

901 X-exam of Det. Cleksyn

being investigated?

A That is right.

Q And it was in this context that this request was made?

A That's correct.

MR. TALLIS: No further questions.

THE COURT: Thank you; that's all,
thank you.

MR. CALDWELL: I call Shane Joseph Kirby,
My Lord.

10

211763

SHANE JOSEPH KIRBY, sworn, states:

MR. CALDWELL, examining:

Q I believe that you are a member of the Royal Canadian Mounted Police with the rank of Staff Sergeant and that you are now and have been for some time in charge of the Firearms Section at the Crime Detection Laboratory in Regina?

A That is correct, sir.

Q And I believe that your training and your work extends to more than just the field of firearms examination and includes examination of metals and some fingerprint examinations and so forth? 10

A And tool marks, yes sir.

Q I show you P.21 for identification - a black leather wallet . . ?

A . . if I may refer, My Lord, to some notes made in my own hand at that time?

THE COURT:

Q If you require to do so in order to refresh your memory. 20

A Yes sir.

Q You say they were made at the time that you . . ?

A . . received the exhibits, My Lord.
Yes sir. This item here, a black leather wallet, I received from Staff Sergeant Paynter of the Serology Section of the Crime Detection Laboratory on the 21st day of April 1969.

MR. CALDWELL:

Q And did you examine that in some manner?

A Yes sir. I conducted examinations of the wallet Exhibit P.21 to determine whether or not it contained some fingerprints. I applied x-ray 30

dusting techniques in my examination; I found no fingerprints on the wallet Exhibit P.21.

Q And what did you do with it in due course?

A This was retained by me in my possession until the 3rd day of June 1969 when I handed it over to Identification Officer Kleiv, of the Saskatoon City Police Department.

Q And that I take it would be the last you had of handling it other than examining it in court in connection with this matter?

10

A Yes sir; that is correct.

Q Now, I believe that you received a collection of items from a Corporal McDonald of your section on a later date?

A Yes sir; on the 22nd of April 1969 I received from Corporal McDonald one knife blade.

Q I show you P.12, Staff; is that the one?

A Exhibit P.12 is the knife blade to which I have referred, sir.

Q I show you P.16 a purse; did you receive that from him on that date?

20

A Yes sir; Exhibit P.16 one handbag I received from Corporal McDonald on the same date and time.

Q I show you P.17 a lady's winter boot; did you receive that from Corporal McDonald at the same date and time?

A Yes sir, I did.

Q And P.18 another winter boot; did you receive that from him at the same date and time?

A Yes sir, I did.

30

Q And P.19 a knife handle; did you receive that from him at the same date and time?

211765

A Exhibit P.19 a red plastic knife handle I also received from Corporal McDonald the same date, place and time.

Q Was that the entire collection of items that you received from Corporal McDonald then?

A Yes sir, that is.

Q Now, did you personally examine the knife blade P.12 and the knife handle P.19 to attempt to determine whether they once formed part of one and the same knife?

10

A Yes sir; I conducted examinations to see if the blade Exhibit P.12 had at one time been part of or was broken from the handle Exhibit P.19.

Q What technique did you use for that?

A I used a comparison microscope, sir. This is a microscope in which you can see two objects at the same time. You see as it were the left hand portion of the left hand object and the right hand portion of the right hand object and you can place them into position beside one another in the eye piece or the viewing device, so that you get as it were a single or composite object; you can match them up here.

20

Q Is that the technique that you used with those two items?

A Yes sir.

Q And I take it with the butt end of the blade so to speak and the small metallic stub protruding from the handle?

30

A There is a small piece of metal protruding from the handle - the red handle Exhibit P.19, sir;

211766

and on this there are markings made by grinding during the manufacturing operations. The same type of markings are present on the blade near the break. The break first of all matches up in size and dimensions and these grinding or file marks run from the handle portion on to the blade and they all match up in their disposition, their shape, contouring and dimensions. And as a result of this . .

THE COURT:

10

Q . . would you call that a sort of scoring?

A A scratch mark as it were, My Lord.

Q A number of them?

A There were a very large number and all these were in agreement; what was on the handle portion also appeared on the blade. And as a result of this it is my opinion that the blade Exhibit P.12 was at one time part of the handle Exhibit P.19; they were one time attached one to the other.

20

Q May I see them please?

I take it you didn't make any pictures of them?

A I just took some polaroid shots, My Lord, for my own information and record purposes.

Q Did you alter the metal on either the knife blade or the protruding part from the handle?

A No, My Lord.

Q Would you go down and indicate to the jury/^{how}you feel that that blade was attached to that handle - go right in front of the jury, would you please?

30

MR. CALDWELL:

211767

Q Do you have one of these photographs?

A I have, yes.

THE COURT: Oh, you have the photographs.

MR. CALDWELL:

Q As I understand it these are polaroid and would be made by you in their entirety ~~by you~~ both exposures and . . ?

A . . these were made for me under my direction by Corporal McDonald.

Q Were you supervising that process? 10

A Yes sir.

Q And were they made through the microscope, Staff?

A Yes sir.

Q Through the microscope?

A Through the microscope.

THE COURT: You go ahead and lead him on that then, Mr. Caldwell -

Q Have you the knife there?

A I have, My Lord, yes. 20

MR. CALDWELL:

Q Now, the photograph you are holding was made as I understand it right in to and through the microscope of the two objects compared in the manner you told us about?

A Yes sir.

Q And Corporal McDonald made these under your direction?

A Yes sir.

Q And as I understand that polaroid process he would both expose the negative and in effect develop and print it all in one . . ? 30

- A . . it's all done in a matter of - after you shoot the shot, sir, it takes about fifteen to twenty seconds to produce this print.
- Q I see; and may I ask you just one thing before you come down to show the jury - the scorings or scratches that you referred to I understood you to say would be part of the manufacturing process of the knife?
- A Some would be - yes, the large majority as a result of the manufacturing process and then 10 of course in use you will get markings - sometimes you will get markings that run across these manufacturing markings; they are superimposed as it were.
- Q Alright; perhaps you would come down then, Staff.
- MR. TALLIS: My Lord, is the picture going in?
- THE COURT: I assume it will be. Do you want to deal with the picture now?
- MR. CALDWELL: I think this might be 20 helpful, My Lord, if I could tender it now.
- THE COURT: Very well; that will be P.38.
(Polaroid photograph
made EXHIBIT P.38)
- Q It might be I think preferable, Staff Sergeant, if you first of all dealt with the knife exclusive of the pictures and then you can go on and demonstrate through the pictures if you like. In other words, what I would like to see you do - and I'd like you to show me when you show it to 30 the jury - is just exactly where you think the blade was attached to the piece of the metal

that's in the handle?

A Yes, My Lord.

Q Because the piece of metal in the handle is smaller in width than the width of the broken part of the blade; that's so, isn't it?

A Well not really, My Lord. There is a curve on the blade. May I show it to you?

Q Yes please.

A I point it out here first if I may so you can see it.

10

Q This is for the jury, it's not really for me but I want to know what you're talking about when you get down there.

Well, even at that . . . ?

A . . . the tang of the knife - the knife blade, My Lord, is made so that the tang - that's the part that runs into the handle . . .

Q . . . is that the way you suggest it fitted?

A I can't see that far away, My Lord.

It fits in right here - see?

20

Q I see; well, you demonstrate that to the jury, will you please?

THE WITNESS GOES TO IN FRONT OF THE JURY.

A I possibly first should explain that when a knife is made there is a portion left on the back of it that goes into the handle. This is called the tang. And this is always as a rule narrower than the blade. It may have the same width or thickness here but sometimes is narrower unless the blade comes back all the way to have a piece 30 of wood riveted on either side.

MR. CALDWELL:

211770

Q I take it the construction is not that latter type?

A No; it is a tang or spike that protrudes back from the handle - a narrow one - and it is driven in to the handle to give you a purchase on the blade.

The tang portion can be seen sticking out of the handle here - taken down in this position here. You can see where (next few words inaudible).

THE COURT:

10

Q A little louder please?

A It ends right in here at this position here. Now, there is a bend on the material - this is a type of hardened steel.

Q Show it to the members in the back too, will you please?

A It is a type of hardened steel which can be subjected to a certain amount of bending but after you reach as it were the tolerance point it cracks off. A piece of soft metal will bend 20 when you apply force to it. A piece of hard metal like a spring - a straight spring - can be bent to a degree but once you take it beyond a certain point it will snap.

Now, in this photomicrograph here or photograph . .

Q . . P.38.

A . . P.38, you will not see a jagged line here at the division point. You notice this line; this is where the two materials overlap in the 30 microscope and the straight line here is the division line where you see half of each object.

211771

You will notice at this point here a curve up. I will put a T - I have marked one end of the photograph as "Top". You will notice a curve upwards. This curve corresponds to the curve on the knife here where it cuts back to the tang - in this position.

Now, in here you will notice these grinding marks. It looks like a plowed field when you look at it from an airplane up about thirty thousand feet or so - just like furrows - these 10 fine marks here. They run from one side of the photograph to the other.

Down at this point here where they are more obvious underneath the rust and other materials deposited on the part of the piece of metal in the handle. You will notice how these lines run across and how they match up.

This is the curve here on the blade, sir, and this is a straight line because the comparison microscope shows it as a straight line - it 20 doesn't show the jagged edges here. And here are the grinding marks and here you can see them run across and match up in their spacing and type and contouring.

THE WITNESS RETURNS TO THE WITNESS BOX.

MR. CALDWELL, continuing:

Q And as I understand it, Staff, P.38 is your photograph of what you saw in the microscope?

A Yes sir.

Q And that any other photographs are duplicates 30 of that rather than different views?

A Most of them are duplicates, yes sir.

211772

- Q So that to look at those I gather the blade in effect flares outward from the tang in either direction?
- A It gets larger, yes sir.
- Q Now, did you examine the purse before you?
- A Yes sir. I examined the handbag and a pair of boots, that is Exhibits P-16, P-17 and P-18 to determine whether or not they contained fingerprints.
- Q Did you use a similar technique to that on the 10 wallet?
- A Yes, sir; and I could not find any prints.
- Q And did your examination include a folder within the purse?
- A Yes sir. In the purse there was a Bank of Montreal folder and this was also examined and checked for fingerprints with negative results.
- Q And again with a similar technique I suppose?
- A Yes sir.
- Q Now, does that complete the examinations that 20 you conducted, Staff?
- A That would be the sum of my examinations, yes sir.
- Q What did you eventually do with the knife blade P-12, the handle P-19, the purse P-16 and the two boots P-17 and P-18?
- A These were retained by me in my possession until the third day of June 1969 when I handed them to Identification Officer Kleiv of the Saskatoon City Police Department. 30
- Q And I take it that other than seeing them in court in connection with this case that would be

your final dealings with them?

A That is correct, sir.

MR. CALDWELL: Thank you; your witness.

THE COURT: You have some cross-examination?

MR. TALLIS: Yes, My Lord.

THE COURT: Will it be long?

MR. TALLIS: Well, it could be five or ten minutes.

THE COURT: We might as well take a ten 10 minute adjournment now then.

RECESS

THE COURT: Yes, Mr. Tallis?

MR. TALLIS: Thank you, My Lord -

Q Mr. Kirby, I just have a few questions to ask you. First of all I take it that the exhibits that you referred to in answer to my learned friend's questions are the only exhibits that you handled pertaining to this case?

A That is correct, sir. 20

Q And as I understand it some of these exhibits were received on April the 21st from Mr. Paynter in your lab. and the others were received on the 22nd of April?

A That is correct, sir.

Q Now, in dealing with the items that you tested for fingerprints, I take it that it's fair to say that from your standpoint it is highly desirable for an article to be submitted to you for examination as quickly as possible? 30

A That is correct, sir. Some occasions dealing with Kleenex and paper towels one should have

211774

them within a few hours of the deposit of the print.

Q Yes but other items such as some of this other material it is desirable to have them at least within a few days?

A Or even sooner, sir.

Q The sooner the better?

A That is correct, sir.

Q And a lapse of a month or so makes it extremely difficult for you in many instances to do much 10 in the way of fingerprint testing?

A Yes sir. The acids or oils deposited by the finger are absorbed and dissipate into the material giving a smudge after a period of time and then nothing after that.

Q So that if articles are submitted to you say a couple months later or something like that in many instances they are really of very little or any value?

A That is correct, sir. 20

Q Unless some steps have been taken to preserve the items for you?

A That is true, yes sir.

Q And there are types of spray and whatnot that can be put on and preserve them for you?

A Yes sir. If a print is located to save it from damage and protect it, it can be covered by certain types of spray material.

Q And there is some material you pretty well have to use an x-ray on it to bring out the print? 30

A Yes sir; on rough leather material and on human flesh.

- Q Yes; and this is where the x-ray technique has advantages over the other standard techniques for fingerprinting?
- A That is true, yes sir.
- Q Now I take it then it's common ground between us that you never received any type of hunting knife for examination in connection with this case?
- A No sir, I did not.
- Q It was never submitted to you; and with reference to the two items that are here and have been 10 called in evidence at this trial P.12 being the knife blade and P.19 being the knife handle, I take it that you were only asked to make a comparison with respect to the handle and the knife blade insofar as whether or not they had been together?
- A That is correct, sir.
- Q And you did not make any examination of the point of the blade?
- A No sir, I did not. 20
- Q And you were never asked to make such an examination?
- A That is correct, sir.
- Q And the photograph that is tendered in evidence here as P.38 as I understand it you put the word "Top" up here to indicate the top portion of the blade?
- A Well, no sir. I used the word "Top" to designate on the print when I say top or bottom; but actually this is the knife edge of 30 the blade at the portion marked "Top".
- Q Well, let's get that straight then. The word

915 X-exam of S/Sgt.Kirby

"Top" denotes the sharpened edge of the blade?

A That is correct, sir.

Q So that if you were looking at it in that sense you would turn it up like that, would you?

A The sharp edge or outting edge is now down and on the right hand side, yes.

Q And perhaps you could just step down for a moment . . ?

THE WITNESS STEPS DOWN TO IN FORNT OF THE JURY.

MR. TALLIS: 10

Q There appears to be some substance here and I don't think anyone asked you. What is that?

A In the centre of the photograph, sir, on the outting edge of the blade rather than the handle of the knife . .

Q . . yes?

A . . there are some materials; there's some more appears on the handle edge. Now I didn't examine this substance to determine exactly what it was; it is a form of deposit that could be rust or some other material. 20

Q I see; but you had nothing to do with that phase of the examination?

A No sir, I did not.

Q And do your same observations apply with respect to the foreign material shown in the left half of the photo?

A When it's upside down, yes - some foreign material over and on top of the metal.

THE WITNESS RETURNS TO THE WITNESS BOX. 30

MR. TALLIS:

Q I see; and this photograph then is taken to

211777

depict the actual physical holding of the two parts together?

A No sir, not really. What I am trying to show here in this one are the grinding marks - are the scratch marks on the blade how they match up and line up here and here.

Q Yes but what I'm getting at is it would be an attempt to line it up?

A Well, the two edges that are broken, sir, are as it were underneath one another. The edge - 10 the jagged edge of the handle portion would be to the one side of the hairline where it cannot be seen and the same for the jagged portion or the tang end of the blade is also to the other side of the hairline.

Q Yes, but you would be holding them together - just overlapping a little to get this photograph?

A Well, they are overlapped through a series of lenses, sir, not physically.

Q I see; they are not physically overlapped? 20

A Not in this photomicrograph, sir.

MR. TALLIS: I have no further questions.

THE COURT: Any re-examination?

MR. CALDWELL: No, My Lord.

THE COURT: Thank you.

MR. CALDWELL: I call Thomas Stanley

Edmondson, My Lord.

THOMAS STANLEY EDMONDSON, sworn, states:

MR. CALDWELL, examining:

Q I believe you are a member of the Royal Canadian Mounted Police with the rank of Staff Sergeant and that you are in charge of the Saskatoon Subdivision General Investigations Section and were so throughout 1969?

A That's correct, sir.

Q And I believe, Staff, that you received a sealed and wrapped box from another officer to deliver 10 to Regina in 1969?

A Yes; on March the 20th 1969 I received a sealed and wrapped box from Identification Officer Kleiv of the Saskatoon City Police.

Q Now, Staff, may I ask you - are you certain of that date?

A The 19th of March - I beg your pardon.

Q The 19th of March?

A The 19th of March 1969.

Q And that's from Ident. Officer Kleiv, is it? 20

A That's right.

Q And he's a member of the Saskatoon City Police?

A That's correct, sir.

Q And did you deliver that box?

A Yes; when I received it I initialled it and dated it and kept it in my personal possession until the 20th of March 1969 when I handed it to Lloyd McDonald - Cpl. Lloyd McDonald of the Crime Detection Laboratory in Regina, Saskatchewan. 30

Q And I take it that in the interim you did not open it or look inside it or anything like that?

A No, I didn't, sir. I handed it over to Corporal McDonald and it was in the same condition as when it was when I received it.

Q And you said that you had marked the wrapper I believe on the box?

A Yes, I did. I initialled it "T.S.E." and the date the 19th of March 1969.

Q I show you P.30 for identification - a cardboard box and a paper wrapper that is part of that exhibit and ask you whether that is the box and 10 wrapper which you are speaking of?

A This is the wrapper, sir, here. I can identify it by my initials "T.S.E." and 19-3-69 as the date I received it. The box is the same size; it was wrapped at the time and I have no initials on it.

Q You did not of course mark the box as such but simply the wrapping?

A No sir, just simply the wrapping that was around it. 20

Q And once you left the box with Cpl. McDonald is that the last then that you had to do with it - with the box and wrapping?

A Yes sir, it was.

Q And I take it you looked at it and identified it at the preliminary inquiry in this case?

A Yes I did.

THE COURT:

Q Whom did you receive this from?

A From Identification Kleiv, My Lord. 30

MR. CALDWELL: I would tender that, My Lord.

THE COURT: P.30.

919 Exam of S/Sgt. Edmondson

(Exhibit P.30 for

identification

made EXHIBIT P.30

MR. CALDWELL: Thank you, My Lord.

Thank you; your witness.

MR. TALLIS: No questions.

THE COURT: Thank you, Officer.

MR. CALDWELL: My Lord, I have four further

witnesses from the Crime Detection Laboratory

who we called to be here this morning and who 10

left by aircraft - and they have now arrived.

THE COURT: I thought you were going to
make a startling announcement. You may proceed.

MR. CALDWELL: Thank you, My Lord.

I call Gary Hestor McLeod.

211781

GARY HECTOR McLEOD, sworn, states:

MR. CALDWELL, examining:

Q I believe your name is Gary Hector McLeod and that you are a civilian member of the Toxicology Section of the Regina Royal Canadian Mounted Police Crime Detection Laboratory?

A Yes sir, that's correct.

Q And I believe, Mr. McLeod, that on March the 11th 1969 you received an item from Staff Sergeant Paynter, also of your staff there? 10

A Yes sir, I did.

Q And what was the item you received?

A It was this cardboard mailing tube which contains two vials and at that time they contained blood.

Q And you received both the tube, the two vials and blood in the vials at that time?

A Yes sir, I did.

Q And at least for my purposes I don't wish to go into what you did but I believe you did 20 conduct an examination on the blood?

A Yes sir, I did.

Q Was there blood in both vials?

A Yes, there was.

Q How do you identify the container and the vials?

A I marked with my initials "G.Mc." and the date - 11 March '69; and each vial is marked the same way.

Q And you did that when you received them?

A Yes sir. 30

Q And did your examination use up the entire amount of blood in the two vials?

A Yes sir, it did.

Q And as I understand you, there was blood in both when they reached you?

A Yes sir.

Q And since making your examination did you retain the two vials and the cardboard mailer until now?

A Yes sir; they have been kept in my personal exhibit locker until today.

Q And they have not been tendered at the preliminary inquiry in this case? 10

A No sir.

Q And did you get them and bring them to court here today?

A Yes sir, I did.

Q As I understand you the situation is that you were not the person if anyone who grouped that blood?

A No sir.

MR. CALDWELL: I would tender the item for identification, My Lord. 20

THE COURT: P.39 identification.
(Mailing tube containing two vials made EXHIBIT P.39 for identification.

MR. CALDWELL: Thank you; your witness.

MR. TALLIS, cross-examining:

Q You said your examination used up both samples; did you conduct tests on the blood? 30

A Yes sir, I did.

Q But you did not conduct any grouping on the blood?

A No sir.

Q And what type of test did you conduct on it?

A I analyzed the blood for alcohol, for barbiturates and for narcotic drugs.

Q I see; and you didn't find any alcohol?

A No sir, I didn't.

Q But you did find a trace of drugs?

A There was no barbiturate or narcotic present.

Q But I said a trace of drug of some sort?

A Yes. 10

Q But could you determine what drug it was?

A No sir, I couldn't.

Q Did you check to try and determine what drug it was?

A I tried to identify the drug . .

Q . . but you were unable to?

A . . the quantity was too small.

Q And you used up both samples in doing this?

A Yes, I combined them and extracted the combined amount. 20

Q You mixed the two samples - that is you mixed blood from both vials into one container?

A Yes sir.

Q Now, when you received those blood samples were they sealed?

A One was sealed and the other, the tape had been out.

Q So that one of the vials had been broken into - I don't use that term in a . . ?

A . . it appeared to have been opened. 30

Q You were satisfied one of them had been opened?

A Yes sir.

Q But insofar as the other one is concerned you were satisfied it had not been opened?

A Yes, the tape was intact.

Q The tape was intact?

A Yes sir.

Q Was the seal intact on the tape?

A Yes sir.

Q There was a seal on it, was there?

A The tape was folded over the top and a second piece around to effect a seal, yes. 10

Q But was there any sealing wax or anything on it when you received it?

A I believe there were two spots of red sealing wax; I'm not positive of this fact now.

Q You couldn't say one way or the other?

A No, I don't recall.

Q But you are quite satisfied that one of them had already been opened?

A Yes sir.

Q Now, that one that had been opened, was it full 20 of blood or was there less in it than in the other one?

A They were approximately the same volume; there wasn't very much missing.

Q Do you have notes that you made at the time of your observations?

A Yes.

Q Well, could you check your notes to refresh your memory on these points?

A Yes sir. 30

THE COURT: Are you going to examine him on technical matters, Mr. Tallis? Because

he hasn't qualified as far as I'm concerned.

MR. TALLIS: No, there are no technical matters now in the light of what he said on his examination -

Q Now, dealing with the one that was open, would you just check your notes to see how the quantity in that vial compared with the quantity in the other?

A I don't have that marked down.

Q And you don't have any note as to the amount which was in each one then? 10

A No sir, I don't.

Q I see; you just have a recollection that you mixed the two of them in another container?

A Yes sir.

Q And then conducted your tests?

A Yes; I extracted the --

Q And you don't have a note as to whether or not one of them was sealed with sealing wax or anything like that? 20

A No, my notes were to the effect that one was sealed and/^{one}was unsealed.

Q I see; but the manner in which it was sealed, you don't have a note on that?

A Well, I know that the one was sealed by tape in that . .

Q . . when I'm using the term "seal" I'm thinking of wax on the tape.

A Yes - no, I don't recall that.

MR. TALLIS: No further questions. 30

THE COURT: Thank you.

MR. CALDWELL: I call Lloyd Ramsey McDonald, My Lord.

LLOYD RAMSEY McDONALD, sworn, states:

MR. CALDWELL, examining:

- Q I believe you're a corporal, a member of the Royal Canadian Mounted Police and attached to the Firearms Section of the Crime Detection Laboratory in Regina?
- A That's correct, sir.
- Q And that Staff Sergeant Kirby is the N.C.O. in charge of that section?
- A Yes sir, he is. 10
- Q And I believe, Corporal, that in 1969 you received some items and passed them on to other officers at the laboratory?
- A Yes sir, I did.
- Q I show you P.12; did you receive that item?
- A Yes sir. This is an exhibit or item which I received on the 25th day of March 1969 from Cpl. Malchanko.
- Q He is another member at the laboratory, is he?
- A Yes sir, he is. 20
- Q And in what form was the item when you received it?
- A I received it in this envelope which has my initials on the outside of the envelope "L.R.M."; and the date 25th of March 1969; as well as being tagged with a red tag with my initials and the date appearing on same.
- Q I see; so that you actually saw the blade in this instance and put your mark on a tag, did you? 30
- A Yes sir.
- Q I see; and what did you do with that item?

211787

- A I retained this item in my possession until the 22nd of April 1969, at which time I handed it over to Staff Sergeant Kirby.
- Q Did you perform any tests of any sort on it?
- A No sir, other than photographing it at one time.
- Q I see; and was this working in conjunction with Staff Kirby later on?
- A Yes, it was, under his direct supervision.
- Q And as I understand it though, he was conducting some examinations and you took a photograph under his direction? 10
- A Yes, that is correct, sir.
- Q And did you alter it in any way while it was in your possession?
- A No sir, I did not.
- Q And I believe that you received a collection of items from Staff Sergeant Edmondson, of Saskatoon Royal Canadian Mounted Police, at one stage in 1969?
- A Yes sir, I did. 20
- Q When was that?
- A I received a sealed box from Staff Sergeant Edmondson on the 20th day of March 1969.
- Q And was this box wrapped in paper and sealed?
- A It was wrapped in brown paper, sir.
- Q Were you the one who opened it?
- A Yes sir, I opened it.
- Q And I show you P-16; was that one of the contents of the box?
- A This is one of the contents of the box. 30
- Q How do you identify it?
- A I identify it by a tag which I placed on this

plastic bag and my initials "L.R.M." Corporal; and the date 20th of March 1969 appear on the tag.

Q I show you P.17; is that one of the contents of the box?

A Yes sir. This is a plastic bag which I removed from the box. I placed a tag on same and it has my initials "L.R.M." Corporal; and the date 20th of March 1969.

Q I should ask you, Corporal, did the two items in the bags contain items such as they do now when you received them? 10

A Yes - the beige purse and this boot.

THE COURT: Is that P.17?

MR. CALDWELL: Yes, My Lord -

Q I show you P.18; was that boot in that bag another part of the contents?

A Yes sir; this is the boot and plastic bag which I removed from the same box on the 20th day of March 1969. I placed a tag on the bag and my initials "L.R.M." Corporal on the tag as well. 20

Q I show you P.19; was this knife handle part of the contents?

A Yes. This knife handle was contained in this envelope and in the box which I received on the 20th day of March 1969. I placed this tag on the handle and my initials "L.R.M." appear on the tag.

Q Now, did you yourself conduct any examinations of any sort on the purse, either of the two boots or the knife handle that are before you there? 30

A No sir, I did not. I retained them in my possession until the 22nd of April 1969, at which time I handed them over personally to Staff Sergeant Kirby.

Q Is that all those four items?

A That's the two boots and the purse and the blade and the handle.

Q Oh I see; the item you received from Malchanko - the blade - also went to Kirby the same date?

A At the same time, yes sir. 10

Q And with respect to all five items then I take it that other than mark them for identification purposes you did not alter them in any way?

A No sir, I did not.

Q Alright; and it ended up giving them all to Kirby on that same one date?

A That's correct, sir.

Q I believe that at another time last year you received a sealed box from the same Corporal Malchanko? 20

A Yes sir, I did.

Q When was that?

A On the 3rd day of September 1969 I received a sealed cardboard box from Corporal Malchanko and I retained it in my possession until I gave it back to him in Saskatoon on the 5th day of September.

Q Where was it you received it?

A I received it at the Crime Detection Laboratory.

Q And you retained it and brought it to Saskatoon, 30 did you?

A Yes sir, I did.

Q And gave it to him on September the 5th?

A Yes sir.

Q During the time it was in your custody did you open it or tamper with the contents in any way?

A No sir, I did not.

Q And I show you a box and ask you whether that's the one you refer to?

A This is the box which I received. I identify it by my initials which appear in several places on the box - initials "L.R.M.". 10

THE COURT: Is that one of the exhibits?

MR. CALDWELL: Not yet, My Lord - I would tender it.

THE COURT: Have you any objection to it going in as an exhibit?

MR. TALLIS: No, My Lord.
(Cardboard box
made EXHIBIT P.40

MR. CALDWELL:

Q Now, have you mentioned all the items you received in connection with this particular matter to your knowledge? 20

A Yes sir.

Q And as I understand you then you conducted no tests on any of them whatever?

A No sir, other than the photograph.

Q Other than that one you have already told us about?

A Yes sir.

Q Now, Corporal, I think I may have misled you on this but will you have a look please at P.20 for identification and its contents; and did you 30

have any handling of those items or any part of them?

A These three envelopes, sir, are also exhibits which were contained in that cardboard box which I received on the 20th of March 1969. I had these and placed these labels or tags on the back; they were sealed envelopes when I received them; I placed the labels and tags on the back and retained them in my possession until I handed them to Staff Sergeant Tweed on the 26th 10 day of March.

Q And they were part of the same box of contents you told us about before?

A Yes sir, they were.

Q Now, as part of that exhibit for identification at the time when you received it were those three circular pill boxes part of the exhibit?

A Not to my knowledge, sir; I don't remember seeing those.

Q I see; and they don't bear your mark, do they? 20

A No sir, they do not.

Q And that would be the only handling then of the three envelopes that you had?

A Yes sir, this is correct.

Q And with respect to the envelopes, like the other items did you perform any kind of examination on them?

A No sir, I did not.

Q Or alter their contents in any manner?

A No sir, I did not. 30

MR. CALDWELL: Thank you; your witness.

MR. TALLIS: I have no questions.

THE COURT: That's all, Officer, thank you.

MR. CALDWELL: I call Bruce Ivan Paynter,
My Lord.

BRUCE IVAN PAYNTER, sworn, states:

MR. CALDWELL, examining:

Q I believe that your name is Bruce Ivan Paynter
and that you are a Staff Sergeant, a member of
the Royal Canadian Mounted Police in charge of
the Serology Section at the Crime Detection
Laboratory at Regina, Saskatchewan?

A That is correct, sir. 10

Q And I believe, Staff, that on February the 7th
of 1969 you received a collection of items at
the laboratory from Ident. Officer Kleiv, of
the Saskatoon Police Department?

A May I refer to the notes that I made at the
time in this regard to check on the date and
the exhibits?

THE COURT:

Q If you require to do so in order to refresh
your memory. 20

A I do, sir.
Yes, I received a number of exhibits from Ident.
Officer Kleiv on the 7th of February 1969 at our
laboratory in Regina.

MR. CALDWELL:

Q I'd like to show you a series of items, Staff,
and have your evidence as to whether or not
they are the ones you received.
Now, first of all, an item which is P.11 - a
wrapper?

A Yes sir. This wrapper was a wrapper that was 30
around an exhibit which I received from Ident.
Officer Kleiv.

- Q And how do you identify it?
- A It has my initials, case number and the date that I received it marked on the wrapping.
- Q And I show you P.5 - a black coat; is that one of the items?
- A Yes sir; this coat was received in the wrapper P.11.
- Q And how do you identify it?
- A Again it is marked with my initials, case number and the date that I received it, as well as tag 10 with the same information on it.
- Q I show you P.6 - a pair of panties; is that one of the items you received?
- A Yes sir; this is one of the items that I also received from Ident. Officer Kleiv.
- Q How do you identify it?
- A My initials, case number and the date that I received it are marked on the exhibit.
- Q I show you P.7 - panty girdle with stockings attached. Is that one of the items you received? 20
- A Yes sir.
- Q How do you identify it?
- A This item also has my initials, case number and the date that I received it marked on it.
- Q And P.8 - a half slip; is that one of the items you received, Staff?
- A Yes sir. This item also has my initials, case number and the date that I received it marked on it.
- Q Right on the item? 30
- A On the item, yes sir.
- Q And P.9 - a brassiere; is that one of the items

you received?

- A Yes sir. This item was also received at the same time; it also has my initials, case number and the date that I received it marked on the exhibit.
- Q P.10 - a white uniform dress; is that one of the items you received?
- A Yes sir. This item also bears my initials, case number and the date that I received it.
- Q And P.39 for identification - a cardboard mailer containing two vials; is that one of the items 10 which you received?
- A Yes sir.
- Q How do you identify that?
- A The container as well as each of the glass vials bear my initials, case number and the date that I received them.
- Q And in the case of the vials is it scratched into the glass?
- A It's scratched into the glass; this is done by using a diamond pencil. 20
- Q And P.12 - a knife blade - is that one of the items you received?
- A Yes sir, this was also received in the same manner as the other exhibits. It also has my initials, case number and the date that I received it scratched on to the blade.
- Q P.13 - two envelopes and two vials within them; is that among the items you received?
- A Yes sir. Both of these vials contain my initials, case number and the date that I 30 received them.
- Q And where are they on the vials?

- A They're scratched on to the vials near the bottom of the vials.
- Q In each instance?
- A In each instance. There are also red tags attached to the vials.
- Q I see; and P.14 for identification; is that one of the items you received?
- A Yes sir. I received this exhibit at the same time and in the same manner as the other exhibits. The envelope has my initials, case number and the date that I received it marked on it. 10
- Q And was it a sealed white envelope?
- A It was a sealed envelope and I did not open the envelope to examine the exhibit.
- Q And P.15 for identification; is that one of the items you received?
- A Yes sir. This envelope was also received in the same manner as the previous envelope - sealed. I did not open the envelope but my initials, case number and the date that I received it are marked on the exhibit. 20
- Q I believe, Staff, that that constitutes all the items you received at that particular time and place and from that officer?
- A That is correct, sir.
- Q And of course you received other items later which we will go into, but this was the shipment so to speak for that . . . ?
- A . . . for that particular date, yes sir. 30

THE COURT: I think this might be a convenient time to adjourn until two o'clock.
12:15 P.M. JANUARY 27TH, 1970 - COURT ADJOURNED.

211796

2:00 P. M. JANUARY 27TH, 1970 - COURT RESUMED.

ALL JURORS PRESENT.

THE COURT: Yes, Mr. Caldwell.

MR. CALDWELL: Thank you, My Lord -

Q Staff, before lunch I think you had said that that was the entirety of the group of items you received from Ident. Officer Kleiv February the 7th 1969 that are now before you?

A That is correct, sir.

Q And I believe it's true that you conducted 10 some examinations of some of those items and passed some others on to other officers?

A That is correct, sir.

Q Now, did you examine the liquid blood sample which is contained in the cardboard container consisting of two test tubes - P.39 for identification?

A This exhibit contained two glass vials containing liquid blood samples. I examined one blood sample only. The other one I did not open. 20

Q I see; and can you see from them, Staff, which one it was that you examined?

A Yes sir; it is the one that I have here in my right hand. I have marked on the side of the glass "Group O".

THE COURT: Just a minute please. You haven't qualified this officer.

MR. CALDWELL: No, I beg your pardon, My Lord, it's my mistake -

Q Before going into the matter of your tests, 30 Staff, I think that you have testified already that you are head of the Serology Section of the

laboratory?

A That is correct, sir.

Q And when did you commence work - I should ask you first - what are your academic qualifications?

A I entered our laboratory system in 1959 at Ottawa Ontario; and from that point attended Carleton University where I obtained a Bachelor of Science degree, majoring in chemistry.

Q And have you had any other academic training in the way of degrees in your field? 10

A No sir.

Q And once you got that degree, what did you do, Staff?

A I obtained the degree in 1964 and I was transferred to the Regina laboratory in September of that year; and was an understudy in the Serology Section for the remainder of 1964.

Q And what did you do then?

A Since the beginning of 1965 I have been doing case work and giving evidence in the courts; I have given evidence in the courts in the Yukon and Northwest Territories and the provinces of Alberta, Saskatchewan, Manitoba and Nova Scotia. 20

Q I see; and has this included both the courts at the level of Magistrate and . . . ?

THE COURT: . . Mr. Caldwell, I'm not the slightest bit interested in how much evidence a witness has given; that doesn't qualify him. What I want to know is what his qualifications are with respect to the matter of examination of blood samples, groupings, and 30

that kind of thing.

MR. CALDWELL:

Q Now, what has your training been in the field of examining say liquid blood samples or dried stains for that matter as to the grouping and so forth?

A As I said, I was an understudy in serology for approximately four months in 1964 and this was the basis of the training during that time.

Q Serology is the field within which that lies, I take it? 10

A Yes sir.

THE COURT:

Q Just what is serology?

A We use ^{it}to describe mainly examination of body fluids - blood and seminal fluids mainly.

MR. CALDWELL:

Q And did that part of your training include any examination of those body fluids under supervision of other personnel? 20

A Yes it did.

Q And did you eventually go to the stage of doing such examinations yourself?

A Yes; I have been doing examinations of this nature since the beginning of 1965.

Q And since that time have the examinations been ones that you have done yourself so to speak unsupervised?

A That is correct, sir.

Q And has your work since 1965 been steadily in the field of serology? 30

A Exclusively in that field, yes sir.

- Q And were you at Regina in the laboratory during all that period?
- A Yes sir.
- Q And when did you become head of the Serology Section?
- A I believe it was January the first 1966.
- Q And during the period from 1965 till the present have you in fact analyzed a number of liquid blood samples?
- A Yes I have, sir. 10
- Q Could you give us an approximation of how many?
- A I could not say, sir; it would be within the two or three hundred range probably but I could not give a definite number.
- Q During that period have you examined stains for the presence of blood and in some cases to go on in grouping - to determine whether it was human blood and sometimes go on and group the blood?
- A Yes I have, sir. 20
- Q And what numbers would this run into?
- A Again I could not give a figure but this would be a few thousand.
- Q And have you examined stains for the presence of human seminal fluid and/or spermatazoa during that period?
- A Yes sir.
- Q And in what range of numbers of such examinations?
- A Again I could not give a figure but again it would be well over a thousand. 30
- Q And from what you told His Lordship I take it

that your field extends to the examination of some other bodily fluids than those we have mentioned?

A Yes sir.

THE COURT:

Q After your four months understudying did you continue to understudy or work under somebody else?

A There was a Mrs. Hirsch who was in charge of the Serology Section but I did the work on my own 10 after that time.

Q I was just wondering how in four months you could acquire a profound knowledge of examination of bodily fluids?

A We stick mainly to blood and seminal fluids, sir.

Q I see; so the whole four months was spent in that work, was it?

A Yes; there would be also some work on identification of game animal meat. 20

MR. CALDWELL:

Q And as I understand you, your work would be restricted to those areas then during that period?

A That is correct, sir.

Q And it was at the conclusion of that period that you commenced doing such examinations on your own and unsupervised so to speak?

A Yes sir; I was doing examinations on my own after that date. Mrs. Hirsch was available if 30 I had any questions to ask or anything of that nature after that date.

Q I see; is she still with your section?

A No, she is not, sir.

Q And I take it without going into it that there are other people with your section now but that you are the head of it?

A That is correct, sir.

Q I'd like to ask you about P.39 for identification, Staff - one of the items you received - and I think you said that you examined one of the two vials so to speak and that it's the one that bears the inscription "Group O" on it? 10

A That is correct, sir.

Q Now, what did you determine the contents to be?

A It was given to me as a sample of liquid human blood and I determined the blood group of it.

Q And was it human blood?

A It would be human blood, sir, in the order that I was able to group it, yes sir.

Q And what group did you determine it to be? 20

A I found it to be of group "O".

Q And as a result of that you made that inscription, did you?

A That's when I marked the tube, yes sir.

Q And as I understand it you opened only the one vial during that process and left the other one intact in the way you found it?

A That is correct, sir.

Q Did it appear to contain human blood in any way?

A Yes; the liquids appeared to be the same in both tubes. 30

THE COURT:

Q Did you say you used the whole of the one vial?

A No sir; I would only remove a very small portion of it.

MR. CALDWELL:

Q Staff, is it possible under some circumstances to determine whether or not blood is human and in some circumstances to go on and group it from dried stains?

A Yes it is, sir.

Q And did you examine P.12 - the knife blade - 10 with a view to that?

A Yes I did, sir.

Q And what did you find the situation to be with it?

A I found human blood of group "O" present on the knife blade.

Q And I believe you examined the item which is I believe P.13 for identification - the two what are now two empty vials?

A Yes I did, sir. 20

Q Now, when you received the vials what were the contents - in what form were they?

A The vials when I received them contained a liquid. This was a pale yellowish or clearish liquid.

Q I see; and was this true of both vials?

A That is correct, sir.

Q Now, I'd like to pause at that point, Staff, before going into what you did with the vials and ask you whether your training and knowledge 30 and experience includes some knowledge of the matter of the secretion of blood antigens into

the bodily fluids of some persons?

A Yes sir.

Q Now, is there a name to describe the class of those persons, Staff?

A Persons who secrete their blood group antigens in their other body fluids are known as secretors.

THE COURT:

Q Who secrete their what?

A Their blood group substances or antigens. 10

Q Did you say or?

A They are usually called antigens - a-n-t-i-g-e-n-s.

Q Yes - they're known as secretors?

A The persons are known as secretors, yes, My Lord.

MR. CALDWELL:

Q And I take it antigens is one and the same thing as blood group substances?

A Yes, I use the two interchangeably.

THE COURT:

Q Well, just explain that, will you please for my 20 benefit and the benefit of the jury - what is a secretor in plain language - what does he do?

A A person who is group "A" blood will have the same group "A" substance in his other body fluids - in saliva, perspiration, tears, seminal fluid - the same antigens as he does in his blood.

Q In other words, he doesn't have blood there, he has the antigens?

A He just has the antigens the same as are in the blood, yes sir. A person who is a non-secretor 30 will not have these antigens in their other body fluids but they will be in the blood.

Q Well, I take it that antigens is just one portion of the blood?

A Yes sir.

MR. CALDWELL:

Q And when you speak of antigens in this sense, Staff, I take it you are speaking of them as opposed to whole blood?

A Yes sir. This is just a portion - a chemical in the blood that is used in the grouping under the A-B-O blood grouping system in this case. 10 Antigens can be other substance besides the "A" antigen. Many substances can be classified as antigens but in this instance I am referring to the blood group "A" antigens.

Q Now, are these secretors found within the various different blood groups of the population?

THE COURT: Besides "A" you mean?

MR. CALDWELL: Yes.

THE COURT:

Q In addition to "A"? 20

A Yes; they would be in the A-B-O and A-B groups, yes.

Q Well then, you didn't single out "A" for any particular reason?

A No sir.

MR. CALDWELL:

Q So what are the basic divisions in human blood, Staff?

A In the blood grouping system that we use at our laboratory and the one we use for grouping dried 30 stains is divided into group "A", group "B", group "O" and group "A-B".

Q That's four basic groups, is it?

A Yes sir.

Q And I take it from what you have told us that within each of those groups you will expect to find secretors and non-secretors in the general population?

A That is correct, sir.

Q Now, what percentage of the general population are secretors?

A Approximately 85%. 10

THE COURT:

Q 85% are secretors?

A Yes sir.

Q It's not unusual then?

A No, it would be quite common.

MR. CALDWELL:

Q As I understand you, Staff, in the case of a secretor from what you say you should be able to ascertain his blood group from one of those bodily fluids? 20

A Yes sir.

Q Alright now, when you checked the two vials which form P.13 for identification, on the first time in which you examined them, Staff, what examination did you make of the vials?

A The first examination was to examine the contents of the vials for the presence of human seminal fluid.

Q And I take it this would be in accordance with what you had been asked to do? 30

A That is correct, sir.

Q And what did you find in that respect?

A In one of the vials which was marked when I received it as I-1, I found human seminal fluid. In the other vial I found no seminal fluid.

Q Now, at the time of that initial examination did you examine for anything more than the presence or absence of human seminal fluid?

A Yes sir. I was asked to check the contents of the vials for the presence of any blood grouping substances - the "A" antigen or the "B" antigen.

THE COURT: 10

Q Just a minute - for just "A" and "B"?

A Yes sir. The group "O" person is one who does not have a Group "A" or group "B" antigen in his blood. He will have "A" antibodies and "B" antibodies.

Q Just a minute; as I understood you in any one of these groups A-B-O or A-B that a secretor will have antigens which is in his bodily fluid and which can determine the A-B-O - A-B group?

A That is correct, sir. 20

Q Now, tell us again please why you confined yourself to "A" and "B" right now?

A The "A" and "B" are the antigens that determine the blood group. A person who is group "A" has "A" antigen in his blood. A person who is group "B" has "B" antigen in his blood. An "A-B" person has both antigens. And a group "O" person has neither antigen.

Q Well, what antigens has he got then that could be secreted in the other bodily fluids? 30

A There's a substance they refer to as "H" substance, which he could secrete.

Q "O" is confined to "H" then, not "A" and "B"?

A "O" will not have "A" and "B" antigens.

THE COURT: Thank you; go ahead.

MR. CALDWELL:

Q Now, I'm sorry, Staff, but your second examination as part of the initial one I think you said . . . ?

A . . . is an examination for the presence of these antigens and I found "A" antigens present in the sample of liquid. 10

Q And was that in the same one in which you found the seminal fluid?

A Yes sir; it was the vial that was marked I-1 when I received it.

THE COURT:

Q Just a minute please; so that you conclude from that then that he had "A" blood grouping, did you?

A There is another problem in grouping the other bodily fluids, My Lord. In the blood group the persons that have "A" antigens and no "B" 20 antigens would have "B" antibodies. And in grouping blood we also check for these antibodies before we will determine what the blood group was. But the other body fluids, there's no antibodies to check for. And this creates the problem in stains or materials such as this as we do not know if there was a "B" antigen present and it was destroyed or if there was never any "B" antigen there.

Q So you couldn't tell whether it was "A" or "B" 30 then?

A All I can say is that I found "A" antigen, so

it would be from a group "A" or a group "A-B".

Q A group "A" or a group "A-B"?

A Yes.

Q Not "B"?

A Not "B", no sir.

MR. CALDWELL:

Q Staff, what is the constituent of human seminal fluid that enables you to identify it as such?

A As seminal fluid?

Q Yes.

10

A We run two separate tests on this. One is a test for an enzyme produced by the male prostate gland known as phosphatase enzyme. This is a chemical test. And we also do a microscopic examination and identify spermatazoa.

Q And did you find spermatazoa in this case?

A I did.

Q And that is the principal ingredient of male seminal fluid - that is spermatazoa?

A I would not say it's the principal ingredient. 20
The seminal fluid is the vehicle to transport these cells.

THE COURT:

Q Only found in the male, anyway?

A Yes sir.

MR. CALDWELL:

Q On this first occasion that you understand I am talking about in which you examined these two or the one vial of the two, did you make any attempt on that first occasion to examine the 30 contents for blood as such ?

A No sir, I did not.

Q And I say that as opposed to antigens - a constituent?

A That is correct, yes.

Q Alright; and from what you found when you made that initial examination what was the indication at that time, that is what could you say about the person from whom it apparently came, as at that stage in your examination?

A At that time in the examination the results of the examination would indicate that the seminal fluid may have or probably came from a group "A" secretor. 10

THE COURT:

Q May have or what was the other word you used - or probably?

A Probably.

Q A group . . . ?

A . . . "A" secretor.

Q But you couldn't rule out the possibility of it coming from a group "A-B"? 20

A I could not, sir.

MR. CALDWELL:

Q Now, I'd like to follow, Staff, through everything which you did with that particular item please before we go on. Did you retain the two vials for some period?

A I gave the vials to Corporal Victor Malchanko, who is employed in the Hair and Fibre Section at our laboratory on the 17th of March 1969.

Q And I believe the situation is that you later received them back again? 30

A Yes sir. I again received the same vials from

Ident. Officer Kleiv of the Saskatoon City Police at our laboratory on the 3rd of June 1969.

Q Now, was there any contents in the vials at this stage?

A In the one that was marked as I-1 there was still liquid in the vial. The other one the liquid appeared to have dried leaving a stain in the vial.

Q I see; and did you examine I-1 again?

A I did. 10

Q Now, on this occasion what did you examine for?

A On this occasion examination was to determine if there was any blood present in the liquid.

Q And just to be clear, Staff, I take it you're speaking now of blood as such as opposed to any constituent of blood?

A As opposed to antigens, yes sir; this would be blood.

Q Now, did this involve a different technique than you had used previously? 20

A Yes it did.

Q And what was the result of this second examination?

A If I may explain the test. This test is one used by hospitals to test for blood in urine and they find that it is specific for their purpose in testing for blood in this liquid. I have used this test and tested it with several substances and I found that it will give a false positive reaction with certain green 30 vegetables and with leather.

Q What do you mean by a false positive reaction?

A It will give a positive result - the same result with these substances as it will with blood.

Q Have you found it will give a false positive reaction with other substances than those two?

A No, I haven't, sir.

Q And I take it you've tried it with others from what you say?

A Yes, we've tried it with many substances.

THE COURT:

Q In other words, it's something from the vegetables that's there and not blood and mistaken for blood, is that what you mean? 10

A No sir; I'm saying that the test - when tested against other substances - a few other substances will give a false positive and for that reason I cannot positively say that a substance is blood from using this test alone.

Q It's not much good then, is it?

A Well, we use it as a screening test to eliminate stains and then if it is positive we attempt to do a further test to positively identify it as blood if there is sufficient there. 20

MR. CALDWELL:

Q But those are the two subjects if you will on which you found it to give a false reading so to speak?

A That is correct.

Q And have you found it did give a false reading with any other substances you have tested?

A No sir. 30

Q Now, when you on the second occasion tested the contents for the presence of blood as such,

what result did you obtain?

A I obtained a positive result for blood with this test.

Q And is that the extent of what your finding showed you?

A Yes sir; there was insufficient blood in this sample - or coloring in this sample that I was able to attempt any confirmation tests to absolutely prove that there was blood present.

THE COURT: 10

Q It turned out to be useless then, didn't it?

A Chemically I could not say that it was definitely blood there.

MR. CALDWELL:

Q And as I understand you, Staff, this would be a matter of the quantity you had to work with?

A That is correct, sir.

Q And can you describe or not the quantity of blood revealed to you in this way?

MR. TALLIS: My Lord, my learned friend 20
is using the question quantity of blood and with the utmost deference . .

THE COURT: . . there is no evidence whatsoever of blood.

MR. TALLIS: . . and I think accordingly the question should be framed differently.

THE COURT: I'm sorry, I was speaking to the sheriff - did you ask about the quantity of blood in this sample?

MR. CALDWELL: Yes, My Lord. 30

THE COURT: Well, there is no proof of any blood.

MR. CALDWELL: I understand that and I
can rephrase my question.

THE COURT: Yes - go ahead.

MR. CALDWELL:

Q This was in effect - well, I won't pursue
that, My Lord -
Alright now, if indeed there was blood as such -
I'm asking about this time - in the sample at
the time you checked for blood as such . .

THE COURT: . . excuse me, but there 10
was no blood.

MR. CALDWELL: Well, My Lord . .

THE COURT: . . you just can't ask
hypothetical questions like that unless you're
prepared to prove that there was blood there.
If you can't prove that there was blood there
through some witness or other I won't allow
you to pursue it.

MR. CALDWELL: Well, I'd like to pursue
what the result of the test indicated at any 20
rate, and perhaps . .

THE COURT: . . Well, it was positive
for blood but he has already said that that
might be false because of the other factors
that he mentioned and he said that there wasn't
enough to make a positive identification as to
whether it was a false positive or not a false
positive.

MR. CALDWELL: I understood the . .

MR. TALLIS: . . excuse me, if I may 30
interject here. He even went further, My Lord,
and said chemically I would not say it was blood.

THE WITNESS: Chemically I could not positively identify it as blood.

MR. CALDWELL: Well, perhaps, My Lord, I can ask the witness -

Q From the result you did get on that what could you narrow the item down to being? From the result you got what could you narrow down the cause of that result to?

A With this particular test?

THE COURT: 10

Q Yes; what were the various things it might have been?

A It would be blood or an extract from a leather product or an extract from green leafy vegetables such as lettuce, horseradish and vegetables of this nature.

MR. CALDWELL: Perhaps, My Lord, I could ask the witness this -

Q If the result you got as I understand you was caused by any of those causes what can you say 20 about the effect of this second or latter test, Staff, on the result you got in your first test?

A If this test was caused as a result of blood in the liquid this would eliminate the necessity of the antigens being produced by a secretor that I found in the first test, because the antigens could be there as a result of blood being in the liquid.

THE COURT:

Q So if it was blood the person might not have 30 been a secretor?

A That is correct; he would not necessarily be a

secretor if it was blood that caused this positive test that I obtained.

THE COURT: Thank you.

MR. CALDWELL:

Q Now, Staff - and I expect you have told the Court but just to be clear on this - are "A" antigens any part or is there any way they can be obtained from "O" blood?

A No sir.

Q Now, having covered all the tests you did of the contents of either of the two vials which are P.13 for identification . . . 10

THE COURT:

Q . . . I take it you didn't endeavor to test the dried substance that was in the bottle other than I-1?

A No. The other one was marked with an I-2 and it gave me a negative test for seminal fluid and a negative test for human material, so I made no further test on it. 20

MR. CALDWELL:

Q And have you described then, Staff, all the tests you made on either of those vials at any time now?

A Yes sir.

Q What did you do eventually with the two vials which are P.13 for identification?

A I then brought them to court with me at the preliminary hearing held in Saskatoon on the 5th of September, 1969. 30

Q And they were tendered in evidence then, were they?

- A That is correct, sir.
- Q Now, Staff, did you examine P.6 - the panties - for the presence of human seminal fluid?
- A Yes I did, sir.
- Q And with what result?
- A I found human seminal fluid present at the back of the crotch area in the panties.
- Q Did you mark the location, Staff, on the exhibit?
- A The area outlined in the crotch area - the black mark - and the hole out inside this area is the area of the cloth that I used in my test. 10
- Q Right; now, Staff, did you examine P.5, the black coat, P.7 the panty girdle, P.8 the half slip, P.9 the brassiere, P.10 the white uniform dress for the presence of seminal fluid?
- A Yes I did, sir.
- Q And with what results?
- A I found no seminal fluid on any of these items. 20
- Q And I believe you have already mentioned that you found none in the vial forming the last part of P.13, that being I-2, as I understand it?
- A That is correct, sir.
- Q Now, I believe, Staff, that you transferred P.39 for identification - the tube with the two vials in it - to another person?
- A Yes sir; this was given to Mr. McLeod, employed in the Toxicology Section of our laboratory on the 11th of March, 1969. 30
- Q And with respect to the remainder of the items before you, what did you do with them?

A The remainder of the items that I have mentioned were given to Corporal Malchanko, of the Hair and Fibre Section on the 17th of March 1969.

Q And you have mentioned of course, the receiving of the one item P.13 for identification back again; did you receive any of the other items back again?

A No sir.

Q And other than dealing with them at the preliminary inquiry I take it that would be all 10 that you had to do with them?

A With these exhibits, yes.

Q And have you described all the tests you did on all these various exhibits now?

A Yes sir, I believe I have.

Q Alright now, I believe the situation, Staff, is that you received another collection of items from Identification Officer Lorne Grant on a different date?

A I received a number of exhibits from Ident. 20 Officer Grant on April the 21st 1969.

Q I show you P.21 I believe for identification . .

THE COURT: You haven't tendered that; I don't know why you couldn't tender it.

MR. CALDWELL: Yes, I would tender that, My Lord, as an exhibit.

THE COURT: For what it is worth - it was found in the vicinity of the hospitalization cards.

MR. CALDWELL: Yes; I would tender that, 30 My Lord.

THE COURT: P.21 then.

957 Exam of S/Sgt. Paynter

(Exhibit P.21 for
identification

made EXHIBIT P.21

MR. CALDWELL:

- Q And is P.21 one of the items you received from Ident. Officer Grant on April the 21st 1969?
- A I received the envelope which was sealed at the time I got it. I did not open the envelope but gave it to Staff Sergeant Kirby on the 21st of April 1969. 10
- Q It was in the form of a sealed envelope when you got it?
- A That is correct.
- Q Did it have contents of some sort?
- A It did, yes.
- Q And I show you P.22; is that one of the items you received from Grant?
- A I received this box from Ident. Officer Grant. Again it was sealed when I received it and I did not open it. This was given to Cpl. Malohanko²⁰ on the 22nd of April 1969.
- Q I show you P.32; was that one of the items you received from Grant?
- A This envelope was also received from Ident. Officer Grant. Again the envelope was not opened but given to Cpl. Malohanko on the 22nd of April 1969.
- Q And I show you P.35; was that one of the items you received from Grant?
- A Yes sir. This blue toque was received from Ident.³⁰ Officer Grant on April the 21st 1969.
- Q And was it in the form of a sealed envelope at

211819

that time?

A It was sealed when I received it, yes.

THE COURT:

Q What did you do with it?

A I examined this for the presence of blood and then later gave it to Cpl. Malchanko on the 22nd of April.

MR. CALDWELL:

Q I show you P.23 for identification; is that one of the items you received from Grant? 10

A Yes sir. This liquid blood sample was also received from Ident. Officer Grant on the 21st of April 1969.

Q And in what form was it when you received it?

A It was sealed when I received it.

Q And was the envelope sealed also?

A Yes sir.

Q And the sample itself, I take it?

A Yes sir.

THE COURT: 20

Q What did you do with it?

A I determined the blood group of the blood in this vial.

MR. CALDWELL:

Q I show you P.24; is that one of the items you received from Grant?

A Yes sir. These two samples were received from Ident. Officer Grant on that same date.

Q Were they in a sealed envelope when you received them? 30

A They were.

Q And I show you P.25 for identification; is that

one of the items you received from Grant?

A Yes sir. This envelope was received sealed from Ident. Officer Grant and I did not open it but gave it to Cpl. Malchanko still sealed on the 22nd of April 1969.

Q I believe you mentioned that you grouped the liquid blood sample which I believe is P.23 for identification yourself, did you?

A I did, sir.

THE COURT: 10

Q Which one was that?

A P.23, My Lord.

MR. CALDWELL:

Q And what did you find it to be?

A I found the blood in this vial to be of group "A".

Q And that's human blood I take it of group "A"?

A Yes sir.

Q And you have told the Court that you examined P.35 - the toque - and for what did you examine it? 20

A The toque was examined for the presence of blood.

Q And what did you find?

A I found human blood of indeterminate group on the toque in two areas, one on the inside of the toque and one on the outside.

Q Now, could you show the Court where the areas are please?

A The area on the outside I have outlined the stained area with a red pencil and I have removed 30 a portion of the article and conducted the test on this area. The stain on the inside again

outlined with red and portions of the stain inside this area were removed; and these are the areas that I conducted the test on.

Q How many samples did you cut from the toque in the process?

A There are two holes inside the area on the inside; there is two holes on the area outside as well as a third area marked with the letter "C". This area is one which was not stained which I used as control sample of the cloth in 10 conducting the test.

Q So, is that five holes you made in it?

A Yes sir.

Q Five pieces cut out of it. Now, without going into it, Staff, for my purposes, I take it there are various reasons why under certain circumstances you cannot group human blood?

A The dried blood, sir?

Q Yes, speaking of dried blood.

A Yes sir. 20

Q This was a dried stain, was it?

A It was.

Q And in the case of this particular item your opinion was that it was human blood but you could not group it?

A That is correct, sir.

Q Now, what was the reason in the case of this particular item?

A There was not sufficient blood in the stain in order for me to attempt the grouping tests. 30

Q And I believe you carried on a test on the item which is P.24 - the two vials containing saliva

samples?

A That is correct, sir.

Q And in what form were the samples when you received them, that is was there any actual liquid or moisture as such?

A No sir; they were given to me as saliva stains on pieces of cloth. The cloth was dry when I received them.

Q And what test did you conduct on those two items?

A These items were tested to determine if I could find either "A" or "B" antigens in the saliva on the cloth. 10

Q And did you determine any such antigens?

A I found none.

Q And from that, Staff, just from that alone what would that indicate to you, if anything, about the person that supplied these samples?

A This would indicate that the person was a non-secretor.

Q A non-secretor; now, I believe you passed along item P.16 to another officer, did you - that being a sealed envelope purportedly containing a wallet? 20

A That exhibit was . . .

Q . . . excuse me - I beg your pardon, I believe it's P.21?

A Yes sir; that was given to Staff Sergeant Kirby on the 21st of April 1969.

Q And would that be the last you had to do with it?

A Yes sir. 30

Q And I believe you passed on P.22 - the sealed film box - to another officer?

A Yes sir; that was given to Corporal Malchanko on the 22nd of April 1969.

THE COURT:

Q What was that?

A P.22, My Lord.

THE COURT: What did you call it?

MR. CALDWELL: I called it a film box, My Lord.

THE COURT: Oh yes, that's the one with the sweater in it. 10

MR. CALDWELL:

Q I believe you passed on P.32 - an envelope purporting to contain a fibre sample - to another officer?

A P.32 was also given to Corporal Malchanko on the 22nd of April 1969.

Q And the toque P.35 - you passed that on?

A Yes sir; this was also given to Corporal Malchanko on the 22nd of April 1969.

Q And P.23 for identification - the liquid blood sample - did you pass that on? 20

A That was given to Ident. Officer Kleiv on the 22nd of May 1969.

Q And P.24 - the saliva sample - did you pass that on to someone?

A That was also given to Ident. Officer Kleiv on the 22nd of May 1969.

Q And P.25 for identification - purported hair sample - did you pass that on to someone?

A That was given to Corporal Malchanko on the 22nd of April 1969. 30

Q And you I believe tendered one or more items

yourself at the preliminary inquiry?

A No sir.

Q Oh, I beg your pardon . .

THE COURT: . . just a minute please, I
just want to get something cleared up here -

Q What was the wallet for identification - was
that P.21?

A P.21, My Lord.

THE COURT: Will you show me that P.21
please? 10

THE COURT CLERK PASSES P.21 ON TO THE COURT.

THE COURT: I'm sorry, I'm going to
have to ask you gentlemen for a little
clarification on this wallet business. Is this
P.21 the wallet that the little boy found in the
snow?

MR. CALDWELL: Yes, My Lord.

THE COURT: Well, was there another
wallet?

MR. CALDWELL: I think this is the only 20
wallet that has been mentioned.

THE COURT: There were no contents in
this when he found it, were there?

MR. CALDWELL: His evidence was no.

THE COURT: That's right; was there
some other evidence that there were contents?

MR. CALDWELL: You recall his evidence,
My Lord, that some papers flew from it.

THE COURT: Quite right. Well, would
you mind telling me what P.21 is - contents of 30
what?

Were these P.33 contained in any wallet - did

that come out during the evidence, Mr. Caldwell?

MR. CALDWELL: P.33, My Lord - I would
have to look back.

THE COURT: Very well, I don't want to
confuse you or the jury but I've got a note
here - contents of wallet - and I thought there
must have been another wallet.

MR. CALDWELL: I'm sorry, My Lord, but
I'll have to check that; I've forgotten what
they were. 10

THE COURT CLERK: They were put in the
evidence of Penkala shortly before noon
yesterday.

THE COURT: Well, we'll come to it
later; I won't hold the thing up now, Mr.
Caldwell; I'm confused over where they came
from.

MR. CALDWELL: Yes, I would have to look
back -

Q I'm sorry, Staff, but is that all the tests you 20
did now with that collection of items you got
from Grant and all the handing on you did?

A If I may correct a statement I made a minute ago.
Exhibit P.24 was received from Ident. Officer
Kleiv again on the 3rd of June 1969 and I did
tender it at the preliminary on the 5th of
September 1969.

Q And that was which one again?

A P.24 - the saliva samples.

Q I see; so as I understand you it came back to 30
you at the same time as the two vials P.13 did?

A That is correct, sir.

Q Now, on the occasion that it came back to you then, did you do any testing of it or its contents?

A Yes, I tested the cloth for the presence of an enzyme produced by saliva - found in saliva; and found this to be present on the cloth.

Q That was on the second occasion, was it?

A Yes sir.

Q I think that you at various times received other items in connection supposedly with this matter, 10 Staff?

A That is correct, sir.

Q And one of them that you did receive was a liquid blood sample purporting to be from one Ron Wilson?

A That is correct, sir.

MR. CALDWELL: Thank you; your witness.

THE COURT: Cross-examination?

MR. TALLIS, cross-examining:

Q Mr. Paynter, my learned friend Mr. Caldwell 20 directed your attention to P.35 - being this blue toque - and if we may examine the exterior surface my counting would indicate that there are three holes in the toque on the outer surface?

A Yes sir.

Q And I take it that each of those holes resulted from a cut that you made in the toque at those individual spots?

A That is correct, sir. 30

Q Now, you have indicated you have your notes here and I take it that it's common ground between us

that when you first received the toque there were no holes in it?

A Not to my knowledge there weren't.

Q Well, you would have examined it and noted it if there had been, wouldn't you?

A If there had been holes there I would have made my holes away from those holes. I made those three holes myself.

Q Fine; and you can tell by the three holes that they have in fact been cut out for examination purposes? 10

A Yes sir.

Q Now, similarly, if we turn the toque what I will call inside out, I gather that there are a couple of holes on the inside?

A Yes sir.

Q And were those two holes also made by you in the course of examination?

A Yes, they were.

Q I see; now, you can correct me if I'm wrong but I gather that you examined the whole toque pretty carefully to try to discern blood spots on it? 20

A Yes sir.

Q And now, as I understand it you were only able to locate blood in - was it one or two spots on here?

A There were two areas. The holes did not necessarily remove the entire area of the stain.

Q I see; but were there two areas where you found blood and just two? 30

A There were two areas; one on the outside and one on the inside.

- Q In other words, was the hole - was the blood stain that you found on the inside anywhere near the other one or did you check that out?
- A There is a stained area on the outside that corresponds with the stained area on the inside but does not correspond with the two places that I removed on the outside.
- Q I see; now, you mentioned that one of the holes you put in here was a sort of control sample?
- A Yes sir. 10
- Q And is that the small one at the bottom on the outside?
- A It is, sir.
- Q And that one did not have blood on it, I take it?
- A That is correct.
- Q And that's why you called it a control sample?
- A That is right.
- Q Now, you have those two vials in an envelope here I think, which you commonly called I-1 and I-2? 20
- A Yes sir.
- Q And they are now as I understand it P.13 in these proceedings?
- A That is what I have^{it} marked as, yes.
- Q You have it marked on that basis; now, as I understand it you received these two samples of liquid when they were in the actual vials?
- A They were, yes.
- Q They weren't in plastic containers when you received them - that is plastic bags as distinct 30 from vials?
- A The liquid sample was in the vial and the vial

in the plastic container as it is now.

Q And one of them you designated for your purposes I think as I-1 and one as I-2, is that correct?

A Yes; I believe they were designated that way when I received them.

Q I see; in any event that was the way you used . . . ?

A . . . to distinguish them apart, yes.

Q . . . to distinguish them. Now, you told my learned friend in your evidence-in-chief that you tested I think the one marked I-2 for seminal fluid, which forms part of . . . ? 10

A . . . I-2 was tested for seminal fluid, yes.

Q . . . P-13; and as I understand it that one vial the substance in there was negative for seminal fluid?

A That is correct.

Q And negative I think you told my learned friend for human material? 20

A Yes sir.

Q Now, I believe you also described it as being a yellowish sort of color?

A Very pale . . .

Q . . . pale yellow?

A . . . color liquid, yes sir.

Q Now, how much was in that vial when you first received it - what quantity?

A I could not give an exact amount; it would possibly be one c.c. or two c.c.'s - but a small amount of liquid. 30

Q I see; and you could notice the coloration of

it when you held it up to the light?

A Yes.

Q That is you could see it with the naked eye?

A Yes sir.

Q Well now, you made the notation that it tested negative for human material; did you go further and test it to determine what type of material was in there?

A I did not, sir.

Q I see; and all you can tell us is that it was 10
this pale yellowy color?

A Yes sir.

Q But I take it that the test when you say the absence of human material - this would negative body substances including urine and things like that ?

A No sir.

Q I see, it wouldn't?

A It wouldn't negative urine, no sir.

Q Well, when you said human material what were 20
you referring to?

A Blood, seminal fluid, saliva, perspiration.

Q I see; things like that?

A Yes sir.

Q So that you just - you are just not able to from your scientific knowledge - or testing because of no testing - say what was in there when you got it?

A That is correct.

Q Well now, you later turned that vial I-2, which 30
is part of P.13, over to Corporal Malchanko, did you?

- A Yes I did.
- Q And he's in your Hair and Fibre Section?
- A That is correct.
- Q I see; and then subsequently you received that back?
- A Yes I did, sir.
- Q And when was it that you received it back?
- A On the 3rd of June 1969.
- Q I see; and when you received it back was there any quantity in there suitable for testing 10 purposes?
- A It was dried material only in it when I received it back.
- Q And it was not possible to make any tests then on that dried material?
- A I made no tests on it. It would be possible to make tests on it but I made none.
- Q You didn't make any on it?
- A No sir.
- Q And now, from what you told my learned friend 20 I gather that blood is grouped into what is commonly called the A-B-O and A-B groups?
- A That is correct, sir.
- Q And that is commonly called the international system?
- A Yes sir, I believe it is.
- Q And in addition to that there are other systems but I don't think you used any of them?
- A We do not use them in testing dried blood stains, no sir. 30
- Q Now, as I understand it you have already told my learned friend that about 85% of the population

secrete blood grouping factors in physiological fluids other than blood?

A Yes sir.

Q And dealing with this matter when you make a check and find that a person is a secretor - so that you can say he is a secretor, as you use the term - you must find antigens in order to be able to say that he is a secretor in the case of an "A" group?

A Yes sir. 10

Q Or a "B" group?

A Yes sir.

Q In the case of an "O" group you have to find this "H" factor?

A We do not test for that, sir. We would give the same test for an "O" group as we would for a non-secretor.

Q I see; well now, this "H" factor - this is what I want to come to - this "H" factor that you mentioned to My Lord the Chief Justice is a factor or substance which you will find in an "O" group? 20

A Yes sir.

Q But now you said you don't test for that?

A We do not at our laboratory, no.

Q You do not test for that?

A It is under research at the moment but we are not using it in our routine tests.

Q Well now, by that you mean under scientific research? 30

A We are testing it, yes sir.

Q I see; but you don't use that in your lab?

A No sir.

Q So that this "H" factor that you mention is something you are not dealing with at this time at the lab?

A That is correct, sir.

Q Now, as I understand it this vial I-1, forming part of P.13, is one that you tested and found human seminal fluid in it?

A Yes sir.

Q I-1 of P.13 is the one that had human seminal fluid in it? 10

A Yes sir.

Q And when this was submitted to you you ran a test shortly after it was received from one of the Saskatoon City Police officers?

A Yes sir.

Q And I understand it was Mr. Kleiv that delivered this item along with others to you on February the 7th 1969?

A It was. 20

Q And as a result of the test that you conducted of that human seminal fluid you at that time came to the opinion - if I understand the situation correctly - that this seminal fluid came from a secretor of group "A"?

A That was the opinion that I obtained at that time, yes sir.

Q That was your considered opinion?

A Yes sir.

Q And as a matter of fact you reported that finding back to the Saskatoon City Police Department, I take it? 30

973 X-exam of S/Sgt. Paynter

A I did, sir.

Q And that would be approximately March the 12th 1969 that you reported your findings to that effect?

A I could not give you the date of my report; it would be in that area.

Q Well, I'm not quibbling over a day or so but would you agree with the general time?

A It would be in that area, yes.

THE COURT: 10

Q Excuse me - that it came from a secretor of group "A" - is that what you said?

A That's what I said at that time, yes sir.

MR. TALLIS:

Q Now, after you made that report to the City Police in connection with this vial I-1 which you marked, which forms part of P.13 in evidence here, you returned the vial or you submitted the vial to some other person?

A I did. 20

Q And who was that?

A Corporal Malchanko.

Q And at the time you submitted the vial to Malchanko did you seal it up again?

A No sir.

Q I see; you left it unsealed?

A Yes sir.

Q And then the next thing you saw of this particular vial I-1 was when it was brought back to you on June the 3rd 1969, is that correct? 30
Just take a moment and check your notes; I'm not trying to rush you on this.

211835

974 X-exam of S/Sgt. Paynter

A 3rd of June 1969, yes sir.

Q And was it delivered to you at that time by Mr. Kleiv or Mr. Grant?

A By Mr. Kleiv.

Q Mr. Kleiv; and when it was brought back to you on this particular date was it sealed or was it in a vial that was not sealed?

A It was still in the same vial. I do not recall if the vial was sealed but the vial was in a sealed envelope. 10

Q I see; but could you check your notes with respect to the vial and tell me whether or not it was sealed when you received it?

A I made no note of it being sealed or unsealed - the vial.

Q I see; and if you would just have a look at I-1 forming part of P.13, would you be able to recollect whether or not it was unsealed when you received it back? Perhaps looking at the adhesive that is apparently on there will 20 assist you.

A Upon looking at the adhesive I would say that there was no second adhesive placed on it; no sir, this would be the original which was cut by myself.

Q You would agree with me that there appears to be the original on there which you cut?

A Yes sir.

Q And that no subsequent seal was ever put on it which you had to recut? 30

A That's correct, sir.

THE COURT: I'm sorry, I'm going to have

211836

975 X-exam of S/Sgt. Paynter

to interrupt you, Mr. Tallis, ^{to} clear up a point
on this business of being a secretor -

Q You said at the time you made your report that
in your opinion the seminal fluid came from a
secretor of group "A"?

A Probably came from a secretor of group "A", I
believe it was. I do not have my report here
but . .

Q . . just a minute please - that was your opinion
at any rate - it probably came from a secretor 10
. . ?

A . . yes sir.

Q . . and that secretor had group "A" blood?

A Yes sir.

Q Alright; and if the substance that you found
there turned out - that is the free blood, which
you thought was free blood - turned out to be
not free blood - you understand what I mean?
One of those other substances that you referred
to that came from leafy lettuce and so on? If 20
it wasn't blood - if it came from one of those
other things, what would that do - confirm or
. . ?

A . . this would indicate that it came from a
secretor of group "A" or group "A-B", yes, sir.

Q If it was not blood?

A If the substance that gave me this positive test
was not blood.

Q But if it was blood . . ?

A . . if it was blood I could not say whether or 30
not it was a secretor because . .

Q . . and yet you can't tell me or tell the jury

211837

whether it was blood or it wasn't blood, is that right?

A I cannot tell you definitely. In my opinion it probably was blood but I cannot tell you positively.

Q It might not have been blood?

A There is a chance, yes.

Q Alright; so that you can't say definitely then that the person whose seminal fluid you examined on this occasion was a secretor or not a secretor? 10

A I cannot say, no sir.

THE COURT: Alright. I'm sorry I'm a little dense on that, Mr. Tallis, but I had to get it through.

MR. TALLIS, continuing:

Q And I think that it's common ground between us - and this may be a rhetorical question - that one's blood group is the same from birth to death, that is we don't change or fluctuate? 20

A We don't change, no sir. We will find that certain antibodies and antigens will increase after birth; they may not be present at birth but they will increase and then decline again; but it would be the same blood group . .

Q . . but the actual group . . ?

A . . it would be the same, yes sir.

Q Now, when you were examining this item I-1 on the second occasion - that is when it was returned to you on June the 3rd - you made this test for a substance which you could not scientifically identify and as I understand it 30

there was no way in which you could isolate this substance which you said might be blood or other things so as to test that substance for the presence of antigens?

A No sir.

Q If you had been able to scientifically isolate that substance and then test for antigens you could be more precise on that, couldn't you?

A Yes sir. If the substance had been blood and you could separate the blood from the seminal fluid you would then be able to test them individually. 10

Q That is, test the blood for antigens . . . ?

A . . . test the blood and the seminal fluid for antigens, yes sir.

Q Now, I gather that in the field of blood grouping it is also possible to sub-group people, that is let's take the "B" group - am I correct in understanding that you can go further and sub-group people? 20

A In the "B" group?

Q Yes.

A It may be possible, sir, but not to my knowledge in the "B" group.

Q I see; well let's take it then with the "A" group; I understand that in the "A" group you can break down the "A" group into a number of sub-groups?

A Yes sir.

Q And for example you can break it down into A-1, A-2 and so forth? 30

A That is correct, sir.

- Q And I take it then this reflects the fact that within the "A" group there are differences which you can isolate into sub-groups - if I may use that term?
- A Yes sir.
- Q And as I understand it, for example, you are in the "A" group yourself?
- A I am, sir.
- Q And if you take it down a step further you are in sub-group A-1? 10
- A I am, sir.
- Q Yes; and this is an illustration to - other people might be in the A-2 group?
- A That is correct, sir.
- Q Now, when you were doing your blood grouping in this instance did you do any sub-grouping?
- A No sir.
- Q And as I understand it you will agree with me that there are quite a number of sub-groups say in the "A" group? 20
- A Yes sir.
- Q And I'm not worried about the exact number here but I take it there are quite a number?
- A Quite a few, yes sir; I can't give you the number either.
- Q Could you tell me approximately how many offhand?
- A No sir, I can't.
- Q Fine; but in any event it's more than several?
- A More than . . . ?
- Q . . . more than several? 30
- A I would say it was several.
- Q I see; and by that just so there is no

misunderstanding here, by several you would mean three or four, would you?

A It would go further than that, sir.

Q It would go further than that; I just wanted to get your idea on several; so that what would you estimate the number you mean when you say several - and I'm not trying to belittle you in any way on this, please understand that.

A I would say it would be in excess of five at least; it would be in excess of five - possibly 10 ten or fifteen. The differences are very slight and different examiners in doing research on this, if they find a slight difference they will often tack in another one and it varies from time to time just who is agreeing on what is a sub-group.

Q I see; it's not a perfect science?

A It's not a definite cut-off, you know, it's a continual gradual type step.

Q You're satisfied you're in group A-1, though, 20 are you?

A I am, sir.

Q Did you run that test yourself?

A I forget whether I done it myself or it was done by the Red Cross.

Q I see; but in any event this is a technique that is used by the Red Cross, I take it?

A They use it only slightly; there is not enough difference that it causes them any degree of problem. 30

Q But I gather that for medical purposes such as blood transfusions this blood grouping is used?

A It does not cause them any problem in blood transfusions.

Q No, but is that where it is used?

A No sir; it's more liable to be used in civil cases - maternity suits or this nature.

Q I see; so that you have some - I'm not suggesting a personal background, please don't misunderstand me - but you have some knowledge of it being used in situations such as this?

A We do not do examinations of this nature but this would be . . . 10

Q . . . I'm speaking of scientific knowledge . . . ?

A . . . it could be used for that purpose perhaps.

Q I think that at the preliminary hearing you did mention that for medical purposes such as blood transfusions it is sometimes used in this way?

A I may have; I don't recall saying it, but they do not differentiate it really.

Q I see; yours was taken at the Red Cross? 20

A It may have been or we may have done it at the laboratory.

Q I suppose you run some of them off on yourselves just by way of testing, do you, when you are understudying?

A Oh yes.

THE COURT: We'll adjourn for ten minutes.

RECESS

THE COURT: I want to clear up that little point that I was confused about. As far as I can tell there is no evidence as to where 30

981 x-exam of S/Sgt. Paynter

the so-called contents of the wallet came from. In his evidence Officer Penkala produced the wallet with contents in it; the contents were personal cards and photographs and in addition to that he produced some hospitalization cards and he said in the wallet when he received it, as I understand it from Detective Sergeant Mackie - you would have to check that - he said the wallet contained personal cards and photographs; but it's obvious from the evidence 10 of Detective Sergeant Mackie that there was nothing in the wallet when he picked it up from the boy. So that when I made my note - and it was accurate at the time - reference was made to contents of wallet. There was no evidence from Penkala that could be accepted that in fact the contents were in the wallet at any time. Anyway, you can follow it up, Mr. Caldwell.

MR. CALDWELL: I'm sorry, My Lord, I'll 20 have it looked up.

COURT CLERK: We have arranged with Miss Lockrey to clear it up for us.

THE COURT: Thank you. Yes, Mr. Tallis?

MR. TALLIS: Thank you, My Lord -

Q Mr. Paynter, just a few more questions with which you can perhaps assist us - dealing with this vial labelled I-1 which forms part of P.13, you recall being asked a number of questions by my learned friend and myself about this 30 substance which you couldn't scientifically identify and I just want to ask one or two more

211843

questions in connection with that. I take it that a visual examination of this seminal fluid did not reveal any reddish color of any sort?

A No sir, there was no reddish color to it.

Q No reddish color to it; and this substance if I may use it when you were endeavoring to isolate it scientifically, was a very very minute quantity, as lay people would think of it, wasn't it? 10

A The sample of liquid or the substance in it?

Q The substance in it.

A It would be a very small amount, yes.

Q And if I may get down to terms in which I think of to illustrate size, it would be smaller than a pinhead?

A I couldn't say, sir, in that while it was in the liquid form what the size of the pure substance would be.

Q I see; well, in any event it would be a very minute amount? 20

A Yes sir.

Q And when we talk in terms of a pinhead it might be even smaller than that?

A It could be. I'll put it this way, sir; a pinhead of blood in two or three c.c.'s of liquid would cause the reaction with no difficulty.

Q And a small quantity of blood would cause coloration that you could see? 30

A Whether or not a drop the size of a pinhead would or not, I could not say.

- Q But a relatively small amount?
- A It would not take a great deal to start giving a pinkish color to the liquid.
- Q That's right; and you had enough to do with the samples that it's fair to say you didn't even detect a pinkish color . . . ?
- A . . . I did not suspect any blood in it when I first received it, sir.
- Q And when you looked at it even later on there was no pinkish coloration or anything like that 10 that the naked eye could see?
- A No sir.
- Q And I suppose that this examination would be under good lighting and whatnot?
- A Yes sir.
- Q Now, P.24 consists of two vials and as I understand it each one of them had fabric in it?
- A That is correct, sir.
- Q And the fabric had what you found to be human saliva in each case, is that correct? 20
- A I found an enzyme on the cloth that is present in human saliva.
- Q Well, did that lead you to the conclusion that the substance in the cloth was human saliva?
- A It led me to the conclusion, sir, that it was saliva. Other animals may have this enzyme present in their saliva as well, I could not say.
- Q Well, you were able to isolate it as human saliva, I suppose - or were you?
- A No sir. 30
- Q Oh I see; all you can say is just saliva?
- A Saliva.

- Q Yes; and I take it then that some of the substances are found in animals as well as humans?
- A They may have the same enzymes present in their saliva; I could not say.
- Q But certainly you found the enzyme there and was it a good sample in each of those instances - quantitatively speaking?
- A I could not say, sir. You could not detect the stain on the cloth. This may have been 10 because the entire cloth was stained and would appear to be the same all over.
- Q I see; the whole cloth in each instance . . . ?
- A . . . it could have been.
- Q Could have been stained?
- A Yes sir. I could not detect any individual stained area on the cloth.
- Q Now, you also told my learned friend I think that with reference to the panties which are here as an exhibit - P.6 - you have told us 20 about finding seminal stains in the crotch; and was there a fairly substantial area of seminal stain there?
- A The stained area is to the rear of the crotch area, outlined with the black and the area out out. The amount of staining material, I could not say, sir.
- Q Now, were you able to run any tests on the dried seminal stains apart from ascertaining that it was caused by seminal fluid? 30
- A I did not, sir.
- Q Well, is it possible to test dried seminal stain

to take into account this secretor and non-secretor aspect?

A Yes sir.

Q I see; but I take it that no test was made of that area there, or was it? Just take a moment to check your notes if you please.

A No sir.

Q And if I may just come back for a moment to P.13 - that vial that was called I-2 with the pale yellow liquid in it; I believe that when you had that liquid you actually opened it and this is before it dried up when you first had it - you actually smelled it, did you? 10

A Not that I recall, sir.

Q Well, I was wondering whether or not there was any odor that you could detect from it that would indicate the type of material it was?

A I couldn't say, sir, whether I did or not; but not that I recall.

Q You don't recall any odor? 20

A I don't recall smelling it to see if there was any odor.

Q Do you customarily do this after you open vials?

A Not intentionally, sir.

Q Sometimes on - well, do you recall me asking you this question and giving this answer at the preliminary hearing - this might assist you - page 171 at question 52 - this was in reference to I-2 - well, 51, question and answer - do you recall being asked this question and giving this answer? 30

"I see. Well was there any - what . . ."

" . . . color was it?"

Answer:

"I believe it was a pale yellow color."

Do you remember being asked that question?

A I don't recall, sir; it's quite possible but I don't recall.

Q I see; and 52 question and this answer:

"A pale yellow color, and I take it there wasn't any detectable odor or anything that would indicate what it was?"

10

And your answer is recorded as: "No sir."

Do you remember being asked that question and giving that answer?

A I do not recall it. If I gave that answer it would be because there was no odor from the distance that I opened it. I probably would not take a smell of it on purpose to determine if there was an odor there.

Q But you don't specifically recall being asked those questions?

20

A I don't specifically recall them, no sir.

Q But naturally you don't dispute that they were asked?

A No sir.

MR. TALLIS: I have no further questions.

THE COURT: Any re-examination?

MR. CALDWELL: No, My Lord.

THE COURT: Thank you. Next witness.

MR. CALDWELL: A matter has arisen, My Lord, that I think ought to be brought up in the absence of the jury.

30

THE COURT: Very well; would you please

retire, members of the jury, then for a short while.

MR. TALLIS: I might say that as far as I'm concerned Mr. Paynter can be excused if he is required on other matters.

JURY RETIRE.

THE COURT: Yes, Mr. Caldwell?

MR. CALDWELL: It is a matter, My Lord, that I think my learned friend has suggested and I agree ought to be brought up initially with Your Lordship and there may be two or three aspects to it. This is a matter, My Lord, of . . . 10

THE COURT: . . will it take some time?

MR. CALDWELL: To discuss, My Lord?

THE COURT: Yes.

MR. CALDWELL: I would think so, yes.

THE COURT: Well, shall I let the jury go?

MR. TALLIS: Well, it's four o'clock now and I would think it will take at least half an hour and possibly Your Lordship might even want to consider it a little longer. It may very well be that there is not that much point in keeping them hanging around. 20

MR. CALDWELL: There is one thing, based on the matter my learned friend has just made known to me, that I might be in a position upon making this submission to Your Lordship to proceed with some evidence not connected with this for the rest of the afternoon. 30

THE COURT: Yes but if it takes half to

three-quarters of an hour to determine - if it will only take fifteen or twenty minutes then alright but I'll have to let the jury go, there's no sense in having them sitting there.

MR. CALDWELL: Well, I can't absolutely guarantee, My Lord, how long it will take.

THE COURT: Well, you're coming along as well as you thought you would, Mr. Caldwell?

MR. CALDWELL: In terms of . . ? 10

THE COURT: Time?

MR. CALDWELL: Yes, My Lord.

THE COURT: There's Wednesday, Thursday and Friday left.

MR. CALDWELL: I would estimate right now that the Crown's case will be done on Thursday, My Lord.

THE COURT: Well, go ahead and tell me then what your general proposition is and then I'll decide. 20

MR. CALDWELL: Very well. This is a matter that I propose and I do propose the possibility of calling two witnesses whose names are not on the indictment. Now, I'd like to have on the record the way in which this came about, My Lord. On Sunday . .

THE COURT: . . well excuse me just a minute. My impression - and I want to recheck it - is that you are not restricted to the witnesses that are on the indictment or 30 restricted to the witnesses that were called at the preliminary inquiry.

MR. CALDWELL: I believe that's true,
My Lord, but as I said I think there are two
or three aspects that ought to be canvassed.

THE COURT: Very well.

MR. CALDWELL: On Sunday January the 18th
the Saskatoon Police learned for the first time
of what in my submission amounts to an
admission on the part of the accused to this
offence - and I say what it amounts to in my
opinion, My Lord. On the same date the police 10
officers advised myself in person and on the
same date I advised my learned friend by
telephone of what I knew of that situation at
the time, which was not much more than that at
that time; and advised my learned friend that
depending on the results of interviewing these
persons I might intend to call them at the trial.
And still on the same date, Sunday January the
18th, I arranged for an investigator to go to
Regina on the next day - Monday January the 19th 20
1970, and interview these persons. This was
initially three persons, My Lord. This was done
on Monday January the 19th. On Tuesday the 20th
I received copies or the originals I should say
of statements from each of these three persons.
On Wednesday the 21st I delivered copies of all
three statements to my learned friend.

THE COURT: What date?

MR. CALDWELL: Wednesday, the 21st, My Lord -
to my learned friend Mr. Tallis; and I advised 30
him I would interview them as soon as possible,
that is those three; and that I might call one or

more of them at the trial depending on the results of the interview.

Now, the two males were to Saskatoon Friday January the 23rd and I interviewed them then and advised my learned friend by telephone on Saturday the 24th that I would call these two males for the Crown's case.

The third person - the female - just got here today; I have interviewed her just at noon, My Lord, and advised my learned friend that I will not be calling her and I am making her of course available to him to interview after the conclusion of the afternoon today. 10

Now, I want to go on and tell Your Lordship what I had proposed to do about this because . .

THE COURT: . . well, excuse me a minute. Do you intend to go any further into the type of evidence that you expect to adduce? 20

MR. CALDWELL: I think Your Lordship, yes, should know about that . .

THE COURT: . . would it not be preferable that I should - I am asking you this now, I'm not suggesting I will do it - preferable that I should see the statements?

MR. CALDWELL: I would be quite content to . .

THE COURT: . . but I would want to hear what Mr. Tallis has to say about this too, 30 of course.

MR. CALDWELL: . . as an initial thing and

then I think we would both of course want to be heard further because my learned friend has a few comments.

THE COURT: Well, you go ahead and finish what you're going to say, though.

MR. TALLIS: My Lord, if I might just interject here apropos of what you raised earlier. It seems to me that the issue here is of sufficient importance that we are going to be a fair amount of time on it. My colleague Mr. Disbery is going to deliver an argument on the admissibility of the evidence even if Your Lordship decides to permit leave to have the names added to the indictment; and I must say that I would also think that it would be not improper for Your Lordship to be shown copies of the three statements so to speak to give Your Lordship the background on which our view and argument can properly be based on behalf of defence.

Having said that I leave it to Your Lordship to consider whether you now would like to suggest that the jury be instructed to go.

JURY RETURN.

ALL JURORS PRESENT.

THE COURT: Members of the jury, a
somewhat similar situation has arisen now
to that which arose the other day when an
argument was presented to me about four
o'clock. It may last for fifteen minutes,
it may last an hour. I see no purpose in
keeping you here, in view of the fact that
it's now four o'clock. You might just as
well make use of the extra hour.
So will you depart now please and come back
at ten o'clock tomorrow morning.
JURY RETIRE.

10

THE COURT: How do you wish to proceed now, Mr. Caldwell? Have you something more to say?

MR. CALDWELL: Well, I'd be content based on what Your Lordship has said and my learned friend to have Your Lordship if you will at this time examine the statements; and I mention that it's the two males whom I intend to call, but all three statements are here. And I will want to say something more afterward, My Lord - 10 and I'm sure my learned friend will - about the proposed evidence.

THE COURT: Let me have a look at them then.

MR. CALDWELL: Yes, My Lord. These are the originals, My Lord, and my learned friend has photostats of them.

THE COURT READS THE THREE STATEMENTS.

THE COURT: Will you have photostats made of the two statements - the two males - so 20 that I can have them?

MR. CALDWELL: Yes, I will, My Lord.
My Lord, I think there are probably at least two separate issues arise here and the first is the matter of the general law on witnesses called at the trial who are not called at the preliminary inquiry and I'll be prepared to argue that as soon as Your Lordship wishes; I'm prepared now.

THE COURT: I'd rather hear what Mr. 30 Tallis has to say on that because I think I know what the law is, I hope I do.

MR. CALDWELL: And then, My Lord, there
is the other question of course of the effect
of the evidence if it is allowed in terms of
its probative value and/or its prejudicial
value, as the case may be and I think if Your
Lordship pleases I'd be pleased to have my
learned friend heard on that.

THE COURT: Mr. Disbery?

MR. DISBERY: Well, I don't think I can
argue too strenuously with my learned friend's 10
submission with regard to the first
proposition, that is the adding of witnesses
to the indictment who were not called at the
preliminary. However, for the purpose of the
record I wish the record to show my objection
to that.

 With regard to the second matter, My Lord,
you have read the statements now and it is my
respectful submission, My Lord, that the three
statements - and I feel that this is probably 20
the gist of the evidence as it will come out
if they are allowed to testify - creates such
an atmosphere in which these statements were
allegedly made by the defendant, that any
probative value that they might have
considering his physical state at the time is
greatly outweighed by the prejudice that they
would create in the minds of the jury against
the defendant, taking into consideration the
circumstances - the surrounding circumstances 30
in which the statements were allegedly made.

 Now, although this is not a case where

this is a statement to a person in authority,
My Lord, I respectfully submit that the same
type of considerations ought to apply in
considering the matter of admissibility of
the alleged statements; and I think in regard
to that, My Lord, the main factor is the
circumstances with regard to the defendant.
Now, I think Your Lordship can see by reading
the statements that there were certain things
occurring in the room which would lead one to 10
seriously wonder about the capability of
anybody who said these alleged things of
really considering what he was saying; and I
think, My Lord, that that is backed up by
some of the activities that were going on in
the room at the time.

Now, there are a line of cases, My Lord,
with regard to people who allegedly make
statements to people in authority . .

THE COURT: . . is that with relation 20
to the matter of voluntary or otherwise?

MR. DISBERRY: It's in relation to the
authority of a person who made the statement
to comprehend what they're saying. Now, all
these cases deal with intoxication. Now,
these cases state that one of the things that
must be considered by a Court in determining
the admissibility of a statement is the
condition of the person making the statement.
There are five or six cases in which this point 30
is raised and I must say that I think there are
two of them that the Court decided that the

person who gave the statement was sufficiently aware of the surroundings and what was going on and that this factor did not enter into it to a sufficient degree to have the statement excluded. The others the Court decided that the statement should be excluded on this very ground.

THE COURT: On the ground that it wasn't voluntary?

MR. DISBERRY: Yes they did, My Lord, 10
and they say that the condition of the person making the statement is of prime importance - yes, they find they were not voluntary on consideration of this particular aspect.

Now, I must say I was not able to find cases where a statement was not made to a person in authority; these are all cases where admissions were made to people in authority . .

THE COURT: . . I must say - I'm just 20
going to interrupt for a minute - I must say that I thought and it seems to me I read it very recently that the question to be determined is whether it's voluntary or not voluntary. The condition of the person at the time of taking it may be taken into consideration in determining the truthfulness or otherwise or accuracy of the statement.

MR. DISBERRY: Yes, My Lord, I was just
coming to that. I was going to draw an analogy. 30
There is no question of voluntariness here, that doesn't have to be determined, but I am

respectfully submitting that in statements such as these the Court on deciding the matter of admissibility must look at the surrounding circumstances; and as I would respectfully submit those circumstances are such that the probative value of the evidence is so far overshadowed by the prejudice in effect that the whole circumstance creates in a jury's mind, they virtually have no probative value; and I respectfully suggest that Your Lordship can exercise a discretion and not allow that type of evidence to be given. 10

Now, as I say I haven't found any cases on that point but I suggest respectfully that you can draw an analogy between these statements given to people in authority and statements such as we have here. I think on reading authorities one of the elements that they consider is whether the person in fact knew what he was doing. And I think also, My Lord, that considering the date that these statements were allegedly made, one must bear in mind that there has been considerable involvement with the police up until that time. I think that Your Lordship can properly consider that in determining the background of the whole situation. I think it's fair to say that there were a number of interviews up to that point. And I say that, My Lord, because I think that on deciding this matter of admissibility that Your Lordship has to consider 20 30

not only that but the circumstances that were present within the room. Now, that is really the main contention for not allowing these particular statements to be admitted in court and that is that if they are admitted they have to be admitted in total and I respectfully submit that all the circumstances have to be placed before the jury.

THE COURT: Well, do they? That's a question of what evidence Mr. Caldwell may lead and it's a question of how far the scope of the cross-examination will go. 10

MR. DISBERRY: Yes, well, I have authority on that, My Lord, which suggests that the total circumstances of a confession should be placed before the jury and it is R vs Chambers 1947 Ontario Reports 443; and an alternative citation is 4 Criminal Reports 117. And R vs Orel 2 WWR . .

THE COURT: . . is that the old series? 20

MR. DISBERRY: I don't know, there was no indication of being new or old; I imagine it would be the old series, My Lord - at page 378; and an alternative citation is 82 Canadian Criminal Cases at page 35.

THE COURT: There must be a year in the Western Weekly.

MR. DISBERRY: 1944, My Lord.

Now, I submit that this established that in a situation where there is a statement of a confession the total circumstances have to be established before the jury. And if they 30

are established here, My Lord, I think that any probative value that arises from the actual statements is far overshadowed by the surrounding circumstances, in fact overshadowing to such an extent that it really raises a serious question as to whether the particular person can receive a fair trial in the eyes of the jury.

Now, My Lord, if you wish me to give you some reference with regard to the consideration 10 of intoxication in giving statements the main case I found is R vs Drewicki at 41 Criminal Reports 265. Now in that case there are five other cases cited which are considered and in two of those cases or one of those cases the particular statement made by the accused was admitted even though the state of intoxication at the time was considered but it was not considered to be sufficient to make the statement an involuntary statement in that 20 sense. The others including the main case found the other way that the degree of intoxication was such that the persons do not appreciate what they were doing and consequently rendered the statement involuntary.

THE COURT: How was that determined -
on a voir dire?

MR. DISBERRY: I'm not sure, My Lord.

THE COURT: It couldn't have been any
other way if it was the statement. See, it 30
isn't the statement here that we're concerned
about as far as I can see, it's the question of

1000 JURY OUT

evidence of a witness that we're concerned about.

MR. DISBERY: Yes, My Lord. I used the word statement as (next few words inaudible). The report for that is not . .

THE COURT: . . well, I can check it but it must have been if a judge said it wasn't admissible - it must have been on a voir dire.

MR. DISBERY: I think My Lord, that the 10
proper procedure is to exclude the jury and
make a determination of the circumstances
surrounding. But basically, My Lord, that's
our submission and although it doesn't
strictly speaking involve a question of
voluntariness I'm inviting Your Lordship
respectfully to draw an analogy with these
cases and the case that we have here of
statements made under certain circumstances.
And I would respectfully submit in summing up 20
that even if these statements are technically
admissible that the probative value to be
derived from them would be far overshadowed
by the prejudice that would be created in the
minds of the jury; and, My Lord, as I
understand the law, Your Lordship has a
discretion vested in yourself to exclude
evidence or admit evidence and I have
authorities for that proposition;
The Hoer Mohamed case 1949 2 WWR 753 at 760; 30
Harris vs the Director of Public Prosecutions
1952 Volume 1 All England 1044 at 1048;

211862