

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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MARCIA McLELLAN
COURT STENOGRAPHER

1 MR. LEGERE: Your Honour, I have some concerns about the
high frequency wires in my cell, about privacy. I
just wonder if you could look into it. I told
Mr. Furlotte about it.

5 MR. FURLOTTE: Mr. Legere is concerned about all the
telecommunication wires from here into his cell and
whether or not amongst that they'd be able to listen
to our conversations while we are in there discussing
the case. As I told Mr. Legere, as a defence lawyer,
10 I suppose I am suspicious at any time I am interviewing
any of my clients in federal institutions or in
county gaols as to whether or not the facilities may
be bugged and we have to take precautions in every
case. The reasons we may be suspicious - I don't
15 know what could be done about it. I mean if you
remove the wires, I am still going to be suspicious
so as I told Mr. Legere there is nothing you can do
to remove my suspicions because - particularly in
this case there is --

20 THE COURT: You can be suspicious whether there are wires
there or not.

MR. FURLOTTE: That's correct and that's what I told
Mr. Legere - that is why I told Mr. Legere I did not
intend to raise the issue with the Court.

25 MR. LEGERE: They were hooked up two weeks before and I
was kicked out of the Court.

MR. FURLOTTE: I can understand Mr. Legere being suspicious
also because I have been suspicious throughout my
30 career for one reason or another. That's something
that I don't know how any defence lawyer or accused
can get around.

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1 THE COURT: I can explain very easily the fact that they
may have been rigged up a couple of weeks before the
Court started. They were rigged up as a matter of fact
before the voir dire started back in April. They were
5 rigged up because on December 5th at Newcastle the
accused had suggested that his conduct might be such
during the trial it would be necessary to use that sort
of thing. I ordered the wires and the facility
installed. That is the explanation on it. I was
10 hoping it might never have to be used. All I can say
is I will look at it. I will check with the police
officers or the sheriff officers who are responsible
for installing that equipment. There is no indication
that I have or any reason I have to believe they are
15 being used for any purpose other than monitoring
purposes here in the courtroom.

Now could we have the jury?

MR. ALLMAN: Before we do, My Lord, you mentioned yesterday
that you wanted at some point in time - sorry - at
20 some point today to discuss the status of Sergeant
Poissonnier, if I could do that now.

THE COURT: Let's do it a little later. The jury has been
waiting and I think we should get started.

MR. ALLMAN: Fine. Whenever Your Lordship indicates, I am
25 am ready to do it.

THE COURT: We will do that perhaps at the recess or some
time. On this last point, I will look into this and I
will make some further comment on it later today or
30 sometime soon.

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1 (Jury called. All present.)

THE COURT: You have another witness, Mr. Sleeth?

MR. SLEETH: Yes, My Lord. Yesterday we called Mr. Gomke
and Mrs. Mercer and I indicated at the time to the
5 Court that the next in sequence would be a Mr. Golding,
the truck driver. He was not available at that time.
As a result we have skipped briefly to Corporal Barter,
who testified late in the afternoon. I would now like
to go back briefly then to Mr. Golding who is now
10 available. He falls in sequence from Constable Mercer.
I call Brian Golding.

MR. BRIAN GOLDING, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

15 Q. Mr. Golding, would you please state your full name
for the jurors?

A. It's Brian Leslie Golding.

Q. And your occupation please?

A. I'm a truck driver.

20 Q. And in 1989 your occupation was?

A. I was a truck driver.

Q. I am going to take you back to November of '89. You
were at that time involved in an incident which I know
you wish to relate to the jurors. Would you please
25 commence with the date on which these incidents arose
and the place?

A. Okay, it was the morning of Friday, November 24, 1989.
I was on my way from Montreal to Halifax and I stopped
in Sussex briefly just to -- I was going to clean my
30 windshield because there was a snowstorm at the time.

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1 So I pulled into the Irving Station in Sussex and
I got out and I went over to the fuel pumps to get a
squeegee and as I was going over I noted a gentleman
fueling a car at the pumps but that's all I noticed at
5 the time. I went back to clean my windows and as I
was doing that the car that had been getting the gas
it took off out of the station - you know - like quite
quickly. Like enough that you would notice it. It was
leaving in a big hurry. And the fellow that had
10 --putting the gas in was chasing it on foot. So as I
was watching this he chased the car to the road and
they turned back and started heading back towards me
and the truck. So I stepped down off the truck and
as he approached he said, "Come on let's get out of
15 here." And I looked down and there was a gun pointed
at me. And I kind of hesitated for a second because
I wasn't sure what was going on. And he, you know, he
gave me a little push and said, "Come on let's get
out of here right now." So we went back around to the
20 driver's side of the truck and he got me to go in
first. So I got in and I went across the driver's
seat and sat down in the passenger's seat and he got
in the driver's seat and asked me to change places
with him. And I was going really slow and he was
25 saying, "Come on - come on let's go. We've got to
get out of here." And there was another truck
approaching the yard and as he seen it coming he
said, "I want you to leave before that truck parks."
30 So I got myself together and put the truck in gear
and asked him which way he wanted me to head. He said,

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1 "Head towards Moncton." So I went back out towards the
highway and I headed up the eastbound on-ramp towards
Moncton. I was starting away and he kept telling me
to go faster, "go faster" and you know I was carrying
5 a fairly heavy load and the roads were icy and I was
doing my best to get the truck going. I guess it
wasn't quick enough because finally at one point he
reached over with his foot and he put it down over
top of mine on the fuel pedal and he said, "You know I
10 know this truck can go faster than this." At that
point you know I was quite scared and the way it came
out was I started yelling at him. I said, "You know
if you want me to drive the truck you know you have
to leave me alone and let me drive it and you know I
15 wish you'd stop pointing the gun at me." And he said
he had to point the gun at me but as long as I did
what he said he - you know - I wouldn't get hurt. So
we started up the highway and we went a little ways
and he proceeded to introduce himself as Allan Legere.
20 And he said to me, he said, "I'm the one that's the
suspect in three or four murders that happened in the
Miramichi." And I want to say here at -- I didn't
believe him. I didn't quite seriously believe that
he was who he said he was because his appearance at
25 that time was different than what I had been used to
seeing in the papers. You know I was used to seeing
a different person and he didn't really look the same.
And when he was talking I could smell that he'd been
drinking and so I wasn't really sure whether to believe
30 him or not. But when he said that about the murders I

1 said to him, I said, "Well did you do it?" And he
goes, "It doesn't matter if I did it or not. The cops
will have me framed for them anyway." So I didn't
say anymore after that about that and we kept going
5 up the road and as we came to Peticodiac there is a
truck weigh scale on my side of the road as you get
just past Peticodiac and I started thinking well if
the scale is open you're required to stop. It's the
law that you have to stop. So I started to try and
10 explain to him that we were going to have to stop
and he said, "No, don't stop." Again, I tried to
explain to him if we didn't stop, you know, we might
be -- the police might come after us. And, again, he
just said, "No, you don't stop." So as we got to the
15 scale there is a sign by the highway. It tells you
if it is open and it was open. And I started to put
my signal light on. I said, "I have to stop." And
at that point he leaned over towards me and he pushed
the gun up against my side and he said, "Don't stop.
20 I can feel the devil coming up inside me." And so
I thought I guess I better not so I pulled back out
on the highway. And we went on by the scale and just
my luck the officer that was on duty at that time --
there is big windows in front of the scale and you
25 can see the highway. But he had his back turned to
the highway and he was talking to another driver that
was already in the building so they didn't notice us
go by. But after we got by you know I said to -- I
30 said to him, I said, "You know what are we going to do
if the cops do come after us?" And he said, "Just

1 don't stop." And I said, "Well what happens if they
get in front of us?" And he said, "Well just smash
into them." So we kept going. As we got in towards
Moncton he indicated he wanted me to go up towards
5 Newcastle. There is a road that goes up there. It's
route 126. You take a -- just by the Forest Hills
truck stop. So we started heading up that road and
as we were driving along he was talking a little bit
more and basically described the events that led to
10 him being with me there that night. He said he had
taken a train to Saint John and that he had drank in
a local bar there. And then he had then taken a
taxi driver hostage. And he mentioned that the taxi
driver offered him \$150 and that -- but he didn't
15 want the money. He said that wasn't -- you know that
didn't concern him. And he told me about the taxi
driver going off the road and that they then flagged
this lady down that picked them up. And that's what
had led to them being in Sussex. He described a
20 little bit about, you know, he called himself a
survivor exactly and had described that he had been
hiding from the police and had hid in the woods and
that type of thing. As we were driving along at
one point he said -- he asked me to put the window
25 down on his side because he said he hadn't slept for
a couple of days and he needed the cold air to help
him keep awake. So there is -- the window in that
particular truck was a power window but the switch
is right by me. So I put the window down for him and
30 I turned the heater off. He asked me to turn the

1 heater off as well. I asked him then if I could put
a jacket on because it was quite cold and he said, "No
problem." We drove along for a while and there was
quite a period of silence and I was concentrating
5 on the road. It wasn't snowing at that point. It
had stopped snowing by then but the road was still
covered in snow and that was my first winter driving
a truck. So I was trying to concentrate on that as
much as possible. And he hadn't said anything for
10 quite a while so I looked over and he had kind of
nodded off. You could tell, you know, he was leaning
forward and he was sleeping I figured. So I wasn't
sure what to do. The truck we were in you sit quite
close to one another and he had had the gun sort of
15 on his lap pointing towards me and he was sitting
at a bit of an angle on his seat. And you know I
could tell he was nodded off so I wasn't sure whether--
you know if I should try to grab the gun or what and
I kind of figured where it was pointing at me I
20 probably would have been the one that got shot if it
went off. So I decided to try to wake him up and I
just hollered. I hollered -- he introduced himself
before as Allan Legere so I just hollered his name
quite loud and that brought him right up. And he
25 asked me where we were at that point and we were just
the other side of Rogersville, which is -- well you
are getting fairly handy to Newcastle by that time.
And it was only about twenty to five. So he asked
me to start slowing down and I asked him why and he
30 said, "Well I don't want to get into Newcastle until

1 6:00 o'clock." It was only twenty to five then. So I
said, well I said, "Even if we slow down," I said, "I
think we will be in Newcastle long before 6:00 so
maybe we should stop." And he said, "okay" so we
5 stopped. I asked him what was the -- why he wanted
to arrive in Newcastle at 6:00 o'clock and he said
there was a plane that he wanted to get at CFB Chatham
and it left -- it was boarding at 6:00 o'clock and
he just wanted to get there just as it was boarding.
10 And then he got -- you know I asked him where he was
going to go and he said he was thinking he was going
to go to Iran. I asked him what kind of plane it
was and he said it was four-engine propellor plane.
I remember saying that I didn't think one of those
15 would fly overseas that far. Then he started to say
you know that he had mentioned this plan already to
the lady he had with him before and he said, "You
know I shouldn't have told her that. Now that she's
got away she's probably told the cops." So he asked
20 me if it was hard to drive the truck and I said, "No,
it's relatively easy." You know I wanted to -- but
if he wanted to take the truck that was fine by me.
And I said, "You know maybe we should drop the
trailer and make it easier to drive it." You know
25 jsut have the truck itself without the trailer and
he asked me where we thought we could drop it. And
there was a dirt road just ahead of us on the lefthand
side and I said, "We'll just take it up there somewhere
and get rid of it." So we went up the road and we
30 found a place where there was nobody else around and

1 we dropped the trailer.

 Pretty well as soon as we had done that he
changed his mind. He said, "No," he said, "take me
back to Newcastle." I said "okay" so we got back in
5 the truck and we started heading back towards
Newcastle.

 I am not really how close we were but we must
have been getting fairly handy. Right out of the
blue he said, "Take a left here." So I turned up
10 the street and as we were going along I seen a set of
headlights coming behind us in my mirror. I mentioned
this to him and he said he'd seen it.

 Once it got closer I could see it was one of
those -- I guess they call it a dogmaster van. It's
15 a Chevy Suburban with a big dog in the back and they
had the little red light going in the windshield. So
I told him that, too, and he just said, "Keep going.
Keep going."

 We weren't going very fast and I couldn't even
20 say how far we went really for sure. But I remember
looking over at him and I just said, "I don't think
we can keep going forever." And he was real calm and
he said, "Okay, pull over."

 We started to pull over and we were just about
25 stopped. We were just crawling and I looked over
and he was looking into the mirror to see what they
were doing behind us. I kind of figured he wasn't
paying attention to me for a second so I bailed out
then and started running back towards the police.
30

 I had my hands above my head and I just yelled,

1 "He's got a gun. He's got a gun." That was pretty
well the conclusion of the trip.

MR. SLEETH: My Lord, before going back over that. I can't
help notice that one of the jurors at the very end
5 row may need -- possibly Mr. Push could get her a glass
of water or something. She appears from where I stand
to be having some distress.

THE COURT: Mr. Sears would you get some water please?
Do you want to recess for a few minutes?

10 JUROR: I will be okay.

THE COURT: If you don't feel well, you just shout out.

JUROR: I am just fine. I am just coughing that's all.

THE COURT: Pardon?

JUROR: I just have a cough.

15 THE COURT: Have you got cough drops or anything? If you
don't feel well or if you want a break or feel you
would like to go outside, we will all go of course.
Just speak up and we will stop.

MR. SLEETH: Thank you, My Lord.

20 Q. Mr. Golding, you said earlier during your testimony
how Mr. Legere - the individual who had stopped you
and called himself Allan Legere. Is he present in
this courtroom today?

A. Yes, he is.

25 Q. Where, please?

A. He is seated over between the two R.C.M.P. officers in
the beige sport coat.

MR. SLEETH: My Lord, I'd ask the record again to show the
witness has just identified the accused in the
30 prisoner's dock.

- 1 Q. You also told us earlier how this individual had described himself as a survivor. Could you elaborate on what was said at that point?
- A. Well when he was saying that that's basically when he was talking about -- he was -- you know he'd hid in the woods during the summer months. He'd said something -- I remember him saying about having fires and when he heard a helicopter coming or something he'd snuff the fires out. Like when it started to turn cold he had lost that as an option and he couldn't stay in the woods any longer.
- 10 Q. He was talking about the woods in what area? Was there mention of the area?
- A. I guess he had said it was around the Newcastle area.
- 15 Q. Was there mention at that time about the police searching for him?
- A. The only thing he'd said about the police was that he was kind of surprised that they couldn't find him.
- 20 Q. You mentioned how a taxi driver he said had offered him \$150 and he was not, in your words, interested in that. Was it that the money didn't interest him or that amount didn't interest him?
- A. He said the amount didn't interest him.
- 25 Q. This weapon that was pointed at you how close a look did you have at it?
- A. Well it was dark and he had it wrapped in a plastic bag so I didn't really have a really good look at it. He'd described it himself.
- 30 Q. What did he say it was?
- A. It was -- he said it was a .308 rifle and I remember

him actually showing me a bullet that belonged to the gun and he said at that point it was -- he said, "If this hits you, you won't walk away from it."

Q. I am showing you 'MM' and I call your attention to particulars of the cartridges. Have you seen cartridges like that before?

A. Okay, which would be the cartridge? That's a bullet right?

Q. Yes.

A. Okay, I've never seen the cartridge. I've seen the bullet.

Q. When?

A. That was one of the ones -- it was like one of the ones he showed me.

Q. I am now showing you 'MN'. Have you seen a device similar to that?

A. Well if you take it right from about there that's exactly what I remember seeing of it. That's basically what I'd seen from right there up.

Q. You are talking about the muzzle end?

A. Yes. Just about that last couple of inches there.

Q. This would have been about how far from you inside the truck?

A. Well, I think as I said before, we sit quite close. He would have been right maybe you know less than a foot and a half from me and the gun was on his lap.

Q. How long did this trip all take? How many hours or minutes are we talking about?

A. Well I remember checking the time just before I got out of the truck and it was just about 2:10. I believe

1 he was arrested at 5:30 so just about three and a half
hours.

MR. SLEETH: Thank you very much. I have no further
questions, My Lord, on direct.

5 THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Golding, you picked Mr. Legere up at approximately
what time - or I should say he picked you up?

A. It was approximately 2:10.

10 Q. About 2:10?

A. Yes.

Q. And other than you being initially scared with the
rifle and using the rifle to threaten you to drive
him where he wanted to go did Mr. Legere appear kind
15 of calm?

A. Well with the exception of when we pulled into the
scale, or when I attempted to pull into the scale. The
look on his face told me there that, you know, I
didn't really have much of a choice. I had to pretty
20 well do what he was saying.

Q. How much discussion was there about his likely being
caught once he hit the Newcastle area because the
police would be waiting for him?

A. The only discussion I remember about being caught at
25 all was just after we'd gone by the scale and I remembe
asking him specifically, "Do you or do you not want
to be caught?" and he had said no.

Q. He said no. He was going to Iran.

30 A. Yes, that was later.

Q. I understand he took your wallet?

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1 A. Yes.

Q. He gave you back your money?

A. He gave me back my money. There was only about twenty
bucks or so in it anyway and he gave me back all my
5 personal effects as well - my pictures of my girlfriend,
and my family.

Q. Right. He just wanted your ID?

A. Yes.

Q. He must have thought he looked your age did he?

10 A. Oh, I mentioned that to him because he had mentioned
his age previous to that. He said he was 41 and I
was only 24 at the time so, you know, I asked him if
he thought he could pass for 24.

Q. Did he tell you that to take me to Newcastle and he'd
15 let you go there?

A. Yes.

Q. When he first got in the truck?

A. Once we first started up the highway, yes.

Q. And he said if you do what he asked he won't hurt you?
20

A. Yes.

Q. And when he said that he wouldn't hurt you if you do
what he wants did he also tell you that if you knew
what kind of a guy he was you would believe him?

A. Yes.

25 Q. If you really knew what kind of a guy he was that you
would believe him?

A. Yes.

Q. But it was hard for you to believe him with a gun
30 sitting on his lap?

A. Exactly.

- 1 Q. You had every right to be scared.
A. Yes.
- Q. I understand from your direct testimony Mr. Legere
felt that the police were going to frame him for the
5 murders on the Miramichi?
A. That was a statement he made when I inquired as to
whether he had done the murders or not.
- Q. How long would Mr. Legere have been asleep in the truck
A. I really couldn't give you an approximate time. I
10 just -- you know I was concentrating on driving mostly
and I just know -- I noticed that there was a long
spell when nothing had been said and I just happened
to glance over and noticed that he had nodded off.
- Q. He said he hadn't slept for a couple of days?
15 A. Yes.
- Q. Did you say how long you thought Mr. Legere was asleep?
A. I said I couldn't approximate it.
- Q. Ten, fifteen minutes, half hour?
A. Really have no idea.
- 20 Q. So you would have been in the truck with him for
approximately three hours and twenty minutes?
A. Yes.
- Q. Or thereabouts? Three and a half hours?
A. Mmm.
- 25 Q. Now when you said you bailed out of the truck, I
understand the truck was stopped at that time?
Mr. Legere told you to stop the truck?
A. When I had said I didn't think we could keep going he
30 said, "Okay, pull over." That's the last thing I
remember him saying.

1 Q. And once you stopped the truck you noticed him looking
out the rear mirror?

A. That's as I was stopping.

Q. And then you bailed out?

5 A. That's as I was stopping.

Q. Did you hear Mr. Legere give himself up to the police
officers?

A. What happened from -- once I had gone to the police
officers they had taken me behind the Suburban. I sat
10 down on the back bumper there and I heard lots of
noises, you know, cars going, some doors slamming,
people yelling, but I didn't hear anything specific
after that. I was just there. I was glad to be out
of the situation.

15 MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination?

MR. SLEETH: No, My Lord, no questions on redirect.

THE COURT: Thank you very much, Mr. Golding. Where are you
headed for now?

20 MR. GOLDING: Right this minute?

THE COURT: No, I mean Boston or Newfoundland?

MR. GOLDING: No, I am going to Montreal right now.

THE COURT: Oh, Montreal.

MR. SLEETH: Truck right across the river I believe, My
25 Lord, ready to go.

MR. SLEETH: Now, My Lord, we'd like to return to the
sequence which we concluded yesterday afternoon. We
had had Corporal Barter on the stand. I concluded with
30 him. I would call Corporal Lutwick.

1 CORPORAL GARY LUTWICK, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Would you as with the previous witnesses please state
5 your full name and your occupation for the jurors?

A. My name is Gary Robert Lutwick. The last name is
spelled L-u-t-w-i-c-k. I'm a regular member of the
Royal Canadian Mounted Police. I have approximately
10 fourteen and a half years service. I am presently
assigned to the tactics and the weapons training unit
at the Dwyer Training Centre in Richmond, Ontario.
There I am assigned duties as an instructor for both
emergency response team members and special emergency
response team members.

15 Q. And you were in the courtroom yesterday when Corporal
Barter testified?

A. That's correct.

Q. And he related a number of incidents and referred to a
partner that was with him. You are that partner?

20 A. Yes, I am.

Q. Could you then in your own words relate the things you
saw and observed and said at that time, beginning with
hour, date, and the like?

25 A. On the 24th of November, it was a Friday early morning,
at about 5:00 a.m., 1989, I was in Newcastle,
New Brunswick, at that time as part of an emergency
response team unit. As a result of a briefing with
the emergency response team leader at that time,
30 Corporal Tom Spinkx, myself and Corporal Terry Barter
went to a roadblock which was set up on Highway 126

1 just outside of Newcastle.

We were there to assist the members who were manning the roadblock in the event that there should be some difficulty arise there.

5 As a result of further radio communications, Corporal Barter and myself travelled up the road, Route 126, to the intersection of Highway 118. We turned right onto Highway 118 and immediately came up behind a tractor-trailer without the trailer, just the tractor itself.

10 The tractor was heading in a southerly direction along 118. It was orange in colour. It was a Mack truck I believe, conventional, and it was proceeding down the road at about 30 - 40 kilometres an hour.

15 Because of previous information we'd received about the tractor-trailer in the area, we decided we would stop the vehicle and check its occupants.

20 We came up behind the tractor-trailer and put our emergency equipment on and did not get any immediate response from the truck. It continued on at its present rate of speed down the road.

25 We had occasion to pull up beside the tractor-trailer hoping to make ourself, our presence known. It had no effect. The tractor-trailer continued on down the road for approximately one kilometre.

30 At that time it came to a sudden abrupt halt in the middle of the road and immediately a male individual jumped from the driver's door - excuse me - and ran back towards the police vehicle that Terry Barter and myself were in.

1 We had both exited the police vehicle as soon as
the driver -- the vehicle had come to a stop and we
were outside the vehicle when the gentleman was running
back. I was on the passenger's side and Corporal Barter
5 was on the driver's side of the vehicle.

The man running back towards us was frantic. He was
yelling, "He's got a gun. He's got a gun." He had his
hands up in the air and he was sprinting full stride
towards us. He had dark hair, a young looking man,
10 mustache, and he was wearing a light-coloured vest,
dark jeans.

He immediately went to the left side of our
vehicle towards Corporal Barter and at that point I
lost sight of him thinking that he'd gone behind the
15 vehicle. I immediately went behind the vehicle to
see what the situation was and he was there with
Corporal Barter.

I looked at the individual close up, was satisfied
that he was too young to be the suspect we were looking
20 for. I quickly patted him down, frisked him for any
weapons, and satisfied myself that he wasn't a threat.
I told him to stay where he was. The individual again
repeated that there was a man in the truck with a gun.

I went back to the front of the police vehicle on
25 the passenger's side and observed the truck. It was
still where it had been. It was still running. The
driver's door was still open. There was no one else
visible at that time.

I started yelling at the occupant of the truck
30 telling him to come out of the vehicle. I shouted this
several times and told him the first thing I wanted to
see was his hands come out the driver's door.

1 I shouted that a couple of times and at that
point I noticed a set of hands come out the driver's
door from about the elbows to the fingertips. I
told the individual that I wanted him to put his hands
5 on the door frame so I could see them and to leave
them there.

They did that momentarily and then they disappeared
inside out of my sight. The next thing I observed was
a metallic object being thrown from inside the vehicle
10 out the driver's door to the pavement in front of the
vehicle, or at the side of the vehicle right onto the
road.

The object that was thrown, from what I could see
at that time, had a metallic finish to it and it was
15 connected by a brown leather strap and it had a
definite ring to it when it hit the pavement. I was
satisfied in my own mind that it was a weapon of some
type.

I again ordered the individual to come out with
20 his hands on the door frame and at that point the
individual did come out. As he got near the door I
heard him say, "I'm coming out. I'm coming out."
He slowly stepped out of the vehicle. I told him to
step down onto the steps, the tank steps, and then
25 down onto the pavement. He did this and I told him
to lay prone out onto the pavement, and he did that
as well.

The individual was wearing a light-coloured
30 toque or hat. He had on a blue ski jacket, winter
ski jacket, dark-coloured pants, and tan-coloured
work boots. He was about five nine, about a hundred
and sixty, a hundred and seventy pounds, and appeared

1 to be about forty years of age.

At that point I moved up closer to the individual about five metres away, slightly behind to his left. At that point I noticed Corporal Barter off to my left
5 hand side in the ditch area and he was covering the suspect and making commands as well, giving commands as well.

I approached the individual on his left side and I told him to stay down and not to move. Corporal
10 Barter approached him from the left side as well, more towards his head area and then quickly moved back out of my sight I presume back towards the police area.

At that point I heard the individual on the ground say, "I'm okay. I'm giving up." At that point there
15 was some movement from him. I approached him and I put my foot on the back of his neck - shoulder area and pushed him down to the ground. Then I moved back and there was further conversation from the individual on the pavement. I could not discern what
20 it was.

He was moving about some more and I approached him again and again I put my foot on his back and pushed him down to the ground.

Corporal Barter approached from my left hand
25 side. As he approached the individual he struck him in the forehead area with his foot and he was yelling at him to stay down, that type of thing. From that point on Corporal Barter proceeded to handcuff the individual as I was covering him from his left side
30 slightly to the rear and Corporal Barter searched him,

1 starting at the head - shoulders, and worked down.

I noticed the individual was carrying some sort of
belt and it appeared to be holding a pouch or pouches
of some type around his waist. I heard the individual
5 also remark that he had a knife on it.

These items were taken off the individual and
placed on the ground beside us.

At that point Corporal Barter, after he had
handcuffed the individual, I heard him advise the
10 individual that he was under arrest for escaping lawful
custody and that he had the right to retain and
instruct counsel without delay. I heard him also give
the individual a standard police warning.

At that point the individual was turned over on
15 his right side so he would be facing -- I had a good
look at his face and I was satisfied in my own mind
that it was Allan Legere.

At that point a female member arrived on the scene.
She was in uniform, as well, two other members in
20 uniform that were originally manning the roadblock,
Corporal Veysey and Constable MacPhee. At that point
when they were there I stepped back and just took a
relaxed posture. After the individual was shackled
about the ankles he was brought to his feet and brought
25 back towards the police vehicle that Corporal Barter
and myself were in. At that point further belongings
were taken out of his pockets and a further search
completed.

30 I had really no other conversation with the
individual nor did I hear any at that time.

1 Shortly after that the individual was placed in
the back of a police vehicle, marked police vehicle,
and taken from the scene.

Q. Okay, this individual who came, the second individual
5 who came out of the vehicle and the one that Barter
placed under arrest, is present in this courtroom
today?

A. Yes, he is, sir.

Q. Where please?

10 A. He is the gentleman seated between the two uniformed
police officers with a tan sports jacket, long dark
hair.

MR. SLEETH: My Lord, I would ask that the record show that
the witness has just completed identifying the accused,
15 Allan Legere.

Q. The first individual who exited from the truck and
ran forward with his hands up that you related saying,
"He's got a gun. He's got a gun?" was whom?

A. That was Mr. Golding who gave evidence previous to me.

20 Q. What sort of weaponry did you have with you at that
scene that night?

A. I had two weapons on my person, one was a Sig Sauer
pistol located on my hip in a holster and the second
25 one I was carrying was a Heckler and Koch, nine
millimetre semi automatic carbine.

Q. Would you be able to -- continue.

A. --which I was holding in both hands in front of me.

Q. Would you be able to spell that, Heckler and Koch,
30 please? I have seen it spelled in various --

A. H-e-c-k-l-e-r. K-o-c-h.

1 Q. What condition was -- what state was the first individual, the one who exited and went running towards your Suburban and wound up behind it?

A. He was very frantic as he exited the vehicle. It
5 seemed very obvious to me by the fact that he had his hands up that he was -- first thing he wanted to make sure that no harm came to him - sort of a giving up gesture. He was making sure that he got back to some help right away. He knew there was police there and
10 he was coming back to get help.

Q. And the second individual who exited after throwing out the metallic object that clattered, what state was he in that you observed him to be in when he came out first?

15 A. He did exactly as he was told up to the point he was thrown on the ground. He didn't say anything. He was very deliberate. His movements were very, very slow and on command. At that point that was such a distance that I couldn't say whether he was scared or not, but
20 he was certainly doing as he was told

Q. When you got closer to him?

A. When I got closer to him I had a good look at him. He
seemed to be in a scared situation. His face was pale. Although he was fairly talkative on occasion he was
25 for the most part fairly calm and quiet.

Q. When did he become most talkative?

A. He became most talkative after he had been handcuffed and actually brought to his feet.

30 Q. There was mention made by yourself of a kick of sorts, and earlier as well by Corporal Barter, to this

1 individual. Could you tell us how that was
administered and what force you could see applied,
how it was done?

A. As Corporal Barter approached the individual who was
5 prone on the ground he kicked him towards the head
area, forehead area, with his foot, toe of his foot.
It was -- I wouldn't call it a hard kick. It was a
kick from the knee. At that point I would say that
it didn't create any immediate reaction to the
10 individual. He didn't move suddenly or he didn't make
any exclamations of pain or discomfort at that time.
He did comment afterwards that -- he said to Corporal
Barter - I was in the area then - he said, "You didn't
have to do that. You're as bad as I am," type of thing
15 I believe his words were, "What did you do that for?
You didn't have to do that. You're as bad as me."

MR. SLEETH: Thank you very much, Corporal.

THE COURT: Cross-examination, Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

20 Q. Corporal Lutwick, when Mr. Legere got out of the
truck and he was ordered onto the ground --

A. Yes.

Q. You ordered him onto the ground?

A. Yes, I did.

25 Q. You told him first to get on his knees on the ground?

A. Yes, I believe I did.

Q. And then you told him to lay face down?

A. Yes.

30 Q. And when you told him to lay face down where were his
hands?

- 1 A. His hands were out in front of him.
- Q. In front or on the side?
- A. In front I believe.
- Q. How far in front? Right straight up.
- 5 A. Yes.
- Q. Were his hands like that all the time?
- A. As I mentioned earlier he was moving around obviously trying to get a conversation going, trying to relax. That prompted me to actually -- when he
- 10 moved I put my foot on his neck to reassure him that I was there very close and that I wanted to control the situation.
- Q. Would you say that he was trying to talk to you or to Corporal Barter?
- 15 A. He was trying to talk to somebody. I don't know if he realized where I was or where Corporal Barter was at that time.
- Q. And when he was talking his face was right into the ground?
- 20 A. Yes, he was flat on the ground.
- Q. Flat on the ground and basically his nose to the ground?
- A. His face might have been to one side but basically his face was on the ground, yes.
- 25 Q. So I believe you mentioned on two occasions you had to put your foot either on the back of his head or his head to keep his head down?
- A. I believe I said his neck area, his back, yes -
- 30 shoulders.
- Q. Neck area. That was one time and another time you did

1 it again?

A. Yes, I believe I did it twice.

Q. And is that at the same time that Corporal Barter kicked him in the face?

5 A. No, those were done previous to Corporal Barter's kick to the face. I was by myself at that point.

Q. While you were standing guard over Mr. Legere and you had to put your foot - tell him to keep his head down and you put your foot to put it down. You had this
10 9 millimetre carbine rifle in your hand?

A. Yes, I did.

Q. And that was a semi automatic?

A. Yes.

Q. Mr. Legere must have known you were armed?

15 A. I don't know if he did or not, sir.

Q. When you ordered him to get on the ground were you facing him?

A. No, I was not. I was off to the side slightly behind him most of the time.

20 Q. So would Mr. Legere have been able to see both yourself or Mr. Barter?

A. He might have been able to see Mr. Barter. I did not notice him look in my direction so if he saw me it would be out of his peripheral.

25 Q. Now you stated Mr. Legere's arms were out in front?

A. Yes, basically out in front.

Q. Over his head?

A. Yes.

30 Q. Do you recall the Witness Statement prepared by yourself?

A. Yes.

- 1 Q. Do you recall what you said in the Statement as to
where Mr. Legere's arms were?
- A. No, I don't.
- Q. Would you read your Statement here as to after you
5 ordered the suspect - page 3?
- A. Okay. "I ordered the suspect to his knees on the
pavement and then onto his face prone out in a cover
position, in a searched position with his arms held
out to his side. I moved in close to the rear with
10 the suspect in a covered position while Barter moved
from the left towards the head." Yes.
- Q. Is that the way you remember it?
- A. I remember his arms being stretched out.
- Q. Stretched out.
- 15 A. In front of him. Whether they were to the side or
slightly to the front -- they were not underneath his
body.
- Q. And when he was down on his belly with his arms
stretched out and his face to the ground he said,
20 "I'm giving up. I'm giving up,"?
- A. Yes, he said, "I'm okay. I'm giving up."
- Q. Did you at any time think that Mr. Legere was trying
to escape after he was down on his belly?
- A. In my own mind I was going to make sure that he
25 wasn't going to escape and until he was handcuffed,
properly searched, I was going to do whatever I felt
necessary to control the situation.
- Q. That's fair but in your own mind did you feel that
Mr. Legere was attempting to escape?
30
- A. Not at that point, no.

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1 Q. And not at any time?

A. I wouldn't say that.

Q. So Mr. Legere did not give you any reason to think that you were going to escape?

5 A. Other than the fact of his movements which resulted in me pushing him down.

Q. Right. Which you felt was sufficient?

A. Yes.

Q. Would you say that Corporal Barter overreacted?

10 A. That's not for me to say.

Q. Why not? You were there. You're a police officer. You conduct many arrests.

A. The frame of mind that Corporal Barter was in is not the frame of mind that I was in. The way I was
15 controlling the situation is different from the way he controlled the situation.

Q. Was Corporal Barter very excited at the time?

A. I'm sure we were all very excited.

Q. As a matter of fact you could say that Corporal Barter
20 was even frantic?

A. No, I wouldn't say he was frantic.

Q. Was he yelling at Mr. Legere?

A. Yes, he was.

Q. Obscenities?

25 A. Yes.

Q. And he kicked him in the face?

A. Yes.

Q. Did you observe Mr. Barter going back to the police vehicle to get handcuffs?

30 A. I observed him -- initially when I approached the

1 individual after he'd been out of the vehicle go off to
my left out of my sight. I did not look back to see
where he went and I did not know at that time why he
had left.

5 Q. And how long was he gone?

A. Seconds.

Q. Now you mentioned that after Mr. Legere was kicked in
the face you said the kick wasn't strong. It was just
from the knee back first of all. You --

10 A. Yes.

Q. -- said it didn't appear to be a strong kick?

A. No.

Q. And you said that after Mr. Legere was kicked that he
didn't -- it didn't appear to bother him?

15 A. Well, not outwardly.

Q. Not overly?

A. No.

Q. Maybe because the guy was half knocked out?

20 A. That may have been the case, although he didn't show
any signs of such.

Q. Right. That might be one reason for being subdued
would it not?

A. I can't say, sir.

25 Q. Isn't it true when Mr. Legere - I won't say regained
consciousness but at least --

MR. SLEETH: Better not. There is no --

THE COURT: That would be a bit of an exaggeration wouldn't
it?

30 Q. When Mr. Legere seemed not to be so subdued and was
able to speak and started speaking he didn't even
realize who kicked him did he?

- 1 A. I don't understand your question.
- Q. He was blaming another police for kicking him, a
different police officer than Corporal Barter?
- A. That may have been the case. I don't know where he
5 made that assumption.
- Q. Not in your presence anyway?
- A. No.
- Q. After Mr. Legere had been kicked in the face and he
had his hands handcuffed behind his back --
- 10 A. Yes.
- Q. And after he began speaking again to you he informed
you that he had a knife on him?
- A. That's correct.
- Q. And you mentioned that Mr. Legere was scared and pale?
- 15 A. Yes, he looked that way.
- Q. Is that before he was kicked or after?
- A. After.
- Q. You don't know why he looked scared by any chance?
Scared he was going to get kicked again or shot?
- 20 A. I don't know, sir.
- Q. Would you say that after he was kicked he had reason
to be scared?
- A. I assume that probably he was scared to some degree,
yes, during the whole incident.
- 25 Q. He must have felt quite threatened at the time because
of the circumstances that happened to him. He was
giving up and getting kicked in the face.
- MR. SLEETH: My Lord, the witness is being asked to place
30 himself in the mind of another human being and he
couldn't possibly do that.

1 THE COURT: Haven't we really explored this business about
the kick and the scaring and so on as far as the
circumstances merit?

MR. FURLOTTE: I believe it is important, My Lord, to show
5 that Mr. Legere felt threatened at the time.

THE COURT: All right.

Q. Would you say that Mr. Legere had every reason to feel
threatened at the time?

A. In what way sir? Could you be more specific?

10 Q. That more physical harm may become of him.

A. How Mr. Legere felt at the time I could not say. I
believe I --

Q. If you were put in Mr. Legere's circumstances would
you have felt threatened at the time?

15 A. I could not do that, sir. I was not in Mr. Legere's
circumstances.

Q. If you were being placed under arrest and a police
officer kicked you in the head after you gave up and
being there armed with rifles, a man who you said -
20 Corporal Barter was kind of frantic --

MR. SLEETH: Objection. He never said he was 'kind of
frantic'. He specifically denied that.

MR. FURLOTTE: Well, if your memory is better than mine.

MR. SLEETH: Absolutely.

25 THE COURT: Just a minute, Mr. Furlotte. Would you like
to ask about two more questions on this subject and
then move on to something else? These officers aren't
on trial you know.

30 MR. FURLOTTE: No, Mr. Legere is on trial. I know that,
My Lord.

1 Q. If you were placed in the position of Mr. Legere after
having been kicked in the head, after having given
yourself up, did you yourself say he wasn't making any
attempt to escape that you could perceive? If you were
5 in Mr. Legere's position as a normal individual using
your common sense, would you feel threatened that more
physical harm might become of you?

A. That would depend on a lot of factors sir. First of
all it's difficult for me to answer that situation
10 when I'm not in Mr. Legere's situation.

Q. So in other words you would prefer not to answer the
question?

THE COURT: No, he can't answer the question, Mr. Furlotte.

Q. Are you aware as to whether or not Mr. Legere's
15 cheekbone was broken as a result of the kick?

A. I do not.

Q. You never inquired?

A. No, I did not.

MR. FURLOTTE: I have no further questions.

20 THE COURT: Re-examination.

REDIRECT EXAMINATION BY MR. SLEETH:

Q. Arising from questions from counsel for the accused to
your observation was there any occasion when Mr. Legere
appeared to lose consciousness following that kick?
25

A. No, there was not.

Q. If he had obeyed all the instructions given by you
and Barter would there ever have been a kick or physical
violence used on him?

30 A. No, there would not.

Q. Was he being fully cooperative before this kick?

1 A. Yes. Well, to some extent in that I had to actually
push him down.

Q. He was not being cooperative then?

A. To that point, no.

5 Q. And was he fully cooperative afterwards?

A. Yes.

MR. SLEETH: Thank you.

THE COURT: Thank you very much, Corporal Lutwick.

CORPORAL LUTWICK: Thank you, My Lord.

10 THE COURT: Who is your next witness?

MR. SLEETH: Constable Dugas. She would not be a long
witness, My Lord.

CONSTABLE LINDA DUGAS, recalled as a witness,
having been previously sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. SLEETH:

Q. You gave testimony earlier as part of a continuity
scene, Constable Dugas. You heard testimony given a
moment ago by Corporal Lutwick I believe.

20 A. Yes, I did.

Q. And he mentioned the presence of a female member
on the scene. Do you recall his testimony to that
effect?

A. Yes, I do.

25 Q. You are that person?

A. Yes, I was.

Q. Would you then please take up your involvement with
this incident beginning with the time and the date?

30 A. On the morning of the 24th of November, 1989, I was
instructed to take position at a roadblock on Highway
126 in a community called Nelson just outside of

1 Newcastle. We were at -- I was at that roadblock with
five other members. We had been instructed to attempt
to intercept a tractor-trailer supposedly on its way
from Sussex.

5 At one point or another two of our members left
the roadblock to take a patrol down the road. As a
result of conversation heard on the radio, shortly after
they left I patrolled down to Highway 118.

Q. These two members who left on their patrol of their
10 own were which members please?

A. Corporal Terry Barter and Corporal Gary Lutwick.

Q. Okay, you then went on patrol subsequently yourself
to the location?

A. I did.

15 Q. Where was that please?

A. On Highway 118 in a community called South Nelson in
the County of Northumberland, Province of New Brunswick

Q. What type of vehicle were you travelling in?

A. I was travelling in a marked police vehicle by myself.

20 Q. You arrived in contact with these other two officers
then at a certain time?

A. Upon arrival at the scene I parked my vehicle directly
behind the police Suburban which they had been driving.
I could see an orange tractor parked a short distance
25 in front of their police vehicle. The two members were
standing over a male subject lying on the pavement.
I quickly exited my vehicle and approached the other
two members to offer assistance if required. Upon
arrival there I was asked if I could identify the
30 man lying on the ground. At that time the man turned

1 and looked at me. I told him that it was indeed
Allan Legere and Mr. Legere looked at me and said,
"Yeah it's me."

Q. Did you see anything else being done at the time you
5 arrived there, or shortly after your arrival?

A. Two other members arrived immediately after me.

Q. They would be?

A. Constable Ken MacPhee and Corporal Don Veysey.

Q. You say Corporal Barter was there. Could you see him
10 having any conversation with the accused?

A. There was some talking around at that time but I was
mostly just keeping an eye on the suspect on the
ground.

Q. Okay, the suspect then is he present in this courtroom
15 today?

A. Yes, he is.

Q. Where, please?

A. He is seated in the accused's box between the two
20 uniformed members. He is wearing a tan blazer.

MR. SLEETH: Again, I would ask that the record show that
the witness has just finished identifying the accused,
Mr. Legere.

Q. How long did you remain at that scene?

A. Roughly probably approximately forty-five minutes.

Q. After you had arrived and confirmed the identification
25 of the suspect, what did you proceed to do?

A. After he was properly searched and put in a marked
police vehicle, I proceeded to put the police line,
30 which is a yellow cord, around the scene to protect
it until arrival of the IDENT. Section.

1 Q. You say after he was properly searched. Did you see
the search taking place?

A. I was behind Corporal Barter and Corporal Lutwick
as he was being searched.

5 Q. So you observed them removing things from him?

A. Yes.

Q. Did you see what Corporal Barter and/or Corporal Lutwic
did with the objects they removed?

A. No, they were putting them on the hood of their
10 vehicle but I wasn't keeping track.

MR. SLEETH: Thank you very much, Constable.

THE COURT: Cross-examination, Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Constable Dugas, what time did you arrive at the
15 scene?

A. Approximately 5:40 a.m. I would say because Corporal
Barter asked me the time shortly thereafter and it was
5:46.

Q. Corporal Barter asked you the time shortly thereafter?

20 A. Shortly after my arrival and it was 5:46 at that time.

Q. 5:46. What did you observe when you arrived?

A. As I said there was a man lying on the ground.
Corporal Barter and Corporal Lutwick were standing
near by.

25 Q. Did you see Corporal Barter kick Mr. Legere?

A. No, I did not.

Q. Did you see Corporal Barter put the handcuffs on
Mr. Legere?

A. He had already been handcuffed when I got there.

30 Q. I have a copy of your report. Here is the copy of

1 your report. It says 'Investigator, Constable L. Dugas

A. That's my name, yes.

Q. And dated your report -- the copy of the events which happened November 24, 1989.

5 A. Yes.

Q. And you say you arrived about 5:40. What did you observe at 5:44?

A. "Member arrived at the scene. Legere lying on roadway. Corporal Barter taking out his handcuffs."

10 Q. Taking out his handcuffs at 5:44. And you said you arrived on the scene about 5:40?

A. I said roughly around 5:40.

Q. You originally said that when you arrived Mr. Legere had already been handcuffed, but now -- in your report you say that when you arrived Corporal Barter was just

15

taking out the handcuffs. So which way was it?

A. When I arrived next to the suspect he had already been handcuffed. When I arrived in my vehicle the members were standing near him.

20

Q. But you saw Corporal Barter taking out the handcuffs. Where was he taking them out from, the vehicle?

A. He had them in his hand.

Q. He had them in his hand. Where was he standing?

A. Next to Mr. Legere.

25

Q. Next to Mr. Legere?

A. Well next to the male subject on the ground actually. I didn't know at that time if it was Legere for sure.

Q. It was Mr. Legere.

30

A. It was Mr. Legere.

Q. And you didn't see Corporal Barter kick Mr. Legere?

- 1 A. No, I did not.
- Q. Did you hear Corporal Barter read Mr. Legere his rights, given the police warning, caution?
- A. I believe he was doing that as I was approaching.
- 5 Q. He was what?
- A. I believe he was doing that as I was approaching.
- Q. As you were approaching. And did you say Mr. Legere was given over to your custody and you put him in the vehicle?
- 10 A. No, I did not.
- Q. You didn't have anything to do with Mr. Legere?
- A. After I identified him, no, I did not.
- Q. Do you recall what time Mr. Legere was removed from the scene of the arrest?
- 15 A. Right off the bat, no, I can't say that I recall. I wasn't the one to put him in the police vehicle or to drive the vehicle from the scene so I can't say that I recall.
- Q. Check you report. Do you have a copy of your report with you?
- 20 A. No, I don't.
- Q. I will show you a copy of mine.
- A. At 5:58.
- Q. 5:58.
- 25 A. He would have left with Constable MacPhee and Constable Bolduc.
- Q. And what time did Corporal Barter -- did you observe Corporal Barter read the rights to Mr. Legere, his rights to counsel?
- 30 A. 5:46 when he asked me the time.

- 1 Q. And it was two minutes before that wherein you saw
Corporal Barter with the handcuffs out?
- A. Approximately, yes.
- Q. From the time that you saw Corporal Barter with the
5 handcuffs out in his hand until the time he read him
his rights where were you for the two minutes - standing
next to --
- A. I'm sorry.
- Q. Where were you for the two minutes from 5:44 to 4:46
10 from the time you saw Corporal Barter with the
handcuffs out until the time you saw Corporal Barter
read Mr. Legere his rights?
- A. Standing nearby.
- Q. Standing nearby?
- 15 A. Yes.
- Q. And what did Mr. Legere look like?
- A. He was clean-shaven and his haircut was -- looked
like it had been done by himself.
- Q. What position was he in all that time?
- 20 A. When I first approached he was lying on the pavement
and after a few minutes he was stood up in front of
the Suburban where he was -- where they finished the
search.
- Q. When he was lying on the pavement for two minutes did
25 you basically observe -- did he appear to move at all?
- A. He only moved to look at me.
- Q. When he moved to look at you.
- A. When I was asked to identify him, yes.
- 30 MR. FURLOTTE: I have no further questions.
- THE COURT: Re-examination.
- MR. SLEETH: I have no redirect, My Lord.
- THE COURT: Thank you very much.

1 MR. SLEETH: I would ask that this witness be excused,
My Lord. She doesn't have to be recalled.

THE COURT: Yes. Now I think we will have a recess for
fifteen minutes. (Jury Retires.)

5 Court Recessed. (11:00 a.m.)

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COURT RESUMES - (Accused present) 11:30 a.m.

1 THE COURT: I know that I did suggest that the
Poissonnier matter be considered now, but we have
been half an hour with our break and I wonder if we
could leave that until this afternoon.

5 MR. ALLMAN: Since the situation, depending on whatever
Your Lordship's ruling is, but the practical result
of the situation isn't going to arise until next week
anyway. I'm sure we can discuss it at 2:00 o'clock.

THE COURT: At 2:00 or during the recess or sometime this
10 afternoon. I don't want the jury sitting out here too
long. Okay, the jury brought back.

(Jury called - All present)

THE COURT: You have another witness?

MR. SLEETH: My Lord, as indicated on the list, the next
15 witness would normally have been Corporal Veysey. I
believe I indicated yesterday there was some difficulty
with being able to present Mr. Veysey at the time. I
don't know if counsel for the accused had an opportunity
to consider his position with respect to testimony, if
20 required, from Corporal Veysey.

THE COURT: There is illness in his family. Was that it?

MR. SLEETH: That's correct, My Lord. His father, as I
understand it, is being operated on, or would have
been operated yesterday or possibly today - open heart
25 surgery down in Halifax - and for various reasons it
appears that the good corporal is the only one that
could be present at the time from the family.

THE COURT: And you felt that it wasn't perhaps not
material to your case?

30 MR. SLEETH: We felt that it wasn't particularly stunning

1 his testimony, My Lord.

THE COURT: Does the defence want -- he can be presented
later if necessary.

MR. SLEETH: Oh, he could be, yes, My Lord.

5 THE COURT: Do you have any views on that, Mr. Furlotte?

MR. FURLOTTE: I haven't had time. I can understand
Corporal Veysey's position. I don't mind his being
absent today and tomorrow, but I have to review the
evidence that he is supposed to give to see whether
10 or not I will need him next week.

THE COURT: That's all right. You do that and let us know
before we finish this week. If I forget to bring it
up, you bring it up and we will determine then if you--
if you require him, the Crown will have to have him
15 there.

MR. ALLMAN: Recall Corporal Godin.

CORPORAL RON GODIN, recalled as a witness, having
been previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

20 Q. Your name is Corporal Ron Godin?

A. That's correct.

Q. You have previously testified in this matter?

A. I have.

25 Q. I am going to show you an item that has been marked
'MM' for Identification. Could you take a look at
that and tell me anything you can about it, including
any markings that you can refer to?

A. It appears to be the same clip and five rounds of
30 .308 ammunition that I came to contact in Nelson on
the 24th day of November, 1989, on Highway 118.

- 1 Q. How did you come into contact with it?
- A. As a result of a phone call I patrolled that area.
- Q. And what did you do when you got to the area?
- A. I examined a .308 rifle that was on the pavement on the
5 ground and I rendered it safe by opening up the breach,
removing one shell out of the chamber, and removing
the clip which had four shells in the clip also.
- Q. I am showing you 'NN' for Identification. What can
you tell us about that?
- 10 THE COURT: You can take it out if you want to.
You can take it out if you assure us it is safe now.
- A. That is similar to the .308 sawed off rifle that I
examined and disarmed on the same date in Nelson-
Miramichi.
- 15 Q. You examined the rifle and the clip on that date.
What did you do with them?
- A. They were taken over by Constable Greg Davis.
- Q. Constable Davis?
- A. Yes.
- 20 MR. ALLMAN: My Lord, subject to any objection, I believe
both those items continuity has been proved up -
Constable Davis has discussed them earlier. I would
like to have them entered as exhibits.
- THE COURT: One question I have. What time of day was
25 this?
- A. I arrived at 7:35 a.m. on the morning of the 30th day
of November, 1989.
- MR. ALLMAN: I should add, My Lord, those items were
30 handled subsequently by two other police officers,
Constable Proulx and Staff Sergeant Bickerton.

THE COURT: Corporal Barter I think identified them --
did he identify it as -- yes, he did, as the gun.
That would be exhibit 96. So NN becomes P-96.

THE CLERK: MM, My Lord?

5 THE COURT: No, NN.

THE CLERK: There are two being offered - NN and MM.

THE COURT: The clip, MM, and the cartridges, become
P-96 and the rifle becomes P-97.

THE CLERK: Yes, My Lord.

10 EXHIBIT P-96: (formerly MM for Ident.) clip and
cartridges.

EXHIBIT P-97: (formerly NN for Ident.) rifle.

THE COURT: Is there a difference between a shotgun and
a rifle?

15 A. Calibre-wise, yes - depending on the calibre and the
size of the barrel.

MR. ALLMAN: The witness I mentioned, Staff Sergeant
Bickerton - we will be having him.

THE COURT: You have somebody else.

20 MR. ALLMAN: He knows a lot about firearms.

Q. Now that those two items are in evidence, you mentioned
with regard to item -- you mentioned with regard to
the rifle that is being marked as P-97 that you did
something to it. What was that?

25 A. Upon visually examining the rifle that was on the
ground on the highway next to the tractor the item
itself was photographed as is and it was then I
realized that the gun itself, the hammer was cocked
back.

30

1 Q. What would it require then if the hammer was cocked
back to cause that rifle to fire?

A. Just a slight touch of the trigger.

Q. Having made that observation what did you proceed to
5 do?

A. Again, after I photographed it I physically picked up
the rifle and brought the hammer back to its safe
position, opened up the breach, and as I opened it up
a shell came out of the chamber and at the same time
10 I removed the clip. In the clip there was four more
rounds, which I removed.

Q. Before you got your hands on that rifle there was a
shell in the chamber and the hammer was cocked. Do I
have that right?

15 A. That's correct.

Q. I am going to show you an object that has been marked
4G. Would you take a look at that and tell us any-
thing you can about that item?

A. Again, along with the rifle that I visually examined
20 on the ground, next to the tractor there was also a
brown belt that had a black pouch attached to it.
Inside the black pouch was a Swiss Army knife and a
black lighter similar to these two here. Again, these
two items and the black pouch and bag was retained,
25 taken by Constable Davis.

Q. Right there and then on the scene?

A. That's correct.

Q. Just so the jury understands. What happened when you
see these objects? What do you do?
30

A. After I've taken the photograph and done what I needed

1 to do at the time, they were just physically given to --

Q. You made a gesture that you passed them over.

A. That's correct.

Q. That's because he was the exhibit man I take it.

5 A. That's correct, yes.

Q. Where did you say 4G was found in relation to the
rifle?

A. They were next to each other on the ground, or on the
pavement.

10 MR. ALLMAN: Subject to any objection, My Lord, Constable
Davis has given evidence all ready. I would ask to
enter the knife, 4G.

THE COURT: P-98.

THE CLERK: Knife and lighter.

15 MR. ALLMAN: Knife and lighter, yes - contents.

THE COURT: There is a lighter in the --

THE CLERK: Yes, My Lord.

THE COURT: There was a brown belt the witness mentioned.
Is that part of the exhibit or isn't it?

20 MR. ALLMAN: I believe not.

EXHIBIT P-98: Knife and lighter

MR. ALLMAN: The only matter, My Lord, while this witness
is on the stand - I don't need to ask him any
25 questions about it, but I believe it is now appropriate
to seek to enter PP and QQ because I think their
relevance is now established and their continuity was
proved up through witnesses Davis, Gosselin and Guitard.
They were 105, 107, and 108. So subject to any
30 objection I'd ask that those two items PP and QQ be
made exhibits.

1 THE COURT: PP would be P-99 and QQ would be P-100. They
are both boxes - cardboard cartons.

MR. ALLMAN: Yes.

THE COURT: One was for the --

5 MR. ALLMAN: They can be differentiated because one is
for a .308 and that's -- PP is for a .22-250 --

THE COURT: And QQ which is the .308 becomes P-100.

EXHIBIT P-99: (formerly PP for Ident) Rifle Box .22-250

EXHIBIT P-100: (formerly QQ for Ident) Rifle Box .308

10 MR. ALLMAN: I have no other questions of this witness.

THE COURT: Cross-examination, Mr. Furlotte.

MR. FURLOTTE: I have no questions.

THE COURT: Thank you very much, Corporal Godin. He is
not being recalled.

15 MR. ALLMAN: I believe not, My Lord. I think he is finally--

THE COURT: Through. You are excused.

MR. SLEETH: I call Constable MacPhee.

CONSTABLE KENNETH MACPHEE, called as a witness, having
been duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. SLEETH:

Q. Would you please state your full name and your
occupation, please?

A. Yes, my name is Kenneth George MacPhee. I'm a peace
officer and a constable in the Royal Canadian Mounted
25 Police. I've been so employed since the 5th day of
October, 1976. Presently posted at Oromocto detachment
here in New Brunswick.

Q. I would ask you to go back to the fall of 1989. Where
30 were you posted at that time?

1 A. In the fall of 1989 I was posted at Sackville detachment, Sackville, New Brunswick. In November 1989 I was seconded to the Newcastle area to assist in an investigation which was ongoing at that time.

5 On the latter part of the month I patrolled to that area and was assigned to Corporal Don Veysey to do a pro active patrol there, our shift being from midnight until eight o'clock in the morning.

Q. So what date?

10 A. We started there I believe on the 22nd of November.

Q. I would ask you to turn your mind to the 24th of November. You heard the witnesses who testified earlier, Corporal Lutwick I believe and Constable Dugas?

15 A. Yes.

Q. And they related an involvement which they had in the general Newcastle area, Nelson-Miramichi. You were involved in that area?

A. Yes, I was.

20 Q. Please then relate to the Court your involvement beginning with the date and the time?

A. In the early morning hours of the 24th of November, 1989, as a result of information we received by radio, we proceeded up Highway 126 just south of the Chatham
25 Head area and set up a roadblock. Shortly after we set it up, Constable Dugas of Newcastle detachment arrived at the scene to assist us. Following that we received information that there was a suspect possibly
30 in a tractor-trailer would be heading in our direction. Following Constable Dugas' arrival, after that Corporal Lutwick and Corporal Barter arrived on the scene in the

1 dog wagon.

Shortly after they arrived we received further information by radio that there was a possible suspect vehicle on the side road off 126 south of our position. Corporal Barter advised us not to break the roadblock to investigate, that he and Corporal Lutwick would look after it.

They left. They weren't gone very long, just a few minutes. They advised they were behind a tractor, a large truck.

Q. You said "we" at a roadblock. You were referring to whom please?

A. Corporal Veysey and myself.

Q. And I understand your testimony up to now Corporal Barter and Lutwick left you at a certain point?

A. Yes, they left the roadblock with the idea being that they'd look, check it out, so as not to break the roadblock in case there was nothing to it.

Q. All right.

A. They advised by radio that the --

Q. You yourselves remained at the roadblock?

A. Yes.

Q. And there was contact with you from other police officers?

A. Yes.

Q. As a result of that contact what did you do?

A. We patrolled following Constable Dugas who is familiar with the area. We patrolled south on Highway 126 for a short distance, approximately a kilometre and a half. She turned off 126 onto

1 Highway 118. We followed her. Again at approximately
1.9 kilometres down Highway 118 we came upon a tractor
trailer stopped roughly in the centre of the road. The
dog van was there. Corporals Lutwick and Barter were
5 there. I pulled the police car I was driving just
slightly behind the tractor-trailer and to the left.

There was a male laying on the ground on his back.
I myself went up to this person. Identified him as
Allan Legere from previous experience I had had with
10 this man. His appearance was slightly different. He
had lost some weight. His hair was shorter. He
wasn't wearing any eyeglasses and he had no facial
hair. There was some bruising under his right eye.

Q. How much weight had he lost? You said you had
15 dealings with him before. Had he lost a lot?

A. Probably 30 - 40 pounds maybe. I'd last seen him at
Renous.

Q. So you observed him and you observed weight loss.
Continue then what you observed and did?

20 A. Yes, Corporal Veysey at this time had joined me. He
remained with this gentleman. I went back to the
police car and obtained a set of shackles, leg irons.
Went back and placed these on Mr. Legere. At that
time he advised he could have shot some of our members
25 He advised me of this several times. I lifted him to
his feet and took him to the front of the dog van
where Corporal Barter was.

I asked Corporal Barter if he had been Chartered
and warned. He said he had, referring to Mr. Legere.
30 I at that time left Mr. Legere with Corporal Barter

1 and Corporal Veysey. I went to the car I had been
driving, checked the back seat - make sure there was
nothing there and went back to the front of the dog
van and took Mr. Legere and placed him in the back
5 seat of the police car.

I then got in the front seat, driver's side. I
had arrived at about 5:45, according to my watch.
Mr. Legere was placed in the police car at 5:50 a.m.,
according to my watch.

10 I immediately advised him he was under arrest for
escape lawful custody and advised him by a Charter
Notice that it was my duty to inform him that he had
the right to retain and instruct counsel without delay

15 Following that Mr. Legere, who at this point in
time was talking quite a bit, advised that he wanted
to see a doctor. I told him I couldn't take him to a
doctor at that point in time. He then looking around
asked -- or stated, "Look at the gun that guys got."
He had stated he had let an R.C.M.P. girl go. Then
20 he said, "the fucker had kicked him in the face,"
when he was on the ground and he said no wonder he
had hated us so much. He then looked out the window
and at that point in time I believe the yellow barrier
police tape was being placed around. He asked what
25 that was. He asked for his dentures and then he
requested that I go get his stuff. I believe he was
referring to the items that were on the hood of the
dog van.

30 Q. What items were these? What was happening at that
point?

1 A. Corporal Barter had removed several items from his
person and placed them on the hood of the dog van.
At that point in time following that bit of conver-
sation, Constable Luc Bolduc got in the front of the
5 police car, passenger's side. Mr. Legere looked at
him and he said, "You're the fucker that kicked me."
He asked Constable Bolduc what his name was and he
said, "You wouldn't have done that to me man to man
I'll tell you," and then he called him a "fucking
10 prick."

Shortly after that at 5:57 a.m. we left the scene
and patrolled to Newcastle detachment.

On the way there again Mr. Legere was talking
quite a bit and I didn't catch everything he said. He
15 said that he could have shot our fellows several times
He said the materials that he used to make the key
during his escape was supplied to him by the guards.
He stated that the money that he had hidden whoever
found it had took it. He repeated these things
20 several times over. He said that he had tried to get
out of the country, but was unsuccessful.

We proceeded directly to Newcastle detachment to
the side of the building in a garage bay there.
Corporal MacNeill opened the door and then sort of
25 disappeared. We took Mr. Legere into the bay and did
a cursory search of him.

He was wearing at that time a dark coloured ski
type jacket, sweat pants, and tan coloured work boots.
From his person I removed a small pouch containing
30 several rounds of .308 ammunition and a train ticket.

1 Mr. Legere at this time advised that he had used
the ticket to travel from Montreal to Saint John.

 We then took him down a corridor to the cell area.
We took him into the cell room. I left Constable
5 Bolduc with him. I went to the guard's room, took off
my sidearm and got a key and returned. We at that
point in time did a strip search of Mr. Legere being
that we removed his clothes and searched for weapons
and that type thing.

10 Following the search, which was 6:20 we finished
the strip search, I seized all the items that had
been dropped on the floor during the search, advising
Mr. Legere that they were being seized as evidence.
Sergeant Johnston and Corporal MacNeill arrived at
15 that point in time into the cell area. Mr. Legere
was given a blanket, as he was naked at the time,
and he was placed into the cell. The cell was locked.

 Corporal MacNeill left shortly after that. I
left the cell area to the hallway outside taking the
20 items that I had seized with me placing them on the
floor. Sergeant Johnston stayed with him, Mr. Legere,
for approximately fifteen minutes leaving at 6:35.

Q. Were you able to see the two of them in there?

A. Not really. I could hear conversation, snatches of
25 conversation. I'd check every now and again to see
if everything was okay. But I could hear parts of
the conversation. Mr. Legere was doing most of the
talking. There was no questions asked. He was just
talking incessantly. There was mention of \$900 I
30 believe it was. He said further that he had

1 been in the -- something about the Kelly Road area
and that he hadn't spoken to anyone for the time that
he had been out.

5 At 6:35 Sergeant Johnston left. Again, I was left
alone with Mr. Legere. He at that time stated that
his face was all 'fucked off', in his words. He
requested to have the cuffs removed as they were
tight. I went into the cell. I didn't remove the
cuffs. I just loosened them. He then asked for a
10 drink of water and requested to see a lawyer. I
advised him that I couldn't go along with his request.
I was not able to supply him with a lawyer.

Q. Why was that?

A. Because of where we were. We were in the cell area.
15 I was guarding him. I couldn't leave there to take
him out because of the security risk.

I advised him, though, that in very short order
he would be given opportunity to contact a lawyer.
I again read him the Charter Notice which stated that
20 it was my duty to inform him that it was his right to
retain and instruct counsel without delay. I further
gave him the standard police warning which was:

25 You need not say anything. You have nothing to
hope from any promise or favour, and nothing to
fear from any threat whether or not you say
anything.

I asked him if he understood this. He said he
did as he had when I gave him the Charter Notice in
the police car at the scene at Nelson-Miramichi.

30 Up to that point in time Mr. Legere had requested
to see a doctor. I again told him I couldn't, not in
my position I couldn't supply him with a doctor but

1 that the G.I.S. investigators would be in shortly
and they'd look after his requests.

Shortly after that at approximately 6:40
Sergeant Johnston and Constable Mole came into the
5 cell area and shut the door. Shortly after that
at 6:45 a.m. Constable Ron Charlebois came into the
area and entered the room as well.

That basically was my contact with Mr. Legere
until he left at approximately 7:24 a.m.

10 At 7:08 a.m. Corporal MacNeill handed me a
handwritten consent to search written by Mr. Ferguson,
the Crown prosecutor of the area. I immediately
handed this through the door to Sergeant Johnston.

Following Mr. Legere being removed from the cell
15 at 7:24 I remained in the outer corridor processing
the various exhibits, or various items I had seized.
I turned all these items over to Constable Davis at
8:05 a.m. Numerically they ranged from numbers 279
to 301 inclusive and that was my involvement at the
20 detachment.

Q. You mentioned shortly after the start of your testimony
about an initial Charter warning of some such that you
had given to Mr. Legere.

A. Yes, in the police vehicle.

25 Q. The person who you've been naming consistently as
Mr. Legere is he present in this courtroom today and
if so where please?

A. Yes, he is sitting between two R.C.M.P. officers in
the prisoner's dock wearing a light-coloured shirt
30 and dark hair, mustache.

1 MR. SLEETH: I'd ask again, My Lord, that the record
show that the witness has just finished identifying
the accused Allan Legere.

Q. When you had given him that warning was there any
5 request then by him for a lawyer?

A. No, no request made for a lawyer until just prior to
Sergeant Johnston and Constable Mole.

Q. At the scene when you first encountered Mr. Legere
and before he was placed in the police cruiser, what
10 condition did he seem to be in at that time?

A. He was -- seemed to be hyper. He was talking a lot.
I didn't catch everything he said. I had things to do
there. But he was just talking a lot, just talking
incessantly. Nobody would ask him any questions. He
15 was just talking.

Q. Did he appear stunned or anything like that?

A. No, not at all.

Q. When was the first time he mentioned to you a kick
in the face?

A. When we were in the police car he mentioned "the
20 fuckers had hit him when he was down on the ground"
I believe the words he used.

MR. SLEETH: My Lord, I have an item here, plastic bag
and contents, I'd like marked for identification at
25 this time.

THE COURT: Is there any order you want them in?

MR. SLEETH: You will find, I believe, one is marked 286
and one is marked 287 already.

(4H for IDENT.: Plastic bag containing boot)

30 (4I for IDENT.: Plastic bag containing boot)

Q. Constable, I am posing before you 4H and 4I marked
for Identification. Would you take a moment please

1 and see if you can identify those for me?

Perhaps, My Lord, while the constable is verifying
or examining them, I have another item I'd like to
have marked for identification at this time.

5 THE COURT: 4J.

(4J for IDENT.: Plastic bag containing wristwatch)

A. Yes, those are the boots I seized from Mr. Legere on
the morning of the 24th of November, 1989, at
Newcastle detachment.

10 Q. From where on Mr. Legere?

A. His feet.

Q. A large plastic bag, 4J, and the contents. Do you
recognize what's in that bag?

A. Yes, that's the wristwatch that was seized from
15 Mr. Legere the morning of the 24th of November, 1989,
at Newcastle detachment as he was being strip searched.

Mr. Sleeth: My Lord, I have another plastic bag and
contents, paper contained within it. I'd like that
marked, please, if it could be for identification at
20 this time. 4K I believe we are to.

A. Those three items were turned over to Constable Davis.

Q. By three items you mean 4H, 4I and 4J?

A. Yes, the boots and the watch.

25 MR. SLEETH: 4K.

THE COURT: What about 4J?

THE CLERK: It's the watch.

THE COURT: 4J was the watch was it?

MR. SLEETH: Yes, My Lord. The witness was examining that
30 just a moment ago.

THE COURT: Oh, yes. What was 4I then?

- 1 MR. SLEETH: 4I was the right boot, My Lord.
THE COURT: The boots were separate?
MR. SLEETH: Yes, My Lord. They were put down as 4H and 4I
(4K for IDENT.: Plastic bag containing train ticket)
- 5 A. Yes, this item was seized from Mr. Legere's pocket.
Q. Do you recognize the item? What is it?
A. It's the train ticket that he referred to as the one
he had used from Montreal to Saint John.
Q. And you took that from whom please?
10 A. From Mr. Allan Legere.
Q. And from where on Mr. Allan Legere?
A. Pocket - coat pocket. This was subsequently on that
same date - 8:05 - turned over to Constable Davis.
Q. You turned --
15 A. By myself. Nobody in between.
MR. SLEETH: Plastic bag and contents, My Lord. It could
be 4L.
(4L FOR IDENT.: Plastic bag containing 4 live
rounds of .308 ammunition and
Triple A battery)
- 20 Q. Constable, I am now placing before you a large plastic
bag with what appear to be metal objects inside it.
Can you tell us what they are? Do you recognize them?
If so can you relate what they are?
A. Yes, they are four live rounds of .308 ammunition and
25 a triple A battery. These were seized from
Mr. Legere the morning of the 24th of November, 1989,
and subsequently turned over to Constable Davis.
Q. They were seized by whom?
A. By myself.
30 Q. And you say they were from Mr. Legere. From where
on Mr. Legere?

1 A. Yes, as a result of the strip search.

Q. Where upon Mr. Legere did you find these?

A. In one of his pockets. I'm not sure. I couldn't say for sure which one, but they came from his person.

5 MR. SLEETH: I have yet another item for identification, My Lord - plastic bag with what appears to be a jacket.

THE COURT: 4M.

(4M FOR IDENT.: Plastic bag containing jacket)

10 Q. Constable, I am now placing before you 4M marked for Identification. Would you please look at that? You may have to open the bag. If you must, please feel free to do so.

15 A. Yes, that is a black leather jacket seized from Mr. Legere by myself during the strip search in Newcastle detachment on the 24th of November, 1989. That is the same jacket. There is my initials, time and date.

Q. It bears your initials?

20 A. Initials and time and date.

Q. Is there anything special about that jacket that you recall - any special markings on it?

A. I think it had a logo on it - Mercedes Benz.

Yes, it still bears the same Mercedes Benz logo.

25 Q. Would you just pull that up so it can be seen and what you are talking about? Where is the Mercedes Benz logo?

A. Where I am pointing with my pen.

30 Q. Could you please then replace 4M in the bag from which it came?

1 A. This again was turned over to Constable Davis at the detachment.

Q. Constable, I have just placed before you WWW, earlier identified and referred to by a number of witnesses -
5 bag and contents. It appears to be a pen, lighter and keys. Do you recognize anything in WWW?

A. Yes, they appear to be the same items that -- removed from Mr. Legere during the strip search. The tamper proof envelope is still sealed. The seal has not been
10 broken.

Q. And the items are?

A. A set of car keys; a Canadian Pacific pen; a green Bic type lighter. Again, this was turned over to Constable Davis at the detachment in Newcastle on the
15 24th of November, 1989.

Q. I am now placing --

THE COURT: I'm sorry - this last item. Was there a plastic bag did you say? You said something. It didn't appear to be opened.

20 A. The tamper proof exhibit bag.

THE COURT: Oh, the exhibit bag. There was no other bag --

A. No. I'm sorry - the bag has been opened down in the lower left-hand corner. Missed the first time. They appear to be similar to the items that I seized from
25 Mr. Legere.

MR. SLEETH: I have one more item for identification, My Lord - plastic bag and some electronic device. 4N.
(4N for IDENT.: Aiwa AM-FM RECEIVER)

30 A. This is an Aiwa AM-FM Receiver. It is the same one I seized from Mr. Legere during the strip search at the Newcastle detachment on the 24th of November, 1989.

- 1 That same morning turned it over to Constable Davis
at the detachment at 8:05 a.m.
- Q. Okay and you referred to an Aiwa Receiver. Can you
spell that please?
- 5 A. Oh, yes. Okay, Aiwa appears to be the brand name.
A-i-w-a, TV sound, 3 band receiver. The maker of the
brand name is Aiwa.
- Q. And you took that from where from Mr. Legere?
- A. From a pocket - pocket of his clothing.
- 10 THE COURT: This is I take it a radio - radio as opposed to
-- what was the other thing? Wasn't there some other
object marked earlier? What do you call them - a
Walkman?
- MR. SLEETH: Perhaps, My Lord, I would refer you to to
15 4D. Is there a brand name that you can see on the
item identified by other witnesses as 4D?
- A. Yes, it bears the same brand name Aiwa. A-i-w-a.
- MR. SLEETH: Thank you very much, constable. No further
questions, My Lord, on direct.
- 20 THE COURT: Cross-examination, Mr. Furlotte?
- CROSS-EXAMINATION BY MR. FURLOTTE:
- Q. Constable MacPhee, what time did you set up the
roadblock?
- A. Approximately 4:00 o'clock in the morning - 4:00 a.m.
- 25 Q. How many roadblocks would have been set up in the
area?
- A. I couldn't tell you for sure.
- Q. Word from a pretty good source that Mr. Legere was on
his way to town?
- 30 A. According to the radio transmissions, yes.

- 1 Q. Now you arrived on the scene. You say after you
pulled up behind the tractor trailer you mention you
saw a male lying on the ground on his back.
- A. Yes.
- 5 Q. Do you recall what time that would have been?
- A. That was at 5:45 a.m.
- Q. 5:45.
- A. According to my watch when I arrived.
- Q. And when you approached Mr. Legere lying on his back
10 you were able to identify him?
- A. When I got right up to him, yes.
- Q. Now you were told by Corporal Barter that Mr. Legere
had been chartered and given the police caution?
- A. Yes.
- 15 Q. Did you ask Mr. Barter if Mr. Legere had requested a
lawyer?
- A. No, I did not.
- Q. And you put Mr. Legere in the police car about five
minutes later at 5:50?
- 20 A. Yes.
- Q. And you chartered him - advised him of his right to
counsel?
- A. Yes.
- Q. And did you ask him if he wanted a lawyer?
- 25 A. No, I did not.
- Q. Mr. Legere at that time when you read him his Charter
he appeared to be more concerned about getting a
doctor than a lawyer did he?
- 30 A. He asked if he could be brought to a doctor.
- Q. And you stated to him that you would look after it
later on or what?

- 1 A. No, I said that he would -- in due time this would
be taken care of. I didn't say I would do it, no.
- Q. But yourself you had no intentions of either getting
him a doctor or a lawyer at that time?
- 5 A. No, I did not - up to the investigators.
- Q. Isn't it appropriate, Constable MacPhee, that when you
tell a person that you are either arresting or
detaining that he has a right to a lawyer? Isn't it
appropriate that you ask him if he wants to get a
10 lawyer?
- A. Not necessarily, no.
- Q. Not necessarily?
- A. No. He appeared to be lucid, talkative.
- Q. So you don't give them the opportunity to call a lawyer
15 either do you?
- A. If the opportunity presents itself I would, yes, but
at that point in time it didn't.
- Q. Did Mr. Legere appear nervous at that time?
- A. He was hyper when he was in the back seat of the
20 police car.
- Q. Hyper - upset? Upset, also?
- A. Yes, he was. Yes, to a certain degree.
- Q. I believe on direct examination you stated that
Mr. Legere said, "Look at the gun that guy's got."
25 Something to that effect.
- A. Yes.
- Q. So he was very concerned about police officers around
him with guns?
- 30 A. That's the remark he made at the time.
- Q. And Mr. Legere was under the impression that

1 Constable Bolduc kicked him, or is it Corporal Bolduc?
Constable Bolduc kicked him in the face?

A. When Constable Bolduc got in the car he said, "You're
the fucker that kicked me."

5 Q. So he was confused at the time as to who even kicked
him?

A. I'm not sure if he was confused or not. He seemed
pretty sure about that.

Q. You arrived on the scene with who?

10 A. Corporal Veysey.

Q. Corporal Davis?

A. Veysey.

Q. How many police officers were on the scene when you
arrived?

15 A. There was -- when I got there Constable Dugas was just
ahead of us. There would have been only Corporal
Barter and Corporal Lutwick there ahead of Constable
Dugas from what I saw.

Q. And you arrived with Constable Davis?

20 A. Corporal Veysey.

Q. Corporal Davis.

A. Veysey.

Q. You say Mr. Legere stated to you that he could have
shot police officer, or you guys, something to that
25 effect, lots of times?

A. Several times.

Q. And did you seize the rifle yourself after or handle
the rifle yourself at any time?

30 A. No.

Q. Mr. Legere is expressing an opinion to the effect that

- 1 there's no need of being dirty with him because he
wasn't dirty with you guys. Is that right?
- A. He at no point said that that I can remember.
- Q. Not in those words, but to that effect?
- 5 A. He at no point in time said that to me.
- Q. So at 5:50 you read Mr. Legere his rights again in the
police car?
- A. Yes.
- Q. And what time did you leave the scene of the arrest?
- 10 A. 5:57 a.m.
- Q. What time did you arrive at the police station?
- A. 6:04.
- Q. 6:04?
- A. Yes.
- 15 Q. You began a strip search?
- A. After we went --
- Q. At what time?
- A. Well between 6:04 and 6:20 the strip search was
conducted. We stopped in the bay of the detachment,
20 one of the garage bays, for a cursory search for
weapons. He was taken down the hallway into the
cell room where he was left with Constable Bolduc. I
went back and removed my sidearm and placed it in the
guard's desk, got the key to the cell, and returned.
- 25 At that point in time we did the strip search.
- Q. And that would have been between 6:04 and 6:20?
- A. Yes.
- Q. Was there anybody else present between 6:04 and 6:20
when you were doing the strip search?
- 30 A. Not in the cell area that I can recall, no.

- 1 Q. Not in the cell area?
- A. No.
- Q. What about just outside the cell area?
- A. I believe there was some members, some E.R.T. members,
5 which is the Response Team members in the corridor
outside. They didn't speak. They were there for
security.
- Q. What time did you first observe Sergeant Johnston on
the scene?
- 10 A. Him and Corporal MacNeill arrived at 6:30, just at
the end of the strip search - the first time I saw
him anyway.
- Q. The first time that you saw Sergeant Johnston was
about 6:20?
- 15 A. Yes, following the strip search.
- Q. And what did you do at 6:20?
- A. At 6:20 Sergeant Johnston and Corporal MacNeill went
into the cell room. I removed the exhibits from the
cell room floor out into the hallway where I kept
20 continuity of them.
- Q. Is that when you stated you heard Mr. Legere talking
and making some remarks - something about \$900? Was
that at that time?
- A. Yes, Corporal MacNeill left very shortly after he
25 arrived and at that point in time Sergeant Johnston
was alone with Mr. Legere in the cell --
- Q. In the cell or was --
- A. Area. The cell area.
- 30 Q. In the cell or was Mr. Johnston on the outside of the
cell?

1 A. Well it was in the cell room with Mr. Legere being
in the cell and Sergeant Johnston being outside in the
small foyer there.

Q. And I understand Mr. Legere had been naked at that
5 time with maybe just a blanket over his shoulders?

A. Blanket wrapped around him, yes.

Q. Wrapped around him. And at that time Mr. Legere's
hands were still handcuffed behind his back?

A. Yes, they were.

10 Q. And the blanket that was gotten for Mr. Legere, did
anybody put it over his shoulders or was it just
thrown into the cell?

A. No, it was placed over his shoulders I believe by
Constable Bolduc.

15 Q. You believe Constable Bolduc put it over his shoulders?

A. Yes.

Q. What time did Mr. Legere ask for a lawyer?

A. It was between 6:35 and 6:40.

20 Q. And when Mr. Legere asked for a lawyer you told him
that you couldn't get him one?

A. I said I couldn't get him one at that time. He would
be given an opportunity to contact a lawyer.

25 Q. Do you think at that time it would have been your
duty to get him a lawyer or to assist him in getting
a lawyer?

A. My job at that time was to guard the exhibits and
Mr. Legere until the arrival of the investigators.
That was my job at that time.

30 Q. Who was going to run away with the exhibits?

A. Nobody while I was there.

THE COURT: We believe you, too.

- 1 Q. You didn't expect Sergeant Johnston to steal them
did you?
- A. No.
- Q. Sergeant Johnston was gone at the time?
- 5 A. Which time now?
- Q. When Mr. Legere asked for a lawyer.
- A. Yes, Sergeant Johnston left at 6:35 and returned at
6:40 with Constable Mole.
- Q. It was only yourself present and Mr. Legere present?
- 10 A. Yes, at that time.
- Q. And yet who was going to steal the exhibits if you
left - surely not Mr. Legere?
- A. I wasn't going to lose continuity of the exhibits nor
was I going to abandon my post at that time.
- 15 Q. Was there a telephone in the area?
- A. No, there wasn't.
- Q. Who is the next person you saw after Mr. Legere asked
for a lawyer?
- A. It was Constable Mole and Sergeant Johnston came down
20 and went into the cell room with Mr. Legere.
- Q. Okay, when they arrived did he ask you if Mr. Legere's
rights had been read to him?
- A. Sergeant Johnston asked me if I had chartered and
warned him.
- 25 Q. Maybe before we get to that, once Mr. Legere asked
for a lawyer I believe you stated you read him his
rights again.
- A. I did, yes.
- 30 Q. You had already read him his rights twice - once in
the police vehicle didn't you?

- 1 A. Just once before that.
- Q. Just once before that?
- A. At 5:50.
- Q. Just once in the police vehicle?
- 5 A. Yes, at 5:50 which he stated he understood.
- Q. You didn't read him his rights again when you were --
just before doing the strip search?
- A. No, I didn't.
- Q. So once Mr. Legere asked for a lawyer and you felt
10 it was important to guard the exhibits why did you
read him his rights again?
- A. I wanted to make sure he understood fully that he had
the right to counsel.
- Q. My God he asked you for counsel. He must have
15 understood.
- A. I wanted to make sure.
- Q. Or did you want to distract him?
- A. No, I didn't want to distract him. I wanted him to
make sure -- or wanted to make sure he understood his
20 right to counsel which he stated he did.
- Q. But at the time you believed Mr. Legere wanted
counsel?
- A. I did and I also believed he'd be given an opportunity
to get it shortly.
- 25 Q. Right. At that time you understood that Mr. Legere
understood his rights to counsel?
- A. Yes.
- Q. And he requested counsel. There is no mistake about
that.
- 30 A. Just prior to being given the Charter, yes.

- Q. Now when Sergeant Johnston came back with Corporal Mole why didn't you tell them that Mr. Legere requested counsel and advise them to go out and assist Mr. Legere in getting counsel?
- A. Well it was my belief that they were going to give him opportunity to get counsel. I advised that I had given the Charter Notice.
- Q. Who was your supervisor?
- A. It would have been Corporal Veysey.
- Q. Corporal Veysey had been on the scene with you?
- A. Corporal Veysey had been at the scene with me - had been in the police car with me.
- Q. So he knew that Mr. Legere requested a doctor also?
- A. I don't know if he did. Once I got in the police car with Mr. Legere I had no more contact with Corporal Veysey.
- Q. Who went back to the police station with you?
- A. Constable Bolduc.
- Q. While you were looking after the exhibits and Constable Bolduc left, was there any reason why Constable Bolduc couldn't have arranged to get Mr. Legere a doctor?
- A. I don't know. As I said I was at my post. His injuries didn't appear to be life threatening at the time.
- Q. When Mr. Legere asked for a lawyer did you tell him that he would be given the opportunity to get one later?
- A. Yes, I did - shortly.
- Q. Shortly. What time in the morning was that again?

- 1 A. That was between 6:35 and 6:40 a.m.
- Q. Do you know what time Mr. Legere was actually given the opportunity?
- A. I have no idea.
- 5 Q. Some time in the afternoon?
- A. I have no idea.
- Q. Do you know what time he was given a doctor?
- A. I have no idea.
- Q. Who is Corporal Hachey?
- 10 A. Again, I have no idea.
- Q. Do you recall Mr. Legere asking for a drink of water?
- A. Yes, that was between 6:35 --
- Q. 6:40. Around the same time that he asked for a lawyer?
- A. It was after Sergeant Johnston left. Just before he
- 15 asked for a lawyer actually. The same reason I couldn't get him a drink of water. I couldn't leave my post.
- Q. And somebody came in and said that he couldn't find any exhibit bags. Who was that?
- 20 A. That was outside the cell area. That was Corporal MacNeill.
- Q. That was Corporal MacNeill?
- A. Yes. He didn't come in contact with Mr. Legere at that time.
- 25 Q. How many times did Mr. Legere ask to see a doctor?
- A. Several times. At least twice that I can remember.
- Q. Now you mentioned something about a handwritten consent to search?
- A. Yes.
- 30 Q. And that was given by who?

- 1 A. Again, Corporal MacNeill gave it to me.
Q. Who was that handwritten note from?
A. As I understood it --
Q. Who prepared it?
- 5 A. Fred Ferguson, the Crown prosecutor in the Newcastle area.
Q. And who was supposed to sign that consent or consent to the search?
A. I have no idea. I identified it for what it was and
10 gave it to Sergeant Johnston through the doorway.
Q. Was Mr. Legere's name on it?
A. No, not that I can recall. It may well have been.
Q. The boots that you had seized from Mr. Legere that he was wearing, did they have any laces in them at
15 the time?
A. No, they didn't.
Q. Did you seize any jewellery off of Mr. Legere?
A. No, I don't believe I did.
Q. Was Mr. Legere wearing any jewellery at the time
20 you searched him?
A. Oh, yes. Okay, yes, two gold chains I believe and the watch, if you consider a watch jewellery.
Q. The gold chains were -- anything on the gold chains?
A. I can't recall.
25 Q. Crosses on both chains?
A. I can't recall right now. I could check through the exhibit list.
Q. Where were the gold chains?
A. Around his neck I believe.
30 Q. Around his neck?

- 1 A. Yes.
- Q. Do you recall any rings that he was wearing?
- A. No, I don't believe so.
- Q. Do you recall whether or not Mr. Legere may have
- 5 had a ring on both of his little fingers?
- A. I don't recall.
- Q. The electronic instrument with the Aiwa brand name --
- A. Yes.
- Q. Do you know what that is?
- 10 A. I believe it is an FM receiver.
- Q. FM receiver?
- A. Yes.
- Q. Did it also have a TV band on it?
- A. Yes, I believe it does.
- 15 Q. So it can pick up FM radio stations and also
television stations - sound for television stations?
- A. As I understand it, yes.
- Q. Do you know whether or not it worked?
- A. I have no idea.
- 20 Q. Do you recall Constable Bolduc showing up whenever you
were doing a strip search and hearing -- do you recall
Sergeant Johnston showing up when you were doing
your strip search and hearing Corporal Bolduc telling
Sergeant Johnston to wait outside until they're --
- 25 finished your search?
- A. Until the strip was over - the strip search was over
at 6:20. I didn't see Mason Johnston. That's the
first I saw of him.
- Q. Did you hear him?
- 30 A. No.
- MR. FURLOTTE: I have no further questions.
- THE COURT: Re-examination?

1 MR. SLEETH: Just one on redirect, My Lord, more in the
nature of clarification.

REDIRECT EXAMINATION BY MR. SLEETH:

Q. As counsel for the accused asked about Charter
5 Warnings and the like that you had given on different
occasions, at the same time the Charter Warning was
given, you gave the Police Warning of the right to
remain silent?

A. Yes, I did.

10 Q. Each time to the accused?

A. No, just the second time.

Q. And he was aware then of that right?

A. I was of the understanding Corporal Barter advised
me that he had been chartered and warned at the time
15 of his initial arrest.

Q. And it was also done as well by yourself - the right
to remain silent?

A. Yes.

Q. Which he exercised?

20 A. Yes.

MR. SLEETH: Thank you.

THE COURT: Thank you very much, constable. That is all.
You are excused. Now we will adjourn - it is
quarter to 1:00 - until 2:00 o'clock

25 (Jury Retires.)

NOON RECESS

30

1 COURT RESUMES-2:10 p.m. (Accused present.)

THE COURT: We will go ahead with --

MR. WALSH: My Lord, just before you do. After Constable
Bolduc will be the next witness, I will be calling
5 Staff Sergeant Johnston and Corporal Mole. Part of
their involvement with respect to the arrest of
Legere involved later in that day being present
when foot impressions were taken. They didn't take
them, but they were present. I do not intend to go
10 into that particular area because that whole issue
does not become relevant until this Court rules on it
in a voir dire later. I simply tell the Court that
so I can forewarn Mr. Furlotte that I won't be
delving --

15 THE COURT: Which witness is that?

MR. WALSH: That would be Staff Sergeant Johnston and
Corporal Mole. I do not intend to get into that
area because that area doesn't become relevant until
this Court rules on the whole question of the --

20 THE COURT: But then you would have to call them back.

MR. WALSH: Well, we will have them available.

THE COURT: Yes, I mean if the other thing went ahead.

MR. WALSH: We would have them available and depending on
whether or not it would be necessary, it would
25 certainly depend on Mr. Furlotte, but I simply point
that out at this time, My Lord.

THE COURT: Well, you understand that, Mr. Furlotte. You
would avoid cross-examining them on this point. Your
first witness, though, is Constable Bolduc, is it?
30 All right, jury.

1 (Jury called. All present.)

THE COURT: Do you have another witness, Mr. Sleeth?

MR. SLEETH: Yes, My Lord, Constable Bolduc.

5 CONSTABLE BOLDUC, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Would you please state your full name and your
occupation for the Court, witness?

10 A. My name is Joseph Gerard Luc Bolduc. I'm a member of
the Royal Canadian Mounted Police since August 1977.

Q. I'd like you to go back in your mind to 1989. Where
were you stationed at that time?

15 A. In the fall of 1989 I was working in the Newcastle
area assisting the Newcastle detachment as a member
of the Emergency Response Team for the R.C.M.P.

Q. That is known commonly as the E.R.T. team, am I right?

A. Right.

20 Q. I'd like to take you directly then to Friday, the
24th of November, of certain involvements you had on
that date which I would like you to relate to the
jurors now, beginning with the time?

25 A. On the 24th of November, 1989, there was all members
of the R.C.M.P., including three members of the
Emergency Response Team maintaining a roadblock on
highway number 8 - the Repap Windmill in Newcastle,
County of Northumberland, Province of New Brunswick.

30 In the early hours of the morning at approximately
around 5:30 the three members of the E.R.T. team,
Corporal Boudreau, Constable Dube, and myself were
dispatched off highway 126, and I believe it was on

1 highway 18, to assist other members of the R.C.M.P.
which had located a suspect vehicle and a suspect.

So we proceeded to the area and we arrived there
shortly after. There was a tractor unit parked on
5 the side of the road, a R.C.M.P. unmarked Suburban
van, green colour, one - maybe two R.C.M.P. marked
units and ourselves that we got behind them. As we
come out of the vehicle there we were told to stay
away from the scene, which was ahead of us, and to
10 keep an eye on an R.C.M.P. vehicle there. In this
R.C.M.P. marked unit there was a male individual
in the back seat which we were pointed at that was
supposed to be Allan Legere and Constable Ken MacPhee
was sitting on the front seat.

15 Q. The person who was sitting in that back seat, as you
arrived on the scene, of that vehicle which had
MacPhee in the front seat, is that person in this
courtroom today and if so where, please?

A. Yes, this person is sitting in the prisoner's dock
20 between the two R.C.M.P. members wearing a white shirt,
gold trim glasses, dark hair.

MR. SLEETH: Just wish the record reflect, My Lord, that
the witness has just identified the accused,
Mr. Allan Legere.

25 Q. You noticed Mr. Legere, then, in the back seat of the
vehicle with Mr. MacPhee, Constable MacPhee, in the
front seat. Were you here this morning when Constable
MacPhee testified?

A. No, I was outside the courtroom.

30 Q. Please continue then.

1 A. Then we stayed a little bit behind that vehicle there
approximately 6 to 8 feet. Myself I was on the --
by the right rear fender of that vehicle just main-
taining sight on the vehicle and the suspect on the
5 back seat. A few minutes after I was assigned to
the member -- accompany Constable MacPhee to escort
Allan Legere back to Newcastle detachment. Again,
2 - 3 minutes after I was told that we were almost
ready to leave and I jumped in that marked police
10 car in that front seat on the passenger's seat.
Constable MacPhee was the driver.

Q. This would be about what time approximately?

A. Approximately around 6:00 o'clock in the morning.

Q. You got in the front seat of the vehicle - MacPhee
15 at the wheel?

A. MacPhee at the wheel. Then very shortly after we
started proceeding towards Newcastle detachment. At
that time Allan Legere told me that I was the
20 cocksucker that kicked me in the face. I didn't know
what he was talking about at that time so I ignored
him. Then we started proceeding, like I said, to
Newcastle detachment. Mr. Legere, I believe, asked
me my name, which I gave him - I was Constable Bolduc.
25 And he told me something in the effect that with all
my buddies around I was a pretty brave man but man to
man I would not take him on. So I ignore his
statement and we kept on driving towards Newcastle.
So Mr. Legere kept on talking and then he came with
30 the subject that if it hadn't would have been of the
old mother winter we would never have caught him, that

1 he had been in Montreal, had no birth certificate, no
money, no place to go. I said, "What you want me to
do?" And then he mentioned about being in Saint John,
New Brunswick, coming down - I believe it's on a
5 train. And again in Saint John stating that he didn't
know what to do there - turning himself in or what.
Which I didn't answer any of his statement because I
was keeping an eye on him for security purposes there
only. And he mentioned something about the taxi
10 driver that he got a ride with - taxi driver or -
and they got into a ditch towards Moncton and then
he said, "Oh, me and my luck." He said, "Who stopped
behind me was a female R.C.M.P. officer." Then he
mentioned something about a truck driver that was
15 going to Halifax and he said, "What do you want me
to do to Halifax?" Then he kept on driving and --
I believe after that he came back with the topic of
me - why I had kicked him in the face?

Q. What did he say about kicking?

20 A. He said, "Man," he said, "why did you kick me in the
face?" And at that point like it was the second time
and I said, "Nobody kicked you in the face." And
then he requested to see a doctor. He said, "I want
to see a doctor and this will all be coming out in
25 Court." And to this statement I said, "When we get
to the detachment we'll see what we can do to get you
a doctor."

Q. Before this discussion of doctors and the like was
30 there mention by Mr. Legere about how hard you might
have kicked him or how badly?

1 A. Yes, he had mentioned that I -- "You kick as bad as
me," which again not knowing what had happened I
didn't know what he was talking about.

Q. Okay. All right then going back then there was
5 further discussion. He did mention a doctor. Would
you just continue then on again please in order of
chronology?

A. So we kept on driving and then he complained about
his handcuffs being too tight and I told him that I
10 was not in a position to loose his handcuff and I
told him that the more he moved the worse it gets.
I said, "Just stand still there." So we kept on
driving towards Newcastle detachment and he
mentioned something about how he had got the material
15 to fabricate the key that would -- to free his
handcuff on his last escape which I think was material
from a radio or a T.V. that the guard had supplied
him and all that stuff. After that mentioned some-
thing about being in the woods and being in the woods
20 in the summertime or the last while, that he had
made friends with the wildlife, and feeding the
squirrels with his hands I believe.

Q. Was there anything shown by him to you?

A. There was something showing to me at one point - a
25 ticket that how he'd got to Saint John, but I'm not sure
if it's in the police car or after when we searched
him there but first believe it was in the police car
but I'm not sure.

Q. This trip would have taken how long from the spot
30 where Mr. Legere was taken into custody until you
arrived at the Newcastle detachment?

1 A. It was not really long. I'm not very familiar with
the area but I would say 10 - 12 minutes - 13 minutes
14 minutes.

Q. How talkative was Mr. Legere in the course of this
5 trip?

A. Mr. Legere was very talkative. Like I said myself I
didn't want to get involved in the conversation at
all. I was just assigned as a security officer to
make sure that we made the trip to the detachment.
10 But Mr. Legere was very talkative. Never stopped
talking. Very hyper. His eyes were glassy there
and very -- he kept talking all the time. Never
stopped talking.

Q. He never stopped talking?

15 A. Never stopped talking.

Q. Were you able to take notes at the time?

A. After all when we finished we were trying -- we left
the area and we went to the Major Crime Unit which
was straight off highway going to Bathurst where I
20 sat down and I wrote some notes there.

Q. Once you arrived at the detachment, or once you
arrived at your destination in Newcastle, what did
you do with Mr. Legere upon your arrival?

A. So when we arrived at the Newcastle detachment
25 Corporal MacNeill let us in the big garage there.
At that time I left my weapon in the vehicle and
we got Mr. -- me and Constable MacPhee got Mr. Legere
out of the police car. As soon as we came out we
had a quick search for any obvious weapons whatsoever.
30 I located the brown leather case containing some

1 ammu in one of his -- he had two jacket on - in one
of his pocket there that I turned immediately over to
Constable MacPhee. Following that we proceeded to the
prison cell area there where we stripped Mr. Legere
5 for a complete search and at that time I went out of
the room just inside the door and requested from
Corporal MacNeill if there was a way to bring me some
rubber glove to proceed to the search there. Returned
a few second after inside and we completely searched
10 Mr. Legere for any other evidence or weapons. When
this was finished my job which was like -- remember
like putting Mr. Legere in the cell and my job was
completed and I departed that area.

MR. SLEETH: Thank you, constable.

15 THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. What time did you leave the scene of the arrest?

A. I would say in approximately 6:30 - shortly before
6:30 in the morning of the 24th of November, 1989.

20 Q. About 6:30?

A. Shortly before that or around there.

Q. Shortly before 6:30. And you would have arrived at
the police station at what time?

A. Well we went to the -- we would have arrived?

25 Q. Yes.

A. --at the police station?

Q. Yes.

A. --the detachment 6:15 approximately.

30 Q. You said you left shortly before 6:30. The police --
the scene at the arrest - I understood you to say you

1 left shortly before 6:30. Did I hear right or did you
say something else?

A. Around 6:30 approximately. Shortly before. A few
minutes before.

5 Q. And you arrived at the police station with Mr. Legere
at 6:15?

A. In that vicinity I would say.

Q. Okay, 6:15 comes before 6:30.

THE COURT: 6:50 he's saying.

10 A. 15. 1-5.

Q. Now, not the time you left the police station to go
to the arrest scene. If you are -- what time did you
arrive where Mr. Legere was arrested?

A. At the scene --

15 Q. At the scene of arrest do you recall what time you
arrived?

A. Like I said I didn't take any note of that. When we
left the area where we were maintaining a roadblock
that was around 5:30 in the morning we left -- which
20 is in front of the Repap Mill on highway number 8. So
the time to get there approximately 10 minutes - 15
minutes and then so we might arrive at the scene
quarter to 6:00.

25 Q. Quarter to 6:00. And you would have left the scene
of the -- how long would you have been at the scene of
arrest?

A. 15 - 20 minutes.

Q. So you would have left the scene of the arrest maybe
closer to 6:00 o'clock rather than 6:30?

30 A. We have left the scene?

Q. Yes.

- 1 A. To go to the detachment?
- Q. Yes.
- A. Around 6:00 o'clock I would say.
- Q. And you arrived at the detachment at what time?
- 5 How long would it take you to drive to the detachment?
- A. I'm not very familiar with the area and second I didn't take any note of the time because I was strictly instructed to keep an eye on Mr. Legere. I would say around 6:15 that we arrived at the detachment. That's
- 10 all approximate.
- Q. But you did make some notes after you arrived at the detachment?
- A. At the Major Crime Unit section there which I did take some notes there, yes.
- 15 Q. Do you have your notes on you?
- A. No.
- Q. I have a copy of your notes - typed version of your notes. It states here your notes were made at 6:30 on November 24, 1989. Does that basically look like
- 20 the notes that you had made out? You don't have to read it out loud - just look at it for a minute or so.
- A. That's correct.
- Q. Did I understand that part of the conversation that you
- 25 say Legere had made to you in the back seat of the car on the way to the police station was something to the effect that "he kicks as bad as you do" or "you kick as bad as him"?
- A. That's correct.
- 30 Q. What was that comment, again, that you said he made?

- 1 A. He said something to the effect that "you kick as bad as me".
- Q. Kick as bad as me. Not just that you're as bad as him?
- 5 A. No, "you kick as bad as me".
- Q. Now, when you made your notes at 6:40 on that morning which would have been within the hour of Mr. Legere making comments to you, you list 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 things that he commented to you about, is that right?
- 10 A. Yes, pretty well right, yes.
- Q. And the comment that you stated in Court that, "you kick as bad as he does" is not there is it?
- A. I'd like to point out to you that this -- these notes
- 15 there I made them when I was instructing on the Sharpshooter Course at the Canadian Force Base in Gagetown. I was contacted by Constable Charlebois, which was the chief investigator in that file there, to send him something A.S.A.P. to get the paper work
- 20 ready there. There is a fax number there so I went to the headquarters and what I wrote there I wrote what I could remember, what I could specifically remember, from my notes there.
- Q. Okay, and when was that?
- 25 A. That would have been in the month of May, 1990.
- Q. Month of May, 1990. And why does it say at the top of these notes that the notes were made and dated Friday, November 24, 1989, Newcastle, New Brunswick - notes of Constable Bolduc made at 6:40 hours, Major
- 30 Crime Unit? And now you are saying you only made those

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- 1 in May of 1990?
- A. Can I answer your question or is this --
- Q. Yes, I would like you to explain that.
- A. When I made -- when I facsimile something to -- these
5 notes to Constable Charlebois I wrote exactly when I
wrote the note and where I took my notes, my personal
notes, and it's the only time I took and I wrote down
after the arrest there. So those are my notes that
I could recall from my notes and there is nothing
10 wrong with writing that -- what I told him on paper
was from my notes that I took at 6:40 a.m. on the
24th of November, 1989.
- Q. And you didn't feel it was important to put that little
aspect that Mr. Legere was supposed to have made a
15 comment that "you kick as bad as he does"?
- A. Not that I didn't feel that. It's a slip like --
- Q. But it was important to put that he complained about
the handcuffs being too tight?
- A. It's not a matter of putting what is important and
20 what's not important. It's what I could remember.
- Q. It's what you could remember. So you weren't able
to remember it in May of 1990 but now today you are
able to remember it. Is that what you say?
- A. I think I did remember pretty well along except that
25 when I wrote these notes to Constable Charlebois like
it's nothing I didn't remember at that time that I
didn't put on paper.
- Q. Who was all in the cell area whenever you were strip
30 searching Mr. Legere?
- A. Just me and Constazble MacPhee.

- 1 Q. Did you see Sergeant Mason Johnston there at any time?
- A. I think at one point I saw Staff Sergeant Johnston at the doorway and made a statement to him that we'd
- 5 be finished and to wait - we'll be finished very shortly.
- Q. To wait and you'd be finished briefly. So Sergeant Mason Johnston was out there speaking to Mr. Legere?
- A. Sorry?
- 10 Q. Did it appear that Sergeant Johnston go there to speak to Mr. Legere?
- A. I don't know. I just -- his head popping out in the doorway that's all. I don't know the purpose.
- Q. You mentioned that Mr. Legere had asked for a doctor?
- 15 A. That's correct.
- Q. Did you advise anybody that Mr. Legere had asked for a doctor?
- A. No, I didn't.
- Q. Did you hear Mr. Legere ask for a lawyer at any time?
- 20 A. I don't recall him asking for a lawyer.
- Q. You don't recall. Did you notice any jewellery on Mr. Legere?
- A. Don't remember.
- Q. And Mr. Legere told you he was in Saint John?
- 25 A. Yes.
- Q. And he showed you a train ticket from Montreal to Saint John?
- A. I remember seeing a train ticket somewhere.
- 30 Q. You didn't find a train ticket on him from Bathurst to Montreal by any chance did you? You only found

1 one train ticket on him when you searched him?

A. I don't remember if I found the ticket, but I've seen
a ticket that he said it was his ticket from Montreal
to Saint John.

5 Q. Nevertheless, Corporal Bolduc, as far as you know
there was only the one train ticket found on
Mr. Legere. And you mentioned something that he told
you he was thinking about turning himself in?

A. Yes, and that was when he was in Saint John I believe.

10 Q. Mother winter was catching up on him?

A. Correct.

Q. Did he also tell you that police officers had been
close to him many times?

A. Yes, he mentioned something about being at times --

15 R.C.M.P. was being very close to him but he didn't
want to shoot an R.C.M.P. officer.

Q. But he mentioned he could have shot an R.C.M.P.
officer lots of times?

A. Yes, correct.

20 Q. He didn't want to shoot an R.C.M.P. officer?

A. That's correct.

Q. Now you recall testifying at the voir dire in May
of this year - April-May of this year?

25 MR. SLEETH: I would object to that, My Lord. I must
object to that.

THE COURT: Why do you object?

30 MR. SLEETH: My Lord, any reference to anything beyond the
fact that he may have testified in a voir dire, any
contents of a voir dire we well know should be left
there.

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1 MR. FURLOTTE: These are the contents of that voir dire,
My Lord. You ruled that these statements would be
admissible.

THE COURT: I have ruled the statements were admissible in
5 this Court, but rather than refer to a voir dire, why
don't you ask the witness - do you recall testifying
on April 24 or whatever day it was?

Q. Do you remember testifying in Court before giving
similar evidence that you are giving today?

10 A. That's correct, yes.

Q. And do you recall whether or not on that day you
mentioned about some statement that Mr. Legere said
to you about "you kick as bad as him"?

A. I believe so. I believe this was in my events of
15 previous testimony.

Q. This might take some time, corporal, but I guess I
will have to ask you to read your testimony to see
whether or not you made such statement, unless the
Crown wants to admit --

20 MR. SLEETH: My Lord, I must ask on what basis my learned
friend or Mr. Furlotte is asking for the authority
for this person to read through the statement.
Section 10 of the Canada Evidence Act sets forth that
25 you can do that kind of thing if there is a
discrepancy between something that is said under oath
today and something that may have been reduced to
writing on a previous occasion. The testimony of
this witness is that he did say those things on the
30 previous occasion. It's not as if the reference to
"you kick as hard as me" suddenly rolls up for the

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1 first time here today. We already have it under oath
again repeated. It took place earlier.

THE COURT: You have got to remind the witness under
Section 10 what he said on some earlier occasion by
5 reading it to him, reminding him of the occasion, and
if that differs from something he has said today then
you ask him how he explains the --

MR. FURLOTTE: My Lord, if the witness gives different
testimony in one proceeding than he gives in another
10 then that witness can be brought to the attention that
he stated something different.

THE COURT: You will have to do it by following Section 10.
You are familiar with Section 10?

MR. FURLOTTE: Yes, My Lord.

15 THE COURT: Of the Canada Evidence Act. You have to read
that off to him, the section, the lines or whatever
that he said. As a matter of fact here I have in
mind that the witness said today precisely what he is
being asked about. I may be wrong about this that
20 "you kick as bad as I do" or something. Didn't you
say today that --

A. Yes.

THE COURT: This is what he said today.

MR. FURLOTTE: And he's also said that he believes he said
25 that in the first Court proceeding when he gave
evidence.

THE COURT: Yes.

MR. FURLOTTE: Now I'm submitting that --

30 THE COURT: Show him where he said something different in
that proceeding.

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1 MR. FURLOTTE: I can't show him where he said something
different, but I can show him that he never said it
at all.

THE COURT: Ask him why he didn't say it before. You know
5 it seems to be quibbling over stuff that is totally
irrelevant almost.

MR. FURLOTTE: My Lord, with all due respect, I do not
believe it is irrelevant.

A. Can I speak, My Lord?

10 Q. Please do.

A. I am quite sure I said it in the previous testimony.

Q. You are quite sure you said it in the previous
testimony.

A. If you give it to me, I will find it.

15 THE COURT: During a recess you look and see if you can
find where he said something different or where he
didn't say it at all.

MR. SLEETH: My Lord, if I may - if I could please it
would perhaps be of assistance to everybody here.
20 Turn to page 36, line 15, and show it to the witness.

THE COURT: Page 36, line 14.

MR. SLEETH: 15, My Lord.

THE COURT: Volume what?

MR. SLEETH: Volume II, My Lord.

25 THE COURT: Volume II out of XV.

MR. FURLOTTE: I guess it's my mistake, My Lord. I
apologize. He did say that.

THE COURT: Okay, put it down quick. Next question.

30 Q. But you don't know. That statement is not in your
notes.

1 A. Are you asking me a question?

Q. Yes.

A. What is the question?

Q. Could that statement be in your original notes? This
5 is the ones you faxed in May of 1990. Could that
statement be noted in your original notes?

A. Well I look at the fax like you showed me there and
it's not there.

Q. It's not there.

10 A. Those notes were made from memory there.

MR. FURLOTTE: I am going to quit while I am ahead,
My Lord.

THE COURT: I don't think you are ahead. Anyway,
re-examination?

15 MR. SLEETH: Absolutely not, My Lord.

THE COURT: All right, Corporal Bolduc, go home. You
have another witness?

MR. WALSH: Yes, My Lord, I'd call Staff Sergeant Johnston.

20 STAFF SERGEANT JOHNSTON, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

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

25 A. My name is Guy Mason Johnston. I'm a Staff Sergeant
in the Royal Canadian Mounted Police. I'm presently
stationed at Moncton, Westmorland County, New Brunswick.
I have been a member of the Royal Canadian Mounted
Police for the last twenty-six years.

30 Q. And what is your present duties?

1 A. I am a Staff Sergeant and my duties are entailed in
the job as a section N.C.O.

Q. Staff Sergeant Johnston, do you know Allan Legere?

A. Yes, I do.

5 Q. Is he present in Court today?

A. Yes, he is. He is seated in the prisoner's dock
between the two uniformed R.C.M.P. officers.

Q. How long have you known Allan Legere?

A. Approximately twenty years.

10 Q. Would you tell the Court please in your own words
your involvement in this particular aspect of the
matter beginning with the date, the time, and the
place?

A. Yes, on the 24th day of November, 1989, I entered the
15 cell area at the Newcastle detachment; that is,
Newcastle, Northumberland County, New Brunswick. I
entered the cell area and looked at Allan Legere.

Q. Before you go any further I should ask you this
question. Staff Sergeant Johnston, why were you in
20 the Newcastle area? What if any role were you
playing?

A. I was assigned to an investigation, the murder of
Father James Smith, as the investigator in that
murder. As a result of that and as a result of
25 learning that Allan Legere had been captured, I went
into the cell area to speak to Constable Ken MacPhee.
I walked in and asked Constable MacPhee if Allan
Legere was given his Charter Notice and his police
warning.

30 Q. Were you satisfied?

- 1 A. I was satisfied from Constable MacPhee's answer that
he was.
- Q. What happened next?
- A. Constable MacPhee mentioned the change in Allan
5 Legere's appearance. I walked into the cell area to
get a look at him and I looked and there was a great
change in his appearance from previous times that I
met him and had dealings with him.
- Q. Did you just have a quick look or did you leave or did
10 you stay?
- A. I just had a quick look and he spotted me.
- Q. Who did?
- A. Allan Legere.
- Q. And what if anything did he say to you?
- 15 A. He said to me, "Come here you short little fucker I
want to talk to you." This was said in friendly
terms. I walked over to him and he had a complaint
to make. He said, "Mason, they didn't have to do that
20 to me." He said, "I didn't shoot anyone." He
said, "I could have shot people where they got me."
And really I didn't know what he was talking about. I
asked him what he was talking about and he said,
"That fucking French frog Bolduc," he says, "kicked
me in the face." Again, he said he wanted to complain
25 about it and I said, "Well, I'll look into it."
- Also, at that time, he asked me if he could see
a doctor and I said, yes, I would make some arrange-
ments.
- Q. Did you know what he was talking about there?
- 30 A. He had a black eye.

1 Q. Did he appear to be in any distress?

A. No, not to me. Anyway, I said I would make the
arrangements and he also asked me would I take the
cuffs off. He was wrapped in a blanket. I said to
5 him, I said, "Look, Kevin will be down in a minute
and," I said, "we'll take your cuffs off." And I was
referring to Corporal Kevin Mole. I was going to
leave the cell area at that time. I turned to go out
and he said, "By the way, Mason," he said, "why didn't
10 that cop report shooting at me?" And, again, that
took me by surprise. I didn't know what he was
talking about. I asked him what he was talking
about. He said, "Well one night I nearly got caught."
He said, "The policedog was so close to me he sniffed my
15 ass." He said, "I turned around," he says, "I give
him a swat and told him to fuck off." He said, "The
dog did," and he laughed at that. And, again, he
said to me, "Why didn't the police officer report
firing those shots?" He said, "I could have killed
20 him that night." He says, "But I didn't." He said,
"I shot in the air."

So he kept talking to me and during the conver-
sation he asked me for his dentures, for his glasses,
and I didn't have any idea where they may be but I
25 said I would surely try to find them for him. At
that particular time he said to me, "Geez Mason I
got myself in a mess this time." He went on to
explain that. He mentioned that he hijacked a taxi
in Saint John and then worse than that, he says, "ran
30 into an R.C.M.P. female constable and hijacked her."

1 During that same time period he had nothing but
good comments about the R.C.M.P. member. He said
she was a nice person and very smart.

 He went on to elaborate about the hijacking of
5 the truck.

 I asked him at this particular time when he got
back and he said -- why he came back -- excuse me.
He said, "Well, I only had \$900. I was running out of
money." So he said he decided to come back. He
10 mentioned - you know - that it had been getting cold
when he had left. And I asked him when he had left
and he said the previous week.

 During this time period, also, we were talking
I said, "Well, you wouldn't be in all this mess if you
15 hadn't escaped in the first place." Well, then he
started telling me how he escaped from the prison
guards in Moncton and how easy it was and how stupid
they were. He told me he hung out in the east end of
Moncton and the police were looking for him in the
20 west end. He mentioned something about jumping a
train, about hurting his foot. He went on to say
that he was back in Newcastle within two days of --
two or three days of the escape. He said he hitch-
hiked up highway 126 and even stopped off at
25 Rogersville and had a chicken dinner.

 We talked about his survival. I asked him
about him living -- what he was doing during this
time period and he told me he lived in the woods for
the whole time and he said when the weather got nice
30 he probably ate better than I did and elaborated

1 about lobster and steak and read the newspaper every
day. He said the print -- the ink was even dry on it.
He talked -- he explained in the survival how he
lived in the woods, and he said, how he cooked his
5 food. He mentioned about cooking baked potatoes in a
-- put it in a soup can and cooking baked potatoes.

Q. With what kind of a device was he using to cook?

A. He was just putting it in the fire and he mentioned
that he only made fires in the daytime. At this
10 period also he mentioned there were helicopters
flying overhead. He mentioned that he moved different
times. He had campsites and he moved. He said he
found the time long but he made friends with the
squirrels. He trained them. Just basically elaborating
15 how he made out in the woods.

Q. You testified that he mentioned that he had left the
area the previous week. What if any indication did
he give you as to where he was or where he went?

A. Yes, after we talked about his episodes in the woods
20 and how he survived. During this period he mentioned
to me - and I said to him - I said, "I find it hard to
believe that you didn't come in contact with anybody."
And he said, "So help my Jesus, Mason," he said, "I
only saw two people," he says, "that whole time." He
25 says, "One fellow I saw fishing up behind the golf
course toward the Kelly Road." He said, "And the
other guy," he said, "I was walking across the train
bridge in Newcastle," he says, "and I met this fellow
face to face." He said, "The guy said to me," he
30 said, "I wasn't sure if he said hi Al or hi pal." But

1 he said, "I wasn't sure." He said, "I was going to
go back and throw him off the bridge," he says, "but
I didn't." And he said that's the two people that
he meant -- the only people that he saw.

5 He then went on to say that he had another close
call. He nearly got caught on the train in Quebec.
He elaborated how stupid the police officer was that
rolled up his sleeve partway and he said he was sure
he was caught at that time, and he continued on by
10 train to Montreal.

Q. Could you describe for the jury - it may be difficult
today but can you describe what the conversation was
like? Were you getting an answer for every question
or was he giving more answers than there was questions?
15 How was it? Can you describe it?

A. No, I asked a few questions but he was talking a mile
a minute. He was a real motor mouth. He wouldn't
stop talking. He just continued to talk.

Q. What was your intention of going to the cell in the
20 first place?

A. When Constable MacPhee mentioned the change in him I
was just going to glance in and just for curiosity
take a look at him. I noticed a remarked difference
in him. He had lost a lot of weight. He didn't have
25 his beard. He did not -- his hair was short. His
face was thin and shallow thus giving him a protruding
nose feature.

Q. How unrecognizable was he to you or how different -
excuse me - how different was his appearance to you
30 from when you had seen him last and when you saw him
this particular morning?

1 A. If I could make this comparison - if I was walking
down the street and he was walking on the sidewalk
on the other side of the street, I probably wouldn't
have given him another glance. If I met him face to
5 face, I'm quite confident I would have recognized him
if I met him face to face, but not across the street.
That's the remarked difference.

Q. How long were in the cell?

A. I went into the cell area approximately 6:21 on the
10 24th day of November and I left the cell area at
approximately 6:35.

Q. You said you went to the cell just to see the
difference. You had heard about his appearance. Did
you have any intention of questioning this man at the
15 time?

A. No, I had no intention of questioning him whatsoever.

Q. Why?

A. It was decided previous to his arrest that there were
two members assigned to do the questioning and I had
20 no intention of questioning him.

Q. Did anything else happen in that time frame of 6:21 to
6:35?

A. No.

Q. What happened at 6:35?

A. At 6:35 I left the cell area to go out and see
25 Constable Charlebois and Corporal Mole. They were
going to come down to the cell area and talk to
Mr. Legere. As I stated, they were the two members
that were assigned to talk to him. As I had left the
30 cell area Mr. Legere asked me for a drink of water.

1 He asked me again for his glasses and dentures,
breakfast. He wanted to have something to eat. I
left the cell area and I went up and I spoke to
Corporal Mole and Constable Charlebois. Corporal Mole
5 had a couple of things to do or to take just a couple
of minutes. I did get a glass of water and take it
down to the cell area and put it there. I didn't
speak to Mr. Legere. I went back out. Constable Mole
was free at that time so he followed me down, or
10 we went down together to the cell area. This would
be approximately 6:40. A short time after Constable
Charlebois came in. When I walked in Corporal Mole -
Allan looked at him and he started laughing. He said,
"Lord Jesus, Kevin, where did you get that haircut?"

15 Q. What was he referring to?

A. Well, you would have to have seen Kevin's haircut at
that particular time. Kevin had short hair and
probably different that Allan saw the last time and
Kevin said to him, "Well what are you talking about?
20 Yours is not much better," or words to that effect.
Allan says - he said, "A shave and a haircut in
Montreal - \$22." Anyway we -- shortly after that
Constable Charlebois came in. Corporal Mole gave
Allan his Charter Notice and police warning again,
25 his rights to counsel and police warning. Of course
he had to get Allan's attention to see if he under-
stood because he was talking a mile a minute -
talking to me or anybody who would listen to him.
So anyway Kevin - Corporal Mole then took the cuffs
30 and shackles off Mr. Legere.

1 Q. How was he dressed?

A. He had a blanket around him at that particular time.

Q. Did he have any clothes on other than the blanket?

A. No. Corporal Mole then proceeded to take hair
5 samples from Allan Legere.

Q. From what parts of his body did you notice?

A. He took them from his head area and pubic hair.

All this time Allan continued to talk - didn't even
pay any attention to Corporal Mole taking the hair.

10 When the hair was pulled out he didn't even flinch.

There was some conversation previous to taking the

hair. Kevin told him that he was going to take the

hair. Corporal Mole told him that he was going to

take the hair and Allan says, "Go ahead. Do what you

15 have to do." He said, "I'm not consenting."

Corporal Mole told him that -- "You know the procedure,

and Allan said, "Well do what you have to do. I'm

not consenting." Then for the next while Allan

repeated everything he said to me and more. He

20 continued to repeat the same things about being in

the woods, about the taxi driver, the R.C.M.P. officer,

where he was. He was more animated. At this time we

had given him a pair of coveralls to put on. He

became more animated when he was describing the police

25 on the train being stupid and missing him saying that

first of all they had the wrong arm and when they did

pull up the other arm he even demonstrated how they

pulled it up and only went so far and then he

30 animated and -- "Whew, I was sure I was caught," he

said. And obviously the policeman missed that. So

1 basically that was the repeat of the conversation
that I had with him when I first went into the cell.
He again repeated it.

Q. You used the words when I asked you about the time
5 between 6:21 and 6:35 to describe how the conversation
was going and you used the term 'he was a real motor
mouth'. How did this compare to the period when you
went back in and how long did you stay in there that
night? You went in around 6:40 you said.

10 A. We left there approximately 7:25 - 7:30, Constable
Charlebois, Corporal Mole, and myself. Corporal Mole
and Constable Charlebois took Allan Legere up to the
interview room.

Q. When you originally had made your decision as to who
15 was going to interview the accused where was this all
to take place? Where was the interview to actually
take place when you first decided what to do?

A. The interview was to take place in an interview room.
There was no -- we weren't to do any interviewing in
20 the cell area.

Q. You said, Sergeant, that you have known -- Staff
Sergeant, that you've known Legere 20 years.

A. Approximately 20 years.

Q. Why would he be telling you all these things in the
25 cell during this time?

A. He likes to boast and make himself look good.

Q. Was there anything else with respect to the conver-
sation that you wish to add, if anything?

30 A. No, when we first met in -- one thing I remember when
we first went in the cell area when I went in with

1 Corporal Mole he had said that, "I imagine the news
media are all lined up outside," and sort of laughed
at that.

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

5 THE COURT: It is quarter past 3:00 and I think we will
recess for 15 minutes or so. So I would ask the Jury
to go out please. You are not to discuss the matter
as you know.

(JURY RETIRES)

10 (Recess - 3:15 p.m. - 4:10 p.m.)

Court Resumes - (Jury called - All present)

15 THE COURT: Ladies and gentlemen of the jury, we had
planned this afternoon to go on with the cross-
examination of this witness. During the recess I
have had occasion to discuss certain matters with
counsel involved and it has taken a little longer
than anticipated and there is no possibility that
cross-examination could be completed this afternoon
in the next 20 minutes. I think counsel are agreed
20 that it would be better if we let you people go home
and come back in the morning and we would go on with
the cross-examination in the morning. So we are
going to do that. We may, as a matter of fact, have
to discuss certain matters in your absence on your
25 arrival in the morning, so we may even then at 9:30
have to keep you outside for a short time, but no
longer than necessary. I tell you again, as I have
told you before, please don't try to speculate on
30 what we are doing in your absence because we will tell
you everything you should know and we will keep from
you everything you shouldn't know.

1 I do want to warn you though, again, as I did
last night that we are approaching the wind down of
the trial and still have got a long way to go yet.
The end is in sight. I indicated yesterday the
5 number of witnesses. We have got about twenty
witnesses, I believe, it's the hope of counsel will
be heard this week. There are about five witnesses
next week and then there are expert witnesses the
following week, and after that, and so on and so on.
10 We are getting close to the end. When we started
out 243 Crown witnesses. It looked like a formidable
lot. Now we are down to numbers 211. It also
emphasizes the importance that none of you do anything
that is going to comprise the trial in any way and I
15 want to warn you as I did last night that no one
should talk to their families, to friends, to
boyfriends, girlfriends, brothers-in-law, sisters-in-
law, or anybody else about this case outside the
courtroom. People may try to compromise you, you
20 know, and it has not been unheard of in trials. I
warn you particularly about that.

So we will adjourn. Staff Sergeant, you will not
discuss this matter with anyone until all your evidence
is completed. We will go on with you as soon as we
25 have dealt with the matters in the morning.

Would you take the jury out, Constable Sears,
please?

(JURY RETIRES)

(Court Adjourned - 4:20)

30

(Constinuation of trial - October 3, 1991)

1 COURT RESUMES - 9:30 a.m. - (Accused present.)

THE COURT: This is a voir dire hearing in the absence of
the jury and of course nothing that transpires at the
voir dire hearing can be publicized until after the
5 whole trial is over. I believe you had an application
to make.

MR. ALLMAN: Yes, My Lord. We wish to raise an issue under
Section 644(1) of the Criminal Code. I am sure Your
Lordship is familiar with the section.

10 Before we get into it, we have a preliminary
matter that we want to raise. I am referring Your
Lordship now to Ewaschuk, Criminal Pleadings and
Practice in Canada, second edition, paragraph
17.1070 - that is the paragraph number. It says that

15 In conducting inquiries into this kind of issue, the
trial judge may conduct either a public or an
in camera inquiry to determine this issue.

We would respectfully request that you order a
semi in camera inquiry, and I will explain what I
mean by that.

20 It is difficult to explain why, without getting
into the evidence, but the nature of the evidence we
will be calling - and we will be calling --

THE COURT: I may say that I am familiar in some degree
with the nature of the problem.

25 MR. ALLMAN: We have no objection to the media being
present. We know they are responsible and they do
not report matters that go on in voir dire. They
understand the law on that and can be relied upon to
follow it. We are also reluctant always to keep the
30 media out because they are the guardians of the public

1 They represent the public so to speak. If things are
done in the presence of the media, we can be assured
that nothing is being done in a hidden or wrongful
fashion. We would not wish the media to leave. In
5 fact we would like them to stay.

We do not have that same degree of assurance for
what I can call civilian members of the public.
They don't understand these things to the same extent.
They are not bound by the same considerations as is the
10 press and we are very concerned that what goes on in
the proceedings that are about to take place might
make its way back to the jury via one of those
chains of communication that can come into existence -
A says something to B that is interesting to C and so
15 on. So we would respectfully ask that the public,
other than persons who might be witnesses in this
matter, which is police and others, and the media,
should be excluded pursuant to that indication in
17.1070.

20 The authority that Ewaschuk cites for that,
by the way, is Musatano, M-u-s-a-t-a-n-o, 1985,
24 CCC (3d) 65. That's an Ontario Court of Appeal
decision.

25 I don't know if Mr. Furlotte has any comments on
that particular aspect.

THE COURT: Do you have any comment to make, Mr. Furlotte?

MR. FURLOTTE: The only comment I have to make, My Lord, is
again that excluding part of the public I'm not sure
whether the Court has the jurisdiction to do that.
30 It's either an in camera hearing or it's not an in
camera hearing, not a semi in camera hearing. I'm not

1 not sure whether the Court has the jurisdiction to
make that order.

THE COURT: I notice Section 486(1) - "Any proceedings
against an accused shall be held in open court, but
5 where the presiding judge...is of the opinion that
it is," among other things "in the interest of...
"the proper administration of justice to exclude
all or any members of the public from the court room
for all or part of the proceedings, he may so order."

10 MR. ALLMAN: Musatano is cited in the annotations of
Tremear's as the cases on Section 486 as well as on
jury matters.

THE COURT: I am aware of that. I am going to make that
order and I do make it now. I just want to be
15 clear on - members of the media may stay. The
court officers may stay, the accused, of course, and
counsel.

MR. ALLMAN: There are a number of police officers who are
potentially witnesses. What I suppose to do is to
20 call one police officer who didn't himself do anything.
but he has been responsible for receiving reports
and he has received and collated information.

THE COURT: Would it not be proper to confine the police
officers not only to that one officer but to all of
25 those who might be involved, and other police officers
who aren't concerned with the application.

MR. ALLMAN: Well, actually what I meant was police officers,
or all others who may be witnesses liable to be called
30 on this hearing. They were the ones I was contem-
plating being allowed to stay.

1 THE COURT: That's right. You may have someone else,
Constable Charlebois or someone who is --

MR. ALLMAN: He's a potential witness.

THE COURT: He is a potential witness and it may be that
5 one or two of the officers who normally stand at the
back and Sheriff Fraser, of course, they would be
expected to continue in --

MR. ALLMAN: I don't want to delay matters any further, but
I would ask that maybe we could start in about five
10 minutes so that we can make the arrangements to clear
the courtroom of people - the security staff out there.

THE COURT: I don't think we need go out again. Can't I
simply say now --

MR. ALLMAN: Well, I guess more people have come in now
15 while I was talking and I didn't know about it.

THE COURT: I would ask all members of the public, other
than those I have just referred to, to leave the
courtroom, please, and wait outside if you want to.
You will be told when you may come back in. I would
20 anticipate that the proceedings might take a half
hour or perhaps longer. Sheriff Fraser, are there
any persons back there who don't qualify?

SHERIFF FRASER: Pardon me, My Lord?

THE COURT: Are there any people back there who don't
25 qualify to stay?

SHERIFF FRASER: No, I believe everything is okay.

THE COURT: I guess we should close the door really in an
in camera hearing.

MR. ALLMAN: Before I do call evidence, My Lord, I would
30 like to just repeat so that the situation is quite

1 clear for the record what I am doing. As I say I
am calling an officer whose evidence will be virtually
and entirely hearsay evidence. It would be
inadmissible I understand at a normal trial, but this
5 of course is not a normal trial. It is a hearing into
a particular issue. As I read the authorities, and I
could be corrected on this if I am wrong by
Mr. Furlotte or by the amicus curiae, there is no set
process for this type of inquiry and it is essentially
10 in the Court's discretion how it is proceeded with
and the nature of the evidence is akin somewhat to a
bail hearing, that is to say you can take any
reliable trustworthy evidence you feel appropriate,
including hearsay evidence. I should add, though,
15 that the officer will be asked and will say that the
people who have given him this information are in
Court, so they are available. It's just that I think
it would be quicker and safer to go through one
officer, but we are not hiding anything - the other
20 people are going to be available.

THE COURT: You have in mind that your main officer be
sworn?

MR. ALLMAN: He would be sworn. That is what I would
25 suggest, yes. I don't know what the form of the oath
is. I think it has to be --

THE COURT: Before you call him would you care to outline
just what the hearing is about?

MR. ALLMAN: I am going to go through a process of setting
30 out certain information that has come to our attention
I should explain that this situation arose last week

1 at which stage it was so to speak merely a question
mark. We didn't know what it was. We didn't know
what it was going to amount to. It was obviously a
very delicate area and the police have handled this
5 issue with the appropriate degree of delicacy. They
can't just go barging in there and bugging people,
but on the other hand they do need to get information.
So as a result of that, surveillance has been main-
tained for some time.

10 We are going to be calling evidence concerning a
relationship which we believe exists between the
accused, Allan Legere, and a lady called Lois Gaunce.
We are going to be calling evidence concerning a
relationship which we believe to exist between
15 Mr. Legere and a lady called Caroline Norwood. We
are going to be calling evidence concerning a
relationship which we believe exists between another
lady called Pamela Keleher and one of the juror's
Mr. Moorcroft, number 12. We are going to be calling
20 evidence concerning the relationship between Pamela
Keleher, the last lady I mentioned, and Lois Gaunce
and to a lesser extent Caroline Norwood.

25 We are going to be calling evidence which has
been obtained through observations from sheriffs
officers, R.C.M.P. officers, and others who have been
present in this Court the recent days. We will be
calling evidence that's been obtained specifically
through surveillance by officers and we will be
30 calling evidence of comments made by jurors to the
sheriffs in circumstances which we believe does not

1 breach the oath of confidentiality because one of the
things that the sheriff or the court officials exist
for is to pass on jury concerns, and that's what this
was.

5 We believe that all this will indicate the
existence of what I am going to call for want of a
better phrase, a pipe line running from the juror,
Mr. Moorcroft, through these people to Mr. Legere and
back . We are not going to allege that Mr. Moorcroft
10 has done anything wrong. We are not in a position to
prove that and I don't know, short of electronically
eavesdropping upon Mr. Moorcroft, how we ever could
do that, and obviously we are absolutely not going to
do anything of that kind.

15 Our position, basically, will be that there is a
sufficient concern and should be a sufficient concern
in the Court's mind, and there is all ready based
upon what they themselves observed, a concern in the
jury's mind that something has gone on and there is a
20 cloud of suspicion which is not appropriate to allow
the juror in question to continue.

I am going to be quoting a number of cases in
argument at the end. These include Holcomb, 1973,
15 CCC, 239, which says that "the words reasonable
cause are not to be used ejusdem generis with the
word illness." They include misconduct on the part of
a juror, or activities which suggest that he may have
been interfered with whether or not there was
25 intentional wrongdoing.

1 I am going to quote Andrews, 1984, 13 CCC (3d)
207, which says it is important not only that jurors
be impartial, that they be seemed to be impartial.

3 Tsoumas, I believe it is pronounced, 1973, 11 CCC
5 (2d) 344, Ontario Court of Appeal, which says a judge
can discharge a juror who is unable to act consistently
with the principle that a juror must not only be
impartial but manifestly must be seen to be impartial.

10 Those are not my legal arguments. I have legal
10 arguments that are slightly in greater length than
that, at the end based upon whatever the evidence
comes out to be.

THE COURT: Will you call your first --

MR. ALLMAN: Sergeant Poissonnier.

15 SGT. POISSONNIER, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

THE COURT: I have difficulty with the spelling of your
20 name, Sergeant.

SGT. POISSONNIER: You are not the only one -
P-o-i-s-s-o-n-n-i-e-r.

THE COURT: I had it right.

Q. And your first name is?

25 A. Yes, my name is Vincent Poissonnier. I am a member of
the Royal Canadian Mounted Police. I hold the rank of
Sergeant. I have been a peace officer with the
Mounted Police for twenty-one years, presently in
charge of the General Investigation Section in
30 Moncton.

1 Q. And Sergeant I see that you have before you notes.
I take it these are in your handwriting?

A. Yes, they are.

Q. And these would reflect information that has been
5 given to you from other persons either directly or
through double hearsay so to speak?

A. That is correct.

Q. And I understand that you wish to refer to those
notes periodically to make sure that you are giving an
10 accurate version of what --

A. Yes, I do.

Q. First of all, Sergeant, do you have any -- could you
explain very briefly how this situation came to your
attention in the first place and then we will go on to
15 the relationships?

A. Okay, the evidence concerning the relationship existing
between Allan Legere and Lois Gaunce has been known to
us and the general public that is for some time.
Mrs. Lois Gaunce is on record, according to news media
20 reports, supporting her personal beliefs that Allan
Legere is being treated unfairly by the New Brunswick
justice system. I have, for the record, some of the
newspaper articles to that effect supporting --

Q. Articles and letters?

25 A. Pardon me?

Q. Articles and letters or just articles?

A. They are articles, also comments that was sent to
Mrs. Gaunce to the newspapers to be printed under the
public opinion section of the newspaper - the news-
30 papers I should say. Further more to establish a

1 further relationship between Mr. Legere and Mrs. Gaunce
she has - Mrs. Gaunce that is - has often visited
Mr. Legere at the Atlantic Institution in Renous and
that is according to the records that is held at the
5 institution in question.

I have the articles in question here.

MR. ALLMAN: I imagine you've probably got copies of these
already.

MR. FURLOTTE: I never followed that aspect of the
10 publicity, but I have no objections to them being --

MR. ALLMAN: There are nine sheets of paper, My Lord. I
suggest that they be marked collectively.

THE COURT: We are not going to give these exhibit numbers
really. Way back at the beginning of the voir dire
15 in April we adopted a system for certain items.

There were letters from Mr. Legere to the Court and
other items that were put in and given some special
numbers. Do you remember, Mr. Pugh, what that was or
do anyone else remember? I have it here in the book.
20 VD-1, VD-2, VD-3, 4-5-- 13, 14, 15 - we got up to that

THE CLERK: Well I know we have VD-65 on May 6.

MR. ALLMAN: Maybe I could suggest that to avoid confusion
we should call this an inquiry and call them I-1.

THE COURT: All right or C or something. All right let's
25 call them I, Inquiry or J. Let's put a J - J-1 and
mark these collectively J-1.

EXHIBIT J-1: 9 Newspaper Articles.

Q. Those letters, and I don't propose to go through them
30 individually - I am sure His Lordship can --

THE COURT: I am familiar with all those.

1 MR. ALLMAN: They would include, among other things,
Mrs. Gaunce selling buttons with "N.B. Justice
Department Unfair to Mr. Legere"?

A. That is correct. One of the articles refers to that.

5 Q. And I believe she has described in the articles -
I am not sure whether it is her description or the
description of the reporter dealing with her as
"a supporter of Mr. Legere"?

A. That is correct.

10 Q. And how long, approximately, to your knowledge has
this relationship of being a supporter gone on?

A. Approximately since December of 1990 at which time
Mr. Legere was charged.

15 Q. Is there anything else you want to tell us about your
understanding of the information as to the relationship
between Mr. Legere and Mrs. Gaunce?

A. Well from the information that I have obtained which
I just related to the Court awhile ago, and from other
observations, I can fairly conclude that Mr. Legere
20 and Mrs. Lois Gaunce are entertaining a close
relationship given the situation they are in. I mean
a relationship where they know each other, correspond
with each other, and have concerns for each other.

25 But again what I just said will be supported
later on in my testimony with other evidence that was
obtained.

30 Q. Now I understand that there is also another lady,
Caroline Norwood. Do you have any information as to
any relationship that may exist between Mr. Legere and
Caroline Norwood?

3 A. Yes, sir.

Q. Tell us again --

A. Again from my involvement in the Allan Legere matter,
I personally noted media reports mentioning the
5 ongoing relationship existing between Caroline Norwood
and Allan Legere. There was extensive news media
attention given to Mrs. Norwood and in her involvement
with Mr. Legere. At one point it was reported in the
newspapers that Mrs. Norwood was engaged to Mr. Legere
10 At this time I don't know if this is still a fact. In
any event it was well-publicized.

Mrs. Norwood is another person that is very strong
supporter of Mr. Legere. She is presently as of a
few days ago embarked in trying to sell some of
15 Mr. Legere's drawings to raise money I take it.

I have an article or two that I just provided
this Court attesting to just what I have just said.
I have more, however, there in Moncton at my office.
If the Court so wish, I can provide the Court with
20 all the articles that are referring to Miss Norwood
and Mr. Legere.

Q. So the articles that we just introduced to the Court
includes some relating to Mrs. Norwood?

A. That's correct, sir.

25 Q. And I gather from what you are saying they are just a
sample?

A. That is correct.

MR. FURLOTTE: For the record, My Lord, defence is not
30 contesting a relationship between Mr. Legere and
Caroline Norwood, nor between Mr. Legere and Lois
Gauce.

1 Q. I don't want you to get out of your track, Sergeant,
but have those two individuals, Lois Gaunce and
Caroline Norwood, been in Court in the spectator's
area from time to time?

5 A. I have personally noted their presence in Court and
also sitting together.

Q. The next matter, then, given Mr. Furlotte's helpful
indication that -- the next matter I want you to get
into is any evidence that you are aware of concerning
10 relationship that may exist between a lady called
Pamela Keleher and Mr. Jeff Moorcroft, who I under-
stand is juror number 12?

A. Yes, sir. According to my information which was
obtained from R.C.M.P. sources, it shows that
15 Mrs. Pamela Keleher has known Jeff Moorcroft for as
far back as April of 1991. In fact from ^{our} conversations
conducted thus far for Mrs. Keleher and Mr. Moorcroft
are entertaining a report that is resembles more like
a commonlaw relationship. My conclusion in this
20 regard will be supported again later on in my
testimony through other avenues of investigation we
have conducted. So --

THE COURT: May I ask at this point - he lives in Kings
County in Belleisle Creek as I recall from the jury
25 list. That is the address shown for him. What is her
address?

A. We don't have an address for Mrs. Keleher.

Q. If I could just interrupt for a moment. I believe
30 you are going to be coming on to surveillance aspects
of this including some of what Mrs. Keleher is doing

- 1 these days.
- A. That's correct.
- Q. And what she should be doing these days.
- A. That's correct.
- 5 Q. It's kind of obscure but I think it will become
 apparent to Your Lordship.
- THE COURT: All right, yes.
- Q. So your understanding is that Pamela Moorcroft and
 -- Pamela Keleher and Jeff Moorcroft have something
10 akin to a commonlaw relationship?
- A. From the information that I have which is accurate,
 they have known each other since April of 1991 and
 are presently entertaining a close relationship.
- Q. Is there anything else you want to tell us about that
15 or do you want to move on now to the topic of the
 relationship if any between Pamela Keleher and Lois
 Gauce?
- A. The connection between Mrs. Pamela Keleher and
20 Lois Gauce was first brought to my attention by
 court officials, sheriff officials, on the 24th of
 September of this year. They had noticed that
 Mrs. Keleher was associating with Mrs. Lois Gauce
 saying that they were sitting in court together.
- Q. Just on that topic by the way - my understanding is
25 that Mrs. Gauce has dark black hair?
- A. Yes, Mrs. Gauce has --
- Q. And Mrs. Keleher has quite blonde hair?
- A. Blonde, yes.
- Q. So they tend to be visible.
- 30 A. That's correct. The sheriffs in question thought that

1 I should be made aware of the situation in view of the
publicity that was generated in the past and present
concerning Lois Gaunce's views and support towards
Mr. Legere's cause, so to speak.

5 They also aside from -- on the 24th of September
were sitting together in court. They also were seen
during recess having a cigarette outside the building.

I would like to point out that as a result of
their meeting at recess on this particular day, I was
10 informed by a concerned citizen who accidentally
overheard a conversation between Mrs. Keleher and
Mrs. Lois Gaunce. This person wanted to remain
anonymous, however, from the observations --

15 THE COURT: I don't want to get into names other than it's
necessary.

A. From the observation that this concerned citizen over-
heard, stated to me -- if I can refer to my notes for
a second? I may add that concerns that were raised by
the deputy sheriffs or the sheriffs in question was
20 based that they knew beforehand that the blonde one,
as they referred to, which is Mrs. Keleher, was seen
in the morning and in the evening driving
Mr. Moorcroft's vehicle picking him up at the
rendezvous point and for some time before the 24th
25 they realized that they were connected. So as a
fait accompli that Mrs. Keleher and Mr. Moorcroft
knew each other because she was picking him up in
the morning -- dropping him off in the morning and
picking him up at night at the rendezvous point. So
30 they deducted from that that when she started

1 associating with Lois Gaunce the reason that I should
be made aware of it and take it from there.

Of course shortly after this anonymous tipper
informed that while standing outside, according to my
5 notes - to the courtroom - Mrs. Keleher and Mrs. Gaunce
were overheard chatting. Although this person was
unable to gather the entire conversation, we were
nevertheless able to learn the following.

Mrs. Keleher was first introduced to Mrs. Gaunce
10 that particular day from the gist of that conversation.
That during their conversation Keleher informed Gaunce
that she had a relative on the jury, or words to that
effect. That from the gist of the conversation, again,
Keleher would have indicated an interest to visit
15 Gaunce.

At this time putting the fact together I
instructed the security personnel and that includes
R.C.M.P. officers present in this courtroom or in
this court building to monitor closely the activities
20 of Lois Gaunce and Mrs. Keleher.

Q. Monitor in the courtroom?

A. In the courtroom, yes. And when I mean activities,
were they to sit together constantly, let's establish
if this is just a first encounter and would state that
25 I was trying to establish if there is consistency
between the relationship.

Q. What they would do at breaks and where they would go
at the end of the day?

A. That's right. The sheriffs in question kept an eye on
30 the situation. On the 25th of September both subjects

1 again were observed, and that's Gaunce and Keleher,
which I testified, departed the courtroom and meet
outside. For some reason they were not seen together
in court that particular day. They did however meet
5 outside - pouring rain prevailing at the time. On the
26th of September Gaunce and Keleher are sitting
together having conversation and et cetera.

On the 27th of September '91 as a result of a
close relationship being developed between Keleher
10 and Gaunce, and it was developing more and more, I was
quite concerned at this relationship. I decided to
initiate a further investigation and ordered
surveillance on Mrs. Gaunce.

Q. On Mrs. Gaunce alone?

15 A. Alone. That it was to confirm or deny our concerns
of course. A surveillance was initiated on Mrs.
Gaunce which revealed that she had -- the surveillance
was initiated on the 27th which was last Friday it
revealed that Mrs. Gaunce did in fact visit Mr. Legere
20 at the Atlantic Institution in Renous.

Q. On what date?

A. 27th, the Friday. That's the day that everybody had
the day off, except us of course. The team was
25 comprised of four members of the R.C.M.P., experienced
ones in the field of surveillance. It was maintained
during the weekend and surveillance revealed that
there was no contact, physical contact that is,
between Mrs. Keleher and Mrs. Gaunce.

30 On the 30th of September, that's Monday, they
met again here at the courtroom.

1 I will further elaborate on the results of the
surveillance later on.

As of the 27th of September, 1991, it became
clear that Gaunce and Keleher were entertaining a close
5 relationship. From our observation it was not a
relationship that is just on a friendly basis at
first and a casual conversation. There was no
question in our mind that this relationship, although
I firmly believe they were first introduced the 24th
10 -- was building up more and more.

Evidence was obtained also through the
observation of sheriff's officials and R.C.M.P.
officers while attending the court are as follows.

15 On the 25th of September '91 I personally
observed Pamela Keleher sitting beside a lady that was
later identified through our investigation as the
wife of another member of a jury. During that day I
observed this lady speaking to Keleher outside the
20 courtroom. This situation was to say the least a
cause for concern again taking into the consideration
the situation we had in our hands. I may add however
that that was the only time that I've seen Mrs. Keleher
with this lady so that was just an observation, but I
was more concerned that Mrs. Keleher has now
25 entertained a relation with Mrs. Gaunce. I know and
every else knows connected with this case that
Mrs. Gaunce feels strongly towards Mr. Legere's case.
Now we have a situation where Mrs. Keleher is now
30 sitting beside the spouse of a member of a jury and
that caused me quite concern. However that was the
only time and after that it did not prevail.

1 It reaffirmed once more that my decision to
conduct surveillance was the right one, but because
Mrs. Keleher had been sitting beside the spouse of a
member of the jury, I instructed the members of the
5 surveillance team to also conduct surveillance on
Mrs. Keleher to ascertain if in fact she would not
only try to contact other relatives of members of the
jury but also the lady that she had been sitting
beside.

10 I am happy to note that the surveillance did not
show that Mrs. Keleher had any contact from what we
have observed with other members or spouse of the
jury, or relatives.

THE COURT: That is with that particular spouse.

15 A. That's right and others for that matter. Or any
others.

THE COURT: Or any spouse - yes.

20 A. Now surveillance was continued and then unable as to
really again confirm the close relationship that
exists between Gaunce and Keleher. I want to refer to
notes that were prepared by Constable Charlebois on
the 1st of October 1991. While sitting in court
Constable Charlebois was sitting in front of
25 Mrs. Keleher and Mrs. Lois Gaunce. They were sitting
together, Gaunce and Keleher, and they had a
conversation and I would like to refer you to --
Constable Charlebois who is presently in court today
and is available for testimony if My Lordship see fit.
30 And I will read:

9:00 o'clock arrive at Burton Courtroom. 9:32

1 observed Gaunce seated beside Keleher on bench
immediately behind reserve police seating. Gaunce
was on Keleher's left. Two older blonde ladies were
seated to Keleher's right. Both Gaunce and Keleher
5 were wearing black tops and blue jeans. They engaged
in what appeared to be friendly confidential conver-
sation and were smiling. 10:05 - observed Keleher
looking towards Moorcraft smiling. He was recipro-
cating her gestures. 10:08 - Gaunce and Keleher observ
10 whispering. 10:31 - recess. Observed Gaunce
and Keleher exiting the courthouse together. They
walked towards front of white building and appeared
to enter a vehicle, brown Oldsmobile. Through our
surveillance it was confirmed that this brown Olds-
15 mobile does belong to Mrs. Lois Gaunce who drives
the vehicle. 11:10 - Gaunce and Keleher re-enter
the courthouse. 11:30 - Observe Gaunce and Keleher
seated together at the same bench. 12:25 - lunch
break. Observe Gaunce and Keleher depart courthouse
20 together.

I will refer to other surveillance notes
during that lunch hour from other members shortly,
My Lord.

25 At 14:20 observed Keleher and Gaunce together
seated in the second row. 15:20 - recess. Gaunce
and Keleher exit courtroom together and proceed
towards Gaunce vehicle. 16:05 - observed Moorcraft
leaning towards Keleher smiling and grinning. He
did not appear to be paying very much attention to
30 Barter's testimony. He appeared distracted. 16:20 ~

1 overheard Keleher say, "He's arrogant," referring to
 Corporal Barter's testimony. 16:35 - overheard
 Keleher say following, while Justice Dickson warning
 jurors about disclosing jury deliberation. Keleher
5 says, according to Constable Charlebois, "He is
 psychic. Is he psychic? He's psychic." She again
 says, "What do they know more than we do?" When
 comments were made at 16:20 hours -- 16:35 hours, I
 was sitting directly in front of Gaunce and Keleher.

10 Q. Constable Charlebois?

 A. Constable Charlebois that is and that is why he was
 able to overhear these comments. It was obvious
 after Constable Charlebois' report to me that we were
 on the right track. The surveillance team reported
15 to me the following, and I would like to refer to
 their notes. For the Court's record, the surveillance
 team involved Corporal Jim Dunbar, Corporal Jerry
 Belliveau, Corporal Randy Geddes, and Constable Allain
 D'Allaire. Do you wish that I read all the notes?
20 I have highlighted some points that are relevant to
 this.

 Q. Perhaps you could summarize them and touch on the
 highlights and then if any of us feel that we need
 more information we can certainly come back to it.
25 Give us the essence of it and touch the highlights.

 A. Surveillance on the 30th --

 MR. FURLOTTE: My Lord, I would probably ask for all of
 the notes.

30 MR. ALLMAN: Fine.

 MR. FURLOTTE: So maybe we should do it now.

 MR. ALLMAN: As Your Lordship directs.

 THE COURT: Go through all of the --

 A. It shouldn't take too long anyway, Your Honour.

1 THE COURT: All right go ahead.

A. On the 27th of September, 1991, as I explained
awhile ago, that was the date that surveillance was
started. The times will be referred to in metric.

5 1900 hours - surveillance started on Lois Gaunce
in Millstream just off of highway 820 -- 880. This
road is between highway 1 and 2 Trans Canada just
outside Sussex. Gaunce has been positively identified
by members of the surveillance team. Photos taken
10 of Gaunce residence. No movement other than local.
And that's just routine movement - nothing suspicious
by that. On the 28th of September 1991 surveillance
all day until bedtime. Local movement and Lois
Gaunce go to the post office only. Again, a routine
15 day. The 29th of September, 1991 - surveillance all
day on Lois Gaunce. Again, local movement only.

These are the dates that are referred to this
past weekend as I testified awhile ago. Gaunce and
Keleher did not physically contact each other that
20 weekend.

On the 30th, Monday - surveillance on Gaunce
for the day. 8:46 - Gaunce leaves residence in
Millstream, New Brunswick. 9:51 -

THE COURT: A.M.?

25 A. A.M., yes, sir.

9:51 a.m. - Gaunce arrives at the Burton
Courtroom. 10:30 a.m. - Gaunce seen talking and then
sitting with Pamela Keleher in court. 12:40 - Pamela
Keleher is observed getting into the passenger's
30 side of Lois Gaunce's vehicle. Both are followed to
Saveeasy Mall in Oromocto, N. B.

1 They refer that to the Saveeasy Mall. It's the
Oromocto Mall, which is the same thing.

12:46 - surveillance team observed Lois Gaunce
and Pamela Keleher enter Pizza Delite inside Saveeasy
5 Shopping Mall in Oromocto. At 13:41 Lois Gaunce
and Pamela Keleher are observed leaving Saveeasy
Shopping Mall and entering Gaunce's vehicle.

Now, for the purpose of this exercise, Your
Honour, the surveillance team saw fit -- or a member
10 of the surveillance team saw fit to take pictures to
support their claim. I have them here. Photo 1
to 6 indicate what I just said - that they were
entering Gaunce's vehicle on their exit from the
Saveeasy at 13:41 on the 30th.

15 Q. You say photos 1 to 6. Are they numbered?

A. Yes, they are numbered and there is also a written
description of what it entails actually.

Q. Which amounts to what you have already testified
to?

20 A. That's correct.

THE COURT: J-2.

THE CLERK: All 6 of them, My Lord?

THE COURT: Yes, all of them together.

EXHIBIT J-2 (1 ~ 6): Photographs

25 A. These photographs I'm about to introduce to this
Court was taken by Corporal Belliveau, a member of
the surveillance team.

At 13:42 Gaunce stops at post office and gets
out. Pamela Keleher stays in Gaunce vehicle. 13:52
30 Gaunce and Keleher return to court parking lot.

1 Gaunce parks car. Keleher gets out and goes to
quarter ton silver truck, registered owner
Moorcraft, Jeff Moorcraft. Gaunce then meets
Keleher next to half ton truck and both proceed to
5 courtroom. At 17:08 Keleher observed driving half
ton silver grey truck and parks at Sobey's, which is
up the road. Moorcraft arrives minutes after and
takes over driving. 17:30 Keleher and Moorcraft at
liquor store, Fredericton, New Brunswick. 18:30 -
10 Pamela Keleher and Moorcraft turn into a residence
just off highway 2, Trans Canada, 2 kilometres from
24-hour Irving in Nackawic. Gaunce observed leaving
courthouse at 17:10 and departed toward Sussex, N.B.,
which is the opposite direction. On the 1st of
15 October, 1991, at 9:03, Pamela Keleher dropped off
Moorcraft at Sobey's parking lot. At 9:14 Pamela
Keleher arrives at Burton Courtroom and parks half
ton that is registered, again, to Moorcraft. At
19:18 Lois Gaunce arrives at Burton Courtroom, parks
20 her vehicle, and goes immediately to Pamela Keleher
who is waiting in the half ton truck. Lois Gaunce
arrives at the half ton truck and Pamela Keleher gets
out of the vehicle. Both talk and then proceed to
courthouse together. Photos, again, were taken - 7
25 to 12 - to support the investigator's claim.

THE CLERK: J-3 (1 to 6)?

THE COURT: J-3, yes, 7 to 12.

EXHIBIT J-3 (7-12): Photographs

30 Q. I think perhaps you could continue with your
testimony while the Clerk is marking them.

1 A. 1st of October, 1991, 10:55 - Pamela Keleher and
Lois Gaunce observed leaving courthouse together.
They were observed going to Gaunce's vehicle, the
brown vehicle. Observed smoking cigarette. Again,
5 on the same date, 11:06 - Pamela Keleher and Lois
Gaunce observed going back into courtroom together.
12:28 - Pamela Keleher and Lois Gaunce leaving
courthouse together. Pamela goes to half -- quarter
ton truck registered, again, same vehicle to Jeff
10 Moorcraft. Pamela observed passenger door around
glove compartment. Pamela closes door and is
picked up by Lois Gaunce who just went to her car.
Both are followed from courtroom - from courthouse
in Gaunce's vehicle. 12:35 - same day, Gaunce and
15 Keleher arrives at the Saveeasy shopping mall. Car
is parked. Both Gaunce and Keleher enter shopping
mall. Photo, 2, again to support their claim.

13 - 14, if I may introduce them?

20 THE COURT: J-4 (13 - 14).

A. That's correct, sir.

EXHIBIT J-4 (13 - 14): Photographs

25 THE COURT: How much further do you feel you have to go
with this, Mr. Allman? I mean do you want to cover
all of this?

30 MR. ALLMAN: If Mr. Furlotte wants us to go through
reading the entire thing, may I suggest this? I am
going to ask the officer to stop reading the entire
thing and Mr. Furlotte can cross-examine him about any
days that concern him in particular. I know that
there are certain things that I do want to bring out
that are more specific than just reading.

1 THE COURT: Well, you concentrate on your particular things. You know to me, really, it is so apparent this juror can't continue right at this point.

MR. ALLMAN: Could I just perhaps elicit three or four
5 more things, My Lord, and I will stop?

THE COURT: All right, you go ahead.

MR. ALLMAN: And I will lead the witness in light of Your Lordship's indication just to get him into the specific area I am concerned with.

10 Q. You mentioned that on a couple of occasions these ladies have been to the shopping mall, presumably for lunch?

A. That's correct.

Q. Have they been anywhere else for lunch?

15 A. Well, actually it was routine that they were going for lunch in the mall, but --

Q. Did that routine ever change?

A. That's right, but if I may refer -- okay. But on the
20 2nd of October, 1991, and I wish to stress this to this Court because it leads to something important. On the 2nd of October, 1991, Pamela Keleher is observed arriving at the courthouse.

THE COURT: This is --

25 A. On the 2nd - I am skipping you --

THE COURT: Yes but this is yesterday?

A. Yesterday, yes. Okay, she arrived at the courtroom. The same scenario - sitting in court with Mrs. Gaunce. Now we will skip and I will get to the lunch hour.

30 At 12:10 Keleher and Gaunce observed leaving court together. Gaunce goes to her vehicle and Pamela Keleher goes to the half ton truck - quarter ton

1 truck. She is observed on passenger's side. She
then leaves quarter ton and is picked up by Lois
Gaunce. They leave courthouse parking lot and are
followed at all times. At 12:21 Gaunce and Keleher
5 observed arriving at the Riverview Restaurant this
time. It is the first time they had gone to this
restaurant.

Q. The restaurant they had been going to before is
about how far away?

10 A. Oh --

Q. How many minutes drive?

A. No more than 2 - 3 minutes - depending on the
traffic, but usually 2 minutes.

Q. The Riverview Restaurant - how far away is that?

15 A. I have never been there. It's quite a distance.

THE COURT: Where is it located?

A. I think it's -- I am going by the notes of the
members, Your Honour, and I cannot answer that
question but there is somebody here available to
20 answer that question.

THE COURT: Well, that is all right.

Q. In any event, your understanding is it's quite a
distance away further than the mall?

A. That's correct.

25

Q. What happened at the restaurant?

A. At 12:40 both Gaunce and Keleher were observed at
their dinner table while inside restaurant. At
this particular time a member of the surveillance
team entered the restaurant. In the restaurant
30 at the time there is only Mrs. Gaunce, Mrs. Keleher,
and the officer in question. Corporal Geddes was the

1 member who entered the restaurant. Positioned himself
in the restaurant such that he was able to decipher
some of the conversation that was taking place
between Keleher and Mrs. Gaunce. We don't have full
5 conversation here because at that time it was
difficult, but we got some of the gist of it.

When I arrived - Corporal Geddes' notes I wish
to emphasize - it says: When I arrived they were
just receiving their food and they were talking
10 about Pam having lived with a gentleman by the name
of Clayton, et cetera. Gaunce replied something
which he can't make out. Keleher says, "They can't
kick him off the jury." Gaunce says, "I hope not."
Keleher and Gaunce talk for a few minutes and eat.
15 Gaunce, again, talks, "He can't hear what's being
said." Keleher says, "He's got to have someone
going for him." Then they discuss Sussex murder, and
that's the recent murder they had last Sunday.
Gaunce speaks. The last word mentioned "the
20 jewellery". And I wish to emphasize that the day
before there was evidence to this court concerning
jewellery. Keleher replies, "That looks bad." Gaunce-
can't make out what she says, but at the end he
says, "It couldn't have been him."

25 Q. Who said, "It couldn't have been him"?
A. Gaunce said that.
Q. That that was in response to Keleher's remark,
"That looks bad"?
A. That looks bad. The other one says, "It couldn't
30 have been him. There is more conversation that is

1 difficult to decipher, but then Gaunce says, "Rather
 than find out in 20 years he's innocent," Inaudible-
 "see him in a different light." Gaunce says that.
 We have bits and pieces of conversation. You can
5 appreciate it.

MR. ALLMAN: Yes, I understand.

A. Then the rest of the conversation was somewhat -- in
 general terms. But what was noted by Constable
 Geddes is that Mrs. Keleher at times wanted to change
10 subject and talk about other issues - children or
 what have you, and Mrs. Gaunce would continuously
 bring the subject up on this trial and other issues.

Q. Is there anything else about the restaurant or do we
 depart from the restaurant now?

15 A. No, sir.

MR. ALLMAN: By the way, My Lord, I have been handed a
 note. This isn't strictly evidence, but I have been
 advised - I can call the officer who passed the
 note - it is seven miles on the Trans Canada Highway
20 to the restaurant in question. If Mr. Furlotte
 wants, I will call evidence on that or perhaps
 that could just be accepted.

MR. FURLOTTE: There is no need.

MR. ALLMAN: We have driven -- Mr. Furlotte has driven
25 by it. I know I have.

THE COURT: Is that down river?

MR. FURLOTTE: Yes.

Q. Basically - I just want a couple of more things from
 you officer. I am going to try and cut this
30 short. Have there also been occasions upon which

1 Caroline Norwood, the other lady we mentioned, has
been sitting in the area with Mrs. Keleher and
Miss Gaunce?

A. Yes, sir, I have noticed that myself. The extent of
5 the three people, the relations outside the courtroom
I am unable to say, but I have seen them sitting
together in court.

Q. And that continued up until today - something along
those lines?

10 A. That's correct.

THE COURT: I'm sorry - Norwood and whom?

A. Mrs. Norwood, Mrs. Gaunce and Mrs. Keleher.

THE COURT: The three of them.

A. Were sitting in the courtroom together.

15 Q. Okay, I want to come onto another area. I am going
to ask you a question. Don't answer it for a moment
because I want His Lordship to know if it's
appropriate to answer the question. Have you
received any information from any sheriff's officers,
20 first of all, as to a communication that the jurors
made intentionally to that officer?

A. Yes, I have.

Q. With respect to a concern they had that they wanted
that officer to advise them about it?

25 A. Yes, I have.

MR. ALLMAN: My Lord, I would submit that is not a breach
of the juror's confidentiality. It's not about
their deliberations.

30 THE COURT: No, I don't think it is.

Q. First of all, how many members of the jury --

1 THE COURT: Nothing to indicate any thinking on the part
of the --

A. Absolutely not, sir.

Q. How many members of the jury made this matter known
5 to the sheriff in question?

A. On the -- not to confuse here. There is one on the
1st of October and one on the 2nd so I will start
with the 1st of October.

Q. No, let's break it down.

10 THE COURT: I don't want any names of the jurors.

A. No.

Q. Okay, one communication I understand was overheard?

A. Yes, sir.

Q. And one was unintentionally given to the sheriff's
15 officer?

A. That's correct.

Q. I take it Your Lordship's ruling is the same regarding
the one that was overheard. That, I understand, was
in the van driving up in the morning?

20 A. That is correct, sir.

Q. And, again, not anything about the deliberations of
the jury on the evidence?

A. That is correct.

Q. Okay, could you tell us first of all what was over-
26 heard in the van driving up?

A. Sheriff Officer Andrew Fortune was delegated to
drive the jury on the 1st of October at 4:45 to the
rendezvous point up the road. As he was driving a
female juror is talking to another female juror in the
30 van.

THE COURT: Let's just say juror.

1 A. Okay. The conversation was that they were talking
about Jeffrey's girlfriend and that they were saying
that she should not be sitting with Lois Gaunce and
that -- well I say Lois Gaunce. I will clarify that.
5 -- with the black-haired lady because they knew that
she is a friend of Allan Legere's and they were quite
concerned about it. They didn't think that it was
proper. It wasn't proper. And then again from the
conversation that was overheard by Andrew Fortune, a
10 deputy sheriff, apparently Jeffrey was advised by a
member of the jury of their concern regarding his
girlfriend associating with a person who obviously --
I have said what I said about Mrs. Gaunce obviously.

Q. Supported Mr. Legere.

15 A. Supported Mr. Legere. On the 2nd of October, 1991, I
had a conversation with another sheriff's officer,
Mr. Les Sears. He was approached outside the jury
room in this building, actually into the hallway
that leads to the back door. Four members of the
20 jury expressing their concern regarding a member of
the jury's girlfriend associating with Lois Gaunce
and they felt that their concern should be addressed.
They were very uncomfortable seeing this.

25 Q. And they were expressing that uncomfortableness
to the officer in question?

A. That is correct. As a result of yesterday this is
perhaps the reason why we have this hearing today.

Q. That is what is precipitated the situation here now?

30 A. That is correct.

Q. Did you get a note as to what was actually said by

1 the jury, people when they were talking to the
official regarding their concern or did you just get
the gist of it?

A. I got the gist of it. Mr. Sears was informed that if
5 we wanted the exact circumstances and what exactly
was said, he is available in Court to testify to that
effect.

Q. My understanding was it was simply an expression of
concern.

10 A. That's right.

Q. I just want to get one other thing clear and on the
record. There has been no surveillance, no eaves-
dropping, electronic or otherwise, of the jury?

A. Absolutely not.

15 Q. And there is nothing to suggest or nothing to prove
or disprove that anything has been said to the juror
by Mrs. Keleher?

A. That's correct.

20 Q. And short of during the kind of surveillance I have
just mentioned, do you know of any way you could get
that information?

A. No, unless we have judicial authorization to
intercept.

25 Q. Is there anything else or basically have we dealt
sufficiently in your opinion with what you are aware
of?

A. No, sir, that's pretty well the result of our
investigation thus far.

30 THE COURT: The procedure in this type of application, I
think, is left up pretty much to the Court. I will

1 give Mr. Furlotte, of course, an opportunity - he
is not on trial nor is the accused on trial nor is
anyone on trial as far as that goes. I will give
Mr. Furlotte an opportunity to express his views and
5 perhaps if he feels it necessary to ask questions of
the Sergeant. I must say that I have certainly
heard enough here, plus my own observations from time
to time, to convince myself that an order should be
made discharging that particular juror and it is not
10 a question of whether he is impartial. It is a
question of whether he can appear impartial and I
don't see how he possibly could. It would be
making rather a farce out of the trial, you know, to
continue with that and with it generally known. I
15 am sure that the knowledge of this isn't confined
to those of us in the courtroom here today. On the
basis of what has been said, obviously there are a
large number of people who know about this.

20 This came to my attention, you might say,
yesterday before I came into Court at 2:00 o'clock
in the afternoon and I was most concerned about it.
I determined that during the recess yesterday after-
noon I would follow up the investigation into it and
take whatever action was necessary. When I was in
25 the course of following it up, counsel approached me.
Mr. Furlotte knew nothing about it, of course, but
all counsel came to me in chambers. Crown counsel
advised me of their awareness of this. I wasn't
aware that they knew about it actually. I had a very
30 limited knowledge of what it was all about really.

1 Then it was agreed, or we agreed, that we would
follow this procedure to have this hearing this
morning.

Did you have any observations you want to make?

5 Do you want to sum up, Mr. --

MR. ALLMAN: Well, my position depends to some extent
upon what Mr. Furlotte's position is. It may be,
I certainly don't know - it may be that he agrees.
My position is the juror should be discharged on the
10 basis as Your Lordship indicated of the appearance,
and the way I was going to argue it, if we need to
argue it is this. If you reverse the proposition
and the pipeline that I described operated in a
similar fashion, only let us say to a police officer
15 involved in this case, I am certain Mr. Legere would
want the juror off because he wouldn't be happy.
He'd feel that maybe there was something bad going
on and I would sympathize with that opinion of
Mr. Legere's if you simply reversed that. We are
20 asking for the same thing. I don't know what
Mr. Furlotte's position is, though, and I respond
to anything that he says.

THE COURT: Mr. Furlotte, what is your position here?

MR. FURLOTTE: Maybe before I address the issue I'd like
25 to ask the Sergeant one question.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Is there also evidence that one of the jurors was
overheard discussing the relationship between
Miss Keleher and Miss Gaunce with Mr. Moorcraft
30 while in the van, telling Mr. Moorcraft that this is
wrong - your girlfriend shouldn't be doing this?

1 A. No, according to what I have there was a conversation
between two members of the jury more or less
agreeing that, yes, it's a situation that should not
exist. And of course during the conversation one of
5 the jurors apparently mentioned that while
Mr. Moorcraft was aware of what we're talking about,
of our concerns.

Q. From your understanding that the jury -- do you
understand whether the jury is confronting
10 Mr. Moorcraft with this?

A. I am not allowed, entitled, or capable of knowing
that.

Q. I am concerned with also when we had the girlfriend
of Mr. Moorcraft sitting in Court watching the
15 proceedings and when Miss Keleher was observed
sitting beside the wife of another member of the
jury, was that in Court also?

A. Yes, that was in Court.

Q. And do you know how many members of the jury have
20 their wives or spouses sitting in Court observing
the proceedings?

A. I don't.

Q. Do you know whether or not the wife aside from
Miss Keleher and aside from the wife of the juror --
25 not aside from, but the other juror's wife and
Miss Keleher, they are also sitting in Court during
the voir dire sessions?

A. That would be a presumption on my part, but it's a
30 possibility. I don't sit in Court all the time as
you know.

1 Q. Did you say when you were discussing it earlier that
Mr. Moorcroft had been advised by members of the jury
that this relationship between his girlfriend and
Lois Gaunce was wrong?

5 A. Again, I will repeat. I will repeat for the third
time what I said. Two people were talking and they
were members of the jury. They were talking about
the situation that I was concerned about and every-
body else connected to this case was concerned about
10 when these two people were sitting together and that
the relationship was building up. The jury, I
presume, deducted the same thing I did. I mean for
the first time that they sat together, no problem.
Then the second day - the third day. So, you know, 1
15 take it from the advise that His Lordship gave the
jury on the first day of the trial to become
impartial, to be impartial, and to not discuss
anything - they were concerned about the oath. They
didn't suggest that improper was done. The appearance
20 in view of their responsibility was not proper. That
is what I got from -- there was no suggestion of
anything illegal - act - was done but it's for
members of a jury who has relatives, or girlfriends,
or spouses -- I mean they are equally responsible
25 to --

MR. ALLMAN: I hesitate to interrupt, but we have been
going all through this onto hearsay evidence and
there is no problem. If this is an area that
concerns Mr. Furlotte, I understand the sheriff's
30 officer who heard conversations in court, he's --

1 THE COURT: I don't want to get into that. It's not
necessary to get into that. I have heard enough.
What is your position, Mr. Furlotte?

MR. FURLOTTE: My Lord, I have heard enough and in all
5 fairness I agree the appearance of whether
Mr. Moorcraft has been -- even discussed what goes on
in the jury room, or the evidence, or his feelings
towards -- with his girlfriend and whether that was
discussed between his girlfriend and Lois Gaunce, we
10 have no way of knowing that. But the appearance
itself, it's terrible, and I have to agree with
Mr. Allman and Sergeant Poissonnier and yourself
that there is just no way this juror could be
allowed to stay there and give the appearance of
15 a fair trial to the Crown.

On the other hand I'm deeply concerned as the
effect that this appearance has had because as the
Crown admits, even the members, at least six members
of the jury are very concerned about it also. I
20 know at a later date I will be -- I expect I will be
making a motion for a mistrial because I feel this
appearance has contaminated the whole jury against
Mr. Legere because they may feel Mr. Legere was
behind this for some reason or another when there is
25 no evidence of that whatsoever. I will be making a
motion in the near future for a mistrial. I would
like to put the Crown and the Court on notice and I
have to, again, further look into some of the facts
of the situation and prepare some legal argument for
30 a mistrial. I understand we will --

1 THE COURT: Yes. Well, thank you, very much.

MR. ALLMAN: Could I speak very briefly, My Lord?

THE COURT: Yes.

MR. ALLMAN: With regard to the motion for a mistrial
5 of course we will deal with that when it is raised.

In light of my learned friend's remarks regarding
the propriety of discharging the juror, I don't think
there is any more I need to say.

There is just a couple of things I would like to
10 mention to Your Lordship. I would like to quote from
two cases about the situation where you discharge a
juror - what does it do to the other jurors and what
is appropriate for a judge to do?

There is a case called MacKay. That is in 1980
15 Western Weekly - sorry - 1980, 53 CCC (2d) 366. In
that case the British Columbia Court of Appeal said
that where a juror was discharged --

THE COURT: Is that mentioned in --

MR. ALLMAN: I don't think it is, no. This is a case
20 which Mr. Sleeth's research has produced and he can
find cases which nobody else can. But this case says,
and I am just going to read from the headnote. "The
appellate was convicted of rape and indecent assault.
During the course of the trial the appellate spoke to
25 and had lunch with one of the jurors. There was no
indication of any attempt to influence the juror. The
juror was discharged. The trial continued with 11
members. The remaining jurors were given no reason
30 for the discharge of the juror. An appeal was made
against the conviction. A new trial was ordered.

1 The omission to tell the remaining jurors the
reason for the discharge may have caused them to
speculate on the reason for the discharge and come to
the unfair conclusion that the appellate had tried
5 to influence the juror. The judge was correct to
discharge the juror, but he should have given the
jury an explanation of the action."

On the other hand we also have the case of
Holcomb. This is a New Brunswick Court of Appeal
10 decision, 15 CCC (2d) 344. In that case, again, a
juror was discharged. In that case, very briefly
from the judgment - "Counsel for the appellate
contended..." -- I'm sorry, Andrews is the one I
want. In Andrews a juror was discharged. In that
15 case the judge said to the jury, "You will notice
that there is one juror no longer present. For reasons
that I have determined, that juror will no longer be
a member of the jury. I want to stress with you
that you are to adopt no inference whatsoever from
20 the departure of that particular juror, no inference
negative to any of the accused. Do you understand?
And if you do, if you follow my instructions, there
will be no problem." The Court said that the
appellates contended the judge should have said
25 something more or something less. The less said the
better in these circumstances. What is said must
be left in the discretion of the trial judge. He
must decide what explanation will ensure the
30 continuance of a fair trial and no prejudice to the
accused.

1 I am not prepared to say that those words would
have prejudiced the accused. Such explanations must
be viewed in the light of the whole trial.

5 What I would respectfully suggest is that you
should give some direction to the remaining jurors.
Whether you give a reason or not for discharging
this juror is entirely in your discretion and in your
wisdom, but there should be some direction to them
that ensures that they draw no adverse inference
10 against Mr. Legere. I believe that would be an
appropriate thing to do.

THE COURT: It seemed --

MR. ALLMAN: And that's inference against anybody -
Crown or Mr. Legere.

15 THE COURT: I indicated before and I will reaffirm that
I intend to make an order discharging Mr. Moorcraft
as a juror and I very possibly will give a reason.
It may be a vague reason. I don't want to get into
it any more deeply than is necessary. I think I
20 have got to go farther than that. I think I have to
go and forbid him - I am just saying this because I
would like to have the comment of counsel - I think
I have got to forbid him to have any contact with
any juror before the end of the trial either by
25 telephone, personally, or in any way. And, also,
he must remain clear of this courtroom and the
trial until the whole thing is completed.

MR. ALLMAN: While we are on the topic of what one might
30 call ancillary orders, we would also request an
order under Section 486 I think it is - 486 -

1 excluding from the courtroom and the court building,
the entire court area, including the grounds, Lois
Gaunce, Caroline Norwood, and Pamela Keleher. We
would also request that it be made very clear to the
5 media and anybody present in this court the infor-
mation that has come out in the course of this inquiry
should not be disseminated. We do not want the jury
to know what went on because of -- to protect the
accused.

10 So we would ask for those additional orders -
order that Gaunce, Keleher, Norwood, and Moorcraft
you have already dealt with. An order that Gaunce,
Keleher, and Norwood have no contact with any members
of the jury and not be present in the court area
15 and an order that the information given at this
inquire not be disseminated outside. Of course the
result is going to be disseminated. That will be
announced in court, but the information not be
disseminated.

20 THE COURT: I do reiterate what I said when we started this
morning that this is a voir dire session with the
jury absent and the media are not to -- or no one is
to publish anything which is taking place in the
absence of the jury until the whole trial is
25 completed. I did say that earlier, but I think quite
a few media members have come in since we started.

30 On the three people, Gaunce, Norwood, and Keleher
Keleher, there could be no question she should be
excluded from the thing. On the basis of what I have
seen, Gaunce has gone about to cultivate this. I have

1 observed Mrs. Gaunce in the court and I have observed
her carrying on communications in the courtroom by
mouthing messages and so on. I have seen that when
no one else has seen it because other people have
5 been looking at the jurors coming in and I have been
observing what --

MR. ALLMAN: Of course Your Lordship is in the best position
being directly facing the --

THE COURT: I am psychic. As a matter of fact when they
10 suggested, according to the witness, someone suggested
the other day that I was psychic. When I made that
pronouncement, I was on the point of saying to the
jury - you know there are people out there who are
going to try to frustrate this trial. I hadn't quite
15 worked out in my mind how I wanted to express this
and I therefore gave a modified version, which
apparently took hold to some extent.

Norwood is friendly. I don't know that I -- I
don't think I am inclined to make an order perhaps
20 against Norwood although I will issue the instruction
that she is to be seated in the back row of this side
of the courtroom when she enters. Sheriff Fraser, will
you see that that is implemented please? You know the
lady I think. I am sure you do.

25 Well, what I propose to do now is I am going to
return to my chambers. I am going to take the Court
Reporter with me. I am going to ask the Constable to
have Mr. Moorcraft come in my chambers and I am going
to speak to him about this matter and explain to him
30 what I am going to do and why I am doing it. I am

1 going to also instruct him that he is not to divulge
anything outside about what occurred in the jury room
in line with the restriction imposed by the Criminal
Code of course. I will also point out to him that I
5 am going to make the order subsequently here in open
court.

Having done that, I will have the jury brought in
here and I will tell them that I am making the order
discharging and I will make the further orders that --

10 MR. ALLMAN: One very minor last matter, My Lord.

Of course by that stage Mr. Moorcraft will have
ceased to be a member of the jury, but I would think
it would be appropriate for the media not to photo-
graph - it would be an embarrassing situation.

15 THE COURT: The same restriction will apply not only to
all of the jurors on photographing, but the photo-
graphing Mr. Moorcraft will also be out as far as that
goes. And of course I will be reiterating to all
these people concerned that they are to have no
20 communication with any member of the jury and any
member of the jury who does have any one approach
them are to contact the sheriff immediately or some
other officer of the court and it will be passed to
me. Can anyone think of any further instruction I
25 should make?

MR. FURLOTTE: The fastest train to Tibet.

30 THE COURT: I might say about the television cameras. I
gave permission on Tuesday and Thursday for the
television camera to take pictures on this level
within a certain number of feet. I think it was

1 agreed 10 feet or so of the side door out here.
They have crept up now. They take pictures of me
entering every Tuesday morning and Thursday morning.
I looked in my garage this morning for a pair of
5 snowshoes. I thought I would look great on television
carrying a pair of snowshoes. I couldn't find the
snowshoes so I didn't bring them.

MR. ALLMAN: Everybody would be worried. They would think
you were psychic about the weather.

10 THE COURT: Next Tuesday I may be carrying a pair of
snowshoes and I want you to know if I appear on
television that is the reason.

 All right, we will recess now until I call the
jury back. It will be about 10 minutes I should
15 imagine.

(Court Recessed)

20

25

30

1 MR. ALLMAN: Just before we closed, Your Lordship asked
us if there were any other matters and we said no,
but a couple of things have occurred to us when we
had a moment to reflect during the interval. Two
5 things: I understand Your Lordship intends to make an
order excluding certain persons from being present
in the jury -- in the courtroom rather. I would ask
Your Lordship to make that order now before the jury
come in. We don't want the jury to hear that order
10 made. They will put two and two together. So if you
are going to make that order, could we make it at
a time when the jury doesn't know about it? The
second matter is this - it occurs to us that it is
possible that the media may wish to interview civilian
15 people, not members of the jury, or witnesses, or
anything like this, but people who have an interest in
this case. We can't prevent that.

THE COURT: Interview what?

20 MR. ALLMAN: The media may wish to interview people. I am
thinking specifically of the people you are planning to
exclude.

THE COURT: I don't think they would consider that for a
moment surely.

25 MR. ALLMAN: Well --

THE COURT: It would be totally improper for them to do it.

MR. ALLMAN: If that is a direction from Your Lordship
that the media --

30 THE COURT: That is a direction from me and I am sure the
media realize that. The media can't publish anything
that is going to prejudice the trial in the long run.

1 MR. ALLMAN: What we are concerned about is that of course
they can't publish what went on this morning directly,
but it would be possible to do it indirectly by
talking to somebody else. We want the whole thing
5 kept from the jury until this case is completed.

THE COURT: I am inclined to accept your suggestion about
the exclusion. I am going to have the jury in in a
minute and I am going to be making an order for the
discharge of one of the jurors. I am going to make an
10 order now under Section 486 is it?

MR. ALLMAN: I believe it is 486, yes.

THE COURT: 486 says:

"Any proceedings against an accused shall be held
in open court, but where the presiding judge...
is of the opinion that it is in the interest of..."

15 various things including:--

"the maintenance of order or the proper administration
of justice to exclude all or any members of the
public from the courtroom for all or part of the
proceedings, he may so order."

I am going to make that order now in respect of two
20 individuals whom I am told are present. Mrs. Lois
Gounce. Mrs. Gounce, are you present? Would you stand
please? Mrs. Pamela Keleher. Is Mrs. Keleher present?
Would you stand please, Mrs. Keleher? I am making an
order prohibiting you from attending this trial at any
25 time before its conclusion

MRS. GAUNCE: It doesn't matter. It's a complete farce
anyway. It's all one-sided so it doesn't really
matter.

THE COURT: I am very pleased to hear that actually.

30 MRS. GAUNCE: Oh, I don't care if I stay here or not. It's
true.

1 THE COURT: You are not to have any contact with any juror
either directly or indirectly either of you or with
any family member of the juror, or to be at the home,
place, or residence of any juror. You are not to
5 attend anywhere around this courthouse or attend the
trial at all. Whether involvements that you had
before now warrant further action by the police or
not must be left up to the police. I am making an
order in that regard. Sherrif, would you escort these
10 two ladies, please, out of the courtroom?

MRS. GAUNCE: It's no problem. We can go without an
escort. See you.

MR. LEGERE: Yes.

THE COURT: Could we have the jury brought in please?

15 (Jury called. All present)

THE COURT: Members of the jury, I would like to say some-
thing to you at this point. Section 644 of the
Criminal Code says:

20 "Where in the course of a trial the judge is
satisfied that a juror should not, by reason of
illness or other reasonable cause, continue
to act, the judge may discharge the juror."

I propose to make an order in respect of one of your
numbers under that section of the Code.

25 It came to my attention yesterday that police
surveillance and so on had indicated that the girl-
friend of one of the jurors has been friendly, has
been seated in the courtroom here, has been associating
with a person that was reputed to be a girlfriend of
the accused. We have had a hearing on that this
30 morning, an in camera hearing with the public excluded.
I have heard evidence, or at least sufficient evidence

1 to satisfy me that it would be totally improper for
the juror to continue on.

I am not imputing any breach of the juror's oath
when I make an order for discharge. I am not
5 suggesting that he wouldn't have been able to act
completely impartially in the case. The important
thing in a trial of this nature not only is that a
juror be impartial, but he must manifestly be seemed
to be impartial. I think the information that has
10 circulated in the public now would raise very serious
doubts in the public's mind as to whether the juror
involved could act impartially.

I am not going to give any further directions in
that. I have spoken to the juror involved and I have
15 explained these reasons to him. I have also reminded
him that he is not to disclose anything to the public,
to anyone, concerning any discussions, or any
conversations, or considerations which have taken
place in the jury room during the course of the trial.
20 He can't disclose that even after the trial is over.
That can't be disclosed and if he were to disclose that
he would be committing an offence under the Criminal
Code. I have told the jury this before and I think I
have referred to it and certainly when the trial is
25 over I will be reminding you all of the same provision.
You are not free to disclose anything that took place
in the jury room that is not subsequently disclosed in
open court and really the only thing that takes place in
the jury room that is disclosed in open court is your
30 verdict, or verdicts when you bring those back.

1 The other thing I think would be in the interest
of the administration of justice - in fact I have
instructed the juror that he is not to have any
communication with any member of the jury either by
5 telephone or by personal contact until the whole trial
is over. I also feel it would be improper for a
person who has served on a jury partway through a
trial to be present subsequently at the trial and I
have told him, and I repeat this instruction now, that
10 he is not to attend in the courtroom or attend the
trial during the course of the trial.

I have made two other orders. They involve two
ladies: Mrs. Lois Gaunce and Mrs. Pamela Keleher.
They were present in the courtroom here a few minutes
15 ago. I made this with you people absent. I have
made an order that they be expelled from the courtroom
and not be present at any subsequent sitting of this
trial and they will not be present.

20 The juror in respect of whom I am making the order
is a Mr. Jeff Morecraft who know this and to
Mr. Morecraft I thank you. I think perhaps you are
an unwitting victim here perhaps. I don't hold any
blame on you. Perhaps you have acted somewhat
25 indiscreetly, but I think others have been responsible
for drawing you into this think. I am sorry about
that. I am sorry that you can't continue on with the
jury.

30 Mr. Sears, would you escort Mr. Moorcraft out.
Thank you.

 There is one other thing I want to add. Please

1 put this out of your mind. You are down to eleven
people now instead of ten. I must say in my knowledge
of this matter I can see no reason why the balance of
the jury is compromised in any way. I can't see why
5 you shouldn't continue in any way and every member of
the jury.

I will say this that your spouses, and girlfriends,
and boyfriends, and so on of course are free to attend
the trial at any time, but I think jury members would
10 be well-advised to discourage your wives, or husbands,
if you have any control over them, from coming to the
trial. I think that would be a good thing to do, but
I see no reason whatever why any other member of the
jury shouldn't continue on through the rest of the
15 trial.

There is a provision in the same section I read
part of a minute ago wherein the course of a trial a
member of a trial a member of the jury dies or is
discharged pursuant to subsection (1), the jury shall
20 be deemed to remain properly constituted for all
purposes of the trial and the trial shall proceed and
a verdict may be given accordingly if the number of
jurors is not reduced below ten. So I don't think we
are going to have the same difficulty with any other
25 of you. Perhaps illness - I won't say death - perhaps
illness will overcome someone but hopefully it won't.
So I don't want you to impute any inference against
the accused, or against the Crown, or against any other
person connected with this trial from this incident.
30 As I say it perhaps has occurred unwittingly and you

1 are not to judge the accused harshly merely because
it has occurred, or you are not to judge anyone else
harshly because it has occurred, the Crown or anyone
else. It is just one of those things that has
5 happened that 'we take in our stride' I think was the
phrase I used the other day.

Now, we will get on with the rest of the trial.

You have a witness on the stand, Mr. Allman.

MR. ALLMAN: Sergeant Johnston was on the stand.

10 THE COURT: Sergeant Johnston, if he will resume the
stand, we will go on with the cross-examination.

MR. ALLMAN: Staff Sergeant Johnston. I apologize to him.

THE COURT: You have been sworn yesterday, Sergeant
Johnston?

15 A. Yes, My Lord.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Sergeant Johnston, I understand you are the officer
in charge of the Smith file?

20 A. Yes, Mr. Furlong (sic).

Q. Can you tell me when you first became aware of the
evidence of Joseph Roderick Allen Williams and Joseph
Wayne Williams and in relation to a composite
drawing marked P-92 for identification?

25 THE COURT: I'm sorry - the question was when you first
became aware of the evidence -- have they testified?

MR. FURLOTTE: They have already testified.

THE COURT: Oh, they've testified at this trial. Oh, yes,
you meant the evidence at this trial.

30 Q. Exhibit P-92. Do you recall when you first became
aware of that evidence?

1 A. I think I first became aware of that on or about the
17th day of November, 1989.

Q. 1989.

THE COURT: Look, I'm just not quite sure what you are
5 talking about here. You say, "When did you first become
aware of the evidence?" The evidence was given by these
witnesses in court and it wasn't given the 7th day of
November. You mean aware of their statements or their
involvement or something?

10 MR. FURLOTTE: Aware of these witnesses that they may have
had something to contribute to the police investigation.

A. I was speaking specifically about that composite
drawing that you showed me and the first time I saw it
was the 17th day of November, 1989, if I'm not mistaken.
15 As far as any other evidence regarding that, I'm not
aware of anything regarding the composite or where it
was -- I could assume where it originated from but I am
not directly aware.

Q. Were you aware that Joseph Roger Allen Williams and
20 Joseph Wayne Williams gave statements to the police?

A. No, I'm not.

Q. Do you know of any reason why the Crown prosecutor was
not made aware --

MR. WALSH: Objection, My Lord.

25 THE COURT: That is not a proper question.

Q. Did the person or at least the composite of this person,
P-92, could this person become a suspect in the Smith
murder for any reason?

A. Not from the composite drawing.

30 Q. Do you have a suspect in the Smith murder who resembles
the composite drawing in P-92?

- 1 A. There is an accused that resembles that somewhat, yes.
- Q. The accused, Mr. Legere?
- A. Yes.
- Q. Did you ever compare the composite drawings of P-92
5 and P-91 at any time?
- A. No.
- Q. Did you ever see the composite drawing of P-91 before?
- A. Is P-91 here?
- Q. This is P-91 here.
- 10 A. I may have but I can honestly say that I specifically zeroed in on that.
- Q. You personally did not prepare it?
- A. No, I wasn't involved in anything to do with the composite drawings.
- 15 Q. I understand you are the Chief Investigator of the Smith file and I suppose everybody takes directions from you. You are the brains of the investigation so to speak?
- A. I am the Chief Investigator of that -- I was up to
20 a certain point of that file, yes.
- Q. And all police officers are supposed to keep you informed of the evidence they may or may not encounter?
- A. In relation to the death of Father Smith, yes.
- Q. And are you saying these comparisons were never
25 brought to your attention?
- A. Not in relation to Father Smith.
- Q. Now you mentioned P-92 resembles, you say, the accused, Mr. Legere.
- A. Among others, yes.
- 30 Q. And it also resembles other people?

- 1 A. Yes, it does.
- Q. Would it resemble another suspect?
- A. In what?
- Q. In the Smith case.
- 5 A. I don't have any other suspects in the Smith case.
- Q. You don't have any other suspects in the Smith case?
- A. No.
- Q. All the suspects are now eliminated in the Smith case?
- A. I didn't have any other suspects in the Smith case.
- 10 Q. Do you know when this individual was supposedly
observed?
- A. No, I don't.
- Q. Did you look for any other suspects in the Smith case?
- A. I looked at numerous possibilities and took
15 numerous investigative procedures and I do not have
any other suspects in the Smith case other than the
accused.
- Q. Do you know whether or not in investigative procedures
that an order was acquired from a judge for the
20 interception of private communications of Mr. Legere?
- A. No, I -- would you repeat that?
- Q. Do you know whether or not through police investigation
a court order was obtained for the interception of
private -- the inference with private communications
25 of Mr. Legere?
- MR. WALSH: Is this question - first of all, before I make
a suggestion that will be argued unfortunately in the
absence of the jury, I would like to know whether the
30 relevance of this question -- is he suggesting that
this was done during the -- before Mr. Legere's
capture?

1 MR. FURLOTTE: After Mr. Legere was captured.

Q. So you are not aware that there was an order for the
interception of private communications of Mr. Legere
during the fall of 1990 while he was in the Atlantic
5 Institute?

A. Now you are being specific. You are saying the fall?

Q. The fall.

A. I was told there was.

Q. So you are aware that there was.

10 MR. WALSH: He is starting to -- he wants to investigate
the investigation by getting into the hearsay
evidence aspect. We have dealt with it before. I
wish Mr. Furlotte would restrict himself to the
-- what we consider to be irrelevant evidence for the
15 jury.

MR. FURLOTTE: I believe this is relevant evidence for the
jury, My Lord.

MR. WALSH: Well, perhaps My Lord if -- perhaps since
Mr. Furlotte is making the statement he believes it
20 is relevant evidence for the jury, I would like to
know what it is and then if the fact that you believe
it is so then the jury can hear it so it is something
we would have to do in the absence of the jury
unfortunately again, My Lord.

25 THE COURT: Where are you leading here, Mr. Furlotte? This
is when, in the fall of 1990?

MR. FURLOTTE: Fall of 1990.

THE COURT: This is after the recapture of Mr. Legere?

30 MR. FURLOTTE: This was just before Mr. Legere was formally
informed that he was going to be charged with the
murders.

1 THE COURT: Well what has that got to do -- what would
that conceivably have to do with the murders with
which he is charged?

MR. FURLOTTE: I want the police officer to state the
5 conditions upon which such a warrant can be obtained.

THE COURT: Well that is a matter of law.

MR. WALSH: That's the problem, My Lord. We are dealing
with something that in our opinion is not relevant,
but it is something that we are prepared to argue
10 and if in fact the Court finds it's relevant and would
be assistance to the jury in reaching their conclu-
sions --

THE COURT: Well I guess we will have to ask the jury to
go out for a few minutes.

15 A. I could probably say that I have no relevant infor-
mation to that investigation, Mr. Furlotte.

THE COURT: Well, Mr. Furlotte, anyway the witness has said
he has no relevant information to that --

A. I was not involved in that part of the investigation.
20 I have no relevant information other than I was told ~

Q. Do you know who was involved? Who got the order?

A. No, I do not.

MR. FURLOTTE: I will raise it with another police officer,
My Lord.

25 MR. WALSH: I refer Mr. Furlotte to Section 193 of the
Criminal Code as well for future reference.

MR. FURLOTTE: Are we going to get into the law, Mr. Walsh?

MR. WALSH: Well we can discuss it later, My Lord. I never
30 know from one minute to the next where he is going
with his questions.

1 THE COURT: We are finished with that now.

Q. Sergeant Johnston what is the duty of a police officer basically?

A. The duties are so numerous, Mr. Furlotte, that I think
5 we'd be here all morning. I don't really know what--

Q. Let's get into a few specifics. Is the duty of a police officer to protect the general public?

A. Yes.

Q. Is Mr. Legere a member of the general public?

10 A. Yes, he is, Mr. Furlotte.

Q. Is Mr. Legere to be presumed innocent until proven guilty?

MR. WALSH: Objection, My Lord. He is asking him legal questions.

15 THE COURT: These are legal matters. These are not proper subject - you know if you want to argue these matters, Mr. Furlotte. These aren't questions. It's just a waste of time to be asking this type of question.

Q. Sergeant Johnston if you had evidence which might
20 assist to prove Mr. Legere's innocence on any charge that he may be charged with, would it be your duty to divulge that information?

A. Yes, it would be.

Q. Do you have any information which may assist Mr. Leger
25 to prove that he did not kill Father Smith?

A. No.

Q. I understand your first involvement with Mr. Legere in the Smith case was upon his arrest?

A. Yes.
30

Q. And what time did you arrive at the police station on the morning of his arrest?

- 1 A. Approximately 6:00 a.m.
- Q. What time did you first meet with Constable Mole and Constable Charlebois?
- A. Approximately 6:30, 6:35, 6:36.
- 5 Q. And what did you do upon your meeting with Constable Mole and Constable Charlebois?
- A. I asked them to come down to the cell area to take Mr. Legere up to the interview room and do what they had to do at the cell area.
- 10 Q. And what time did you arrive at the cell area?
- A. What time were you talking about? When I first --
- Q. When you arrived at the cell area with Constable Mole and Constable Charlebois.
- A. Constable Mole and myself arrived at approximately
- 15 6:40, Constable Charlebois shortly afterwards.
- Q. Now I understand between your meeting with Constable Mole and your arrival at the cell area with Constable Mole that Constable Mole had some duties to perform?
- A. Would you repeat that?
- 20 Q. In between 6:35 and 6:40 did Constable Mole -- you didn't meet with Constable Mole all that period of time. He had other duties to perform.
- A. No, I told you I met with him at 6:36 but I think he was going to pick up some bags or something. It was
- 25 just a matter of a minute or two that he went to get those things.
- Q. Did he also have a telephone call to make?
- A. I'm not quite -- I don't know.
- 30 Q. How much conversation did you have with Constable Mole and Constable Charlebois?

- 1 A. Not very much conversation.
- Q. Basically what did you tell him?
- A. I said that I was down in the cell area, that -- asked
5 them to come down to do what they had to do and to
basically take Mr. Legere up to the interview room
when they were finished. There was no great conver-
sation.
- Q. I understand from your testimony yesterday that
Mr. Legere had told you a lot of things before you
10 went up and met with Constable Mole?
- A. Yes.
- Q. Between 6:20 and 6:35?
- A. 6:21 - 6:35, yes.
- Q. And did you relay everything to the Court yesterday
15 what Mr. Legere told you in that period of time or
just part?
- A. Just part of it.
- Q. So he may have told you twice as much as what you
actually told the Court?
- 20 A. He did tell me more but I didn't repeat some of the
things.
- Q. That was from 6:20 to 6:35?
- A. Yes.
- Q. Do you know how long you were on the stand on direct
25 examination yesterday?
- A. No, I do not.
- Q. Approximately half an hour?
- A. I don't know.
- 30 Q. I am concerned, Sergeant, it appeared to take you
twice as long to tell us what Mr. Legere told you in

- 1 the time you actually had in the cell area.
- A. That's your interpretation of it. I mean you will
have to accept that.
- Q. Yet Mr. Legere told you much more than what you told
5 us in Court yesterday?
- A. Yes, he did.
- Q. He told you all that in 15 minutes?
- A. Yes, he did.
- Q. Now you testified yesterday that you asked Constable
10 MacPhee if Mr. Legere was given his Charter Notice
and Warning -- Police Warning and Caution?
- A. Yes.
- Q. And did you ask Constable MacPhee if Mr. Legere
requested a lawyer?
- 15 A. No.
- Q. Any reason why not?
- A. I was satisfied by asking the questions that I asked
and verified that they were done that I was fulfillin
my my responsibilities and duties as a police officer.
- 20 Q. Now when you first went into the cell area -- when
you were talking to Mr. Legere that 15 minutes between
6:20 and 6:35 did you advise him of his rights to a
lawyer?
- A. No.
- 25 Q. When you returned about 6:40 did you advise him -- or
Constable Mole or Charlebois advise him of his rights
to a lawyer in your presence?
- A. Corporal Mole advised him of his rights, yes.
- Q. Three police officers in there at the time?
- 30 A. Yes.

- 1 Q. Any of you ask him if he wanted a lawyer?
- A. No.
- Q. How much time did you spend in the cell area with
Mr. Legere on the day of November 24, 1989?
- 5 A. I would only be giving you an approximate. I would
say 3 - 4 hours. That was after -- what time period
are you talking about - the whole day?
- Q. The whole day, yes.
- A. Maybe I talked to him for 4 hours after he was brought
10 back from the interview room. Not talked to him -
mostly listened to him.
- Q. And throughout the whole day that you were there
either in the cell area with Mr. Legere or at the
detachment, how many times are you aware of that
15 Mr. Legere asked for a lawyer and didn't get one?
- A. None really.
- Q. You were never present yourself when Mr. Legere asked
for a lawyer?
- A. No, I wasn't. At one particular time I suggested -
20 I was aware that Mr. Legere was looking for a lawyer
and I strongly suggested that he get a hold of one
and he said nobody wanted to take his case and I
went to efforts to get a lawyer for him as far as
calling one for him, and getting him on the phone,
25 and passing him the phone.
- Q. What time was that?
- A. I would imagine between 3:30 and 4:00 in the afternoon
- Q. And you first came in contact with him at 6:20 in the
morning?
- 30 A. Yes.

- 1 Q. When did you first become aware that Mr. Legere requested a lawyer through Constable MacPhee?
- A. Weeks afterwards.
- Q. Do you recall being in the cell area at the same time
- 5 as Constable Mole and Constable Charlebois?
- A. Yes.
- Q. And do you recall looking at Mr. Legere's arm and then saying to Constable Mole, "Come over here. They looked at the wrong arm"?
- 10 A. No.
- Q. And you mentioned yesterday that Mr. Legere demonstrated how he rolled up his sleeve and I believe you indicated he just rolled up his sleeve to his elbow. Is that right?
- 15 A. Yes.
- Q. And he was supposed to be showing you how he rolled up the arm as to why the police weren't able to see a tattoo?
- A. Yes.
- 20 Q. And you don't recall suggesting being the first one to suggest the police did that rather than it being Mr. Legere just telling you off the cuff?
- A. No, Mr. Legere was quite proud of that.
- Q. Was he proud of it or was he just bullshitting you?
- 25 A. Boastful.
- Q. Boasting. Mr. Legere likes to make police officers look foolish does he not?
- A. I really can't answer that question. I can't formulate what Mr. Legere --
- 30 Q. Possible Mr. Legere was trying to make the police

- 1 officers look foolish - telling you a story?
- A. Anything is possible.
- Q. Do you believe anything that Mr. Legere tells you?
- A. No.
- 5 Q. Mr. Legere tells some pretty good stories at times does he not?
- A. Are you saying that?
- Q. Did Mr. Legere tell you a lot of stories that would be extremely hard to believe for anybody?
- 10 A. Well sometimes you have to decipher fact from fiction but basically he tells you what he wants to tell you.
- Q. Are you sure Mr. Legere mentioned to you that -- described how he just rolled it up to the sleeve, or that he said how the police looked on the wrong
- 15 arm?
- A. I'm sure.
- Q. Rolled up his sleeve?
- A. Yes.
- Q. Did you tell Mr. Legere that the police had been
- 20 looking for a small eagle and a star on his arm?
- A. No.
- Q. Do you know what description the police or the train staff in Quebec were given of Mr. Legere?
- A. No.
- 25 Q. So you don't know what they were told about which tattoos to look for?
- A. No.
- Q. Now, there were 3 police officers on the train who say they checked the suspect who looked like
- 30 Mr. Legere. They testified in Court. Were you here

1 when they testified?

A. No.

Q. They testified in Court, or I believe the 3 looked at
a suspect for tattoos and didn't find any and the
5 evidence was that they rolled the sleeve up by
the shoulder -

A. One.

Q. One testified that they rolled the sleeve up to the
shoulder and didn't see any tattoos.

10 A. That's contrary to what Mr. Legere told me.

Q. Contrary to what -- the story Mr. Legere you say told
you. Who would you believe?

MR. WALSH: Objection, My Lord. That's not a proper
question. If he wants me to --

15 A. On that particular aspect I would believe Mr. Legere.

Q. Because it suits your case.

A. No. Obviously the tattoos were there and the person
must have been mistaken because he missed them. I
mean anybody could figure that out.

20 Q. Three police officers?

A. If they only rolled it up so far, yes.

Q. But the evidence was that it was rolled up to the
sleeve -- up to the shoulder?

A. One police officer - you asked me my opinion?

25 Q. Yes.

A. And what I thought?

Q. Yes.

A. And I'm giving it to you.

30 Q. Right.

A. On that particular aspect the only explanation I can

1 see is that the police officer was mistaken or he
would have saw the tattoo, therefore, I believe that
Mr. Legere had to say that it was only rolled up so
far. That is the only explanation that any reasonable
5 person could have.

Q. But your opinion I suppose one could say is a little
bit biased?

A. I hope that you don't think that.

Q. And you believe Mr. Legere was guilty before he was
10 even arrested?

MR. WALSH: Objection.

THE COURT: Oh, no. You know that type of question
isn't permitted, Mr. Furlotte, surely. That is the
most basic thing. My God a lawyer just out of law
15 school would know that.

MR. FURLOTTE: My Lord, this is all a question of weight
that the jury ought to be putting on the testimony of
this witness and they have the right to consider
whether or not a witness is biased before he testifies
20 and during his testimony.

A. Mr. Furlotte, I am a professional policeman. I do my
job to the best of my ability and in my mind people
are not guilty until proven innocent. They are
innocent until proven guilty.
25

Q. Who is Al Rivard?

A. He is the officer commanding Moncton sub-division.

Q. Do you know whether or not Al Rivard made a statement.

MR. WALSH: Objection, My Lord.

THE COURT: That would be hearsay. We are not interested
30 in hearsay.

1 MR. WALSH: My Lord, I want to make it clear I have no
need to protect Staff Sergeant Johnston. He is quite
capable of helping himself, but we would like to keep
it within the bounds.

5 Q. Sergeant Johnston, is it proper to release suspect's
names to the media before a suspect is charged?

A. No.

Q. Is it proper to release evidence which you feel might
help to convict a suspect to the media before the
10 suspect is charged?

A. What case are you talking about?

Q. I am talking about any case.

A. Okay, just to clarify that, if you are clarifying this
in general, no.

15 Q. In general, no. And it's not proper to try and
connect the evidence that you have to a suspect to the
media?

A. No.

20 Q. In other words a suspect should never be tried in the
media before he is tried in the Court?

A. No.

Q. Do you have any knowledge of the police doing that?

A. No.

Q. Do you read the newspapers?

25 MR. WALSH: Objection, My Lord. He is onto collateral
matters.

THE COURT: Look we're not - the media aren't on trial.
There is a jury here which is going to decide the
30 issues involved in this case. The media aren't going
to determine it. We don't care what the media said.
I have determined before, or it's been determined -

1 counsel have agreed on the selection of this jury
 as an impartial jury.

MR. FURLOTTE: I don't blame the media for printing what
 they were told, My Lord.

5 Q. The conversation that you had with Mr. Legere, or
 you say Mr. Legere had with you, between 6:20 and
 6:35 in the morning, it wasn't taped by any chance?

A. No.

10 Q. And the conversation you had with Mr. Legere while in
 the presence of Constable Mole and Constable
 Charlebois between 6:40 and 7:25 that wasn't taped
 either I suppose?

A. No.

15 Q. Did you tape any conversations between yourself and
 -- or between the police and Mr. Legere that day,
 November 24th?

A. Yes.

Q. Any reason why they all wouldn't be taped?

A. Yes.

20 Q. What is it?

A. When we went down -- the first contact with
 Mr. Legere in the cell area there were no plans to
 interview Mr. Legere. There were just plans to
 perform certain police functions. Mr. Legere was the
25 to be taken to an interview room and the taping of the
 interview was to take place at that time.

Q. I believe one of those police functions was to take
 hair samples?

A. Yes.

30 Q. And were you or any of your officers -- you were the
 officer in charge at that time?

1 A. Yes.

Q. And were you or any of your officers advised by the Crown Prosecutor to get Mr. Legere's consent before you take hair samples?

5 A. I can only assume that a note came from the Crown Prosecutor that had writings on it that indicated -- to see if Mr. Legere would sign the consent to take his hair.

Q. And that was totally ignored?

10 A. Totally.

Q. Do you know whether or not a Judge can even give you the permission to take an accused's --

MR. WALSH: Objection, My Lord. I am going to ask, please
My Lord, if the jury would go out for a few -- if
15 you get the jury excluded for a few minutes.

Apparently Mr. Furlotte is bound and determined to transgress constantly here and I just think it might be appropriate to address some questions --

20 THE COURT: I have made a ruling in this case following a voir dire that this evidence is admissible and that there was no denial of the accused's rights under the Charter of Rights. I have made a ruling that the hairs, both scalp and pubic hairs, and whatever else was taken was taken illegally and not in contravention
25 of the law. That's a ruling. I have made a determination on that point and that resolves that. I have made it as a matter of law.

MR. FURLOTTE: You are absolutely right, My Lord. That
30 doesn't prevent me from cross-examining police witnesses to show what their attitude was at the time

1 nor to show that they -- I suppose attitude towards
Mr. Legere and in total violation of any and all of
his rights that that would go towards the credibility
of the evidence that not only --

5 THE COURT: The ruling that I have made is that they did
nothing in violation of his rights. That was --

MR. FURLOTTE: Oh, I am well aware of your ruling, My
Lord.

THE COURT: Why are you going back over that now? You
10 say you are trying to show now that it was all in
violation of the rights --

MR. FURLOTTE: Their attitude towards Mr. Legere is a
matter of credibility on the evidence that they are
giving on the stand today.

15 MR. WALSH: My Lord, again, I repeat. I think that if we
are going to argue this that it would be appropriate
to do this in the absence of the jury.

THE COURT: I am going to suggest this - that we go to
lunch actually. We will stand this witness down and
20 we will -- we will send the jury off to lunch and we
will stay for a few minutes and discuss this and then
we will be ready at 2:00 o'clock to go on to complete
the cross-examination.

(Jury Retires)

25 THE COURT: Where do we stand right now on this matter
anyway? We are in a voir dire now.

MR. WALSH: My Lord, I can suggest from the Crown's point
30 of view that Mr. Furlotte's conduct in asking these
questions is verging on contempt of Court. He knows

1 that this matter has been dealt with in a legal
ruling that this man's Charter of Rights, his common
law rights, have not been violated. It consumed one
week of testimony, briefs on law - it has all been
5 argued and the Court has ruled that this man's legal
rights were not violated. Mr. Furlotte wants to
appeal to a higher Court on law, the jury, and imply
by the questions he is putting to Staff Sergeant
Johnston that in fact his rights were violated, that
10 they had some bad motive and therefore they put the
-- the simple fact of the matter is the legal rights
were not violated and he wishes to impute that through
the questions that he is putting to Staff Sergeant
Johnston.

15 I can't see any other reason to ask the Staff
Sergeant - where you aware that even a judge couldn't
order hair to be taken? I mean that is a known fact
in law that you can't get a warrant for bodily
substances. This Court has ruled that you can take
20 bodily substances as an incident of a legal and valid
arrest. The jury doesn't know any of these things.
But he wants to argue the law in front of the jury.

THE COURT: What is your position, Mr. Furlotte?

25 MR. FURLOTTE: My position, My Lord, is that I was not
of the understanding that you ruled that Mr. Legere's
rights were not violated. I was under the under-
standing that -- and there is no doubt Mr. Legere's
rights had been violated, but it would not have
brought the administration of justice into disrepute.

30 THE COURT: And therefore the matter is --

1 MR. FURLOTTE: And therefore the matter goes to a
question of weight just as in Criminal Evidence
Handbook by Harold J. Cox, at page 225 it says,
"The issue of voluntariness of a confession may be
5 raised by defence in cross-examination to weaken the
evidentiary value of a confession. There is no onus
on the Crown to prove"

THE COURT: That is true but do you really think from a
practical point of view you are making any impression
10 on this jury?

MR. FURLOTTE: Not if they have already got their mind
made up - definitely not.

THE COURT: I am not suggesting for a minute that they
have their mind made up. They have their mind made
up on one thing, I would think, that this witness is
15 probably giving as accurate an account as he can.
You are not going to be able, I suggest, to convince
this jury that this man is lying about everything he
is saying. If you want to show him to be a beast
20 for pulling out hairs or something, get down to it
and ask the questions about that. You know to go on
here for hour after hour - not hour after hour yet
but it will be. What are you accomplishing?

MR. FURLOTTE: I am attempting to weaken the evidence of
25 this witness through cross-examination.

THE COURT: Okay, I'll --

MR. WALSH: He keeps saying that - I am attempting to
weaken by cross-examination. This is not tavern
cross-examination. There are rules of law that he is
30 aware of, but he continuously ignores them and he --

1 THE COURT: I don't want any suggestion that there was a
breach of the law in this matter what he did. I have
made a ruling on that. This evidence is admissible
and I am not going to have the jury bogged down in
5 a question of whether the Charter of Rights was
offended or whether statements were voluntarily made.
You can suggest that because Mr. Legere had a bone
injured in his face, or a black eye, or something
that perhaps he was more readily talkative than he
10 would have been or that he was doing that in the hope
-- he was talking merely so he would get his
breakfast. I mean if you want to suggest that, but
come to the point with this witness and get down to it
The only thing I can say is we will go on after lunch
15 and I will have to intervene if you are not abiding
by the rules.

I am giving a wide latitude here in examination
but there is a limit which I can go.

20 You are still on the stand.

(NOON RECESS)

25

30

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1 Court Resumes (Jury called - All present.)

(Accused present)

THE COURT: Mr. Furlotte, you have a few more questions
to ask of this witness?

5 Q. Sergeant Johnston, you mentioned that Allan Legere had
rolled up his sleeve to show you his arm?

A. I didn't say he rolled it up.

Q. Or hauled up his sleeve?

A. Yes.

10 Q. What was he wearing at that time?

A. Coveralls.

Q. So this statement would have been made after you
went back in with Constable Mole and Constable
Charlebois?

15 A. Several times it was made. That was one of the times.

Q. I believe you also mentioned yesterday in your
testimony that once you went back in with Constable
Mole and Constable Charlebois that Mr. Legere
basically repeated everything he told you when you
20 were with him alone?

A. Basically.

Q. And after you left Mr. Legere at 6:35 - in between
6:35 and 6:40 you got Mr. Legere a drink of water?

A. I took a glass of water down to the cell area.

25 Q. Down to the cell area. And then you went back up to
meet with Constable Mole and Charlebois again?

A. Yes.

Q. How long did that take?

A. A matter of 30 - 40 seconds.

30 Q. And you just had a very brief conversation with
Constable Mole and Charlebois and told them what you

1 were doing?

A. Basically, yes.

Q. Did you discuss anything with Constable Mole and
Charlebois as to the conversation you had with
5 Mr. Legere?

A. I really don't remember. If I did it would have
been very brief.

Q. Are you sure Mr. Legere rolled up his coverall sleeve
or did he just tell you that they looked on the wrong
10 arm?

A. I'm sure that he --

THE COURT: No, that was covered before lunch. You asked
that before lunch.

MR. FURLOTTE: No, I did not. I asked about rolling up
15 the arm, but not whether or not he just said that they
looked on the wrong arm.

THE COURT: Yes, you asked that before lunch.

A. You did ask that question, but to answer it again he
did roll it.
20

THE COURT: We don't really want to repeat things over and
over again. We have come back I think it's eight
times now to this business of rolling up the sleeve
after getting away from it. We leave the sleeve and
then we come back to it - eight times, seven maybe.
25

MR. FURLOTTE: Eight times, eh?

THE COURT: Seven.

Q. Sergeant Johnston, in the preparation of the police
reports and the court briefs, or even your own reports,
30 the evidence that you were going to give in court,
basically how is that done for yourself?

- 1 A. All the evidence is analyzed and the reports are
made. It's very, very difficult to explain to --
- Q. No, I am just talking about for your own testimony
that you are giving here today.
- 5 A. My own testimony?
- Q. Yes, how did you -- did you read your reports or your
- A. I made certain notes after I talked to Mr. Legere as
far as my testimony goes.
- Q. And did you review those notes before you come to
10 court to refresh your memory?
- A. Not this time, no. I did in April.
- Q. You did on the previous hearing?
- A. Yes.
- Q. And for this hearing did you read the transcript
15 from the last hearing to refresh your memory?
- A. Yes, I did.
- Q. Now the notes you used originally to refresh your
memory, do you have those notes with you?
- A. No, I don't.
- 20 Q. Would you allow me to see those notes if you did have
them with you?
- A. No, I wouldn't.
- Q. Any particular reason why not?
- 25 A. If I referred to the notes then I would give them
to you, but it's rather than the reason for
principle, no. There is no other reason that I
wouldn't give you the notes other than it's a
matter that I am not referring to my notes therefore
30 I wouldn't let you see them - not because I am
trying to hide anything.

- 1 Q. Everything you say that Mr. Legere said to you while
you and him were alone in the cell from 6:20 to 6:35,
was that in your notes?
- A. No, it wasn't.
- 5 Q. How much of it wasn't in your notes?
- A. That's quite a large part of it. When I make my
notes I make notes that in putting down one word will
lead me to remember a sequent of events.
- 10 Q. Is it standard procedure for police officers to make
adequate notes of everything that transpired shortly
after an event?
- A. It depends upon the circumstances, but yes.
- Q. Am I to understand that you didn't do that?
- A. I did to a great degree. You asked me did I put
15 everything down. No, I did not put everything down.
I put a great, great deal of it down.
- Q. But your position is that if you had your notes on you
you would not allow me to see the notes to see if you
missed anything or interpreted your notes may be
20 wrong?
- A. As I already answered -- do you want me to answer
again?
- THE COURT: No, you answered that.
- 25 Q. Now you mentioned Mr. Legere made a comment that a
shave and a haircut in Montreal, twenty-two bucks?
- A. Yes.
- Q. So basically he was, what, attempting to tell you
that he got his haircut and shaved his beard off in
Montreal?
- 30 A. I don't have any recollection of a beard shaved off,

1 but he said, "a shave and a haircut."

Q. What did he refer to when he said -- or what did you think that he referred to when he said a shave? What was he shaving off?

5 A. Actual shave that you and I would get at a barbershop on occasion.

Q. Aside from you say Mr. Legere doing all the talking and not asking any questions, did you ask questions to Mr. Legere, specific questions?

10 A. Yes.

Q. Sergeant Johnston, just one last question. You mentioend that there was no other suspects in the Smith case besides Mr. Legere. Is that right?

A. Not from my investigation.

15 Q. Was it your intention to look for any other suspects?

A. As a policeman the door is never closed. I continuously look at the case, continue to review, continue to ask questions, and I have done up to this point and I still have not ocme up with any other suspects.

20 Q. Now a suspect in your mind is that necessarily somebody who would be a suspect where you have proof beyond a reasonable doubt or any suspect for any reason whatsoever?

25 A. I think as a responsible and professional person I think that any information that would come to light would warrant an investigation.

MR. FURLOTTE: I have no further questions.

THE COURT: Re-examination, Mr. Walsh?

30 MR. WALSH: Just a couple, My Lord.

REDIRECT EXAMINATION BY MR. WALSH:

1 Q. Mr. Furlotte asked you at the outset of the cross-
examination about the time it took you yesterday to
relate the conversation with respect to the time that
5 it occurred back in November of '89. Can you make
any comparison between the way you were giving the
conversation and the way Mr. Legere was talking back
then?

A. Yes, I think looking at my testimony yesterday I
10 spoke slowly and concisely and with some hesitation
in some parts. In Mr. Legere's case he never
stopped talking. I didn't relate all the information
because I didn't think it was relevant such as the
squirrels like peanut butter and vanilla cakes. So
15 that basically -- if there is any discrepancy there,
that is where it would be.

Q. Mr. Legere brought -- Mr. Furlotte brought you to the
question of a lawyer and you said that you had given
him a phone at one time during the day. Did you
20 arrange for anything requested by Legere at any time
that morning?

A. Anything Mr. Legere asked me that morning I arranged
for him. I arranged for his dentures. I arranged
for his glasses. I arranged for a doctor, and I
25 arranged for his breakfast. Anything that he asked,
I arranged for him.

Q. And did a doctor attend on Legere that morning?

A. Yes.

Q. And you testified yesterday what if any concerns you
30 had before the doctor came. Did you have any concerns

1 after the doctor left about Legere's health?

A. No, none whatsoever.

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

5 THE COURT: Thank you very much, Staff Sergeant, that is
all for you. Does that finish you off or are you --

MR. WALSH: That does, My Lord, yes.

THE COURT: Thank you. You may be excused. Another
witness, Mr. Walsh?

10 MR. WALSH: I will call Corporal Kevin Mole, My Lord. He
is recalled.

CORPORAL KEVIN MOLE, recalled as a witness, having
been previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

15 Q. You have testified before in this trial, corporal.
You are Kevin Mole. You are a member of the
Royal Canadian Mounted Police. You were with the
General Investigation Section of the R.C.M.P. during
1989 during the occurrence of these matters?

20 A. That's correct.

Q. Would you relate to the court, please, what if any
involvement you had in relation to the arrest of
Allan Legere?

25 A. Yes, at approximately sometime around 6:00 o'clock in
the morning of Friday, the 24th of November, 1989, I
received a telephone call at the hotel in Newcastle
where I had been staying. As a result of that
telephone conversation, I made an immediate patrol to
30 the Newcastle detachment of the R.C.M.P. I
accompanied Constable Ron Charlebois to the detach-
ment where I arrived and shortly after my arrival I

1 met with Sergeant Mason Johnston.

Q. There has been previous testimony with respect --
from Sergeant Johnston with respect to times that he
did certain things. What if any information can you
5 give the jury as to your ability or your inability
to have accurate times?

A. On that particular morning I had been prepared to
leave the Newcastle area and travel to Fredericton
where I had some work to do. I had prepared myself
10 to leave that particular morning. When I received
the call I took most of the items that were on my
dresser and put them on my briefcase, and that
included my watch. They remained in my briefcase
at the time and I relied that morning on the times
15 I received from Constable Charlebois for most of my
notes until I returned to my briefcase around
7:30 that morning.

Q. Okay, I just wanted that background, corporal. Would
you continue please? You met with whom?

A. Myself and Constable Charlebois we met with Sergeant
20 Mason Johnston at the Newcastle detachment.
Following a brief conversation that lasted roughly
a couple of minutes, Sergeant Johnston left the
office that I was in, the main office area. I made
25 a brief telephone call. Following that I met with
Sergeant Johnston in the main office area. I then
went directly to the forms room at the Newcastle
detachment where I recovered a pair of surgical
gloves, a first aid scissors with a point -- a
30 blunt end, exhibit bags, and exhibit stickers. I

1 immediately followed Sergeant Johnston to the cell
area at the Newcastle detachment. It would be in
the northeast corner of the detachment.

Q. What if any role were you or any other member to play
5 in relation from here forward? Did you have any
idea of what your role was to be?

A. My role that particular morning I was to be involved
in the interview of Allan Legere, to arrest him for
murder, and to make sure that he had been given
10 his Charter Rights and police caution and to seize
hair from Mr. Legere.

Q. Did you have any idea before you went to the cell
area where the interview was to take place?

A. Yes, I left my briefcase in my jacket in the
15 interview room on the main floor area at Newcastle
detachment.

Q. Continue. You went down to the cell area.

A. I proceeded to the cell area with Sergeant Johnston.
I followed him down. Constable Charlebois was
20 behind me. We travelled through the corridor into
the main cell block area. There is a long, about a
30 foot hallway. There is cell rooms on each side,
one on the righthand side halfway down the wall
and one down on the lefthand corner. I met with
25 -- Sergeant Johnston continued on towards the cell
which would be at the far end of the building on the
lefthand corner. I met with Constable MacPhee who
was in the area on the floor with some clothing
and articles and he was placing them in bags. I
30 sought from him and received the key to the cell that

1 Mr. Legere was in at the time.

I followed Sergeant Johnston into the cell room. The cell room itself is a room approximately 12 by 15 feet in size. It is separated down the centre with bars with a door in the centre. I entered the cell room. Sergeant Johnston was immediately in front of me outside of the barred area and I observed Mr. Legere in the cell behind the bars.

10 Q. What was his manner of dress and what if anything did he look like?

A. When I entered the cell room area Sergeant Johnston made a comment to Mr. Legere, "Do you recognize this guy?" or "Do you know who this guy is?" I immediately opened the cell door and I entered the cell.

15 Mr. Legere made a comment about my hair and I made a comment about his. He said, "Shave and a haircut, twenty-two dollars, Montreal."

Q. Did you know the accused prior to this time?

20 A. Yes, I did.

Q. For how long prior to this time did you know him?

A. Personally, approximately three years.

Q. What if anything could you tell the jury about his appearance when you first saw him that morning?

25 A. Immediately when I first saw Mr. Legere as I entered the room I was surprised at his appearance. At one point very early in the conversation when I first entered the cell while Mr. Legere still had the blanket around him, he had made a comment about myself and how I had gained weight and I made a
30

1 comment about how I never would have recognized him.
He looked so different since the last time I had
seen him and I had seen him on December 8, 1988, so
it would be 11 months earlier. I remarked at the
5 time and I noticed almost immediately and I commented
on Mr. Legere's size and how thin he was and how
old he looked. When I entered the cell he looked
very thin and shallow in the face. His face looked
very long. His nose seemed to be more pronounced
10 or noticeable because his face was so shallow. He
looked quite lithe or thin. It was difficult to
notice immediately --

MR. FURLOTTE: My Lord, I am going to object to the
description of Mr. Legere's face. It is opinion
15 evidence, especially when we have the best
evidence rule. We have Mr. Legere's picture in
evidence and I am sure the jury can decide for
themselves whether Mr. Legere's face was long or
any description. I believe the physical descriptions
20 given by this witness is going to

THE COURT: There couldn't be any foundation for that
objection in law. That is not a valid objection in
law. He is giving a description of what he
observed and it is admissible - period.

25 Q. Continue Corporal Mole.

A. I noticed --

THE COURT: I am not saying the jury has got to accept
this description. I am simply saying that the
30 witness -- that the Crown is entitled to examine the
witness on what he observed.

1 Q. The question is -- my understanding is you are
comparing what you saw that morning was the same
person you had saw the last time on December 8, 1988,
is that correct?

5 A. That's correct.

Q. And you are showing whatever distinction there was
between that person in December '88 and that morning,
November 24, 1989, is that correct?

10 A. That's correct. I noted at that time from the last
time I had seen Mr. Legere I noted a remarkable
difference in his size.

I entered the cell area. There was a conver-
sation about my weight and his weight. At one point
Mr. Legere said to me that, "You wouldn't have been
15 able to follow in my footsteps or go where I've
been."

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

20 A. I noticed his hair was very short. Mr. Legere at
that time when I entered the cell area was standing
near the bars to the righthand side of the cell. He
had a brown wool blanket wrapped around his upper
body and it went down to about his knees. From his
knees to his feet were exposed. He had no shoes or
socks on, or pants. He had a noticeable black eye,
25 his right eye. He had what appeared to be a scrape
on his forehead. His hair was cut short. It was
brown with tinges of grey in it. To me he looked
quite a bit older than the person I expected to see
in the cell that morning.

30

I went into the cell. I stood beside Mr. Legere

1 to his immediate right. I asked -- he was very
excited, happy. He talked incessantly mostly to
Sergeant Johnston. I think at one point there was a
comment that Sergeant Johnston made to me or whatever
5 that "You won't believe where Allan has been."
Mr. Legere continued to talk about how he had eluded
the police and different things like that.

At 6:47, at approximately 6:47 I asked
Constable Charlebois for the time. This would be
10 within a minute or two after removing the handcuffs
and leg shackles from Mr. Legere. I did that
personally.

I asked Mr. Legere to sit down. He still had
the blanket around his body. I had removed the
15 shackles off his feet and the handcuffs. I asked
him to sit down, which he did. I then read to
Mr. Legere the Charter Notice, the standard Charter
Notice. I advised him that he was under arrest for
the murder of Anne Flam. I told him of his right
20 to counsel. Following that -- and I asked him if he
understood and he replied 'yeah'. He continued to
talk.

Q. Why did you say for the murder of Anne Flam?

A. Up to that point I wasn't sure what Mr. Legere had
25 been arrested for. I understood at that time that he
had been placed under arrest and had been chartered
for being unlawfully at large. So it was my intention
when I entered the cell area to make sure that
30 Mr. Legere understood that he was under arrest for
murder.

1 Q. Why didn't you mention the other, Daughney or Smith
or anything of that nature?

A. I didn't personally feel it was necessary to -- my
intention was to place him under arrest for murder.

5 Following that I read from a card the standard
police caution advising the subject of his right to
remain silent and not to have any fear from any
threats or any -- hold out any hope for any promises
and that any evidence that was received could be
10 used as evidence. I asked if he understood that
and Mr. Legere said 'yeah'.

I then -- still seated beside Mr. Legere I
read the standard secondary caution the police use
and basically it advises the subject that anything
15 that he had said previous, or anything that had been
said to him previous, he was not now compelled to
repeat and that -- I asked him if he understood that
as well and he said that he did. He said 'yeah-yeah'.
He continued to talk profusely. At 6:55, approxi-
20 mately 6:55, I asked Mr. Legere -- had stood up by
that time. I asked Mr. Legere if he would sit down
and that I was going to be seizing hair.

I told him that I had to seize hair and he
said, "Kevin, you know how I feel about that. I am
25 not consenting." And I said, "Allan, I am going to
have to take your hair anyway." I said, "Do you
want to help?" He said, "You do what you got to do
but I'll not help." So I took the clear plastic
30 exhibit bag that I had recovered from the forms
room. It is a bag that is used only one time. It

1 comes from a box of exhibit bags that are purchased
and nothing -- they are only used at one time and
disgarded. There was nothing in this plastic bag
that I had brought.

5 When Mr. Legere was seated I clipped some of
his hair and placed it into this clear plastic bag.
I then pulled several hairs from his head and placed
them in the plastic bag, the same plastic bag. I
then rolled the plastic bag up and put an exhibit
10 seal over the ends of it. At no time did Mr. Legere
make any comments about the seizure of the hair. He
just continued to talk mostly to Sergeant Johnston.

I then asked Mr. Legere to stand up, which he
did. I arranged the blanket so that a portion
15 of his lower body was showing. At that time I
removed several clumps of pubic hair, pulled them
from his genital area. I also, using the scissors,
clipped several hairs and placed them in a separate
plastic bag that I had brought with me that was
20 also empty. I placed all of the hairs into that
bag. I rolled that bag up, put the sticker on it,
and put my date, time, and name on it.

Q. When you were doing this, Corporal Mole, what if
anything did you notice about his body?

25 A. I noticed at that time that Mr. Legere, his upper
body - he appeared to be very, very muscular, which
I expected. Although he was very slight, his
muscles were very well-developed, well-defined.
His lower body I was very surprised at how slight he
30 was from the waist down. I noted that his legs

1 appeared very, very thin. His waist was thin. His
pubic hair I was surprised to see that it was very,
very light and I would describe it as light brown.

Q. Why were you surprised to see that?

5 A. I had had personal contact with Mr. Legere before in
close proximity and I always noted his hair, his
head hair to be dark and felt it was dark brown. I
expected throughout that Mr. Legere's pubic hair
would be dark brown. I was surprised to find that
10 it was light. At that time it was light coloured.

Q. Did you notice anything about the general area of
the pubic region?

15 A. I noted that -- well it appeared to me -- well I
noted that his hair was very sparse, that the hairs
appeared to be shorter than what I expected. It
looked as if to me that the hair had been chafed
or worn away as if someone had gone a long time
without wearing underwear.

20 Following that I placed my exhibits to the
side and I asked Constable Charlebois if he could
get a pair of coveralls for Mr. Legere to wear so
that we could go to the interview room.

25 At approximately 10 or so minutes before we
entered the interview room Constable Charlebois
provided to me a pair of blue coveralls which
I gave to Mr. Legere and I -- at this whole time I
stayed in the cell with Mr. Legere beside the
metal bed. When we brought the coveralls in I gave
30 him an opportunity to put the coveralls on and take
the blanket off and put the coveralls on. I noticed

1 again how very, very thin Mr. Legere was at that time
very thin.

Q. Are you able to relate to the jury any conversation
that took place in the cell from the time that you
5 went in the cell until the time you left the cell to
go to the interview room? Are you able to relate to
the jury any conversation that you heard?

A. Some of the things that were said were repeated on
several occasions.

10 Q. How slowly or fast was he talking?

A. Very rapid fire. The conversation would change from
being chased by the police at one point. I think one
of the first things when we first went in there,
a concern that Mr. Legere had was whether the media
15 were lining up outdoor and he had talked -- he talked
in profanities quite a bit of the time and talked
about -- didn't know what all this talk was about
an accomplice. That was all bullshit and that he
hadn't seen anyone all summer, that he had stayed
20 in the woods, and he repeated that - that he had
stayed in the woods all summer and how cold it was
getting now and he -- and if it wasn't -- he could
feel the snow in the air and he had to get out. That
he had five -- at least five particular places
25 that he stayed in the woods, that he stayed in a
different one every night. He never stayed two
places the same two nights in a row. He talked
about staying out around Loggieville - in the woods
out around Loggieville. He talked about -- although
30 he didn't have any accomplices he had seen 2 people

1 throughout the summer and one was -- one person he
had met crossing the Morrissey Bridge. That is
between Newcastle and Chatham Head - about halfway
across. He said that the person had made a comment
5 to him and he didn't know whether to understand
that the person had called him by name or had made
a comment about, he just understood 'Al' or 'pal'.
He talked about being chased by the police along
the tracks in Chatham and having lose some beer
10 and he was quite upset about that - a box of beer or
a bag of beer.

Q. Where if anywhere did he say he lost those?

A. I believe he said he lost the box of beer or bag of
beer on the tracks in Chatham, near Chatham. He
15 -- the other person I think he said he saw was a
person who was fishing and I believe he said around
the Golf course, in Bushville, or between Kelly
Road and Bushville. Someone was fishing and he
saw that person but they didn't see him.

20 Q. I am going to stop there for a moment, Corporal
Mole. Just to orient the jury once again. Are you
able to point using this pointer to to P-1 which
is the large aerial map behind you. Would you just
stand up and turn around? It's easier. Would you
25 point to the Morrissey Bridge?

A. This would be the Morrissey Bridge. It would span
the Miramichi River between Chatham Head and
Newcastle. Mr. Legere stated that he met a person
30 halfway across the bridge.

Q. And you have mentioned something about someone

1 fishing in Bushville and Kelly Road. Do you know --
you used to live in that particular area, corporal,
is that correct?

A. That's right. I lived on the Miramichi on two
5 occasions for approximately 6 years.

Q. Are you aware of any place in that area that is known
for fishing or people frequent for fishing?

A. There is --

Q. Perhaps you could turn just a bit so the jury is
10 not blocked?

A. Okay. This road here would be the Kelly Road and
this road here is the Harper Road. This here would
be the Golf Course and I believe this is the area
he was speaking of here.

15 Q. What is that area do you know?

A. This is Morrison Cove. There is a nature trail with
little brooks and streams that run through it and it
runs into several bodies of water here, large body
of water. I am not sure of that area of the lake
20 right now or that body of water what the name of it
is. This is the area that I understood that he was
referring to.

Q. To your knowledge is that a popular place or a place
25 frequented by fishermen?

A. Yes, it is. Yes, it is. This is the nature trail
through Morrison Cove and there is several little
streams.

Q. Continue constable.

30 A. At one point Mr. Legere talked about being on the
train on the way to Montreal and how the police

1 almost caught him. He had said that on at least
two occasions in the cell area that morning. The
first time he talked about it I was taking the hair
from his head I believe. The second time was when he
5 had the coveralls on and just before we left the cell
area and he demonstrated with the coveralls how the
police had checked him, what they had done. He said
he had been on the train, that the police boarded the
train, that they came to him. The person sitting to
10 his left was asleep. He attempted to make the
policeman believe that he was with the person
beside him. He was asked to stand up and roll up
his sleeve and I think his words were, "Oh, boy, they
got me now," or "Oh fuck, I think I'm caught." He
15 began to raise his left arm, held his arm out, and
he began to raise his sleeve on his left arm. He
raised it a few inches and the policeman told him,
"No, the other arm." And he said, "whew", so they
went to his right arm. He began to raise his sleeve.
20 He got about half way up his forearm. The policeman
said "more". So he raised it up to about the elbows
where he had described. He brought his sleeve up
and the policeman said "okay".

25 He talked about the dog and how the police dog
that had been following him all summer had become
like a pet to him. And he explained how if the dog
follows you long enough it becomes almost like a
friend, knows its quarry and he was trying to explain
30 how he would evade the dog by spitting into the woods
or backtracking. He said at one particular point the

1 dog chased him. He was being quiet in the woods and
the dog came right behind him and stuck his nose in
his rear end and it surprised him and he turned
around and he told the dog to take off or get out of
5 here and he slapped at the dog, or he made a gesture
with his hand, and the dog wouldn't go. It wanted to
be with him. So he had to growl at the dog finally
to get it to go away. And this dog he reported to me
was the police dog that was chasing him and had been
10 quite acquainted with him and he was able to treat
it like a pet.

He talked about being in the woods and he
talked about lighting fires. He talked about all of
the helicopters that were flying overhead all summer
15 long and the four-wheel drives that the police were
using to try and catch him. He was very proud of
the fact that the police couldn't catch him through
that summer.

20 Q. You mentioned the dog, a police dog. What if
anything did he mention about the dog handler?

A. He had mentioned earlier during the time when I
first entered the cell about the incident, an
incident where he had shot over a policeman's head.
As we were leaving the cell area, we began to leave
25 the cell area, he came out of the cell. He pointed
to me and he said, "That policeman shot at me first,"
and he said, "I bet you didn't get a report on that."
And then he went on to explain how he didn't shoot
at the policeman. He said, "I only shot over his
30 head but," he said, "you check." He said, "He
shot first." And he said, "I didn't shoot at him. I

1 just shot over his head." And he said, "I bet you didn't get a report on that."

Q. Before we go any farther, corporal, I am going to -- so we don't miss that -- I am going to show you an item I have taken from the possession of the Clerk. 5 Would you look at that item? First perhaps, My Lord, I should have it marked for identification.

THE COURT: 40 is the next.

40 FOR IDENT. Pubic Hair Standard.

10 Q. I show you an item that has been marked 40. Would you look at that item for us, please, and tell us if you can identify it?

A. This would appear to be the clear plastic bag that I would have placed the pubic hair standard that 15 morning.

Q. The pubic hair standard?

A. The pubic hair standard into this bag.

Q. You are referring to the hair, the pubic hair?

A. The pubic hair standard. I say that because I 20 recognize a similar bag, but I recognize the tag, the R.C.M.P. exhibit tag that I placed on the bag that morning. It's in the area that I had testified to on the bag across the opening. These are all additions to the bag since I've had it, this red 25 tag - these letters and numbers and these two court tags. Also, the exhibit item number - I placed that on there.

Q. Which number is it?

A. Number 83. 30

Q. Where did you get that number from?

1 A. When I turned this exhibit over to Constable Laurent Houle in Newcastle detachment, I received an item number from him and I placed it on the bag at that time.

5 Q. That is the next question. What did you do with that particular pubic hair that you placed in the bag from the time that you seized it from the accused until you gave possession of it up?

10 A. I kept this item here - particular item here - in my personal possession until the 26th of November, 1989, at approximately 5 minutes to 8:00. I met with Constable Laurent Houle at the Newcastle detachment exhibit room. I received that number from him. I placed it on the tag myself and I turned that
15 item directly over to Constable --

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

A. No.

20 Q. And the person that you took the hair that you say was pubic hair was put in this bag, the person that you took that hair from is whom?

A. Mr. Allan Legere who is seated in court to my left there.

25 Q. Between the two police officers?

A. That's correct - in the white shirt with his head down.

Q. And that is the same person obviously you had the conversation with that morning?

30 A. That's correct. At one point during the conversation about the time that we were taking the hair that

1 Mr. Legere talked about -- I had made some jokes
about his size and he said he hadn't been eating
that well until about the first of July. He had
relied mostly on berries and whatever you get in the
5 woods. And then after the first of July or the first
of the summer he was able to eat quite well. He
ate -- his comment was that he probably ate better
than we did. He ate lobster, hams. He said hams.
I think he said oysters and he cooked them himself.

10 Q. Now you've indicated that you left the -- unless there
is something else. I would like you to tell the jury
what if any connection you had with anything else
you may have seized in relation to this matter
following the time that you left the cell area?

15 A. After entering the interview room --

Q. And this would have been after leaving the cell?

A. That's correct.

Q. What time did you leave the cell area do you remember?

20 A. Approximately 7:30 that morning. We left the cell.
Constable Charlebois went ahead to make sure there
were no other persons present that could have
contact with Mr. Legere. We left the cell area,
the main cell block area, travelled the hallway up
four short stairs into the main office area and into
25 the interview room which would be on the southeast
corner I believe of the Newcastle detachment. The
interview room at Newcastle detachment is approxi-
mately 10 by 10 in dimensions. It has light-
30 coloured walls, brown carpeting. At that time there
was about a five foot table in the room, three chairs,

1 a tape recorder, telephone book, my briefcase, and my
jacket.

Q. How long did you stay in the interview room with the
accused?

5 A. I went into the interview room with Mr. Legere at
7:30 that morning approximately and Mr. Legere was
taken from that interview room at 2:15 p.m.

Q. During that period of time did anyone else enter that
room or did you remove anything from that room?

10 A. At approximately 9:30 that morning Mr. Legere asked
if he could blow his nose. His breakfast had
arrived. I gave him his breakfast. I left the room.
Constable Charlebois and I were the only two members
with him in the room. I left him with Constable
15 Charlebois. I went out to the bathroom area at
the detachment. I removed a roll of toilet tissue,
a new roll of toilet tissue that was covered. I
removed the packaging from it. I went to the main
office area. I received an empty garbage can that
20 looked fairly clean. I went back to the interview
room with this garbage can and this roll of toilet
paper - toilet tissue. I went to the interview
room. When I first went in the interview room at
25 7:30 Mr. Legere sat with his back to the door to my
left. I sat directly to his right. Constable
Charlebois sat opposite. When I entered the inter-
view room I took this garbage can that I had. I
gave the tissue to Mr. Legere. He placed it on the
table. Took enough out to blow his nose. I took the
30 garbage can and I placed it down by my feet on the

1 righthand side of the table. Mr. Legere ate his
breakfast. He blew his nose on several occasions.
Each time that he blew his nose I would observe
him blow his nose. He'd open the Kleenex and look
5 at it. He'd close the Kleenex and he'd throw it in
the garbage. I think on the last occasion - I think
about the third time - he threw it into his plate of
food and then threw the plate of food into the
garbage can.

10 Q. This was the same Kleenex or a different piece of
toilet paper each time?

A. He just continued to pull off the roll, blow his nose,
and each time he'd do it in a similar fashion. He'd
blow his nose. He'd look at it. There were bits of
15 -- of course there was nasal discharge or congestion.
There appeared to be bits of mucus and a red --
portions of red dried blood or whatever. He'd look
at that. He'd make a comment about his having a
nose bleed or whatever. He'd close it back up and
20 throw it in the garbage can. At about 10:20 I
removed that garbage can from the area by my feet
and I placed it to the corner of the interview room.
At about 11:20 I left the interview room with that
garbage can. I emptied its contents. I removed the
25 tissue paper. I placed it into another clear
plastic exhibit bag that hadn't been used before.
I marked and initialled it and I kept it in my
personal possession as well.

30 Q. What if anything was on the tissue paper that you

kept in your possession?

A. The tissue paper was the tissue paper that I watched Mr. Legere discard after blowing his nose and I observed what I thought were bits of blood and mucus on the tissue.

Q. What did you do with the actual tissue paper? What did you put it in?

A. I took the tissue paper from the garbage can. I placed it in a clear plastic exhibit bag. I folded that bag up. I put the exhibit sticker on much as I had done before and I marked and initialled it and I kept it in my personal possession.

Q. Until when?

A. I -- just after lunch on Monday, the 27th of November, I went to the Newcastle detachment where I met with the exhibit custodian, Constable Davis. I received an exhibit number from him which I placed on the bag. Following that I -- on that same date at approximately 2:12 in the afternoon I turned that exhibit directly over to Constable Ron Charlebois in Douglstown at the R.C.M.P. office there.

MR. WALSH: My Lord, I have another item that I will take from the possession of the Clerk and I will ask that it be marked for identification on this trial.

THE COURT: This is 4-P.

4-P FOR IDENT: Toilet tissue.

Q. Corporal, I will show you the item that has been marked 4-P. Would you look at that for us please and tell us whether you can identify it?

A. I can identify the tag on this plastic bag. The

1 tissue in the bag now appears to be similar to the
tissue that I had placed in the bag. You can see
bits of mucus - I don't know what you call it - and
blood were on the tissue at the time. This looks
5 like to be dried there now. This appears to be the
same item. The exhibit tag I recognize - the item
number 335. The file number, the exhibit number,
my name, the date, and the time that I actually
seized it in Newcastle, New Brunswick. This hasn't
10 changed really except that the bag is opened in a
different place and there is 2 court stickers on it
now and some writing on it that I don't recognize
on the bag, but the bag appears to be the same one
that I gave to Constable Charlebois - the tag
15 definitely is.

Q. Did you ever take possession of that item after that
time that you gave it to Constable Charlebois?

A. No.

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

THE COURT: Did you intend to mention scalp hair?

MR. WALSH: No, My Lord. The only one that is going to
be relevant for the purpose that we want to introduce
that is the pubic hair.

25 THE COURT: Oh, yes. Well I thought you might be
overlooking it and rather than having a complication-

MR. WALSH: No, thank you, My Lord.

The scalp hair you put in a bag and you gave that to
who?

30 A. Constable Houle.

1 MR. WALSH: But the hairs that we have dealt with this
morning - excuse me - or this afternoon are the
pubic hairs, is that correct?

A. My item number 83, yes - the item that you showed me
5 contained the pubic hair standard from Mr. Legere.

MR. WALSH: Thank you, My Lord.

THE COURT: We will have a recess now, but before we do I
wanted to raise the question of programming. This is
Thursday afternoon isn't it? About this time,
10 Mr. Walsh, you always put in a pitch for all the
little witnesses that you have that you want to
finish up. The jury are not going to be very happy
about coming back tomorrow after I promised earlier
in the week that it might not be necessary, but we
15 haven't made the progress I'm afraid this week that
we anticipated. We certainly will have to go on
tomorrow. I think counsel had indicated earlier
as a matter of fact that you have a lot of witnesses
here.

20 MR. WALSH: We discussed this at lunch time, as you are
aware. It slowed down considerably after we had --
it slowed down considerably greater than we had
anticipated at the beginning of the week. We had a
discussion at lunch time. Perhaps Mr. Allman could
25 advise the court as to what the best plans -- because
the number of witnesses that he has is --

MR. ALLMAN: That is correct, My Lord. We are going to
be going through 7 police or police related witnesses.
I include in that context Mr. Evers and Miss Lumgair.
30 Then we have 6 civilian witnesses who have been here

1 for quite a while. We also have a Mr. Lazimi who was
not able to come at his appointed time, which is
number 177, and we would like to get him in and out.
There are two alternatives that I see. One is to
5 frankly recognize the situation we've gotten into
delay wise, set tomorrow to call just a few witnesses
that we really do want to get rid of, and then as
Your Lordship knows we have matters we have to deal
with on Monday that the jury are not going to be
10 required for. The other alternative is to sit
tomorrow morning and tomorrow afternoon and maybe
Saturday and get through the 7 police and the 6
civilian that I just mentioned before we get onto
the remaining two areas that we hope to come to a
15 conclusion. I am basically asking Your Lordship
and I take it Your Lordship may ask the jury for
guidance. Would they prefer to ram ahead Friday
afternoon and Saturday, or would they prefer to
save this and we're not going to do this and let's
20 just do Friday morning.

THE COURT: We won't do Saturday. I will answer that for
the jury. We will --

MR. ALLMAN: They could think about it over the recess.

THE COURT: Well I am not going to let them.

25 MR. ALLMAN: You could think about it over the recess,
too.

THE COURT: Well we could, although my proposal is this.
I think we might perhaps try to sit for awhile
tomorrow afternoon, or perhaps have a little longer
30 session than we had planned. Normally we had planned
rising about 1:00 o'clock on Friday. I wonder if
we couldn't perhaps go until about 3:00 o'clock.

1 JUROR: My Lord, there are a couple of jurors that have
appointments of medical nature tomorrow afternoon,
3:30 and then we have a 3:00 o'clock. So if we
could get out at --

5 THE COURT: 2:00 anyway. Well there you have it and that
is fair enough because last Friday I had one of my
own - dental rather.

MR. ALLMAN: We will get enough witnesses to guarantee
that we go until 2:00 o'clock tomorrow and then some
10 just in case.

THE COURT: Yes, but I would suggest that you concentrate
on your civilian witnesses.

MR. ALLMAN: It might disrupt the order a little bit.
I think the jury understand by now what we are doing.

15 THE COURT: Yes, but I think your police witnesses are
better able perhaps to --

MR. ALLMAN: They can endure the inconvenience better.

THE COURT: Yes, I think your civilian witnesses should
be got out of the way. So we will plan on doing that
20 tomorrow. We will have to talk tomorrow about where
we go on Monday. We had sort of anticipated next
week would be a short week and the jury would have a
fairly long break over the Thanksgiving holiday, as
much as 5 days. It may be down to 4 days now. That
25 may even wind up at 3 days. Anyway, tomorrow we will
talk about next week. So, the jury out.

JURY RETIRES

THE COURT: You have finished your direct examination?

30 MR. WALSH: Yes, I have, My Lord.

1 THE COURT: I would ask counsel to make it a twenty-
minute break.

COURT RECESSED

5 COURT RESUMES - (Accused present)

MR. FURLOTTE: Before we start I would like some
directions from the court. I discussed this with
Crown prosecutors during the break and in regards
to cross-examination of Corporal Mole there are
10 aspects of the statement given by Mr. Legere in the
interrogation room which the Crown is not putting
into evidence and therefore there is no way I can
put it into evidence. But there are portions in that
statement which was on tape. It's been transcribed
15 and it's answers given to certain questions by
Corporal Mole and Constable Charlebois which
contradicts the testimony that Corporal Mole has
given in court and that Sergeant Johnston has given
in court. So basically these police officers are
20 saying that Mr. Legere made certain statements to
them, but then the best evidence, or the real
evidence, that we have, the defence, is when he is
being asked these questions on tape, he is denying
having said that he had shot at the police officer.
25 There were questions about the position with the
police on the train. So he is contradicting on tape
what these police officers are claiming that he
said during his original statement.

30 THE COURT: Who is contradicting?

MR. FURLOTTE: Mr. Legere is.

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1 THE COURT: But if those statements aren't admissible
how can you put them in? You could use those
statements to -- if Corporal Mole is saying some-
thing here, as we discussed before, saying something
5 different than he said on some other occasion, you
can use those to cross-examine him, but there is no
way you can use statements made by the accused to
get -- you can't get evidence of the accused in in
that fashion.

10 MR. FURLOTTE: No, I didn't want the statements into
evidence. I just wanted to be able to cross-examine
Constable Mole on those certain portions of the
statement where Mr. Legere was contradicting what the
officers are saying.

15 THE COURT: You are trying to get Mr. Legere's evidence
in and you can't get it in in that way.

MR. FURLOTTE: I'd like some --

THE COURT: Let's hear what the Crown has to say.

20 MR. SLEETH: My Lord, if it please the court, on that
particular subject the position of the Crown will
be that what my learned friend is talking about is
the classical form of self-serving evidence which
has been a long-standing rule. You cannot admit such
evidence. The Crown is not offering such evidence.
25 The Crown has not presented to the court and is not
presenting to the jurors any such evidence of this
particular tape. I also note my learned friend has
twice referred to best evidence. The best evidence
rule applies to documents, not tapes. Self-serving
30 evidence is the basis on which the Crown opposes

1 the very mention made by my learned friend. The
entire tape itself would constitute self-serving
evidence and be it inadmissible through counsel for
the accused or through cross-examination of Crown
5 witnesses. Small discreet little portions of it
would be even more inadmissible.

I mentioned before My Lord returned that if my
learned friend wanted to reflect on this more over-
night possibly, he might consider doing a portion of
10 his cross-examination of this witness, and again we
seek the guidance of the court here. Complete that
portion of the cross-examination that did not deal
with this particular area and if he felt he had
discovered some basis in law which entitled him to
15 continue with his application he could do so
tomorrow morning if he wanted some time to think
about it.

THE COURT: Why don't you do that, Mr. Furlotte? Think
about it overnight and this witness could be
20 stood aside. I must say I don't --

MR. FURLOTTE: I have done some later research and I
couldn't find out where it could say I could or
couldn't. I just wasn't able to find it.

THE COURT: Well, if you can find out where it says you
25 can but I don't think you are going to find it.
This is one of the reasons why the Crown isn't --
perhaps the accused didn't make admissions at that
stage, but in any event - or confessions and they
perhaps wouldn't be interested in putting it in,
30 although if he repeated what he has said so far, I

1 suppose those might be treated as supporting
admissions in some degree.

MR. FURLOTTE: I was just thinking something along the
analogy of if an accused was to take the stand
5 himself and he was to make contradictory statements
on the stand which were contrary to some statement
that he gave to the police but was ruled inadmissible
by the court, then the Crown is able to cross-examine
on statement.

10 MR. SLEETH: Oh, My Lord, my learned friend mistakes the
law entirely on that. We could cross-examine the
accused on something that had in fact been voir dired
and ruled admissible.

THE COURT: What you are really trying to do I think,
15 Mr. Furlotte, is get evidence by the accused into the
record without having him go on the stand. It is
not admissible as far as I am concerned. I mean if
he wants to give a different account, he has the
privilege of course when the time comes and when the
20 defence -- I can't refer to this in front of the
jury, of course.

MR. FURLOTTE: I think even the Crown can understand the
dilemma that I am in because with the transcript of
the taped statement I have evidence that Mr. Legere
25 is denying things there that the police officers are
claiming that he said earlier in the morning. You
are right. I would like to get it in.

MR. SLEETH: My Lord, if it please the court, again I
30 apologize but my learned friend used the expression
'even the Crown can'. Especially the Crown recognizes

1 the dilemma in which my learned friend finds himself.
Unfortunately the law and the jurisprudence makes it
equally clear that he does not find a way out of that
dilemma. He is caught on the horns of it. It is
5 self-serving evidence. Our position is that it is not
proper to admit it in toto or in part and we are
prepared to argue that further on.

THE COURT: Well, look, think this out overnight. Think
this over the night, Mr. Furlotte. What do you want
10 to do - stand this witness aside?

MR. WALSH: Well, My Lord, it depends on --

MR. FURLOTTE: I can cross-examine him on the portions so
far without his staying outside of the --

THE COURT: Well, all right.

15 MR. WALSH: And I can have Corporal Mole -- Corporal Mole
will have to make himself available tomorrow morning
and if he can convince you that there is some law
that supports that, then --

THE COURT: Just on that one aspect tomorrow morning.

20 MR. WALSH: On that one aspect and you can put him back
on. If not, then Corporal Mole can --

THE COURT: All right, we will do that. There are no
other problems about the areas. What other witness
do you have this afternoon?

25 MR. WALSH: The next witness would be Constable Charlebois
following the cross-examination of --

THE COURT: This is dealing with his involvement in the
cell business and it would be largely repetition I
30 gather.

1 MR. WALSH: It will be, yes. It does on a large part,
My Lord, but not entirely.

THE COURT: Okay, bring the jury in.

(Jury called - All present)

5 THE COURT: Thank you. Now the cross-examination of
Corporal Mole.

CROSS-EXAMINATION BY MR. FURLLOTTE:

Q. Corporal Mole, I understand from your testimony
today that the times that you put in your notes,
10 or in your police report, that you relied on the
times given to you by Corporal Charlebois?

A. I received from Corporal Charlebois that morning two
particular times.

Q. Two particular times?

15 A. That's correct.

Q. And which particular times did you receive from
Constable Charlebois?

A. I received the time of the delivery of the Charter
Notice to Mr. Legere at 6:47 and I requested and
20 received and the time 6:55 for the seizure of the
pubic hair standard from Mr. Legere.

Q. How did you rely on the other times that you had in
your notes?

A. I entered the interview room at 7:30 a.m. I
25 retrieved my briefcase. I began to take notes and
except for the two times that I had received from
Constable Charlebois I guessed.

Q. So you only began taking notes at 7:30?

30 A. That's correct.

- 1 Q. Once you entered the interview room?
- A. That's correct.
- Q. I have a copy of your notes here, typed version,
which starts back at -- you give times of 5:40, 5:55,
5 6:20, 6:35, 6:47 describing as to what took place
at those times up to 6:55. Now where did you get
the times from, like say, 5:40 and 5:55? Why did you
mark those times down?
- A. Those are the approximate times that I believed at
10 7:30. In retrospect I was guessing at the times
it took until I got to 6:47.
- Q. And when you made these notes -- or should I say
before you made these notes did you compare notes
with Sergeant Johnston or Constable Charlebois?
- 15 A. No. When I began to take notes it was after I had
entered the interview room. I tried to recall what
had taken place previous to that. I didn't have the
benefit of having either Sergeant Johnston with me
or was I beside --
- 20 Q. Okay, so that the notes before 7:00 o'clock would
have been made at 7:00 o'clock. Is that what you
are saying? Or as soon as you entered the interview
room, then you started your notes and went back and
brought them up to 7:00 o'clock?
- 25 A. No, I entered the interview room at 7:30.
- Q. I'm sorry - 7:30. So this would have been done at
7:30?
- A. At 7:30 I would have went into the interview room,
30 retrieved my watch and whatever, and I would have
made notes of what had occurred up to 7:30.

- 1 Q. Okay, fine. And the times basically before 7:30
except for the two times you received from Constable
Charlebois were just estimations?
- A. They were a guess on my part, that's correct.
- 5 Q. So when you arrived at the detachment who did you meet
first off?
- A. I arrived at the detachment with Constable Charlebois.
- Q. And that was approximately what time?
- A. It would be -- I don't really remember. I would think
10 it would probably be 10 or 15 minutes before I
entered the cell block.
- Q. 10 or 15 minutes before you entered?
- A. That's correct.
- Q. You don't have a copy of your notes on you do you?
- 15 A. I don't have that copy there, no.
- Q. Do you have the original?
- A. Do I have my notes with me? Yes, I do.
- Q. Well maybe you could check your notes and see what
times you put in your notes?
- 20 A. My notes are -- the notes that you have there are a
typewritten copy of the notes that I have in my
notebook.
- Q. So what time do you say that you met with Sergeant
Johnston?
- 25 A. Shortly after my arrival at the office.
- Q. Approximately what time?
- A. Approximately 15 minutes before I entered the cell
block.
- 30 Q. What time did you enter the cell block?
- A. Probably 7 or 8 minutes before I read the Charter
Notice.

- 1 Q. 7 or 8 minutes before you read the Charter Notice?
A. That's correct.
- Q. What time did you read the Charter Notice?
A. At 6:47.
- 5 Q. Do you recall putting in your notes that you entered
the cell block area at 6:35?
A. That's correct.
- Q. Which would have been 12 minutes before you read the
Charter Notice?
10 A. Okay.
- Q. Do you recall stating that you met with Sergeant
Johnston at 5:55?
A. It says that in my notes?
- Q. That's what I have, yes. Do you want to check yours?
15 A. No, that's fine. If it says that in those notes,
that's the time that I wrote. If you are asking me
if that's the actual time, I don't know. I didn't
have a watch.
- Q. From 5:55 to 6:35 that would be 40 minutes.
20 A. Uh-huh. That's correct.
- Q. Not 15 or 20.
A. That's correct.
- Q. Now it's 7:30 when you made your notes. Did it seem
like 40 minutes or did it seem like 15 or 20 minutes?
25 A. I just guessed. I really don't know. At the time
everything happened very quickly.
- Q. When you met with Sergeant Johnston, regardless of
what time it was, what took place?
30 A. We had a brief conversation. Following that he left
the room. I made a phone call.

- 1 Q. How long did that conversation take?
A. My telephone conversation?
Q. No, with Sergeant Johnston.
A. No more than a minute - two minutes at the most.
- 5 Q. A minute - two minutes. And then you went and made
a phone call?
A. That's correct.
Q. And how long did that phone call take?
A. I believe 2 or 3 minutes, maybe 4 minutes.
- 10 Q. That was a long distance phone call to Mrs. Flam?
A. That's correct.
Q. In Halifax?
A. That's correct.
Q. A little after 6:00 o'clock in the morning?
15 A. It was before 6:47. I couldn't tell you the exact
time.
Q. But the telephone call could have lasted 3 - 4
minutes, maybe even longer?
A. It was a very brief telephone call.
- 20 Q. After you made the telephone call you what - went to
get some exhibit bags?
A. I met with Sergeant Johnston.
Q. So you met with Sergeant Johnston first?
A. That's correct.
- 25 Q. He told you -- you had brief discussion?
A. That's correct.
Q. You went and made your phone call?
A. I didn't go anywhere. I just stayed where I was
and I made the phone call.
- 30 Q. Okay, you stayed where you were. You met with
Sergeant Johnston again?

- 1 A. That's correct - in the same area that I was at.
- Q. The same area you were at. Then you went to get the exhibit bag?
- A. That's correct.
- 5 Q. And what else did you have to get besides the exhibit bags?
- A. I retrieved a pair of rubber gloves, surgical gloves, a pair of scissors, and exhibit stickers, and exhibit bags.
- 10 Q. How long would that --
- A. A minute - a couple of minutes.
- Q. So you could have expended between the phone call and picking up the scissors and exhibit bags five minutes?
- A. I would have been at the office a few minutes. I
- 15 would have met with Sergeant Johnston. I would have had a few -- a brief discussion, maybe a couple of minutes. I'm not sure exactly how long. Following that discussion I made a phone call. The phone call
- 20 may have lasted for five minutes. The person I was calling had to get out of bed, come downstairs, answer the phone, wake up. Following that Sergeant Johnston appeared. I left from there. I went to get the exhibit bags in the main office area and that
- 25 may have taken 2 or 3 minutes as well. I went directly from there to -- followed Sergeant Johnston to the cell.
- Q. I believe Sergeant Johnston testified, if my memory serves me correctly, that he met with you and
- 30 Constable Charlebois about 6:35 and you went to the cell block area about 6:40. So for about 4 minutes

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- 1 span from the first time that he met you until
his -- reached the cell block area where Mr. Legere
was. Would be about appropriate?
- A. It sounds okay.
- 5 Q. And in that 4 minutes you called Mrs. Flam and you
retrieved some scissors and exhibit bags?
- A. That's correct.
- Q. So the conversation you may have had with Sergeant
Johnston must have been very brief?
- 10 A. It was only a couple of minutes.
- Q. What was your conversation with Sergeant Johnston?
- A. My first question is whether or not it is true that
that is Allan Legere and he confirmed that it was.
I believed him. He said, "You can't shut him up. He
15 won't stop talking. He's real cooperative." Things
like that. We discussed who was going to do the
interviewing, who was going to take the notes. We
discussed whether or not I was going to give him the
Charter Notice. We discussed whether or not I was
20 going to seize his hair, which I did.
- Q. And in your notes you have all this taking place
at 5:55.
- A. I wrote those that morning. If that's what it says
there, that is what I wrote.
- 25 Q. I believe that Sergeant Johnston testified that he
hadn't met you until about 6:35 to 6:36?
- A. I don't know what Sergeant Johnston testified to.
- Q. Did Sergeant tell you that Mr. Legere had made
30 several admissions to him?
- A. He said that you can't shut him up, that he's talking

1 a mile a minute, to hurry up. So everything I had
to do was to hurry.

Q. And did Sergeant Johnston mention to you at that time
that Legere had mentioned about the October shooting
5 incident at Corporal Tomassin?

A. I don't recall that in particular. I can recall that

Q. Would you like to check your notes?

A. I can recall in particular that he talked about
being in the woods all summer.

10 Q. That was at this initial meeting with Sergeant
Johnston?

A. That's correct. I didn't have any knowledge of where
at the time -- when I arrived at the office I didn't
really know what was going on. I was just told to
15 get there, that Mr. Legere had been apprehended and
I wouldn't know if they pulled him out of a river
or -- I didn't realize that he'd come from Montreal
or anything.

Q. Did you put in your notes that when you met with
20 Sergeant Johnston at 5:55 that Sergeant Johnston
told you that Legere told Sergeant Johnston about
the shooting incident at Corporal Tomassin?

MR. WALSH: My Lord, if I could. He keeps referring to
this page of notes. If he would like to, he could
25 show them to Corporal Mole.

MR. FURLOTTE: I asked the corporal if he would like to
check his notes and he doesn't seem --

MR. WALSH: He explained that that was represented and --

30 THE COURT: Why not show him the statement and let him
read it to refresh his mind.

1 Q. This typed version of your notes, corporal. At
6:55 -- or 5:55 rather. Did you note under time 5:55
that Sergeant Johnston told you that Mr. Legere
commented about the October shooting incident at
5 Corporal Tomassin?

A. That's correct.

Q. Do you recall that happening?

A. Yes.

10 Q. At your initial meeting with Sergeant Johnston he
told you that Mr. Legere said this?

A. Yes.

Q. And also comments regarding leaving the area and
being checked on the train in Quebec?

A. Yes, he did.

15 Q. That's your initial meeting with Sergeant Johnston
at
at 5:55 or /least before you reached the cell block
area?

A. That's correct.

20 Q. And including showing how he's asked to raise his
shirt sleeve and show his tattoo?

A. Yes. That was told to me now.

Q. Sergeant Johnston told you that?

A. Everything was said very quickly. I was told that.
He never showed me.

25 Q. That's before you reached the cell block area?

A. That's correct.

Q. Now when you reached the cell block area what did you
observe about Mr. Legere?

30 A. He was in the cell. The door was locked. He had a
brown blanket wrapped around him. He had shackles on
his feet.

- 1 Q. And where were his hands?
- A. Behind his back. I didn't realize that until I got in, but I didn't observe --
- Q. Hands were handcuffed behind his back?
- 5 A. That's correct.
- Q. With a blanket over him?
- A. That's correct.
- Q. Then what you have in your notes at 5:55 before you reached the cell block area, is that a complete
- 10 fabrication? How could Sergeant Mason Johnston have told you that Mr. Legere, as well as the things about shooting at Corporal Tomassin and being on the train, being checked on the train, including showing how he was asked to raise his shirt sleeve and show
- 15 his tattoo, and all that while Mr. Legere had been wrapped in a blanket and was handcuffed -- hands handcuffed behind his back?
- A. I'm not sure exactly what I meant by that.
- Q. Are you sure what Sergeant Johnston meant by that?
- 20 A. Like I say it was -- the conversation that I had with Sergeant Johnston was very quick. It was a lot of information within a short period of time and I don't know if showing is a proper word or describing. It might have been a better word - describing.
- 25 Q. You stated you made these notes at 7:30, as soon as you entered the cell block area because everything was fresh in your mind?
- A. That's correct.
- 30 Q. So you would have made those notes, according to your testimony, before Mr. Legere even had a pair of

- 1 coveralls on?
- A. That's correct. Oh --
- Q. How could you get that in your notes if Mr. Legere
5 didn't even have his sleeve to roll up and show
Sergeant Johnston?
- A. I didn't make the notes before I went in the interview
room. I made the notes when I was in the interview
room at 7:30.
- Q. Right. You made the notes before Mr. Legere had the
10 coveralls.
- A. I made the notes after Mr. Legere had the coveralls
on.
- Q. I understood you just to say that you made them
before he --
- 15 MR. WALSH: No, he never said that at all, My Lord.
- THE COURT: No, I think he said that he put the coveralls
on in the cell from a blanket -- The witness' evidence
here was that Mr. Leger told them about it once in
the cell when he had the blanket on and then later
20 after he had been given the coveralls in the cell
and all before 7:30 - that he had demonstrated with
the coveralls how the sleeve had been pulled out.
That was the witness' evidence.
- Q. Okay, so you are saying then that's an error in your
25 notes?
- A. That's correct. The proper word might have been
'described', I don't know.
- Q. Now it seems in your notes that Corporal Johnston
30 told you quite a bit what Mr. Legere had told him in
the 4 minutes you were with him. Sergeant Johnston

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1 calling Mrs. Flam and running around getting scissors
and exhibit bags. How much did Mason Johnston tell
you that Mr. Legere said at that time or did he tell
you anything at that time?

5 A. Over and above what I have already testified to?

Q. Yes.

A. I don't recall any other information I might have
gotten from Sergeant Johnston at that time other than
what I have already testified to.

10 Q. Were these notes made simply to verify Sergeant
Johnston's testimony that Mr. Legere told him some-
thing between 6:20 and 6:35 or are they an honest
mistake?

15 A. You mean my notes or do you mean a portion of my
notes?

Q. Yes.

A. Yes my notes or yes a portion of my notes?

20 Q. It could appear, corporal, that these notes were
deliberately made to support Sergeant Johnston's
testimony that Mr. Legere told him something between
6:20 and 6:35 which apparently cannot be possible.

MR. WALSH: My Lord, I don't know if that is a figment--
it's a pretty blatant statement, but if he wants to
25 phrase it in the form of a question I expect
Corporal Mole will be happy to answer it.

THE COURT: You were about to treat it as a question
weren't you?

30 A. Well, My Lord, I was going to ask yourself if you
could ask --

THE COURT: If you want elucidation on it, you ask me.

1 A. I was going to ask, My Lord, if you could help me
with the question - what the question is.

THE COURT: Ask Mr. Furlotte to help you.

5 Q. If you want to read your notes at 5:55 before you
enter the cell block, what took place before you
entered the cell block area. Does that appear, what
you have in your notes, to corroborate the testimony
given by Sergeant Johnston that Allan Legere spoke
to him and told him certain things before reaching
10 the cell block area?

A. I wasn't present when Sergeant Johnston testified.

Q. But if Sergeant Johnston testified about certain
things Legere told him between 6:20 and 6:35, and
those things told to him were in your notes, would it
15 appear that you were attempting to corroborate
Sergeant Johnston's testimony?

A. I made those notes from what I could recall at the
time. I made those notes at 7:30 in the morning
20 the 24th of November. I didn't specifically take
those notes to do anything other than refresh my
memory.

Q. Corporal Mole, did you say you had your original
notes on you? Could I see them?

25 MR. WALSH: No. Excuse me, My Lord, there is no basis
in law for that request. It's just a --

Q. You relied on your original notes to make this typed
version?

A. That's correct.

30 Q. And you are using this typed version to refresh your
memory before coming to court or your original notes?

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1 MR. WALSH: My Lord, I believe there is basis in law
that when a police officer uses his notes to refresh
his memory before coming to court that I have the
right to see his notes.

5 THE COURT: What is the authority or where is it?

MR. FURLOTTE: Again, Criminal Evidence Handbook by
Harold J. Cox, page 261. Under the heading "Notes
Refreshing Memory" it says, "Where notes are used by
Crown witnesses, the defence is entitled to production
10 of those notes." It quotes R. vs. Ballillie,
1954, Ontario Court of Appeal decision recorded at
107 CCC, p.405. And another Court of Appeal
decision, R. vs. Monfils and 4 others, 1971 case
reported at 4 CCC (2d) p.263, again, Ontario Court
15 of Appeal.

THE COURT: Are these notes here -- you know this
business of disclosure has been the ruination of
lawyers. Lawyers used to talk about issues and
facts. Now all they do is quibble. I don't know
20 what is going to happen to the legal profession in a
few more year's time. However, apart from that, are
these notes here given on disclosure are they the
same notes that you made originally or did you make
different notes originally?

25 A. They are basically a copy of the original notes, My
Lord.

THE COURT: Why don't you let the witness, Mr. Furlotte,
read these notes again or read portions, whatever
you are going to examine on? You are trying to
30 establish that he is saying something different now

1 than he said --

MR. FURLOTTE: My Lord, I just led this court to believe
that there is a suspicion that these notes, typed up
version which I was presented with, may be --

5 THE COURT: Falsified.

MR. FURLOTTE: May be a fabrication to support Sergeant
Johnston's testimony and in order to -- I believe for
this officer to clear himself he should want to --

MR. WALSH: He doesn't have to clear himself of anything.

10 The only one who has testified in this courtroom is
Mr. Furlotte.

THE COURT: This officer has said these are --

MR. FURLOTTE: This witness has testified, though, that
he has used his own notes to refresh his memory for
15 the preparation for coming to court and the law says
when a witness does that I should be able to check his
notes.

THE COURT: Have you got your notes?

A. Yes, My Lord, I do.

20 THE COURT: Why don't you compare your notes against these
notes and then talk from one or the other? You
don't have any objection to producing your notes, I
gather, do you?

A. No, My Lord.

25 THE COURT: The Crown don't object?

MR. WALSH: Well, My Lord, I don't know -- all I am
trying to get at here, My Lord, is that the normal
rules of evidence in law as Your Lordship is well
aware of is unless the officer uses - in my under-
30 standing of the law - unless the officer uses his

1 notebook in the courtroom to refresh his memory
there is no right of any lawyer to ask the particular
witness to go into a fishing expedition to get into
a notebook that a police officer uses for many
5 different things. All Mr. Furlotte has done here is
refer to --

THE COURT: Well, the witness has said that he refreshed
his notes before coming to court - he refreshed his
memory rather.

10 MR. WALSH: Yes, but I am talking about inside the court-
room. If he uses his notes to refresh his memory
in the courtroom, then Mr. Furlotte has the right to
look at them. That is my understanding of the law.
All Mr. Furlotte did was to show him the notes here
15 for the purpose of actually trying to get at some-
thing he doesn't have a right to in the first place.

THE COURT: Why don't you give him those notes there and--

MR. FURLOTTE: He has them right in front of him.

THE COURT: You have those notes.

20 MR. FURLOTTE: He has my copy right in front of him.

THE COURT: Do you want to get your own notes? I am not
going to make you produce them. I am just going to
ask you to check them against your notes there and see
if they say the same thing. I am not going to ask
25 you to produce them to Mr. Furlotte or to the court.

A. The notes at 5:55 - in my notes in the notes at 5:55
in here. I've checked. I've compared them, My Lord.

THE COURT: Any other time span you want to check?

30 MR. FURLOTTE: I don't see any point in it, My Lord.

THE COURT: Put your book away.

- 1 Q. Constable Mole, you describe Mr. Legere when you
met him that morning, November 24, 1989, as having
a long face?
- A. Long narrow face.
- 5 Q. Long narrow face. And that was in comparing him
to the last time you saw him in 1988?
- A. That's correct.
- Q. Now I'll show you Exhibit P-72, which is photo
lineup. Mr. Legere's picture is number 6. If you
10 were going to give a description - if you saw that
person and you were going to give a description for
police purposes, would you describe that person as
having a long narrow face?
- A. I note from these photographs these are profile
15 photographs. The size of each person's head appears
to be a bit different as if the photographs were
taken from different distances. I'm not certain
but I believe in this photograph here Mr. Legere has
his teeth and when I saw him he didn't have his
20 teeth when I first saw him that morning. Without his
teeth in -- I'm not sure if he has teeth in there or
not. It looks like he does, but without his teeth
in he really at that time there he looked like an
old man. His face looked quite long and --
25
- Q. Without your teeth, you'd probably shorten up?
- A. Your chin looks very long with no teeth.
- Q. Your chin would be closer to your nose rather than
farther -- would you describe the composite the
30 composite drawing of P-54 as having a long narrow
face?

- 1 A. I think that would be a fair description.
- Q. Mr. Legere doesn't have any hawk-like nose does he -
long hawk-like nose? He didn't appear to be having a
long hawk-like nose that morning?
- 5 A. I don't recall saying that.
- Q. I didn't say you said it. I am just asking you. It
didn't appear as if he had a long hawk-like nose on
the morning of November 24, 1989.
- A. With his hair that short and his face that thin, his
10 nose was -- I noticed that his nose was bigger than
I could remember it.
- Q. That's basically what Mr. Legere looked like?
- A. That's correct.
- Q. On November 24?
- 15 A. That's a profile of Mr. Legere.
- Q. He had a receding hairline on the morning of the 24th
also?
- A. Yes, he had short hair.
- Q. Short hair and a receding hairline?
- 20 A. I could see his forehead and he had a scrape on it
or whatever so he probably had a little bit of a
receding hairline.
- Q. Mr. Legere on November 24, 1989, -- I will show you
25 Exhibit P-54 and P-92. Would you say he looked like
either or neither or both of these composite drawings?
- A. Well I can see resemblances in both.
- Q. Do you think the resemblances -- if Mr. Legere
resembled both of these individuals maybe on the same
30 day or would it be at different times?

- 1 A. I don't understand your question.
- Q. If people resembling both of these individuals were
seen at the same time say within half an hour around
the same area could they be a good resemblance of
5 one man or would it have to be two different men?
- A. Well one person in the photo has a beard and one
person doesn't.
- Q. Right.
- A. If I saw those people within half an hour of each
10 other and one had a beard and one didn't, I don't
know how I could compare them.
- Q. I am showing you Exhibit P-91 which compared to P-92
would you say there is a resemblance?
- A. Both seem to have a beard. Both seem to have the
15 same kind of hair. I find the eyes are different.
One's face seems to be quite a bit fuller than the
other.
- Q. Both have a plaid shirt.
- A. Most artists I guess when they draw people they put
20 plaid shirts on them so if it's an artist's depiction,
the clothing I don't know. But this gentleman here
appears to have a wider face than the other.
- Q. Right. Wider face?
- A. More fuller face. The other one is more -- the
25 features are more cut and longer.
- Q. I show you Exhibit P-54, again. It's not a checkered
shirt is it?
- A. No, it's not.
- 30 Q. What if I were to tell you the same artist made all
these composite drawings?

- 1 A. Okay.
- Q. Do you know that whether or not the same artist made all these composite drawings?
- A. I don't know that for sure, no.
- 5 Q. You mentioned when observing Mr. Legere that his upper body was very, very muscular.
- A. That's correct.
- Q. Any pictures taken of this muscular body at that time?
- 10 A. At 7:30 in the morning?
- Q. At any time during the day or the investigation, at least in the first few days of the investigation?
- A. Yes, I believe Mr. Legere was photographed on the 24th of November.
- 15 Q. Without his shirt on?
- A. Yes, I believe he was.
- Q. Without pants on?
- A. No, I don't believe he was. Not that I am aware of. I don't know if the pictures were taken with his
- 20 pants off or not.
- Q. Now you described his lower body, which was what?
- A. Lower portion of his body?
- Q. Lower portion of his body.
- A. From his waist down and I described his upper body.
- 25 Q. You said he had very thin legs?
- A. At that time he had very thin legs, yes.
- Q. Not muscular?
- A. No, they appeared to be very, very thin like a
- 30 long-distance runner or someone who -- they seemed to be disproportionate to his upper body, very well-defined muscular upper body.

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- 1 Q. Was Mr. Legere weighed at the time of his arrest?
A. No, there had been a reference of his weight but how
much he weighed or --
Q. Now you mentioned that Mr. Legere told you up until
5 July 1 he hadn't eaten very much. He was just
eating berries.
A. That's correct.
Q. But after July he was eating as well as you were.
A. Better.
10 Q. Better?
A. He was eating probably better than we were.
Q. So he should have gained weight normally?
A. Depends on what you are doing when you are eating I
guess.
15 Q. Do you know how much Mr. Legere weighed at the time
of his arrest?
A. I believe Mr. Legere told us that he weighed about
160 pounds.
Q. Clothed.
20 A. That's correct.
Q. You took his word for it?
A. He told us that he thought he had weighed about
145 pounds at the first of the summer. He said he
was about 160 now and he felt good.
25 Q. He told you he thought he weighed 145 at the first
of summer?
A. That's right.
Q. When did he tell you that?
30 A. Sometime that morning when we were talking about his
weight and how much he had lost, the difference in

- 1 his size, his appearance.
- Q. Do you know how much Mr. Legere weighed when he
escaped?
- A. I can relate to you what I was told he weighed or
5 his weight at the time of his escape.
- Q. Did you check any records at the Atlantic Institute
to see what he weighed or are you just going by
somebody off the street?
- A. I believe at the time of his escape he was listed as
10 being 190 pounds.
- Q. Are you aware whether or not Mr. Legere went on a
hunger strike after he was charged with these
offences?
- A. Within the past year?
- 15 Q. Yes.
- A. I can recall something in the media about it.
- Q. And he was on a hunger strike for approximately 25
days?
- A. I really don't know.
- 20 Q. You don't know. Did you check with Atlantic
Institute as to how much weight Mr. Legere lost in
25 days without eating anything?
- THE COURT: Why would he check that, Mr. Furlotte? That
was after the trial started that you are talking
about.
- MR. FURLOTTE: You can gather evidence up until the day
the trial ends; My Lord. I just want to know how
good the investigation was conducted.
- 30 THE COURT: He is not running a diet centre or Nutri-
Sweet.

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- 1 Q. You're the chief investigator for -- one of the
chief investigators for the Flam incident?
- A. No, I believe I testified that I was one of the
investigators on the Flam. The chief investigator
5 would have been Sergeant Gaetan Germain. The file
coordinator would have been Corporal Gary MacNeil
and I would have been one of the file investigators.
- Q. File investigators plus you were a foot investigator.
You took many statements from Nina Flam.
- 10 MR. WALSH: We have already dealt with this, My Lord.
- MR. FURLOTTE: Well I just want to verify with this
witness, My Lord, that he wasn't just a file
investigator.
- A. Well, one of my duties during the investigation was
15 to deal with a witness, Nina Flam.
- Q. During your investigation did you have reason to
believe that the person who attacked Nina Flam only
weighed about 150 pounds.
- 20 MR. WALSH: Objection, My Lord. This matter had been
dealt with when Nina Flam -- when he testified
after Nina Flam. He cross-examined him at some
length.
- THE COURT: I think surely we went through that phase.
- MR. FURLOTTE: Yes, I did, My Lord.
- 25 THE COURT: What is the question again?
- MR. FURLOTTE: Now this witness has testified that when
he observed Mr. Legere. Mr. Legere was very small and
before July, he probably only weighed about 145 pounds
I believe it is reopened and I can get into it.
- 30 MR. WALSH: Yes, but he is asking the officer to make the

1 comparison. My understanding - correct me if I am
wrong - he is asking the officer to make the
comparison of an observation someone else made with
the accused. That's my understanding. That would
5 be totally hearsay. That's something that the jury
has to do is compare the description of Nina Flam
to something later, but not for this officer.

THE COURT: What precisely was the question, Mr. Furlotte?

MR. FURLOTTE: Maybe I could ask Mr. Sleeth to help me
10 out.

Q. Basically you had reason to believe that the person
who attacked Nina Flam only weighed about 150
pounds during your investigation.

A. I don't recall ever Mrs. Flam telling me that or I
15 ever presumed that. I knew we were looking for a
suspect that was --

Q. About the size of John Marsh?

A. Someone --

MR. WALSH: Object, My Lord. We have dealt with this.
20 He is just trying to get another kick at the cat
here.

THE COURT: You can't give evidence, Mr. Furlotte.

MR. FURLOTTE: I am not giving evidence.

THE COURT: Let the witness answer the question.
25

MR. FURLOTTE: But I can ask leading questions.

THE COURT: Let the witness answer the question. He said
he was looking for a suspect weighing - I think that
is what you were saying. I don't know.

A. My Lord, we were looking for a suspect who was
30 described as being very thin at the waist and who had

- 1 light-coloured, possibly light-brown pubic hair.
That's pretty well the only description that we had.
- Q. If you wanted to know the likely size of Mr. Legere
at the time of the assault of Nina Flam, it didn't
5 interest you enough to find out how much weight
Mr. Legere lost the 25 days that he was on an absolute
fast from food?
- A. You are asking me as an investigator a person in a
controlled situation in a cell who I understand
10 doesn't get very much exercise comparing him to a
person who ate berries for three months and was on
the lam, whether or not they would be the same
-- would lose the same amount of weight over the
same period of time? It didn't cross my mind, but
15 it doesn't seem to be that they are a parallel.
It's like apples and oranges. A person that exercises
all day, runs from the police --
- Q. If the person just ate berries up until July?
- A. And didn't exercise at all?
- 20 Q. You put on weight when you don't exercise don't you?
Well not if you're eating -- generally exercise is
to take weight off.
- A. I would expect the person who ate berries for 3 months
and was running from the police to lose a considerable
25 amount of weight, that's correct.
- Q. Mr. Legere I believe said that upon hitchhiking up
to Newcastle he stopped at Rogersville and got himself
fried chicken.
- 30 THE COURT: Aren't we really getting into the absurd here
now? You don't put on 20 pounds on with a feed of
chicken. Look, the jury want to get home. How many

1 more questions are you going to have of this witness,
Mr. Furlotte?

MR. FURLOTTE: I think it would be a good time to adjourn
for the day. I will finish cross-examining him
5 tomorrow. We can --

THE COURT: Yes.

MR. LEGERE: Your Honour, it makes good press, but I have
heard enough duplicated tales and insults. Barter
kicked me, drawing blood. At headquarters Kevin Mole
10 and Charlebois took the blood samples which otherwise
wouldn't be taken illegally, and I endured an eight-
hour taped interrogation without legal counsel. Maso
Johnston I met in '87 for the first time and he was
instrumental in getting me a life sentence for a crime
15 I did not commit by reciting the same goddamned thing
to the jury about spilling my guts.

THE COURT: Sheriff, would you take the accused out,
please?

MR. LEGERE: I'm fucking sick of it. I would like to see
20 the fucking day any cocksucker would kick me in the
face and I wouldn't get up if my hands weren't
cuffed. They'd have ten fucking machine guns on me.
And what about the juror that got kicked off? He was
on my side.

25 THE COURT: I am making the same order under Rule 650
for the expulsion of the accused from the courtroom.
He will perhaps get over this little temper tantrum
before tomorrow morning. I guess we haven't got our
video turned on yet. Perhaps I shouldn't have said
30 that. I will withdraw that statement without the

1 video. I will make it tomorrow morning with the
video on.

We will adjourn now. We will stand this witness
aside for the present and we will finish cross-
5 examination in the morning. You shouldn't discuss
this matter with anyone.

CPL. MOLE: No, My Lord.

THE COURT: I say to the jury the same as I said before.
You have got to allow for frustrations and so on.
10 Don't think too badly about these little outbursts
that come along.

If we adjourn at 2:00 o'clock tomorrow afternoon
does that give time to get to appointments?

JUROR: That will be fine, My Lord.

15 THE COURT: I think the suggestion was perhaps that --

JUROR: We will just have our muffins and we will --

THE COURT: My word, muffins.

JUROR: We are getting too fat anyway.

THE COURT: Mr. Furlotte will straighten you out on
20 muffins, unless you have berries with them. All right
we will have a break in the middle of the morning
sometime.

(JURY RETIRES)

COURT ADJOURNED AT 4:45 P.M.

25

30

1 COURT RESUMES - October 4, 1991, 9:30 A.M.

MR. ALLMAN: There is just one matter, My Lord. I
don't know if Your Lordship has any particular
5 plans regarding Mr. Legere's return to the courtroom.
We have some submissions we would like to make on
that topic, just very, very brief.

THE COURT: All right.

MR. ALLMAN: Your Lordship pointed out the first time
10 Mr. Legere was expelled that if he spoke up again
he would be expelled again and this time probably
for a longer period.

Our position would be that if Mr. Legere spoke
up, even if he just spoke up with a couple of rude
15 words, he should be expelled. He should be expelled
for a longer period. However, in fact he spoke up
and he spoke up a good deal more seriously on this
occasion than the occasion for which he was expelled
before.

20 So our feeling is that the court maintain
credibility, if you combine those two things, that
he should be expelled for several days.

There is another factor, too, to which Your
Lordship has already adverted on a number of
25 occasions. Mr. Legere is not helping himself by
this kind of activity either in terms of the activity
or specifically some of the remarks he shouted. I am
not going to specify, but there are remarks there
that are not going to be of assistance to him.

30 It may be in his own protection, also, he needs

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1 a period of days in which to reflect upon the fact
that he can't behave like this in his own best
interest.

5 So we would suggest that he be excluded for
some period, longer than just a day.

THE COURT: You are in a difficult position, Mr. Furlotte
I realize. Do you have any representation to make?

MR. FURLOTTE: Well, I am in a difficult position and
it's -- one thing is true like Mr. Allman states.
10 I believe Mr. Legere in his outbursts is doing
himself more harm than good and I have told him
that several times. He is a spontaneous person.

THE COURT: Excuse me one moment here. That light is
not on up there, or is it?

15 COURT CONSTABLE: It's working, My Lord.

THE COURT: I don't see the red light.

COURT CONSTABLE: They changed the camera.

THE COURT: Does it focus on everything in the courtroom
here?

20 COURT CONSTABLE: From you over to about 85 percent of
the jury. It won't get the last 2 jurors.

THE COURT: But I mean it takes --

COURT CONSTABLE: Oh, yes, everything here.

25 THE COURT: I am not desiring to be on camera
particularly, but I think it is important that the
accused see me particularly when I am speaking. I
am sorry, Mr. Furlotte.

MR. FURLOTTE: As I was saying, My Lord, Mr. Legere
30 appears to be kind of a spontaneous person and he
felt himself being quite ridiculed in court yesterday

1 by being called -- or the past couple of days being
called a snivelling coward and the works. I think he
feels that the police officers were attempting to
provoke him deliberately so he would speak out.

5 Again, he understands your position as far as --
like he states like for Monday. It's a voir dire
Monday. They are all police officers, professional
witnesses, and the jury will not be here so he felt
that maybe he could be in the trial during the voir
10 dire Monday.

I don't know what to advise the court as to what
position to take. I have no control over the
situation and it is a question of what is going to
look proper for the court, for the jury, for every-
15 body concerned.

I think Mr. Legere was quite upset yesterday at
the -- not so much at the outcome of the exclusion
of the juror, because I think he basically agrees
with that situation. It doesn't look good.
20 Mr. Legere likes everything done right away and
he would have preferred to have had the motion
for the mistrial done immediately rather than wait
until Monday. I can understand why the situation has
to wait until Monday. I believe it ought to be put
25 over and not have held yesterday, but Mr. Legere has
different opinions than myself and who is to say maybe
his is better than mine. We are entitled to our
own opinion.

30 I think it is evident that Mr. Legere does not
trust the judicial system and rightly or wrongly that

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1 is not the issue. I think some regards has to be
taken for that consideration.

THE COURT: Thank you.

MR. ALLMAN: If I could just mention one other thing
5 while this is a convenient moment because it arises
out of something Mr. Furlotte says? There are some
other inquiries we are pursuing and I would prefer
not to do the motion for the mistrial on Monday. I
would prefer to leave it towards the end of the week.
10 It may or may not be that those inquiries will
produce any results, but I don't feel I will be ready
on Monday. We will have plenty to do.

THE COURT: I don't want to get into a long discussion
about these matters right at the present time. I
15 will be announcing to the jury, when they return, what
my ruling is with regard to the continuation of the
expulsion order. I do have just two comments to
make and one is with regard to the suggestion that the
accused might feel the police officers were trying to
20 stir him up with the reference to snivelling character
and so on. He has heard these expressions used
before - motor mouth and so. These expressions have
been used before. They were used in the voir dire.
He knew quite what to expect. You know the -- his
25 comments yesterday seemed to have been almost
deliberate and deliberately timed because he seemed
to be speaking from notes. I wasn't paying a great
deal of attention to it. He seemed to be speaking
30 from notes and it seemed to have been planned.

There is one other comment I must make right now

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1 and that is I know that the suggestion was made
that an application might be made next week for
a ruling or an order that there be a mistrial
on the ground that the jury have been contaminated
5 by the presence of this man. I raise this question.
Hasn't the accused himself undermined any basis
for an application for a mistrial by suggesting
in front of the jury here that his belief, whether
well-founded or not, is that he had one supporter
10 on the jury and the others were by inference
opposed to him? Maybe that was just his
perception. Maybe it was based on some sort of
pipeline information as alluded to yesterday by
the Crown in its remarks.

15 How could ever an accused seek an order for
mistrial after having made that type of comment
to a jury? I am going to have to when the jury
comes back this morning - I am going to have to
say something about this aspect to them. I am
20 not going to consult counsel now as to what I
should say. In fact, I don't even know what I
am going to say at this moment but I will say
something. I only hope the right words come out.

25 That is all I want to say. I may say that
certainly today I am going to continue the order
for the expulsion. Just a minute, Mr. Sears?
Do you have something to say?

MR. SLEETH: Yes, My Lord. Again, while the jury is
30 out, late yesterday there was some discussion of
whether or not Mr. Furlotte wanted to pursue

1 inquiries into one area while cross-examining the
witness, Corporal Mole. The Crown took objection
on the basis that he was moving into the area -
that it would be a violation of the principles
5 respecting self-serving evidence or prior consistent
statements.

THE COURT: May I say now I don't want to hear further
argument on that matter. I simply rule that it is
not admissible.

10 MR. SLEETH: Excellent.

MR. FURLOTTE: My Lord, just before -- am I able to
ask the police officers in cross-examination if
they put certain questions to Mr. Legere without
soliciting the answer that Mr. Legere gave?

15 THE COURT: You mean up to 7:30 in the morning?

MR. FURLOTTE: No, even all day.

THE COURT: Not after 7:30. We held a voir dire for a
full week back in April, starting April 22 and
went through to April 29 on the admissibility
20 aspect. It was fully understood I am sure by all
parties at that time that nothing that transpired
after 7:30, apart from certain limited things
about when he had his breakfast, and what time
a doctor saw him which I recall was during the
25 morning and about breakfast time it seems to me.
Those were the only things with which the voir dire
was concerned. There was no suggestion at that
time that any part of any statement or questions
or answers or interviews after that should be
30 part of the trial. I am going to abide by that.

1 MR. FURLOTTE: Even anything the police officers may have
told Mr. Legere, not even a question --

THE COURT: Well, no. We are not concerned with what
they may have told him after that. We are not
5 concerned with that. If it had a bearing on state-
ments, if at 6:00 o'clock in the morning they made
statements to him that God above has told us this
morning that you committed these murders and had
led him to believe that he was compromised by God's
10 information and made these statements which he did
so the police officers in consequence of that,
perhaps that is material. I am taking a rather
outrageous example. That would be admissible, but
what was said after he was taken away to the inter-
15 view room we are not concerned with.

MR. FURLOTTE: Okay, My Lord, but for the record I
would just like to object to my inability to cross-
examine because --

THE COURT: Well I --

20 MR. FURLOTTE: And I will state for the record now I
feel that way. I feel that if the police are going
to introduce statements of an accused person, they
have to introduce all the statement and not just
part of it. They want to introduce the statement
25 from 6:20 up until 7:25, and 7:25 once it is being
taped, then they don't want that part in. I don't
feel the Crown has -- is entitled to enter part of
a statement unless they are ready to enter all of
it. That's basically my position.
30

THE COURT: Well I only remind you, Mr. Furlotte, that you

1 you wanted the right yesterday to cross-examine on
portions of those taped statements, but showed no
inclination or desire or willingness to have the
whole of those statements put into evidence.

5 Certainly that was the attitude taken on the voir
dire earlier in April. Again, I point out that, you
know, if there is other evidence that is material
it is the privilege of the defence to call that
evidence in the trial.

10 So let's have the jury back.

(JURY CALLED - ALL PRESENT)

THE COURT: Perhaps I should just say a few words to
the jury here this morning.

15 One thing, of course, is that yesterday just
before we adjourned I made another order under
Section 650 of the Code expelling the accused from
the courtroom. The question, of course, that I have
to consider now is should I continue that order in
20 effect and for how long or whatever. I think I do
have to take a rather more serious view of what
occurred yesterday perhaps than I did earlier
occurrences because it seemed to have been of a
deliberate nature and almost deliberately timed
25 perhaps because the accused did appear to be speaking
from notes which he prepared. Perhaps he wasn't.
I don't know. I wasn't paying a great deal of
attention but that was the impression I got. It
seemed that the whole thing was perhaps deliberately
30 timed. So I am not inclined to lift that expulsion

1 order at this time. I will have to consider when
it will be lifted.

I said earlier that I'm not particularly
comfortable having an accused out of the courtroom,
5 but that is not something over which I have control.
I believe you heard me, or perhaps I said it at a
voir dire, but if you didn't hear me I will repeat
it now. When the application was made by the Crown
for the expulsion of the public when Mrs. Nina Flam
10 testified, I said then that I couldn't envisage any
situation where I would ever - I think I said this -
any situation where I would exclude the public from
the courtroom. Well I've had to backtrack on that
a little because the situation arose yesterday where
15 I did have to exclude the public. Even later
yesterday it arose again where I had to exclude
two members of the public permanently from the
courtroom.

Is this being heard?

20 COURT CONSTABLE: Yes, perfect.

THE COURT: I guess I finished that, whatever I was
saying.

I don't want to get into the content of what was
said here yesterday. The words spoken by the
25 accused were words that he wasn't entitled to
speak before the jury. There is a time and place
when defence may call witnesses to testify on their
behalf under oath. That is the normal circumstance.
There are a couple of points perhaps mentioned by
30 the accused that I think now is the appropriate time

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1 for me to mention.

One was the suggestion that on an earlier conviction he had been framed by one of the police officers who testified yesterday. Well I may tell
5 you that he appealed his conviction in that case. The Appeal Court dismissed the appeal. A further appeal was taken in the Supreme Court of Canada and he forfeited his right to have that appeal heard when he remained at large and wasn't present for
10 the hearing of his appeal, and that presumably was by his own choice.

The second matter to which he alluded, and I haven't seen notes and I have no transcript of what he did say and my recollection of what he did say
15 is only the same as your own. He referred to the illegal taking of hair. I may say that a voir dire has been held in this case and the court has determined that there was no hair which was the subject of the voir dire which presumably -- and
20 which is the subject of this trial -- was taken illegally. That ruling has been made as a matter of law.

The accused's chief complaint yesterday seemed to be - or one of his complaints - was that he had
25 been interrogated and interviewed for a period of 8 hours, or for some long period, and while suffering from a black eye and so on. I say this perhaps for the benefit of the accused more than for anyone else and that is in the police investigation and in the
30 trial of these matters other people have perhaps been

1 interviewed for long periods and perhaps interrogated
for long periods as well. The example that comes to
my mind is that of Mrs. Nina Flam who lay in a
hospital suffering not from a black eye, but on the
5 verge of death from physical injuries suffered by
her assailant. I make no suggestion as to who the
assailant was, but she was interrogated for long
hours and quite obviously by the police because
they wanted to try to find out what they could about
10 her assailant before she might expire, if that
were to be the eventuality that resulted from the
assault on her. She experienced a long period of
examination and I believe perhaps an even longer
period of cross-examination by the accused's counsel
15 in this courtroom. She did that. She accepted
with grace my ruling on the Crown's motion that
the public be excluded while to save her embarrassmen
she be given the privilege of testifying under those
circumstances. I ruled against the Crown and she
20 accepted that ruling with grace.

The issues in this case aren't going to be
decided by you on the ability to whine or the
ability not to whine, but on the hard facts, the
circumstances as revealed by the hard facts and
25 testimony. Those hard facts must come from direct
proof of the circumstances or circumstantial proof
I will be instructing you further in that regard
later. Nothing that the accused may have said
yesterday or his explosive demeanor should be
30 judged too harshly by you in reaching your final

1 conclusion. I will be having more to say about
this, but I feel it is important to say that
type of thing now.

5 There was one unfortunate reference by him
yesterday to the fact that the court had removed
perhaps the only juror who might be partial to
him. Well I point out to you that that -- you should
accept that remark not as any criticism of yourselves,
or even of the former twelfth member of the jury, but
10 as a perception that the accused perhaps wanted to
get across. I suggest there is nothing to me to
suggest that anyone's mind on the jury - as far as
Mr. Moorcraft, and I interviewed him yesterday, there
is nothing to suggest that either his mind was made
15 up in this matter or the minds of anyone else's was
made up in the matter.

Again, I instruct you and I advise you to
concentrate on the evidence in this case and listen
20 to the addresses of counsel at the close of the case
and my instructions to you at that time and decide
the guilt or the innocence of the accused in each
of the four counts which he is charged on the basis
of that evidence.

25 I would like to say one thing perhaps in
elaboration of a remark I made yesterday and that
was I suggested that your spouses and friends and
so on, or girlfriends, boyfriends, whatever,
be discouraged from attending the court. I
30 only say that not because I mistrust your spouses,
or boyfriends, or girlfriends, but only because

1 if they come to court they don't know beside whom
they are sitting. It's very possible that
Mr. Moorcraft's girlfriend when she first came to
court didn't realize that she was being approached
5 and was sitting beside who she was sitting beside.
People just don't know who they are. There perhaps
are people back there now who are trying to undermine
the trial, or may be trying to undermine the trial
in some way. So I suggest they not come here because
10 they expose themselves unduly to that risk and
they expose you people to that risk.

I think that is all I need say at this time.
We are going on with the cross-examination of the
officer who was on yesterday.

15 MR. FURLOTTE: Yes, My Lord.

THE COURT: I do suggest Mr. Furlotte -- I want to point
out one other thing in this general regard and that
is that Mr. Furlotte has been no party to this. I
am sure this isn't done with his encouragement.
20 I am sure it is done without his advice. I am sure
that he appreciates the accused is not helping his
cause by doing what he is doing and in that respect
we have a sympathy for him. I would ask Mr. Furlotte
in the examination of this witness not to conduct
25 that cross-examination with the idea of entertaining
his client or of catering to his wishes or desires -
get to the basis of the truth. What we are concerned
with here in this case is this witness telling the
30 truth. Is he withholding some of the facts? The
law, as I explained the other day, is a search for

3356

1 the truth, and that's what we are concerned with
here.

Would you have Corporal Mole --

5 CORPORAL MOLE, recalled as a witness, having been
previously sworn, testified as follows:

CONTINUATION OF CROSS-EXAMINATION:

Q. Corporal Mole, do you recall what time you asked
Constable Charlebois to get a pair of coveralls for
Mr. Legere?

10 A. It would have been after 6:55.

Q. After 6:55?

A. That's correct.

Q. I believe you stated that Mr. Legere said that he
lost a box or a bag of beer along the tracks?

15 A. That's correct.

Q. Did Mr. Legere joke about having newspapers delivered?

A. Yes, he did.

Q. And do you know whether or not the incident which
happened with Corporal Tomassin, the dog man, where
20 the alleged shooting occurred by someone he was
chasing, do you know whether or not that was in the
newspaper?

A. Was the incident reported in the newspaper?

Q. Yes.

25 A. I believe it was.

Q. So Mr. Legere could have read all about that in the
newspaper?

A. Could he have read about the incident in the
30 newspaper?

Q. He could have.

- 1 A. He said he read the newspaper daily so he could have
read it, yes.
- Q. Would you explain again how Mr. Legere described to
you how he was stopped in Quebec by two policemen?
5 Exactly what did Mr. Legere tell you?
- A. I believe on the first occasion I was taking hair
samples from him and I wasn't paying a lot of
attention to his gestures. But he described going
to Montreal on the train, staying in a fancy hotel,
10 that he almost got caught by the police, that at
one point he was seated beside a person who was
asleep.
- Q. He said beside a person - he meant sitting in the
same seat and someone sitting right next to him?
- 15 A. To his left.
- Q. That wasn't like a double train seat where one guy
was sleeping in one seat and another guy sleeping
in another seat was it? That's not the explanation
he gave you.
- 20 A. I am not sure exactly. He said he sat on a train
beside another person and the police came to him. I
am not sure exactly the description of the seat.
- Q. He said there was a guy sitting on his left.
- 25 A. He gestured to his left.
- Q. How many policemen did he say stopped to question
him and search him?
- A. I believe he told us two.
- Q. I believe we know from the evidence that there was
30 three who searched somebody supposedly identified as
Mr. Legere with the identification of Fernand Savoie.
Is that right?

- 1 A. I am not sure of the evidence presented.
- Q. But Mr. Legere you say told you there was two police-
men questioning?
- A. I can recall him saying that two policemen questioned
5 him, yes.
- Q. And did he tell you that the police - that they
wanted identification?
- A. Yes, he did.
- Q. And what did he tell you about identification?
- 10 A. I believe he told us that he didn't have any, or he
wasn't able to identify himself.
- Q. So if Mr. Legere was in fact the person the police
officers stopped that they have come to court and
identified as Mr. Legere and that they rolled up
15 his sleeve and couldn't find tattoos, but had
identification of Fernand Savoie, Mr. Legere would
be mistaken on two points, that there was only two
police officers rather than three, and he doesn't
know anything about being asked for identification
20 because he didn't have any identification on him?
Would that be correct so far?
- A. I can only tell you what Mr. Legere said to me.
- Q. Right. He would not be describing the same incident
as was described by the police officers in court
25 themselves.
- A. I can only tell you what Mr. Legere told me that
morning.
- Q. When you were questioning Mr. Legere on the morning
30 of October 24 -- or November 24 you didn't know that
police officers stopped an individual and asked the

- 1 individual for identification did you?
- A. I didn't know that, no.
- Q. And you didn't know that there was three police
officers rather than two police officers did you?
- 5 A. No, I did not.
- Q. I believe you stated in your direct examination
yesterday that Legere seemed proud of the fact that
the police couldn't catch him?
- A. That's correct.
- 10 Q. Now in his statement to you did he appear as if he
was trying to make the police look maybe stupid?
- A. It appeared to me that Mr. Legere was very excited
to see someone that he knew and could talk to and
he was very excited about explaining what had happened
15 to him.
- Q. But he tried to make the police look stupid, too,
didn't he?
- A. He did at one point say that the police were stupid
or on a couple of occasions. The train incident was
20 one where he said that the police were stupid.
- Q. And he was telling you also a bunch of stories as to
how and why the police were stupid. Is that right?
- A. He said so many things I don't know exactly what
you are referring to. He did make references that
25 the police were stupid and weren't able to --
- Q. And in generalities he was telling you stories that
would make the police look stupid?
- A. At times the stories were very comical that's true.
- 30 Q. Now you say you seized pubic hair from him on
November 24?

- 1 A. That's correct.
- Q. '89. November 24.
- A. November 24, 1989.
- Q. And you turned it over to Constable Houle on
- 5 November 26?
- A. That's correct.
- Q. Now you mentioned after -- on direct examination you mentioned at 7:35 you went to the interview room?
- A. At approximately 7:30 - 7:35 that's correct.
- 10 Q. And you described the interview room as a room about 10 feet by 10 feet?
- A. That's correct.
- Q. I believe you stated there was about a 5 foot table in there, 3 chairs, and a tape recorder?
- 15 A. That's correct.
- Q. And you were in there from about 7:30 to 2:15 in the afternoon?
- A. I wasn't there throughout but I mean I was in the room from 7:30 until 2:15. I had exited the room
- 20 several occasions.
- Q. And what was the purpose of being in there from 7:30 to 2:15 with a tape recorder?
- A. We entered the interview room at 7:30 with the express intent of interviewing Mr. Legere.
- 25 Q. Now everything you testified in court here today happened -- what Mr. Legere told you supposedly happened before 7:30?
- A. That's correct.
- Q. When the interview was not taped?
- 30 A. That's correct. It wasn't an interview. Before 7:30 we didn't attempt --

1 Q. Well any discussions or statements was not on
tape recorder?

A. That's right. I didn't attempt to interview
Mr. Legere before 7:30.

5 Q. And anything after 7:30 is not being put into
evidence is that correct?

A. I haven't testified to anything that happened after
7:30 other than seizure of some exhibits.

10 Q. You mentioned in the interview room you brought
Mr. Legere some toilet paper to blow his nose?

A. That's correct.

Q. And when he was blowing his nose there appeared to be
dried blood in it?

15 A. There appeared to be spots of what I would call
coagulated or dried blood.

Q. Coagulated. Is that as a result of a kick in the
face?

A. I don't -- I wouldn't know why he had blood clots in
his nose.

20 Q. Do you know whether or not the police looked for
any other suspects after Mr. Legere was arrested?

A. Following the arrest of Mr. Legere I was shortly
afterward transferred to Fredericton here. My only
involvement after that with the files was to prepare
25 -- help prepare a court brief -- the Crown brief
for the Flam investigation and to deal with certain
witnesses.

MR. FURLOTTE: I have no further questions.

30 THE COURT: Re-examination, Mr. Walsh?

MR. WALSH: I have a couple, My Lord.

1 REDIRECT EXAMINATION BY MR. WALSH:

Q. Yesterday Mr. Furlotte referred you to an area
of 5:55 that you had put in later. At 7:35 you had
made note about meeting Sergeant Johnston back at
5 what you thought was 5:55. You didn't have a watch
is that correct?

A. That's correct.

Q. And Mr. Furlotte made much of this particular
notation of your memory of what Sergeant Johnston
10 was telling you before you went to the cell. Is
that correct? He did make --

A. Yes, he did.

Q. He did ask you questions about that?

A. That's correct.

15 Q. Did Staff Sergeant Johnston, when you met him before
you went to the cell area, did he demonstrate using
his sleeve --

A. No.

20 Q. -- that Allan Legere did something?

A. No.

Q. Did he tell you that Allan Legere demonstrated with
his sleeve to him at that time?

A. No.

25 Q. When you made your notes at 7:35 of what you
remembered Staff Sergeant Johnston telling you at
5:55 how much conversation would you have been
subjected to from Allan Legere between the -- that
time?

30 A. Approximately 45 minutes of non-stop chatter - just
non-stop and it was repetitive.

- 1 Q. He repeated many things?
- A. Many things were repeated to me or in front of me.
- Q. By?
- A. Continually. Mr. Legere.
- 5 Q. Mr. Furlotte yesterday made an allegation that you fabricated that particular aspect of your notes for the purposes of supporting Staff Sergeant Johnston.
- A. That's correct.
- Q. Do you have a comment you wish to make about that?
- 10 A. Only that I made those notes from my recollection and that's my memory to the best of my ability and I didn't lie and I didn't fabricate.
- Q. You said yesterday that Mr. Furlotte was referring you to notes. He had typed notes and you said those
- 15 were notes from your notebook. Is that correct?
- A. That's correct.
- Q. Is it usual or normal for a police officer to type up his notes to give to defence lawyer?
- A. No, it's not.
- 20 Q. You are protective of your notebook. I think that is obvious from yesterday.
- A. That's correct.
- Q. Would you tell the jury please if you can how police officers normally view their notebooks and how they
- 25 deal with them?
- A. Normally your notebook is kept on your -- it's a log of your daily work or activities, people you speak to - comments that are made often in confidence and
- 30 informants, conversations that you would not want to

1 have made public, things that could embarrass
people or jeopardize other investigations.

Q. Being protective of your notebook is that something
that only you are or in your experience are other
5 police officers the same way?

A. In my opinion no police officer would voluntarily
give up his notebook without being ordered to because
of the content of the notebook - normally.

Q. Do you have anything to hide, Corporal Mole?

10 A. No, I don't have anything to hide in my notebook.

Q. Yesterday Mr. Furlotte showed you two sketches,
P-92 and P-54.

THE COURT: I'm sorry - the numbers?

MR. WALSH: P-54, My Lord, and P-92. My understanding
15 yesterday was that you see similarities in features
between those two individuals?

A. That's correct.

Q. Mr. Furlotte asked you questions this morning with
respect to Legere reading the newspaper and perhaps
20 found out some of these things in the newspaper and
was bragging - attempting to make himself look good.
To your knowledge, Corporal Mole, did you have any
knowledge prior to that morning that Legere was in
Montreal and stayed in a swanky hotel?

25 A. No. As I described when I was contacted and told to
go to the office I had no idea where Mr. Legere had
even been apprehended at and it wasn't until I
actually got to the office that it was confirmed to
30 me that he had been caught so I didn't really have
any idea where he was.

- 1 Q. Prior to his arrest was it to your knowledge ever
reported in the newspaper that Allan Legere was on
a train in Quebec, had been searched by police
officers, had been sitting beside someone who was
5 asleep, and that these police officers had let him
slip through by looking at the wrong arm?
- A. Not to my knowledge that was never in the newspaper.
- Q. Was it ever reported in the newspaper prior to his
arrest that he stayed in a swanky motel in Montreal--
10 or hotel in Montreal?
- A. That was never in the newspaper to my knowledge.
- Q. Did you know anything about that prior to his
arrest?
- A. I didn't know anything about that until I entered
15 the cell that morning.
- Q. You took him to the interview room at 7:35 is that
correct?
- A. Approximately 7:30.
- Q. This morning you told Mr. Furlotte that you weren't
20 attempting to interview him prior to that time.
- A. That's correct.
- Q. When you took him to the interview room what offences
if any were you interviewing him for?
- A. It was my intention to interview Mr. Legere for the
25 murder of Anne Flam, murder of Linda Daughney, the
murder of Donna Daughney, and the murder of Father
James Smith.
- Q. At the beginning of that interview was he aware that
30 is what you were interviewing him for?
- A. Yes, Mr. Legere was subsequently given a further
Charter Notice.

1 Q. Was he aware that this is what you were interviewing
him for, these 4 offences?

A. He told he was being investigated for those 4
offences, that's correct.

5 MR. WALSH: I have nothing further.

THE COURT: Thank you very much, Corporal Mole.
Corporal Mole is subject to recall?

MR. WALSH: No, My Lord.

THE COURT: Thank you very much.

10 Now, you have another witness, Mr. Walsh, or someone?

MR. ALLMAN: My Lord, we have spoken to Mr. Furlotte
about this. Logistical considerations and
considerations of convenience of witnesses are
starting to make quite a few adjustments in our
15 schedule. The order that we propose to go now is
this. Way back on number 177 was a Mr. Michael
Lazimi. He was not available for quite a period
of time. He is now available so we would like to
slot him in to get him back out so to speak. He
20 relates back to the Montreal portion of this
evidence.

After that we have a Doctor John Bowen. He
has come down from Ottawa, but he is here at this
time. He will be coming again, but he is here this
25 time for a very brief continuity matter so we would
like to do him next.

After that I have 5 - 6, I'm sorry, civilian
witnesses who have been hanging around for 2 days
and I would like to do them. They are numbers 220,
30 Fernand Savoie; down to 225, Randall Briggs and then

1 we will see where we are after that. So the next
 one is Mr. Lazimi, which is Mr. Sleeth's witness.
MR. SLEETH: My Lord, Mr. Lazimi will wish to testify
 in French.

5 THE COURT: We have an interpreter here, I gather.

MR. SLEETH: Yes, My Lord.

10

15

20

25

30

1 MR. LAZIMI MICHEL, duly
sworn, testified as
follows:

INTERPRETER:

5 Mrs. Denise Andrews.

DIRECT-EXAMINATION
BY MR. GRAHAM SLEETH:

Q. Would you please
state your full
10 name, witness?

I. My name is Lazimi
Michel.

Q. And I believe that
in November of 1989,
15 you were working for
Gresch & Skaff,
opticians, in
Montreal?

I. Yes.

20 Q. I am placing in
front of you exhibits
P-77 and P-78.
P-77, it's the one
on your left.
25 Do you recognize that?

I. Yes.

Q. And that is what type
of document?
30

I. This is an examination
file.

M. LAZIMI MICHEL, dûment
assermenté, a témoigné comme
suit:

INTERPRÈTE:

Mme Denise Andrews.

INTERROGATOIRE
PAR ME GRAHAM SLEETH:

I. Voulez-vous donner votre
nom au complet, témoin?

R. Mon nom c'est Lazimi
Michel.

I. Et je crois que en
novembre 89, vous étiez
employé avec Gresch &
Skaff, qui sont des
opticiens à Montréal?

R. Oui.

I. Je place devant vous les
pièces à conviction
P-77 et P-78.
P-77 est celle de votre
gauche.

Est-ce que vous
reconnaissez ça?

R. Oui.

I. Quel est ce genre de
document?

R. Ça, c'est un dossier
pour passer l'examen.

- 1 Q. What sort of examination? I. Quel genre d'examen?
- I. An eye examination. R. Un examen de la vue.
- Q. Of the optometrist I. De l'optométriste
- 5 Q. Gresch & Skaff? I. Gresch & Skaff?
- I. That is correct. R. C'est ça, oui.
- Q. And the date of the TÉMOIN: Oui.
- examination is I. Et la date de l'examen
- indicated on the est indiquée à la gauche
- 10 upper left hand en haut?
- side? R. Oui, le 17/11/89.
- I. The 17th of the
- 11th of '89.
- Q. The 17th of November
- 15 of 1989?
- WITNESS: November. I. Le 17 novembre 89.
- R. Oui, c'est ça, le 17
- novembre 89.
- MR. SLEETH:
- 20 Q. And that particular I. Qui était le client pour
- examination was for cet examen en particulier
- whom? Who was the
- client? R. C'était Monsieur Savoie
- 25 I. Mr. Savoie Fernand. Fernand.
- Q. And you recognize the I. Vous reconnaissez la
- writing of the main d'écriture de la
- person who performed personne qui a fait
- 30 the examination? l'examen?
- I. Yes. R. Oui.
- Q. And it is the writing I. C'est l'écriture de qui?

1 of?

I. I filled out the files,
and after that,
subsequently, Dr.

5 Gresch did the
examination.

Q. And after the examina-
tion was done, what did
you do?

10

I. I took the file from
Dr. Gresch, and I had
to pick out a pair of
glasses for Mr. Fernand
15 Savoie.

Q. Did you, yourself,
speak with Fernand
Savoie at that time?

I. Yes.

20

Q. And did Fernand Savoie
tell you what his job
was, what his line of
work was?

25

I. He told me he was a
painter, he wanted
glasses. He said he
was in a hurry.

30

Q. P-78, the green paper
in front of you, do you
recognize that type of
paper?

R. Ben moi, je remplis les
dossiers, après c'est
le docteur Gresch qui
a passé l'examen.

I. Après que l'examen a été
complété, qu'est-ce que
vous avez fait vous-
même.

R. J'ai pris le dossier du
docteur Gresch, et
fallait que je choisisse
une paire de lunettes
pour M. Fernand Savoie.

I. Est-ce que vous avez
parlé avec M. Fernand
Savoie à ce moment-là?

R. Oui.

I. Est-ce que M. Savoie
vous a indiqué quel étai-
son emploi à ce moment-
là?

R. Il m'a dit qu'il était
peintre et qu'il voulait
des lunettes, qu'il
était pressé.

I. P-78, qui est le papier
vert devant vous, vous
reconnaissez ce genre de
papier?

- 1 I. Yes. R. Oui.
- Q. And it is what kind of I. Qu'est-ce que c'est ce--
paper, please? ce papier?
- I. That is the invoice. R. Ça, c'est la facture.
- 5 Q. For glasses? I. Pour les lunettes?
- I. Yes. R. Oui.
- Q. Who actually turned I. Qui a actuellement donné
the glasses over to les lunettes à M.
Mr. Fernand Savoie? Fernand Savoie?
- 10 I. It's myself. R. C'est moi.
- Q. I am going to show you I. Je vous montre une
a photographic line-up, parade d'identité sur
which is P-72, on photo, qui est la pièce
exhibit P-72. Do you à conviction P-72.
- 15 recognize the person Reconnaissez-vous la
who named himself as personne qui s'est
Fernand Savoie on it? nommée comme étant
Fernand Savoie?
- MR. SLEETH:
- 20 Would you turn the line-
up so the jurors can
see who you are pointing
at?
- 25 - You are pointing out I. Vous pointez au Numéro
Number 6? 6?
- I. Yes. R. Oui.
- Q. You were in this court- I. Vous étiez dans cette
room yesterday, Mr. salle de cour hier, M.
Lazimi? Lazimi?
- 30 I. Yes. R. Oui.

1 Q. And the person you--
 Fernand Savoie, the
 person you knew as
 Fernand Savoie, was
 5 he present in this
 courtroom yesterday?

I. La personne que vous
 connaissiez comme étant
 Fernand Savoie, est-ce
 qu'il était dans la sall
 de cour hier?

I. Yes.

R. Oui.

Q. Where, please, was he?

I. Où était-il?

I. He was sitting over
 10 there, but he changed
 a bit. He put on some
 weight.

R. Il était assis là-bas,
 mais il a un peu changé,
 il est plus gros. Il a
 grossi.

Q. Was he where I am?

I. Est-ce qu'il était où
 je suis?

I. He was sitting in the
 15 middle, between the
 two policemen.

R. Au milieu, entre les
 deux gendarmes qui
 étaient là.

MR. SLEETH:

20 Thank you, Mr. Lazimi. I would ask, My Lord, that the
 record show that I am presently standing in the front of
 the prisoners' dock, where the accused, Allan Legere,
 was seated between two police officers yesterday.

Q. When you spoke with
 25 Mister--the person
 who named himself as
 Fernand Savoie, what
 language did he speak
 to you in?

I. Lorsque vous avez parlé
 avec la personne qui
 s'est identifiée comme
 étant Fernand Savoie,
 dans quelle langue est-
 ce qu'il vous a parlé?

30

R. Il m'a parlé en anglais
 et en français, mélangé.

INTERPRETE: Pardon?

- 1 I. He spoke to me in english and in french. R. Il m'a parlé en anglais et en français.
- Q. Mainly english? I. Mais surtout en anglais?
- I. Mostly in english. R. Surtout en anglais.

5 MR. SLEETH: Thank you.

THE COURT (DICKSON, J.): Cross-Examination, Mr. Furlotte?

CROSS-EXAMINATION
BY MR. WELDON FURLOTTE:

CONTRE-INTERROGATOIRE
PAR ME WELDON FURLOTTE:

- Q. The person you saw sitting between the
10 two police officers yesterday, aside from putting on weight, did you notice any
15 other changes?
- I. His hair was longer, or his is longer.
- Q. What about his hair colour?
- 20 I. It's not the same colour, it's darker.
- Q. Was there any grey in his hair at that time?
- 25 I. I don't remember.
- I. La personne que vous avez vue assis entre les deux policiers hier, à part du fait qu'il a pris du poids, est-ce que vous avez remarqué d'autres changements?
- R. Il a les cheveux plus longs.
- I. À ce qui a trait à la couleur des cheveux?
- R. Non, c'est pas la même couleur, plus bruns.
- I. Est-ce qu'il y avait du gris dans ses cheveux à ce moment-là?
- R. Je m'en rappelle pas.

MR. FURLOTTE: No further questions.

THE COURT: Re-Examination?

MR. SLEETH: No, My Lord, I have no question on Re-Direct.

LA COUR: Merci, Monsieur,
30 Vous êtes excusé!

1 MR. WALSH: My Lord, I'd call Dr. John Bowen. The
purpose of being called at this time is for
continuity only. He will be subject to stand aside
and will be recalled later.

5 DR. JOHN BOWEN, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court your name please?

A. John Hales Bowen.

10 Q. And your occupation?

A. I am a civilian member of the Royal Canadian Mounted
Police, currently employed in the Central Forensic
Laboratory in charge of operations for the Molecular
and Genetic Section.

15 Q. With respect to these particular matters, these 4
homicides, did you have occasion to take possession
of any particular items?

A. Yes, I did.

20 MR. WALSH: My Lord, I have 2 items I wish to have
marked for identification. They purport to be
insoles. The right appears to be the right insole--
I'd ask to have marked for identification.

THE COURT: 4Q.

25 4Q FOR IDENTIFICATION: Right Insole.

MR. WALSH: And the next one is police identification
number 81 and it purports to be left insole.

THE COURT: 4R.

4R FOR IDENTIFICATION: Left Insole.

30 Q. Doctor Bowen, I have 2 items that have been marked

- 1 for identification, 4Q and 4R. Would you look at those for us, please, and tell the jury whether you can identify them?
- A. Yes, I can identify them. They bear my file number, my exhibit number, my initials, and the date received.
- 5 Q. Would you tell the jury, please, the circumstances under which you first saw those items and what if anything you did with them?
- 10 A. I received these from Constable Houle on November 23, 1989. I examined them for the presence of hair for subsequent analysis. I removed 2 hairs from exhibit 4Q and did not observe any hairs on exhibit 4R.
- 15 Q. In removing the hairs or looking at the insoles did you in any way damage the insoles, or did you add anything to them, or take anything away from them?
- A. No, I did not except the removal of 2 hairs from exhibit --
- 20 Q. Did the removal of 2 hairs cause you to do any damage to these particular insoles?
- A. No, it did not.
- Q. They were under your sole control and possession from the time that you had them?
- 25 A. That is correct.
- Q. And when did you next see them after you turned them over to Constable Houle? Did you ever take possession of those items after that time?
- A. They were in my possession for a period of 5 days.
- 30 Q. Until you turned them over to Constable Houle?
- A. I turned them over to Constable Charlebois.

- 1 Q. Oh, excuse me - Constable Charlebois. You received
them from Constable Houle. That was the question.
Who did you in fact turn them over to? I'm sorry.
- A. I turned them over to Constable Charlebois on
5 November 28, 1989.
- Q. And after you turned them over to Constable Charlebois
did you ever take possession of those items after
that?
- A. No, I did not.
- 10 Q. Thank you. I will show you an item that has been
marked C for Identification. It purports to be a
vaginal swab from Nina Flam. Would you look at that
item for me please and tell me whether you can
identify it?
- 15 A. Yes, I can. It bears my file number, exhibit number,
initials, and date received.
- Q. And did you do anything with that particular item
when you received it?
- A. Yes, I did.
- 20 Q. Generally, without specifics, what did you do? Did
you do anything with it generally?
- A. Yes, I cut off the tip of the swab and used it for
subsequent DNA analysis.
- 25 Q. I show you D for Identification. It purports to be
another vaginal swab purportedly taken from Nina
Flam. Would you look at that for us please and tell
me whether you can identify it?
- A. Yes, I can. Again, it bears my file number, exhibit
number, date received - October 25, 1989.
- 30 Q. And the previous item, C for Identification, and this

- 1 item, did you do anything with this particular item?
- A. Yes, I did. I examined that by cutting off the tip of the swab and again examining it for DNA.
- Q. Did you use the results in DNA analysis?
- 5 A. Yes, I did.
- Q. And what if anything did you do with these items after you used them for DNA analysis?
- A. I returned them to -- may I refer to my notes, My Lord?
- 10 THE COURT: Yes, sir. What number was that - D?
- MR. WALSH: That was D for Identification.
- A. Excuse me - what exhibit number was that?
- MR. WALSH: That would have been -- it was C and D for Identification, identification numbers 1-I and 1-J.
- 15 A. I returned those to Constable Britt on March 25 of 1991.
- Q. I am going to show you what has been marked on this W for Identification. It purports to be a vaginal swab from Donna Daughney. Do you recognize that?
- 20 A. Yes, I do. It bears my file number, exhibit number, initials, and date received.
- Q. And what if anything did you do with that item when you received it?
- A. I cut off the tip of one of the swabs present in 25 this exhibit and analyzed it for DNA.
- Q. It was used in DNA analysis?
- A. That is correct.
- Q. And what if anything did you do with that item after 30 that?

- 1 That would be police identification number 109.
- A. This exhibit, again, was returned to Constable Britt
on March 25 of 1991.
- Q. I show you an item that has been marked X for
5 Identification. It purports to be a body swab from
Donna Daughney. Can you identify that, please?
- A. Yes, I can. It bears my file number, my exhibit
number, my initials, and the date received.
- Q. When did you receive it and what if anything did you
10 do with it?
- A. I received it on October 25 of 1989 and I cut off
the tip of the swab again and analyzed it for DNA.
- Q. And what if anything did you do with it after that
time?
- 15 A. It again was returned to Constable Britt on March 25
of 1991.
- Q. I don't know if I asked you this or not, Dr. Bowen,
but the items that you received, C, D, X, and Y --
excuse me -- W and X, who did you receive those
20 items from?
- A. I received those from Constable Britt.
- Q. And when was that that you received them from
Constable Britt?
- A. October 25, 1989.
- 25 Q. I show you what has been marked at this trial Y for
Identification. It purports to be a blood standard
of Donna Daughney, for you records police identi-
fication number 115B. Do you recognize that item?
- 30 A. Yes, I do. It bears my file number, exhibit number,
initials, the date received October 25, 1989.

- 1 Q. From whom?
- A. Constable Britt.
- Q. And what if anything did you do with that item?
- 5 A. I used a sample of this for DNA analysis and then subsequently returned it to Constable Britt on March 25, 1991.
- Q. I am going to show you an item that has been marked in this hearing Z for Identification. It purports to be a vaginal swab from Linda Daughney. For your records it would be police identification number
- 10 134.
- A. Again, it bears my file number, exhibit number, initials, date received - October 25, 1989. It was received from Constable Britt.
- 15 Q. What if anything did you do with that item?
- A. I cut off the tip of one of the swabs and subsequently analyzed it for DNA.
- Q. And what if anything did you do with that item you have in your hands after that time?
- 20 A. The item was returned to Constable Britt on March 25, 1991.
- Q. I show you an item that has been marked AA for Identification. It purports to be a body swab taken from Linda Daughney. Do you recognize that
- 25 item?
- A. Yes, again, it bears my file number, exhibit number, initials, date received - October 25, 1989, from Constable Britt.
- 30 Q. And what if anything did you do with that item?

1 A. I cut the tip of the swab off and analyzed it for
DNA and subsequently returned it to Constable Britt
on March 25, 1991.

Q. Police identification number 135. I show you BB
5 for Identification.

THE COURT: What is that - DD?

MR. WALSH: BB - as in Bob.

Q. BB purports to be a blood standard from Linda
Daughney. Would you look at that for us please
10 and tell me whether you can identify it?

A. Yes, again, it bears my case number, exhibit number,
initials, date received - October 25, 1989, received
from Constable Britt.

Q. And what if anything did you do with that item?

15 A. I took an an aliquot of the blood sample and analyzed
it for DNA and then subsequently returned it to
Constable Britt on March 25, 1991.

Q. I show you an item that has been marked JJ for
20 Identification. It purports to be scalp hair
standard of Legere taken in 1986.

THE COURT: Scalp?

MR. WALSH: Scalp hairs.

A. It bears my file number, exhibit number, and
25 initials, and date received - October 25, 1989.

Q. What if anything did you do with that item?

A. I used the hair roots from the scalp hair sample for
DNA analysis.

Q. I'll show you an item that has been marked LL for
30 Identification. It purports to be a pubic hair
standard of Legere taken in 1986.

- 1 A. Again, it bears my file number, exhibit number, and initials, and date received - October 25, 1989, from Constable Britt.
- Q. What if anything did you do with that item?
- 5 A. I removed the hair roots for subsequent DNA analysis.
- Q. And what did you do with the item in your hand after you had done your DNA analysis?
- A. Both those items I returned to Constable Britt on March 25, 1991.
- 10 Q. I show you an item that has been marked 4P. It purports to be toilet tissue taken from a garbage can in an interview room at the RCMP station in Newcastle in 1989.
- A. Yes, it bears my case number, exhibit number, initials and date received - November 27, 1989.
- 15 Q. And who did you receive that from?
- A. Constable Charlebois.
- Q. Constable Charlebois?
- A. Yes.
- 20 Q. What if anything did you do with that item after you received it?
- A. I removed a portion of it and examined it for DNA and then subsequently returned this to Constable Charlebois on March 25, 1991.
- 25 Q. At the same time that you returned some other items to Constable --
- A. Britt. Yes, that is correct.
- Q. You say you removed a part of it. What part did you -- why did you remove part of the item?
- 30 A. There were several stains on the toilet paper that I

1 removed for analysis.

Q. These stains appeared to be what?

A. Blood.

Q. Apart from the insoles that were marked for identi-
5 fication, the items that we have just gone through,
Dr. Bowen, are these the items all of which you
used for DNA analysis to which you are going to
testify later?

A. That is correct.

10 Q. There is one further item. It's coming from the
possession of the Clerk. It has not been previously
identified. I wish to have that marked.

THE COURT: 4S.

4S FOR IDENTIFICATION: Pubic hair standard

15

MR. WALSH: My Lord, this particular item - we have
taken Dr. Bowen slightly out of sequence. Duff Evers
would have had to testify before him. This item
purports to be, through Duff Evers will purport to be
20 public hair standard of Legere taken in 1989.

Q. Final item, Doctor, 4S. Would you look at that for
us please and tell me whether you can identify it?

A. Yes, it bears my file number, exhibit number, initials,
and date received - January 10, 1990.

25

Q. Who did you receive it from?

A. It received this from civilian member Duff Evers.

Q. What if anything did you do with that item and the
contents of that item?

30

A. I removed the hair roots and used it for subsequent
DNA analysis.

1 Q. What if anything did you do with the item in your
hand after that?

A. I returned the exhibit to Constable Houle on March 25,
1991.

5 Q. And this would have been at the same time that you
returned items to Constable Britt and Constable
Charlebois?

A. That is correct.

10 Q. Again, this item would have been included with the
previous items that you actually -- DNA analysis for
which you are going to testify in this court?

A. That is correct.

15 MR. WALSH: My Lord, I have finished my questions of
Dr. Bowen on this continuity phase. I would make a
motion apart from the 2 insoles that have been
marked for identification. I would make a motion that
C, D, X, Y -- W, X, Y, Z, JJ, LL, AA, BB, HH, 4S, 4P
be entered as exhibits on this particular trial
continuity being -- the relevance of the matter is
20 apparent. Continuity will be proved up, particularly
the item 4S will be proved up through Mr. Evers, and
other items will be proved up through Constable
Charlebois and again when Mr. Evers testifies. As I
say, he is taken out of sequence so we can get him
25 back to Ottawa.

THE COURT: My memory, although good, isn't quite good
enough to recall whether you have in fact established
continuity of all those items.

30 MR. WALSH: I can advise the court as to our situation
with respect to each one if you'd like.

1 THE COURT: Well I don't know. Do you --
MR. FURLOTTE: I have no objection.
THE COURT: My impression is that you have.
MR. WALSH: Some will be undertakings that these items
5 -- some of them will have to be proved up through
Constable Charlebois or Mr. Evers. They would have
normally testified before Dr. Bowen, but we have
them present and they will testify.
THE COURT: Let's give them -- subject to your being
10 reprimanded if they don't fill in the gaps, let's
give them exhibit numbers now. Do you want to call
those out? You have them in order there. Whatever
the next exhibit number is.
THE CLERK: 101 I believe.
15 THE COURT: The next number coming up.
THE CLERK: It would be 101.
THE COURT: Yes, you are quite right. So C will become
101; D becomes P-102; W is P-103; X is P-104;
20 Y is P-105; Z is P-106; AA is P-107; BB is P-108;
HH is P-109; JJ is P-110 and LL is P-111; 4P is P-112
4S is P-113. Did you say a 4F in that?
MR. WALSH: No, My Lord. There were insoles. They
weren't being entered.
25 THE COURT: Well, you are not entering those at present.
MR. WALSH: No.
THE COURT: Those are the numbers.
EXHIBIT P-101 - EXHIBIT P-113 INCLUSIVE.
THE COURT: Are you going to examine on any of these
30 items now?
MR. FURLOTTE: Just on the insoles.

1 THE COURT: Those can be marked during the recess. You
don't have to do that straight away. Did you have
other questions?

5 MR. WALSH: No, My Lord. He is subject to stand aside
after cross-examination.

THE COURT: Yes. Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

10 Q. Dr. Bowen, you mentioned you took 2 hairs from 4Q,
the right insole?

A. That is correct.

Q. And did you attempt to do anything with those hairs?

A. No, I did not. They were insufficient for analysis.

15 Q. In other words there was no hair roots that you
could get a DNA extraction from?

A. No, there was insufficient -- there was no sheath
material available for DNA typing.

Q. What about for hair comparisons? You used to be a
hair expert.

20 A. They were body hairs.

Q. Hair and fibre expert.

A. That is correct.

Q. Before you were DNA.

A. Yes.

25 Q. How long were the hairs?

A. The hairs were very short. They were less than a
centimeter. They were body hairs.

Q. Body hairs?

A. Yes.

30 Q. Off the foot?

- 1 A. One cannot tell.
- Q. You don't know?
- A. No.
- Q. Just that you know they are not scalp hairs.
- 5 A. That is correct.
- Q. Could they have been pubic hairs?
- A. No.
- Q. Something other than scalp or --
- A. Or pubic hair.
- 10 Q. What about the insoles themselves? Did you attempt to check them for anything?
- A. For --
- Q. Extract sweat from them for DNA analysis?
- A. No, I did not.
- 15 Q. Would that have been possible?
- A. We haven't actually had a successful extraction of sweat, no, not that I am aware of.
- Q. You haven't.
- A. We haven't in our lab.
- 20 Q. Not in your lab. Other labs possibly have?
- A. Not that I am aware of, no.
- Q. And you say you returned those insoles to Constable Charlebois on November 28?
- A. That is correct.
- 25 Q. Did you have that in your notes as to when you returned them, November 28?
- A. Yes, I do.
- Q. Just an exhibit transfer slip?
- 30 A. Yes, that's correct.
- MR. FURLOTTE: No further questions of this man.
- THE COURT: Re-examination, Mr. Walsh?
- MR. WALSH: No, My Lord.

1 THE COURT: Thank you, Dr. Bowen. You cannot, of course,
discuss this aspect of your testimony with anyone
until all your testimony is complete. I am sure you
understand. Thank you. You are excused for the
5 present. It is quarter past 11:00. We said we were
going on only until 4:00 o'clock today.

MR. ALLMAN: No, 2:00 o'clock. The jurors mentioned
that they had medical appointments.

10 THE COURT: You may be right. Anyway, we had better
have a recess now, 15 minutes or so. I am just
wondering -- yes, you are quite right on the 2:00
o'clock. If we have about a half an hour, an hour
perhaps, then we could -- that would bring us back
at quarter to twelve and then perhaps we could make
15 a run of it and even finish up before 2:00 o'clock
if you get through those witnesses.

Mr. Pugh, you should arrange for the turn off
of the video machine during the recess.

20 THE CLERK: Yes, My Lord.
(Jury Retires)

COURT RECESSED - 11:30 a.m.

25

30

1 COURT RESUMES - 12:15 P.M. (Accused viewing
proceedings from holding
cell.)

(Jury Called - All Present)

THE COURT: You have another witness?

5 MR. ALLMAN: Just before I do, My Lord, one minor
housekeeping matter. We've been checking up and there
is an item which can go in as an exhibit, item SS,
picture of Mr. Legere. I understand there is no
objection to it becoming an exhibit.

10 THE COURT: Was that the small picture?

MR. ALLMAN: That's the small picture taken.

THE COURT: But has this been marked for identification?

MR. ALLMAN: It's SS for Identification.

15 THE COURT: But is it a small picture of a larger one?
There was a larger picture put in earlier.

MR. ALLMAN: No, it's not.

THE COURT: Where did this come from, SS?

MR. ALLMAN: It purports to be taken shortly after
Mr. Legere's arrest. Shortly after the arrest.

20 THE COURT: So that becomes P-114.

MR. ALLMAN: I'm sorry I meant to say it's by Corporal
Godin. I thought I said that.

THE COURT: Corporal what?

MR. ALLMAN: Godin.

25 EXHIBIT P-114: Photograph of Mr. Legere.

THE COURT: The jury can see that along with other
exhibits later.

MR. ALLMAN: My next witness is Fernand Savoie.
30 Mr. Savoie indicates he can testify in English. If
there are any problems the interpreter is available,
but he thinks he can testify in English.

- 1 THE COURT: Would the interpreter care to -- is the
interpreter there? All right.
- MR. ALLMAN: Perhaps we could swear the interpreter,
My Lord, just in case there are any words, particular
5 words.
- MR. WALSH: She's been sworn.
- MR. ALLMAN: Right.
- THE COURT: Is the interpreter in court? Yes, there she
is. Would you mind coming up and just sitting --
10 is there a chair on the other side -- just to be
available in case Mr. -- if there is anything you
don't understand, Mr. Savoie, you ask the interpreter
- MR. FERNAND SAVOIE, called as a witness, having
been duly sworn, testified as follows:
- 15 DIRECT EXAMINATION BY MR. ALLMAN:
- Q. What's your full name?
- A. Fernand Savoie.
- Q. Where do you live?
- A. Buctouche, New Brunswick.
- 20 Q. How long have you lived in Buctouche, New Brunswick?
- A. Since 1972.
- Q. '72?
- A. Yes.
- 25 Q. Do you speak French?
- A. Right.
- Q. The period of your life from 1988 -- November 1988 to
December 1989, although you were living you indicated
in Buctouche, where were you working at that time?
- 30 A. I was working at the Repap Pulp and Paper Mill in
Newcastle and residing from Monday to Tuesday night

3390

1 at the Governor's Mansion in South Nelson and on
the weekend returning home.

Q. Monday to Friday - Governor's Mansion; weekend home?

A. Yes.

5 Q. My Lord, there has already been evidence, and I don't
know that this witness can confirm it, as to where
the Governor's Mansion is.

THE COURT: Yes, I think that's --

Q. Did you say Monday to Friday?

10 A. Yes, I went back there to work on Monday and stayed
overnight from Monday to Thursday at the Governor's
Mansion.

Q. How did you get to and from your home to spend the
week at the Governor's Mansion?

15 A. During the summer I used the 1981 Datsun and during
the winter months I used the '79 half-ton truck.

Q. Approximately when did you stop using the Datsun to
get to and from?

20 A. The first snow storm I believe - something like the
17th - 18th of November '89.

Q. So up until the snow came on the 17th and 18th of
November, you had been using the Datsun in the
fashion you just described?

A. Yes.

25 Q. I am going to show you now an item that has been
marked as 4E, two documents. You have to shake them
down because they are covered. Can you look at
those two documents and tell me if you recognize
30 them and if you do what they are?

3391

1 A. Yes, one is proof of insurance bearing my name from
Allstate for '81 Datsun and a '79 GMC truck. And
the other is the provincial registration for a Datsun
'81 200SX bearing my signature.

5 Q. Do you recognize that signature as being yours?

A. Yes, I do.

Q. Subject to any objection I'd ask both those items
collectively be entered as an exhibit.

THE COURT: That would be P-115.

10 EXHIBIT P-115: Proof of Insurance and Registration

Q. I am going to give you those back and ask you some
questions about them. Where did you normally
keep your vehicle registration and insurance card?

15 A. I usually keep the cards in the dash glove compartment
of the car.

Q. Did you have occasion to receive the new insurance
card in connection with that vehicle?

20 A. Yes, my insurance was renewed in the fall of '89 and
the beginning of the insurances, the 10th of
October.

Q. So when would you -- when you said that you were
looking at the insurance document that's an exhibit?

A. Yes, the Allstate insurance card.

25 Q. So if that became effective the 10th of October, when
approximately would you have received the card?

A. I'm not sure of the exact time on the weekend but
it would have been shortly before.

Q. Are we talking a day or two or a week or two?

30 A. From the 6th - 7th of October.

3392

- 1 Q. When you received the new insurance card on the 6th
or 7th of October, '89, where did you put it?
- A. I put it in the -- one each: one in the Datsun and
one in the truck.
- 5 Q. So there would be one insuring the Datsun - would be
in which --
- A. In the glove compartment of the Datsun.
- Q. Along with what?
- A. With the registration.
- 10 Q. Do you know what if anything happened to those
documents? Did they stay in the glove compartment
or did something happen to them?
- A. No, I always assumed that they were in the glove
compartment.
- 15 Q. Did you ever discover that your assumption was
incorrect?
- A. I was notified by the police detachment in Newcastle
to check my car to see if anything was missing.
- Q. And when you checked was there anything missing?
- 20 A. The only thing I found missing was my registration
and insurance card.
- Q. I gather then that you don't know the precise date
upon which they went missing?
- A. No, I do not.
- 25 Q. When would you last have seen them in the glove
compartment of your Datsun?
- A. At the time I put the card in around the 6th to the --
well 6th or 7th of October of '89.
- 30 Q. After November 17th, 18th, the day that the first
snow arrived where was your Datsun that winter?

1 A. After that first snow on the weekend I left it home
in Buctouche.

Q. Parked where?

A. At my residence about 3 miles south of Buctouche.

5 Q. But between October 6th - 7th and November 17th - 18th
I understand you would have been making your trip to
the Governor's Mansion and back, in the way you
testified to?

A. Yes, that's right.

10 Q. And so far as you were aware during that time where
were your vehicle documents?

A. I always assumed they were in the glove compartment.

Q. To some of the jury sitting there, they can view your
appearance. Casting your mind back does your present
15 appearance compare to your appearance in November
1989?

A. Oh, I would fit practically the same.

Q. Perhaps a little older?

A. No doubt.

20 THE COURT: G.S.T. has had its effect.

Q. In November 1989 did you have occasion to go to
Montreal?

A. No, I didn't.

25 Q. In November 1989 did you have occasion to check
into any hotel in Montreal?

A. I did not.

Q. Buy any glasses in Montreal?

A. No.

30 Q. Sell any jewellery in Montreal?

A. No.

1 Q. Go on a train?

A. No.

MR. ALLMAN: Thank you.

THE COURT: Cross --

5 MR. FURLOTTE: I have no questions.

THE COURT: No cross-examination. Thank you very much, Mr. Savoie, and you are excused, merci, sir. I am sorry that you have been held around here perhaps for a few days.

10 MR. ALLMAN: My next witness is William Wilson.

My Lord, perhaps if he doesn't come in in a moment, I will skip him. He has obviously stepped out to the washroom or something. I will just go ahead with the next witness.

15 THE COURT: Here he is.

WILLIAM WILSON, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

20 Q. What is your name, please?

A. William David Wilson.

Q. Where do you live?

A. Edmonton, Alberta.

Q. In the months of October and November of 1989 where
25 were you residing?

A. At the Governor's Mansion.

Q. That is in Newcastle, New Brunswick?

A. Yes.

Q. What were you doing at the Governor's Mansion?
30 Why were you staying there?

3395

1 A. I was working at the mill there, the Repap Mill, and
I was residing there, lived there.

Q. The Governor's Mansion is in the general area of
Newcastle, New Brunswick?

5 A. Yes.

Q. Would you have a vehicle there?

A. Yes.

Q. What sort of vehicle?

A. It was a Ford 350 one ton.

10 Q. Truck?

A. Yes, truck.

Q. Did anything happen to the truck or the contents of
the truck?

A. Yes, the truck was broken into.

15 Q. Do you remember the date?

A. The 20th of October, the night or the morning of the
21st.

Q. Somewhere between the 20th and the 21st of October?

A. Yes.

20 Q. And you say it was broken into. When did you discover
that it was broken into?

A. The next morning when I was heading out going some-
where and the window was broken on the right hand
side and then I looked down -- looked through my stuff
25 and I noticed it had been broken into. All the
glass was all over the place and I searched through
my stuff and I found a couple of articles were
missing.

30 Q. When you came to make your check after you discovered
it was broken -- did you discover any particular
things missing?

- 1 A. Yes, my watch and my electrician's ticket.
- Q. I am going to show you an item that has been marked
4J. Would you take a look at it please and tell me
if you recognize it?
- 5 A. That's my watch, yes.
- MR. ALLMAN: I'd ask that it be marked as an exhibit,
and then I will ask the witness a couple of questions
about it.
- THE COURT: You are offering it did you say?
- 10 MR. ALLMAN: I am offering it as an exhibit, yes.
- THE COURT: That will be P-116.
- EXHIBIT P-116: Watch.
- Q. I am showing you P-116. It's a Timex watch which
you previously indicated -- believed to be yours.
15 Is there anything about it that causes you to
believe that it is yours? Any marks?
- A. Yes, the paint on it. I was painting a house before
I came to the job.
- 20 Q. What can you see on the strap of that watch that I
am showing to you?
- A. The paint.
- Q. That's what causes you to believe that's yours?
- A. Yes.
- 25 Q. I am going to show you an item that has been marked
4F. Take a look at that and tell me if you recognize
that?
- A. Yes, that's my electrician's ticket.
- Q. In whose name?
- 30 A. William D. Wilson. That's my legal name.

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1 MR. ALLMAN: I'd ask to have that entered as an exhibit.

THE COURT: P-117.

EXHIBIT P-117: Electrician's Ticket.

5 Q. Are you in fact the William D. Wilson who holds the certificate of completion of apprenticeship for the trade of electrician?

A. Yes, that's true.

Q. That's what is stated on that card.

A. Yes, that's right. The red seal is on the back.

10 Q. That's the red seal you are referring to?

A. Yes.

Q. When you discovered that you had been a victim of a theft what did you do?

15 A. Well I went to the R.C.M.P. there and there was no one there so -- then someone phoned me up from New Brunswick here.

Q. Did you report the theft is what I am getting at?

A. Yes.

20 Q. Did you ever see those items again? I mean the wristwatch and the trades certification.

A. Not until today.

Q. Apart from those items what other items did you observe to have gone missing?

25 A. None other than --

Q. Do you remember any clothing that might have gone missing?

A. I thought I missed my jacket but I wouldn't --

Q. So you're not sure?

30 A. I'm not sure, no.

1 Q. What did you use to use when you were staying at the
Governor's Mansion to shave? Do you remember if you
had a shave?

A. Yes, I did. That's who it was missing, too. You're
5 right. The razor.

Q. I take it you got another one?

A. Yes.

MR. FURLOTTE: I wonder if we would call that a leading
question, My Lord.

10 THE COURT: Yes, I think that was leading.

A. Actually I thought it was a teenager had broken into
the truck and then I started thinking later on,
these Shick razors that were missing, why would a
teenage use a Shick razor?

15 MR. ALLMAN: I wouldn't know. I have no other questions.

THE COURT: That hockey team of yours out there,
Edmonton Stampeders, they are not going to beat the
Los Angeles Kings this year.

A. I don't know. I am not that kind of a fan.

20 THE COURT: They're the Eskimos. Thank you very much.

MR. ALLMAN: You can step down.

THE COURT: Yes, you are all through. Have a good trip
back.

25 MR. ALLMAN: My next witness is Hiroshishi Takikashi.

HIROSHISEI TAKIKASHI, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name please?

30 A. Hiroshishi Takikashi.

Q. Where do you live Mr. Takikashi?

- 1 A. Vancouver, B.C.
- Q. In 1989, the month of October, where were you staying then?
- A. I was living in Fredericton.
- 5 Q. Where?
- A. Fredericton.
- Q. Did you have occasion to go anywhere else besides Fredericton at that time?
- A. Yes, I did.
- 10 Q. Where to?
- A. I was on tour with Theatre New Brunswick therefore going to Bathurst, Campbellton, Chatham, Saint John, Moncton, Sussex, and St. Stephen.
- Q. And in accordance with these plans and with this trip
- 15 did you have occasion to stay at a boarding residence somewhere?
- A. Yes, I did.
- Q. What was it called?
- A. In Chatham. It was called the Governor's Mansion.
- 20 Q. Do you remember the date on which you stayed there?
- A. The night of the 25th of October.
- Q. 1989?
- A. 1989.
- Q. And what transportation did you and the other fellows
- 25 have?
- A. We had the company van, 15 passenger van we all travel in.
- Q. And did you discover anything that happened to that van?
- 30 A. On the morning of the 26th some of the other fellows

- 1 went out to the van that morning and --
- Q. I don't want to get into the conversation they had
with you. They came back and talked to you about
something?
- 5 A. Yes.
- Q. As a result of what they told you what did you do?
- A. I went outside to -- I didn't think about it
originally that there was anything wrong, but later
on when we were driving I started to notice that, yes
10 my bag was missing.
- Q. And as a result of the inquiry you made subsequent to
that, what if anything did you discover had gone
missing?
- A. The bag itself was missing. . It was a red gym bag.
15 Inside there was a little radio with cable in a case,
a big flashlight, 4D cell, and my Swiss Army knife,
and a toque I believe was the other item missing.
- Q. Toque?
- A. A toque.
20
- Q. Any other items of clothing that you can remember?
- A. Not that I can think of.
- Q. You mentioned one of the things I think was a small
radio of some kind?
- 25 A. Yes.
- Q. I show you an item that has been marked 4N. Would
you look at it and if need be take it out of its
bag and tell me if you can say anything about it?
- A. So far it looks like it. Yes.
- 30 Q. Yes what?
- A. Yes, that is my radio.

- 1 Q. Is there something in particular about it that
enables you to say that?
- A. The velcro stuck to the back and the letters NHK on
it.
- 5 Q. What does NHK mean?
- A. It's the name of a T.V. station I work for in Japan,
Nihon Hoso Kyokai
- MR. ALLMAN: I don't know if the shorthand reporter need
that spelling.
- 10 A. T.V. Japan.
- MR. ALLMAN: Perhaps I could have that marked as an
exhibit?
- THE COURT: Was that in Japanese lettering?
- A. No, it was in English.
- 15 THE COURT: English.
- A. Yes, the initials were.
- THE COURT: That is Exhibit 118.
- EXHIBIT P-118: Radio.
- 20 Q. Do you remember any of the names of any of the
companions, the people who came back and talked to
you as a result of which these things happened?
- A. Chris Saad and David Westlake were the two came
back initially to say there was something missing.
- 25 Q. Any other names of any other companions?
- A. Kevin Purdue.
- MR. ALLMAN: Kevin Purdue. Thank you.
- MR. FURLOTTE: I have no questions.
- THE COURT: No cross-examination. Thank you very much,
30 Mr. Takakashi. Have a good journey back.
- MR. ALLMAN: The next witness is Jerry Haddow.

1 JERRY HADDOW, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name please?

5 A. Jerry Haddow.

Q. What town or city do you live in?

A. Nelson, B.C.

Q. Did you ever have occasion to live in the Miramichi
area of New Brunswick?

10 A. Yes, I did.

Q. When was that?

A. October and November '89.

Q. And where were you staying when you were on the
Miramichi?

15 A. Governor's Mansion.

Q. I am showing you an item that has been marked 4M.
Take it out if need be. Would you have a look at
that please and tell me if you recognize it?

20 A. Yes, I can.

Q. What is it?

A. It's a black leather jacket with Mercedes Benz crest
on it.

Q. Is there anything in particular about it that enables
25 you to recognize it?

A. I haven't seen another one like this.

Q. Whose was that?

A. It was mine.

MR. ALLMAN: I am going to ask to mark it as an
30 exhibit, My Lord.

- 1 THE COURT: Exhibit P-119.
EXHIBIT P-119: Jacket.
- THE COURT: What was the identification number on that?
- MR. ALLMAN: It was formerly 4M.
- 5 Q. Now I gather you recognize 4M as being an item that
used to belong to you?
- A. Yes, I do.
- Q. What happened to 4 -- not 4M anymore. The Court has
got a number on it. What happened to P-119?
- 10 A. What happened to my jacket?
- Q. Yes.
- A. Stolen out of my truck.
- Q. When?
- A. It would be on the Thanksgiving weekend probably on a
15 Friday night.
- Q. In '89?
- A. In '89.
- Q. How did you come to discover that it was gone?
- A. I went out to get something out of the truck in the
20 morning, a bag, and I noticed the bag wasn't there
and I left for Moncton shortly after in another
vehicle and found out that my jacket wasn't there
when I went to go to Moncton.
- 25 Q. Apart from the jacket, I think you mentioned something
else. What was that?
- A. It was a red tote bag.
- Q. Red tote bag. What had happened to that?
- A. The contents of that were dumped out on the back
30 seat of my truck.

1 Q. What about the bag itself? Was that there to be
seen?

A. No, it was not.

MR. ALLMAN: I have no other questions. Thank you.

5 THE COURT: Cross-examination?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. You mentioned that this was stolen after which
weekend?

A. I said before the weekend.

10 Q. Oh, before.

A. Before the long weekend.

Q. Before the Thanksgiving weekend?

A. Yes, it was on the Friday night.

MR. FURLOTTE: Thank you.

15 THE COURT: Re-examination?

MR. ALLMAN: No further questions.

THE COURT: I thank you very much, Mr. Haddow. You are
excused. Another witness:

20 MR. ALLMAN: Wilfred Dyck.

WILFRED DYCK, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

25 A. Wilfred John Dyck.

Q. How do you spell that?

A. The last name is spelled D-y-c-k.

Q. What town or city do you presently reside in?

A. I keep a residence or I keep an address at Gunn,
30 Alberta - G-u-n-n.

Q. In 1989 did you have occasion to reside temporarily

- 1 at another place?
- A. I was at Chatham in the Governor's Mansion.
- Q. How long did you stay there?
- A. Approximately 6 weeks.
- 5 Q. During those 6 weeks did anything happen, first of all to the contents of the room that you were inhabiting at the Governor's Mansion?
- A. Well during the time I was there I lost a number 13 volume of an Encyclopedia Britannica. I lost a
- 10 wallet.
- Q. Where were they? You say you lost them. What happened to them do you know?
- A. I had the encyclopedia in my room and it's one I had -- when I loaded the stuff and I was in -- I
- 15 was going into another town already and then I said I should check my volumes to make sure they are all there and then I realized number 13 was gone.
- Q. So it was missing from your room?
- A. Yes.
- 20 Q. What about the wallet?
- A. I was staying in another room in the Governor's Mansion at that time because of people coming in and going, getting into a better room, or whatever. That
- 25 door was locked so I could lock it. But I got up at 2:00 o'clock in the morning and went to the washroom. When I came back it was cold in the room so I left the room open, the door open.
- Q. Where was your wallet?
- 30 A. My wallet was in my jeans.
- Q. In the room that the door was open?

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- 1 A. Yes.
- Q. Okay.
- A. I left the door open after I went to the washroom.
I didn't realize that I should have locked it, but
5 it was cold in the room so --
- Q. So what happened to the wallet that you left in the
jeans in the room?
- A. I noticed it was missing in the morning when I got up
- Q. Do you remember what day that was or about what
10 day that was?
- A. I could not remember what specific day. It was
during the six weeks that I was there. It was
August and October.
- Q. August to October. Okay, did you have transportation
15 at the Governor's Mansion?
- A. I had a 1987 GMC half-ton full size.
- Q. And what if anything happened to that during this
time that you were at the Governor's Mansion?
- A. It was broken into.
- 20 Q. Do you know the date when that was broken into?
- A. No, I don't know that.
- Q. But it would be in that same time frame?
- A. Yes.
- Q. What if anything was taken in that break?
- 25 A. I had a number of things taken: a work parka, an
old work parka; a pair of boots; a pair of rigging
boots; some socks; some work clothes; a hunting knife.
I believe it was a filleting knife with probably
30 about a 10 or 11 inch blade, work socks, T-shirt, some
briefs that were still in a package - you know.

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1 Q. I am showing you now 2 items, 4H and 4I. Just take
a moment to look at those 2 items please.

You mentioned that you had some work boots stolen
from you. How do those that I have just shown you
5 compare to the work boots?

A. They were new at the time. They were brand new.

Q. Apart from that how do those compare?

A. They are the same ones.

THE COURT: Those items - do they both have soles?

10 MR. ALLMAN: I will ask the questions on --

THE COURT: All right. P-120.

MR. ALLMAN: I have 121.

THE COURT: Yes, 120 and 121.

MR. ALLMAN: My Lord, it has been some time since those
15 boots got their identification numbers. I would
just remind the jury that those are the boots that
-- the evidence is seized from Mr. Legere at the time
of his arrest.

20 EXHIBIT P-120: Left boot. (formerly 4H for Ident.)

EXHIBIT P-121: Right boot. (formerly 4I for Ident.)

Q. With regard to those two boots, first of all, as
we can all see they presently have had the bottom,
the sole removed from the uppers. I take it when
25 you had them they were not in that condition and
they also don't appear to have any laces in them at
the moment. Did they have laces in when you had
them?

A. Yes, they had white laces in them.

30 Q. Is there anything in particular that -- you look at

1 those boots and apart from the fact they have been
worn now causes you to think that those are the
boots that you had stolen?

5 A. Normally I buy Greb boots but travelling you don't
get size 12 name brand which you want on the road
and I remember that I bought them in Newcastle and
all they had was Gorilla boots.

 Q. They didn't have a size in them.

10 A. Well they fit me. They're 12 and if you look they
are marked Gorilla.

 Q. When you describe them as new, had you worn them
before yourself?

 A. No, I didn't.

 MR. ALLMAN: Thank you.

15 THE COURT: Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

 Q. What was the date, again, that you had these boots
stolen?

20 A. I don't know exact what date but it was -- I was here
in August and October. During that 6 weeks - it
was towards the end of that 6 week period that they
went missing. I had my truck broken into.

 Q. Do you know which date in October that you did leave?

25 A. I could check. I couldn't tell you. I don't know
the exact date.

 Q. Do you know whether or not it was around the middle
of October, or end of October?

 A. I couldn't say what day it was.

30 Q. Sometime in October.

 A. Well I'm saying August or October. I was here for a

1 6 week period. During the latter end of that time
this is what happened.

Q. Do you remember when you came in August whether it
was?

5 A. I would have to call the employer I was working for
because I don't remember the exact or specific date.

MR. FURLOTTE: Could I just have a minute, My Lord?

I have no further questions.

THE COURT: Re-examination?

10 MR. ALLMAN: No re-examination, My Lord.

THE COURT: Thank you.

MR. ALLMAN: Randall Briggs.

RANDALL BRIGGS, called as a witness, having been
duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. ALLMAN:

Q. Where do you live please?

A. Moncton, New Brunswick.

Q. And what is your occupation?

A. Right at the present I am a student.

20 Q. And what is your full name?

A. Randall Carol Briggs.

Q. Mr. Briggs, in 1989 did you have occasion to work
somewhere on the Miramichi?

25 A. Yes, I did.

Q. Where in particular?

A. At the Governor's Mansion in Nelson.

Q. What sort of work were you doing?

A. I was working for A-1 Chimney Sweeps at the time
installing a --

30 Q. Do you remember the day that the incident you are

- 1 going to be describing occurred?
- A. Yes, it was on the 14th of December '89.
- Q. What did you say you were working at at the Governor's
Mansion? What particular job?
- 5 A. Installing a stainless steel flue in one of the
fireplaces.
- Q. You have already indicated that something apparently
happened that day unusual and out of the way. Would
you tell us about it?
- 10 THE COURT: I'm sorry I just didn't get the date.
- A. 14th of December.
- THE COURT: December.
- A. Yes.
- THE COURT: In --
- 15 A. '89.
- Q. Tell us about the unusual thing that happened?
- A. I found a sawed-off rifle hanging on the rod iron
fence in front of the Mansion.
- Q. Whereabouts in relation to the Mansion is this
20 fence that you found the rifle?
- A. It's on the front corner of the building toward the
road.
- Q. Had you been by that location before?
- A. Just to drive in.
- 25 Q. What was the rifle doing?
- A. It was just hanging on the fence.
- Q. What did you do as a result of what you had observed?
- A. I told the fellow that I was working with and we
30 informed the father of the Mansion.

- 1 Q. Who runs the Governor's Mansion?
A. I don't know his name.
Q. What is he?
A. He is a retired priest.
- 5 Q. So you informed him and as a result of all this conversation did somebody arrive?
A. Yes, the father called the R.C.M.P. and Constable LaFontaine showed up.
Q. When Constable LaFontaine showed up what did you and
10 he do together?
A. We removed the clip and opened the mechanism of the rifle.
Q. When the police officer arrived was the rifle still where you had seen it or had you moved it?
15 A. I had brought it into the Mansion. I carried it by the sling.
Q. What condition was the rifle in when you observed it?
A. It was slightly rusted.
20 Q. Slightly rusted.
A. Yes.
Q. What about the action of the rifle?
A. The action was seized.
Q. What did you and/or the police officer do to correct
25 that condition of the action being seized?
A. I had a can of WD40 so we sprayed it on the action and it opened up.
Q. After you'd sprayed the WD40 and got it working, what
30 else did you and the officer do?

1 A. After it was open we just took the shells out of the rifle.

Q. So there was shells in it?

A. There was shells in it.

5 Q. I am showing you an item that has been marked OO for Identification. How does that compare with the rifle that you have been talking about?

A. This is one and the same. It's the same rifle.

MR. ALLMAN: Thank you.

10 THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. How did you come about to see the rifle lying in the--

A. As we were installing the flue, my partner was working on the roof. If he dropped a length of pipe off the roof, it rolled to the front of the building and when I went around to retrieve it I slipped on a patch of ice and hit the fence and heard a rattle and that's when I noticed the rifle hanging on the fence.

20 Q. What is situated right next to the Governor's Mansion on the other side of that fence?

A. On the other side of the fence?

Q. Yes.

A. The front lawn of the Governor's Mansion.

25 Q. Front lawn?

A. Yes.

Q. So if that gun had been -- would you have been able to see that sawed off rifle if you were walking through the driveway?

30 A. No, I don't think you would be able to because it was on the inside of the fence and the way it was hanging it just looked like part of the fence.

1 Q. So you would have to be on the side of the fence
where the lawn is in order to see it?

A. Yes.

Q. And not from the driveway.

5 MR. FURLOTTE: No further questions.

THE COURT: Re-examination, Mr. Allman?

MR. ALLMAN: No re-examination.

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

MR. SLEETH: I'd call Constable von LaFontaine - recall
10 My Lord. He testified earlier as number 127. He
was one of the first to arrive at the Smith scene.

THE COURT: May I just ask you now - not ask you, tell
you. You are winding down aren't you?

MR. SLEETH: I think so, My Lord, yes.

15 THE COURT: May I venture to ask how many more witnesses?

MR. SLEETH: Well we still have quite a number, My Lord,
that we could present.

THE COURT: I know there are.

MR. SLEETH: This particular aspect dealing with the
20 introduction of these particular items I have, there
are four witnesses to present to you, all of whom
I would expect to be brief, My Lord, and there are
several others from the laboratory. I think we'd
like to get them out of the way if possible if the
25 jurors would allow --

THE COURT: Are they all police officers now? Do you
have any civilian witnesses?

MR. SLEETH: We are dealing here with police officers,
My Lord, and civilian members of the R.C.M.P.

30 THE COURT: But you have two who are further down -
236 and 237. Are they --

1 MR. SLEETH: Not today, My Lord, no.

THE COURT: Well let's go along for a little while.

MR. SLEETH: Thank you, My Lord.

5 CONTABLE YVON LAFONTAINE, recalled as a witness,
having been previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Constable, I have just placed before you OO for
Identification. Do you recognize that?

A. Yes, I do.

10 Q. Would you relate to the jurors, then, how it is that
you say you recognize that and the circumstances
which lead to this ability of yours?

A. There is an exhibit tag on the article that bears
15 my initials, the time and the date I seized the
article. That would be the 14th of December, 1989,
at 1624. That's 24 after 4:00 p.m. On that date
I was instructed to attend the Governor's Mansion in
Nelson, County of Northumberland, Province of
20 New Brunswick. I drove to the Governor's Mansion
in Nelson and there I met with a Mr. Briggs and a
Mr. LeBlanc and as a result of a conversation that I
had with these gentlemen we went inside the
Governor's Mansion and I was shown this article.
25 I took possession of it.

Q. What condition was it in when you found it, the
hammer, the lever?

A. The lever was cocked and there was a round in the
chamber and if I remember well the magazine was
30 already out of the rifle.

- 1 Q. Did you at the time make any observations of the
magazine or the contents?
- A. It contained four rounds.
- 5 Q. Okay, you said that the lever was cocked. What else
did you notice about the condition of OO when you
found it at the Governor's Mansion?
- A. It had rust on the metal portion of the rifle and
the rest is basically the same as it is now.
- 10 Q. Did you do anything with the item OO at that time
once you discovered there was rust on it?
- A. To make it safe for transport we removed the round
inside the chamber. Somebody got some WD40 and we
were able to remove the round and make it safe for
transport back to the office in Newcastle and
15 that's what I did. I brought the exhibit back.
- Q. WD40 is what?
- A. It's just like grease or oil. It's a spray we put on.
- Q. You brought it back to the office in Newcastle?
- A. At Newcastle that's correct.
- 20 Q. When you brought it back there did you turn it over
to any particular person or did you keep it yourself?
- A. I kept it in my personal locker and I am the only
one to have a key to the locker.
- 25 Q. You kept it for how long?
- A. I kept this exhibit, this article, until the 18th of
January, 1989 -- 1990, sorry, at which time I turned
it over to Constable Marc Proulx of the GIS Section.
- 30 Q. After having turned it over have you seen it since
that time before this date?
- A. No.

- 1 Q. You referred at the start of your testimony to a
location known as the Governor's Mansion. That is
located in what town or village please?
- A. That is in Nelson. It's right across from Newcastle
5 and it's alongside the Miramichi River.
- Q. Behind you is a large aerial photograph, P-1, as an
exhibit. Would you be able to point out to the
jurors the location of the Governor's Mansion which
you have been referring?
- 10 A. Yes, I can. It would be right here where you have
this yellow pin.
- MR. SLEETH: Thank you very much, constable. Does the
pin have a number? Would you just go up and look
at it?
- 15 A. I believe it says 17.
- MR. SLEETH: Thank you very much, constable. Sorry to do
that to you. No further questions.
- THE COURT: Cross-examination?
- MR. FURLOTTE: No questions.
- 20 THE COURT: Thank you very much, Constable LaFontaine.
- MR. SLEETH: My Lord, recall Constable Marc Proulx.
- CONSTABLE MARC PROULX, recalled as a witness, having
been previously sworn, testified as follows:
- DIRECT EXAMINATION BY MR. SLEETH:
- 25 Q. You testified earlier, Constable Proulx?
- A. Yes, I did.
- Q. That was in relation to a series of items which you
received in Montreal from --
- 30 A. That is correct.

- 1 Q. Corporal Proulx, I am showing you an item which has
been marked 4G for Identification. Actually, it is
P-98 if you look further.
- A. Yes.
- 5 Q. Do you recognize that?
- A. Yes, I do. This is the -- referred to as a Swiss
Army knife I believe and a small Bic lighter I
received from Constable Scott Allen on the 9th of
January, 1990, and I turned over to Constable Greg
10 Davis the 17th of April, 1990, at just about 3:00
o'clock in the afternoon.
- Q. And you had it in your possession for how long after
you received it from Constable Allen?
- A. Approximately three months.
- 15 Q. And you kept it where during that time?
- A. It's a locker that I have in the basement of our office
It's locked. I have the key. It remained there for
the duration.
- 20 Q. And have you seen it since the time you turned it
over to Constable Davis, whom you referred a moment
ago?
- A. No, I saw it in the courtroom but not before that.
- Q. I am now placing before you P-96, Exhibit P-96. Do
25 you recognize that?
- Q. This is 5 rounds of ammunition and a clip that I
received from Constable Davis the 3rd of January 1990
at 3:15 in the afternoon. The next day on the 4th
of January 1990 at approximately 2:00 o'clock in
30 the afternoon I turned this particular exhibit over
to Staff Sergeant Bickerton at the Crime Detection
Laboratory in Sackville, New Brunswick. I received

1 this item back from Staff Sergeant Bickerton on the
9th of April 1990. It was in my possession from that
particular date to the 17th of April at approximately
3:00 o'clock again in the afternoon where and when I
5 turned it over to Constable Greg Davis.

Q. And between the time that you turned it over to
Constable Greg Davis and this date, have you seen
P-96?

A. No, this is the first time now.

10 THE COURT: That item was related to what, Mr. Sleeth?
I mean it is an exhibit already, but just to get it
in context, where did it come from?

MR. SLEETH: It along with P-97, My Lord, were I believe
seized at the scene of the arrest of Mr. Legere.

15 THE COURT: Oh, yes, and the army knife was seized at
the scene of the arrest?

MR. SLEETH: Yes, My Lord, it was testified also by
Corporal Barter while he was testifying.

20 THE COURT: Was that knife referred to? Was that tied
in to the missing Swiss Army knife that one of the
witnesses this morning testified to?

MR. SLEETH: No, My Lord.

THE COURT: That's not the knife.

MR. SLEETH: May I continue?

25 THE COURT: Oh, yes.

Q. Constable, if you would take your time, P-97, plastic
bag and a firearm of some sort inside.

30 A. Yes, this is an item that I received from Constable
Greg Davis on the 3rd of January 1990 at 1515, which
is 3:15 in the afternoon and there again I took this

1 exhibit personally to Staff Sergeant Bickerton of the
CDL Sackville on the 4th of January at approximately
2:00 o'clock in the afternoon. I received the
exhibit, this particular exhibit, along with the clip
5 as well on the 9th of April 1990 from Staff Sergeant
Bickerton and I returned this exhibit to Constable
Greg Davis on the 17th of April 1990 around 3:00
o'clock in the afternoon.

Q. After you turned it over to Davis, have you seen
10 that item?

A. No, it's the first time today.

THE COURT: That is the rifle -- what rifle are we
talking about here? Is that the .38 or the .22-250?

A. It's the .308, My Lord.

15 MR. SLEETH: .308, My Lord.

THE COURT: Yes, .308.

Q. I am now passing back to you OO. Do you recognize
this?

20 A. This is a firearm that I received from Constable
Yvon LaFontaine, the previous witness, on the 18th
of January 1990 and on the 22nd, which is 4 days
later, I turned this exhibit as well to Staff
Sergeant Bickerton of the laboratory in Sackville
25 and I received this exhibit, along with the other
one, on the 9th of April and I turned them over to
Constable Greg Davis on the 17th of April approxi-
mately 3:00 o'clock in the afternoon.

Q. And since turning that over to Constable Davis have
30 you seen OO?

A. No, it's the first time, again, that I --

- 1 THE COURT: This is the .22-250.
- Q. You have referred several times to Staff Sergeant Bickerton. What is his occupation at the laboratory? You mentioned that he was at the
- 5 laboratory.
- A. He's -- as far as I am concerned he is a firearm expert. He's a member of the R.C.M.P. I have known him for several years. He has done analysis
- 10 for us.
- Q. In firearms use?
- A. Firearms section, yes.
- MR. SLEETH: I have no further questions of this witness, My Lord.
- 15 THE COURT: Cross-examination, Mr. Furlotte?
- MR. FURLOTTE: I have no questions.
- THE COURT: Thank you, Constable Proulx.
- MR. SLEETH: I would ask that he be excused, My Lord.
- THE COURT: Yes, you are excused. Thank you.
- 20 MR. SLEETH: Yes, My Lord, on your list the next witness is indicated as being Staff Sergeant Bickerton. He is present, but I would like before that to call Constable Mark Bridges.
- CONSTABLE MARK BRIDGES, called as a witness, having
- 25 been duly sworn, testified as follows:
- DIRECT EXAMINATION BY MR. SLEETH:
- Q. Would you please state your full name and your occupation for the court, please?
- A. My name is Christopher Mark Bridges - B-r-i-d-g-e-s.
- 30 I'm a member of the Royal Canadian Mounted Police, presently stationed at Newcastle detachment, New Brunswick.

- 1 Q. Constable Bridges, I am passing to you a weapon or
an object which is OO for Identification at this
moment. Can you identify that?
- 5 A. This is apparently a sawed-off firearm which was
received by myself into the -- from a locker at
the Newcastle detachment which I removed from that
locker in my capacity as the exhibit custodian at
Newcastle detachment. I did so on the 23rd of
10 April of 1990 and I removed this item from the
locker, confirmed that it was the item as it is
described on an exhibit report, and locked it in
the bond room which I am then responsible for.
- Q. Do you know how it got to that particular locker?
- 15 A. I have no knowledge as to how it got to that locker.
- Q. The exhibit system that you are talking about is
what?
- 20 A. The members who handle exhibits routinely place them.
Once they have documented those exhibits and made
them subject of an R.C.M.P. exhibit report and
documented that in an exhibit ledger, they place a
copy of the exhibit ledger in the -- a copy of the
exhibit report in the ledger and they seal the
25 exhibit in question in a locker which has a one way
lock on it. In other words, the member places it
into an empty locker, locks the padlock for which the
exhibit custodian being myself at the time has the
only key. I then remove that exhibit possibly a day
later from its locked condition in the locker and
30 place it into the bond room, again, for which I have
the key.

1 Q. They remain then in the bond room for how long?
A. It remained in the bond room, as far as I'm concerned
until the 11th day of October, 1990, at which time
my duties as the bond custodian ended and I turned
5 this and other exhibits in the bond room over to
Constable Greg Davis.

Q. Now by examining the exhibit ledger do you know who
originally placed that in the lock? You heard the
testimony of Constable Proulx?

10 A. Yes, when I removed the exhibit itself I do not know
who put that item in there. Often I can look at the
documentation on the exhibit report itself and make
an assumption as to who put it in there, but I
really have no knowledge.

15 MR. SLEETH: No further questions of this witness, My
Lord.

THE COURT: Cross-examination, Mr. Furlotte?

MR. FURLOTTE: I have no questions.

20 MR. SLEETH: I'd now call Staff Sergeant Bickerton.

STAFF SERGEANT BICKERTON, called as a witness,
having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

25 Q. Would you please state your full name and your
occupation for the jurors, witness?

A. Yes, sir. My name is Gordon Michael Bickerton.
My surname is spelled B-i-c-k-e-r-t-o-n. I am a
member of the Royal Canadian Mounted Police and
presently employed by them as a firearms and tool
30 mark examiner. I am presently located at the
Forensic Laboratory in Sackville, New Brunswick. I

1 have been a member of the R.C.M.P. for 27 years, plus
a member of the Firearms and Tool Mark Section for
slight in excess of 20 years.

Q. That forensic laboratory is in which location?

5 A. Three locations - the forensic laboratory in Regina,
Saskatchewan; Winnipeg, Manitoba; and the past 10
years at Sackville, New Brunswick. My work involves
actually 4 main types of examinations, the first
10 being firearms identification which involves such
things as mechanical assessment of firearms to
determine whether or not they are capable of firing,
whether or not they are operable, whether there has
been any modifications made to them to change the
15 mechanism; for example, for semi automatic, fully
automatic, or vice versa.

I do what is called a probable make and type
examination, which is examination of ammunition
components to determine the type, the make, and
20 model, calibre of firearm from which the expended
cartridge case or bullet was fired.

I do range determination and also do the
cartridge and fire bullet examinations to identify a
given fired bullet to assess the firearm or to
25 identify an expended cartridge case to the firearm.

In addition to firearms identification, which I
bulk together, I also do what is referred to as tool
mark identification and that covers a broad spectrum,
but it would entail such commonly known tools which
30 would include a screwdriver, for example, that might

1 be used to jimmy a cash box, or a bolt cutter that
is used to cut chain or steel. I can identify that
suspect tool by markings that it leaves on the
object victimized.

5 I also do physical matching, which is sort of
a jigsaw puzzle, putting pieces together to prove
whether or not they were from the same origin.

Finally, I do serial number restoration.

10 Q. Staff Sergeant, have you been qualified as an expert
entitled to give opinion evidence by the courts
anywhere in Canada and in what particular fields if
you have been?

15 A. Yes, sir, on numerous occasions. I completed an
understudy period of firearms and tool mark
examinations at the forensic laboratory first in
Regina, Saskatchewan, in 1971. My understudy
completed two years later, but however at that time
I was at the forensic laboratory in Winnipeg, Manitoba
20 I completed the understudy period, which was under
the direction of senior qualified members in the
field of firearms and tool mark identification and
at the completion of this study I had occasion to
attend various arms and ammunition factories both
25 in Canada and in the United States.

30 Upon returning from the tour I commenced
receiving exhibits and conducting examinations on
these exhibits and frequently thereafter going to
court giving my findings. As a result I have had
occasion to give testimony in the provinces of
Saskatchewan, Manitoba, Ontario, New Brunswick,

1 Nova Scotia, and Prince Edward Island.

In numerous capacities or - excuse me - at
different levels at the Provincial Judges court
level, Court of Queen's Bench. I have had occasion
5 to give evidence at Arbitration Hearings, Coroner's
Inquests, and Military Court Martials.

Q. And you have been assigned expertise in what fields
in particular, sir?

10 A. In the areas that I mentioned, sir, primary in
firearms and tool mark identification.

MR. SLEETH: My Lord, at this stage I would move that
the witness be - with permission from the court -
to have the witness recognized as an expert
entitled to give opinion evidence in the field
15 of firearms and tool mark examination.

THE COURT: Have you any questions on this?

MR. FURLOTTE: No questions and no objections.

THE COURT: I declare the witness an expert in those
20 fields, firearms identification and tool mark
identification.

MR. SLEETH: Thank you, My Lord.

Q. Staff Sergeant, I am placing before you two
exhibits, P-96, identified by a series of witnesses
25 as a cartridge case of sorts and cartridges, and
P-97, a sawed-off rifle. Would you tell us, first
of all, do you recognize those two?

A. I am personally referring to court exhibit P-96. I
would describe it as a detachable box magazine for a
30 firearm. At the time I received it, it contained
5 rounds of ammunition of calibre .308 Winchester.

1 These were received by myself at the forensic
laboratory located in Sackville, New Brunswick, on
the 4th day of January, 1990, from a Constable
Mark Proulx, a previous witness here this afternoon.
5 I had occasion to conduct examinations on this item
and at a later date had occasion to return it to
Constable Proulx and that was on the 9th of April,
1990.

 This firearm is empty and thus safe.

10 THE COURT: Thank you.

A. I now refer to court exhibit P-97. I would describe
it as a calibre .308 Winchester, that is the calibre,
lever action rifle. It is manufactured by Browning.
It is known as the model VLR and bearing the serial
15 number 11653PT227. I had occasion to receive this
item from Constable Marc Proulx, the previous witness
upon the 4th day of January, 1990. After examinations
at a later date, the 9th of April, 1990, I returned
it to Constable Proulx.

20 Q. Next, Staff Sergeant, I am now passing to you OO
for Identification.

A. This firearm is also empty, thus safe. It was on
a different occasion, the 22nd of January, 1990.
I had occasion to receive this item from Constable
25 Marc Proulx, the previous witness. I would describe
this item as a calibre .22-250 Remington lever action
rifle. The manufacturer or make is Browning. It,
too, is a Browning VLR and the serial number is
30 12401PR227. On the 9th of April, 1990, I returned
it to Constable Marc Proulx.

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1 MR. SLEETH: My Lord, before I go any further with this
witness, I wonder if OO presently for Identification
could be now marked into evidence. I believe the
continuity has now been established.

5 THE COURT: That would be exhibit P-122.

EXHIBIT P-122: Rifle.

Q. Before going any further, Staff Sergeant, you
referred to this item P-97 as being a .308
Winchester manufactured by Browning and 122 as
10 being a .22-250, I think you said Winchester -
I could be wrong - manufactured by Browning. Can
you explain that?

A. I will attempt to do so, sir. There are firearms
15 manufacturers and there are ammunition manufacturers
and some will manufacture both ammunition as well
as firearms. When a round is manufactured, various
research goes into the round and it is eventually
developed or coined by a given manufacturer. In
20 the case of court exhibit P-97 this particular
firearm is in calibre .308 Winchester. Winchester
was the designer of that particular calibre. If a
calibre becomes popular or is used in the common
market, various manufacturers will get on the
25 bandwagon and produce a firearm that will chamber
that particular round. So in this instance the
calibre of the firearm was designed by Winchester.
Browning, a firearms manufacturer, decided to
manufacture this make and model in Winchester's
30 calibre, namely .308.

- 1 Q. The second one, the .22-250 which you referred to
earlier?
- A. With respect to court exhibit P-122, this firearm
is in calibre .22-250. This particular calibre was
5 coined by Remington. The firearm was manufactured
by Browning in a calibre of in this case .22-250
which was designed by Remington.
- Q. At the forensic laboratory did you perform examination
and tests with P-97 and P-122?
- 10 A. Yes, sir, I did. The purpose of my receiving said
items was first to determine whether or not they
were operable, whether or not they would test fire,
and I did conduct examinations on them for that
purpose. Respecting court exhibit P-97, the calibre
15 .308 Winchester, in the condition of receipt without
alterations I was able to test fire it. Perhaps I
might want to state that this is a firearm which
has been adapted from a rifle by sawing or cutting,
reducing the barrel length less than 18 inches in
20 length. Upon measuring the barrel, I found it to
measure 4 and 7/8 of an inch in length as I recall
which is considerably shorter than the criteria
of 18 inches. Firearms of this type which I have
personally owned and tested others like it have
25 found to have had a barrel length of 20 inches so
you can see a considerable amount of barrel length
has been removed.

I had occasion to test fire court exhibit P-97,
30 however, for that purpose I utilized the detachable

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1 box magazine, which is court P-96. The magazine
from my examination was found out it would contain a
total of 5 rounds and in fact these 5 rounds were in
the magazine when I received it. If one is to load
5 the magazine with the full 5 rounds as I received it,
with the action of the firearm closed the magazine
cannot be inserted so one has to strip one round out
of the magazine in order to put the magazine totally
in so it locks into position. So I would refer
10 to the capacity of the magazine, although it was
received with 5 rounds, as actually being 4 rounds.
The 5th round could be simply directed into the
chamber and the action locked so the firearm has
a capacity of a total of 5 rounds; 1 in the chamber,
15 4 in the magazine.

So using this detachable box magazine, court
exhibit P-96, and ammunition available to me from
my stock at the forensic laboratory, I test fired
this particular firearm and I had occasion to
20 test fire it through a chronograph so I was able to
measure the velocity of the projectiles or bullets
fired from this firearm and subsequently determined
that, yes, in fact it did shoot.

25 Respecting accuracy, the accuracy was not
great. The projectile is fired in a true flight or
path. They struck my target medium, however, it
was difficult to aim because the firearm is not
equipped with two sights and the barrel length is
30 such that it is not conducive to accuracy. Also, by
shortening the barrel, the velocity is also
considerably reduced, however, still capable of

1 causing serious bodily injury and/or death.

Q. I notice that that item which that rifle - sawed-off
rifle which you have in your hand, P-97, I believe --

A. Yes, sir.

5 Q. --has a long sling to it. How would that be carried?

A. Well, sir, normally the rifle has a 20 inch barrel.
Other firearms at least like this had a 20 inch
barrel. Frequently they are supplied by the factory
with sling attachments and a sling. This particular
10 sling is the detachable type. There is a button
that can be depressed so you can remove it readily
from the stud which is normally attached to the
forward end of the forearm. On the front end of the
firearm and on the back end there is a stud which
15 is located at the heel of the butt stock. The
butt stock on this particular firearm has also been
cut off.

In this instance the attachment for that sling
has -- there is an attachment that is normally
20 attached to the butt stock. A similar type of
attachment is now attached to the pistol grip
of this firearm. I can't say whether this attachment
originally came from the butt stock of this firearm,
25 but one like it was attached to the pistol grip of
this particular firearm.

The pistol grip is the handle portion if you will
of the rifle stock or shotgun stock and there is
further extension referred to the butt that one
30 would put to their shoulder when operating a firearm
to aim and operate the firearm. There is a sling

1 attachment normally on the heel of this butt stock.
In this instance there is an attachment now on the
pistol grip.

Q. Could you demonstrate to the jurors how you might
5 port that - how you might carry that weapon using
that sling, please?

A. Well, sir, normally the sling attachment is on the
bottom of the butt stock, also on the bottom of the
forearm. One could carry it, for example, over the
10 shoulder in which case the underneath side of the
firearm would be next to the holder. In this
instance the sling has been attached to the front
end of the firearm at the top of the firearm, which
is just the reverse of the norm and the bottom is in
15 such location that it will allow access to the sling
to the top of the firearm and one thus could put
the sling over the shoulder, something like this
and carry it in such a manner.

Q. How fast could you make use of that weapon while it
20 is in that position?

A. Well, sir, if it's loaded -- I have left the action
open. It is clear. If it's closed one would
hopefully carry it, the hammer in the lower position.
25 Can you see it, My Lord?

THE COURT: Yes. I carried one for five and a half years.

A. When I refer to half cocked so that the hammer is
not -- one could hopefully carry it in that fashion,
however, cock it --

Q. The blink of an eye it would be ready.
30

1 MR. SLEETH: Thank you very much Staff Sergeant.

Q. You also referred to that weapon having been
shortened. What can you tell us, as a tool examiner
now, about the barrel and what might have been used
5 to shorten that weapon?

A. Well, sir, the -- yes, the firearm has been
considerably shortened, the barrel to the length
of 4 $\frac{7}{8}$ of an inch. It has been cut with a metal
cutting object. Upon examination of the cut end,
10 which is very crudely done, one actually to the
unaided eye can view the tool marks and you can
see them from different angles. This would suggest
to me, sir, that it was cut with a hand held
hacksaw possibly without the benefit of the firearm
15 in a vise, for example, to hold it rigid. So it
has been cut off. One can also see that the now
muzzle of this firearm is it's not square to the axis
of the bore. It's very much at an angle. It has
been very crudely done. Further, it has not been
20 completely cut off. The last portion at approximately
6:00 o'clock the reference to the barrel there is a
good portion of it was not cut at all. It has
actually been broken. It has been cut through
the entire bore portion, or through the hole of the
25 barrel if you will, and then has been snapped -
broken. While I am at the front end as well the
bolt that holds the fore end on, the wooden fore end,
the wooden portion underneath the barrel which is
normally a hand rest, that bolt has also been cut
30 in a similar fashion. It is not square. It's very

1 rough. The wooden fore end has also been cut
slightly shorter than the bolt that held it so it
can simply slide on. I had occasion to remove
the tape and -- can simply slide the fore end off
5 or on. It has been cut right through the
checkering. With respect to the butt stock - the
butt stock of the firearm is held on with a bolt
that goes through from the recoil pad of the firearm
through the butt stock and is bolted to the
10 receiver in approximately this position - location
of the firearm. The rear portion of the receiver -
that bolt also has been cut through indicating that
the person cutting it through did not know the
firearm significantly well. He did not know where
15 to cut it off because he ended up cutting the bolt
as well.

There is a small area of wood still afforded to
attach the sling attachment and that has been
attached with a wooden screw simply into the now
20 cut-off stock.

Q. So all the cuts then were pretty amateurish - not
professionally done?

A. Well it certainly was done in a very crude fashion,
sir, with poor tools or workmanship ability.

25 Q. 122 please, the .22-250. What tests did you perform
on it?

A. I assume the purpose of receiving this item was
as with P-97 to determine whether or not it was
operable and to make examinations of the firearm.
30 Upon receipt it was readily apparent that there was

1 surface rust over the entire area of the metal.
There is still bright blue showing, but the surface
rust, like spotty, over the action was apparent.
The action was a little sluggish. It was not easy
5 to open when I first received it, however, without
the aid of tools I was able to lower the lever
operating the action. This firearm, as with P-97,
did not have a box magazine attached to it when I
received it. There was no magazine.

10 Upon taking it into the firing chamber to
determine whether or not it was operable, I did not
have a magazine so I fired this in a single shot
fashion by simply directing the round of ammunition
directly into the chamber and I used ammunition from
15 my laboratory stock, closed the action on the single
round, such as this, and attempted to fire it.
The hammer was cocked and as I pulled the trigger
dropping the hammer the firearm as I received it did
not fire. So then I conducted an examination to
20 determine why not and the explanation for that, sir,
was that the firing pin, which is that component of
the firearm that is struck on the back end by the
hammer and drives the firing pin forward protruding
the nose of the firing pin through the bolt face of
25 the bolt and if that firearm is properly locked
and loaded that tip of the firing pin will make
contact with the primer, that component of a rounded
ammunition, discharging that particular round.

30 This connection of force was not possible in
the condition of the firearm as I received it. The

1 bolt, which you now can see just slightly protruding
beyond the base of the bolt that protrudes approxi-
mately one-sixteenth of an inch is spring-loaded
and now you can -- spring-loaded is pushed to the
5 back and with the force of the hammer hitting,
the centrifugal force will drive that firing pin
forward making contact with the primer. However,
again, the firearm was rusted and the firing pin in
this instance when I examined it was found frozen
10 flush with the end of the bolt and it was seized
there. From taking and removing it, cleaning it,
and oiling it, I was able to free it so it's as free
as it is now. Once I freed that firing pin I was
then able to fire the firearm and I also had
15 occasion to chronograph it and notice the
trajectory path.

As with court exhibit P-97 this firearm,
court exhibit P-122, the barrel has also been cut
20 off in a very crude fashion. The barrel length is
4 inches in length. The bolt retaining the fore end
has also been cut as is the fore end itself. You
will see the cuts are very crude.

In this instance one again examines the tool
25 marks you can see that the direction of force has
been applied from different angles such as a hand
held hacksaw and the bore was pretty well cut through
and then the balance of the firearm again was
broken. However, in this instance, you can see the
30 break was not clean and a large portion of the barrel
was broken away and I would index that as approximatel

1 3:00 o'clock position of the barrel. A large portion
has been broken out and this would give the bullet
a very unstable effect as the bullet departed the
muzzle. The muzzle is cut off at a very crude
5 angle. It is not square. It right angles to the
axis of the bore. The base of the bullet would
not be supported so when firing it I found the
bullet tumbled and struck the target, which was
approximately 12 feet away. The side of the
10 bullet struck rather than the nose of the bullet
striking so the bullet was tumbling in flight. The
velocity in this instance, the average velocity, as
I recall - I have it in my notes - was approximately
15 fifteen hundred and fifty feet per second, again,
considerably less than the normal velocity of
projectiles of this calibre, however, amply
sufficient to cause bodily injury and/or death.
The accuracy was poor. The trajectory path was
20 poor.

Q. Sergeant, from your examination of the firearm and
your study of firearms and the like over a period
of years would it not be correct to say that a
tumbling bullet could do more damage actually than
25 a bullet that is properly stabilized going direct?

A. Yes, it can, sir.

Q. The condition in which you found the firearm you
say froze. Would that be consistent with a firearm
possibly having been outdoors and rusting for a
30 period of time?

A. Yes, sir.

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- 1 Q. Was it easy, however, using oil to put it in an operable condition?
- A. Yes, sir, it was and it would suggest to me, sir, that the firearm was probably left with the hammer
- 5 totally down resting on the firing pin rather than the half-cocked position. Had it been left in the half-cocked position as I know have it, the hammer is off the firing pin. The spring pressure would allow it to extend slightly beyond the face of the
- 10 bolt. It would suggest to me, sir, that it was left with the hammer fully down as I now have it.
- Q. And you did hear the testimony of the previous witness that it was chambered. There was a cartridge found in it.
- 15 A. No, sir. I heard testimony that there was a cartridge found in P-97 but I don't recall --
- Q. .22-250.
- A. That is possible, sir, because again the firing pin is not longer than the bolt so it would be possible
- 20 to have a round in the chamber and the hammer fully depressed, or against the end of the bolt.
- Q. And then if left for a period of time it would rust?
- A. It certainly could, sir.
- 25 MR. SLEETH: Thank you.
- THE COURT: Cross-examination?
- CROSS-EXAMINATION BY MR. FURLOTTE:
- Q. You test fired this rifle yourself?
- A. Yes, sir, I did.
- 30 Q. And you examined it before you test fired it?

- 1 A. Yes, sir, I did.
- Q. .308 had never been fired before or I should say the
.308 had never been fired after the barrel was
sawed off? You were the first one to fire the shots
5 with or did you take note of that?
- A. There was gunshot residue in the barrel, sir. It
had been fired previous to cleaning. With respect
to it being fired and being cut, I cannot comment
sir. There was no --
- 10 Q. Whoever sawed this -- this is sawed off with a
hacksaw. There should be little sharp edges going
on the inside of the barrel?
- A. It is possible, sir.
- Q. That would be there before you had fired it?
- 15 A. Possible, sir. As I recall there was no such
indication of protruding burrs into the muzzle, sir.
It could have been fired after it was cut.
- Q. Did you specifically check for that?
- A. I don't recall, sir, whether the burrs were
20 protruding. I cannot honestly say, sir.
- Q. That goes for both rifles, the .22-250 as well?
- A. That is correct, sir.
- Q. So you don't know -- you can't say for certain that
that was fired after it was sawed off and you can't
25 say it wasn't?
- A. As I recall, sir, I don't recall protruding -- I
don't recall any protrusions. Admittedly there
could have been, but I don't recall.
- 30 Q. I understand you checked for tape, also, on both?

- 1 A. Yes, sir, I did have examinations to -- occasion to
do examinations respecting the tape.
- Q. Would you explain the purpose of examining the tape?
- A. Well, sir, I was requested to determine whether or not
5 there was any similarity in court exhibits P-97 and
P-122 and also in addition to another firearm
whether or not there was any similarities between
the firearms and as one can see and as I have
mentioned in my evidence there are a lot of similar-
10 ities and one as you point out, sir, they are both
wrapped with black electrical tape. The fore ends
on both firearms, the pistol grip on court exhibit
P-122. The pistol grip, court exhibit P-97, was a
different tape. I refer to it as masking tape or
15 the paper versus the plastic and it appears to be
darkened with some marker.
- Q. I notice the difference in the two rifles, too, that
one sling is on the bottom and the other one is
20 tied up on the top.
- A. Yes, sir.
- Q. Can you actually tell whether or not the tape, the
black electrical tape, had that come from the same
roll?
- A. I attempted such examination to determine just that,
25 sir, and it is my opinion that they are from
different rolls. They were different in width and/or
texture of the tape.
- Q. In your profession I presume you have seen many
30 sawed-off rifles.
- A. Yes, I have seen quite a few.

- 1 Q. And they are quite similar to these two? They usually try to be sawed off as short as possible?
- A. Well they -- I don't know their intent of cutting them, sir, but they're usually -- the result is
- 5 certainly much more concealable being that they are shorter. Usually, from our experience, the method in which they've been cut off, although hacksaws I would suggest are frequently used, they are a little
- 10 bit more careful in the amount that they are cut off usually being cut off square to the actions of the bore possibly having the assistance of such things as a vise to secure the firearm while cutting.
- Q. I understand you were also given as an exhibit the
- 15 skin portion of the breast of one of the Daughney sisters. Were you given a skin portion of one of the breasts?
- A. Yes. Yes, on another case I did receive an exhibit purportedly from that source, sir.
- Q. And what was the purpose of that?
- 20 A. As I recall, sir, it was to determine whether or not -- to examine it for the presence of tool marks.
- Q. You mean like the end of a barrel - gun barrel?
- A. Yes, or any other source, biting, or what have you,
- 25 sir. There was purportedly to be a question area on that piece of flesh, however, at the time I examined it I found no such markings, sir, that I could detect.
- Q. And you couldn't detect any bite marks either?
- 30 A. No, sir.
- MR. FURLOTTE: I have no further questions.
- MR. SLEETH: Very quickly, My Lord.

REDIRECT EXAMINATION BY MR. SLEETH:

1 Q. Staff Sergeant Bickerton, your specialty, your area
of expertise is firearms and not forensic dentistry
is it?

5 A. That is correct, sir.

Q. You were asked about whether or not the firearm, P-97,
was concealable. You answered that it was. Could
both of those be carried underneath a coat?

A. I would suggest they could be, sir.

10 Q. You were asked what -- for the first time on cross-
examination about similarities between those two
weapons. You mentioned that both had been wound
with electrical tape. What other similarities did
you notice?

15 A. Well they were both firearms adapted from a rifle
by in this case hacksawing the barrels to a short
length, also, the cutting of the butt stock at the
pistol grip. They are similar in that the cuts
were done by a hacksaw. They were done through
20 approximately the same area of the barrel at the
fore end and securing bolt of the fore end. They
were both taped with electrical tape. I would
suggest the purpose would be twofold: one to hold
the fore end onto the firearm since the retaining
25 bolt has now been cut; and secondly to assist in the
securing of a sling which is found to be attached
to both of the firearms in the fore end of the front
of the firearm. One is attached to the top; one
is attached to the bottom of the firearm. Respecting
30 the back end of the firearm, they have both been

1 cut at the pistol grip. The sling is attached at the
base or at the pistol grip. One is with the aid of
a screw directly into the wood and it appears to be
a washer of sorts utilized whereas the court exhibit
5 P-97, a wood screw is also used, but the attachment
for the sling is also -- has been utilized. The
attachment is not -- the screw goes directly through
the sling.

Q. Both weapons are in fact concealable and operable?

10 A. They are both operable, sir. I had occasion to test
fire them.

MR. SLEETH: No further redirect, My Lord.

THE COURT: Two questions.

A. Yes, My Lord.

15 THE COURT: One is those are not shotguns are they?

A. No, sir, they are rifles. They were rifles.

THE COURT: There is a difference.

A. Yes, My Lord.

20 THE COURT: I ask you that just for the benefit of one
of the newspaper reporters who insists on calling
these shotguns. The other thing is when the chimney
sweep knew enough to use WD40, why didn't you use it?

A. I said I used oil, My Lord. I also used some
25 sandpaper to clean it.

THE COURT: Not WD40.

A. I believe I did use WD40.

THE COURT: Thank you very much.

A. May I be excused, My Lord.

30 THE COURT: Yes.

A. I am not condoning any given products.

THE COURT: The Crown might want to go ahead, but you
are not going to. It is 2:00 o'clock and the jury

1 must get away now. So we will --

MR. ALLMAN: I am just wondering about timing on Monday,
My Lord. There are matters, as you know, we wish
to get into in the absence of the jury. I am just
5 wondering what time you want to tell the jury to
come back. At least I think there are matters that
we want to go into in front of the jury.

MR. FURLOTTE: On Monday in front of the jury?

MR. ALLMAN: I was talking to Mr. Furlotte. I think
10 there is enough matters -- it may be all day Monday
so perhaps we could tell the jury not to come in
in the morning and then we can -- I don't know what
you want to do in the afternoon.

THE COURT: Could we do this rather than, you know,
15 perhaps waste part of the time if some of the matters
turn out to be shorter than anticipated? Could
we ask the jury to come in the morning, or to come
at 9:30, the usual time, and continue on with Crown
witnesses at that time? You have still a number --
20

MR. ALLMAN: Oh, yes.

THE COURT: --before you reach any voir dire stage.
Continue on with those witnesses through the morning
and then we will consider a voir dire in the after-
noon and we may send the -- after discussing voir
25 dire say at 12:30 or along about that time we may
send the jury home at that time and quite possibly
will, but we will have got through quite a few
more.

30 MR. ALLMAN: That's fine, My Lord.

1 THE COURT: Then we have our voir dire in the afternoon,
and then the jury back probably the next morning,
and carry on from there.

MR. ALLMAN: Yes, that's fine.

5 THE COURT: I think that will be the best way. So we
will ask the jury to retire now. I don't think
it is necessary for me to question you anymore about
being careful and who you talk to and who approaches
you. I again emphasize that if anybody -- if there
10 is anything suspicious or any hanky-panky going on
with anybody trying to interfere with you or any
members of your family or anybody else, you let
the sheriff know or the constable or make sure
I know about it and without delay. Thank you.

15 JURY RETIRES

THE COURT: Now we will adjourn.

MR. FURLOTTE: My Lord, before we adjourn, I will be
making a motion for a mistrial and I would prefer to
have that motion heard on Monday rather than the
20 Friday of next week like Mr. Allman is suggesting.
It is pointless to go through all the evidence and
all the witnesses of the trial and then have the
motion for mistrial. The motion won't take long.
25 The facts were all placed before the court yesterday
or the day before, whatever, and basically it's
going to be just arguing the effects of the facts
that have already been presented to the court.

MR. ALLMAN: The point is that there may -- and I have
30 a possible expectation there may be additional
facts and the police are looking into that matter

1 now. Accordingly, I am not in a position to say
that I will be able to deal entirely with the matter
on Monday. If I can I will, but I must say there
are matters that are being investigated and I
5 can't really say anymore than that.

THE COURT: I will consider this before Monday noon.
Monday we will go ahead with -- Monday morning we
will go ahead with these witnesses. We will discuss
this when we send the jury out for lunch on Monday
10 noon. We will arrange for lunch for them here
whether they are required in the afternoon or not.
They can stay together until after lunch and see
what we require. When they go at 12:30 or thereabouts
then we will discuss this matter in the voir dire
15 session. Perhaps we can dispose of an application
for a mistrial right after lunch or -- anyway
we can consider it and I will give directions in
that regard but both sides should perhaps be
prepared to argue, be prepared to argue on Monday
20 afternoon.

MR. ALLMAN: The only problem is, though, I don't know
if I will be prepared to argue on Monday because I
may have additional evidence that I will --

25 THE COURT: I appreciate your --

MR. ALLMAN: But if I don't -- let's put it like this.
We will definitely do I think the voir dire on --
the voir dire on Monday and if I'm in a position
to do so, evidence wise we will try and do the
30 mistrial application also.

1 THE COURT: We will have to leave that a little up in
the air. I did make some observations earlier this
morning when we started out about mistrial application
at this point and I do want you to bear that in
5 mind. So we will adjourn now until 9:30.

COURT ADJOURNED

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