Appendix P
Federal Minister's Decision of February 27, 1991

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Minister of Justice
and Attorney General of Canada

Ministre de la Justice
et Procureure générale du Canada

A. Kim Campbell, P.C., Q.C., M.P./c.p., c.r., députée

February 27, 1991

Mr. Hersh E. Wolch, Q.C.
Wolch, Pinx, Tapper, Scurfield
Barristers & Solicitors
ICG Building
904 - 444 St. Mary Avenue
Winnipeg, Manitoba
R3C 3T1

Dear Mr. Wolch:

I am writing to you in your capacity as counsel for Mr. David Milgaard, on whose behalf you have applied for the mercy of the Crown pursuant to Section 690 of the *Criminal Code*. The application concerns Milgaard's conviction for the non-capital murder of Gail Miller in Saskatoon in 1969.

Upon receipt of your application, departmental counsel undertook a full review of the case. Their advice following that review has been provided to me, and I have considered it along with the information and submissions you provided the Department. In view of the complexity of the issues raised and the considerable public interest that has been generated in the case, I thought that I should describe in some detail the factors and evidence that have led me to conclude that a remedy under Section 690 is inappropriate in the circumstances.

Section 690 of the *Criminal Code* provides that the Minister of Justice may direct a new trial if after inquiry the Minister is satisfied that in the circumstances a new trial is justified; similarly, the Minister of Justice may refer the case to an appellate court for hearing. The purpose of this procedure is to permit a review of cases where new evidence or information raising doubts concerning the correctness of a conviction has arisen after the full judicial process, including appeals, has been exhausted. I wish to emphasize that it is not the function of the Minister of Justice to retry the case. The remedy is an extraordinary one, as the normal judicial process is designed to ensure that no miscarriage of justice has occurred. Ministers of Justice traditionally have declined to act where the basis upon which the application has been brought relates to matters or issues which were considered by the jury at trial. For instance, relief is commonly declined where the applicant points to the unsavoury character of a witness when that issue was placed squarely before the jury. Ministers of Justice have in the past intervened and referred the case to the courts where it can be demonstrated that a reasonable basis exists to conclude that a miscarriage of justice has likely occurred.

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I propose to divide my comments into four parts. First, I will outline the materials received from you by the Department, and will describe the process by which your application was examined. Second, I will outline the evidence considered by the jury at the trial of Mr. Milgaard, commenting primarily upon the evidence for which there is confirmation or corroboration from one or more sources. Third, I will comment upon the submissions you have advanced on this application, including the evidence of Ron Wilson, and the basis upon which you have suggested that the case should be referred to the courts for a remedy under Section 690 of the *Criminal Code*. Finally, I will outline the basis for the conclusion I have reached on the application.

Examination of the Application:

Section 690 of the *Criminal Code* confers a serious and important responsibility upon the Minister of Justice. It is important to ensure that a case has been reviewed as thoroughly as possible, as the remedy provided under that section is one of last resort. When conducting an investigation into the matter, and later advising the Minister of Justice, the Department of Justice has as its duty an objective discovery of the facts, including an impartial examination of any new evidence that may become available. The approach taken during the investigation is not adversarial in nature; rather, it takes the form of an impartial inquiry into the full circumstances of the case. Upon conclusion of the investigation, the Department of Justice equally has a duty to consider fairly the arguments put forward by counsel for the applicant, and to measure the facts of the case and counsel's submissions against the provisions of Section 690 of the *Criminal Code*.

During the investigation of this matter, a number of comments were made publicly which tended to suggest that officials within the Department were not impartial in their approach to the application. That was simply not the case. At all times I have had and continue to have full confidence that officials within this Department have handled the inquiry fairly, objectively and competently, and that their approach to the examination of the case was at all times wholly consistent with the best traditions of the criminal justice system in Canada. In view of the allegations that were made, senior officials concluded that, in the particular circumstances of this case, especially in view of the public perceptions that could flow from these unwarranted allegations, it would be appropriate to seek the advice of eminent counsel with considerable experience in matters of criminal litigation. The Honourable William R. McIntyre, Q.C. who practices in Vancouver, was retained for that purpose. Mr. McIntyre has considerable experience in criminal litigation as a practitioner and as a former member of the Supreme Court of British Columbia, the Court of Appeal for British Columbia and the Supreme Court of Canada. Mr. McIntyre has reviewed the case in detail, and has provided his advice to me as well.

I have reviewed the information and submissions you have provided, which included your initial application dated December 28, 1988, the subsequent information and materials you furnished between May 1989 and September 1990, and the submissions that you presented, in person, to senior departmental officials on October 1, 1990. In addition the entire record of the trial and appellate proceedings has been reviewed. Over three dozen individuals (some of whom testified at trial, while others did not) were interviewed

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or re-interviewed by the RCMP and departmental counsel, in some cases under oath. Counsel who represented Mr. Milgaard at trial and on appeal was also interviewed. The forensic evidence discussed in your application and the reports you provided were discussed with their authors and also evaluated by scientists in that discipline. A departmental report was completed and reviewed by senior departmental counsel. In formulating my conclusions on the application, I have personally reviewed the facts of the case, as well as your submissions and the advice I have received, in an independent and careful manner.

The issues raised by your application are as follows:

(1) the submission that new evidence from Deborah Hall and Ute Frank, who were not called at trial, contradicts the trial evidence of Crown witnesses Melnyk and Lapchuk;

(2) the submission that "advances in scientific technology have allowed the applicant to discredit the forensic evidence called at his trial and to provide evidence that exculpates him as the perpetrator of the crime";

(3) the submission that there is new evidence in the form of the statement provided by Ronald Dale Wilson on June 4, 1990; and the request to re-examine the evidence of Albert Cadrain and Nichol John in light of the contents of Mr. Wilson's June 1990 statement;

(4) the allegation that one Larry Fisher may have committed the crime and the impact that unsolved rapes in Saskatoon could have had on the jury's deliberations; and

(5) the submissions that David Milgaard could not have killed Gail Miller because she was killed at another location and her body deposited in the alley; or, if the offence had been committed in the alley, David Milgaard had insufficient time to commit it, or was not near the scene of the crime at the time it was committed.

At the outset, I should note that the jury found that the evidence presented at trial, while circumstantial, was sufficient to establish the guilt of David Milgaard for the murder of Gail Miller. The Saskatchewan Court of Appeal did not find any reversible error in the trial, and the Supreme Court of Canada refused leave to appeal that judgment. Mr. Milgaard elected not to testify at his trial.

For the reasons that follow, I have concluded that it would not be appropriate to refer the case to the courts either for a new trial or for a hearing in an appeal court. Evidence and information advanced on this application has failed to convince me that a remedy is justifiable. Respecting some of the points raised, there are no reasonable grounds to believe that the evidence or information made available would have affected the verdict of the jury at trial. With other points, the information provided was simply unreliable. There is, in my view, no body of new evidence or information capable of demonstrating that a miscarriage of justice has likely occurred in this case.

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The Evidence At Trial

The evidence at trial, which was corroborated or has since been confirmed, indicated that Milgaard, accompanied by Ronald Wilson and Nichol John, arrived in Saskatoon from Regina on the morning of January 31, 1969. John and Wilson testified that each saw Milgaard with a knife during the journey. John described one knife in Milgaard's possession as a maroon-handled paring knife, similar in appearance to the murder weapon.

Ronald Wilson and Nichol John testified that sometime after 6:30 a.m. that very cold morning, David Milgaard asked a woman, who was wearing a dark or black fabric coat, for directions. The woman, described by John as being in her early twenties, was walking in the same direction in which their car was travelling. Unsuccessful in obtaining directions from the woman, Milgaard, accompanied by Wilson and John, continued driving until their car became stranded on ice in the same block in which they met the woman. Milgaard and Wilson separated in an effort to obtain help; Milgaard left in the direction from which they had just come; Wilson went the opposite way. When Wilson returned, he observed Nichol John to be upset and hysterical. Upon Milgaard's return to the car, she moved away from him.

Although Nichol John and Ron Wilson provided different locations for the stranded car, the distance between the car and the body, calculated from the police diagrams entered in evidence, and the locations of the car provided by Wilson and John indicated that the car was stranded close to the body. Their evidence places Milgaard near the scene of the crime in contact with a woman wearing a coat which was similar in appearance to the one worn by the victim. It also places the vehicle in the vicinity of the killing and in the area in which various articles belonging to the victim were found.

The evidence also indicated that there was blood on Milgaard's clothing when he arrived at Cadrain's residence shortly after 9:00 a.m. on January 31, 1969. The blood had not been there the day before. Milgaard was anxious to change his clothes. After changing, he left the house taking the soiled clothes with him. None of his companions saw those clothes again.

Albert Cadrain paid the auto repair bill thus enabling them to continue their trip. During the Saskatoon - Calgary portion of the journey, Nichol John found a woman's cosmetic case in the car's glove compartment. No one knew the origin of the case; it had not been in the glove compartment during the Regina - Saskatoon leg of the journey. Without speaking Milgaard took the case from Ms. John and threw it out the window of the speeding automobile. The group stopped at a grocery store to buy food in Rosetown, Saskatchewan. At Milgaard's suggestion, Albert Cadrain also bought a paring knife.

The evidence further indicated that the broken blade of a paring knife was found beneath the body of Gail Miller. The maroon coloured handle which was once attached to that blade was found in the backyard of a house adjacent to the east-west alley which formed the top of a "T" when bisected by the alley in which the body was found. The body was located 30 feet from the intersection of the alleys.

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Evidence was introduced that in May 1969, following the broadcast of a news story on the unsolved Miller murder, Milgaard responded to taunts from George Lapchuk, an acquaintance. Milgaard while sitting astride a pillow began to strike the pillow in a violent stabbing motion. Craig Melnyk, Deborah Hall and Ute Frank were also present. Milgaard was quoted by witnesses interviewed in this application as stating that he had stabbed the victim. Witnesses differed, however, on whether Milgaard was serious at the time.

The above facts do not incorporate significant portions of the trial evidence of Ron Wilson, which I will later discuss in greater detail. A conviction registered on the above facts, alone, would not signal that a miscarriage of justice has likely occurred.

Submissions Advanced in Support for the Application

1. The new evidence of Deborah Hall and Ute Frank

Inquiries were made concerning the submission that Craig Melnyk and George Lapchuk mis-stated the truth when they testified that David Milgaard re-enacted the stabbing in a Regina motel room in May, 1969. This submission was initially based on the affidavit of Deborah Hall. Reliance was later placed on the statement of Ute Frank as well.

There are two differences between the testimony of Melnyk and Lapchuk and the sworn interview of Deborah Hall conducted by the department in relation to her affidavit. The first concerns the interpretation to be placed on Mr. Milgaard's words and actions. Deborah Hall confirms the testimony of the crown witnesses concerning what David Milgaard did and said. However, she disagrees with the interpretation that Messrs. Melnyk and Lapchuk place on those words and actions. She felt that David Milgaard was making a "sick" remark and was not serious. Whether her opinion of Milgaard's sincerity would have been shared by the jury is, at best, debatable. Nonetheless, the interpretation to be placed on their testimony in the context of all the evidence presented was certainly a matter for the jury to consider.

The second concerns an amplification of the words attributed to Milgaard by Hall. Ms. Hall quoted Milgaard as saying that he had sexual relations with the victim after he had stabbed her. Neither Melnyk nor Lapchuk had mentioned this in their evidence.

A review has also been made of the statement of Ute Frank, to determine whether or not she refuted the testimony of Melnyk and Lapchuk. I observe that Ms. Frank's statement neither refers to nor refutes the conversation between Lapchuk and Milgaard and relates to a separate conversation. Additionally, she conceded that her powers of observation were dulled by the effects of the drugs she had ingested that evening.

It is significant that Ms. Frank's statement was disclosed to Mr. Milgaard's trial counsel, who later interviewed Ms. Frank during the trial, but chose not to call her as a witness. Your client's counsel was, as I am sure you are aware, particularly experienced in criminal litigation matters, and his decision not to call this witness was

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based upon his understanding of what she could say in court. Even assuming that Ms. Frank had testified at Mr. Milgaard's trial in a manner which was consistent with her statement, there is no reasonable basis to believe that the trial result would have been different. The statements of Ms. Frank and Ms. Hall would not have detracted from the evidence of Messrs. Melnyk and Lapchuk; indeed, Ms. Hall not only confirmed what Milgaard had said but attributed to him a further admission detailing a sexual assault perpetrated by him upon the victim at the time of the murder.

2. The forensic evidence.

Inquiries were made concerning your submission that a proper understanding of the forensic evidence at trial would have resulted in the exoneration of David Milgaard. The forensic evidence concerned seminal fluid found in one of two frozen yellow lumps in the snow which had been collected from the area of the victim's body.

In approaching this evidence I understood that a "secretor" is a person who has blood grouping substances or "antigens" in other bodily fluids (such as perspiration, saliva, and seminal fluid). This group or class of person secrete their antigens into their other bodily fluids. On the other hand, "non-secretors" only have "antigens" in their blood.

At trial, the RCMP forensic analyst testified that he found "A" antigens in the sample taken from one of the lumps of frozen snow, and concluded that the sample was probably from a blood group "A" person that was a secretor, or from a blood group "AB" person. The analyst also testified that Milgaard had blood type "A", and the test he performed on a saliva sample from Milgaard indicated that Milgaard was a non-secretor. There was, therefore, some evidence from which the jury could have inferred, if they felt it reasonable, that the seminal fluid did not originate from Milgaard.

Further tests performed by the analyst to determine the presence of blood in the sample were inconclusive. Although the initial screening test indicated a positive *presumptive* test for blood, it was not a conclusive test and the analyst was unable to chemically identify blood. He noted that on earlier occasions he had obtained a false positive reaction from leather products and from leafy vegetables such as lettuce, when he performed the test for blood. Consequently he told the Court that he could not determine whether there was blood in the sample, and he could not say with certainty whether the sample came from a secretor or a non-secretor.

In your submission, you relied, primarily, on the report of Dr. Ferris who examined a portion of the trial transcript and several test results. Dr. Ferris expressed the view that the serological evidence at trial "could be reasonably considered to exclude [David Milgaard] from being the perpetrator of the murder". In his view the pale yellow colour of the seminal fluid demonstrated that there was insufficient blood to provide the "A" antigens detected in the tests performed by the analyst. Therefore, he concluded that the sample came from a secretor of blood group "A". Assuming that Milgaard is a "non-secretor", he concluded that Milgaard could not have provided the seminal fluid. He also assumed that the donor of that seminal fluid was Gail Miller's assailant.

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You also submitted the report of Dr. Peter Markesteyn, who, at your request, provided an opinion on the report of Dr. James Ferris. On the assumption that the seminal fluid was uncontaminated, he shared Dr. Ferris' view "that the serological evidence *failed to link* David Milgaard" to the crime:

> If to everyone's satisfaction, it was established that the origin of the yellowish patch was unadulterated, uncontaminated human semen, then the presence of the A-antigen in this specimen, clearly, from a serological point of view, *could not be Mr. Milgaard's*.

However, he also shared Dr. Ferris' concern about the integrity and continuity of the samples of the alleged semen. Noting that human semen does not freeze into a yellowish stain, he pointed out that dog urine often contains semen. He was, however, unable to reach a firm scientific conclusion whether the semen retrieved from the snow was human because he could not review the methodology and the notes of the analyst who performed the test. Those notes are no longer available. Dr. Markesteyn added that "[t]he determination of the non-secretor status of Mr. Milgaard, although perhaps acceptable at the time, would now no longer serve as proof of his non-secretor status."

In your application, you have submitted that the forensic evidence, when viewed with the benefit of more advanced scientific knowledge, serves to exculpate Milgaard. After extended consideration of this issue, I am unable to agree with you. Your application proceeds on the assumption that David Milgaard is a non-secretor. There was some evidence suggesting this at the trial, although the validity of the testing procedures then used have since been called into question. I will, however, proceed on the assumption that your client is a non-secretor, as that places him in the strongest possible position.

It is important to remember that it is common ground, both on the basis of the evidence tendered at trial as well as the information from current experts, that the probability of contamination of the seminal fluid in this case, which was found in the snow after several days of activity at the scene, was such that it was difficult to draw any inferences from the evidence at all. Dr. Ferris was aware of this, and on page 4 of his report he expressed surprise that the samples were admitted into evidence, given the circumstances and timing of their discovery. When interviewed, he agreed that once contamination of the sample was taken into account, the forensic evidence neither inculpated nor exculpated David Milgaard. Dr. Markesteyn's report similarly underscores the limited conclusions (if any) that can be drawn from the forensic evidence. A review of the transcript at trial also establishes that both the trial judge and the prosecutor were well aware of the fact that this evidence, once subjected to careful scrutiny during the trial, had little probative value. Indeed in his submissions to the jury, prosecuting counsel told the jury that the forensic evidence neither inculpated nor exculpated David Milgaard. The trial judge did not comment on the forensic evidence in his charge to the jury. Despite this, counsel appearing for the accused did not ask the judge to provide direction to the jury through a recharge. That is not surprising, because the evidence, as tendered, favoured Milgaard's position.

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In the final analysis, the forensic evidence presented at trial proved nothing. With the benefit of hindsight, it may have been preferable had the evidence simply not been tendered. Nevertheless, the case against Milgaard was a strong one. The suggestion that the forensic evidence exonerates Milgaard mis-states the value of that evidence. The forensic evidence tendered at trial, when elevated to its highest probative value, is neutral, establishing neither guilt nor innocence. The recent opinions do not establish that the evidence should now be viewed any differently.

3. The new evidence from Ronald Dale Wilson.

Inquiries were also made concerning the submission that Ronald Dale Wilson, after being coerced and manipulated by the Saskatoon police, testified falsely at the preliminary inquiry and at trial. Ronald Wilson's statements were reduced to writing on March 2, 1969, May 23 - 24, 1969, June 4, 1990 and July 20, 1990. In his June 4, 1990 statement, Mr. Wilson denied portions of his May 23, 1969 statement. Nonetheless, the May 23, 1969 statement and Mr. Wilson's comments during his July 1990 interview, place Mr. Milgaard in contact with a woman wearing a dark coat, near the scene of the offence, at or near the time the offence occurred. Although Wilson denied seeing a knife in Mr. Milgaard's possession in June 1990, he admitted in July 1990 that he saw a bone-handled hunting knife on Milgaard during their trip from Regina to Saskatoon.

In June 1990, Mr. Wilson also stated that he began to implicate Milgaard after lengthy interviews by police authorities. However, in July 1990, he acknowledged that he had *forgotten* that he had implicated Milgaard in Regina before he arrived in Saskatoon, where he was interviewed by police. I consider this oversight by Mr. Wilson to be very important in assessing the allegations of police coercion and manipulation that he advanced to explain his incriminating statement of May 1969, and his trial testimony.

Mr. Wilson testified at trial that he saw David Milgaard in possession of a knife resembling the murder weapon during the Regina-Saskatoon portion of their trip. He said that he heard Milgaard call the woman wearing the dark coat, from whom they had unsuccessfully sought directions, a "stupid bitch". He told the jury that he had been separated from Milgaard for approximately fifteen minutes while he unsuccessfully sought aid for his stranded car; and that he heard Milgaard say "I fixed her" when the latter returned to the car. He also testified that Nichol John was hysterical when he returned to the car; that he saw blood on Milgaard's pants at the Cadrain residence; and that David Milgaard threw a cosmetic case out the window of the speeding car on the way to Calgary and that Milgaard told him in the Calgary bus depot that he (Milgaard) had "hit a girl" or "got a girl" in Saskatoon, and had put her purse in a trash can.

Mr. Wilson now states that he has no recollection of Nichol John's hysteria when he returned to the car, nor of the incident involving a ladies cosmetic case. Although twenty years have elapsed since this event, others who witnessed it vividly recall the cosmetic case incident. Mr. Cadrain and Ms. John also confirm events, which were the subject of Mr. Wilson's trial testimony, that Mr. Wilson no longer recalls.

Some of Mr. Wilson's recent recollections appear to be based not on facts, but on rationalizations many years after the event. For example, he denied that Milgaard entered the motel in his stocking feet on the morning of January 31, 1969. Mr. Wilson assumed that no one would venture out dressed in that fashion in those frigid temperatures. However, Wilson's own evidence at trial, confirmed by the motel operator, showed that David Milgaard did enter in his stocking feet.

Careful consideration was given to Mr. Wilson's allegations of undue police pressure during his stay in Saskatoon. An examination of the police files, interviews with the officers who were principally involved in questioning Mr. Wilson in Saskatoon, and a careful examination of Wilson's allegations of coercion and manipulation prompts me to conclude that Mr. Wilson's characterization of those events grossly exaggerates what occurred, and may reflect a misunderstanding of then existing polygraph procedures.

The questions on the polygraph test merely elicited a yes or no answer. The fact that the polygraph testing procedures, then in place, required the operator to repeat the questions during the monitored phase of the test, coupled with the operator's practice of reading the questions to the subject and permitting the subject to read the question to ensure that the latter understood them, accounts for the repetition which is referred to in Mr. Wilson's complaint.

Mr. Wilson's claim concerning the length of his polygraph session also exaggerates the length and the nature of the questioning at that time. When interviewed, Mr. Wilson said that the May 23, 1969 session began between 12:00 and 1:00 p.m. at the Cavalier Hotel. Mr. Wilson's statement, which was taken the same day, began at 3:30 p.m., and was sworn before a justice of the peace at the police station. Although he may have been away from his hotel for six hours, Mr. Wilson's suggestion that a police "sweat session" (to use his term) led to the incriminating statements reflects a mistaken appreciation of those events. This is underscored by Mr. Wilson's admission that he had forgotten that he implicated Milgaard in Gail Miller's death before he went to Saskatoon, and not as a result of the questioning in Saskatoon by police and the polygraph operator.

Mr. Wilson has acknowledged that the questioning was polite and courteous, and that the tone of the interview was pleasant. Further, he noted that he was neither threatened nor induced by promises to provide the statement. He confirmed this at the preliminary inquiry, at trial, and during his July 1990 interview.

During that interview he maintained that he was questioned on the facts contained in his May 1969 statements and lied only when directed to do so by the polygraph operator, so that the latter could obtain a reading on the polygraph machine. It is noteworthy to mention that Mr. Wilson also confirmed that the polygraph questions related to the facts recited in his May 23, 1969 statement, which were repeated at the preliminary inquiry and at trial.

Only Mr. Wilson's assertion, twenty-one years after the event, supports the proposition that his evidence was coerced, planted or fabricated at police insistence. His own description of his contacts with police, both before he was taken to Saskatoon, and while he was there, offers no support for the suggestion of coercion. It reveals persistent

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questioning which one would expect in a case of this nature. His suggestion that he implicated Milgaard only as a result of a "sweat session" in Saskatoon is negated by his admission that he implicated Milgaard before his visit to Saskatoon. Furthermore he voluntarily disclosed to Saskatoon police the circumstances surrounding the hotel room re-enactment of the crime by Milgaard which was observed by Melnyk and Lapchuk. This enabled the police to obtain evidence, which was previously unknown to them, for trial; and, it militates strongly against the proposition that Mr. Wilson was a coerced and fearful witness.

On the whole of the evidence available to me, I can find no basis for confidence in Mr. Wilson's allegations that his statement incriminating Milgaard was obtained by the manipulation or coercion of police investigators. The current retraction by Mr. Wilson of much of his trial evidence is unconvincing.

Little if any weight can be given to suggestions that Albert Cadrain's trial testimony was unreliable. While Mr. Cadrain experienced personal and emotional difficulties *after* the trial, his trial evidence was confirmed by other witnesses and has since been confirmed by inquiries conducted during this application. It should be noted that he withstood a vigorous cross-examination by experienced counsel. Mr. Cadrain's personal difficulties since the trial do not detract from the credibility of the evidence he provided during the trial.

4. The impact that Larry Fisher's criminal behaviour could have had on the jury's deliberations.

Inquiries were also made concerning the submission that one Larry Earl Fisher was Gail Miller's assailant. The observation of Linda Fisher, his former wife, that her paring knife was missing at the time of the murder was fully investigated, in addition to other assertions. Neither Ms. Fisher's suspicions, which were conveyed to the police in 1980, nor other well publicized assertions by her, provide any evidence to link Larry Fisher to Gail Miller's death. Ms. Fisher noted that the photo of a knife similar to the murder weapon indicated a different handle type, colour and blade from her missing knife. However serious Mr. Fisher's criminal record may be, the entire record at trial and in this application reveals no evidence to connect him with the killing of Gail Miller. Although it was, as you have conceded, quite coincidental that Mr. Fisher resided at the Cadrain residence during Mr. Milgaard's visit, no guilt or suspicion of guilt can be attributed to Fisher in the absence of some form of evidence linking him to the crime.

5. The submissions that David Milgaard could not have killed Gail Miller.

Careful consideration was given to your submission that Gail Miller died at another location and her body was deposited in the alley. The signs of a struggle illustrated by the condition of the snow, the finding of the knife blade underneath the body, and the type, location and pattern of the bloodstains in the snow are examples of evidence from which the jury could have concluded that the murder occurred at that location. In the absence of any evidence suggesting that the offence occurred elsewhere, I am satisfied that this issue was properly left to the jury.

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Your submission that Mr. Milgaard's separation from his travelling companions was completed before the victim left for work, and the submission that his separation did not allow him sufficient time to rob and murder the victim was considered. The evidence at trial established that the length of the separation was approximately fifteen minutes. The precise time of that separation and the amount of time required to complete the offence was squarely before the jury who heard the witnesses, counsel's address and a proper charge on this point. The jury's conclusion ought not to be disturbed on the basis of Mr. Wilson's recent contention that he was separated from Milgaard for approximately three minutes. That contention, unsupported by any other evidence tendered at trial or available to us now, is simply not credible and certainly does not provide a proper basis for re-opening the case now.

Careful consideration was given to your submission that David Milgaard was not at the scene of Gail Miller's death when she died. Reliance was placed on the testimony of the motel operator, Mr. Rasmussen, who testified that he opened the motel shortly after 7:00 a.m. and provided a map to a young man shortly thereafter. Mr. Rasmussen also stated that the man who got the map stayed approximately five minutes before departing in a car. Reference was also made to the testimony of the church caretaker who saw a figure passing in front of a pair of headlights between 7:00 and 7:10 a.m. in the east - west alley which formed a "T" with the alley in which Ms. Miller's body was discovered. It was suggested that an inference could be drawn that the figure that passed in front of the headlights was responsible for Gail Miller's death. It was submitted that if that were the case, the circumstances would exclude David Milgaard because he was at the Trav-a-leer motel at approximately the same time.

There was, however, evidence from which the jury may have viewed the timing of these events from another perspective. According to Mr. Wilson's evidence, his car became stuck in the lane behind the Danchuk residence after they left the motel. The distance between the motel and the Danchuk residence is such that the journey would only take a few minutes because that distance is considerably shorter than the distance between the crime scene and the motel. To drive the 2.6 kilometre distance between the crime scene and the motel at speeds between 40 to 50 kilometres per hour requires approximately 5 minutes.

According to Mr. Danchuk, he left for work between 7:30 and 7:40 that morning. Using Mr. Danchuk's estimate as a starting point, and retracing the trio's activities from their initial contact with Mr. Danchuk, the jury were entitled to find that Wilson's car left the motel closer to 7:30 a.m. instead of shortly after 7:00 a.m. The motel operator testified that the young man who obtained the city map stayed approximately five minutes before departing. That places Mr. Milgaard's arrival at the motel at approximately 7:20 or 7:25 a.m. In view of the travel time between the crime scene and the motel, there would be ample time to cover that distance.

It is important to remember that the jury heard all this evidence at trial. The jury heard the witnesses, counsels' addresses, and a proper charge on this aspect of the case before they reached their conclusion. Indeed, this was one of the primary defences raised at trial. There is no new evidence to suggest that their conclusion was probably wrong.

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Conclusions:

Based on my review of the evidence and the information and submissions presented in this application, I am satisfied that the verdict of the jury was fair and justified according to the law applicable at the time, and continues to be so notwithstanding the information and submissions you have brought to my attention.

The information provided by Deborah Hall does not detract from the evidence led at trial, and Mr. Wilson's present recollection of the events in question is palpably unreliable. The suggestion that the forensic evidence exculpates David Milgaard overstates the value of that evidence, which established neither guilt nor innocence. Further, there is no reliable basis to believe that Larry Fisher was connected in any manner with Gail Miller's death. The submissions concerning the location of the offence and Mr. Milgaard's opportunity to commit the offence were fully canvassed by trial counsel and by the judge who properly charged them on that point. There is no body of new evidence which constitutes a reasonable basis for believing that a miscarriage of justice likely occurred in this case, or, to adopt the test suggested by you during submissions, there is no basis to conclude that a miscarriage of justice may have occurred here. Accordingly I am not prepared to refer this case back to the courts.

Your written and oral submissions in support of Mr. Milgaard's application ensured that all issues in this case were carefully addressed and I thank you for them.

Sincerely,

ORIGINAL
SIGNED BY

A. Kim Campbell

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