

Lieut. Hynick. - Corporal Barto.

certain people were assigned to different phases of the investigation.

Q. That is all.

By Mr. Ertel:

Thank you, Lieutenant.

(Excused from witness stand.)

CORPORAL RONALD K. BARTO, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Ronald K. Barto.

Q. Your occupation?

A. Member of the Penna. State Police.

Q. How long have you been a State Policeman?

A. Seven years.

Q. Are you the Prosecutor in this case?

A. Yes, Sir, I am.

Q. That means by that you filed the charges?

A. Yes, Sir, I did.

Q. Corporal Barto, did you have the occasion to speak to Kim Hubbard on the 1st of November, 1973?

A. Yes, Sir, I did.

Q. Where?

A. At the Pennsylvania State Police Barracks in Montoursville.

Q. Would you state to the Jury, what, if anything, he told you at that time?

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A. Yes, Sir, he came to the Barracks at approximately 9:00 in the morning, and prior to speaking to him, I advised him of his rights, and I then asked him if he would tell me his activities on the 19th of October, 1973, at which time he told me what he did on that particular day.

Q. Did you have him sign a rights card?

A. Yes, Sir, I did.

Q. Is there, or is that here?

A. I have it here, Sir.

(Commonwealth's Exhibit No. 113 marked.)

Q. I show you marked as Commonwealth's Exhibit No. 113, that his rights card?

A. Yes, Sir.

Q. And did you have that witnessed that he was warned?

A. Yes, Sir, witnessed by Corporal Paul J. Bezilla.

Q. And what time was he warned?

A. 9:07 A.M.

Q. Did you write that on there?

A. No, Sir, Corporal Bezilla did.

Q. Now, you were telling us as to what he said at that time, would you continue with that, please?

A. Yes, Sir, he stated to me that on the 19th of October, 1973, that he got up between the hours of 1:00 and 1:15. That the first thing he did when he did get up, he went to the store and bought three packs of cigarettes, two for his Mother and one for himself and then he stated he went over and

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rented a buffing machine and he stated that he thought the name of the place was Rent-All Services. He said that was at 1:45 P.M. of that date, because it was stamped on the receipt when he got the buffer. Then he stated he went back, stopped at the Hum-Dinger and got a "Cosmo" and he was there for about a half hour. Then he said he went back to his residence and the floors were not ready to buff yet, so he went out and he worked on his car.

Q. Did he tell you what he did on his car?

A. Yes, Sir, he did.

Q. What did he tell you he did?

A. He said he had been having trouble with the oil leaking, so he tightened up the oil pan covers, and he added water to the radiator, and then he said this took him approximately an hour and a half. He said when he was completed with that he went back in the house for a minute, and this would have be around quarter of four in the afternoon, and at that point he went over to the Fifth Avenue Car Wash and he washed his car. He said he was over there for approximately 25 minutes. He said it was 25 minutes because he put three quarters in the machine at the car wash, and each quarter takes five minutes. He estimated that it would take him approximately ten minutes to drive over to the car wash and return to South Williamsport. He stated when he returned to South Williamsport, he went to the Hum-Dinger, he bought a coke. He said then he went back home and he was home for about 10 or 15 minutes and that is when Jack Hill called asking about Jennifer. Then he said he continued to work on the floors and polish the floors for

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approximately two hours, and at that point his Mother and all of them became concerned about Jennifer and so he went out looking for her. He said he went down past the Humpty-Dumpty Sub Shop. He went down past the playground at the school, because he thought maybe they were down there, and that he went down around the Hum-Dinger Restaurant and that is when he saw Ard Stetts, and he said at that point he didn't know the exact time, he said it wasn't dark yet, but it was getting there.

Q. After that did he tell you anything else he did that day?

A. He stated that evening he was out with his girlfriend.

Q. Did you have the occasion to talk to him subsequent to that time or be in the presence of people talking to the Defendant, Kim Hubbard?

A. Yes, Sir, I did.

Q. When was that?

A. That was on the 3rd of November, the next time was the 3rd of November.

Q. Where was this?

A. This was at the Borough Building in South Williamsport.

Q. Were you there when a phone call came to the Borough Hall prior to his arrival?

A. Yes, Sir, I was.

Q. Who answered that phone?

A. Trooper Gomb.

Q. Who was the phone given to?

A. It was given to you.

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Q. Did you hear what I said on the phone?

A. I heard what Trooper Gomb said when he handed you the phone.

Q. What was that?

By Mr. Fierro:

I object.

By The Court:

The objection will be sustained, unless it was from the Defendant.

By Mr. Ertel:

Q. Did you hear what I said on the telephone?

By The Court:

Did he know whether it was from the Defendant or not?

By Mr. Ertel:

That is why I am moving on.

Q. Did you hear what I said on the phone?

A. Yes, Sir.

Q. What was that?

By Mr. Fierro:

Your Honor, I object.

By The Court:

The objection is sustained.

By Mr. Ertel:

May we approach Side Bar?

(Side Bar consultation not made a part of the record.).

Corporal Barto.

By Mr. Ertel:

Q. Subsequent to that telephone call, did the Defendant arrive at the Borough Hall?

A. Yes, Sir, he did.

Q. And can you give us the approximate time between the telephone call and the time he arrived?

A. Between the telephone call and the time he arrived was approximately a half hour.

Q. What occurred when Kim Hubbard arrived at the Borough Hall, to your recollection?

A. He walked into the Council Chambers and he stated that he came in for about 10 minutes to help clear up his activities on the 19th of October.

Q. What was done at that point, if anything?

A. He was advised of his rights.

Q. Who advised him?

A. Corporal Houser.

Q. Did you see him sign a card at that time?

A. Yes, Sir.

Q. Then what happened after that?

A. Then he proceeded to tell us that on the 19th of October that he was in the Sylvan Dell area. He stated he went down to the Sylvan Dell area in order to look for a friend of his by the name of Tom Wilt, and the area he went to in particular was what is known as the Old Look-Out, that he went there and his friend, Tom Wilt, was not there, and so he came back to South Williamsport. On the way back to South Williamsport that he passed the Mauro's Music Store and there was

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a bunch of kids there and he waved to them.

Q. Did he identify any of the kids that were there?

A. Yes, I believe he said some of the Mauro boys were there, several brothers.

Q. Did he tell you approximately what time this was when he was on the Sylvan Dell Road?

A. No, Sir, but he was then asked if this was before or after he rented the floor buffer and he replied that it was after .

Q. What happened then after this conversation?

A. It was about at that point when Lieutenant Hynick asked him several questions.

Q. What did Lieutenant Hynick ask him?

A. He asked him if anyone ever used his car, and he replied "No.", and he asked him if he knew where the girl's body was found in the cornfield, and he replied that he did, that he had been told the evening before by one of his friends where the body was found. Lieutenant Hynick asked him if he had ever been in that cornfield, and he said, "No."

Q. What happened?

A. Then Lieutenant Hynick asked him, "Wouldyou come down with me down to that cornfield and show me where the girl's body was found?", and at that point he walked out of the Council's Chambers.

Q. What happened next?

A. He went over to the Chief Smith's office, which is in the same building.

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Q. Did you go there?

A. Yes, Sir, I did.

Q. What happened there, if anything?

A. Sgt. Peterson brought up about mud being on his vehicle, and before Kim Hubbard answered, Chief Smith came in and said that Attorney Bonner was outside and wanted to see Kim Hubbard.

Q. What happened then?

A. He said, "I don't want to see him, I want to tell....", he was referring to Sgt. Peterson, he said, "....I want to tell you about the mud.", and Sgt. Peterson said, "No, you go talk to your Attorney.", so he left and apparently had a conference with Attorney Bonner, and later he returned, in the presence of Mr. Bonner, and stated that the mud that we found on his vehicle was from Stroehmann Brothers where he works, and it was from the area of 6th Avenue in South Williamsport where he had been parking with his girlfriend.

Q. Did he say anything further than that?

A. Not that I recall, no, Sir.

Q. Officer Barto, did you have the occasion to make a check of the driving between, driving times between the Nevel home and the Hubbard home and the scene where the body was found?

A. Yes, Sir, I did, from the Nevel home to the scene.

Q. At what speed did you drive that?

A. Approximately 35 miles an hour.

Q. How long did it take you to get from the

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Nevel home to the scene?

A. I measured the distance in two different directions.

Q. Name the two different directions?

A. The first direction I went from the Nevel home, which is located on Howard Street, to 6th Avenue, to Route 15, and turned left on the Old Montgomery Pike Road and went down until I hit the Sylvan Dell Road and then to the scene where the girl's body was found. This distance was approximately three and four-tenth miles, and it was driven at the average speed of 35 miles per hour, in the area of six minutes, six to seven minutes.

Q. Did you go another route?

A. Yes, Sir, I took the route from the scene of where the girl's body was found, took the Sylvan Dell Road to South Williamsport Borough on East Second Street, and went up Mountain Avenue, I mean went up Main Street to Mountain Avenue and went out Mountain Avenue to Howard Street, and I measured that distance by using the odometer on the car as being three and two-tenth miles and driven at approximately 35 miles an hour it took me from six minutes to six minutes and 15 seconds.

Q. Did you measure the time from the Hubbard home to the scene?

A. No, Sir, I didn't.

Q. Did you ever drive between the Hubbard home and the Nevel home?

A. Yes, Sir.

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Q. Did, can you give us an approximate time between the two?

A. I didn't pay particular attention to the time, I believe that it, in fact I don't recall specifically what the distance was.

Q. Do you recall how many blocks it would be in there? The map would show that.

A. Approximately nine or ten blocks.

Q. Now, Corporal Barto, you were at the scene when the body was found, or immediately thereafter, is that correct?

A. Yes, Sir.

Q. Did you examine the area for footprints other than those which were found as Doctor Miller testified, I guess, within a few feet of the body?

A. Yes, Sir, I did.

Q. Did you check the area between the farm lane and the feet of the body?

A. Yes, Sir, I did.

Q. What, if any, footprints or markings did you find there?

A. None.

Q. Did you measure the distance the body was off of the route or the Sylvan Dell Road to the location of the body in the cornfield?

A. You mean between the hardtop road and the point where the body was found?

Q. Yes?

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A. Yes, Sir, I did.

Q. What was that distance?

A. 127½ feet.

Q. Did you measure the distance between the hardtop road and the place where the casts were made of the car tracks?

A. Yes, Sir.

Q. What was that distance?

A. 26 feet.

Q. These tire tracks that you saw there, can you describe them in relation to the terrain underneath them? The mud?

A. Yes, Sir. If you went back, from the edge of the road there is a berm which consists of gravel which extends approximately 4 and one-half feet. At that point, travelling back this what has been referred to as a farm road, there is a grassy there until you hit 26 feet and at that point there was a deposit of mud for several feet, and after that the lane turns back into a grass covered type terrain.

Q. Were you able to discern any tire tracks in any of the grassy area?

A. No, Sir.

Q. How about bulldozer cleat marks?

A. I could see those, yes, Sir.

Q. Would you describe those, what they looked like?

A. Simply a depression in the ground where the bulldozer ran over it.

Q. It didn't tear up the ground or anything, did it?

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A. No, it just made an indentation into the grass.

Q. Were all of the tire tracks that were seen in that lane cast in moulds?

A. Yes, Sir, all that could be identified as being tire tracks.

Q. Cross examination.

By The Court:

Mr. Fierro?

CROSS EXAMINATION

By Mr. Fierro:

Q. Now, step by step, you stop me if I have this thing wrong, but is this what Kim Hubbard told you at the Barracks, I don't have the date....

A. The 1st of October, 1973...1st of November, 1973.

Q. 1st of November, 1973?

A. Yes.

Q. Just like the other Officer, you have just now said 1st of October, you know that, and you corrected yourself, and it was just a small mistake, but you said it, didn't you?

A. Yes, Sir.

Q. You understand as a human being and as a professional officer, people make mistakes like that?

A. Yes, Sir, I am one of them.

Q. You are one of them and so am I. Let me see if I have this thing right or wrong, and you stop me. On November 1st, I mean this is the statement of Kim's, you understand what I am talking about?

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A. Yes, Sir.

Q. That he said he got up around 1:00 - 1:15, he left the house to go get some cigarettes, that either when he got there or on his way from getting the cigarettes he saw his sister with other children and he waved to them?

A. No, Sir.

Q. What was it?

A. He didn't mention anything about seeing his sister, or anyone else to me at that particular time.

Q. What did he say he saw?

A. He did not say he saw anybody.

Q. Did he say he waved to anybody?

A. No, Sir, he didn't.

Q. All right, did he tell you he saw children at the playground?

A. No, Sir, he didn't.

Q. We will go on from there, that he went to a Rental Service for a buffer, and from there he went to the Hum-Dinger, which is a restaurant, and from there he went home and his Mother was applying wax and the floor was not ready, so he worked on his car for about an hour?

A. An hour and a half, Sir.

Q. But the floors were still wet and he couldn't work on them, so he went to a car wash where he put seventy-five cents in, and after he got through with that he went back to the Hum-Dinger and from the Hum-Dinger, whatever he had to eat or drink, from there he went back home in order to help his Mother, and that while he was there there were a couple of phone

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calls, and the one that concerns us most is the one that was from the Hills, is that correct?

A. He did not mention to me several phone calls, he mentioned a particular phone call.

Q. The one from the Hills?

A. Yes, Sir, from Jack Hill.

Q. From Jack Hill?

A. Yes, Sir.

Q. Did he tell you that he answered, that is to say picked up the call from Jack Hill?

A. No, Sir, he didn't say that.

Q. Who did he say answered it?

A. He didn't say anybody did, he didn't tell me who answered the phone, he just made mention of the fact that is when Jack Hill called.

Q. Were you with Officer Peterson on October 31st when he and others questioned Kim Lee Hubbard?

A. Are you referring to his residence?

Q. October 31st, that is what I am asking about, I didn't ask you where?

A. The only time I saw Kim Hubbard on October 31st was at the South Williamsport Borough Building.

Q. Then you were not at his house?

A. No, Sir.

Q. Well, this call from the Jack Hill's, did you try to find out who answered the phone or who it was from?

A. Yes, Sir, I tried to find out who it was from.

Q. Did you ask him?

A. He told me.

Q. What did he tell you?

A. He said that when he left the Hum-Dinger, after getting back from washing his car he said he went to the Hum-Dinger and had a coke and then he went home and he was home for 10 or 15 minutes and that is when Jack Hill called, and that is the only mention he made to me about the phone call.

Q. But he said Jack Hill called?

A. Yes, Sir, he did.

Q. Did you try to find out from him, Kim, what time the call came in?

A. No, Sir, I didn't ask him.

Q. Did you ask him what Jack Hill said?

A. No, Sir, I didn't.

Q. We will go from there. Well, did you later ask Jack Hill?

A. If he made the phone call?

Q. Yes?

A. Yes, Sir, I did.

Q. Then you said after this call from Jack Hill, that Kim's Mother sent him out looking for Jennifer?

A. No, Sir, he said that he worked on the floors with the polisher for approximately two hours and then his Mother sent him out to look for Jennifer.

Q. Do you mean this was two hours after the phone call?

A. Yes, Sir, that is what he said.

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Q. You made notes of all of this, didn't you?

A. Yes, Sir.

Q. You got them in front of you?

A. No, Sir.

Q. What is that in front of you?

A. This is his rights card.

Q. Are you testifying from memory now?

A. Yes, Sir.

Q. You are saying that he didn't go out looking for Jennifer until approximately two hours after the phone call from the Hills?

Kim went out to look for Jennifer at "5.P.M." and was only out 10 minutes.

A. That is what he told me on November 1st.

Q. This conversation between you and Kim Lee on November 1st, is there some reproduction of it, like somebody typed it up and he signed it, or on tape or something like that?

A. No, Sir. As I was talking to him, and he was telling me what he did, I wrote it down. After that I repeated things to him what he had told me and this is what I base my recollection on.

Q. You didn't ask him to sign anything?

A. I asked him to sign the rights card.

Q. We know that. A statement concerning his activities, did you ask him to sign that?

A. No, Sir, I did not get a signed statement from him only what he told me verbally.

Q. Well, it is customary in Police practice that you can take a statement and ask the man to sign it, isn't it?

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A. Yes, Sir.

Q. Why didn't you do it?

A. Normally when I take a typewritten statement, signed statement that you are referring to, I consider that a confession.

Q. In other words, you were not able to get a confession?

A. No, Sir, he didn't confess.

Q. And because he didn't confess, you didn't want to take down a statement concerning his activities, is that right?

A. I didn't take a formal typed statement, I took notes on what he told me.

Q. You took your notes, but you didn't ask him to sign your notes, did you?

A. No, Sir, I didn't.

Q. All right. Of course, he told you that some time that afternoon he had been on the Sylvan Dell Road?

A. Yes, Sir, he told me that on the 3rd of November.

Q. I see, you had two different interrogations with him? Did you question this man more than on one day?

A. On the first, on the 3rd of November. I also had contact with him on the 16th of November.

Q. Did you question him on the 16th?

A. I asked him questions, yes.

Q. We will put that down, 1st, 3rd and 16th?

A. I also saw him on the 31st at the Borough Hall.

Q. Did you question him then?

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A. No, Sir, I didn't.

Q. Then we will put down you questioned him on the 1st, 3rd and 16th?

A. Yes, Sir.

Q. But all of the testimony you have given this afternoon concerning the 1st of November?

A. No, Sir, the 1st and the 3rd.

Q. Well, tell us what changed between the November 1st statement and November 3rd statement?

A. November 3rd he told us he was in the Sylvan Dell area. That he went up to the Old-Lock-Out.

Q. And on November 1st he did not mention that, did he?

A. No, Sir.

Q. What else did he change between the statement of the 1st and 3rd?

A. On the 1st he told me that the day before when Sgt. Peterson had spoken with him, that he recalled telling them that he saw a friend of his, Ard Stetts in the afternoon, and when I spoke to him on the 1st he stated that he recalled that being more near evening that when he saw Ard Stetts. In fact, he said it was not dark yet, but getting there, that is how he fixed the time as being later on in the evening.

Q. What else did he change between the 1st and 3rd?

A. Nothing that I recall.

Q. Those are the only two items?

A. Yes, Sir, about Ard Stetts and about being in the Sylvan Dell area. *Kim, only said he was on the Dell*

Mauro
Burt's
Cyan

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Q. As you looked over the situation you said in your own mind, "Big Deal, it didn't mean anything."?

A. I thought it did.

Q. Sylvan Dell and Ard Stetts, okey, now those are the only two things you are sure of he changed in those two statements?

A. As best as I can recall, yes, Sir.

Q. Did you check out on about his going to this place to get a buffer, whatever that machine might be?

A. I did not personally, no.

Q. Somebody must have?

A. Yes, Sir, it was checked out.

Q. What did you check out as to his activities after 4:00 on October 19th?

A. I spoke to one of the Mauro brothers.

Q. What else?

A. Are you talking about his activities on the 19th after 4:00?

Q. Yes, Kim Lee Hubbard's activities after 4:00?

A. I spoke to Mrs. Nevel several times.

Q. You spoke to Mrs. Nevel, you spoke to Mauro, who else?

A. You want to know everybody I spoke to?

Q. That has some reference to Kim Lee Hubbard, if you talked to John Smith and he said, "I don't know anything.", I don't want you to say it.

A. Are you talking about people that told me his activities after 4:00 on the 19th of October?

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Q. I want to know who those people are?

A. I would say Mrs. Nevel and the one Mauro brother.

Q. That is all you spoke to concerning this boy's activities after 4:00?

A. On the 19th. That is all I recall at this time.

Q. Now, you are the Prosecutor in this case and you were part of the investigation, weren't you?

A. Yes, Sir.

Q. Now, I want you to tell me do you personally know or can you produce a witness to show where Kim Lee Hubbard was on October 19th at 4:30 in the afternoon?

A. Yes, Sir.

Q. Who is that witness?

A. Mrs. Nevel.

Q. And is that the only witness you can produce to show where he was at 4:30 that afternoon?

A. You mean an eye witness?

Q. Yes?

A. That is the only one I know of.

Q. That is Mrs. Nevel?

A. Yes, Sir.

Q. Can you produce any eye witness or do you know yourself where Kim Lee Hubbard was at 5:00 the afternoon of October 19th?

A. Yes, Sir.

Q. Who is the witness?

A. Jack Hill.

Q. Where did Jack Hill say or saw or heard Kim Lee at

5:00?

A. He told me he called him, he called the Hubbard house and Kim answered the phone.

Q. At what time, at quarter to five, wasn't it?

A. No, Sir, he fixed the time anywhere between quarter of five and as late as 5:00.

Q. All right, but another witness that you can produce is Jack Hill at quarter to five to 5:00, is that correct?

A. Yes, Sir, he said that the call could have been made up until 5:00.

Q. I will give you the benefit both ways, we are not trying to deceive the Jury, your testimony is that Jack Hill told you that he spoke by telephone to Kim Lee Hubbard anywhere between quarter to five and 5:00 on that afternoon of October 19th, now isn't this correct?

A. Yes, Sir.

Q. Now, you say driving around 35 miles an hour on well, on both of the routes, it takes between six and seven minutes to get down to the area where the body, the girl's body was found, that is one way?

A. Yes, Sir.

Q. So that two ways it can take about 14 minutes driving around 35 miles an hour, is that right?

A. Yes, Sir, assuming you drive 35 miles an hour, between 12 and 14 minutes round trip.

Q. And did you do that on a Friday afternoon at 4:30?

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A. No, Sir, I did that on the 15th of November at about 1:00 in the afternoon.

Q. The reason I am mentioning Friday, I am talking about Friday night traffic at 4:30, did you do this on a Friday night at 4:30?

A. No, Sir.

Q. You didn't?

A. No, Sir, I did it on Thursday.

Q. Well, you know what the Friday night traffic is like on 4:30, don't you, crossing that bridge, do you know?

By Mr. Ertel:

I object, he never crossed the bridge.

A. I didn't cross the bridge.

By Mr. Fierro:

Q. You know what the traffic is like that crosses the bridge at that time?

A. You mean coming from Williamsport to South Williamsport?

Q. Either way, Friday night at 4:30, you, as a State Policeman, don't you know what the traffic condition is like in South Williamsport especially the traffic that comes and goes across the bridge, do you know what it is like or not?

A. Yes.

Q. It is heavy, isn't it?

A. I would say Market Street and Hastings Street are busy all of the time.

Q. Let's go on, what you are telling this Jury, you are telling this Jury about the travel time from one of these

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two houses to the area where the body was found, but you are not giving them any time spent at the area, for example to kill somebody? You have not put that time in there, have you?

A. No, Sir.

Q. And you have not put in that time, any time that might be spent by, let's assume it was him for the purpose of argument, you have not put any time in there that he might spend in talking to the victim, you didn't put that time in there, did you?

A. No, Sir.

Q. All you put in there was the drive down, don't stop at all, and the drive back, correct?

A. Right, that is all I wanted to report.

Q. That is all you wanted to record, and we know that Jack Hill spoke to this boy at quarter to five to 5:00 that same day?

A. Right, that is what he told me.

Q. I don't think I want to ask any more questions, that is all.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. You were asked about speaking to this man on the 16th of November, what did he say or what was the conversation on that date?

A. On the 16th of November I arrested him.

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Q. Did you have any conversation with him at all at that time?

A. Yes, Sir, when I arrested him I advised him of his rights and transported him to the State Police Barracks in Montoursville.

Q. What, if anything, did he say to you?

A. He was photographed and fingerprints.

By Mr. Fierro:

This does not answer the question, he is asking about conversation.

By The Court:

Answer the question, Officer?

A. I asked him if he wanted to give me a statement and he said, "What do you mean?", and I said, "Do you want to give me a confession as to what happened between you and Jennifer Hill on the 19th of October, 1973?", and he said, "Yes, you had blew it." By Mr. Ertel:

Q. No further questions.

Kim was saying "you got the wrong one"

RE-CROSS EXAMINATION

By Mr. Fierro:

Q. Do you know what he meant when he said, "Yes, you blew it."?

A. No, what did he mean?

Q. Did you ask him?

A. No, he laughed and walked away. *Kim did not wait*

Q. That is all.

away he was Hand cuffed

By Mr. Ertel:

That is all.

(Excused from witness stand.).

By The Court:

We will take a 15 minute recess. Everyone else will remain seated. The defendant is excused and the Jury is excused. May I see Counsel at Side Bar?

(Side Bar consultation not made a part of the record.).

(Recessed at 2:40 P.M., EDT.).

(IN CHAMBERS.).

By Mr. Ertel:

Witness No. 37 will testify she is approximately 13 years old. That she was in the backyard of her house and that the Defendant was there.....

By The Court:

On what day?

By Mr. Ertel:

At Approximately a month before this incident. That the Defendant got on top of her, was trying to pull down her pants, was trying, she was trying to get away, that somebody came around the side of the building and interrupted them, they thought it was her Father coming, and he got up and ran. The same witness will testify that they were swimming and he made the comment, "I am going to rape you.". Now, I don't know if it was before or after the incident. He was trying to tug down her swimming suit and dunking her under the water, trying to pull down her bottoms.

By The Court:

That was months before?

By Mr. Ertel:

This was in August.

By The Court:

On what theory?

By Mr. Ertel:

On the theory that this man was attempting to do something sexually to this girl at the time. The girl's clothing was disarrayed, although she may have done it consensually we can't tell, however he did do it to a girl under age. These girls were young. He is 20. This other incident he got interrupted in. This incident he did not get interrupted in, whether the girl shouted or not he strangled her at the time.

By The Court:

Was he exposed at all on the occasion of this young girl?

By Mr. Ertel:

I can't answer that, I don't know.

By The Court:

Why don't you give me the works?

By Mr. Ertel:

The next one was within a week of this incident, he took a young girl, he took her on a ride, which he picked her up, coaxed her into the car. She got in, she went with him.

By The Court:

Where from?

By Mr. Ertel:

Her home area in South Side. They went down the

Sylvan Dell Road, they went up to the Look-Out and back to her house. During the time he kept putting his arm around her. At one point he pulled her head down towards his crotch. He asked her if she ever undressed in front of a boy and the indication that he wanted sexual activities with her.

By The Court:

Was he exposed at all?

By Mr. Fierro:

Are you talking about the Pett girl? You know, I heard her testimony, why don't you give the Judge the whole thing? I cross examined her under oath at the preliminary hearing.

By The Court:

What is it that he substantially said?

By Mr. Fierro:

No, what she said he picked her up, he did talk to her about disrobing. She mentioned the route, which is unimportant, we are only talking about sex.

By Mr. Ertel:

The Sylvan Dell Road.

By Mr. Fierro:

That is all right with me, I don't care where they went, I am talking about how they behaved, and I says, "Did he harm you? Did he curse you? Did he threaten you? Did he hit you?", and all of these things she said, "No", "No", "No", and that is that. He was not exposed. He did not pull her head down to his crotch.

By Mr. Ertel:

She said that, that is true, but she was scared then and didn't say that. The next one is a witness 41, he had intercourse with her on two occasions.

By The Court:

How old is she?

By Mr. Ertel:

I think 17 at that time, but at that point he wanted her to "blow" him, and pulled her head towards his crotch to have her blow him. He had intercourse with her twice too.

By Mr. Fierro:

That is legal to have intercourse.

By Mr. Ertel:

It is not legal for oral sodomy. She refused.

The next two....

By The Court:

How old are they? Under 16 or over 16, is what I am talking about?

By Mr. Ertel:

My recollection they are under 16.

By Mr. Fierro:

Doesn't it make a difference whether he knows the age?

By The Court:

I don't think so.

By Mr. Fierro:

For this case?

By Mr. Ertel:

My recollection is they are young, they are 12 or 13, I don't know, and I don't have the notes here, and I didn't talk to these two. Again, he tried to pick them up within about two weeks of this incident and both of them refused to go with him, but...no, I am sorry, this was the same day as the Linda Peck situation.

By The Court:

That was when?

By Mr. Ertel:

Six days before this incident, he tried Sue Mitchell and Brenda Merrick, and he got Linda Peck.

By Mr. Fierro:

What he is saying, he asked the two girls to get in the car with him. I can do that and that is not a crime.

By Mr. Ertel:

I have to check on this other one.

By Mr. Fierro:

I have talked to most of these girls right out here.

By Mr. Ertel:

She She was 17 at the time. Sue Perry is 15, she knows Kim Hubbard, he invited her out five or six times last summer, that is the summer in question. She refused to go with him. He told her if she walked past his house at night he would come out and rape her. He also said the same thing to another girl in her presence and asked the other girl, who is 14, to blow him, in her presence. I think that covers all of those type

witnesses.

By The Court:

Now, what is your purpose?

By Mr. Ertel:

To show intent when he took this girl down there, to show he intended either oral sodomy or sexual intercourse, which would be statutory rape and that this was his "NO" of operation.

By The Court:

The Court is ruling that the probative value does not outweigh the risk of undue prejudice to the Defendant and I am sustaining the objection.

(Off-the-record discussion.).

By The Court:

Let the record show that Counsel agree that the Court need not review individual testimony of each witness.

(RETURNED TO COURT ROOM AT 3:45 P.M., EDST.).

By Mr. Ertel:

I think that by stipulation we have agreed to put the floor buffer receipt at 1:45.

By Mr. Fierro:

I will agree.

By The Court:

It is not in, but what Mr. Fierro wants to do is checked it with his receipt, we have not had it marked yet.

(Commonwealth's Exhibit No. 114 marked.).

By Mr. Ertel:

We have marked Commonwealth's Exhibit No. 114, which

Corporal Barto.

667.

purports to be a Rent-All Center receipt.

By The Court:

All right, and I understand, Mr. Fierro, after you had an opportunity to check the date, if it is the same that will be stipulated?

By Mr. Fierro:

Yes.

By The Court:

Proceed, Mr. Ertel.

By Mr. Ertel:

We forgot to put in the helmet with Officer Barto, and I believe that will be stipulated also.

(Commonwealth's Exhibit No. 115 marked.).

By Mr. Ertel to Corporal Barto:

Q. I show you marked as Commonwealth's Exhibit No. 115, Corporal Barto, can you identify that?

A. Yes, Sir.

Q. What is it?

A. It is a helmet I removed from the Kim Hubbard vehicle.

Q. Cross examination.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

By Mr. Ertel:

I move into evidence Commonwealth's Exhibit No. 115.

Barto.

By The Court:

They are admitted without objection.

(Commonwealth's Exhibits Nos. 121, 122 and 123 admitted into evidence.).

By Mr. Ertel:

I call Officer Barto.

CORPORAL RONALD K. BARTO, previously sworn, recalled and testified as follows:

By Mr. Fierro:

Make an offer at Side Bar on the record.

(AT SIDE BAR.).

By Mr. Ertel:

This is with Sampsell again. He never testified to any interview with Sampsell, this is an interview with Sampsell, the tape recording with Sampsell when he testified contradictory to in the Court Room.

By The Court:

What is Sampsell going to say on that?

By Mr. Ertel:

He is going to say he didn't talk to him, he didn't know why he was being subpoenaed here.

By Mr. Fierro:

I am missing this, Judge.

By The Court:

So am I.

By Mr. Fierro:

This man is up here to say something negative?

Corporal Barto.

By Mr. Ertel:

He is here to say something negative.

By The Court:

What he is doing is saying Sampsell gave him a statement different than what he testified to on the stand?

By Mr. Ertel:

We have the tape recording.

By The Court:

I don't want the tape recording, but do you have it typed out so we can see what he says?

By The Court:

What do you mean you don't want the tape recording? I think that would be the best evidence.

By The Court:

I will permit from his own recollection.

By Mr. Fierro:

Why can't this witness testify from his own recollection?

By The Court:

I think that is the proper way to do it in this case.

By Mr. Ertel:

I will withdraw him at this point, because I have not asked him about the other things.

By The Court:

Cover this one.

(END OF SIDE BAR.).

Corporal Barto.

DIRECT EXAMINATION

By Mr. Ertel:

Q. Officer Barto, you have previously been sworn, you are the Prosecutor in this case?

A. Yes, Sir.

Q. Did you speak to Keith Sampsell concerning this matter?

A. Yes.

Q. Do you recall when?

A. The 13th of February, 1974.

Q. At that time did you make a tape recording of that statement?

By Mr. Fierro:

I object to that, that does not conform to the offer.

By The Court:

I will permit the answer to stand.

By Mr. Ertel:

Q. Did you make a tape recording of that statement?

A. Yes, Sir.

Q. Do you have a recollection of what he stated to you as concerned when, if ever, he saw Mike Grimes on the date of October 19, 1973?

A. Yes, Sir.

Q. What did he say?

A. When I interviewed him as to his activities on the 19th and in the area of him specifically seeing Mike Grimes, he

Corporal Barto.

recalled that on that particular day he was with Paul Bubb, and he was with his brother, Jeff Sampsell, and that they did go past the Grimes' residence at what he felt was probably 3:30, but he was not sure. He related he didn't recall seeing Mike Grimes that day, and he did not recall seeing the Defendant or the Defendant's car on that day.

Q. No further questions.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

By Mr. Fierro:

Your Honor, I move the latter part of his answer be stricken, it does not conform with the offer of proof concerning whether he saw the Defendant or not.

By The Court:

Strike it from the record, it is limited to his seeing Mike Grimes on that day.

By Mr. Fierro:

That is correct.

By Mr. Fierro:

I move that that entire answer be stricken on the grounds that the Officer testified not in conformance with the offer, he said that the witness Sampsell told him he didn't recall, this was not a denial as stated in the offer of proof.

By The Court:

I will permit it to stand, did not recall seeing Mike Grimes on that day.

Trooper Richard Reitz.

By Mr. Fierro:

All right.

TROOPER RICHARD REITZ, being duly sworn according to law, testified as follows:

By Mr. Fierro:

Offer at Side Bar.

(AT SIDE BAR.).

By Mr. Ertel:

We are going to put him on, he made the search of the house, he talked to Mrs. Hubbard to search the house. He picked up a blue shirt. Mrs. Hubbard was trying to imply we planted the shirt, when he stated he showed the shirt to Mrs. Hubbard, she saw him get it, she said, "It is Kim's, he has not worn it for a long time. We are ready to follow up it is only paint on the shirt, not blood. She raised it.

By Mr. Fierro:

This is what I object to, his offer. Now, one, she said this Officer handed the shirt to her, not the way he is stating in the officer, and he wants to rebut that it was paint, not blood, this is only a matter of opinion and not true rebuttal.

By The Court:

She didn't testify it was blood, the only thing she testified to the mode of getting the shirt.

By Mr. Fierro:

She said the Officer showed her the package, he turned it around.

Captain Francis Ross.

Q. No further questions.

RE-CROSS EXAMINATION

By Mr. Fierro:

Q. Was there any connection in telling these people about the Hills, I mean with the Hubbards, excuse me, you said the man's name was what, Hill?

A. Hill.

Q. No relationship to the Jack Hill family?

A. Not that I know of.

Q. In speaking to the Hubbards about this man, Hill, with a bloody face, was there any relationship, blood or marriage, between the Hubbards and this Hill with a bloody face?

A. They didn't say there was, no.

Q. Well, I mean you went there to tell the Hubbards' about him?

A. Yes, because that is, a man told me he knew them.

Q. For that reason alone?

A. Yes.

Q. That is all.

(Excused from witness stand.)

Recalled

CORPORAL RONALD K. BARTO, previously sworn,
recalled and testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. Officer Barto, did you have the occasion to speak to Mike Grimes and interview him?

A. Yes, Sir, I did.

Corporal Barto.

Q. When was that?

A. January 11, 1974.

Q. Where did you interview him?

A. At the South Williamsport High School.

Q. Did you have the occasion to talk to him about his activities on the 19th?

A. Yes, Sir, I did.

Q. What did he tell you in relation to whether or not he saw the Defendant on that occasion?

A. I asked him the specific question if, he made the statement to me that Kim pulled up between 4:00 and quarter after four and ran in the house, and I asked him where he was at the time that Kim pulled up, and he said he was laying underneath his car working on the starter, and I said, "From that position could you see Kim himself, could you see his face?", and he "No.", and I said, "Well, what part of him, if any, could you see?", and he said that he could only see him from the waist down, and I said, "If you could see him from the waist down, do you recall what he was wearing?", and he said "He was wearing blue jeans and his Army boots.", and then he hesitated and said, "Or sneakers."

Q. Did you ask him, did he say anything about the Forsberg car?

A. Yes, later I asked him if anybody else had been there while he was working on his car, and he mentioned Mr. Forsberg had come before Kim had arrived home.

By Mr. Fierro:

That is not rebuttal, and I object to the question

Corporal Barto.

and answer.

By The Court:

It is not proper rebuttal.

By Mr. Ertel:

Q. Did he tell you where his car was in relation to Kim Hubbard's?

A. He said when Kim Hubbard's car pulled in, it pulled within 15 feet of his.

By Mr. Fierro:

That is not proper rebuttal.

By The Court:

The objection is over ruled.

By Mr. Ertel:

No further questions.

CROSS EXAMINATION

By Mr. Fierro:

Q. Now, however, in your interview with Mike Grimes, he did tell you he saw Kim's car pull up around 4:00 to 4:15, didn't he?

A. Yes, Sir, he stated that.

Q. And he did say "boots" and then he said, "...or maybe he wore sneakers.", is that right?

A. Yes, Sir, after he hesitated.

Q. That is your interpretation that he hesitated?

A. There is a time period when he said "...Army boots..", and when he said "...sneakers...", and that is why I consider that a hesitation.

Q. Likesometimes you have seen witnesses, including

Corporal Barto.

Policemen hesitate here in the Court Room, are you talking about that sort of hesitation?

A. Somewhat, yes, Sir.

Q. Sure. Now, are you the Officer who told Mike Grimes that he is a liar, that he couldn't have seen Kim's car between 4:00 and 5:00?

By Mr. Ertel:

I object.

By The Court:

The objection is over ruled if it happened on that occasion.

By Mr. Fierro:

Yes.

A. Never told him he was a liar.

Q. You didn't?

A. No, Sir.

Q. Did you say to him words like, "You are not telling the truth, because Kim's car couldn't have been there when you said so."? Something like that?

A. No, Sir, not that I recall. I simply asked him what he knew about the 19th and he related it to me.

Q. Were you alone at the time?

A. No, Sir.

Q. Was there an Officer with you?

A. Yes.

Q. Did this other Officer bully him, do you know?

By Mr. Ertel:

I object to that.

Corporal Barto.

By The Court:

Sustained.

By Mr. Pierro:

Q. Did this other Officer ask Kim whether he lied about Kim's car?

A. Not that I recall.

Q. You say not that you can recall?

A. No, I am sure he didn't.

Q. Now, he told you about his Uncle, Mr. Forsberg, appearing on the scene that day, didn't he?

A. Yes, Sir.

Q. He told you that his Uncle appeared on the scene before Kim, didn't he?

A. Yes, Sir.

Q. You probably asked him what time his Uncle came back and about his Uncle's activities, didn't you?

A. No, Sir.

Q. You didn't?

A. No, he told me that his Uncle had come before Kim, and so I went and talked to his Uncle.

Q. So what?

A. I went and talked to his Uncle, Mr. Forsberg.

Q. You learned from his Uncle about his activities, didn't you in connection with what Mike Grimes told you on that occasion?

A. I would like the question repeated.

Q. I will reask it. You went to Mr. Forsberg to check wi

Corporal Barto.

Mr. Forsberg concerning Mr. Forsberg's activities as they were related by Mike Grimes, isn't that true?

A. All Mike Grimes told me was....

Q. I didn't ask you what Mike Grimes told you, we already know that, I am asking you whether you checked with Mr. Forsberg?

A. I interviewed him as to his activities.

Q. You checked with him as to his activities?

A. Yes.

Q. You heard Mr. Forsberg in Court, didn't you?

A. Yes, Sir.

Q. He testified in Court the same way that he told you, when you checked him, didn't he, isn't that correct?

A. Yes, Sir, he did.

Q. That is all.

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Did Mike Grimes testify in Court the same way he told you?

A. No, Sir.

By Mr. Fierro:

About what? I object to that, otherwise it is not rebuttal.

By Mr. Ertel:

About his conversation on that day?

By The Court:

Q. Is there anything you have not related, Sir?

A. Not that I can recall.

Corporal Barto.

By Mr. Ertel:

Q. What were the inconsistencies?

By Mr. Fierro:

I object.

By The Court:

Sustained.

By Mr. Ertel:

Q. You were asked about the interview with Mike Grimes and Mr. Forsberg, what were the inconsistencies in, between their statements?

By Mr. Fierro:

I object to that, it has not been shown there was any.

By The Court:

The objection is sustained, you may make an offer at Side Bar, if you care to.

(AT SIDE BAR.).

By Mr. Ertel:

You opened the door.

By The Court:

Tell me?

By Mr. Ertel:

He is going to tell Forsberg drove right up in front of Grimes' car and there could not have been Kim Hubbard's car there during the time, he never saw it.

By The Court:

Who said that?

Corporal Barto.

By Mr. Ertel:

Forsberg pulled right up in front of the Grimes' car. Grimes said that Kim Hubbard's car was right in front of his car, and they couldn't have been the same way, both cars couldn't be in the same position.

By Mr. Fierro:

Wait a minute. Judge, if you recall, the Hubbard car was about 15 to 20 feet in front of the Grimes' car.

By The Court:

That is correct.

By Mr. Fierro:

That is what Grimes said, and that is what Mr. Forsberg said.

By The Court:

I thought they were substantially the same.

By Mr. Ertel:

Grimes did not relate the Forsberg car ever.

By The Court:

I am sure he did.

By Mr. Ertel:

Not to him.

By The Court:

He did on testimony.

By Mr. Fierro:

That is not an inconsistency, that might be an omission.

By The Court:

I don't think it is proper.

(END OF SIDE BAR.).

By The Court:

The objection is sustained.

By Mr. Ertel:

That is all, Officer.

By Mr. Fierro:

No questions.

TROOPER CHARLES FAMA, previously sworn, recalled and testified as follows:

By Mr. Fierro:

I would like to have a Side Bar.

(AT SIDE BAR.).

By Mr. Fierro:

Before, your Honor, there is a Side Bar offer, I would like to make an objection. The District Attorney is shuttling Officers constantly in this case. I don't know if he has a legal right to do so, but I think it is poor practice, and I think he has been harassing, in a sense, the Defendant, and he is playing the numbers game, and I don't like it and I object to it.

By Mr. Ertel:

I am not harassing anybody. This man was with Officer Barto and he is going to say they didn't bully him or anything else, they asked questions of Mike Grimes. You implied now that these people battered and would bully.

By Mr. Fierro:

That is not rebutting somebody's testimony.