

COMMISSION OF INQUIRY INTO THE WRONGFUL
CONVICTION OF DAVID MILGAARD

REPLY FILED ON BEHALF OF EDDIE KARST

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1. We have had an opportunity to review the Submissions made by various parties. With the hope of not repeating submissions that we have already made, we submit the following:

Disclosure

2. Lengthy submissions have been made both by counsel for David Milgaard and Joyce Milgaard (the "Milgaard Submission"), as well as counsel for Justice Tallis concerning the issue of disclosure. This is a subject which has been addressed by counsel for Mr. Caldwell. We do however note the following:

- (a) Any assessment of the disclosure issue must be made in the context of the practice that was in place in 1969/70. It is significant that a number of parties who have reviewed this matter, including the Supreme Court of Canada, did not find a problem with the disclosure that took place bearing in mind the disclosure practice at the time;
- (b) Det. Karst was not responsible for transmitting the police file to the Crown Prosecutor's Office and he had no role in determining what disclosure was to take place. He assumed that everything would be provided to the Crown Prosecutor but that is not something he had specific knowledge of.¹

Coercion or Manipulation of Crown Witnesses

3. We respectfully adopt and agree with the submissions made in the Brief filed on behalf of the Attorney General of Canada representing the Royal Canadian Mounted Police ("RCMP") and specifically paragraph 79 concerning the unfounded allegations

¹ Eddie Karst Transcript pp. 12221-22

that the Saskatoon City Police ("SCP") had coerced or manipulated witnesses during the original police investigation. The fact is that notwithstanding the repeated suggestions and allegations, no evidence was brought forward to establish that the SCP had coerced or manipulated any witnesses during the original police investigation and this was later confirmed by the RCMP during their criminal investigation into police and prosecutorial alleged misconduct.

4. Ron Wilson testified that Det. Karst treated him fairly, that he did not receive any threats, that Det. Karst did not scare him and that no attempt was made to put words in his mouth. On the other hand, he was scared of David Milgaard.² Similarly Nichol John confirmed that she was not threatened by police and when interviewing her they advised her to take her time and they did not put words in her mouth. She does not believe that she lied when she spoke to the police.³

5. It should be noted that there were a number of media reports which provided extensive details about the murder of Gail Murder. While we do not suggest that any of them were read by Nichol John or Ron Wilson, the fact is that many factual matters about the murder were in the public domain.⁴ We note for example that Nichol John spoke with her friend, Barbara Berrard about the murder itself prior to her being interviewed by the police.

Role of Det. Karst

6. In paragraph 7 of the Milgaard Submission the statement is made that after Albert Cadrain came in, Det. Karst immediately set about the task of locating Ron Wilson, Nichol John and David Milgaard. This is not correct. David Milgaard was located and Det. Karst was sent to interview him. He was not involved in locating Ron

² Ron Wilson Transcript pp. 5515-16 and 5983-84

³ Nichol John Supreme Court of Canada 302469 at 520-22, Eugene William's Interview 125206 at 227, Dr. Fleming Interview 031224 at 226-27, Joyce Milgaard Interview 048643 at 656-62, 682-3

⁴ Media Reports 159791, 226843, 004085, 039073, 218745, 004985 and 050614

Wilson or Nichol John at that time. He was not the "lead investigator" as he is described in paragraph 83 of the Milgaard Submission.

Nature of the Investigation

7. The Milgaard Submission repeatedly speculates about what was or was not done by the police in carrying out their investigation. Examples include:

- (a) An alleged failure to obtain full information about Albert Cadrain's interview in Regina.
- (b) An allegation that Albert Cadrain was not challenged about the specifics of his story and the police did not consider that he was motivated by fear (para. 11); and
- (c) The allegation that Nichol John must have spent a "traumatic" night in cells (paras. 23 and 29).

8. All of this is speculation and none of it is supported by any hard evidence. The fact of the matter is that it was known that Albert Cadrain was told about the murder in Regina and this was open for cross-examination at the trial. Albert Cadrain was fully cross-examined at the preliminary hearing and the trial about his story. He stuck to his position that he saw blood. Nichol John has no recollection of being mistreated by the police or fear of the police. She did not enjoy her stay in cells but did not describe it as a traumatic experience (see footnote 3). It is interesting to note that Joyce Milgaard apparently was aware of the name of the matron and states that she supplied this information although there is no record of this.⁵ Justice Tallis also believed that he knew the name of the matron based on his questioning at the trial of Nichol John.⁶ No evidence was forthcoming from the matron of any mistreatment of Nichol John or any supposed trauma suffered by her.

⁵ Joyce Milgaard Transcript 31960-965

⁶ Nichol John Trial Testimony 003049 at 220

9. Concerning the statements of Nichol John, Ron Wilson and David Milgaard, it is incredibly simplistic to suggest that their initial statements were correct and that Nichol John and Ron Wilson's subsequent statements were not. The fact is that all three of the initial statements left out relevant information and in some areas were incorrect. David Milgaard himself acknowledged that he held back information from the police⁷. We know Ron Wilson did the same. Most significantly, Ron Wilson left out that they were looking to "roll somebody" and to "whack somebody in the head and take their wallet".⁸ Defence counsel for David Milgaard correctly noted that putting those statements to the witnesses, and the fact that they had left out important parts, would be a very risky business.⁹

Discovery of Larry Fisher

10. Paragraph 4 of the Milgaard Submission concludes with the following statement:

"They directly contradict the claims of Saskatoon police officers that no connection was made between the Saskatoon rapist and the murder of Gail Miller, and the claim that detectives working the homicide case were unaware of sexual assault cases, which were worked by morality officers."

In the case of Det. Karst his testimony is that he is certain that he would have been aware of the indecent assaults/rapes in 1968/69 but the point was that he did not see any connection between them and the murder of Gail Miller.¹⁰

11. Contrary to what is stated in paragraph 54 of the Milgaard Submission, Fisher did not move out in the fall of 1970 never to come to light again until 1980 and then was not heard of again until 1990. Attempts were made to locate him in the early 1980s and particulars about him including where he resided and the fact of his criminal record were discovered by Joyce Milgaard and those working on her behalf. Joyce

⁷ David Milgaard Supreme Court of Canada 013092 at 234-5 and 248

⁸ Wilson Transcript pp. 5362-63

⁹ Tallis Transcript pp. 24129-139

¹⁰ Karst Transcript pp. 12529-31

Milgaard testified that they were already looking for the rapist as a possible murderer of Gail Miller in the late 1970s.¹¹ No connection was made at that time linking Larry Fisher to the murder of Gail Miller. Joyce Milgaard acknowledged that Peter Carlyle Gorge did have information about Larry Fisher in the early 1980s and when Commission counsel showed her it, it "blew her off her chair".¹² Obviously it did not register in the 1980s when she and her counsel received it.¹³

Recommendations

12. Concerning the recommendations that have been made by the Milgaards, a number of them are beyond the scope of Det. Karst's role at the Inquiry. However, some of them he has knowledge of and does support. These would include the following:

- (a) The establishment of an independent review board;
- (b) Creation of a provincial review board;
- (c) The videotaping of all witness statements;
- (d) The comments made by Justice Tallis on the need for broader powers in the Court of Appeal to intervene; and
- (e) Advising victims of the results of a criminal investigation.

Conclusion

13. On behalf of Det. Karst, Mr. Boychuk and myself, thank you to Commission counsel and staff for all of their help, assistance and patience and thank you as well to all counsel for their courtesy in dealing with this at times, very emotionally charged Inquiry.

¹¹ Joyce Milgaard Testimony 29597

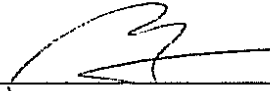
¹² Joyce Milgaard Transcript 29648

¹³ Joyce Milgaard Transcript 30167-71

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30 day of
November, A.D. 2006.

McDOUGALL GAULEY LLP

Per:



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