

1001 JURY OUT

And R vs Lizotte 1951 Supreme Court Reports  
115. That also appears in the Second Edition  
of The Canadian Abridgment, My Lord.

Thank you, My Lord.

THE COURT: Well, you would have  
taken the same objection you're taking now if  
this evidence had been proffered at the  
preliminary inquiry; and I take it there is no  
distinction between the proposition which  
would have existed at that time and the one 10  
that exists now. That is the fact that it  
came in afterwards really has nothing to do  
with this matter of prejudice or non-prejudice,  
has it?

MR. DISBERRY: Well, with respect, I  
think it has a little more practical effect  
when you're considering a jury, My Lord.

THE COURT: Of course, we have leaned  
over backwards in this western jurisdiction  
anyway, insisting that all the witnesses who 20  
are known be called and so on and some other  
jurisdictions in this country even don't  
insist on it, that all the evidence be adduced;  
all they require is that sufficient evidence be  
adduced to put the man on trial.

MR. DISBERRY: Yes, My Lord. I must say  
my learned friend Mr. Caldwell - we were supplied  
with this information as soon as he had it  
available to him.

MR. CALDWELL: My Lord, if I could be heard 30  
briefly. I think there are possibly three  
considerations and the first I think is the

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least problematic as to the situation of the evidence having not been called at the preliminary inquiry and I would only mention four cases among many:

The McClain, My Lord, which is an older case - 85 Canadian Criminal Cases 488. That's a 1915 Alberta Supreme Court Appellate Division case;

And King against Munevich, which is located at 58 British Columbia Reports page 4. That's a 1942 British Columbia Court of Appeal case, My Lord. 10

THE COURT: It's only in the British Columbia Reports?

MR. CALDWELL: That's the only citation I have and I can leave it with you if you wish, it's quite brief; And the King vs Gallant 83 Canadian Criminal Cases 48. That's a 1943 Prince Edward Island decision, My Lord; 20

And finally - and there are others - the Queen vs Cunningham 15 Criminal Reports 167. And that's a 1952 New Brunswick Court of Appeal situation.

There are other cases. There is a Saskatchewan case - the Grigoreshenko and Stupka case but it's an older Saskatchewan Court of Appeal case . .

THE COURT: . . give me anything you've got in the Saskatchewan Court of Appeal, Mr. Caldwell. 30

MR. CALDWELL: Very well, My Lord.

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THE COURT: It's very persuasive authority.

MR. TALLIS: He doesn't think so, My Lord.

MR. CALDWELL: This is a 1945 edition of the Court, My Lord, and it's 85 Canadian Criminal Cases at 129 and it is generally about the topic of . .

THE COURT: . . what's the name of it?

MR. CALDWELL: Grigoreshenko - 10  
G-r-i-g-o-r-e-s-h-e-n-k-o - and Stupka -  
S-t-u-p-k-a.

Then it might assist Your Lordship, there's Lemay against the Queen which is a Supreme Court case - 14 Criminal Reports at 89 and it's a very exhaustive review of the discretion of the . .

THE COURT: . . is that the leading case?

MR. CALDWELL: I would believe it to be 20  
so, My Lord. The Agostino case immediately follows it and is related - the same volume at page 113.

And then I'll mention these others:  
Queen vs Eyre, 16 Criminal Reports 133.  
That's a 1952 British Columbia Court of Appeal;  
And then there's the Queen against Oliva, My Lord, which is 1965 3 All England Reports at 116 is one of the more recent ones.

Now, the first four I mentioned, My Lord, 30  
are the ones I thought came closer to this question and I don't think there's too much

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argument about that.

Now, the second thing, My Lord, is the only analogy I can suggest to what this situation would be, would be the law as it relates to what effect intoxication has on a statement and I do want to bring to Your Lordship's attention there is a fairly exhaustive Saskatchewan Court of Appeal judgment the Queen against Hartridge, with which Your Lordship is familiar. That's at 10 56 Western Weekly Reports 385; or 1967 1 Canadian Criminal Cases 346. Now in that one, My Lord, one of the things canvassed was the whole effect of intoxication upon voluntariness, all other things being equal; and the Court there reviewed the older Canadian cases and I think it's very useful and as far as I know it's up to date in this province at this time.

Now, the third phase and the one I would 20 submit, My Lord, I think does present some difficulty and I'll tell the Court frankly that in examining-in-chief it has been my intention if this evidence is allowed that I at any rate would not ask of the two male witnesses, whom I think Your Lordship understands are the two I propose to call, I would not be asking them of the other activities in the room which might in my view certainly give rise to some . . . 30

THE COURT: . . well, there are two other activities.

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MR. CALDWELL: Well, those are specifically the ones I did not intend to ask in re the accused's actions, My Lord; in other words, no mention of those two activities.

THE COURT: Well, his condition might be . .

MR. CALDWELL: . . well, I just tell Your Lordship what my first plan was and to this moment is that, that I would not go into those two things and I would even at this point instruct my witnesses I won't. Of course I do intend to ask them - I think this is quite different, My Lord - these two males if the evidence is allowed - whether each one of them individually was at the time he was in the motel room under the influence of any intoxicant - drugs, LSD etc. - and you recall, My Lord, we've done that earlier in this case but I specifically say "Were you" to the one and "Were you" to the other and of course this is what I would think would be of assistance to the jury when they come to determining weight, My Lord.

Now, from there, My Lord, I would submit and my initial reaction to this is that the other information of course is known to my learned friend and . .

THE COURT: . . it's just a matter of cross-examination.

MR. CALDWELL: Well, this is it and that is not my area, My Lord. Now, I must say I

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hadn't considered the aspect that my learned friend has raised this afternoon, that is the argument that in effect if anything goes in about these - as I understand his argument - if we pass the first hurdle of the fact it wasn't called before that either all the circumstances or none must go in and I would, of course, My Lord, want you to carefully consider that if Your Lordship ends up deciding that that's the law on the 10 thing I would want to carefully consider that, as you will appreciate. But my reaction had been that there would be nothing so to speak wrong about me examining-in-chief and avoiding some areas specifically and as of this time - that is, still assuming that this evidence is to<sup>be</sup>/allowed - that would still be and is my intention; and it just happened, My Lord, that the circumstances seemed to be that way in this instance, and then it would 20 seem to me Your Lordship of course is going to have to rule whether it's either an all or nothing proposition, whether all the circumstances must be led in-chief.

THE COURT: Really I don't understand that yet; I'll look into it but here is a witness that you're producing and you say you want to call him and this is the effect of his evidence and then it's a question of during the hearing of that evidence something 30 is about to arise which did arise - the type of thing/<sup>which</sup>did arise in connection with the evidence

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of that man Wilson, an objection was taken and I heard the objection in the absence of the jury and as I recollect it now - and in addition to that certain things were not asked of him, which you could have asked him.

MR. CALDWELL: Well, that was deliberately so, My Lord.

THE COURT: And I don't see any great distinction between the situation there and this particular case. 10

MR. CALDWELL: Well, with respect, My Lord, that was-my reaction was that it's in some ways very similar to that previous situation in which I think the thing was handled without any misfortune.

My Lord, I don't know if that's of any assistance but that is my position on the thing and certainly my intention has been and will be unless Your Lordship otherwise rules, if Your Lordship rules that I may call these witnesses. 20

THE COURT: Well, it will be in your hands, Mr. Caldwell, and Mr. Tellis and Mr. Disbery are here for the purpose of protecting the interests of their client.

MR. CALDWELL: That's right. I did just simply wish to make it known that this is my intention and then of course anything that arises can be dealt with.

THE COURT: Anything further, Mr. Disbery? 30

MR. DISBERY: No, My Lord, I have nothing

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further to say; it's just that I think it's a  
matter of the total effect of this evidence.

THE COURT:                    Would you please have  
those run off as quickly as possible, Mr.  
Caldwell?

MR. CALDWELL:                I'll have it done  
immediately, My Lord.

THE COURT:                    Thank you.  
We'll adjourn, gentlemen, until tomorrow  
morning at ten o'clock.

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4:40 P. M. JANUARY THE 27TH, 1970 - COURT ADJOURNED.

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10:00 A.M. JANUARY 28TH, 1970 - COURT RESUMED.  
JURY OUT.

THE COURT:                   Have you gentlemen any  
                                  representations in particular you wish to  
                                  make to me this morning before I rule on  
                                  this matter?

MR. CALDWELL:                Only this, My Lord, that  
                                  the second case my learned friend cited I  
                                  think was more a matter of a situation  
                                  where the judge had - first of all it was a       10  
                                  person in authority, the judge had ruled it  
                                  voluntary and then refused defence counsel  
                                  leave to cross-examine as to its truthfulness;  
                                  so I don't think with respect that it's  
                                  comparable. But I have nothing further to say.

THE COURT:                   Well, gentlemen, I have  
                                  decided that the evidence is admissible. It's  
                                  evidence which if accepted by the jury tends to  
                                  inculcate the accused. I know that I have to  
                                  determine matters of admissibility and in this     20  
                                  <sup>case</sup>  
                                  to me it is clearly admissible; the weight to  
                                  be placed on it is a matter for the jury.

                                  And of course you will follow the line  
                                  that you indicated yesterday, Mr. Caldwell?

MR. CALDWELL:                I will do that, My Lord.

THE COURT:                   Thank you.

                                  Call the jury in please.

THE JURY RETURNS.

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ALL JURORS PRESENT.

THE COURT: Yes, Mr. Caldwell?

MR. CALDWELL: I call Craig Alfred Melnyk.

CRAIG ALFRED MELNYK, sworn, states:

THE COURT:

Q How do you spell your last name?

A M-e-l-n-y-k.

MR. CALDWELL, examining:

Q Now, Craig, I believe you are seventeen years  
of age now, are you?

10

A Yes.

Q And where is your home?

A Regina, Saskatchewan.

Q And what is the address there?

A 1724 Toronto Street.

Q And is that your parental home?

A Yes.

Q And you're still living there, are you?

A Yes.

Q And how far did you go in school, Craig?

20

A To grade eight.

Q And when was it that you finished that?

A A year ago.

Q What month and what year, do you recall?

A November of '68.

Q Now, have you had some employment since you  
finished school?

A Yes.

Q Would you briefly just tell the Court what  
sort of things you have worked at?

30

A At drywalling, construction . .

THE COURT:

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Q Drywalling and construction, did you say?

A Yes.

Q Drywalling is really construction work, isn't it?

A Yes.

MR. CALDWELL:

Q How long at drywalling?

A Six months.

Q And for whom?

A Nick Lapchuk and McKillop and Company. 10

Q And any other jobs?

A I worked at Moore's Taxi for a while.

Q What sort of work?

A I was a washman.

Q And any others?

THE COURT:

Q A what - a washman?

A Yes.

And I worked for a warehouse.

MR. CALDWELL: 20

Q Which one?

A Atomic Transport.

Q Speak up please.

What was the name of the construction company?

A Lindsay Cement.

Q And you mentioned I think two drywall concerns?

A Yes.

Q McKillop and Nick Lapchuk?

A Yes.

Q Any other ones? 30

A No.

THE COURT:

Q Are you working now?

A No.

MR. CALDWELL:

Q Now, I believe, Craig, that you are an acquaintance or that you know David Edgar Milgaard?

A Yes.

Q And is he in court here today?

A Yes.

Q Which person is he? 10

A The one in the suit.

Q And seated where?

A Right in that . .

THE COURT:

Q In the accused's box?

A In the accused's box.

MR. CALDWELL:

Q Alright; and how long have you known him?

A Two to three years.

Q And whereabouts did you meet him? 20

A In Regina.

Q And I believe you had an occasion in the spring of 1969 to be together with Milgaard and some other people?

A Yes.

Q And what's the best you can say about when that was, Craig?

A In May.

Q In May - that would be of 1969, would it?

A Yes. 30

Q And is there some particular way you can fix the date as being May?

A It was just before I went to Edmonton.  
Q And when did you go there?  
A In June.  
Q Pardon?  
A In June.  
Q Alright now; I believe this was in an evening,  
so to speak?  
A Yes.  
Q And who were you with first that evening?  
A George Lapchuk. 10  
THE COURT:  
Q Just a minute please; is that a son of the  
man you worked for?  
A Yes.  
MR. CALDWELL:  
Q And did you - and this was in Regina, was it?  
A Yes.  
Q Did you and George run into any other youths  
you knew that evening?  
THE COURT: Any other persons. 20  
A Yes.  
Q And who were they?  
A Bob Harris and Gary Silljer.  
Q Bob Harris and Gary Silljer; do you know how  
that Silljer is spelled?  
A S-i-l-l-i-j-e-r.  
THE COURT:  
Q Spell that again, will you please?  
A S-l-l--i-j-e-r.  
Q And his first name? 30  
A Gary.  
MR. CALDWELL:

Q And I don't want to go into what was said but  
you talked with them - you and George?

A Yes.

Q As a result of that did you go somewhere?

A Yes.

Q Where was that?

A The Parklane Motel.

Q And is that still in Regina - that motel?

A Yes.

THE COURT: 10

Q Did you go with them?

A No.

MR. CALDWELL:

Q Whereabouts in Regina is the Parklane?

A Right by the outskirts of the city.

Q And out which street or avenue?

A It's at the north end of Albert Street.

Q North end of Albert Street?

A Yes.

THE COURT: 20

Q It's not all the way out to the end of Albert,  
is it?

A Just about.

Q Is that as far as Woolco?

A Yes; it's right across the street.

MR. CALDWELL:

Q When you got there did you go to a particular  
room?

A Yes.

Q And do you yourself remember the room number 30  
or not?

A No.

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Q And did you knock on the door?

A Yes.

Q And who answered?

A David.

Q And anytime you say David you are talking about the accused Milgaard, are you?

A Yes.

Q Did you and George go in?

A Yes.

Q Now, who was there when you arrived? 10

A There was David and Ute Frank . .

Q . . alright now, is that a girl?

A Yes.

THE COURT:

Q How do you spell that?

A U-t-e; and her last name is Frank.

MR. CALDWELL:

Q Ute Frank - anyone else?

A Debbie Hull.

Q Did you know those two girls before? 20

A Yes.

Q What time would you estimate you arrived there?

A About ten thirty.

Q And that would be p. m.?

A Yes.

Q Now, was there a television set in the motel room?

A Yes.

Q And at any time while you were there was it turned on? 30

A Yes.

Q And when it was on was the sound turned on

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that you could hear the sound?

A Yes.

THE COURT:

Q Do I understand that it was as a result of information you had obtained from Harris and Silljer that you located the accused out at Parklane?

A Yes.

MR. CALDWELL:

Q Did there come a time that evening when the news came on the television? 10

A Yes.

Q And at that time in Regina what time did the news come on?

A Eleven o'clock.

Q And is the situation there that you have so to speak a national and a local television news at or about that time?

A Yes.

THE COURT: 20

Q You have two national news, don't you?

A The CTV national news.

Q And the CBC?

A No, I don't think so; I think this is just CTV and then we get our news.

Q You get your news after the CTV is over anyway - that's from the local station?

A Yes.

MR. CALDWELL:

Q Whatever station this was did there come a local news segment so to speak? 30

A Yes.

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Q What time do you recall that as being?

A About eleven fifteen.

Q And was that still on and the volume still on?

A Yes.

Q Now, when the local news came on and throughout it, was it still the same group of people in the room you've already mentioned - you, George, David Milgaard and the two girls?

A Yes.

Q No one new? 10

A No.

Q And nobody left?

A No.

Q And was there some item on the local news which led to some discussion?

A Yes.

Q Alright now, can you tell us - as I understand it . . . ?

THE COURT:

Q Well, what did the news relate to? 20

A It was to the stabbing death of a nurse here in Saskatoon.

MR. CALDWELL:

Q And I perhaps should ask you - I gather this is one of these rooms where the TV set is in what amounts to the bedroom part of the motel unit?

A Yes.

Q Now, you said there was something about the stabbing death of a nurse in Saskatoon? 30

A Yes.

Q Do you yourself remember anything else of the

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item other than that or not?

A Just that they hadn't got the person yet.

Q Now, what happened after that came on the news?

A Somebody asked David - like, before he was talking about a saliva test that if it turned positive that they were going to arrest him for this.

THE COURT:

Q Just a minute please; before this news went on are you saying that there was some discussion 10 about a saliva test?

A Yes.

Q Just a minute please; and that was by the accused, was it -Milgaard?

A Yes.

Q And what did you say - and if the saliva test what?

A Turned positive then he would be arrested.

Q This was before the news started?

A Yes, this was before this motel room. 20

Q Oh before - sometime before you went to the motel room?

A Yes.

Q Some other day?

A Yes.

THE COURT: Yes - go ahead.

MR. CALDWELL:

Q And I take it that other discussion at an earlier time you and David were involved in that, were you? 30

A Yes; like there was me and David and George different times and at the motel room somebody

asked him if he did it, like we used to kid him about it.

THE COURT: Just a minute please, I want to get that straight -

Q You say you used to kid him about it?

A Yes.

Q Before this incident at the motel room?

A Yes.

THE COURT: Yes - at the motel room - go ahead. 10

MR. CALDWELL:

Q Now, when this news item was completed so to speak, what happened at the motel room?

A Somebody asked David if he had did it, referring . .

Q . . do you recall who it was?

A No I don't.

THE COURT:

Q Was it a man or a woman?

A I couldn't say for sure. 20

Q Yes - go ahead?

A He got up on his knees on the bed and he put a pillow between his legs, sort of half between his legs and half on the bed.

MR. CALDWELL:

Q Alright, you'll have to talk up, Craig; it's hard to hear you.

THE COURT:

Q He got up on his knees and he put a pillow where - between his knees? 30

A Yes.

Q And the bed?

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by the Court

A Yes.

Q Yes - well just a minute, before you go on -  
was he in a crouched position or was he flat  
on his stomach on the pillow?

A He was on the shins of his knees on the bed.

Q On the shins of his knees; and was his body  
lying on the pillow or was it above the pillow?

A It was above the pillow.

Q Well, was it touching the pillow?

A The insides of his legs were. 10

Q Where was his stomach?

A Facing the wall. He was sitting upright only  
he was on his knees.

Q Oh I see; he was sitting upright?

A Yes.

Q Yes - go ahead?

A And he started hitting the pillow like he was  
stabbing something.

Q Just a minute please - go ahead?

A He was hitting the pillow like he was stabbing 20  
something and he said - I killed her or  
something fourteen times.

Q I killed her . . ?

A I'm not sure if it was - I killed her - but  
fourteen times was in there. It was either  
"I killed her . . ." or "I stabbed her fourteen  
times."

Q You're sure it was either killed or stabbed?

A Yes.

Q Yes? 30

A And then he said: "I fixed her".

Q Yes?

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A And then he sort of rolled on his side and started laughing.

THE COURT: Yes?

MR. CALDWELL:

Q Craig, do you recall whether this was done with one or both or either hand or what the situation was?

A I can't remember.

Q Pardon?

A I can't remember. 10

Q Now, what happened when this took place?

A The room sort of - just everybody just sat there and just sort of looked in a daze like.

Q And what happened then?

THE COURT:

Q Just a minute please; was there anything more said?

A No.

Q Yes?

A And the subject was dropped. 20

MR. CALDWELL:

Q And after that did some people eventually leave - did some of the people leave eventually?

A Yes; Debbie Hull asked George to drive her home.

Q And did they leave?

A Yes.

Q And did you leave then or later?

A No, I stayed the night.

THE COURT:

Q Just a minute please; you stayed the night? 30

A Yes.

Q Who else stayed the night?

A There was Ute Frank and David.

Q What happened to George - did he come back?

A No, he went home.

MR. CALDWELL:

Q And that other girl I take it when she left stayed out too?

A Yes.

Q Now, during the time you were in the motel room - and you understand I'm talking about from when you arrived through this whole episode until you left - were you under the influence of any liquor or intoxicant or any drug or LSD or anything of that sort whatever? 10

A No.

THE COURT:

Q Just a minute please; had you taken any?

A No.

Q Do you take drugs?

A Yes.

Q Were you taking drugs then at that time, I mean had you been taking drugs before that at some time or other? 20

A Yes.

Q How long was it before you took drugs on that particular evening?

A Before that evening?

Q Yes.

A About two or three days I think.

THE COURT: Thank you.

MR. CALDWELL: Thank you, your witness. 30

THE COURT: Cross-examination?

MR. TALLIS: Thank you, My Lord -

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Q I have a few questions to ask you, Craig, arising out of what you told my learned friend Mr. Caldwell and My Lord the Chief Justice. I take it that it's common ground between us that you were taking drugs after this occasion in the motel?

A Yes.

Q And you're taking them up to the present time, are you?

A Yes. 10

Q And what drugs are you taking?

A LSD, hashish, marihuana.

Q And in what way do you take it - what form?

A What form?

THE COURT:

Q Do you take it through your mouth or do you have it . . . ?

A . . . through my mouth.

MR. TALLIS:

Q Have you ever taken it with a needle? 20

A No.

Q I see; and how frequently do you take these drugs?

A Well, the last time was about three months ago.

THE COURT:

Q The last time you took any drugs was three months ago?

A Yes.

MR. TALLIS: 30

Q And had you been taking them pretty regularly up to that time?

A No, not pretty regularly.

Q Well, you mentioned to My Lord the Chief Justice that you had had drugs two or three days before this meeting in the motel?

A Yes.

Q What drugs were you taking then?

A T.H.C.

Q And could you just translate that back to . . . ?

THE COURT:

Q . . what did you call that? 10

A It's tetrahydrocannabis.

MR. TALLIS:

Q T.H.C. you call it for short?

A Yes.

THE COURT:

Q What is it anyway?

A It's sort of a synthetic marihuana; it's in a powder.

MR. TALLIS:

Q And that is what you had been taking on this 20 occasion two or three days before this meeting?

A Yes.

Q You can't recall specifically the day on which you took it?

A No.

Q And then you took it after that occasion, I take it?

A Yes.

Q And was it the same type of drug or a different one? 30

A A different one.

Q What was the different one you had taken?



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A Well, it would be LSD.

Q LSD; and had you taken LSD before this occasion when you met with David at the Parklane?

A Yes.

Q You had; and could you tell us what type of reaction you sometimes get from LSD?

A I can't explain it.

Q Well, do you have hallucinations?

A Yes.

Q And can you explain it any further than that? 10

A No.

Q You've gone on what you commonly call trips?

A Yes.

Q And is each trip somewhat different in your experience?

A Yes.

Q And you see things in a pretty distorted way, do you, on occasion?

THE COURT: Maybe he doesn't know the meaning of that word. 20

MR. TALLIS:

Q Well, do things look different?

A Yah.

Q Quite a lot different to what they are in real life?

A Yah.

Q And can you explain it any further than that - the pictures that you see when you're on these trips?

A I don't know how to explain it. 30

Q I see; well, could you tell us some of the pictures you sometimes see?

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- A I see a lot of things.
- Q You see a lot of things?
- A Yes.
- Q Well, could you just go further and tell us what you mean by that?
- A I don't know; everything is just different.
- Q I see; and now, I take it from what you told my learned friend this girl Ute Frank was there and another girl by the name of Debbie Hull and then there was you and George Lapchuk? 10
- A Yes.
- Q On this occasion; and as I understand it Ute Frank lives in Regina?
- A Yes.
- Q And you see her from time to time, do you?
- A Yes.
- Q And have you seen her within the last day or so?
- A Yes.
- Q When did you last see her?
- A Yesterday. 20
- Q I see; where did you see her yesterday?
- A In Mr. Caldwell's office.
- Q And that was here in Saskatoon?
- A Yes.
- THE COURT:
- Q In Mr. Caldwell's office he saw her last?
- A Yes.
- MR. TALLIS:
- Q But you have known her for quite a few years, have you? 30
- A Yes.
- Q Now, you told my learned friend about the news

that came on there and this stabbing incident that was reported as having taken place in Saskatoon. Now, as I understand it when this news was on there were just the five of you in the room?

A Yes.

Q And I suggest to you, Mr. Melnyk, that when you were in the room with David that particular night he was what you would call high?

A Yes. 10

Q In other words, by that I mean that he was obviously under the influence of something?

A Yes.

Q Which you took to be perhaps something similar to the stuff you had taken on occasion?

A Yes.

Q There wasn't any liquor around?

A No.

Q Now, I suggest to you that actually when you told my learned friend that you used to kid around with David about this business of the Miller murder, you did that because you knew that the police had questioned him in Regina on a number of occasions? 20

A I took it that he was questioned here.

Q I see; well, in any event you had been kidding him about it?

A Yes.

Q Because you knew he had been questioned prior to this date? 30

A Yes.

Q Yes; and as a matter of fact I suggest to you

that when he was there in the room this fellow  
Lapchuk started what you would call bugging  
David about this?

A Yah, like he just brought the subject up.

Q Well, didn't he start bugging him about it, to  
use the term like you people use it?

A Well, like he asked him if he - yes - like we  
used to ask him if he - you know, we used to  
fool around with him.

THE COURT: 10

Q You used to what?

A Like he said that if his saliva test turned  
out positive then they would arrest him and  
you know, we thought he was just kidding, so  
we used to kid around.

MR. TALLIS:

Q Yes, you used to joke and kid with him about  
that?

A Yes.

Q And who was carrying the brunt of the kidding 20  
on the night in question?

A I couldn't say for sure.

Q Well, would you agree with me that George  
Lapchuk probably started it at least?

A I couldn't say.

Q You couldn't remember?

A No.

Q Well, did you participate in the kidding on  
that occasion that night?

A I don't think so. 30

Q You don't think so; well now, did any of the  
girls participate in the kidding?

A I don't know.

Q So the only one you can remember doing any kidding as you use the term was Lapchuk?

A Yes.

Q And did he start kidding with him before the news came on?

A No.

Q I see; it was after this news item?

A Yes.

Q And some discussion then took place in which this kidding occurred? 10

A Yes.

Q And now, I take it that when you told my learned friend about this incident and you described him banging - striking the pillow - I suggest to you that after this took place he sort of rolled over on his side on the bed?

A Yes.

Q And you said he started to laugh. I suggest to you that a better recollection is that he started to laugh as you describe it hysterically? 20

A Yah, well, he was laughing.

Q Yes; well, didn't you tell the police that he turned over on his side and was laughing hysterically?

A Yes.

Q Yes; and do you still say that today - do you agree with that today or do you wish to change what you said in that connection?

A Well, he was laughing. 30

Q I see; and was he not laughing hysterically?

A Yes.

1030 X-exam of C.A.Melnyk

Q Pardon?

A Yes.

Q Yes; and that's your recollection today?

A Yes.

THE COURT:

Q What do you mean by the word "hysterically"?  
You had better explain it.

A Well, he was laughing really really hard, like  
you sort of lose control of yourself.

MR. TALLIS: 10

Q Well, do you use it in the sense sort of  
crazily or something like that?

A Yes.

Q Is that the context in which you used it?

A Yes.

Q And did he laugh in this manner for quite a  
while?

A A minute or so.

Q Pardon?

A A minute or so. 20

Q A minute or so; and then as I understand it  
sometime after this news item and after this  
discussion the two of them left - Debbie and  
George left?

A Yes.

Q And you stayed there the night?

A Yes.

Q And did you leave the next day?

A Yes, I left in the morning.

Q You left in the morning; did you have a vehicle 30  
of your own?

A No.

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Q I see; how did you leave - on foot or . . ?

A Yes; I walked.

Q You walked; and now, you told my learned friend about your employment and I take it that it's also common ground that you were convicted in Regina, were you not, of theft?

A Over fifty, yes.

Q Over fifty; that is theft of property in excess of a value of fifty dollars?

A Yes. 10

Q And when was that that you were convicted?

A Oh, I was convicted February '69.

Q I see; and you were granted a suspended sentence?

A Yes.

Q Well now, I suggest to you, Witness, that you never said a word along these lines to the police until fairly recent times, is that correct?

A Lines of what? 20

Q Well, you never mentioned anything about this incident . . ?

THE COURT:

Q You didn't tell the story?

A Until?

MR. TALLIS:

Q Fairly recently?

A No.

Q As a matter of fact you didn't tell this story to any police officers until you yourself had 30 been charged with armed robbery, isn't that right?

Wasn't it after you were charged with armed robbery?

A Yes.

Q Yes; and isn't it a fact that you were hoping to get the police to withdraw this charge of armed robbery in Regina?

A No.

Q Because you had an alibi?

A No - because I had an alibi?

Q Yes.

10

A Yes.

Q Yes; you were hoping to get them to withdraw it, weren't you?

A Yes.

Q Yes; and you still hope that it will be withdrawn . . . ?

A Yes.

Q . . . because of your alibi?

A Yes.

Q And you were supposed to be in court there today, 20 weren't you?

A Yes.

Q I see; on this armed robbery charge in Regina?

A Yes.

Q And were <sup>you</sup> one of the boys that managed to get hold of David's identification cards - his Social Security card and whatnot?

A No.

Q You didn't have anything to do with taking that?

A No.

30

Q And using it?

A No.



Q Nothing whatsoever?

A No - like --

Q Pardon?

A Like, people that I hang around with had his identification but I didn't have it.

Q Oh I see; this fellow Lapchuk had it?

A Yah, I think it was George.

Q Pardon?

A I think it was George.

Q That's a Social Security card? 10

A I don't know what was in it.

Q Well, it was some form of identification card?

A Yes.

Q That had been obtained from his wallet?

A Yes.

THE COURT:

Q Were you there when it was obtained?

A No.

MR. TALLIS:

Q You weren't? 20

A No.

Q But you saw it in someone else's wallet after?

A No, I saw the wallet - I saw his wallet.

Q I see; but did you see Lapchuk with his I.D. card, as you people call them?

A I think it was George; I couldn't say for sure.

Q You couldn't say for sure; well, were you present when it was used to hoist cheques and whatnot?

A No. 30

Q You weren't?

A No.

Q And I take it you have never been charged for possession of narcotics or anything like that?

A No.

Q Never been picked up by the police in that connection?

A No; I've got searched quite a few times but never charged.

Q You've been searched quite a few times; and have you ever been approached about being a possible informer in connection with drugs and so on? 10

A What do you mean?

THE COURT:

Q Have you ever been asked to be a "stooly"?

MR. TALLIS:

Q Stool pigeon?

A Yes, I was asked.

Q You were asked; and were you offered so much a head for anybody you would turn in?

A Yes. 20

Q How much per head were you offered?

A Five hundred dollars.

Q Five hundred dollars a head?

A Mhm.

Q Are you sure it wasn't just fifty?

A Positive.

Q It was five hundred dollars?

A Yes.

Q Well now, who made this offer to you?

A The City Police. 30

Q The City Police; that's in Regina, not Saskatoon?

A Yes.

MR. TALLIS: We don't have that kind  
of money here.

THE COURT:

Q Did you accept it?

A No.

MR. TALLIS:

Q I see; but this offer was made?

A Yes.

Q And it was you say the City Police?

A Yes. 10

Q And do you remember the individual who made  
you that offer?

A No.

Q You don't know the name of the person?

A No.

Q And I suppose then that somewhere along the  
way you heard about the reward that was being  
offered in connection with the Gail Miller  
murder?

A No. 20

Q You didn't hear anything of a reward on the  
news or anything like that?

A No.

Q About a reward being offered?

A No.

Q Nothing like that ever came to your attention  
on the news items?

A No.

Q And I take it you are not going to school at  
the present time? 30

A No.

Q You are unemployed at the present time?

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A Yes.

Q And I take it you see Lapchuk fairly frequently,  
do you?

A Yes.

Q And when was the last time you saw him?

A About half an hour ago.

Q I see; and I take it you have seen him pretty  
well every day in the last little while, have  
you?

A Yes. 10

Q Just so that there is no misunderstanding I  
take it that this occasion in the Parklane  
Motel would be you said sometime in May?

A Yes.

Q And was there only one occasion / where this group  
of five  
were in that  
motel in that particular room?

A Yes.

Q So, we are only talking about one specific  
occasion when Lapchuk, Debbie Hull, Ute Frank,  
you and David were there? 20

A Yes.

Q And I take it that in this particular news  
item there was some reference to the stabbing  
but you can't remember the details of it that  
were discussed?

A Yes.

Q Do you remember reference to a knife in the  
news item?

A It was about the stabbing death in Saskatoon.

Q I see; but you can't recollect whether there 30  
was any reference to a knife or type of knife  
that was used or anything like that?

A No.

MR. TALLIS: I have no further questions.

THE COURT: Now, Mr. Tallis, I'm not at all satisfied if I may say so with respect to some of the information which I think should be obtained from this man and I thought I'd ask the questions and I think it would only be fair that I allow you to cross-examine on anything arising out of it in view of the seriousness of this matter - 10

Q You say that this incident took place sometime in May of 1969?

A Yes.

Q When is the first time that you ever mentioned it to anybody?

A This incident?

Q That is this incident in the motel which you have just related to the effect that the accused had said that he had stabbed or killed somebody fourteen times - when did you first mention that to anybody? 20

A The last time I can remember was two weeks ago.

Q No but the first time?

A Oh, I can't remember.

Q Well, did you ever mention it to any of your friends?

A I don't - I couldn't say.

Q The only time you ever remember mentioning it to anybody would be about two weeks ago, is that right? 30

A Yes.

Q To whom?

- A To Ron Wilson.
- Q To Ron Wilson?
- A Yes.
- Q Is he the Ron Wilson who was on this trip that these three took - you probably heard the story, haven't you?
- A Yes.
- Q Was he one of the two?
- A Yes.
- Q Where were you talking to him? 10
- A Up town in Regina.
- Q Was that before he gave evidence in this case, do you know?
- A Yes, it was before this.
- Q Before this trial?
- A Yes.
- Q Who raised the subject?
- A Ron; he was talking about coming up to Saskatoon.
- Q Yes? Did he ask you if you knew anything about it or did you volunteer to him? 20
- A I asked him, like . .
- Q . . just leave it at that; don't give the conversation. Did he say to you that he knew you knew something about it or anything like that, or did you volunteer it to him?
- A I think I volunteered it to him.
- Q And when is the next time that you mentioned it to anybody?
- A After that occasion?
- Q Yes. 30
- A The following Monday.
- Q Was that to the police?

A Yes.

Q Did the police come to you or did you go to them?

A They came to me.

Q Where?

A In Regina, like . .

Q . . to your home?

A No; they phoned me on Sunday and they came down  
on Monday.

Q Where did they see you?

A At a motel. 10

Q At that time/<sup>had</sup> you been charged with armed robbery?

A Yes.

Q At that time?

A Yes.

Q Were you out on bail?

A Yes.

Q Did you have anything whatsoever to do with  
the taking of this - the suggestion made to  
you of the taking of any identification card  
belonging to the accused? 20

A Did I have anything to do with it?

Q Yes.

A No.

Q Did you see a card which you thought was his  
card?

A Yes.

Q When did you first see that?

A I don't know; it was in Wascana Park I think  
I seen it.

Q How long ago, though? 30

A Last summer I guess.

Q It was in the summertime?

A Yes.

THE COURT: Have you any questions you  
want to ask arising out of that, Mr. Tallis?

MR. TALLIS: No, My Lord.

THE COURT: Mr. Caldwell?

MR. CALDWELL: I will put two questions to  
Your Lordship I'd like the witness to answer  
since this has been raised.

First of all, which force this charge of armed  
robbery arose, that is which police force; 10  
And secondly which police force came and  
interviewed him on the Monday?

THE COURT: Very well.

MR. CALDWELL, re-examining:

Q The armed robbery charge was laid by what  
police department?

A Regina City.

Q Regina City; the interview you had on the Monday  
was with members of what police department?

A Saskatoon City Police. 20

Q Saskatoon City Police but it was at Regina?

A Yes.

Q I see; and as I understand you that would be  
about a week ago this last Monday, would it?

A Yes.

MR. CALDWELL: Thank you.

THE COURT: That's all, thank you;  
you may go.

MR. CALDWELL: I call George Nick Lapchuk,  
My Lord. 30



GEORGE NICK LAPCHUK, sworn, states:

MR. CALDWELL, examining:

Q Your full name is George Nick Lapchuk and I believe you are eighteen years of age?

A Yes sir.

Q And where is your home, George?

A Regina, Saskatchewan.

Q And the address?

A 1763 Toronto Street.

Q And is that your parental home? 10

A Yes sir.

Q And you're living there, are you?

How far did you go in your schooling?

A Grade nine.

Q And when did you - did you complete grade nine or . . . ?

A In '68.

Q And did you get into ten, George?

A Yes; I started my grade ten but I dropped out.

Q And when would that be? 20

A That would be in early '69.

Q Early '69?

A Well, at the end of '68 - beginning of '69.

Q Now, what is your - since you quit school what has been your situation as to working?

A Well, first of all I worked as a delivery boy for Food Paradise.

Q Is that a store in Regina?

A Yes.

Q Anything else? 30

A I worked for my father off and on since then with his construction company.

- Q What's the name of his company?  
A Lapchuk Construction.  
Q And is that a general contractor so to speak?  
A Sub-contractor.  
Q What sort of work?  
A Drywall - stucco --  
Q And you said off and on you have been with him on some occasions, have you?  
A Yes.  
Q Have you been unemployed at times? 10  
A Yes.  
Q I see; and have you served some time in jail?  
A Yes.  
Q Now, I believe you know David Edgar Milgaard?  
A Yes sir.  
Q Is he here in court today?  
A Yes sir.  
Q Which person is he please?  
A The person sitting in the box.  
Q And how long have you known him? 20  
A Approximately two years.  
Q And I believe you met him in Regina?  
A Yes sir.  
Q And I'd like to ask you about an occasion in 1969 when I believe you were together with him and some other people. Now, what do you remember about the time of the year this was - do you remember the exact date, first of all?  
A Not the exact date; I believe it was in May.  
Q In May; and that would be of '69, would it? 30  
A Yes sir.  
Q Now, and I understand this was in the evening

so to speak?

A Yes, early evening as well.

Q Who were you with first of all that evening?

A Craig Melnyk.

Q And is that the person who just went out of court here ?

A Yes.

Q And did you and Melnyk meet some other people during that evening?

A Yes sir.

10

Q Who were they?

A Robert Harris and Gary Silljer.

Q And did you know both of them before that?

A Yes sir.

Q And I take it that you met them somewhere in Regina, did you?

A Yes.

Q As a result of talking to them did you go somewhere?

A Yes.

20

Q Where did you go?

A Parklane Motel.

Q What did you have for transportation?

A I had my father's truck.

Q You and Craig used, it, is that right?

A Yes.

Q And do you know exactly the room you went to - the number - or not?

A Not exactly, no.

Q Alright; what time did you get to the Parklane? 30

A Oh I'd say about ten thirty.

Q And did you go to a room?

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A Yes.

Q Directly upon arrival?

A Yes.

Q And did you knock on the door?

A Yes.

Q And were you admitted into the room?

A Yes.

Q Now, when you got in the room who was in the room?

A There was Dave - Dave Milgaard, Ute Frank and Debbie Hull. 10

Q And when you say Dave you're referring to the accused?

A Yes.

Q Who answered the door?

A Dave did.

Q Did you know the two girls, Ute Frank and Debbie Hull before that?

A Yes sir.

THE COURT: 20

Q Were they expecting you?

A No, they weren't.

MR. CALDWELL:

Q And was there - this being a motel room was there a TV set in the main room?

A Yes sir.

Q Is that the same room the bed was in?

A Yes.

Q And was it on during the time you were there?

A Yes. 30

Q Was the volume up on it to the extent that you could hear it alright?

- A Yes sir.
- Q And did there come TV news during the evening?
- A Yes.
- Q And as part of the TV news did there come to be a local news segment?
- A Yes sir.
- Q Now, what's your memory of what time the local news came on then?
- A Approximately a quarter after eleven - right after the national. 10
- Q At the time when the local news came on were the same five people you have mentioned still in that room?
- A Yes.
- Q Was there an item on the local news that attracted your attention in that room?
- A Yes.
- Q And would you tell the Court the best you can remember as to what it was about - that is, what you remember of that part of it? 20
- A I can't remember the exact wording but it was in some reference to the nurse being murdered in Saskatoon.
- Q And when that item came on did anything - or following it I should say did anything happen?
- A Well, I made a comment to Dave about his, like he had been picked up and questioned about this murder and I made a comment . .
- THE COURT:
- Q Just a minute please; you knew he had been picked up? 30
- A Yes sir.

MR. CALDWELL:

Q Now, could I just go back, George, I take it you knew that before this whole incident?

A Yes.

Q And as you said that he had been picked up for questioning?

A Yes.

THE COURT:

Q How did you know that?

A He had told us this. 10

MR. CALDWELL:

Q That's David?

A Yes.

Q And had you made comments to him previous to that evening about that situation?

A Yes sir.

Q Alright; on this occasion now after that news was on the air what did you do?

A Well, I said to him: Why don't you admit it? You did it; you know you did it. 20

THE COURT:

Q Just a minute please - Why don't you admit it? You know you did it. Yes?

A I just made the comment just to sort of bother him as a joke.

Q Yes?

A Well, then things started happening like.

MR. CALDWELL:

Q Alright now; I take it from what you say you had made similar joking comments in the past to David? 30

A Yes.

Q And that would be well before this?

A Yes.

Q Alright; what happened when you said that?

A Well, first of all he got a sort of funny look and then he jumped off the bed and straddled the pillow . .

THE COURT:

Q Just a minute, I want to get this down.

He jumped off the bed, is that what you said? 10

A Yes.

Q And straddled the pillow?

A Yes.

Q Where was the pillow?

A On the floor.

Q Yes?

A And then he said: Where is my paring knife?

Q He said what?

A Where is my paring knife?

MR. CALDWELL: 20

Q Now, are you using - I'd like you to tell the Court anywhere where you are using exact words or words to a certain effect?

A Well I believe this - to my remembrance this was the exact words.

Q In this instance?

A Yes.

THE COURT:

Q Yes?

A And then he went through the motions of stabbing 30 the pillow - raising his arm and stabbing the pillow. And then he said . .

Q . . just a minute. He went through motions of  
stabbing the pillow - with both hands or one  
hand?

A I can't remember.

Q Yes?

A And then he said: Yes I stabbed her, I killed  
her, I stabbed her fourteen times and then she  
died.

Q Just a minute. He said: Yes I stabbed her, I  
stabbed her fourteen times . . ? 10

A . . and then she died.

Q Yes?

A And these aren't the exact words. The only  
part that I can remember for sure is that:  
and then she died. I can't remember whether  
it was stabbed her or killed her but - and  
then she died - stands out in my mind.

THE COURT: Thank you; go ahead.

MR. CALDWELL:

Q Now, what happened when the accused did these 20  
things in the room?

A Well, I was shocked, like I hadn't expected a  
display like that, you know; and I just  
started looking at him and I believe everybody  
else in the room was looking at him also; and  
then he looked up and saw that everybody -  
that I was staring at him with my jaw hanging  
down.

Q I'm sorry; you'll have to talk louder.

THE COURT: 30

Q You say: I was staring at him?

A Yes.



Q And you think everybody else was staring at him?

A Yes, well I didn't look around the room but everything was all of a sudden quiet so --

MR. CALDWELL:

Q Alright; and you were staring at him?

A Yes.

Q What did he do?

A He just looked up and looked at me and then got up and shrugged his shoulders and smiled and sort of gave a little laugh and sat down. 10

THE COURT:

Q Just a minute; he just looked up and looked at you?

A Yes.

Q Did he say anything else about it at all?

A No.

Q Didn't either affirm it again or take it back?

A No sir. I just dropped it altogether.

MR. CALDWELL: 20

Q You did?

A Yes.

Q As I understand you, George, you were the person who did this - made remarks to him?

A Yes.

Q On this occasion?

A Yes.

Q Now, did you - as I understand you it would still be the same party of people in the room throughout this episode? 30

A Yes.

Q Did you leave sometime after that?

A Do you mean leave to go home like?

Q Yes - leave the room at any rate?

A Well, I left several times during the night like for cokes and stuff like that and then I went home about oh I'd say two thirty.

Q I see; did anyone go with you?

A Not when I went home, no.

Q And had anyone gone with you at any other juncture of the evening?

A Yes.

10

Q Who was that?

A Well, I had gone across to the gas station with Debbie Hull and Dave once to get some cokes - we had driven across.

Q And by the time you left finally and for the last time who was left in the room when you finally left?

A When I left there was Dave, Ute and Craig.

THE COURT:

Q What happened the other girl?

20

A I really can't remember. I believe I drove her home but I can't really recall what time that was.

MR. CALDWELL:

Q Now, during the entire time when you were in the motel that evening - I'm talking about from when you arrived at the room until you finally left at the very end - that whole period of time; were you yourself under the influence of any liquor or intoxicant or any drug or LSD or anything of that description?

30

A No sir.

THE COURT:

Q Just a minute please; had you taken any?

A That night?

Q That day?

A No.

MR. CALDWELL: Thank you; your witness.

THE COURT: Cross-examination?

MR. TALLIS, cross-examining:

Q Mr. Lapchuk, approximately what time did you  
arrive at the Parklane Motel on the evening 10  
in question?

A Approximately ten thirty, sir.

Q Ten thirty; this is in the evening?

A Yes.

Q And as I understand it you went there with  
Craig Melnyk?

A Yes.

Q And this meant that there were five of you in  
the room?

A Yes. 20

Q The five that have been mentioned in evidence  
here. And now, just so that there is no  
misunderstanding I take it that there was only  
one occasion that you can recollect in your  
life where the group of you - that is the five  
of you - were in this one room at the Parklane  
Motel?

A Yes.

Q There is no danger of there being other  
occasions. Now, I gather from what you told 30  
my learned friend that you were in and out of  
the motel on the evening in question?

A Yes, occasionally.

Q You left for home around two thirty?

A Yes.

Q Now, you mentioned that on one occasion you were over to the gas station?

A Yes.

Q And on that occasion you say David was with you?

A Yes.

Q Now, you went out on other occasions with other people, did you? 10

A No, not that I can recall. See, I may have driven Debbie Hull home. This is the only part that I can't really recall when I drove her home.

Q I see; you don't recall whether you drove her home or not that evening?

A No.

Q Well, you told my learned friend that you left several times during the night. What did you mean by that? What several times were you referring to? 20

A Well, I had to go out and move the truck once. That accounts for one also.

Q I see; that accounts for one of those occasions?

A Yes.

Q Now, you told My Lord the Chief Justice that you hadn't taken any drugs that day?

A No. 30

Q Had you been taking drugs previous to this occasion?

A Approximately a week previous, yes.

Q I see; and what type of drugs had you taken?

A LSD, tetrahydrocannabis, marihuana.

Q That tetrahydrocannabis is the one you call T.H.C. for short?

A Yes.

Q And how long had you been using these various drugs prior to this occasion?

A Approximately two and a half years.

Q And now, did you use them subsequent to this occasion? 10

A Yes.

Q And how long did you use them subsequent to this occasion?

A Until August of '69.

Q Until the fall of this past year?

A Yes.

Q And were you using them regularly?

A Not regularly; whenever - about - not right - well - okay. 20

Q How frequently?

THE COURT:

Q How often a week?

A Oh, once every two weeks, once a week possibly.

MR. TALLIS:

Q It varied from time to time, I take it?

A Yes.

Q Now, on the evening in question I gather from what you say that this pillow was on the floor? 30

A Yes.

Q And David was down on the floor?

A Yes.

Q Pounding this pillow in the manner in which you have described?

A Yes sir.

Q And now I take it that it is common ground that at that time he was high?

A Yes sir.

Q And by that I mean under the influence of something which you took to be drugs?

A Yes sir. 10

Q Was he naked?

A Yes sir.

Q And this is when he was down on the . . . ?

A On the pillow.

Q . . . floor - is that correct?

A Yes sir.

Q Now then, I gather that you left Craig there - you're quite sure of that - Craig remained?

A Yes sir.

Q And there was only this one incident that you 20 have described to Mr. Caldwell that took place when you were there?

A The . . . ?

Q The pillow incident?

A Yes, there was just the one time.

Q Pardon?

A Yes, there was just the one time.

Q Now, as a matter of fact I understand that you were the one that really had started bugging Dave about this matter that night? 30

A Yes sir.

Q And bugging is the term that you used yourself

to describe what you did, isn't it?

A Yes.

Q Now, this was in relation I take it to the news item that was on the news that you heard on TV?

A Well, this is what sort of activated it in my mind.

Q Well now, did you do the bugging before or after the news?

A Afterwards.

Q Afterwards? 10

A After I had heard the comment on the TV.

Q After you had heard the comment on the TV. Do you remember the details of this comment?

A No sir.

Q And did anyone else participate in the bugging?

A No; just myself that I can remember.

Q You were the only one that participated in it and you as I understand it had bugged him on earlier occasions?

A Yes. 20

Q And as I understand it this shrugging of shoulders and giving a little laugh was after he got up from off the pillow?

A Yes sir; after like he noticed that I was, you know--

Q I see; and where did he sit after he got up off the pillow?

A On the bed.

Q I see; and then did you enter into some other conversation after that with other people there? 30

A Well, I tried to change the subject, you know, I wanted to drop it.

Q I see; and did you in fact talk to other people about something else at that time?

A Possibly; I can't remember.

Q Well now, you told my learned friend that you had spent a little time in jail and as I understand it you did spend some time in 1969, did you?

A Yes.

Q What were you convicted of in 1969?

A Conspiracy to commit fraud. 10

Q And was that in Alberta?

A Yes.

Q And did this involve Ron Wilson?

A Yes sir.

Q You were one of the co-conspirators with him?

A Yes.

Q And how much time did you get up there with Ron?

A Six months.

Q And do you recall when it was you were convicted of that? 20

A It was August the 15th 1969 that I was convicted and sentenced.

Q And were you convicted of a number of other offences around the same time?

A Yes sir.

Q What other offences?

A Forgery and uttering.

Q How many charges of forgery and uttering?

A Six forgery and six uttering.

Q And what did you get on those? 30

A Three months concurrent - to run concurrent with my sentence of six months.



Q Now, did you have any convictions previous to that?

A Yes sir.

Q What was that?

A August 1968 forgery. December '68 theft under.

THE COURT:

Q Just a minute please. December what?

A '68 - theft under.

Q Theft under fifty dollars?

A Yes. June '69 possession of a sawed-off .22. 10  
And presently I'm out on bail.

MR. TALLIS:

Q You're expected to stand trial on what is that that's coming up?

A Forgery and uttering and possession of stolen goods under.

Q I see; and when does that come up in court?

A A week from yesterday.

THE COURT:

Q Forgery and uttering and possession and theft 20  
under?

A Possession of stolen goods under.

MR. TALLIS:

Q And when were you charged in that connection?

A Two weeks ago.

Q Two weeks ago?

A Yes, I believe so.

Q Now, dealing with - my understanding is that you were one of the chaps that got hold of an I.D.card belonging to David? 30

A Yes sir.

Q And was there anyone else involved in that

with you?

A I believe there was Ron Wilson and Wayne Wood.

Q Wilson was involved in it?

A I think so; I can't really remember.

Q Well now, just a minute, you know . .

A I can't remember.

Q . . you'd either know or not whether your friend Wilson was involved in that?

A Well, we had his I.D. card on many occasions.

Q You took it out of his wallet, didn't you? 10

A Well, there was one time last summer that we had it.

THE COURT:

Q Now just a minute, you were asked whether you took it out of his wallet or not. Did he give it to you or did you take it on him?

A No; we had his wallet; the wallet was taken from him.

MR. TALLIS:

Q Yes, you took the wallet; and then you got the I.D. card out of the wallet? 20

A Yes sir.

Q And you used that I.D. card in some of these activities, didn't you?

A In one cheque, yes.

Q Yes; and you got into trouble over it?

A No, I did not.

Q You didn't get into any difficulty over it?

A Not the one concerning his I.D.

Q I see; but you were using that I.D. card to pass yourself off in certain cases? 30

A For one cheque, yes.

Q And you have never been charged in that connection?

A No sir.

Q Well, did you - who got hold of the I.D. card? Did the police get hold of it in due course?

A Well, do you mean from me or where did it finally end up?

Q Well, after you had it what did you do with it?

A I can't remember.

Q You can't remember what you did with that I.D. card? 10

A I can't remember what happened to the I.D. card.

Q That is David's I.D. card?

A I believe it was thrown away.

Q You believe it was thrown away?

A Yes.

Q And you believe Wilson was with you in connection with that?

A Yes.

Q And did you throw the wallet away too? 20

A I believe so.

Q Pardon?

A I believe so.

Q Well now, just a minute, did you or didn't you throw the wallet away?

A I can't rightly say, sir; it was a long time ago.

Q A long time ago; would that be last summer?

A The summer of '68.

THE COURT: 30

Q Just a second please. This wallet that you procured belonging to the accused was procured

in the summer of '68?

A Yes sir - July of '68.

MR. TALLIS:

Q And when did you get rid of the I.D. card  
that you think you threw away?

A It must have been about two weeks afterwards  
because . .

Q . . I see.

A . . I was picked up by the Edmonton police  
that same month for another charge, like my 10  
first charge of forgery and I didn't have it  
with me then. This was two weeks after I had  
written the cheque.

Q I see; you don't know whether the police got  
it then or whether you threw it away?

A I'm not sure but I think I threw it away  
because there was no mention of it at my court  
case.

Q And I take it certain other papers in there  
were thrown away too - that were in his wallet? 20

A Probably.

Q Well, what I'm getting at in addition to this  
I.D. card there were other papers belonging to  
him in that wallet?

A Yes.

Q And were they thrown away with the wallet or  
separately?

A I imagine they were thrown away with the wallet -  
the whole thing.

Q I see; was Wilson with you on that occasion? 30

THE COURT: On the occasion when it was  
thrown away?

MR. TALLIS: Yes.

A No, he was not.

Q I see; was he with you on the occasion when you used the I.D. card?

A I believe he was in the same car with us but I don't think he had anything to do with it.

Q And who else was in the car?

THE COURT: Just a minute please -

Q Did you ever show this I.D. card to Wilson and let him know that you had the accused's I.D. card? 10

A Oh yes.

MR. TALLIS:

Q And who else was in the car with you?

A Michael Art, Craig Melnyk and Bob Harris.

Q Craig Melnyk was there too?

A Yes.

Q And this was on a trip into Alberta?

A It was before the trip into Alberta.

Q Before the trip; in other words you showed it in Regina? 20

A Yes.

Q And you took it with you on the trip to Alberta?

A Yes.

THE COURT:

Q I want to get this straightened up. Did you steal the accused's wallet?

A I personally did not steal it but it was stolen. 30

Q Alright; and you received it from somebody else?

A Yes.

- Q Well, did you ever tell the accused that you had his wallet?
- A No, he left town the next day. The day after it was stolen he went to Langenburg with a friend of his John Ledgerwood.
- Q Well, you saw him a year later?
- A Oh yes; I admitted to him that I had had it.
- Q Well that's what I want to find out; you admitted to him . . . ?
- A . . . oh yes; I had admitted to the accused afterwards that we did take his wallet. He questioned me about it. 10
- Q . . . and did you make - there was no question about it?
- A There was, like he questioned me: Did you take my wallet? And I said: Yes. I admitted it to him.
- Q I see; and had you made this admission before this conference or discussion in the Parklane Motel - at that time . . . ? 20
- A Oh yes; oh yes sir; it was a long time before that.
- Q What did he tell you when he found out that you knew something about his wallet?
- A Nothing; we just laughed it off. No one got in trouble over it so --
- Q That's the main criterion, I suppose?
- A Well, I don't exactly understand what you mean.
- Q That's the main thing to be concerned about - you didn't get into trouble? 30
- A Well, he didn't. You see, I did but he didn't.
- THE COURT: Oh, I see.

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MR. TALLIS:

Q You say you got into trouble?

A Well, I was charged with forgery - not connected with that I.D. but that's what started me on it; that's what started me writing cheques; it was too easy with somebody else's I.D.

Q I see; well now, I take it then that it's only in quite recent times - it was only recently that you ever said anything about this conversation to the police? 10

A Yes sir.

Q Since you were charged in Regina?

THE COURT:

Q This last time?

A Yes.

MR. TALLIS:

Q Since you were charged?

A Since I was charged, that's right.

Q And have you ever been arrested for narcotics or drugs? 20

A No.

Q Ever searched for them?

A On occasion, yes.

Q Well, how frequently?

A Oh, I'd say about five to ten times within the last three years.

Q And that's in the Regina district, is it?

A Yes, in Regina.

Q Recently? 30

A Yes.

THE COURT:

Q You've never been convicted on narcotics?  
A No, I have never been.  
MR. TALLIS:  
Q Were you ever offered any arrangement about  
being an informer?  
A Many times.  
Q Many times?  
A Many times.  
Q In Regina?  
A Yes. 10  
Q I see; offered money for it?  
A Yes.  
Q Who would do that?  
A Regina City Police.  
Q I see; do they offer you so much a head  
for every one you turn in or . . ?  
A . . I wasn't told what the arrangements were  
going to be; they just offered it to me.  
Q Oh I see; you were just offered money?  
A Yes. 20  
Q But you didn't turn anybody in?  
A No, I did not.  
Q So you never got into a discussion of how  
much per person or anything like that?  
A No sir.  
Q And I take it you never told them or made any  
admissions about your activities in drugs  
yourself?  
A No sir.  
Q You knew better than to do that? 30  
A Well, it would be sort of like hanging myself,  
wouldn't it?



MR. TALLIS: Yes; no further questions.

THE COURT: Any re-examination?

MR. CALDWELL: Just one or two similar

things, My Lord -

Q Just briefly, when my learned friend asked you whether it was just recently you said anything about this conversation to the police and you agreed to that, I gather that you're talking about like the Parklane Motel episode?

A Yes, the Parklane Motel. 10

Q That's the one you're talking about, is that right?

A Yes.

Q And this charge you are on now is a Regina City Police charge?

A Yes.

Q Now, what police department interviewed you about the Parklane Motel episode?

A Saskatoon Police.

Q Where was that done? 20

A It was at the Westwood Motel I was interviewed. They phoned me up and asked me.

Q And that would be the first and only time you had told any police officers about this episode?

A Yes sir.

Q Now, when was that?

A About - I can't remember the exact day; it's about a week and a half ago.

THE COURT: 30

Q Well, did they approach you or did you approach them?

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A They approached me.

Q Obviously they had known something about it  
then before they came to you?

A Yes sir.

Q Were you in custody at the time?

A No, I was not.

MR. CALDWELL:

Q And you went and saw some Saskatoon City  
policeman at his motel in Regina, did you?

A Yes sir.

10

Q And you related this thing. And you remember  
this was around a week and a half ago now?

A Yes.

MR. CALDWELL: Thank you.

THE COURT: That's all, thank you;  
you may go.

It would probably be an appropriate time to  
adjourn for ten minutes.

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MR. CALDWELL: I call Robert James  
Rasmussen, My Lord.

ROBERT JAMES RASMUSSEN, sworn, states:

MR. CALDWELL, examining:

Q Mr. Rasmussen, I believe that in January of  
1969 you lived in Saskatoon and were manager  
of the Trav-a-leer Motel at 3301 22nd Street  
West?

A Yes.

Q And I believe that since that time you moved 10  
to and are now residing at Calgary, Alberta?

A Yes.

Q I would ask you, sir, to speak up please?

A Yes sir.

Q And I believe that you were working at the  
motel on the morning of Friday, January the  
31st 1969?

A Yes sir.

Q And that you had a car arrive that morning  
and someone come into the premises? 20

A Yes.

Q I show you P.2; there has been evidence that  
this is an enlargement of a map of part of the  
city, sir; and that this is 22nd Street and  
that this is Circle Drive. Now, does that tag  
in that rectangle indicate where the motel  
would be?

A Yes.

Q And what was the first you saw of any persons  
out of a vehicle? 30

A Well, the first I saw was when the car pulled  
up in front and then a gentleman came in to the

motel.

Q And have you a view out your door - your front door toward where cars park?

A Yes; it wasn't too good though on account of the lighting.

Q But you saw a car pull up and a person come in?

A Yes.

Q And what did you notice about the person who came in?

A Nothing too much; didn't pay too much attention to him. 10

Q Did you notice anything about the way he was dressed so to speak?

A Nothing that I could recall.

THE COURT:

Q Do you specifically know whether he had shoes on or not?

A He had no shoes on.

Q He had no shoes on?

A No. 20

MR. CALDWELL:

Q What age of a person approximately?

A I'd say in his early twenties.

Q And this would be a male, I take it?

A Yes..

Q And did this person come in by himself?

A Yes sir.

Q And did he make some inquiries of you?

A He wanted a city map, yes.

Q And did you give him a map? 30

A Yes I did.

Q I see; and when he got the map what happened?

A Well, he said - I might be back for a room later; and he went out and got in the car and they drove away.

Q I see; and how long would he be in the motel?

A Oh probably five minutes.

Q Now, did you see any other persons in the car from the look you got of the car?

A Just his back; I could see a party sitting in the front seat.

Q And this would be a separate one than the one that came in? 10

A Yes.

Q Did you have a look into the back seat of the car at all?

A No, I did not.

Q And did you go out to it at all or was your look taken from within the building out the door?

A I beg your pardon?

Q Was your view taken from within the building then? 20

A Yes.

Q You didn't go out to them at all?

A No, I did not.

Q Now, what time do you estimate it was that the person - the car and that person came into your motel?

A It was just shortly after seven o'clock that I opened the door and it hadn't been open too long when this car drove up. 30

THE COURT:

Q What time do you open?

A Seven o'clock.

MR. CALDWELL:

Q This would be shortly after seven a.m. then?

A Pardon?

Q It was shortly after seven a.m.?

A Yes.

Q And is the person who came in without the shoes and got the map in court here today?

A I beg your pardon?

Q Is the person who came in and got the map in court here today? 10

A I couldn't say that.

Q Alright; and at that time he was a stranger to you - that person?

A Yes.

MR. CALDWELL: Thank you; your witness.

THE COURT:

Q Just a minute please. You say this was shortly after seven?

A I beg your pardon, sir? 20

Q You say this was shortly after seven?

A Yes sir.

Q That's when you open your motel up for business?

A Yes.

Q And were you on days?

A Yes; I open in the mornings always.

Q And you're there for how long?

A Well, off and on all day.

Q Do you take the desk in the mornings?

A Yes. 30

Q Anybody else there?

A My wife is there.

Q Oh I see . . . ?

A . . she was sleeping at the time.

Q Well, what I want to know is this - did you give a city map to anybody else in the first say two hours of that morning between seven and nine o'clock?

A No, not that I recall.

THE COURT: Thank you.

Cross-examination?

MR. TALLIS, cross-examining: 10

Q I just have a few questions, Mr. Rasmussen. As I understand it you have a counter there?

A Yes.

Q And you were behind the counter?

A Yes sir.

Q And this male individual came to the counter?

A Yes sir.

Q And I believe that he asked you about the location of some building such as a service station? 20

A Some Royalite service station.

Q A Royalite service station. And I believe it's fair to say that you were the one who got a city map for him?

A Yes sir.

Q And when I say city map I mean City of Saskatoon map?

A Yes.

Q And I think that you explained to him where you thought he wanted to go? 30

A Yes. I just told him down 20th Street some place; I wasn't too sure where it was.

- Q I see; but you tried to give him the general direction?
- A Yes I did.
- Q And actually you gave him this map of the city so he could take it with him?
- A Yes sir.
- Q And while this map is not stamped in any way by your motel - that's correct, isn't it?
- A It has three different motels on it.
- Q Okay, that's what I wanted to lead up to; what 10 do these three arrows refer to that you have put on the map?
- A The three arrows refer to the Trav-a-leer Motel, the Idylwyld Motel and the Greystone Motel.
- Q And they are commonly called the three Lamar Motel?
- A That's right, yes.
- Q To designate them, is that correct?
- A Yes.
- Q Now, after you did this is it fair to say that 20 the young man thanked you for the map?
- A Yes he did.
- Q Pardon?
- A Yes sir.
- Q And you told My Lord the Chief Justice that he didn't have any boots or shoes on?
- A No, he had no shoes on.
- Q But he did have stockings on?
- A Yes.
- Q And you were of course asked by the police 30 whether you noticed anything unusual about his clothes?



A Yes.

Q And you told them that you didn't notice anything unusual?

A That's right.

Q And you were asked if you noticed anything unusual about the chap that came in?

A Yes.

Q And I think it's fair to say you told them you didn't notice anything unusual?

A That's right, yes.

10

Q And other than the fact that he thanked you for the map?

A Yes.

Q And he was quite polite to you?

A Yes he was.

MR. TALLIS: I have no further questions.

THE COURT: Thank you; you may go.

MR. CALDWELL: I call Victor Sam Malchanko.

VICTOR SAM MALCHANKO, sworn, states:

MR. CALDWELL, examining:

Q I believe that you are a member of the Royal Canadian Mounted Police with the rank of Corporal and that you are in charge of the Hair and Fibre Section of the Regina R. C. M. P. Crime Detection Laboratory?

A Yes sir.

Q And did you - in your case did this involve some academic training to start with, 10 Corporal, or . . . ?

A . . . yes; I understudied for approximately two years under senior members of the Hair and Fibre Section. Towards the latter part of that training I was given a series of practical and written examinations and after that had been completed I was permitted to work on actual cases.

Q And your particular field did not involve I take it going and getting a degree on some 20 topic or other at the University?

A No sir.

Q And where was it that you spent - did you say two years?

A Yes sir.

Q Was that at Regina?

A No sir; that was at the Crime Detection Laboratory in Ottawa, Ontario.

Q In Ottawa?

A Yes sir. 30

Q And that would be two years of working under more senior personnel, would it?

A Yes sir.

Q Under their guidance?

A Yes sir.

Q And generally what sort of work were you doing during that period - examination of what sort of things?

A First of all it was going through a certain amount of material pertaining to this subject - reading material; also doing practical work such as making collection of hair and fibres, 10 collections of human hair from various body areas and also collections of animal hairs; identification of fibres, comparison and identification of hair samples; and we work on old cases.

Q I see; and when you say fibres, this would include cloths as we know them?

A Yes; and also certain amount of work pertaining to physical matching; comparison of such articles as glass, plastic, wood. 20

Q I see; and this period of training went for two years, did you say?

A Yes sir.

Q Now, what happened at the end of that period?

A I was given a series of written examinations and also practical examinations pertaining to identification of hair and fibres; and after that I was permitted to work on actual cases.

Q Did you successfully pass this series of examinations? 30

A I suppose I did because if I wouldn't have I wouldn't have been permitted to work on cases.

- Q I see; at any rate you got through that one way or another?
- A Yes.
- Q And it was after that stage when you were put to work on actual case work; now, would that be, Corporal, still under supervision initially or on your own so to speak?
- A Initially it would be under somebody that would be in charge of the section.
- Q I see; and this was still in Ottawa? 10
- A Yes sir.
- Q And how long did you stay in Ottawa and work in that manner?
- A I was in Ottawa in the Hair and Fibre Section for approximately four years.
- Q So it would be the two years you mentioned plus about two more?
- A Yes.
- Q And I take it, though, that all four years were spent in that field and working in that way? 20
- A Yes sir.
- Q And did you go directly from the Ottawa Laboratory to the Regina Laboratory?
- A Yes, I was transferred to Regina.
- Q And how long have you been in the Regina lab?
- A Oh, approximately two years, sir.
- Q And what part of that time have you been the person in charge of the section?
- A For the last year.
- Q For the last year; and you have other people 30 with you now in your section?
- A Yes; one more member in the section.

Q And when you started you would be the junior man or one of them in Regina?

A Yes.

Q And during your Regina experience have you been working under supervision or so to speak unsupervised on occasion?

A Well, the first year would be other supervision and then later on I was in charge of the section.

Q From the time you became in charge of the section and that's about a year ago, is it? 10

A Yes sir.

Q And who were you working under during the first year?

A Staff Sergeant James.

Q And he was head of the section then?

A Yes sir.

Q And it's still known as the Hair and Fibre Section?

A Yes sir.

Q And during the time you have been in Regina 20 have you been working on actual case work?

A Yes sir.

Q Now I believe, Corporal, that in 1969 you received first of all a collection of items from Staff Sergeant Paynter of your laboratory?

A Yes sir.

Q I show you P.5 - a black cloth coat and P.11 a wrapper; is that one of the items?

A May I refer to my notes please?

THE COURT: If you require them in 30 order to refresh your memory.

THE WITNESS: Thank you, My Lord.

MR. CALDWELL:

Q Did you make these at the time you received these  
and as you made your various tests and so forth?

A Yes sir.

THE COURT:

Q But you do require them for such purpose?

A Yes, My Lord and also to describe in detail  
what particular examinations.

Q You can't do it from memory then obviously?

A No, My Lord.

10

MR. CALDWELL:

Q Is that one of the items you received?

THE COURT: What is this exhibit number?

MR. CALDWELL: P.5 the coat and P.11 the  
wrapper, My Lord.

A Yes sir; this is one of the items that I had  
received.

Q And you're talking now about P.5 the coat, are  
you?

A Yes sir.

20

Q And how do you identify it?

A I identify it by my initials "V.S.M." and the  
date I received it, the 17th of March 1969.

Q And that was from Staff Paynter at the lab, was  
it?

A At the Crime Detection Laboratory.

Q And did you mark the wrapper, Corporal, or not  
- P.11?

A Yes I did. I have my initials "V.S.M." and the  
date I received it, the 17th of March 1969.

30

Q And I show you P.6 a pair of panties; are those  
one of the items you received from Staff Paynter

on March 17th 1969?

A Yes it is, sir.

Q How do you identify it?

A By my initials "V.S.M." and the date I received it, the 17th of March 1969 on the tag attached to the garment.

Q I show you P.7 a girdle with stockings attached; did you receive that item from Staff Paynter March 17th 1969?

A Yes I did. I identify this by my initials "V.S.M." and the date I received it, the 17th of March 1969. 10

Q And that was from Staff Paynter at the lab again?

A Yes sir.

Q I show you P.8 a half slip; is that one of the items you received from Staff Paynter March 17th 1969?

A Yes it is. I identify it by my initials "V.S.M." and the date I received it, the 17th of March 1969, on the tag attached to the garment. 20

Q I show you P.9 lady's brassiere; is that one of the items you received?

A Yes it is. I identify it by my initials "V.S.M." and the date I received it, the 17th of March 1969, on the tag attached to the garment.

Q I show you P.10 a white uniform dress; is that one of the items you received from Staff Paynter March 17th 1969?

A Yes it is. I identify it by my initials "V.S.M." and the date I received it, the 17th of March 1969, on both the garment and the tag attached 30

to the garment.

Q I show you P.12 a knife blade; is that one of the items you received from Staff Paynter March 17th 1969?

A Yes it is. I identify it by my initials "V.S.M." and the date I received this article, the 17th of March 1969, on both the blade and the tag attached to it.

Q You scratched that into the blade, did you?

A Yes I did, sir. 10

Q I show you P.13 two vials; did you receive those items from Staff Paynter March 17th 1969?

A Yes I did. I identify them by my initials "V.S.M." and the date I received them, the 17th of March 1969, which I have on both the tags and the vials.

Q Each vial and each tag, eh?

A Yes sir.

Q I show you P.14 I believe for identification; is that one of the items you received from Staff Paynter March 17th 1969? 20

A Yes it is. I have my initials "V.S.M." and the date I received this article, the 17th of March 1969, written on the envelope.

Q Was it in the form of a sealed envelope when you received it?

A Yes sir.

Q I show you P.15 for identification; is that one of the items you received from Staff Paynter March 17th 1969? 30

A Yes it is. I identify it by my initials "V.S.M." and the date I received it, the 17th of March



1969, written on the envelope.

Q Did that make up all the items that you received from Staff Sergeant Paynter on that occasion?

A Yes sir.

Q And I believe that you performed some tests and examinations on some of these items, did you?

A Yes I did.

Q And I believe that you examined P.10 the white uniform dress, is that so? 10

A Yes.

Q And what did you ascertain as you examined that dress?

A The purpose of the examination in this regard was to examine and identify a tuft of fibres which was found adhering back of the name plate on this garment which has the words "Miss G. Miller".

Q Was this tuft adhering in that manner when you received the dress? 20

A Yes sir.

Q It was there then, alright; and did you collect the tuft of fibres?

A Yes I did. These fibres were brown fibres and were identified as rayon and wool composition; there was a mixture.

Q Did you examine the fibres to determine whether they may have originated from any of those clothing exhibits before you which you received on that date? 30

A Yes I did.

Q And with what result?

A I concluded that they did not originate from any of the items of clothing which I had received in this batch.

Q Now, are you familiar with the viscose rayon and wool fibres that you say were adhering to the name tag - are you familiar with that kind of material?

A Yes sir.

Q And I take it that your work, Corporal, 10 includes some familiarity with various kinds of cloths used to manufacture clothing of necessity?

A Yes sir.

Q And what sort of garments to your knowledge are those sort of materials found in - that is viscose rayon and wool?

A Well, a combination of viscose and wool could possibly be found in such articles of clothing as shirts, skirts, and various blouses, and 20 jackets possibly.

Q I see; now, did you examine the left front area of P.10?

A Yes.

Q And what did you find to be the situation in the left front area?

A The left front area immediately in the area of the badge and the name tag was pulled apart at the seams.

Q Is that visible now? 30

A Yes it is.

Q Would you hold it up and show the jury please.

Perhaps you could just separate it, not tear it or anything but just separate it?

THE COURT:

Q That's near the throat, is it?

A Yes, My Lord.

Q Oh, it's below the collar?

A Below the collar and just immediately to the left of the central portion of the dress.

Q And left as you wear it?

A Yes. 10

THE WITNESS POINTS OUT TO THE JURY ON EXHIBIT P.10.

MR. CALDWELL:

Q And what is the situation with that business in your opinion?

A Well, this appears to have been forcibly pulled apart due to a force applied to the garment itself and as a result the thread in the seam broke or gave way as one would express it. 20

Q And would you - from what you saw of that division so to speak is it your opinion that it could be due to wear and tear?

A Well, since it is involving the breaking of threads right in the seam I would conclude that it was not so much wear and tear as actual force applied to the garment that caused it.

Q I see; did you examine the zipper at the back of the garment? 30

A Yes I did.

Q And does examination of zippers fall within

- your work by the way and your experience?
- A Yes, it does from time to time.
- Q And did you come to an opinion as to - first of all I should ask you, was it in an opened position - the two sides separate from one another when you received it?
- A Yes, they were open.
- Q And did you examine the condition of the two sets of teeth and so on that make them zip?
- A Yes. 10
- Q Did you come to an opinion as to how the two sides had been separated?
- A Well, the zipper - this portion was not engaged with the portion of the zipper on the opposite side and I concluded that they were pulled apart by force.
- Q Now, from what did you conclude that, Corporal?
- A Well, first of all, the metal portions at the bottom were bent. There was also a certain amount of seam separation at the bottom here; 20 and the fact that the zipper when it's pulled down generally is engaged with the opposite half; in this case it was not.
- Q At any place throughout the length?
- A No sir.
- Q What do you call the little item that you hold to zip it up and down - is there a name for that particularly?
- A I don't have any particular name for this portion of the zipper. 30
- Q Alright; now, can I ask you now about P.5 the black coat?

THE COURT:

Q Would you mind just first of all holding the coat up so the jury can have a good look at it before you deal with it please - front and back?

A (indicating to the jury) This is the front of the garment. And this is the back of the garment.

MR. CALDWELL:

Q Did you examine P.5 for any sort of cuts? 10

A Yes I did, sir.

Q And did you locate any?

A Yes, I found six cuts.

Q Did you mark them, Corporal?

A Yes, I drew a circle around each cut on both the outside of the garment . .

THE COURT:

Q Just take it down and show it to the jury please, so they can see?

THE WITNESS GOES TO IN FRONT OF THE JURY AND INDICATES. 20

Q Are they all in the back - those six you are referring to now?

A These are the cuts on the back, My Lord.

Q And there are six?

A Yes - one, two, three, four, five, six. And I drew circles around them and numbered them. And also the corresponding numbers were placed on the cuts inside the garment and they are also numbered one, two, three, four, five, six. 30

MR. CALDWELL:

Q Could you follow the course of the cuts through

the whole fabric, so to speak?

A Yes, this is what I have done; I have numbered them as they corresponded - as the cuts corresponded on the back with the cuts on the inside I numbered them accordingly.

Q So that that number "3" for instance on the outside is in your opinion matched by "3" on the inside by the same cut, so to speak?

A Yes sir.

Q And did they all puncture the entire coat? 10

A Yes sir.

WITNESS RETURNS TO THE WITNESS BOX.

Q And did you examine P.12 the knife blade to an extent at any rate, Corporal?

A Yes I did.

THE COURT:

Q You say you examined that?

A Yes My Lord. I determined the length of the blade - the length of the blade was three and a quarter inches long; the width - the maximum width of the blade was five-eighths of an inch. 20

MR. CALDWELL:

Q Now, did you examine that blade to determine whether that blade could have produced the cuts in the coat - the six that you have mentioned?

A Yes I did. First of all I determined the width of the cuts on the garment and the width of the cuts as I have them on the garment: Number 1 is approximately one-half an inch in width; 30

Number 2 is approximately a quarter of an inch  
in width - by the way, these are cuts I am  
referring to on the inside of the garment, the  
width of the cuts on the inside -  
Number 3 was approximately half an inch;  
Number 4 . .

THE COURT:

Q . . Just a minute - go back over them, would  
you please - the width of the cuts on the  
inside - would you give us the measurements 10  
again please?

A Yes.

Number 1 out approximately half an inch;  
Number 2 approximately a quarter of an inch;  
Number 3 approximately half an inch;  
Number 4 approximately half an inch;  
Number 5 approximately half an inch;  
Number 6 approximately five-eighths of an inch.

I also made an experimental cut with this  
blade in the area of the right sleeve of the 20  
garment to see the type of cut that a blade such  
as this could produce; and this is the cut that  
this blade did produce.

THE COURT:

Q Did you penetrate right through the garment -  
you did it from the outside, I take it?

A Yes My Lord.

Q And you penetrated it right to the inside?

A Yes My Lord.

MR. CALDWELL: 30

Q Did you mark that one, Corporal?

A This was underneath the fur. I did this as an

experimental out.

Q Underneath the fur on the right sleeve?

A Yes.

Q On the cuff end that is?

A That is right.

Q Alright, how did the out that you made there compare with the other ones?

A I examined this out . .

THE COURT:

Q . . just a minute please before you go on. 10

How far did you penetrate the blade all the way through - up to the end?

A No, just a portion. This was just a . .

Q . . well, did you penetrate to the extent that the widest portion of the blade entered the cloth?

A No, I did not, My Lord.

THE COURT: Alright; go ahead.

MR. CALDWELL:

Q So the extent to which - it penetrated but you 20 didn't get to the widest portion of the blade?

A No sir.

Q Alright; how did that out compare with the ones on the back?

A Well, this out was similar to the outs on the garment and I concluded that these outs . .

THE COURT:

Q . . what's the size of it, first of all?

MR. CALDWELL:

Q The one you made? 30

THE COURT:

Q Do you know the size of it? You measured all



the others; did you measure that one?

A No, I didn't, My Lord. This would be approximately half an inch.

THE COURT: Thank you.

MR. CALDWELL:

Q Now, as a result of all this did you come to an opinion as to whether P.12 could have been used to make the cuts in the back of P.5?

A Yes I did.

Q And what was your opinion? 10

A That the cuts produced on this garment could have been made by a knife blade such as this or any other similar object.

Q Now, Corporal, when you are dealing with a knife blade puncturing fabric in general terms, is there a degree of give or latitude to the fabric in your experience - I am asking you about fabric such as in that coat?

A Well, there are a number of factors that would have to be considered; for example whether or 20 not the garment was held tightly or whether it was folded and in a loose state. These are factors that would determine the extent or the size of the cut that such a blade could produce. It would also depend on whether or not the blade was pulled or just pushed in. All these factors would determine as to the size of the cut produced.

Q There are a number of variables, are there?

A Yes sir. 30

Q And variables when we are talking about one blade and one piece of fabric?

A Yes sir.

THE COURT:

Q And conditions. If you had something behind it to hit against then the penetration would be quicker and probably more incisive?

A Yes, My Lord.

Q Rather than if it was just a loose garment that you were hitting at?

A Right, sir.

MR. CALDWELL:

10

Q Did you examine the buttons on the coat, Corporal?

THE COURT: Just before you go on on that point -

Q The size of the cuts would depend I take it on whether there was a direct hit going at right angles to the coat - the fabric of the coat - or whether it was on an angle and a slashing effect?

A Yes. All these factors like I mentioned, if the blade had been dragged or pulled it could have produced larger cuts . . . 20

Q . . . if there was a dragging effect would that not mean possibly that the outer portion of the fabric was out more than the inside portion of it?

A It could.

Q Is there anything to indicate that on that garment?

A No, there isn't, My Lord. These appear to be . . . 30

Q . . . direct stabs?

A . . . fairly direct. As indicated the largest

out that I found here is approximately the same size as the blade is at the widest portion.

MR. CALDWELL:

Q Did you examine the button situation of the coat, Corporal?

A Yes I did.

Q And how many buttonholes does it have?

A The coat has three buttonholes on the right side. It also has two buttons - the bottom one and the top one; and an area here indicating that a button had been present corresponding to the middle buttonhole. 10

Q What indicates there had been a button present there?

A Well, there are threads and there's threads extending in the area of where the button would have been; and also this corresponds to where the buttonhole is on the opposite side.

Q Did you receive a loose button of any shape or form at all? 20

A No sir.

Q And did you come to an opinion as to the manner in which the centre button if there was one had been removed?

A Since the laminate underneath the sewing on the coat is torn and the threads are frayed, I concluded that this button was removed with considerable force, particularly because of the fact that the laminate immediately below where the button had been is also torn. 30  
Whether or not this was done while the coat was still closed or whether this was done by

the button forcibly removed by some other means  
I was not able to determine that.

THE COURT:

Q Let me see it please.

What you're saying is that because the fabric  
of the coat was torn that indicated a forcible  
removal?

A Yes, My Lord.

Q Just show it to the jury, will you please?

THE WITNESS GOES TO IN FRONT OF THE JURY. 10

A This is the torn fabric. (indicating)

THE WITNESS RETURNS TO THE WITNESS BOX.

MR. CALDWELL:

Q Did you examine the panties P.6, Corporal?

A Yes I did.

Q And did you find an opening in the crotch  
area of them?

A Yes I did.

Q Did you come to an opinion what that was due  
to, from what you saw of them? 20

A Well, there are certain tears in this which  
appear to be due to regular wear and tear.  
There are also certain cuts in the garment  
which are portions of cloth removed from the  
garment.

Q This would be for scientific testing I presume?

A This is the way the garment was received from  
Staff Sergeant Paynter. There might have been  
certain tests conducted on it.

Q Which would give you that appearance? 30

A Yes.

MR. CALDWELL: Now, if Your Lordship please

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there is a matter my learned friend wishes us to go into in the absence of the jury. It would be the next order of business and I don't think we'll take long.

THE COURT: Members of the jury, you are excused until two o'clock.

THE JURY RETIRES.

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JURY OUT

THE COURT (to the witness): Sit down for a minute,  
will you please.

Yes?

MR. TALLIS: My Lord, I think perhaps  
it would be preferable if the witness were  
asked to go out too.

THE COURT: Yes, would you mind . . ?

THE WITNESS LEAVES THE COURT ROOM.

THE COURT: While he is going I am  
going to bring you back to that subject I 10  
referred to yesterday, Mr. Caldwell. You will  
recognize that P.33 is in for identification  
only.

MR. CALDWELL: Yes, and I am checking with  
the court reporter.

THE COURT: I have already checked with  
her and I think the conclusion is that I was  
correct yesterday that I arrived at, that there  
is no identification in any way with the wallet  
except for the fact that it was in the wallet 20  
when it was handed to the officer by the other  
officer.

MR. CALDWELL: Well, if Your Lordship  
pleases I may . .

THE COURT: . . well you look into that,  
will you please?

MR. CALDWELL: Yes, My Lord.

This is a matter, My Lord which we'll be  
next going into the matter of this witness  
examined seven human pubic hairs which were 30  
removed from one of those two vials which have  
been in evidence here as P.13; and I expect

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him to give evidence that from his examination  
and comparison . .

THE COURT: . . which exhibit are you  
talking about now?

MR. CALDWELL: That's P.13, I believe, My  
Lord - the vials.

THE COURT: Oh yes, in one that the  
seminal fluid was contained in?

MR. CALDWELL: That's right. And I expect  
him to give evidence that he compared it to the 10  
control sample . .

THE COURT: Which exhibit? Compared to  
exhibit . .

MR. CALDWELL: . . I'll have to just check -  
it will be P.14 for identification at this time.

THE COURT: Well that's . . ?

MR. CALDWELL: . . pubic hair from the  
victim.

THE COURT: From the deceased, yes?

MR. CALDWELL: Now, I am expecting his 20  
evidence to be that a common origin is possible.

THE COURT: That's not very much use,  
is it?

MR. CALDWELL: Well, My Lord, I'd like to  
be heard on this because . .

THE COURT: . . well, even if he did say  
that what probative value has it?

MR. TALLIS: That's my point, My Lord.

MR. CALDWELL: What I'd like to suggest to  
Your Lordship by the time we get to that point 30  
I would examine him on how far one can go in  
this matter of hair samples; it's not as exact

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an art as fingerprinting and so on. As I understand it very often the best that can be said is that a common origin is possible. Now, Your Lordship will appreciate that there is <sup>only</sup> not/a matter of a question of identification of some things but there is a question of elimination of some things; in other words, I submit that if I had evidence which can show that the hairs in the lump as they first were - that a common origin is possible, in other words 10 that they may have come from the victim - that this is evidence that should go to the jury; the weight of it of course I realize is another thing; but . .

THE COURT: . . I don't see your purpose, Mr. Caldwell. Supposing it did come from the deceased - supposing it did come from the deceased, what does that establish?

MR. CALDWELL: Well, I don't know what questions may be in the jury's mind . . 20

THE COURT: . . do you think there's any question about the fact that this woman was raped or that there is any question in the jury's mind that she was raped?

MR. CALDWELL: Well, My Lord, I have my opinion but I don't know what their opinion is and as Your Lordship knows often juries have very different opinions than what counsel feel on certain topics.

THE COURT: Judges too, I suppose you 30 would say.

MR. CALDWELL: That's what I'm told, My

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Lord.

MR. TALLIS: Sometimes counsel hopes so,  
My Lord.

MR. CALDWELL: You see, My Lord, it could  
never be said that that evidence proves that  
her pubic hairs were in that frozen material . .

THE COURT: . . it might have been a  
dozen different people; there might have been  
somebody else that had sexual intercourse at  
that particular location the night before . . 10

MR. CALDWELL: . . I suppose that's  
arguable.

THE COURT: Well, it's very arguable.  
That's one of the places they do it, I  
understand - in back lanes and so on under  
surreptitious circumstances.

MR. CALDWELL: My Lord, I think - as you  
will appreciate it may be of some importance,  
I mean a good deal may turn on this business  
of - what I am trying to say, My Lord, is that 20  
while I don't feel it will identify the hairs,  
that I should be allowed to show that at least  
they are not eliminated thereby. The evidence  
isn't going to be any more as I understand it  
than to say that a common origin is possible.  
But I submit I should be allowed to put that in  
and the weight of it is a matter for the jury.  
They may say that means nothing or they may put  
some importance on it. And this is as I  
understand it the state of the art in this 30  
matter of hair comparisons is such that this is  
very often as good a result if you will or as

accurate an answer as these people can give.  
It's not like fingerprints when they say it  
could only come from that person. In the case  
of a hair sample they can very often not  
identify it by saying it had to come from  
this person, but they can very often say it  
could have come from this person, it's  
consistent with the hair that did. I think  
Your Lordship will see that the weight of the  
thing of course is a matter for the jury, 10  
they can say that doesn't mean anything but I'm  
not in a position to know that.

THE COURT: I just wonder how  
important it is. Quite candidly I don't see  
how there can be any doubt about the fact that  
the woman was raped, but supposing the jury  
didn't think she was raped what's that got to do  
with the murder? There she was - the picture  
speaks for itself.

MR. CALDWELL: Well, I think this much, 20  
My Lord, with respect, I would agree that even  
if the jury feel there was no rape at all,  
they're not satisfied with that - doesn't  
detract from the argument that there was a  
murder.

THE COURT: That's right.

MR. CALDWELL: But Your Lordship will  
appreciate I don't know what they're thinking  
on that topic and it may be that they would  
say - why didn't we hear where those public 30  
hairs were from? Suppose, My Lord, that they  
were inconsistent, that they were inconsistent

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with the - suppose the witness came in and said; I have examined the ones from the deceased, I have examined the ones from the vial; they are two different things entirely. Now, I think that would found an argument that - well, look here, that seminal sample has nothing to do with this thing. The jury may feel it has, My Lord; I can't say. They may very well go out and say we're not satisfied of that and we're . .

THE COURT: . . it sounds so far fetched 10  
to me, Mr. Caldwell, I must say with all respect. Here is a woman who is found with seminal fluid in her. How do you know that seminal fluid and the pubic hair didn't get there as a result of a struggle when somebody was trying to snatch her purse? There are so many things on which you can speculate and I think you're just confusing the issue.

MR. CALDWELL: Well, I know, My Lord,  
that it's not going to identify anything but I 20  
am submitting to you that it would also have the effect of not eliminating the deceased - in other words was not eliminating her connection if they chose to find that with that seminal fluid; but that's the best footing I can put it on, My Lord.

THE COURT: Well, I'll hear what Mr.  
Tallis has to say about what he considers to be the dangers if any of such evidence going in.

MR. TALLIS: Well, My Lord, the position 30  
I take I think can be stated quite succinctly. My learned friend has qualified this witness or

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attempted to qualify him at least and I'm not quarrelling with the questions he put in that connection - as an expert. Then during the course of his submission to this Court he said that in effect as I understand his evidence, this field of hair comparisons may in effect be an imperfect science where this is as far as a witness can go.

Well now, My Lord, that is not an answer. Either it is admissible or it is not admissible. 10 And there are many fields where science has not progressed far enough so that a Court will permit evidence to be adduced.

Now, in this particular case I would with respect refer you to questions in the preliminary hearing on this man's evidence - question 26 on page 143 - starting approximately at question 26 on page 143 and going over I would say to question 36 on page 145; and it is my respectful submission that when you read those particular questions 20 and answers - and I'm sure that this witness will not revile from his previous testimony because I know him well enough to make that assumption - that it is my contention that the probative value of such evidence is nil.

THE COURT: It may be so but is there any - does it in any way hurt the position of your client?

MR. TALLIS: My position is, My Lord, that if it is not admissible - and I say that 30 it is my respectful submission it is not admissible when you look at those questions and

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