

Appendix G  
Crown Closing  
Address



Q.B.J. No. 29 of A.D. 1969

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IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
CRIMINAL SIDE  
JUDICIAL CENTRE OF SASKATOON  
-----

C A N A D A                    }  
                                      }  
PROVINCE OF SASKATCHEWAN }

HER MAJESTY THE QUEEN

- against -

DAVID EDGAR MILGAARD

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ADDRESS TO THE JURY

BY MR. CALDWELL  
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C. V. REPORTING SERVICES LTD.  
500-224-4th Avenue South  
Saskatoon, Sask.

141905

Appendix G Crown Closing Address

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1 Address to Jury  
Mr. Caldwell

MR. CALDWELL: Lady and gentlemen of the jury, I  
am sure, first of all, that both my learned friend  
and His Lordship want to join me now in thanking  
you for your patient attention to what has been a  
fairly lengthy trial. We have now heard all the 5  
evidence, and it is my privilege to address you in  
support of the charge against the accused at this  
time, and I can only say that I hope my address  
will be somewhat shorter than the evidence was.

Now I'd like first to outline the 10  
Crown's theory of the offence. The evidence is  
that the girl, Miss Miller, was still at her  
residence home, 130-0 South between, as I get it,  
6:35 and 6:45 the morning of the murder. It must  
be inferred that she set off on foot for the bus 15  
line on 20th down either Avenues P -- excuse me,  
Avenues O or Avenue N, one or the other. She had  
to go south from her residence, and the Crown  
suggests on the evidence that it was down Avenue N  
proceeding southward on the west side of that 20  
avenue, proceeding towards 20th Street where the  
bus line is.

There is now, Milgaard, Wilson  
and Nichol John, the Crown suggests, driving  
southward on that same avenue, overtook her 25  
somewhere in the block between 21st and 20th

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Address to Jury  
Mr. Caldwell

Street, likely early in that block, I suggest to you the north end somewhere, and stopped and asked her directions.

Now, after the accused spoke to her through the rolled down car window and asked for directions, evidently with a result unsatisfactory to himself, the window was rolled up and the car proceeded on southward with Milgaard, according to Wilson, saying, "Stupid bitch." 5

Now, at this point there is a disagreement between the witnesses Wilson and Nichol John as to what happened to the car, and that is something, lady and gentlemen, that you are going to have to sort out, whether you accept one version, accept the other, or possibly accept a combination of the two. But Wilson says they continued south to the intersection of N and 20th and you remember he ... marked the residence there, as to where they had ... he later ... it to be that intersection and the name he did not know at the time, but he learned the name later. At that, he says they turned in the intersection and made what I would call three-quarters of a U-turn, ending up facing eastward, as I understand it, and that it was at this point, with the car facing eastward, that he and Milgaard left the car, going 10 15 20 25

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Address to Jury  
Mr. Caldwell

in opposite directions looking for help, with  
Milgaard, as I understood the evidence, going back  
in the direction of the girl and Wilson going in  
another direction. The Crown suggests this other  
direction was either east or west on 20th Street 5  
itself.

Now, as I understand Wilson's  
evidence, he says that he came back to the car in  
the same position that it was left in. After  
this, when he got in, Milgaard returned to the 10  
car, still in that same position -- and that  
Wilson is -- remember that is at the intersection  
-- short of breath. That Milgaard got into the  
car and made the statement that he had fixed her,  
or something to that effect. 15

Now according to Nichol John the  
car got to what we, I submit, must presume to be  
this intersection, made a U-turn, became stuck,  
got unstuck again, went over to the garage in the  
opposite direction the girl was going, and I would 20  
suggest this is somewhere along here facing north  
on the ... of N, and then made a turn into an  
alley behind what she now knows to be the funeral  
home as I understood her to say, that she recog-  
nizes the street, but at that time she didn't know 25  
it to be a funeral home -- now it is clear that

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Address to Jury  
Mr. Caldwell

this is the funeral home 1402 - 20th Street,  
Westwood Funeral Chapel -- and became stuck on an  
incline going into the alley.

Now, whichever version of that  
episode which you choose to accept, lady and 5  
gentlemen -- and as I have said already, you may  
accept something by way of a compromise -- but  
assuming you accept one or the other, I suggest  
that it is absolutely inescapable that that car  
was stuck in the very block from which they had 10  
stopped the girl for directions and stuck in a  
position which would put her approaching the car  
at a time when Milgaard left the car looking for  
help. Now whether you feel the car was stuck in  
the intersection here as Wilson says or ... in the 15  
alley entrance behind the funeral home as Nichol  
John says. Either way, I am submitting to you  
that it has to be that that car was stuck in the  
same vicinity as that girl who was walking south  
whom they stopped and asked for directions and 20  
whom, of course, I am suggesting to you must have  
been Gail Miller.

Now, from the fact that Gail  
Miller's purse was later found in the trash can  
down here on the -- behind 1414 - 20th Street West 25  
and her keys and comb and surgical scissors were

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Address to Jury  
Mr. Caldwell

found in the back yard of 226 0 South, over here -  
- you remember the people who pointed that out --  
obviously taken from the purse and thrown away,  
the crown suggests that you may well infer that  
this attack on the deceased, which the crown says 5  
was made by the accused Milgaard and him alone,  
began as an attempted purse snatch. The Crown  
invites you to infer that this attempt was met  
with resistance on the part of the deceased, after  
which the accused produced the knife which Wilson 10  
said he had in his, the accused's, possession  
between Regina and Saskatoon, and commenced to  
menace the girl with the knife, and either leading  
her or chasing her westward in the alley behind  
the funeral home, turning the corner and going 15  
northward in the north-south of the T-alley where  
he finally attacked and killed her at the place  
where the body was found, where the snow was  
trampled and where her last desperate struggle  
took place, of course, bare-handed against the 20  
accused and his knife, and that point, you will  
recall, was indicated by ... on P-1.

Now, from the finding of the  
spermatozoa in her vagina and on her panties, as  
well as on the frozen lump in the snow in the area 25  
where the body was found, which, of course,

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Address to Jury  
Mr. Caldwell

contained human spermatozoa, the crown invites you to infer that what started out as a simple matter of a purse snatch turned into a wilful murder and a rape on the person of the deceased as she was either unconscious or dead at the time, and you will recall the evidence by Dr. Emson, testifying on that part of it. 5

Now the Crown's theory of the offence is that Milgaard then took the purse of the deceased, searching through it hurriedly as he went back towards the car behind the funeral home, heading south again or in this alley, or at the intersection here, if you prefer this may have taken place, and throwing out the items of obviously no value, the scissors, the comb, on his way and ... where they landed ... and taking the wallet of the deceased from the purse and stopping at the intersection of the alleys, and it is very near ... at this small portion of the intersection of the alleys to deposit that purse in the trash can behind 1414 - 20th Street West. And at this point then returning to the car, whether the car is in the alley behind the funeral home or at the intersection, whichever you believe, with the wallet and the cosmetic bag out of sight on his person, either in pockets or under his coat, to 10 15 20 25

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Address to Jury  
Mr. Caldwell

await a chance for a more leisurely search of this item at a safer distance from the scene of the murder.

Now, consistent with this explanation I submit, would be the throwing of the knife handle ... in the ... back of a tree at 227 where it was found, because that would be at a time when the accused was heading east back towards the funeral home or towards the intersection. He had to go east to get to either one, and consistent with this explanation would be the burying of the one snow boot from the deceased and her sweater, which is east of the intersection of the T-lane which the Crown suggests was no doubt done by the accused on his way back to the stalled car, and I will have more to say about that later, gentlemen.

Now, the Crown also suggests that the figure which Mr. Diewald, the caretaker at St. Mary's Church, saw pass in front of the vehicle's headlights twice at approximately 7:00 to 7:10 a.m. that morning, may well have been the accused passing in front of the car which was stalled -- according to Nichol John's evidence, just at the entrance to the alley, but which Diewald estimated to be stopped at approximately the intersection of

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the alleys. he said there was a vehicle there and he could see the headlights -- in the process, the accused, either of disposing of the purse or burying the boot and sweater in the snow, in the location where Detective Drader found it, marked ... on P-1. 5

The Crown suggests the accused then returned to the stalled car, arriving at the same time as Ron Wilson, got into his former position on the passenger side of the front seat, while Wilson came back shortly after this to his former position, as you recall, as the driver of the vehicle. 10

The Crown suggest that the car then got free. Whether again this is behind the funeral home or leaving the intersection, but it left the vicinity of the murder and went directly to the Travaleer Motel. 15

Now when we look ...it doesn't look like such a distance; here is the scene, here is St. Mary's Church, two blocks up this way and straight up 22nd, brings you to the Travaleer Motel ... driving and that, I think, would take a very few minutes. Now the Crown suggests that was the next order of business, that is where Mr. Rasmussen said they were sometime shortly after 20 25

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Address to Jury  
Mr. Caldwell

7:00 a.m. and obtained a map. The Crown says they then set off for Cadrain's house next, stalling behind Danchuk's in the ... T South, the location shown here on P-2. After spending a good deal of time getting under way from Danchuk's, arrived at Cadrain's at 334-0 South, here, which is again on P-2. Next getting -- excuse me, I should say arriving at Cadrain's and parking there, according to the evidence, on the west side of Avenue O, across the road from Cadrain's and facing southward. 5 10

Now the Crown invites you to infer that on his way from the car into Cadrain's -- you will recall that Milgaard initially went alone from the car to Cadrain's, or else after he came out of Cadrain's with his suitcase, that he looked through the wallet, threw it away, as he approached and/or -- as the case may be -- as he left Cadrain's house. And you will recall the evidence that the wallet clearly identified as belonging to Gail Miller ended up just down the street, on the same side as Cadrain's, in front of 326, where it was found by Beauchamp much later and at much the same location Sergeant Mackie found the hospitalization cards bearing her identification. The Crown submits that that is 15 20 25

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Address to Jury  
Mr. Caldwell

quite consistent with an explanation of how the  
wallet got there.

Now the Crown invites you to  
infer that on his way into Cadrain's he discarded,  
the accused, the blood-stained toque right next 5  
door at 330 -- remember, that's Mrs. Gerse's house  
and right next door to Cadrain's -- having used it  
to wipe the blood from him or his clothes. You  
will recall that Mrs. Gerse found it on a Saturday  
at the end of January, 1969, she said, or the very 10  
first part of February -- and just ... on this  
must have been on Saturday, February 1st, the day  
after the killing, because it could only be that  
date, Saturday, the very first day of February.

You remember that he used the 15  
bathroom when he was in Danchuk's and this, of  
course, would be the ideal opportunity to dispose  
of any blood on him.

Now the Crown invites you to find  
in this case that when he was in the house, in 20  
Danchuk's -- excuse me, in Cadrain's rather, that  
Milgaard did have blood on his jacket and pants  
and that he changed these garments and he put the  
bloody garments in his suitcase, that he immedi-  
ately thereafter departed with the car for a 25  
unexplained purpose, during which trip -- and it

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Address to Jury  
Mr. Caldwell

is clear that he left because the car was parked  
across the road ... which indeed was back on the  
south side of Avenue O, as you recall. So during  
which trip he undoubtedly disposes of that bloody  
jacket and pants in some manner or another 5  
because, you will recall that there is no evidence  
of either of those items ever being seen again by  
anyone, and I ask you to bear in mind that  
Cadrain's house now would be the first place after  
the killing that Milgaard had an opportunity to 10  
change his garments and that he insisted on taking  
this car trip immediately after he changed the  
garments and, according to Albert Cadrain this  
would explain why he had a minor scuffle with Ron  
Wilson over the possession of the car keys. 15

Now my learned friend, of course,  
will be following me with his address and I am  
going to have to burden you with some thoughts on  
the things that he may well suggest to you because  
I must deal with as much as I can. And I think he 20  
may suggest to you that Cadrain and Wilson were  
mistaken or lying, as the case may be, when they  
say they saw blood on Milgaard's clothing at the  
Cadrain house, on the basis that none of the  
witnesses who saw Milgaard after they left the 25  
vicinity of the murder and before they arrived at

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Address to Jury  
Mr. Caldwell

Cadrain's have testified that they saw blood, and I would like to examine that proposition with you now if I might.

First Mr. Rasmussen at the Travaleer only had a short encounter with the accused, he gives him a map and he was on his way in the car and the only thing Rasmussen noticed about the accused, whom he ... identify, was that he had no shoes on. So Rasmussen has not taken that much of a look. 5 10

Now the Danchuks had more dealings with the accused and spent more time with him and there is, of course, no evidence that either of them saw any blood on the accused and that is the evidence. But I ask you to recall their evidence when my learned friend was cross-examining them on this point. Now Walter Danchuk noticed the ripped trousers when Milgaard got out of the car at the service station, because they were drawn to his attention because of his posture as he got out of the car, presumably bending over and expousing the tear. My learned friend asked Walter, "You had an opportunity to see the front?" referring to Milgaard's clothing, and he replied, "Yes." He asked, he didn't see any blood or anything else on the front and the reply was, "I 15 20 25

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never really looked that close." And when he was asked further on this, Danchuk's reply was, "No, I didn't notice any." And when he was asked about the clothing on Wilson and Nichol John he said, "I never really looked at the clothes of the other two, as to the presence of blood. And he concluded his evidence on this by saying that the only unusual thing he noticed was the tear on the trousers of the accused. Now Mrs. Danchuk was asked whether or not she noticed anything unusual down the front of Milgaard's clothes. She said, "No, I didn't pay much attention to it really." And then again she said, "I didn't pay that much attention to the clothes that I would have seen any. And then, when my learned friend asked whether she would have told someone about it if she had seen it, she replied, "If I had seen it I would have told." And her final piece of evidence was to the effect that they were not looking for this sort of thing when the accused was at their house.

Now let me suggest, lady and gentlemen, that there is -- the simply statement, "I didn't see any blood" can mean very different things depending on the surrounding circumstances. It is one thing to say, "I took a careful look at

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the clothing for blood and I didn't see blood."  
In that case there is very strong evidence that  
there was no blood. Now it is quite another  
thing, I suggest, to say, "I didn't see blood, but  
I never really looked that close", or "I didn't  
see blood but I wasn't paying that much attention  
to the clothes." What I am suggesting about the  
Danchuks' evidence is that while their evidence  
clearly is that they did not see any blood, you  
may well conclude that they did not direct their  
attention closely to the accused and his com-  
panions, and you may very well conclude from the  
evidence of Cadrain and Ron Wilson, that the blood  
was actually on Milgaard's clothing when he was at  
Danchuk's, and that the Danchuks simply did not  
notice it.

Now finally, I'll ask you to  
remember that at Cadrain's Milgaard changed his  
clothes which, obviously, involved taking off any  
kind of outside coat and exposing the front of his  
clothing to the view of all of the other people in  
a confined room, and that this is where Cadrain  
and Ron Wilson saw the blood on his clothes.

Now the Crown suggests that there  
are other things which happened that day which  
logically point to the accused as the killer of

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Address to Jury  
Mr. Caldwell

the young woman. There is the fact that Cadrain said that Milgaard wanted to go to Edmonton right away when he showed up at Cadrain's house, and that the accused, according to Cadrain, was anxious to have the car radio fixed at the second Texaco station by having an aerial put on while the car was being repaired; this might indicate to you an anxiety to listen to the news broadcast. 5

A further point of evidence which the Crown suggests points squarely at the accused and him only as the person who attacked and killed the girl was this episode with the cosmetic bag and compact case which occurred in Wilson's car not long after they left Saskatoon. Now the evidence is clear, they didn't belong to Nichol John, the only female in the party. Ron Wilson testified that they were not in his car when the party reached Saskatoon that same morning. Now, upon the girl, Nichol John, holding up this compact and asking whose it was, there was no reply, but the accused who, if you remember, was driving the car at this stage, snatched the item and threw it out the car window without comment. Now I think, lady and gentlemen that this must be a classic example of actions speaking louder than words. For the accused, driving a car 10 15 20 25

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Address to Jury  
Mr. Caldwell

on an open highway -- that a person would have  
taken his attention off his driving long enough to  
reach and grab the item, throw it out the window  
right then, may indicate to you that he regarded  
it as pressing business to get rid of that 5  
cosmetic bag, and right now. No explanation, no  
nothing.

Now you remember that Nichol John  
said that the items she found in the glove com-  
partment was a cosmetic bag containing a face 10  
powder compact, eye shadow and a tube of lipstick.  
Now I suggest that it is absolutely clear that  
this cosmetic bag must have belonged to Gail  
Miller and must have been taken from her purse by  
Milgaard, because, you will recall the evidence of 15  
Nichol John, it wasn't hers, she had not seen it  
before. The evidence of Wilson, who owned the car  
and should be in a position to know, said he knew  
nothing of the cosmetic bag and contents and it  
was not in his car when they left Regina. And the 20  
evidence of Albert Cadrain that he had never seen  
the items before. Now these three and Milgaard,  
remember, were the only occupants of that car.

I expect my learned friend may  
suggest to you that since the items found in the 25  
car by Nichol John included some duplication --

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which they did -- with the items found from the  
purse in the trash can by Detective McCorriston,  
that the cosmetic bag in the car could not have  
belonged to Gail Miller. Remember, the one in the  
car had a lipstick in it and an eye shadow, and 5  
the material that McCorriston found in the pouch  
of the purse included a lipstick and an eye  
shadow. Now ladies and gentlemen, I am going to  
suggest to you that that argument is defeated by  
the very nature of the items that were still in 10  
the purse when McCorriston recovered it, which had  
duplication among those items themselves, quite  
apart from the material thrown out of the car by  
Milgaard. Now the items found by McCorriston  
included a tube of Dream Glow brush-on eye shadow 15  
and Max Factor Hollywood eye shadow in a gold  
tube. There is a duplication right within the one  
cosmetic bag still in the purse found by  
McCorriston, you don't have to go to the one in  
the car. There is a duplication within what is 20  
located there. The material included, in the  
purse, a Hazel Bishop Pale-Pale Pearl lipstick and  
a Golden Glace lip over-glaze; both lipstick, I  
gather, and something to go on over the lipstick.  
So the material still in the purse included 25  
duplications right within itself, indicating that

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this girl, for reasons of her own a ... her  
business, saw fit to carry, apparently, quite a  
large assortment of cosmetics with her. And I do  
ask you to bear in mind that there was no duplica-  
tion between the compact with its powder, the one 5  
in the car, and the items found in the purse, so  
what I am suggesting is that it cannot be argued  
that the fact that there is duplication between  
the stuff found in the car and the stuff found in  
the purse rules out the purse as the source of the 10  
items found in the car. So that cannot be sug-  
gested, and I ask you to keep that in mind when  
you are deliberating.

Now I have been telling you the  
summary of the Crown's theory of how and why the 15  
murder took place, and it is correct to say that  
the Crown relies to a considerable extent, for the  
proof of this offence, on circumstantial evidence.  
Now His Lordship will be giving you the law fully  
on this and on other points after my learned 20  
friend and myself have addressed you and, of  
course, you will be guided by what he tells you.  
However, it is permissible for me to speak very  
briefly at this point about the term "circumstan-  
tial evidence". I do so subject to what His 25  
Lordship will tell you, but I do want to leave one

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thought with you about circumstantial evidence.  
That is that I always have a feeling that non-  
lawyers regard circumstantial evidence as meaning  
the same thing as unreliable evidence or bad  
evidence. Now, in law, that is not the case at 5  
all. His Lordship will be telling you that  
circumstantial evidence is perfectly good and  
proper evidence, so long as it is applied accord-  
ing to certain rules that are laid down for its  
use, and those rules His Lordship will be telling 10  
you in detail. Suffice for me to ask you at this  
time not to leave the courtroom at the end of this  
case with the feeling that the Crown cannot prove  
its case because it must rely, to some extent, on  
circumstantial evidence for that proof, for that 15  
is not the law of this land. As a matter of fact,  
in the great majority of murder cases the Crown  
must rely on circumstantial evidence since there  
are very seldom any witnesses to murder, they  
usually involve only two parties, the deceased and 20  
the accused, which leaves the Crown without an eye  
witness.

Now circumstantial evidence has  
been used to fully and properly prove, I suggest,  
hundreds of murder charges in this country in the 25  
past, even cases where the body was never found

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Address to Jury  
Mr. Caldwell

and it will, no doubt, continue to be so used as long as we have a legal system, and I only ask you now not to retire from the court with any feeling that here, because the Crown has not come up with an eye witness, that you are thereby prevented from making a finding of guilt on the part of some person because of this, that is not correct. 5

Now if you are going to accept the Crown's theory for this killing and find there is evidence to support the items I have suggested, and some proven facts from which you should infer other facts, you are going to have to consider the credibility of the witnesses. And this is another matter on which His Lordship will be instructing you fully after you have heard from counsel, and you will go by his instructions. But I do wish to mention some considerations about the credibility here without getting into His Lordship's field. I am sure His Lordship will tell you that you can believe all or part or none of what any witness who comes into the stand tells you. This is as true for the qualified, expert witnesses as it is for the laymen, and it is as true for the adult as much as for the child. 10 15 20

Now His Lordship will be telling you what effect Ron Wilson's ready admission of 25

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Address to Jury  
Mr. Caldwell

his criminal convictions and Cadrain's of his one conviction ... for vagrancy at Regina, at the end of the trip, should have when you are assessing their credibility. Suffice it for me to say that it is obviously perfectly possible for persons with criminal records to be honest and truthful witnesses; as it is equally possible for persons without such records to be dishonest witnesses. And it would only be if a person with such a record, if asked about his convictions denied them under oath and they were proven, that they would detract from his credibility.

Now in the case of the witnesses Wilson and Cadrain I have no hesitancy in asking you to accept the evidence they gave on the stand. In the case of Nichol John, I submit there are compelling reasons to accept the first part of her evidence about leaving Regina and coming to Saskatoon, indeed, all the evidence up to and including the point where they stopped and spoke to the girl, and the last part of her evidence right after they left the vicinity after the body was found and including the evidence of going to a motel, to Danchuk's, to Cadrain's, the cosmetic case episode and so forth. But I want you to consider very carefully my contention that when

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she was examined as to the events from the time just after they stopped the girl and asked for directions up until they arrived at the motel -- and this, of course, is the heart of the whole episode -- that Miss John, in my submission, was telling you less than the truth as she knew it to be for that full part of her evidence. 5

Now in assessing her credibility as to this part of the episode you are entitled to take into account the answers she gave, after being declared adverse, to the questions concerning the statement she gave Sergeant Raymond Mackie on May 24th, 1969. You will recall the kind of very unsatisfactory evidence she gave then, before being declared adverse, and certainly after being declared adverse being unable to remember some things at all. She had the accused get back in the car when at that ... he had never left it. That's her evidence. She didn't know how they got unstuck twice and so on, and the particularly incredible suggestion that she, last week, here in this courtroom, could not remember whether the accused had called the girl "the stupid bitch" after he spoke to her. She could not remember whether she had seen Dave in the alley taking hold of the girl he spoke to; or could not remember 10 15 20 25

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Address to Jury  
Mr. Caldwell

whether she had seen him grab her purse; could not remember whether she had seen the girl grab for her purse again; could not remember whether she had seen the accused reach into his pocket and pull out the knife; or whether she had seen him 5  
stabbing with the knife; and whether she had seen him taking her around the corner of the alley.

Now I invite you -- in fact, she never even remembered telling Sergeant Mackie that she seemed to recall running down the street and 10  
the next thing she knew she was in her seat, back in the car. Now, one of the ... of the jury system is that you are entitled to come together and use your common sense and experience in the world to decide things, and I ask you to decide 15  
whether a person, if they had seen such events as she evidently once said, could ever forget them. It seems to me that they would be engraved on her mind.

Now His Lordship has already told 20  
you the only use to which you can put the answers to those questions, and he will undoubtedly be repeating that you can only use the answers she gave me to those questions to assess her credibility, or truthfulness. That is the use I ask you 25  
to put those questions and answers to, and I

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suggest you will be driven to the conclusion that when she was giving her evidence here in chief, she was not telling the truth, the whole truth and nothing but the truth about this vital part of the whole incident, while she could recall in detail events happening both before and after that vital scene of the episode. 5

Now I suspect my learned friend will suggest that there are parts of the evidence of Ron Wilson that you should not believe and I want to make some observations about that and I am sure His Lordship will be telling you the proper use which you can make of the admissions by Wilson of his criminal record in assessing his credibility. But briefly, I suggest that the frank admission of all the convictions that my learned friend asked him about, indeed, supports his credibility rather than detracting from it since he told the truth when asked about the convictions, and I want to go on and say that if it should be suggested that Wilson, for some unknown reason, is out to get his friend Milgaard, I would certainly think that he could have done a more workmanlike job of that in his testimony, if that were his intention. Wilson, for instance, says that Milgaard's remarks upon arriving at the car 10 15 20 25

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were, "I fixed her", or something to that effect.  
It seems to me that surely if Wilson was out to  
get Milgaard or frame him, he could have quoted  
the accused as saying he stabbed or killed the  
girl, which certainly would have been more damning 5  
language on the part of Wilson as against the  
accused. Then there is the matter of the accused  
volunteering the information to Wilson in the bus  
depot in Calgary ... that he had a girl, or got a  
girl in Saskatoon, that he had put a purse in a 10  
trash can and he thought she would be all right.  
Now again, it would seem to me that Wilson would  
have made this a lot worse if this were a matter  
of him ... trying to get the accused. But the  
really fascinating thing about that statement came 15  
when His Lordship asked Wilson whether he ...  
followed this admission by Milgaard up by ques-  
tioning him about it. And do you remember what  
Wilson's said here? He said to His Lordship, "I  
didn't believe him." Now it certainly seems to me 20  
that is not the testimony of a person ... on  
shifting the blame to an innocent party. If such  
were the case you would quite expect Wilson to  
say, "It's a thing he would do." But what was his  
reply? -- "I didn't believe him." 25

There are certainly no signs of

141930

hard feelings between Milgaard and Wilson; they  
left Regina together and even returned to Wilson's  
house for a few days after the trip and, evident-  
ly, still as friends. I submit to you that by his  
demeanour in the witness stand, Wilson showed no 5  
animosity towards the accused and I feel that when  
you review his evidence against the other facts  
which are now proven to you independently of his  
evidence, you may very well conclude that he gave  
a very fair and accurate account of what he knew 10  
... this whole situation. I don't think the fact  
that he said ... when he was testifying on the ...  
January '69, that it was two or two and a half  
blocks, and now he thinks that it was five blocks  
or four minutes ... six minutes. I don't think 15  
these kinds of things are going to be such as to  
influence you to decide that you cannot believe  
anything he said here.

Now Wilson stood up to a very  
thorough and capable cross-examination by my 20  
learned friend. During this he readily admitted,  
as I said -- which would be evident anyway -- that  
at first he had withheld what he knew of this  
episode from the investigators during the earlier  
stages of the investigation, that being, you 25  
remember, when he was interviewed by Inspector

141931

Ruddell, in Regina. He admitted he told Ruddell that nobody in the car had anything to do with the murder. He said that he did not give Inspector Ruddell everything he knew. He said he continued this attitude when later interviewed by Detective 5 Karst, in fact, he persisted in that attitude until May 22nd or 3rd when, according to evidence, he had this long interview with a policeman at the Cavalier Hotel in Saskatoon. He said he continued to deny that any of his party were in any way to 10 blame for the death till he came to Saskatoon, telling part of the true story for the first time ever on May 22nd, in Regina, as I recall his evidence, and the rest of it in Saskatoon on the 15 23rd or 24th and you will remember that was the time he was interviewed by the policeman in the Cavalier.

Now my learned friend was kind enough to treat us to some very interesting evidence about the effects of these various drugs 20 these youths apparently had taken, L.S.D., and so on. But I ask you to remember that the sworn and uncontradicted evidence is that neither Wilson or Nichol John was under the effects of L.S.D., drugs, or anything of this sort, during that trip 25 to Saskatoon, while they were in Saskatoon, and

141932

28

Address to Jury  
Mr. Caldwell

nor was Ron Wilson under the effects of any of  
these things when Milgaard made the admission of  
this in Calgary, nor was he under the affects of  
these things when he finally gave his first  
truthful account of the matter to the police 5  
around May 22nd or 23rd, and that is sworn  
evidence.

Now if Wilson were out to get  
Milgaard, I must say I would have expected him to  
say there was blood on the shirt, as well as the 10  
pants, in order to strengthen what Albert Cadrain  
said, but no, Wilson only testified to seeing the  
blood on the pants. In other evidence Wilson was  
asked when he noticed the rip in the accused's  
pants and he said he was not sure if he saw them 15  
ripped at his place in Regina, before the trip, or  
for the first time at Cadrain's. He certainly had  
an opportunity at that time to say that they had  
not been ripped prior to reaching Saskatoon and  
thereby leaving with you the suggestion that they 20  
were ripped in Saskatoon, and thereby pointing at  
Milgaard as the person involved in the attack on  
Gail Miller.

Now my learned friend has also  
brought out some interesting evidence about what 25  
the Regina City Police Department offers to

141933

prospective informants in drug cases and has gone  
into the business of Nichol John being kept in the  
cell the night before she gave the statement to  
Raymond Mackie. I suppose he may suggest that as  
a result of this unchivalrous treatment that the 5  
statement she gave on the 24th may have been  
obtained by duress, or what ever he ... Now I  
think we should pause right here and say, but  
remember that the police department in this city  
started this investigation with virtually nothing 10  
to work on. A dead body in a back alley at 40  
below zero, no tracks, no witnesses, no finger-  
prints, no suspects, no nothing. And the first  
break in this matter came when Cadrain got back to  
Saskatoon on March 1st, after being away the whole 15  
month of February, left Saskatoon January 31st,  
and arrived March 1st. And this, of course, being  
taken up with the trip and being in the two places  
in Regina, being in gaol a week in Regina, working  
two weeks at White City, came home and he told you 20  
how when he came back to his home that Saturday  
night he learned something about the murder from  
the people at his house. And this is actually the  
first information he had about it, aside from the  
little he was told by the policeman who questioned 25  
him in Regina. Now when Cadrain put two and two

141934



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Address to Jury  
Mr. Caldwell

together, in effect, and realized the significant  
... what he learned when he got home and the  
number of things that he had seen earlier, he went  
the very next day, that being Sunday March 2nd,  
that being a whole month after the murder, to 5  
Detective Karst and told Karst what he knew of the  
events, at the police station. So I think it's  
right to say ... that for the first whole month of  
this investigation there was very little to go on.

Now you recall, I think I have 10  
already mentioned another ... thing and this is  
that Wilson said he deliberately held back a lot  
of what he knew about the murder when the police-  
men initially saw him and only telling the true  
story fully for the first time on May 22nd or 15  
23rd, and this is getting on towards four months  
after the murder. I mention this because I think  
you may agree with me that the police did an  
excellent job with the material they had to work  
with and I don't think that you would be too 20  
impressed, given all the circumstances, by any  
representation that ... of this poor girl being  
kept in the cells overnight and that you should  
pay no attention to what she told Mackie. I don't  
think I need dwell on that. 25

Now I said earlier that the

141935

Crown's theory of the offence is that it started off as a purse snatching, developing into a murder and rape when Milgaard encountered resistance to having her purse stolen. I would like to point out the evidence in regard to ... part of the rape. That is the spermatozoa in the body of the deceased, and on her panties, and that was in a frozen lump in the snow in the immediate area of that body, the lump was found later on. Now the evidence of Dr. Emson was that there were numerous spermatozoa in the body, these were blood-stained, and he would estimate intercourse would have taken place not more than 12 hours before his autopsy. And you will notice the difference: this was before his autopsy as opposed to before death, this would put the intercourse, in his opinion -- as I have worked it out -- sometime around -- since he examined the spermatozoa late in the afternoon of January 31, it would put it back somewhere in the vicinity of 8:00 or 9:00 that morning; and he said that would be the outside limit. In other words, I submit to you that that evidence coincides very closely indeed with the Crown's position that this event happened between roughly 7:00 and 8:00 in the morning.

Now you recall, from the absence

141936

of injuries to the vagina, the sexual organs of  
the deceased, Dr. Emson gave his opinion that  
intercourse against her will could have taken  
place after the deceased was either unconscious or  
dead, since, of course, either would cause, as he 5  
testified, relaxation of this part of the body.

Now you may ask yourselves how  
does the Crown suggest these three different  
locations of spermatozoa can be reconciled, that  
is, the vagina, on the panties and in the snow. 10  
The Crown suggests that when you look at that  
scene shown in photographs 2, 3 and 4, and see  
from it what I submit must have been a desperate  
struggle put up for her life by the victim, that  
it is quite possible that the person who raped her 15  
achieved penetration, ejaculated into the body of  
the deceased; that some of the seminal fluid got  
on the panties, where it was later found ... at  
the laboratory; that other seminal fluid drained 20  
from the body on to the snow where it froze into  
one of these lumps that was collected by Penkala.  
Now remember that Corporal Molchanko found human  
pubic hair in that same lump that had contained  
the spermatozoa, and that strengthens what I have  
to say on that. Now from the position of the body 25  
in the photographs before it was disturbed, lying

141937

face down, it is clearly a possibility that this  
is how, the explanation of how the frozen lump of  
material came to be there, and you don't need to  
have expert evidence on ... you know it from your  
common sense and your experience in the world ... 5

You remember that the spermatozoa  
in the body was blood stained and Staff Sergeant  
Paynter found "A" antigens in the vial which  
contained the lump and he tested, later, the same  
sample for the presence of human blood and got a 10  
reaction indicating the presence of either blood  
or those two other extracts he mentioned, mainly  
leafy vegetables or leather, and that his evidence  
was finally to the effect that he could not say  
definitely if the person whose seminal fluid he 15  
examined was a secretor or was not a secretor.

The evidence of Dr. Emson, as I  
said, was that the spermatozoa in the body was  
blood stained and that there are a number of ways  
in which blood can get into the spermatozoa within 20  
the male person and all of this, I submit, while  
it does not have the effect of identifying  
Milgaard alone as the source of that spermatozoa,  
certainly had the effect of not eliminating him  
either, and that is the effect I ask you to give 25  
it. I am not saying it could only be him, I am

141938

34

Address to Jury  
Mr. Caldwell

saying that it certainly has the effect of not eliminating him, he is one of the thousands.

Now the reason for that is that, of course, the spermatozoa found frozen came from a person with type "A" blood; that is established. 5  
That includes the accused and, of course, it includes many thousands of other people, but it certainly doesn't eliminate him as the possible source of that spermatozoa, it is consistent with being his. I ask you to remember now that he does 10  
not have to be a secretor to get "A" antigens in to his spermatozoa if the antigens are found there as a result of whole blood being in his spermatozoa for the kinds of reasons that Dr. Emson mentioned. It could have got there from secreting 15  
-- because the person was a secretor, but "A" antigens are a consistent constituent of "A" blood and could be found there for the reason that whole blood was there.

Now the other thing I ask you to 20  
remember about that is that the "A" antigens in that frozen lump could not have been put there in any way, shape or form from the blood of Gail Miller or from the blood of Ron Wilson. You know what their blood is: Gail Miller's is "O"; 25  
Wilson's is "B". It must have been from a type

141939

"A" person, and type "A" persons include the  
accused. So I leave that phase of the matter by  
stressing again that while this part of the  
evidence does not, of itself, identify the  
accused, it most certainly does not eliminate him. 5

Now of course, there are other  
bits of evidence about this that that were  
consistent with the rape: the zipper on the dress  
being torn asunder, rather than unzipped; the tear  
in the seam of the dress, that was up on the ... 10  
the deceased, the broken brassiere strap, and so  
forth.

Now there is one puzzling aspect  
of this case, and I suspect my learned friend will  
go into it, and that is the situation whereby the 15  
stabbing in the back must have taken place at a  
time when the deceased had her coat on and the top  
of her dress down because, you remember, there  
were no holes in the dress. And the Crown has no  
eye witnesses as to how this took place, but from 20  
the facts that are proven before you, I think His  
Lordship will be telling you that you are entitled  
to infer how it took place. I am going to suggest  
the possible solution to you. That is, that when  
the accused led or forced the girl westward at the 25  
top of the "T" shaped alley behind the funeral

141940

home, or perhaps after he turned north at the trunk of the "T", he may have forced her at knife point and under threats of stabbing to remove her coat and sweater and pull the top of her uniform down, or more likely, I suggest he did this 5  
himself because the middle button has been yanked off and disappeared, the zipper of the dress was sprung, yanked this way while zipped, and the brassiere strap is broken. Now after all this was done it is suggested that the deceased may have 10  
decided to make a run for her life, grabbed her coat around her, got her arms through and was running, only to be pursued and stabbed in the back, with the struggle to her death taking place in the trampled area where the body was found. 15  
The fact that the sweater was found inside out supports my theory, I suggest, because ... you believe ladies undress voluntarily, roll the sweater inside out, buried it in that manner. I had told you already what the Crown suggests as 20  
to how the sweater and the boot got buried and it could be the boot came off during this same violent struggle.

Now on some of the cross-examination in the trial I would gather that my learned 25  
friend may intend to suggest to you the improb-

141941

ability of anybody exposing themselves long enough  
to have sexual intercourse in these bitterly cold  
weather conditions in this back alley, and I think  
that is an argument which should not bear any  
weight whatever. You don't need to speculate how 5  
probable or otherwise it would be for a boy like  
David to want to have intercourse in a freezing  
back alley because on the evidence, I submit to  
you, that it is beyond dispute that somebody did  
indeed have intercourse with that girl in that 10  
back alley, without her consent, and in that  
freezing weather, and probably when she was  
unconscious or dead, and it is idle to suggest  
that nobody would force a girl to undress in that  
weather to gratify his sexual urges because you 15  
have the evidence right before you, I submit, that  
that is exactly what he did, and you have the  
evidence as to the state in which she was found.  
I don't think that anyone capable of doing to a  
young woman what you saw in this photograph number 20  
7 would be deterred from gratifying his sexual  
desires just because he was getting a little cold.  
The evidence speaks for itself, that he was not so  
deterred and he went ahead and did so.

It certainly looks to me that 25  
this poor girl put up a valiant struggle, by the

141942



way the snow was trampled in the area surrounding her body, and I would stress that we are talking about an unarmed girl, bare-handed, up against an assailant with a knife who put a brutal end to her life, without warning.

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Now again, I ... anticipate the things that my learned friend may raise, and I don't know if he may suggest to you the possibility that the victim was driven there by car, unloaded from the car on this spot or what, but I think Lieutenant Penkala cleared that up for us. He said that, his evidence is from what he saw on the snow the victim and the killer could have walked or run to the place where the body ended up, along the travelled portion of the two lanes. I'm talking about the tire tracks, the left and the right, and your common sense will tell you these are tamped hard and it is clear the alleys are open for traffic. So that the evidence is that they could have gone there along the right-hand or left-hand tire tracks -- and you know that that is where people walk in the winter if confronted with the alternative of walking in deep, heavy snow -- without it showing any recognizable foot marks or foot-prints of any sort. You remember Penkala said that it was so cold that it

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141943

made the snow act like sand and it just sort of falls in on itself. And I think the same argument goes for the business about the absence of tire tracks because the police looked carefully and they could not even discern tire tracks in that snow from their own identification van which, as you saw in P-4 was obviously down the alley, it is parked at the intersection. 5

Now the evidence is absolutely clear that there was another vehicle in that alley this morning, as seen by Mr. Diewald, the caretaker of the church. He said it was around the T-intersection, so there can be no question that at least one other had been there in the alley ... to the city police vehicles, and yet the officers, who looked carefully at the snow for tracks, could not even discern tracks of those vehicles, which I say reinforces what Penkala said to you about the snow being so sandy that it simply would not take impressions. 10 15 20

Now there is also a matter that I suggest may be raised by my learned friend that I want to deal with. The suggestion of the various Crown witnesses that they knew ... caused by a right-handed individual. If you had paid careful attention to the evidence, and I'm sure you did, 25

141944

you noticed that Penkala agreed that the knife wounds were inflicted by a person who used his right hand. He made a distinction there, to the difference between being right-handed and using your right hand, and if you look at the photographs I think you will see that there are slashes running down the neck diagonally towards the centre from either side, as far as I can see that can be caused as easily with the right hand this way, or with the left hand this way or this way, or even caused from behind the person reaching over and ... we don't know how it happened -- or it could have been with both hands. So I really feel that there is little to be gained from that line of inquiry. And you remember that Dr. Emson, when he was asked specifically ... by my learned friend, said there could be no certainty about the left-handedness or right-handedness of the killer, but he would say he used the right hand. And in this instance it may be more probable ... he switched, the killer switched hands in front of his victim ... from his ... There was no evidence as to the position of the assailant when the wounds were inflicted so I think that is right up in the air. I suggest that you use a great deal of caution before coming to a conclusion as to the

141945

handedness of the killer.

Now lady and gentlemen, one of the things that His Lordship will be telling you and that you must pass on in this trial is the credibility of the witnesses, and that is ... one 5 of the areas that is left for you to decide, who do you believe and who don't you believe, and so forth, the extent to which you believe witnesses. And I would like to make some suggestions in this regard now, if I may. I have already ... major 10 Crown witnesses in what I hope will assist you in deciding their credibility.

Now with the great majority of the witnesses, in fact, very nearly all of them, I will suggest to you that you will have no problem 15 whatever in accepting what they say as the truth, people finding things and that sort of thing. I think with a few other witnesses you may run into examples of what I call an honest witness who is 20 honestly mistaken, and perhaps one or two examples of that are Mrs. Gerse, who said there was a hole in the toque and I submit, or feel, that that isn't supported at all by the evidence; while Officer Grant said there was only one lump 25 recovered from the hard-packed snow, while I think you should have no trouble in deciding that

141946

Lieutenant Penkala, who was the man who collected the material, was correct that he collected two lumps and he found them in the snow pile. And I gave you those as examples of something that happens in every trial that I refer to as honest witnesses, honestly mistaken in their evidence. 5

Now you will also run into one or two occasions where the witnesses have said different things at the trial than they said at the preliminary inquiry, and my learned friend has demonstrated that on some occasions here. I just ask you to remember this is no uncommon phenomenon in cases of this nature, and I just ask you to remember that these events they are testifying about happened early in '69, they testified at a preliminary inquiry in the late fall of '69, and here we are, early in '70, and they are being asked to recall again. There is a year gone by and in the case of witnesses who make alterations in what they said in the court below, like Mrs. Danchuk, as to whether the accused's jacket was open or not, and things of this sort, those kinds of changes between here and the preliminary inquiry, I suggest should not be such as to cause you to disbelieve everything the witness says. 10 15 20 25

Now you will run into another

141947

phenomenon that happens at all trials involving a number of witnesses and that is the phenomenon whereby different sets of human eyes looked at one thing and each sees different things and ... later recall different things. A good example of that 5  
is with Ron Wilson's car. I think we can take Wilson's word that it was a ... Pontiac, light green in colour with a light top. He is the owner, he should know. Danchuk said it was a '58 Pontiac, he believed it to be blue and two-tone. 10  
The one tow truck man said he thought it was a greyish '58 Pontiac, and Anderson, another tow truck person, thought it was a '58 Chev. The mechanic thought it was either blue and white or green and white, a '58 Pontiac. Now I use that as 15  
an example of what I would call honest witnesses who have seen one item and come in here and honestly do their best to describe it and come up with different things.

Now there is the other category, 20  
including the main Crown witnesses, you are going to have to look carefully at their credibility. I do suggest to you, and leave it with you, that you may well find that the only one of them and ...  
major Crown witnesses, Wilson, Nichol John, 25  
Cadrain, who I submit ... lacking credibility is

141948

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Address to Jury  
Mr. Caldwell

Nichol John, and I suggest that even in her case only that part of her evidence ... the central and most important part.

Now in this trial there has been evidence of two separate voluntary admissions by Milgaard concerning the events in Saskatoon on January 31st, 1969. The first to Wilson in Calgary, at the bus depot at the time Wilson was not under the effects of drugs or intoxicants. Milgaard's statement there that he "hit" a girl, or "got" a girl in Saskatoon, that he had put her purse in a trash can and that he thought that she would be okay. Now this, I submit, obviously can only refer to the episode in which Gail Miller was killed and Gail Miller's purse was put in the trash can, and I suggest that it would be ridiculous to even suggest this can speak to any other incident, there's no way that could be a coincidence. He hit a girl in Saskatoon and put her purse in a trash can. The Crown submits now, knowing now of what you do know of what did happen in Saskatoon to the victim, I submit that statement is not only consistent with his guilt, it is absolutely inconsistent with any other rational conclusion whatever. In other words, there is no other sensible meaning, I submit, you can put on

141949

those words but that he was the one who attacked  
the girl and put her purse in the trash can.  
Quite apart from that, we have independent  
evidence of this, through the youths from Regina,  
Melnyk and Lapchuk. Like Ron Wilson these are not 5  
choir boys and the Crown is not putting them forth  
as an example of the all-American boy, but they  
are the people who happened to have been involved  
in these events. Now you remember that Melnyk  
said in May, that when they were in the room at 10  
the Park Lane Hotel, the television news came on  
about a stabbing death of a nurse in Saskatoon,  
and the police had not caught the person respons-  
ible. Melnyk said somebody asked Milgaard about  
this or accused him of it and that he was on his 15  
knees on the bed, put a pillow between his knees,  
started hitting the pillow as if he was stabbing  
something, said, "I killed her" or "I stabbed her  
14 times, I fixed her." And then he sort of  
rolled on his side and started laughing and 20  
everyone sat there apparently shocked by his  
actions. Lapchuk says that the news item was some  
reference to the nurse being murdered in Saskatoon  
and that he bugged Milgaard about it as he had  
done on many occasions before. You remember, they 25  
said they knew the accused had been questioned and

141950



it was their habit to kid him about it in a joking fashion, and this time he said, "Why don't you admit it, you know that you did it." Lapchuk then said things started happening, Milgaard got a sort of funny look, jumped off the bed was straddling a pillow on the floor, and said, "Where is my paring knife?" And those were his exact words, "Where is my paring knife?" He said Milgaard went through the motions of stabbing the pillow and said, "Yes, I stabbed her, I killer her, I stabbed her 14 times and then she died." Lapchuk said that the words "and then she died" were the ones he specifically remembered. That was a direct quote. He said he was shocked, the room became silent, he stared at the accused, as did everyone else, the accused looked up saw Lapchuk staring at him, got up, shrugged his shoulders and sat down.

Now neither Melnyk nor Lapchuk was at that time under the influence of anything in the way of liquor, drugs, L.S.D. et cetera. They frankly and freely admitted to His Lordship when he asked and to my learned friend when he asked, that each one of them at various times have taken drugs and they described what they were and when they had taken them, and each one unhesitatingly and openly admitted his criminal record.

141951

And lady and gentlemen, again, this frankness of admission on the part of both of these youths not only does not detract from their credibility, that they have criminal records, I submit that it increases their credibility. The fact that they admit things damaging to themselves without any quibbling, I submit makes them more believable witnesses. And their evidence bears the hallmark of genuine evidence, and that is that they show like the ... the differences you would expect between two people describing the same set of events, of the sort I have already mentioned, they have a slightly different recollection of the news story but that ... one of them says the pillow episode happened on the bed, the other one says it happened on the floor and the description of the words used by the accused, while the meaning is certainly the same, were different one from the other. Now that has to indicate to you that they didn't cook this story up or get together on it for some purpose of doing the accused harm. Where I suspect witnesses is when they walk into court and are clear: this is what was said and ... word for word; this is what was done, and we hear a pat story. This is the hallmark of phony evidence when you come in here with word for word from that

141952

I suggest that you may conclude that they did not cook a story up to do any damage to the accused here.

Now again, you recall their evidence that neither of them was under the effects of any drugs or whatever ... but my learned friend did bring out in cross-examination of the two that the accused himself -- and I think the term was "stoned" at the time, and I suspect that my learned friend may invite you to conclude that the accused did not know what he was saying at the time, and I have something to say on that issue. And you will be pleased to know that we are getting toward the end of what I have to say.

Now in law, the fact that a person is intoxicated on liquor, and I mean intoxicated, does not prevent his statement being given in evidence, it only goes to the weight of his statement. In other words, you should look at this condition of the accused as allegedly being stoned, whatever that means, not as to whether he said these things but only as to the weight you are going to put on it. Now it is notorious that a person who is intoxicated often says truthful things that they wouldn't say when they are sober ... you have the expression the truth will out

141953

when one is intoxicated and it seems to me that  
the same argument can apply to people that are  
stoned, that the inhibitions are released, that is  
the time when ... that is the case with the  
intoxicated person and you may well find that that 5  
would loosen the tongue of the accused in this  
case. But over and above that is the fact that  
the actions of Milgaard in getting into this  
kneeling position on top of that pillow and,  
according to both witnesses, striking as if in a 10  
stabbing motion, and the things he said, just like  
when he admitted the offence to Wilson in Calgary,  
can only be consistent with his guilt in the  
stabbing death of Gail Miller.

Now the actions he went through 15  
in the motel room obviously fit what happened in  
real life. You heard about what the injuries were  
to the body, how they were made. Kneeling over  
the pillow as if it were a body, making the  
stabbing motions and even to the extent of talking 20  
about a paring knife. Now there is no way the  
accused could have known those details ...it was  
the accused ... there is no way he could have  
known those details but that he was the killer in  
this instance, and it goes without saying that he 25  
could not have invented the details which would

141954

match the actual events so closely. And it also goes without saying that nobody who had, in fact, not done that deed would ever, drunk or sober, jokingly or otherwise, admit to those deeds in any way, shape or form, let alone describe them with such accuracy as the accused did in that motel room. His admissions to the Regina boys are not only consistent with his guilt, I submit to you they are inconsistent with any other explanation, rational or otherwise. In my submission, I see no possible way they can be interpreted other than that as a direct admission that he was the person who stabbed and killed the girl in Saskatoon. And that evidence is completely and entirely independent of Nichol John, of Cadrain, and Wilson, the people who went on the trip. Nothing to do with Saskatoon, and I submit that it is absolutely independent evidence which is reliable and which should be enough to remove any shadow of a doubt you may have had, if indeed you had any, up to this point as to the guilt of the accused.

Now when His Lordship charges you after you have heard from my learned friend, he will be giving you the usual instructions which are part of every criminal case and part of every jury trial, to the effect that the onus of proof

**141955**

in a criminal case is on the Crown, it remains on  
the Crown throughout and never shifts to the  
accused, that it is not up to the accused to prove  
his innocence. And all these things are ... these  
are standard instructions that must be given to 5  
the jury in every case. And he will also be  
telling you that the Crown must prove its case  
beyond a reasonable doubt and explaining to you  
that this is what the Crown is required to do in  
order to prove its case beyond a reasonable doubt, 10  
and that the Crown is not required to prove its  
case beyond a shadow of a doubt or to an absolute  
certainty -- and there is a difference -- which,  
as you will appreciate, the latter would be an  
impossibility in any criminal case. And His 15  
Lordship will tell you a number of other rules of  
law which you must use and apply in any criminal  
case.

Now lady and gentlemen, when you  
took your oath at the beginning of this trial to 20  
the effect that you would well and truly try and  
true deliverance make between our Sovereign Lady  
the Queen and the prisoner at the bar, you were  
getting involved in what I would call a double-  
barrelled proposition, and while His Lordship will 25  
rightly caution you to be fair and just to the

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Address to Jury  
Mr. Caldwell

accused, I ask you not to forget the other  
obligation which is on you, if the evidence, as I  
suggest it must be such in this case, that you  
have no reasonable doubt but that the accused is  
guilty, I ask you to render the appropriate 5  
verdict and, in this case, with the evidence so  
fresh in your minds, I ask you when you retire to  
consider whether you can come to any conclusion  
whatever, other than that the accused was in this  
case guilty of having committed non-capital murder 10  
on Gail Miller, as charged. Thank you.

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Tab "13"

**141958**



B E T W E E N:

HER MAJESTY THE QUEEN

ON THE INFORMATION OF

- and -

DAVID EDGAR MILGAARD

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SUMMATION OF MR. TALLIS:

Your Honor, in this case, I have a submission to make. I'll endeavor to position as well as I may, having regard to the seriousness of the charge facing this lad of 17 now, he was 16 at that time. My learned friend, Mr. Caldwell has summarized his submission at the end and has submitted to you that the accused is probably guilty, and accordingly, the evidence is sufficient to warrant putting him on his trial. Now in applying the legal test, Your Honor, to assessing this question, I would invite Your Honor to consider the case of R. vs. Kowden 90, Canadian Criminal Cases, at page 101, that is a Canadian case, because it's my submission, relevant to this. It holds quite clearly that there must be more than a possibility of the accused's guilt in order to warrant being committed for trial. My learned friend used the term probably, I take it he used it in contradiction to possibly. I would like to emphasize that term used. The Coffin case (in England) I think is a case which states the principle really well, (Ex parte Bidwell, 1937 1 K.B. 305) and it's cited with approval by a Crown prosecutor, Mr. Savage at (1 Criminal Law Quarterly at Page 77 , and at Page 80) that case is referred to as being very useful guide for Magistrates. It held that sufficient evidence or strong or probable presumption that he committed the offence must be found, so that this, I think, ties in very well with Kowden case that I have cited to you. Now, that principle I think has also been applied by His Honor Magistrate Rice in Manitoba, in the case of Regina vs. Latta, 36 Criminal Reports at Page 432. Now

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Your Honor, in this particular case, I would invite you, with respect to apply, directing your mind and the application of that opinion to the facts of this case, and here there can be no doubt that a girl is dead. My learned friend has dealt with that very briefly, and quite properly, but we were dealing with the question of possibility and probability, I invite you here to assess the evidence as a person with years of experience on the Bench, and consider, for example, the time element. I ask you to consider that in weighing this matter. You'll recall the young lady was seen alive at 20 to 7 that morning, she hadn't left the house as yet. The accused is seen shortly after 7 and away out at the Trav-A-Leer Motel, and sometime after that, he is seen at the Danohuk place. There is a time element there that I ask you to consider very carefully. I'm not going to be lengthy on this, now in addition to that, reference is made to Wilson's evidence, yet by the same token, Wilson's evidence is very clear that he's been in Saskatoon a number of times since then, and has learned his directions. He states their vehicle was never in the east-west alley or the one running north and south. You have Mr. DiWall's evidence that there is a car in there for ten minutes at the relevant time, there is no suggestion even by the Crown's evidence that this car was there. These are matters, Your Honor would weigh to consider possibility and probability. I'm not going into questions that came out in cross-examination. Anything that Cadrain and Wilson said was after they were prime suspects that fingered another individual.

Now that time element is of particular significance, particularly when you consider the physical evidence. the girl obviously had been handled quite a lot, for quite a while. I'm not thinking just in terms of sex. That overcoat had been taken off the arms. The dress had been taken down, rolled down and up, if I may use that term, and obviously, the coat had been put back on and the staywounds in the back must have

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been inflicted after the coat was put back on. And similarly, the stab wounds in the front area must have been inflicted after the dress was rolled down, as there is no penetration of the dress. These are factors I ask you to consider, dealing with possibility and probability. Every one here has a lot at stake, not the least is David Milgaard. Then also, one very interesting facet to this case, the evidence is that he cooperated fully in making samples of his blood available. The evidence was that he is a non-secretor. The seminal fluid that was tested by Mr. Painter indicated that person in the initial test was Group A, but a secretor, as distinct from a non-secretor. The Crown suggests the possibility that some of the accused's blood is in the seminal fluid. This possibility is put forward to diminish a piece of evidence, a piece of scientific evidence which initially would completely eliminate David. The Crown can't be heard to say there's a probability it was his blood in the seminal fluid. The doctor suggests it could be from the onset of menstrual flow, or from a vaginal irritation, or possibly from the accused, if he is bleeding himself internally, or externally.

COURT: On that point, Mr. Tallis, there is one thing I would like to hear on that point, did the doctor not say quite definitely that seminal fluid that was found inside the victim could have been there sometime, a considerable time before 7 or 8 o'clock in the morning?

MR. TALLIS: I didn't interpret his evidence in any way the girl's having sexual intercourse with someone other than her assailant, and I did not contend, that, Your Honor, I did not interpret his evidence as suggesting that in any way, because Your Honor is, as I take it, raising what I would submit is the remote possibility of her having intercourse around 2 o'clock in the morning.

COURT: I may say I thought that was one of the reasons why 2 o'clock was mentioned..

MR. TALLIS: No, that has nothing to do with - this was another individual

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(3)

watching there in a car, his identity was never been ascertained. I'm not alleging the deceased girl was in that position at 2 o'clock in the morning. Any of my questions to the doctor were not for that purpose, Your Honor, if Your Honor thought they were, I must...

COURT: Thank you for clearing that up. I know the girl's parents have been in Court, it's only proper that this should be said and said quite openly.

MR. TALLIS: It's my respectful submission, Your Honor, when you examine all of the evidence in the light of the principles that I have suggested applied, and from which I think my learned friend would not dissent, in view of the terminology he used, it's open for you to find that the degree of probability is not there, I would submit to you at this stage, you have at best a possibility when you consider the evidence. I accordingly submit on the evidence, the accused should be discharged.

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