

By The Court:

Any objection?

By Mr. Fierro:

Yes.

By The Court:

The Court will reserve its' ruling at this time.

JOHN S. GENCAVAGE, being duly sworn according to law,
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. Would you state your full name?

A. John S. Gencavage.

Q. What is your occupation?

A. I am questioned Document Examiner at the State
Police Crime Laboratory in Harrisburg, Penna.

Q. How long have you been a Document Examiner?

A. Approximately ten years.

Q. During that period of time, how many documents
have you examined?

A. Thousands.

Q. Do you examine those documents to determine the
handwriting and whose handwriting they are?

A. Yes, Sir, that is part of my work.

Q. (To The Court.). I offer this man as an
expert as being a Document Examiner as to handwriting.

John Gencavage.

By Mr. Fierro:

Your Honor, we are willing to stipulate as to whatever Kim Hubbard wrote, but the District Attorney don't want the stipulation, he wants this man to testify about it and waste time.

By Mr. Ertel:

I object to the speech.

By Mr. Fierro:

We are willing to stipulate.

By The Court:

Are you willing to stipulate that Exhibits Nos. 116, 117, 118 and 119.....

By Mr. Fierro:

All that I saw is one, I can show my Client the rest of them and we are willing to stipulate if he wrote them, he wrote them. We don't need this testimony.

By The Court:

Any objection?

By Mr. Ertel:

I have no objection if he stipulates he wrote the letter.

By The Court:

Would you show them to him?

By Mr. Fierro:

He was not willing to stipulate.

By The Court:

Show him all four.

John Gencavage.

By Mr. Ertel:

May we approach Side Bar?

By The Court:

Yes.

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

By The Court:

Do you have any objections to this Gentleman's qualifications, Mr. Fierro?

By Mr. Fierro:

No.

By The Court:

You may proceed, Mr. Ertel.

By Mr. Ertel:

The stipulation is not on record.

Q. Mr. Gencavage, did you have the opportunity to examine Exhibit No. 116, 117, 118 and 119?

A. Yes, Sir, I did.

Q. Did you make a comparison of their handwriting?

A. Yes, I did.

Q. Did you determine whether or not they were written by the same person?

A. Yes, Sir, in my opinion they were.

Q. Can you show us why they are?

A. Yes, Sir, I am prepared to make a demonstration.

By Mr. Ertel:

We don't so dispute that, your Honor, his qualification or how he arrived at that conclusion.

John Gencavage.

By The Court:

The statement is on the record. Proceed, Sir.

A. I have the photographic composite which I prepared for the various handwritings involved in this case, if I may step down?

Q. Yes, Sir.

A. (Witness leaves stand.). This is a large photograph of various excerpts of the handwriting involved. The handwriting under the caption "Questioned" is part of the handwriting from Commonwealth's Exhibit No. 116. The handwriting under the caption "Standards" is specimen handwriting submitted to me as being specimen handwriting of Kim Lee Hubbard and is listed as Commonwealth's Exhibit No. 118 and 119. This is merely an enlarged photograph of various characteristics of the handwriting in question and in order that I might demonstrate the various characteristics which indicate and help me arrive at the conclusion that it was written by Mr. Kim L. Hubbard. If we just go quickly over the form, the manner in which the "K" is made, the stroke down, swinging the harpoon affect into the upper case "K", the approach stroke into the "i", the "m", the terminal stroke in the "m". If you compare this with the standard, you will see a variation which is called a natural variation in handwriting. If a person writes their signature ten times, they will vary ten times, at no time will you be able to superimpose one signature upon the other. People have natural variations in handwriting, that is what I am speaking about, so you will see that superficial difference in the upper line of the Standards, but if you compare with the "Kim" on the

John Gencavage.

second line, you will see the variations going back into the identical characteristics. Just quickly again, the manner in which the "H" is made, the free stroke movement, the same thing here, if you look at the very small approach, stroke, terminal stroke of "a" and going into the "r". But you will see identical characteristics in the questioned "Hubbard" and the standard "Hubbard", the similarity of the "s", the manner in which the word "to" is made, you will see the same thing here. The movements in the "o", the way it is terminated, the approach stroke of the "a" along with the approach going into the "n", see the same thing here. The "a" somewhat sets above the base line, and you must draw an imaginary base line, the approach stroke into "n", the stop of the pen after the "n". In the word "night" you see the same thing, the approach stroke in the "n" into the word "noise", but this is microscopic, you see see the stop after the termination of the "n". To get down into the word "things", you will see the small "t", the proportion of the "th" combination and you see it again in the standards. You will see the movement in the "g", you will see the same thing if you look at the movement in terminating "s" in the word "things". It goes up and down, there is a very swooping motion. You will see the same thing here, and part of the terminal stroke on the questioned "s", it is interlineated with the base line. It is difficult to see, but it is present. Now, we go into the handwriting, if we just look at the "K" the similarity in the "K", the "ing" combination, you will see the same thing, approach stroke, the downward approach stroke, the downward approach stroke of the printed "n", downward, up and slightly off on an

angle, terminating. You will see the same thing here touching the "g". You will see the manner in which the printed "e" is made, almost like an uppercase "e", very minute, terminating in the center of the "e". You will see the same thing here. Again the "Hubbard" uppercase, the "l", the manner in which it is made, the movement, you will see the same thing in the Standard "l". After taking all of these things into consideration, it is my opinion that the person that wrote these Standards also wrote the Questioned handwriting.

By Mr. Ertel:

Q. Now, will you take Commonwealth's Exhibit No. 116 and point out where you got the words in Commonwealth's Exhibit No. 116?

A. The name "Kim Hubbard" came off of the envelope. The word "to" was the sixth line from the top, it is the beginning of the, the beginning of the sentence on that line starts with a numeral "3", "You come to....". That is the word "to", where I got that and the word "and" I got from the 10th line down. That line begins with "home". The word "night" was on the last line of the front page.

Q. In other words, Mr. Gencavage, you found them throughout the letter?

A. Yes, I took various sections of the questioned writing and also the same is true of the standards.

Q. Thank you, take the stand. Cross examination.

A. (Witness returned to stand.)

John Gencavage.

By The Court:

Mr. Fierro?

By Mr. Fierro:

I have no questions.

By The Court:

That is all, Sir.

(Excused from witness stand.).

By Mr. Ertel:

Then we offer Nos. 116 through 119.

By Mr. Fierro:

I have to look at them.

By The Court:

Show them to Mr. Fierro before I rule.

By Mr. Fierro:

We agree they should be admitted into evidence.

(Commonwealth's Exhibits Nos. 116, 117, 118 and 119 admitted into evidence.).

By The Court:

They are admitted without objection.

By Mr. Ertel:

I would like to take the opportunity at this time to read No. 116 to the Jury.

By The Court:

Any objection?

By Mr. Fierro:

Yes, I don't think he should read it at this time.

By The Court:

Come to Side Bar, please.)

John Gencavage.

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

(Mr. John Gencavage returned to witness stand.)

By Mr. Ertel:

Q. Will you read the letter which is Commonwealth's Exhibit No. 116 to the Jury, please?

A. The letter begins "Hi Colleen. These are the things you should know and if I am wrong about anything write and tell about it because we got to know it. 1. You called me at 4:30.....", there is a lead into a parenthesis or what appears to be..." (Why, because you looked at the clock and you was closing early that day....", there is no closing of parenthesis. "2. You called me at 7:00. Why, because you looked at the clock and you were not ready to come down yet.". Again, the "Why" began with an open parenthesis and no closed. "3. You come to my house at 7:20 7:25.". Another opening parenthesis and "Why, because you look at the clock when you got to my house.", no closing parenthesis. "4. You stayed at my house and were with me until about 12:45. Thats when you went home and I follow you home and when you got home and when home, and you called me about 1:05 to see if I got home Ok.", and then "rember..." rember, r e m b e r, "That while you were at my house we went parking two times 1. by the railroad tracks 2. Up on the mountain. After we went parking the 1st time, we stop at the hum Dinger and I talked to Ard S. and we got two cokes then we went home. Rember that we saw a movie before you got home that night.", and there is an arrow pointing to the right of the

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page at the bottom. Beginning of the second page, the rear side of this page, "remember", that is r e m e m b e r, "...this and things will turn out OK. Colleen you know, I mean, I hope you know that I didn't kill anyone. I hope you believe me, because I will kill myself before I will go to Jail for something that I didn't even do. Love you always Kim. P.S. Here is one of your cassette tapes. Tape something to me like you were talking to me. They don't listen to the tapes, so talk to me. I love you Thank you for everything."

Q. Thank you, Officer, no questions.

By Mr. Fierro:

No questions.

(Excused from witness stand.)

By Mr. Ertel:

The Commonwealth rests.

By The Court:

Side Bar.

(AT SIDE BAR.)

By Mr. Fierro:

First, the Defendant demurs to the evidence on the grounds that there is not sufficient testimony in this matter to convict him beyond a reasonable doubt, that the testimony produced by the Commonwealth so far is vague, conjectural, and including the circumstantial evidence which is the only evidence that the Defense believes that the Commonwealth produced even is insufficient to support a verdict.

By The Court: Refused.

By Mr. Fierro:

Secondly, that the entire testimony produced by the Commonwealth does not establish First Degree Murder it so being the law, if believed that Murder has been established, but no Murder in the First Degree has been established and when Murder is established is merely Second Degree, and the Commonwealth must go beyond that to prove First Degree Murder, which in this case does not under all standards set by law.

By The Court:

Refused.

(END OF SIDE BAR.).

By The Court:

Proceed, Mr. Fierro.

(Mr. Fierro opened to Jury.).

By The Court:

We will take a recess before you call your first witness. The Defendant is excused. The Jury is excused. Court is recessed.

(Recessed at 10:35 A.M.).

(Reconvened at 10:55 A.M.).

By The Court:

Proceed, Mr. Fierro.

By Mr. Fierro:

Joseph Mendez.