

Kim Lee Hubbard.

A. I don't know.

Q. What is that on the top of the helmet?

A. That is some more of sticky bun and stuff.

Q. And you have testified this was your helmet at Stroehmann's?

A. Yes, and still is.

Q. Nothing further.

By The Court:

Mr. Ertel?

By Mr. Ertel:

No further questions.

By Mr. Fierro:

You may step down.

(Excused from witness stand.).

By Mr. Fierro:

May we come to Side Bar?

By The Court:

Yes, Sir.

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

MICHAEL ROTMAN, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. Michael Rotman.

Q. Where do you live?

Rotman.

A. 305 Preston Road, Flourtown, Penna.

Q. Mr. Rotman, what is your present occupation?

A. Private Investigator.

Q. Prior to you becoming a Private Investigator, what did you do?

A. I worked for the City of Philadelphia, both in the Police Department and in the District Attorney's Office.

Q. In what capacity?

A. In the Police Department I rose from the rank of Policeman to the rank of Captain. In the District Attorney's Office I was a supervisor.

Q. Supervisor of what?

A. Of the District Attorney's Detectives.

Q. Did you have any connection with a Mobile Crime Unit?

A. I was Commanding Officer of the Mobile Crime Unit in Philadelphia at one time.

Q. For about how long?

A. I think it was about nine months.

Q. Have you taught in any schools and, on related subjects to your profession?

A. I taught at Temple University from 1968 to 1971.

Q. What courses did you take?

A. Criminal Investigation, Homicide Investigation and Criminal Law.

Q. Mr. Rotman, are you familiar with in Police work, fingerprinting?

Rotman.

A. Yes.

Q. Are you familiar in Police work with the, if I am wrong you can correct the terminology, the taking or the making of casts such as you see on the floor here?

A. Yes.

Q. And are you familiar with taking and making of impressions of various articles, such as tires, boots, or whatever the artifacts or articles might be?

A. Yes.

Q. Have you so testified in any Courts concerning that type work and investigation?

A. Yes, Sir.

Q. Can you give us an idea...let me ask, I withdraw that, this Mobile Crime Unit, did this involve, for example, going to a scene of a crime?

A. Yes.

Q. But would it involve looking for evidence?

A. Yes.

Q. Making casts?

A. Yes.

Q. Things of the nature that we are talking about?

A. Yes.

Q. You said that you at one time you were in charge of you called yourself "Supervisor of County Detectives"?

A. Well, they are called District Attorney Detectives.

Q. How many men did you supervise?

A. Well, at one point there were, I think four men

Rotman.

95

under my jurisdiction. This was a special unit for investigation of organized crime in Philadelphia. It was the Intelligence Unit of the District Attorney's Office, and then there was the last command I had at the District Attorney's Office, I think there were perhaps 12 to 14 Detectives and perhaps 10 Clerks under my jurisdiction.

Q. These people who were under your jurisdiction, your command, did they ever, under your supervision, direction and control, make such casts and impressions of various articles at crime scenes?

A. Not in the District Attorney's Office.

Q. Is that while you were in the Police Department?

A. With the Police Department.

Q. How long were you with the Philadelphia Police?

A. From 1956 to 1968.

Q. When you were Captain, how many men were under your Command?

A. Well, it varied, depending upon the command that I held. At one time I had 155 men under my command.

Q. At one time you did have that many men under your command?

A. Yes.

Q. Regardless of the number of men, when you were in command did you supervise and control and direct the making of impressions, casts, etc., at crime scenes?

A. Yes.

Q. Did you at any time while you were a Policeman

Rotman.

make them yourself personally?

A. Yes.

Q. Now, Mr. Rotman, you did examine, and if you want to you may step down, but first let me ask you this question, you did appear at the State Police Barracks and examine certain items that are on the floor here, isn't that correct?

A. Yes.

By Mr. Ertel:

I believe it is proper at this time if....

By Mr. Fierro:

I am sorry, if you want to cross examine on qualifications.

By Mr. Ertel:

I would like to ask a few questions.

By Mr. Fierro:

Surely.

CROSS EXAMINATION

By Mr. Ertel:

Q. You are a Captain of Homicide?

A. I was a Lieutenant in the Homicide Unit.

Q. What were you a Captain of?

A. I was Captain in the Detective's Division.

Q. That is a supervisory post?

A. Yes, Command Post.

Q. You administer the people under you and assign and

so on?

A. Yes.

Rotman.

Q. You don't actually make investigations yourself as a Captain?

A. I did.

Q. You did?

A. Yes.

Q. Now, in Philadelphia, the Philadelphia Police Department, do they have a special Crime Laboratory?

A. Yes.

Q. That Crime Laboratory was not under your jurisdiction, was it?

A. At one time it was.

Q. You did not work in the Crime Laboratory, you administered it, isn't that correct?

A. No, I worked in it. I think we are hung up on semantic

Q. I am talking at the Crime Laboratory for the analyzation of scientific evidence?

A. I administered the personnel, the Police personnel in the Mobile Crime Unit.

Q. That is to pick up crime, that is to go to a scene and process?

A. Yes.

Q. That is picking up and collection of evidence?

A. Exactly, searching for and preserving and transporting the evidence to the Crime Laboratory which at the time was under the direction of Doctor Edward Burke.

Q. He had headed up the Crime Laboratory?

A. He did.

Rotman.

Q. And you would make and get this evidence and transport it to them and they would do the analyzation, isn't that correct?

A. He would, and many times I would assist him.

Q. He would testify as to the conclusion?

A. Yes.

Q. He was the Examiner qualified, isn't that true?

A. Well, not entirely. He was in charge, most times there was an Agnes Malatrak who was a Technician.

Q. Who was the Tool Examiner at the Laboratory?

A. Doctor Burke.

Q. He was a Doctor, when you use it....

A. PHD, Chemist.

Q. He was a Tool Examiner, is that correct?

A. Yes.

Q. Mark Examiner?

A. Yes.

Q. He did the testifying and in the analyzation, isn't that correct?

A. At times he did, yes.

Q. Were there times when somebody else did?

A. Agnes Malatrak.

Q. Or his Assistant?

A. Yes.

Q. But your sole function as a Police Officer was the collection of the evidence, isn't that true?

A. Collection, preservation, transportation.

Rotman.

Q. That is it?

A. There were many responsibilities.

Q. I would like to approach Side Bar.

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

Q. Have you ever qualified in a Court Room as a Tool Examiner?

A. I don't think I have. I don't think the necessity ever arose where I was asked to qualify.

Q. Did Doctor Burke qualify as a Tool Examiner?

By Mr. Fierro:

We object to what anybody else qualified as.

By The Court:

Sustained.

By Mr. Ertel:

Q. A Tool Examiner is a specialty, is it not?

A. Well, I would like to think that there are many specialties in the Police Department.

Q. Is that one of them?

A. Yes, but I don't know that it is limited to a person who has a specific education or specific training in the art of Tool examining.

Q. Well, Tool Examining includes the examination of casts, mostly boot prints and also tire tracks, that is part of the Tool Examiner's trade, isn't it?

A. Well, when you say "mostly boot prints and tire tracks", I think it might vary from City to City or from urban to rural atmospheres or areas. In Philadelphia, for



Rotman.

instance we will have more reason to examine tool marks made by a chisel or screwdriver than we would to examine tire impressions.

Q. There is a good reason for that in Philadelphia it is all macadam?

A. Pretty much.

Q. You don't get many footprints because you don't have many cornfields or things like that where people can drop footprints?

A. No, we don't have the fields.

Q. You might get it in a lawn somewhere?

A. Yes.

Q. Except there you usually have grass or something which prevents the footprint from coming out very well, isn't that true?

A. Yes.

Q. But when you wanted a specialist as a Tool Examiner, which included the examination of tire prints, did you ever have the occasion to need a man on tire prints in your career?

A. I am sorry.

Q. Did you ever have the occasion to need a man on tireprints for the examination?

By Mr. Fierro:

I object, he is not testing qualifications.

By Mr. Ertel:

I believe I am.

By Mr. Fierro:

He is asking if he ever had to use somebody else.

Rotman.

By The Court:

Q. Do you understand the question?

A. Yes.

Q. You may answer.

A. Our needs in the Philadelphia Police Department were fulfilled by the personnel in the Crime Laboratory, so we didn't need to hire or engage somebody else for the examination.

By Mr. Ertel:

Q. The Crime Laboratory you are talking about, the one headed by Doctor Burke?

A. Yes.

Q. So you would refer your tireprints and boots prior to Doctor Burke?

A. To personnel in the Crime Laboratory, not specific Doctor Burke, no.

Q. But the Crime Laboratory was under Doctor Burke's jurisdiction?

A. Yes.

Q. I am sorry, I don't mean to trap you and say just merely Doctor Burke, but the Crime Laboratory which was special from the Mobile Unit, isn't that true, you would refer from the Mobile Unit to the Crime Laboratory, you have a specific name for that, is it the Philadelphia Crime Laboratory?

A. It was called the Crime Laboratory.

Q. Did you refer your boot prints and your tire tracks if you had them to that for analyzation?

A. You would have to see the physical structure in order

Rotman.

to appreciate the chain of evidence. The Headquarters or room which the Mobile Crime Unit used was inside of the Crime Laboratory. Where the analyzations were made, it is in effect the same section of the building, the same room, but except that I don't want to mislead you, the room was divided into other rooms by means of walls and doors, of course, but in order to get to the Mobile Crime Laboratory, you had to go into and through the Crime Laboratory.

Q. It was connected to it, and the Mobile Unit would go out of there and go to a crime scene?

A. It was an integral part of the Crime Laboratory.

Q. It is an ordinary on the scene, crime processing division?

A. I am sorry.

Q. You have seen the State Police Mobile Unit, haven't you?

A. Yes.

Q. The same thing?

A. Well, it is the same thing, I think in the Harrisburg area, I don't know if you can say it is the same thing, for instance, in this area as it relates to the other State Police installations.

Q. You have seen the Mobile Crime Unit here?

By Mr. Fierro:

I object to this, this does not test qualifications.

By The Court:

The objection is sustained.

Rotman.

By Mr. Ertel:

Q. How many, I assume that you have made a lot of plaster casts of footprints in your career, is that correct?

A. That is relative to what you figure a lot.

Q. How many did you make, how many have you made over your entire career?

A. Countless, I would not know.

Q. You made them?

A. Personally I made a couple dozen.

Q. That means you laid the plaster?

A. Mixed the plaster and poured it, prepared the surface.

Q. Now, have, how many tire print casts have you made?

A. This would include all of the casts.

Q. The total casts were a couple dozen?

A. Yes, that I personally prepared and made.

Q. Now, after you prepared those, who analyzed them for testimony a Court Room?

A. Doctor Burke and myself and sometimes Agnes Malatrak and myself.

Q. Who came in and testified after examining those as to what they showed?

A. Various people.

Q. Not you?

A. No, I probably testified as to the preparation of the impression of the cast.

Q. But not to the analyzation?

Rotman.

A. Not to the analyzation, that would be correct.

Q. That is a specialty which people get trained for, is that correct?

A. It depends on what you call "trained". There is no, there is no schools, no universities that specifically give a course in preparing analyze casts as it relates to criminal matters.

Q. I don't want to hedge with you, there is a difference between the preparation, marking, making and transportation of the casts and the analyzation, is there not?

A. Yes.

Q. Your function was the making, preparation, and transportation of the casts, isn't that true?

A. Yes, in addition to analyzing.

Q. But you never testified to analyzation?

A. I don't think I did, I don't recall testifying as to analyzation.

Q. (To The Court.) I have the same objection.

By The Court:

Anything further?

By Mr. Ertel:

Nothing further.

By The Court:

I think we will recess at this time until 1:15.

The Defendant is excused. The Jury is excused. May I see Counsel?

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

(Recessed at 12:00 Noon.).

(Reconvened at 1:15 P.M., EDST.).

(Michael Rotman returned to witness stand.)

DIRECT EXAMINATION

By Mr. Fierro:

Q. Mr. Rotman, do you remember the date that you went to the Police Barracks to examine certain boots and tires that were in Police custody?

A. Yes, Sir, it was February 14th at approximately 11:00 A.M.

Q. Who was the Police Officer that turned over, accompanied you while you had this examination?

A. Corporal Barto and Trooper Krebs.

Q. What articles did you examine?

A. I examined the four tires in question and the casts that they had marked for Exhibits.

Q. Whatever articles you examined were marked, were tagged, weren't they?

A. Yes.

Q. Will you step down and go through these articles and tell us when you read the tags, read the Exhibit number and tell us whether or not you examined that article?

A. (Witness leaves stand.). This is, I don't see an Exhibit number on here.

Q. There should be one on there?

A. Here it is.

Q. Read that Exhibit number?

A. Commonwealth's Exhibit No. 96.

Rotman.

Q. Did you examine that at the State Police Barracks?

A. Yes, this is a right foot boot. This one is Commonwealth's Exhibit No. 97.

Q. Did you examine that at the State Police Barracks?

A. Yes, which is a left foot boot, and I examined that also.

Q. Now, take a look at the next Exhibit next to you?

A. Do you want me to go in any particular order?

Q. Any way that you want to do it.

A. This is a cast that is marked L-2 on the back and carried Commonwealth's Exhibit No. 92, which I examined.

Q. All right.

A. This is Commonwealth's Exhibit No. 89.....

By Mr. Ertel:

I will stipulate that all of these articles were made available to them.

By Mr. Fierro:

And that he examined them?

By Mr. Ertel:

I will stipulate he looked at them.

By Mr. Fierro:

Q. Continue, please?

A. Commonwealth's Exhibit No. 89 which is a Kelly-Springfield tire.

Q. Did you examine that at the State Police Barracks?

A. Yes.

Q. Go ahead?

Rotman.

A. And this would be a cast that is identified as L-1 and marked as Commonwealth's Exhibit No. 94.

Q. Did you examine that?

A. I examined this, yes. Here is a plaster cast which is marked L-7, Commonwealth's Exhibit No. 50.

Q. Did you examine that at the Barracks?

A. I did.

Q. All right.

A. This is a plaster cast, L-3, Commonwealth's Exhibit No. 91.

Q. Did you examine that at the Barracks?

A. Yes.

Q. All right?

A. This is a cast marked L-6, Commonwealth's Exhibit No. 52.

Q. Did you examine that at the Barracks?

A. I did. Cast L-8, which is Commonwealth's Exhibit No. 53, which I examined.

Q. At the Barracks?

A. Yes.

Cast L-10, which is Commonwealth's Exhibit No. 54, I examined that. This is cast L-9, Commonwealth's Exhibit No. 55, which I examined. This is cast L-5, Commonwealth's Exhibit No. 51, which I examined. This is L-4 a cast, Commonwealth's Exhibit No. 93, which I examined. This is a Kelly-Springfield tire, I examined. A tire, Kelly-Springfield tire, Commonwealth's Exhibit No. 90, which I examined. Still another Kelly-Springfield tire,



Rotman.

Commonwealth's Exhibit No. 88, which I examined.

Q. Please resume the stand.

A. (Witness returned to stand.)

Q. Can you tell us, in your professional opinion, which carries the higher evidentiary value, for example fingerprints or the type of evidence that you have just identified at?

A. Fingerprint evidence.

Q. What?

A. Fingerprint evidence would.

Q. As opposed to fingerprints, why is the type of evidence that you have just identified of less value?

A. Fingerprints have characteristics which are unique and do not change. Each person has their own fingerprints and can't transmit these fingerprints to anybody else, and, of course, they never change from time of birth. This type of physical evidence, or this physical evidence of examining tool markings, casts, other impressions, are not unique. For example, given the same set of circumstances, a tire could possibly wear in the same way that another tire on another car would wear. Heel marks, impressions from shoes, can wear the same way, that different individuals can wear their shoes down the same way. There is nothing unique about a pair of shoes or the way they are worn. I think for this reason alone is enough to say that fingerprints are of higher evidentiary value than these types of impressions.

Q. Now, while you were at the Barracks, did you have

a conversation with, I think it is Mr. Krebs, you said somebody else was there, did you have a conversation with Mr. Krebs?

A. And Corporal Barto.

Q. Did you go over the articles with Mr. Krebs and Corporal Barto or just Mr. Krebs?

A. Well, we, well, I think it would be fair to say the three of us went over the articles, inasmuch as Corporal Barto was present.

Q. Now, can you tell us what you discussed with Mr. Krebs and Corporal Barto, if he participated, as to points of, and you can pick out whatever objects you used, as points of similarities or dissimilarities, whether you had a conversation with them?

A. Yes, Trooper Krebs pointed out to me some of the similarities that appear on the casts.

Q. Now, will you show us what casts he was talking about?

A. Yes. This is, we will use Commonwealth's Exhibit No. 94 is a cast of a tire, and there is a crack in the tread, that also appears on the tire. There is a L-5.....

By The Court:

Q. The other number, please?

A. Yes, I am sorry. Commonwealth's Exhibit No. 51, there are impressions of nail marks that appear on the boot, that appear on here along with accidental impression, chance impression of a cut mark that appears on the boot.

Rotman.

By Mr. Fierro:

Q. Is that all he showed you and discussed with you?

A. I think it was.

Q. Then did you...you may resume the stand.

A. (Witness returned to stand.).

Q. Other than what Mr. Krebs showed you and discussed with you, did you, having now identified all of the articles that you testified about, make your own examination of them and comparison of the articles with the casts?

A. Yes.

Q. You did?

A. Yes.

Q. I want you to refer to, I don't know what the exact number is, but you will find it, a plaster cast identified as L-2, will you pick it up, please?

A. All right.

Q. L-2?

A. That is Exhibit No. 92.

Q. Is that also marked L-2?

A. Yes, the cast is.

Q. That is Exhibit No. 92?

A. Right.

Q. Now, in making an examination of that, did you find anything in comparison with the tire and that Exhibit No. 92 that did not appear on the Exhibit .....

By Mr. Ertel:

I object to that, unless he can establish some basis for the question.

Rotman.

By The Court:

Q. Do you understand the question, Sir?

A. Yes, I think I do, your Honor.

Q. The question is not clear to the Court, would you rephrase it, he thinks he understands, but he is not sure, Mr. Fierro.

By Mr. Fierro:

Q. Do you find any indications that are different between the cast identified as No. 92, I believe, and the tire?

A. Yes.

Q. All right, now tell us what you found that was different on the cast than from the tire?

By Mr. Ertel:

I object to the question until we get a comparison of what tire he is referring to.

By The Court:

Yes, which tire, are you referring to all four, Sir?

By Mr. Fierro:

Q. Which tire?

A. It was this tire, Exhibit No. 89.

Q. Does that have an "L" mark on it too, the tire outside of the Exhibit number?

A. I don't know, no, I don't, I think it was just the casts that were marked with these "L" numbers.

Q. Well, the tire you have just identified, were you told by Mr. Krebs, or did you independently find out that there is the impression of a part of that tire to the cast that you have

Rotman.

identified?

A. I am sorry?

Q. Is this the same tire that was supposed to have made the cast?

By Mr. Ertel:

I object to leading at this point.

By The Court:

Q. Do you understand what the question is?

A. Yes. Trooper Krebs did not identify the tire to the cast, I did.

By Mr. Fierro:

Q. You did?

A. Yes.

Q. Now, you have already identified the tire by the Exhibit number and you have identified the cast. Now, can you tell us did you find any differences between the tire that you have identified and the cast that you have identified?

A. Differences in the way of omissions.

Q. Omissions?

A. Yes.

Q. What were they?

A. Well, for one, there is around the inside rim or inner part of the tire as it sets on the car, or wheel, I think there were six or seven marks which caused the tread, the outside tread which is almost non-existent, or is, in fact, non-existent and the first tread next to it, an even smoothness between the two treads, it smooths out, and this occurs I think six or seven

Rotman.

different places around the circumference of the tire.

Q. Do they appear on the cast that you identified?

A. No, I didn't see any.

Q. Now, will you go to cast that is marked L-1 and read its' Exhibit number?

A. That is Exhibit No. 94.

Q. Will you find the tire and read the Exhibit number that you compared with that cast?

By Mr. Ertel:

I object, find what tire?

By Mr. Fierro:

Let him find it, I don't know which one it is.

By Mr. Ertel:

The tire he identified with that cast?

By Mr. Fierro:

He is going to find the tire.

A. This is Exhibit No. 88.

By Mr. Ertel:

I didn't get that.

By The Court:

No. 88.

By Mr. Fierro:

Q. Now, to the previous Commonwealth Exhibit, I have forgotten, is that the tire that you compared with that last Commonwealth Exhibit No....cast?

A. Yes, I believe it is.

Q. Did you find any differences between the cast and the tire?

Rotman.

A. This was one of the points that were in comparison shown to me by Trooper Krebs, and on the cast there is this accidental mark that was identified, I think it was some one and one-half centimeters from the end of the identifying mark, there is a gouge mark in the cast that does not appear on the tire.

Q. Can you show us that?

A. Here is the mark.

By Mr. Ertel:

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

A. Right.

By Mr. Fierro:

Q. You say "here is the mark"?

A. That is the mark on the tire.....

By Mr. Ertel:

I don't want to interrupt, but that is Commonwealth's Exhibit No. 94 you are referring to?

A. That is right. On the cast there is a gouge mark that does not appear on the tire.

By Mr. Fierro:

Q. Will you point to that gouge mark on the cast so the Jury can see it?

A. Right there.

By The Court:

Q. That is cast No. 94?

A. Yes, your Honor.

Rotman.

By Mr. Fierro:

Q. What does that gouge mark appear like, tell them about the shape, the size, what does it look like?

A. Well, I guess the best explanation would be the appearance of a check mark, diagonal, or between a diagonal-like there with a short stem and a long stem.

Q. Hold it up to the Jury? Show them the gouge mark?

A. This is the crack that is identified and as in the tire, and this is the gouge mark that does not appear in the tire.

Q. Come down and show it to the other end of the Jury?

A. This is the crack that appears in the tire and that is the gouge mark that does not appear there.

Q. Now, will you please show them the tire and show them on the tire the crack mark that you say is there and the absence of the gouge mark?

A. This is the crack. The gouge mark should be here, but it is not.

Q. Please show the Jury down at this end?

A. This is the crack here, the gouge mark should appear over here.

By Mr. Ertel:

I object to that, that it should appear.

A. I am sorry.

By Mr. Fierro:

Q. Just say that it doesn't, it is not there.

A. It does not appear.



Rotman.

Q. Take the stand.

A. (Witness returned to stand.).

Q. I want you now to pick up the boots and read what the Commonwealth Exhibit Nos. are, and you may take them to stand with you, if you wish?

A. This is Commonwealth's Exhibit No. 96 and Commonwealth's Exhibit No. 97.

Q. Which is the right and which is the left?

A. 96 is the right and 97 is the left.

Q. Did you examine those boots?

A. Yes.

Q. Did you examine them and compare them with the cast impressions?

A. Yes.

Q. Will you come down please and get the cast impressions?

A. Well, there are more than one.

Q. Would you rather do it from the floor, would it be easier to take the boots down to the floor?

A. There is only really one, I think, that is of any consequence.

Q. All right?

A. This is Commonwealth's Exhibit No. 51, a cast which was marked for identification as L-5.

Q. That is a cast of which boot, do you know?

A. The lighting is bad here.....

Rotman.

By Mr. Ertel:

Q. Can we get you a light that would help you, would you like another light or something?

A. It always helps. It is the right boot.

By Mr. Fierro:

Q. Now...

A. I believe it is the right boot. The light is kind of....

Q. You have already identified the right boot?

A. Yes.

Q. Now, you have made a statement, you have said there is only one boot cast which was of any consequence?

A. Right.

Q. Will you explain that statement in the light of your examination of these boot casts?

A. Well, the others, I think, are somewhat of a poor quality.

Q. I didn't hear you?

A. I am sorry, the others, the casts are of somewhat poor quality.

Q. Poor quality, you say?

A. Yes.

By Mr. Ertel:

I object to that, he said, "somewhat of a poor quality". Mr. Fierro is now putting words in his mouth.

By Mr. Fierro:

Q. Didn't you say "poor quality"?

Rotman.

By Mr. Ertel:

He said "somewhat of a poor quality".

By Mr. Fierro:

Q. What quality did you say the other boot impressions was?

A. I would say they are somewhat poor.

Q. Now, the one boot cast that you have, that you are looking at and that you have identified, did you say that was of the right boot?

A. The light is very difficult here. Yes, I believe it is of the right boot. I think it is this boot...the left boot, I am sorry, it is the right boot.

Q. Now...

By The Court:

Q. Which one, Sir?

A. The right boot, Sir.

By Mr. Fierro:

Q. Now, an examination of the right boot cast and the right boot, can you tell us whether you found any differences between the boot and the cast?

A. Omissions, differences of omissions.

Q. What are they?

A. They are heel marks. There are marks on the heel, cut marks on the heel which do not appear in the cast.

Q. Are those cut marks on the heel visible to the naked eye?

A. Yes.

Rotman.

Q. Will you come down and show those cut marks on the heel to the Jury?

A. (Witness leaves stand.). They appear, as a matter of fact, on both boots.

Q. Let's take the right boot first?

A. These are the marks, three gouge marks.

Q. Point them out to the Jury?

A. One, two three.

Q. Come to the middle of the Jury Box and sort of bend over and show them?

A. One, two three.

Q. Now, come down here to the end?

A. One, two three.

Q. Do those three cut marks that you have pointed out to the Jury appear on the right boot cast?

A. No, no, Sir, they don't appear on any casts.

Q. On any casts?

A. Not that I could find.

Q. Were there anyother differences between the right boot and the right boot cast?

A. No. Perhaps the torn mark on the inside of the sole, as I say this part of the cast is of somewhat poor quality and it is really difficult to make an analysis for certain that is what, as a matter of fact it is. It does for all intent and purposes, does not appear.

Q. Will you come and show them this thing that you say for all intents and purposes does not appear, this, again, is the

Rotman.

right boot?

A. Yes.

Q. Show them what it is?

A. It is this mark along here.

Q. About how long is that mark?

A. About an inch and a half to two inches.

By Mr. Ertel:

I have a ruler here if you would like to measure it.

By Mr. Fierro:

Here is one?

A. About two and a quarter inches, approximately.

Q. Show the Jury?

A. Yes, I think everyone saw it.

Q. Now, can you return to the stand.

A. (Witness returns to stand.).

Q. Can you explain why that two and a quarter inch mark does not appear on the right boot cast?

A. No, Sir.

Q. You cannot?

A. No, Sir.

Q. Now, is there anything else on the right boot and right boot cast that you would like to tell us about?

A. No, just the fact that general description can be seen, they are half soles, etc. That is about all.

Q. Now, as to the left boot, did you make an examination of that and the left boot cast?

A. Yes .

Q. Both of which have been identified?

A. Yes.

Q. You did?

A. Yes.

By Mr. Ertel:

I am not sure the left boot cast was identified.

By Mr. Fierro:

We will do it?

A. Well, it is the left boot cast that it is really this impression is made over.

By The Court:

Speak up?

A. The left boot is the cast that represents...well, let me get the two Exhibits for you, your Honor, it is 91....I am sorry, 51 and 97 are the identifying.....

By Mr. Fierro:

Q. 51 and 97?

A. Yes.

Q. That is which boot?

A. I am sorry, the light was bad in here, this is the left boot to be compared with this cast.

Q. Is that the boot you showed the Jury?

A. No, I showed them the right boot, but the same factors exist. Here there are two cut marks on the heel.

Q. What are you talking about when you say "here"?

A. On 97, which is the left boot, it matches favorably, or there are identifying marks I should say with cast,

Rotman.

Commonwealth's Exhibit No. 51, except that there are two cut marks on the inside of the heel that do not appear on the cast.

Q. Now, are you now talking about the left boot?

A. I am talking about the left one, yes. The light was bad up here, and I am sorry for the mistake, but under it with the use of the flashlight I could see it much better.

Q. Now, is there anything else concerning the left boot and the identifying cast that you want to make a statement about?

A. Well, once again the gouge mark on the sole that appears here, and I think I mentioned the gouge mark on the heels.

Q. Which boot is that?

A. The left boot.

Q. Is that the one with the two and a half inch.....

A. No, that was the right boot.

Q. I don't want to be mistaken about that, okay.

Well, then there is something else to this left boot besides two cut marks?

By Mr. Ertel:

I object, he is leading.

By Mr. Fierro:

Q. Is there something else about this left boot besides the two cut marks?

By The Court:

Q. Do you understand the question?

A. Yes, I do.

Q. You may answer?

A. The gouge mark in the sole

Rotman.

By Mr. Fierro:

Q. Does that appear on the corresponding cast?

A. It doesn't appear.

Q. Bring it down here and let us see the boot, the cast and the boot?

A. (Witness leaves stand.). This is the cast.

Q. Known as?

A. Exhibit No. 51. These two marks should appear in here and do not.

Q. Point to those marks with the flashlight.

By Mr. Ertel:

I object to the "should have".

A. They do not appear.

By Mr. Fierro:

Q. Where would they appear on the cast?

A. Approximately here. I pointed to, I indicated at approximately a certain point on the heel.

Q. Now, bring it down to the other side of the Jury. First, show the Jury the marks you are talking about?

A. These are the marks I speak of on the heel of the shoe or boot.

Q. Exhibit No. 97?

A. This is the cast, should appear on here and don't.

Q. That is Exhibit No. 51?

A. 51.

Q. Now, bring it down to the end of the Jury here.

On Exhibit No. 97, point out the marks you refer to?



Rotman.

A. Here are the marks on the heel and do not appear on the cast.

Q. That is Exhibit No. 51?

A. Yes.

Q. Take the stand.

A. (Witness returned to stand.).

Q. Can you explain why, on this boot and cast, can you explain why those marks don't appear?

A. I don't think anyone could explain that, Counselor. That is the problem with this type of evidence.

Q. What do you mean "That is the problem with this type of evidence."?

By Mr. Ertel:

Objection.

By The Court:

I will permit the answer.

A. You can't account for omissions in the impression, and it is my opinion that because you can't account for omissions, you can't with any degree of certainty.....

By Mr. Ertel:

Objection.

By Mr. Fierro:

He is expressing an opinion.

By The Court:

This is an opinion.

By Mr. Ertel:

This man is not qualified.

Rotman.

By The Court:

The objection is over ruled, you may answer.

A. In my opinion, you can't say with any degree of certainty that a certain mark was made in an impression was made by a certain factor on the object which made the impression.

By Mr. Fierro:

Q. After you concluded, whatever you had to do, examining, thinking, whatever your processes are, did you, specifically concerning the boot or boots, both of them, did you come to an opinion as to whether or not the boots made the cast impressions that are in evidence?

A. Yes.

Q. Did you come to any opinion?

A. Yes.

Q. What was your opinion?

A. In my opinion, given the same set of circumstances, any number of boots or tires could have made those impressions.

Q. Any number you say?

A. Yes, it is possible these boots and these tires made those impressions, but it is also possible that other tires and other boots could have made the same impressions.

Q. Cross examination.

CROSS EXAMINATION

By Mr. Ertel:

Q. Mr. Rotman, you have been a little uncomfortable in your testimony here, have you not?

Rotman.

By Mr. Fierro:

I object to that.

A. I have been a little physical, you might say.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Mr. Rotman, how long did you examine these particular items?

A. At the Barracks?

Q. Yes?

A. About two hours.

Q. About two hours, that is all?

A. That is all.

Q. Did you bring any special equipment?

A. I had with me a magnifying glass and a ruler.

I used the ruler, but did not need or use the magnifying glass.

Q. You certainly went over these for comparison points, didn't you?

A. Yes.

Q. Is that all the comparison points you found which you have described here?

A. I described what Trooper Krebs pointed out.

Q. You didn't ask him for all of them, did you?

All of the comparison points, he only showed you a few, didn't he?

A. Yes.

Q. You said, "That is enough.", didn't you?

A. Well, I don't know if I said "That is enough."

I am not sure I said, "That is enough.". I said. "Okey. I have

Rotman.

seen as much as I wanted to see."

Q. You seen enough?

A. I said that I had seen as much as I wanted to have seen.

Q. That was after you were looking at the tire impressions, is that right, then you looked at the boot impressions

A. Right, I examined the tires first.

Q. Then you looked at the boots?

A. Yes.

Q. You neglected to show the Jury, I think, the nail marks on that impression?

A. Well, that was a point of comparison that Trooper Krebs showed me I agreed upon.

Q. Did you make a comment then after you looked at those boots in the presence of Trooper Krebs and Corporal Barto?

A. I am not sure if I did or not, we had a lot of conversation.

Q. Could you have made the comment something like, "Some guys never get a break."?

A. I could have, but I don't know if it was in context with examining these, because we were talking about the crime situation in Philadelphia and the problems Investigators have, etc. I remember saying something like that, but I don't know if it was, in fact, with reference to this.

Q. Did you also make the comment "If you got him you got him."?

A. I don't remember saying that.

Rotman.

Q. You would not deny saying that?

A. I don't deny, but I don't remember saying it.

Q. Now, when you first got there you spent about ten minutes just looking at the casts, didn't you, just overall view, and at that point Trooper Krebs started to help you, isn't that true?

A. No.

Q. He didn't help you by pointing out casts?

A. Yes, but it was not after ten minutes, I think it was a little later than that.

Q. Now, you were able to identify a tire to a cast, is that right?

A. Yes.

Q. And there was not any question about it, you came down and looked for the cut and you saw the cut in the tire and saw the cut in the cast?

A. Not the cut, each cast has its' own identifying mark.

Q. With the tire?

A. Yes.

Q. Cut marks?

A. No.

Q. Break marks?

A. Not accidental marks, marks of factory marks.

Q. You don't consider....

A. Manufacturing marks.

Q. You don't consider a tread, a crack in the tread which you showed on the one tire as a manufacturing mark?

Rotman.

A. I didn't say that.

Q. That you looked for, you went around this tire and looked for that?

A. Right, are you asking me for what I looked for now or at the State Police Barracks?

Q. You looked for it now, to identify the cast?

A. Yes, I did, but I thought you were asking me what I looked for at the State Police Barracks?

Q. That is an accidental marking?

A. Yes.

Q. When you are looking at fingerprints do you get omissions in fingerprints too with smudges and soforth?

A. I would not consider a smudge an omission. You get omissions.

Q. You look for what we call positive points of comparison?

A. Yes.

Q. When you get enough positive points of comparison, then you conclude that fingerprint came from that individual?

A. Yes.

Q. That is exactly what you do, you look for enough points of comparison between the physical object and the cast to conclude whether or not that is the object, do you not?

A. That is correct.

Q. You don't worry about omissions because that can come from soil, filling in, weather, the fact that the boot or shoe might have moved in the soil and filled it in, the crack may

Rotman.

have been filled in, in the boot when a guy had dirt in it from somewhere else, you don't worry about those in your comparisons, do you?

A. No, you are right, you don't worry about them.

Q. So you looked for the positive points of comparison to conclude that tire made that particular tire mark?

A. Yes.

Q. And the same for a boot, to a boot cast, is that correct?

A. Yes.

Q. So all of these omissions that you talked about basically in the, in the tool examining art are nonsense, aren't they?

A. Not necessarily.

Q. They just don't show, and nobody can explain it, because you said yourself?

A. That is exactly right.

Q. But if you get enough points of positive comparison of accidentals, you can put it to a particular object, is that right?

A. In fingerprints I would say that is right.

Q. In tool marks?

A. Well, it depends on what you consider enough points, and what somebody else might consider enough points.

Q. Well, it is all a matter of statistics, is it not?

A. Certainly is probabilities.

Q. Let's go through a few of the probabilities to narrow

Rotman.

this down even with the manufacturer's marks, can we do that?

A. Sure.

Q. So we start with the probability of the particular tire itself. Now, there are so many tires manufactured in the United States?

A. Yes.

Q. Do you have any idea how many brands, would you consider it over 150?

A. I will accept that.

Q. Now, of those 150 brands, one of them is Kelly-Springfield?

A. All right.

Q. And a Kelly-Springfield is a replacement type of tire, do you know that?

A. I don't know that for a fact.

Q. You didn't check with the factory or anything?

A. I did no further investigation.

Q. You never went back to the factory?

A. I did no investigation.

Q. So Kelly-Springfields, I assume you have done some tire analysis before, have you?

A. Yes.

Q. Now, you know what these are called?

A. I can't see. (Witness leaves stand.).

Q. The cracks, the wider grooves

A. No, I don't.

Q. That is ribs, that is a rib design, and that is in



Rotman.

a tread pattern?

A. Yes.

Q. Do you know how many tread patterns are put out in various tires?

A. I would say numerous.

Q. That would limit it further, because you have to get down to the tread pattern in the Kelly-Springfield tire?

A. Yes.

Q. Do you know if they change those periodically?

A. I think that they did.

Q. So that, in fact, they sometimes go from a seven ribbed tire to a five ribbed tire, you are familiar with that from your own common knowledge?

A. Yes.

Q. That limits it even more even within the Kelly-Springfield group?

A. Right.

Q. Now, we also have, are you familiar with these little cuts called sipes?

A. Yes, at the tread, yes.

Q. Now, do you know they vary in patterns?

A. Yes.

Q. And do you know how many patterns you might have in Kelly-Springfields with this type of ribbing?

A. Once again I would say numerous.

Q. Now, the sidewall changes, does it not?

A. The identifying mark on the sidewall?

Rotman.

Q. Yes.

A. I don't know that they do, I am not sure, I thought all of the manufacturers had their own identifying marks. They could change from one year to the next or intervening years, five years or whatever.

Q. Now, we limited it a little bit more, because you got to get the type sidewall with the type rib with the type sipe with the type tire?

A. Yes.

Q. Now, we have gotten that far, then we have what is called wear patterns?

A. Right.

Q. Each tire wears differently than another tire, depending on alignment, camber and so on of the automobile?

A. Yes.

Q. That is individual pretty much to an automobile, is it not?

A. Yes, sure.

Q. The wear patterns are different for different cars, because a car hits a curb or gets out of alignment or has an accident, so then you compare wear characteristics, so that even limits it a, limits it more within a Kelly-Springfield, sidewall, tread, sipe design?

A. Yes.

Q. That is even more limitation?

A. Yes.

Q. You found, as a matter of fact, that Commonwealth's Exhibit No. 89 and Commonwealth's Exhibit No. 92 compared in all

Rotman.

of those degrees, did you not? I don't want to trap you here.

A. No, that is all right. Let me see the "L" number.

Q. Did you make notes of your examination?

A. Yes.

Q. Do you have them with you?

A. No.

Q. You didn't bring any notes with you?

A. No, I never testify with notes.

Q. You don't even have them with you here?

A. No.

Q. You didn't review them at all?

A. I didn't say that.

Q. When did you review them?

A. Last night.

Q. You didn't bring them with you so I could look at them?

A. No, Sir, that is L-2, I think that was a front tire, am I correct?

Q. Right, front tire.

A. Right front tire.

Q. That compared in tread design, wear characteristics, did you measure the depth of the tread?

A. Yes.

Q. Did that compare favorably?

A. Yes, in areas it did, certain areas.

Q. That is another positive, so everything at this point from, compares, is that correct?

Rotman.

A. Everything at this point tells me it is a Kelly-Springfield tire.

Q. A Kelly-Springfield with this wear pattern, with this particular design, with this particular size, with this particular edge wear, everything is compared?

A. Yes.

Q. How many points of comparison did you find as far as accidentals are concerned on that?

A. I didn't, I think there was one on this one.

Q. Only one?

A. Yes. I only examined it for two hours, all of these things for two hours.

Q. Well, certainly, Sir, if you are coming into Court in an important matter like this, you want to give a good, fair objective opinion, don't you?

A. I would like to, yes.

Q. And you would certainly want to investigate this more than two hours?

A. Well, the time was limited, there was limitation on time.

Q. Well, did our people throw you out or anything?

A. Not at all, they were extremely courteous.

Q. Now, I want you here in this Court Room to give me a fair appraisal using that drafting set, using triangulation, and the dividers, and give me a comparison of every accidental mark between this cast and that tire, can you do it, and I will help you.

Rotman.

By Mr. Fierro:

I object to his helping.

By Mr. Ertel:

I will be glad to point the things out.

By Mr. Fierro:

You don't have to point anything out, and I object to any experimentation, this man is here to testify as to his examination and opinion.

By The Court:

Q. Do you understand the question?

A. I understand.

Q. You may proceed.

By Mr. Ertel:

Q. Can you do it?

A. I don't know how to use one of these sets, to be perfectly frank with you, and I don't know that these drafting sets, I have never seen, as a matter of fact, Doctor Burke use one either when he was doing it himself or when we were together doing it.

By Mr. Fierro:

I object to this, that the District Attorney must not present his own instruments. The man has a right to say what he uses and not make experimentations with anything provided by the Commonwealth.

By The Court:

Q. Are there any instruments that you used that you d have with you that you would like to see if we have available?

A. No, most of it is done by sight, your Honor, and if

Rotman.

they measure favorably from one point to another, from one identifying point to another, that is usually sufficient.

By Mr. Ertel:

Q. That is sufficient to conclude that is the tire that made the mark, isn't that true?

A. Yes.

Q. Now, would it be just as accurate in using a rule, if we took either a compass or by just using a measuring stick to measure a distance between two marks and take it from the tire to the cast?

A. Same difference.

Q. Same difference?

A. As long as it is locked.

Q. Are you familiar with the fact that 89 and 92 Trooper Krebs just said they could have been the same?

By Mr. Fierro:

I object to what Trooper Krebs said.

A. I am not familiar with what he said.

By Mr. Ertel:

Q. You are saying, aren't you, that 89 could have made 92, aren't you saying that?

A. This is L-2, I think that was the right front tire.

Q. That is the right front tire, that is what you identified it as?

A. Yes.

Q. So you identified this particular cast 92, to Commonwealth's Exhibit No. 89....

Rotman.

A. Now, I don't know.

Q. It is the right front tire from an Oldsmobile sedan?

A. Yes, right front tire.

Q. You identified this cast with this tire, is that right?

A. Yes.

Q. So we can lay those together. I believe you testified about cast No. 94?

A. Yes.

Q. Okey, and that is tire No. 88?

A. Right.

Q. I hate to ask you this, but can you come down here?

A. Sure. (Witness leaves stand.).

Q. Now, would you be kind enough to pick out what you would consider a comparison?

By The Court:

The Jurors in the back cannot see, Mr. Ertel.

By Mr. Ertel:

There does not seem to be a better way to handle it.

By The Court:

The Defendant is excused for 15 minutes. The Jury is excused for 15 minutes. Court is recessed.

(Recessed at 2:20 P.M., EDST.).

(Reconvened at 2:35 P.M., EDST.).

Rotman.

(Michael Rotman returned to witness stand.)

By The Court:

Proceed, Mr. Ertel.

By Mr. Ertel:

Q. Would you come down here again, Mr. Rotman?

A. (Witness leaves stand.)

Q. Now, Mr. Rotman, there is the "D" of the tire, that is a class characteristic?

A. Yes, manufacturer's.

Q. What we call class manufacturer's?

A. Yes.

Q. Now, 1, 2, 3 sipes, see that crack right there?

A. Right.

Q. Two of them right there?

A. Yes.

Q. We measure that off of the corner of the "D", which we are doing now to the first crack, right, would you say that is accurate?

A. No, I want the edge.

Q. You want the edge?

A. Yes.

Q. Now, let's come over to the cast, now you are off the "D", the first crack?

A. Right.

Q. The cast should be a little bit off because plaster varies a little bit?

A. It spreads a little bit, the plaster as it falls



Rotman.

because of the weight of the plaster.

Q. That compares favorably to that crack, does it not?

A. Well.....

Q. It is right there?

A. Okey, if you want to consider that a crack. It could also be a flaw in the casting.

Q. Let's take the next one.....

By The Court:

Mr. Ertel, the way you are standing there the Jurors on the end can't see.

By Mr. Ertel:

Q. Commonwealth's Exhibit No. 88, I believe we are taking, and we are measuring to the second crack, is that correct, from the corner of the "D"?

A. Yes.

Q. There is another.....

By The Court:

Mr. Ertel, if anything is said it must be on the record.

By Mr. Ertel:

Q. I said I got the wrong crack. Okey, we are going from the tip of the "D" to the second break in the sidewall, in the sidewall of Commonwealth's Exhibit No. 88?

A. That is, yes, Sir.

Q. That comes out right on the cast to an imprint right at the edge of the sipe as shown on Commonwealth's Exhibit No. 88,

Rotman.

is that correct?

A. Well, let me see that again here?

Q. Do you want to count them, would that be easier, 1, 2, 3, right at 4?

A. Right about 4.

Q. Right here, do you see it right here, where your light.....

By Mr. Fierro:

I have to object to this, I don't know what he means when he says, "right here". I want to make this objection, the District Attorney, in effect, is testifying, and I object. He should ask this man questions and not make statements.

By The Court:

Be specific as far as the record.

By Mr. Ertel:

Q. From the tip of the "D", the markings on the sidewall at the corner of the tread and the sidewall, from the "D" up do you, and where I have placed the dividers, do you see the crack?

A. Yes, but how do you explain this form of plaster in the middle if you are going to call that a crack? How do you explain that lump of plaster in the middle?

Q. Let's go back and ask you on this if there is a lump of rubber?

A. Yes, but it don't take on the same shape as the plaster.

Q. But it does, it shows the cracks in the same location?

A. If you want to consider these cracks, okey, I will agr if you want to consider them cracks, but you have the same type of

Rotman.

cracks all through here, all through the plaster you have the same type of cracks.

Q. Let me show....

A. The question is are the cracks there because the tire caused the impression to be made or are the cracks there because of the way the plaster was poured and set? That is my question. This is the problem with this type of identification.

Q. You have looked at these, you have gone from the tire to the cast?

A. What you showed, I agree is true.

Q. All right....

A. But I am not so sure that I would not say for sure that the cracks that you show on the plaster are, in fact, cracks that were caused by the impression of the tire.

Q. You are just not sure of that?

A. I would not say that it is because of the mould along here.

Q. They lay in the same distance?

A. They do, there is no doubt about that.

By The Court:

Speak up.

By Mr. Fierro:

It sounds to me like this is taking on a debate.

By The Court:

Yes, Mr. Ertel, it is questions and answers.

By Mr. Ertel:

Q. Do they lay the same distance from the corner of the

Rotman.

"D" of "Kelly-Springfield", is that correct?

A. Yes.

Q. They lay at the same angle from the corner of the "D", is that correct?

A. They lay at the same distance.

Q. Now, do they also lay on the edge of the tread to the sidewall?

A. Yes.

Q. Do they show both on the cast, which is Commonwealth's Exhibit No. 94, and as on 88?

A. There are similar marks on the cast as appear on the tire. I would not say for certain that those marks were caused by the marks on the tire.

Q. Now, let's take one other measurement on that, if we can? This is a measurement between the two cracks which is at the, on an angle from the "D" of Kelly-Springfield. Would that be a fair distance between the two?

By Mr. Fierro:

What is a fair distance, what is it?

By The Court:

For the record, Mr. Ertel.

By Mr. Ertel:

Q. I have set up the dividers, is that correct, and that is betweek the two breaks in the tire off of the edge of the read?

A. Yes, the District Attorney measured the distance between the two breaks from the "D" of "Springfield", and these

Rotman.

being the same two breaks that he identified previously. Now he is measuring the distance between the two breaks.

Q. Does that compare favorably, in your opinion?

A. Well, when you are talking about centimeters, no.

Q. But it does compare for tool work?

A. It is quite close, but there is a slight difference.

Q. Now you are looking at what is Commonwealth's Exhibit No. 108, is that correct?

A. Okey, yes.

Q. Now, can we count across again from the "D" and we go, 1, 2, 3, 4, 5, 6, 7 and do you note on the photograph, which is Commonwealth's Exhibit No. 108, is a crack?

A. Yes.

Q. Now, let's go to L-1, which is easier to see of Commonwealth's Exhibit No. 108, start here, 1, 2, 3, 4, 1, 2, 3, 4, 5.....

A. You are counting something that does not appear in there.

By Mr. Fierro:

Did the Court Reporter get that?

By The Court Reporter:

Yes.

By The Court:

Anything said, would you speak loud enough?

By Mr. Ertel:

Q. Let's measure it again?

A. I repeat, he was counting a point that did not appear.

Rotman.

Q. Should it be there?

A. Yes, it should be there, but these other marks should be on the cast also. These marks of omission I speak of.

Q. Marks of omission can fill in?

By Mr. Fierro:

I object, this is argumentative.

By Mr. Ertel:

Q. Can you Point 4 on the tire on, and on the cast?

By Mr. Fierro:

What is Point 4?

By Mr. Ertel:

Q. Shown on the top of Exhibit No. 108, can you Point 4 which is laid out by Trooper Krebs both on the tire and on the cast?

By Mr. Fierro:

I object on the record, whatever Trooper Krebs laid out it is meaningless on the record.

By The Court:

Is it marked on the Exhibit?

By Mr. Ertel:

Yes.

By The Court:

Refer to the mark.

By Mr. Ertel:

Q. Can you find Point 4 on 108?

A. You counted Point 4 here, on the photograph marked L-1, on the photograph marked LEK-3, you counted Point 2 T -

Rotman.

not sure which one.

Q. Well, we will start, if I made a mistake, let's start with Point 3, can you find Point 3 over on the photograph on the tire....let's start over. On Commonwealth's Exhibit No. 108, can you point to Point 3 on the cast picture as compared to the tire picture of Commonwealth's Exhibit No. 108 of the tire, Point 3?

A. Yes.

Q. Are they there?

A. Something appears in the photograph.

Q. Does it appear to be a crack?

A. It can be, yes.

Q. And counting from the "D", can you lay it out to be the same distance?

A. Right.

Q. It is the same distance, and it appears the same?

A. Apparently the same distance, I didn't measure it, it might very well be the same distance.

Q. Would you measure it please?

A. The photographs are not accurate.

Q. Here are the two Exhibits, can you measure it on the Exhibits?

A. I am looking at the photographs, if you want to point them out onto the Exhibits, I will measure them.

Q. You are the Examiner here....

By Mr. Fierro:

I object to the argument again.

Rotman.

By The Court:

Refrain from arguing, ask questions.

By Mr. Ertel:

Q. As a Tool Examiner, will you point them out on the Exhibits, please, not the photograph?

A. Let me see what you are talking about?

Q. Can you observe it?

A. Yes.

Q. Now, take the dividers and measure the distance, please, what does it appear on the tire to be?

A. What?

Q. What does it appear to be?

A. A nick or whatever, crack. I was wondering if we were looking at the same crack, your Honor. If the District Attorney and I are in agreement that we are looking at the same crack, because there are many cracks in this tire, I was wondering if we were in agreement.

Q. Okay, you got it now?

A. Now you want me to find it on here?

Q. If you will, please. When you say "on here", you mean Commonwealth's Exhibit No. 94?

A. Yes.

Q. Did you find it?

A. Yes.

Q. It is exactly the same location, is it not?

A. Well, there, yes, there is a flaw in the cast that appears to be in the same location as the flaw in the tire.

Q. You have located that by using dividers and just layin



Rotman.

it on there and looking right at the end of the divers?

A. Yes.

Q. And on the same angle, was it not?

A. Yes.

Q. About the same length?

A. Yes.

Q. By the naked eye you could see that?

A. No, by the naked eye I would not trust, but I would say it is the same.

Q. Do you want to measure it?

A. No.

Q. Why don't we measure it?

A. No, we used the compass and I am satisfied.

Q. Now, let's look at Point 4, if you will, please, on Commonwealth's Exhibit No. 108, and also in the tire, now it might be easier to pick up in the tire, do you think you can pick that up on the tire and on the Exhibit?

A. Okey.

Q. What does it appear to be in the tire?

A. A crack.

Q. And running which direction, can you give us a description as best you can?

A. Well, it is running from the, I would say the outer edge of the first tread down to the rim of the tire, not the rim of the tire, but the first rim of the mould. Do you want this measured?

Rotman.

Q. Please, would you?

A. To the "D"?

Q. That would be fine?

A. Okey.

Q. Can you locate the same thing on the cast which is Commonwealth's Exhibit No. 94?

A. Okey.

Q. Did you find it?

A. Yes, it is not the exact distance, there is a crack in the plaster.

Q. That compares favorably for tool analysis?

A. Yes, not an exact distance.

Q. Let's check the exact distance, you note the tire does have imperfection here in the cast, where obviously something happened to the cast?

A. Exactly.

Q. That is why the distance would not compare favorably in your opinion?

A. Could very well be, either that or the impression spreading, the earth spreading as the plaster falls into it.

Q. So we do, 1, 2, 3, 4, points of comparison just on the sidewall of this tire, is that correct, in the cast?

A. Once again, you will, you call them points of comparison and I am concerned whether or not the plaster is of such consistency that it would have formed these cracks anyway, because there are cracks along the ridge.

Q. But they do work out distance-wise exactly, is that

Rotman.

correct, or as close as one would expect?

A. Yes.

Q. And the angles are the same as the cracks?

A. Yes, I would say they are.

Q. Let's go to the next one....incidentally, you didn't find those, did you, when you were looking at the tire?

A. No.

Q. You didn't examine it that closely?

A. No, Sir.

Q. Now, looking at Commonwealth's Exhibit No. 109, can you look at Point 5 which is shown on L-1 and LEK-3?

A. Are they of the same tire?

Q. LEK-3 and L-1, do you see what Point 5 is?

A. Yes.

Q. That is a scrape mark that appears in the tire, is it not?

A. Yes.

Q. Can you find that on the tire, please?

A. Right here.

Q. You have found it, where is it on the tire?

A. The tire is upside down according to the photograph.

Q. That crack appears as in the second rib of the tire, and it is a long thin crack, what would you say the distance would be, approximately?

A. Inch and a half.

Q. Can you find that on the cast, please?

A. It is over here, but it is not, but the plaster is

Rotman.

somewhat covered.

Q. But you find the same crack in the same tread?

A. The same crack in the same tread, but I would not, but I would not, I would say not as long because of the imperfection of the cast.

Q. Are you familiar what that object is here on the Photograph which is 109, can you get a point of reference to measure from that to some other point in the tire?

A. What are you speaking of?

Q. From this crack to some other point of reference?

A. From the crack to the point of reference?

Q. Yes? For instance, could you count the number of dashes on the sidewall to the point where that crack starts?

A. Yes. This is one of the points that Trooper Krebs showed me.

Q. You did see that?

A. Yes.

Q. Can you count that off and see if it is in the same location?

A. When I see on here, it is not in the same location....

Q. You missed one thing, because it is covered over.

By Mr. Fierro:

I object to that statement.

A. I counted that, I didn't miss.....

By Mr. Fierro:

I would like to have a ruling on that.

Rotman.

By The Court:

The objection is sustained.

Ask questions, Mr. Ertel, no statements.

A. I would say it is approximately in the same position.

By Mr. Ertel:

Q. That is close enough for tool work?

A. Yes, that would be.

Q. That is a good identifying mark, is it not?

A. Yes.

Q. Now, let's look at Point 6 on Commonwealth's Exhibit No. 109, can you see Point 6?

A. Uh-huh.

Q. What is it?

A. It looks like.....are you talking about this mark?

Q. Well, can you see it better on LEK-3?

A. No, it does not appear here.

Q. Can you locate that on the cast going from the near bar?

A. On the cast?

Q. Let's start from the tire, wouldn't that be easier for you?

A. Okay.

Q. Found it?

A. Right.

Q. What does it look like?

A. A cut mark.

Q. How long is it?

Rotman.

A. About a half inch.

Q. Can you find that also on the cast?

A. Okey.

Q. The same length?

A. Approximately.

Q. Lying in the same angle?

A. Approximately.

Q. And is that close enough for a good point of identification in tire work?

A. Yes.

Q. So that is six points on this particular cast, is that correct, for this tire?

A. I believe so...well, I don't particularly agree with the points along the side.

Q. But you do agree with the ones definitely in the tread work?

A. In the tread work, yes, but not the ones along the side.

Q. They are accidentals?

A. Yes, they are.

Q. And they are peculiar to one type tire?

A. That is debatable.

Q. That is what you look for?

A. That is exactly what you look for, yes, but omissions are things that have a greater bearing on the matter too.

Q. But you have already stated you looked for positives, not omissions?

A. Yes.

Rotman.

Q. Incidentally, did you examine that cast and that tire thoroughly at the Barracks?

A. Not thoroughly, no.

Q. Incidentally, let me see which tire do we have now and the cast?

A. If I would have been able to take the tire and the casts and just study them for a long period of time, when you are not tried and when you are able to observe properly, I think I could have made.....

Q. The same comparisons?

A. I could have made a better judgment, perhaps.

Q. You felt you just didn't have sufficient time, is that what you are saying?

A. Well, even a full day is not sufficient time, is what I am saying.

Q. Well, in that case what we are doing here probably is not going to be sufficient either?

A. Well, I am not adverse to trying.

Q. Exhibit No. 87 and 91, did you compare those while you were at the Barracks?

A. Yes, I believe I did.

Q. Can we start, Exhibit No. 110 shows a point marked 1 on the L-3 to the left panel?

A. Yes.

Q. Does that appear to be a crack in the cast?

A. Yes.

Q. Looking at the tire, does the same crack appear

Rotman.

on the tire as No. 1?

A. Yes.

Q. Can you find that on both casts and tire, the actual Exhibit? Incidentally, from the cast, on the cast from the photograph it appears just below rib No. 2 in the tire and it also appears on the tire photograph on Rib 2?

A. Yes.

Q. Did you find it?

A. Yes.

Q. Do you want to measure that for us, please?

A. Yes, I can.

Q. Can you point it out to the Jury?

A. Here it is here.

Q. Is this what we are looking at?

A. I don't think they would be able to see it anyway.

Q. How about if I pick it up this way?

A. It is difficult to hold a heavy object and speak at the same time.

These are the marks, they give you oblique lighting.

Q. You see a couple marks there, do you not?

A. Yes.

Q. There is a, can you point them out and get the distance between them and find them on the cast?

A. All right.

Q. Now, can you go to the cast and find them on the cast, please?

By Mr. Fierro:

Wait, please. I object to one of the casts



Rotman.

out to the witness, to assist the witness. The witness is being asked to find it, he should be the one to find it.

By The Court:

Yes, and Mr. Ertel is doing the questioning.

By Mr. Ertel:

Q. Can you find it, Mr. Rotman?

A. There is a crack here, but the same crack does not appear.

Q. Can you find Points 2 and 3 in relation to No. 1, the triangle?

A. Yes.

Q. Is there a triangular section of marks 1, 2, and 3 shown as Commonwealth's Exhibit No. 110? Can you find Points 1, 2, 3 ?

A. Yes.

Q. Can you find those same points on the tire, please?

A. There are cracks that appear in here that do not appear in the tire.

Q. But the three positive marks do show there and show on the tire, do they not?

A. Yes.

Q. Are they in the same relationship to each other, approximately? Are they approximately the same distance apart?

A. Yes.

Q. And do they look the same?

A. Yes.

Q. There are three points of comparison, are they not?

Rotman.

A. Okey, yes.

Q. They are good points of comparison because of their angles? Their distance and their relationship to each other, are they not, they are unique with having a triangle like that?

A. I hate to use the term "unique".

Q. Unusual?

A. Unusual.

Q. Now, shall we go on....

A. But there is also a possibility something like that could appear on another tire.

Q. Let's go to Point No. 4, please?

A. Okey.

Q. What is Point No. 4, can you identify it?

A. Well, it looks like a small crack, similar to the crack that perhaps a nail might make.

Q. Would that be in the second ribbing?

A. Yes.

Q. Does it show in the same approximate location on Commonwealth's Exhibit No. 110, the photographic Exhibit?

A. I am sorry?

Q. Do they show on the photographic Exhibit, No. 110, in the same location on L-3 and LEK-2?

A. I didn't look at LEK-2, I am sorry....yes.

Q. Would you look at 4 and 5 together, since they are close together?

A. You are asking if it shows, all right. yes.

Rotman.

Q. Same location?

A. You see on the photograph the tread, the rib as you call it, is not as pronounced on here, because that is photographic lighting.

Q. Can you find those on both Exhibits now, the tire and plaster cast?

A. Okay.

Q. You found it on the cast, can you find it on the tire?

A. Yes.

Q. Now, would you measure?

A. Okay.

Q. Now, can you find 5 while you are on the tire, is that in the same location on the cast as it is on the tire?

A. As it appears from the other marks, yes.

Q. Same location, now would you describe it as far as the angle of the cut, is it in the same angle?

A. Yes.

Q. Same angle?

A. Approximately, yes.

Q. Is that close enough for an accidental mark in tool marking for favorable comparison?

A. Yes.

Q. Can we find Point 5, please? You are observing that on Commonwealth's Exhibit No. 110?

A. Yes.

Q. You see it both on the photograph of the plaster cast and the photograph of the tire?

Rotman.

A. Yes. (Witness now goes to plaster cast.)

Okey.

Q. Did you find it on the cast?

A. Yes.

Q. Would you find it on the tire, please, No. 5, please?

A. Yes.

Q. Did you observe it on the tire?

A. Okey, I see it on the tire, I see it on the cast.

Q. Is it on the same location in both the tire and  
cast?

A. Approximately.

Q. Is it the same angle?

A. Approximately.

Q. Is it an accidental marking?

A. Yes.

Q. Does it compare favorable for tool mark analysis?

A. Yes.

Q. Is it in the same location in relation to Point 4,  
which is an accidental marking, which you saw before on both the  
cast and the tire?

A. I didn't hear you?

Q. The angular distance, if you want to call it,  
from 4 to 5 is the same on the tire as on the cast?

A. Yes, approximately.

Q. These two accidental markings are approximately  
the same dimensions, the same angles, everything?

A. Approximately.

Rotman.

Q. Now, can you find Point 6?

A. I have.

Q. Can you describe what Point 6 is as you observe from Commonwealth's Exhibit No. 110?

A. It appears to be a scratch mark at the edge of the tire.

Q. Is that a long scratch mark?

A. A long scratch mark.

Q. Can you observe that on the tire?

A. There is a scratch mark on the tire, it is much longer than it appears on the photograph.

Q. The photograph had to be cut in half, didn't it?

A. Yes.

Q. See the same scratch mark on the cast itself?

A. Yes, but not as pronounced, but it is there.

Q. And it is the same distance from the sidewall?

A. Approximately.

Q. That is an accidental marking, is it not?

A. I am not sure...well, it appears to be.

Q. You would not expect the manufacturer to put a scratch mark like that on a tire?

A. I have purchased tires that had flaws in it.

Q. That is an accidental flaw?

A. By the manufacturer.

Q. But you see that same flaw, and does it continue on to 110 onto the other photograph which was marked and still marked as 9 under that photograph, a continuation of 6?

Rotman.

A. Okay, yes.

Q. That compares again favorably, does it not?

A. Yes.

Q. Now, let's go to Point 7 on Commonwealth's Exhibit No. 11, can you observe that?

A. Yes.

Q. On the photograph, what is it?

A. It looks like a nail hole.

Q. That is an accidental?

A. Yes.

Q. Can you find that on the tire, please?

A. There are a few nail holes here, or holes that appear to be made by pieces of glass or nails or, whatever, tacks.

Q. Can you find that particular Point No. 7 on the cast?

A. Yes.

Q. Does it appear in the same location as it does on the tire?

A. Yes, approximately.

Q. Both close enough for tool work analysis to make a favorable comparison?

A. Yes.

Q. That is a favorable comparison between the tire and the cast, is that correct, on that tool mark?

A. Yes.

Q. Can you find Point No. 8 on Commonwealth's Exhibit No. 110?

Rotman.

A. Yes.

Q. Can you find it also in the photograph?

A. Yes.

Q. What is it?

A. It looks like a scratch mark.

Q. What tread or rib is it in?

A. Approximately the center rib.

Q. Can you find that on the tire, please?

A. Yes, there is a couple of cuts in the center rib.

Q. Can you find that particular No. 7 and find it on the cast?

A. Yes....7 or 8?

Q. If I said 7, I mean 8?

A. Thank you. Yes.

Q. See it?

A. There is a mark in the plaster, yes.

Q. Does that compare favorably with the tire mark?

A. Yes.

Q. At the same location?

A. Yes.

Q. Same angle?

A. Uh-huh.

Q. Same rib?

A. Approximately.

Q. Favorable comparison for tool mark analysis?

A. Yes.

Q. Accidental mark?

Rotman.

A. Uh-huh.

Q. Now, Point No. 9.....

A. There are more pronounced marks on the tire that does not appear on the cast.

Q. Well, if you go to the cast where is that more pronounced marks?

A. Imperfections.

Q. Or where it appears a twig or some sort of debris was located on the roadway, something was pressed in the ground?

A. This would be a twig pressed into the ground.

Q. Possibly part of a cornstalk?

A. Well, not being at the scene and not observing it, I don't know. I would expect if this twig were movable that it should have been moved before this cast was made, before the cast was poured. This, it is difficult to say, this appears this could have been something covering the ground, but it also appears as perhaps air bubbles or whatever when the plaster is poured.

Q. Of course, you were not there, you don't know how much dirt was scraped off of this after it was pulled out of the ground?

A. Exactly.

Q. You clean these after you pull them out, there is a lot of dirt and debris adheres?

A. Yes, it is cleaned to starch solution, you brush on



Rotman.

the starch paste and let it dry, and then you pull off the film that will be created by the starch paste and the dirt will come off with it.

Q. You are an expert at that, because it was really your specialty in making these things?

A. I would like to consider myself a specialist in every field.

Q. Now, Point No. 9 is again a scratch mark, is that right?

A. Yes, at the lower edge.

Q. Can you tell where that terminates on the tire?

A. On the photograph?

Q. Just by looking at the photograph and then go to the tire, if you will, please?

A. Yes, there is a termination point.

Q. Is that what is called a wear bar on a tire?

A. Yes.

Q. And it is just to a slight angle to the...well, can you measure it, I guess that would be the easiest way?

A. All right.

Q. Have you got them measured on the tire?

A. Yes.

Q. Can you find that on the cast, please?

A. We are at No. 9?

Q. Yes?

A. Uh-huh.

Q. In relation to the wear bar for tool mark analysis,

Rotman.

does it end in the same place?

A. Well, the whole plaster is somewhat smoothed out here. There is what, there is what you might refer, what you refer to as a wear bar, immediately above on the cast, there appears to be, I hesitate to call it a wear bar, because I don't think that it is.

Q. Whatever you think it is, that is all right.

A. But it does not appear on the tire. This same wear bar, as you call it, appears a little further on down and then, of course, the rest of the tire from this point on the cast becomes somewhat obliterated, does it not?

Q. I can't answer your question.

A. I am sorry, I was acting as the District Attorney, I am sorry.

Q. That line does compare favorably for tool mark analysis, does it not?

A. Well, the fact that it continues around the tire.....

Q. Could you measure it on the tire and measure it on the cast and see if it is about the same length?

A. Okey, approximately 17½ inches.

Q. Would you measure it on the cast please, if it, if you can?

A. The cast appears somewhat smaller.

Q. That would be because of the imperfections in the cast, is that correct?

A. It could be for a number of reasons, many reasons.

Q. Compares favorably with tool mark analysis, does it not?

Rotman.

A. Yes.

Q. That is an accidental?

A. Well, okey, you might call any of these things accidentals.

Q. Well, certainly the manufacturer didn't design it with that?

A. I would hope not.

Q. Now, Mr. Rotman, I show you marked as Commonwealth's Exhibit No. 51 and Commonwealth's Exhibit No. 97, which is a left boot of the Defendant. Now, taking a look at Commonwealth's Exhibit No. 111, you had commented, I believe, in your Direct Examination concerning the wear mark on the right inside sole and you were not able to locate it, now look, take a look at Commonwealth's Exhibit No. 111 and showing you the picture of the cast, can you now locate that on the cast, looking at Point No. 1?

A. No, not really.

Q. Well, can you locate Point No. 2, which is a nail mark?

A. Yes, the nail mark I have seen, yes.

Q. Now, can you locate that nail mark?

A. Yes.

Q. Where is it located?

A. Right here. (Indicating to cast.).

Q. Possibly if you will take a look again at L-5 and look and see which wing of the cast it is, and then look for the nail mark, if you will, please?

Rotman.

A. This is the wing we are looking at.

Q. All right, now can you find the nail mark? I will move this tag if it will help you? If you will step aside, Mr. Rotman, a second?

By Mr. Fierro:

There is an unanswered question on the record.

A. I don't see it.

By The Court:

Now, Mr. Ertel, your Gentleman will have to be seated if you are going to converse with him there, the Jury can hear every word you say. (Referring to Trooper Krebs.).

By Mr. Ertel:

I want the man to show me something on the Exhibit.

By The Court:

Do it outside of the hearing of the Jury.

By Mr. Fierro:

He is not testifying, Mr. Krebs is not testifying.

By The Court:

I agree, Sir.

By Mr. Ertel:

Q. Mr. Rotman, I point out to you an object on the cast.....

A. Difficult to see, isn't it?

Q. At the tip of my finger, does that appear to be a nail mark to you?

A. It could be, I would not, I would not say for sure that it is. It could be.

Rotman.

Q. All right, will you take the dividers from that nail mark.....

A. I am not saying it is a nail mark.

By Mr. Fierro:

He didn't say it was a nail mark.

By Mr. Ertel:

Q. What appears to be a nail mark.....

By The Court:

Reword your question.

By Mr. Ertel:

Q. Does it appear to be a nail mark to you?

A. I don't think so, not to me it doesn't, it could very well be, but I don't think it is. As I have explained before, these casts are not of the best quality. I am not trying to cast aspersions on the people who took the casts, I don't know what the conditions were at the time they took these casts, and it could very well be this cast is excellent for the conditions that existed.

Q. Well, would you measure the distance between the nail mark on the shoe and the indentation on the boot?

A. Which nail mark?

Q. Right there?

By Mr. Fierro:

I insist that he has to make a good record.

A. There are 1, 2, 3, 4, different nail marks.

By The Court:

Be specific.

Rotman.

By Mr. Ertel:

Q. Well, will you go on the cast and what can be a nail mark, in your opinion, will you measure from that to you see an indentation which has a rounded point coming out in the cast with a swoop in and swoop out and back out, can you measure from this distance from the alleged nail mark to the indentation?

A. Well, you have already done it for me.

Q. Can you take that and lay it on the boot?

A. Right.

Q. Is that distance the same from the point of that indentation to the nail mark you have identified on the boot?

By Mr. Fierro:

He did not identify a nail mark on the boot.

By The Court:

Reword your question.

By Mr. Ertel:

Q. Is there a nail?

A. The distance is identical from the spot which you marked on the cast as it appears on the shoe.

Q. The spot there is a round spot, is that correct, upon the cast?

A. Yes, it is a round spot.

Q. Now, will you measure across how wide that is and measure the nail on the boot?

A. Measure the round spot?

Q. Yes?

A. Is this the round spot you are referring to?

Rotman.

Q. Yes, Sir. It is definitely circular, is it not on the cast?

A. Yes, but so are some of these holes that appear in the cast, they are probably air bubbles.

Q. Does it measure favorably?

A. It measures favorably. It measures favorably to the thread too.

Q. It....

A. It measures favorably to this thread, and it measures favorably to this thread.

Q. But.....

A. It measures favorably to this nail, and it measures favorably to this thread, and to this thread. This is the problem you have with this type of.....

Q. Wait a minute....

By Mr. Fierro:

Let him finish.

By Mr. Ertel:

Will you sit down?

By Mr. Fierro:

No, I won't, I object to your interrupting and I have a right to stand here and watch this.

By The Court:

Finish your answer, Sir.

By Mr. Fierro:

He was going around the boot.

Rotman.

By The Court:

Finish your answer.

A. I measured, your Honor, a mark in a cast that the District Attorney says and that Trooper Krebs identified as a nail mark, and I have no reason, your Honor, to doubt Trooper Krebs, he treated me as a perfect Gentleman. The District Attorney wanted me to measure the distance which appears on the cast to this nail hole in the shoe, and it does measure favorably, but it does also measure favorably for these thread marks that appear along the outside of the shoe and another nail mark that appears on the opposite side of the shoe, and as I was about to finish, I said that this is the problem that we have with this type of identification, your Honor, that this sole is produced thousands and millions, perhaps could be on a number of shoes, and I am sure that the nail marks and the thread marks will match exactly.

By Mr. Ertel:

Q. Now, Mr. Rotman, you have identified that nail mark, or the distance across what you see was a circular hole on the cast, is that right, and you measured it as compared to the various things on the boot?

A. Yes.

Q. Now, measure from that circular point to the tip of the break on the inside of the sole?

A. We did.

Q. That measures favorably, doesn't it?

A. Yes.



Rotman.

Q. Now, will you measure to the upper tip of that hole?

A. What do you call the upper tip of the hole, I am not sure.

Q. This boot, which is Commonwealth's Exhibit No. 97 has a break here and here, does it not, on the inside?

A. Yes.

Q. Taking the distance from the nail hole, and that is a nail hole on the boot, is it not?

A. Yes.

Q. To the closest point in the second indentation?

A. Okey.

Q. Now, I want you to do this, not me?

A. You have already done it, so I will accept it, I have been watching you.

Q. Will you take and do that on the same place on the....

A. Where is this mark you pointed out to me before.

Q. Is that the same one?

A. Yes.

Q. Does it measure favorably to the second point?

A. If you want to call this a point of comparison, it measures favorably.

Q. How about to the tip of the point of the boot where it goes out around, which would be the cut mark with the sole that is left out, can you measure that out, and I will try to put it on for you, is that about correct?

A. Yes.

Rotman.

Q. Can you do that on the cast also?

A. Is this where you measured to?

Q. I can't answer your questions.

A. All right.

Q. Do you want to check it and come back?

A. I think it slipped off. Okey.

Q. Now, do you want to come back and measure again  
the boot?

A. No, I think it is the same.

Q. Is it the same?

A. Yes.

Q. It measures favorably, does it not?

A. Yes.

Q. Now, would you take and compare the other wing  
of this particular Exhibit with the boot?

A. Yes.

Q. Did you find any comparison points there?

A. This "l" shape mark or nick, or whatever in the shoe,  
appears over here. I guess you will want me to measure it?

Q. Yes, I would.

A. What do you want me to measure?

Q. Measure to anyother reference point?

A. To the nail?

Q. Do you see a nail on there?

A. Well, there is a mark that is more pronounced than  
the other mark that you showed me that you called a nail.

Q. Is that a nail?

Rotman.

A. It is a piece of plaster that probably....

Q. Is a nail?

A. Could be a nail, yes. It measures favorably.

Q. You see the "L" that is an accidental mark?

A. Yes.

Q. You got the nail mark, now do you have anyother nail marks on that particular Exhibit?

A. Yes, there is one here. You are calling them nail marks.

Q. They appear to you to be nail marks?

A. Okey. Now, do you want me to measure here?

Q. Which are you measuring between on the boot?

A. Well, there are.....

Q. You see a very pronounced nail on the boot?

A. There are 1, 2, 3, 4, 5, 6, 7,....13 pronounced nails on the boot.

Q. Is there more than one pronounced that my finger is lying on?

A. Is that more pronounced, not really.

Q. Can you measure betwe en the one I pointed to, you have an idea which two nails they represent, do you not?

A. Yes.

Q. They compare favorably, do they not?

A. Yes.

Q. Now, you measured between two nails, would you mea between the nail that you once measured from and to this other nail and see if you can locate that on the cast?

Rotman.

A. Okey.

Q. I am pointing out one point, I am pointing out another point?

A. That is the ones we just measured? These are the ones we just measured, is it not?

Q. Yes, Sir, now this one here?

A. Okey, now I have a favorable point of comparison to the one you just showed me.

Q. Okey, can you put that on the boot and see if there is a favorable point?

A. I just measured it from the boot.

Q. It is the same?

A. Yes, but right next to it is a little round circle that might appear to be what you call a nail that doesn't appear here.

Q. All right, but you do have three separate points of comparison on these boots, is that right?

A. Yes.

Q. And they not only conform, they conform in size and also distances from each other?

A. Yes.

Q. And angles?

A. Yes, but there is probably just as many points of dissimilarities and omissions.

Q. But we only look for favorable points of comparison, is that correct?

A. When you say "we", you mean.....

Rotman.

Q. Many tool examiners?

A. Yes.

Q. Now, you have located one point, have you not, just now while we were talking shown on Commonwealth's Exhibit No. 112?

A. Yes.

Q. And you located Point No. 2, did you not?

A. I think so.

Q. And you did locate, I believe Point No. 7 on Commonwealth's Exhibit No. 112?

A. Yes, and 6.

Q. Did you locate 6 also?

A. Yes.

Q. That is the "L" shape mark, is that correct?

A. If that is what 6 represents, yes.

Q. You located that in relation to Point No. 7?

A. Yes.

Q. And it compared favorably to tool mark analysis and it is "L" shape cut?

A. Yes.

Q. Now, Point No. 5, will you locate Point No. 5?

A. The thread mark?

Q. Yes?

A. There are many thread marks around the shoe.

Q. Can you locate it in relation to Point 6 on the cast?

A. Let me see if I can find it on the cast? There is

Rotman.

somewhat of an indentation here.

Q. Can you measure that to what appears to be a nail mark on the cast?

A. Okey.

Q. Measure that on the boot please?

A. I don't know that that is the one I measured.

Q. Check it and see if you will, please?

A. Okey.

Q. Measures favorably?

A. Yes.

Q. The thread mark right where you would expect it in relation to the nail on the boot?

A. Yes.

Q. Now, Point No. 4, can you identify that?

A. Okey.

Q. Can you locate that also in the cast? First, tell the Jury what you are looking for?

A. There is a piece of, I guess this is rubber, hard rubber, and a piece of the sole, it is a half sole, a piece perhaps one-half inch from the back end of the half sole is gouged out, it would appear as though somebody took a knife and just scraped it out.

Q. Can you locate that on the cast?

A. Well, not really.

Q. Well, may I suggest to you that you take the dividers and put it on the nail mark on the shoe and take it to the point on the boot, and then put that on the cast and see if you can

Rotman.

locate.....

By Mr. Fierro:

I object to that, he says, "Now, I will suggest to you how to do it....", and the man said, "Not really."

By The Court:

Just ask the questions and let him do what your question includes.

A. There is on the cast at the edge, there is, I am trying to find a good word to describe it so you might understand, a piece of plaster that apparently clumped up, now whether or not the mark on the shoe made this piece of this mark in here, this piece of plaster to clump up, I would not venture an opinion. It could have been done, but quite possible it didn't.

By Mr. Ertel:

Q. Does it measure favorably?

A. It measures favorably.

Q. It measures almost exactly from the nail hole?

A. Almost exactly, but that is the edge of the cast anyway.

Q. Well, the cast would end where the boot ends, would it not?

A. I would hope so.

Q. So the edge of the cast should be the edge of the boot?

A. Well, when you consider the plaster that falls into the impression might spread it a little bit and well, we are

Rotman.

talking about millimeters.

Q. Now, you found, 1, 2, let's eliminate 4, have you located No. 3 yet?

A. I don't think we looked at No. 3 on Exhibit No. 112.

Q. Commonwealth's Exhibit No. 112, do you see a, is there a cut on.....

A. There is a cut from the edge of the nail on the heel to the back of the heel.

Q. Can you find that on the Plaster of Paris?

A. I found it on the boot readily. In the position that this flaw in the heel would appear on the cast, there is apparently some, a piece of twig, as a matter of fact it was a piece of twig that starts at that indentation, now whether the plaster lumped up because of that twig or was caused by the flaw in the heel is a matter of interpretation.

Q. Would you measure the distance from the nail mark to that mark on the plaster cast and see if it compares favorably?

A. It would have to, without measuring, which nail do you want me to measure from?

Q. You say it does anyway?

A. It would have to.

Q. Because it is the exact edge of the heel where this place would be, is that correct?

A. Well, yes, not, no, because it is the edge of the plaster cast.

Q. And it is the edge of the heel, the same thing?

A. All right.



Rotman.

Q. Incidentally, I note on some of the casts another name tag, you didn't tag these, did you?

A. No, Sir.

Q. Who tagged those, do you know?

A. No, Sir.

Q. I am sorry, Mr. Rotman.

A. (Witness returns to stand.).

Q. Now, how many points of comparison would you have to have to make an identification between two tires with two different cast impressions, the two tires being from the same car and the two cast impressions being from the same area?

A. I am not sure I understand your question.

Q. How many points of comparison, positive points of comparison do you need to equate two tires from the same car with two casts in the same area to say that the same car driven in there with the same tires?

A. I think perhaps, if you don't mind, I would have to clarify your question?

Q. Sure?

A. The same tires were driven in there, not necessarily the same car, because Kelly-Springfield tires can be on a thousand cars.

Q. In other.....they are not necessarily on the same car?

A. They are not necessarily on one car.

Q. I see what you are saying. In other words, assume that those two tires were on the same car, and you got favorable

Rotman.

points of comparison on both tires, going into an area, how many points of identification do you need to say positively it came from the same car?

A. Counselor, I don't think I can say positively with the thousand points of comparison that it came from the same car, and for reasons that I brought up before, and I think they bear repeating. The fact of the matter is.....

Q. We don't need to repeat.

By Mr. Pierro:

Please let him answer, I object.

By The Court:

You may finish your answer.

A. The fact of the matter remains, in spite of the fact they are accidental, as you call them, unique, it is not out of the realm of possibility that they could appear on another tire.

Q. Have you ever done a statistical analysis of any type?

A. No.

Q. Have you ever done a statistical analysis to determine the points you need on two different objects which are on the same car leaving a print at a particular location to determine how many of these things go together to eliminate all other possibilities?

A. No. I am trying to think of a case that we handled that one would come to mind was a hit and run accident....

Q. We can't be, we can't ask about specific cases, but...

Rotman.

A. I won't mention names, but I just want to give you an example so that my point sounds valid, you are asking for how many points of identification do we need for positive identification, I don't know that a thousand points are enough, and on the other hand I don't know that you need even more than one. We once brought in a suspect because he had a broken headlight, and the glass that we found at the scene of the hit and hit accident favorably, one piece of glass favorably matched a piece of glass that was still in his headlight. That was one piece of glass, and we brought him in for investigation.

Q. That was conclusive in your mind?

A. I didn't say that, I said we brought him in for investigation. It could only, in my opinion and my experience, you can only use this type of evidence, of analysis to point the finger in the right direction, or to a certain direction. I don't feel that it is at all conclusive. It is not the same as fingerprints, it can't be compared in the same text as fingerprints are compared with. It is just not fair. I grant you that you have 10 points of comparison on even one tire or even one section of a tire, which is even better, not the complete circumference of the tire or 17 inches of a tire, but rather just a little section of a tire right at the valve, or right above the valve, or where ever, and if you have a thousand points of comparison, and I am sure Krebs would bear me out, that it is not impossible for that to happen to still another tire.

Q. That is one tire?

Rotman.

A. That could be a thousand tires.

Q. Let's add another tire to that?

A. You can add four more to it, Sir.

Q. Let's add another, a boot print?

A. All right.

Q. I have no further questions.

By The Court:

We will take a recess. The Defendant may be excused. The Jury may be excused. The Court is recessed for 15 minutes.

(Recessed at 3:55 P.M., EDST.).

(Reconvened at 4:15 P.M., EDST.).

By The Court:

The witness will take the stand.

By Mr. Fierro:

The witness was excused.

By The Court:

I thought you had re-direct.

By Mr. Fierro:

No.

By The Court:

Proceed, Mr. Fierro.

By Mr. Fierro:

The Defense rests.

By The Court:

Mr. Ertel, rebuttal, if any.

By Mr. Ertel:

I am ready to go with a couple of witnesses, I didn't

Richard DeVito.

anticipate anything this soon.

By The Court:

Go with those you have, and if you can locate some of the other ones, we will try to locate those. I would like to get quite a bit of it out today. Proceed with what you have.

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

By Mr. Fierro:

I would like to have an offer on the record.

(AT SIDE BAR.).

By Mr. Ertel:

This guy will testify he was at the Barr's, he was subpoenaed by the Defense. The guy left there about two minutes of four. That he observed the white helmet on the ledge of the car.

By The Court:

The other time agrees exactly with his time.

By Mr. Fierro:

Did he observe it on that day?

By Mr. Ertel:

He can't specify the day.

By Mr. Fierro:

Then it is not rebutting.

By Mr. Ertel:

Yes, because they testified the helmet was never on the ledge.

By The Court:

Yes, he did, he testified he never had the helmet