no problem", and he did add that.
- 10 Q. What was the demeanor of the accused - of Mr. Legere prior to the handcuffs being placed on him?
- A. I considered him - he was scared and sniveling, timid; and after the handcuffs he returned to the concept that we had been told Allan Legere portrayed.
- 15 Q. At the time that you used your foot on him, what was the purpose of using the foot at the time?
- A. To stop him from continuing to get up.
- Q. I am placing before you a bag which has been marked 4D for identification and has been described as an Iowa or some such thing, tape player. You referred to a Walkman?
- 20 A. Yes, this is similar to what I gave the member at Newcastle detachment.
- Q. To Cst. Davis?
- A. Yes, to Cst. Davis. I gave him all these items in a bag. We emptied the bag at the office. There's also a motel key of some sort in the bag. I didn't mark it because I didn't want to do anything to endanger any forensic examinations.
- 25 Q. By forensic examinations you mean laboratory examinations?
- 30 A. Yes, laser, fingerprinting, whatever.
- Q. I am passing to you now XXX. Do you recognize that?
- A. No I don't particularly remember this one at all.
- Q. YYY?
- 35 A. Glass case.

100

Cpl. Barter - direct

- Q. Bearing the title Greiche & Scaff. That's the title on it I believe?
- A. Yes it is, Greiche & Scaff. It is similar to what I seized from Mr. Legere on this date.
- Q. 4E, a plastic bag containing yet another plastic bag and earlier identified by Cst. Davis as an insurance card and a registration, a vehicle registration?
- A. Yes, there was a plastic bag with some papers folded up that would be almost wallet size or pocket size at the time. I didn't examine the papers in this but this would be similar to what I gave Cst. Davis on that morning.
- Q. 4F?
- A. Yes, I recall a card in the name of William Wilson. It's an Alberta apprenticeship and trade certificate and it was issued in 1969, and I recall giving this to Cst. Davis.
- Q. UUU?
- A. It's a key similar to the one I gave to Cst. Davis on the 24th of November.
- Q. MM - do you recognize that?
- A. It's a clip with some bullets but I didn't make any observations as to what---
- Q. NN?
- A. This is a sawed-off rifle similar to the one with a strap on one end that was thrown out of the truck that day. It appears very similar.
- Q. Would you just hold that up for the jurors to see?
- A. It's a lever-action rifle that's cut off right at the back here and the barrel is cut off right to the - as short as it can. There's a clip fitting in here and there's some glass beside here beside it.
- Q. I'm sorry Cpl., the type of vehicle that was hurled out from the vehicle which you had stopped would be---

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Cpl. Barter - direct

A. This appears to be similar to the one hurled from the vehicle that day.

Q. Okay. I'm passing to you 4G for identification.

5 A. This is a package containing a Swiss army knife and a black lighter and I recall taking two items from Mr. Legere on the road that day and leaving them on the road near the rifle.

Q. Where did you take those from him on that road?

10 A. Adjacent to the truck.

Q. But where on his person?

A. From his upper body, above the waist. I don't recall which pocket.

Q. At the time - you were demonstrating earlier that Mr. Legere would have been in a semi-pushup position---

15 A. Yes.

Q. ---when you used your foot on him. Where - where was that knife then when you subsequently found it?

A. It would have been down in this part.

20 Q. Around the stomach area?

A. Yes the stomach or lower breast area.

Q. And his hands would have been where?

A. Well he was coming up in a manner like this off the ground.

25 Q. At the time, you just demonstrated his hands would be almost in line then with his---

A. His hands were coming up under his body in order to do that. His hands were under his body.

MR. SLEETH: Thank you very much Cpl.

30 THE COURT: Cross examination - if you were going to be very long and this witness didn't have to get back to British Columbia it might be appropriate to adjourn now and go on in the morning. Are you going to be very long?

35 MR. FURLOTTE: I think I can be finished by four thirty.

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Cpl. Barter - cross

THE COURT: Well all right, that's twelve minutes. I don't want to push, but at the same time I--- pardon?

MR. FURLOTTE: I won't be held to that My Lord.

5 THE COURT: Well go ahead. I just don't want to by four thirty. We kept the jury here last night to all hours and I'm not going to do it again tonight.

CROSS EXAMINATION BY MR. FURLOTTE

10 Q. Cpl. Barter from what I hear from the direct examination it appears that you feel you have to justify as to why you kicked Mr. Legere in the head, is that right?

MR. SLEETH: I'm going to object to that My Lord, the Cpl. said nothing to indicate he feels he has to justify in the course of anything in his direct examination.

15 MR. FURLOTTE: I didn't say the officer said that. I think this officer can answer for himself.

MR. SLEETH: My Lord---

20 THE COURT: Well that appears to be an interpretation Mr. Furlotte is putting on it but however, be that as it may, I am sure this witness can deal with it so why not let him answer.

MR. FURLOTTE:

25 Q. I repeat Cpl., what I get from your direct examination you feel that you have to justify as to why you kicked Mr. Legere in the head. Would you please answer?

A. I did. I said no.

Q. You said you don't feel you have to justify it? The answer is no?

A. That's correct.

30 Q. So therefore you were - could have kicked him in the head then for no reason whatsoever as far as you're concerned, if you don't need to justify it?

A. Is that a question or statement?

A. It's a question.

35 THE COURT: No, it's a statement. Next question?

Cpl. Barter - cross

MR. FURLOTTE:

- Q. Then what I get from your answer, do you feel that you don't have to justify as to why you kicked him in the head?
- 5 A. If I'm asked why I kicked him in the head. I haven't been asked that.
- Q. Would you feel it would be proper to kick Mr. Legere in the head for no reason at all?
- 10 A. No.
- Q. And you say you kicked Mr. Legere in the head because you thought he was going to get up?
- A. That's correct.
- Q. And he made a motion to get up?
- 15 A. A perceived threat to me.
- Q. A perceived threat to you. Where was your revolver?
- A. I had put it in my holster.
- Q. And where was Cpl. Lutwick?
- A. He would be in a close proximity to me.
- 20 Q. Cpl. Lutwick had his weapon out?
- A. He did.
- Q. He did?
- A. Yes.
- Q. And on a few occasions, Cpl. Lutwick when Mr. Legere raised his head, - Cpl. Lutwick just put his foot on the back of Mr. Legere's head and told him to stay down?
- 25 A. Is that a question sir or a statement?
- Q. Did you observe that?
- A. No.
- 30 Q. Where were you?
- A. Well apparently I wasn't there at that time.
- Q. You weren't there at that time. You were gone for the handcuffs.
- A. Is that a question?
- 35 Q. Yes it's a question. Did you go for the handcuffs?



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Cpl. Barter - cross

- A. I went for the handcuffs.
- Q. Where were your handcuffs?
- A. In the car - truck.
- 5 Q. Where was Cpl. Lutwick's handcuffs?
- A. I don't know.
- Q. Now you had, I believe you said an M16?
- A. Yes.
- Q. Would you describe that please?
- 10 A. It's a rifle.
- Q. Pardon?
- A. It's a rifle, collapsible stock, .233 calibre, semi-automotic.
- Q. Semi-automatic?
- 15 A. Yes.
- Q. How many rounds does it hold?
- A. It depends on the size of the clip?
- Q. What was the size of the clip you had?
- A. The clip held 30 rounds.
- 20 Q. 30 rounds. Semi-automotic. Now when this person got out of the truck you felt it was safe enough to put that semi-automatic down and take out your service revolver?
- A. That's right.
- Q. This person told you that he was giving himself up?
- 25 A. He indicated that, yes.
- Q. He said "you got me"---
- A. Yes.
- Q. --okay, you got me?
- A. Yes.
- 30 Q. He threw his weapon out and you didn't feel he had other weapons. That's why you threw your M16 to the side?
- A. No.
- Q. Why did you throw your M16 to the side?
- A. Because I wanted to go into close contact with him to get
- 35 him down properly.

Cpl. Barter - cross

- Q. So he was already on the ground. When he jumped out of the truck he hit the ground right away did he not?
- A. When he jumped out of the truck he got off the running board and then stepped down and then got out.
- 5 Q. On the ground?
- A. On the pavement, yes.
- Q. On the pavement. Any snow on the pavement?
- A. No not right there.
- 10 Q. It was a very clear cold evening?
- A. It was that.
- Q. Minus 12 I believe did you say?
- A. I did.
- Q. This man is laying face first on the ground?
- 15 A. I don't know if his face was on the ground but he was in the prone position on the ground, yes.
- Q. Now you mentioned also that when you searched this man you took a belt off him and there was a knife in the belt. Did you mention that?
- 20 A. Yes.
- Q. Did this individual also tell you that when he got on the ground he says "I have a knife on me"?
- A. No.
- Q. To inform you that he had a knife on him?
- 25 A. No.
- Q. You didn't hear him say that?
- A. No.
- Q. Are you saying this man who was laying on the ground appeared to be resisting arrest?
- 30 A. He appeared to be getting up very quickly after he was told not to and in light of the situation I made sure he stayed down that way.
- Q. Did you describe this individual laying on the ground as a sniveling coward?

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Cpl. Barter - cross

- A. Up to then yes, maybe he was getting up to run, I don't know.
- Q. Maybe he was getting up to run. You did not know who  
5 this man was?
- A. Not at the time, no.
- Q. Yet you addressed him to "get down on the ground you cocksucker"?
- A. That's right.
- 10 Q. You feel this man may have thought - you called him a sniveling coward, or he appeared to be a sniveling coward - maybe this was scared you were going to shoot him?
- A. Perhaps.
- Q. If you acted like you did, called this man a cocksucker  
15 and kicked him in the head, not knowing it was Allan Legere, what would you have done if you had known it was Allan Legere?
- A. I wouldn't have done any different.
- Q. So you treat everybody you arrest that way?
- 20 A. If they react in a manner that I perceive a threat, yes, so I have control of the situation safely. By all means.
- Q. Now you were advised that the suspect was probably coming towards you?
- A. Yes.
- 25 Q. And you were advised that the suspect would be Allan Legere?
- A. Could be Allan Legere, not would be.
- Q. So you had basically everything but a formal invitation as to (inaudible)?
- 30 A. No.
- Q. Cpl. Lutwick was guarding Mr. Legere on the ground while you went for the handcuffs. Did you observe that he had his handgun or rifle - a weapon - trained on Mr. Legere?
- A. I assume he did. I didn't make any direct observations  
35 as to that. I don't know.

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Cpl. Barter - cross

- Q. And he got in kind of an argument with you trying to say that well he never hurt any of you so you had no business hurting him?
- 5 A. Well he made a statement to that effect.
- Q. So he was probably scared you were going to kick him again?
- A. I don't know.
- Q. You don't know?
- 10 A. I don't know. He didn't say he was scared.
- Q. Did he get angry at you at that time and challenge you and tell you there was no way you would do that man to man, you wouldn't kick him if his hands weren't behind his back?
- 15 A. No.
- Q. You don't recall him telling you that?
- A. No.
- Q. Did Mr. Legere believe at the time that he had already had his hands handcuffed behind his back when you kicked him in the face?
- 20 A. Pardon me?
- Q. Did Mr. Legere say anything at the time to lead you to believe that he had already had his hands tied behind his back when you kicked him in the fact?
- 25 A. To do that he would have had to get on the truck with his hands with his hands tied behind his back, so no he didn't.
- Q. You say you didn't hear Mr. Legere arguing with you after?
- 30 A. You're asking me---
- Q. Did he say----
- A. ---whether his hands were tied behind his back when he was kicked?

Cpl. Barter - cross

- Q. When you instructed him that he had the right to retain and instruct counsel without delay, did you tell him that you would get counsel for him if he wished?
- 5 A. No I did not tell him that.
- Q. Did you even ask him if he wanted counsel?
- A. No I did not.
- Q. So you were just what - just giving him - paying his rights lip service?
- 10 A. No, I didn't even have a list of the available duty counsel in the area sir.
- Q. And after you kicked him and you got him up he was angry at you?
- A. He compared me to him.
- 15 Q. Compared you to him?
- A. He said "you're just like me, you're an animal".
- Q. And he said something to the effect that you're as bad as him?
- A. Yes he did, yeah.
- 20 Q. So he felt you had no right in kicking him in the face, apparently?
- A. He didn't make direct allusions to that, but---
- Q. But it would be a safe assumption that that's what he had in mind?
- 25 A. Is that a question or a statement sir?
- Q. I'm asking you a question.
- A. What is the question.
- Q. Do you believe that that is a safe assumption?
- A. It was the first time I had met the gentleman.
- 30 Q. And he didn't think you had the right to kick him in the face?
- A. It was the first time I had met the gentleman and he didn't make any statements that way.

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Cpl. Barter - cross

- A. Well it would be a motion - from having been here that I've seen people get up from a lying-down position. Had it been a bird he may have been starting to fly, but I would assume that from a human as a man getting up.
- 5 Q. When you observed this individual moving, which you say he appeared to be getting up, you didn't just instruct him to lay back down again?
- A. I had already told him that.
- 10 Q. You told him that whenever he got out of the truck before you went to put handcuffs on him.
- A. We had already told him that once, to lie there and lay still.
- Q. How long before you were going to put handcuffs on?
- 15 A. A matter of seconds sir.
- Q. You mentioned after you put the handcuffs on you give Mr. Legere the standard police warning?
- A. Yes we did.
- Q. You told him he was under arrest for escape from lawful custody?
- 20 A. That's correct.
- Q. And you advised him to instruct counsel - he the right to instruct counsel without delay?
- A. Retain and instruct counsel.
- 25 Q. Retain and instruct counsel without delay?
- A. Yes.
- Q. And what did you do to accommodate that he would be able to get counsel without delay?
- A. Me?
- 30 Q. Yes?
- A. I called the - there were some support police cars there and shortly after this incident he was taken back to the Newcastle detachment, so we expedited this situation so that I'm sure he could.

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Cpl. Barter - cross

- Q. Could Mr. Legere have been getting up to - did you instruct him that you were going to handcuff him?
- A. I told him to lie there and be still and not to move.
- 5 Q. But if you were to handcuff him he would have had to move his hands to get his hands behind his back would he not?
- A. Not at that time he wouldn't, no.
- Q. Well how are you going to - how did you handcuff him in the end?
- 10 A. Eventually I put his hands behind his back.
- Q. So if Mr. Legere was going to put his hands behind his back for you to handcuff him, you observe that as him attempting to run away?
- A. This was before. We were starting to handcuff, I was
- 15 bending down---
- Q. To put the handcuffs on him?
- A. I would have been, yes.
- Q. You would have been?
- A. Shortly, but not yet.
- 20 Q. And do you remember telling Mr. Legere you were going to handcuff him?
- A. I told him not to move.
- Q. You told him not to move. How could you handcuff his hands behind his back if he is not to move?
- 25 A. Put one handcuff on here, move the hand behind his back and move his other hand behind his back and put the other handcuff on, like that.
- Q. Did you instruct Mr. Legere as to how you were going to handcuff him, the procedure you were going to follow?
- 30 A. No we never got that far. He started getting up.
- Q. Or at least you - perceived it to be he was getting up?
- A. He started getting up.
- Q. You could have been mistaken could you not?

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Q. You did not hear Mr. Legere say to you that you wouldn't do that if my hands weren't behind my back? In other words you wouldn't kick him in the face if it was man to man?

5 A. No I don't recall that.

Q. So if Mr. - did Mr. Legere accuse you of being the coward?

A. No. He may have felt that.

Q. He may have felt that?

10 A. I don't know the man.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination Mr. Sleeth?

MR. SLEETH: One very quick question My Lord.

REDIRECT EXAMINATION BY MR. SLEETH

15 Q. To the long series of questions from Mr. Furlotte about this kick, you could have shot or kicked him basically, right?

A. I didn't have a gun out at the time. I'm sure Cpl. Lutwick could have shot him.

20 Q. Just the way of maintaining control?

A. Yes, non lethally.

MR. SLEETH: Thank you. I have no further questions on redirect of this witness at all My Lord.

25 THE COURT: One final question out of idle curiosity, where was Echo?

A. Echo was in the back of the suburban My Lord.

Q. You didn't use Echo?

A. No, it was not used at all.

30 THE COURT: Thank you very much. You are excused. Have a good trip back. We will adjourn now until nine thirty in the morning. I want to say to the jury, just before you go, and that is that probably at this stage of the trial and with the media publicity and so on, more and more people are realizing that you  
35 are members of the jury here and are probably



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trying to talk to you about the case, or pass comments. I reiterate simply what I did before, don't have any conversation with them about the case at all. Just say that you are forbidden to talk to them about the case. Pay no attention to them. Thank you.

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