

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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October 7 and 8, 1991.

VERNA PETERSON
COURT REPORTER

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(COURT RESUMES AT 9:30 a.m., OCTOBER 7, 1991.)

(JURY CALLED - ALL PRESENT.)

(ACCUSED IN HOLDING CELL.)

THE COURT: Now I think I might say that when the
5 accused is brought back to the court room I'm
not going to, again, ask for any undertaking to be
given as to good behaviour because it didn't mean
a great deal last time so I'd simply have to deal
with the situation that develops after that as it
10 arises. Now, you have your first witness, Mr.
Walsh?

MR. WALSH: Yes, My Lord, I'd recall Constable Ron
Charlebois.

15

CONSTABLE RONALD CHARLEBOIS, called as a witness,
having already been sworn, testified as follows:
DIRECT EXAMINATION BY MR. WALSH:

Q. You are Constable Ron Charlebois, you're a member
of the R.C.M.P., you're with the General Investi-
20 gation Section in Moncton, and in 1989 you were
with the General Investigation Section and you
were a file coordinator with respect to these
particular matters, is that correct?

A. That's correct.

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Q. Would you tell the Court, please, your involvement
in this aspect or what if any involvement you had
with respect to the arrest of Allan Joseph Legere?

A. Yes, I can. As a result of a call that I received
at 6:00 a.m. on the 24th of November, 1989, I
30 proceeded to Newcastle Detachment. I was
accompanied by Corporal Kevin Mole who at the time
was a constable. We arrived at the detachment at
6:25. Shortly after arrival we had a brief
conversation with Staff Sergeant Mason Johnston.

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Subsequent to that we proceeded to the cell area where Allan Legere was being held.

5 Q. Who did you go to the cell area with?

A. I followed in behind Staff Sergeant Mason Johnston and Kevin Mole. They proceeded into the cell area. I stopped to discuss a couple of matters with Constable Ken MacPhee who was processing exhibits at the time.

10

Q. What if anything occurred? What time would you have entered the cell area?

A. It would have been approximately 6:35, 6:40, that area.

15 Q. And what if anything happened when you entered the cell area?

A. When I entered the cell area Corporal Mole and Sergeant Johnston were inside speaking to Allan Legere. It was actually very anticlimatic in that to me it appeared like it was three long-lost friends that were reuniting after a long separation. The atmosphere was very jovial.

20

25 Q. There was joking back and forth. At that particular time the two were outside the cell area and Corporal Mole opened the cell door with a key that he had and he entered into the cell with Sergeant Johnston and I stayed on the outside.

25

Q. The outside of the cell?

A. That's correct, near the door.

30 Q. Were you able to overhear any conversation or were you able to see into the cell?

A. Yes, at approximately 6:47 Corporal Mole read the Charter to Allan Legere. He advised him that he was under arrest for the murder of Annie Flam. He read him his rights to counsel and he read him a

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5 police caution and a secondary police caution, and Allan Legere acknowledged that he understood all of this but at that point in time he did not make any request whatsoever to speak to a lawyer. Around that same time he was joking with Corporal Mole and he made some reference to his haircut.

Q. Whose haircut?

10 A. To Kevin's haircut.

Q. Who did?

A. Allan Legere made some reference to Kevin Mole's haircut asking what did he do to his hair or something to that effect, and Kevin in turn
15 asked -

Q. Corporal Mole?

A. Yes, Corporal Mole in turn asked Allan Legere the same thing, to which Allan Legere responded, "Shave and haircut, \$22.00 in Montreal". At the
20 same time Allan Legere made some remark to the effect that Kevin had gained quite a bit of weight and Kevin questioned Allan Legere about his weight also and he said something to the effect that, "If you'd been through what I've been through you'd be
25 light", or white, or something to that effect. Anyway, at 6:55 Corporal Mole told Allan Legere that he would be taking some hair samples from him and Allan Legere responded, "You know how I feel about that, Kevin, I'm not consenting", and
30 anyway, at the time he was conversing with Sergeant Johnston, he was extremely talkative. At that point in time there was no need to urge him to talk, he was just rambling on about different subjects, and I'll get to those later, but anyway,
35 while he was conversing with Staff Sergeant

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Johnston Kevin proceeded to collect scalp hair samples and pubic hair samples by pulling them and cutting them, and what I found strange is that it was like Corporal Mole wasn't even there. Allan Legere just kept on conversing with Mason Johnston, he didn't seem to be bothered a bit by the fact he was taking hair samples, and that was at 6:55 and we departed the cell area at approximately 7:25.

Q. For what purpose?

A. To go to the interview room. Prior to departing he was given a pair of coveralls by - actually Kevin had asked that I go out and get some coveralls so I had -

Q. Corporal Mole?

A. Excuse me, Corporal Mole requested that I get coveralls so I exited the cell area for a very brief moment, requested one of the investigators who was outside to get coveralls which were delivered shortly thereafter. Now, during all the time that we were in the cell area with Allan Legere, as I mentioned, he was talking constantly. He was almost like a broken record player, he would repeat himself. He talked about his escape in Moncton. With respect to the escape he made reference to the lady he had abducted. He said that she didn't want to get out of the vehicle on Mountain Road and he also said that she was more concerned about getting something out of the back seat of her vehicle. He found that kind of strange. He talked - oh, yes, he also mentioned about the guards that he confronted at the hospital. He said that he had just confronted

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5 them with an antenna of some sort and it wasn't a
knife, he said it wasn't a knife, and he said they
more or less joked or ridiculed him for being so
scared, and I think he made mention of mace, too,
at that time.

10 After that he spoke about staying in the
woods during all the time that he was in the area,
the Miramichi area. He did say that he never left
the area. He mentioned staying in five different
locations and he said that he would light his
fires during the day and not at night so he
wouldn't be caught. He made reference to becoming
15 friends with squirrels and the birds. He also
mentioned that he was chased by dogs throughout
the summer and he said that he developed - some-
thing to the effect that he had developed a way
with them. He said, "They'd come up and sniff my
20 ass and I'd tell them to fuck off and they'd take
off".

He talked about his encounter with the police
dog, he said that he never shot directly at him.
He said that he shot over his head.

25 Q. At who?

A. At the police dog, the dog man.

Q. The police dog or the -

A. The dog man himself.

Q. The handler?

30 A. The handler, yes, and he questioned whether the
dog man himself had reported firing his gun
because he said that he'd fired at him first, the
dog man had fired at him first. He talked about
encountering a person on the bridge, the Morrissey
35 Bridge that crosses from Chatham to Newcastle.

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Q. From Chatham to Newcastle?

A. Excuse me, Chatham Head to Newcastle. He said
5 that he thought the guy had recognized him because
he said - or he thought he said, "Hi, Pal", but
then he realized it was - he thought he said, "Hi,
Al", but then he realized it was, "Hi, Pal", so he
decided not to throw him off the bridge.

10 He talked about staying in an expensive hotel
in Montreal. He described it as being swanky, and
I vaguely recall him mentioning to Corporal Mole
that - saying something to the effect, "Kevin, you
wouldn't be able to afford that place", or
15 something to that effect.

He mentioned about being on a train, being
checked by a train in Quebec, being checked by two
police officers. This he had repeated on a couple
of occasions, and when he had his coveralls he
20 actually in a very deliberate manner raised his
right sleeve to show his - right up to his elbow,
and he went on to explain that he thought it was
all over at that point in time and he was really
surprised that he wasn't arrested.

25 He mentioned that - he talked about the
abductions. He made reference to the taxi driver
saying that - basically that the guy was crying a
lot and getting on his nerves because he was so
scared, and he said that he departed the area
30 because it was getting cold out and he felt that
the R.C.M.P. were on to him. He made reference
to a helicopter that we have with a heat sensor,
he was aware of that.

35 That's another thing, with respect to his
stay in the woods he said that he was reading the

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5 newspapers and the radio on a daily basis so he was well aware of what was going on. At one point in time he even made reference to Ernie Munden, he actually asked who this Ernie Munden guy was.

Q. Who was Ernie Munden?

A. Ernie Munden was the press liaison officer for the R.C.M.P. Anyway, he made mention of Ernie Munden, Sergeant Ernie Munden.

10

Q. What if anything did you note about - did you know this man, Legere, before this morning you went in to see him?

A. No, I didn't. When I went in that morning he was naked, he had a - I think it was a brown wool blanket draped over his shoulders. His hands were cuffed behind his back and his legs were shackled. He appeared to have very thin legs and a very thin waist but his upper torso and his shoulders were still quite broad. His hair was short and like a dark brown and he had grey on the side. He had a welt under his - a red welt under his right eye.

20

Q. Did you ever know this man, did you ever meet this person before that morning you went in there?

A. That's the first time I met Allan Legere personally. I had seen numerous photographs of him.

25

Q. How did he compare to the photographs you had seen of him?

A. He appeared to have lost a considerable amount of weight.

30

Q. Did you notice anything else about him, about his body or his facial area, what if any injuries he had other than the welt under his eye?

A. Yes, actually when he was - I think it was when

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5 Corporal Mole was taking the hair samples or right around that time I noticed that he had a small cut just at the top of his forehead where it meets the hairline.

Q. You're referring to the centre of the forehead?

A. The centre of the forehead, yes, and I asked him about the cut. I said, "Where did you get the cut
10 on your forehead", and he said that he fell on some ice in Montreal.

Q. Now, Constable Charlebois, you say you left and went to the interview room. Who went into the interview room?

A. Yes, at 7:25 Corporal Mole and I escorted Allan Legere to the interview room in Newcastle Detachment and there was just the three of us that entered into the room at that time.

Q. O.K., what if anything happened - without any
20 conversation or anything of that nature, what if anything happened in that room that you would have had occasion to have had to take any exhibits later?

A. Yes, at approximately 9:30 Corporal Mole brought
25 in some toilet tissue, a roll of toilet tissue, and a waste paper basket. He had brought this in at the request of Allan Legere and he provided the paper to him. At the same time we had provided him with a breakfast.

Q. And what if anything happened in relation to that
30 toilet tissue and waste paper can, that you know of?

A. Yes, I didn't pay any attention to what occurred with the toilet paper afterwards but I discussed
35 the matter with Corporal Mole later, later

that day.

- 5 Q. O.K., in relation to that did you have occasion to
take in possession anything?
- A. Yes, in relation to that on the 27th at 14:12,
2:12 p.m., I received the plastic bag containing
toilet tissue, stained toilet tissue.
- 10 Q. That's the 27th of November, 1989?
- A. 1989, that's correct.
- Q. And who did you receive it from?
- A. I received it from Corporal Mole.
- 15 Q. I show you the item that's been entered in this
hearing as Exhibit P-12. Would you look at that
for us, please, and tell us whether you -
- A. Yes, I can identify this as P-12 as being item 335
that I received from Corporal Mole at 14:12 hours
on the 24th of November, 1989.
- 20 Q. I said P-12, I meant P-112, 112.
- A. Excuse me, 112, yes, and I kept this in my
possession up until 19:45 on that same date, the
27th of November, 1989, when I hand delivered it
to Dr. John Bowen in Ottawa.
- 25 Q. And did you have occasion to take possession of
that item after that time, after you had given it
to Dr. Bowen?
- A. Yes, I received this item on the 25th. I received
it back from Dr. Bowen on the 25th of March, 1991,
at 11:30 at the Moncton Subdivison office.
- 30 Q. And in whose possession was it since that time?
After you received it what if anything did you do
with it?
- A. Actually, I'm not certain what I did with it,
actually.
- 35 Q. Would you require your notes? What I'm asking you

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to do is did you turn that item over to anybody?

5 A. I'm not certain if I turned it over to someone or
if I kept it in my possession until court, I'd
have to refer to my notes.

Q. Would you have that information in your notes?

A. It would be in my notes but it's not here.

Q. Where is it?

10 A. It would be in my locker in the police room.

Q. In this building?

A. Yes. I'm sorry, I just -

THE COURT: Well, if it wouldn't take too long perhaps he
could run and get it. Would it take you long to
15 find it after you -

A. Well, I'd have to look through my - I'm sorry, I
just had a blank, I don't know -

THE COURT: Perhaps the witness could check at a recess
and -

20 Q. What do you remember about - without using your
notes can you remember anything about what you
did with that item after that time?

THE COURT: You're talking about the 25th of March?

MR. WALSH: Yes, 1990. That would have been after the
25 analysis was done, My Lord.

THE COURT: This was an item that was put into evidence
at the voir dire, I take it, was it?

MR. WALSH: That's correct, My Lord.

30 A. Voir dire, I seem to think that I kept it in my
possession until then but I'd have to -

MR. WALSH: I see. This item was taken from the Clerk,
My Lord, and it was an item that was put into
evidence at the voir dire.

THE COURT: And it's been in the Clerk's -

35 MR. FURLOTTE: Well, My Lord, I don't think the Crown

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should be giving evidence.

MR. WALSH: Well, I mean, I'll have to call the Clerk.

5 THE COURT: Oh, well, we're not concerned after it got
into evidence if he can -

MR. WALSH: That's right, and all I'm saying is that it
was into the Clerk this spring and I think the
constable's testimony is because it was back in
10 the spring he's just trying to remember from the
time that he took it in March until the time it
was actually entered in the hearing in the spring.
That's the period you're talking about now?

A. That's correct, yes.

15 THE COURT: Well, do you want to - can someone else find
it for you or can you find it most easily
yourself?

A. Oh, I can find it.

20 Q. If I showed you an exhibit sheet, an exhibit
report associated with this particular item,
would you be able to refresh your memory from
that?

A. Yes, I would, because I was the one that prepared
it.

25 MR. WALSH: With the Court's permission?

THE COURT: Yes.

Q. I show you this exhibit report here. It's headed,
"Exhibit 89471, Item 335, file #893923". First of
all, would you tell us whether you recognize that
30 exhibit report?

A. Yes, I recognize it, I was the one that devised
the form itself and filled in the information.
According to this form I received - like I said,
I received that item on the 25th of March, 1991,
35 at 11:30, and there's no one after me so that

would mean that I kept that in my possession until it was introduced into evidence.

5 Q. In the spring?

A. In the spring.

Q. At the voir dire?

A. Yes.

10 Q. I show you two items marked 4Q and 4R for Identification. Would you look at those for me, please, and tell me whether you can identify those and if so, what if anything you had to do with those items?

15 A. Yes, when I was in Ottawa on the 27th and 28th of November, 1989, I received these two items from Dr. John Bowen. I received them on the 28th of November, 1989, at 14:25 hours. Upon my return to New Brunswick the next day, on the 29th of November, 1989, at 17:10 hours, I turned over
20 these two items to Constable Laurent Houle, the exhibit custodian for the Smith murder case.

Q. And did you take possession of those items after that time?

A. No, I did not.

25 THE COURT: Those are inner soles, I take it, from -
MR. WALSH: That's correct, My Lord, left foot and right foot insoles.

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

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

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Constable Charlebois, on November 24, 1989, you arrived at the detachment about 6:25 a.m.?

35 A. That's correct.

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Cst. Charlebois - Cross

- 5 Q. And you entered the cell - I believe before you entered the cell area where Mr. Legere was you had a brief conversation with Sergeant Mason Johnston?
- A. That's correct.
- Q. And how long did that conversation take?
- A. Just a couple of minutes.
- 10 Q. And then you proceeded to the cellblock area where Mr. Legere was?
- A. Yes.
- Q. And before - I believe when you arrived Corporal Mole and Sergeant Johnston went into the cell area where Mr. Legere was?
- 15 A. That's right.
- Q. And you had conversation with Constable Ken MacPhee?
- A. That's correct.
- 20 Q. Did Constable Ken MacPhee tell you at that time that Mr. Legere requested a lawyer?
- A. No, he did not.
- Q. How long was it before you went to the cell area after Corporal Mole and Sergeant Johnston?
- 25 A. Well, actually, I went to the washroom before I spoke to Ken MacPhee so that would have taken me a couple of minutes, and I spoke to Ken MacPhee for just a couple of minutes, so anywhere from three to five minutes, somewhere around that area.
- 30 Q. Now, when you observed Mr. Legere I believe you said he was naked except for having a blanket over him?
- A. That's correct.
- Q. His hands were handcuffed behind his back?
- A. That's right.
- 35 Q. His legs were shackled also?

- A. His legs were shackled, yes.
- Q. And how long did he stay in that restraint, I suppose I should say?
- 5 A. How long did he what?
- Q. How long did he stay in those restraints before he was given coveralls?
- A. Well, that was around 6:40 - approximately 20
- 10 minutes to half an hour, 35 minutes, somewhere around there.
- Q. Anywhers from 20 minutes to 35 minutes?
- A. Yes.
- Q. I believe you mentioned that just before you left
- 15 the cell area and went to the interview room area he was given coveralls?
- A. Yes.
- Q. So he was given coveralls -
- A. He was given coveralls at approximately - I think
- 20 it was 7:15, that area.
- Q. 7:15?
- A. Yes.
- Q. And then you went to the interview room at 7:25?
- A. Approximately, yes.
- 25 Q. When were the leg shackles removed?
- A. It was shortly after we had entered into the cell area, which was around 6:40.
- Q. And the handcuffs?
- A. The same time, same key for both the shackles and
- 30 the -
- Q. About what time again?
- A. I said shortly after we arrived in the cell area which would have been shortly after 6:40.
- Q. Shortly after 6:40. Now, Mr. Legere was read his
- 35 rights at 6:47?

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A. That's correct.

Q. And he was advised that he was under arrest for
5 what?

A. He was advised that he was under arrest for the
murder of Annie Flam.

Q. Had he been advised that he was under arrest for
any of the other murders?

10 A. Not at that time.

Q. At any time during the day?

A. Yes, he was.

Q. At what time during the day would he have been
advised that he was arrested for either the
15 murders of Daughneys or the murder of Father
Smith?

A. I think it was at approximately 8:30. 8:30, 8:35
that morning he was advised that he was under
arrest for the four murders.

20 Q. Now, you mentioned that Mr. Legere had stated to
you that he had never left the area?

A. That's right.

Q. And I believe you said he asked you who Ernie
Munden was?

25 A. That's correct.

Q. And what did you tell him?

A. Well, I can't recall exactly what I told him. I
wasn't doing a lot of the conversing but from what
I can vaguely recall I imagine he was told who he
30 was.

Q. Right, and who is Ernie Munden?

A. Ernie Munden at the time was the liaison officer
with the media, the R.C.M.P. liaison officer.

Q. He is an R.C.M.P. officer, though, is he not?

35 A. That's correct, he's a sergeant at Newcastle

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Cst. Charlebois - Cross

Detachment.

Q. And do you know whether or not Ernie Munden
5 advised the media that the R.C.M.P. was 99.9 per
cent certain that Mr. Legere had left the area?

A. Am I aware of that?

Q. Yes.

A. No. No.

10 Q. Did the R.C.M.P. believe at one time that Mr.
Legere had left the area?

MR. WALSH: Well, if he's asking if the R.C.M.P. - that's
a - he's delving into the area of hearsay, the
area that we've discussed before about him asking
15 a general opinion about what somebody else might
have thought.

MR. FURLOTTE: My Lord, this man is a file coordinator
for all the murder investigations and if he
wouldn't have knowledge as to what the beliefs of
20 the R.C.M.P. was, nobody would.

MR. WALSH: Whether he does or not it's still hearsay, My
Lord.

THE COURT: Yes, well, I think it's hearsay but I'll
permit the question in the circumstances.

25 A. Yes, there was - no one - notwithstanding what
may have been said in the media or not, no one
was certain where Allan Legere was during that
period of time that he was unlawfully at large.
There was a lot of speculation even amongst
30 investigators as to whether he was in the area or
not.

Q. And there was speculation as to who was assisting
Allan Legere while he was escaped?

A. There was speculation as to whether anybody was
35 assisting him by providing him with food or

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harbouring him, yes.

Q. Yes, and there was also speculation as to who may
5 have moved Allan Legere out of the area into
Ontario?

A. That's before I arrived, but I heard speculation
along those lines, yes, which was never proven.

Q. But the R.C.M.P. did obtain a search warrant to
10 seize some particular suspect's car in order to
search it for evidence?

A. I'm unaware of that.

Q. You're unaware of that?

A. That's right. I'm led to believe there was a
15 search of a vehicle but I don't know if they
obtained a search warrant.

THE COURT: I hope you're going to produce evidence
later, Mr. Furlotte, to back all of these
suggestions up.

Q. Do you know whether or not Ernie Munden released
20 to the press the statement that -

MR. WALSH: Objection, My Lord, he's going to - I
reiterate my objection that he's asking the
officer to delve into essentially hearsay
25 matters. He's going to quote out of what looks
like a newspaper article. The very nature of the
question is going to be a - just the question
itself if he doesn't -

THE COURT: This is not material to the issues involved
30 in the trial and -

MR. FURLOTTE: Well, My Lord, on direct evidence this
witness testified that Ernie Munden was the
liaison to the media for the R.C.M.P.

THE COURT: Right.

35 MR. FURLOTTE: And I'm asking this witness -

THE COURT: We're not interested in publicity statements
or warnings given by Sergeant Munden to the media
5 or to the people of the area or to anyone else.
How would it have any bearing on the guilt or
innocence of the accused? I don't know how many -
I don't know over what period Sergeant Munden may
have operated, but for seven months I suppose he
10 was -

MR. FURLOTTE: My Lord, I believe the Crown stated in his
opening address that they were not going to be
submitting to the jury that Mr. Legere was the
only party to these offences but just necessarily
15 that he was a party to the offence and that he
could possibly have -

MR. WALSH: No, no, no, that's not correct, My Lord -

MR. ALLMAN: That's not what I said.

MR. WALSH: - and perhaps if he's going to get into
20 questions of law or issues again, unfortunately,
I would respectfully suggest that the jury be
absent while we argue this particular aspect
again, unfortunately.

THE COURT: Well, we do seem to be getting into a field
25 here that perhaps the jury shouldn't be hearing
about, and I would ask the jury to go out briefly,
please. Don't get settled in too well.

(JURY WITHDRAWS.)

MR. WALSH: My Lord, if you would permit, although the
argument is raised while I have this witness on
the stand, Mr. Allman actually was the one who
made the opening address and it would be much
better if he addressed that particular issue, if
35 you would permit.

MR. ALLMAN: I don't have my opening address before me
but I do distinctly recall using the word
5 emphatically and saying to the jury, "We are
emphatically not saying that Mr. Legere had an
accomplice". All we were ever saying was that
we are not concerned with that possibility one way
or the other. That's all I wanted to say about my
10 opening. So far as this particular issue is
concerned, the question he's obviously going to
ask this witness is, "Sergeant Munden said
something to the media, can you comment on it".
That's double hearsay, what Sergeant Munden said
15 to the media is hearsay, what this officer's
information about that area is is hearsay unless
it's something he personally dealt with himself.
I'm going to be addressing this issue again at
another time but the bottom line to it all is Mr.
20 Furlotte wants to investigate the investigation.
He wants to drag in any number of names,
references, observations, he wants every witness
he's got on the witness box to make comments on
what other people know, what other people have
25 said, what other people have done. It's all
absolutely improper and its sole purpose, or at
least certainly its sole effect, is going to be to
raise a whole load of red herrings and get the
jury thoroughly confused. Sometimes defence
30 counsel ask questions that are legally improper
but you can see the point and they may have a
meritorious purpose, and normally Crown Counsel
would not take a technical or frivolous objection.
Our submission, this is not a technical or
35 frivolous objection, it's legally inadmissible

5 because it's hearsay and it's meritoriously
inadmissible because it's a load of irrelevant -
irrelevancies.

THE COURT: What kind of question is it? What are you
going to ask about Sergeant Munden, Mr. Furlotte?

10 MR. FURLOTTE: My Lord, since Mr. Legere is innocent till
proven guilty I believe that the jury has the
right to know the scope of the R.C.M.P.'s investi-
gation into finding other possible suspects, I
suppose I should say at this time, or rather to
say the scope of their investigation to be able
to charge other individuals either other than Mr.
15 Legere than along with Mr. Legere, and if the
R.C.M.P.'s investigation is centred specifically
on Mr. Legere and they're not concerned about
anybody else, then I believe the jury should have
the opportunity of not only weighing the evidence
20 but weighing the investigation of the R.C.M.P. If
they are going to be finding Mr. Legere guilty
beyond a reasonable doubt, then I don't only
think that the jury should be taking into consid-
eration what the R.C.M.P. did and uncovered, but I
25 think they should also be taking into considera-
tion what the R.C.M.P. did not do and did not
attempt to uncover and -

THE COURT: Well, now, to get back to my question, what
is it you want to find out about what Sergeant
30 Munden said?

MR. FURLOTTE: Basically the statement in the paper is,
"Allan Legere, if he is here, would not be here
and remain unlawfully at large unless he is being
assisted', Munden said", and that's quoting
35 Munden. I want to know if the R.C.M.P. had any

Voir Dire

evidence as to whether or not Mr. Legere was being
assisted while he was escaped and as to why they
5 were suspicious that he was being assisted.

THE COURT: Well, I'm not going to allow you to pursue
this line of questioning with the witness. Mr.
Allman has given succinctly and properly the
reasons why you shouldn't be allowed to do that,
10 because as he's pointed out, we're not investi-
gating the investigation. We're not concerned
with what the police did to investigate the matter
one iota. We're concerned here with the evidence
that the Crown puts before the Court to establish
15 the linking of the accused with these crimes, or
the non-linking, as the case may be. I'm not
going to permit that, we're just flying off into
red herrings that have no bearing whatever on the
matter.

20 You know, what are you after? What type of
thing are you after, to find out whether the
R.C.M.P. believed that somebody was delivering
newspapers each day to the accused in the woods or
at a camp or at the basement of his old house
25 where he lived or what? You know, we're not
concerned with this.

MR. FURLOTTE: Well, I think I'd be quite concerned as -

THE COURT: If when the time comes for the defence to
call evidence if you can call evidence to show
30 that some other person committed these crimes,
then that is good - you may be able to establish
a good defence on the part of the accused. To
prove that there were accomplices wouldn't
necessarily establish a defence.

35 Well, I'm not going to permit this line of

questioning, it's irrelevant to the issues
involved in this lawsuit. There's no reason why
5 the jury shouldn't be brought back now? O.K.,
bring the jury in.

(JURY CALLED - ALL PRESENT.)

THE COURT: Now, Mr. Furlotte, you have other questions?
10 MR. FURLOTTE: Yes, My Lord. Constable, Exhibit P-112
which was the toilet tissue?
A. That's correct.
Q. Which was in your possession? I believe you
stated you received that on November 27, 1989?
15 A. That's correct.
Q. And you delivered that to Dr. John Bowen?
A. That's correct.
Q. On what date did you deliver it to Dr. John Bowen?
A. That same day, that evening.
20 Q. The same day?
A. Yes, at 7:45.
Q. And you received it back from Dr. John Bowen when?
A. On the 25th of March, 1991, in Moncton.
Q. As far as you know Dr. John Bowen had it in his
25 possession all that time?
A. As far as I know, yes.
Q. And the pair of insoles that you were shown as an
exhibit you -
A. - received -
30 Q. - received that on what date?
A. The 28th of November, 1989, from Dr. Bowen, and I
turned them over to Constable Laurent Houle on the
29th.
Q. You received them from Dr. Bowen on what date?
35 A. The 28th.

- Q. Of what?
- A. Of November.
- 5 Q. Of November? Now, as file coordinator did you assist in preparing the witnesses can-say statements?
- A. Yes, I assisted in preparing a number, yes - quite a few.
- 10 Q. And I would assume you assisted in preparing your own?
- A. I prepared my own.
- Q. And you prepared your own from your notes?
- A. Yes, with one minor mistake that you're about to ask me about.
- 15 Q. O.K., tell me about it.
- A. I noted that at 7:10 there's reference to the conversation in regards to staying at the hotel and also encountering the two police officers on the train, and under that I noted that he rolled up his sleeve, and then I have him - on my can-say sheet I have him receiving the coveralls at 7:15, but that's wrong, and it doesn't jibe with my notes.
- 20 Q. So I guess you may as well explain why you made that mistake.
- A. Explain why I made it? Well, because I'm human.
- Q. When did you make your notes?
- A. My notes were made on the 24th of November, 1989, the evening of the 24th of November, 1989, at approximately 7:15.
- 30 Q. And did you have a watch on you that day?
- A. Yes, I did. As I mentioned, Allan Legere was conversing quite a bit, talking very fast and talking a lot, and during the time that we were
- 35

5 in the cell area he mentioned - initially he
mentioned about the train, being checked on the
train going to Montreal by two police officers,
and obviously we were quite interested in that
because we were aware that the - at our request
that the police in Quebec had checked the train
and it came up negative, so most certainly he was
10 questioned further on that matter after he was
provided with the coveralls, and that's when he -
I distinctly recall Allan Legere lifting up,
raising his left - or right sleeve on his right
arm, illustrating to us what he did for the police
15 officers.

Q. Now, when you mentioned in your will-say statement
that he was checked by two cops in Quebec -

A. Mm-hmm.

Q. - now, did Mr. Legere say in Quebec or in
20 Montreal?

A. At one point in time he said in Quebec and at
another point in time he said the train to
Montreal.

Q. In Montreal?

25 A. Not in Montreal, going to Montreal.

Q. The train going to Montreal?

A. That's correct.

Q. But as far as for the two policemen checking him,
were the two policemen in Montreal?

30 A. In Quebec. No, not in Montreal, he said in
Quebec.

Q. He never told you they were in Montreal?

A. As I mentioned, at one point in time - he made
reference to the train, once on his own and once
35 upon questioning, on two occasions. At one time

- he referred to the train in Quebec and at another time the train going to Montreal, but he always made reference to being checked by two police officers. He was very candid and very open about that fact.
- 5
- Q. He never mentioned which train to Montreal or on what day or in what month?
- 10 A. No, he didn't.
- Q. Could he have been talking about the train coming from Montreal to Saint John?
- A. He did take the train from Montreal to Saint John but no, not the way I understood it.
- 15 Q. At least not the way you interpreted it?
- A. That's right.
- Q. Or wanted to interpret it?
- A. Not the way I understood it.
- Q. As file coordinator when did you become aware of the statement of Joseph Roderick Allan Williams and Joseph Wayne Williams and the composite drawing which was prepared by Roddy Williams?
- 20 A. I became aware of the contents of their statements on the 15th of September of this year.
- 25 Q. Just on September 15th this year?
- A. That's correct.
- Q. And how did you become aware of their statements?
- A. I made a trip from the Howard Johnson's hotel here to the court house and I pulled out their file and reviewed their statements.
- 30 Q. Who asked you to do that?
- A. No one asked me, I did it myself.
- Q. When did you become aware of the composite drawing? The exhibit is P-92. I show you Exhibit
- 35 P-92.

- A. I became aware - I had seen that composite drawing prior to September, 1991, actually while I was in Newcastle investigating back in 1989, but I just became aware that it had a connection, some connection, with Mr. Williams on the 15th of September, 1991.
- 5
- Q. Were you aware that this character had been observed on the morning of the Daughney incident?
- 10
- A. Like I say, I was aware of that composite drawing back in - would have been back in October to December of 1989, and I had some ray or vague idea that it was in relation to the person that was seen by the tracks, but I wasn't fully aware of all the facts.
- 15
- Q. Now, in preparing the will-say statements and the police briefs you had a good big picture of the case the Crown was going to try and prove against Mr. Legere?
- 20
- A. I have a pretty good understanding of the case, yes.
- Q. And were you present in court when Mr. Allman made his opening address to the jury?
- 25
- MR. WALSH: Objection, My Lord. I don't know where Mr. Furlotte's coming from in this particular question but it doesn't appear to me to have any relevance unless he's going to ask the officer to comment on the Crown's position with respect to the case which would be totally improper and irrelevant.
- 30
- THE COURT: Well, he won't be permitted to answer a question like that, but go ahead, Mr. Furlotte.
- Q. Were you in court when the Crown Prosecutor made his opening address to the jury?
- 35
- A. No, I wasn't.

Q. Did you prepare the will-say statement for Mark Anthony Manderson?

5 MR. WALSH; Objection, My Lord, the will-say statement, as Your Lordship is well aware, is an attempt to try and provide defence with complete disclosure and it's a summary a peace officer may or may not have correctly done in relation to the evidence to
10 try and assist the defence without actually having to read the whole statement, so I think that this is something that we should discuss -

THE COURT: Yes, well, the objection is well taken, the witness can't be examined on the purpose of the
15 will - preparation of the will-say statement or not. If the will-say statement, so-called, is in the form of a statement by a witness, the witness can of course be cross-examined on that under Section 10 of the Canada Evidence Act if it's
20 suggested that his evidence on the stand is departing from that contained in the statement, but that's the only use that can be made of that. If there's information contained in that statement that you want to ask this witness about, without
25 reference to the statement - I mean just using -

MR. FURLOTTE: No, no, I - Mr. Manderson testified, to your knowledge Mr. Manderson testified?

A. To my knowledge he did, yes.

Q. Mr. Manderson did not give the testimony which was
30 expected?

MR. WALSH: Objection, My Lord. At this time, My Lord, I'm going to ask -

THE COURT: No. Yes, that's not a fair question.

MR. WALSH: Could we have the jury, please - probably
35 it's the best time for a break and -

THE COURT: Well, we're going to stop that right now,
that line of questioning. It's improper to ask
5 that sort of question, you know, in front of the
jury, Mr. Furlotte, and you know that -

MR. FURLOTTE: I'm afraid I don't know that, My Lord.

THE COURT: - to suggest that somebody didn't give the
evidence they were supposed to give. There may be
10 foundation for it, perhaps, there's a 99 per cent
chance there's absolutely no foundation for it,
but you seem to be trying to throw up a red
herring here that - all right, go ahead.

MR. FURLOTTE: Well, My Lord, any evidence that tends to
15 assist Mr. Legere cannot be considered a red
herring. Maybe the Crown considers it that and
maybe you consider it that, but I do not.

MR. WALSH: My Lord, perhaps since Mr. Furlotte doesn't
seem to understand what questions he can and
20 cannot ask it might be an appropriate time to
resolve that issue when the jury have their break
without me going up and down like a jack-in-the-
box here.

THE COURT: I would despair of the possibility of trying
25 to impress the fact on Mr. Furlotte in a 10-minute
voir dire if he doesn't understand it now.

MR. FURLOTTE: Mr. Charlebois, the evidence of Joseph
Wayne Williams and the evidence of Joseph Roderick
Allan Williams and the composite drawing, P-92,
30 do you know why this did not come to the attention
of the Crown Prosecutor and myself until after Mr.
Manderson testified?

A. Yes, the Crown Prosecutor, that particular
composite drawing, the relevance of that
35 particular composite drawing, and the respective

Cst. Charlebois - Cross

5 statements of Joseph and Roderick Williams were
brought to the Crown's attention on the 15th and
16th of September. The reason it wasn't brought
before is because an investigator was of the
opinion that it was not helpful, and once the
Crown viewed the composite drawing it was decided
that we'd review the statements and follow up on
10 this, which we did. The Crown felt it would be
relevant to this case.

THE COURT: Well, I think we should stop that line of
questioning right there.

15 MR. FURLOTTE: I believe, Constable, you said you didn't
know Mr. Legere before November 24th or you hadn't
seen Mr. Legere personally before November 24,
1989?

A. That's correct.

Q. Is Mr. Legere five-foot-seven?

20 A. He doesn't appear to be to me.

Q. Does Mr. Legere look like an Indian?

A. No, he doesn't appear to look like an Indian to
me.

Q. Does Mr. Legere have dark brown eyes?

25 A. No, he has blue eyes.

Q. Mr. Legere ever known to have a potbelly?

A. I don't know him that well to answer that
question.

Q. As file coordinator when did you first become
30 aware that Exhibit 339, I believe, in the
Daughney file, a knife and a sheath supposedly
found under the front seat of Father Smith's car
was -

A. That's not -

35 MR. WALSH: That's not Item 339.

30

Cst. Charlebois - Cross

- 5 A. No, it's not in relation to the Daughney murder,
it's in relation to the Smith murder. It was
Constable Laurent Houle's Item #100. I think 339
referred to the number that was assigned to it by
the laboratory because they have their own
numbering system.
- 10 Q. O.K., I believe Constable Robitaille had seized
that item?
- A. That's correct.
- 15 Q. And as far as for file coordinator, when did you
first become aware of the alleged fact that
Constable Robitaille found that item underneath
the front seat of Father Smith's car?
- A. It would have been sometime in 1990, I couldn't
give you an exact date.
- 20 Q. As a file coordinator I'm going to show you a
continuation report of Constable Robitaille and
maybe you could tell me who that was sent to and
who the conversation was with.
- A. Yes, it was sent to me. I had requested that he
send me a continuation report. I didn't notice
any reference in his report to the knife itself.
25 I had neglected to notice that he had itemized it
in his exhibit report.
- Q. And what date was it that you weren't able to find
it in your telephone conversation?
- 30 A. Well, with respect to his report it says the 31st
of July, 1991, so I presume that I would have had
a conversation with him a couple of days before
that, but that's simply with respect to his
report.
- Q. Which you had provided me with a copy of before?
- 35 A. That's correct.

Q. And there was no mention of the knife in that report?

5 A. There was mention in Corporal Robitaille's exhibit report of him seizing the knife but he omitted to mention it in the narrative, the body of his actual report.

MR. FURLOTTE: No further questions.

10 THE COURT: Thank you, Mr. Furlotte. Now, re-examination?

REDIRECT EXAMINATION BY MR. WALSH:

15 Q. Just one, My Lord, just that last point. Just so we can clarify for the jury - I believe this may have been clarified before, but there's a continuation report and there's an exhibit report, is that correct?

A. That's correct.

20 Q. And the exhibit report, that was made by who, and with relation to the knife who made the exhibit report?

A. The initial report or the initial exhibit report in relation to the knife would have been made by
25 Corporal Robitaille. He works for Bathurst Ident. Section and they have their own exhibit reporting system, so he would have assigned his own number to that particular knife. In turn he would have turned over that knife to Constable Houle who is
30 the exhibit custodian for the Smith case. Now, Constable Houle would have assigned his number which was item #100, but Corporal Robitaille did have an exhibit report prepared where he itemized that knife that he seized from Father Smith's
35 vehicle.

32

MR. WALSH; Thank you, I have nothing further.

THE COURT: Thank you very much, Constable Charlebois.

This witness isn't being recalled?

5 MR. WALSH: No, that's it, My Lord.

THE COURT: So you're excused, thank you. Who is your
next witness?

MR. WALSH: The next witness, My Lord, will be Constable
Greg Davis.

10 THE COURT: Is he very long or -

MR. WALSH: Well, we have a number of items that we'll
have to mark as exhibits and just a number of
items that I'll have to show him.

THE COURT: But I mean shall we go on before -

15 MR. WALSH: I think it might be an appropriate time for
a recess. It's up to you, though, My Lord,
whether you think it's too early.

THE COURT: Is he just a continuity witness?

MR. WALSH: Yes, but he'd be about 15 minutes or so.

20 THE COURT: Oh. Well, let's take a recess now, then.

(BRIEF RECESS - COURT RESUMED AT 11:25 a.m.)

(JURY CALLED - ALL PRESENT.)

25 (ACCUSED IN HOLDING CELL.)

MR. SLEETH: Just quickly, My Lord, before the calling of
the next witness by Mr. Walsh, there were two
witnesses, Constable Emery who was witness 197,
30 and Corporal Vesey who I believe was witness 207.
I had indicated before the jury sometime last week
that it might not be necessary to call these
people. We have confirmed now from Mr. Furlotte
it will not be necessary to call these witnesses.

35 THE COURT: All right, so Emery, 197, he's being struck

off, and -

MR. SLEETH: - Vesey, 207.

5 THE COURT: 207, and he's not being called.

MR. SLEETH: Vesey, observations of the arrest, and Emery was involved with the appearance at the bridge and the finding of the credit cards.

THE COURT: Yes, all right.

10

CONSTABLE GREGORY DAVIS, called as a witness, having already been sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

15 Q. You've testified before, you're Constable Greg Davis, you're a member of the Royal Canadian Mounted Police, you're presently stationed in Newcastle, you were so stationed in 1989 and you're an exhibit custodian related to one of the homicides connected with this matter, is that
20 correct?

A. That's correct.

Q. I'm going to show you a number of items, Constable Davis. I'm showing you an item that's been marked 4K. It purports to be a train ticket.
25 Could you look at that item for us, please, and tell me whether you can recognize that?

A. Yes, I can identify this exhibit by my initials, the date and time, being the 24th of November, 1989, at 8:05 a.m. I received this item
30 personally from Constable MacPhee at Newcastle Detachment and I've kept it in my possession since that time.

Q. And you in fact brought that item to court?

A. Yes.

35 MR. WALSH: My Lord, at this time continuity, I would

MR. WALSH: My Lord, I would move to have this item entered as an exhibit. We submit the continuity

THE COURT: And this item is what?

MR. WALSH: It's a Canadian Pacific Hotels and Resorts
5 pen, a set of keys, and a Bic lighter, green in
colour.

THE COURT: That will be P-125.

Q. I show you another item that's been marked XXX.
It purports to be a receipt for the Queen
10 Elizabeth Hotel. Would you look at that for us,
please, and tell me whether you can identify that
item?

A. Yes, I can identify this item by my initials, date
and time, being again the 24th of November, 1989,
15 at 10:18 a.m. I received this personally from
Corporal Barter at Newcastle Detachment and I had
that in my possession until it went to court.

MR. WALSH: My Lord, I would submit that the continuity
has been proven on that item and we would move to
20 have this entered as an exhibit on this hearing.

THE COURT: P-126.

Q. I have an article that's been marked UUU. Would
you look at that for us, please, and tell me
whether you can identify it?

A. Yes, I received this item on the 24th of November,
25 1989, at 10:18 a.m. I received it personally from
Corporal Barter, Newcastle Detachment. On the
14th of November, 1990, at 1:53 p.m. I turned this
item over to Constable Proulx of the Moncton
30 G.I.S. Section at Newcastle Detachment.

Q. Did you have occasion to take possession of that
item after that time?

A. Yes, it was returned to me from Constable Proulx
on the 29th of January, 1991, at 2:00 p.m. at
35 Newcastle Detachment.

36

Cst. Davis - Direct

Q. And you brought that item to court?

A. Yes.

5 Q. I would submit the continuity has been proven on this particular matter. It purports to be one hotel key, My Lord, or a key, in any event.

THE COURT: Key, P-127.

10 Q. I show you two items that have been entered as an exhibit on this particular trial, P-120 and P-121, and they purport to be work boots taken from Legere at the time of his arrest.

15 A. I can identify these two items by my initials, date and time, being the 24th of November, 1989, at 8:05 a.m. I received them personally from Constable MacPhee at Newcastle Detachment. They were then turned over to Duff Evers at the Crime Detection Laboratory at Sackville on the 29th of November, 1989, at 11:45 a.m.

20 Q. Did you have occasion to come into possession of those items after you turned them over to Duff Evers?

A. Yes, they were returned to me on the 9th of August, 1990, at 8:00 a.m. from Constable Houle.

25 Q. And what if anything did you do with them after that?

A. I then turned them over to Sergeant Kennedy of the Fredericton Identification Section on the first of September, 1990, at 10:00 a.m.

30 Q. And did you ever receive them back after that time?

A. No, I did not.

35 Q. I'll show you what's been marked on this trial as Exhibit P-118. It purports to be an AWAK FM-AM T.V. Band Receiver.

37

Cst. Davis - Direct

5 A. I can identify this item again by my initials,
date and time, being the 24th of November, 1989,
at 8:05 a.m. It was received personally from
Constable MacPhee at Newcastle Detachment and this
item was in my possession since that time.

Q. And you brought that item to court?

A. Yes.

10 Q. I show you an item that's been marked 4D. It
purports to be an AWAK tape player with
headphones. Would you look at that item for me,
please and tell me whether you can identify that?

15 A. Yes, I identify this by my initials, date and
time being the 24th of November, 1989, at 10:18
a.m. It was received personally from Corporal
Barter at Newcastle Detachment and I kept that in
my possession until the time it went to court.

20 MR. WALSH: I would submit, My Lord, that continuity has
been proven up on this particular item and I would
move to have it entered as an exhibit on this
trial.

THE COURT: It will be P-128.

25 Q. I have an item that's been marked - excuse me,
entered on this particular trial as P-117. Would
you look at that for us, please and tell us
whether you can identify that item? It purports
to be an Alberta trade certificate in the name of
William D. Wilson.

30 A. Yes, I can identify this by my initials, date and
time being the 24th of November, 1989, 10:18 a.m.
It was received personally from Corporal Barter at
Newcastle Detachment and was in my possession
until the time it came to court.

35 Q. I show you an item that's entered at this trial as

- Exhibit P-116. It's a wristwatch. Would you look at that for us, please, and tell me whether you can identify it?
- 5
- A. Yes, I can identify it by my initials, date and time being the 24th of November, 1989, at 8:05 a.m. I received this item personally from Constable MacPhee at Newcastle Detachment. I then
- 10 turned it over to Duff Evers at the Crime Detection Laboratory at Sackville on the 29th of November, 1989, at 11:45 a.m.
- Q. Did you have occasion to come into possession of that item after that time?
- 15 A. Yes, I received it from Constable Houle on the 9th of August, 1990, at 8:00 a.m. at Newcastle Detachment.
- Q. And you in fact brought that item to court?
- A. Yes.
- 20 Q. I show you an item that's been marked P-119 on this particular trial. It purports to be a leather jacket of sorts taken from Legere at the time of his arrest.
- A. I can identify this item by my initials, date and
- 25 time being the 24th of November, 1989, at 8:05 a.m. I received it personally from Constable MacPhee at Newcastle Detachment. It was then turned over to Duff Evers of the Crime Detection Laboratory at Sackville on the 29th of November, 1989, at 11:45
- 30 a.m.
- Q. And did you have occasion to come into possession of that item after that time?
- A. Yes, it was returned to me from Constable Houle on the 9th of August, 1991, at 8:00 a.m. at
- 35 Newcastle Detachment.

Q. From Constable Houle?

A. Yes.

5 Q. I show you an item that's been marked Exhibit P-79. It purports to be one brown glasses case in the name of Greiche and Scaff. Would you look at that item for us, please, and tell me whether you can identify it?

10 A. Yes, I can identify this item by my initials, date and time being the 24th of November, 1989, at 10:18 a.m. I received it personally from Corporal Barter at Newcastle Detachment. I then turned it over to Duff Evers at the Crime
15 Detection Laboratory at Sackville on the 29th of November, 1989, at 11:45 a.m.

Q. And did you have occasion to come into possession of that item after that time?

A. Yes, I received it personally from Constable Houle
20 on the 9th of August, 1990, at 8:00 a.m. at Newcastle Detachment.

Q. I show you an item that's been marked Exhibit P-98. It purports to be a Swiss Army Knife and a lighter. Could you look at that item for me,
25 please, and tell me whether you can identify it?

A. Yes, I can identify this item by my initials, date and time, being the 24th of November, 1989, at 9:03 a.m. I received this item personally from Corporal Godin of the Bathurst Identification
30 Section. It was then turned over to Duff Evers at the Crime Detection Laboratory at Sackville on the 29th of November, 1989, at 11:45 a.m.

Q. Did you have occasion to take possession of that item after that time?

35 A. Yes, it was returned to me at Newcastle Detachment

Cst. Davis - Direct

from Constable Proulx of the Moncton G.I.S.

Section on the 17th of April, 1990, at 2:59 p.m.

5 Q. And you brought that item to court?

A. Yes, I did.

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

THE COURT: Cross-examination?

10 MR. FURLOTTE: I have no questions.

THE COURT: Just to clarify this in our minds because
there are so many exhibits, these are all items,
I believe you have said, there's evidence to
to suggest were taken from the accused at the time
15 of his arrest on November 24th? Am I right about
that?

MR. WALSH: That's correct, My Lord, all of these items.

THE COURT: All of these items, including the last item?

MR. WALSH: Yes, including the last item, My Lord, yes.

20 THE COURT: And I'm talking about the items that have
been newly marked as exhibits which were earlier
marked for identification and as well all of the
other items that you've shown to the witness.

MR. WALSH: That's correct, My Lord. All of the items
25 that I've dealt with the witness on at this
particular time were items that were taken - we
suggest - we say they were taken from the accused
at the time of his arrest.

THE COURT: Well, it's the Crown's contention that the
30 evidence supports that suggestion. I'm not
stating that as a fact, it's just to try to tie
them in.

MR. WALSH: That's right, My Lord, they were associated
with the arrest of Legere.

35 THE COURT: All right, thank you very much and you're

Cst. Houle - Direct

excused, Constable. Thank you.

5 CONSTABLE LAURENT HOULE, called as a witness,
having already been sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

10 Q. You've testified before in this particular
hearing, Constable. You're Constable Laurent
Houle, you're a member of the Royal Canadian
Mounted Police, you were stationed in Newcastle in
1989, you were an exhibit custodian associated
with one of the homicides in this particular
matter. Am I correct in all those assumptions?

15 A. That is correct, yes.

 Q. I have a number of items I wish to show you,
Constable Houle. This item here is marked as 3B
for Identification. It purports to be two pieces
of plastic with "Horn" written on it, or on one of
20 them. Can you identify that item for us, please?

 A. Yes, I can. It bears my initials, date and time.
I received this from Constable Robitaille on the
27th of November, 1989, at 4:00 p.m.

 Q. And what if anything have you done with that item
25 since that time?

 A. It has been in my possession until it was entered
in court.

MR. WALSH: My Lord, I would move to have this particular
item entered as an exhibit on this trial.

30 THE COURT: That will be P-129, and just so that -

 MR. WALSH: Yes, My Lord, I'll give the background on
that. Those two pieces of plastic, one with
"Horn" drawn on it, were found inside Father
Smith's vehicle and purport to be so. I show
35 you an item that's been marked 3C for

Cst. Houle - Direct

Identification. Would you look at that for us,
please? It's one GM ignition key, purports to
5 be.

A. Yes, again it bears my initial, date and time.
This was turned over to me by Constable Robitaille
on the 27th of November, 1989, at 4:00 p.m. and it
had been in my possession ever since until it was
10 entered in court.

MR. WALSH: My Lord, I would move to have this item
entered as an exhibit.

THE COURT: It will be P-130.

MR. WALSH: And for background this purports to be one GM
15 ignition key found under the passenger side floor
mat of Father Smith - or James Smith's vehicle.
I'll show you two items marked 4Q and 4R. They
are insoles. Would you look at that for us,
please, and tell me whether you can identify those
20 items?

A. Yes, I can. Again it bears my initial, date and
time. This was turned over to me by Sergeant
Chiasson of the Bathurst Ident. on the 22nd of
November, 1989, at 4:40 p.m.

25 Q. What if anything did you do with that item after
it was turned over to you?

A. I personally turned it over to Dr. John Bowen of
the Central Forensic Laboratory in Ottawa on the
23rd of November, 1989, at 11:23 a.m.

30 Q. And did you have occasion to come into possession
of that item after that time?

A. Yes, it was turned over to me. It was returned to
me on the 29th of November, 1989, at 5:10 p.m. by
Constable Charlebois of the Moncton G.I.S.

35 Q. And did you have occasion to do anything with that

Cst. Houle - Direct

item after you received it from Constable Charlebois?

5 A. Yes, I did. On the 9th of June, 1990, at 3:20 p.m., I turned it over to Sergeant Robert Kennedy of the Fredericton Ident. Section.

Q. Did you have occasion to take possession of those items after that time?

10 A. No, I haven't.

Q. When you had these items did you do anything to alter these items in any way?

A. No, I haven't.

15 Q. I'll show you an item that's been marked for Identification OOOO. Would you look at that item for me, please, and tell me whether you can identify it?

A. Yes, again it bears my initials, date and time. This was turned over to me by Corporal Mole of the Moncton G.I.S. on the 26th of November, 1989, at 7:55 p.m.

20 Q. And what if anything did you do with that item?

A. On the 27th of November, 1989, at 10:00 a.m. I turned it over to Mr. Evers of the Hair and Fibre Section at the Sackville Laboratory.

25 Q. And did you have occasion to come into possession of that item after that time?

A. Yes, it was returned to me via registered mail by the Sackville lab by Mr. Evers of the Hair and Fibre Section on the 21st of December, 1989.

30 Q. And in whose possession was it since that time?

A. It was mine until it was entered as court exhibit at the voir dire on the 24th of April, 1991.

35 Q. And do you know what was in this particular plastic bag at the time that you delivered it to

Mr. Evers?

5 A. Yes, it was containing several pubic hair from the suspect, Allan Legere.

Q. And when you received the bag back from Mr. Evers was there any hairs in the bag when you received it back?

A. No.

10 Q. I show you an item that's been entered as an Exhibit P-113. It purports to be three pubic hairs taken from identification number OOOO. Do you recognize that item?

15 A. Yes, I do. There again it bears my initial, date and time. This was turned over to me by Dr. John Bowen from the Central Forensic Lab, Ottawa, at the Moncton Subdivision Detachment on the 25th of March, 1991, at 11:40 a.m.

20 Q. And in whose possession did that remain after that time?

A. It was entered in court.

Q. You brought it to a voir dire here?

A. Yes, I did.

25 Q. I show you an item that's been marked for identification 3D. It purports to be a jacket found in Bathurst.

30 A. Yes, again it bears my initial, date and time. I received this from Constable Robitaille of the Bathurst Ident. on the 27th of November, 1989, at 4:00 p.m.

Q. What if anything did you do with the item after you received it from Corporal Robitaille?

35 A. I turned this over to Mr. Evers of the Hair and Fibre Section of the Crime Detection Laboratory in Sackville on the 28th of November, 1989, at

o-nine a.m.

- 5 Q. And did you have occasion to come into possession
of that item after that time?
- A. Yes, on the 28th of June, 1990, it was returned to
me via registered mail from the Crime Detection
Laboratory, Sackville, from the Serology Section
from S. Lungair.
- 10 Q. And in whose possession did that item remain after
that time?
- A. Mine, until it was entered in court.
- Q. I'll show you two items that have been marked on
this particular trial as Exhibits P-120 and 121.
15 They purport to be work boots taken from Legere
at the time of his arrest.
- A. Yes, I can recognize these exhibits by the
exhibit numbers, 89-471, item #286 and 287.
- Q. And where did you receive those from?
- 20 A. I received that from the Sackville Laboratory from
Serology Section, S. Lungair, on the 28th of June,
1990.
- Q. And what if anything did you do with those items
after? Did you turn them over to anyone?
- 25 A. Yes, I turned them over to Constable Davis,
exhibit custodian for the Daughneys murder case
on the 9th of August, 1990, at 8:00 p.m.
- Q. Did you have occasion to take possession of those
items after that time?
- 30 A. No, I haven't.
- Q. I show you an item that's been entered at this
trial as Exhibit P-116. It purports to be a
watch. Would you look at that for us, please?
- A. There again I can identify this exhibit by the
35 exhibit number, 89-471, item #291. There again I

- received this via registered mail from the Sackville Laboratory from the Serology Section, S. Lumgair, on the 28th of June, 1990.
- 5
- Q. Did you do anything with the item after you received it from the Serology Section?
- A. Yes, on the 9th of August, 1990, I turned it over to Constable Davis at 8:00 p.m.
- 10
- Q. I show you an item that's been marked Exhibit P-79. It's a brown glass case in the name of Greiche & Scaff. Do you recognize that item?
- A. Yes, I do. Again I recognize this exhibit by the exhibit number 89-471, item #317. Again I received this via registered mail from the laboratory at Sackville, Serology Section, S. Lumgair, on the 28th of June, 1990.
- 15
- Q. And what if anything did you do with that item?
- A. On the 9th of August, 1990, at 8:00 p.m. I turned it over to Constable Davis.
- 20
- Q. I show you an item, Exhibit P-119, that purports to be a leather jacket, leather-like jacket.
- A. There again I can identify this exhibit by the exhibit number, 89-471, item #300. This I received via registered mail from the Sackville Laboratory from the Serology Section from S. Lumgair on the 28th of June, 1990, and I turned it over to Constable Davis on the 9th of August, 1990, at 8:00 p.m.
- 25
- 30 THE COURT: What was the exhibit number on that last one?
- MR. WALSH: P-119, My Lord. Did you have occasion to take possession of the item after that time?
- A. No, I haven't.
- MR. WALSH: I have no further questions. Thank you, My
- 35 Lord.

47

Mr. Evers - Direct

MR. FURLOTTE: I have no questions.

THE COURT: Thank you very much, Constable Houle. I

5 think that's the end of you, isn't it, so you're
excused.

MR. WALSH: My Lord, my next witness, I've recalled Duff
Evers.

10 ADOLPHUS JAMES EVERS, called as a witness, having
already been sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. To refresh the jury, you've testified before,
you're Mr. Duff Evers?

15 A. That is correct.

Q. You're with the Hair and Fibre Section of the
Sackville Forensic Laboratory, the R.C.M.P.
Laboratory, at Sackville, New Brunswick; is that
correct?

20 A. Yes.

Q. And you were there in the year 1989?

A. I was.

Q. And you took possession of several items
associated with the homicide we're now being
25 tried?

A. Yes.

Q. I show you first of all an item that's marked for
identification OOOO, a plastic bag purports to
have contained pubic hair at one time. Could you
30 identify that for us, please?

A. I identify this article, court exhibit OOOO, by my
initials, date and case number. I received this
from Constable Houle on the 27th of November,
1989. This bag contained a pubic hair sample,
35 that is a number of hairs presumably from one

Mr. Evers - Direct

5 particular source. In fact, the bag contained 28
human pubic hairs. Twenty-five of the pubic hairs
I mounted on microscope slides for microscopic
examination. The remaining three pubic hairs
containing a root sheath was put in a pill box
which I marked as my exhibit 83A. This bag was
then returned via registered mail to Constable
10 Houle on August - registered mail #324.

Q. Did you have occasion to take possession of this
item after that time?

A. No, I did not.

Q. You say they were pubic hairs?

15 A. They were twenty -

Q. Who did they purport to come from?

A. They were reportedly from Mr. Legere.

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

THE COURT: Yes, on the continuity - this purported to be
taken from Mr. Legere when?

MR. WALSH: That would be at the time of his arrest by
Corporal Mole. This is the bag from which I
25 understand Mr. Evers removed hairs and put some
hairs in another container.

THE COURT: That would be P-111.

Q. This item I show you, Mr. Evers, has been marked
Exhibit P-113. How does that relate to the other
30 item you've just identified?

A. I identify court exhibit P-113 by my initials,
date and case number. This pill box was the pill
box which I put three human pubic hairs which I
removed from court exhibit for identification 40
35 and which I previously identified as a pubic hair

5 sample reportedly from Mr. Legere. I put the
pubic hairs in the pill box, I sealed the pill box
and I gave the pill box and contents to Dr. John
Bowen on the 10th of January, 1990.

Q. At Ottawa?

A. Yes.

Q. You delivered them to Ottawa personally?

10 A. I did.

Q. Why those three particular pubic hairs?

A. Those three pubic hairs had a root sheath
attached or part of the hair follicle.

Q. Was that important for why you were delivering it?

15 A. Yes, I was delivering them to Dr. Bowen for future
DNA analysis.

Q. I show you an item that's been marked Exhibit
P-71. It's a knife with a black sheath purported
to have been found in James Smith's vehicle in
20 Bathurst. Do you recognize that item?

A. I identify court exhibit P-71 by my initials,
date and case number appearing on the plastic bag
and the red R.C.M.P. laboratory tags. I received
this knife via registered mail on the 21st of
25 December, 1989, registered mail #91. I examined
the knife. I then gave the knife to Mrs. Lumgair
of the Serology Section on the 21st of December,
1989.

Q. Did you have occasion to come into possession of
30 that item after that time?

A. No, I did not.

Q. I show you an item that's been marked 3D for
Identification. It's a jacket purported to have
been found in Bathurst. Would you look at that
35 item for me, please, and tell us whether you can

50

Mr. Evers - Direct

recognize it?

5 A. I identify this article by my initials, date and
case number appearing on the red R.C.M.P. labora-
tory tag as well as on the jacket. This contained
one black jacket I received from Constable Houle
on November 28, 1989. I examined the jacket, I
then gave it to Mrs. Lungair of the Serology
10 Section on the 13th of December, 1989.

Q. Did you have occasion to come in possession of
that item after that time?

A. No, I did not.

15 Q. I show you two items that have been entered at
this trial as Exhibit P-120 and 121. They purport
to be boots seized from Legere at the time of his
arrest. Can you tell us whether or not you
recognize those items?

A. I identify the boots by my initials, date and
20 case number. I received the boots from Constable
Davis on the 29th of November, 1989. I examined
the boots, I then gave them to Mrs. Lungair of the
Serology Section on the 13th of December, 1989.

25 Q. When you received these items it's obvious from
the bag that the soles have been cut off or part
of the boots have been cut off. Were they in that
condition when you received them?

A. No, the boots were intact when I received them.
They were also missing the laces.

30 Q. And did you have occasion to do anything to alter
these boots while you had them?

A. Nothing other than initial them and put a lab tag
on them.

Q. I show you Exhibit P-116. It's a watch.

35 A. I identify court exhibit P-116 by my initials,

5 date and case number. I received this watch from Constable Davis on the 29th of November, 1989. I examined the watch and gave it to Mrs. Lungair of the Serology Section on the 13th of December, 1989.

Q. And did you have occasion to take possession of that item after that time?

10 A. No, I did not.

Q. I show you an item that's been entered at this trial as Exhibit P-119. It purports to be a leather jacket taken from Legere at the time of his arrest.

15 A. I identify court exhibit P-119 by my initials, date and case number. I received this black jacket from Constable Houle on the 29th of November, 1989. I examined the jacket and gave it to Mrs. Lungair of the Serology Section on the 20 13th of December, 1989.

Q. You received that from whom?

A. Constable Davis.

Q. I didn't know if I'd heard you correctly, I thought you'd said Houle. It was Constable Davis you received this item from?

25 A. Yes.

Q. And did you have occasion to take possession of that item after that time?

A. No, I did not.

30 Q. I show you an item that's been marked Exhibit P-79, one brown glass case with the name Greiche & Scaff. Do you recognize that item?

A. I identify this article by my initials, date and case number appearing on the glass case. I 35 received this from Constable Davis on the 29th of

Mr. Evers - Direct

5 November, 1989. I examined the article and gave it to Mrs. Lumgair of the Serology Section on the 13th of December, 1989.

Q. Did you have occasion to take possession of that item after that time?

A. No, I did not.

10 Q. I show you Exhibit P-98, a Swiss Army Knife and a black lighter. Would you look at that for me, please, and tell me whether you can identify it?

A. I identify this article by my initials, date and case number appearing on the red laboratory tags as well as the package. I received this from
15 Constable Davis on the 29th of November, 1989. I examined this article and gave it to Mrs. Lumgair of the Serology Section on the 13th of December, 1989.

20 Q. Did you have occasion to take possession of that item after that time?

A. No, I did not.

25 Q. Mr. Evers, you testified here at the beginning that you took possession of item OOOO which has now been marked as an exhibit and they purported to contain pubic hairs - or they contained pubic hairs purportedly from Legere, that's now Exhibit P-131, and you removed some pubic hairs from that and put them in another container which is now marked Exhibit P-113 and took those to Dr.
30 John Bowen in Ottawa. Am I correct in that summary?

A. Yes.

35 Q. Could you tell us, please, about those particular pubic hairs? Could you tell us what the colour of those hairs were microscopically?

- 5 A. Microscopically the pubic hairs were medium grey-brown near the root of the hair. The colour continued into a medium brown to dark brown.
- Q. And what if any factors could affect a person's assessment of colour of that hair on a person's pubic region?
- 10 A. Looking at an individual hair with a microscope and assuming the colour on the body would be very subjective. Basically where I would be involved in this kind of examination would be if I were to examine unknown pubic hairs and speculate as to the colour of the hair of the individual that they
- 15 may be looking for. On these particular hairs the hairs were a medium to dark brown and the pubic region or the scalp region would probably be medium brown, in that range.
- Q. And to determine what it would look like on a
- 20 person's body in the pubic region you say it would be subjective. Why do you say that, what factors would have to be taken into consideration, what kind of factors would affect an assessment of the colour?
- 25 A. There would be a great number of factors. Certainly the light in the room in which the area would be examined, the length of the pubic hair, the thickness of the pubic hair, the reflective properties of the hair; all of these things would
- 30 affect the colour on the body.
- Q. O.K., what if anything did you notice about these pubic hairs related to the factors you've just mentioned?
- A. One of the features that I examined on the pubic
- 35 hairs in 1989 was that I noted that the pubic

hairs were relatively short. They were not particularly thick as well.

5 Q. Short for pubic hair?

A. Yes, the greatest length was four centimetres in length.

10 Q. What effect would that have in relation to the colour, in the assessment of that colour of that hair on the body?

A. Well, that is not particularly long for terminal pubic hair. It may affect the colour that one would observe visually.

Q. In what way?

15 A. It may appear lighter, particularly if the skin beneath could be seen.

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

THE COURT: Cross-examination, Mr. Furlotte?

20

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Evers, in relation to the colour of pubic hair under the microscope I believe you described it as what, medium grey-brown?

25 A. It was medium grey-brown near the root continuing into a medium brown to dark brown.

Q. Medium brown to dark brown. Basically when I asked you when you were on the stand before about the colour of Mr. Legere's scalp hairs under the microscope you stated it was basically the same colour as his pubic hair.

30 A. I wouldn't be able to speculate. Where I would be able to state is that if I were to find unknown pubic hairs on a particular case and I were asked
35 what kind of hair would the individual have that

- 5 we may be looking for, in this particular case I would state that the hair would be a medium brown colour.
- Q. Right, but you recall when you were on the stand before I asked you in your notes what colour the hair of Mr. Legere that you observed under the microscope?
- 10 A. Yes.
- Q. And basically I believe you stated his scalp hair was anywhere from medium to dark grey, medium brown to dark brown?
- 15 A. If I stated it would be that there is a correlation between the pubic region and the scalp region and I would assume that the colour would be something about the medium brown to dark brown.
- 20 Q. Right, and I believe you stated before that under a microscope the colours looked - will look lighter than looking through the naked eye?
- A. That is correct.
- Q. And looking at them all together it would look darker than what they actually looked like under the microscope?
- 25 A. Individually microscopically they would appear lighter than they would on the body in mass.
- Q. On the body?
- A. Yes.
- 30 Q. So basically to look at the pubic hairs that you saw under the microscope, the colour that you see under a microscope, to look at them altogether, hundreds of thousands on the body, you're going to probably observe a dark colour?
- 35 A. It would appear darker than I would observe

56

Mr. Evers - Cross

microscopically.

5 Q. Yes, and you did not observe under the microscope
the pubic hair being light brown, or light in
colour?

A. No.

10 Q. Now, you mentioned one of the factors which might
play a subjective role in determining the colour
of pubic hair or any hair would be the lighting.

A. Yes.

Q. So if the lighting was not good it would appear
darker yet?

15 A. I don't know how it would appear. It would be
more difficult to observe the colour.

Q. It would be more difficult to observe the
proper colour but you don't know what kind of
effect it would have?

A. I have no experience.

20 Q. So you're not an expert in that field?

A. No.

MR. FURLOTTE: No further questions.

MR. WALSH: No redirect, My Lord, thank you.

25 THE COURT: One question I had, you said that the pubic
hairs were relatively short and you used the
expression, "and not thick". When you said that I
take it that you meant the individual hairs were
slim as opposed to thick. You weren't referring
to density when you referred to thickness?

30 A. No, actually -

THE COURT: You would have no way of determining density?

A. No, we would not determine the density.

THE COURT: On the body, that is.

35 A. The hairs themselves were basically .11 milli-
metres in thickness which would be relatively thin

S. Lungair - Direct

5 for most pubic hair standards. The pubic hair was
also in a cut condition which made it relatively
short as well.

THE COURT: Any questions arising out of those, Mr.
Furlotte or Mr. Walsh?

MR. WALSH: No, My Lord.

10 THE COURT: Thank you very much, Mr. Evers, I guess
you're excused. You're not subject to recall, I
gather?

A. No, I'm not, My Lord.

THE COURT: Thank you very much.

15 SANDRA LUMGAIR, called as a witness, having
already been sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

20 Q. Again to refresh the jury's memory your name is
Sandra Lungair, you've testified previously in
this case, you're with the Serology Section at
the R.C.M.P. Crime Lab in Sackville, you've been
declared an expert witness in the field of
serology and you've been at that lab for all the
period that we're concerned with in this case; do
25 I have that right?

A. Yes, sir.

Q. I'm showing you an item that's been marked P-71,
a knife and sheath. Can you look at that and tell
us anything about it, please?

30 A. Court exhibit P-71 is a black-handled knife and a
black leather sheath which I received on the 21st
of December, 1989, at the Forensic Laboratory in
Sackville from Duff Evers of the Hair and Fibre
Section. I was asked to examine both of these
35 articles for the presence of blood, I did not find

5 blood to be present on either. I returned these exhibits to Constable Houle of the R.C.M.P., Newcastle, via security mail on the 27th of June, 1990.

Q. I show you an item that's been marked DDD, triple D. Could you look at that and tell us anything about it, please?

10 A. Court item triple D is a black nylon jacket which I received on the 13th of December, 1989, from Duff Evers at the Forensic Laboratory in Sackville. I was asked to examine this exhibit for the presence of blood, I did not find any
15 blood. I returned this exhibit to Constable Houle of the R.C.M.P. in Newcastle on the 27th of June, 1990, via registered mail.

MR. ALLMAN: My Lord, I believe continuity of that item has now been proven up and I'd ask to enter it as
20 an exhibit.

THE COURT: That would be Exhibit P-132.

Q. I'm showing you P-79. What can you tell us about that, please?

25 A. Item P-79 is a glass case marked Greiche & Scaff which I received on the 13th of December, 1989, from Duff Evers at the Forensic Laboratory in Sackville. I was asked to examine this article for the presence of blood. I did not find any blood to be present. I returned it to Constable
30 Houle of the R.C.M.P. in Newcastle on the 27th of June, 1990, and excuse me, it's not via registered, it's via security mail.

Q. I show you now an item that's been marked triple E. What can you tell us about triple E?

35 A. Item triple E is a pair of Greb work boots which

S. Lungair - Direct

- I had received on the 15th of December, 1989,
from - I'm sorry, I'm not sure of the rank -
5 Robert Kennedy at the Forensic Laboratory in -
Q. He's an R.C.M.P. officer?
A. Yes, he is, excuse me - at the Forensic Laboratory
in Sackville. I was asked to examine these
articles for the presence of blood, I did not find
10 blood to be present on either. I returned them
via security mail to Robert Kennedy at the Identifi-
cation Section in Fredericton on the 28th of
February, 1990.
- Q. With regard to those items you say you were
15 looking for the presence of human blood. If human
blood got onto a pair of boots such as those you
have in your hand is it possible to wash that off?
A. Oh, yes.
Q. You say oh, yes with a certain confidence. How
20 difficult would it be to wash it off?
A. How difficult it would be or could be I can't
really say, but the soles are rubber, you could
remove the blood from those fairly readily. On
the leather, it depends on the condition of the
25 leather. A rawhide surface it would be more
difficult to remove the blood than from a smooth
leather surface. The outer surface of these is
fairly smooth, worn but fairly smooth. If you
have a fairly large quantity of blood it would
30 dry as a crust. It would flake off during normal
wear. If you wore the boots through snow or
through a mud puddle you would eliminate more of
the blood.
- Q. How about sticking your foot in a sink and
35 washing it?

60

S. Lungair - Direct

A. That would do it.

Q. Apart from testing those boots for the presence of
5 blood did you do anything else to them or alter
them in any way?

A. I was specifically asked to pay particular
attention to the join of the sole to the upper,
and those appeared to be sort of heat fused, for
10 lack of a better term for me, and I did make some
cuts to do some more examinations, but you could
still recognize them as work boots when I was
finished.

Q. Apart from that work that you did on that specific
15 area did you make any other alterations or changes
to the boots in any way?

A. No, sir.

THE COURT: Just on the boots, did they have laces at the
time when you examined them?

20 MR. ALLMAN: They don't have laces in them now, do you
know if they had laces when -

THE COURT: They do or don't? Do they now?

MR. ALLMAN: No, they don't.

A. They had been cut across the toe. I can
25 specifically check my notes.

THE COURT: I'm not particularly concerned. I thought
they were the ones with laces now. It's the other
boots, is it, that have laces now?

MR. ALLMAN: I'm not sure about the other boots, My Lord.
30 These certainly don't have laces now.

THE COURT: I'm not concerned about this unless counsel
want to follow it up one way or the other.

MR. ALLMAN: No, I'm not. If Mr. Furlotte wishes, he
can. P-116, what can you tell us about that?

35 A. Exhibit P-116 is a Timex watch which I received

S. Lungair - Direct

5 on the 13th of December, 1989, from Duff Evers at the Forensic Laboratory in Sackville. I was asked to examine this article for the presence of blood, I did not find blood to be present. I returned it via security mail on the 27th of June, 1990, to Constable Houle of the R.C.M.P., Newcastle, New Brunswick.

10 Q. P-119, a Mercedes-Benz logo jacket?

A. Exhibit P-119 is a black leather jacket which I received on the 13th of December, 1989, from Duff Evers at the Forensic Laboratory in Sackville. I was asked to examine this article for the presence of blood. I did find a small amount of human blood on the lower right front side of the jacket. I attempted to type that blood. My efforts were unsuccessful, I did not obtain any useable results. I returned the exhibit to Constable Houle of the Newcastle R.C.M.P. via security mail on the 27th of June, 1990.

Q. P-98?

A. P-98 is a Swiss Army Knife and a black plastic Bic type lighter which I received on the 13th of December, 1989, from Duff Evers of the Hair and Fibre Section at the Forensic Laboratory in Sackville. I was asked to examine both of these articles for the presence of blood. I did not find blood present on either. I returned them to Constable Houle of the R.C.M.P. in Newcastle, New Brunswick, on the 27th of June, 1990.

Q. Items P-120 and 121?

A. Exhibits P-120 and P-121 are a pair of boots, left and right boots, which I received on the 13th of December, 1989, from Duff Evers at the Forensic

35

S. Lumgair - Direct

5 Laboratory in Sackville. I was asked to examine
these two articles for the presence of blood. I
did not find blood to be present on either. I
returned them to Constable Houle of the R.C.M.P.
in Newcastle, New Brunswick, on the 27th of June,
1990.

10 Q. And just to clarify the boot situation because
we're always going to get confused about it, those
are the boots that purportedly were taken from Mr.
Legere at the time the arrest was made. I just
wanted to ask you one other question about the
other boots. If you look inside triple E, if you
15 look at the area where the laces normally go, the
holes in the boots, do you see any laces in there?

A. No, I don't.

Q. If you look at the bottom can you see any laces?

A. Yes, I do.

20 Q. They're apparently in a separate condition from
the boots at this time?

A. Yes, they are.

MR. ALLMAN: I have no further questions.

25 THE COURT: Thank you very much. Cross-examination, Mr.
Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

30 Q. As I understand your testimony, Ms. Lumgair, all
the items that you checked for blood there was
only blood on the leather jacket?

A. There was only a small amount of human blood on
the leather jacket, correct.

Q. Which you could not type at all?

A. I tried; I was unsuccessful.

35 Q. And that blood stain on that leather jacket, you

can't tell whether it's a day old or a month old, is that correct?

5 A. That's correct.

MR. FURLOTTE: No further questions.

MR. ALLMAN: No re-examination.

THE COURT: No. You found no blood on the boots?

A. That's right.

10 THE COURT: You had examined the laces as well or -

A. If the laces were there at the time that I received them I would have examined everything. I can check my notes for you.

15 THE COURT: Well, again it's - do counsel want to raise it?

MR. ALLMAN: No.

MR. FURLOTTE: No.

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

20 MR. ALLMAN: My Lord, the next witness would be #219, Constable Scott Allen. He was pure continuity, I believe continuity of the Swiss Army Knife. I understand from Mr. Furlotte that we're not required to call Constable Allen.

25 THE COURT: So we're striking him from the list. Well, now, we will recess now for lunch. On your list other than the people #230 on there are only two other witnesses, other than your footprint whatever?

30 MR. ALLMAN: Yes, there's two topics we've got to get into, as Your Lordship knows, and the only civilian witnesses, if I can use that expression, are Alice Garner and Louise Pineau.

THE COURT: Are they available?

35 MR. ALLMAN: They're not available, no, Louise Pineau is sick at the moment and those two witnesses or

their testimony come together so we're not in a position to deal with them at this time and
5 basically we are complete as of now in terms of witnesses up to the last two matters that we really want to get in.

THE COURT: So there's no point in bringing the jury back after lunch?

10 MR. ALLMAN: I don't think so, no, My Lord.

THE COURT: And we could safely, I gather, send the jury home and tell them to come back tomorrow morning at 9:30?

MR. ALLMAN: Yes, as far as I'm concerned.

15 THE COURT: So when we recess now the jury - I believe arrangements have been made for lunch but as soon as that's over the van can take you on your way and we'll recess until 9:30 tomorrow morning when I would ask you to return or be back here. Under
20 pain of death if you come anywhere near this court house this afternoon, you stay away, because the alternative is to keep you locked up in that little room there all afternoon but I don't want to do that so please don't come near here.

25 Just before you go, though, just looking ahead for the rest of the week, we don't know just where we go from here but it would seem to me that at the most the jury would perhaps be required only two days, can I safely say that?

30 MR. FURLOTTE: It looks pretty good.

MR. ALLMAN: I'd say two days with a faint chance of three, but then, that's because I'm a pessimist.

THE COURT: Well, I'm an optimist, so you take my word on it and not Mr. Allman's, but anyway, the likeli-
35 hood perhaps would be two days Tuesday and

Wednesday, perhaps as Mr. Allman says a bit of
Thursday, but then we would be adjourning, I
5 think it would be agreed, until next Tuesday,
which is the day after Thanksgiving, so you will
have a longer break this week. So thank you very
much.

10 (JURY WITHDRAWS.)

THE COURT: Now, the idea this afternoon was to have
the -

MR. ALLMAN: Well, there are three matters that are left
15 outstanding that have got to be discussed in the
absence of the jury, and first and most important
the one that we do need to do this afternoon is
the discussion of what I'll call the feet aspect,
or the feet in boot aspect. There are two other
20 matters, I don't know whether we could do them
this afternoon, whether Mr. Furlotte wants to do
them this afternoon, we'll just have to play this
by ear. One is Mr. Furlotte's application for a
mistrial and the other is the question of whether
25 or not we are obliged to call Sergeant
Poissonnier. I would suggest we leave those two
matters on the back burner and see how we go this
afternoon.

THE COURT: Yes. There were two points I might mention.
30 I could wait till this afternoon to do it but one
is when the jury does retire, assuming we reach
that stage, as in the normal course we would, I
want to provide the jury with - the jury would
of course be taking with them to the jury room all
35 of the exhibits which by then will number some

two or three hundred, I suppose. Well, we're up
to 132 now and the other stuff, the DNA aspect,
5 will bring a great many more, I suppose. I'd like
to have a list of the exhibits which I would hope
counsel could agree to as an exhibit list. It
wouldn't be an exhibit in itself, that list, but
if counsel could agree and the Court could agree
10 with counsel on the description of the items in
that list - I don't want anything referred to in
that list to suggest evidence or to suggest any
finding, but inevitably it must - for instance, a
body swab or a swab from somebody or other, while
15 there's a certain connotation of fact involved,
finding of fact involved there, I think counsel
could agree that the evidence indicates that it's
a body swab from so-and-so or a blood standard or
a knife, simply a black knife and a sheath. It
20 doesn't have to specify where it's found or
anything of that nature.

Now, the Clerk has been keeping a list, of
course, of all the exhibits, and as a matter of
fact, I find that his list - he's given me copies
25 of the first two or three pages of his list down
to about Exhibit 97, and I find it to be accurate,
and while I'd want to go over it more fully I
would suggest that the Clerk go on completing his
list and sometime before we finish he provide me
30 and I'll provide the counsel with copies and
perhaps we can - after consideration you could let
me know whether you approve of that as the list
that should go to the jury.

The other thing is on this map here, P-1,
35 the aerial photograph, you've got at least 19, is

5 it, pins in there now all describing different
locations, and I would like to provide the jury
as well with a sheet showing what the locations
are, pin #1, yellow, green pin or whatever it is,
red pin, Flam residence, Smith rectory, Daughney
residence, yellow pin #1, whatever it is -

MR. ALLMAN: Purported this, that or the other.

10 THE COURT: Not place where glasses were found but
so-and-so residence or something of that
nature. Now, as far as the preparation of that
list goes, I presume the Crown people would be the
best people to provide that, so if you're through
15 with pins now, are you -

MR. ALLMAN: I think we're through with pins.

MR. WALSH: Yes, My Lord.

THE COURT: Well, you could perhaps set about preparing
that sort of list and when you have it prepared
20 if you wouldn't mind providing Mr. Furlotte and
me with a copy?

MR. ALLMAN: Yes. Your Lordship will observe we have no
yellow pins left.

THE COURT: Oh, well, you have no more dolls left to
25 stick them in. O.K., there's no hurry about this
but in another few days if you could prepare that
list and Mr. Furlotte will look at it and I'll
look at it and we'll see if we can agree on it.
So we'll adjourn now until two o'clock.

30

(LUNCH RECESS)

35

Voir Dire

(COURT RESUMED AT 2:00 p.m.)

(ACCUSED IN HOLDING CELL.)

5

THE COURT: Well, now, there were three matters that we wanted to consider this afternoon. Mr. Allman alluded to them earlier.

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MR. ALLMAN: Yes, of those three the third, the matter of the application for a mistrial, as I mentioned last week and I wasn't sure this morning what the status was, we are not in a position to deal with that matter at this time. What we would suggest is that we deal with it whenever - after the feet evidence is dealt with. By that I mean there's going to be now a voir dire on the topic of feet and then there's going to be some evidence before the jury on the topic of footprints and bootprints and so on, and we could do the application for a mistrial immediately after that if that's convenient to Mr. Furlotte, which I would think would likely be Wednesday, might just be Thursday.

THE COURT: What is your comment on that suggestion, Mr. Furlotte?

25

30

MR. FURLOTTE: Well, My Lord, I understand on the application for a mistrial the R.C.M.P. would like to do a little more further investigation on that matter into the, I don't know, jury tampering or whatever you want to call it, so I can't deny them the opportunity to do further investigation to complete their argument, so I guess I would have no choice but to give the Crown sufficient time to answer to it.

35

THE COURT: I had toyed with the idea of perhaps hearing the applicant's representations on the matter and

Voir Dire

then seeing where we went from there, but I accede
to the notion, then, that we let this go till
5 after the other is over.

There's one thing that concerns me a little,
and that - well, there are two things that concern
me a little. One is I'm not just sure - from what
I know and from our very brief discussion on this
10 matter in chambers the other day I take it that
the application for mistrial is tied essentially
to the dismissal of the one juror from the jury,
and I did make the comment the other day, I wasn't
deciding the merits of any subsequent applica-
15 tion - I did say that it was difficult to see much
merit in an application for mistrial in the light
of the remarks that the accused had made in the
court room in front of the jury. However, if the
application is made perhaps it's being made on
20 wider grounds or - in any event, if the applica-
tion is made it will be heard and considered.
I am concerned that any police investigation
would - I'm not going to get involved in this
application in a great inquiry as to the extent of
25 whatever interference or lack of interference
there may have been earlier, and -

MR. ALLMAN: I don't think that this is going to involve
an extensive police inquiry. I think Your
Lordship will appreciate that the inquiries the
30 police already made were made with considerable
delicacy and tact and an understanding of the
fact that this is a situation that required
diplomatic handling and I don't think that
they're out there pursuing any great investiga-
35 tion. I believe there's just one particular

Voir Dire

5 matter and almost we could have gone ahead with it today, but there's a logistical problem, really, and we're sure we can do it Wednesday.

10 THE COURT: Yes, well, you appreciate what I'm saying here, that I don't want to get involved - I wouldn't want word to get back to the jury here in this case that there's a big police investigation undergoing. I don't want to frighten these people into thinking they're under investigation or anything of that nature. There's no ground for that whatever.

15 MR. ALLMAN: There isn't a big investigation and they are not being investigated.

THE COURT: No, no. Well, I'm sure of that.

MR. ALLMAN: There's just one particular little matter that needed exploring.

20 THE COURT: This of course is a voir dire hearing and nothing said here can be reported until after the whole trial is finished. Well, you let me know when the time is right. You people talk about this and let me know when you want to hear this. The other matter was Sergeant -

25 MR. ALLMAN: The other two matters. There's one that must be disposed of today and that's the matter that I'm loosely calling the feet matter and the other that was floated some days ago and that's been floating around ever since and it will have to be addressed, I suppose, one day is the matter of who if anybody calls Sergeant Poissonnier. That can be disposed of at any time, too. I guess what I was saying is we'll see how long the voir dire on the feet aspect takes and if it's over as quickly as I hope it will be and if there's some

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Voir Dire

5 spare time left this afternoon and if Mr. Furlotte
wants to get into that other matter, the
Poissonnier matter, then we could do that, too,
but the first order of the day and the first
priority in my respectful submission is to dispose
of the feet matter.

10 THE COURT: Well, let's tackle that first, and in that
connection would you - presumably you've had some
discussion with Mr. Furlotte about it or you know
what his feelings might be as to the admissibility
or what grounds of objection.

15 MR. ALLMAN: We've had some discussion and I'll indicate
what I understand the situation to be and what my
responsibilities are and Mr. Furlotte can indicate
if, (a), I've got anything wrong, and (b), if
there are any other matters that he wants to
raise.

20 THE COURT: Do you envisage making at this time a general
statement as to the type of evidence - what you're
trying to prove with this evidence?

25 MR. ALLMAN: Well, there's two matters that I have
identified as matters that I feel it's my duty to
raise. There may be other matters that Mr.
Furlotte wants to raise but the two matters I want
to raise are these. The first is, and we have
alluded to this before we got into the opening
address that I made because of the necessity of
30 knowing before I made my opening what I safely
could and safely could not say -

THE COURT: I recall the discussion.

35 MR. ALLMAN: At that time one of the areas identified was
this, there will be evidence - this is from a
Sergeant Chiasson - to the effect that the boots

Voir Dire

that were found near Father Smith's car were the boots that made the bloody footprints inside
5 Father Smith's house and also were consistent with the prints outside. That evidence, as I understand it, is not required to be voir dired. Evidence of that kind has been given frequently, it's fairly routine. My understanding, and I
10 could be corrected if I'm wrong about that, is that it doesn't require to be voir dired, it was on that basis that I was permitted to refer to it in opening. If Mr. Furlotte has any comment on that no doubt he can make it when he's responding
15 to what I'm saying now.

The second area that I feel it's my responsibility to raise is this. When Mr. Legere was arrested prints or casts were taken of his feet and various tests and observations were made to
20 compare those with the boots that were found near Father Smith's car. We'll be calling three witnesses. Now, the nature of their evidence, and I'm going to summarize it very briefly - the nature of their evidence will be to describe how
25 feet on a human being coupled with that human being's physical shape and activities leave impressions within footwear, including boots, to make comparisons between the impressions within the boots in question and the casts of Mr.
30 Legere's feet and to come to the conclusion at the end of all this that it is highly probable that Mr. Legere's were the feet that made the impressions within those boots or, to put it another way, that the impressions within those
35 boots were either made by Mr. Legere or were made

by a person having the same morphological foot characteristics -

5 THE COURT: What do you call it?

MR. ALLMAN: Morphological, which means form and
structure, so I'll repeat that, they were made -
the markings within the boots were made either by
Mr. Legere or by a person happening to possess the
10 same morphological foot structure as Mr. Legere
and the same accidental foot characteristics as
Mr. Legere, specifically with reference to a hole,
a puncture hole, in the left heel of Mr. Legere
which matches up with a hole made by a nail in the
15 heel of one of the boots. They are not saying Mr.
Legere and Mr. Legere alone could have made those
imprints, they are saying it's highly probable
because the characteristics are such that it would
require it to be somebody with those same features
20 as Mr. Legere.

Those are the two issues that I feel it's my
responsibility to raise. Whether Mr. Furlotte
identifies any others that he feels he should
raise I'm going to have to leave up to him.

25 THE COURT: May I ask this in connection with those
points? The witnesses you're calling are expert
witnesses, I gather, or have some -

MR. ALLMAN: They are all three expert witnesses. The
first is Sergeant Kennedy who is an identification
30 officer with the R.C.M.P. As an identification
officer the type of work he does involves
comparisons, measurements, charts, that kind of
thing. Because he got involved in this particular
case he's also made a special study of feet and
35 part of his evidence will relate to him examining

5 a large number of feet, nine hundred and something, I believe, creating a computer program for the measurements of those feet and commenting on the nature of that program, but it all still comes back to the bottom line, it's Mr. Legere who made those marks or somebody with the same characteristics.

10 The second witness is Special Agent Bodziak who is from the FBI, and he also has made a study of this type of topic and I could give you his C.V. if you want.

THE COURT: Well, I don't want it just at the moment, no.

15 MR. ALLMAN: O.K., he would be giving basically the same evidence as Sergeant Kennedy although he used his own photographs to come up with his own conclusions. He'll be asked to give his own conclusions and then to compare them to Sergeant Kennedy's

20 conclusions.

The third witness is a Dr. Bettles. He's a foot doctor.

THE COURT: Sergeant Kennedy and Special Agent Bodziak, they did their studies independently?

25 MR. ALLMAN: They did their studies independently.

THE COURT: And Dr. who?

MR. ALLMAN: Dr. Bettles, he's a specialist in feet, a podiatrist, I believe is the word, from P.E.I. He also did his own measurements from a slightly

30 different approach. For example, Sergeant Kennedy did his measurements in millimetres and Dr. Bettles did his in inches, but basically they're the same type of measurements, obviously, and to give his conclusions and also to give his

35 observations as a foot doctor on the many feet

he's seen over the years and the degree of individuality which feet possess.

5 THE COURT: And then another question is have copies of their will-say or whatever it's now called, have they been given to defence?

MR. ALLMAN: Yes.

10 THE COURT: And how long ago or at what stage? Was this back with the original or -

MR. ALLMAN: I'm not absolutely certain because some of these reports have come into existence during the time since the day we first appeared in court so they may have been updated from time to time as it's gone on, but I believe, and certainly Mr. Furlotte's never indicated to me otherwise, that he's had ample notice of the nature of the evidence that these people would be giving.

15 THE COURT: And the other question I was going to ask of you, Mr. Allman, at this point is the taking of the casts of Mr. Legere's footprints of his feet, is there any question involved in this?

MR. ALLMAN: If I can come back to what I said, Your Lordship will have noted that I used my words quite carefully. I identified two areas which it's my responsibility to raise. Any objection there may be to the taking of the footprints - I'm sorry, to the taking of the casts, the fact is the casts were taken. Therefore it's up to the defence to object to that. It would presumably be a Charter argument if there is one. Under Collins as Your Lordship knows, the obligation is upon the defence to raise that issue. Up until now I've never been advised that that was an issue. If it is, Mr. Furlotte can raise it and I'll be prepared

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Voir Dire

to respond to it, but the only issues I feel I have to raise are the ones I have raised.

5 THE COURT: Well, I'm quite aware of that. The only thing is that you recall that at the end of the voir dire, as a matter of fact when the voir dire was being planned back in April, I made an effort to identify or to have identified the areas that
10 would be voir dired at that point and they were and we held an extensive six-week voir dire and it was my impression at that time that things were covered.

MR. ALLMAN: No, Your Lordship shouldn't have that
15 impression.

THE COURT: Am I wrong?

MR. ALLMAN: I think it was always clear to all of us that we didn't want the pre-trial voir dires to go on too long and therefore we felt that the voir
20 dire on the feet aspect was probably only going to be a half-day or so for the reasons I've already alluded to. Your Lordship had mentioned very early on that you weren't really frightfully happy with this arrangement of having a lot of pre-
25 trial voir dires and I respectfully agreed with that. In an ordinary trial an issue such as the feet issue here that might take a half-day to dispose of would be dealt with during the flow of the trial, so that is why we didn't dispose of it
30 prior to trial, but the only issue to me that's ever been identified as an issue to be raised on the voir dire is the issue of the appropriateness of the expert's opinions that it is Mr. Legere or someone with the same foot characteristics that
35 made the marks inside those boots.

THE COURT: May I ask you, though, this? These two
further questions, one is when were the prints
5 taken of Mr. Legere?

MR. ALLMAN: You mean the casts?

THE COURT: Yes, the casts, rather.

MR. ALLMAN: They were taken the day of his arrest.

THE COURT: I see, and this was in the interview room, I
10 take it?

MR. ALLMAN: I'm not certain in what room it was but -

THE COURT: It was after the - this wasn't during the
initial stage?

MR. ALLMAN: No, there was a measure of - again, I don't
15 want to testify on this and if there's any
problem I'll call Sergeant Kennedy who's in court
but my understanding is they were taken in the
afternoon. Sergeant Kennedy wasn't physically
present in Newcastle at the time Mr. Legere was
20 arrested so he had to get there. Then after he'd
got there he didn't have with him the necessary
foam material or plaster material to take the
imprints, that had to be procured from P.E.I. It
was procured the same day he was arrested and as
25 soon as it arrived in Newcastle Mr. Legere's feet
were put into the foam or the plaster or whatever
it was.

THE COURT: The other question I was going to ask is in
the statements that have been provided to the
30 defence of the evidence of the three expert
witnesses, have those statements gone into detail
as to the reasons and the conclusions?

MR. ALLMAN: Yes, and the most recent item that was given
to him was copies of all the charts that Sergeant
35 Kennedy had prepared with an accompanying

commentary attached to them.

THE COURT: Yes, and the other thing, you have five
5 witnesses, or six listed or whatever - six, I
believe - seven perhaps.

MR. ALLMAN: Perhaps I could just explain a little bit
about that. Staff Sergeant Dino Gatto is purely a
continuity person. Sergeant Chiasson, we did have
10 him down twice. We had him down as 231, continu-
ity, and then 235 to put the boots into the house.
We've decided to make a minor change to that and
we've decided to amalgamate 231 and 235, so after
Staff Sergeant Gatto had done his continuity thing
15 we'd call Sergeant Chiasson to do his continuity
aspect and then to get into the meat of his
evidence which is that those boots made those
marks in the house, and then we have Sergeant
Kennedy, Special Agent Bodziak, and Dr. Bettles
20 on the next question which is the relationship
between the feet of Allan Legere and the boots
found near the car.

THE COURT: But Sergeant Kennedy's evidence - he would be
the only witness on the taking of the -

MR. ALLMAN: On the taking of the cast, yes. On that
25 topic perhaps I might mention another thing. You
may recall that Corporal Mole and - there were two
people who were present when - Staff Sergeant
Johnston - they were present when the casts were
30 taken, they didn't participate in doing that, but
when they were on giving evidence on the statement
aspect of this we did inform the defence at that
time that they were physically present when the
casts were taken, so they're here if you feel the
35 need of them.

Voir Dire

THE COURT: They're available if necessary?

MR. ALLMAN: They're available, yes. Perhaps I could

5 just mention one last thing which is this; as Your
 Lordship knows, basically there are two ways you
 can do a voir dire. One way is you actually call
 the human beings to give evidence. The other way
 is I could indicate as I am doing now what the
10 nature of the evidence will be. If need be I
 could put copies of their reports before Your
 Lordship so you could see what. I will certainly
 call them if I have to but it seems to me it's not
 necessary in this case. We're not dealing here
15 with something like DNA where nobody knew anything
 about it. Your Lordship wouldn't have understood
 anything about it in the absence of evidence.
 We're dealing here with basically just an applica-
 tion of a routine matter. I can call them if Your
20 Lordship or Mr. Furlotte inquires, I can put their
 reports before you, or we can be content with the
 summation of their evidence that I've just given,
 and I have some authorities on the law when we
 know what Mr. Furlotte wants to do.

25 THE COURT: All right. Well, now, Mr. Furlotte, you've
 heard what Mr. Allman's representations are on
 this matter. I'm not deciding this and asking you
 to argue the matter, I merely want your indication
 of where you stand on the -

30 MR. FURLOTTE: Well, just to pick up on the last point
 that Mr. Allman stated, he doesn't believe that he
 would have to call evidence on the voir dire, it's
 for you to decide whether or not you're going to
 admit this evidence. I would submit, My Lord,
35 that a voir dire is a trial within a trial and I

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haven't heard of a trial yet without calling
evidence, just presenting arguments to the judge
5 without any evidence whatsoever on the hearsay
evidence of the Crown Prosecutor, so I would
submit, My Lord, that evidence will have to be
called on the voir dire. The Crown submits that
there are two matters that the Crown wishes to
10 address, one the comparing the boots found in
Bathurst to the prints left at the scene at
Father Smith's residence. I would agree with the
Crown that there's no need of a voir dire on that
issue, that there's ample law to uphold that that
15 type of evidence is admissible by the Crown.

The second issue as to the casts taken and
the comparison of those casts to the boots found
at the scene of the crime, I see two issues in
here. One, the casts taken, I would submit that
20 the Crown has anticipated properly that I will be
contesting the admissibility of any casts taken of
Mr. Legere's feet as that they were taken contrary
to his rights under the Charter. Basically we
will get into that later on, the arguments for it,
25 and again the comparison of these casts to the
boots, the Crown has indicated that he wants his
expert witnesses to bring evidence that it is
highly probable that Mr. Legere's feet were in
those boots or, in the alternative, that - bring
30 evidence that the same morphological foot
structures and the same accidental characteristics
compare with Mr. Legere's feet.

I would submit again, My Lord, that the Crown
is right that they would have to bring a voir dire
35 in order to have this evidence admitted and I

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would submit, My Lord, that it would be similar to
the DNA evidence that I construe this as new
5 scientific evidence. I personally have not heard
of this type of evidence in Canadian courts
before. I'm not saying it hasn't been introduced
in Canadian courts before but it is, to my know-
ledge, new at least to the courts of New
10 Brunswick, and if for some reason or other it has
been introduced in a court of New Brunswick before
it must be on a very rare occasion, so I would
submit that there is no scientific background
which would allow the courts to automatically
15 allow this evidence into testimony without some
investigation as to the reliability of such
evidence or such opinions, so therefore I would
submit that the Crown would have to prove on a
voir dire that the expert witnesses would be able
20 to give their opinion as to the likelihood that
Mr. Legere's feet or the casts would match the
insides of those boots, and I will be contesting
the taking of any casts of Mr. Legere's feet
after he was arrested because I would contend that
25 they were taken in violation of Mr. Legere's
rights.

THE COURT: Well, there are two issues, actually, that
are created, aren't there? One is whether they
were taken contrary to the rights of a person
30 under the Charter of Rights and secondly, is it
probative evidence that should go before a jury
or before a court, really.

I point out that while courts frequently,
particularly in the long distant past, would hear
35 the whole of evidence through, for instance, on

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5 confessions or statements and that type of thing
and go through it, I think the tendency in recent
years has been for counsel to agree as much as
they can on the factual situation and then put the
legal argument on the matter before the court, and
it really means that in an awful lot of voir dires
today there isn't really any evidence taken or
there's no necessity for evidence being taken.
10 Certainly if the parties don't agree, then
evidence has to be taken, but only on the actual
issues before the court. I make that general
observation.

15 Now, on the matter of the expertise of these
three witnesses, are you prepared, Mr. Furlotte -
I'm not holding any gun to your head on this, I'm
simply asking you, are you prepared to acknowledge
their expertise on the basis of the C.V.'s that
presumably have been supplied you already?
20

MR. FURLOTTE: I wish to challenge their expertise and
their ability to draw opinions as to the likeli-
hood that the casts and the footwear would match
Mr. Legere.

25 THE COURT: Well, now, may I come back to you, Mr.
Allman? Can I ask for your proposals as to how
we might - I think it's obvious that we're going
to have to hear some evidence here on the matter.

MR. ALLMAN: Could I just address a couple of issues,
30 then?

THE COURT: Yes, all right.

MR. ALLMAN: O.K., the first is - we're getting into the
law a little bit but I'm going to do it because
it seems to be part of what my learned friend
35 said. Evidence of this kind has been admitted,

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5 it was admitted in the case of The Queen against
 Neilsen and Stolar, the Manitoba Court of Appeal,
 16 C.C.C., 3rd, at Page 39, beginning at Page 39,
 and I'll read - that dealt with both the issues.
 It dealt with the issue of the taking of the
 accused's footprints -

THE COURT: Are you going to argue that now?

10 MR. ALLMAN: No, I'm not going to go into it in detail
 but I think it's appropriate because of what Mr.
 Furlotte said, that the question of the voir dire
 to some extent hinges upon is this a novel
 scientific technique. Neilsen and Stolar
15 indicates that it is not and that it's been
 accepted in Canadian courts before, so we are not,
 as we were in DNA, into something that no Canadian
 court had ever pronounced upon before.

THE COURT: What was the name of the case?

20 MR. ALLMAN: Neilsen and Stolar, 16 C.C.C., 3rd, Page
 39, decision of the Manitoba Court of Appeal.

THE COURT: Was it precisely the same thing?

 MR. ALLMAN: Precisely the same. Two things happened in
 that case. Footprints were taken from the
25 accused. I'm not going to go into the details
 about the case because we'll argue it in legal
 terms later, but at the end of the day the fact
 of the taking of the footprints was admitted by
 the Manitoba Court of Appeal.

30 The next thing that was argued was the
 evidence of two expert witnesses. The Manitoba
 Court of Appeal, and again I'll go into this in
 more detail when we come to the legal argument -
 the Manitoba Court of Appeal said that as long as
35 the experts came before the court as experts in

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5 terms of drawing comparisons, noting similarities,
demonstrating measurements, and observing what
measurements are significant, that was acceptable.
The one thing that they said they would not allow
the experts to do, and the experts in that case
did not do and the experts in this case will not
do, is go so far as to say that the marks inside
10 the shoes were made by this person and nobody
else, but they expressly approved of - in this
case it was an anthropologist, I believe -

15 "She described unique features or
characteristics appearing in both.
She shied away from advancing a
scientific theory that the footprints
of no two human beings could be the
same. She declared it is possible but
20 highly remote that another person had
caused these observations."

so that basically when we came to deal with this
we discussed this matter with our experts and
25 ensured that their evidence would comply with the
terms of Neilsen and Stolar on footprints.

30 THE COURT: Were they upholding a trial court there or -

MR. ALLMAN: They were upholding a decision of - it
doesn't indicate who the judge in the first
instance was but it was a decision of a trial
judge.

35 THE COURT: What was the year of that?

MR. ALLMAN: 1984.

THE COURT: And another case you said?

MR. ALLMAN: I should perhaps also mention, My Lord, that
leave to appeal that case was refused by the
40 Supreme Court of Canada in 1985.

THE COURT: And did you have another case?

MR. ALLMAN: There are other cases I can quote from the
United States where evidence of this kind has been
admitted but I don't propose to get into those at

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this stage.

THE COURT: And what was the other point you were going
5 to -

MR. ALLMAN: Well, the other point I was going to make is
this, I recognize Mr. Furlotte's desire to call
evidence but it's going to be a time-consuming
process and I do not see that it's necessary. I
10 can give you, he's got, the reports of these
individuals. For example, the report of Sergeant
Kennedy is two and a half pages long plus an
addendum with charts, that's another two and a
half pages long. The report of Mr. Bodziak is
15 four pages long. I don't think there's any
argument that that's what they're going to say.

THE COURT: Well, may I suggest this, that insofar as the
taking of evidence goes on that point, insofar as
the principle of the admission of the thing I
20 would be very much surprised if the courts were to
hold otherwise than that evidence of this type
could be given. Is that the only Canadian case
you could find?

MR. ALLMAN: That's the only Canadian case I can find,
25 but as I say, leave to appeal was refused to the
Supreme Court of Canada.

THE COURT: When this point was raised earlier and when
we discussed it in a voir dire sitting you
remember I mentioned I thought that it had been
30 brought up in the Ambrose and Hutchinson case back
in 1975.

MR. ALLMAN: I don't think it was quite on point.

THE COURT: Pardon?

MR. ALLMAN: I don't think that was quite the same point.

35 THE COURT: No, it was a different thing as I realized

later. There were comparisons of boot marks in
the earth and in the snow but not relating the
5 shoes, or boots as they were in one case, to the
individuals.

MR. ALLMAN: What I could do is this -

THE COURT: What I was going to suggest was this on that
point, why don't you submit the will-say state-
10 ments in lieu of calling those people -

MR. ALLMAN: And they could be available for cross-exam-
ination?

THE COURT: - and make them available for cross-examina-
tion, and as a matter of fact, I would say why is
15 it even necessary to consider more than the
evidence of one of the experts, because the
principle - we're not talking about weight here,
we're talking about the principle of the thing,
aren't we? You may feel otherwise, I -

20 MR. ALLMAN: No, no, no, I think Your Lordship has a very
helpful suggestion. Perhaps I could just refine
on it to this extent, the business about the
admissibility of the initial taking of Mr.
Legere's foot measurements, I'm concerned and I
25 want to make it very clear in my submission
that this is a Charter argument. The burden of
raising it and proving it is upon Mr. Furlotte,
but I don't want to be silly about this. What we
could do is this, I can submit to you Sergeant
30 Kennedy's will-say - actually, I think probably
it would be easier to submit Sergeant Kennedy's
report than his will-say - and I could put
Sergeant Kennedy on. Now, at this point it would
be appropriate, I might ask him a few questions
35 about the circumstances of the taking of the

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5 footprint and then turn him over to Mr. Furlotte who can then cross-examine on (a), the taking of the footprint and the circumstances surrounding it, and (b), the contents of the report. I don't see the point in doing as we did with the DNA, a complete dress rehearsal of all this, it's not necessary.

10 THE COURT: I don't see the necessity for that.

MR. ALLMAN: I'll put Sergeant Kennedy's report in, I'll call him, I'll ask him a few questions on the topic of the taking of the prints, or the casts, it's the same thing really, and then Mr. Furlotte can cross-examine on both issues. That's what I would respectfully submit.

15 THE COURT: This is with Sergeant Kennedy. Now, who else, what else?

MR. ALLMAN: Well, the other two are Bodziak and Bettles but Your Lordship indicated it would probably be suitable to only call one person on the issue of is this sort of evidence acceptable, and it would be easier to make it Sergeant Kennedy because he's also the person who took the casts, so he could deal with both issues, both the cast taking issue and the evidence that flows from that issue.

20 THE COURT: In other words, you boil it down to one witness?

MR. ALLMAN: Yes, and he's the best one because he covers both aspects.

25 THE COURT: Well, this seems to me to be an eminently suitable way to do it. Is Sergeant Kennedy's statement long?

MR. ALLMAN: It's six and a half pages.

35 THE COURT: What I would propose is that we would take a

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recess here before embarking on that and I would
study his statement in advance and then we would
5 put him on the stand and you - you don't have to
put him on the stand to produce the statement, do
you? Oh, well, it can be agreed, surely -

MR. ALLMAN: The one I've got is just the writing. He's
got one that actually has the photographs and we
10 could give you that one, the best possible report
that he's got.

THE COURT: I want the best possible - I want whatever
one you're going to use, but is this material
to this - Mr. Furlotte has had access to this
15 information?

MR. ALLMAN: Yes.

MR. FURLOTTE: My Lord, maybe then I'd also like to put
on record at this time that this is one of the
aspects that I had co-counsel - Michael Ryan was
20 supposed to look after this evidence and to answer
to the voir dire and to prepare for cross-examina-
tion of the Crown's expert witnesses. As you're
well aware, Mr. Ryan was unable to complete most
of his functions in defending Mr. Legere. There
25 is nothing in his file which assisted me in this
matter and basically I will be answering to
these - I suppose this evidence that is being
given by the Crown basically on the on-the-spot
common sensical approach. I have not had time to
30 even study the material a great deal except read
over it once. I have not had time to consult with
any expert witnesses enable to cross-examine the
expert witnesses as prepared by the Crown and for
the record I'd just like to state that the defence
35 is totally unprepared for this type of evidence.

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MR. ALLMAN: Also for the record I'd like to state that
basically Mr. Furlotte's been aware of the nature
5 of this evidence at least in its basic sense since
April of this year.

MR. FURLOTTE: Yes, I admit to that, My Lord.

THE COURT: Yes, well, that's right, but what I have in
mind here is let's proceed in this way, and I
10 will - well, let's get plain just what we're
doing. You're going to file this report with me
in a minute. We'll recess here, I will take 15
minutes to go through that report fully just as
though I were listening to the witness on the
15 witness stand giving that in direct examination.
Then I'll come back into court, we'll reconvene,
you put Sergeant Kennedy on the stand, you ask
him your few questions to supplement the report
or to lay the foundation for the report or
20 whatever. Then Mr. Furlotte will cross-examine
him on these points, both the question of the
method of taking the thing and the consent or
whatever may have been given or the beliefs that
were entertained by him at the time or whatever is
25 relevant, and also on the question of the
probative value of whatever evidence he gives as
an expert or that the other experts would give.
If you want more than 15 minutes - presumably
you've read this stuff over before today, Mr.
30 Furlotte?

MR. FURLOTTE: Oh, I've read this over back in December
or January.

THE COURT: Yes, but I mean more particularly over the
past weekend presumably you've -

35 MR. FURLOTTE: No, I have not had time to touch this on

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the weekend, or since December or January I haven't had time to look at this.

5 THE COURT: I'm not trying to hurry you on it today. It may take me 15 minutes to read it in here. You may want to read it and analyze it a little, maybe you want a half an hour instead of 15 minutes.

10 Then when that cross-examination is finished presumably there's an opportunity to re-examine or something, we'll play it by ear there. Then I'll hear your arguments on the matter, your Charter arguments and the probative value of the evidence argument. I'll probably then take it under consideration until, say, tomorrow morning and give an answer on it tomorrow morning, so you file that with me now.

15 MR. ALLMAN: I also have a copy, if this is the right time to give it to you, of Neilsen and Stolar.

THE COURT: All right, let me have that. Have you given Mr. Furlotte a copy of the case?

MR. ALLMAN: I've got a copy to give him.

20 THE COURT: All right, and Mr. Furlotte, you have this same report here?

25 MR. FURLOTTE: I assume it is, yes.

THE COURT: Well, you want me to come back in 15 minutes or in half an hour? I may take a half an hour myself. Do you want a little longer than the -
30 the only thing is, the sooner we finish this afternoon, assuming the thing were to go ahead tomorrow, the longer you've got to prepare for a cross-examination before the jury of the same witnesses, of all four witnesses on the matter,
35 but I'm not trying to hurry you this afternoon.

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MR. FURLOTTE: I expect half an hour - six and a half pages, I -

5 THE COURT: All right, we'll adjourn now till quarter past three and then come back and proceed.

(RECESS - COURT RESUMED AT 3:30 p.m.)

(ACCUSED IN HOLDING CELL.)

10

THE COURT: Now the understanding was that I would read this report, which I have done. You would then call Sergeant Kennedy, and I might say where we go from here is you can ask Sergeant Kennedy some questions, Mr. Furlotte then will have the opportunity to explore him further. Then that having been concluded I'll be asking Mr. Furlotte if the defendant wishes to call any evidence on the voir dire and we'll go from there.

20

SERGEANT ROBERT KENNEDY, called as a witness, being duly sworn on the voir dire, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

25 THE COURT: The report I've been given, I wonder if we couldn't give this a letter for identification? I don't know whether you're even going to tender it as an exhibit or not but it -

MR. ALLMAN: I hadn't planned on doing so.

30 THE COURT: Well, let's give it a number. Why don't we just call it SSSS, and if it's not used otherwise, all right, we go on to TTTT, so will you mark that SSSS for Identification, Mr. Pugh?

MR. SLEETH: Excuse me, My Lord, just for convenience, 35 I note that we did initially have a 4S which

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then became Exhibit 113.

THE COURT: All right, TTTT for Identification, glad you
5 pointed that out.

MR. ALLMAN: With Your Lordship's permission I propose to
lead this witness fairly rapidly through his
qualifications.

THE COURT: All right.

10 Q. You're Sergeant Robert Kennedy, a member of the
Royal Canadian Mounted Police, and you've been a
member of the R.C.M.P. since May 10, 1966?

A. That's correct, yes.

Q. And employed full time with the Identification
15 Section since June 3, 1971?

A. That's correct, yes.

Q. In 1971 you did a 14-month training program in
identification work?

A. That's correct.

20 Q. And in 1971 you did a fingerprint technician
course?

A. Correct.

Q. A drawing and design course at Algonquin College,
Ottawa?

25 A. That's correct, yes.

Q. From April to June, 1972, you completed an
identification and methods techniques course which
would centre on crime scene investigation, photo-
graphic techniques, latent fingerprint search,
30 physical matching and general crime scene investi-
gation?

A. That's correct, yes.

Q. And in June, '72, you completed a survey course at
Carleton University?

35 A. Correct.

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at Vancouver and Fredericton?

A. That's correct, yes.

5 Q. And in fact your plan for those courses has been accepted as the Force standard in Atlantic Canada?

A. That's correct, yes.

10 Q. In 1990 you took a credit course in anthropology at U.N.B.?

A. Yes.

Q. You've lectured at workshops on physical matching?

A. Yes, that's correct.

15 Q. Including the National C.I.S. Conference held at Saint John, New Brunswick?

A. Correct, yes.

20 Q. You've examined hundreds of scenes of crimes and made various comparisons and identifications that have been appropriate to this type of matters that have arisen at those scenes of crimes?

A. Yes, I have.

Q. Including specifically comparing thousands of footwear impressions?

A. That's correct.

25 Q. And at the moment you are in the process of conducting a study into the matching and differentiating of feet in footwear?

A. Yes, I have been for the past year.

30 Q. You've prepared a computer program, in fact, in conjunction with that?

A. Yes, I have.

Q. And approximately how many pairs of feet have you examined and put onto your computer program?

A. Over 1,800 feet.

35 Q. That would be 900 pairs, over 900 pairs of feet?

95

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A. Approximately 920 people.

5 Q. And you've given expert evidence at all levels of court in Saskatchewan, Nova Scotia, and New Brunswick as an expert in identification and physical matching?

A. That's correct, yes.

10 Q. And you're familiar with the various items of reference material specifically including "Footwear Identification" by Sergeant M. Cassidy?

A. That's correct, yes.

Q. Was Sergeant Cassidy a member of the R.C.M.P.?

A. Yes, he is, out of Ottawa.

15 Q. Are you also familiar with a textbook put out by Special Agent Bodziak from the FBI?

A. Yes, I am.

20 MR. ALLMAN: My Lord, I'd ask that this witness be declared as an expert in identification and physical matching.

THE COURT: He could be called a forensi-pod, I suppose, or something. We'll have to invent a new description for that type of individual.

25 MR. ALLMAN: Well, he could be but I wouldn't do it to his face.

THE COURT: Do you have any questions you want to ask, Mr. Furlotte, on the question of the expertise?

30 MR. FURLOTTE: Just in relation to your study on the process of matching feet, I think you mentioned something about over 1,800 feet that you have studied or -

35 A. Yes, over the past year I've collected approximately 920 individual people, inked impressions of their feet. I've taken these - each individual foot and had 16 points of measurement on each foot

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5 for a total of 32 measured points and entered
those on a computer, a program that I had designed
with a member from Moncton Ident. Section. Also
10 along with the study I've taken casted impressions
of approximately 30 people along with their inked
impressions, made casts of their feet, and I've
taken their footwear, shoes, sneakers, and
15 examined the insides of their shoes and sneakers.
The main purpose for the program on the computer
was self-serving, to show that each foot would be
unique, and once the 1,800 and so individual feet
were put on the computer I started a comparison
20 with one foot to another to try to find any two
feet in the collection that might be similar, and
I was unable to find any to date and I've compared
approximately 400 or so people, about 800 feet,
through my collection and found none that were
even close.

MR. FURLOTTE: So if the foot comparisons that you've put
into your computer - that would be all 16 points
of measurement for each foot?

A. Each foot is the 16 points that's entered in the
25 computer to be stored. The feet are put on one
individual piece of paper so it takes 32 measure-
ments per entry. However, each of the measure-
ments are indexed so I can ask for one measurement
whether it be the width of the ball of the foot or
30 the length of the foot and ask the computer with
this measurement how many would be - for an
example, how many would have 210 millimetre foot
length, and the computer at that time will fish
back everybody in the collection that would have
35 that length whether it be 50 or 100. My next

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point of measurement would be any measurement I
might have, i.e., a heel width. I then ask the
5 computer, in this hundred that you fished back to
me with the overall length of 210 how many in that
group would have a combined overall length of 210
plus the width of a heel of 55 millimetres, and
the reduction is drastic, it might come up with
10 about ten, and I do this until I get either one
respondent or I get no respondent, which would
indicate that the foot was not in the collection.
If I get one respondent I check it with what I'm
putting into the computer, I compare it to ensure
15 that it is the same person that I've asked the
computer for.

MR. FURLOTT: And I assume you would take these measure-
ments off of live people or -

A. No, as I said earlier, there was several methods
20 used. One was an inked impression. I had the
people walk on - it's called an inkless paper.
The pad is a yellow pad that has some chemical on
it. When you walk on the yellow pad and on the
white piece of paper it causes a chemical reaction
25 and turns black, gives me a black impression but
leaves nothing on the foot. That was done and the
measurements were taken from the inked impression.

The other that I've done, which is more time-
consuming, is a casted impression. That's having
30 the person under controlled conditions standing in
a piece of foam. The foam is a special foam used
by podiatrists to take molded impressions of
people's feet. I use that and then use a casting
material called dental stone, fill that impression
35 and take that cast now which is a replica of the

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foot, measured that, and have done it that way
also.

5 MR. FURLOTTE: Would one method be more accurate than the
other?

A. One method wouldn't be more accurate with me doing
it. I think that if - two individual people
measuring the same inked impression might be off
10 by one millimetre or so just from where you're
putting the ruler, but in my computer program I've
built in a plus or minus five millimetre error,
which is actually ten millimetres, and even with
this large ratio I was still able to find a big
15 difference and able to pick out individuals from
the collection quite readily, but I left that
error in just for that possibility of having a
slight in between one millimetre calling it 21
millimetres or 21 1/2.

20 MR. FURLOTTE: O.K., so for your own measurements you
built in a plus or minus five millimetre error?

A. No, not for my measurements, my measurements went
in exact, but when I searched the computer with
an individual I put in a plus or a minus error so
25 that it will be searching a larger portion of the
computer program, so that each time I would get a
larger number of respondents until I had to put in
so many measurements that it ended up being just
one respondent, and each time it was the
30 individual that I was actually searching.

MR. FURLOTTE: Now, these foot measurements that you
received, what type of people did you measure,
males, females, children?

A. Yes, males, females, children, different racial
35 backgrounds, different ethnic origins. I took

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5 some from the base at Base Gagetown. I took some
from the Forestry School at the Forestry Complex,
at the headquarters building in the R.C.M.P.,
I took some from P.E.I., over at the base in
P.E.I., several citizens from Charlottetown. I
went to a C.I.S. conference where I lectured on
physical matching and they were people from all
10 across Canada, as far away as British Columbia,
the United States, and I requested that everybody
in the conference give me their feet, and most
did, and that included people from the United
States and all across Canada, so I got quite a
15 variety of feet in the collection.

MR. FURLOTTE: How many people would have been from that
conference?

A. Oh, from the conference I got about 70, 65 or 70
impressions.

20 MR. FURLOTTE: When you say impressions you mean -

A. Inked impressions.

MR. FURLOTTE: From 60 or 70 people which would double
the impressions or -

A. Sixty or seventy people, 140 or 130 feet. In the
25 collection also are sisters, brothers, related
people.

MR. FURLOTTE: And you say when you run these through
your computer that you couldn't find a match of
any two people or having, say, a similar foot?

30 A. That's correct. As I said earlier, when I used
the plus or minus five after one measurement I may
find several people that would have that one
measurement within the plus or minus five. I then
would go to the next measurement which would be a
35 plus or minus five, and I would lose a group of

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5 people, and I averaged using a plus or minus five
with the 400 people as high as 15 entries out of
32 and as low as five entries out of 32 before it
gave me one respondent, which was the one I was
searching. Each time it would give me a list of
respondents. Always the individual that I was
searching was in that list, and it just kept
10 breaking down until he was the only one left in
that list. I also searched people that were not
in the collection, putting measurements through,
and after six entries the computer would come back
and say not on file, that it couldn't even line up
15 anybody that was close.

MR. FURLOTTE: So after about six out of the 16 it would
reject?

A. With a plus or minus five, yes. I also tried to
use it with the exact measurements. It didn't
20 give me a very good study because putting the
exact measurements in sometimes after two entries
and no more than four entries it would fish back
just one respondent, and I wanted to search a
larger area to give credibility to the study, so I
25 went with a plus or a minus five, which a ten
millimetre difference is quite a bit and gave me
more entries to put in in a bigger respondent
collection.

MR. FURLOTTE: Any mathematical scientific equations that
30 you use to calculate probabilities that -

A. I didn't calculate probabilities, no.

MR. FURLOTTE: You didn't calculate probabilities, so you
basically just judge on the data that you put into
your computer yourself?

35 A. I don't follow your question.

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MR. FURLOTTE: Well, basically all you're doing is the

measurements that you put into your computer,

5 that's the only information that you use to form
an opinion as to how unlikely it might be that -

A. No, as I said earlier, that study was to assist me

in forming a conclusion on the differences in

10 feet. I studied the - the computer program just

allowed me to study the differences in length,

width, different measurements. I also studied the

shape of the ball of the foot, the toe, the first,

second and third, fourth and fifth phalanges,

their relative size to the first phalange which is

15 the large toe, how the ball of the foot arches up

or arches down, how the arch is flat against the

paper which is a flat foot, or arched up away from

the paper, many things that I examined when I

examined the mold and people's feet. The study

20 was completely just to help me to determine how

rare the feet are, and if I could find in measure-

ments alone two that were the same.

MR. FURLOTTE: I have no further questions.

MR. ALLMAN: Just a couple. As I understand it by

25 getting a plus or minus five millimetre error

factor you give the computer an increased chance

of finding a match?

A. That's correct, that's why I did it like -

Q. And the second thing is that as I understand it

30 you're not going to come from your computer

program and seek to give a jury a statistical

figure for what the probabilities or likelihoods

are of a match?

A. No, I'm not.

35 MR. ALLMAN: I have no other questions on that particular

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aspect of getting him qualified, My Lord. I would submit he's entitled to be qualified.

5 THE COURT: Out of curiosity, do a person's right foot and left foot ever match identically, subject to being transposed left to right?

A. No, I entered each measurement myself on the computer and the left and right foot are as unique
10 as one foot is from the other in individuals. They're really unique, they're different.

THE COURT: That's by the way, probably. Well, for the purpose of this voir dire you're declared an expert in the field of - you described it
15 adequately before, just how did you put it, Mr. Allman?

MR. ALLMAN: Identification and comparison of footprints, or foot characteristics, I think.

THE COURT: Foot characteristics, yes, O.K., that does
20 it.

MR. ALLMAN: My Lord, again, with my learned friend's permission I propose to lead a little bit at this stage. I understand that on the 24th of November, 1989, you were requested to proceed to Newcastle
25 to assist the Bathurst Identification Section as a result of Mr. Legere being arrested.

A. That's correct, yes.

Q. Where were you when you got that request?

A. I was at home.

30 Q. Which is in?

A. In Fredericton, New Maryland.

Q. When did you get the request?

A. Early in the morning, approximately, I believe, around nine or ten o'clock in the morning. By the
35 time I got to the office and got everything ready

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I think we arrived about two-thirty in Newcastle.

5 Q. O.K., and at that stage what did you determine
would be the appropriate method of obtaining
information or data as to Mr. Legere's feet, which
I gather was your purpose in being there?

10 A. Yes, it was determined through discussion that a
molded impression of Allan Legere's feet be taken
as evidence. I had reason to believe that a pair
of boots seized in Bathurst related to the crime
scene and I took that for evidence.

15 Q. So you were seeking to make some sort of
comparison between Mr. Legere's feet and those
boots?

A. That's correct, yes.

Q. And you felt that a foam imprint was the appropriate way to do that?

A. That is the accepted method, right.

20 Q. Did you have any of that kind of foam immediately
available to you at the detachment?

25 A. There was no foam available at the detachment and
there was none available in New Brunswick. The
two closest areas that we had a chance to find
some were in P.E.I. and Nova Scotia.

Q. And where did you eventually get some foam from?

A. We chartered an airline and got some out of Prince
Edward Island from Dr. Bettles, Dr. Keith Bettles.

30 Q. Dr. Bettles being one of the other proposed
witnesses on this topic at this trial?

A. Yes, he's a doctor and he's a podiatrist.

Q. When did the foam from P.E.I. get over to you in
Newcastle?

35 A. Shortly after 9:00 p.m. on the same date, the 24th
of November.

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- Q. And when did you proceed to take casts using that foam from Mr. Legere?
- 5 A. I entered the cell at approximately 9:20 p.m. and spoke with Mr. Legere, and took the foot casts shortly after that.
- Q. So it would be approximately 20 minutes from the time the foam arrived to the time the casts were produced?
- 10 A. That's correct, yes.
- Q. You've indicated that you had reason to believe that the boots found near the priest's car might have some significance. What was your understanding as to those boots?
- 15 A. Well, at that time they were seized at a hotel next to or in close proximity of the Father Smith vehicle. They were held for examination by Bathurst Ident. and I felt at the time that it could have been involved.
- 20 Q. With regard to your legal situation what was your understanding at the time that you came to take the foot casts from Mr. Legere as to the legal situation?
- 25 A. Well, I felt I had justification under the common law incident to an arrest seizing evidence that might be used at a trial.
- Q. From your knowledge and experience of identification type of work what sort of data or information about people who have been arrested is normally taken?
- 30 A. I've seized clothing, fingerprints, photographs.
- Q. Did you measure their height, for instance, weight, that type of thing?
- 35 A. Yes.

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Q. And so you understood that that was appropriate at common law?

5 A. That was my understanding, yes.

Q. Specifically with regard to the possibility of evidence relating a pair of feet to a pair of shoes or boots, what was your understanding as to the possibility of that type of evidence being
10 obtained?

A. Well, I knew that the possibility existed, I knew it had been done before. I knew that podiatrists had done some work in the area. As a matter of fact, Keith Bettles at one time, I knew that he
15 had done some work in it. I also knew that there was some areas in the United States that they were doing work on the matching of feet back to boots.

Q. Specifically as regards Dr. Bettles, were you aware at this time that Dr. Bettles had in fact given evidence in relation to that type of
20 information or not?

A. I knew that a doctor had given evidence, I believe in Sydney, Nova Scotia. The fact that it was Dr. Bettles, at the time I didn't know but I found out
25 shortly after that.

Q. But you knew a doctor had given that type of evidence?

A. That's correct, yes.

Q. And I think when you were testifying earlier as to the material that you're familiar with as an
30 identification officer you mentioned Sergeant Cassidy, that's a Mountie, his book on footwear identification. Is that a standard textbook that identification officers are familiar with?

35 A. Yes, it's one of our recommended readings. It's

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- 5 Inspector Cassidy now. He wrote a book on footwear identification and there was one chapter devoted to imprints inside of shoes, and that was -
- Q. The type of information that you believed you might be able to obtain in this case?
- A. That's correct, yes.
- 10 Q. When would that book have been published, approximately?
- A. Oh, I believe in 1980.
- Q. So to your knowledge this type of thing was being discussed and dealt with in 1980?
- 15 A. Yes, definitely, yes.
- Q. I just want to ask you a few questions specifically about what you did. My understanding is that you did in fact take three sets of molded impressions of Mr. Legere's feet with a foot foam called Foam Art?
- 20 A. Foam Art.
- Q. That's what you'd got from Dr. Bettles?
- A. That's correct, yes.
- Q. And thereafter you proceeded to make the comparisons which are outlined in the report that's been filed as TTTT?
- 25 A. That's correct, yes.
- Q. I'm not going to go through those in detail with you, I just wanted to ask you a little bit about other steps. My understanding is that there's an FBI agent, Mr. Bodziak. Have you any knowledge of any tests that he's performed?
- 30 A. Yes, I had occasion to talk on the telephone with Special Agent Bodziak. I also went down to Washington and spent a week conferring with Mr.
- 35

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Bodziak on his expertise, mainly going over
methods that he used and methods that I used. I
5 gave him access to my exhibits and he took his own
photographs and measurements, again conferred on
other information that was available, other books
that were written on the subject, and I came back
to Fredericton. Before I contacted Special Agent
10 Bodziak I talked to a Dr. Facey out of Scotland
Yard. He's also working in this type of evidence.
I spoke at length with him, again conferring on
the type of work I was doing, and he recommended
Special Agent Bodziak, being much closer to
15 Fredericton than England would be. I wanted to go
and see one of them and Bill Bodziak was
recommended by Dr. Facey.

Q. The Dr. Facey with whom you consulted, is he the
Dr. Facey who's referred to as one of the
20 witnesses in Neilsen and Stolar?

A. Yes, he is.

Q. From your conversation with Mr. Bodziak are you
aware of what work he has done in this sphere,
that is to say matching or - matching to some
25 extent feet to footwear?

A. Yes, he's also done a study on feet impressions.
I don't know to what extent he's finished up but
he's into a study on feet. He's given evidence in
court throughout the United States in, I think,
30 approximately 50 cases.

Q. That would include giving evidence in court on the
topic that we're dealing with today, that is to
say, feet to footwear comparison?

A. That's correct, yes. I say that he's given
35 evidence in fifty cases, I think he worked on

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about fifty cases and has given evidence in about eight of those cases in a court of law.

5 Q. And with regard to Dr. Bettles, what's your understanding as to his background, the information that he can give?

A. Well, again, he was the podiatrist that I had contacted for the Foam Art and I didn't know at
10 the time that he was the one that had also given evidence in Sydney, Nova Scotia. When I contacted him again to explain what I had done and if he could help me, it was that time that I found out that he had given expert testimony and had worked
15 on a criminal case on this line, so I went again and I conferred with Dr. Bettles and again went over my techniques, his techniques, and brought the exhibits down. He again took the exhibits with me there and took his own work from it. I
20 then took them back to Fredericton and he did his own examination.

Q. So both of the other two people you consulted did their own independent work?

A. That's correct, yes.

25 Q. And I understand also that Dr. Bettles can give evidence relating to the patients that he has actually seen and his observations of their feet?

A. He has an ongoing practice in Charlottetown, that's correct.

30 Q. Just one other matter, I don't think this is specifically mentioned in your report, but when you were - you mentioned in your report on Page 4 that - you make a reference to a hole present in the boots in the liner of the left insole and its
35 relationship to a discoloured spot on the left

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5 foot of Allan Legere. Did you make any further inquiries or cause any tests to be performed regarding that hole, what might have accounted for it?

A. Yes, I took it to a forensic laboratory in Halifax, Nova Scotia, to the electron microscope section, and they did a scan on the black or
10 reddish-coloured speck.

Q. It was found to be what?

A. She found it to be a high iron content, and in brackets, probably rust.

Q. And how did that relate to your observations of
15 the boots?

A. I related it to the fact that the indent and the black material on the heel was on the exact location at the centre of the heel as a nail hole was in the bottom of the boot, and the nail again
20 was a metal nail sticking up through the centre of the heel which wore a hole through the insole and was in the exact location as a mark on the bottom of the cast.

Q. Just one last general question, in essence is
25 what you're doing and what the other people are doing in this case an application of the type of evidence and the type of fact-seeking that you do in other areas of comparison or is it a different sphere entirely?

A. No, the physical evidence comparing is a
30 comparison of details in an object and coming to certain conclusions from those details, whether it be foot impressions that we do all the time at a crime scene, something that's maybe pressed
35 against an object for a long period of time and

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then taken away, we do comparisons on that to
match it back to a crime scene, whether it be torn
5 paper, is matching of details and characteristics
and drawing a conclusion on our finding.

MR. ALLMAN: Thank you, I have no other questions.

THE COURT: Thank you very much. Mr. Furlotte?

MR. ALLMAN: Just to clarify, Mr. Furlotte asked me - I
10 indicated that I'm not going to go through the
officer's report. I understand that the report
is before Your Lordship.

THE COURT: Oh, no, I think the understanding is that
that is -

MR. ALLMAN: Yes. Well, Mr. Furlotte wasn't sure about
15 that but that's the situation.

THE COURT: Oh, no, that's part of the evidence. May I
ask, Mr. Furlotte, before you start, just a couple
of questions? I'm not cross-examining him, it
20 pertains only to the question of expertise, but
may I ask you this, Sergeant, you speak of this
nail protruding; your expertise doesn't extend
to giving opinion as to how long it may have
stuck in a heel to make a hole there?

A. Oh, no. No, sir.

THE COURT: Or how long one might have tolerated a nail
sticking in one's heel?

A. No.

THE COURT: Which wouldn't be very long.

A. I wouldn't imagine.

THE COURT: The other question was does your expertise
extend to giving an opinion as to how long a pair
of boots might have been worn by an individual in
order to make an impression in the inner sole or
35 the main sole, and if so, what bearing does it

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5 have if that boot might have been owned and used
by someone else with a different foot configura-
tion before that?

A. It would be difficult to determine much from a
shoe that hasn't been worn for some period. If
you're asking me if two people wore it for the
same period of time if I could differentiate
10 between the two, no, I couldn't. The predominant
wearer would end up coming through, the one that
wore it most, and that would be the one that I
could do some physical comparisons on, although I
could probably state that it could have been worn
15 by somebody else if that person wore it long
enough to cause another impression somewhere or
cause a shadow, other sweat areas on the boot, but
that would take a period of time and it would
depend, too, on the circumstances. For instance,
20 somebody in the Canadian Army wearing boots every
day, every day, every day would wear - the boot
would conform to his foot a lot faster than some
businessman wearing his shoes to the office and
back home once a day. Getting the boot wet and
25 the heat on the boot, the sweat, the more a foot
sweats the more sweat marks it leaves in the
bottom and the more the foot would conform to the
foot itself.

THE COURT: That's all I had. You go ahead now, Mr.
30 Furlotte.

CROSS-EXAMINATION BY MR. FURLLOTTE:

Q. First of all, Sergeant, on the aspect of the legal
situation into seizing the foot casts incidental
35 to an arrest, do you know what time Mr. Legere was

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arrested?

5 A. No, I'm not familiar with that. As I say, I got
the call sometime on the morning of the 24th
asking if I would come to Newcastle and assist.
I had done some assistance with the Bathurst
Ident. Section at the other murders and I was
asked to get there as soon as I could to assist.
10 When I got there at two-thirty the steps were
taken immediately by myself to have the material
brought to me so that I could take the molded
impressions off his foot without delay, and the
earliest opportunity I had to get that material
15 was at nine o'clock and I immediately acted upon
that and took his impression.

Q. O.K., now, you mentioned a few analogies
incidental to arrest such as taking photographs
and fingerprints so therefore you felt you were
20 justified in taking the footprints, is that what
I understand?

A. I didn't get your question.

Q. I believe you used the analogies that seizing
items from an accused person incidental to arrest
25 such as taking photographs and taking finger-
prints?

A. Mm-hmm, or items of clothing.

Q. Or items of clothing?

A. Yes.

30 Q. Now, I understand that you mentioned that the
taking of photographs and fingerprints coincides
with the common law?

A. No, I used that - the Identification of Criminals
Act would allow us to take photographs and finger-
35 prints.

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- Q. So you would have the right to take photographs and fingerprints according to statute? Statute law gives you that right?
- 5 A. The Identification of Criminals Act, yes. I didn't take the photographs or fingerprints.
- Q. O.K., you don't know of any statute law which would give you the right to take footprints?
- 10 A. No, what I acted upon was the common law incident to an arrest that I had the right to seize evidence that I felt was pertinent to an investigation.
- Q. Is there any reason why you couldn't have got a search warrant from a judge in order to take footprints?
- 15 A. It's my understanding that there's nothing available in the form of a search warrant to take foot impressions. That's why we act on common law and take it incident to an arrest, because there's no such thing.
- 20 Q. So are you saying that a judge doesn't have the authority to give you the power to take the footprints?
- 25 A. That's my understanding, that's correct.
- Q. So where the judges don't have the authority the police do; is that your impression?
- A. That's right, yes.
- Q. The police have more power than judges?
- 30 A. I didn't say that, sir.
- Q. Bit more discretion?
- A. We're covered - my understanding, we're covered under common law. Incident to an arrest I can seize but I cannot get a warrant to seize from a judge footwear or items of clothing.
- 35

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THE COURT: They can arrest me and I can't arrest them, I know that.

5 Q. Now, these were taken around 9:20 in the evening?

A. I went into the cell, approximately 9:20. I think about five minutes after, 9:25, I believe, I took the impressions.

Q. And what did you tell Mr. Legere?

10 A. When I entered the room I told Mr. Legere that I was Sergeant Robert Kennedy of the Forensic Ident. Section and that I was assisting in an investigation on the murder of Father Smith and that I was taking his molded impressions of his feet.

15 Q. O.K., you didn't ask him his consent, you told him you were taking them?

A. I told him that I was taking an impression of his feet, and in the form of a question because he answered the statement in the form of a question, I guess, his reply to myself and Staff Sergeant Mason Johnston who was standing next to me, he was looking at both of us, asked, "Is this legal, do I have to do it", and my answer was yes, it was.

20 Q. It was legal, that he had to do it, that's what you told him?

A. That's what I told him, yes.

Q. Did you give him the opportunity to call his lawyer?

A. He never asked to call his lawyer.

30 Q. Did you read him his rights?

A. No, he had already been read his rights, that was my understanding, about three or four times before then, and continuing the investigation it wasn't necessary to read his rights again.

35 Q. Now, I understand from testimony you want to give

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is that it's highly unlikely that somebody other than Allan Legere wore those boots in question that were found by the motel in Bathurst?

5

A. That's correct, yes.

Q. And on what do you base your judgment on that?

A. I base my judgment on the examination of each molded impression. I've made many charts to

10 illustrate different areas that I've studied, that I've looked at. I made measurements of the foot again in - on the molded impression, the one I took from Mr. Legere, in 32 areas, 16 on each foot, and I also measured the same areas on the

15 insole. I couldn't get 32 measurements off the insole because some of the points just weren't visible but I was able to get most. I did a comparison through that. The accidental characteristics in the foot which I call

20 accidental characteristics is the raised area at the ball of the foot was highly callused. It was compared to an oversized boot which he had worn and had broken, cracked in the sole. This was in the same area and it was raised up as the callused

25 area. The nail hole in the boot itself was compared with a mark which was consistent to the nail, it was in the exact location, and when that mark was placed over the nail hole in the boot, the ball of the foot, each toe in sweat areas and

30 the indented areas lined up perfectly. One of his feet, I believe it was the right foot, has a separation between the first and second phalange. It was very evident in the bottom part of the boot, the separation.

35 I also compared the upper portion of the

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boot. When the bottom portion is taken off the upper portion also leaves indents and sweat areas. This was compared with the foot, also showed the separation in the right foot. The length of each phalange, the fifth metatarsal area and the phalange area on the side of the boot matched and I drew my conclusions on those points.

10 Q. O.K., out of the 16 measured - you say you used 16 different measurements of a foot?

A. That's correct, yes.

15 Q. And out of those 16 measurements that you took of Mr. Legere's foot how many would have matched somebody else in your - I don't know, call it a database, of your eighteen hundred and some impressions?

20 A. Using the exact measurement, after the second measurement put into my computer Allan Legere's name came out and only Allan Legere's name came out. I then increased the error to plus or minus five. It took six inputs before only Allan Legere's name came out. I then increased it to plus or minus seven to give me a wider database and only Allan Legere's name came out after eight inputs out of 32.

25 Q. After 32?

30 A. After eight inputs out of 32 measurements. I only used eight before I got one respondent, which was Allan Legere. I also tried the measurements without Allan Legere's measurements being in the computer and after six entries plus or minus seven the computer came back and said no respondents, that the person was not on file.

35 Q. What size boot would Allan Legere wear, under

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normal circumstances what size boot?

5 A. The size of his foot I calculated to be about a size 9. What size boot he would wear, I would guess a 9, a 9 1/2. The boot I had done work on was size 11. The boot he was arrested with that I also had was size 12.

Q. So did you do work on both pairs of boots?

A. Yes, I did.

10 Q. Now, how long would you suspect that Allan Legere would have had to wear the pair of boots that were found outside the motel in Bathurst in order to create those impressions in it?

15 A. I'm not able to give you an exact figure but he wore them a long time to do the wear that was present in the boot. It wasn't just a sub-surface sweat area, it was indented quite a bit and a lot of sweat and a lot of wear in the felt insole, so it was worn for quite a while.

20 Q. And those boots were size what?

A. Size 11.

Q. Now, a person who normally wears a size 9 wearing a size 11 boot, would his foot move around a lot in the boot?

25 A. The indication by looking at the insole of the boot indicated that no, his foot didn't move around inside the boot much at all. Each individual toe, first phalange, along with the other five toes, were well indented. They weren't - if you get something moving inside of something you get a double impression. It wasn't that case at all, it hadn't moved. It hadn't moved around at all.

30 Q. So would that indicate that the person had to wear a lot of pairs of socks or something to take
35

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up the slack?

5 A. No, it didn't. The size of the boot was long, and
the difference between a size 9 1/2 and the size
of an 11 is not a great difference. The length of
it is not a great length. The width is hardly any
and your foot is contained width-wise where you
10 have some movement lengthwise unless your boot is
laced up, and that prevents any forward motion
with the boot being laced up, but there was no
indication inside of the insole that the foot had
moved around very much.

15 Q. And you're saying there was no indication that
somebody else wore that boot besides Allan Legere?

A. There was no other impression in the boot that I
could see, no.

Q. How long will an impression stay in a pair of
boots from somebody wearing them?

20 A. The impression that I have inside of this boot,
I'm unable to say with certainty, would last
years, forever.

Q. So whoever wore the boot, say, before Allan
Legere - let's take for instance Allan Legere
25 wouldn't go out and buy a pair of boots size 11
if he wore a size 9, would he?

A. No, I don't imagine. I don't know.

Q. So going on the assumption that Allan Legere
stole somebody else's boots and was wearing them,
30 why wouldn't the other person's foot impressions
be in the boot?

A. If somebody wore the boots for any extended
period of time you would expect their foot to be
inside of the boot and show some sign of it.
35 There was no sign inside of this boot that anybody

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else had worn the boot.

Q. And that's in both pairs of boots, the size 11 and
5 the size 12?

A. That's right, yes.

Q. Out of all the foot impressions that you've
collected, how many people would be a size 9?

10 There was 920 people that you took foot
impressions from, or measurements? How many would
be a male size 9?

A. A male size 9 I'm unable to tell you. There are a
few in there, probably quite a few, but they range
15 from size 7 to about size 12, dispersed as evenly
as I could get. I'm unable to say how many.

Q. But if you're comparing, say, Allan Legere's foot
measurements and he's a size 9, wouldn't it be
fairer to compare him just with people who are
roughly size 9?

20 A. I didn't take Allan's foot and try to compare him
with my collection. I compared Allan's foot with
impressions down in the bottom of a boot. My
study was to see if people have - if each foot is
different, if people have different feet, if the
25 left foot is different from the right foot, if
brothers and sisters have the same foot
morphology.

The study again was self-serving to see and
to show that feet are different, not to search
30 anybody through the collection. My main purpose
in searching through the collection is to try to
find somebody that would match one to the other.
I put Allan Legere's feet in there to do that, I
guess, in case I was asked why didn't I search
35 Allan through the collection. Well, I did, but I

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5 didn't do it to compare him with somebody with a
size 10 or a size 11, I did it because it was part
of my study.

10 Q. O.K., but for you to come to the conclusion that
it's highly unlikely or it's probable that it's
Allan Legere's feet that we're - highly unlikely
that it was somebody else other than Allan Legere
or that it's probably Allan Legere's feet that
were inside those boots, you are using your data
collection of over 900 people when you run
Legere's specifications, I suppose, through your
computer?

15 A. No, I didn't come to my conclusion by running
Allan Legere's feet through my collection. Again
my collection was as part of my study to show that
feet are different, that measurements, size, shape
of feet are different, and that's what the study
20 was for, to show that. My comparison was with
Allan Legere with two pairs of boots that I was
given, I did a physical comparison on that. I did
some background work for court purposes and that's
what the study was for.

25 Q. O.K., the swear marks in the boots, would they be
a little bigger than Allan Legere's actual foot
size or are they identical?

30 A. They were as close to identical as you could find.
Again, when you're doing measurements of sweat
areas with the inked impression when somebody
walks across a piece of paper they walk on the
paper once and make an inked impression. If
somebody walks in a pair of boots they walk
thousands of times and really put that impression
35 in there. It might make a little difference

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because you're sinking into the insole a very
small distance, but the difference in sizes would
5 be minimal. It's as close to the same as you
would want to get.

Q. And what do you call minimal?

A. They were the same. As I said before, the
difference in a half a millimetre, somebody
10 measuring and me measuring 21 and somebody saying
it's 21 3/4 - minimal, that idea. They were the
same.

Q. O.K., you mentioned sweat stains could last for a
year in a pair of boots after they're not worn
15 any more, that imprints should last for a year or
more?

A. The ones I've been working with, they've been
indented enough that I would say they'd last quite
a while, yes.

Q. Quite a while, and how easily would it be to, say,
20 wash those sweat stains out of a pair of boots?

A. I don't think you could wash the sweat stains out
that were in there. Sweat stains in the boots
that I'm working with are worn. It's a felt
25 liner, it's worn down very deep, it's black and it
would take a good washing to take the sweat stains
out and you would know that the boot was washed or
the insole was washed to remove that because the
felt then would show signs of being washed or
30 disturbed.

Q. O.K., so to get this straight again in my mind,
you've just basically taken and compared the casts
of Mr. Legere's foot with the sweat stains that
were inside the boots to draw a comparison?

A. I've compared Allan Legere with the impressions

35

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inside the boot, yes.

- 5 Q. And out of you getting a fairly accurate comparison of the cast and the stains in the boots, that's one aspect. Then you use the other aspect of your database or your comparisons of over 900 people to show that people's feet are different, and because you get out of the 900 people you
- 10 couldn't find any two people that match?
- A. That didn't have anything to do with my conclusions on whether or not the foot was similar. The database was used strictly to show that feet are different, to give me credibility to be able
- 15 to say that I've done a study, that feet are different and here's why, they're different in the length, the width, the size of the ball of the foot, the size of the heel - they're different. The study was used strictly for that, for a
- 20 scientific study whether I was doing a case for court today or a case for court in ten years time. It's a study to show that feet are different and it didn't enter into my conclusions that I will draw on the comparison.
- 25 Q. O.K., now that we know that feet are different, which probably wouldn't take an expert to come to that conclusion. Do you have any expertise on how similar feet are?
- A. You lost me.
- 30 Q. Do you know of any study being conducted as to show how similar feet may be?
- A. Well, the study I'm doing is a comparison between feet. I'm comparing the similarities, I'm comparing the differences. You have to compare
- 35 the similarities before you can compare

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5 differences. You have to take all the similarities in feet to begin with and then you find the differences, and feet are similar in some respects. Most feet have five toes, that's a similarity. They all have a ball of a foot, they all have a heel, that's a similarity. They all have an arch, some are fallen, that's a similarity, but then we get into the differences and the differences arise when you compare the measurements of these balls of feet how the arch or the metatarsal areas in the phalanges, how they differ, how the first phalange compares with the second phalange, whether it's separated, whether it's not. You compare differences to make a study so you do compare similarities, definitely feet are similar.

10
15
20 Q. Now, I understood from your qualifications that you're also what, a fingerprint expert?

A. That's correct, yes.

Q. Now, how would you, say, compare footprints to - at least the study that you conducted on footprints, with the reliability of fingerprint evidence?

25
30
35 A. Well, it's well know that fingerprints are the only infallible means of identification, that with enough characteristics that you can positively say that only one person made that fingerprint impression. Footwear comparison is relatively in infancy. We're starting off as fingerprints started off many years ago and we're compiling a database, and because the database is not complete enough, it's not large enough, a big enough population hasn't been compared, we're not able to

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say that only one person could have made the impression, so we can say that one person did make it or somebody else that would have the same foot morphology and the same accidental characteristics as the one I'm comparing.

5

Q. So you are compiling a database with footprints?

A. I am doing a study on footprints. I know Mr.

10

Bodziak, Special Agent Bodziak, is doing a study on footprints. I know there's other places in North America that are doing a study on footprints with the end result being, hopefully, that down the road we might be able to go further on a conclusion, but at the present the conclusions we can come to are what we're saying here today.

15

Q. So there's no scientific basis upon which you can base your conclusion?

A. There's definitely a scientific basis on what I'm saying. My whole study was a scientifically based study. My comparison was a scientifically based comparison.

20

Q. But you can't use the database that's being formulated in order to come to some mathematical probabilities?

25

A. I suppose a mathematician could come to a mathematical possibility with my database, with what I have, but I am unable to say now because of the lack of people that have been studied that only one person could have made the impression. The probability exists that somebody else could, remotely could have, but I have to let that go in as remotely because I haven't seen enough footwear to do it positively and I don't think anybody has.

30

35

Q. O.K., as a fingerprint expert you know that -

MR. ALLMAN: I hesitate to interrupt but it seems to me
that for some time we have been discussing
5 interesting questions that go to weight and
virtually no questions that go to admissibility.

THE COURT: Well, having said that let's go along for a
while. Yes, we are not really concerned with -

MR. FURLOTTE: Have you ever testified in court before
10 as -

THE COURT: Yes, just a minute. Just to elaborate on
what Mr. Allman says, we're not really concerned
with the question of weight here, it's the
question of absolute admissibility or otherwise.

MR. FURLOTTE: Well, My Lord, I'm going to be arguing
15 that the Court ought not to contribute sufficient
weight to this witness's testimony which would
allow him to come to court and say that it is
probably Mr. Legere's feet that made the
20 impressions inside those boots. True, we are in
a sense here arguing about what kind of weight
should be put on this expert's testimony, but I
believe it's up for the Court to decide as to
whether there is sufficient - if the Court is
25 sufficiently satisfied that the evidence supports
the fact that this witness can state with all
certainty that it is probably Mr. Legere's feet
that made the impressions inside those boots.

THE COURT: Yes, well, go ahead anyway. I'm prepared to
30 give you a fair liberty in the scope of your
questioning on that.

MR. FURLOTTE: In relation to fingerprint evidence I
understand that each fingerprint examiner, whether
or not he was to identify a fingerprint as
35 belonging to an accused person, there is some

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measure of subjectivity even in fingerprints,
depending on how many marks that are identifiable?

5 A. Yes, fingerprint comparison again is comparing
characteristics and evaluating these character-
istics and coming to a conclusion, and it's up to
each ident. technician to come to his own conclu-
sion whether or not it's an identification or not,
10 if that's what you mean.

Q. And how many measuring characteristics do you have
with, say, fingerprint evidence?

A. There's no predetermined number of characteristics
that is associated with fingerprints. It's been
15 commonly accepted ten, but - it's been accepted in
court as ten but identifications have been made
with less than ten and there's no predetermined
number of points. It's up to the ident.
technician to evaluate his characteristics and
20 come to a conclusion, and his conclusion is
reached after he feels he has enough character-
istics, whatever number that might be.

Q. O.K., but in the footprint comparisons that you've
made I understand you limited yours to 16 measure-
25 ments that you take into consideration aside from
accidental characteristics?

A. No, I didn't. As I said, the 16 characteristics
in each foot was done strictly for a study. That
16 points of measure was strictly for a study. I
30 also measured Allan Legere's foot in 16 different
locations as part of my comparison. My other
comparisons was the size of each toe, the size of
the ball of the foot, the shape of the ball of the
foot, the relative size of each, its relation one
35 to another, the separation between the phalanges,

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- 5 the fifth phalange and the metatarsal doing a
sweat area on the side of the boot; each one of
these were taken into consideration. It had
nothing to do with comparing 16 different measure-
ments and coming to a conclusion. That was put in
as part of my comparison only, a small part.
- 10 Q. So I understand in relation to comparing people's
known feet to known footwear, I suppose, you've
only compared 30, roughly? Did I understand that
from your direct testimony?
- A. You mean comparing casts of people's feet to
shoes?
- 15 Q. Casts to footwear.
- A. Yes, I've compared approximately 30 to 40 areas,
yes.
- Q. And out of those 30 to 40 you know one person
could have fit two different pairs of boots or -
- 20 A. No, anywhere there was sufficient sweat and
indentations, you're right, no two people could
have - in this collection no two matched.
- Q. And even those comparisons of 30 to 40, they would
not have been a person with necessarily the same
25 foot size, say a size #9?
- A. Well, I tried to get as many as possible. Like I
said, I did a variety. I did many at 8 1/2 which
there was some indication that the shoe size of
Mr. Legere was 8 1/2. I calculated the shoe size
30 at being 9 so I took many at a size 9 and I took
more at size 9 1/2 to get a ball park figure on
his shoe size. It's hard to determine a shoe
size. I've taken a thousand people and took their
inked impression and every time I asked their shoe
35 size many of them were, "I don't know", or, "I

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5 think it's 8", "I think it's 8 1/2". I guess they
try a shoe on until it fits and if it happens to
be a 10 this year and a size 9 1/2 next year, then
that's what they wear. I'm just going with the
overall length of the foot and I didn't know that
until I had the casts done and then measured them,
so I stuck between 8 1/2 and 9 1/2 as best I
10 could.

Q. O.K., but basically what I'm getting at, Sergeant,
is if you were going to compare my foot and my
foot was a size 9 and you were going to see how
common or uncommon it is with the general popula-
15 tion you would only compare my foot with other
people who have size 9? That would be fair,
wouldn't it?

A. If I was going to compare yours with the general
population?

20 Q. To see how common or uncommon it was.

A. Yes, if I was going to compare one person with the
general population I would do that, yes.

Q. It wouldn't be fair to compare my size, say
size 9, with somebody else size 10 or size 12 or
25 size 6 to show how uncommon it is?

A. Using your scenario, no, it wouldn't be fair to
compare another size, if that's what I was trying
to do.

Q. Right, so out of the 30 people that you tried
30 matching 30 to 40 people, now, you say you tried
matching their foot to the different shoes, how
many of them would have been Mr. Legere's size
foot?

A. I just finished saying that I tried to keep all 30
35 between 8 1/2 and 9 1/2, which I believed Allan

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Legere's foot to be.

5 Q. So did you do that study specifically for the Allan Legere case?

A. No, the casts that I did was part of my Allan Legere case to get casts that were similar, because I took the 30 casts and compared them with the insole to see how many similarities I could find.

10 Q. O.K., so if I get this straight, in order to prepare for the Allan Legere case for your ability to come to court and say that it is probably Allan Legere's foot inside the boot, foot impressions inside the boot, you went out and collected some-

15 wheres 30 to 40 casts or impressions from other people to see how they would match the same boots that -

A. Well, I wouldn't say see how they would match. I just wanted to see how many similarities would be found.

20 Q. Right, and because you couldn't find any other similarities in the 30 to 40, then you can come to court and say it is probably Allan Legere's? Is that what you've done?

A. No, that's nowhere near what I said.

25 Q. O.K., what did you say?

A. O.K., I said that I took a cast of Allan Legere, I compared it with the insole that was given to me by a member of the Bathurst Ident. Section. I compared that in many areas, which I described earlier, the toe relationship. I then took 30 or 30 40 other casts and compared them inside of their own shoe for background work for a study, part of the study that I'm doing with the measurements,

35

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- 5 and I also, because I had the 30 or 40 there,
looked for similarities in the insole of the Greb
boot, but I didn't reach any conclusions because
of that. I did that because I had the 30 there,
they were molded impressions which I was working
with, and I looked for similarities.
- Q. And you couldn't find any?
- 10 A. No. Well, I couldn't find any similarities that
were significant.
- Q. Out of those 30 to 40 casts that you had already
had?
- A. That's right.
- 15 Q. O.K., but you're not basing your opinion on that
test that Allan Legere's feet were probably in
those boots? Which tests are you basing your
conclusion on?
- A. I'm not basing my conclusion on any test. I base
20 my conclusion on a comparison with a casted
impression that I took from Allan Legere to a
physical comparison inside of a pair of Greb
boots to a physical comparison inside of a pair of
Gorilla boots. I've done other tests to enhance
25 my qualifications into this. I've done a study
to help me understand feet and part of that study
included the measurements of inked impressions.
Part of that study included taking molded
impressions, and because I had the casted
30 impressions of other people's feet there I did
compare those casted impressions with the cast of
Allan Legere with the cast of the insole of both
boots to see if there were any similarities. The
tests that I did weren't done to make any conclu-
35 sions. My conclusions were drawn from a

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comparison, a physical comparison of characteristics inside of a pair of boots to the cast.

5 From those comparisons I came to a conclusion.

Q. And you come to the conclusion that the sweat marks inside the boots are similar to a person with the foot similarities to Allan Legere?

A. My conclusion was the mark inside of the boot was
10 made by Allan Legere or someone with the same foot morphology, the structure and make-up of the foot, in conjunction with the accidental characteristics found inside. If somebody else had those make-up, then somebody else could have put it in.

15 That's what I'm saying.

Q. But your conclusion is also that it was probably Allan Legere's feet that made the impressions inside the boot rather than somebody else?

A. That's fair, yes.

20 Q. That's what I want to know, what are you using to base that conclusion that it's probably Allan Legere rather than somebody else?

A. On my physical comparison with the casted
25 impression of Allan Legere's foot, doing a comparative study, comparative analysis of all the different characteristics in that molded impression with the insole and coming to that conclusion.

Q. Yes, well, we're just saying the same thing over
30 as I understand it, Sergeant. You've compared the characteristics inside the boots?

A. That's right.

Q. To the characteristics of the mold from the feet of Allan Legere?

35 A. That's right.

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- Q. And because they are similar you've come to the conclusion that it is probably Allan Legere's.
- 5 Now, you must be using that evidence, those two comparisons, in relation to some other data that you have gathered in your expertise to be able to draw the conclusion that it's probably Allan
- 10 Legere and not likely somebody else. What particular areas of your studies are you drawing upon to form that conclusion?
- A. I'm not drawing on any areas of my study to make a conclusion. I'm drawing on my experience to compare physical evidence, whether it be footwear
- 15 at a crime scene or a fingerprint or a broken piece of glass, is to do an analysis of the characteristics of that physical comparison and with enough physical characteristics to form a conclusion, and with footwear at a crime scene
- 20 with enough characteristics my conclusion can be that it's made by that boot and only that boot. Because of the lack of scientific data I'm unable to say that only one person could make that
- 25 impression inside of the boot, but my comparison is done on the same idea as any physical comparison, it's a comparing of details and in drawing the conclusion from the comparison.
- Q. So again from what I understand you're drawing your conclusion just on the similarities and not
- 30 based upon your studies in your expert field?
- A. Oh, definitely based on my studies, the studies to show that feet are different. It helps to decide whether or not two feet are the same, and have I ever found two feet the same? No, I
- 35 haven't. All my studies, I guess, come to my aid

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when I'm comparing any physical evidence.

Q. You took three sets of molds of Mr. Legere's feet?

5 A. Yes, I did.

Q. And why is it supposedly, I suppose, a callus area supposedly made by a protruding nail in the heel of one of Mr. Legere's feet only showed up in one of the casts and not all three?

10 A. Well, I didn't say it was a callused area, I said it was a mark in the mold, and the mark appeared to be a reddish substance. It was something that appeared to have been indented into Allan Legere's foot. It was extracted through the foam and left
15 in my cast, and once that was extracted from the foot the second mold wouldn't pick it up because I already have it in the first cast. That was subsequently analyzed under the electron microscope, and as was stated earlier, it came back
20 that it was a high iron content, probably rust.

Q. Probably rust that fell off his heel?

A. Well, I wouldn't say fell off, that was extracted from the heel, yes.

Q. Again that would be assuming Mr. Legere never took
25 a shower or bath from the last time he had his boots on?

A. That's assuming nothing. It's saying that a piece of something that appeared to be rust was extracted from Allan Legere's foot and left in my
30 mold.

Q. So it wasn't a callus on his heel that made the mark in your mold?

A. There was no callus on the heel that was evidence, no.

35 Q. And aside from that accidental characteristic

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which other accidental characteristics were there?

5 A. There was a high callus area in the ball of the
foot area, on the lower part of the ball of the
foot below the first phalange, a high callused
area, and when it was compared with the sole of
the boot it lined up over a broken sole. The sole
was broken and it caused a raised sharp area in
10 both boots and the high callused area was directly
over that. I make no inference from that. I
pointed it out and I put it on my chart. That
would be for Dr. Bettles to comment upon, not
myself.

15 Q. You say both boots, that's both boots from the
same pair of boots or both pairs of boots?

A. No, from the Greb boots. They were broken across
the heel from being worn and bent and it broke
precisely below the ball of the foot area and left
20 a ridge inside of the boot, a high ridge, and this
was directly below a high callused area on the
bottom of the ball of the foot.

Q. Which might be common from wearing any old pair of
boots? Once boots are worn to a certain degree,
25 regardless of the make of boots, the soles may
crack in that area and cause calluses?

A. Well, I suppose it could crack, yes.

Q. So that accidental characteristic might be quite
common?

30 A. I haven't found it common in 2,000 feet that I've
taken.

Q. Have you found it before at all?

A. I haven't seen too many. On one foot in
particular it was a high callused area. In the
35 2,000 feet that I've studied on I haven't found

135

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any to that degree, no.

THE COURT: You said broken across the heel, did you not?

5 A. Oh, I didn't mean the heel, the sole.

THE COURT: You meant across the sole?

A. Correct, yes.

Q. Now, you mentioned that you went to Washington for
a week to confer with Bodziak?

10 A. That's correct, yes.

Q. Confer with him for the full week or were you just
a week in Washington?

A. No, I worked for the full week.

15 Q. For the full week, and you consulted also with an
expert from Scotland Yard?

A. By telephone, correct.

Q. By telephone, and you consulted with the doctor
from P.E.I.?

A. That's correct, yes.

20 Q. Was that because you weren't too sure about what
your opinion was?

A. No, I was sure what my opinion was because I had
already done my report and sent it in because I
was quite sure what my opinion was, I just wanted
25 to confer with other experts in the field.

Q. Can you tell which pair of boots was worn the
most, the size 11 or the size 12?

A. It appeared to me that the size 11 boots had been
worn the most under more trying circumstances.

30 Q. Is that because of the condition of the boots
themselves or because of the impression within
them?

A. That's a combination of both the condition inside
the sole and the condition of the appearance on
35 the outside.

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Q. And there was no indication in those boots of somebody with a size 11 wearing them?

5 A. There was no indication of anybody else having worn those boots, and definitely not size 11.

MR. FURLOTTE: I have no further questions.

MR. ALLMAN: I have no re-examination.

10 THE COURT: Were the Gorilla boots softer? You examined the boots?

A. The Gorilla boots were much softer. The insole was - it's a work boot but the Greb seems to have a firm, firm base and the Gorilla has a nice padding that the foot really sank down into and it took the impression, I think, quicker than the Greb boot would have.

15 THE COURT: But the uppers of the Gorilla, were they capable of being rolled up and put in a haversack, say, carried in a haversack?

20 A. Oh, they could have been carried easily, yes. The floppy top, the long part, could have been folded right down. They can be folded up.

THE COURT: I haven't got anything else except why didn't you go to Menzies for your material?

25 A. At that time everything was closed up and -

THE COURT: When you go for plantar fasciitis to a Menzies type - what do you call them?

A. Orthopedic - I'm not sure they use that Foam Art. I'm not sure, the information I got, that nobody in Fredericton had it. We even checked an area in Moncton, one of the top places there, and they didn't have it.

30 THE COURT: I think you'll find they do and if you want to come and see my inner soles after the trial is over I'll show you.

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MR. ALLMAN: I'm sure in light of those observations that
Your Lordship will definitely want to hear from
5 Dr. Bettles, at any rate.

THE COURT: I'm recovered now.

MR. ALLMAN: Oh, but it's a good idea to keep checking up
regularly, I'm told.

THE COURT: Now, you have no other -

10 MR. ALLMAN: I don't propose to call any other witnesses.

THE COURT: No. Thank you very much, Sergeant.

MR. ALLMAN: My Lord, I would propose to at this stage
briefly have a discussion on the legal aspect of
this matter, make some submissions.

15 THE COURT: Oh, yes. Well, I think that is the next
step. Why don't you go ahead.

MR. ALLMAN: Yes, well, I'll begin, then, with the aspect
that Mr. Furlotte raised, that is to say, the
right of the police to take these impressions in
20 the first place. I was just wondering if Mr.
Furlotte intends to call any evidence.

THE COURT: Oh, I'm sorry, I meant to ask that. Mr.
Furlotte, do you propose to call any evidence?
I want to point out, too, that the fact that the
25 accused is excluded from the court room at this
time doesn't in any way prevent you from calling
him as a witness on the voir dire if you care to
do that.

MR. FURLOTTE: No. I would like to consult with Mr.
30 Legere before I answer that question.

THE COURT: All right, I think we'll take a recess, then,
for 15 minutes.

(BRIEF RECESS.)

(COURT RESUMED - ACCUSED IN HOLDING CELL.)

THE COURT: Well, resuming our voir dire hearing, I was
5 asking Mr. Furlotte if he -

MR. FURLOTTE: I will not be calling any evidence.

THE COURT: I take it that argument isn't going to be
very long?

MR. ALLMAN: I'll be as brief as I can, My Lord.

10 THE COURT: All right.

MR. ALLMAN: First of all, with regards to the admissi-
bility of the taking of the impressions, the Crown
submits that that activity was in fact, as the
sergeant believed, admissible at common law. I'd
15 like to refer you to Mr. Walsh's Crown brief on
the admissibility of bodily substances which was
filed with you on the voir dire. On Page 13 of
that brief he refers you to the case of Marcoux
and Solomon against the Queen, 1975, 24 C.C.C.,
20 2nd, at one, at Page 6 and 7, quoting Mr. Justice
Dickson as he then was:

25 "An accused cannot be forced to disclose
any knowledge he may have about an
alleged offence and thereby supply proof
against himself but (i) bodily condition,
such as features, exhibited in a court-room
or in a police line-up, clothing, finger-
prints, photographs, measurements, (see the
Identification of Criminals Act), and (ii)
30 conduct which the accused cannot control,
such as compulsion to submit to a search of
his clothing for concealed articles or his
person for body markings or taking shoe
impressions or compulsion to appear in
35 Court do not violate the principle",

against self-incrimination. So that's a decision
of the Supreme Court of Canada which indicates that
40 among other things the accused may be forced,
compelled, to submit his person for body markings
or taking shoe impressions.
45

I would also refer you to -

THE COURT: When they talk about shoe impressions there
5 are they talking about outside shoe impressions or
inside?

MR. ALLMAN: I believe they're talking about outside but
I would submit the same principle would apply to
inside.

10 I would also refer you to the case of Beare
and Higgins. That's a Supreme Court of Canada
case, 45 C.C.C., 3rd, at Page 57. Now, bear in
mind that I'm dealing now with the topic of common
law admissibility. I'm quoting now from the
15 decision, there is only the one decision, on
Page 71:

"The view expressed in U. S. and Kelly",
which is that fingerprinting is admissible,

20 "was soon afterwards mirrored by the Scottish
court case of Adair v. M'Garry.... which
made clear that the court there regarded the
25 practice of custodial fingerprinting as
comparatively innocuous, one that if denied
would hamper the police in the investigation
and detection of crime. Canadian courts have
tended to follow that case and the great
weight of authority in this country is that
30 custodial fingerprinting is justifiable at
common law",

and in my respectful submission there is no valid
35 reason for distinguishing between the common law
power to take fingerprints and the common law
power to take prints of any other portion of the
40 anatomy, it's simply that fingerprints are the
ones which would normally be taken, the point
being, as is said in Higgins, that it's such a
45 minor infringement of any right that there might
be that the common law has always allowed it in
50 view of its probative value, so the Crown would
submit that this activity was, in fact, as the

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officer believed, admissible at common law.

While I'm dealing with that I would also refer you to the case of Miller. That's on the topic of time of seizure. Mr. Furlotte pointed out that there were some hours elapsed between Mr. Legere's arrest and the time that the actual foam imprints were taken. We've explained why in our evidence. In the case of Miller, which is 38 C.C.C., 3rd, at Page 252:

"... the Crown's case depended in part on analysis of blood stains on a bandage which had been seized from the accused some 18 hours after his initial arrest. Blood stains had been found at the scene of the offence and the investigating officer some hours after the accused had been arrested realized the importance of the bandage. The officer accordingly applied for a search warrant to seize the bandage",

and he got it. However, the judge held that the use of the search warrant was improper, it wasn't authorized, and the Court went on to say that nevertheless it was admissible at common law as an incident to arrest and that 18 hours did not prevent this being still an incident of arrest.

THE COURT: What court was that?

MR. ALLMAN: That's a decision of the Ontario Court of Appeal. Now, obviously, if there was no valid reason for delay and the delay was excessive, it might be otherwise, but where there is a valid reason for the delay and it's not excessive, and in this case it wasn't, you may still be acting incident to the arrest even some time after the initial instant of the arrest. Obviously Mr. Legere was arrested on the roadside. You can't do many things there and then. Some measure of delay is inherent in the situation and in the Crown's submission the delay in this case was by

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no means unreasonable and should not prevent it being admissible at common law as an incident of arrest.

5 Secondly, the Crown would submit that the act of taking measurements of the foot is also admissible under the statutory powers of the Identification of Criminals Act. These are all alternative grounds, I should point out. If you read the
10 Identification of Criminals Act it states as follows at Section 2(1):

15 "Any person in lawful custody charged with or under conviction of an indictable offence may be subjected by or under the direction of those in whose custody he is to the measurements, processes and operations practiced under the system for the identification of
20 criminals commonly known as the Bertillon Signaletic System or to any measurements, processes or operations sanctioned by the Governor-in-Council having the like object in view."

25 The reference there is to the Bertillon Signaletic System. Now, although we always think of that in referrence to fingerprints, in point of
30 fact, the Bertillon Signaletic System, when it first emerged upon the scene, was not so limited. If you read West's Law and Commercial Dictionary,
35 and a similar definition is to be found in other dictionaries, I don't propose to bore you with all
40 of them, the definition is West is:

45 "A method of anthropometry used for the identification of criminals and other persons consisting of the taking and recording of a system of numerous minute and uniform measurements of various parts of the human body absolutely and in
50 relation to each other, the facial, cranial, and other angles and any eccentricities or abnormalities noted in the individual."

55 As I understand it, what happened is the Bertillon system basically involved any body measurement you care to name but it gradually focussed in specifically on fingerprints because

they were the most useful because of their extreme uniqueness, but the Bertillon system is not limited to that and the Identification of Criminals Act specifically refers to the Bertillon system or anything having the same basic purpose in mind.

THE COURT: Really stirs the imagination, doesn't it?

MR. ALLMAN: Well, it's historically interesting, in fact. We did do some research into the Bertillon system and I guess they used to do a lot of things. They measured beards, I seem to remember reading somewhere.

I also refer you to the case of Shortreed, a decision of the Ontario Court of Appeal in 1990. The passage I'm reading is Page 304:

"Once a suspect is arrested on reasonable and probable grounds, there is nothing to prevent the police from obtaining photographs and fingerprints under statutory power (the Identification of Criminals Act) and taking other measurements generally referred to as the Bertillonage, or the Bertillon Signaletic System (named after the French scientist Alphonse Bertillon, who devised an anthropometric system of identifying criminals)."

I emphasize there the words, other measurements, apart from photographs and fingerprints.

"It was argued that the rule against self-incrimination protects a mere suspect, prior to his arrest, by giving him not only the right to remain silent but also the right to refuse to provide evidence against himself, such as photographs. I do not agree. The fact that photographs of a suspect can be taken without his consent following his arrest, does not mean that such consent is necessary before his arrest. The facial or other bodily features of the person are facts which can be recorded by a criminal investigator by means of a photograph."

I would submit the same principle would apply by means of a cast.

The Crown would therefore submit that the

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activities of Sergeant Kennedy were admissible at
common law, they were admissible under the Identifi-
5 cation of Criminals Act. If there is any
argument to the contrary, and if Your Lordship is
minded to accept that argument, then we would
refer you to Section 24(2) of the Charter. I
don't propose to go into the law in that in detail
10 because a good deal of that was covered again when
we were dealing with the DNA evidence and the
admissibility of bodily substances.

I think I can sum it up very briefly by
saying that if the non-consensual, non-warrant
15 seizure of pubic hair being plucked from you is
admissible, the far less intrusive activity of
asking you to stick your foot into a foam cast
would seem to be equally admissible on the same
principles. It would not bring the administra-
20 tion of justice into disrepute to admit a foam
impression taken from somebody's foot. Certainly
it's less intrusive by far than the activity of
taking pubic hairs.

THE COURT: That's what they actually found in Nielsen,
25 didn't they?

MR. ALLMAN; That's part of Nielsen, too, yes. I was
going to say in Nielsen they relied - I take it
in Nielsen the arguments under the common law and
the Identification of Criminals may not have been
30 addressed to them. I take it was assumed sub
silentio in Nielsen and Stolar that the taking was
not proper, but they Section 24(2)'d it. I'm
adding two more strings to my bow, I'm saying we
don't need to get into Section 24(2) because it's
35 admissible anyway. Only if you find that it isn't

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admissible do you need to look at Section 24(2)
and then I would ask you to consider Nielsen and
5 Stolar as saying if improper, it nevertheless does
not offend Section 24(2).

I would point out in this regard, looking at
the administration of justice aspect of things,
this is very important evidence from the Crown's
10 point of view. If correct, it links the boots to
the house and possibly, the weight being a matter
for the jury, links Mr. Legere to the boots.

Given the minimal intrusion practiced upon
the accused in this case to get the evidence in
15 question the Crown would respectfully submit that
it would not bring the administration of justice
into disrepute to allow this evidence in. In
fact, it would do the exact opposite. The public,
their consideration is certainly a relevant point
20 in this, and I think the public would not regard
it as wrong to admit this type of evidence.

The second issue is the expert evidence.
Assuming that the fact of taking the casts can be
put in, what about the expert evidence? It's
25 clear in the Crown's respectful submission that
what you have here is nothing revolutionary and
nothing new, it's simply a particular adaptation
or application of what identification people do
all the time. They look at something, they look
30 at something else, they say they're the same or
similar and that there are no dissimilarities and
they go on to comment in general terms upon the
inferences that can be drawn from that. What the
experts in this case are asking to say, as I'm
35 sure Your Lordship has noticed in Nielsen and

5 Stolar, is exactly what the Court of Appeal in
Nielsen and Stolar said they could say; that is to
say, there are a great many similarities here,
there are no dissimilarities, and it is probable
that a certain person made those marks. That's
exactly what they approved of in Nielsen and
Stolar and that case was appealed to the Supreme
10 Court of Canada and leave to appeal was refused.
In the Crown's respectful submission there is no
valid reason for preventing that. Almost all of
Mr. Furlotte's cross-examination went, in my
submission, to weight, not admissibility. Those
15 are all interesting points and he can bring them
out in front of the jury but the jury should not
be denied the opportunity to hear this evidence.

As I already pointed out, I could quote to
Your Lordship, if you so desired, American cases
20 in which this type of evidence has been approved,
including a case of Field against the State,
where FBI Agent William Bodziak testified on
precisely this type of evidence with the approval
of the Court, the Alabama Court, I believe it was
25 in that case. I'm reading from a computer
printout now:

30 "Our review of the record convinces us
that Field's argument that forensic
foot morphology is an unproven field
is mistaken. Forensic foot morphology
as described by Bodziak" -

and I would say here as described by Kennedy -

35 "involves no novel scientific theory
or technique. The techniques employed
consist of simple physical comparisons
between prominent features of the
40 accused's feet and the wear patterns on
the insoles of the discarded running
shoes. Though the comparison of wear
patterns and foot morphology may be
relatively rare, the underlying technique
is neither novel nor unaccepted.

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5 Evidence of comparisons similar to those
made by Bodziak in the present case has
been uniformly accepted where preferred."

and they cite a number of cases for that.

10 THE COURT: I suppose you could cite Daniel Defoe in
Robinson Crusoe, couldn't you?

MR. ALLMAN: Yes, well, I'm sure that one was unique.

15 THE COURT: Page one.

MR. ALLMAN: He was the only other person on the island.

20 THE COURT: Mr. Furlotte, what have you got to say?

MR. FURLOTTE: Well, My Lord, I'm not prepared for this
so you're not going to get much of an argument
from me. The only thing I've been concerned
25 about, and when I say that illegally obtained
evidence, I suppose, from Mr. Legere in taking
the foot impressions is - I find it difficult to
accept that where Parliament has seen fit to
authorize police officers to take fingerprints and
30 to take photographs on arrest that the police
officers are able to rely on what they consider
powers incidental to an arrest to go beyond what
Parliament has allowed them to do, and by simply
arguing that these powers are incidental to arrest
35 at common law, my understanding of seizures,
search and seizure incidental to arrest at common
law was for the purpose of protecting the police
officers in the event that any accused may have a
weapon or may be hiding evidence upon him. I find
40 it difficult to accept the fact that police
officers, if given the power to take footprints or
measurements of feet of an individual incidental
to arrest, have more powers than judges.

I think the evidence in this case, even be it
45 the plucking of the hair without the consent of
Mr. Legere, not bothering asking Mr. Legere to

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5 take his hair, have followed the same process in
taking his footprints. They didn't care whether
they took it with his consent, with authority of a
court, or even against maybe what a judge would
authorize them to do. They went out and did it
10 anyway, and as far as the appearance here is that
police officers have no respect for Mr. Legere's
right and basically they have no respect for the
law and placed themselves, I would submit, above
the law. Whether or not this would be acceptable
within a legal community or whether it would be
15 acceptable by the general public that the police
officers are allowed to defy individuals' rights,
that I guess is a matter for you to concern
yourself with.

I suppose in whether or not you were to
consider as to whether or not this is justifiable
20 in a free and democratic society, I would submit,
My Lord, that you also have to take into consid-
eration as to what your ruling - what effect it
does have. It does not only tolerate what the
police are doing, it also encourages them to go
25 out and do it again and on a continual basis.

I realize this may be important evidence to
the Crown in order for them to prove their case
against Mr. Legere in relation to Father Smith's -
the charge of homicide against Father Smith.
30 However, the prejudicial effect that this could
have also against Mr. Legere, not so much in the
weight that the jury might place on this evidence
but in relation to all the other evidence that the
Crown has against Mr. Legere in the Father Smith
35 case. I would submit that the police had

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absolutely no evidence whatsoever of Mr. Legere
being involved with Father Smith at the time that
5 they took the foot impressions: It was a clear
fishing expedition on their part, as I believe the
evidence has been revealed in this court thus far
and the last piece of evidence the Crown is
attempting to prove Mr. Legere guilty of the
10 Father Smith homicide is evidence that was
conducted, I believe, in June of 1990, and this is
the first piece of, I suppose if one wants to
call it real evidence, which the police are using
to connect Mr. Legere to the case.

15 As to the opinion of Sergeant Kennedy, I
would submit, My Lord, that the opinion of
Sergeant Kennedy wants to give to this court that
it is unlikely anybody else could have made the
impressions inside those boots except Mr. Legere
20 and that it is probably Mr. Legere's footprints or
sweat marks inside those boots, that is not based
on any scientific evidence aside from Sergeant
Kennedy's ability to compare the measurements and
the markings inside the boots with the measure-
25 ments and markings that a cast made off of Mr.
Legere's feet and comparing their similarities.
I tried to get Sergeant Kennedy to clarify on
different occasions as to what criteria he was
using to be able to say that it is probably Mr.
30 Legere who wore those boots, and only Mr. Legere
who wore those boots. Sergeant Kennedy testified
that he was not using any prior studies that he
himself conducted in drawing those conclusions, he
was basing those conclusions simply on the fact
35 that the marks inside the boots would be made by a

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foot shaped similar to the cast of Mr. Legere's feet.

5 I would submit, My Lord, that that is all that this witness can testify to, that there are similarities between the case of Mr. Legere's feet and markings inside the boots. I would submit, My Lord, that all this witness can testify to is that
10 Mr. Legere could not be excluded, that it is consistent with somebody - with the shape of Mr. Legere's feet that whoever wore those boots, it would be consistent with Mr. Legere's feet but not evidence that it is probably Mr. Legere's feet
15 that made those markings in the boot.

I would ask the Court to consider this type of evidence in relation to hair samples or similarities of hair evidence being associated with an accused person. All the witnesses can come to
20 court and testify to is that they are similar and therefore the accused could not be excluded because of that type of evidence. I suppose there is evidence before this Court as to the degree of probability in hair evidence similarities. I
25 believe the Crown's own witnesses have testified that studies by the R.C.M.P. were conducted that chances were one in 4,500. The Crown's own expert witness, although they have not prepared any report for the R.C.M.P. themselves, tend to down-
30 play the high degree of probability which was conducted by a study and a written report presented by their chief hair and fibre expert for the R.C.M.P. Whether or not the one in 4,500 would be accurate, nevertheless, even with that
35 high degree of probability or unlikelihood, as one

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5 might put it, court experts are not allowed to
come to court and say that it is probably the
accused's hair which they found on the scene.

10 The figures in this case for the boots have
not been proven to even come close to a likelihood
of one in 4,500. There is no way that they can
even come to court and give any kind of a figure,
at least what I've gotten from Sergeant Kennedy.
15 Just on their own subjective opinion that well,
because feet are different, which it doesn't take
any kind of an expert to come to court and testify
to that, I think one could almost take judicial
notice of that type of an opinion, but there has
20 been no study done as to how similar feet may be,
shapes, sizes and foot markings may be. There's
no doubt that you could go out and say well, I've
collected 2,000 foot samples and I haven't been
able to find any one of these 2,000 to match any
of the other 1,999. That is not even the
evidence before the Court. The only evidence
before the Court is that some footprints have been
run through the computer to find out if any match
25 could be made and it would not be unlikely to find
it difficult to find a matching footprint out of
even 2,000. The figure here is a little over
1,800, but even say out of 2,000 when the foot-
prints are taken from men, women and children of
30 all different sizes, I believe to be able to come
to court and testify on a balance of probabilities
that such prints made inside the boots are Mr.
Legere's, the opinions from these expert witnesses
must be based on some statistical probability in
35 order to come to that conclusion. If they don't

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know how common it may be, then they are in no
position to form an opinion that it is probably
5 Mr. Legere's. If they are only going to come to
court and say that, well, I've tested out of 2,000
and I couldn't find a person's foot to match,
therefore it is unlikely that we're ever going to
get a match or what the probabilities are that a
10 match could occur, I would submit, My Lord, that
that is not scientific evidence, let alone -
granted it's not novel scientific evidence but I
would submit, My Lord, that it's not scientific
evidence which deserves enough credibility to be
15 able to form the opinion that it is unlikely that
somebody other than Mr. Legere made those prints
inside the boots.

THE COURT: Mr. Allman?

MR. ALLMAN: Very, very briefly, and I'll guarantee you
20 I'll be less than a minute. Mr. Furlotte
described the evidence we propose to call as
prejudicial. It's not prejudicial, it's proba-
tive, that's why Mr. Furlotte doesn't want to let
it in, because it's probative. He describes the
25 police as violating the rights of the accused.
The Crown submits they're not violating these
rights, they're exercising powers given to them
by common law and powers given to them by
statute.

30 With regard to Mr. Kennedy's opinions, I
understand that it's based upon two propositions:
(a), that the feet and the boots match in all
respect, including the accidental characteristics,
and there are no dissimilarities; (b), from his
35 knowledge, his studies, other studies with which

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he's acquainted, information he's got from Mr. Bodziak, from Dr. Bettles, and generally from others, he is of the opinion that feet are, if not unique, generally very dissimilar one from the other and that therefore it follows that it's probable that Mr. Legere's feet made the marks in that boot. That's exactly what Nielsen and Stolar say that this kind of expert can say.

In the Crown's submission, the accidental feature of the nail matching up exactly with the mark in Mr. Legere's heel alone, without more, would justify Sergeant Kennedy in saying what he does say.

THE COURT: Thank you very much, Mr. Allman. I won't endeavour to make a ruling on this right at the moment. I will think about this this evening and first thing in the morning I'll deliver a decision on it. If the decision is favourable to the Crown then the Crown will be prepared, of course, to go ahead with its witnesses.

MR. ALLMAN: Yes.

THE COURT: I think you indicated that you'd be going ahead with certain witnesses regardless. However, we'll do that in a voir dire first thing before we call the jury in in the morning.

MR. ALLMAN: Mr. Purlotte raised one other matter to me that we originally said we should discuss in chambers, I think we should discuss it in court.

MR. FURLOTTE: My Lord, it's in relation to Mr. Legere. Mr. Legere would like some kind of indication as to when or if he's going to be returned to the court room. He's concerned because the little room that he's in, there is no air circulation in

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5 that room. He says he's being housed in a toilet
for the duration of the trial and if he is not
going to be allowed in the court room he would
prefer to remain at the detention centre in
Fredericton where he will be more comfortable
rather than sit in that little room there.

10 THE COURT: Well, let me say - I don't want to hear from
the Crown on this. Let me say this, that I'm not
going to plea bargain, if that's the word, on this
matter. I am disposed, actually, to perhaps when
the jury returns tomorrow allow the accused into
the court room again. I indicated earlier I'm not
15 going to ask defence counsel to express any under-
taking on his behalf of good behaviour, it wasn't
worth very much before. No criticism of you, Mr.
Furlotte, but your client's undertaking wasn't
worth much, and as far as the facilities here in
20 the court house is concerned, I can only say this
is something the accused should bear in mind if he
chooses to misbehave again, because I'm not going
to provide for monitoring facilities at the jail
in Fredericton. This is where the monitoring
25 facilities will continue to be provided if there
is further misbehaviour, and he must bear that in
mind, so thank you for conveying the thoughts
anyway.

Now we'll adjourn till morning.

30

(COURT ADJOURNED TO 9:30 a.m., OCTOBER 8, 1991.)

35

(COURT RESUMED AT 9:30 a.m., OCTOBER 8, 1991.)

(ACCUSED IN HOLDING CELL.)

5 THE COURT: A couple of housekeeping matters first, and
one is that I spoke yesterday about when the jury
retires eventually to consider their verdict I
wanted to provide them with a copy of the list of
exhibits and a copy of the list of the items on
10 the aerial map. There's one further item I think
the jury should be provided with in the jury room
and that is a calendar for the year 1989. Surely
counsel wouldn't object to the jury being
provided. The only thing is where does one get
15 a calendar, or a proper sized calendar that could
be put on the wall. Could the Crown undertake
to -

MR. ALLMAN: I'm sure we can get one from somewhere.
Whether it will be big enough to put on the wall
20 I don't know, but we can get one from somewhere,
and as to whether the jury is entitled to it, my
understanding is that they're entitled to take
judicial notice of such things as calendars,
almanacs, and so on.

25 THE COURT: Well, that's my view and I've certainly done
it before. Well, I would say a proper little
thing, even showing the period, say, from May till
the end of the year of that year. In the
telephone book you've got your perpetual calendar,
30 there's no problem in finding a calendar.

MR. ALLMAN: No, no, I'm sure we can get some. I know
where I can get a little one, for example. I've
got a 1989 desk diary, it's got the 1989 calendar
in it, but it's only the size of that book, so we

Ruling on Voir Dire

can get something, I know that.

THE COURT: I'd like to see it in advance because I want
5 to - there should be nothing indicated on it other
than just the days of the week and the numbers and
so on.

MR. ALLMAN: No. it will be as it came from the printer.

THE COURT: Another small housekeeping matter, that is
10 that yesterday in reference to the expulsion of
the accused I made the statement that I wasn't
going to plea bargain in the matter. I want to
make it clear for the record, and I'm sure it was
clear from the context in which I used that
15 expression that I'm not using it in respect of
guilt or innocence or plea bargaining in respect
of any count in the indictment. I was using the
word plea bargaining only in the sense of
bargaining in respect of the presence or otherwise
20 of the accused. I say that for the record, I
don't think there could be any doubt about it.
The question of whether the accused is expelled
from the court room or not has no bearing
whatever, as far as I'm concerned, on the question
25 of guilt or innocence, and I may say that as soon
as I have delivered my decision just now on the
subject of the voir dire yesterday I will be
directing the accused to be brought back into the
court room, which will be in a few minutes time.

30 Now, yesterday we had a voir dire. In
respect of the matters which were the subject of
the voir dire yesterday afternoon I can see
nothing which would preclude the Crown from
adducing that evidence which it seeks to adduce.
35 The comparison of a known footprint standard to

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5 a footprint found on either the main sole or the
inner sole or some other part of a boot to prove
ownership or use of the footwear is no different
in essence than comparison of a known footprint or
boot print of a subject with a footprint or boot
10 print found in snow, mud or sand, for instance,
near the scene of a crime to establish the
presence of the subject at that locus or place,
and the latter type of comparison is very
frequently resorted to and permitted in criminal
cases.

15 Comparison by an expert will, in most circum-
stances, of course, carry more probative weight
than would comparison by a layman. I know of no
evidentiary law which would preclude the adducing
of evidence based on appropriate and proper
scientific testing to show that the likelihood of
20 any two feet having identical characteristics is
small.

In respect of the taking of the casts of the
accused's feet following his arrest, that was in
my opinion permitted at common law as incidental
25 to arrest. The delay until 13 or 14 hours after
the actual arrest does not alter that circum-
stance. The delay is accounted for by the
evidence.

30 If any breach of any Charter right did occur,
and in my considered opinion it did not, then the
adducing of evidence of what was done could not be
said to bring the administration of justice into
disrepute. On the contrary, to refuse the right
to adduce evidence as to the taking of the casts
35 having regard to all the circumstances prevailing

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would in itself have that effect, viz., to bring the administration of justice into disrepute.

5 The jury will be instructed in due course that it is its prerogative to attach such probative weight as it sees fit to whatever evidence is adduced just as it would in the case of any other evidence before it.

10 So that concludes my ruling on that point. There are no other questions arising out of that? And you're ready to call your next witness?

MR. ALLMAN: Yes, My Lord. There's going to be one very minor change. 230 is Staff Sergeant Dino Gatto, 15 231 is Sergeant Dan Chiasson, 235 is Sergeant Dan Chiasson again. We have reshuffled the order a little bit. Sergeant Gatto has been delayed getting here and he's only a continuity person anyway so we're going to slide him in when he gets 20 here, and Sergeant Chiasson, 231 and 235, we're going to amalgamate that. Our original intention had been to make 231 Sergeant Chiasson's continuity evidence, and then his substantive evidence is 235, but what we're proposing to do 25 now is to amalgamate those two and I'll be offering a number of items in evidence subject to proving them up further through the other experts who dealt with them at one time or another.

30 Oh, I've just been advised that Sergeant Gatto is here so we can - we're still going to amalgamate 231 and 235 but we will go with Staff Sergeant Gatto.

THE COURT: Yes. Incidentally, the report which was marked yesterday TTTT, you're putting that -

35 MR. ALLMAN: We're not putting it into evidence, it was

5

S/Sgt. Gatto - Direct

simply a quick way of doing the evidence on the
voir dire.

5 THE COURT: Would you have the accused brought in,
please, by the Sheriff's officers?

(ACCUSED IN DOCK.)

10 THE COURT: Now we'll have the jury, please.

(JURY CALLED - ALL PRESENT.)

THE COURT: And I would just report to the jury that I
have lifted the order that I made earlier on the
15 exclusion of the accused from the court room and
I would ask you to ignore everything that has gone
before. We're getting away to a fresh start.
Now, Mr. Allman, you have a witness?

MR. ALLMAN: Yes, My Lord.

20

STAFF SERGEANT DINO GATTO, called as a witness,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Could you tell the jury your name and occupation,
25 please?

A. My name is Dino Vittorio Gatto. I'm a member of
the Royal Canadian Mounted Police stationed with
the Fredericton Forensic Identification Section
with the R.C.M.P. 'J' Division Headquarters,
30 Fredericton, New Brunswick.

Q. How long have you been with that department?

A. I've been with that department since June of 1968.

MR. ALLMAN: Could I get these two items marked for
identification?

35 THE COURT: UUUU, and VVVV.

6

S/Sgt. Gatto - Direct

- 5 Q. I'm showing you now two items that have been
marked 4U and 4V. Can you look at them, see if
you recognize them, and then give us -
- 10 A. Yes, these items were turned over to me on the
20th of September, 1990, by Sergeant Dan Chiasson
of the Bathurst Forensic Identification Section at
Bathurst, New Brunswick. I then took them back to
Fredericton, New Brunswick, locked them up into my
exhibit locker, and I held them until the 9th of
October, 1990, at which time I turned them over to
Sergeant Bob Kennedy of the Fredericton Forensic
Identification Section.
- 15 Q. So just to shorten that, you received them from
Sergeant Chiasson, you kept them yourself, and
then you turned them over to Sergeant Kennedy?
- A. That's right.
- 20 Q. Did you do anything with them or perform any test
upon them?
- A. No, I received them in these document protectors,
there's a plastic bag in each, and I just turned
them over to Sergeant Kennedy.
- 25 Q. And in particular nothing was done to alter the
condition of those bags?
- A. Absolutely not.
- Q. And what are they, can you see what they are?
- A. They're two plastic bags, a plastic bag in each.
- MR. ALLMAN: I have no other questions.
- 30
- CROSS-EXAMINATION BY MR. FURLOTTE:
- Q. Sergeant Gatto, what was the purpose of you taking
them in the first place?
- A. The reason was I was in Bathurst conducting an
35 audit on the Bathurst Identification Section,

S/Sgt. Gatto - Cross

5 that's part of my duties, and Chiasson requested I
take these back to Bob Kennedy, Sergeant Bob
Kennedy of the Fredericton Identification Section,
because he was going to require to run some tests
on those items and he asked if I would initial,
date them, and keep them in my possession locked
up in my locker until I could turn them over to
10 Kennedy. It was to save Chiasson from driving all
the way from Bathurst to Fredericton when I was
doing that myself.

Q. O.K., but I notice it took you about 19 days to
turn them over to Sergeant Kennedy.

15 A. That's right, by the time the weekend was
finished and I was doing other duties in other
places and by the time Kennedy and I were able to
get together that's what it would take.

Q. So time didn't seem to be of the essence, then?

20 A. At that time, no.

MR. FURLOTTE: No further questions.

MR. ALLMAN: I have no re-examination.

THE COURT: Thank you, Sergeant Gatto, you're excused.

MR. ALLMAN: My next witness is Sergeant Dan Chiasson,
25 and as I indicated to Your Lordship earlier, he's
#231 and #235, but I'm going to amalgamate those
two into just one piece of evidence. He's already
been sworn.

30 SERGEANT DANIEL CHIASSON, called as a witness,
having already been sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

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

A. My name is Frank Daniel Chiasson. I'm the member
35 in charge of the R.C.M.P. Bathurst Forensic

Sgt. Chiasson - Direct

Identification Section in Bathurst, New Brunswick.

Q. And you've already given evidence at this trial on
5 a number of occasions?

A. That's correct, yes.

Q. And if my memory serves me right you were
qualified as an expert in the field of identifi-
cation specifically at that time with a point of
10 view of giving evidence about fingerprints?

A. Yes, that's correct.

Q. And on that occasion you indicated to the jury
the qualifications that you had in general terms
as a member of the Identification Department?

15 A. Yes.

MR. ALLMAN: I'd like, My Lord, with Your Lordship's
permission, to lead this witness through some
additional qualifications specifically relating
now to the topic we're going to be dealing with.

20 THE COURT: Just to refresh my memory, was the sergeant
declared an expert in -

MR. ALLMAN: I believe he was declared an expert because
he gave fingerprint evidence.

THE COURT: In -

25 WITNESS: In the field of fingerprints, My Lord.

THE COURT: - fingerprints.

MR. ALLMAN: And in the course of that you explained
about your qualifications as an identification
comparison -

30 A. Yes, that's correct.

Q. In addition to those standard and routine qualifi-
cations have you also in the year 1977 during your
understudy work for identification compared and
identified thousands of footwear impressions in
35 controlled situations?

9

Sgt. Chiasson - Direct

A. Yes, that's correct.

5 Q. Have you completed the R.C.M.P. identification examination course which dealt with all phases of identification work including footwear identification?

A. Yes, I have.

10 Q. Have you kept yourself up to date with the various publications that have been written on the topic of identification, specifically identification of footwear?

A. Yes, I have.

15 Q. What textbooks do you know of that deal specifically with that topic, footwear identification?

A. We've had occasion to - in our section we've had the book, "Fingerprint Identification", by Michael J. Cassidy, which is an R.C.M.P. publication but it goes in depth with the actual manufacturing of footwear, the comparison methods of footwear, the identification methods of footwear and so forth, and also a text from a Mr. William Bodziak from the FBI which we've read as well.

20 Q. The William Bodziak whose text you use, is he in court at present, or is he around the court house?

A. Yes, he is. He's in court, yes.

30 Q. I take it that like any other person in this type of work there are ongoing identification seminars and workshops that keep you all up to date with the recent developments in this line of work?

A. Yes, that's correct.

35 Q. In the course of your work have you had occasion to detect, develop, photograph, lift, cast, compare and identify footwear impressions from scenes of crime?

10

Sgt. Chiasson - Direct

- A. Yes, I have.
- Q. And compare them with feet, footwear?
- 5 A. With footwear impressions, yes.
- Q. Are we talking tens, hundreds, thousands of cases on which you've done that?
- A. In the course of my duties on an operational point of view I'd say hundreds of footwears.
- 10 Q. Are you a member of the Canadian Identification Society?
- A. Yes, I am.
- Q. Have you been declared an expert entitled to give identification evidence specifically as it relates to footwear impressions and comparisons in courts?
- 15 A. Yes, on numerous occasions.
- Q. At all levels?
- A. At all levels.
- MR. ALLMAN: Subject to any objection I'd ask that this
- 20 witness be declared an expert in identification specifically in footwear impressions and comparisons.
- THE COURT: Just to clarify that, you're talking about exterior -
- 25 MR. ALLMAN: I'm talking about comparing - we're talking, are we not here, Sergeant, about comparing impressions left by the exterior of a piece of footwear on an object or floor or something of that kind?
- 30 A. That's correct, it would be an outsole impression that I am comparing.
- THE COURT: Yes, you're not talking about inner sole or actual foot -
- A. Footwear impressions.
- 35 THE COURT: Any questions, Mr. Furlotte?

11

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MR. FURLOTTE: I have no questions.

THE COURT: No. Well, I declare the witness an expert in
5 footwear and footwear impression comparison, and
identification, I guess that word would have to go
in there somewhere.

MR. ALLMAN: Before we get into the substance of your
evidence, Sergeant Chiasson, I'm going to show you
10 a number of items. First of all I'm going to show
you EEE for Identification. Can you look at that
and tell us anything about it in terms of your
having handled it, dealt with it?

A. Yes, on the 22nd of November, 1989, at the
15 Bathurst Forensic Identification Section, I
received from Corporal Robitaille, a member of
that Section, one pair of brown Greb Kodiak
work boots complete with plastic bags inside the
boots. These are the boots that I received. My
20 initials, the date, and the time are written on
the toe of the boot plus I have an exhibit tag
attached to the boots that say 22 November '89,
13:30 hours.

Q. And after you received those items - I don't want
25 to get at the moment into what you did in terms
of testing with them, but who's the next person to
get them after you?

A. The next person who would have received these
would have been Sergeant Robert Kennedy of the
30 Fredericton R.C.M.P. Forensic Identification
Section on the 13th of December, 1989. I turned
them over personally to him.

Q. Sergeant Kennedy's in court now, is he not?

A. Yes, he is.

35 Q. And just to refresh the jury's memory, those are

boots purportedly found at Keddy's Bathurst Motel somewhere in the vicinity of a car?

5 A. That's correct, yes.

MR. ALLMAN: My Lord, subject to any objection I'd ask to enter these items as exhibits. It's apparent that we also have to call Sergeant Kennedy but he is in court and I'll undertake to do that.

10 THE COURT: All right. That would be Exhibit P-133.

Q. I'm going to show you two more items that have been marked 4U and 4V. Take a look at those and tell us what you can about those.

15 A. Yes, exhibits marked 4U and 4V, these are two plastic bread type bags that were found inside those boots that I received on the 22nd of November of 1989 from Corporal Robitaille. The item marked 4U is a Save-Easy Bake Shop bread bag which was in the left boot of item - the
20 previous boots I just saw there, the brown boots, and item 4V was in the right boot of the brown Greb Kodiak type boots.

Q. In what fashion were they in those boots?

A. They were inserted inside the boot.

25 Q. Was any part of the bread bag visible?

A. Yes.

Q. On the exterior of the boot?

30 A. The top of the bag would have been visible on the outside of the boots and the tags, the date and the initials, my signature, dated 22 November, '89, 13:30 hours, are on each of the document protectors. I put the bags inside the document protectors.

Q. After you received them what did you do with them?

35 A. Once I removed the bags from inside the boots I

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5 conducted a fingerprint examination on them by the use of a cyanoacrylate method and I retained the bags until I turned them over to Staff Gatto.

Q. Any fingerprints found?

A. Just water stains and smudges, no fingerprints.

Q. And the Sergeant Gatto to whom you handed them over, that's the previous witness?

10 A. That's correct, yes.

Q. I'm showing you now two more items, 4Q and 4R. Can you look at those and tell us what you can about them?

15 A. Yes, 4Q and 4R, these are two insoles that I removed from the brown Greb Kodiak boots that we just previously saw. These were removed by myself on the 22nd of November, 1989, at 14:30 hours. The item marked 4R was removed - insole removed from the left boot and the item marked 4Q
20 was the insole removed from the right boot. These I turned over to Constable Houle of the Newcastle R.C.M.P. Detachment who was our exhibit man at this time at approximately 14:40 hours.

25 Q. With regard to those four items that I just showed you recently, that's the two bread bags and the two insoles, what if any alterations did you make in the condition of any of those items?

30 A. The bread bags would have been, of course, subjected to vapour fumes in the process of fingerprint examination and they would have been altered somewhat from the original state they were in.

35 Q. I'm thinking specifically now of any injuries, tears, holes, or anything of that kind.

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A. There would have been nothing to that effect, no.

Q. I'm showing you now P-61, and to refresh the
5 jury's memory this is an item of paper, a portion,
I believe, that was found at - or allegedly found
at the scene of the rectory. Could you tell us
anything about that, when it came into your
possession, what you did with it?

10 A. Yes, item P-61 is a church bulletin from the
rectory which was found in the kitchen area of the
rectory of Father James Smith. We saw this
particular piece of paper in the photographs that
were in Exhibit P-60. I myself removed this from
15 the kitchen floor on the 17th of November, 1989,
at 16:20 hours and retained it until it was
turned over to this Court.

Q. And item P-62, again maybe you could refresh the
jury's memory as to what that is and tell them
20 what you've done with it.

A. Item P-62, this is another item that we saw on
the photographs P-60 of the Father Smith rectory.
It's a small religious magazine called, "The
Candle Magazine", and it was found in the office
25 near the feet of Father Smith and it had a
partial footwear impression just like the previous
exhibit and I seized this on the 17th of November,
1989, at 13:00 hours.

Q. And retained it in your possession since then?

30 A. That's correct, yes.

MR. ALLMAN: Could I get these two plans marked for
identification at the moment?

THE COURT: WWW and XXXX.

MR. ALLMAN: Mr. Furlotte is just having a look and maybe
35 they can go right in.

15

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MR. FURLOTTE: I have no objections to them being put in
as an exhibit, My Lord.

5 THE COURT: Exhibit P-134 and Exhibit P-135.

Q. Just in general terms what - who prepared those,
first of all?

A. I prepared them.

Q. And for what purpose?

10 A. Chart P-134 was prepared in order to assist the
Court and the jury in understanding how a footwear
identification is made and P-135 would be - I
prepared that in an effort to show the Court the
correlation between a certain pair of boots and
15 possibly other footwear impressions on the
exterior of the residence.

Q. So these are demonstrative aids to assist the jury
in understanding the evidence that you're about to
give?

20 A. That's correct, yes.

Q. Sergeant Chiasson, now that we've got the objects
covered and those items introduced can you tell us
what it was that you sought to do and the results
of what you in fact did do?

25 A. Well, on the 22nd of November, 1989, once I
received the brown Greb Kodiak-type work boots
it was requested that I attempt to compare the
outsoles of those boots with the two partial foot-
wear impressions that were on the previous
30 exhibits.

Q. And again, just because we've got two lots of
boots and we have to be clear all the time, the
Greb Kodiaks are the ones that have been marked
P-133 purportedly found near to the car?

35 A. That's correct, yes, and the other two items are

P-61 and 62, I believe.

Q. That's the two -

5 A. The church bulletin.

Q. The church bulletin and the church magazine?

A. That's correct, yes, so it was requested from me
that I attempt to compare those partial footwear
impressions with the outsoles of the boots and
10 subsequently I did compare that and as a result it
was noted that indeed the footwear impressions on
both P-61 and 62 were made by the left outsole of
the brown Kodiak and Greb boots.

Q. Could you explain how you come to that conclusion
15 and demonstrate to the jury how you come to that
conclusion?

A. In P-134 it's a chart consisting of a series of
coloured photographs, coloured and black and white
photographs, complete with a series of letters.

20 Q. Do you have a pointer with you or something of
that kind that perhaps you could use to assist?

A. The top of the chart we see the letters 'U' and
the letters 'K'. Under the letters 'U' we come
down and we see two coloured photographs. The
25 first coloured photograph, the same photograph we
originally saw in the Exhibit P-60, in the office,
in the rectory of Father Smith's office, and in
fact if you look at the photograph you can still
see Father Smith's body in the upper corner of the
30 photograph. In that photograph your attention is
drawn to a small circled area right near the feet
of Father Smith, and when you follow down this
blue line you will see another photograph here in
this circle. Now, this item here is indeed
35 Exhibit P-62, "The Candle Magazine", and when you

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5 come down the blue line it's a coloured photograph
of that partial footwear impression that's on that
"Candle Magazine" that we saw in the exhibit. In
fact, this photograph here is a one to one or an
actual size of that partial footwear impression,
so you come from the office from the floor and
here we isolate or depict the partial footwear
10 impression, and you come over here under 'K', this
is a photograph of the boots that we just
previously mentioned, the brown Greb Kodiak-type
work boots, size 11, which I received from
Corporal Robitaille on the 22nd of November, and
15 in fact that's in one of your books as well, in
the photographs that Corporal Robitaille presented
to this Court.

From this photograph we come down to another
coloured photograph right here, and here there's a
20 small red circle which is just meant to more or
less isolate or depict the left outsole of the
same pair of boots. Now, in the middle here we
have another small coloured photograph, and that
small coloured photograph says, "test impression".
25 It's 22 November, '89, it says "left boot", and my
initials and the time are on it. When a request
comes from a detachment or an outside police
agency to compare a suspect footwear, be it a
sneaker or a boot, with a scene of crime
30 impression, the first thing that we have to do is
first of all you photograph the footwear in
question, and the second thing we do is we make
test impressions of the outsole of those boots.
Now, what that does for us, it shows us how the
35 outsole will represent itself, what the signature,

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5 the actual characteristics of that outsole, look
like when they're placed on a hard surface, so
what we had on the middle here is a test
impression or standards that I made at the
Bathurst Forensic Identification Section just to
see what that outsole will look like, and in fact
it's from the left boot, so if we come down under
10 'U' again we have the coloured photographs in the
office of Father Smith, we have the isolated shot
of the partial footwear impression that's on that
magazine, and now to come down below that and in
this blue box is a black and white photograph, and
15 what that is in fact is just a black and white
photograph of this footwear impression that we
isolated above here, but now in this case it's
enlarged approximately four times.

20 You move across the chart to this small
photograph that says, "test impression", come
below that, there's another black and white photo-
graph, and it, too, is a photograph that I took,
black and white, of a portion of that test
impression, and it's the same size as the one
25 underneath the letter 'U', and finally you come
under 'K', and there's another black and white
photograph here and it, too, is a black and white
photograph that I took of the portion of that left
outsole that's circled in the coloured photograph
30 underneath 'K', so now we've reduced all our
components to three black and white photographs,
three properties that are more or less suitable
for comparison. Now we can analyze these, we can
compare them, and we can evaluate them, because
35 they're all reduced to the same properties.

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5 If you look under 'U', the black and white
photograph under 'U', it may not appear to be as
strong or as clear as the one we have here, and
the reason for that is because you've got to
remember that that black and white photograph
or let alone this impression was made very much by
accident. The boot in question would have walked
10 on a red substance which we believe to be blood
and would have transferred the outsole impression
onto that magazine to a two-dimensional positive
type of impression, so it's made very much by
accident, it's not - you can see there seems to be
15 pieces missing and it's not as strong or as clear
as the test impression because it's made quite by
accident. On the other hand, the test impression
is made under controlled circumstances, it's made
in the Identification Section by myself. I took
20 the boot, I applied black fingerprint powder to
it, and I put the boot on a clear adhesive-type
surface and it comes out very clear, very strong,
there's no distortion due to slippage or pivoting
or anything to that effect, so that would tend to
25 give you a different appearance of one being
weaker or stronger than the other.

Now, once we have reduced it to this state
we have to conduct our comparison, and the
philosophy of footwear identification is based in
30 this manner. Footwear identification is based on
the continuous agreement of class and accidental
characteristics or identifying characteristics in
sequence and in such number and significance that
no other conclusions can be reached. Now, what
35 that basically means is very simply this. We have

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two phases of comparisons we have to go through. The first phase is to find and to establish the class characteristics, and they will either tend to eliminate the boot completely or they'll tend to be in agreement that we can pursue it and go on to the second stage of comparison, and class characteristics are very simply the size, the style, the shape, and the pattern design, and when you look at these three black and white photographs you can see first of all that the pattern design is very obvious. It's the herringbone-chevron type pattern, and it's consistent in all three photographs.

The style, when you look at the style in your class comparisons you're looking - for example, you can't compare a sneaker with a work boot, you can't compare a running shoe and a dance shoe or a dress shoe. You'd have to compare apples to apples, not apples to oranges, so in this case we're comparing work boot to work boot, so that's consistent and in agreement, and the next two parts, the shape and the size. Size in this case does not pertain to the size of the boot, be it a size 11 or a size 9, it means the size of the actual unknown, the unknown impression that you're dealing with. I may have only a small portion of a partial footwear impression and with measurements we use calipers, through observations, does it correspond with the size of the test impression at a certain area, and in this case the shape and the size, shape being left or right foot, or the shape of my unknown to the shape of my known, and all those were found to be in consistency and in

5 agreement, so now at this stage we've satisfied
the class characteristics. They're consistent,
they're in agreement to size, shape, style and
pattern design, but still we have not proven
anything. Any one of a thousand pair of brown
Greb Kodiak boots could have made that impression
at this stage.

10 Now we go into the final comparison, and
that's the one that is really important. This is
the one that establishes identity or individuality
and that's known as the accidental or the identi-
fying characteristics, and those are the randomly
15 placed cuts and nicks and tears and gouges and so
forth that are unique to that outsole and that
outsole alone, so when you come down to the chart,
the blue box, the three black and white photo-
graphs, you can see a series of letters completely
20 around those impressions. Each one of those
letters, and there's 11 of them depicted there -
each one of those letters depict one accidental
characteristic or identifying characteristic that
is in sequence and in complete agreement one to
25 the other, and the unknown to the known. I'm
showing 11 here but in fact there's 13 of those
gouges and cuts and so forth that make it uniquely
to that boot and that boot alone.

Q. And then what about the one underneath 'K'?

30 There's numbers around that one, too.

A. That's correct. The one underneath 'K' is just -
in fact, these two are the same because this is
a test impression of the signature of the boot
and this is just a photograph of the outsole
35 itself.

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- Q. So obviously it's the same?
- A. That's correct, yes. The actual comparison would
5 be between these two here is where you're really
looking.
- Q. Just before I ask any more questions about it, so
far as the two large pictures on the left, the one
underneath 'U' and the one underneath the Mountie
10 badge if you keep going far enough down, what's
your conclusion regarding those two items?
- A. My conclusions regarding those two items would be
that the test impression, which is all the same
thing here, this one or this one, that I made from
15 the left outsole of the Greb boots -
- Q. Which boots were purportedly found at the Keddy's
Bathurst?
- A. That's correct, yes. The left boot is the boot
that made the impression that's under 'U', the
20 partial footwear impression that's in blood on the
magazine, that's the boot that made the
impression, and the same thing with the church
bulletin that was found in the kitchen.
- Q. You mentioned that of those photographs you've
25 depicted 11 points but that there are in fact two
more. Is there a reason for not depicting the
two more?
- A. There's in fact 13 of them. Unlike fingerprints
footwear identification because of the random
30 aspect of these plus their uniqueness that there
are gouges and there are rips and there are tears
and each one have their own little configuration,
one could be a star shape, the other one could be
shaped like a triangle and so forth, you don't
35 need as many of them to establish identity as you

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5 would perhaps with a fingerprint if you're
looking at a dirty or not a fingerprint that's
very clear. To have marked the three additional
ones that I did not mark would have been a case of
overkill, there's no need for it.

10 Q. Just give me an example of one of the ones on
there that you didn't feel it was necessary to
mark because it would be overkill.

15 A. Well, if you look at these two right here we have
the 'K', and the 'K' comes up to a gouge that's
at the bottom of that particular herringbone
design, same thing there, but if you come down
we'll call it a rib and you have a big space here.
That is an accidental characteristic. It's a
gouge that's completely removed, the piece of
threading is completely gone. If you come over
here you can go down one and it's right there, the
20 gouge is there as well. Another one is on top,
and you've got to remember this is just a demon-
strative aid, the actual comparison is done much -
one to one, but there's another one in this corner
right here between 'D' and 'E' which is evident
25 there, and there's another one in this area here.
This line comes down here from 'I', and here it
still comes down there. The piece is actually
removed and it's gone.

30 Q. Is the process - given the distinction that you
just made that you don't need as many points of
comparison, but could you make a comparison
between what you're doing and what a fingerprint
examiner does?

35 A. Actually the comparison is very much the same
except when you're dealing with fingerprints

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5 you're dealing with specific known what we call characteristics, which are your bifurcations, your ridge endings, your lakes and your islands and so forth, and they have to be in agreement and in sequence in the fingerprint as well. These have to be in agreement and in sequence but because of their uniqueness, again, you don't need as many of them. If I have a star-shaped one here and a triangle-shaped one there and one that's shaped like a hockey stick, for an example, that is very special and very strong all by itself.

10 Q. Is there anything else that you wanted to add with regard to 134 either in terms of your conclusion that it was that left boot that made that impression or anything else about the process that you went through, or basically have we completed 134?

20 A. We have completed 134.

Q. Could you then proceed to explain any other findings and observations you made by reference to 135 or anything else you want to do.

25 A. Now, 135, the purpose of 135 was to attempt to, again, correlate the other footwear impressions that were noted in the area outside and around the rectory of Father Smith. We'll start first of all with 'B'. We have a series of coloured photographs and letters 'A', 'B', and 'C'. 'B' is the same as you can see here in chart 'K', it's that same pair of boots that I received from Corporal Robitaille on the 22nd of November, and they come down, the photograph below that one is the same one again that we saw here in photograph 'K', and 30 then finally we come down to a third coloured

35

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5 photograph underneath 'B' and it isolates the left boot. That belongs to the same pair of boots that were received from Corporal Robitaille.

10 Now, if you go to 'A', that's a coloured photograph that you saw once again in your books that you received at the scene dealing with the rectory of Father Smith. This is in the garage area. Once you get through the big front garage doors you're in the garage and that wooden door at the back, see the small circle there, is the door that was damaged that leads to the bottom area of Father Smith's rectory. You follow that small
15 circle down and there's a close-up view of the door, and again in this area on the door we had this which is a partial footwear impression. It's what we call a two-dimensional one and it's a positive impression where the residue is left on
20 the door from the boot print.

Now, there's a small satellite photograph up here which leads from here, and all that is, it's a brand-new pair of Greb boots and it depicts a photograph of the heel of a brand-new pair of Greb
25 boots.

Now we'll leave that for a moment, go over here to 'C'. 'C', again a photograph that you're familiar with. This is the back area of Father Smith's rectory and again there's a small circled
30 here, this specifically isolates the back doorstep and when you come down the blue line there's the back doorstep with something in a small scale which in fact when you follow down to the third photograph under 'C', it's a two-dimensional
35 partial footwear impression, a positive one, which

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is residue or deposit left on the actual surface.

Q. So the bottom one there is a close-up of the
5 middle one?

A. The bottom one here is a close-up of the middle
one, that's correct, under 'C'. The same token
the bottom one under 'A' is a close-up of the
middle one under 'A'. Now, here again there's a
10 small satellite here. I've taken another photo-
graph of a brand-new outsole of a pair of Greb
Kodiak boots, and what that does, I'm not saying
that these boots here made these two impressions.
I'm just showing the possibility that where we
15 talked about class characteristics, size, shape,
style and pattern design are very consistent, and
even though a brand-new pair of Kodiak Greb boots
may have made the same impression where we've
identified these boots inside the house it's very
20 possible that these boots are indeed responsible
for those two impressions.

Q. Let me see if I've understood you correctly. So
far as 134 is concerned your opinion is that those
boots, the particular individual left boot in
25 question made those marks on the magazines?

A. That's correct, yes.

Q. With regard to the other impressions, the ones in
the garage and on the steps, (a), they're consis-
tent with a pair of boots of that type but there
30 isn't enough to go any further than that in their
case?

A. That's correct, it's just that where these boots
were indeed confirmed to be inside it's very
possible that they could have been outside.

Q. Just one other matter with regard to 'A', I just

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5 want to refresh the jury's memory on this, there
was evidence that on that door in addition to the
heel mark that you've isolated there were some
other marks. Could you remind the jury what it
was you felt about those marks?

A. When we first examined that door there was indeed
10 another footwear impression that was in fact
impregnated right into the wood, it was almost
like it was burnt right in there, and we at first
were quite excited that we had found two types of
physical evidence that we would be able to work
with, but upon closer examination it became
15 obvious that they were too old, had been there
for some time, and they were of no value to us at
all.

Q. Is there any evidence that you found of any other
20 footwear, boots, shoes, any kind of footwear,
inside that house or in the immediate exterior
where you found footprints?

A. No, there was no other pattern type of footwear
noted, no.

MR. ALLMAN: Thank you.

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

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. I notice, Sergeant, where you mentioned the
30 characteristic marks where you said a gouge here
and a gouge on the other print but you didn't
bother marking that as an accidental character-
istic?

A. That's correct, yes.

Q. Because it would be overkill?

35 A. Exactly.

- Q. I see you have what, eleven?
- A. There's eleven shown there.
- 5 Q. Eleven shown. How many do you need before you're satisfied that it's a positive identification?
- A. When you're comparing footwear impressions, again like fingerprints you don't need as many, but the clarity of them, the uniqueness of them, and of
- 10 course the position which they're in is very important. I can't give you a specific number. I'd say I might be satisfied with this pair of boots after four, I might be satisfied with this pair of boots after seven, eight, nine, ten, it
- 15 doesn't matter. There's no specific number required.
- Q. Now, I'll leave this for a minute and get back to the heels, and I believe in the left boot you found there was a nail protruding?
- 20 A. No, I did not, no.
- Q. You did not?
- A. No.
- Q. Did you examine the boots?
- A. The only thing I did with the boot, I examined it
- 25 for hair and/or fibres, I removed the bags that were in the boots and the insoles and I turned the hairs that I had found, and the insoles, to Constable Houle of the Newcastle Detachment.
- Q. Do you recall what colour the hairs were in the
- 30 bags?
- A. No, I don't. I don't. There was five, I recall removing five from inside those bags.
- Q. The gouges left out in the heels, is there any possible way that some of them could be due to,
- 35 say, faulty manufacturing or certain portions of a

sole or a heel will crumble because of faulty manufacturing?

- 5 A. This is a good point and you have to be very careful that when you're comparing a brand-new pair of boots, because brand-new pairs of boots will come out with what we call mold defects or flaws, and these are small air bubbles that
- 10 sometimes get inside the mold and they'll come out and when they're brand-new they will sometimes represent themselves when you make a test impression as an accidental characteristic like a gouge or a rip, and they usually wear out very
- 15 quickly once the shoe is worn because they're not very deep, and also when you start with a brand-new pair of boots you'll find - we talk about wear marks, the degree of wear marks and the position of wear marks, and brand-new boots, these ribs of
- 20 the herringbone design are usually much sharper. Perhaps if you look over here you can see they're almost cutting sharp, and as you wear the boot they get flat, flat and thicker and thicker and thicker, and that's where you erase and usually
- 25 eliminate all of these manufacturer's molds or flaws and so forth.
- Q. O.K., is there some of the manufacturer's molds or flaws that could come out only after wearing the boots for a certain time, like certain air
- 30 bubbles and once the boot is worn down to a certain degree then it will cause a gouge or what would appear to be an accidental characteristic?
- A. No, not really. In my experience I've never found one to surface after the boot is complete. These
- 35 boots are really quite worn and they would have

30

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eliminated all manufacturer's flaws.

5 Q. O.K., maybe you could go through the accidental characteristics and point out to the jury and explain to the jury what you found in each one. For my benefit, too.

10 A. Yes, beginning with 'A' in this particular corner of the rib you have a small cut that cuts right across the top of that rib. You come over here and you'll get a chance to get a closer look at this later, there is a small cut that cuts exactly in the same position on the top of that rib, right there. Now, you'll skip a rib, go up
15 to the second rib -

Q. But you don't see the other portion on the -

A. I'm sorry.

20 Q. On this picture here, underneath 'U', we don't see that top portion of the sole or the cut, you just see a straight line across?

A. Oh, it's there, Mr. Furlotte, it's right there, a little brown spot.

Q. Perhaps.

25 A. It's there, yes, I can see it from here. Again you must remember this is just to demonstrate to the jury. The actual comparison is done on a much closer one to one aspect. It's very hard for me to do an actual comparison for you by using a chart of this magnitude. Should I go on?

30 Q. O.K., please.

A. And point #B, we skip the rib in the middle between 'A' and 'B', and for example, on the test impression you see there's a cut that starts from 'D', touches 'C', comes down to 'B', and in fact
35 that it even touches that rib that's between 'A'

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5 and 'B', and over here you can see that the cut is there, it comes down from 'D' to 'C' to 'B', and in fact I think if you look close enough you can still see a little bit of it on the rib between 'A' and 'B'.

Q. O.K., but I notice here on 'B' the cut seems to go right through.

10 A. Yes.

Q. But on 'B' over here the cut seems to stop about halfway through. What would the explanation for that be?

15 A. Because under 'U' the black and white photograph of the partial footwear impression was made again very much by accident. There was no way to control pressure or to control the type of surface or smudging and so forth. Where this one here, under the test impression, that black and white photograph depicts a test impression that's
20 made under very controlled conditions. I could control the amount of weight I put on that to register how clearly I wanted those accidentals to come out, so this is why they may appear to be
25 somewhat different in strength and colour, but they're still there.

Q. I suppose maybe, just while we're into that, it would be the same explanation as to maybe why this rib here is full and it seems over here on the
30 third one up there seems to be a gouge out of this one?

A. Exactly, it appears broken on the unknown.

Q. If they were both clears then this would be - if there was a gouge here and there was no gouge
35 here, then that would exclude this boot, it would

be an accidental characteristic which would exclude the boot, would that be right?

5 A. That's not completely true because you've got to remember this particular footwear impression would have been made on the - assuming the 16th of
10 November. I received these boots on the 22nd of November. If these boots indeed were worn from the time they left the crime scene to wherever they ended up an additional accidental character-
15 istic, an additional gouge, or even one of those particular rips might have been expanded or distorted a little bit, that it would not reflect to be in the same kind of shape.

Q. Yes, but the gouge wouldn't grow in on the boot?

A. No, no. No, this would be the one you might have additional or changed -

Q. This impression would have been made first?

20 A. Yes, exactly.

Q. So I'm just saying if there was a gouge in this boot surely by the time you seized the boots a week later or whatever the gouge wouldn't grow in, in this particular case here?

25 A. If there was a gouge on the unknown and these boots were worn for a week, that gouge could literally be erased or changed - or changed - because of the excessive wear or whatever these boots would have walked on. It happens sometimes.

30 Q. O.K., we'll go on to #E, I guess we're at?

A. Yes, #E, here we have a small cut in the rib. Now, we're coming down from 'D', went to 'C'. If you follow through on 'C' you're at the peak of the rib and you can see there's a small cut
35 there. The same thing with here, you take 'C',

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you go up, and there's a small cut, you can actually see the cut underneath the letter 'E'.

5 In 'F' we go back to point 'D', we had that cut that was coming down 'D', 'C', 'B'. You can see on the photograph it's not there but the rib comes back on this side and there's a small gouge and a cut right there. Same thing, you come up
10 'D', you come down, and there it is there.

 Some of these will duplicate almost exactly the shape they're in, be it a shape of a star - others will be a little bit distorted due to, again, accidentally the impression is made or the
15 excessive wear on the test impression.

 In point 'G' - now, on point 'G' on the test impression we can see there's a gouge in the rib that's connected with 'B'. We come up to the peak and come back down towards the centre of the sole.
20 Same thing here, take 'B', come down, you can see it right there. In fact, if you look at 'G' you can almost break it down into two accidental rips or tears, but in fact when you come up here you can see I'm just showing you one of those under
25 'G'.

 If you go to point 'H', point 'H' represents itself, it's on the same rib that we saw, 'F', come down, start up the valley here and you can see that there's three - in fact, three small
30 gouges there as well. If you come to 'H' you can see those three small gouges but I'm just referring to one of them, the bigger one of the three. That's evident in there.

Q. You can see three?

35 A. Well, they're clustered together there.

Q. Maybe if you come over here for a minute,
Sergeant. I see two in this one.

5 A. Just behind the -

Q. One behind the arrow.

A. That's correct.

Q. And none on the sides?

10 THE COURT: Speak loudly enough, please, that the jury
can hear. Otherwise you're wasting your time.

A. You see the big one right at the tip of the arrow?

Q. Right.

15 A. There's the big one at the tip of the arrow. Then
you go to the left of the black arrowhead, there's
another void or gap there. You would find that
same gap there, and then on this side there's
another small void or gap and it's right there as
well on the other side of the arrowhead.

Q. O.K., I see three here.

20 A. Yes.

Q. One at the point of the arrow, two to the left?

A. O.K., and one to the right.

Q. One to the right?

A. Yes, it's right there.

25 Q. I can't see the one to the right, it may be there.

A. It is, indeed.

Q. O.K., I see the one to the right here.

A. Yes, the one at the end of the arrow.

Q. Right, but I don't see two to the left.

30 A. Well, these two appear to be more or less filled
in but they're there. You see that white gap?

Q. O.K., let's go on to 'H'.

A. 'H' is a cut.

Q. I'm sorry, 'H' we were just looking at.

35 A. No, we were - I'm sorry, you're absolutely right.

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5 'I' is a cut that comes down and cuts the two ribs here, and that's the same rib, now, that 'H' was on, and if you go there you can see the cut actually comes down. Now, what happens to the rib below 'I', here we have it as a cut on the test impression, here there's some distortion, might be slippage or something, but it certainly comes out
10 a lot bigger gap than we have under the controlled conditions.

'J', 'J' is one of the gouges that almost duplicated itself perfectly, you can see the little hook on the bottom of the ridge just below
15 'I'. Here, 'J', the same little hook or gouge is represented here as well, and you come down two of the ribs below 'J', one, two, and you have another gouge right in the valley, right in the peak of that ridge, and that one, too, is quite duplicated without too much distortion.
20

Q. Now, could any of those have been accidental characteristics, say, right from the point of manufacture?

A. Not really, no. There's control devices. When
25 the manufacturers produce boots there's quality controls and they would never let a pair of boots like that with all those ribs and gouges get out in the marketplace. The little flaws that we discussed as mold flaws are quite minute and they're so superficial -
30

Q. Would have been like flaws, air bubbles, inside the ribs or the tread marks and then after they're worn a little bit, then they become obvious?

A. Not really, because this method of producing this
35 kind of boot is known as a compression molding,

5 and what that is, they take a biscuit type of material, they put it in a mold, they close the cover and subject it to a great deal of heat and pressure and so forth, and the only way you're going to have flaws are on the exterior surfaces of that mold when it comes out, because the inside is just solid material and would not have a chance to get air bubbles.

10 Q. O.K., you mentioned that you didn't - you can't say for certain that it's the same pair of boots here that made the impression marks on the steps going up to the back door of the priest's home?

15 A. That's correct.

Q. Were the marks not clear enough that you could compare them or that you didn't feel it was necessary?

20 A. No, it's not that it wasn't necessary. The accidental characteristics were present but there wasn't enough to go on to the accidental - pardon me, the class characteristics were present but there wasn't enough detail to go into the further comparisons of the identifying characteristics.

25 Q. O.K., that was the left boot also?

A. Yes.

Q. And that's going up to this back door on the lefthand side, or on the righthand side facing the back of the building?

30 A. Yes, on the garage side of the building.

Q. And I believe that's where there was a blood transfer found?

A. On the bottom of the door frame there, yes,

Q. Bottom of the door frame?

35 A. Yes.

- Q. Well, actually there was two blood transfers there, one similar to Father Smith's and one that was not similar to Father Smith's?
- 5 A. I don't know.
- Q. Do you recall which - I'm not sure you're the witness, but which door had been broken?
- A. Yes, I do recall.
- 10 Q. One of the back doors, one of the screen doors?
- A. This back porch area here only has two doors and they're both aluminum doors, there's no double doors there, and it was this door here that had the plastic striker plate.
- 15 Q. That's the one that had the plastic plate?
- A. That's correct, yes.
- Q. Now, you mentioned you didn't find any fingerprints on the boots or in the plastic bags?
- A. That's correct, yes.
- 20 Q. But there was water stains?
- A. There was water stains on the bread bags inside the boots.
- Q. How wet were the boots when you first had them?
- A. They were quite damp when I got them from
- 25 Corporal Robitaille.
- Q. And when did you receive them?
- A. On the 22nd of November at 1:30 in the afternoon.
- Q. 22nd, and as far as you know they were seized on the 17th of November?
- 30 A. I'm not sure of the date they were seized.
- MR. FURLOTTE: I have no further questions.
- MR. ALLMAN: I have no re-examination.
- THE COURT: One question I have of this witness. Mr. Furlotte in one of his questions said - referred
- 35 to the heel mark made by someone going up into

the rectory and you answered the question although I'm not sure whether that escaped you or not.

5 Would not the mark have been made by somebody going out of the rectory, or could you tell from the nature of the mark on the step? Was it going up, going in, or going out?

A. It was going in, My Lord, going up.

10 THE COURT: Going up?

A. Yes, it's the outsole, it wasn't the heel impression. You're right, it's the outsole of the left boot that goes up the stairs into the rectory.

15 THE COURT: I see, but what was the reference to the heel? Was there a heel -

A. Yes, the heel impression, My Lord, is on the wooden door in the garage area that was damaged to get inside. That's the heel mark.

20 THE COURT: Oh, that's the heel there. Oh, I'm sorry, I missed that, and the other was going up?

A. That's correct, My Lord, on the steps in the back they were going up.

THE COURT: You could tell that from the mark?

25 A. Just by looking at it, yes.

THE COURT: By looking at it?

A. Yes, there was enough there you could see it was going in that direction.

THE COURT: Fine, any questions?

30 MR. ALLMAN: No, My Lord. As I indicated, I've amalgamated Sergeant Chiasson's evidence under 231 and 235, so he's completed so far as I'm concerned and I'd ask he be excused.

THE COURT: All right, you're excused. Thank you very
35 much.

39

MR. ALLMAN: My Lord, the next witness is Sergeant Robert
Kennedy. He'll be, I'm sure, quite a while. I
5 could put him on and get started and then take a
break or we could take the break now, whichever
you prefer.

THE COURT: I think we'll take the break now, then, and
then we can sail through with him until lunch
10 hour, so would the jury please retire? Let me
see, I wonder if it would be worth while to send
these diagrams to the jury room with the jury?

MR. ALLMAN: I think that would be a good idea because
it's fresh in their minds.

15 THE COURT: I think we'll do that, then, and perhaps Mr.
Sears could take the stands out as well, but if
the jury would go out first we'll -

(JURY WITHDRAWS.)

20 (BRIEF RECESS - RESUMED AT 11:10 a.m.)

(ACCUSED IN DOCK.)

MR. WALSH: My Lord, before you begin I have a copy of
the calendar that you had suggested. I showed
25 it to Mr. Furlotte and he has no problem. I'll
show it to you.

THE COURT: Yes, the calendar is O.K., sure.

(JURY CALLED - ALL PRESENT.)

30

THE COURT: Now, you have another witness?

35

SERGEANT ROBERT KENNEDY, called as a witness,
being duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name and occupation, please?

A. I'm Robert Ben Kennedy, I'm employed with the
Royal Canadian Mounted Police presently stationed
at the Forensic Identification Section in
10 Fredericton.

Q. What's your rank?

A. Sergeant.

MR. ALLMAN: My Lord, with my learned friend's permission
I propose to lead this witness through his
15 qualifications with a view to seeking to have him
declared an expert.

THE COURT: O.K.

Q. Sergeant Kennedy, I understand you're with the
Identification Department?

20 A. That's correct.

Q. How long have you been on identification work?

A. For the past 20 years.

Q. I take it your training began in 1971 in Ottawa
with a 14-month training program in identifica-
25 tion work?

A. That's correct.

Q. And in July and August, 1971, did you successfully
complete a fingerprint technician course and spend
six months in the Fingerprint Bureau searching
30 prints?

A. That's right, yes.

Q. In 1971 did you also complete a drawing and design
course at Algonquin College, Ottawa?

A. Yes, I did.

35 Q. From April to June, 1972, did you continue and

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- complete the identification methods and technique course including crime scene investigation, photographic techniques, searching for latent fingerprints, physical matching and general crime scene investigation?
- 5
- A. That's correct, yes.
- Q. In June, 1972, did you complete a survey course at Carleton University?
- 10
- A. Yes.
- Q. And in 1973 attend the identification seminar in Regina, Saskatchewan?
- A. Yes.
- 15
- Q. Have you also completed a one-year diploma photography course through the Toronto Institute of Science and Technology?
- A. Yes, I did.
- Q. Are you a fingerprint examiner appointed by the Solicitor General of Canada?
- 20
- A. Yes, I am.
- Q. And in October, 1976, did you attend a facial identification workshop in Halifax?
- A. That's correct.
- 25
- Q. In October, 1979, did you attend a forensic pathology course in Toronto for three weeks?
- A. That's right.
- Q. In June, 1980, did you successfully complete a certification exam which would cover all phases of identification work, fingerprints, photographs, and physical matching?
- 30
- A. That's correct.
- Q. 1982 were you attending the regional workshop at Memramcook Institute and again in 1984?
- 35
- A. Yes, I did.

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- Q. These would be workshops in which members of your profession are updated on new techniques and developments in old techniques?
- 5 A. We're required to attend every second year, that's correct.
- Q. Are you a member of the Canadian Identification Society?
- 10 A. Yes, I am.
- Q. Have you put on yourself, that is to say organized yourself, crime scene courses in Vancouver and also in Fredericton?
- A. That's right.
- 15 Q. And has a course that you prepared been in fact the standard course that's been used in recent years in the Atlantic Provinces?
- A. Yes, it has.
- Q. Did you take an anthropology credit course at the University of New Brunswick?
- 20 A. Yes, mainly dealing in osteology.
- Q. What's osteology?
- A. It's the study of bones.
- Q. Bones being -
- 25 A. In the human body.
- Q. Have you periodically attended workshops on physical matching?
- A. That's correct, yes.
- Q. And did you lecture at the National Canadian Identification Society in Saint John on crime scene preservation and preservation of evidence?
- 30 A. That's correct, yes.
- Q. And are you familiar with the sort of reference material that individuals in your profession use and rely upon for their activities?
- 35

A. Yes, I am.

Q. Could you give me an example of two books that you
5 and other identification people use?

A. Michael Cassidy, one of the members in the Royal
Canadian Mounted Police, did a study on footwear.
His book is a recognized reading material for the
R.C.M.P. There's many books, another is recently
10 Bill Bodziak, Special Agent for the FBI, has a
book that we have in our possession that's on
footwear.

Q. Is the Mr. Bodziak to whom you refer as writing
that book, is he present in court now?

15 A. Yes, he is.

Q. In connection with your duties have you recently
had occasion to prepare a study in which you
studied a large number of feet?

A. Yes, over the past year I've conducted a study on
20 the bare feet by collecting approximately one
thousand feet from different individuals, approxi-
mately two thousand feet.

Q. That's because each individual has two feet?

A. That's correct.

25 Q. You didn't get any one-legged people among them?

A. No, we didn't.

THE COURT: That would throw you out, wouldn't it?

A. Each foot was measured in approximately 16
different areas for a total of 32 for a pair of
30 feet. All the measurements were entered on a
computer program indexed one to another so that
one measurement could be asked of the computer and
fished out the individual with that certain size
and combined index one so I could add another one
35 to the program and call that out.

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Q. Well, I don't want to go into that in detail at the moment but you were the person that studied those approximately a thousand feet and dealt with the programming the computer aspect of it?

A. Yes, I did.

MR. ALLMAN; My Lord, subject to any objection I would ask that this witness be declared an expert in the field of identification and matching specifically entitled to give opinion evidence regarding the human foot and footwear.

THE COURT: Any questions, Mr. Furlotte, on the question of expertise?

MR. FURLOTTE: Have you ever had any superiors declare you an expert or certain exams that you've had to pass?

A. Well, the only place that I can be declared an expert is in the court of law and I have been declared an expert in the court of law in physical matches and fingerprint work.

MR. FURLOTTE: Physical matches in fingerprinting?

A. No, physical matches and - of physical evidence and fingerprint identification.

MR. FURLOTTE: O.K., is that physical matches of footwear or physical matches of feet?

A. It's physical matches of footwear, glass, paper. Physical matching falls under one criteria, it's the evaluation of physical evidence to form a conclusion, whether it be bare feet, footwear, glass, plastic. It's an evaluation of the physical evidence to come to a conclusion.

MR. FURLOTTE: Have you ever given evidence in court before matching bare feet?

A. No, I haven't.

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MR. FURLOTTE: Or matching feet to boots?

A. No, I haven't.

5 MR. FURLOTTE: Now, your studies in these areas, a lot of
it was of your own initiative?

A. The study was my study, yes, I did the study
myself.

MR. FURLOTTE: And have you ever had your studies
10 reviewed by superiors or other experts in the
field?

A. Yes, I have. On several occasions I presented my
study along with some charts to an identification
conference that was held in Fredericton where we
15 have identification people and coordinators from
across Canada. I've also presented my study to
Special Agent Bodziak from the FBI and discussed
my findings again from the study with Dr. Keith
Bettles, a podiatrist out of P.E.I. I've shown
20 other organizations within the R.C.M.P., G.I.S.
Sections, the study that I was conducting.

MR. FURLOTTE: So what I get, you've discussed your work
with other alleged experts in the field?

A. Yes, we've conferred on it, that's correct.

25 MR. FURLOTTE: But there was no formal peer review board
to undertake to study your competency?

A. No, there's no formal course in physical matching,
it's an expertise learned over a period of time
through training and reading material that other
experts in the field write on. You form your own
30 expertise in that field.

MR. FURLOTTE: But in the end it all can be explained by
common sense, can't it?

A. I don't believe that common sense can enter into a
35 conclusion. Common sense in some physical matches

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5 can enter into two pieces joining together or a
piece of material fitting one to another, but the
conclusion that that was at one time one piece of
material, I don't think it can be a common sense
approach, it has to be through study and work that
was completed by the expert in that field. I
don't think common sense would - only common
10 sense would come into it.

MR. FURLOTTE: So your conclusions, then, do I take it
you're saying would be basically subjective?

A. My conclusions would be based on a comparative
analysis of a known to an unknown to arrive at a
15 conclusion. Whether common sense was involved
with that analysis along with study and expertise
in that field, then common sense might play some
part, but not just a common sense approach.

MR. FURLOTTE: I have no further questions.

20 MR. ALLMAN: Just one in re-examination on this specific
point. Mr. Furlotte asked you if you yourself
had done comparisons of feet to the footwear, to
shoes or boots. Are you familiar with work that's
been done in that sphere by other experts?

A. Yes, I am. I've read articles before this case
25 came about on the matching of feet to boots.
Michael Cassidy's book has a chapter on that
topic. I knew that a doctor from Prince Edward
Island had given evidence in a court of law in
Sydney, Nova Scotia. I didn't realize it was Dr.
30 Bettles until after I contacted him for this
particular case, but yes, I've read articles on
it and knew that the science existed.

Q. Do you know if the FBI and Scotland Yard are
35 involved in that area?

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- A. Yes, while I was doing my research into the case I contacted a Dr. Facey from Scotland Yard,
5 discussed the facts and ideas with him, conferred with him. I also contacted, on the advice of Dr. Facey, a Special Agent Bodziak in Washington, by phone and spent a week down in Washington conferring with William Bodziak.
- 10 MR. ALLMAN: I have no other questions. I renew my motion.
- THE COURT: Well, I will declare the witness for the purpose of this trial an expert in physical matching with particular emphasis on feet and
15 footwear. I've explained to the jury before that you will have to make your assessment, of course, in the case of this witness as any other expert witness as to whether they know what they're talking about or how impressed you are with their
20 qualifications and their conclusions and so on, or their ability to make conclusions.
- MR. ALLMAN: Sergeant Kennedy, how did your involvement in this matter begin?
- A. As a result of our request to attend to Newcastle
25 Detachment on the 24th of November, 1989, to give some assistance I patrolled to Newcastle, arriving there at approximately 2:30 in the afternoon.
- Q. When you received the request where were you?
- A. I was at home.
- 30 Q. In Fredericton?
- A. That's correct, yes.
- Q. So you had to go up to Newcastle?
- A. That's right, I had to drive.
- Q. Carry on.
- 35 A. After I arrived there at the scene Staff Sergeant

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5 Gatto was there and several members of the
R.C.M.P. The matter was discussed and it was
decided from information received that a pair of
boots had been found in Bathurst by Keddy's Hotel
and the fact that Mr. Legere was in custody in
Newcastle, that a set of molded impressions of his
feet be taken believing that this could be used
10 as evidence at a -

Q. The purpose would be to compare what with what?

A. Compare the feet with a pair of boots that was
seized from Keddy's Hotel.

Q. At the time that you got there and you received
15 the information and came to the decision that you
would wish to take these casts were you in a
position there and then to do that?

A. From the information I had gathered even before
going to Newcastle over a period of several years
20 it was realized that there was only one good
medium for taking the molded impressions and that
was a foot foam that podiatrists use to take
molded impressions of feet. I checked around
Newcastle area and there was none. I checked
25 Fredericton, I couldn't find any, and I couldn't
find any in Moncton. Moncton advised that they
might be able to get in touch with somebody to
have it shipped from, I believe, Toronto. I then
contacted Prince Edward Island, a Dr. Keith
30 Bettles, and he had some so we chartered a plane
to fly there, pick up the foot foam and bring it
back.

Q. The Dr. Bettles to whom you're referring, he's in
court, is he?

35 A. That's correct, yes. I didn't get the foot foam

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until approximately 9:00, 9:10 that evening and immediately made arrangements to go into the cell.

5 I did at 9:20 go into the cell.

Q. But you chartered a plane the same day to go over, get the foot foam and come back again?

A. That's correct, yes.

10 Q. And it got back to you and into your hands about what time?

A. Approximately 9:00, 9:10.

Q. And what did you then proceed to do?

A. I got the foot foam called Foam Art ready and went into the cell where Allan Legere was.

15 Q. And the Allan Legere to whom you're referring, is he in court now?

A. Yes, he's seated between the two R.C.M.P. officers in the prisoner's box.

20 Q. And what did you then proceed to do when you came into his presence?

A. I explained to Mr. Legere who I was, that I was Sergeant Kennedy of the Royal Canadian Mounted Police, I was involved into an investigation into the murder of Father Smith, and that I was there to take molded impressions of his feet.

25 Q. And without going into the details of any conversation, did you in fact take molds of the kind you've been discussing?

A. Yes, I did.

30 Q. Do you have those with you?

A. Yes, I do.

MR. ALLMAN: Could I get these marked for identification, please?

THE COURT: www and xxxx for Identification.

35 Q. I'm going to show you two objects, the first

50

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that's been marked 4W, what can you tell us about that, please?

5 A. I might explain first that when a molded impression is taken of an individual's foot what's called Foam Art is a foam similar to the foam that you would stick plants into. It's a soft foam, when pressed it molds to the finger. This is a
10 larger version and a little bit softer, but the person stands on it, keeps putting their weight on the foot until it gets about halfway down into the foam which is about three inches thick. The foot is removed and a plaster of Paris, this being
15 dental stone, which is a similar material it's - we use dental stone in the Forensic Ident. Section because when it dries it's a finer grain, as plaster of Paris is not, and when it's dried the foot foam is peeled off and it crumbles away and
20 the foot is washed off and that's why the foam is not here, it's been destroyed, it's gone. Again, the molded impression was taken, and at approxi- 10:00 p.m. that evening a cast was made of the molded impression and left to dry overnight and
25 the next day.

Q. And what you have in front of you now is what, then?

A. That's the result of the molded - the cast taken from the molded impression out of the Foam Art.

30 Q. After it's dried?

A. That's correct, yes.

Q. The one that you're looking at now which is 4 -

A. 4W.

Q. - is what?

35 A. It's the right cast of Allan Legere's foot.

51

Sgt. Kennedy - Direct

Q. And what about the other one?

5 A. That would be the left cast of Allan Legere's
foot.

Q. The left cast, you mean the left cast of the left
foot, 4X?

A. That's right.

10 Q. And subsequent to taking the molds in whose
custody have they been?

A. They have been in my custody up until the present
time. When I was in Washington discussing the
matter with Special Agent Bodziak he had
possession while I was there to do his photographs
and examining them.

15 Q. And I think you mentioned Dr. Bettles, has he also
while they were in your custody observed those
items?

A. Yes, they were brought down to him also and I kept
20 possession of them and I did any photographs that
Dr. Bettles requested. I did my own photographs
down in P.E.I.

Q. Subject to any objection I'd ask that those two
items be entered as exhibits and I have indicated
25 that I'll be calling Mr. Bodziak and Dr. Bettles.

THE COURT: Those will be P-136 and P-137.

Q. O.K., just for the record, those items have now
become P-136 and P-137. I'm going to show you now
two other items, 4U and 4V. Can you tell me if
30 you recognize them and give me any information
about them that you have?

A. Yes, my initials appear on the document protector
that's holding the two bread bags. I received
those from Staff Sergeant Gatto on the 9th of
35 October, 1990, at approximately 2:20 p.m. at the

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Fredericton Ident. office. I've had these in my possession since that day until today in court.

5 Q. I take it that again Special Agent Bodziak and Dr. Keith Bettles have also seen those things?

A. Yes, the exhibit that I'm mentioning here all ran through the same procedure.

10 MR. ALLMAN: I'd ask that those items be entered as exhibits on the same basis as before.

THE COURT: P-138 and P-139.

15 Q. And just for the record, those two items which I have showed you, 4U has become P-138, 4V has become P-139. I'm showing you an item that was entered as P-133. Can you look at that and tell us what you can about that?

20 A. Yes, that's a pair of Greb Kodiak boots that I received with my initials on it on the 13th of December, 1989, from Sergeant Dan Chiasson from the Bathurst Identification Section and -

Q. Those are the boots that purportedly were found near to this car at Keddy's?

25 A. That's correct, the boots that were reported to be behind Keddy's Hotel. I took the soles off the boots and I put grey tape on the top to do some photographic work and examination of the boots.

Q. When you received them, then, they were in an ordinary boot condition, I take it?

A. They had the sole on it, yes.

30 Q. I'm showing you now P-120 and I'll put down there P-121. What can you tell us about those?

35 A. Yes, it has my initial on it and the date. I received those from Constable Davis from Newcastle on the first of September, 1990. Again, I cut the sole off and had them in my possession until today

53

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- in court other than the times Special Agent Bodziak was examining them. These are the boots that were purported to have been worn by Allan Legere on his arrest.
- 5
- Q. And it was you that brought those boots, all those boots, to court?
- A. That's correct, yes.
- 10
- Q. Lastly among the items that I'm going to show you are 4Q and 4R. Can you look at those and tell me anything about them, please?
- A. Yes, they are a pair of insoles that I received from Constable Houle on the 9th of June, 1990, and they were the insoles purported to be the insoles from the Greb Kodiak boots that were found by Keddy's Hotel up in Bathurst.
- 15
- Q. And what did you do with those items?
- A. They were held in my possession, again, photographed under several types of light, UV light, luma-light and regular light and examined, and they were in my possession until today other than the time that Special Agent Bodziak had examined them while I was up in Washington.
- 20
- Q. Did the examinations, photographs, etc. cause any injury or damage to those items, the insoles?
- A. No, they did not.
- 25
- MR. ALLMAN: Subject to any objection I'd ask that those two items now be entered as an exhibit on the same basis as before.
- 30
- THE COURT: 4Q would become P-140, and 4R would become P-141.
- Q. Sergeant Kennedy, the items that we've just gone through, the casts, the bread bags, the boots, the insoles, and also the other set of boots,
- 35

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- 5 not the Greb Kodiak but the items that are P-120
and P-121, what was your purpose in getting all
those items together? What did you want to do?
- A. I wanted to do a physical comparison with the
molded impression of Allan Legere's foot with the
inside of both pairs of boots, with the insole of
the boots and the upper portion called the uppers
10 inside of the Greb boots.
- Q. When a person wears footwear, boots, shoes, etc.,
what effect does that have upon what he or she is
wearing?
- A. Yes, the base of the foot being a solid structure
15 it first of all indents or puts an indent in the
sole or insole of a pair of boots. The boot then
starts to conform to the foot itself, the sweat
from the foot due to heat leaves an imprint of the
sweat area on the insole, and after a period of
20 time you have both indents with the sole of the
shoe conforming to the foot and the sweat areas
left on the bottom and on the upper portion of the
boots.
- Q. Is there a ratio between how long and how often a
25 person has worn a particular item of footwear and
the extent to which these impressions and sweat
marks will be left?
- A. The studies that I've done on my own, the articles
that I've read, the people I've conferred with,
30 agree that it takes a period of time to start
seeing the impressions, but once the impression is
visible not many changes take place due to
repeated wearing by the same person.
- Q. So that was what you were looking for here, to
35 see if you could make a comparison between the

55

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casts and the footwear?

A. That's correct.

5 Q. Could you tell us how you went about doing that and just take us through it using any objects you want?

A. Well, I have prepared some charts that might assist the court in understanding my comparison.
10 The charts are identical to the booklet that I gave -

MR. ALLMAN: Can I get this item marked for identification, please?

THE COURT: YYYY.

15 MR. ALLMAN: I understand there's no objection to this item going in as a -

THE COURT: Rather than YYYY, P-142. That's called 'A', is it, on top?

MR. ALLMAN: That's 'A' on top. I'm going to show you
20 these items and just ask you to tell the jury what they are without at this stage going through it in any detail. What is P-142?

A. It's a series of photographs. The chart on the board at present is a series of photographs
25 showing the left Greb boot that was purportedly found up by Keddy's Hotel in Bathurst showing different areas of the boot, the left sole, the insole, the left sole with them both together. The cast of Allan Legere's left foot is shown in
30 #5 and #6 on top of the insole and sole of the Greb boot.

Q. These are all photographs you took yourself, and all the photographs you're going to be referring to in the next few minutes are photographs you
35 took?

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A. That's correct, yes.

Q. Which depict the scene as you saw it?

5 A. Yes, the only difference is that the left insole at times was photographed under ultraviolet light and what that does is enhances the sweat areas so it's easily seen rather than the ordinary light where it wouldn't be seen very well.

10 MR. ALLMAN: Could I get this item marked as an exhibit?

THE COURT: So chart 'B' becomes Exhibit P-143.

Q. I'm showing you P-143. I'll give it to you so you can explain to the jury what it is.

15 A. That's a series of photographs again showing the left Greb boot, the same boot as shown in the previous chart except it's just showing the heel area of the boot and again showing the same area on the cast of Allan Legere's foot. The bottom photograph is the cast over the boot using ultra-
20 violet light again.

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

THE COURT: Chart 'C' would be Exhibit P-144.

Q. Exhibit 144, can you tell us just in general terms about that?

25 A. That's a series of photographs showing the bread bag that was introduced as an exhibit earlier and the left foot cast from Allan Legere.

Q. And the bread bag is over the cast on -

30 A. At times. The first photograph it's just on a piece of cardboard, white cardboard. The next two photographs the cast is inside of the bread bag and on the bottom photograph it's a piece of cardboard and the cast of Allan Legere's foot side by side.

35 MR. ALLMAN: Item 'D' which I believe can go in as an

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exhibit.

THE COURT: P-145, chart 'D'.

5 Q. I'm showing you now P-145. Can we go through the same explanation process for that?

A. Yes, again this is the right Greb Kodiak boot purportedly found by Keddy's Hotel in Bathurst. The boot is taken apart and shows several photographs of the sole, the insole, and the sole with
10 the insole on top, and the other two photographs are the -

Q. That's 5 and 6?

A. 5 and 6 are the molded impression of Allan
15 Legere's right foot, and on the bottom one it just shows the cast on top of the insole and sole together.

MR. ALLMAN: Item 'E' which I believe can go in as an exhibit.

20 THE COURT: P-146.

Q. I'm showing you P-146. What about that one, what can you tell us about P-146?

A. That's a series of photographs again showing the right heel of the Greb boot, the right heel of the
25 cast of Allan Legere's right foot. Number 2 again is the toe area of the right Greb boot and the right cast of Allan Legere's foot. Number 3 is the same photograph as #2 except it's done under ultraviolet light.

30 MR. ALLMAN: Item 'F', this I believe Mr. Furlotte wants marked for identification.

THE COURT: This would be YYYY for Identification.

Q. What can you tell us about 4Y?

A. Again it's a series of photographs. The photo-
35 graph underneath, the positive photograph,

50

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Q. And the ability to see through the top one which is clear enables you to visually compare the top and the bottom one?

5

A. That's correct, yes.

MR. ALLMAN: My Lord, subject to any objection I'd ask that that be entered as an exhibit.

THE COURT: That would be P-147, so 4Y becomes P-147.

10

MR. ALLMAN: I'd ask that 'G' be marked for identification.

THE COURT: ZZZZ.

Q. I'm putting it on the easel, 4Z. Can you explain to us what that is including references to items 3 and 6 which appear to have the same kind of overlay?

15

A. Yes, it's again a photograph of the interior of the Greb boot. This area now is the upper portion of the Greb boot mentioned earlier, the one purportedly found behind Keddy's Hotel in Bathurst. The same with the photograph on #4 photograph, it's the right Greb boot, the interior portion, the upper portion of the boot. Photographs #2 and 5 are the left and right foot cast of Allan Legere showing the toe area only, and photographs #3 and 6 are combining - photograph #3 combines with an overlay photograph 1 and photograph 2. The only difference between photograph 2 and the overlay part is that this was done on a precision line film so I could see through it, and this was done on paper. The same applies to the bottom photograph, #6. Photograph #5 was done on paper. The overlay, same photograph, was done on a film so you could see through it.

20

25

30

35 MR. ALLMAN: Subject to any objection I'd ask that 4Z

become an exhibit.

THE COURT: That would be P-148.

5 MR. ALLMAN: I'd ask that item 'H' be marked for identification.

THE COURT: AAAAA for Identification.

Q. Can you go through the same process, please, with SA?

10 A. Yes, again it's a series of photographs. Starting with #1 is a left Gorilla boot that was entered into evidence here just shortly. It purportedly is a boot worn by Allan Legere at his arrest. Photograph #2 is the left foot cast from Allan
15 Legere taken by myself. Photograph #4 is the insole to the Gorilla boot. Photograph #3 is the left insole from the Greb boot which again was the boot purportedly found by Keddy's Hotel in Bathurst. Numbers 5 and 6 are overlays combining
20 the left insole from the Gorilla boot photographed on paper, the left foot cast from Allan Legere done on the film base so I could see through it as for an overlay, and the same on the right side, it's the paper photograph on the bottom being the
25 left insole of the Gorilla boot and -

Q. Which boot did you say this was?

A. The left insole of the Gorilla boot, and the overlay being a copy of the left insole from the Greb boot done on film so I could see through it.

30 Q. Those are the items in the bottom lefthand and righthand corner of that?

A. That's right, it's just a comparison between the two photographs on this side is compared down here and the photograph on this side, those two
35 are compared down here with an overlay.

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

THE COURT: P-149.

5 MR. ALLMAN: I would ask that 'I' be marked for identification.

THE COURT: BBBBB.

Q. I'm showing you 5B. Could you go through the same process in relation to this item?

10 A. It's the same type of chart which was just shown except we're showing the right Gorilla boot and doing the same process all the way through showing the right cast of Allan Legere with the right insole from the Gorilla boot again with the
15 right insole from the Greb boot and doing an overlay comparing on the photograph 5 and comparing the foot cast with the Gorilla boot and on photograph #6 I'm comparing the insole from the Greb boot with the insole from the Gorilla boot.

20 Q. By means of an overlay on both those latter?

A. That's correct, yes.

MR. ALLMAN: Subject to any objection I'd ask that be entered as an exhibit.

THE COURT: P-150.

25 Q. Now that all those items have been entered as exhibits what I'm going to ask you to do using whatever of those charts is appropriate at the time you come into it to take us through what you did and what your findings were.

30 A. If I can start with chart 'A' and work my way through I might add that the charts I'm showing is not how I made my conclusion. It's an illustration to the Court which would help me explain some of my findings.

35 Q. O.K., just to clarify that, and I think this also

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links up with what Sergeant Chiasson is saying,
when you're making your comparison what do you do?

5 A. When a comparison between a bare foot impression
or a cast is made with an unknown boot a compari-
son is made with the cast and with the boot on a
table. Several points are compared by the use of
calipers to get distances between toes, the
10 differences between the ball of the foot, any
indentations in the insole is compared with any
protrusions on the cast. Different lighting
techniques has to be used to enhance any indents
by using oblique lighting, using infrared
15 lighting, using ultraviolet light and using luma-
light. They're all sources of light that we have
available. The comparison is made throughout a
long period of time, taking photographs and
comparing the photographs and comparing the
20 exhibit itself. The charts are just an accumula-
tion of my final findings and just as an illustra-
tion to the Court on what areas I found matched.

Q. You don't make the charts and then do the
comparisons from the charts?

25 A. No, the charts are made after your findings and
just to show -

Q. The charts are just a summary and illustration?

A. That's correct, yes.

Q. Granted then that in this case you would have
30 used the actual objects, not the charts, and
you're just using the charts for an illustra-
tion, can you proceed to take us through what
you did?

A. Using chart 'A' the first procedure was to cut
35 the sole off the left Greb boot, which was done

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and it's in as an exhibit as you saw earlier.
The purpose of the photograph is just to show the
5 shape of the upper part of the boot.

The next photograph is a photograph of the
insole of the sole of the boot with the insole
removed. I bring your attention to an area in the
heel, in this area, there was a nail protruding
10 up, a nail or a staple, protruding up through the
heel in this area here, again photographed to show
the overall area plus the nail hole protruding up
and a break here in the sole of the boot. After
being worn for a period of time it broke and
15 caused a raised area along this portion here,
quite a good raised area.

Q. That's the inside of the insole but the inside of
the left sole?

A. That's the inside the sole. I call this the sole
20 and this is the insole, the sole being the inside
sole, not something you would walk on, it would be
too hard. This is the insole, the separate insole
from this area, again noting a hole in the heel of
the insole and it's directly in line over the nail
25 or staple hole in the sole. It's in the exact
location and is consistent with being made by the
nail.

The areas here, dark areas all through here,
is a sweat area that comes up and it's consistent
30 with the ball of the foot, when the ball of the
foot is walked it causes a sweat area. Also that
can't be seen in this photograph but can be seen
in the next photograph is also indents, indent
areas through here where each toe comes in contact
35 on a daily basis with the bottom of the shoe.

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Again this one under normal light, with oblique lighting you can see. Through here is an actual indent. This is a raised area that comes right across that would separate the heel from the ball of the foot and the heel area here again is an indented area, also stained but indented, and again the stain shows up better under UV light than it does under normal light. It's visible under normal light and it's visible more by looking at the exhibit itself, but UV light brings up the stain itself a lot better.

This is the cast of Allan Legere's left foot again just showing the overall foot again with the attention being brought to a mark in the heel of the left foot. On a comparison it was found that when all toes and ball of the foot area it was placed in the indented portion and sweat areas of the left insole of the Greb boot the nail hole lined up exactly and was consistent with a hole in the heel and the nail in the heel of the Greb boot.

Photograph #6 shows the cast being placed over the insole. This area through here is an indented area. Now, because this is on top you can't see the sweat but also a sweat area there, very slight. The main portion of the sweat area is through here and the raised area that I mentioned earlier that runs along here is in this portion here, which you can see. This fits precisely with the extension from his toe down through and it comes directly across to the other side. Again when all this is in place, and the other chart will show when this is moved back the

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mark on the heel lines up precisely with the hole
and the nail hole in the bottom of the left Greb
5 boot.

Chart 'B' is a close-up of the heel of the
same boot. It just shows - again it's hard to see
with ordinary light, the nail protrudes through
this area here. I'll jump to photograph #3, the
10 insole now placed in its proper position, that's
the hole in the insole which is in the exact
location and is consistent with being made by the
nail in the bottom of the boot. This shows the
mark and indentation in the heel area of the cast
15 of Allan Legere.

Again jumping to photograph #5, the toe area,
as I explained on the other chart, is placed in
the indented portion and the sweat areas. The
nail hole in the insole and the nail in the boot
20 line up in the exact location as the mark on the
bottom of the cast of Allan Legere's foot. This
shows better what I'm talking about, the sweat
area. It's a photograph -

Q. This is #6?

25 A. Photograph #6, it shows better the sweat areas as
in photograph 5. It's the same photograph except
the foot now is held back a bit under UV light and
the sweat area through here is the ball of the
foot here and extends across and through and
30 follows the ball line up that foot. The area
where the toe touches the insole again shows up as
a dark area and the raised portion here that
wouldn't get as much weight and sweat pushed in is
a crease here that would fit in between the toe
35 and the ball of the foot area.

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Q. And how does Mr. Legere's cast fit on 5 and 6 into the insole and sole?

5 A. The cast of Allan Legere's foot fit perfectly into the 5 and 6. It followed all the contours, it followed the sweat. The ball of the foot, as you'll see in my other charts, dropped down drastically, curves down to a point and also comes
10 up to a little peak inside which you'll see on other photographs and all of that fit precisely with the sole and the cast of Allan Legere's foot.

Q. Was anything done in an attempt to ascertain what had caused, what might have caused the mark,
15 indentation, call it what you will, on the left heel of Mr. Legere?

A. Well, yes, the mark on the - indented mark on the heel of Allan Legere's foot was taken to Halifax to a forensic lab to the electron microscope and
20 it was examined -

MR. FURLOTTE: I'm going to object to any hearsay evidence.

MR. ALLMAN: My Lord, my understanding is that an expert is entitled to refer to the evidence of other
25 experts that he's used for his purposes. For example, a doctor can refer to a report of an X-Ray technician.

MR. FURLOTTE: My Lord, he's only entitled to hearsay evidence on explaining why he should be declared
30 an expert in his field. As to relying on maybe other experts' participation in the investigation and the results of their findings, then that would be hearsay evidence and I have the right to cross-examination of that particular evidence, and if
35 that witness is not brought in for my cross-

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examination, then this witness is definitely not entitled to give any hearsay evidence.

5 THE COURT: What is the nature of the evidence?

MR. FURLOTTE: My Lord, I think this is a matter should be discussed in the absence of the jury.

MR. ALLMAN: I agree. We've been sending the jury out often enough, I don't see why he should be any different.

10 THE COURT: Pack them right off to lunch, I think. It's quarter past twelve so I think perhaps we'll ask you to go to lunch now and we'll carry on for a little while here, for a few minutes, it won't take very long, and we'll see you back at perhaps a quarter to two or whatever - two o'clock.

(JURY WITHDRAWS.)

20 MR. ALLMAN: My Lord, I'll ask the question, I'll get the answer, and then Mr. Furlotte can explain what his problem with it is. The question was what tests were performed on that portion of Mr. Legere's foot to see what might have caused the indentation.

25 A. Yes, I brought it in to the - again, as I said, Halifax Forensic Lab, and it was put under the electron microscope and found to contain a high iron content, i.e., probably rust, is what was stated.

30 MR. ALLMAN: That's what I would seek to elicit from this witness.

THE COURT: There's not very much wrong with that, Mr. Furlotte, is there?

35 MR. FURLOTTE: Did you do the tests yourself?

A. No, I was there when the test was being done but I didn't do it myself.

5 MR. FURLOTTE: And was it your opinion that that was was a high iron content?

A. No, it wasn't.

MR. FURLOTTE: So you're relying on hearsay evidence?

A. I'm relying on what the expert at the lab told me,
10 yes.

MR. FURLOTTE: Well, My Lord, that would be hearsay evidence and inadmissible by this witness.

THE COURT: Well, I'm inclined to agree with Mr. Furlotte. Mr. Walsh can argue it.

15 MR. ALLMAN: My Lord, Mr. Walsh has a legal argument on that matter.

THE COURT: But why doesn't it suffice for the Crown's purposes to have this witness say I observed a mark on the cast or there was some material on
20 the cast or whatever?

MR. ALLMAN: Well, I think he's already said that. We feel that it adds a little to our case to indicate that what was observed in fact turns out to likely have been rust. I don't know that it's
25 a matter of great importance but anyway, Mr. Walsh can just maybe briefly address Your Lordship.

THE COURT: Let's hear what Mr. Walsh has to say.

MR. WALSH: My Lord, the only reason being that I've had occasion with the DNA evidence to look at
30 scientific opinions generally with respect to what I could and couldn't bring before the Court in the form of an expert opinion. My understanding of law as it exists now, particularly with the more recent decision of the Lavallee case in the
35 Supreme Court of Canada, Your Lordship will

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remember that case, it's the case in which the battered wife syndrome was put before the Supreme Court of Canada and accepted, and in that particular case there is a litany of steps or summaries of law that the Supreme Court of Canada set out with respect to expert opinion. I don't have access to the case right at this moment, My Lord, but my memory of that particular case is that the expert opinion in this particular regard, if he's relied on the results of another expert in addressing the very questions that he has to address, and that is the significance of the nail hole in relation to the nail and that certainly he went to an electron microscope for that particular purpose, it is incorporated within his opinion that he's giving, it's part of what he actually relied on. He relied on the opinion of other experts which is a classic exception to any hearsay rule.

Now, my understanding is there's two schools of thought that have come out of Lavallee, one of Mr. Justice Sopinka who is a majority of one, albeit, in which he has indicated that provided that the expert, it's the type of evidence or opinions that he would rely on in the course of his work, that in itself is sufficient for the expert to put his evidence before the Court. Otherwise the experts in any field rely on opinions of others constantly, it forms part of what they do, and provided it's reliable and trustworthy he's certainly entitled to do that without any independent proof of that particular opinion, the reasoning and the reality behind it

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being otherwise expert opinion would become so laborious every time an expert gave an opinion we would have to bring in other experts and other experts and other experts, and there's a number of cases out west, one in particular I remember, Jordan, in which a chemist relied on the opinion of another chemist who had prepared a standard solution he needed to use in another one. That is one school of thought.

The other school of thought is that the expert is entitled, and this is the majority of the Lavallee decision and I will provide it to you over the lunch hour - the other school of thought, My Lord, is that the opinion that this man gives, he's entitled to give it because it forms part and is part of what he actually did, the type of inquiries he'd made in actually formulating his own opinions, and that's obvious from the fact that he actually took this to an electron microscope. He can still rely on this particular - he can still express that opinion as to what that electron microscope told - he was told from that particular subject.

The Supreme Court of Canada, the majority has said that if there is no independent proof of that particular aspect, then there's no weight that can be given to it. In this particular case Mr. Furlotte - we had a voir dire in this matter, that particular opinion was expressed by the sergeant and there was no objection taken to that particular form of opinion. Since he took no objection to that opinion, now we are in the position where what our position will have to be

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is that he's entitled according to the Lavallee decision to express the opinion he received from the electron microscope. Then it may be necessary, depending on this Court's ruling, to support the weight for that particular opinion to call the person who actually conducted that particular examination, to bring him into court to support that particular aspect of the opinion, and again I would suggest, My Lord - I'm doing this off the top of my head, I haven't read the Lavallee decision in some time - I would suggest respectfully that if I was given an opportunity, five or ten minutes, I could obtain the decision, provide it to you over the lunch hour, and before the jury are called back you could make your decision as to how you wish to approach it.

What we're suggesting, Your Lordship, is that we can satisfy Mr. Furlotte by bringing up that person from Halifax, but that does not prevent Sergeant Kennedy from giving his opinion on that matter and I would suggest that the Lavallee decision which is the authority in Canada at this point in time on scientific opinions is - at least some aspects of scientific opinions - will support that view.

THE COURT: But there was no subsequent finding or opinion made by Sergeant Kennedy which turns on that. That was sort of the ultimate opinion in that line of thought, wasn't it?

MR. WALSH: Yes. My understanding of the sergeant's opinion is that when he was lining up the staple or the nail in the boot with the hole being consistent the electron microscope further

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corroborates - because of the findings from the
electron microscope it further corroborates that
5 the hole in the boot with the insole with the cast
further corroborated that this would in fact be
the mark consistent with the mark on the boot.
That's my general understanding of his evidence.

THE COURT: He could give evidence of that. The evidence
10 which you're endeavouring to seek in his answer
is that the mark or the hole was caused by a
particular - in a particular way or by a
substance or something.

MR. WALSH: Yes.

15 THE COURT: That there was rust on a nail, I gather.

MR. WALSH: That the indentation - and the sergeant can
correct me - the indentation in the insole is
iron and probably rust, something of that
particular line, I can't remember.

20 THE COURT: There would be nothing - and I think Mr.
Furlotte will probably agree there would be
nothing to prevent this witness from saying he was
present when certain tests were carried out on the
hole excluding the mention of the rust or whatever
25 the technical term is there, that the hole lined
up with what he found on the mold impression and
on the inner sole and the sole itself. He can say
that.

MR. WALSH: Yes, I think he can say that without the
30 electron -

THE COURT: If it helps any. I'm not sure it -

MR. WALSH: Without the electron microscope examination I
think he's saying that anyway.

THE COURT: He's saying it anyway, I'm not sure that it
35 adds anything to your case but -

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MR. WALSH: The aspect of that mark in the insole, the
indent being iron or probably rust, is further
5 corroboratorion of the opinions that he's giving in
relation to the fact that the insole, the foot
cast, and the boot match up where the nail hole
is. My position is that, again, Mr. Furlotte
didn't raise it in the voir dire in which this
10 evidence was submitted. Inasmuch as he's raised
it then - I don't want to be redundant, the
Lavallee decision, I would suggest -

THE COURT: Yes, well, the Lavallee decision, Mr.
Furlotte probably hasn't seen that either. Why
15 don't we do this, why don't we adjourn, you get
your Lavallee decision copied, you say you can
get copies?

MR. WALSH: I have a number of decisions on the
scientific opinion evidence that connected to
20 Lavallee and I can provide Mr. -

THE COURT: Well, provide them to Mr. Furlotte, provide
them to me, and we'll come back at a quarter to
two and then Mr. Furlotte would have a chance to
rebut what you've said now in the light of having
25 read Lavallee, and then having listened to that,
then I'll give my decision on that.

MR. ALLMAN: My Lord, just one other point. If Your
Lordship after you've considered the authorities
rules that this witness is not entitled to make
30 specific reference to what the findings were in
Halifax, then we'll be applying to add a witness
to the list and we'll call the person from
Halifax.

MR. FURLOTTE: That's fine, My Lord, if the defence is
35 given sufficient time to provide full answer and

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defence to that witness, and that would mean getting a sample of the evidence and having my own experts check it out, which might take a couple of weeks or a month.

MR. ALLMAN: Certainly shouldn't take a month, but he's got notice now of what the expert would say, he heard yesterday what the expert would say. We could put him in at any time it was convenient in our case. I say he, it may be a her.

THE COURT: Well, you people might - you know, my God, surely the taxpayers of this country have been put to enough expense now in this case. Why don't counsel get together and see if perhaps the question couldn't be asked and answered here? However, that's not for me to force that. You know, that is, seriously, the type of thing that would be agreed upon by counsel in most criminal cases. The other day we listened to four witnesses in succession here, one was from Victoria, one was from Vancouver, one was from Edmonton, one was from Calgary, and they all came here to talk about a kit bag being missing or being stolen or a knife being stolen or something else. You know, in the normal criminal case counsel would agree on that sort of thing. I hope that no one has stock in either Canadian International Airlines or Air Canada, because when this case is over their stock is going to take an awful dip.

MR. ALLMAN: I can assure Your Lordship that we made attempts.

THE COURT: All right, we'll recess till, let's say, quarter to two or two o'clock or whenever we're ready around then.

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

(ACCUSED IN DOCK.)

5

THE COURT: Well, we were discussing this matter of the admissibility of the other matter, and over the lunch hour the Clerk delivered to me, or Mr. Walsh delivered through the Clerk, a copy of the Lavallee decision and another essay on it in the Criminal Reports.

10

Let me just ask a question before I come to you, Mr. Furlotte. As I understand it, this witness, Mr. Walsh - or is it Mr. Allman?

15

MR. ALLMAN: Depends on the question.

20

THE COURT: This witness says that he found, as I understand, a nail protruding from the boot. Then he says that when he took the cast of the foot, or made the mold of the foot, he found a hole in the heel, and then he says that he went to Halifax and he submitted the mold to the people there and they put it into their machine or whatever and they found that the discolouration on the hole of the mold was due to - let's call it rust, I forget what the chemical term was. Am I right so far?

25

MR. ALLMAN: I believe that's my understanding. You could check with the witness, if you wish.

THE COURT: Yes, well, this is my understanding, anyway, from -

30

MR. FURLOTTE: That's not my understanding. My understanding is that there was no hole in the heel but there was a mark or something stuck on the cast once they took the cast and that portion they took off the cast and brought it to Halifax for examination.

35

THE COURT: Would you relate that, would you relate
what -

5 SGT. KENNEDY: Yes, I said that there was an indentation
in the heel with a brownish-red substance in that
indentation.

THE COURT: On the what?

SGT. KENNEDY: On the cast of Allan Legere's left foot.

10 THE COURT: Are you talking about the Foam Art cast?

SGT. KENNEDY: Yes, the one I have here in court, the
plaster cast of that.

THE COURT: Well, this is the solid off the Foam Art?

15 SGT. KENNEDY: That's correct, yes. That's where the
material was found indented into an indent in the
heel of that cast.

THE COURT: Yes, and you noticed what material, a black
mark or something?

20 SGT. KENNEDY: I noticed a dark mark, a reddish-brown
mark, and I took the whole cast to Halifax and
Mrs. Lyons extracted some of the brownish colour
out of there and -

THE COURT: And then she said that was so-and-so?

SGT. KENNEDY: Yes.

25 THE COURT: Yes, but you had earlier noticed a nail in
the boot?

SGT. KENNEDY: That's correct, yes.

THE COURT: Which corresponded, you say, the position,
to the hole that you found?

30 SGT. KENNEDY: That's correct, yes, and it was consistent
in size and shape with the nail in the bottom of
the shoe.

THE COURT: Yes. Well, without requiring to hear from
you further, Mr. Furlotte, I'm going to rule as
35 follows. I'm not going to permit this question to

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be put to the witness and I'm upholding the objection taken by defence counsel in the matter.
5 The witness's opinion, or at least his evidence as to the hole and the matching and so on is purely a physical observation and what the substance was in the hole is really over and above his opinion. His opinion isn't based on the
10 opinion as to what the substance was in any way, so I don't see how the Lavallee decision is really applicable to the thing at all.

If the Crown wants to call evidence as to what the material found in the hole - if they feel
15 that is relevant I would be inclined to permit them to call a witness to testify to that point. I can't really see that it's all that important but, however, I'm not trying to tell the Crown what they should try to prove or what they
20 shouldn't try to prove. When I say that I would be inclined to grant the Crown permission to do that I do it on two bases. One is that as I understand it there was notice in the will-say statements or reports to the effect that this
25 witness would be saying that and would be referring to what he had been told by the lab in Halifax or by the expert in Halifax.

MR. FURLOTTE: My Lord, there is nothing of any such nature in the will-say statement nor is there
30 anything of such nature in the report by this witness. The first I've heard of a substance being taken off the heel and sent in for analysis was yesterday at the voir dire which took me quite by surprise.

35 THE COURT: Well, that was the second point I was going

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5 to come to was that it was - I made a ruling this
morning that the evidence given by the witness
yesterday could be given in court today, and the
evidence given by him yesterday did include this
reference to what the substance was found in the
hole, and no objection was taken to it at that
time and I suppose strictly one could - the Court
10 could take the position today that, well, it can
be repeated today before the jury because it was
approved of this morning. I'm taking a narrower
view of it than that. What does the Crown have to
say on this other point?

15 MR. ALLMAN: On that point, My Lord, if in fact no copy
of the report from the lady in Halifax was
attached to Sergeant Kennedy's report, then we
apologize, it would be an oversight. He has been
aware of it since yesterday when he heard the voir
20 dire. I know he's got a copy of the report now.
We would, I think, want to call the lady from
Halifax. We are just at the moment checking upon
her availability. I believe there was a situation
where she may have been pregnant or something of
25 that sort, I'm not sure. We're checking on her
availability so I'm not actually saying at the
moment that we do want to call her. If she's
available we would like to call her and, of
course, as is the usual practice when witnesses
30 are added to the list, Mr. Furlotte is entitled
to a reasonable length of time to get prepared for
her evidence. Her evidence in the report which
Mr. Furlotte would have to be prepared for is as
follows:

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5 "The item was examined in the presence
of Sergeant Robert Kennedy, one molded
foot impression. The purpose was to
examine and identify foreign debris on
the heel area of the impression.

10 Findings: The heel area of the foot
impression bore foreign blue fibres and
a foreign red substance.

15 Conclusion: The foreign red substance
was predominantly iron and was probably
rust."

That's what he'd have to be prepared to deal with.
I don't think it would take a great deal of time
to be prepared for it but we certainly recognize
20 Your Lordship would have to give him whatever you
felt was appropriate time to prepare.

THE COURT: Well, two weeks would be a sufficiently long
time and that is when, presumably, the defence
will be asked if they're calling evidence. You'll
25 be bringing up the matter again if you feel that -

MR. ALLMAN: I'll raise that matter again when I know the
exact status of that lady.

THE COURT: But right away, I mean tomorrow or -

MR. ALLMAN: As soon as I know the status of the lady and
30 that she is available and when she's available
I'll return to that topic.

THE COURT: I'm not making a ruling at this time,
simply -

MR. ALLMAN: No, no, I'll renew that application if
35 appropriate.

THE COURT: So we'll deal with that tomorrow, but anyway,
I've made myself clear on what this witness can
and can't say.

MR. ALLMAN: I would propose to ask this witness again
40 just to clear the situation up and go back so we
can start afresh where we were and my understand-
ing is that this item was taken to Halifax for

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5 further tests, leave it at that, and move on to
'C'. That's already in evidence and it would
just go ahead.

THE COURT: Yes. I indicated before lunch that perhaps
there's something this witness can say about it
having been confirmed there was a hole there but
I can't see that that really helps or -

10 MR. ALLMAN: It isn't that there was a hole there, it was
what was in the hole or indentation, so I won't
get into that with him.

THE COURT: This witness puts a nail in the hole, the
other witness puts a rusted nail in the hole.
15 That's the only difference, isn't it?

MR. ALLMAN: That's right, that's about it.

THE COURT: All right. Well, you understand what you
can't say?

SGT. KENNEDY: Yes.

20 THE COURT: So we'll have the jury back in.

(JURY CALLED - ALL PRESENT.)

SERGEANT ROBERT KENNEDY RESUMES STAND:

25 DIRECT EXAMINATION BY MR. ALLMAN CONTINUES:

Q. Yes, I would just like to go back to what was
dealt with this morning. So far, Sergeant
Kennedy, you've been dealing with among other
things the left area of the boots that were
30 allegedly found near the vehicle - among other
areas you've been dealing with the left heel
area?

A. That's correct, yes.

Q. And you indicated that there was a nail or -
35 I forget what the other word you used was, a -

81

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A. - staple.

Q. Staple, and I think you indicated that - I don't
5 want to put words in your mouth, what was the
relationship between the nail or staple, the hole
in the insole, and the observation you made in the
cast of Mr. Legere's left heel?

A. Again going back to photograph #4 - or photograph
10 #5 first, after I put the casted impression in the
insole and had the toe and the ball of the foot
line up, also the sweat areas that run, and shown
in photograph #6, back through in the same
15 direction as the ball area on the cast of Allan
Legere, it was noted that the mark indentation in
the heel of the cast of Allan Legere lined up
precisely with the hole in the insole and with the
nail in the boot itself. The mark in the heel was
20 consistent with being made by the nail in the
boot.

Q. O.K., that's in terms of the fact that they line
up?

A. It's penetrating, yes.

Q. What about size or shape in terms of the -

25 A. Well, when I say it's consistent with I mean both
consistent with having been pushed up and the same
relative size and shape as the nail in the boot.

Q. And I think you also indicated that the cast was
30 taken to a laboratory in Halifax for some further
work to be done on it?

A. That's correct, yes.

Q. And I think basically that concludes 'B', am I
right?

A. I believe so, yes.

35 Q. All right, and could you proceed on to the next

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chart?

5 A. That really concludes the left boot. Again the
chart shows the end results of my work done on
it. I can elaborate on the work that was done
before the charts were made.

Q. O.K., would you, please? .

10 A. The toes and the ball of the foot and the heel
areas were all measured with a caliper to ensure
that the toes and the ball of the foot lined up
in distances, that the distance between each toe
and the distances between the toes and the ball of
the foot were consistent, that the point where the
15 indentation in the cast of the foot also was
consistent to the - what we call the optical
centre of each toe. Taking the optical centre as
the very centre of each toe regardless of how
heavy or how big of a mark a toe will make on an
20 inked impression, if you take the optical centre
and the toe gets smaller the centre will still be
there, so taking a measurement using a caliper,
just using calipers to go from the optical centre
to the mark to ensure that each measurement was
25 the same both in the molded impression and in the
insole, and they were.

Q. When you were talking about that you were looking
at the casts. Would that be of assistance to you
just to show the jury what you were doing?

30 A. To take the optical centre that we call is just
taking the very centre of each toe, the very
centre of each one, which is very easy to find,
it's the - I made up a 'T' grid measured one to
five millimetres each side of the 'T' and lined
35 up the 'T' grid until I had the same distance on

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5 each side and marked the optical centre. This was
then, with calipers, just distance-wise to the
metatarsal area which is the upper area here, in
three places, and also to the optical centre of
the heel which ended up being in about this
direction. I also took the distances from the
optical centre of each of the toes to the mark on
10 the heel to ensure that they were consistent in
both the cast and the insole, and I found they
were.

The ball width, again with calipers, were
transferred from the cast to the insole, again
15 found to be consistent. The width of the heel,
the overall length of the foot using calipers,
were transferred one to the other and all were
found to be consistent with the - to be identical
with the insole and the cast, and these charts
20 show that when the cast is placed on the insole
that every point that I just mentioned line up
and the hole in the bottom also lines up.

Q. So what we see when we simply look with our
unaided eye at those charts, you went further,
25 you measured with calipers?

A. Just taking the distance with a caliper,
transferring it to the insole or vice-versa,
taking the measurements from the insole and
transferring it to the cast, it's easy to see the
30 cast fitting in to all the indentations from the
side and it's easy to see when you lift it up, but
to get underneath the proper way is to use the
calipers and just distances to ensure that it is
in fact lining up.

35 Q. That's measuring as opposed to just looking?

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5 A. That's correct, it's another aid into arriving at a conclusion. Chart 'C' is a photograph of a bread bag that's in as an exhibit at the present time.

Q. Do you want the braed bags?

A. Yes.

Q. P-138 and P-139, two bags.

10 A. These are the bread bags I received from Staff Gatto on the 9th of October, 1990. Both were examined for any marks or any evidence that I might find inside. On one of the bread bags when it was examined - actually on both bread bags that were examined one portion of the bag seemed to
15 have a wear area, and the wear area on the bottom of the bag appeared all along the inked area which is the writing for the name of the company, but in particular up in this part here and in the bottom area. Again a hole appeared. The area where the
20 hole was was approximately the same size as a heel would be if a foot was placed inside the bread bag and the wear area here, in this area, appeared to be approximately the same size as a wear area on a ball of a foot, again if a foot happened to be
25 there.

When the bag was turned over on the opposite side a hole on the opposite side was found. It was consistent with a toe that may have protruded through if, again, the bag was put on the foot.

30 Q. Just show the jury that hole, the one that you say is consistent with a toe coming through.

A. It's on the opposite side of the bag.

Q. You've got your finger through it?

35 A. Yes, my finger's through it. Again this shows the bread bag on a piece of cardboard showing the area

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5 that I mentioned here and the area up at the top
that again has been - it's a worn area. I took
the molded impression of the foot cast of Allan
Legere's foot. I put it in the bag and put the
toe through the top of the bag as if it was to be
worn on the foot.

Q. Which toe? Which toe would you have put -

10 A. The large toe, the first phalange of the left
foot. I then wrapped the foot up as if it was
being worn in the boot as shown in photograph #2,
and when it was turned over the wear area on the
ball of the foot fit in perfectly with the wear
15 area on the ball of the foot. The wear where I
thought was the heel area fit in with the heel
area and there was a hole in the bottom of the
bread bag and that again lined up precisely with
the indented mark on the heel of Allan Legere's
20 cast and also lined up with the same area on the
insole of the boot and the nail in the bottom of
the boot.

Photograph #4 shows the bread bag and the
foot cast side by side. This is a cardboard
25 behind just showing the relation to the wear area
on the top to the ball and the heel to the heel
and the hole in the bread bag to the mark on the
heel.

Q. And you say that the hole on the heel lines up
30 with the hole in the bread bag?

A. The worn hole in the bread bag, yes.

Q. What about size and shape also, apart from just
lining up?

A. The size of the hole in the bread bag, it appeared
35 to have been worn wider, but as shown in the

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5 photograph it was perfectly around the mark in the bottom of the cast and left the indent in the dead centre as if it had been moved back and forth around the area.

Q. If a person were wearing a bread bag over his socks inside his boots would they be liable to move; I mean the bread bag?

10 A. The bread bag being slippery on the sock, I would imagine. I've worn bread bags myself many, many years ago but - to keep my feet dry, and they do, they slide down and move back and forth.

Q. Is there anything else you can tell us about 'C'?

15 A. No, that's 'C'. Chart 'D' is the right Greb Kodiak boot that was purported to be found by Keddy's Motel in Bathurst.

Q. So 'A', 'B' and 'C' were the left?

A. That's correct.

20 Q. 'D' is the right?

A. And again it's just breaking the boot down to the upper, the lower part, and the lower part with the insole, and the insole separate. The insole in this case again photographed under ultraviolet
25 light to show the sweat areas and several of the toes that started to come up under UV light from the sweat and the cast of Allan Legere's right foot, and again the bottom photograph shows that the indents as shown up in this photograph, it's
30 indented all along the phalange area or the toe area, and again there's a ridge in the metatarsal area which is the top of the ball of the foot and the ball of the foot is here with another indent through the heel area, and again after using
35 calipers and placing the cast over the insole it

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5 was found to match perfectly the raised area
between - again between the toe and the ball of
the foot fits in with the cast area here and runs
along where the toes and ball join, the metatarsal
area, it's all through that area here, and there's
the raised portion here, all through here.

10 Q. Just carry on, I'm not going to interrupt you
unless you want to be interrupted.

15 A. Chart 'E' is the right foot again and it's showing
just the heel area on the photograph #1 to show
that the indent in the heel area, the cupped area,
fit precisely with the heel area of the cast, and
when this fits precisely so does the ball of the
20 foot. Now, it's raised off a bit so you can see
the indentation through here and the toe area.
The same photograph was taken under UV light to
bring out the sweat area just below the ball of
the foot and to bring out the sweat area just
below the toe. That white area is the raised
portion that would run, again like I said earlier,
between the toe and the ball of the foot in the
metatarsal area where the toes join the ball of
25 the foot.

Q. That's raised and doesn't come in contact to the
same extent?

30 A. It comes in contact with the groove in top, if
you will. There's no pressure. This is an
overlay, 1 to 4, summarizing most of the
charts that I've just talked about, the photo-
graph #1 being a left sole of the Greb boot
without the insole. As I said earlier, there's a
crack that runs across the insole through this
35 area here and it has a raised portion on that,

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5 yes, and this is - again there was no sweat
material in here because the insole would absorb
all the sweat. It's just to show that also the
10 nail hole in the sole is indicated here. When
the foot is placed in the bottom of the boot
without the insole and purposely lining up the
nail hole with the mark - this is the cast of
Allan Legere's left foot - purposely lining up the
15 nail hole it was found that the foot again
conforms to the boot. The marked raised area in
the break also runs directly below the ball of the
foot, and on the ball of each of Mr. Legere's feet
there was at that time a callused area, a built-
up area. I make no comment on that other than the
fact that I'm showing it on a photograph.

Q. It was there?

A. It was there. Photograph #2 now is the insole of
20 the Greb boot again taken under UV light to show
the sweat area which comes across, raises up and
runs down. It also peaks in this area and runs
across here. This is the sweat area of the ball
of the foot. The nail hole through the insole is
25 in that area. When the cast of the foot, which is
the left cast of Allan Legere's foot, is placed
over, lining up the sweat areas, the raised area
that goes up to the second phalange or the toe
next to the big toe, the second phalange, the nail
30 hole again precisely lines up with the mark in the
bottom of the cast. The sweat area that raises up
into a peak here again is consistent with the ball
of the foot that comes around and slightly raises
on the cast, and again the foot drops off on the
35 side, the ball of the foot has an extreme drop.

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A lot of feet come across quite straight, this has a predominant drop which is shown here and here.

5 Photograph #2 is the right bottom of the boot again broken across from - I would say from wear, and a raised area just above the broken area, it was pushed up and raised, and again I just show the photograph put into the boot so that it would
10 fit and the raised area is in line with again a high callused area or raised area on the sole of Allan Legere's foot, or the cast of his foot, and again -

Q. And again there are no sweat marks on that because
15 it's the sole, not the insole?

A. That's the sole, correct. The sweat area on the right insole from the Greb boot again shows the ball sweat area. It shows a toe area here. It might be added at this time that between the first
20 and second phalange here, the big toe and the one smaller one, there's no gap, it's a tight toe. In this foot there is a gap. There's a spacing between the large toe and the first toe, the first and second phalange, the predominant gap. As
25 shown in this area with the ball of the foot, the toe, the gap is a light coloured area and then your other toe starts here with your last toe being down on the side.

Q. So on that one when you put the cast overlay over
30 the right insole what do you find in terms of a gap between the big toe and the next toe?

A. The gap between the large toe and the toe next to it, the gap line that runs through here lines up precisely with the gap in the sweat area of the
35 insole of the Greb boot that was found behind

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Keddy's. That finishes both boots and again the overlay is to demonstrate the area that I was
5 working on. I didn't work on the overlay itself, I was working on the cast and the insole in front of me, and I do the overlay to show you what type of comparison I was doing, and it's just an assistance to the Court rather than what I used
10 for a comparison.

Q. As you pointed out before, these aren't what you used for your comparisons, these are what you used to illustrate your comparisons?

A. That's correct. Chart 'G' is the left Greb boot,
15 the upper portion, the part that covers the top of the toe where the - if you had a steel toe where the steel toe would be. This particular pair of boots didn't have a steel toe. There was a cut in the boots when I got them. It was
20 learned that it was cut by the Bathurst Ident. Section to open it up. I joined it back together with a tape and I explained earlier that I altered the boots, I put tape on the outside. This was the whole of the boot together. I spread
25 the boot open enough to make a good photograph and on the inside of the boot there are areas of sweat. There's a sweat area here, here, here, here, and finally an edged area of sweat. I then did with calipers and by placing the cast inside
30 of the boot made certain notations, one of which being the toe area and this area and all the other phalanges lined up precisely with the top of the cast of the left foot of Allan Legere. The overlay shows the toe fitting into the large toe
35 section of the left boot. The other toe areas

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lining up down to the fifth phalange, and when you
get to the fifth phalange the side of the boot has
5 a sweat area that you can see runs up through
here. Now, to get a sweat area on the boot like
that a foot has to come in contact with it. As I
said before, the boot conforms to the foot so it's
wrapping around the foot and that contact and the
10 heat from the foot makes a mark, a sweat mark, in
the side. When the fifth phalange, which is here,
comes down the foot indents and then rolls out
where the ball of the foot ends. This is
precisely what this does on the fifth phalange, it
15 comes down and rolls out. It looks as if it's
about three millimetres further than my foot is
but I've opened the boot so I could show it. If
it was wrapped around the boot it would come in
contact in the precise area that the fifth
20 metatarsal area and the last toe would be, right
around the side of the foot.

Q. Just in case anybody's not - I think you explained
before, what's a phalange?

A. It's the toe. It's hard to say - you can say
25 index finger and middle finger, with your toes you
have a big toe and you have toes, so the fifth
phalange is the last toe.

Going on to the right Greb boot, upper
inside, again when it was opened it was found to
30 have sweat areas in this area, longer toes,
phalanges, up through, down to again the last
area. This area here is indented out and then
it bulges right here. You can see if it was up
close. The last phalange, the last toe, would be
35 here, indents in and around out again in the shoe,

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and again the shoe is spread apart. When the cast
of the right foot from Allan Legere is placed in
5 it and again calipers used to make some conclu-
sions on it, the overlay will assist in showing
that, as I said earlier, there's a gap between the
first and second phalange, the big toe and the
little toe, there's a gap. This gap is shown
10 here. The toe area is here, there's a buckle in
the leather as the leather buckled down, and then
the second toe starts here so there is a gap that
runs up through and on through here with lines up
precisely with the gap through here. The other
15 toes line up and the little indent that comes out
in toward the centre of the boot line up with the
last toe and the ball of the foot that comes in
and then the ball spreads out and it shows in a
sweat area there that spreads out and lines up
20 precisely with the area that protrudes on the ball
of the foot.

When I finished with the Greb boot I also did
a cross-comparison with the Gorilla boot. The
Gorilla boot, through my investigation I found
25 that Mr. Legere had worn those at the time of his
arrest. To me it was a known that his foot was in
that boot, so I did up a chart to cross-reference
the Gorilla boot with Mr. Legere's foot with the
Greb boot, and I'm just going to show a couple of
30 charts on the cross-reference that I did. This is
the right Gorilla boot with the sole on.
Actually, the sole is cut off, I put it on for
this photograph. This is the right foot cast of
Allan Legere. This is the insole from this
35 Gorilla boot up here, the one that again was worn

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by Allan Legere at the time of his arrest, and
this is the insole -

5 THE COURT: Did you miss 'H' or did you intend to?

A. I missed it but I would rather go to this one
first. This is the insole of the Greb boot. I
then did a cross-reference, as I said earlier,
with an overlay. What I did before I'd made up
10 the charts is that I compared the indentations in
the Gorilla boot which runs through here, the heel
area with the known, which is the cast of Mr.
Legere, because he had worn it, and it was found
that all areas of the foot were consistent with
15 the ball area, the space between the right toe as
shown here, the line runs down. Now, this line
here is on the photograph underneath but the line
on top here is his actual space and that line runs
down through and runs through, so it does line up
20 as being the separation, but as again I said,
that's a known, we knew that he had worn them
anyway.

Q. Yes, you knew this was his feet cast?

A. That's right.

25 Q. You knew these were boots, or you believed you
knew these were boots he was wearing when he was
arrested?

A. Yes. You can also see that the ball area comes
up to a very sharp peak and drops back again.
30 Again it's significant, a lot of feet don't do
that, come up so sharp. It was a characteristic
which was again used for an analysis. Calipers
were used once again but again, as we know, the
shoes were on the feet. I do the overlay to show
35 that the boot is an extra-large boot, it's big on

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5 the toe, a little big on the heel, but nonetheless, even though it's bigger the foot does make the mark in one spot, it doesn't move all over the boot. It stays where it is and fits in, precisely fits in.

10 I then did a cross-comparison with the right Greb boot insole. Again this is under UV light, the sweat area, the toe, the separation and the toe. There's another small area here which appeared to be a toe, it's a sweat area. Again this is the insole from the Gorilla boot. It's photographed again, I get a ridged detail that
15 comes down noting the metatarsal area that rises up, the area between the toes and the ball of the foot. One toe, large toe, and small toe. It's hard to see but the light area here is in this area. The next one is here and the space is
20 here, so as we flip over and you'll do it yourself if you wish, the light areas line up precisely with the first phalange, the first toe. There's a gap, the line runs down through, and there's another toe that strikes here. There's a
25 high area here as shown in the overlay, it's right in here. It fits in this really indented area here. The last toe is down to the edge and well down to the side and that is the area that I'm talking about that I find to be a sweat area here.
30 You can see through here the ball of the foot ends, that it starts losing pressure. Your weight bearing on the bottom of the foot is mainly on the heel and the ball of the foot and the toes also dig in. Sometimes the arch is a flat foot,
35 some pressure will go down on the arch. There was

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5 no pressure on the arch here and very little
pressure on the outside; some but very little,
most was on the heel area, so the ball of the foot
seems to end in a U-shaped circle in the exact
area where the ball area ended on the insole of
the Greb boot of the sweat area, and the overlay
was used for that. Again calipers were used to
10 ensure that the distance of the sweat area was the
same in both, that the size of the toe and
relation of the toe to the first phalange and
relation to the second phalange was the same, and
it was.

15 Q. On all that, of course, you were dealing, as you
have already pointed out, with a pair of boots
that if the evidence is correct you knew Mr.
Legere had been wearing and a cast that you did
know, because you took it yourself, was Mr.
20 Legere's?

A. Yes. This is the same idea, it's the left
Gorilla boot. Again as I said the sweat area in
the toes didn't show up as well in the left boot.
However, I photographed the Gorilla boot, the left
25 foot cast of Allan Legere, the mark in the sole.
This is the left foot cast of the Greb boot.
You'll notice that the hole that's usually there
is not visible. Using the ultraviolet light and a
filter trying to build up this it ends up showing
30 a wear area, and this is a really deep wear area
and the hole kind of disappears. It's just the
lighting. We use ultraviolet light to fluoresce
different things and even ink, some inks will
fluoresce somewhat so you can see writings that
35 are there in visible light and aren't there under

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UV light.

Q. So because you used that light it helps in some
5 ways and it hurts in other ways?

A. That's right. I've lost the hole, I know about
where it is, but I've gained the sweat areas, so
the hole is done under normal light and I've used
it on other charts, now it's used to show sweat
10 areas. Again knowing that it - I believe that
Allan Legere wore those boots at the time of
arrest from the evidence in court. I still made
an overlay showing the toe areas, again showing
the sweat area in this area, the pressure area,
15 the high area in the metatarsal area, and the deep
impression in the heel area. Again when it's laid
over, knowing the fact that it should be there, it
is. The ball area runs up high and drops down as
it does here, and the heel area fits into the ball
20 as it should, it was there. I did a cross-
reference with the insole from the left Greb boot
which is here. I again through measurements -
measurements, I say measurements using a caliper,
transferring one to the other, I laid this over
25 the insole of the Gorilla boot and found that it
matched again in several areas. As I said before,
the toe is not really predominant. It's there,
the sweat area is here, you lose one here, but
nonetheless they do show a - this fourth phalange
30 area here is precisely in an area where the sweat
area shows through on the left insole of the Greb
boot and also the first phalange and slightly the
second one is shown up, but the sweat area lines
up again with the U-shaped pattern which is
35 slightly different from the other boot but lines

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- up precisely in the area and drops down and ends where the indented area ends on the Gorilla boot.
- 5 The lower area where the sweat ends comes up through and ends, as I said, not as much pressure, not as much sweat, and the heel area line. Again you get the same sweat area here, the same arching formation, then nothing of any value and then a
- 10 sweat area again in the heel and fits precisely in that indented area.
- Q. I gather from the fact that you've put 'H' away that we're now through with the charts for the time being, at any rate?
- 15 A. Yes, that's correct.
- Q. Am I correct in this, I understand that you took a video partly to do certain things under controlled conditions and partly to display certain things under some of the lighting that you
- 20 couldn't very well bring with you to court? Am I right about that?
- A. Yes, I was going to demonstrate, I guess, the exhibit to the jury. It becomes very difficult, the small areas we're looking at, it's hard to see
- 25 unless you have it in your hand and examining it, and I guess they will be able to do that on their own but I did a video which would show in a larger format the areas that I did line up and how the sweat marks on the toe and ball of the foot
- 30 actually does form through and just different things that I examined, it shows on the video.
- Q. A portion of the video also uses these special lights that you've -
- A. The last part of the video uses the ultraviolet
- 35 light, again to enhance the sweat area.

Q. And this is a video that you took yourself?

A. I took it myself and it takes about ten minutes.

5 Q. You've seen it since then, I take it?

A. Yes, I have.

Q. And it accurately represents what the camera saw?

A. That's correct.

10 Q. Or would you arrange to have it taken, I should say?

A. I took it myself.

Q. Do you have that video with you?

A. Yes, I do.

15 MR. ALLMAN: Subject to any objection I'd ask it be entered as an exhibit.

MR. FURLOTTE: My Lord, I was given a copy of all the other videos before this trial ever started for my perusal but I have never seen this video before and I don't know what's on it so I -

20 MR. ALLMAN: Well, I understood Mr. Furlotte saw some portion of it last night. It's about ten minutes long, I think, and if he wants to we can see it right now if that's the situation.

THE COURT: You've seen part of it, did you say, Mr. -

25 MR. FURLOTTE: Quite by accident, My Lord, it wasn't planned.

MR. ALLMAN: We were showing it last night.

THE COURT: Well, what do you say this is, in any event? I mean it's sort of a - it's really the evidence?

30 MR. ALLMAN: It's the sergeant physically demonstrating things that he did and has described to the jury.

THE COURT: Well, I don't think it's going to take you by surprise very much, Mr. Furlotte, is it?

35 MR. FURLOTTE: Well, it's not going to take me by surprise but if there's something on it that the

jury shouldn't see I'm not going to know it until they see it.

5 MR. ALLMAN: It's about ten or fifteen minutes and if Your Lordship wishes we'll play it.

THE COURT: You've seen it?

MR. ALLMAN: I've seen it. I don't believe there's anything in it that's -

10 THE COURT: Are you aware of anything that might cause a problem?

MR. ALLMAN: No, I don't believe there's anything in it that isn't a physical portrayal of what -

15 THE COURT: Let's show it and, Mr. Furlotte, as we go along if you feel it should be stopped, shout out and we'll -

CLERK: Mark it as an exhibit, My Lord?

THE COURT: Well, it can be marked afterward. We can look at it first and then mark it.

20

(Sgt. Kennedy commenting as video plays.)

A. Again this is just what I showed on one of my charts, the insole with the nail hole coming through the bottom of the shoe without the insole. This is the insole being placed on top of the boot, again showing the hole in the insole which lines up with the nail hole on the -

25 THE COURT: Where was the nail then, at this point?

A. It's still underneath the thing of the boot, it's underneath the leather, it's not up high, high, high. This is just the cast being placed in the area, again to show how the indentation on both the upper raised area and the heel area where it fit into the molded area, and again there is the toe indentation and the rest of the toes have

35

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an indent along the side of the insole. Again
showing all the ball fitting in, it's quite dark
5 how the nail hole lines up with the mark on the
bottom of the insole, and just showing side by
each view of the side of the foot.

This is the right boot with the insole
already inserted. The cast of the right foot,
10 again to show that the indented portion on both
the heel and the cast and the toe lines up
precisely with all the indented areas on the
insole. The indented area runs down along the
side and drops off here and so does the ball of
15 the foot, this is where it starts and stops you've
got a raised area.

This is the bread bag that I talked about
earlier showing the wear area here with the hole,
the wear area up on the ball end, and turning the
20 bread bag over the area that's consistent with
being pushed through by a toe.

This is the left cast again of Allan Legere's
foot with the mark on the heel area there in that
position. Demonstrating the foot going inside of
25 the bread bag as it had been worn on the foot
extending the toes through the back where the hole
was and wrapping the bread bag around the foot.
Again the toe protruding through the back, and
when it was turned over the heel area, well-worn,
30 the ball of the foot area worn. That's the ball
area where the writing has been worn through and
the paper's been worn. There's the hole in the
bread bag and there's the mark in the sole of the
cast of Allan Legere's foot there with the hole
35 and the wear throughout the heel area.

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5 This is the ultraviolet light of the insole,
of the right insole again showing the sweat areas.
The toe areas here, shown here. The arch in the
bottom of the ball area and the arch in the top.
This is the right cast of Allan Legere's foot
again placed on top of the insole with the UV
light. The sweat area which runs underneath and
10 directly across is in this area here, it's a dark
portion, again runs through here and you can see
the indent or the ball ends on this side, on the
fifth phalange metatarsal side.

15 Again lifting up you can see that the ball
area runs back and down as does the ball area of
the foot, the toe area here with slight staining
and then the ball area well back of the toes. The
toe area here and the ball, or the toe and the
ball of the foot.

20 This is the left cast insole, again showing
the indented area, the sweat area, up through, and
the heel. Under UV light again the nail hole
doesn't show up, it just shows a worn sweat area
in here, but again shows how the sweat area comes
25 up to a peak and drops off. The indented portion
is here, that line along here as seen right up and
down here is the raised area between the toe and
the ball area, the metatarsal area. It runs
completely back this way.

30 The cast of the foot from Allan Legere, again
physically placed in the indented area. It
indents through here. There's a raised portion
here between the toe and the ball of the foot
area and the sweat area in the heel line up with
35 the rounded portion of the heel itself. The sweat

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5 here extends up to a peak and back and you can see
the indented portion here from the toe. There's a
raised area along here that runs up in line with
the toe joints, and again just showing the
indented with the sweat area climbing up with the
heel itself, and raising it up as far as I can
raise it to show how far back it goes and the
10 extreme indentation here with the raised portion
that's consistent with the top of his metatarsal
area, through here, and how the area comes down
and lines up with the other side of his foot which
runs down through here, and that's the ball area.

15 Q. A lot of the problems, I take it, you've got in
this situation is this, that when you put one
surface into contact with another surface you
can't look inside to see that they're matching up?

A. That's correct, yes.

20 Q. So you were having to separate and thus to some
extent distort the view?

A. That's right.

Q. But the visual observations that you've been
making and describing and then showing on that
25 video, are they supported or contradicted by the
measurements that you took with your calipers?

A. No, they fit precisely in the areas that I was
measuring. Again it's difficult to do a chart
and a video to point to the Court what I saw when
30 I examined the two. The charts are necessary to
allow me to give my evidence and I've made them
the best I could.

Q. What does the word morphology or morphological
mean?

35 A. That means structure of the foot, the form of the

foot, make-up.

- 5 Q. And you and I think other police officers in this field have used the word accidental characteristics. What's an accidental characteristic?
- A. An accidental characteristic, especially in this type of evidence, is a mark that could have been made by a nail, a callused area that would build up over time from a defect in the shoe, not in this case but any other mark that could be caused from an external force.
- 10 Q. In this case comparing the morphological and accidental characteristics of the casts that you took of Mr. Legere with the morphological and accidental characteristics exhibited on the boots, particularly the boots that were allegedly found near the scene, what's your opinion?
- 15 A. Well, it's my opinion that the cast of Allan Legere made the impression inside of the boots. I can qualify that by saying that it could have been made by someone else with the same foot morphology in combination with the same accidental characteristics as shown in the charts and on the video.
- 20 Q. So it's made either by Mr. Legere or by somebody having the same morphological characteristics and the same accidental characteristics?
- A. In combination with the accidental characteristics, that's correct.
- 25 Q. When you were talking about your qualifications earlier on you indicated you had done a study involving feet and I think you said - how many feet did you say you'd so far gotten up to?
- 30 A. Eighteen hundred and forty-some feet.
- 35

- Q. Coming from half that number of human beings?
- A. That's correct, yes.
- 5 Q. And what was the general object of that study?
- A. The main object behind the study was to show that feet are different, to build up a scientific data base that feet are individual, no two feet are the same when you measure them in several areas. In
- 10 this particular case I measured each foot in 16 different areas for a total of 32 areas.
- Q. Now, obviously your observations are not about every foot on God's earth, they're only about the feet that you yourself have dealt with?
- 15 A. That's correct, yes.
- Q. I think it's common knowledge and I take it the jury can take judicial notice of the fact that all feet are in some respects similar. Normally we have five toes, a ball, a heel, an instep?
- 20 A. That's right.
- Q. Can you explain in terms of your study what it's revealed to you about dissimilarities in feet?
- A. Again getting back to the similarities is that we all have five toes and a ball and a heel. The
- 25 dissimilarities would be the relationship from one of those to each of those. The toes in relation to the ball of the foot are different, the first phalange in relation to the second phalange being different, the heel length, the heel width
- 30 different. The left foot - in each case that I studied the left foot was different from the right foot, entirely different from the right foot.
- Q. You mean on a given individual?
- A. That's correct, yes, over 923 individuals put into
- 35 the computer, I measured and put them in myself,

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- 5 I've checked measurements on it and found that the left foot was completely different from the right foot in the same individual. I've checked brothers, sisters, found them different.
- Q. You mean brothers and sisters or brother with brother, sister with sister?
- A. Brother with brother, sister with sister, brother with sister.
- 10 Q. You would figure they'd be different. You said you took how many measurements per foot, or observations?
- A. Each foot had approximately - did have 16 points of measurement for a total of 32 per set of feet.
- 15 Q. And you fed this data into this computer?
- A. That's correct, yes.
- Q. And what sort of things can you do with that data?
- A. That data can be drawn upon by - each measurement is indexed one to the other and by putting in one set of measurement, for example the width of the ball, whether it be 53 millimetres or 52, if that's entered into the computer the computer will send back all the feet in that collection with a ball width of 52 millimetres, and you might have a list of 100 for a round figure. The second measurement put in could be any measurement throughout that area, whether it be the overall length of the foot, and let's say it's 210 millimetres.
- 20 30 When that's added in, it then drops off a great number of people and leaves me left with 50. The next measurement I put in might drop off 25 more and with the eventuality of having one respondent, and that respondent has been, on every check I've done, the one that I was searching.
- 35

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Q. O.K., where generally speaking does the computer say I'm sorry, there's only one of those in here?

5 A. That depends on the measurement I use. I started off by using the exact measurement that I had entered in the computer and I wasn't getting it past two or three entries out of 32.

10 Q. So when you say, let's say, 32 millimetres, 210 millimetres, 18 millimetres, whatever, exact figures, you wouldn't get past what?

15 A. After three entries I was getting the individual that I was trying to fish out of the computer, so I didn't find that was a reliable study if I was only getting three so I extended my possibilities so I would include more people coming in to a plus or minus five which is a ten millimetre difference in the overall measurement of each measurement. Now, a ten millimetre difference between 210
20 millimetre overall length is not a great deal, but a ten millimetre difference between 53 millimetres which is a ball width would make quite a big difference, and with a plus or a minus five I was getting one respondent after between five and ten
25 entries out of 32. One respondent would come up and each time it was the individual that I was looking for in that collection.

30 Q. Just to make it clear, tell me if I'm getting this wrong, when you give the computer a bigger choice by giving it a margin of five millimetres on either side of your figures you're giving the computer more chance, a better chance to find more people who match? Is that right?

35 A. Yes, that was my idea was to see if I could find more people to have two come out the same, giving

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5 it a wider search choice, and after - I did, I
think, around 400, and I haven't found any after -
again I stayed between five and ten entries out of
10 32 before it came back thatt it was that
particular individual. I also entered in the
computer feet that weren't in there, and after
approximately seven, plus or minus, I was getting
a readback from the computer that it was not in
the collection.

Q. Were you trying to trick the computer?

A. I was trying to see that if the foot wasn't there
would it find another foot. It was easy, I guess,
15 to find the foot if it's there, but if it was
going to substitute a foot that was close I was
interested, and it didn't.

Q. Based on the study, then, and recognizing that you
haven't observed every foot on earth, what
20 generally can you tell the jury about the
dissimilarities of feet?

A. I think not just based on my study, it's -

Q. Well, let's stick with your study first and then
we'll come -

A. Well, based on my study I find that feet are
25 different, they have very many dissimilarities,
and they're easy to plot and easy to search
through a computer program.

Q. And I interrupted you, you said - because I
30 gathered that view isn't just based on your
studies, it's based on other information. Can
you tell us about that?

A. Again it's based on conferring with other people
in the field, William Bodziak from the FBI, I
35 talked with, again, Dr. Facey from Scotland Yard,

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and talked with Dr. Bettles from P.E.I., articles
I've read that -

5 Q. Do those sources of information agree or disagree
with your opinion that feet are different and do
have a number of distinct peculiarities?

A. They agree.

Q. They agree with that?

10 A. That's correct.

Q. When you combined the observations that you've
made regarding Mr. Legere's feet, the casts, and
the observations that you've made regarding the
boots, especially the boots that were found at
15 the - allegedly found near his car - when you
combined those with your opinion that feet are
different and they do have peculiar distinctions
to themselves, what's your opinion as to the
likelihood or unlikelihood that the Greb boots
20 were in fact worn by Mr. Legere?

A. I think it's a high probability they were from
my information that I gathered from the mold and
the foot.

Q. I think I may have asked you this earlier but I
25 just want to come back to it in case I didn't, the
longer you wear a certain item of footwear, how
does that affect the impression and the markings
that you're going to leave inside that footwear?

A. The main effect that I found it had is that the
30 markings may get darker with more sweat and more
dirt. The indentations may get a little deeper
but nonetheless, it's a single indentation, it's
not spread apart. It doesn't move around the
inside of a shoe or a boot, it stays constant.

35 Q. Is it possible to look at a pair of boots and say

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precisely how long a person has been wearing them?

A. No.

5 Q. Is it possible to do it in some sort of general terms, these boots are well-worn, little worn, or something of that kind?

A. Well, the only thing I can mention is that it takes a little while to get the impression inside
10 of a boot. As far as the Greb boots were concerned, they were worn for quite a while to make the wear marks inside. The felt liner was worn down quite a bit in the heel area, the ball of the foot area, and under each toe. The sweat
15 marks were really dark so I would say they were worn quite a while.

Q. Mr. Legere's feet are size what, according to the - if he went into a store and somebody measured him there what would they probably
20 recommend for him?

A. I would say they would recommend a 9 or a 9 1/2, but I guess picking shoes are the responsibility of the person buying them, but I would suggest a
25 9 or a 9 1/2 from the measurements I took from the casts.

Q. Someone might tell me that my size is 9 1/2 and I might tell him I feel happier in a different size?

A. That's correct.

Q. But you feel the salesman would tell Mr. Legere
30 a 9, 9 1/2?

A. That's correct.

Q. What size are the Greb boots, the ones allegedly found near to the scene of the - near the priest's
car?

35 A. The Greb boots are size 11.

110

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Q. And what size are the other boots, the ones allegedly worn by Mr. Legere upon his arrest?

5 A. The Gorilla boots are a size 12.

Q. Is there any comparison between the two sets of boots, the Greb boots and the other boots, in terms of the interior being soft or hard and its ability to receive an impression from the feet?

10 A. Yes, I found the Gorilla boots had the insole of a much softer leather, it took the impression quite readily, and it indented a lot more than did the Gorilla boots and would do it, in my opinion, in a shorter period of time.

15 Q. Is there anything else you want to add, Sergeant, or basically have we covered your evidence?

A. I think we've covered it.

MR. ALLMAN: I have no further questions.

20 THE COURT: I think we'll take a recess there before we start cross-examination so will the jury please go out? Do the jury want to take with them these latest plans, is there any advantage in that? We'll send them out anyway and you can have a look at them if you like.

25

(BRIEF RECESS - RESUMED AT 3:30 p.m.)

(ACCUSED IN DOCK.)

(JURY CALLED - ALL PRESENT.)

30 THE COURT: We didn't give the video an exhibit number.

MR. ALLMAN: Oh, I'm sorry, I thought we had.

35 THE COURT: P-151 I think is next, so the video becomes P-151, you can call it video on foot and boot prints. Now, you had finished your direct examination. Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLLOTTE:

- 5 Q. Sergeant Kennedy, as I understand it, it was on
November 24th, the day Mr. Legere was captured,
that you took the casts of his both feet?
- A. That's correct, yes.
- Q. And that was taken about what, 9:20 in the
evening?
- 10 A. 9:25.
- Q. Now, you mentioned you went into the room where
Mr. Legere was. Are you sure Mr. Legere wasn't
brought into a different room where he was photo-
graphed to take the casts?
- 15 A. No, if I remember correctly I went into the area
that he was in.
- Q. That he was in, and how was he dressed?
- A. I believe coveralls, blue, and I believe a pair of
blue, looked like R.C.M.P. socks that we wear.
- 20 Q. R.C.M.P. socks?
- A. That's what it appeared, yes.
- Q. Blue socks?
- A. If I remember correctly, yes.
- Q. Do you know how long he was walking around in
bare feet?
- 25 A. No idea.
- Q. Now, aside from these set of casts of Mr.
Legere's feet that you took, P-136 and P-137,
I understand you took some other casts of Mr.
Legere's feet?
- 30 A. Yes, I took three sets in total, yes.
- Q. And this is one set?
- A. That's the first set, yes.
- Q. That's the first set, and where are the other two
sets, do you have them with you?
- 35

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- A. No, I didn't work with them, they're back at the office. I have them, but I don't have them here.
- 5 Q. I'll show you Exhibit P-137 which is the cast of Mr. Legere's left foot, and would you point out to the jury, please, as to where the indentation in the left - in the heel is?
- A. The mark and indentation would be in that area
10 right about there.
- Q. Is that where that kind of a black mark is?
- A. Well, it's black now. When I brought it to the lab in Nova Scotia Mrs. Lyons, who works on the electron microscope, picked some substance which
15 appeared to be a reddish-brown in colour off, a very minute particle, but it was required for the electron microscope, which left it sort of a dark area. The colour is easier seen under a microscope and when I examined it under a microscope
20 you could see the colour better but it wasn't sort of a blackish mark like that, it was more reddish.
- Q. O.K., is there any other indentations aside from that one on that cast?
- A. Yes, the whole area on the foot has different -
25 slight indentations.
- Q. Slight indentations?
- A. None as prominent as the mark there, and the area where the mark was wasn't a deep indentation, it was just the material imbedded in a slight
30 indentation actually visible better under a microscope that we use at the office, but it wasn't lying on top of the cast but it wasn't imbedded down two inches in the cast either.
- Q. O.K., so what I understand - what about when you
35 mixed up the material for the casts? Could any

dirt get into that material?

- 5 A. When the cast is mixed up everything we use is
cleaned out for that purpose. Being with the
Forensic Ident. Section we have to ensure that our
exhibits are not contaminated and every precaution
is taken, and precautions were taken in this
instance and I believe that nothing was in my
10 casting material when I poured the mold.
- Q. O.K., so I see in all the other cracks here kind
of a little different colour than what's on the
sole here?
- 15 A. O.K., the problem with Foam Art, when we use it
it will only give detail on the bottom plantar
area of the foot. As the foot sinks down into the
casting material, the Foam Art, the sides break.
It just breaks down, it doesn't form around the
foot as a shoe would, it just breaks down, and
20 where you get moderate detail is in the plantar
area, the bottom of the foot. The colouring in
those cracks, those cracks are there because the
foam now is broken and I filled this foam with
a casting material. The casting material is
25 pinkish in colour and when I clean it off of the
area that is smooth it takes all the lines of the
foot and it even takes the wrinkles in the sole of
the foot, the dental stone does. The wrinkles,
any deformities, will be shown in the bottom.
- 30 When you get to the side it gets really deep
cracks and I was able to clean off the foam from
the bottom easily and from the sides I couldn't,
and I wasn't about to scrub it with anything hard
because I didn't want to ruin any detail that I
35 had so it was just washed gently and gentle

- washing cleaned the area that I was working with off but left the discoloration on the side which I wasn't concerned with anyway.
- 5
- Q. O.K., you mentioned the bottom of this doesn't show the wrinkles or the line marks in -
- A. No, I didn't say that. I said the bottom shows all the wrinkles in the feet.
- 10
- Q. It shows all the wrinkles?
- A. It shows any deformities of the foot. The only thing it doesn't show, and in some instances it does, but it wouldn't show ridge structure as in a fingerprint, and ridge structure are minute
- 15
- elements in a sole area and the phalanges of the foot as are on fingerprints, but it shows well the wrinkles, it shows any deformities of the foot, it even shows a plantar wart.
- Q. O.K., so for a foot of a man Mr. Legere's age
- 20
- would you say he has lots of wrinkles or is that standard or is that what you'd call a smooth foot?
- A. That's a relatively smooth foot. I don't think it has much to do with age. I did several of a particular one and I commented on it at the
- 25
- office. The fellow was 23 years old and his feet were wrinkled like a prune and it had no bearing on age, it's just the make-up of the foot.
- Q. O.K., now, I notice the rough spots up here around the edge, so that wouldn't be necessarily wrinkles
- 30
- on Mr. Legere's feet, would it?
- A. No.
- Q. No?
- A. No.
- Q. And nor like in between the toes here, that
- 35
- wouldn't necessarily be wrinkled areas?

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- A. No, that's where it's breaking away.
- Q. Where it's breaking away, and what about here at
5 the corner of the ball of the foot? That, too,
could be breaking away?
- A. Some of that could be breaking away from the ball
but as you'll note, just below the breakaway is a
fairly smooth area, and above it, so I'm taking
10 that to be a callused area. I'm not familiar with
calluses to any extent so I'm taking it to be a
callused area.
- Q. But it's not necessarily a callused area?
- A. It's something, but not necessarily a callus. I
15 believe it to be something in the foot.
- Q. Well, it looks like a continued ridge of the
breakaway from the cast here, does it not? See
how it follows the main circle?
- A. All along here is what you're saying it is. This
20 one is separate slightly and the other one follows
down. This comes through this way, and I'm taking
it to be a raised callused area on the bottom of
the foot, but I'm not familiar with calluses, so -
- Q. The molds on - the other two sets of molds that
25 you took of Mr. Legere's feet, would it also show
an indentation in the heel area?
- A. It doesn't show any discoloration as that one
does. I've searched it under a microscope and
there are some marks in that area which appear to
30 be an indentation but aren't good enough for me to
make any assumptions on it, and that's why it
wasn't mentioned in my direct. There was some
little area there that appeared to be broken or
indented, but not good enough for me to say that
35 it was an indented area, but there was definitely

- no material in that area. I believe it to be taken on the first cast and it was extracted on the first mold.
- 5
- Q. But if there was something in Mr. Legere's heel which upon putting his foot into the foam area, and apparently it must have - if this indentation was on Mr. - or coloured substance, I assume
- 10 you're going to say that it must have been imbedded into Mr. Legere's heel in order for it to get onto the cast; is that what you're going to be implying, or have implied so far?
- A. Are you asking me a question, do I think it was
- 15 imbedded in Mr. Legere's foot?
- Q. Yes.
- A. I think that that material that was on that was on and probably slightly imbedded into Mr. Legere's foot. It wasn't imbedded deep enough because the
- 20 foam doesn't extract too many things from a foot so I believe that it was in the foot slightly but not far enough that the foam wouldn't extract it out.
- Q. O.K., but if it was something there caused from
- 25 his wearing the boots that were found at Keddy's Motor Inn in Bathurst that would be something that would have to be in his heel since at least July 16th?
- MR. ALLMAN: July?
- Q. Or not July, November 16th, when the boots were
- 30 assumedly discarded.
- A. I don't follow your question. What was the question?
- Q. Well, from the evidence that you've given so far -
- 35 A. Yes.

- Q. It would appear that you want the Court to draw the inference that what was ever left on this cast of Mr. Legere's left foot was at one time on Mr. Legere's left foot and transferred from his foot into the mold whenever you took the mold of his foot? Correct?
- 5
- A. I'm not - I don't want the Court to infer that. I'm saying that if you're asking my opinion I believe that the mark in the heel of that cast was on Mr. Legere's foot and it ended up being in the mold of the left heel of Mr. Legere.
- 10
- Q. And how long do you want - how long do you believe that that was on Mr. Legere's left foot?
- 15
- A. I have no idea.
- Q. You have no idea. The foam that you take the foot impression in, does that have some kind of a cleansing agent in it?
- 20
- A. I don't know the make-up of the foam. It's the foam as I described before similar to the florist's foam that you stick plants in. It's the same density. It mightn't be quite as hard, but it's the same density and breaks away the same way when you push on it. That's why the side when you push down, it doesn't wrap and form around the foot as modelling clay might expect to, you can't do that. This just pushes down and a cleansing agent, I don't know what it's made up from. I don't know why they would put a cleansing agent in it, if they did.
- 25
- 30
- Q. So at least from what you know there's nothing in the foam which would help extract imbedded objects from a person's foot?
- A. As far as I know. I have no idea what the make-
- 35

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- 30 don't know why they would put a cleansing agent in it, if they did.
- Q. So at least from what you know there's nothing in the foam which would help extract imbedded objects from a person's foot?
- 35 A. As far as I know. I have no idea what the

make-up of the foam is. All I know, it's very useful and I have good success with taking molded impressions.

5

Q. For a foreign substance to be imbedded on this cast it would have first have had to have been imbedded into the foam, is that a safe assumption?

A. It had to be on the foam or in it; on or in, yes.

10

Q. There's no way it could have gone on after?

A. You're asking my opinion?

Q. Yes.

A. No, not in my opinion, it couldn't have gone after.

15

Q. Why not?

A. As I said earlier, working with the Forensic Ident' Section it's part of our job to keep everything, all evidence, as clean as possible to ensure that there's no contamination and I did the same in this case, I made sure that everything I used was clean. I used fresh water and I put the casting material in the foam myself and let it dry and I believe - you asked me what I believe and I believe that it came from Allan Legere's foot.

25

Q. Casting material dries right in the foam, you don't separate it, it will continue drying and -

A. It dries, and I let it dry overnight. It hardens within about fifteen minutes. I let it dry overnight to ensure that it was dried and I brought it back to Fredericton where I took it apart and cleaned it.

30

Q. Again the cast for the right foot, I believe this ridge in the ball area, what did you assume that to be again?

35

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- A. A callused area on the bottom of the foot.
- Q. A callused area, and that forms again a nice
5 circle from where - on the side where it doesn't
form the breakaway material?
- A. It lines up with the breakaway material but
extends straight across the foot whereas nothing
else does, and that's why I feel that it's a
10 callused area. Again I'm not a foot doctor to
know the condition of that. All I know, it's
there and that's why I photographed it and left
it as that, that here's a photograph of this area.
What it is would be left to somebody else to say
15 what it is. I'm assuming it's a callused or some
raised area on the ball of the foot. I make no
other comment on it other than that.
- Q. O.K., if it was a breakaway area could that be
caused by taking the cast out of the mold too soon
20 or -
- A. I didn't take the cast out of the mold too soon.
- Q. I didn't ask you if you did, I asked if it could
be caused by taking the cast out of the mold too
soon.
- 25 A. I can't assume anything. I left it long enough so
it would be hard. I haven't taken a cast out of a
mold too soon to know what it does. I can't
comment on something I don't know. I'd have to
see it to let you know.
- 30 Q. How long did you leave it in the cast?
- A. Overnight. Recommends 20-minute drying, I left it
on overnight.
- Q. Of course, just underneath - how much of that
would be callus?
- 35 A. Again, I said I photographed the area all through

5 here. It would be for somebody else to say what
it is. As far as I'm concerned it's a raised area
on the cast. I photographed it as that, I put it
on my chart as that and made no other comment on
it other than to say here's an area that appears
to be a callused area, and I laid it on my chart
and I made no other comment on it other than the
10 fact that to me it appeared to be a raised area,
possibly a callus, and it would be for some doctor
or something with feet to know if it's a callus or
not.

15 Q. I'll go to the left foot again and the so-called
indentation in the left heel. If there was a
foreign body stuck in Mr. Legere's heel which
caused that indentation, and let's say for
instance that a foreign body had been in his heel
for a week, then that indentation should stay in
20 the heel area for a considerable period of time?
It wouldn't pop out right away as soon the foreign
body was removed, would it?

A. You're asking me an assumptive - I have no idea, I
don't know what a foreign body would do imbedded
25 in a heel, how long it would stay or how long it
would take to come out.

Q. So you don't know whether or not Mr. Legere still
had an indentation in his heel after that foreign
body was removed?

30 A. No, I don't.

Q. And the other two casts that you took of his feet
would not support that?

A. As I said earlier, the other two casts of the feet
had no foreign body in it as that one did as I
35 believed that the first mold extracted what was

there out.

- 5 Q. And there's no indentation as prominent as this one in the heel area of the other two casts?
- A. Well, there's no foreign body in it. What makes that indentation as great as it is under a microscope is the fact that there's a foreign body there.
- 10 Q. Once the foreign body was taken out, that's what made the indentation, the foreign body?
- A. That made the indentation. That being gone, then I wouldn't expect to be another indentation unless there was another foreign body inside of the area where it was extracted already.
- 15 Q. O.K., before you took the impressions of Mr. Legere's feet was he instructed to wash his feet or did anybody wash his feet to remove foreign bodies from underneath?
- 20 A. No, my procedure when I do that is to have them remove their socks, I rub my hand along the bottom of the sole lightly so there's no rocks there and I instruct them that I want them to stand on the foam until I tell them to stop, and
- 25 I hold their ankles in both hands and when I instruct them to stop, they stop or I stop them for them, and I lift the feet out, and I do the same with the other one.
- 30 Q. Now, the bag that you had placed over the left cast, I believe it's P-138, is that the one?
- A. Yes, it is.
- Q. O.K., would you take that out again, please, and you mentioned there were wear marks on that bag?
- A. Areas which appeared to be wear marks, yes.
- 35 Q. Yes, and how long would a person have to wear the

- boots with the bags in them to get the wear marks as much as that bag has been worn?
- 5 A. I have no idea.
- Q. So you don't know if it would take ten minutes or ten days?
- A. I don't know if it would take ten minutes, it would take a lot less time than ten days.
- 10 Q. How many holes in that bag?
- A. Several.
- Q. Could you count them, please? Have you counted them already?
- A. No, I've noted them already. There's about four
- 15 large holes, a rip that I did myself trying to get it glued back up, it was cut apart, and several other large holes on either side.
- Q. And you had fitted that bag over the left cast?
- A. Yes, that's correct, yes.
- 20 Q. To match up the holes, and you showed it on the video?
- A. Mm-hmm.
- Q. And would you do it again?
- A. Lining up the area where I believe to be the ball
- 25 of the foot, tightening the heel area around, it fits in sort of an area like that.
- Q. O.K., and now that you've fitted it in, you've squeezed it, and you can't see the hole in the heel from the hole in the bag, can you?
- 30 A. In that position, no, you can't.
- Q. And that's the way you just did it, you just put it in there and wrapped it up, you pulled it up, and even when you pull it tight you can't get that hole up to the indentation in the heel?
- 35 A. The way you're doing it, no, you can't, not the

way you're doing it, but if you put your toe back through that hole where it was as I did -

- 5 Q. O.K., try it again.
- A. It's just a matter of pushing the hole through the video. I lined up the ball area with the bottom area of the foot. I then pulled up the heel area so that everything was tight and wrapped around.
- 10 The heel area, like I said, is a wear area that runs across the bottom of the toe.
- Q. Now, you did it and you pulled it up and I still can't see the hole in the heel, the indentation in the heel, through the hole in the bag.
- 15 A. Well, doing it in that position, the black mark on the bottom of the bag lines up, to me, in the centre of the heel as it was in the video.
- Q. O.K., there you have it this time, right?
- A. Yes, I have it this time.
- 20 Q. So it's easy to manipulate that bag to line up the hole?
- A. Very easy, it fits very easy, yes.
- Q. I'm going to ask you to try it again, Sergeant.
- A. O.K., the main idea is to find the ball of the
- 25 foot. The wear area of the heel has to be over the wear area of the heel and the ball of the foot, and when you do that -
- Q. O.K., you have it lined up. Now, check the hole for the toe.
- 30 A. There's the toe right here through the hole, sir, right there, all the way through. The ball of the foot and the heel area with the mark when it's stretched around in the centre of the hole.
- Q. Now, maybe we could go through your charts again.
- 35 We'll start with 'A'. Now, I notice a cast when

- 5 it's here in picture #6 on chart 'A', P-142, that there seems to be a fair area of of the toe area ahead of the cast?
- A. The toe area of the boot?
- Q. Yes.
- A. That's correct, yes. It's size 11 boot.
- 10 Q. Size 11 boot, so you would expect some play area there?
- A. There would be area up above the toe, yes. The difference between sizes 9 and 11 is not a great difference in a shoe size, two sizes.
- Q. What about 9 and 12?
- 15 A. Well, again not a great difference. It's a little big bigger but not a great difference.
- Q. Make it a little more awkward, though, to wear, would it, to wear boots too big for you?
- A. Yes, each size you go up, I would imagine it would
- 20 make it more difficult.
- Q. And probably difficult to run?
- A. Depending how extra-big your boots were, I would imagine, yes. It would make quite a noise, I guess.
- 25 Q. Were you ever asked to take any cast impressions of footprints left on the beach in Chatham Head around the Kelly Road?
- A. No, as I said earlier, I was called to several scenes to assist Bathurst Ident. It was their
- 30 area for doing ident. work. I stayed away from any other work. Any exhibits that may have been found were pointed out to Sergeant Chiasson of the Bathurst Ident. Section and had him handle it. I got involved with this area because nobody was
- 35 there from Bathurst and I ended up taking the

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molded impression and working with it. Other than that I did no other work.

5 Q. O.K., you mentioned in #2, photograph #2, that there's a strong high ridge here where it was broken?

A. Yes.

Q. And that's the sole itself?

10 A. That's the sole itself.

Q. And would that high ridge have any effect on the insole creating a high ridge?

A. I didn't see it coming through the sole at all. It didn't have any tearing effect, no.

15 Q. Would that cause a person to gain calluses on his feet across that high ridge area?

A. Again I said I made no comment on that, I have no idea, that's not my line of expertise.

20 Q. Nor do you know if it should cause a sweat mark across in the insole?

A. Well, it didn't. I don't know if it should but it didn't.

25 Q. Do you want to try chart 'B'? I show you again the left insole. Now, would you fit that again in the -

THE COURT: What is that, number what?

MR. FURLOTTE: The insole is P-141, so would you fit P-137 which is the cast of the left foot into P-141, the left insole?

30 A. Well, it's going to be difficult to see anything at all with a flat surface unless I had the boot, but relatively that's the area that we're talking about, but unless we had the boot and the like -

35 Q. Would that be about basically the way it fits, or back a little further?

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- 5 A. You're talking basically, I guess. I took weeks to do the actual examination, and basically that's where it should be. I would need to do a lot more work to get it lined up exactly where it should be.
- Q. Now, that cast impression appears to be a lot wider than the insole, is that uncommon or -
- 10 A. No, insoles come, those foam insoles or fibre insoles, come a certain size. The boot - again, like I said, the boot conforms, the side of the boot conforms and cradles the side of the shoe. If the bottom of the shoe was as wide as the
- 15 widest part of your foot it would be a pretty wide shoe but most shoes aren't.
- Q. So that would be normal for the insole to be narrower than the foot?
- A. Narrower than the widest part of the foot but well
- 20 within the limits of the weight-bearing area.
- Q. O.K., could we go on to 'C'? O.K., sorry, we covered that one. O.K., that's the right foot, O.K., we'll leave that up there. Now, you mentioned these are size 11 boots, is that right?
- 25 A. Yes, they are size 11 boots.
- Q. And Mr. Legere's feet is about a size 9?
- A. Appears to be a size 9, 9 1/2.
- Q. And you only found impressions of one person ever having worn these boots?
- 30 A. Yes.
- Q. So anybody who may have owned the boots before Mr. Legere, if somebody owned these boots before Mr. Legere had them on his feet, supposedly, you say Mr. Legere had these boots on his feet,
- 35 there's no evidence of anybody else ever having

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worn these boots?

- 5 A. No evidence of anybody having worn those boots, right.
- Q. If somebody had worn these boots, say, before the person whose foot was in them who you believe to be Mr. Legere, would that person's prints be erased because somebody else wore them after?
- 10 A. That would depend on several factors. The main one would be the size of the foot that was in the boot before, surmising there was a foot there before. If the foot was big enough and was in the boot long enough to cause indentations and sweat areas outside of the area of Mr. Legere's foot, then you would see them in the area of here. That wasn't visible. If the foot was small enough to cause indentations and sweat marks much smaller than Mr. Legere's foot, you would get toe areas here, which there are none. If somebody wore them relatively the same size you would get a little distortion throughout each toe area and the ball of the foot, which there was none, so it's my opinion that there was nobody else - I saw no other impression in the boot.
- 15
- 20
- 25 Q. And how well-worn were these boots, would you say?
A. Extremely well-worn.
Q. Extremely well-worn, somebody would have to wear them what, couple of months, six months?
- 30 A. I wouldn't make a guess on it. They were ready to be turfed, thrown out. There was not much left of them, they were well-worn.
- Q. And how long would a pair of boots like this normally last?
- 35 A. I have no idea. They would last me ten years.

- Q. O.K., go on to the next one. I believe some of the measurements you made were from - you
5 mentioned from the ball to the heel, from the heel to the toes, or did you just fit these for indentations?
- A. Specifically the measurements were taken from the heel all right, but in a certain part of the heel.
10 Some were taken from the edge of the heel to the tips of each toe. Some were taken from the optical centre of the heel to the optical centre of each toe, so specifically, in specific areas, not just from the heel to the toe generally.
- 15 Q. O.K., so now, it's easy to make these measurements on the casts of Mr. Legere's feet. How do you make these measurements on the sweat marks?
- A. It's the same idea as using the cast. For example, using calipers and taking the indentations of the foot, the indentation again appears -
20
- Q. Well, let's show you the insole. I show you P-141, an insole of the left foot of the Greb boot.
- A. O.K., as I said, my examination took longer than
25 two minutes. It was under several forms of light, it was under UV light, it was under normal light, I looked at it under infrared light and I looked at it under a luma-light. Areas were measured under different lighting situations to get the
30 different techniques. It was also measured under oblique lighting, and oblique lighting will give me the indented areas that I need to form the end of the heel, which is here. The indented areas will also give me the area here which is the meta-
35 tarsal area which I can easily measure. It comes

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5 along that area here, the tips of the toes and
in this area here. The tips of the toes end in
this area here. When I go under UV light it's
even more pronounced, the sweat area that would
come along here, so I just can't take this and say
here's the end and here's the bottom, it took a
longer period of time for me to do my work than
10 two minutes. I spent a lot of time on it and
that's the accumulation of what I'm saying here
is -

Q. And did you get different measurements when you
used different lighting?

15 A. No, I didn't get different measurements when I
used different lighting, I got different areas I
could see better. Like even on this cast, on this
thing here, you can see the metatarsal area is
quite predominant, it's easily seen, it's easily
20 measured. The edge of the heel here is quite
easily measured. Where we lose is maybe up in
this area. I can guess where it is here or I can
use light, different types of light, to enhance it
so I can see where it is, so on here I can measure
25 areas I can see. I have to use different light to
measure areas I can't see. The light doesn't put
something there that's not there so I wouldn't get
a different measurement, it just helps me see it.

Q. O.K., the dark edge across the top of that insole,
30 the toe area right up here at the top, what would
that be?

A. Up here?

Q. Yes.

A. That appeared to me to be a sweat area or dirt
35 area or a wet area that just dried because the toe

was pressing in so hard and made a big U-shaped area that was wet and dirty up at the top.

5 Q. So it extended up past the front of the toes, the sweat mark?

A. Yes, some areas were even looked at on the opposite side. It's much easier to see, sometimes the ball of the foot comes out white, the toe area starts coming out white, because the downward pressure here, you don't get any white coming through and here on the heel you get it, so like I said, it's not just taking this and plant the mold on it and say here is a match, it wasn't that easy, and the same here. I can't show you the exact area here without using many different types of light.

10

15

Q. O.K., let's just take the left insole, for instance, and the measurements you made on the cast and the measurements you made on the insole. Was there any difference at all in the measurements?

20

A. Yes, there was. There was some difference of one or two millimetres in different areas, and the main areas were areas that were hard to see but nonetheless there were some differences and - in the measurements there were some differences. Some measurements were right on, other measurements were different by one or two millimetres.

25

Q. Would that be normal?

30

A. Yes, it's normal when you're trying to measure areas that are very difficult to see and measuring areas that are almost impossible to see, yes, it's normal.

Q. So even if you were measuring a known foot which

35

- 5 belonged in a known set of boots as belonging to the same person, your measurements would still not be all that accurate?
- A. Now, you're asking me a hypothetical question, that's not what I said. I said that here I found it hard to measure. Any other sweat areas that would be similar to this would be hard to measure. 10 Some boots may take a sweat area and stand out as would an inked impression, so no, everything is not the same. I'd have to see the boot you're talking about and I'll let you know. This was difficult to measure. Would I rely on just 15 measurements to do a comparison? No, I wouldn't. There was many other factors that come into a comparison. Measurements was just one area that I used.
- Q. So if this boot was difficult to measure there 20 would be room for error, I suppose, some degree?
- A. There would be room for error on the measurement. As I said, the error was plus or minus one because there was a couple of millimetres difference in some of the areas, is that what you mean by error?
- Q. Yes. 25
- A. Oh, errors in - yes, plus or minus one error, difference in error, sure.
- Q. Now, you mentioned you used calipers to do your measurements. What kind of calipers do you use?
- A. I have a set of draftsman - part of my job with 30 the Forensic Identification Section is to do plan drawings and I have my own plan drawing calipers, or a compass. I also have an extension arm for the compass that extends out for about six inches 35 on one side and it comes straight out so I can get

a pretty accurate reading on a large area.

Q. And what do you use to measure your calipers?

5 A. I use a ruler.

Q. Just a ruler? Not a measuring tape, a ruler?

A. No, a ruler, a steel ruler that has measurements in millimetres and the like.

Q. And you use the same ruler all the time or -

10 A. I've used the same ruler since the start of this study right through the court, yes.

Q. Now, you mentioned it takes a period of time to start seeing impressions when a person is wearing a pair of footwear?

15 A. It would take some time, yes.

Q. And once the impressions are made they last for a considerable period of time? Maybe they'd stay inside of a pair of boots for years?

A. Depending on the impression. These impressions here will stay inside of the boot for years, yes, this type.

Q. Now, you said these boots were well-worn?

A. Yes, they were.

Q. And you can tell by the impressions in them that they were well-worn, not just by the condition of the boots?

25 A. No, the impression in them doesn't tell me that they're well-worn. As I said, the Gorilla boots were a lot newer and had deeper impressions in them than these did. The material will take an impression more. What tells me these were well-worn is from the ultraviolet photography where the heel area is almost worn through, and again, not looking at one thing on this footwear comparison, 30 it was over a long period of time. If you turn 35

Sgt. Kennedy - Cross

5 the insole over the fact that the white is almost worn through tells me that the boots were worn for a long period of time, and the condition of the boots. The break in here takes longer than a short period of time to break a pair of boots by walking with them. Looking at the uppers it's easily seen that the boots aren't brand-new boots. 10 Not just one factor is going to tell me if the boots were worn for a long time as it's not going to be one factor to come to a conclusion on the identity of the boots.

15 Q. O.K., the impressions in these Greb boots, how long would a person have to wear those boots - say these boots were not destroyed and I was to wear these boots after you obtained them, how long would it take before my foot impressions would overtake the ones that are already in it?

20 A. I have no idea.

Q. Would it take a considerable period of time?

A. It would take some time.

25 Q. So somebody else could wear these boots for a couple of weeks and you would identify the original wearer of the boots rather than the second wearer?

30 A. If you're saying a couple of weeks I wouldn't make a comment on a couple of weeks. I don't know if the impression from somebody else would be seen in a couple of weeks. There's a possibility it might be in a couple of weeks, that's - couple of hours -

Q. Over the impression of somebody else?

35 A. Not over the impression of somebody else but to distort the impression of somebody else. The

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5 primary wearer, the person that's worn that boot
for the last year, let's say, will be predominant
in there. If somebody else wore them for another
period of time shorter than the predominant wearer
his foot mark might show up inside of the boot,
but not as predominantly as you're going to see
here. Now, whether it takes two weeks, I can't
10 comment on that, I don't know.

MR. FURLOTTE: I think you may as well have a seat,
Sergeant.

THE COURT: Why don't you say the same to him? I don't
mean that, really.

15 MR. FURLOTTE: I've been sitting down all day, My Lord.
The nail that you found - I assume you did find a
nail in the heel of the left boot?

A. Yes, it was a nail or a staple. I was going to
remove it and I was going to take the boot apart
20 to see what it was and I opted out doing that. I
started to and changed my tactic.

Q. So you don't know what it is, a nail or a staple?

A. It's a sharp piece of metal in the shape of a nail
or a staple.

25 Q. How high was it raised from the sole?

A. Not very high. It was raised up enough where you
could pick it with your finger, but not really
high.

Q. Would it be safe to say that maybe at one time
30 that sharp object stuck up through the insole and
then later it was worn off, that it was no longer
sticking up through the insole whenever you
examined the boots?

A. It's safe to say that it may have been higher than
35 what it was when I examined it but it was still

sufficiently visible when I examined the boots.
Whether or not it was longer or not, I can't make
any comment on that.

5

Q. Was it still sufficiently visible whenever the
insole was in the boot or only once you took the
insole out?

10

A. It was more visible when the insole came out of
the boot. You couldn't see it through the insole
up above the - it wasn't long enough to go through
the insole and stick up.

Q. So it wouldn't have been long enough to stick into
somebody's heel, whoever was wearing the boot?

15

A. It would be hard to make a comment on that. From
my observations I believe it was long enough to
wear a hole in the insole.

Q. At one time it obviously did.

20

A. And I believe it was long enough to wear a hole in
the bag, and I draw an inference from my having a
hole in the - or a particle in the left cast of
Allan Legere that it may have been long enough to
cause a mark in his left heel.

Q. May have?

25

A. May have.

Q. Could I have the measurements that you found and
the different measurements that you took?

A. Yes, you may.

30

Q. O.K., would you tell the Court, please, which
measurements you took and what they were? I
believe there was what, 16 different measurements?

A. Yes, the measurements from the mold using a set of
calipers dated 91-09-26.

Q. Would that be the left foot or right?

35

A. I did left and right foot.

- Q. And is that 16 measurements between the left and right foot or of each foot?
- 5 A. That's 16 measurements each foot for a total of 32 measurements. Do you want me to read these off or do you want this as a -
- Q. That might take some time. I'll see if I can think of a shorter way of doing this. O.K.,
- 10 rather than of the mold of the foot let's take the measurement from the insoles of the Greb boot and the insoles of the Gorilla boot and we'll see what differences there may be.
- A. One difference is in the heel width of the left
- 15 boot was three millimetres larger than the right heel area. It was 63 millimetres in the left and 60 millimetres in the right.
- Q. O.K., is that between the feet, now, or is that between the boots?
- 20 A. That's the width of the heel.
- Q. The width of the heel in which boot, now?
- A. The left heel width is 63 inches. The right heel width is 60 millimetres - not inches, millimetres.
- Q. And the right is 60?
- 25 A. Mm-hmm.
- Q. And that's in which pair of boots?
- A. Which pair of boots - I don't follow you.
- Q. O.K., what are you reading off now, the measurements of the casts or the boots?
- 30 A. No, you wanted the measurement from the insole, did you not?
- Q. From the insole.
- A. That's what I'm reading.
- Q. O.K., this is the insole from which boots, the
- 35 Greb boots or the Gorilla boots?

- A. Well, there's no insole, basically, from the Gorilla boots. The insole that we had here are
5 from the Greb boots, the ones found behind Keddy's Hotel.
- Q. Did you take measurements off the insoles of the Gorilla boots?
- A. I didn't take measurements off them. I used
10 calipers just to take from one size to the other to see how they fit in, the size of the toe, the length of the toe, but I didn't copy measurements down, I just calipered it.
- Q. And what did you do, just look at the caliper and
15 say they're similar, they're close enough?
- A. I took a caliper reading from the outside tip of the first phalange of the Gorilla boot to the edge of the heel of the Gorilla boot. I would then go to the molded impression to see if it matched and
20 I would go to the insole of the Greb boot to see if it was similar or if it matched. Each time I did this the areas I could see matched.
- Q. Perfectly?
- A. Yes, they matched perfectly.
- 25 Q. Close enough for you?
- A. Close enough for any forensic ident. expert, yes.
- Q. You didn't take the measurements, you just have the measurements for the Greb boots?
- A. That's correct, yes.
- 30 Q. O.K., that's the first measurement, the heel?
- A. Mm-hmm.
- Q. O.K., what's your second measurement?
- A. The second measurement is from the optical centre of the heel to the optical centre of the first
35 phalange.

- Q. And what were they?
- A. In the left foot it would be 214 millimetres and
5 in the right foot it would be 225 millimetres.
- Q. What would be your third measurement?
- A. The third measurement would be from the optical
centre of the heel to the optical centre of the
10 second phalange in the left and right foot. The
left foot would be 225 millimetres, the right foot
would be 228 millimetres.
- Q. Fourth measurement?
- A. From the optical centre of the heel to the
optical centre of the third phalange, left foot
15 being 213 millimetres, the right foot being 213
millimetres.
- Q. The fifth measurement?
- A. The fourth measurement, the optical centre of the
heel to the optical centre of the fourth phalange.
- 20 Q. Is this the fourth measurement or fifth? You did
the width of the heel first -
- A. The width of the heel first, and it would be one,
two, three, four - this is the fifth measurement
going to the fourth phalange, the fifth measure-
25 ment. From the optical centre of the heel to the
optical centre of the fourth phalange, left foot
being 205 millimetres, the right foot was unable
to get a reading.
- Q. Sixth measurement?
- 30 A. The optical centre of the heel to the optical
centre of the fifth phalange, 185 millimetres in
the left foot, 190 millimetres to the right foot.
- Q. Seventh measurement?
- A. Going to - which area do you want to go to?
- 35 Q. It doesn't matter to me, I just want all the

measurements, whatever they are.

5 A. O.K., then, we'll go from the - in the left foot
I've measured from the metatarsal just below the
first phalange to the outside edge of the heel,
and that was two hundred and -

Q. Can you explain where that is again?

10 A. The metatarsal is just below the first phalange,
the large toe. It's just where the ball of the
foot joins the large toe to the outside heel of
the - the outside heel would be the back part of
the heel, on the back part of the foot 226 milli-
metres.

15 Q. 226?

A. Yes. From the metatarsal area directly below the
second phalange, would be the second toe, meta-
tarsal where it joins the ball of the foot, to the
outside heel, edge of the heel, 235 millimetres.

20 Q. O.K., your eighth measurement?

A. It's from the -

25 THE COURT: I'm just thinking here, how much longer are
you likely to be with your cross-examination, Mr.
Furlotte? I'm just thinking in terms of when do
we stop here. We're past our half-past four hour
and -

MR. FURLOTTE: Well, we could stop here because I expect
to be quite some time with this witness.

30 THE COURT: I think we'd better plan on stopping now and
then going on in the morning. I had been hoping
that perhaps if this witness were finished there
might be some hope tomorrow of finishing up, but
how long do you, Mr. Allman, see tomorrow? You
have two more witnesses?

35 MR. ALLMAN: Yes.

140

THE COURT: Are they a full day? Well, you can't tell
but -

MR. FURLOTTE: My Lord, it may be that if the Crown can
5 provide me with all this information that I wish
out of these witnesses, then maybe we could save
court time.

MR. ALLMAN: Well, with regard to the other witnesses Mr.
Furlotte's free to discuss anything with them as
10 he's been free to discuss it with any of our
witnesses. With regard to this witness, of
course, we have a problem, he's on the witness
box, but if there's information that Mr.
Furlotte wants from this witness that can speed
15 things up I certainly don't object to them
talking to each other.

THE COURT: Well, to begin with perhaps this witness
could on a slip of paper - you want the rest of
these measurements?

MR. FURLOTTE: Yes.

THE COURT: How far do they go, 16 or 18? What is it?

A. 32 on this one.

THE COURT: Well, perhaps the witness could, as soon as
we retire here today, on a slip of paper write
25 out these things and give them through Mr. Pugh
here, the Clerk, to -

MR. ALLMAN: I don't know if they're presently in a
format that would make sense to the jury but I'm
sure we could either photocopy them as they are
30 or do something else that makes it more visible
to the jury.

THE COURT: Let's give you permission, Mr. Allman, to
discuss this in conjunction with Mr. Furlotte
and the witness and see what can be provided to
35 speed that up. Are there any other fields,

though, that are going to take a long time?

I mean you say you want this information but what other information do you want?

5 MR. FURLOTTE: I want all the measurements that he made and I want to be able to compare them with the measurements that the other expert witnesses are coming in and made.

10 THE COURT: Will the other witnesses likely have measurements?

MR. ALLMAN: I don't want to get in, in front of the jury, into what the other experts - what I'm prepared to do is this. Mr. Furlotte can talk to this witness even though he's on the witness box and get information from him, and then if he wants to talk to or get information from the witnesses we have not yet called we'll make them available tonight or whenever he wants.

THE COURT: All right.

20 MR. FURLOTTE: That would be fine. I think it might save a lot of court time.

THE COURT: I'm thinking of saving the jury's time, essentially.

MR. FURLOTTE: They're part of the Court.

25 THE COURT: And the Court, my time and everybody's time. Well, you people will continue on with this after we get out of here and see what you can work out, all right, but otherwise you'll be back - well, you'll be back on the stand anyway at 9:30 in the morning and you shouldn't discuss it except as I've outlined just now, and I'm afraid I can't give the - as I say, I had hoped that perhaps by tomorrow night we'd be through and then you'd be released until Tuesday. It looks now as though there's a possibility we might be going into

30

35

Thursday but you understand what the situation is
and we'll finish up as soon as we can this week.
I caution you again, of course, not to talk to
5 anyone outside about the case. I hope that no one
is getting mail or any anonymous letters through
the mail. If you are, let me know about that,
too.

10 {COURT ADJOURNS TO 9:30 a.m., OCTOBER 9, 1991.

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