

1101 JURY OUT - WITNESS OUT

answers, and that being so it should not go before the jury. I can see that certain theories could be profounded by the prosecution on the basis of this evidence which might be damaging in argument in the minds of a jury and accordingly . .

THE COURT: . . you're more imaginative than I am, Mr. Tallis.

MR. TALLIS: Well, conversely perhaps I could make arguments that would be 10
damaging to the prosecution case but I don't think that should be the test. If it's not admissible it should not go in.

THE COURT: Well, what is the difference between this and getting evidence just for example - type "O" blood was found on the ground and type "O" blood was the type of the victim?

MR. TALLIS: Well, of course that's an entirely different matter, My Lord. You can say 20
scientifically with precision that this is type "O" blood and that this is type "O" blood . .

THE COURT: . . but lots of people have type "O" blood.

MR. TALLIS: But in this particular case the witness cannot go that far, My Lord. If you read the evidence at the preliminary you will see that there were not even the accidental characteristics that are necessary in which to give any firm scientific opinion. And 30
accordingly I submit that if you read those questions and answers it will be conclusive as

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against the admissibility of this type of
evidence.

THE COURT: Very well.

MR. TALLIS: Thank you, My Lord.

THE COURT: We'll adjourn until two
o'clock.

Oh, by the way, the indictment shows that
after this witness you have two more witnesses,
both doctors as I understand it.

MR. CALDWELL: Yes, My Lord; there is Dr. 10
Brand this afternoon and Dr. Emson tomorrow
morning.

THE COURT: What about the balance of
this afternoon?

MR. CALDWELL: There's Kleiv to be
recalled very briefly to identify blood samples,
you will recall.

THE COURT: Yes.

MR. CALDWELL: There is the rest of Mr.
Malchanko will take a certain amount of time. 20

THE COURT: Yes.

MR. CALDWELL: There is a matter my learned
friend and I will discuss which may involve two
more witnesses.

THE COURT: I see; very well then.
Two o'clock.

12:35 P.M. JANUARY 28TH, 1970 - COURT ADJOURNED.

2:00 P.M. JANUARY 28TH, 1970 - COURT RESUMED.

JURY OUT - WITNESS OUT.

THE COURT: Before I proceed to deal 30
with this matter of the evidence that Mr.
Caldwell suggests he should adduce, could you

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gentlemen answer this: Is there any evidence yet - and I haven't checked my notes, I haven't had time to - as to blood being found on the coat?

Do you know, Mr. Caldwell?

MR. CALDWELL: My offhand reaction is no, My Lord.

THE COURT: Mr. Tallis, is that your reaction too?

MR. TALLIS: I don't think there is any 10 evidence of that, My Lord.

THE COURT: Thank you.

Well, gentlemen, I have decided that the evidence as suggested should be adduced is of such inconsequential value that I don't think I should allow it. I don't think we should confuse the issues and I would have to tell the jury in any event that it was of no value as far as they were concerned, consequently I see no necessity for permitting it to be adduced. 20

MR. CALDWELL: Thank you, My Lord, and just so that I am under no misapprehension, would that extend to the extent - would Your Lordship allow me to adduce evidence that there was pubic hair in the . . . ?

THE COURT: . . well there already is evidence.

MR. CALDWELL: From one of the other witnesses but not from this man I don't believe. 30

THE COURT: If you want to do that but you would be just repeating what you did before.

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MR. CALDWELL: Well, I would propose to do
that, My Lord.

THE COURT: Very well.

MR. CALDWELL: I recall Corporal Malchanko.

THE COURT: Well, call the jury in.

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1105 Exam of Cpl. Malchanko

THE JURY RETURNS.

THE WITNESS VICTOR SAM MALCHANKO RETURNS TO THE WITNESS BOX.

THE COURT: Before you proceed with your question, Mr. Caldwell, you see that exhibit P.10, which is the black coat.

THE COURT CLERK: It's Exhibit P.5, My Lord.

THE COURT: I'm sorry, you're right, it's P.5 -

Q When you examined that, Officer, did you find anything which you thought had indicated there was blood on the coat? 10

A No, My Lord.

THE COURT: I may say this as far as the jury is concerned that I don't recollect any evidence being adduced so far to indicate there was blood on the coat. Thank you. Mr. Caldwell?

MR. CALDWELL: Thank you, My Lord -

Q Just one question about P.13 the two vials, Corporal; did you find some hairs in one of those? 20

A Yes sir.

Q And what sort of hair?

A I found seven human pubic hairs.

Q Thank you; now, did that - I believe that there came a time when you passed on a number of these items to other persons?

A Yes sir.

Q Now, what did you do with P.5 the coat, P.6 the panties, P.7 the girdle, P.8 the half slip, P.9 the brassiere, P.10 the dress, P.13 for 30

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identification the two vials; P.14 for identification and P.15 for identification?

A These exhibits that you are referring to were transferred to Ident. Officer Kleiv of the Saskatoon Police Department on the 22nd of May 1969.

Q And other than the tests you performed on them I take it you didn't alter them in any manner during that time?

A No sir. 10

Q What did you do with P.12 the knife blade?

A Exhibit P.12 was transferred to Corporal McDonald of the Firearms Section on the 25th of March 1969.

Q And that I believe means that you passed on or you have now described all the items being passed on to one person or another?

A Yes sir.

Q I believe you received a further collection of items from the same Staff Sergeant Paynter on a different date, is that correct? 20

A Yes sir.

Q And when was this second collection received?

A On the 22nd of April 1969.

Q I show you P.22 a yellow film box; is that one of the items you so received?

A Yes, this is one of the exhibits I received. I identify it by my initials "V.S.M." and the date I received it, the 22nd of April 1969.

Q That's on the box? 30

A Yes sir.

Q Did you mark - did it have a sweater in it at

the time?

A Yes sir.

Q Did you mark the sweater?

A Yes I did. My initials are on the label "V.S.M." and the date I received it, the 22nd of April 1969; also on the R.C.M.P. laboratory tag.

Q I show you P.32 alleged blanket sample; is that one of the items you received from Staff Paynter April the 22nd 1969? 10

A Yes it is. I identify it by my initials "V.S.M." and the date I received it, the 22nd of April 1969.

Q Was it a sealed envelope when you received it?

A Yes sir.

Q And I show you P.35 blue toque; is that one of the items you received from Staff Paynter April 22nd 1969?

A Yes it is. I identify it by my initials "V.S.M." and the date I received it, the 22nd of April 1969, on the R. C. M. P. laboratory tag attached to the garment. 20

Q I show you P.25 for identification; is that one of the items you received from Staff Paynter on April the 22nd 1969?

A Yes it is. I identify it by my initials "V.S.M." and the date I received this item, the 22nd of April 1969.

Q I show you P.20 I believe that's for identification. 30

THE COURT: Yes it is - three envelopes and three pill boxes.

MR. CALDWELL: Yes, My Lord.

Q Did you receive all those items - those three envelopes and the three pill boxes from Staff Paynter that same day April the 22nd 1969?

A The three envelopes which comprise P.20 and the two pill boxes were received from Staff Sergeant Tweed on the 26th of May.

Q I beg your pardon - there are three pill boxes, aren't there?

A Yes sir. 10

Q And that was from Staff Tweed May 26th 1969?

A Yes sir.

Q Alright; now, did you examine the contents of that item, P.20 for identification - one of the envelopes making up that item?

A Yes sir.

Q Which one was it?

A I examined the contents of all three.

Q Alright; in one of them did you locate some fibre material? 20

A Yes I did.

THE COURT:

Q That's one of the pill boxes you're talking about, is it?

A Yes, My Lord.

MR. CALDWELL:

Q Now, I'm sorry, Witness - was it a pill box or an envelope?

A A pill box.

Q I beg your pardon, I thought it was an envelope. 30

A The one that was marked 01-3 I found a number of fibres in that pill box. There were some red

striated fibres. I might point out that some of these were not identified because of the minuteness of the fibres. However, some that were larger were identified and I found two small fibres which were identified as light blue viscose rayon.

Q Did you compare them to the item in P.32 the alleged blanket sample?

A Yes I did.

Q And what opinion did you come to as to the two 10 fibres in those two different items?

A The fibre composition of Exhibit P.32 was identified as light blue viscose rayon and the two fibres which I mentioned from Exhibit P.20 could have originated from that blanket P.32 or any other article composed of light blue viscose.

Q Now, I believe that ^{at} one time, Corporal, you packed a number of items in a box in Regina, sealed it up and gave it to Corporal McDonald 20 and retrieved it back from him in Saskatoon on a later date?

A Yes sir.

Q When was it you packed the box?

A That would be on the 3rd of September 1969.

Q And what did you put into it?

A Into that box I put Exhibits P.22, P.32, P.35, P.25, P.20 . .

Q . . and without going into it I believe one or two other items which have not been tendered 30 here?

A Yes sir.

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1110 Exam of Cpl. Malchanko

- Q Alright; and did you seal the box when you packed it with those items?
- A Yes I did, sir.
- Q And gave it to Corporal McDonald in Regina on the date you have mentioned?
- A Yes.
- Q When did you get it back?
- A On the 5th of September 1969.
- Q Where?
- A This would be right in the Court House here. 10
- Q In Saskatoon?
- A Yes.
- Q And did you unpack it - was its outward appearance as you had given it to McDonald?
- A It did not appear to be tampered with in any way.
- Q When you opened it were the contents the same?
- A Yes, they were there.
- Q And did you tender some of those items or all of them at the preliminary inquiry in this matter? 20
- A Yes I did.
- Q I show you P.40; is that the box?
- A Yes it is. It has my initials "V.S.M." and the case number.
- Q Pertaining to this matter?
- A Yes.
- MR. CALDWELL: Thank you; your witness.
- THE COURT: Cross-examination?
- MR. TALLIS: Thank you, My Lord - 30
- Q Mr. Malchanko, I'd like to refer to Exhibit P.10 for a moment, which is the lady's uniform - and

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that agrees with your notes, does it?

A Yes sir.

Q And now, I take it that in your field of fibre examinations you examined the front portion of the dress to see whether or not there were any possible slash marks caused by a knife down the front here, did you? Any break in the fibre apart from the seam?

A No, I did not find such marks, sir.

Q You didn't find - but you looked for any marks of that nature, didn't you? 10

A Well . .

Q . . just like even light marks where the odd fibre was out or anything like that - there is nothing of that nature, is there, on it?

A No sir, I did not find any.

Q No; and now you also looked at the sweater which is here - I believe you have the one sort of reddish colored sweater - have you got it there? In that box I believe. 20

Yes, this is P.22. Now, you examined this sweater for possible breaks in the fibre or cord such as knife marks of any kind, even those that had not completely penetrated?

A This exhibit was examined with regard to its composition - fibre composition - to compare the fibres with those that had been bound to the name plate.

Q I see; but did you examine it for any possible puncture marks or where pressure might have been applied? 30

1112 X-exam of Cpl. Malohanko

A No, I did not.

Q You didn't; perhaps you could just put it
back in there then.

Then, Corporal, the toque has been called P.35
in these proceedings; and now as I understand
it when you received this toque you examined
it for any rips or tears or anything like that?

A This was examined for any adhering hair.

Q But didn't you look to see whether or not
there were any rips or anything like that in 10
it?

A Not particularly in that regard, no sir.

Q In any event you examined it for the presence
of human hair and did not find any?

A That is correct.

Q And was your examination limited to that point?

A Yes sir.

MR. TALLIS: I have no further questions,
My Lord.

THE COURT: Thank you, Officer. 20
Just leave the exhibits there and someone will
take them, you can just take your notes and go.

THE WITNESS: Thank you, My Lord; may I
be excused now?

THE COURT: As far as I am concerned.

MR. CALDWELL: My Lord, I'd like to
tender one or two items as exhibits. The first
is P.14 for identification.

THE COURT: Just a minute please.
Any objection, Mr. Tallis? 30
Alright, P.14 for identification becomes P.14.

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(Exhibit P.14 for

identification

made EXHIBIT P.14

MR. CALDWELL: P.15 for identification,

My Lord.

THE COURT: Just a minute please - the
same thing, Mr. Tallis?

MR. TALLIS: The same position, My Lord.

THE COURT: P.15 for identification now
becomes P.15. 10

(Exhibit P.15 for

identification

made EXHIBIT P.15

MR. CALDWELL: P.20, My Lord, for

identification I tender as an exhibit.

THE COURT: What about that, Mr. Tallis?

MR. TALLIS: No objection.

THE COURT: P.20 for identification
becomes P.20.

(Exhibit P.20 for 20

identification

made EXHIBIT P.20

MR. CALDWELL: P.25 for identification, My

Lord.

THE COURT: Same thing?

MR. TALLIS: No objection.

(Exhibit P.25 for

identification

made EXHIBIT P.25

MR. CALDWELL: I call ^{Lewis} McKenzie Brand, My 30

Lord.

MR. TALLIS: I may say, My Lord, so that

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there is no misunderstanding, the last witness
is free to go as far as I'm concerned; my
learned friend can instruct him accordingly.

THE COURT: This just has to do with
taking the blood sample, does it?

MR. CALDWELL: Yes, My Lord.

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LEWIS MCKENZIE BRAND, sworn, states:

MR. CALDWELL, examining:

Q I believe your name is . . . ?

MR. TALLIS: You can lead on his name
and qualifications.

MR. CALDWELL:

Q I believe your name is Lewis McKenzie Brand,
that you are a member of the College of
Physicians and Surgeons for Saskatchewan and a
general practitioner of medicine here in 10
Saskatoon?

A I am.

Q And I believe, Dr. Brand, that on a date in
1969 you took a blood sample from a person who
was accompanied by a police officer?

A Yes I did. On the 17th of April 1969 in the
Emergency room in St. Paul's Hospital I
obtained a sample of blood from a person
identified to me by Sergeant Oleksyn of the
City Police as David Milgaard. 20

Q And is he in court here today?

A He's sitting in the prisoner's box, yes.

Q And that would be the first time you had known
him to your knowledge?

A Yes.

Q And you yourself personally drew the blood
sample from the accused, did you?

A I did, yes.

Q And was Sergeant Oleksyn present at the time
so to speak? 30

A No, he introduced me to him, I took David into
one of our examining rooms in the Emergency Ward,

at which time he and I were alone when I took the blood sample from his left arm.

Q I show you P.23 for identification; would you examine that and is that the container in which you placed the sample of the accused's blood?

A Yes, this is the container in which I placed the blood. It was signed on a piece of tape with my name and that of Sergeant Oleksyn and the name of the individual from whom I took it, and the time and date of taking this blood sample. 10

Q You put your name and the time and the date on there, did you?

A Yes I did.

Q And is that information still visible there on the tape?

A It is. My name is present here, the time of taking and we put the tape over the cork and the name and the date and the name of the accused and Sergeant Oleksyn's signature at the bottom. 20

Q And I gather you took only the one sample in the one vial?

A That's right.

Q And when you had finished corking the item, taping it and marking it, what did you do with it?

A I handed it to Sergeant Oleksyn.

Q Would that be the last you had to do with it other than seeing it . . . ? 30

A . . . that's the last I had to do with it, yes.

Q Did you attempt to test the blood in any way

1117 Exam of Dr. Brand

including grouping it?

A No, I did not.

Q And did you obtain any other bodily samples from the accused on that or any other occasion?

A No, I did not.

MR. CALDWELL: My Lord, I tender that.

THE COURT: P.23.

(Exhibit P.23 for identification 10 made EXHIBIT P.23)

MR. CALDWELL: Thank you; your witness.

THE COURT: Cross-examination?

MR. TALLIS, cross-examining:

Q Doctor, I gather that when you met David at the emergency room in St. Paul's you first of all checked to see whether or not he was willing to consent to this procedure?

A Yes I did. I asked him if he was willing to have blood taken and he said yes. 20

Q And was this when the two of you were alone?

A I honestly can't remember; I think it was.

Q In any event I gather that after you made this inquiry of him you got him to sign a form to consent to it?

A Yes.

Q And he signed this form without hesitation?

A That is right.

Q And throughout the whole procedure he was polite and co-operative to you? 30

A Yes he was.

MR. TALLIS: No further questions.

THE COURT: Thank you, Doctor.

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1118 Exam of Officer Kleiv
on Recall

MR. CALDWELL: My Lord, I recall Thor
Hendrik Kleiv. You will recall it was a
matter of looking at blood samples from the
deceased.

THOR HENDRIK KLEIV, previously sworn, states on recall:

MR. CALDWELL, examining:

Q Now, Officer, you testified earlier in this
trial and I take it you realize you are still
under oath?

A Yes sir. 10

Q And I think you earlier described that at the
autopsy on the body of Gail Miller by Dr.
Emson on Friday January the 31st 1969 you
attended throughout and took various things,
both clothing and bodily samples?

A Yes sir.

Q Now, did you observe Dr. Emson collect a
sample of the blood from the deceased?

A Yes I did, sir.

THE COURT: 20

Q What date was that?

A On January the 31st 1969, My Lord.

MR. CALDWELL:

Q And you observed him collect this sample, did
you?

A Yes I did, sir.

Q What did he do with it?

A He placed it in vials and then I took
possession of the vials.

Q How many vials? 30

A There were four vials altogether.

Q I see; and did you mark them in some manner

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1119 Exam of Officer Kleiv
on Recall

when he handed them to you?

A Yes I did.

Q And did you mark them with your initials and the date?

A Yes.

Q Did Dr. Emson mark them?

A I don't believe he did, sir.

Q Now, I should like to show you P.39 for identification - the cardboard mailer containing two vials. Are those two of the ones which you received from Dr. Emson in which blood samples from the deceased were put? 10

A Yes they are, sir.

Q How do you identify them?

A With my initial "T.K." and the 31st of the 1st month 1969 on the adhesive tape.

Q And is such a marking on both vials?

A Yes sir.

Q And what did you eventually yourself do with those two particular vials? 20

A They were brought to the Police Station to the Identification Section and wax seal placed on the adhesive tape and I placed my initials on the wax seal and they were placed in the refrigerator in the Identification Section. And they were later placed in this container; my initial appears on the adhesive tape on the container; and on February the 7th 1969 they were turned over to Staff Sergeant Bruce Paynter at the R. C. M. P. Laboratory in Regina. 30

Q Was that by yourself?

A Yes sir.

1120 Exam of Officer Kleiv
on Recall

Q And other than marking them and preserving them
in that manner had you changed their contents
in any way?

A No, I hadn't.

Q And we are to understand I take it that there
were two further blood samples?

A Yes; they were not submitted to the laboratory.

Q But you saw all four being assembled so to
speak?

A Yes sir. 10

Q And your mark is on the mailer in this case?

A Yes; it is on the adhesive tape - my initial
appears on the adhesive tape.

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

THE COURT: Very well. P.39 for
identification becomes P.39.

(Exhibit P.39 for
identification

made EXHIBIT P.39 20

MR. CALDWELL: Thank you; your witness.

MR. TALLIS: My Lord, I have no questions
to ask this witness on this phase of the matter
but something has come up whereby I would like
to at least reserve the right to possibly
having him recalled tomorrow. It would be for a
very brief matter but I want to check out
certain things.

THE COURT: What do you say, Mr.
Caldwell? 30

MR. CALDWELL: I have no objection.

THE COURT: Very well.

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MR. TALLIS: It certainly won't unduly
delay us because it will only be a matter of a
minute or two.

THE COURT: I wasn't asking for that
reason.
Very well, will you make yourself available
then for tomorrow please?

THE WITNESS: Yes.

MR. TALLIS: We know where to find him.

THE COURT: Next witness? 10

MR. CALDWELL: If Your Lordship pleases,
I am going to apply at this time to recall
three witnesses very briefly in relation to the
matter of the wallet and its contents rather
than go back through the evidence and of course
I am intending to examine the witnesses
briefly as to the . . .

THE COURT: . . . who are the witnesses?

MR. CALDWELL: Giles Beauchamp, Raymond
Mackie and Joseph Penkala, My Lord. 20

THE COURT: Just a minute. Well, what
in the world can Giles Beauchamp add to what
he has already said?

MR. CALDWELL: Well, My Lord, I think he
was asked some questions about the contents
and with respect I feel that this can be
clarified.

THE COURT: He gave evidence before or
after which person?

THE COURT CLERK: He gave evidence, My Lord, 30
at four thirty p.m. on the 26th.

THE COURT: Yes but who was the witness

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before and who was the witness after?

THE COURT CLERK: Mr. Pyra followed him and
McCorriston preceded him.

MR. CALDWELL: He was the twenty-sixth
witness, My Lord.

THE COURT: Very well.

MR. CALDWELL: Thank you, My Lord; I
call Giles Beauchamp.

THE COURT: He wasn't sworn, was he?

THE COURT CLERK: No, My Lord.

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211984

GILES BEAUCHAMP, not sworn, states on recall:

THE COURT:

Q Hello,, Giles.

A Hi.

Q Sit down; you're going to be asked a few more questions, you understand?

A Yes.

Q And you remember I asked you about telling the truth?

A Yes. 10

Q And you will tell the truth, won't you, to these questions?

A Yes.

THE COURT: Thank you.

MR. CALDWELL, examining on recall:

Q Now, Giles, you remember the other day being in court and telling the jury about kicking the snow and the wallet flying up?

A Yes.

Q And about a couple of papers as I recall 20 dropping out of it there?

A Yes.

Q And that you eventually later that afternoon gave the wallet to a policeman?

A Yes.

Q Now, Giles, did you take anything of any description or sort out of the wallet?

A No.

Q To keep or give to anyone else or anything?

A No. 30

Q Did you add anything of any description to the wallet?

A No.

Q And did you go through any little compartments
or pockets or flaps in the wallet and open
them?

A No.

THE COURT:

Q You didn't open it up then?

A No.

Q So when you told me that "there was nothing in
the wallet when I took it", what did you mean 10
by that?

A That I never saw any.

THE COURT: You never saw any; oh I see.

MR. CALDWELL:

Q But you told the Court now that you didn't
search through it, Giles?

A Yes.

Q And as I understand you then, the way you got
it would be the way you gave it to that
policeman at Remenda's house? 20

A Yes.

Q Just perhaps one more thing; was the wallet
snapped closed with that snap, Giles, or was
it flapping open like this?

A It was snapped.

Q You think it was snapped closed?

THE COURT: Snapped together?

A Yes.

Q And you didn't unsnap it?

A No. 30

MR. CALDWELL:

Q I'm showing it to you now with the outside snap

1125 Exam of G. Beauchamp
on Recall

fastened and how does that seem to you compared
to when you found it?

A I think so.

Q You think the same, do you?

A Yes.

MR. CALDWELL: That's all the questions I
have, My Lord.

THE COURT: Mr. Tallis?

MR. TALLIS, cross-examining:

Q Giles, did you not look to see if there was 10
any money in it?

A No.

Q You didn't; and you don't recall - well, you
don't remember telling anyone that you looked
to see if there was money in it?

A No.

Q And did a paper not fall out after you picked
it up?

A No.

Q It didn't? 20

A Just the ones that fell out when I kicked it.

Q Kicked the snow?

A Yes.

Q I see; they didn't come out of the wallet?

A No.

MR. TALLIS: Fine.

THE COURT: Thank you, you may go now.

MR. CALDWELL: I recall Raymond William
Mackie, My Lord.

30

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RAYMOND WILLIAM MACKIE, previously sworn, states on recall:

MR. CALDWELL, examining on recall:

Q Sergeant Mackie, you testified earlier and you realize that you're still under oath in this trial?

A Yes.

Q And I show you first of all P.21 and I think that that is the wallet that you obtained from Giles Beauchamp in the manner you have already told us about? 10

A Yes it is.

Q And just briefly how do you identify it again?

A I marked the card holder that was in it 2:30 p.m. April the 4th 1969 and my name "R. W. Mackie".

Q And that's a sort of folder that has its own snap and appears to belong within the larger wallet?

A Initially this was fastened in the wallet. 20

Q When you received it?

A Yes.

Q And it seems to be loose now?

A Yes it is.

Q And your initials and date and so on still show up on the inside of that item?

A Yes, they do.

Q Now, when you received it as I understood you it was at Remenda's house and from Giles in effect? 30

A Yes.

Q And it was after that that Giles showed you

1127 Exam of Sgt. R. W. Mackie
on Recall

the place where you found the hospitalization
cards?

A Yes.

Q Now, when did you first carefully look through
the wallet?

A At the time I turned it over to Lieut. Penkala.

Q And up until then you simply retained it, did
you?

A Yes.

Q And when you did look through it at the time 10
you gave it to Lieut. Penkala did it have
anything by way of (inaudible) in it?

A Yes it did.

Q What sort of things?

A Photographs and identification cards in the
name of Gail Miller.

Q And did you make a specific inventory or list
of them or not?

A No, I didn't.

Q And where were they within the wallet? 20

A Most of it was in the cellophane folders which
were in this portion.

Q Which were in the . . . ?

A . . . they were in this folder part here.

Q Alright; and you're showing the smaller
interior folder that's now loose?

A Yes.

Q And you say then it was attached?

A Yes.

Q And do you remember any specific thing about 30
any of the say photographs or cards?

A There was a photograph of Gail Miller and a

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photograph of a Les Spence.

Q And I take it he's a person whom you came to know as a matter of your investigation?

A Yes.

Q Now, I'd like to show you P.33 for identification; if you could examine the items making that up and tell the Court how they compare with what was in the wallet at the time you gave it to Lieut. Penkala?

A These are similar items as to what were in the 10
wallet.

Q How about the photographs?

A I believe this is a photograph here of Gail Miller and of Les Spence.

Q The ones you referred to a moment ago?

A Yes.

Q And is there any identification in there bearing the name Gail Miller?

A Yes there is.

Q Now, how does that collection compare with the 20
way you saw it in the wallet and gave it to Lieut. Penkala?

A As I recall it, it appears that it's the same contents.

Q And I think there are larger plastic sleeves there, Sergeant, but are there smaller plastic items within them?

A Yes.

Q Would you hold one of those up?

A These were the items that were mounted in this 30
folder at one time.

Q I see; and the plastic larger sleeves have

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on Recall

apparently been added since?

A Yes.

Q Now, when you gave the wallet to Lieut.
Penkala did you yourself extract the contents
out of it or not?

A No, I did not.

Q And did you stay around while he did anything
if he did anything?

A Just while he took the contents out of the
wallet. 10

Q Were you there for that?

A Yes; it was after this that I marked the small
inner portion of the wallet.

Q I see; after Lieut. Penkala took those plastic
sort of leaves out of it?

A Yes.

Q And as I understand you, you left the whole
thing with him whether it was divided into
parts or not at that time?

A Yes I did. 20

MR. CALDWELL: Thank you; your witness.

MR. TALLIS: No questions.

MR. CALDWELL: I recall Lieut. Penkala.

THE COURT: Why do you need to call him?

He identified those as being the ones he
received from this officer.

MR. CALDWELL: Very well, I tender this as
an exhibit.

THE COURT: Very well. P.33 for
identification becomes P.33. 30

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(Exhibit P.33 for
identification
made EXHIBIT P.33)

MR. CALDWELL: If Your Lordship pleases,
there is one further Crown witness and the
situation is that he has left the city, will
be back late this evening and will be able to
testify at ten in the morning; and that will
be the last Crown witness.

THE COURT: You are asking me to 10
adjourn at this time then.

MR. CALDWELL: If Your Lordship pleases.

THE COURT: Well gentlemen and members
of the jury there is only one more witness to
be heard for the Crown and he - that's the
doctor, is it?

MR. CALDWELL: That's Dr. Emson.

THE COURT: He's not here and won't be
back until tomorrow morning so we have no
alternative but to adjourn until ten o'clock 20
tomorrow morning.

3:00 P.M. JANUARY 28TH, 1970 - COURT ADJOURNED.

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10:00 A.M. JANUARY 29TH, 1970 - COURT RESUMED.

ALL JURORS PRESENT.

THE COURT: Next witness, Mr. Caldwell?

MR. CALDWELL: I call Harry Edmond Emson,

My Lord.

HARRY EDMOND EMSON, sworn, states:

MR. CALDWELL, examining:

Q Dr. Emson, I believe you are a member of the
College of Physicians and Surgeons for
Saskatchewan? 10

A Yes.

Q And that your specialty is pathology and that
you carry on your work principally at St. Paul's
Hospital, Saskatoon?

A Yes.

Q When did you graduate in medicine, Doctor?

A In January 1952.

Q And where was that?

A In the University of Oxford, England.

Q And can you tell the Court about your work after 20
that time, leading up to your present position?

A From January 1952 to July 1953 I served in
intern and resident positions in Manchester
Royal Infirmary in England.

From August 1953 to July 1955 I was in the
Royal Army Medical Corps of the British Army
with the rank of Captain and the grading of
specialist in pathology.

From September 1955 to August 1956 I was
resident in pathology at Birmingham Accident 30
Hospital in England; in September 1956 I came
to Canada and I served first as resident in

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pathology at St. Paul's Hospital, Saskatoon, for one year, and then as resident in pathology in the University Hospital in Saskatoon for approximately fifteen months.

In 1958 I took the qualification of certification in pathology of the Royal College of Physicians and Surgeons of Canada.

I was assistant pathologist at the University Hospital in Saskatoon and assistant professor of pathology from 1958 through 1960. 10

And in 1960 I went back to St. Paul's Hospital as Director of Laboratories and Chief Pathologist, which position I still hold; and I also hold the position of lecturer in pathology in the University of Saskatchewan.

Q I take it your work as such includes the regular performance of autopsies on deceased persons?

A Yes sir.

Q Now, does your training and experience, Doctor, 20 as well as performance of autopsies include the examination of bodily fluids?

A Yes.

Q Such as spermatazoa and so forth?

A Yes.

Q And have you examined samples of spermatazoa on different occasions?

A Yes.

Q And does your work include and training include the ability to group human blood? 30

A Yes.

Q I believe, Dr. Emson, that on January the 31st -

Friday, January the 31st of 1969 - you were at work at St. Paul's Hospital and in the morning hours viewed a body in the Emergency Department of the hospital?

A Yes.

Q And approximately what time was it you first saw the body?

A I first saw the body in the Emergency Department at approximately ten thirty a.m. on the 31st of January 1969. 10

Q And did you take an initial look so to speak at the body at that time?

A Yes.

Q What did you observe?

A The body was that of a young adult white female appearing compatible with her stated age of twenty years. The body was partly clothed. The clothing was removed subsequently in the afternoon. Parts of the body which were exposed - which consisted of 20 the face, the hands, the front of the chest, the right leg, thigh and foot, were frozen and firm to the touch. The face was frozen and there were depressions in the skin at each angle of the mouth. The skin was not broken or bruised; it was depressed; the frozen skin was pitted. These areas measured approximately five-eighths of an inch each in diameter.

Q Did you at that time note the situation with 30 the clothing?

A Not in detail.

THE COURT: Mr. Caldwell, aren't you going to identify this body first?

MR. CALDWELL: I believe that would be at this stage, My Lord - in the afternoon when it was identified to the doctor.

THE COURT: I thought he might be able to identify the body from the pictures; however --

MR. CALDWELL: Oh, I'll be showing him that, My Lord -

Q When you saw the body in the morning, Doctor, 10 was there some person accompanying it?

A Yes. The body was viewed in the presence of Identification Officer Kleiv and Lieut. Penkala of the Saskatoon City Police.

Q Now, did that complete more or less your initial view of the body in the morning?

A Yes.

Q And I believe you saw the same body again in the afternoon and commenced an autopsy?

A Yes. The full autopsy . . . 20

Q . . . may I show you P.4 at this time. Is photograph #8 of the same body you saw in the morning and on which you commenced the autopsy in the afternoon?

A Yes, that is the photograph of the body and a portion of my initials are visible on the identification card on the body.

Q When was it you commenced the autopsy?

A At two forty p.m. on the same afternoon - the 31st of January 1969. 30

Q And was that in St. Paul's Hospital morgue?

A Yes.

Q Were you the person who personally carried it out?

A Yes.

Q Who else was present?

A There was present my assistant, the mortician, Lieut. Penkala and Identification Officer Kleiv.

Q Now, at that time, Doctor, at the initial stages of the autopsy itself did you examine more fully the clothing situation as the body was then?

10

A Yes.

Q And what did you notice?

A When we started the examination the body was clothed most externally in a black coat with both arms fitted into the sleeves. Below the coat there was a white uniform of the type which nurses wear; this had been rolled down around the waist so that the arms of the body were out of the uniform but re-inserted into the sleeves of the coat. There was a brassiere off of which the right strap was broken, and a light girdle.

20

Q Did you notice the situation with the sleeves of the uniform as to whether or not they were intact?

A No.

Q Alright; and anything else, Doctor?

A There was a pair of white stockings pulled down around the ankles, a pair of panties which was pulled down around one ankle, and a single boot on the left leg. This was the clothing. The clothing was removed and handed as a

30

specimen to the representative of the Saskatoon City Police.

Q And that would be Kleiv or Penkala as the case may be?

A Yes.

Q Did you notice anything by way of discoloration in the afternoon of the body?

A The areas which had been exposed when I initially saw the body - that^{is} the arms, the right leg and right thigh - were discolored and dark red. The left thigh was discolored but the left leg which had been protected by the single boot, and the chest and abdominal wall were not discolored; they were white. 10

Q And the type of discoloration you saw, what would you expect it to represent?

A I think it represented the effects of extreme freezing.

Q And I take it you have seen similar situations with other bodies? 20

A Yes.

Q Now, did you at approximately that stage of the autopsy take note of what you could see from an external view as to the injuries, Doctor?

A Yes.

The external injuries: first of all on the front of the neck and on the upper chest approximately from beneath the chin to the regions of the collar bones on both sides 30 there were a group of incisions - incise wounds, that is cutting wounds - and these totalled

approximately fifteen in number. A lot of them were superficial scratches which had not divided the skin completely. Some of them were deeper and two of them had divided the skin and the tissues beneath the skin and had exposed the muscles of the neck. These incise wounds ran in general from above on the left to below on the right."

THE COURT:

Q Excuse me a minute please - would you repeat that please? 10

A These wounds ran in general from above on the left to below on the right. That is most of them ran from the region below the left ear towards the centre line and the right side of the body. Put some of them ran approximately in the midline and a few were angled from above on the right to below on the left.

Q Just a minute; some on the midline?

A Yes. 20

Q And then you said . . . ?

A One or two from above on the right to below on the left.

MR. CALDWELL:

Q Perhaps there, Dr. Emsen, I could again show you P.4 and if you yourself will look briefly at photographs eight through eighteen inclusive and satisfy yourself as to whether those are of the body you examined on that occasion? 30

A These photographs are all of the body I examined on this occasion and the wounds which I have

been describing are shown best in photograph #14.

Q Now, could you perhaps just hold fourteen and show the jury - perhaps you could come down for this and just demonstrate.

THE WITNESS GOES TO IN FRONT OF THE JURY.

A The first group of wounds to which I have been referring are these relatively superficial wounds on the neck, those running from above on the left to below on the right, some approximately in the midline, two of these have divided the skin and exposed the muscle beneath it, most of them are superficial scratches. This can also be seen in photograph #15 and in some of the other photographs.

10

THE WITNESS RETURNS TO THE WITNESS BOX.

Q I think you described that first group of injuries being in the nature of incisions?

A Yes.

20

Q And did you find a group of injuries of a different nature next?

A Yes. The next group of wounds in the region of the left collar bone were three stab wounds. Each of these was approximately five-eighths of an inch in width.

You will find, Your Lordship, that in my initial report the dimensions are given in centimeters; I am translating . .

THE COURT:

30

Q Well, we haven't got that, Doctor, so you just deal with it as it was.

A Thank you. Each of these was approximately five-eighths of an inch in width and they lay above the left collar bone at approximately its midpoint; and they penetrated downwards and outwards so that their general direction was towards the left armpit.

THE COURT:

Q Just a minute please; they were on the left side and they were slanting towards the left?

A Yes, Your Lordship. 10

MR. CALDWELL:

Q Now, could you possibly come down again, Doctor, and I think photograph #15 - does it show that second group you have mentioned?
THE WITNESS GOES TO IN FRONT OF THE JURY.

THE COURT:

Q Doctor, would you please - you'll be facing the jury - will you please speak loudly enough so the reporter can hear you. I think she got everything last time but I just want to make certain. 20

A These stab wounds are shown in photograph #15. There are a group of three lying in that region of the left collar bone and they also appear at a slightly different angle in photograph #14.
THE WITNESS RETURNS TO THE WITNESS BOX.

MR. CALDWELL:

Q Did you find a further group of stab wounds, Dr. Emson?

A Yes. On the front surface of the left lower chest was a group of stab wounds of the same size - three of these lay just beneath the left breast. A fourth stab wound of the same size 30

lay in the right lower chest just to the right of the midline on the front of the chest.

Q Did you determine a direction so to speak in which they travelled, Doctor?

A These were approximately from forwards to backwards.

THE COURT:

Q Excuse me, what do you mean by that?

A Straight in, Your Lordship.

MR. CALDWELL:

10

Q And I wonder, Doctor, if you could possibly come down again and point those out to the jury. Do they show on photograph 14?

THE WITNESS GOES TO IN FRONT OF THE JURY.

A I think they show slightly better in photograph #15. There's a group of three there and one more just to the right of the midline.

THE WITNESS RETURNS TO THE WITNESS BOX.

Q Did you find a further group of stab wounds in another location?

20

A Yes. On the back of the right chest there were five stab wounds. One of these lay almost in a line with the right armpit. The other four were grouped on the back of the right chest. All these stab wounds were approximately of the same size and shape.

THE COURT:

Q Approximately five-eighths?

A Yes, Your Lordship.

30

MR. CALDWELL:

Q Did you determine a direction for that group of

wounds, Dr. Emson?

A The wounds themselves - the entry of the wounds was angled slightly in general from above on the right to below on the left. This was the direction in which the knife blade penetrated.

THE COURT:

Q Excuse me a minute; above on the right . . ?

A . . to below on the left. This was the angle at which the knife appeared to have been held when it penetrated the body; and then the direction of the wound - each of the wounds - was approximately straight in. 10

Q In other words, the cut itself was angled slightly from right to left?

A Yes, Your Lordship. I think this shows well on the pictures that the incision itself was slightly angled but the direction was . .

Q . . straight in?

A Yes.

MR. CALDWELL: 20

Q I think perhaps - does that show on photograph #13, Dr. Emson - that group?

A Yes.

THE WITNESS GOES TO IN FRONT OF THE JURY.

A (Cont.) Four of these wounds are well shown on picture #13. The fifth, which was the one almost in the line of the armpit, is really only seen in photograph #16.

Q Number 16?

A Sixteen. 30

THE WITNESS RETURNS TO THE WITNESS BOX.

THE COURT:

Q That's five then - four directly in the back
and one . . ?

A . . one which was almost laterally down the
side.

MR. CALDWELL:

Q Is that the total of stab wounds, Dr. Emson,
that you found?

A Yes.

THE COURT:

Q Just a minute please, will you? Four in the 10
back, one on the side and four on the front?

A Yes, Your Lordship.

Q Or from the collar bone up I should say.
Thank you.

MR. CALDWELL:

Q I think that's twelve, all in all?

A Yes.

THE COURT:

Q Maybe I missed one then; four in the back,
four on the front, one on the side; that's 20
nine . . ?

A . . and three on the collar bone, Your
Lordship, is twelve.

MR. CALDWELL:

Q Did you find any significant differences as
between all those stab wounds, one from
another, Doctor?

A No.

Q Now, I believe you also located some scratches
and abrasions on the body, did you? 30

THE COURT: Excuse me a minute; are you
going further into those wounds?

MR. CALDWELL: Yes, My Lord, the internal part of it -

Q As I understand, Doctor, you're talking now still about the external . . ?

A . . I am talking still about the external injuries.

As well as the injuries I have detailed I found the following external injuries:

On the back of the lower right leg were a group of superficial scratches; 10

On the back of the lower left leg just below the knee joint was a rather poorly defined small bruise.

Q Do those two items both show in photograph 18 of P.4?

A Yes, but not very well. They weren't very prominent injuries.

Q I see; and perhaps I'll just have you point them out if you will to the jury?

THE WITNESS GOES TO IN FRONT OF THE JURY. 20

A There is the group of small superficial scratches; and the bruise really is in this region here.

THE WITNESS RETURNS TO THE WITNESS BOX.

Q Did you examine the face of the deceased for abrasions?

A Yes. There were numerous recent superficial abrasions on both cheeks, the chin and the nose.

Q And do they appear in photo 14? 30

A Yes they do.

Q And perhaps you could just briefly again point

them out if you will to the jury?

THE WITNESS GOES TO IN FRONT OF THE JURY.

A Those are these injuries here. Those are the superficial abrasions.

THE WITNESS RETURNS TO THE WITNESS BOX.

Q And did you examine the lips of the deceased?

A Yes. The lips were excoriated is the word I used - reddened and raw.

Q And is that apparent also in fourteen, Doctor?

A Yes, I think it is. 10

THE COURT:

Q Reddened and raw - do you mean that the skin was broken?

A Yes, Your Lordship.

Q What did it appear to you to be - as a result of being hit or scratched?

A I couldn't say for certain. The outside temperature was about forty below that morning and it may well just have been superficial freezing. It could have been injury before death but with this degree of freezing it was impossible to tell. 20

MR. CALDWELL:

Q Was there any other item you noticed on the area of the face, Doctor?

A There was a small bruise with an abrasion on the upper left eyelid, which also shows in photo #14.

Q Now, I take it that after that phase you commenced an internal examination and opening of the body itself? 30

A Yes.

Q And what did you find as that progressed?

A There was a very small bruise in the scalp in the region of the right temple. This was less than an inch in diameter. There was no injury to the skull or brain.

There was no injury or disease of the heart or the blood vessel system.

The stab wounds of the chest had penetrated the chest cavities.

THE COURT:

10

Q Just a minute please; chest wounds penetrated the chest cavities?

A Yes.

Q You said chest cavities?

A On the right and left; they are divided, Your Lordship.

Q Yes?

A And the right chest cavity contained between two and three pints of blood; and on removal of this it was found that the stab wounds had penetrated the lower lobe of the right lung. And in my opinion this was the injury directly causing death. 20

Q Lower lobe . . ?

A . . of the right lung.

Q Your opinion is that that was the cause of death?

A Yes, Your Lordship.

MR. CALDWELL:

Q How many, Doctor, stab wounds penetrated there? 30

A The four stab wounds and the one lateral wound in the right chest all penetrated the cavity

but only two of these had actually injured the lung.

Q And just briefly what would be the mechanism whereby you say these in your opinion were the cause of death?

A The cause of death was the actual loss of blood into the chest cavity; the shock attendant upon this; the embarrassment of breathing.

THE COURT:

10

Q Blood in the cavity, the shock . . ?

A . . the loss of blood, the shock and the embarrassment of breathing resulting from collapse of the right lung and displacement of the left lung.

Q If the lung wasn't functioning she couldn't breath properly?

A Yes, My Lord.

MR. CALDWELL:

Q For a person, Doctor, of that approximate age and that sex and that size so to speak, how much of the blood you would expect in such a person does the three pints constitute?

20

A You would normally estimate the blood content of a person of that size as approximately ten pints, I think.

THE COURT:

Q Would you repeat that again please?

A Ten pints.

Q No, I'm sorry, in answer to . . ?

30

A . . you would normally estimate the amount of blood in the body of a person of that size as

approximately ten pints.

Q Ten pints altogether?

A Yes. This would represent approximately one-third of the blood in the body.

MR. CALDWELL:

Q And did you go on and examine the other internal organs, Doctor?

A Yes.

Q And I don't think for my purpose it's necessary to go through the routine type of examination 10 but this will be available in your report?

A Yes. There was no significant disease or injury to any of the other organs.

THE COURT:

Q Just a minute please; just one point here, I want to go back a minute. The four stab wounds and the one lateral wound all penetrated the chest cavities?

A The right chest.

Q Well, were those all the frontal wounds or were 20 some of them the wounds from the back?

A Those were the back wounds, Your Lordship.

Q They were all back wounds?

A Yes - on the right side.

THE COURT: Thank you.

MR. CALDWELL:

Q If I could possibly just pause there, Doctor, and show you P.12 a knife blade. From what you say of the stab wounds both externally and internally what would be your opinion as to 30 whether a blade of that dimension would have been responsible for the stab wounds?

A Yes, it could.

Q And does the length of this blade appear sufficient to you to reach the depth to which you found the wounds in this body?

A Yes, it does.

Q Now, did you examine the genital-urinary system, Doctor?

A Yes.

Q And in particular did you discover anything in the vagina of the deceased? 10

A In the vagina there was a small amount of reddish fluid. This was removed with a glass tube and on examination was found to contain a large number^{of} spermatazoa which were not moving, they were not motile.

THE COURT:

Q Just a minute please; not moving - what was the other word you used?

A Motile.

Q By the way - excuse me - I just want to go back for a minute here; what time in the afternoon did the examination take place? 20

A We started at two forty p.m., Your Lordship. I have not got a time recorded for the end of the examination but to the best of my recollection we finished about five thirty.

Q Can you give us any indication as to when the examination of the vagina took place when you found that the spermatazoa was not mobile?

A That would be towards the end of the afternoon; I would estimate between four and five p.m. 30

THE COURT: Thank you.

MR. CALDWELL:

Q I assume that that involved you taking a sample and looking at it through a microscope for that matter?

A Yes.

THE COURT:

Q What's the significance of the blood, if any?

A The blood where, Your Lordship - in the vagina?

Q Yes. 10

A The blood from its physical appearance - and I have at the moment no information as to its group - could have come from the deceased or from the male partner.

Q No suggestion that it might have been menstrual?

A We tried to establish this and there was no other evidence of menstruation. It was a small amount of blood tinged fluid; it was not a large amount of menstrual blood.

The lining of the uterus was intact and 20 showed no evidence of menstrual shedding.

Q You didn't group it then - you didn't group this blood?

A This blood tinged fluid?

Q Yes.

A No, Your Lordship.

Q Well, I take it there was no evidence that the blood was caused as a result of penetration of the hymen or anything like that?

A The hymen was absent. There was no evidence 30 of forcible penetration. There was no evidence of injury to the genitalia.

MR. CALDWELL:

Q Now, did Ident. Officer Kleiv collect some . . . ?

THE COURT: . . . just a minute before
you go on to that, I just want to ask another
question -

Q Was the physical condition of the genitalia
such as to indicate that intercourse might
have been reasonably easy?

A Yes, Your Lordship.

THE COURT: Thank you. 10

MR. CALDWELL:

Q I believe you said the clothing was handed to
one or other of the Identification officers?

A It was handed to Lieut. Penkala.

Q And did either of those two take any bodily
samples that you saw?

A The other samples taken at the request of the
police were: hair from the scalp; hair from
the pubic region; and blood obtained from the
right chest cavity. 20

Q Did you draw that last sample yourself?

A Yes.

Q And did you - I take it you put it into some
sort of container, did you?

A Yes.

Q And what did you do with it when you did this?

A It was handed directly to Lieut. Penkala.

Q In this instance did you mark it or not, Doctor?

A I cannot recollect. It is my habit to do so but
I cannot recollect whether it was done on this 30
particular occasion.

Q Now, I think, Dr. Emson, that you mentioned

earlier that you had given the width of the external appearance of the stab wound in inch . . . ?

A . . . the width was approximately five-eighths of an inch.

Q And in terms of inches did you come to any exact figures as to the depth of the stab type wounds or is this possible?

A Approximately three inches.

THE COURT:

10

Q All stab wounds - all the main ones you've mentioned?

A The deepest.

THE COURT:

Oh, the deepest.

MR. CALDWELL:

Q Doctor, assuming the use of a given blade so to speak does the depth of stab wounds depend to some extent on the firmness of the part of the body struck so to speak or its compactability?

A Oh yes. If the stab penetrates a body cavity it may be that the organs within the cavity will be sufficiently mobile to slide away from the blade rather than be penetrated by it. 20

Q So there is some difference even for a given blade, I take it?

A Oh yes.

Q Now, did you come to an opinion as to whether the puncture or stab type wounds had been caused by a double or a single edged blade?

A I cannot be sure of this. My impression was of a single edged weapon but I cannot be sure of that. 30

- Q Doctor, would there be any significant difference as between a double and a single edged blade from what you saw?
- A From the point of view of the injuries, with a blade as narrow as this, very little.
- Q Did you come to an opinion as to how the slash or out type of wounds as opposed to the stab wounds were caused - and I'm thinking of the type of weapon?
- A They were made by a blade with a sharp edge; 10
but apart from that I can say nothing.
- Q Did you come to an opinion as to when the various wounds were inflicted in relation to one another?
- A I think they were all inflicted within a short time of each other. I do not think one can say which was the first and which was the last.
- Q What is the technical name for the situation of the blood emptying into the lung cavity which you described? 20
- A Hemothorax.
- Q You told the Court that you examined the vagina for the presence of spermatazoa and located non-motile or non-moving spermatazoa?
- A Yes.
- Q In what quantity did you find them, Doctor?
- A Numerous.
- THE COURT:
- Q Just to make certain that there's no question about it, this is male sperm you are talking 30
about?
- A Yes, Your Lordship.

Q Of course the only sperm is male, isn't it?

A Yes, Your Lordship.

MR. CALDWELL:

Q Dr. Emson, from the situation with spermatazoa that you found, did you come to any opinion as to when sexual intercourse that deposited it where you found it may have taken place?

A This is a question on which it is not possible to give an exact opinion. In general spermatazoa in the vagina start to disintegrate 10 about twelve hours after intercourse. So that from the presence of numerous easily recognized spermatazoa I would estimate the active intercourse to have occurred most probably not more than twelve hours before the examination. The loss of motility - when ejected the spermatazoa are of course motile and in general they lose their motility in the vagina within four hours or to maximum six 20 hours.

THE COURT:

Q I'm sorry, you'll have to repeat that. They lose what?

A Their motility in the vagina within four hours or at the maximum six hours.

Q Just a minute please. Well then, I don't understand that; it just appears offhand to me to be a contradiction; I wouldn't mind you clearing it up. You said the sperm - I'll say sperm to use the short expression - start to 30 disintegrate about twelve hours after intercourse; then you say they lose their

motility within four hours or maximum six hours.
Now, does that mean that when they cease to have
mobility that they haven't started to
disintegrate?

A No, Your Lordship. First of all they are
actively motile. Then they lose their motility
but they remain intact. And then they actually
start physically to break up, to disintegrate.
The normal time for loss of motility in the
vagina is four to six hours. The disintegration 10
is usually advanced about twelve hours.

Q Well, was there any disintegration?

A Not that I could appreciate, no.

Q Well then, sexual intercourse might have taken
place within six hours before your examination?

A Oh yes, Your Lordship. I'm giving twelve hours
as a maximum.

Q Oh I see; that's a maximum?

A Also, Your Lordship, the body was deeply
frozen and this too would have impaired - 20
reduced the motility of the spermatazoa.

Q Would you repeat that please?

A The body was deeply frozen and this would have
quickly reduced the motility of the spermatazoa.

THE COURT: Thank you.

MR. CALDWELL:

Q And do I understand you then, Doctor, on that
estimate that you are talking of course about
pre-examination as opposed to pre-death?

A Yes. 30

Q That twelve hours?

A Yes.

Q And I believe you may have covered this but did you examine the genitalia of the deceased for signs that might indicate sexual intercourse against her will?

A Yes.

Q And what were your findings?

A I did so examine and I found no evidence. There was no evidence of injury to the external or internal genitalia.

Q Now, Doctor, what is the effect on the bodily tissues - and I am specifically asking about the female genitalia - of the person in question being unconscious? 10

A Relaxation.

Q And what is the effect on the tissues of the female genitalia of the person in question being the death of that person?

A At first relaxation and later rigor mortis.

Q And when is the onset of rigor mortis?

A It is notoriously variable, but in general rigor starts to occur within six to twelve hours of death and then it advances for a variable period of time and then it recedes. But it is a notoriously variable science. 20

Q Now, as I understand you then, the first effect of death on those tissues would be relaxation?

A Yes.

Q Followed in a variable time of six hours or upward by the stiffening so to speak caused by rigor mortis? 30

A Yes. When we examined the body at two forty

p. m. on the 31st of January rigor mortis was just beginning.

THE COURT:

Q I asked you a question a little while ago, Doctor, I want to go back to it, and that relates to the question Mr. Caldwell has just put to you. You told me that her female organs were such as to indicate that intercourse might have been reasonably easy?

A Yes, Your Lordship. 10

Q And even if the intercourse was against her will was her physical condition such that intercourse might have been forced and there would be no evidence of damage?

A With respect, Your Lordship, I think that's impossible to answer. It depends on the degree of resistance the girl would have put up. She was a young healthy girl; if she had wished she could have resisted very strongly; if she had been physically capable of resisting 20 and wished to she could have resisted very strongly. There was no evidence that the act of intercourse had been forcible but this could be for various reasons.

MR. CALDWELL:

Q Doctor, following along with that if I may, from your findings of course it is inexcusable that sexual intercourse had occurred in this instance and you have given your estimate of how long before the examination you believe it 30 occurred and of course it goes without saying that it could be during the life and with the

consent of the deceased?

A Yes.

Q Is there any way sexual intercourse could have taken place in your opinion during the life of the deceased and without her consent - I say without her consent - and end up with the situation in which you found nothing by way of injuries to the genitalia?

THE COURT: Well, he just answered that -

10

Q Haven't you? Isn't that what you just said?

A She could have been unconscious.

MR. CALDWELL:

Q Now, is that in your opinion a possibility?

A It is a possibility. There is no anatomical evidence to prove or disprove it. It is a possibility.

Q I take it from what you have already said that it's also a possibility that she could have been dead?

20

A Yes.

Q Now, Doctor, your work involves the examination of seminal fluid and its constituent spermatazoa as you have told us?

A Yes.

Q Are there conditions under which human blood as such can get into seminal fluid or spermatazoa in the male person?

A Yes.

Q Could you tell the Court what they are please? 30

A One would be local injury to the male genitals.

A second and quite common occurrence would

be any inflammation either internal or external of the male genitals.

Q Are there any other causes?

A There are rarer conditions but I think the injury and the inflammation are the most common ones.

Q You understood my question to be speaking of blood as such as opposed to any constituent of blood?

A Yes - blood cells. 10

THE COURT:

Q If you had some bladder trouble, blood from the bladder that might . . ?

A . . yes, My Lord. Inflammation anywhere in the genital or urinary system.

MR. CALDWELL:

Q And I think, Doctor, that your training and experience and knowledge includes - and I want to mention that briefly - the field of antigens that form part of the blood? 20

A Yes.

Q Does "O" blood contain "A" antigens?

A No.

Q Does "B" blood contain "A" antigens?

A No.

MR. CALDWELL: My Lord, there is a matter I think should be raised in the absence of the jury at this time.

THE JURY RETIRES.

1159 JURY OUT

THE COURT: Yes, Mr. Caldwell?

MR. CALDWELL: My Lord, the next matter

I propose to ask Dr. Emson - and my learned friend felt that I should canvass this with you beforehand with the jury absent - that is that I had Dr. Emson personally take a sample of blood from Ronald Dale Wilson and group it and I propose to lead evidence and tender the container so to speak and have him say what group Wilson's blood is and as a matter of so 10 to speak expediting things. There was a sample taken before, My Lord, and it would have involved calling three more witnesses from Regina out here; and I canvassed this situation with my learned friend and if the evidence is submitted of course it is proposed that there would be an admission of the fact that the blood was that of Ronald Dale Wilson, a Crown witness in this trial.

Now, I submit, My Lord, that it is open 20 to me to prove the blood type in this case. There has been evidence of what kind of blood was on knives, what kind of blood - or I shouldn't say blood - of antigens in the sample in the alley; and I would submit this that . .

THE COURT: . . well, there is nothing as I recollect it - and we've had so much evidence here I can't be expected to remember it all - there is nothing that I recollect with respect to an examination of the sperm and the 30 blood that was found in the vagina of this woman.

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MR. CALDWELL: No, that's true.

THE COURT: Well then, what possible
use could it be?

MR. CALDWELL: Well, it may very well be
the situation that it will be argued or as
Your Lordship can see that it's open to be
argued that possibly this Wilson was a party
to the offence here.

THE COURT: It might be argued, yes,
but I don't see how his blood grouping has 10
anything to do with it.

MR. CALDWELL: Well, the only thing is
this, My Lord, that I submit I should be in a
position to show that none of the blood found
in various things - and there's been a good
deal of evidence of types of blood found on
one thing and another - was the blood of his
type; because as it happens all three types
in this instance are different, that is the
accused, the deceased and Wilson; and as you 20
know there is evidence before the Court now on
two of those blood types.

THE COURT: Well, there is evidence of
the blood that was found - was there evidence
of the blood type of the accused?

MR. CALDWELL: Yes, I believe from Staff
Sergeant Paynter, My Lord. I think you will
find that he testified that the accused's
blood was type "A". You recall Dr. Brand
took the sample from the accused. And of course 30
it is established I submit that the deceased's
blood was type "O".

THE COURT: Yes.

MR. CALDWELL: That's the footing on which I would lead the evidence, My Lord, and I will abide by your ruling of course as to whether it is appropriate at this time.

THE COURT: Your only possible object could be to show that it wasn't type "O".

MR. CALDWELL: Or type "A".

THE COURT: What difference does it make? There's no type "A" found on the scene. 10

MR. CALDWELL: No, but there are "A" antigens which are a constituent of "A" blood found on the scene, My Lord.

THE COURT: That was in connection with the specimen of frozen snow.

MR. CALDWELL: That's correct, My Lord, and it may well be that the jury in their wisdom will decide that that specimen came from the person who killed the deceased. I'm not in a position to say that they won't decide 20 that. And the question may remain - well, maybe Wilson was the donor so to speak or source of that spermatazoa and those "A" antigens.

THE COURT: What have you to say, Mr. Tallis?

MR. TALLIS: Well, My Lord, I must state my position quite bluntly on this. It is my respectful submission that this evidence is not relevant to the issue, and accordingly, 30 regardless of what my learned friend may think about the fact that the jury may consider it,

it is incumbent upon Your Lordship to rule first of all whether or not it is admissible. And one of the factors that must be considered is whether or not the evidence is relevant to the issues here. My learned friend has in a rather oblique way anticipated so to speak a possible defence of blaming some other person, namely Ron Wilson. And in my submission this is not open to him on the basis of the case as presented by the Crown and the conduct of the case throughout in this court. And I think that it is very clear under these circumstances that this evidence does not meet the test of relevancy to the issues here. 10

THE COURT: I'm going to admit it.
MR. CALDWELL: Thank you, My Lord.
THE COURT: Call the jury back please.
THE JURY RETURNS.

MR. CALDWELL, continuing:

Q Now, Dr. Emson, I believe that this morning - today - you drew a blood sample from a young man by the name of Ronald Dale Wilson at St. Paul's Hospital, that you personally collected it and that you personally grouped it?

A Yes.

Q What group did you find it to be?

THE COURT: Just a minute please; how are you going to tie this up with the Wilson who gave evidence? 10

MR. TALLIS: Well, My Lord, for the record I can say that I will waive the necessity of having Ronald Wilson called to be identified by this witness; and I'm quite prepared to accept the fact that the person from whom the blood sample was drawn by Dr. Emson was the Ronald Dale Wilson who has been referred to earlier in these proceedings and who gave evidence. 20

THE COURT: Thank you.

MR. TALLIS: I think that covers that point, My Lord.

THE COURT: Thank you.

MR. CALDWELL: Admission of identity.

A COMMENT BY MR. TALLIS COMPLETELY DROWNED OUT BY A LOUD COUGH FROM THE AUDIENCE.

MR. CALDWELL:

Q What type was it, Doctor?

A Blood group "B". 30

THE COURT:

Q "B" like in Brown?

A Yes, Your Lordship.

MR. CALDWELL:

Q And do you have the sample or the residue or
the remainder of it with you?

WITNESS PRODUCES SAMPLE.

Q And you have put his name, your name, the
date on the specimen?

A Yes.

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

10

THE COURT: P.41.

(Blood sample identified
as that of Ronald Dale
Wilson
made EXHIBIT P.41)

MR. CALDWELL: Thank you; your witness.

THE COURT: Would you prefer to have an
adjournment before you commence your
cross-examination?

MR. TALLIS: No, I think the doctor would 20
probably like to get away and secondly it's quite
convenient for me to carry on at this point.

THE COURT: Very well then, thank you.

MR. TALLIS, cross-examining:

Q I just have a few questions here, Doctor.
First of all I take it that from your general
observations of this young lady you would
characterize her as being in perfect physical
health prior to her death?

A There was no evidence on anatomical examination 30
of significant disease.

Q And I take it the photos would certainly

indicate that she was what you would commonly call a well nourished girl?

A She was of normal stature and good nourishment.

Q Now, you described certain wounds to my learned friend and I don't want to belabor this point but I think that at the preliminary hearing my learned friend asked you whether or not you were able to come to any opinion as to whether they were inflicted by a person using a right or left hand?

10

A I think one cannot be certain about this. The only evidence of handedness in the assailant would be the general direction of the wounds on the front of the neck, which in general ran from above on the left to below on the right.

Q Now, when you say above on the left you're referring to the deceased?

A I am referring to the deceased's body.

Q And angling in to the right on the deceased's body?

20

A Yes.

Q And is it fair to say from that that you could draw the inference that they would more easily be caused by a right handed person in contradistinction to a left handed person if he were standing in front of her?

A I don't think one can be absolute about this but it appears more probable.

Q And I think that's what you gave at the preliminary hearing?

30

A I think so.

Q That on the balance of probabilities this is

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the inference that one could make from the wounds?

A Yes. This is of course assuming that the assailant was at the pertinent time standing in front of the deceased.

Q Yes; well, was there anything to indicate that they had been inflicted from over the back or anything . . ?

A . . no, there were wounds both on the anterior and posterior surfaces of the body and from my examination there was no evidence as to the position of the assailant when these were inflicted. 10

Q And this inference that you said could more easily be drawn is based I suppose upon your background in this particular field?

A I think it's a matter of common sense that a right handed person is more liable to injure the left side of a person facing him.

Q In other words, you're not suggesting - in other words, a lay person could easily . . ? 20

A . . I'm not suggesting I have particular expertise on this.

Q And when you say common sense you refer to what ordinary people see and do?

A Yes.

Q Now, I take it if we look at - if I might have P.4 - when you were referring to P.4 I think you made reference to photo #17 before the jury - and I won't bother having you come down again - and you pointed out certain abrasions and whatnot on the legs, is that 30

correct?

A I think this was number 18.

Q Number 18 . . ?

A Seventeen shows the anterior surfaces of the legs - the front surfaces - and does not show significant injury. Eighteen . .

Q . . I take it that these marks on the legs were too small and undefined to enable you to make any conclusion as to how they were caused?

A That's correct.

10

Q In other words, one would just be speculating?

A Yes.

Q And I take it, Doctor, that from your examination of the body of the deceased there was nothing from it you could form any conclusion as to whether the re-insertion of the arms into the coat took place before or after death?

A I have no evidence as to this.

Q And naturally you looked over the situation pretty carefully when you noticed the unique situation as far as the clothes?

20

A Yes.

Q Now, when you were examining the body you mentioned - and the photos show this - that certain of the garments were rolled up in the waist area?

A Yes.

Q And these pictures are not colored photographs but is it correct that some of those garments had a fair amount of blood on them?

30

A Yes.

Q Which one particularly had a great deal of blood on it?

A The uniform - the nurse's uniform - was blood stained. The brassiere was blood stained; this was obvious. The girdle was to a lesser extent blood stained. The coat was a dark color and I cannot recollect how we assessed the blood stain of the coat.

Q I see; do you recall whether there was any blood stains on the coat? 10

A No.

Q I see; now, you told my learned friend in evidence that you obtained some fluid from the vagina of the deceased?

A Yes.

Q And subsequently tested this particular fluid for the presence of spermatazoa?

A Yes.

Q And this of course was done as I understand it right in the hospital? 20

A Yes.

Q And this particular sample of fluid that you had was characterized by a reddish colored tinge?

A Yes.

Q Now, what was done with that particular sample after you tested it for spermatazoa?

A It was discarded.

Q I see; I take it that no portion of it was turned over to the police? 30

A No.

Q And as a matter of fact to be fair about it to

you it was not requested by any of them?

A It was not suggested at the time, no.

Q Yes; and now I take it that there wasn't sufficient blood in this fluid to have enabled one to test for blood grouping if a request had been made?

A Yes.

Q Now, dealing with this particular matter, I take it that your examination revealed that this girl did have some inflammation at the neck of the womb, if I may use this term? 10

A Yes.

Q And as a matter of fact . .

THE COURT:

Q . . you say inflammation at the neck of the womb?

A Yes, Your Lordship.

THE COURT: Yes - go ahead.

MR. TALLIS: Pardon?

THE COURT: Go ahead; I don't understand 20

it but --

MR. TALLIS:

Q Well - and as a matter of fact it's common ground between us that this could be a source of blood getting into this fluid which you aspirated from the vagina area?

A Yes.

Q And I think you made that quite clear at the preliminary hearing - I want to be quite fair with you on that - and then I think as you told my learned friend another possibility was that there could be blood in the seminal fluid of 30

the male donor?

A Yes.

Q But I take it that it's common ground between us that the inflammation at the neck of the womb was such that it could have caused blood to get into this fluid which you withdrew by aspiration?

A Yes.

Q And now then, I take it that you couldn't rule out the possibility that she was starting to menstruate? 10

A We tried to do this. This can be done by microscopic examination of the tissue; and I think largely because of the freezing this was partly disintegrating. I formed the impression that she might have been about to menstruate but there was no obvious menstrual loss of the lining of the uterus and there was no menstrual blood in the vagina.

Q But I take it with reference to this trace of blood that was in the fluid that you aspirated you felt there was a possibility that she was just starting to menstruate? 20

A Yes, this could have been.

Q And that this could have caused the discoloration of the fluid?

A Yes.

Q Now, you told my learned friend quite properly in your examination-in-chief that with reference to certain - he asked you a question or two about blood groups and I think that you mentioned to him something about antigens? 30

A Yes.

Q You remember a reference being made to that.
Now, as I understand it, group "O" blood does
not have antigens as we think of them in the
context of group "A" and group "B"?

A That is correct.

Q Yes; so that if a quantity of group "O" blood
got into a body fluid such as seminal fluid
of a group "A" secretor, that would not in any
way affect the scientific result? 10

A No.

THE COURT: Just a minute - if group
"O" . .

MR. TALLIS: . . my question was if a
quantity of group "O" blood got into the
seminal fluid or other body fluid of say a
group "A" - I think I used that example -
secretor . .

THE COURT: . . yes?

MR. TALLIS: . . then that would not in 20
any way affect the scientific result?

THE WITNESS: No.

THE COURT: What result?

MR. TALLIS:

Q Or the finding - it wouldn't affect the finding
that he was an "A" secretor?

A No, it would not.

Q And the same thing would apply to a group "B"
secretor?

A Yes. 30

Q And just so that there is no misunderstanding
here, I take it that it's common ground between

us that group "O" people do not have this substance in their blood in the same way as "A" and "B"?

A They do not have the "A" or "B" antigens.

Q And those are the antigens that you earlier referred to . . ?

A Yes.

Q . . in response to my learned friend's question . . ?

THE COURT: Well I'm a little confused; 10
I've got it that "A" and "B" blood doesn't contain antigens.

THE WITNESS: Not my statement, Your Lordship.

MR. TALLIS: That's not his statement, My Lord, with respect. I think he said "A" blood would have "A" antigens in it and "B" blood would have "B" antigens according to my notes on the situation; but perhaps the Doctor can clear that up for us. 20

THE COURT: Just before the jury retired, Miss Lookrey, could you find that? I may have misunderstood it.

MR. TALLIS: My colleague, My Lord, Mr. Disbery has it noted specifically here and it may assist you. The statement I think you're referring to is - my learned friend asked the question: Does "O" blood contain "A" antigens? And the witness said no. And then he was asked: Does "B" blood contain "A" antigens? And the answer was no. 30

THE COURT: Well I just got antigens,

I didn't hear the "A".

Would you give me that from the record please,

Miss Lockrey?

REPORTER, reading:

Question: And I think, Doctor, that your training and experience and knowledge include - and I want to mention this briefly - the field of antigens that form part of blood?

Answer: Yes. 10

Question: Does "O" blood contain "A" antigens?

Answer: No.

Question: Does "B" blood contain "A" antigens?

Answer: No.

THE COURT: I see, thank you. I missed "A" I guess.

Yes, go ahead then, Mr. Tallis.

MR. TALLIS: Thank you, My Lord -

Q Now, you told my learned friend also that blood is sometimes located in the seminal fluid of a male person and you told my learned friend, the jury and His Lordship certain things that may cause this. Now, would I be correct - well, have you ever found blood in say a sixteen and a half year old boy where you have tested his seminal fluid - have you personally ever found that condition? 20

A I don't ever recollect having done it before on a sixteen and a half year old boy.

Q I see; you've never personally done it? 30

A No.

Q And I take it that - well, do you recollect

ever having done it on we'll say a seventeen or eighteen year old boy - in that area?

A I'm afraid I can't give you the ages of the patients on whom this has been done. It is I think accepted medical knowledge that small amounts of blood commonly find their way into seminal fluid of males of any age beyond puberty, in conditions particularly of slight infection anywhere in the genital or urinary system; and less commonly in the events of external injury. 10

Q And is it fair to say that it is less likely - that these inflammations are less likely to occur in a younger person?

A No, I don't think so.

Q There is no distinction?

A I don't think so.

Q But you haven't personally conducted any tests on any group . . . ?

A . . . I have never done any series of this. 20

Q I see . . . ?

A . . . but the type of inflammation of which one thinks of the urinary bladder or prostate is not uncommon in young people at all.

Q And this is determined by clinical testing?

A Yes.

MR. TALLIS: I have no further questions.

THE COURT: Any re-examination?

MR. CALDWELL: No, My Lord.

THE COURT: Thank you, Doctor. 30

THE WITNESS: May I leave, Your Lordship?

THE COURT: Yes.

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Have you any more witnesses, Mr. Caldwell?

MR. CALDWELL: My Lord, there is a matter of discussing the possibility of another witness with my learned friend.

THE COURT: Well, we'll adjourn now and you can let me know after the adjournment.

MR. CALDWELL: I was just thinking in terms of a short adjournment, My Lord.

THE COURT: Well, it's time for a ten minute adjournment.

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MR. CALDWELL: My Lord, this is a situation in which I propose now to call a witness by the name of Mrs. Maria Indyk. Now, her name is not on the indictment. She was called by myself at the preliminary inquiry and I had not intended to call her at the trial but my learned friend has requested that I do so and I am quite pleased to do so. I call Maria Indyk.

MARIA INDYK, sworn, states:

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MR. CALDWELL, examining:

Q Mrs. Indyk, I believe you live at 901 Temperance Street in Saskatoon?

A Yes I do.

Q I believe that in January of 1969 you worked at a firm Spotless Dry Cleaners, on 20th Street West, Saskatoon?

A Yes I did.

Q And I believe that on Friday January the 31st 1969 that your husband drove you to work and left you - dropped you off at the corner of Avenue "O" and 20th Street, Saskatoon?

20

A Yes.

Q What time did he drop you there?

A I can't tell you exact time but we left house seven or little after seven. If I may remember correctly when we were passing 19th Street bridge it was - clock was five past seven.

Q Alright; and I believe that morning that you were going to go to St. Mary's Church before you went to work?

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A Yes.

Q And that's at Avenue "O" and 20th, is it not?

A Yes.

Q And when you got there, Mrs. Indyk, was the church open?

A No, church was closed.

Q And did you have to wait for a few minutes until it was unlocked?

A I didn't wait. I just took off back to 20th Street because it was too cold to stand. 10

Q I see; now, Spotless Dry Cleaners where you work, which way was it on 20th from the church - east or west?

A Facing west church was on the right and Spotless was on the left.

Q On the left, eh?

A Mhmm.

Q So it's near the church, is it?

A Near the church.

Q And when you found the church locked you started walking? 20

A Walking back from Avenue "O" towards the 20th Street.

THE COURT:

Q Just a minute please, excuse me; is Spotless Cleaners on 20th?

A On the 20th.

Q And you were walking back from the church on Avenue "O"?

A Avenue "O" towards 20th Street. This is about 30 fifty, maybe sixty steps, I don't think it's more. Well, maybe is, maybe not, I don't know.

MR. CALDWELL:

Q Well, were you going to then just go to work since the church was locked?

A No, my work didn't start till nine o'clock so I wanted to be in church till they open because it was still closed.

Q Okay; now, as you walked - did you reach the corner of "O" and 20th?

A No.

Q Did you meet some person? 10

A Yes.

Q What was the first you saw of the person?

A First I seen a white scarf, you know it was dangling in front of her when she was running crossing Avenue "O" on to 20th Street. And then she come to my side where was the church and she ran towards me. She stop . .

THE COURT:

Q . . just a minute please - she was running and came towards me? 20

A Yes.

Q And stopped?

A Stop and she looked at me. Neither I nor she said a word.

Q She looked at me what?

A She looked at me but no her no me say a word.

Q Didn't say a word?

A No; I was taken by surprise you know.

MR. CALDWELL:

Q And you said neither you nor she said a word? 30

A No. We didn't exchange no words at all.

Q Now, when you first saw her was she on 20th

Street?

A On the 20th Street on the corner.

Q Would it be on the sidewalk area?

A On the sidewalk.

Q And you said running I think?

A She was running.

Q And she turned and went up . . ?

A . . she cross - like that was Avenue "O" -
she cross, come to my side.

THE COURT: 10

Q She crossed Avenue "O"?

A Yes.

Q And she came to your side?

A To my side and run towards me.

Q And were you on the west side of Avenue "O"?

MR. CALDWELL:

Q The church side?

A Yes; on church side.

Q And I take it that would put her running up
the sidewalk towards you? 20

A Towards me.

Q And how close did the person get to you?

A About that. We nearly come face to face and I
look at her . .

THE COURT:

Q . . just a minute, you said "about that" -
indicating maybe what - about two feet?

A Maybe two, maybe three; it was no more.

MR. CALDWELL:

Q Did she stop there? 30

A She stop. She looked at me and well I guess I
stare at her, you know, I was taken by surprise,

I just looked at her; and then she just turn
(next few words inaudible).

THE COURT:

Q She turned with what?

A Just - she was looking at me and she just turn
like that and walk briskly, that was all -
quick walk.

MR. CALDWELL:

Q Which way?

A North. 10

Q North on Avenue "O"?

A On Avenue "O".

Q And this I take it would be all on the sidewalk
on the church side?

A On the sidewalk on the church side. It was
dark but little light from the street that was
coming, that's all.

Q Now, tell the Court what you saw about this -
this was a female person?

A Yes. 20

Q How old?

A That's one thing I am no good at describing age.

Q But a mature woman or teenager or what?

A She wasn't teenager; she was a mature woman.

THE COURT:

Q She was not a teenager?

A No.

Q She was a mature woman?

A Mature woman.

MR. CALDWELL: 30

Q And I think you said she had a white scarf on?

A Yes; a long white scarf.

Q Was it over her head?
A It was over her head.
Q Did you notice anything else about her clothes, Mrs. Indyk?
A She had a black coat. I didn't see the front but when she pass me I seen a black collar on the back; but I didn't see this in front because scarf was covering it. That's all I know.
Q About the clothing, that's all you know? 10
A That's all.
Q Did you see whether this female was carrying anything?
A I didn't look.
Q Okay . . ?
A . . she might, she may not.
Q Now, you said she turned and walked briskly away from you going north on "O"?
A Yes.
Q Would that then put her behind you so to speak? 20
A Yes. And I turned after her and I was looking, you know.
Q Yes; did you see her when you turned?
A Yes I did.
Q And did you keep your eye on her for a time?
A Yes.
Q What would be the last you saw of her?
A The last I saw her was - on the church door beside the door you have lights and she come to these lights and then she passed. When she 30 passed these lights I didn't see nothing. I stood for few seconds or minute, I don't know,

you know, and then everything was quiet.

Q And she just disappeared into the dark?

A In the darkness. It was very dark; it was foggy.

Q Did you see any more of that woman or not?

A No, I did not.

Q Did you see anybody else?

A Yes I did.

Q How did that happen?

A When she pass me and she ran - she didn't run, 10
she walk, you know, brisk. She walk and I
hear footsteps. This I can't tell you if that
was my imagination or really but I felt, you
know, the way nerves was coming - if she
turned to other side of the street and then
come back; but that might be, because I was
heavily "bra", maybe was my imagination; and
I starts to go and I come to this opening of
the lights of the church, you know, and I
didn't hear nothing, was quiet. So I just 20
stood, so quiet, so I turn to the right.

THE COURT:

Q This is when you got back to the church?

A No, on the sidewalk, still on sidewalk. And
then I see another woman. Well this first was
more slim, this other was little heavier - well,
that's what I could make it because it's not
very good light, yes, she was little heavier
and she was walking.

MR. CALDWELL:

30

Q This was a different woman, was it?

A Different woman; different walk.

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Q Alright; where did you see her?

A She was walking on other side of the street -
of Avenue "O".

THE COURT:

Q On the other side of the street from you?

A From me.

MR. CALDWELL:

Q Going which way?

A Going north also.

Q And walking on the sidewalk as far as you could 10
see?

A On the sidewalk as far as I could make it out.

Q Aside from this being a heavier set person did
you notice say the age of this lady?

A I couldn't because time she come up on me - she
was very little, you know, but I just caught a
glimpse of her beige scarf and black hair just
like that, that's all.

THE COURT:

Q Beige scarf? 20

A Beige - some kind of - I don't know, that's
what it looks.

MR. CALDWELL:

Q Did you notice anything else about the second
female's dress other than the scarf?

A A black coat.

Q And what was the last you saw of this second
woman?

A The same when lights come, like that she gone.

Q As soon as she got out of the . . . ? 30

A . . . out of my vision, that's all.

Q I see; did you see anything more of her - the

second woman?

A No; after she pass this darkness I didn't see nothing.

Q And I take it you didn't know either of those two people?

A No, I did not.

Q And did you see any other people on foot in that area at that time?

A No, I did not.

Q Did you eventually - did the church open and you get in there eventually? 10

A When it open I don't know but when I was standing and even when she passed, you know, I was standing and still staring because for three weeks prior I was standing quite often, I may say nearly every day; just few times that I was taken by somebody; I didn't see a soul; and that somehow make me feel unnecessary. And I was standing and looking, you know, and then I went to the church, 20 church was open and I walk to the church.

Q And do you know, Mrs. Indyk, what time it was when the church opened and you got into the church?

A No, I don't.

Q You didn't have a watch or look at it or anything?

A I never wear a watch.

Q And you just don't know what time that was?

A No, I don't. 30

Q Alright; you went to the church and did you eventually go on to work at nine?

A No. I went to the church and I was disturbed, I couldn't even concentrate on my prayers. And then come an elderly lady, you know, and she come into the church and I walk out. I couldn't somehow settle - well, I was nervous, that's all.

Q And when you did leave the church did you eventually go on to work that morning?

A Yes, I come to the - shop was open, I was there about twenty to eight.

Q And you arrived at work around twenty to eight, 10 did you?

A Umhm.

Q And all this activity then as I understand you was after seven and before twenty to eight?

A It was about - well, I couldn't tell you exactly but I was in church about ten minutes or so; maybe ten, maybe no, I don't know.

Q And your husband had just dropped you there and driven on, had he?

A Yes. He drive off because seven thirty he start 20 work and he have to park car and change clothes and everything.

MR. CALDWELL: Thank you; your witness.

THE COURT:

Q Just one minute please. Were there any persons in the church when you arrived there?

A No.

Q Nobody?

A Nobody.

Q And the only one who came was this older person 30 that you referred to?

A Yes; after me she come.

THE COURT: Yes, Mr. Tallis?

MR. TALLIS, cross-examining:

Q Where was your husband working at that time?

A On Intercontinental Packers.

Q At Intercontinental; and he had to be there . . . ?

A . . . at seven thirty.

Q At seven thirty; and when you got to the church
it wasn't open?

A It was not.

Q You had been there many times before so you 10
knew how to get in?

A I've been many times and . . .

Q . . . go ahead?

A . . . and if church wasn't open janitor was just
opening, you know, it happened two times I
come before seven and he was just opening and
letting me in.

Q Now, when you first saw this lady that came
over to your side - the one that you told us
was going north on Avenue "O" on the church 20
side - when you say she was a mature person
would you estimate between roughly, between
twenty and thirty - in that neighborhood?

A I figure her to be in early twenties.

Q Early twenties?

A But how much I can't say because I don't know.

Q And as I understand it when you first saw her
she was running?

A Yes.

Q And did she have one hand - she was carrying 30
one hand in her pocket?

A One hand was moving, the other was somehow

like that; but if she had in pocket or not I don't know.

THE COURT:

Q You are indicating holding your left arm close to your side?

A Mhm.

Q And the other?

A Other was moving.

THE COURT: The right hand was moving.

MR. TALLIS: 10

Q Now, the other lady that you saw that ended up going north on the east side of Avenue "O" . . . ?

A Yes.

Q . . . would this be about four or five minutes after you saw the first lady?

A Five no. About three - four maybe. Five minutes I think is too much.

Q Well, I think that's fair enough. And I take it you noticed that she had black hair?

A Yes. 20

Q You could see this from underneath the beige . . . ?

A . . . scarf was like this and hair was like that.

Q And when your husband drove you down to the church did he drive along 20th?

A Yes.

Q And was there a car following behind you?

A Yes, was about three blocks.

Q Pardon?

A About three blocks behind.

Q About three blocks behind you? 30

A Mhm.

Q And that's the only car that you saw?

A That's the only car we saw - we saw and I saw.
Even standing I didn't see any cars.

MR. TALLIS: I see; I have no further
questions.

MR. CALDWELL: No re-examination, My Lord.

THE COURT: Thank you, you may go.

Yes, Mr. Caldwell?

MR. CALDWELL: That's the case for the
Crown, My Lord.

THE COURT: Is it your intention to 10
call evidence, Mr. Tallis?

MR. TALLIS: I wonder if we could rise
until two o'clock at this point, My Lord.

THE COURT: Adjourn until two o'clock.
12:00 NOON JANUARY 29TH, 1970 - COURT ADJOURNED.
2:00 P.M. JANUARY 29TH, 1970 - COURT RESUMED.
ALL JURORS PRESENT.

THE COURT: Mr. Tallis, do you intend
to call evidence?

MR. TALLIS: No, My Lord. 20

THE COURT: Mr. Caldwell, are you
prepared to proceed with your argument?

MR. CALDWELL: I am, My Lord.

BOTH COUNSEL ADDRESS THE JURY.

THE COURT: We will adjourn until ten
o'clock tomorrow morning.

5:10 P.M. JANUARY 29TH, 1970 - COURT ADJOURNED. 30

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10:00 A.M. JANUARY 30TH, 1970 - COURT RESUMED.

JURY POLLED - ALL PRESENT.

THE COURT: A member or members of the jury have asked that the evidence of Maria Indyk be read back to them and I am going to ask the court reporter Miss Lookrey now to read that evidence - and would you please face the jury when you do it please, Miss Lookrey?

COURT REPORTER, reading: 10

This is the evidence of Mrs. Maria Indyk:

Mr. Caldwell, examining:

Question: Mrs. Indyk, I believe you live at 901 Temperance Street in Saskatoon?

Answer: Yes I do.

Question: I believe that in January of 1969 you worked at a firm Spotless Dry Cleaners, on 20th Street West, Saskatoon? 20

Answer: Yes I did.

Question: And I believe that on Friday January the 31st 1969 that your husband drove you to work and left you - dropped you off at the corner of Avenue "O" and 20th Street, Saskatoon?

Answer: Yes.

Question: What time did he drop you there? 30

Answer: I can't tell you exact time but we left house seven or little

212051

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REPORTER, reading:

after seven. If I may
remember correctly when we
were passing 19th Street
bridge it was - clock was five
past seven.

Question: Alright; and I believe that
morning that you were going to
go to St. Mary's Church before
you went to work? 10

Answer: Yes.

Question: And that's at Avenue "O" and
20th, is it not?

Answer: Yes.

Question: And when you got there, Mrs.
Indyk, was the church open?

Answer: No, church was closed.

Question: And did you have to wait for a
few minutes until it was
unlocked? 20

Answer: I didn't wait. I just took off
back to 20th Street because it
was too cold to stand.

Question: I see; now, Spotless Dry Cleaners
where you work, which way was it
on 20th from the church - east
or west?

Answer: Facing west church was on the
right and Spotless was on the
left. 30

Question: On the left, eh?

Answer: Mhm.

012052

1191

REPORTER, reading:

Question: So it's near the church, is it?

Answer: Near the church.

Question: And when you found the church
locked you started walking?

Answer: Walking back from Avenue "O"
towards the 20th Street.

Question by His Lordship: Just a minute
please, excuse me; is Spotless
Cleaners on 20th?

10

Answer: On the 20th.

Question: And you were walking back from
the church on Avenue "O"?

Answer: Avenue "O" towards 20th Street.
This is about fifty, maybe
sixty steps. I don't think it's
more. Well, maybe is, maybe not,
I don't know.

Question by Mr. Caldwell: Well, were you
going to then just go to work
since the church was locked?

20

Answer: No, my work didn't start till
nine o'clock so I wanted to be
in church till they open because
it was still closed.

Question: Okay; now, as you walked - did
you reach the corner of "O" and
20th?

Answer: No.

Question: Did you meet some person?

30

Answer: Yes.

Question: What was the first you saw of

212053

1192

REPORTER, reading:

the person?

Answer: First I seen a white scarf,
you know it was dangling in
front of her when she was
running crossing Avenue "O"
on to 20th Street. And then
she come to my side where was
the church and she ran towards
me. She stop . . .

10

Question by His Lordship: . . . just a
minute please - she was running
and came towards me?

Answer: Yes.

Question: And stopped?

Answer: Stop and she looked at me.
Neither I nor she said a word.

Question: She looked at me what?

Answer: She looked at me but no her
no me say a word.

20

Question: Didn't say a word?

Answer: No; I was taken by surprise you
know.

Question by Mr. Caldwell: And you said
neither you nor she said a word?

Answer: No. We didn't exchange no words
at all.

Question: Now, when you first saw her was
she on 20th Street?

Answer: On the 20th Street on the corner. 30

Question: Would it be on the sidewalk area?

Answer: On the sidewalk.

212054

1193

REPORTER, reading:

Question: And you said running I think?

Answer: She was running.

Question: And she turned and went up . . . ?

Answer: . . she cross - like that was
Avenue "O" - she cross, come to
my side.

Question by His Lordship: She crossed
Avenue "O"?

Answer: Yes. 10

Question: And she came to your side?

Answer: To my side and run towards me.

Question: And were you on the west side
of Avenue "O"?

Question by Mr. Caldwell: The church side?

Answer: Yes; on church side.

Question: And I take it that would put her
running up the sidewalk towards
you?

Answer: Towards me. 20

Question: And how close did the person
get to you?

Answer: About that. We nearly come face
to face and I look at her . .

Question by His Lordship: . . just a
minute, you said "about that" -
indicating maybe what - about
two feet?

Answer: Maybe two, maybe three; it was no
more. 30

Question by Mr. Caldwell: Did she stop
there?

212055

1194

REPORTER, reading:

Answer: She stop. She looked at me and
well I guess I stare at her, you
know, I was taken by surprise, I
just looked at her; and she just
turn . .

And then the next few words, members of the
jury, I could not understand.

Question by His Lordship: She turned
with what? 10

Answer: Just - she was looking at me and
she just turn like that and walk
briskly, that was all - quick
walk.

Question by Mr. Caldwell: Which way?

Answer: North.

Question: North on Avenue "O"?

Answer: On Avenue "O".

Question: And this I take it would be all
on the sidewalk on the church 20
side?

Answer: On the sidewalk on the church
side. It was dark but little
light from the street that was
coming, that's all.

Question: Now, tell the Court what you
saw about this - this was a
female person?

Answer: Yes.

Question: How old? 30

Answer: That's one thing I am no good
at describing age.

212056

1195

REPORTER, reading:

Question: But a mature woman or teenager
or what?

Answer: She wasn't teenager; she was a
mature woman.

Question by His Lordship: She was not
a teenager?

Answer: No.

Question: She was a mature woman?

Answer: Mature woman. 10

Question by Mr. Caldwell: And I think
you said she had a white scarf
on?

Answer: Yes; a long white scarf.

Question: Was it over her head?

Answer: It was over her head.

Question: Did you notice anything else
about her clothes, Mrs. Indyk?

Answer: She had a black coat. I didn't
see the front but when she pass 20
me I seen a black collar on the
back; but I didn't see this in
front because scarf was covering
it. That's all I know.

Question: About the clothing, that's all
you know?

Answer: That's all.

Question: Did you see whether this female
was carrying anything?

Answer: I didn't look. 30

Question: Okay . . . ?

Answer: . . she might, she may not.

212057

1196

REPORTER, reading:

Question: Now, you said she turned and walked briskly away from you going north on "O"?

Answer: Yes.

Question: Would that then put her behind you so to speak?

Answer: Yes. And I turned after her and I was looking, you know.

Question: Yes; did you see her when you turned? 10

Answer: Yes I did.

Question: And did you keep your eye on her for a time?

Answer: Yes.

Question: What would be the last you saw of her?

Answer: The last I saw her was - on the church door beside the door you have lights and she come to 20 these lights and then she passed. When she passed these lights I didn't see nothing. I stood for few seconds or minute, I don't know, you know, and then everything was quiet.

Question: And she just disappeared ^{into} the dark?

Answer: In the darkness. It was very dark; it was foggy. 30

Question: Did you see any more of that woman or not?

212058

1197

REPORTER, reading:

Answer: No, I did not.

Question: Did you see anybody else?

Answer: Yes I did.

Question: How did that happen?

Answer: When she pass me and she ran -
she didn't run, she walk, you
know, brisk. She walk and I
hear footsteps. This I can't
tell you if that was my 10
imagination or really but I
felt, you know, the way nerves
was coming - if she turned to
other side of the street and
then come back; but that might
be, because I was heavily . .

And here, members of the jury, the witness used
a word I did not understand but it sounded like
bra -

I was heavily bra, maybe was my 20
imagination; and I starts to go
and I come to this opening of
the lights of the church, you
know, and I didn't hear nothing,
was quiet. So I just stood, so
quiet, so I turn to the right.

Question by His Lordship: This is when
you got back to the church?

Answer: No, on the sidewalk, still on
sidewalk. And then I see 30
another woman. Well this first
was more slim, this other was

212059

1198

REPORTER, reading:

little heavier - well, that's
what I could make it because
it's not very good light, yes,
she was little heavier and she
was walking.

Question by Mr. Caldwell: This was a
different woman, was it?

Answer: Different woman; different walk.

Question: Alright; where did you see her? 10

Answer: She was walking on other side of
the street - of Avenue "O".

Question by His Lordship: On the other
side of the street from you?

Answer: From me.

Question by Mr. Caldwell: Going which way?

Answer: Going north also.

Question: And walking on the sidewalk as
far as you could see?

Answer: On the sidewalk as far as I could 20
make it out.

Question: Aside from this being a heavier set
person did you notice say the age
of this lady?

Answer: I couldn't because time she come
up on me - she was very little,
you know, but I just caught a
glimpse of her beige scarf and
black hair just like that,
that's all. 30

Question by His Lordship: Beige scarf?

Answer: Beige - some kind of - I don't

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REPORTER, reading:

know, that's what it looks.

Question by Mr. Caldwell: Did you notice anything else about the second female's dress other than the scarf?

Answer: A black coat.

Question: And what was the last you saw of this second woman?

Answer: The same when lights come, like 10 that she gone.

Question: As soon as she got out of the . . .?

Answer: . . . out of my vision, that's all.

Question: I see; did you see anything more of her - the second woman?

Answer: No; after she pass this darkness I didn't see nothing.

Question: And I take it you didn't know either of those two people?

Answer: No, I did not. 20

Question: And did you see any other people on foot in that area at that time?

Answer: No, I did not.

Question: Did you eventually - did the church open and you get in there eventually?

Answer: When it open I don't know but when I was standing and even when she passed, you know, I was 30 standing and still staring because for three weeks prior I

212061

1200

REPORTER, reading:

was standing quite often,
I may say nearly every day; just
few times that I was taken by
somebody; I didn't see a soul;
and that somehow make me feel
unnecessary. And I was standing
and looking, you know, and then I
went to the church, church was
open and I walk to the church. 10

Question: And do you know, Mrs. Indyk, what
time it was when the church
opened and you got into the
church?

Answer: No, I don't.

Question: You didn't have a watch or look
at it or anything?

Answer: I never wear a watch.

Question: And you just don't know what time
that was? 20

Answer: No, I don't.

Question: Alright; you went to the church
and did you eventually go on to
work at nine?

Answer: No. I went to the church and I
was disturbed, I couldn't even
concentrate on my prayers. And
then come an elderly lady, you
know, and she come into the
church and I walk out. I 30
couldn't somehow settle - well,
I was nervous, that's all.

212062