

Leon Krebs.

LEON E. KREBS, being duly sworn according to law,
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Leon E. Krebs.

Q. Your occupation?

A. Pennsylvania State Policeman.

Q. For how long?

A. 12 years.

Q. Are you a Trooper?

A. Yes, I am.

Q. Are you assigned to the Crime Laboratory?

A. Yes, I am.

Q. How long have you been assigned to the Crime
Laboratory?

A. For the past two years.

Q. Trooper Krebs, do you have a specialty in the
Crime Laboratory?

A. Yes, I am a Firearm and Tool Mark Examiner.

Q. In Tool Markings, does that include markings on
tires and shoes?

A. Yes, it does.

Q. About how many cases have you examined while
at the State Police Crime Laboratory, just while at the Laboratory
now?

A. At the Crime Laboratory, I would say approximately

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10 to 12.

Q. How many other cases, did you have a specialty before you came to the Laboratory?

A. Yes, I spent four years as Identification Officer, which my sole function was to process crime scenes, and preserve and transport evidence.

Q. Did that also include interpreting casts and making casts?

A. Yes, it did.

Q. (To The Court.) I offer this man as an expert in the analysis of tires, tool markings and markings of tires and boots.

By Mr. Fierro:

Go ahead.

By The Court:

Proceed, Mr. Ertel.

By Mr. Ertel:

Q. Trooper Krebs, did you have the occasion in this particular case to examine what we have marked in this Court Room as Commonwealth's Exhibits No. 90, 89, 88 and 87, four tires, Kelly-Springfields?

A. They appear to be the tires, I would have to check my markings to make sure.

Q. Would you?

A. (Witness leaves stand, examines Exhibits, and returns to stand.) They are the tires I examined.

Q. All right, and how did you receive those tires?

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A. I received them from Trooper House in the state they are in right now.

Q. I show you marked as Commonwealth's Exhibit No. 94 and ask you if you can identify that?

A. Yes, this is a plaster cast that was submitted to me by Trooper Houser.

Q. I show you marked as Commonwealth's Exhibit No. 91, and ask you if you can identify this?

A. This is also one of the casts that Trooper Houser submitted to me.

Q. I show you marked as Commonwealth's Exhibit No. 93, and ask you if you can identify that, please?

A. Yes, this is another cast submitted to me by Trooper Houser.

Q. Finally I show you marked as Commonwealth's Exhibit No. 92 and ask you if you can identify that?

A. This is the fourth cast that was submitted to me for comparison purposes by Trooper Houser.

Q. Now, Officer Krebs, did you also have the occasion to examine snow tires?

A. Yes, I did.

Q. How did you get those?

A. They were removed from a vehicle at our Maintenance Unit in Harrisburg, and this was in the presence of Corporal Houser and myself.

Q. Did you examine those also?

A. Yes, I did.

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Q. Were those tires returned, to your knowledge?

A. Yes, they were, they were returned to Williamsport by my services.

Q. Now, would you explain what you do when you make a comparison, and we are only talking now of tires, explain the process you go through?

A. First we examine the cast, and make an attempt by examining class characteristics. Now, class characteristics are characteristics particular to the tire at the point of manufacture. We take these into consideration. We also take into consideration wear characteristics which are particular to the tire itself as to the alignment of the wheels, the air pressure, the load that the tire is forced to carry, and the pitch of the highway, different things taken into consideration, the highway will make the tire wear at a certain point, and this some way characteristic to the tire. Then we take into consideration accidental characteristics which can be caused by a tire running over a stone, accelerated take-off where the tire spins on the highway and cuts and gouges, nail holes and what-have-you are put in the tire. These are called accidental characteristics which are particular to that tire and that tire alone.

Q. How did you go about doing this examination?

A. This is visual examination that is made by checking the surface of the tire and the cast.

Q. Now, will all casts of a tire imprint show up all

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accidental characteristics?

A. No, not all accidental characteristics will be visible on the cast.

Q. Why?

A. Well, you have earth filling in some of these characteristics at certain points. The surface of the ground may not accept this accidental characteristic for the reason there may be a stone or stick of that nature at that particular point and not all accidentals will show up, but we do not deal in dissimilarities, only in similarities.

Q. What do you mean?

A. We deal in the accidental we can see on the tire and the plaster impression.

Q. What do you do with these similarities, what do you do to determine these?

A. Visual examination and also we make measurements from one point to the other and with that point in relation to the tread of the tire.

Q. Now, did you make a physical comparison between the casts in this particular case and the four tires in the Court Room and also the tires from the Environmental Resources vehicle?

A. Yes, I did.

Q. Will you tell us just briefly what was your conclusions and how you arrived at them as far as the cast showing any tire marks from the Environmental Resources vehicle?

By Mr. Fierro:

Your Honor, we object, this witness is not here to

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state conclusions, only his opinions.

By The Court:

Reword your question.

By Mr. Ertel:

I believe a conclusion is an opinion.

Q. Give your opinion, please?

A. My opinion after observing and studying and measuring the tires and casts that two of the tires were the standard summer tread had made two of the plaster of Paris cast impressions.

Q. My question, I believe was, that refers to the ones in the Court Room, I take it?

A. Yes.

Q. I am talking about the Environmental Resources?

A. I misunderstood you. I had made certain measurements and found that these snow tires could have made the marks appearing on these casts, however we lacked accidental characteristics and I could not reach a definite conclusion as to the marks we see on the cast.

Q. These were the Environmental Resources?

A. Yes.

Q. Were there similarities between the two as far as class characteristics?

A. Yes, there were, but these are made by the manufacturer and any type of tire made by that manufacturer should show the same class characteristics.

Q. Now, turning to the Kelly-Springfields, I believe

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you did give your conclusion on that, would you state again what your conclusion was as to the markings of the Kelly-Springfield tires in comparison with the casts here?

By Mr. Fierro:

Which ones are you talking about, you had better define them.

By Mr. Ertel:

Kelly-Springfields.

By Mr. Fierro:

By number.

By Mr. Ertel:

Q. Come down and tell me which ones you can positively identify, Officer?

A. It was my finding that Commonwealth's Exhibit No. 83 had made one of the plaster impressions. Commonwealth's Exhibit No. 90 could have made, (but we lacked accidental characteristics and no definite conclusion was reached as to that tire.) Also Exhibit No. 89 could have made one of the impressions, but here again we lacked accident characteristics and no conclusion was reached. Commonwealth's Exhibit No. 87 was matched and compared with one of the plaster impressions, that was determined in my opinion that tire had made that plaster impression.

Q. Now, did you make some photographs of both the plaster impressions and the tires so you could compare them and show them to the Jury?

A. Yes, I did.

Q. Would you hand me your first one, please?

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(Commonwealth's Exhibit No. 108 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 108, did you make those photographs?

A. Yes, I did.

Q. All right, Trooper Krebs, would you explain what is Commonwealth's Exhibit No. 108, you have something marked at the top as L-1?

A. Yes. This is, well let me see, these numbers are No. 73-2125 are our Laboratory control numbers, this tells me this case was submitted in 1973 and given the number 2125. L-1 is my own particular marking, which that is from my initials "Leon". LEK-3 is my own, I use my own initials for my own marking purposes. This is a side view of a plaster cast, L-1, which is this particular plaster cast.

Q. Now, can you point out on the photograph what you did?

A. As you can see here we have "eld" which are the last three letters of "Springfield", and here we have the same "eld" on the chart. I don't think you would be able to see them where you are, it may take a closer examination. These accidentals

Q. Do you want to put it right up by the Jury Box?
May we have the Jury stand up?

By The Court:

Yes, but you have to speak up.

By Mr. Ertel:

Q. Proceed?

A. Starting from our letter "D", we count over using

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1, 2, 3, between our third and fourth we have an accidental characteristic here and also above the fourth we have an accidental characteristic which if you could over here on the tire you will see we have a small accidental here and accidental out here.

Q. Can you point that out what, on what is Commonwealth's Exhibit No. 94?

A. We count 1, 2, 3 and here we have our two accidentals side by side, between the third and above the fourth.

Q. Then L-1 is a picture of this cast?

A. Yes.

Q. You labeled those 1 and 2, is that correct?

A. Yes.

Q. On LEK-3, which is Commonwealth's Exhibit No. 108, which is a picture of the tire, can you point out those same two points?

A. Yes, right here. Would you like to look at them on the tire?

Q. Yes, which tire would it be?

A. Here we have "D", starting from there we count 1, 2 and 3, and we have two accidental characteristics between the third and fourth and above the fourth.

Q. Did they compare, in your opinion?

A. Yes.

Q. What Exhibit was that, Officer?

A. That is Exhibit No. 88.

Q. Now, let's go back to Commonwealth's Exhibit No. 108,

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I noticed you marked 1 and 2, you also have on here 3 and 4, what are they?

A. They are also accident characteristics which by counting over an equal number of markings we will come up with the same result again. They are accidental characteristics, counting over 1, 2, 3, 4, 5, 6, 7, between 7 and 8, and right in here we have again the accidental characteristic.

Q. This is what, that is shown what you are referring to again as Commonwealth's.....

A. Commonwealth's Exhibit No. 94.

Q. And you are comparing that to Commonwealth's Exhibit NO. 108 on "L-1" on the top?

A. Yes.

Q. That shows what you marked as point 3?

A. Yes.

Q. Can you show them point 4?

A. Counting again, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, between 11 and 12, between here, 11 and 12, we have an accidental coming up in here.

Q. Can you describe that?

A. It is a cut in the sidewall of the tire.

Q. Does that show on the tire itself, in the photograph of the tire which you have LEK-3 on Commonwealth's Exhibit No. 108?

A. Yes, it does, it shows right here.

Q. That is point 4 which you have labeled it?

A. Yes.

Q. Can you point out on the photograph point 3 to the

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Jury?

A. That would be this cut right here, it might be hard to see.

Q. Now, can you point that out physically on the tire itself and the cast so that the Jury can see the comparison themselves?

A. 1, 2, 3, 4, 5, 6 and 7, here we have our cut here and over here is our other cut corresponding with the plaster cast.

Q. Did you also compare basically the wear patterns of this particular tire with that tread?

A. Yes, the wear patterns are similar.

Q. Can you show that to the Jury?

A. Here we have our outer rib which is, this is somewhat deeper and then we are basically smooth all of the way across to the opposite edge of the tire, and here it corresponds with this particular tire, the smoothness here, the deeper tread, and more shallow tread.

Q. Did you form an opinion as to whether or not based upon these four points the wear and the type of tire, whether or not the tire which is Commonwealth's Exhibit No. 88 and Commonwealth Exhibit No. 94, if that tire left that tread mark?

A. At that point in my examination, yes, it was my opinion that tire had made this impression, and then further check showed two other accidental characteristics which further leads to my conclusion.

Q. Do you have pictures of those other two accidental characteristics to show?

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A. Yes, I do.

(Commonwealth's Exhibit No. 109 marked.)

Q. We have marked that as Commonwealth's Exhibit No. 109. Now, you are showing to the Jury Commonwealth's Exhibit No. 109, what is "L-1" at the lefthand top of it?

A. "L-1" is the same cast that we have been looking at, however it is the top view rather than the side view.

Q. What is "LEK-3" on Commonwealth's Exhibit No. 109?

A. This is also the same tire we have been looking at.

Q. You have two number 5's labeled on that, on there?

A. Yes, they are my points of comparison for this particular view. This is a continuation of this particular cast. We are limited by an 8 x 10 photograph, and also two different views of the tire showing the accidental characteristics.

Q. Let's stick to the lefthand portion of Exhibit No. 109, can you point out No. 5, what is that?

A. Yes, this is a cut in the tread of the tire.

Q. Does that show also on the plaster cast in the photograph?

A. Yes, that is right here on the cast.

Q. Do they compare?

A. Yes, they do.

Q. Can you show that on the cast itself?

A. Here we have the plaster cast, see, it is cut right here in the tread itself.

Q. You are showing Commonwealth's Exhibit No. 94, I believe. Now, can you show that in the tire also?

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A. Yes, Sir, I can.

Q. You are referring to Commonwealth's Exhibit No. 88, is that correct?

A. Yes, Sir, right here we have the same corresponding cut in relationship to a wear bar which is located right here.

Q. What is a wear bar?

A. A wear bar is an indication that your tire tread is wearing down to the point where it should soon be replaced. This is put in by the manufacturer. It would be a class characteristic of the tire.

Q. You compared that wear bar to this cut to establish the same thing?

A. Yes, that wear bar is visible in the cast itself.

Q. Now, turning to Commonwealth's Exhibit No. 109, to the righthand side of it, and again I guess we had better move it forward, looking at "L-1" at the top, can you point out a marking there?

A. Yes, in the same tread. Now, this particular characteristic is an accidental characteristic and is somewhat difficult to see due to the whiteness of the cast, but in the same tread. Now, at another position on the tire we have a cut coming across here. It is slightly obliterated at one point, this is the cut I am referring to in the tire. It is a different cut than the first cut I showed you.

Q. Can you show that on the cast and tire again, first on the cast?

A. You will have to look very closely at this one, right

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here we have a cut coming across here, slightly obliterated at this point, starts here and ends here running catty-cornered across the tire.

By The Court:

You have to speak up, Sir.

By Mr. Ertel:

Q. Could, do you have that same cut which you have shown on the plaster cast, which is Commonwealth's Exhibit No. 94?

A. Yes, we do.

Q. You are referring now to Commonwealth's Exhibit No. 88

A. I lost it. Now, this is the first cut that I showed you here, and then we come over to this point, adjacent to this wear bar and here we have this accidental characteristic, this cut in the tread right here running across.

Q. Now, where was the first one?

A. The first one is over in this general vicinity.

Q. How far apart are they on the cast?

A. From the cast, they run from this point to this point here.

Q. Show it to the other end of the Jury box?

A. It is right in this tread here, to the left, to your left of the wear bar.

Q. Does that complete your examination of Commonwealth's Exhibit No. 88, which is the tire you have compared with the cast there?

A. Yes, Sir, I have no further accidental characteristics to show on that one.

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Q. Based on the six points, plus the wear patterns and class characteristics, do you have an opinion as to whether this tire made these marks?

A. Yes, it is my opinion that particular tire made the impression.

Q. Now, did you compare another tire?

A. Yes, Sir, I did.

(Commonwealth's Exhibit No. 110 marked for identification.)

Q. What is marked as Commonwealth's Exhibit No. 110, did you make that also?

A. Yes, Sir, I did.

Q. Now, would you explain what is Commonwealth's Exhibit No. 110?

A. This is a photograph of my markings LEK-2, which is Commonwealth's Exhibit No. 87, and this is a photograph of the plaster impression, L-3, which is Commonwealth's Exhibit No. 91.

Q. Are both "L-3's", I see you have two on the top, one on the lefthand panel and one on the righthand panel, are they pictures of the same cast?

A. This is a continuation out of necessity with the 8 x 10 paper, we must make two pictures to show you the full cast, and again the same tire, two different views of the tire itself.

Q. That would be a view of Commonwealth's Exhibit No. 87, is that correct?

A. Yes.

Q. How many points of comparison did you get as far

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as accident characteristics are concerned on Commonwealth's Exhibit No. 87, which, with the cast, which is 91?

A. I listed nine points of comparison.

Q. Now, I am going to ask you to bring this forward so the Jury can see it? Starting with 1?

A. In point No. 1 we have an accidental characteristic in the second tread pattern, and here we have a portion of it showing, it is slightly obliterated, but it is there.

Q. Can you describe what it looks like?

A. It appears to be a cut in the tread.

Q. Can you point that out on the cast itself, please, which is Commonwealth's Exhibit No. 91?

A. It would be this point here below my thumb. If I don't have it turned right and you can't see it, tell me and I can turn it and the light will show it to you then.

Q. Now, you have shown them as what is point No. 1 in Commonwealth's Exhibit No. 110, can you show them that on Commonwealth's Exhibit No. 87?

A. Right here above my thumb I show you the same corresponding mark. Not this heavier one now, the smaller mark here below that.

Q. That corresponds to the mark on the cast?

A. Yes, it does. It would be this mark here, below my finger.

Q. Is that sort of like a cut?

A. Yes, it appears to be a cut in the tire.

Q. It comes right next to what would normally be some

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of tread pattern?

A. Yes, the tread pattern is somewhat worn away at that point.

Q. That compares with No. 1, is that correct?

That is correct.

Q. Now, turning to Commonwealth's Exhibit No. 110 again, point No. 2, can you point out No. 2?

A. Point No. 2 and 3 are within a half inch from one another and possibly we could show them better by showing them together in relationship to No. 1.

Q. Point No. 1 is almost directly above them?

A. Yes.

Q. What are points Nos. 2 and 3?

A. They are small cuts in the outer tread of the tire.

Q. They are located where on Commonwealth's Exhibit No. 110?

A. Here.

Q. They are between the first and second.....

A. On the first tread, on the outside of the tire.

Q. Would you be able to point those out on the cast, please, so that the Jury can see them?

A. I will try to show you these two points coming, together, here we have No. 1, that was pointed out, and now we drop down here to these two accidental characteristics which correspond with the accidentals on the tire.

Q. They are in a triangular pattern?

A. They are.

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Q. Put your finger on them?

A. This point above my finger and this point right here.

Q. Would you point out No. 1 so they see the triangulation?

A. Here is No. 1, No. 2 and No. 3. Point No. 1 and down to No. 2 and No. 3.

Q. Showing Commonwealth's Exhibit No. 87, can you show those same three points of comparison?

A. Here is No. 1 and come down here to point No. 2 and point No. 3.

Q. Now, Officer Krebs, on Commonwealth's Exhibit No. 110, you have some further marks noted, let's start with No. 4, can you describe that for the Jury?

A. Yes, No. 4 is a cut and possibly for convenience we could show this triangulation there.

Q. No. 4, 5 and 7?

A. In sequence with this long cut.

Q. That would be No. 6?

A. Yes.

Q. Would you describe No. 4 as what it shows on the cast picture of 110 and then show it on the photograph of the tire, if you will, please?

A. No. 4 is a small cut located just off of the second tread, which corresponds with this mark here, mark No. 4 on the tire.

Q. No. 5?

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A. No. 5 is just a small cut adjacent to the wear bar in the outer tread which we shown here as No. 5.

Q. Point No. 6?

A. Point no. 6 is a long cut which runs from this point to the other photograph, actually, it is too large to photograph on one picture.

Q. Let's show it on the other side?

A. Here we have the continuation of this cut in the tire coming across here. Point No. 7 is, is part of the triangulation of points right here, we have a small hole in the tire which corresponds with the smaller hole here in the cast.

Q. Can we show that now on the cast, please?

A. Here we have....

Q. You are referring now to Commonwealth's Exhibit No.91?

A. Commonwealth's Exhibit No. 91, it will show here, and this may be difficult to see as it is all white, but here we have this accident characteristic with relationship to the wear bar, and here we have this particular accident characteristics, when we come up this accidental characteristic, if I turn it this way somewhat it may be more obvious, and here we have the long cut which is marked point No. 6 running from this point to this point over here, and then the smaller hole up here completing this triangulation of three points. This is the wear bar, first accidental characteristic marked point No. 5, this is the one marked point No. 4, a long cut extending from this point over to this point is marked No. 6, and this one here is marked No. 7.

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Q. Based on those, could you conclude that this was the same tire that made this cast impression?

A. Yes, I could.

Q. Did you find anymore points?

A. Yes, I did.

Q. I show you the other side of Commonwealth's Exhibit No. 110, which would be the right panel, can you show No. 8 on that?

A. No. 8 is a cut in the tread.

Q. Now, I will hold that, will you point it out on the tire photograph below it please?

A. Yes, here we have in the center tread, this cut showing here, and here again we have this cut shown in the cast.

Q. What is point No. 9?

A. Point No. 9 is the exit point for this long cut which you have on the tire.

Q. Can you show this to the Jury on Commonwealth's Exhibit No. 91? What is point No. 8?

A. Yes, here we have the cut in the center tread of the tire, not this bigger one, but this smaller cut, and here we have this continuation of the exit point of this long cut in the tire.

Q. Did that exit point correspond with anything so you could identify it?

A. It was just to the left of a wear bar, which is located right in this area.

Q. Can you point out that wear bar?

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A. There is the exit point, this would be your wear bar right here. That is the accidental characteristic marked No. 8. This is your exit point in relation to this wear bar here. Here is your wear bar.

Q. All right, can you locate those points on that tire?

A. Here we have the first three that were shown, the first three points, then we came over and have this accidental characteristic by this wear bar, we have this accidental characteristic shown here and this one that forms a small triangle, then we have our cut across over to this point where it exits, and up here we have our other accidental characteristic which is shown in the photograph of the plaster cast.

Q. Can you show the wear bar where you are referring to?

A. Here is the point of exit and the adjacent wear bar right there. These are the first three points that we have shown to you over here, and then come across to this wear bar, we have this accidental characteristic and this one here, and this one then showing the cut coming across here, we have this accidental characteristic up here, and then the exit point over here adjacent to the wear bar.

Q. Based on that, were you able to conclude that cast and that impression in that soil was made by this tire?

A. Yes, Sir.

By Mr. Fierro:

Did you add "soil" now to this opinion in that question? We object to that, your Honor.

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By The Court:

Is that how you want your question to be asked?

By Mr. Ertel:

I made my question.

By The Court:

May I see Counsel?

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

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Were you able to conclude that cast was made from the tire that, well, the cast was not made, but what the cast was made from was made by that tire?

A. Yes, this cast is a representation of the object that made the mark that this cast was made from. In other words, we deal with a positive and negative, we have a hole, when an impression is made in the ground by a tire, that is a negative impression, if we were to bring that in, that would be completely reversed from the tire, the plaster cast is made from that impression and we have a positive, which then would be a reproduction of the object that made the mark.

Q. You can conclude that tire made that mark, is that correct?

A. That is correct.

Q. Now, there are other markings in some of these casts, I show you marked as Commonwealth's Exhibit No. 92, can you go over there and tell the Jury what you observed on there?

Big Tire
Switch

Switch 89-T-92

Big Tire Switch

544.

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A. This is another cast that was submitted to me, it shows a tire with a fairly good tread, and as a result of having a fairly good tread, the newer the tire the less possibility there is of having accidental characteristics there is and as a result of examining this, it was my opinion that this could have been one of the tires, or due to the lack of accidental characteristics I could not reach a definite conclusion.

By Mr. Pierro:

To what tire does that particular Exhibit refer to?

By Mr. Ertel:

Q. You are now taking out Commonwealth's Exhibit No.

A. That is correct.

Q. Is this the tire you concluded could have made that?

A. Yes, I show here we have a tire with a fairly good treat, a Kelly-Springfield, which we have indication on the casting showing it could have been a Kelly-Springfield, and it was my opinion this tire could have made that mark that that cast was made from.

Q. But due to the fact there were no accidentals, you could identify, you could not positively identify that cast, is that correct?

A. Yes, that is correct.

Q. But the wear patterns and the markings are the same?

A. Yes, the wear patterns are similar.

Q. Did you also observe a sneaker mark in there?

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A. Yes, Sir, I did, I believe this is the one, here we have a slight sneaker mark to the side, what appears to be a sneaker tread.

Q. Can you tell me when that was put in there?

A. No, this is very vague as to this mark, and I couldn't really tell which impression was made first, whether the tire or sneaker was made first.

By Mr. Fierro:

What Exhibit No. is that?

By Mr. Ertel:

No. 92.

Q. Now, Commonwealth's Exhibit No. 93, what tracks can you see on there?

A. There are several treads, we have what appears to be a snow tread on the edge, Kelly-Springfield here, and an overlap of a Kelly-Springfield here, and here again the lack of accidental characteristics no definite conclusion could be reached.

Q. All right, Officer, take the stand.

A. (Witness returned to stand.)

Q. Did you conclude as to, as far as the last Exhibit whether or not the Kelly-Springfield that showed in that could have been made by the tires in question?

A. Yes, I didn't reach a definite conclusion as to which tire made the print, one of the smoother tires had made it.

Q. Now, Officer, did you have the opportunity to examine further a set of boots which is marked as Commonwealths Exhibit No. 96

C. W. Fierro

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and 97?

A. Yes, I did examine these boots.

Q. I show you marked as Commonwealth's Exhibit No. 51, did you have an opportunity to examine that also?

A. Yes, I did.

Q. I show you marked as Commonwealth's Exhibit No. 52, did you have the occasion to examine that?

A. Yes, I did examine this cast.

Q. I show you marked as Commonwealth's Exhibit No. 50, did you have the opportunity to examine that cast?

A. Yes, I did.

Q. I show you marked as Commonwealth's Exhibit No. 54, did you have an opportunity to examine that?

A. Yes, I did.

Q. Commonwealth's Exhibit No. 53, did you have an opportunity to examine that?

A. Yes, I did examine this one too.

Q. And Commonwealth's Exhibit No. 55, did you examine that?

A. Yes.

Q. Now, Officer, as far as the three you have in your hand, being 53, 55 and 54, were you able to reach any definite conclusion on those?

A. No. My examination showed that these boots marked as Commonwealth's Exhibit No. 96 and 97 could have made Commonwealth's Exhibit No. 53, 54 and 55. Here again there was a lack of accidental characteristics thereby no definite conclusion

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could be reached on my part.

By Mr. Fierro:

Please repeat those numbers again and could have made what?

A. Commonwealth's Exhibits Nos. 96 and 97, being the boots, could have made the plaster impressions marked as Commonwealth's Exhibit Nos. 53, 54 and 55, could have been made by Commonwealth's Exhibit No. 96 and 97, being the boots again.

By Mr. Fierro:

Q. Then you said what?

A. But due to the lack of accidental characteristics no definite conclusion could be reached.

By Mr. Ertel:

Q. Did you examine Commonwealth's Exhibit No. 50?

A. Yes.

Q. What conclusion could you reach on that one, if any?

A. There again this Gould, Commonwealth's Exhibit No. 50, could have been made by Commonwealth's Exhibit No. 96 or 97, but here again we have the lack of accidental characteristics and again no definite conclusion was reached.

Q. I show you marked as Commonwealth's Exhibit No. 52, did you reach any conclusion as to that?

A. Here again no definite conclusion was reached in regard to Commonwealth's Exhibit No. 52. Exhibit No. 96 and 97 being the boots, could have made that mark, but again, due to the lack of accidental characteristics no definite conclusion was reached. In other words, a boot of the same design could possibly

Leon Krebs.

have made this mark.

Q. Did you examine Commonwealth's Exhibit No. 51?

A. Yes, I did.

Q. Did you reach any definite conclusion on that?

A. Yes, I did. Commonwealth's Exhibit No. 51 shows two separate shoe impressions, this is one shoe impression on this side and another shoe impression on this side, it was my conclusion that the left boot, being Commonwealth's Exhibit No. 9 did make these two impressions.

Q. All right, did you take photographs and make an Exhibit of this Commonwealth Exhibit?

A. Yes, I did.

Q. Do you have those with you?

A. Yes, I do.

(Commonwealth's Exhibit No. 111 and 112 marked.)

Q. You are now showing to the Jury what is marked as Commonwealth's Exhibit No. 111?

A. That is correct.

Q. Commonwealth's Exhibit No. 111, did you make it?

A. Yes, I did.

Q. Is it a fair representation of what you observed when you made this?

A. Yes.

Q. At the top you have marked "L-5", what is that a picture of?

A. L-5 is a photograph of Commonwealth's Exhibit No. 51 at this particular angle right here.

Leon Krebs.

Q. Which as you face the cast it would be the right wing?

A. Yes.

Q. What is the bottom "LEK-5"?

A. This is the photograph of Exhibit No. 97, looking at the sole and heel.

Q. What is point No. 1? On the photograph?

A. Point No. 1 is an accidental characteristic shown right here in relation with a nail marked Point No. 2, that would be this particular accidental characteristic right here in relationship with this nail impression show.

Q. Continue to show the Jury?

A. This is the accidental characteristic here and the nail impression here.

Q. Incidentally, that boot is No. 97, is that correct?

A. Yes.

Q. Can you show those two accidental characteristics on that boot to the Jury?

A. Here we have the accidental characteristic in relationship to this nail here.

Q. Continue to show the Jury?

A. The accidental characteristic here in relationship to this nail.

Q. Were you able to form an opinion based on those two accidental characteristics with this boot?

A. I did reach the impression this left boot did, in fact, make the impression that this cast was made from.

Q. Is that based on unusual design?

A. This is definitely an accidental characteristic particular to that boot.

Q. Now, I show you marked as Commonwealth's Exhibit No. 112, can you identify this, please?

A. Yes, Commonwealth's Exhibit No. 112 is a photograph showing a plaster cast marked Commonwealth's Exhibit No. 51, this view here, showing this portion of the shoeprint.

Q. The left wing?

A. The left wing of the impression.

Q. And also you have again on the bottom "LEK-5", is that the same boot?

A. This is the same boot, Commonwealth's Exhibit No. 97.

Q. Will you start with point No. 1 on that Exhibit.... First let's use the picture and the cast and or the pictures, then we will go back to the cast and boot. What is point No. 1?

A. Point No. 1 is a nail in the sole of the shoe, here on the shoe we have point No. 1, point No. 2, again a nail corresponding with point No. 2 on the shoe. Point No. 3 is a wear characteristic of the shoe.

Q. Let's go with the nails first, can we stop with 1 and 2?

A. No. 1, 2 and 7. Point No. 7 shows a nail forming this triangle on the plaster cast. Here we have again point No. 1, 2 and 7, showing this triangulation.

Q. Can you show that on the cast, please, which is

Leon Krebs.

Commonwealth's Exhibit No. 51?

A. Here we have the two nail impressions and the third over here.

Q. Now, can you show us on the boot please, which is Commonwealth's Exhibit No. 97?

A. This nail, this nail and this nail here.

Q. You have shown Points Nos. 1, 2 and 7 off of Commonwealth's Exhibit No. 112, can we go on to point No. 3?

A. Point No. 3 is the wear characteristic of the shoe. It is not obvious on the photograph, but when you look at the plaster cast and the shoe itself, you will see the definite wear characteristic here at the heel.

Q. You are referring to the rounded part of the heel?

A. We have a depression here and a rise which corresponds with the heel itself. A low portion and high portion. Here again we have the corresponding rise, a low portion and a high portion. A low portion and high portion, here again we have the re-production and high portion, being a wear characteristic of the shoe.

Q. Now, Point No. 4, can you or do you want to explain No. 4, 5 and 6 together?

A. Okay.

Q. Point them out here?

A. Point No. 4 is the point here, trim mark on the shoe. Point No. 5 is a thread hole from sewing the sole to the shoe itself, and point No. 6 is an accidental characteristic, a small "L" shape cut located between the nail and the thread hole.

Leon Krebs.

Q. That shows up on the photograph also?

A. Yes, that is reproduced down here, the trimming cut. Also in relationship with point No. 7, the nail.

Q. Can you show that on the cast to the Jury?

A. Here we have the trimming mark, we come up to this thread hole here, and right here between the thread hole and the nail hole we have this "L" shaped characteristic.

Q. Can you show it on the boot, please?

A. Here is the trim, the thread hole and the "L" shape characteristic between the nail and this thread hole here.

Q. Is there anybody cannot see it because of the light?

A. You have the trimming characteristic here, the thread hole is here, the "L" shape characteristic is at this point right here, and in relationship to the nail marked point No. 7 on my chart, here we have the trim mark, the thread hole, the "L" shape characteristic in relationship to this nail. Here we have the trim mark, the thread hole and the "L" shape characteristic, the brass nail and the thread hole.

Q. Were you able to identify this one on, identify this on one of the casts, the big cutout mark on Commonwealth's Exhibit No. 97?

A. This could conceivably be in this area, but it is so vague that I would not attempt....

By Mr. Hierro:

You say "this", the record don't show that.

By Mr. Ertel:

Do you have an objection?

Leon Krebs.

By The Court:

Be specific what you are referring to, what Exhibit number.

By Mr. Ertel:

Q. Exhibit No. 112 you were referring to?

By Mr. Fierro:

What part of Exhibit No. 112?

By Mr. Ertel:

If you don't mind, I will conduct the examination, Mr. Fierro.

By Mr. Fierro:

You didn't do it so well.

By The Court:

Now, just a minute, Gentlemen.

By Mr. Ertel:

Q. Explain the cut mark on Commonwealth's Exhibit No. 97, which you said could have been in the area but could not identify it?

A. I am referring to this accidental characteristic here could conceivably fall into this area, but it is so vague I would not call it as a point of comparison.

Q. You did find that on Commonwealth's Exhibit No. 111?

A. Yes, this is the area that I marked as point No. 1.

Q. That corresponds to the point which is the large cut-out on the inside of the shoe of Commonwealth's Exhibit No. 97?

A. That is correct.

Q. Officer, in your opinion, did this Commonwealth's

Leon Krebs.

Exhibit No. 97 make the positive or for this cast which is Commonwealth's Exhibit No. 51?

A. It would be the negative of this cast.

Q. All right?

A. Both sides were made by the left boot of Commonwealth's Exhibit No. 97, being the left boot.

Q. Thank you, Officer.

A. (Witness returned to stand.).

Q. Incidentally, in Commonwealth's Exhibit No. 97, did you examine the inside?

A. Yes. There is at the inside, we have the name, "Kim L. Hubbard", which appears in there to be a service number, appears to be 196446085, it is somewhat illegible, but that is as much as I could make out of it.

Q. Officer, did you also measure the distances between these particular points to determine if they compared?

A. Yes.

Q. Did they compare?

A. They did compare, the measurements.

Q. Cross examination.

By The Court:

Mr. Fierro.

CROSS EXAMINATION

By Mr. Fierro:

Q. Mr. Krebs, in talking about certain casts that you identified and said that you couldn't reach any definite conclusions, I think they were 53, 54 and 55 and also 50 and 52,

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will you explain why you couldn't reach any definite conclusions?

A. Yes, there were no accident characteristics visible on the plaster impressions themselves that would be sufficient for me to compare them to either the tire or the shoe, whichever cast which would apply. There are just not enough marks for me to reach any definite conclusion.

Q. Well, can you explain, for example, why the boots, which are Commonwealth's Exhibits Nos. 96 and 97 made impressions from which casts were drawn, which I called, I think 50, 53, 54, 55, 52, if those boots made those impressions why couldn't you see something in those impressions made by those boots as distinct impressions made in other casts by those boots, what reason for it?

A. In my opinion, there was apparently something on the bottom of the shoe and the reproduction made in that point would be a faithful reproduction of whatever was on the shoe. Once this no longer adheres to the shoe then we return back to the original surface of the bottom of the shoe.

Q. But in these impressions, if these impressions were all made at the same time, say within a few seconds or a minute, what are you talking about when you say something that adheres to the shoe?

A. Well, earth, for example, if it is moist will adhere to a shoe and in walking this particular earth will not stay forever in a firm position in the shoe, it will adhere and possibly in the next step will drop off and possibly in dropping

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off will leave the surface of the shoe and then we will get a good comparison because this has been pressed flat to the shoe and it drops and sticks to the soil existing on the ground and the impression is left there.

Q. Well, if these impressions were all made in an area of seven feet, let's say ten feet and on the same ground, wouldn't you expect all impressions to be the same?

A. No, I would not.

Q. You would not?

A. No.

Q. You would expect some to be better than the others?

A. Yes.

Q. In other words, you would expect that the same boots on the same ground, made at the same time, are going to leave different impressions, that is what you are saying?

A. Depending upon the amount of debris that would be adhering to the surface of the shoe.

Q. Or whatever conditions, isn't that what you are saying, that the same boots can make different impressions on the same ground within the same time, isn't that a fair statement?

A. The same boot under normal circumstances with nothing.....

By Mr. Ertel:

I object and would like to approach Side Bar at this point.

(AT SIDE BAR.).

Leon Krebs.

By Mr. Ertel:

There is no excuse for the commentary that Mr. Fierro made which was heard at my table.

By The Court:

What was the statement?

By Mr. Ertel:

"This man does not want to answer the question.", there are no reasons for those comments made by him.

By Mr. Fierro:

I made it to my Client.

By Mr. Ertel:

I heard it distinctly.

By The Court:

The Court did not hear it, but if there was such a remark it should not be made.

By Mr. Fierro:

What I said to my Client, "I don't think he wants to answer the questions."

By The Court:

There is no need for that.

(END OF SIDE BAR.).

By The Court:

Read the question.

(Official Reporter reads question as follows: "Q. Or whatever conditions, isn't that what you are saying, that the same boots can make different impressions on the same ground within the same time, isn't that a fair statement?")

COE MANU
[Signature]

A. I would have to qualify, I don't...
By Mr. Fierro:

Q. I don't want you to qualify, I want you to answer?

A. Yes, it is possible.

Q. When you got these boots, I think they are Commonwealth's Exhibits Nos. 96 and 97, were they in the same condition as they are now and particularly with reference to the mud, the dirt, or had they been cleaned off, or don't you know?

A. I don't know. They would be in the same condition, now, as I, when I received them. There was some slight debris resembling manure on the bottom which I cleaned off, but a very insignificant amount.

Q. What did you do with whatever resembled the manure or whatever the substance was, did, what did you do with it?

A. I just brushed it with my hand and it apparently fell to the floor.

see page 559
Q. Do you know if the police removed whatever they could of the dirt, manure or other foreign substance that may have adhered to these boots, do you know?
Had Hines boots been dirty I would not have permitted them to be sit on my table

A. No, I don't.

Q. Well, those boots still are dirty, aren't they?

A. Yes.

Q. And you know, as an expert, they still can be scraped, that is to say that the dirt that is on those boots can be scraped and a sufficient amount of dirt from those boots can be obtained for Laboratory analysis, you agree to that, don't you?

A. No, Sir, I can't answer that, I am not a Chemist.

Krebs was... [illegible]

Leon Krebs.

At this point they had no evidence which was

Q. That is out of your field?

A. Yes, Sir.

Q. Now, when you said that No. 53, 54, 55, 50 and 52, you can't make any definite conclusions about those casts concerning those boots, what you are saying is these casts didn't leave enough characteristics or "they were not plain enough for me to make an identification?"

on 2/25/67

A. That is correct.

Q. You understand those casts, those same casts were made by the same Police the same day, the same time, the same area, you know that, don't you?

A. Yes.

Q. And you understand they made casts of at least all of the identifiable impressions they could find on the ground, you know that, don't you?

A. Yes, I do.

Q. I would like to know about this sneaker print that you saw, and I think it is, I don't know if it is your Exhibit No. 92 or Commonwealth's Exhibit No. 92, which is it?

By The Court:

The Court has it marked as Commonwealth's Exhibit No. 92.

A. Commonwealth's Exhibit No. 92,

By Mr. Pierro:

Q. While you are here, since I didn't see it when you showed it to the Jury, where is this sneaker print?

Leon Krebs.

A. What appears to be a sneaker print is right here?

Q. It was what, it has shall we call them chevron type?

A. Yes.

Q. 1, 2, 3, at least four of them?

A. Yes.

Q. Well defined, aren't they?

A. Yes.

Q. To you, Mr. Krebs, as an expert, they appear to be sneaker-type marks?

A. That is correct.

Q. No question about that in your mind, is there?

A. Well, there is always a possibility that a heel may be manufactured that, I don't know about that, would have a mark similar to that?

Q. We will exclude the realm of possibility and put it down to probability, that there is no question in your mind that probably what you told the Jury is a chevron-type mark came from a sneaker?

A. Yes, it appeared to be.

Q. Is there any reason for you to believe, and we will call it a sneaker mark, is there any reason for you to believe that that sneaker mark which appears on Commonwealth's Exhibit No. 92 was not made at the same time that the, let's call it tireprints, on the same exhibit were made?

A. Would you rephrase that question? *

Q. Yes. Is there any reason for you to believe that on

Leon Krebs.

this Commonwealth's Exhibit No. 92, that these chevron-type marks that appear on this Exhibit, were not made at the same time as the result of this cast, which includes the tireprint?

A. You mean simultaneously?

Q. Or within a minute or so of each other?

A. I really can't tell by any time lapse.

Q. Well, then is your answer that you have no reason to believe they were made at substantial different times, let's put it that way?

* A. They could have been made one before the other, the tireprint before the sneaker, or the sneaker before the tire, I can't answer.

Q. I am talking about the time differential, whether one was made, for example, many days in advance or hours or minutes, or whether they could have been in substantially the same amount of time, let's say within five minutes?

* A. They could have been.

*and was not a line
before 1974 Toledo impression*

Q. Well, is there anything that you can say as an expert to tell us, that they were made at different times, like different days, for example?

A. No, I can't.

Q. Well, then is this a fair statement, that as far as you are concerned, and you have looked at this cast, there is nothing on this case to indicate that the sneaker-type marks were not made at or about the same time as the tireprint, is that a fair statement?

A. Yes.

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Q. That is a sneaker-type mark?

A. It appears to be.

Q. Well, of course, you were not there to see who or what made any of these things, were you?

A. No, I was not.

Q. Look at these boots, Commonwealth's Exhibit 97 and 98, you were not there to see what these boots did, if they did it, were you?

A. I did not observe the scene at all.

Q. Just look at those tireprints and sneaker prints, you didn't observe anything, all you did was make certain tests, most of them visually, and made some photographs of whatever the State Police sent you?

A. That is correct.

Q. You are not going to say that on Commonwealth's Exhibit No. 92, that those marks that appear to be sneaker marks were not made by a sneaker, you are not going to say that, are you?

A. No, I can't.

Q. You can't say even that those boots, except for the expression of your opinion, you cannot even say those boots made any marks on these plaster of Paris casts that have been introduced here, can you?

By Mr. Ertel:

I object to that question.

By Mr. Pierro:

I am asking if he knows a fact or merely stating

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an opinion.

By The Court:

Q. Do you understand the question?

A. No, are you referring to the tire cast or shoe impression?

By Mr. Fierro:

Q. Shoe?

A. It is my opinion that the left boot made that particular mark that reproduced that cast.

Q. What I was asking very simply was you are not telling this Jury about facts, you are merely telling this Jury what your opinion is, isn't that correct?

By Mr. Ertel:

I object to that.

By The Court:

The objection is over ruled.

By Mr. Fierro:

Q. Isn't that correct?

A. My opinion....

Q. I am only asking, Officer.....

By Mr. Ertel:

Let the man answer.

By The Court:

Q. Do you understand the question, Officer?

A. Yes, I believe I do, my opinion is....

By Mr. Fierro:

I am not asking what his....

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By Mr. Ertel:

I object until he finishes the answer.

By The Court:

You can answer "Yes" or "No", or that you don't know, and then explain.

A. Would you rephrase your question, please?

By Mr. Fierro:

I won't rephrase it, I will reask it.

Q. Isn't it true that you are here testifying merely as to what your opinion is with regard to this various evidence concerned here rather than facts?

A. Yes, I am stating my opinion, however, my opinion.....

Q. I don't think.....

By The Court:

The Court is permitting him to explain if it is pertinent and relative to the question, Sir.

By Mr. Fierro:

Q. Proceed?

A. We are dealing here with an exacting science and my opinion is that shoe made that print, and your interpretation then of what is a fact and what is not is your opinion. My opinion is that shoe made that print.

Q. Now, Mr. Krebs, you say you are dealing with a scientific observation concerning these matters?

A. Yes.

Q. Are you trying to tell me that your opinion, for example, concerning these impressions that you testified to are

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exacting, for example, as fingerprints?

A. Fingerprints is another field.

Q. Just answer the question?

A. Would you repeat it, please?

Q. Did you forget it?

By The Court:

Mr. Feese, read the question back.

(Official Reporter read question as follows: "Q. Are you trying to tell me that your opinion, for example, concerning these impressions that you testified to are exacting, for example, as fingerprints?").

A. Yes, they are.

*Answer about testimony **

By Mr. Pierro:

Q. You realize what you have just said in your answer, that you say that these casts made, whether of shoes or tires, rise to the same level of evidentiary value as fingerprints?

A. I didn't say "evidentiary value" or "evidential value".

Q. Not evidential, evidentiary?

By Mr. Ertel:

He didn't say that, I object to the question.

By The Court:

Reword your question.

By Mr. Pierro:

Q. Do you say that these tireprints and bootprints that you have been testifying about this morning, that they rise to the same level of scientific precision and evidentiary value as

Leon Krebs.

a fingerprint would?

By Mr. Ertel:

I object to that, no man can testify as to what evidentiary statements and so.....

By The Court:

Q. Do you understand the question?

A. Yes.

Q. Do you feel qualified to answer?

A. Yes.

Q. You may answer, the objection is over ruled.

* A. No, this does not come up to the level that a fingerprint does.

compare with answer on 565

By Mr. Fierro:

Q. Or, for that matter, many other scientific methods of criminal detection?

By Mr. Ertel:

Objection.

By The Court:

Q. Do you understand the question?

A. No.

Q. Be more specific.

By Mr. Fierro:

Q. I will withdraw it. Well, since you consider these matters of some scientific integrity, I would like to have you explain, instead of saying that you reached no definite conclusion about 50, 53, 54, 55 and 52, I want to know on your scientific testing and what that testing was that you made this conclusion?

Leon Krebs.

A. Well, I can show on one Commonwealth Exhibit where the marks were similar, however due to some unknown reason a portion of this shoe was taken away and the mark is similar, but no longer exists, there has been a change from the cast and the shoe.

Q. Who made that change from the cast and the shoe?

A. I don't know.

Q. How was it made?

A. Apparently through wear or abuse.

Q. You mean there is adfference between a cast and a shoe and you say that the change might have been made through abuse or wear?

A. That is correct, after it was made.

Q. What you are saying then, if the cast was made on one day and the boots were worn let's say for the next two weeks, they would have to show some additional change, wouldn't they?

A. They would not have to, it would depend on the degree of wear.

Q. If the degree of wear was considerable, wouldn't they have to show some degree of change?

A. It would again depend on how much or how little they were worn.

Q. Go ahead. Assume that the boots were worn for the following two weeks after October 19th and were worn let's say daily, wouldn't you agree that there should be some change between the boot and the cast?

A. To what degree, I can't really answer that.

Leon Krebs.

Q. I can't answer it either, that is why I am asking you

A. This would depend on how the shoes were worn, on what surface they came in contact with, and things of this nature.

Q. I want you to assume that the boots were for, were worn for approximately the next 14 days after October 19th, and included in their wear they were worn on a concrete floor with water and flour, also on a concrete floor with mud and grease, and also worn on two mountain climbing hikes from school, in addition to the usual daily wear, wouldn't you agree that such time wear would produce a change different than what would appear on the cast?

By The Court:

Side Bar, Gentlemen.

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

By The Court:

Members of the Jury, we are going to take our morning recess at this time. Defendant is excused and the Jury is excused.

(Recessed at 10:45 A.M. and Counsel and Court went to Chambers.).

(IN CHAMBERS.).

(Off-the-record discussion.).

By Mr. Ertel:

The Officers will testify they went to the Hubbard home, he was not a suspect at the time. That the Mother made statements in his present, basically that he was home all of the time during this entire episode, including the entire fore-
afternoon polishing the floor, and at that point they were separated

*Ertel is a
Lie -
Deck Hymels
Testimony
10/14/51
K. Kim
C. Kim*

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the Parents and boy, we asked them and they agreed to do it. At that time the boy left the house, we interviewed the Parents individually, the boy came back to the house and when we were finished, or just about finished. Mr. Hubbard stayed in the vicinity. At that point the boy was interviewed as to his activities in the afternoon. He said he got up at approximately 1:15 , 1:10 to 1:15 in the afternoon, I can be off a little bit on my times. That he went to the store for some cigarettes, came home, he then went down to the Hum-Dinger. He saw the decedent ^{Kim} ~~Kim~~ playing. He then came home, worked on his car for an hour and a half to two hours. He then went to the 5th Avenue Car Wash, washed his car with three quarters, that this took him through the period of time he left, approximately quarter of four, he was there until approximately quarter after four, at which time he returned home. He did not see the decedent at all after that. That the first time he went out was at (7:00) to look for the decedent, but he didn't really look for her, he was instructed to do so, but he didn't. Again he went to the Hum-Dinger and various places around town. The second story, he had never been to the scene too incidentally. The second story was substantially the same as the first...oh, yes, he saw Ard Stetts around (7:00) that night. The second story was substantially the same, except he ⁴ moved the time he saw Ard Stetts, no, he said he saw Ard Stetts at 4:00 the first statement, but the second statement he saw him at 7:00. The second statement was substantially the same. The Third statement was that he went to get a floor buffer in there, I don't know if I mentioned that before or not.

Leon Krebs.

By The Court:

Is that the same in both?

By Mr. Ertel:

Yes, he went around 1:45 to get a floor buffer, and that confirms. The third statement was that he lied to us, that he had been by the scene. First he said he had been down there in the morning, then he said he went after he got the floor buffer, which was at 1:45. That he went up on the mountain to smoke a couple of joints or to find somebody to smoke a couple of joints. He couldn't find anybody. He came back, he saw the Mauro boys on the way back, he waved to them. He explained where he saw them and that that explained his presence at the scene, and that if there is any mud on his car he got it through that trip or at Stroehmann's or parking on 6th or 5th Avenue, I can't recall the Avenue, and he also said that at the 5th Avenue Car Wash he saw a chap he could not identify, he knew him, but he didn't know who he was. We continued to ask him about that, and during the second or third time that is when he came to the Borough Hall and he was advised of his rights, he was told he could leave at any time, that we really didn't want to talk to him. He insisted on talking to the Police Officers, and an Attorney showed up for him and we insisted that he talk to the Attorney and he said he didn't want to, he said he wanted to tell us where the mud got on his car, and the Police Officers said, "We will not talk to you any further, you must talk to your Attorney and

MRS. HUBBARD WAS SUCH A WERD'S WRECK AT THIS TIME FROM RUFUS SMITH HADGERING HER EVERY DAY SAYING THAT KIM "WAS GUILTY". KIM SAID AT THIS POINT THAT HE WOULD CLEAR IT UP HIMSELF THAT L...

Leon Krebs.

By The Court:

Was that a fourth time?

By Mr. Ertel:

That is the same time, and that is basically it.

By Mr. Fierro:

Well, as I said before, anything that happened prior to about 4:00 or quarter to four, the showing of let's say contradictory statements which may or may not be accidental, unless they are germane to the issue itself, and the law is clear on that, I think, that for example he could have made contradictory statements the day before, but unless they bear on the issue of Jennifer's murder, they should not be brought in, and you have said you researched it, and I am sure you have, there is one case says there is nothing more clearly settled in the law than contradictory statements on a matter not germane to the issue, should not be allowed in.

By The Court:

Do I understand all three of these statements he is accounting for his time on the day in question, October 19th?

By Mr. Ertel:

That is the only time. We wanted to show him to see the child, make arrangements.....

By Mr. Fierro:

Don't get misleading, where in this offer that you made on the record do you say that he spoke to this child that day?

Leon Krebs.

By Mr. Ertel:

I did say he saw the child.

Yes, he did speak to the child, he said "hello" to her.

By Mr. Fierro:

Are you going to prove otherwise?

By Mr. Ertel:

No, I am not, I am going to prove opportunity.

By Mr. Fierro:

What you are going to prove, and the Judge says to be specific, that he said he saw this girl with other people and he said "Hello", not necessarily to her but in the general direction.

By Mr. Ertel:

I think he said "Hello" directly to her.

By Mr. Fierro:

I don't care what you think, if you are going to show opportunity, you are going to show he had an opportunity to speak to her and make some arrangement, which is not true. You are being deceptive about this matter.

By Mr. Ertel:

We are not being deceptive.

By Mr. Fierro:

You have to tell the Judge she was with a group of people when he said "Hello".

(Off-the-record discussion.)

(END OF IN CHAMBERS.)

HERE'S
OPPORTUNITY
AGAIN
LIKE
THE
THUMB
572.

Leon Krebs.

(Reconvened at 11:10 A.M., ED&E)

(Officer Leon Krebs returned to witness stand.)

By The Court:

Proceed, Mr. Fierro.

By Mr. Fierro:

Q. Mr. Krebs, it would appear to you, at least in your opinion, based on this physical evidence we have on the floor here, that those boots which are sitting in front of you, did not make the sneaker marks in the Exhibit that we referred to?

A. In my opinion, they did not.

Q. Wouldn't it appear to you, that is in your opinion, that since you have already testified that those sneaker marks were probably made at or about the same time that the tire-prints were made in this one cast.....

By Mr. Ertel:

I object to that statement already, because it is not accurate.

By The Court:

Reword your question.

By Mr. Fierro:

Q. Now...

By The Court:

You may come to Side Bar if you care to.

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

By Mr. Fierro:

Q. Referring to Commonwealth's Exhibit No. 92, the one that had the sneaker mark and the tireprint, didn't you testify previously that you don't know when that sneaker mark was made, is

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that correct?

A. That is correct.

Q. You said in your opinion that it could have been made at or about the same time that the tireprint was made, is that correct?

A. That it could have, I have no way of knowing.

Q. You have no way of knowing when the tireprint was made, do you?

A. No, I do not.

Q. Then continue, it also has been your opinion that the tireprint and the sneaker print were made at the same time, that is within a few seconds or a few minutes of each other?

A. I would have no way of answering that, I don't know.

Q. You can't even know by looking at the Exhibit which came first, do you?

A. No, I can't tell. On that particular cast I can't tell.

Q. What?

A. On that particular cast, I can't tell.

Q. All you know is on that cast you see tireprints and you see a sneaker print, don't you?

A. That is correct.

Q. You know that that sneaker print did not come from those boots that are marked....please read what they are marked?

A. No. 96 and 97.

Q. This you do know, that sneaker print did not come from those two Exhibits?

A. That is correct.

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Q. That being true, you would conclude there was somebody else there at the time that that tireprint was made on that Exhibit, is that correct?

By Mr. Ertel:

I object to the question, nobody can conclude that.

By Mr. Fiero:

Q. When you say "conclude", as you said this morning, in your opinion you would conclude that somebody else made the sneaker print as distinguished from the person who made the boot print?

A. I would have no way of concluding who made the sneaker print.

Q. Well, you would have no way of concluding who made the boot prints, would you either?

A. I did not make any conclusion as to who made the boot print.

Q. All that I am asking you to do now is express an opinion?

A. I am, Sir.

Q. In your opinion, wouldn't you conclude that the person who made the sneaker print is not the person who made the boot print? Wouldn't you come to that conclusion?

A. No, I couldn't.

By Mr. Ertel:

I object.

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By The Court:

Sustained.

By ^Mr. Fierro:

Q. Do you have an opinion as to whether or not the same person who made the bootprints that made the sneaker print from your scientific investigation?

A. I have no way of knowing who made any of the prints, Sir.

Q. Or whether they were different people?

A. I could not tell that.

Q. Either way you can't tell?

A. No, I can't tell who made what shoe or what sneaker or what boot.

Q. You can't tell whether it was one or more than one person who made these two different impressions, that is the sneaker and the boot?

A. I can't tell that.

Q. I couldn't understand when you were showing the Jury some of these Exhibits, that you said "If you can't see the mark, I will see, change it to see that the light hits it a certain way.", of course those statements the way they appear on the record doesn't show us the extent of the mark, that is the depth, the width, but, or the depth, but when you made the statement to the Jury that "If you can't see this cut, I will change the angle of this Exhibit so the light will show it.", weren't you indicating that whatever mark you were then talking about was so insignificant that it had to be shown in a certain way for the naked

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eye to see it."?

A. No, my reason for that was that the cast is white, there is no shadow area with a direct light coming down upon it, and to see this particular mark it requires a shadow-type affect.

Q. Precisely, the mark is so insignificant that you have to do something to create a light or non-light impression for the naked eye to observe? True?

A. It is significant enough to see.

Q. Tell us, for the record, you can pick out whatever marks you want, the length and width and depth of some of those marks?

A. The length and width and depth?

Q. Yes? I am trying to show on the record, the Jury already saw it with their eyes, I am trying to show on the record how large or how small some of these marks are that you were talking about?

A. Do you have any preference.....

Q. You go ahead and pick?

A. Could I have the Exhibit back, please?

Q. You do whatever you want, they are there.

A. From the charts, I believe we could do it from the chart itself. Using Commonwealth's Exhibit No. 112 which shows Commonwealth's Exhibit No. 97, and Commonwealth's Exhibit No. 51, the left portion, my measurements were made by measuring from this line of the heel to this first nail point, No. 2, and the measurement was two and one-quarter inches. From this same point in the heel to nail mark No. 1, my measurement was two and three-quarter

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inches. The distance between the two nails is one-half of an inch. My next measurement is from nail mark No. 1 to nail mark number 7, which measures one and one-sixteenth inches, and again from No. 7 to nail mark No. 2, it is two inches. The distance between the nail mark No. 7 and the three hole marked No. 5, is one quarter of an inch. The distance from nail mark No. 7 to cut mark No. 4 is three-quarters of an inch, and from these measurements which are identical on the plaster cast and the shoe, I reached my conclusions and opinions.

Q. Were there marks on these boots that did not appear in these casts?

A. Yes, there were.

Q. All right, so much for that. Were there marks on these tires that did not appear in these casts?

A. Yes, there were.

Q. And when you said, "We deal only in similarities, not dissimilarities.", explain that?

A. If we have the same accidental characteristic appearing and we also have dissimilar characteristics, we must assume the dissimilarities did not record at the impression due to some, say a crack filled with dirt, which will leave a solid impression, or that the accidental characteristic was, in fact, caused after the impression was made.

Q. So what you are saying is whenever you pick up your cast and the objection that you are going to compare it with in this case prints of boots and tires, I mean boots or tires, you pick out what looks alike and record that and what does not look alike you

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you tend to forget?

A. We don't forget it, it would depend on the degree of dissimilarities.

Q. Well, for example, take a cast that you identified as Exhibit L-2, that is your first initial, isn't that true, that there were marks of smoothness in six different places around the circumference on the tire on the edge at the first tread marks do not appear on the cast?

A. With reference to the smooth marks, are you referring to the wear bar?

A. The way I asked the question, Sir, is the way you got it.

Q. Quite frankly, I am out of my field asking you these questions.

By Mr. Ertel:

I object, if he don't understand the question.

By The Court:

Q. Do you understand the question?

A. YES.

Q. You may answer?

A. Assuming that these are the wear bars, which do go around the circumference of the tire, and this is including the whole circumference of the tire which we do not have represented in the plaster cast marked L-2.

Q. Well, I will ask you another question, on L-1, the right rear of the tire, there is a well pronounced hole which does not appear in the cast, is that correct?

A. I would have to look at it, I really don't recall that particular hole.

Q. You don't recall?

A. I would have to look at it, which one was that again, Sir?

Q. L-1? The right rear of the tire, you made an examination of, or in connection with, or spoke to a man who appears on our behalf concerning these pieces of evidence, didn't you?

A. Yes, Sir. You are referring to Rotman?

Q. Sure. Now, I am going to ask you this question, I will ask it this way, is it true that on cast L-2, which is the right rear tire, an identifying crack appears on the tire and on the cast in between the middle treads, however one and one-half centimeters from that crack is a well pronounced hole which does not appear in the cast?

A. I cannot recall that particular spot from memory.

Q. Well, if there is something you want to do?

A. (Witness leaves stand.). You mentioned cast L-1?

Q. That is right.

By Mr. Ertel:

Identify that?

A. Commonwealth's Exhibit No. 94. Your question was what, Sir?

By ^Mr. Fierres:

Q. There is an identifying crack that appears on that tire and on the cast in between the middle treads, but one and a h

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centimeters from that crack there is a well pronounced hole which does not appear in the cast?

A. There is a well pronounced hole one-half centimeters from the end of that crack which would not appear on the tire, it appears to me it is an air bubble in the plaster cast.

Q. You say it is an air bubble, is that correct?

A. Yes, it appears to be.

Q. You may resume the stand. .

A. (Witness returns to stand.).

By Mr. Fierro:

Q. Mr. Krebs, Exhibit No. 90, would you like to come down and look at it?

A. Yes. (Witness leaves stand.).

Q. Just by looking at that Exhibit and comparing it with the other three tires that we have in the Court Room, it looks as though Exhibit No. 89 has a better tread, it looks as though 89 has a better tread than 90, doesn't it?

A. Yes.

Q. Now, while you are here, Exhibit No. 90, can you print, I mean pick out which one of these casts has an imprint of Exhibit No. 90?

A. I can pick out a cast which has an imprint which would, which could have been made by Exhibit No. 90.

Q. Same difference, will you please show me that?

A. I would say it would possibly be Commonwealth's Exhibit No. 93.

Q. You may replace it, if you wish, and resume the

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stand.

(Witness returns to stand.).

Q. Now, at least it is your opinion that the cast known as Commonwealth's Exhibit No. 93 was made by the tire known as Commonwealth's Exhibit No. 90?

A. A portion of it could have been made by that particular tire.

Q. Now, you know that all of these casts, and I am referring now to the tire impression casts, without referring to the No. and going over and stooping down, that they were all presumably made at the same time by the State Police, is that correct?

A. I don't know.

Q. Nobody told you that?

A. No, Sir.

Q. Now, you said that Exhibit No. 93 in your opinion that Exhibit No. 90 made at least part of that cast, is your testimony concerning the other tires, the same degree, that is that part of those tires could have made part of the other casts?

A. In reference to which cast, Sir?

Q. It would not matter, I am trying to find out whether you know the entire tire made a cast or whether only part of a tire made a cast?

A. Two of the casts were made by the surface of one particular tire, made one cast, one particular tire made the other cast.

Q. Do you have a cast of the entire circumference of the

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tire making one cast?

A. No, I do not, I only have portions.

Q. Just portions of it?

A. Yes.

Q. So when you are talking about Exhibit No. 90, that tire, and you are talking about Exhibit No. 93, the cast, when you say that in your opinion a portion of that tire made a portion of cast No. 93, you are saying that you simply don't have the whole tire and you only have part of it on that cast?

A. That is correct.

Q. Now, in your Police work, it is generally true, that, for example, that casts of this type, that is tire prints and boot prints are generally made at or around the same time for the sake of evidentiary integrity, isn't that correct, and brought down to your Laboratory?

A. For the most part, yes.

Q. Well, I want you to assume these tire casts were made the same day, just assume that.....

By Mr. Ertel:

We will stipulate they were. 28th Oct.

By Mr. Fierro:

Q. It is now known that these tire casts were made the same day, when did you get them?

By Mr. Ertel:

I will have to retract that, do you want to have me state what they, some were made that night and some more the

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following morning, but the material was protected by plastic throughout the entire night.

By Mr. Pierro:

Q. They were made the 28th and 29th, October 28th and 29th, when did you get them? *contradiction*

A. I received, are you talking now specifically on tire casts?

Q. Yes?

A. I received two tire casts on November 1st and two on November 5th.

Q. Now, of course, whether you know of it, or having heard of it here or having been told by Officers, whoever, or however you got the information, you know that these casts presumably were the casts of tire prints found on October 29th, regardless whether they were made the next day or not, you know that don't you?

A. Yes, I assumed they, this when the Officer brings them in, if this was the date they were made on, I am not sure.

Q. The District Attorney just told you that is when they were made except some were cast on the 29th. Now, Mr. Krebs, I believe that Mr. Faust who came here from a garage, said that on October 29th he changed one of Kim Hubbard's tires, now, can you explain, and he identified that tire as Exhibit No. 90, now would you be able to explain how that tire, Exhibit No. 90, which was changed on October 29th, could make an impression that you got from the State Police that was supposed to have been made let's say somewhere between October 19th and October 28th?

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A. I can't say that it did, I just said it could have.

By Mr. Ertel:

I don't even follow the question, I object to it.

By Mr. Pierro:

He answered it, apparently he knew it.

By The Court:

Q. You understood the question?

A. I believe so, yes.

Q. I will permit it to stand.

By Mr. Pierro:

I have no further questions.

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Officer Krebs, you were asked a question about fingerprints and evidential value between fingerprints and this type of analysis, would you explain your answer on that as to the evidential value, what you meant by that?

A. Yes, a fingerprint is moreorless a circumstantial evidence, but we knew that.....

By Mr. Pierro:

We object, this man is not testifying as a Criminologist. He may, I agree, testify concerning his expertise of tires and soforth, but not to lecture on differentiations in the field of Criminology.

By Mr. Ertel:

He was asked this question on Cross Examination and

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not given the opportunity to explain. I believe he is entitled to explain, and furthermore I would represent to the Court that this man is an expert on fingerprints.

By The Court:

Q. Are you an expert on fingerprints?

A. Yes, Sir, I have qualified in three Counties throughout the Commonwealth.

By Mr. Piarre:

If he says and he is an expert, I will let him go.

A. Fingerprints are tied or linked to a person who made that particular print, however in the case of a shoe or a tire impression, we cannot say that particular person made that impression, merely that the shoe or tire made the impression.

By Mr. Krtel:

Q. Do you ascribe the same evidential value to correlating a boot print to a cast mark and a tire to a cast as you would a fingerprint without the further conclusion as to who was wearing the boots or driving the car?

A. Would you rephrase that again?

Q. In relationship to my putting my thumb down there and getting a thumb print, is it evidential value in your opinion better than that, that that thumb made that print, than the fact that that boot made those boot marks?

A. I would say yes, the fingerprint is better.

Q. Because it ties a person in, is that correct?

A. Yes, that is correct.

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Q. But that is the only difference?

A. That is correct.

Q. Now, you were asked about a Mr. Rotman?

A. Yes.

Q. When did you, when were you with him?

A. The 14th of February, 1974.

Q. Where?

A. That was at the State Police Barracks at Montoursville.

Q. What occurred on that occasion?

A. On that date, Corporal Barte, Mr. Michael Rotman from Philadelphia, who is a Private Investigator, and I went over the tires, the casts, or the plaster impressions, the shoes and the shoe impressions.

Q. What happened, describe the process that went on there?

By Mr. Pierre:

I object to that.

By The Court:

The Court can't see how it is material.

By Mr. Ertel:

Well, I can represent it at Side Bar.

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

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. How many hours did you take examining these casts

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and these boots and the tire imprints and the tires?

By Mr. Fierro:

That is improper re-direct.

By The Court:

I will permit it, however, if you know, if you remember?

A. I would say at least a week was devoted to these particular casts and impressions.

By Mr. Ertel:

Q. Now, you were asked on cross examination about tire No. 90 and cast No. 93, you say that it could have been caused by this tire?

A. A portion of that cast, yes.

Q. Would you explain what you mean by that?

A. When I referred to that particular Exhibit No. 90 could possibly have made Commonwealth's Exhibit No. 93, I was making reference to a very small portion here, being this portion where the Kelly-Springfield type ribbing is shown and a rounded shoulder, and this is far from sufficient that we could draw any opinions and conclusions, except that we do have the Kelly-Springfield type ribbing and a rounded shoulder, and this is the only thing I can base my opinion on, that I could not reach any definite conclusions as far as that cast and this tire.

Q. Thank you, Officer. No further questions.

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RE-CROSS EXAMINATION

By Mr. Fierro:

Q. Then that would also mean since you said Exhibit No. 90 could have made Exhibit No. 93, that also means that anyother type of the same tire would also make No. 93, if worn in the same manner, is that correct?

A. Yes, it could, if it were worn to the same degree.

Q. Certainly you know that this tire is a stock manufacture, don't you?

A. Yes.

Q. You know that things that are made in mass manufacturing, they carry the same class characteristics, you know that?

A. That is correct.

Q. They tend, within normal limits, the time and wear that they tend to show the same characteristics with wear, you know that, don't you?

A. Well, this depends on the alignment of the car, the weight of the vehicle, the many things to be taken into consideration with wear characteristics.

Q. Sure, but if the car, for example, you know that most cars are stock and in this case it was an Oldsmobile cutlass, but you know they are made by the thousands, don't you?

A. Cutlass or tires?

Q. Both actually?

A. I can assume they are.

Q. You know that from your expertise, don't you,

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they are made by the thousands, aren't they?

A. Yes, they are.

Q. And that all of the things being equal, let's say, that they tend to wear out in the same manner, whether it is tires or cars, you know that, don't you?

By Mr. Ertel:

I object, because there is no evidence in this case that this car was damaged, and so therefore the assumption is incorrect that they wore normally.

By Mr. Fierro:

We are not talking about his particular car, I am probing his expertise.

By The Court:

Q. Do you understand the question?

A. Yes, I believe I do, but you left out one important thing, the individual who operates and takes care of the car. Some people rotate their tires. Some people run into curbs.

By Mr. Fierro:

Q. Isn't this true, that within normal limits, all things that are mass produced tend to wear out the same, to show the same characteristics without taking the exceptions?

A. I really can't answer that.

Q. All right. Of course, you are here to testify on behalf of the Police, aren't you?

A. No, Sir, I am here to testify to the facts.

Q. You are employed by the Police, aren't you?

A. That is correct.

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Q. How long have you been a Policeman?

A. 12 years.

Q. That is all.

By Mr. Ertel:

Q. Are you here to tell the truth as you see it?

By Mr. Fierro:

I object to this.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. What is your purpose in being here?

By Mr. Fierro:

I object to that.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Have you lied on the stand?

By Mr. Fierro:

I object to that.

By The Court:

Sustained, that is for the Jury to decide.

By Mr. Ertel:

I have no further questions.

By Mr. Fierro:

Step down.

(Excused from witness stand.)

By Mr. Ertel:

We have to approach Side Bar now.