

Q And what was the name of it?

A I don't know the name of it.

Q And were there any stops along the way after getting unstuck from the alley before reaching the motel?

A No.

Q How long would you estimate it took to go from the alley behind the funeral home to the next stop at the motel?

A I don't know. 10

Q And what happened at the motel?

A Dave went in and got a map.

Q And you and Ron . . . ?

A . . . stayed in the car.

Q Were you all still in the front seat?

A Yes.

Q And what was the situation with Dave's say footwear at the time he went into the motel?

A He didn't have any shoes on.

Q And did he have socks on? 20

A Yes.

Q No shoes or I gather no overshoes?

A No.

Q And he went in alone, did he?

A Yes.

Q And how long did he stay in there?

A Only a few minutes.

Q And did he return?

A Yes he did.

Q Did he have anything with him? 30

A A map.

Q And did he get in with you people?

- A Yes.
- Q What happened then?
- A We left the motel and then we started driving again and somehow Dave recognized something or other anyway to get to Shorty's place; that's how we knew from there to get to Shorty's; so anyway we decided to go down this alley and we went down the alley and then we ended up behind this car.
- Q Now, was Dave still doing the navigating so to speak? 10
- A Yes.
- Q And was the purpose as far as you knew and were concerned still to get to Shorty's?
- A Yes.
- Q And you ended up in another alley behind a car?
- A Yes.
- Q Could you get around the car?
- A No.
- Q And was it mobile? 20
- A No, it wasn't.
- Q So what did you people do?
- A Well, Dave said that we should push him out and Ron said we shouldn't because the car - it will stall.
- Q I'm sorry - Ron said what?
- A Pardon me?
- Q Speak up a little - Ron said what?
- A Ron said we shouldn't because the car - it will stall. 30
- Q Shouldn't because the car will stall?
- A Right; so we ended up pushing the car anyway

and the car stalled.

Q That being your or Wilson's car?

A Yes.

Q And what happened then?

A Well, the boys were talking to the man.

Q Now, was there someone in conjunction with that other car?

A Yes there was.

Q And who did he seem to be as far as you could tell, that is he had something to do with the other car? 10

A Well, he was the driver of the other car.

Q And what age of a man roughly speaking?

A Probably in his late twenties.

Q And I take it nobody that you knew?

A No.

Q Or nobody that any of your party knew as far as you could see?

A No.

Q And was there anyone else sort of in connection with that other car? 20

A There was just a woman there.

Q I see; of what age roughly?

A About the same age.

Q So, there was you said some discussion about being pushed or something?

A Yes.

Q And this was between whom?

A What do you mean?

Q Well, who was involved in the discussion? 30

A When we were going to push the guy out?

Q Yes.

- A Well, Ron and Dave.
- Q Alright; and then Wilson tried to push it and stalled his car?
- A Right.
- Q Then what happened?
- A Then the guy came over to our car and the boys got out and he said - come into my place to keep warm. So we all went into the house.
- Q Now, this car was in the back lane and where was the house in relation to the car or vice versa? 10
- A Well, it was right - well, right behind his place in the alley.
- Q The car was?
- A Yes.
- Q And so you went into that house on his invitation?
- A Right.
- Q And whereabouts in the house?
- A Well, on the landing.
- Q Would that be right by the back door? 20
- A Yes.
- Q I see; did you find out so to speak which part of the house it was?
- A Yes.
- Q What was it?
- A The basement suite.
- Q Alright; did you go down there yourself at all?
- A Yes I did.
- Q And did any of your companions go down there?
- A No. 30
- Q That is Ron and Dave I am talking about?
- A Right.

211260

Q And where did they go?

A Well, they stayed on the landing.

Q But you went down?

A Yes.

Q Did you see anything of that lady in there whom you had associated with the car?

A You mean in the suite?

Q Yes.

A No.

Q And did you see anything of any other persons but the three of you and the man whose car appeared to be stuck and the lady who appeared to be with him? 10

A Yes, there was one more lady.

Q One more lady?

A Yes.

Q And how long were you at that person's house?

A About three-quarters of an hour.

Q And what happened like while you were there?

A Well, the guy he phoned a tow truck. 20

Q The other man?

A Yes; and we waited for about half an hour for the tow truck to come.

Q Did it arrive then?

A Yes.

Q What happened when it got there?

A I think he pulled the guy's car out and then he was going to give us a boost and anyway we ended up not getting one so the tow truck went back to the garage. And then the guy drove us to go get some gas to the garage. 30

Q This is the man whose car . . . ?

A . . . yes.

Q Was his car running by this time?

A Yes, it was.

Q So he drove you to go get some gas?

A Right.

Q All three of you?

A Right.

Q And where to?

A To the gas station.

Q Where was it?

10

A I think it was only about three blocks away from this place.

Q And did you know the name of the street or avenue it was on?

A No.

Q Did you know the name of the station?

A No.

Q No?

A No.

Q And when you got to the station did someone get gas?

20

A Yes.

Q Who was that?

A I think it was Dave that went and got it, I'm not sure.

Q Alright, what happened then?

A Well, we brought the gas back to the car and then we went back to the guy's place.

Q How did you get back?

A With his car; he drove us back.

30

Q This same man again?

A Yes.

211262

Q By the way I'm sorry, Miss John, did you learn his name eventually?

A Yes.

Q What was it?

A Mr. Danohuk.

Q You came to know him as that?

A Yes.

Q And he drove you back to the alley behind his house?

A Right.

10

Q And I take it your car was still there?

A Right.

Q What happened when you got back there?

A Well, the car wouldn't start anyway so we had to go back and get the tow truck, so I don't know whether we phoned or we went there but anyway the tow truck came and he gave it a booster.

Q Which tow truck?

A The same one.

20

Q The same one that had been there for Danohuk?

A Yes.

Q And a booster - what's that?

A It's to charge the battery or something.

Q Something to do with the battery?

A Right.

Q And did that get Wilson's car going?

A Yes.

Q And then what happened - I'm sorry, did it get the motor running?

30

A Yes.

Q Would it go then - move?

A Yes it would.

Q Wilson's car?

A Mmhm.

Q Alright; what happened then?

A Well, anyway we were supposed to go back to the service station to pay this guy but we didn't get there.

Q Alright, what happened then?

A And anyway when we were driving in the process we found Shorty's place. 10

Q So that would be after you left Danchuks at some stage?

A Right.

Q How much time would you say you were say stuck at Danchuks altogether, including the time you were away at the station and all?

A Approximately an hour or so maybe.

Q Then it was after that you set off and did reach Shorty Cadrain's?

A Yes. 20

Q And how much time was involved in driving from Danchuks to Shorty's?

A I don't know.

Q Was it far?

A I can't remember how far it is.

Q And you got there one way or another?

A Right.

Q And was Ron still driving then?

A Yes.

Q Now, where did Shorty's house turn out to be, 30 like in terms of the block where was it?

A Oh - right on the corner.

- Q On a corner; and I presume it had a front door
so to speak?
- A Yes it did.
- Q And where did you park, like the Wilson car
stop in relation to Shorty's front door?
- A Across the street.
- Q Across the street; and what happened when you
got there and stopped?
- A Well, Dave went into the house and then he was
in there for a few minutes and then he came to 10
the door and then he waved to us to come in
and he shouted or something and me and Ron
went in.
- Q I see; so Dave went in first and sort of
beckoned you people in?
- A Right.
- Q And when you went in there was there anyone
there?
- A Yes, there was.
- Q Who was that? 20
- A Shorty, his sister and his brother.
- Q And I take it they were all strangers to you
until then?
- A Yes.
- Q And I believe you told us this morning Shorty
is the one you spoke of as Albert Cadrain?
- A Right.
- Q Were there any introductions performed there?
- A Yes.
- Q Everybody introduced? 30
- A Right.
- Q Who did that?

A Dave did.

Q And what was the next order of business at
Cadrain's house?

A Well, the boys decided to change their clothes
so the suitcase was brought in.

Q Who brought that in?

A I don't know.

Q Was it you?

A No, I don't think so; I don't know.

THE COURT:

10

Q Pardon?

A I don't know who brought it in.

Q But you were asked - was it you? Surely you
know whether you brought it in or not?

A Oh, no, I didn't.

MR. CALDWELL:

Q Now, what suitcase was this?

A Dave's suitcase.

Q Did anyone else have a suitcase on this whole
voyage?

20

A No.

Q And you didn't have one?

A No.

Q Alright; and someone brought that in?

A Yes.

Q Did the boys change?

A Yes.

Q What did they change?

A Well, Ron changed his pants and Dave changed
his pants.

30

Q And did you see what was done with the clothes,
like I guess - you say Ron changed his pants?

211266

A Mhm.

Q And Dave changed his pants?

A Right.

Q Was that everything?

A I don't know if they changed anything else.

Q I see; but you're sure of the pants?

A Right.

Q What was done with the two pair of pants they got out of?

A Well, Dave's pants I put in his suitcase but I 10 don't know what happened to Ron's.

Q You say you put them in?

A Yes.

Q And you don't know what happened to Ron's?

A No.

Q Alright, what happened then?

A Albert started to pack some clothes because he was coming with us; so then his mother came home.

Q Pardon me but had there been some discussion on 20 Albert going with you?

A Yes there was.

Q Along what lines generally?

A What do you mean?

Q Well, did someone invite him so to speak?

A Oh yes.

Q And where did the two boys get the pants that they put on there from?

A From Dave's suitcase.

Q Okay; now, you said then that Albert started 30 packing some clothes?

A Right.

Q And what happened then?

A Then Dave took the car for some reason or another.

Q Right; and did he say why he wanted the car?

A Not that I can recall.

Q I take it this was in the house when he took it so to speak?

A Right.

Q And did this involve getting something from someone?

10

A I don't know.

Q Well, who had the keys?

A Oh, Ron had the keys.

Q Did Dave get them?

A Yes he did.

Q And what happened to his suitcase?

A Well, it was left at the house at that time I'm pretty sure.

Q You think it was left at the house?

A Yes.

20

Q Alright; did you - now, if we can just go ahead a little - did you see any more of Dave's suitcase ever?

A No.

Q The last you saw of it you think it was left there on the occasion when they changed their pants?

A You mean left when Dave left or just left there completely?

THE COURT:

30

Q The question is after this time when the pants were changed and you put the pants of the

accused Milgaard into the suitcase did you see
the suitcase again after that anywhere?

A Yes, it was put back into the car.

THE COURT: Alright; that's what Mr.
Caldwell is getting at.

MR. CALDWELL:

Q When?

A Just before we left for the garage.

Q Alright; and I take it this is still the same
time, is it, of what you're talking about now? 10

A Right.

Q Okay; and you say that Dave got the keys and I
gather left the house?

A Right.

Q How long after you got to Cadrain's was that?

A Only about fifteen minutes.

Q And what - did you see Dave like what he did
once he got out the door or not?

A No.

Q And what was the next you saw of Dave? 20

A When he came back into the house.

Q How long . . . ?

A . . . about ten minutes later.

Q And did you pay any attention to where the car
was on this occasion when he came back in?

A Yes, I looked out the window to see if it was
there.

Q Alright; which way did you look out now?

A Well, out Albert's front window looked across
the other side of the street. 30

Q I take it looked to where it had been when you
came there?

A Right.

Q And was it there?

A No.

Q Did you look to see where it was?

A Dave told us where it was.

Q Did you eventually see it?

A Yes.

Q Where was it when you saw it?

A It was on the left side of Shorty's house. 10

Q Would that be right as you face out the front door or as you look at the house?

A As you face out the front door.

Q And you say it was on the side?

A Right.

Q Side street, I gather?

A Yes.

Q And appreciating I suppose you didn't know your directions at that place - north, south, east or west . . . ? 20

A No I didn't.

Q . . . but how would the car be facing when it was on the side street in relation to how it was facing when it was on the front street and across the street?

A Well, looking out Shorty's house it would be facing the same way as I would be looking.

Q I see; alright and it was to the side street of his house?

A Right. 30

Q Now, when Dave did reappear what transpired?

A Well, they sort of - Dave and Ron got into a

little argument; and then . .

Q . . what over?

A Pardon?

Q What over?

A Well, over the car breaking down.

Q Now, where was that argument?

A Pardon me?

Q Where was it that that argument took place?

A In the house.

Q In the house; now, are ^{we} to take it that Dave came 10
back into the house when he returned there?

A Yes he did.

Q And what was the next thing that happened once
Dave got back in the house?

A We all went out to see what was wrong with the
car.

Q But was the argument before you went out?

A Yes.

Q What was the thing that set that off - what
happened that they got arguing? 20

A Well, it was because Dave had taken the car and
he only had it about ten minutes and it broke
down.

Q I take it he must have told this?

A Yes.

Q I see; okay; and there was some argument over
the car having broken down during the time he
had it?

A Right.

Q Between who? 30

A Between Dave and Ron.

Q Then what happened?

- A Then we all went out to see what was wrong with it.
- Q And did you go out to where you told the Court it was sitting?
- A Right.
- Q And that would be the four of you or everybody?
- A The four of us.
- Q That being your three plus Shorty?
- A Right.
- Q When you got out - and appreciating you don't 10
know much about cars - but could you see anything that looked out of line?
- A Yes.
- Q What was that?
- A There was some brown liquid on the snow.
- Q Which sort of way?
- A Well, underneath the car and behind it too.
- Q Okay; and was anything done about checking the car there or trying it or anything?
- A I don't remember. 20
- Q Alright; now what happened when you got out and looked at it?
- A Well, then Ron could see there was something wrong with it that he couldn't fix so then we all went back into the house and a tow truck was phoned.
- Q Do you remember who phoned it?
- A Davedid.
- Q And I take it you awaited its arrival, did you?
- A Right. 30
- Q How much later would that be?
- A About ten - fifteen minutes.

Q And did the four of you stay at Albert Cadrain's house during that period?

A Oh yes.

Q And what about the brother and sister - still around?

A No.

Q And I take it the tow truck eventually showed up?

A Yes.

Q What happened then?

A Then we left with the tow truck to the service station. 10

Q And was it towing the car?

A Yes.

Q Was this the same one again as the one that had been at Danchuks as I understand it twice or a different one?

A I don't know.

Q Okay; and who accompanied the car along to the service station?

A We all did. 20

Q That being . . . ?

A The four of us - Albert and Dave, Ron and me.

Q And just to be extra clear any time we are talking about Shorty or Albert we are talking about Albert Cadrain?

A Right.

Q And did you ride in the car for that or the truck or what?

A No - well, some of us rode in the car and some in the truck. 30

Q And I suppose the man towed you to a service station?

- A Yes.
- Q Do you remember how many men were with the truck?
- A I think there was only one; I'm not too sure.
- Q Now, was the service station the one you had been to before with Danchuk?
- A No.
- Q And do you remember any say name of this service station or brand name or anything to do with it?
- A No. 10
- Q What happened when you got there?
- A Well, they took - well, we waited a few minutes before they could take the car into the garage and then when they got it in we all left to go to this restaurant across the street.
- Q And what time would that be by your estimate? I'm sorry if I asked you this before but what time do you think you got to Cadrain's house?
- A Must have been close to ten o'clock, maybe even after. 20
- Q And we're still talking about the a.m. of January the 31st 1969?
- A Yes.
- Q And what time would you suggest it was when you got to the service station?
- A Must have been about twelve o'clock - twelve thirty.
- Q About noon?
- A Yes.
- Q And when the car finally or after some delay it was taken I presume into the service area? 30
- A Yes.

211274

Q And you say that you then went for something to eat?

A Yes.

Q All four?

A Yes.

Q And where to?

A There was a cafeteria or something across the street from the service station.

Q And you all four went there?

A Yes.

10

Q Did you have lunch?

A Yes.

Q Where did you go then?

A We all went back to the service station.

Q Now, that cafeteria, Miss John, what sort of an establishment was it in?

A It was a serve-yourself thing - you go and pick your own stuff up.

Q But was it in some kind of a business or do you recall?

20

A There was a service station with it too, I think.

Q But at any rate after eating as I understand you, you all four went back to the place where the car was to be fixed?

A Right.

Q And when you got back there to the place where the car had been towed what happened?

A Well, we all sat in the part where you have to pay your bill and then Dave kept running back and forth to the car, I don't know why, but anyway the guy told him finally to stay out.

30

211275

Q Told . . ?

A Dave.

Q You heard that?

A Yes.

Q Now, the part where you pay your bill would be the front office sort of thing open to the public?

A Right.

Q And was the car in a sort of a service bay so to speak?

10

A Yes.

Q And was that where Dave was going to and coming from?

A Yes.

Q And which fellow was it told him to stay out?

A I don't know; there were a few of them there.

Q I appreciate you wouldn't know a name but was he - what was the chap doing who told him that?

A Oh, he was working on the car.

Q Working on which car?

20

A On Ron's car.

Q Okay; and what else happened then if anything while you were there?

A Well, I left the service station.

Q This would be after lunch, would it?

A Yes.

Q And anyone with you?

A No.

Q Where did you go?

A Well, I went across the street to the cafeteria to have a cup of coffee.

30

Q This is a second visit over for coffee?

A Yes.

Q Did you come back?

A Not right away.

Q What happened when you went over for coffee?

A Well, Albert came over then and we were talking.

Q I don't think you should say what was said but did you go somewhere with Albert?

A Yes.

Q And where was that?

A To the Credit Union or something like that. 10

Q Where was the first place you went when you and Albert left the cafeteria?

A To the Credit Union.

Q And what happened at the Credit Union?

A Well, Albert withdrew some money.

Q And this would be his Credit Union, I presume, would it?

A Yes.

Q Where did you go then?

A Then we went to this variety store. 20

Q Where was it from the Credit Union?

A I don't know; it was on the same block but I don't know how far.

Q On the same block?

A Yes.

Q And what happened at the variety store?

A Well, he bought some things.

Q What?

A A banjo or something or other and a xylophone; and that was all. 30

Q And would this be more or less like say toys?

A Oh yes.

Q Where did you go then?
A Then we went back to the service station.
Q Any stops along the way from the variety store to the service station?
A No.
Q And this was still you and Albert?
A Right.
Q And this I presume is where the car was - that service station?
A Right. 10
Q And when you got back there who was there?
A Ron and Dave.
Q I see; and as I understand you this whole trip around had been just you and Albert Cadrain?
A Right.
Q And when you got back what time would it be getting to be?
A I don't know; it would be afternoon.
Q It would be afternoon, eh?
A Yes. 20
Q But do you know when approximately?
A No.
Q And what was the state of affairs with the car when you got back?
A It wasn't quite ready yet.
Q And did you wait around?
A Yes.
Q And did you take any other side trips from that point on until the car was done?
A No. 30
Q Did any of the three others leave during that same period of time?

- A No.
- Q And I take it there came a time when the car was fixed?
- A Yes.
- Q And who paid for the repairs?
- A Albert did.
- Q And what time would you estimate that your party then left the station with the car in running order?
- A About two o'clock I think. 10
- Q And where did you go?
- A We started driving down town and Albert was looking for somebody.
- Q Now, I take it that this was yourself, Ron, Dave and Albert?
- A Right.
- Q And you started driving down town, eh?
- A Right.
- Q Now, appreciating that you don't know Saskatoon, are you talking more of the down town or business type area? 20
- A Well, the stores - department stores and things like that.
- Q Because Albert was looking for someone?
- A Right.
- Q Were there any stops made in that respect?
- A No.
- Q Well, you didn't go anywhere - specifically stop at any place?
- A Yes - well, after we drove down town we went to a friend of Shorty's. 30
- Q I see; and what sort of place was that?

- A I don't know, it was just a place where he lived.
- Q Yes, but a home?
- A Yes.
- Q Did anyone join your party there?
- A No.
- Q Who went in there if anyone?
- A Shorty did.
- Q And I take it returned?
- A Yes. 10
- Q And rejoined your group in the car?
- A Right.
- Q And where did you go then?
- A Then we left Saskatoon.
- Q And would that be your memory of the next thing say that happened?
- A Right.
- Q Alright; and I think you said earlier that the original idea as you understood it was that it was a trip to Vancouver, was it? 20
- A Right.
- Q When you left Saskatoon where were you going first, so to speak?
- A We were going to go to Edmonton.
- Q As part of the trip to ..?
- A ..Right.
- Q I see; and did you notice - well, may I say this - what was the next big city you got to?
- A Oh, it was Calgary.
- Q Rather than Edmonton? 30
- A Right.
- Q Now, after you left Saskatoon were there any

change-off of drivers?

A Yes.

Q Who did the driving?

A Dave.

Q And Ron, I take it?

A Yes.

Q And on that journey the only thing I want to ask you about at all is did you locate anything during the trip out of Saskatoon on the way to Calgary?

10

A Yes I did.

Q What was that?

A It was a cosmetic bag.

THE COURT:

Q A cosmetic bag?

A Yes.

MR. CALDWELL:

Q Now, for our benefit what is a cosmetic bag - what did it look like?

A Well, it was square and it was plastic and had a zipper on the top and was white with yellow flowers on it, containing make-up.

20

THE COURT:

Q Just a minute please; it was white and had white flowers on it?

A Yellow flowers.

Q And what did it contain?

A It contained make-up - face make-up.

Q How big would it be?

A Approximately three by five inches maybe.

30

THE COURT: Thank you.

MR. CALDWELL:

Q And that would be the approximate height and width?

A Right.

Q How about the depth?

A About four inches.

Q I see; now, was this the kind of thing that is transparent and you can see the contents?

A No.

Q And did you look in it?

A Yes I did. 10

Q What did you have to do to look into it?

A You have to open the zipper.

Q And you said there was face make-up in it?

A Right.

Q Now what was that? Was that one or more items like?

A Well, there was more than one item in it.

Q Right; can you tell the Court what they were?

A Well, there was a make-up - a face compact; and there was some eye shadow and some lipstick. 20

Q And is that what you recall as being the items?

A Right.

Q And do you recall any more?

A Not that I can remember.

Q Alright; and the first one then you said was a face compact?

A Right.

Q Did you look in it by any chance?

THE COURT:

Q Is that what you said - a face compact? 30

A Yes.

MR. CALDWELL:

Q This is something you can open?

A Oh yes - right.

Q Did you look in it or open it?

A Yes I did.

Q What was in it?

A There was make-up for your face; it was a powder.

Q And how big an article would the compact be roughly?

A Only about two inches - maybe three or four inches.

10

Q And what shape?

THE COURT:

Q Square or what?

A Just about square; it wasn't quite square though.

MR. CALDWELL:

Q Rectangular?

A Yes, more similar to rectangular.

Q I'm sorry but it's getting hard to hear you?

A It was more similar to rectangular than square. 20

Q Alright; and the second item being what?

A Eye shadow.

Q What form was that in - what did the item look like?

A A sort of a paste.

Q What sort of container?

A It was just a small container.

Q Are we talking about a tube or . . . ?

A . . . a tube, yes.

Q And the third thing? 30

A Was lipstick.

Q In the usual . . . ?

A . . . in a tube, yes.

Q And was any of this yours?

A No.

Q And I include of course the kit and this wasn't yours?

A No.

Q Had you seen it before?

A No.

Q Where did you find it?

A In the glove compartment. 10

Q And I take it this would be then on the front dash?

A Right.

Q Which side of the vehicle?

A The right side.

Q The right side; and when you found that now where were you sitting?

A I can't remember if I was just sitting in front - I was sitting in front somewhere.

Q In the front seat? 20

A Yes.

Q And do you remember who was driving?

A Dave was.

Q And do you remember where Shorty and Ron were?

A No.

Q And when you found the thing I take it first of all of course that you must have looked into it?

A Right.

Q What did you do then?

A Well, then I asked whose it was? 30

Q And what words did you use, do you remember?

A No.

Q It was to the effect of whose it was?
A Yes - right.
Q And was there any response to that of any sort?
A Nobody said anything and Dave - all of a sudden
Dave grabbed it and he threw it out the window
anyway.
Q And you said that he was driving?
A Right.
Q Which window?
A The driver's side. 10
Q And would that be the bag and its contents?
A Right.
Q They would be still in it?
A Yes.
Q Inside the bag?
A Yes, inside the bag.
Q And on that trip when did you get to . . .
THE COURT: . . . before you go on to
that -
Q From the time that you left Regina until you 20
found this cosmetic case had you looked in the
glove compartment at any time?
A Yes I had.
Q When was the last time you looked?
A Just before we left Saskatoon.
Q Was there anything like that in there at that
time?
A No.
MR. CALDWELL:
Q You got to Calgary as the first major stop 30
along the way?
A Yes.

- Q And briefly speaking did you stop somewhere else along the way?
- A Rosetown.
- Q And what happened there?
- A Some groceries were bought.
- Q And did you eat them or all of you shared it, did you?
- A Yes.
- Q And what time would you suggest it was when you got to Calgary? 10
- A It was at night sometime.
- Q And would it be that same evening though, that is of the Friday the 31st?
- A Yes.
- Q And can you say any better than simply that it was at night?
- A It was around nine o'clock I think - eight or nine o'clock.
- Q I see; and I don't wish to go into anything that happened but did you stop one place or another 20 in Calgary?
- A Yes we did.
- Q And where did you go from Calgary?
- A To Edmonton.
- Q When did you leave for Edmonton?
- A That night - that same night.
- Q And would you estimate when?
- A Close to midnight.
- Q And had you ever been say at Edmonton or Calgary before? 30
- A No.
- Q And so when did you get to Edmonton?

A In the morning - early in the morning.
Q Approximately what time?
A Oh, about eight o'clock maybe.
Q I see; something in the order of eight a.m.?
A Right.
Q This I take it then would be Saturday morning?
A Yes.
Q Alright; and I don't wish you to go into what you did but did you stop there at all?
A In Edmonton? 10
Q Yes.
A No.
Q Did you drive through the city or sort of around it?
A Through the city.
Q And where did you go then?
A To St. Alberts.
Q And did you meet somebody there or find somebody there?
A Yes we did. 20
Q Who was that?
A A girl named Sharon.
Q Did you know her before?
A Yes. I did.
Q From . . . ?
A Regina.
Q And sometime previous, I take it?
A Right.
Q And did any of your companions appear to know her, like when you met her at St. Alberts? 30
A Yes.
Q Which one?

- A Both David and Ron.
- Q And what about Shorty?
- A No.
- Q Alright; and did Sharon join your group?
- A Yes she did.
- Q And how long did you stay at St. Alberts?
- A Till about eight that night - something like that.
- Q I see; and did you stay there overnight?
- A Not in St. Alberts. 10
- Q Not in St. Alberts; where were you say over that night?
- A A motel - I think it was just outside of Edmonton.
- Q Oh I see; and as I understand you then this would be say the Saturday night we are talking about now?
- A Right.
- Q Into Sunday morning?
- A Right. 20
- Q And your memory is it was in a motel just out of Edmonton and was Sharon still with you people?
- A Yes.
- Q What happened then on what would be the Sunday morning - where did you go then?
- A We left for Calgary.
- Q Including the girl Sharon?
- A No.
- Q What happened - where did she leave you?
- A Well, I think we drove her home, I'm not too 30
sure but she didn't come with us anyway.
- A But at any rate you left for Calgary?

211288

A Right.

Q And did you get there that day?

A Yes we did.

Q That would be the Sunday according to your memory?

A Yes.

Q About what time?

A I don't know.

Q Morning - afternoon - evening?

A Afternoon sometime. 10

Q Can you say any better than that or not?

A No.

Q And did you stay in Calgary for any length of time on this occasion?

A No.

Q When did you leave Calgary again?

A It was getting close to six o'clock - something like that.

Q That I presume would be p.m., would it?

A P.M., yes. 20

Q Where did you go from Calgary?

A To Banff.

Q I take it this was still your party of four as of Saskatoon - Dave, Ron, Shorty and you?

A Yes.

Q You went from Calgary to Banff?

A Yes.

Q What time of the evening would you get there?

A I don't know what time it was we got there; it was dark anyway. 30

Q I see; I perhaps shouldn't have said evening but do you remember it being before or after

midnight, for instance?

A No, it was before.

Q And did you stay in Banff over that night?

A Yes we did.

Q And whereabouts?

A In the car.

Q And what happened the next day - now, excuse me, but this would be Monday, would it?

A Yes.

Well, anyway I sent a wire to my boss to send me 10 my money and we waited there for about all day.

Q You had some money coming to you from a cafe?

A Yes.

Q And did some money come?

A No, it didn't.

Q But that's what you were waiting for?

A Right.

Q What happened after you had waited most of the day in Banff?

A Then Ron decided to phone his parents. 20

Q And did he do that?

A Yes he did.

Q And then what did you do?

A Then we left Banff.

Q What time of day?

A I don't know.

Q Can you say morning, afternoon - evening?

A I think it was in the afternoon; I'm not too sure.

Q Alright; but at any rate you left Banff still 30 you four people, eh?

A Right.

- Q Where did you go from Banff?
- A Back to Regina.
- Q And without going into details were there any say short stops along the way?
- A Stops? Yes.
- Q And you went on essentially straight through to Regina?
- A Right.
- Q And do you remember what cities you passed through on the way to Regina, like what road you 10 took?
- A Number one.
- Q Number one highway?
- A Mhm.
- Q I see; now, when was it you got to Regina?
- A Well, it was in the morning sometime.
- Q And about what time?
- A Early morning about four o'clock I think.
- Q And are we to understand the trip from sometime during the day you were in Banff and this would 20 be the immediately following morning - the morning of the next day?
- A No, it took us about twenty-six hours to get home.
- Q Oh I see; your memory is it would take all the next day?
- A Mhm.
- Q And then into the following one?
- A That's right.
- Q I see; when you got into Regina all four people 30 still along?
- A Right.

Q And where did you go first in Regina?
A To Cornwall Street.
Q And what was - do you remember the address?
A 2117 - something like that.
Q You're not sure of the address?
A No; it's on the twenty-one block though.
Q Had you ever been in that place before?
A No.
Q And did anyone go there with you?
A Yes. 10
Q Who was that?
A Shorty.
Q And how long did you stay there?
A Oh, about a month.
Q And was Shorty there all that time?
A No.
Q How long did he stay?
A About a week and a half, I think.
Q Now, did Milgaard or Ron Wilson go there with
you to that house or did they simply drop you 20
there?
A They dropped us off, yes.
Q Was Milgaard with Wilson when the two of you
were dropped there?
A Yes.
Q Did you see anything of either of them in the
next few days or weeks?
A No.
Q Did you stay in Regina for the next few weeks
or whatever? 30
A Yes.
Q And once Shorty Cadrain left that house did you

see any more of him in Regina?

A Not for a long time after.

Q I see; well, do you have any idea how long?

A I don't know.

Q I see; but are you saying you did see him
somewhere later in Regina?

A Yes.

Q Now, if I can go back and ask you just a thing
or two about the earlier parts of this voyage
and I'd like to ask you about the time from when 10
you originally left Regina after midnight of
January the 31st up until the time when you
left Saskatoon as I understand it in the
afternoon of the same day Friday January the
31st 1969 - you understand my period of time
alright?

A Right.

Q Now, during any of that period of time were
you yourself under the influence of liquor or
any sort of drugs whatever - LSD or anything of 20
that sort?

A No, I wasn't.

Q And during the same period of time did you see
anything to indicate to you that either Ron
Wilson or David Milgaard was under the
influence of liquor or any sort of drug - LSD
or anything of that sort?

A No.

Q Did you at any time during the whole trip now
back to Regina - did you see anything more of 30
the pants that you say David Milgaard took off
at Cadrain's house?

A No.

Q And I believe you have already told the Court in answer to my questions that you were to an alley behind a funeral home in company with police later on?

A Yes.

Q Like, after this whole trip?

A Yes.

Q And I think you said that you recognized it, did you?

10

A Yes.

Q As being the place where you had been stuck?

A Yes.

Q Now, did you know, Miss John, the name of any street or avenue in connection with that when you were there with the police?

A No.

Q Alright; and I take it of course that you have been spoken to by numerous policemen since that trip?

20

A Yes.

Q And of all sorts - by myself and various other people?

A Yes.

Q And I take it that you - it goes without saying - have been back in Saskatoon and you were looking at the funeral home and so on and as a witness of course at the preliminary inquiry in this case?

A Yes.

Q But as I understood you to say earlier you were here for the first time in your life on the occasion of January the 31st 1969?

211294

A Yes.

MR. CALDWELL: If Your Lordship pleases, I believe I am very near being done examining in chief but if Your Lordship proposes to rise I wonder if it would be in order to ask that I not finish it until after the intermission, so I can check and see.

THE COURT: Very well; we'll adjourn for ten minutes.

RECESS

10

211295

JURY OUT.

THE COURT: Do you wish to say something
in the absence of the jury, Mr. Caldwell?

MR. CALDWELL: Yes, My Lord. First of all,
My Lord, that would be all the questions I have
in ordinary examination-in-chief.
My Lord, I'd like to say that this is a matter
under Section 9 of the Canada Evidence Act I am
raising at this time and as Your Lordship knows
the Act as amended, which now includes the new 10
subsection (2) - I'm sorry, My Lord, I don't
know whether these remarks ought to be made in
the presence or absence of the witness who is
seated in court right now.

THE COURT: Will you go to the witness
room please?

THE WITNESS NICHOL JOHN RETIRES FROM THE COURT
ROOM.

MR. CALDWELL: As Your Lordship knows that
section has been very recently added and of 20
course provides that the party producing the
witness if he alleges that the witness made at
other times a statement in writing or reduced
to writing inconsistent with his present
testimony, the Court may without proof that the
witness is adverse grant leave to that party to
cross-examine the witness as to the statement
and the Court may consider such cross-
examination in determining whether in the
opinion of the Court the witness is adverse. 30

I think it's common ground, My Lord, and it
should be of course before Your Lordship that

441 JURY OUT - WITNESS OUT

this girl did make two statements that were reduced to writing dated March the 11th and May the 24th. A copy of that material - I did supply these to my learned friend August the 15th 1969 and on my quick check of the preliminary inquiry - I stand to be corrected - I believe she testified at the preliminary September 4th and 5th.

THE COURT: Well, was there any difference at the preliminary inquiry as to that evidence that was given here today? 10

MR. CALDWELL: Very little. I would say it's much along those lines. If Your Lordship pleases, though, I am alleging that this witness has made at another time a statement reduced to writing which is inconsistent with her present testimony and I am going to ask Your Lordship of course as I understand the new section initially at any rate in the absence of the jury that I be granted leave to cross-examine the witness as to that statement and for Your Lordship to consider that statement in determining whether in your opinion in due course the witness is adverse. 20

THE COURT: I won't hold a voir dire on it, if that's what you mean.

MR. CALDWELL: Not a voir dire, My Lord, but I would submit . .

THE COURT: . . I'll hear it separate and apart - certainly it must be a type of voir dire if it's in the absence of the jury and you would have to have it under oath. There's 30

211297

442 JURY OUT - WITNESS OUT

nothing in the section to say it should be in the absence of the jury and I haven't - the point hasn't come up before me, it's been discussed amongst my colleagues and it was felt that I should be or the presiding judge should inquire with respect to the application that it is inconsistent with the present testimony, and then if leave is given to cross-examine it's restricted to cross-examining on the statement alone and then I would determine whether the 10 witness is adverse or not. But all those matters should be done in the presence of the jury.

MR. CALDWELL: With respect, My Lord, I haven't had occasion to deal with this - it's a very new section and it would be my feeling I must say - and I may be entirely wrong - that that initial step would be taken in the absence of the jury, the initial step being for Your Lordship to of course first of all allow or disallow my application to cross-examine and 20 then I suppose it's implicit of course that . .

THE COURT: . . I don't want to make any mistake. Of course that mistake can only be rectified by the Court of Appeal and this is an expensive trial but the subsection says and it seems to me very plain that where the application is made by you producing the witness that she has at other times made a statement in writing or reduced to writing inconsistent with her present testimony - ". . the Court may without proof that 30 the witness is adverse grant leave to that party to cross-examine the witness as to the . . "

211298

". . statement and the Court may consider such cross-examination in determining whether in the opinion of the Court the witness is adverse".

Now, all examinations prior to the enactment of this section for the purpose of determining whether a witness was adverse or not, was always in the presence of the jury. I didn't know this was coming up and I would like to have a few minutes further to consider this - I had thought originally when we were considering this 10 section that if it did come up and I knew it would come up in due course that I should examine the statement to determine whether in my opinion there is a basis for your application.

MR. CALDWELL: Yes, My Lord.

THE COURT: Before I gave leave to cross-examine.

MR. CALDWELL: Well, I would think with respect also, My Lord, that the Court would first thing wish to peruse the statement for its own 20 benefit as a very first step, on the basis that the Court may feel having done so that there is nothing there which would give foundation to my application.

THE COURT: Don't you think that is the first step then?

MR. CALDWELL: I do, My Lord.

THE COURT: Then let me have a look at the statement.

Do you want to say something, Mr. Tallis? 30

MR. TALLIS: Yes, My Lord. First of all, I would like to outline my position on the

interpretation of this section and prior to the enactment of this section it has always been my understanding of the law that before counsel could be permitted to cross-examine on a previous statement of his own witness there had to be a ruling by the trial judge . .

THE COURT: . . that's right.

MR. TALLIS: Now the enactment of this section makes an exception to that rule and as I understand it you may, that is there is a 10 discretion to grant leave to cross-examine a witness as to the statement and the Court may consider such cross-examination in determining whether in the opinion of the Court the witness is adverse.

THE COURT: Yes.

MR. TALLIS: I must say and I say this with deference that I find myself in disagreement with Your Lordship's observations . . .

THE COURT: . . but, Mr. Tallis, the 20 thing is so plain. If the legislature . .

MR. TALLIS: If Your Lordship would hear me . .

THE COURT: . . may I finish - if the legislature had intended anything otherwise then it should have been in the section. Do you want me to read something into the section that isn't there?

MR. TALLIS: I think that you have to read it in context because if you read Section 30 9 subsection (1):

"A person producing a witness shall .."

445 JURY OUT - WITNESS OUT

".. not be allowed to impeach his credit by
general evidence of bad character but if
the witness in the opinion of the Court
proves adverse, such party may contradict
him by other evidence or, by the leave of
the Court, may prove that the witness
made at other times a statement
inconsistent with his present testimony . . . "

And then there are certain requirements about
showing him the statement and so on. But it is 10
my respectful contention - and I say this with
the utmost deference and mindful of the
provisions that Your Lordship has mentioned -
so that I think it would be most improper for
Your Lordship to permit cross-examination on
such a statement in the presence of a jury and
then having so permitted that to make a ruling
at that stage that the witness is adverse;
because if you do it in that manner - and I say
this with deference - whatever observations you 20
would then make to the jury with respect to
your findings - suppose you said: Well, having
regard to the situation I am not prepared to say
that this witness is adverse - I cannot see with
respect a jury necessarily following that
comment, and it is my contention that there is
an issue that must be determined by the Court
not by Your Lordship and the jury and that is
whether in the light of all the circumstances
the witness is adverse; and I say that in 30
considering whether or not the witness is adverse
Your Lordship should also look at what she has

211301

said here in court, her demeanor, what was said on the preliminary hearing which is before Your Lordship - not as evidence in this trial but which can be referred to in my view in the same way . .

THE COURT: . . to determine whether she is adverse?

MR. TALLIS: That's right.

THE COURT: Because of Section (2)?

MR. TALLIS: No, not because of Section 10 (2) but because the issue is whether or not she is adverse.

THE COURT: But the law at the present time is that I have to determine - and I think you're familiar with the Wawanesa case . .

MR. TALLIS: Very much so, My Lord.

THE COURT: . . in the Supreme Court of Canada; and the matter of determining whether a person is adverse or not has to be determined from the evidence as given in the witness box in 20 the presence of the jury.

MR. TALLIS: Well, I think in a criminal trial of this nature when you're going to get cross-examination on a statement I'm not prepared to concur in that view . .

THE COURT: . . well, that was the interpretation of the Canada Evidence Act.

MR. TALLIS: . . and with respect I would have to disagree with Your Lordship and I say with respect that on this issue reference 30 has to be made to the conduct of the situation at the preliminary hearing . .

447 JURY OUT - WITNESS OUT

THE COURT: . . well, all I know, Mr. Tallis, is that literally thousands, probably hundreds of thousands of cases in this province that's the manner which has been followed in the past of the judge determining from the evidence that's given in the witness box in the presence of the jury whether or not the witness has demonstrated such hostility that he could declare her to be adverse within the meaning of the section. Now, we may have been 10
- previous judges may have been wrong on that, I'm not prepared to say.

MR. TALLIS: Well, I can recall being in one case where I asked to have the jury go out while it was dealt with.

THE COURT: I know of no such procedure. If you have any authorities for it I will be glad to have them. This is a very important point.

MR. TALLIS: I say with respect that when 20 the amendment came out I can honestly say that I have not been able to find a case which deals with the interpretation of this section and I haven't been able to find a case . .

THE COURT: . . have you been able to obtain anything which would show that in previous cases under the old law a judge has heard cross-examination or heard examination of a witness in the absence of the jury for the purpose of determining whether that witness is 30
adverse or not within the meaning of the section?

MR. TALLIS: I can't say that I have found

211303

448 JURY OUT - WITNESS OUT

anything spelling that out specifically.

THE COURT: Well, this is too important
a matter for me to say finally right now.

MR. TALLIS: Well, I agree and I hope I
have stated my position as fairly and frankly
as can be stated.

THE COURT: Well, your position as I
understand it is that I should first of all
allow Mr. Caldwell to cross-examine this witness
in the absence of the jury with respect to this 10
statement which he alleges is inconsistent with
the present testimony?

MR. TALLIS: And secondly that on this
issue of whether or not she is a hostile or
adverse witness - adverse to use the language
of the section - that I also should be able to
ask her some questions on that issue in the
absence of the jury.

THE COURT: And that I should determine
at that time whether she is adverse or not? 20

MR. TALLIS: At that time you should
determine whether or not she is adverse and if
you so determine then the cross-examination by
my learned friend will have to take place in
the presence of the jury and I will then
follow with my cross-examination of her.

THE COURT: That means that in any case
where statements have been given as understood
by subsection (1) of Section 9 that the matter
of hostility will have to be determined in the 30
absence of the jury?

MR. TALLIS: Where the Crown makes an

211304

application to have such a witness declared
adverse, yes; that's the position I take.

THE COURT: I think I had better look at
the statements. Have you any objection to my
looking at the statements now, Mr. Tallis?

MR. TALLIS: No, I don't think that I can
have any objection to that but I would also ask
while you are looking at them you also look at
the preliminary hearing.

THE COURT: I'd like you to give me 10
further argument on that. Why should I look at
the preliminary inquiry evidence?

MR. TALLIS: Well, because the section
vests you with a discretion. It says "may",
not "must", and in determining whether or not
to grant a request to my learned friend it is
my submission that you must look at all of the
circumstances.

THE COURT: It creates a peculiar
situation that I should in the absence of the 20
jury hear something for the purposes of
declaring this witness adverse and then allow
the cross-examination to proceed which might
be extended beyond the statement. Now, you
take the position, Mr. Caldwell, that I should
hear the cross-examination in the absence of
the jury?

MR. CALDWELL: To put in my position, I
think number one - I submit Your Lordship should
read to himself the statement and that could be 30
the end to such an application. That's number
one.

If Your Lordship gets past that hurdle I must say that again possibly as my learned friend, I cannot quote law on this but it does seem to me that the initial step would be to do this in the absence of the jury, the reason being that, you see, if it's done in the presence of the jury and then Your Lordship in due course . .

THE COURT: . . I understand the implications of it but I didn't pass the law and it's there. 10

MR. CALDWELL: I must say my understanding on that phase of it would be in agreement with my learned friend.

And the third phase, My Lord, I must say I see no basis that I am aware of to look at the preliminary inquiry and I don't know but for what it's worth I think it's common ground that you won't find a great difference if you do look in what this lady said today and what she said in the court below. In other words, 20 I'm not founding my application on that aspect. If Your Lordship pleases I did mention two statements and the one I am suggesting is inconsistent is the one dated May the 24th.

THE COURT: You just want to refer to one statement?

MR. CALDWELL: Yes, I am submitting that the second one in time - that's the one of May the 24th as opposed to March the 11th - is the one that in my submission constitutes a statement 30 reduced to writing inconsistent with her present testimony. I would not, My Lord, propose to go

211306

into everything that is in that statement because there are some things in there that my learned friend and I have been very careful not to go into which in my submission form no part of this case, but there is some part that possibly would. If Your Lordship pleases I would tender the thing for you to read to yourself.

THE COURT RECEIVES STATEMENT FROM MR. CALDWELL.

MR. TALLIS: I don't have the case here 10
but I could put my hand on it very quickly I believe. I recall being involved in one situation where the admissibility of a recent complaint arose in a rape case and the question of the admissibility of that complaint - now I use the term "complaint", that is outcry, recent outcry - arose and in that particular instance I found authority which indicated that a voir dire in effect as a trial of that issue should be held in the absence of the jury and I will 20
undertake to locate that case and make it available to Your Lordship; but in the light of comments that have been made here I thought that I should indicate to you that I am aware of at least one authority dealing with that type of situation and I didn't anticipate we would reach this today and accordingly I don't have the case here but I do have it at home.

THE COURT: Well now, I'm just wondering
- you both agree I should look at this statement 30
and even at that I hesitate a bit because as you know it has been the practice in connection

211307

452 JURY OUT - WITNESS OUT

with admissions, for example, that it is improper for a trial judge as I recall to look at it even in a trial with a judge and jury.

MR. CALDWELL: My Lord, this is interesting because I was always of that impression and yet in the last number of times when I have gone into that a judge sitting in the absence of the jury in my experience has said - I want to hear the whole thing now - and then he decides on a voir dire.

10

THE COURT: On admissions?

MR. CALDWELL: Yes.

THE COURT: But I suggest that there is authority directly to the contrary in the Supreme Court of Canada because I think there is one case recently in which it was said that the judge could not help but be influenced.

MR. TALLIS: He's not supposed to take a peek.

THE COURT: Well, I'm going to look at this statement anyway. Both of you gentlemen have agreed.

20

THE COURT READS THE STATEMENT.

THE COURT: Give that back to Mr. Caldwell, please.

Will you call the jury back please?

JURY RETURN

THE COURT: Members of the jury, I am required to consider a point of law and I will need some time to do it. Consequently we are going to adjourn now until ten o'clock tomorrow morning.

30

4:10 P.M. JANUARY 21ST, 1970 - COURT ADJOURNED.

211308

10:00 A.M. JANUARY 22ND, 1970 - COURT RESUMED.

JURY OUT

WITNESS OUT

THE COURT: Have either of you gentlemen anything further you wish to say in connection with this point that was raised yesterday - Mr. Tallis?

MR. TALLIS: I don't think there is anything more I can say. I referred you to one case yesterday which of course dealt with a different situation - admissibility of recent complaints in a rape case. The one I had in mind was R vs Hunt 1964 1 CC at 210; but I really must say, My Lord, that that dealt with a different issue entirely and it was just by analogy. 10

THE COURT: Anything further, Mr. Caldwell?

MR. CALDWELL: I don't think I have anything further, My Lord. 20

THE COURT: Gentlemen, as you are aware Section "9" of the Canada Evidence Act as it now stands is in two paragraphs numbered respectively (1) and (2).

Subsection (1) says that a person producing a witness shall not be allowed to impeach his credit by general evidence of bad character but if the witness in the opinion of the Court proves adverse, such party may contradict him by other evidence or, by leave of the Court, may prove that the witness made at other times a statement inconsistent with his 30

454 JURY OUT - WITNESS OUT

present testimony, but before such last mentioned proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make such a statement.

Subsection (2) is a recent amendment of Parliament which was assented to on February 13th, 1969, which provides:

"Where the party producing a witness alleges 10 that the witness made at other times a statement in writing or reduced to writing inconsistent with his present testimony, the Court may without proof that the witness is adverse grant leave to that party to cross-examine the witness as to the statement and the Court may consider such cross-examination in determining whether in the opinion of the Court the witness is adverse."

At this stage Mr. Caldwell has not asked to have the witness declared 20 adverse. He has merely asked for permission to cross-examine under the amendment. Presumably he will after such has been done ask that the witness be declared adverse if he thinks such has been demonstrated.

There is nothing in the section to state that such cross-examination is for the purpose of determining adversity. If Parliament had intended otherwise it should and I believe would have said so. It provides, 30 however, that I may consider such cross-examination if the question of adversity

211310

455 JURY OUT - WITNESS OUT

arises. I must give effect to the plain meaning of the statute. There is ample authority for this. In my opinion the language is quite plain and admits of no ambiguity. I may, where the allegation is made by the Crown Counsel, permit such cross-examination. In order to consider whether I should do so I feel it is necessary to examine the statement and this I have done.

The statement is inconsistent in many respects with the present testimony of 10 this witness. I have considered very carefully many judicial pronouncements which were made before the enactment of this amendment but have found them to be of little or no help to me.

As you gentlemen are aware there are special instructions which I must give to the jury in considering any such statement and such instructions will of course depend on the evidence of the witness respecting such statement. I will give those special 20 instructions of course when I charge the jury.

I have determined that the cross-examination under the section shall take place in the presence of the jury.

Call the jury back and the witness.

NICHOL JOHN RETURNS TO THE WITNESS BOX.

THE JURY RETURNS.

THE COURT: You don't need to poll the jury? 30

MR. TALLIS: No, they're all here.

THE COURT:

211311

456

X-exam by Mr. Caldwell
of N. John on a
previous statement

Q You understand that you are still under oath?

A Yes.

THE COURT: Mr. Caldwell?

MR. CALDWELL: Thank you, My Lord -

Q Now, Miss John, you remember yesterday I think
that - excuse me, we had made some mention in
court of you being interviewed by various
policemen?

A Yes.

Q And I think you mentioned to the court that you 10
met various policemen in connection with that
trip of yours to Saskatoon that we have been
talking about?

A Yes.

Q Now, did you meet among other people a man by the
name of Inspector Ruddell?

A Yes I did.

Q Where was that?

A In Regina.

Q And you knew him to be I presume a member of the 20
Royal Canadian Mounted Police?

A Yes.

Q And did he interview you?

A Yes he did.

Q And did you give him so to speak an account of
the happenings we have been talking about?

A Yes.

Q And was that made into a written statement so to
speak?

A Yes it was.

30

Q And signed by you?

A Yes.

211312

457 X-exam by Mr. Caldwell
of N. John on a
previous statement

Q Now in due course, Miss John - and I take it again
that you saw various other policemen too?

A Yes.

Q And did you come eventually to see and to know
and to deal with a man by the name of Detective
Sergeant Raymond Mackie?

A Yes I did.

Q What force was he from?

A The Saskatoon City Police.

Q And I believe that you attended - I think we 10
mentioned yesterday that you did attend at
Saskatoon in May in connection with this matter?

A Yes.

Q And did you see Detective Sergeant Mackie on
that occasion?

A I can't remember.

Q Did you see him on various occasions?

A Yes I did.

Q I see; well, as I understand it you did come to
Saskatoon and I take it saw him here on one 20
occasion or another?

A Yes.

Q And did there come a time in Saskatoon when you
gave Detective Sergeant Raymond Mackie a
statement?

A Yes, there was.

Q Now, what building did that take place at?

A The Police Station.

Q At the Saskatoon City Police Station?

A Yes. 30

Q And do you remember approximately say what time
of day you started that?

458 X-exam by Mr. Caldwell
of N. John on a
previous statement

A No.

Q And did you give Sergeant Mackie one statement
reduced to writing or more than one?

A Just one.

Q Just the one; I'm just asking you, you
understand, about Detective Sergeant Mackie?

A Yes.

Q Alright; you gave him one statement and I think
you said that was in Saskatoon City Police
Station? 10

A Right.

Q And as I understand you it was reduced to
writing?

A Yes it was.

Q And did you have the opportunity - who did the
writing, by the way?

A Sergeant Mackie did.

Q And who was telling him what to write?

A I was.

Q And did you have the opportunity to read it over? 20

A Yes I did.

Q And did you read it over?

A Yes.

Q And did you sign it in due course?

A I think so.

Q Now, Miss John . .

THE COURT:

Q . . well, you would know whether you signed it
or not.

A Yah, I believe I did, yah. 30

MR. CALDWELL:

Q I understood you to say that as of now you don't

211314

459 X-exam by Mr. Caldwell
of N. John on a
previous statement

recall the particular date on which that happened?

A No.

Q And do you remember the month?

A No.

THE COURT:

Q Can you say approximately how long it was after
this incident in Saskatoon on January the 31st?

A It was in the summertime anyway.

Q Was it springtime or summertime?

A It must have been just getting summer because 10
it was fairly nice outside.

MR. CALDWELL:

Q And this was while you were on this trip to
Saskatoon, was it?

A Yes.

Q And I presume of course in connection with that
whole matter of Gail Miller's death?

A Yes.

Q And on that particular trip to Saskatoon was Ron
Wilson in Saskatoon at the time you were? 20

A I can't remember if he was or if he wasn't.

MR. CALDWELL: I see -

Well then, My Lord, along the lines relating to
circumstances I'm going to ask the witness about
the date.

THE COURT: Oh yes.

MR. CALDWELL:

Q Miss John, may I suggest or put to you the date
of May 24th 1969 as the date when that happened
with Sergeant Mackie? 30

A Mhm.

THE COURT:

211315

460 X-exam by Mr. Caldwell
of N. John on a
previous statement

Q I beg your pardon?

A Yes.

MR. CALDWELL:

Q Yes being what?

A Could you repeat that please?

Q Well, would May 24th '69 sound like the date you
gave the statement to him?

A Yes.

Q Now, I'd like to show you . . . ?

THE COURT: Just a minute before you go 10
on.

MR. CALDWELL: Yes, My Lord.

THE COURT:

Q Was anyone with you besides Detective Sergeant
Nackie when you gave the statement or were there
just the two of you together?

A Just the two of us.

Q Was it upstairs in the Police Station or
downstairs on the main floor?

A Upstairs. 20

Q You remember that?

A Yes.

Q Do you remember what kind of a room it was in?

A Well, it was one of these little rooms anyway.

Q A little room?

A Yes.

Q Well, were you sitting down?

A Yes.

Q And was he sitting down?

A Yes. 30

THE COURT: Alright - go ahead.

MR. CALDWELL:

211316

461 X-exam by Mr. Caldwell
of N. John on a
previous statement

- Q Now, Miss John, the statement you did give - and I think you said now that you read it over?
- A Yes.
- Q Was it in the form of a question written out and your answer written out or a form of just a narrative, like you telling your story?
- A It was just an ordinary statement.
- Q That is, were there questions written out in it?
- A No.
- Q And just a continuing story then, I suppose? 10
- A Yes.
- Q And did this process go on for some time?
- A I don't know how long it took.
- Q Do you remember how many pages?
- A No; there was quite a few.
- Q And are we to understand that just you and Sergeant Mackie took part in this sort of interview?
- A Yes.
- Q And was Wilson there for instance - Ron Wilson? 20
- A No.
- Q I'd like to show you a statement just for yourself to look at first, Miss John - if you could have a look through it please and . .
- THE COURT: May I suggest that you ask about the signatures.
- MR. CALDWELL: Yes, My Lord -
- Q Now, if you'll just follow this thing, there's a Page 1 - is that your signature?
- A Mhm. 30
- THE COURT:
- Q Does that mean "Yes"?

211317

A Yes.

MR. CALDWELL:

Q Right - and Page 2, is that your signature?

A Yes.

Q Page 3 is that your signature?

A Yes.

Q Page 4 is that your signature?

A Yes.

Q Page 5 is that your signature?

A Yes.

10

Q Page 6 is that your signature?

A Yes.

Q Page 7 is that your signature?

A Yes.

Q Page 8 is that your signature?

A Yes.

Q Page 9 is that your signature?

A Yes.

Q Page 10 is that your signature?

A Yes.

20

Q And Page 11 is that your signature?

A Yes.

Q And that appears to be the last of it, does it?

A Yes.

Q And that's of course your name and your age then
and your address then in Regina at the top?

A Yes.

Q Now, would you please read this thing - I'm
sorry, Miss John, you notice the date as May 24th
'69 on here, do you?

30

A Yes.

Q Now, would you please read that silently to

463 x-exam by Mr. Caldwell
of N. John on a
previous statement

yourself at this time; just take your time and
read it all over to yourself please.

THE COURT: Have you any copies of that
for me?

MR. CALDWELL: Yes, My Lord. It's a
photostatic copy, My Lord, and my learned friend
has a copy of it.

THE COURT: Thank you.

WITNESS READS.

MR. CALDWELL: Now, have you read the entire 10
thing silently through to yourself, Miss John?

A Yes I have.

Q All 11 pages?

A Yes.

Q And I ask you now whether or not you made that
statement?

A I did.

Q Now, I'm going to ask you again to read to
yourself silently the third, fourth and fifth . .

THE COURT: Just a minute please. 20

MR. CALDWELL: Yes, My Lord.

THE COURT: Yes, go ahead.

MR. CALDWELL:

Q I want to ask you, Miss John - and not to
prolong things, but to read again to yourself
silently from that same statement the third,
fourth and fifth pages please.

WITNESS READS.

THE COURT:

Q Have you read them? 30

A Yes.

MR. CALDWELL: My Lord, I propose to ask

211319

464 X-exam by Mr. Caldwell
of N. John on a
previous statement

the witness next whether those three pages are true.

THE COURT: Yes.

MR. CALDWELL:

Q Are pages 3, 4 and 5 true?

A I don't know.

THE COURT:

Q What do you mean you don't know? You signed them,

A Yah, I know I did but I don't know - I don't remember saying that. 10

Q You signed the pages each one at the bottom of the page?

A Yes.

Q And you gave a detailed statement with respect to what you said had taken place, didn't you?

A Yes.

Q Now, having read it - having read it, does that refresh your memory sufficiently that you can now tell this court what happened on January the 31st? 20

A No it doesn't; I don't remember saying that.

MR. CALDWELL: Now, My Lord, if Your Lordship please, with that question I am ending my cross-examination of this witness and I'm going to next ask Your Lordship for the ruling as to adversity. I suppose, My Lord, ought this statement she read just be marked for identification?

THE COURT: Yes -

Q You recall giving the statement to Detective Sergeant Mackie; you've already admitted that? 30

A Yes I do.

211320

465 X-exam by Mr. Caldwell
of N. John on a
previous statement

Q You remember it quite clearly?
A But I don't remember . .
Q . . just a minute please.
A O. K.
Q You remember quite clearly where you were?
A Mhm.
Q You remember quite clearly that the statement
was taken down in narrative form?
A Yes.
Q And you remember quite clearly that it was read 10
over to you?
A Yes.
Q You remember quite clearly that you signed every
page?
A Yes.
Q Well, can you tell me why you can't remember
what you said on that occasion?
A I don't know.
Q Did you have any discussions about this
statement with anybody outside of the police 20
officers afterwards?
A No.
Q Afterwards?
A Afterwards with what?
Q With anybody afterwards as to what you had said?
A Are you talking about Mr. Caldwell - including
Mr. Caldwell?
Q No, no; I mean anybody else?
A No.
THE COURT: I am declaring this witness 30
to be adverse in the sense that she is hostile
within the meaning of "hostility" as referred to

211321

466 X-exam by Mr. Caldwell
of N. John on a
previous statement

in the decision of Mr. Justice Roach in the Court
of Appeal in the case of Haines v. Wawanesa and
as approved by Mr. Justice Cartwright in the
Supreme Court of Canada.

(Statement

made EXHIBIT P.31
for identification.

MR. CALDWELL: My Lord, with abundant
caution I propose now to cross-examine the witness
on this statement and I may ask Your Lordship's 10
leave under Section 9 subsection (1) to prove
that the witness at another time made a
statement inconsistent with her present
testimony.

THE COURT: Yes; you would have to ask
for leave.

MR. CALDWELL: Yes, My Lord; and I propose
to cross-examine her now.

THE COURT: Very well.

MR. CALDWELL: If Your Lordship pleases 20
there would be no objection to her having it in
front of her for this purpose?

THE COURT: Oh no, not at all.

MR. CALDWELL, cross-examining on a former statement
of the witness Nichol John:

Q Now, Miss John, would you - I'd like to direct
your attention to about the middle of the second
page and from there onward please. And again
you realize now - just so that we all
understand this - that I am asking you about 30
that statement which you have identified as being
the one you gave Detective Sergeant Mackie in

211322

467 X-exam by Mr. Caldwell
of N. John on a
previous statement

Saskatoon May 24th, 1969 and the one you have
just read to yourself?

A Yes.

Q Now, did you tell Detective Sergeant Mackie:

"After we got to Saskatoon . . ."

My Lord, I am referring to the middle of the page -

"After we got to Saskatoon we drove around
for about 10 or 15 minutes. Then we talked
to this girl. This was in the area where
Sergeant Mackie drove me around." 10

Did you tell him that?

A Yes.

Q Is that true?

A Yes.

Q And if I can just digress from the statement for
this moment, it's clear that Sergeant Mackie
later drove you around various areas in
Saskatoon?

A Yes he did .

THE COURT: Excuse me just a minute - 20

Q And you remember telling that to Sergeant Mackie
on this occasion?

A Yes I do.

MR. CALDWELL:

Q Did you tell Detective Sergeant Mackie:

"Ron was driving the car at this time. He
drove to the curb where Dave spoke to
this girl."

A Yes.

Q You remember telling him that? 30

A Yes.

Q And was that true?

211323

468 X-exam by Mr. Caldwell
of N. John on a
previous statement

A Yes.

Q Did you tell Sergeant Mackie:

"Dave was on the outside passenger side
of the front seat. Dave opened the door
to talk to this girl as she approached
along the sidewalk. Dave asked this girl
for directions to either down town or
Pleasant Hill."

Did you tell him that?

A Yes.

10

Q You remember telling him that?

A Yes I do.

Q And was that true?

A Yes.

THE COURT:

Q You distinctly remember saying that?

A Yes, I remember saying that.

MR. CALDWELL:

Q Did you tell Sergeant Mackie:

"He offered to give her a ride to wherever 20
she was going. She refused the ride.
Dave closed the door and said, 'The stupid
bitch'."

Did you tell Sergeant Mackie that?

A Not all of it. I don't remember saying part of
it.

THE COURT:

Q You said you didn't say it - did you say it?

A The first part I said but I don't remember
saying the last part here.

30

Q Well just a minute - that's the kind of thing
I suggest that you might not easily forget -

211324

469 X-exam by Mr. Caldwell
of N. John on a
previous statement

the expression "Stupid Bitch"?

A I don't remember him saying anything.

Q Well, do you remember telling Sergeant Mackie
that?

A No.

Q You're suggesting that he wrote it in then?

A I don't remember saying it.

MR. CALDWELL:

Q Well, on that point, that's on one of the pages
of course that you say already you read over and 10
signed, isn't it?

A Yes.

Q And your position now is you don't remember Dave
saying it?

A No.

THE COURT:

Q And you don't remember telling Sergeant Mackie
that?

A No.

Q Might you have told Sergeant Mackie that? 20

A I might have, yes.

Q And Dave might have said it?

A He might have, yes.

MR. CALDWELL:

Q Alright, did you tell Sergeant Mackie:

"We started to drive away and only went
about half a block where we got stuck and
we ended up stuck at the entrance to the
alley behind the funeral home."

Did you tell him that? 30

A Yes.

Q You remember telling him that?

211325

470 X-exam by Mr. Caldwell
of N. John on a
previous statement

A Not too clearly.

Q Was that true?

A Yes.

Q Did you tell Sergeant Mackie:

"Ron and Dave got out and they tried to push
the car. They couldn't get it out."

Did you tell him that?

A Yes.

Q Do you remember telling him that?

A Yah, I did. 10

Q And was that true?

A Yes.

Q O. K. Did you tell Sergeant Mackie:

"I recall Dave going back in the direction
we had spoke to the girl. Ron went the
other way past the funeral home."

Did you tell Sergeant Mackie that?

A Yes.

Q And do you remember telling him?

A Yes. 20

Q And was it true?

A Yes.

THE COURT:

Q So he did go back in the direction of the girl?

A Yes.

Q Yesterday you told us you couldn't remember.

A I said that . .

Q You said that one went left and the other . .

A . . one went right. And the girl was coming
from . . 30

THE COURT: . . Alright. Go on.

MR. CALDWELL:

211326

471 X-exam by Mr. Caldwell
of N. John on a
previous statement

Q So just pausing there, Miss John, you're saying that the girl was to the right and that's the way that Dave went, is it?

A Yes.

Q And that's the truth now?

A Yes.

Q Did you tell Sergeant Mackie this:

"The next thing I recall seeing Dave in the alley on the right side of the car. He had ahold of the same girl he spoke to a minute before. I saw him grab her purse. I saw her grab for her purse again."

Did you tell Sergeant Mackie those things?

A I don't remember.

THE COURT:

Q Do you remember any part of it?

A No.

Q Are you saying you didn't tell Sergeant Mackie that?

A I'm saying I don't remember if I did or if I didn't.

Q Well, if you did see the accused grab the purse it's something you would have remembered, isn't it? Isn't it? Witness?

A I don't know.

Q Take a drink of water and stop crying.

A If I could tell you what happened I'd tell you. I don't know. I can't remember.

Q The point is this. You told Sergeant Mackie on March the 22nd according to this statement. Now are you saying you did tell Sergeant Mackie or

211327

you didn't tell him?

A I don't know if I did.

Q Did you see Dave have ahold of the girl?

Did you see Dave have ahold of the girl?

A I don't remember anything. My mind is a blank.

Nobody understands. Nobody wants to believe me.

Q You remember the other things, don't you?

A Yes I do.

THE COURT: Go ahead.

MR. CALDWELL: I propose to go on - 10

Q Alright, Miss John, if you will try and just follow along with this and we'll get through it - you have told His Lordship now that you don't remember whether you told Sergeant Mackie that last group of statements?

A Yes.

Q Do you remember whether that's what happened or not?

A I don't remember anything.

Q Did you tell Sergeant Mackie this: 20

"Dave reached into one of his pockets and pulled out the knife. I don't know which pocket he got the knife from. The knife was in his right hand."

Did you tell Mackie that?

A I don't remember.

Q Alright; and/^{did}that happen in fact whether or not you told Mackie?

A I don't know.

Q Did you tell Mackie this: 30

"I don't know if Dave had ahold of this girl or not at this time. All I recall .."

473 X-exam by Mr. Caldwell
of N. John on a
previous statement

".. is seeing him stabbing her with the knife."

Did you tell Mackie that?

A I don't remember.

Q And whether or not you remember telling him, did that happen? Did you see that?

A I don't know.

THE COURT:

Q You don't know whether it did or it didn't?

A No, I don't.

MR. CALDWELL: 10

Q Now, Miss John, I put it to you that that is something you absolutely would never forget if you saw that happen?

A As far as I'm concerned I don't know what happened. I don't even know if I was on that trip or not.

THE COURT:

Q Well, you've already given evidence that you were on the trip - very extensively yesterday. Have you forgotten since yesterday that you told 20 us you were on the trip?

A If you just stop and think how much this bothered me - I'm beginning to wonder if I even did it or not.

MR. CALDWELL:

Q Alright; did you tell Sergeant Mackie:
"The next I recall is him taking her around the corner of the alley. I think I ran after that. I think I ran in the direction Ron had gone." 30

Did you tell Mackie that?

A I don't know.

211329

474 X-exam by Mr. Caldwell
of N. John on a
previous statement

Q And whether or not you told him, did that happen
or not?

A I don't know.

Q Did you tell Sergeant Mackie:

"I recall running down the street. I don't
recall seeing anyone. The next thing I
know I was sitting in the car again. I
don't know how I got back to the car."

A I don't remember saying that.

Q Alright; and whether you remember saying it or 10
not, did that happen?

A Not as far as I know.

Q Alright. Did you tell Mackie this:

"I seem to recall seeing Dave putting a
purse into a garbage can. I don't
remember which time it was or where I
was when I saw this. I recall there were
two garbage cans; the one on the left had
the lid tipped; I don't recall which one
he put it in." 20

Did you tell Mackie those things?

A I don't remember.

Q And whether you remember telling him or not,
did you see those things happening or not?

A I don't know.

Q Alright; did you tell Mackie:

"The next I remember sitting in the car.
I don't remember Ron being in the car or
coming back. I remember Dave coming back
and getting into the front seat of the 30
car. I remember moving over towards the
driver's side because I didn't want .."

211330

475 X-exam by Mr. Caldwell
of N. John on a
previous statement

".. to be near him."

Did you tell Mackie those things?

A Yes I did.

Q And did those things happen?

A Yes.

THE COURT:

Q You remember that?

A Yes, I remember that. Oh God!

MR. CALDWELL:

Q Did you tell Mackie: 10

"I don't remember talking to Ron before
Dave got back. I do not recall Dave
saying anything."

A Yes.

Q And did those things happen?

A Yes.

MR. CALDWELL: My Lord, I'd like to resume
at page 8.

THE COURT: Yes.

MR. CALDWELL: About half way down the page -20

Q And, Miss John, you feel free to look at that if
you wish - the statement in front of you - now,
did you tell Sergeant Mackie:

"After this we left for Calgary. On our
way about half way between Saskatoon and
Rosetown I looked in the glove compartment
for a map. I saw a cosmetic case which I
opened up. There was a compact, two
lipstick and an eye shadow in it. I
asked whose it was. Nobody knew whose it 30
was. Then Dave grabbed it and threw it
out the window. Dave was driving at this time."

211331

476 X-exam by Mr. Caldwell
of H. John on a
previous statement

Did you tell Mackie those things?

A Yes I did.

Q And do you remember telling Sergeant Mackie those things?

A Yes.

Q And are those things true?

A Yes.

THE COURT:

Q How is it you can remember that?

A I don't know. If I had a solution for it -- 10

THE COURT: Alright - go ahead.

MR. CALDWELL: My Lord, I'd like to deal with one thing out of page 1 of the statement.

THE COURT: I have given you permission to cross-examine. You can cross-examine to the full extent.

MR. CALDWELL: Yes, My Lord.

THE COURT: I'm going to direct the jury immediately after you're completed though with respect to the probative value of this matter. 20

MR. CALDWELL: Right, My Lord -

Q Now, did you tell Sergeant Mackie, referring to a stop:

"Shortly after Dave got back into the car I saw a knife he had."

Skipping on:

"This knife was a kitchen knife used to peel potatoes and things like that. It had a maroon handle."

Did you tell him those things? 30

A Yes I did.

Q And you remember telling Mackie that?

211302

477 X-exam by Mr. Caldwell
of N. John on a
previous statement

A Yes.

Q And just briefly that part of your statement was
on the way to Saskatoon from Regina - that's
where that occurred?

A Yah, I know.

Q You agree with that?

A Yes.

THE COURT:

Q That was true?

A Yes.

10

MR. CALDWELL:

Q And that particular incident you do remember,
Miss John, do you?

A Yes I do.

Q And that's true, is it?

A Yes.

Q And as I understood you to say there was only
one statement that you gave to Sergeant Mackie
that was written out and signed in this way?

A Yes.

20

Q So that your position today is, as I understand
you, that you don't know whether you saw Dave
in the alley with the same girl that he had
spoken to shortly before for directions?

A No I don't.

Q Alright; and you don't know whether you saw him
grab her purse . . . ?

THE COURT: Excuse me a minute, just a
minute -

(to the witness) It's very easy for you to 30
stop crying because you've done it several times
when you were asked a question with which you

211333

478 X-exam by Mr. Caldwell
of N. John on a
previous statement

would agree - so would you please stop crying.

MR. CALDWELL:

Q You don't know whether you saw him grab her purse
and her grab for her purse again?

A No I don't.

Q You just can't say one way or another, eh?

A No.

Q And you don't know whether you saw Dave reach
into his pocket and pull out the knife?

A No I don't. 10

Q Or whether it was in his right hand?

A No I don't.

Q Or whether you recall him stabbing her with the
knife?

A No I don't.

Q And you don't recall whether or not you saw him
taking her around the corner of the alley?

A No I don't.

Q And as I understand it you don't even recall
whether you ran after that? 20

A No I don't.

Q I put it to you, Miss John, that those are all
things that if you or anyone else saw them, you
would absolutely have no trouble at all in
remembering them, is that not right?

A I wouldn't know.

Q Alright, and that's the best you can tell us
about those things?

A Yes, that's the best.

MR. CALDWELL: My Lord, those are all the 30
questions I have.

THE COURT: All the questions you have

211334

altogether?

MR. CALDWELL: For the witness and on my examination-in-chief I was finished.

THE COURT: You have finished questioning the witness completely then?

MR. CALDWELL: That's right.

THE COURT:

Q When you returned to the car - when Wilson returned to the car were you crying?

A I don't know. 10

Q Were you hysterical?

A I don't know. I don't even remember him getting back into the car.

Q Were you hysterical and crying at any time during the early hours of that morning?

A No, not as far as I can remember.

Q Did you at any time notice any stains on the accused's clothing?

A No.

Q Did you notice some on the trousers? 20

A No, I didn't.

Q Do you know why the accused and Wilson changed their clothes?

A Yes I do.

Q What was the reason?

A Ron had - acid was eating through his pants; and Dave's pants were ripped.

THE COURT: Members of the jury, I intend to give you these instructions at the conclusion of the addresses of counsel . . . 30

MR. CALDWELL: . . . My Lord, I don't know if this is an appropriate time but there is one

more item under that Section 9 that I want to raise with Your Lordship.

THE COURT: Oh, yes.

MR. CALDWELL: And that is, having made the ruling, My Lord, to ask Your Lordship for leave to prove that the witness made at another time a statement inconsistent with her present testimony; and what I propose of course is calling Sergeant Mackie to deal with parts of that document which is P.31 for identification. 10 That's what I would ask Your Lordship and I of course will abide by your ruling.

THE COURT: No.

MR. CALDWELL: Very well; thank you.

MR. TALLIS: My Lord, if I may, I feel duty-bound to interject here if Your Lordship is going to give the direction which I anticipate Your Lordship is going to give. I think it only proper to observe that in my submission to Your Lordship the witness should be out of the court 20 room when you give that direction, because I haven't even started my cross-examination.

THE COURT: Oh yes.

Will you leave the witness box for a minute or two please?

THE WITNESS NICHOL JOHN RETIRES FROM THE COURT ROOM.

THE COURT: Mr. Caldwell, will you take the statement back?

Members of the jury, I have 30 permitted Crown counsel to cross-examine this witness - a witness called by the Crown on

behalf of the Crown - but I must tell you and I do so most emphatically that except where the witness has admitted the truth of any particular part of the statement that the contents of the prior statement - the contents of that statement which has been referred to - are not to be taken as evidence of the truth of the statements contained therein. They are not to be taken as evidence of the truth of the statements contained therein. They merely 10 serve to test the credibility of the witness. I want to make that quite plain now. I will repeat my directions when I come to address you later in my charge but I want it to be plain when the statement in the evidence is fresh in your memory.

Would you call the witness back please?

MR. TALLIS: I wonder, My Lord, I think perhaps I should ask that the jury go out. In the light of your direction there's a point 20 that I think I should raise with you at this stage.

THE COURT: Would you mind retiring for a few minutes please?

JURY RETIRE.

THE COURT: Yes, Mr. Tallis?

MR. TALLIS: Yes, My Lord. I feel that since Your Lordship gave the direction which you did I should make my observations as to whether or not it is adequate and in my respectful submission the direction which Your Lordship made is with deference not sufficient, because I think the direction should go further and make it abundantly clear in language which the jury will understand that those statements 10 are not evidence against the accused; and if I may say so with deference - that is the portions of it which she did not adopt are not evidence against him.

THE COURT: I thought I said that.

MR. TALLIS: Well, with the utmost deference I would suggest that the language which Your Lordship used . .

THE COURT: . . it's the language of the Court of Appeal Justice, Mr. Tallis. 20

MR. TALLIS: Well, Courts of Appeal have been wrong too, My Lord. But I say this with the utmost deference and I was listening very carefully to Your Lordship's language and my colleague and I thought that it was only proper that I should take this point with you at this stage. In other words, the direction must go further than that if the jury is to understand it in the context which I know Your Lordship means it, at least I think I know that. 30

THE COURT: Well, I must say I don't quite understand you, Mr. Tallis. This is what

I said - that the contents of the statement
except - and I am paraphrasing now - except
such of those which are admitted by the witness
to be the truth, are not to be taken as
evidence of the truth of the statements
contained therein but merely serve to test the
credibility of the witness. Now, I was using
part of the language of one Justice of the
Court of Appeal and I used the language of
another one and that is - their introduction 10
in the case does not serve to prove the truth
of their contents; the statements can only be
considered as affecting the credibility of the
witness who made them.

Now, how much further should I go?

MR. TALLIS: Well, the point I make -
I understand Your Lordship's point very clearly
and I say that the language that is used there
which is adopted I agree from a Court of Appeal
judge is one which a lawyer would understand, a 20
fellow judge would understand, but with
deference I don't think - it's just like
saying to the jury - hearsay is no evidence of
the truth of the fact stated therein but it may
be evidence of state of mind - or something like
that. Now, a jury wouldn't understand that and
yet when Sir John Simon said it or words to
that effect I think everyone tried to grasp what
was being stated; and I say here that in order
for a jury to understand a direction of that 30
nature one would have to go a step further and -
perhaps what I'm really saying is that the legal

484 JURY OUT - WITNESS OUT

language has to be translated more fully into
language which the jury would understand.

THE COURT: I think this jury can
understand but I'll certainly do it, Mr. Tallis.
You requested it and I see no objection to it.
I think we have an intelligent jury and they
understood what I said but I'll tell them that
those statements not accepted as the truth by
the witness are not evidence against the accused.

MR. TALLIS: Right, My Lord. 10

THE COURT: Very well.

Call the jury in please.

THE JURY RETURNS.

20

211340

ALL JURORS PRESENT.

THE WITNESS NICHOL JOHN OUT FROM THE COURT ROOM.

THE COURT: Members of the jury, the
warning that I gave you a few minutes ago is a
proper one and a correct one but I wish to put
it another way to you so there will be no
question as to its meaning and effect, and that
is that with respect to the statement that this
witness admits giving that the only evidence
which can be considered as being against the 10
accused are statements which she has accepted
under oath in the witness box as being the truth,
and that any statement which she has not admitted
as being the truth are not evidence against the
accused.

Call the witness back.

THE WITNESS NICHOL JOHN RETURNS TO THE WITNESS
BOX.

THE COURT: Mr. Tallis?

MR. TALLIS, cross-examining: 20

Q Miss John, you have been asked a number of
questions here this morning and I must ask you a
few. First of all during the course of your
questioning here you were asked whether or not
you had seen anyone else about this case apart
from the police and you mentioned Mr. Caldwell -
and this is no reflection on Mr. Caldwell, as
you know - you remember His Lordship asking
you a question about that?

THE COURT: You're talking about 30
exclusive of the police and exclusive of any
counsel.

MR. TALLIS: Yes -

Q How, you recall being here as a witness at the preliminary hearing?

A Yes.

Q And at that particular time I believe it's fair to say that you had already met Mr. Caldwell?

A Yes.

Q And is it also accurate to say that the first time you ever saw me to hear my voice was when you were cross-examined by me in the witness box there? 10

A Yes.

Q And now as I understand it, you were called here in this very court room as a witness at the preliminary hearing?

A Yes.

Q And you were examined in chief first of all by my learned friend Mr. Caldwell?

A Yes. 20

Q And then you were asked questions by me?

A Yes.

Q And of course you were under oath at that time?

A Yes.

Q And prior to coming to the preliminary hearing to give evidence I take it that you saw a number of police officers?

A Yes.

Q Were you brought up here by police officers?

A No. 30

Q I see; how did you come up?

A With my dad.

211342

Q With your dad; and I gather that you saw police officers when you arrived here?

A Yes.

Q And a number of them?

A Yes.

Q By a number I mean several.

A How many?

Q Several.

A Oh yes.

Q And did you see some of them at the Police Station? 10

A Yes.

Q Some of them here at the Court House to talk to?

A Yes.

Q And you didn't see Inspector Ruddell here?

A No.

Q He wasn't here at the time of the preliminary?

A No.

Q You had seen him earlier in Regina?

A Yes. 20

Q And then I take it that my learned friend talked about this statement and you had a look at the statement; and I think he read to you something about a funeral home in that statement?

A Yes.

Q And is it fair to say that you of your own knowledge did not remember a funeral home?

A Could you repeat that please?

THE COURT: As of when? 30

MR. TALLIS:

Q Well, let me put it to you this way - were you

not told by somebody that this building was a funeral home?

A Yes.

Q And you didn't realize that it was a funeral home?

A No.

Q Who told you that it was a funeral home?

A I don't know; I can't remember.

Q Well, was it a policeman that told you it was a funeral home?

10

A Yes it was.

Q I see; so that you wouldn't have been able to describe the building as a funeral home unless someone had told you that it was a funeral home?

A No.

THE COURT:

Q You just knew it was a building, that's all?

A Yes - right.

MR. TALLIS:

Q And now I take it that you came up to Saskatoon on May the 23rd, did you? Mr. Caldwell referred to May the 24th.

A Yes.

Q Well now, you were up here on the 24th we know starting at at least - you were here in the morning of that date?

A Yes.

Q Now, did you come to Saskatoon the day before?

A Yes.

Q Or would it be even the 22nd of May rather than - 30 you see, the statement you say was the 24th and you have told Mr. Caldwell that under his

cross-examination?

A Yes, mmhm.

Q And can you remember how many days you were up here before this statement was given?

A I think it was only one day.

Q One day before; and did someone bring you up - did the police bring you up?

A Yes.

Q And do you remember what police officers brought you up? If you don't remember their names, were they Saskatoon City Police officers, Regina City Police officers or Royal Canadian Mounted Police officers? 10

A Saskatoon police officers.

Q Saskatoon police officers; in other words they picked you up in Regina and brought you up here?

A Yes.

Q And you were not arrested or anything?

A No. 20

Q And you don't remember the names of them but was there more than one that brought you up?

A There was three I believe.

Q Three?

A Mhm.

Q And did they bring you up by car or were you a passenger on a plane flight?

A By car.

Q By car; and were you brought up in the morning?

A Yes, I think so; I think it was the morning. 30

Q I see; well, it was daylight anyway when you were brought up?

A Yes.

Q Whether it was morning or afternoon; and was Wilson here in Saskatoon at any time around the 23rd and 24th that you saw of him?

A I don't know; I can't remember if he was here.

Q I see; would you have any recollection of seeing him at the Cavalier Hotel?

A Yes, he was here - yes, I do.

THE COURT: When was that then?

MR. TALLIS: 10

Q Was this around on this trip in May when the police brought you up?

A Yes he was, yes.

Q Well now, after you got into Saskatoon you saw Wilson?

A Yes.

Q And I suggest to you that it was at the Cavalier?

A Yes.

Q And were you and Wilson in a room together with some police officers at the Cavalier? 20

A There was just one police officer.

Q One police officer; and how long were you in the room there?

A I don't know how long it was; it was just a short period of time.

Q I see; well now, in any event would you - in any event that police officer was not Mackie?

A No.

Q And how long would you say that you and Wilson were together there on that occasion or can you 30 remember?

A Do you mean alone or with the police officer?

491 X-exam of N. John

- Q Well, how long were you and Wilson in the same room - were you put up in a room there or . . . ?
- A No.
- Q No; you were just at a room that belonged to someone else?
- A Yes.
- Q And at one point there was a police officer with the two of you?
- A Yes.
- Q And were you and Wilson ever left alone in the room, that is with the police officer going out, or can you recall? 10
- A I can't really remember.
- Q I see; well now, in any event up in this particular room was there a collection of knives there?
- A Yes.
- Q And how many knives were in this particular collection?
- A Five or six. 20
- Q Five or six; and I take it that the police officer had a broken knife - was there a blade?
- A No.
- Q I see; but in any event there was a collection - there was about five or six knives there?
- A Yes.
- Q And now in addition to that were there photographs?
- A No.
- Q I see; were there clothes? 30
- A Yes.
- Q And was there a black coat?

211347

A Yes.

Q Well let me put it to you this way and maybe we can save a little time - were you shown some lady's underclothes - let's not go into the particular items?

A No.

Q I see; were you shown a lady's coat?

A Yes.

Q A lady's dress?

Were these things laid out? 10

A No.

Q I see; but you were shown some items?

A Yes.

Q Were they held up?

A Yes.

Q I see; and quite a number of items there?

A Not really.

THE COURT:

Q Well excuse me, let's get it - the black coat; was the dress - I didn't get your answer to that? 20

A I can't remember if the dress was there or not but the coat was.

Q Anything else - let's get it?

A And the knives and that was all.

MR. TALLIS:

Q And do you recall whether there were photographs?

A No.

Q You don't recall any photographs?

A There was no photographs. 30

Q No photographs when you were there; were there any other items that you can recall being

produced?

A No.

Q During the course of this discussion with this police officer whose name you don't recall in the room at the Cavalier Hotel, is it fair to say that this discussion took place before you were with Mr. Mackie? In other words, perhaps you don't understand me - you told my learned friend about being with Mackie on the 24th?

A Yes. 10

Q Now, this discussion at the hotel room took place before that statement?

A Yes.

Q Now, was it the day before or . . . ?

A . . . yes, it was the day before that.

Q The day before; and were you back to the Cavalier on more than - were you there just on one occasion or how many times were you at this room?

A One. 20

Q One; and was Wilson already in the room when you went there?

A No.

Q Or did you both go together?

A No.

Q You didn't go together?

A No.

Q How did you come to meet there then - which one was there first?

A I was. 30

Q You were there first; and then Wilson was brought in?

A Yes.

Q And did you have anything to eat there at the hotel or . . . ?

A No.

Q I see; and I take it that during the course of this discussion with this man reference was made to the Gail Miller murder?

A Yes.

Q In other words, he talked about it?

A Yes. 10

Q And he made reference to her having been stabbed?

A Yes.

Q And as a matter of fact held up the coat?

A Yes.

Q And showed where - did he make any reference to the marks?

A No.

Q Or did they have circles on them at that time?

A I didn't see them.

Q I see; and do you recall now whether the dress 20 was held up having blood on it, that is apparent blood stains?

THE COURT: She doesn't remember any dress.

MR. TALLIS: Well, I just want to try and see whether or not that refreshes her memory, My Lord.

A No, I don't think the dress was there.

Q You don't think the dress was there?

A No. 30

Q In any event there was a discussion of some of the details of the things that had happened to

this girl by this police officer?

A Yes.

Q What other items did he refer to? Now, he told you about the coat?

A Yes.

Q About her having been stabbed?

A Yes.

Q Now, what other items did he mention at that time that you can recall?

A You mean like the coat or something like that? 10

Q The coat or something like that.

A I don't know; I can't remember if he said anything else.

Q You can't recall if he said anything else?

A No.

Q Do you recall if there was any mention of her wallet being found?

A No.

Q Down by Cadrain's or something like that?

A No. 20

Q There was no mention made of that?

A No.

Q And now I think that it's fair to say that either at the preliminary or even some other time before that you were shown a knife blade?

A Yes.

Q And I also suggest to you that - was it at the preliminary that my learned friend showed you a knife blade?

A Yes. 30

Q And is it fair to say that under oath at that time you indicated to Mr. Caldwell that the

blade of the maroon handled knife that you saw
in the car was longer than the broken blade?

A Yes.

Q Yes; and that is the actual knife blade was
longer?

A Yes.

Q And you're satisfied of that, are you?

A Yes.

Q Now, you told my learned friend also I believe
yesterday about seeing a hunting knife in the 10
car?

A Yes.

Q And as I understand it this hunting knife which
you described would be something much larger
than a paring knife?

A Oh yes.

Q And you may have told him this at the preliminary
hearing, I just don't recall, but is it fair to
say that that hunting knife had quite a long
blade? 20

A Fairly, yes.

Q Much longer than a paring knife?

A Yes.

Q And much longer than the maroon handled knife
that you make mention of?

A Yes.

Q And I take it that the handle on this hunting
knife would be much longer?

A Yes.

Q Than the paring knife handle - is that correct? 30

A Yes.

Q And that was the knife which I think you told us -

497 X-exam of N. John

and I may be wrong - that you said David had -
the hunting knife?

A Yes.

Q In the car?

A Yes.

Q And I think you told My Lord the Chief Justice
that it did not have a sheath on it?

A I said I couldn't remember.

THE COURT: That's right.

MR. TALLIS:

10

Q And apart from the two knives which you mention
I take it that you did not see any other knives
in the car on the trip to Saskatoon?

A No.

Q Well now, dealing with this hunting knife, would
the blade of that knife be about six inches long
- five or six inches long?

A About that.

Q And if we are to take the width of it would it
be about three-quarters of an inch to an inch at
its widest point? 20

A Yes.

Q And then would taper?

A Yes.

Q And as I understand it the only knife that you
can recall David having in his hand in the car
. . . ?

A Yes.

Q . . . is the hunting knife that you have described?

A Yes.

30

THE COURT: Would you mind repeating that
question please, Miss Lockrey, and the answer?

211353

REPORTER, reading:

Question: And as I understand it the only knife
that you can recall David having in
his hand in the car . .

Answer: Yes.

Question: . . is the hunting knife that you have
described?

Answer: Yes.

MR. TALLIS: My Lord, I'm going to be a
little while and I was going to get into a new 10
area; I wonder if this would be an appropriate
time to rise and I would ask that you give the
witness instructions not to discuss the matter
with anyone.

THE COURT: You're to discuss this with
nobody.

THE WITNESS: Yes.

RECESS

THE COURT: Yes, Mr. Tallis.

MR. TALLIS: Thank you, My Lord - 20

Q Miss John, a moment ago we talked about the
hunting knife - was that a bone handled hunting
knife?

A Yes.

Q Were there any sort of perhaps engravings isn't
the right word for it, but was it a smooth
bone handled hunting knife or were there little
dips and what-not?

A Yes; it had sort of carvings in it.

Q Carvings in it; that's on the handle of course? 30

A Yes.

Q And that's the one that you earlier said that

you remembered David having?

A Yes.

Q And then the maroon handled knife resembling a paring knife as you have called it, all you can say is that it was in the car?

A Yes.

Q You can't remember who if anyone had that?

A No.

Q Now, I understand that you did have funds of your own? 10

A Yes.

Q When you left Regina; in other words, you weren't broke?

A No.

Q And do you recall - or had you been paid or something like that?

A Yes, I was.

Q You had been paid?

A Yes.

Q And just so there is no misunderstanding I think that you were asked by Mr. Caldwell under oath at the preliminary hearing as to whether or not you remembered who had the maroon handled paring knife and you told him you couldn't remember? 20

A Yes.

Q Well now, you told my learned friend Mr. Caldwell yesterday about a U-turn at a boulevard and getting stuck?

A Yes. 30

Q Now, just so that there is no misunderstanding what do you mean by a boulevard?

A Well, just a piece going down the middle of the street sort of.

Q I see; that is earth as distinct from snow?

A Yes.

Q So you say that you got stuck where there was a boulevard?

A Yes.

Q And I take it that you have been driven over that area quite a number of times?

A Yes.

10

Q How many times have you been driven over that area by the police?

A It's quite a few, I don't know how many.

Q Quite a few; and one of the things you would be looking for would be this boulevard?

A Yes.

Q And were you ever able to find the boulevard?

A No.

Q You weren't; now, I take it that it's fair to say that you've been asked probably this question 20 on many occasions - did you at any time see any blood on any of Ron's or David's clothes?

A No.

Q And I take it that you have told that to the police on more than one occasion?

A Yes.

Q And you gave evidence along those lines at the preliminary hearing here under oath?

A Yes.

Q Now, I understand from the evidence that we have 30 heard that you were at a place which we now know to be Danchuk's?

211356