

Doctor Miller.

00252

(Excused from witness stand.).

DOCTOR EARL R. MILLER, being duly sworn according  
law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, Doctor?

A. Earl R. Miller.

Q. Your occupation?

A. Physician.

Q. How long have you been a physician, Doctor Miller?

A. Since 1946.

Q. Will you tell the Jury your medical backbround  
as far as, let's start with College, your educational background?

A. Locally school. Bachelor's Degree in Science,  
Washington-Jefferson. M.D. Degree from the University, School  
of Medicine.

Q. When did you receive your M.D.?

A. 1946.

Q. Did you have any further training?

A. After that in the Air Force as Flight Surgeon.

Q. How long did that take?

A. Two years in the Air Force.

Q. As well as being a Medical Doctor, do you have  
an official duty in this County?

A. I am Coroner.

Q. Doctor Miller, on October 28th in the afternoon,  
late afternoon, did you have occasion to go to the scene of a

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body located on the , in the Sylvan Dell area in the cornfield?

A. Yes.

Q. Can you tell me approximately what time you arrived there?

A. Between 4:15 and 4:30.

Q. What did you do when you got there?

A. I parked my car along the right side of the road there there were Troopers in the road stopping traffic. I parked my car on the right side of the road and was shown a little path, wagon type path into a cornfield. I was instructed to walk down the center of this trail, staying out of the bare spots.

Back in the cornfield there were other Troopers and from this little path you could see the body of a person lying on the ground in the cornfield.

Q. Now, did you go back to the body at that time?

A. At that time, no.

Q. Were there photographs taken before you went back there?

A. Yes.

Q. I show you marked as Commonwealth's Exhibit No. 1 and ask you if you can identify that?

A. Yes, Sir, that is the scene of the body lying in the cornfield.

Q. Is that how you saw it when you arrived that day?

A. Yes.

Q. I show you Commonwealth's Exhibit No. 2, can you identify that, please?

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A. This is the scene, it is the same scene taken from a farther distance from the body, and it is within keeping of along the edge of the path, the wagon path into the cornfield.

Q. Now...

A. This is aimed in an easterly direction.

Q. I show you marked as Commonwealth's Exhibit No. 3, Doctor, and if you can identify that?

A. Yes, that is a closer view of the body taken from the south side of the body.

Q. Was this taken from some distance from the body?

A. Yes.

Q. I show you marked as Commonwealth's Exhibit No. 4, and ask you to identify that?

A. Yes, this is a picture closer to the body and taken from the north side.

Q. I show you marked as Commonwealth's Exhibit No. 5, and ask you if you can identify that?

A. Yes, this is a closer picture of the body taken from the south side after I pulled the jacket down, revealing specifically to show the position of the arm and the upper torso of the body.

(Commonwealth's Exhibit No. 6 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 6, can you identify that?

A. Yes, this is a picture taken from the opposite side of the body showing again the position of the hand in the jacket, the hand being still in the upper part of the sleeve

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of the jacket.

Q. Had the jacket been moved at that point?

By Mr. Fierro:

Now, only if he knows, we are trying to get along in this case.

A. I moved the jacket.

Q. He moved the jacket?

A. I testified before on previous film that I turned the jacket down and kept it in this position to demonstrate, I asked the picture be taken from one side and then the photographer walked around the body and took the picture from the opposite side.

By Mr. Ertel:

Q. I show you marked as Commonwealth's Exhibit No. 7, can you identify that?

A. Yes, this is a picture from the head of the body demonstrating the position of the corn stalk....

By Mr. Fierro:

Q. The what?

A. The corn stalk, it is under the left shoulder, holding the shoulder up off of the ground.

By Mr. Ertel:

Q. I show you marked as Commonwealth's Exhibit No. 8, can you identify that?

A. Yes, that is another close view of the picture of the opposite side of the head. As a matter of fact, it has picture of my hand in it and I am demonstrating the ear ring in the

*check page 276 B977 should be*

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right ear.

Q. Now, Doctor, after these photographs were taken, what was done as far as you were concerned at that time?

A. The next immediate thing that we did was to cut corn stalks away from the body in an advancing distance out away from the body. These were labeled and identified as to the relative position of the body.

Q. Did you dictate this to somebody?

A. Trooper Houser was acting as my scribe, I was dictating all of the things I saw on the ground and measurements at that time.

Q. Will you describe how you approached the body?

A. After Trooper Keppick took the original pictures, No. 1 and No. 2, I proceeded to the south, in a south direction out of a distance of approximately 20 to 30 feet and entered the cornfield and make a circular path to come into the body from the head end, which is demonstrated by No. 7.

Q. Would it help you to show that to the Jury in doing this?

By Mr. Fierro:

It is not whether he says it is helpful.

By The Court:

No. 1 and 2 have been admitted, the others have not been admitted yet.

By Mr. Ertel:

We will offer cross examination so we can get those admitted.

at 11:14 AM

Check Houser  
Date 1-3-76

Based on Photos 1 and 2 Kennedy RT  
26-29 4th MARK - Miller is familiar  
Sergeant with body lying on ground

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By Mr. Fierro:

Are you through with this witness?

By Mr. Ertel:

I am offering him for cross examination as to the pictures.

By The Court:

You are not finished, proceed.

By Mr. Ertel:

I would like to move their admission at this point.

By The Court:

And it has been objected to as he has not had an opportunity for cross examination.

By Mr. Ertel:

I offer him for cross examination as to the photographs.

By The Court:

Are you finished with the witness?

By Mr. Ertel:

No.

By The Court:

Proceed with your direct examination.

By Mr. Ertel:

Q. After you proceeded around to the head of the body, what did you do next?

A. Well, that was when we finished taking the pictures in this direction, then we cut the corn stalks out, after we

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got all of the corn stalks out, there was a readily identifiable footprint next to the body, and at that time Trooper Keppick secured the plaster of Paris and we made a print of that indentation in the ground.

Q. Is that in one of the photographs that you have?

A. No, I do not see it. there is one with the footpring.

Q. I show you Commonwealth's Exhibit No. 11, can you identify this, Doctor?

A. I can identify this, but that is not the picture I was looking for.

Q. If you identify that, we will, until we find 12 here.

A. This is a picture laterally outward from the left knee, left thigh, and it shows the picture of my hand with a ruler in my hand, with the ruler against the girl.

Q. Did you go around the body and make measurements?

A. Yes.

Q. Of footprints?

A. Yes. At this particular time we attempted, or I attempted to identify impressions on the ground. The ground was quite granular and, it is, of course, in a cornfield that had not been cultivated recently and had not been rained upon recently. Since the surface element of the ground was quite granular in opposition to fine powder, immediately around the body there was impressions which would make you think they were footprints.....

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By Mr. Pierro:

I object to that statement and move that it be stricken, he said, "...make you think it would be footprints...".

By Mr. Ertel:

Q. Were these footprints?

A. These were impressions that I interpreted as footprints.

By The Court:

Any objection?

By Mr. Pierro:

Yes.

By The Court:

The objection is over ruled, it may remain.

By Mr. Ertel :

Q. If you would describe the photograph, maybe I can find it for you?

By The Court:

He can step down.

(Doctor Miller leaves witness stand.).

By The Court:

Mr. Ertel, it is definite we are not going to finish with this Gentleman, if you want to have a breaking spot?

By Mr. Ertel:

All right, it is just as good as any.

By The Court:

The Court is going adjourn for today. We will reconvene tomorrow morning at 9:00. No one may leave until the



Doctor Miller.

Court announces. The Defendant is now excused and the Jurors are now excused.

Court is adjourned until 9:00 tomorrow morning.  
(Adjourned at 5:30 P.M., EDT.).

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And Now, to-wit, Friday, February 22, 1974, beginning at 9:00 A.M., EDST, the trial in the above-captioned matter was continued before the Honorable Charles F. Greevy, President Judge, and a Jury, in Court Room No. 1, at the Lycoming County Court House, Williamsport, Penna., at which time and place the following proceedings were had:

(IN CHAMBERS.).

By Mr. Pierro:

On the record. Your Honor, I requested this conference for this reason, prior to this morning the District Attorney has told the Court that he probably will have Officers testify concerning the Defendant's inconsistent statement as to his whereabouts prior to 4:00 P.M. on the day that Jennifer Hill disappeared, and the Defense then argued to the Court that if that were allowed in, the question of smoking "pot", the buying or selling or giving or the smoking of it might forcibly become introduced, thus prejudicing the atmosphere of this trial. I am now here to say that the Court, and add to my argument this, that it now appears from the Commonwealth's testimony, and unquestionably will later on, that there was no contact between the Defendant and the decedent at least prior to 4:00 P.M., or perhaps 4:30, if one of the witnesses is to be believed, but to allow the Commonwealth all latitude, from quarter to four, prior to quarter of four there was no contact between the deceased and the Defendant in any manner whatsoever. Assuming that the Commonwealth proves contact later on, I agree, that is admissible, but I am saying to the Court the Defendant's movements prior to

that time, since there was no contact at all, do not relate at all to what happened beginning at 4:00 P.M. and are no more germane than what he did a week before, since they are not related to the issue here. In other words, your Honor, what I am saying is if the Defendant had made inconsistent statements or frankly lied about any other matter a week before, it is not germane than his lying as to what he did at 2:00 or 3:00 P.M. that afternoon, especially because they do relate to "pot" and it may be that he was trying to cover or whatever, but has no significance to this issue, and I am asking now that the Court rule on this matter.

By The Court:

When we had the other pre-trial discussion the Court stated that I would rule on each one individually when and offer was made. The Court now has had an opportunity to research the law, and is it coming up this morning or not, Mr. Ertel?

By Mr. Ertel:

I don't know.

By The Court:

What I want before them is make an offer, I have searched the law. Anything further, Mr. Fierro?

By Mr. Fierro:

No.

By The Court:

Mr. Ertel, I am not asking you to reply at this time, because the Court has stated that it wants a full offer on this type of testimony.

By Mr. Ertel:

Which type?

By The Court:

The type of testimony that Mr. Pierro talked about today as prior inconsistent statements.

By Mr. Ertel:

Not prior, but inconsistent statements.

(Off-the-record discussion.).

(Returned to Court Room No. 1, at which time no Jurors were present. The only parties present were the District Attorney and Defendant with his Counsel. Jurors were not in the Box.)

By The Court:

At this time you may proceed, Mr. Ertel.

(At this time the Court reviews slides of victim.).

By The Court:

Who is going to identify these, the Coroner?

By Mr. Ertel:

Yes, this is a picture of the head.

By The Court:

The purpose of this?

By Mr. Ertel:

This is to show petechiae around the eyes. There is something around the eyes which indicate strangulation and also shows the markings on the head of the victim. ✓

By Mr. Pierro:

What do those markings show?

By Mr. Ertel:

1 shows her injuries, that is all I can tell you. ✓

By Mr. Fierro:

Injuries from what? ✓

By Mr. Ertel:

I don't know.

By Mr. Fierro:

I think we should find out, because, your Honor, just having this slide being shown, if it is not necessary, through his expert, then that is completely inflammatory. This slide is one of the ugliest looking thing of a corpse that a person can look upon, and if that would not inflame the Jury, nothing would. His expert is a Forensic Pathologist, a Doctor Catherman, and I know he can testify without the aid of this particular slide, to say that this child was manually strangled. Unless there is something peculiar about the markings on this slide shown on the righthand side, there are two or three scratches. He wants to say there is something unusual which requires it being shown, if there is nothing unusual about it, then I would ask the Court that the Jury not see this slide.

By Mr. Ertel:

Well.....

By The Court:

We are not going to argue it now, I want to see all the slides first.

By Mr. Ertel:

I only have three.

(Commonwealth's Exhibits Nos. 56, 57 and 58 marked for identification.).

By The Court:

Now, go ahead.

By Mr. Ertel:

Now the purpose of this, Commonwealth's Exhibit No. 57, is to show the markings on the neck which is a strangulation mark and it shows the petechiae of the eyes, but it shows the strangulation marks from which he can draw conclusions. Here are the markings on the neck, and that is the main purpose of that.

By The Court:

The same argument, Mr. Fierro?

By Mr. Fierro:

Even more so, your Honor, if he wants to use this to show strangulation marks on the neck, he is exhibiting, to put it bluntly, an ugly corpse that appears to have been manhandled, and that inference may be drawn by the Jury. Now, the markings on the neck the Doctor does not need this photograph to tell the Jury that he saw markings on the neck, he can say so without showing this photograph, and when Mr. Ertel talks about the word he used, it was petechiae, what he means is the breaking of small blood vessels under the skin which the Coroner or some other Doctor can say when a person is manually strangled there is a breaking of small blood vessels under the skin, and it appears in various places, without showing this disturbing photograph.

By The Court:

The next slide.

By Mr. Ertel:

The next would be 58, that is to show the markings on the back of the neck and the midline, which are external markings here, of thumbpring or nailprint, I should say.

By Mr. Fierro:

I think the District Attorney should go further, I think if the District Attorney is going to establish that thumbprint belongs to the Defendant, I agree that this can be shown, but it must be established through a fingerprint expert. If the District Attorney says he cannot establish that, that this belongs to the Defendant, then I say it is useless and the Coroner or the Forensic Pathologist can say, "Yes, I found a thumbprint.", and he can describe where. Now, I am asking the District Attorney, is that thumbprint, does the Commonwealth expect to prove that thumbprint is the thumbprint of the Defendant?

By Mr. Ertel:

By circumstantial evidence, yes.

By Mr. Fierro:

No, by fingerprint evidence?

By The Court:

We won't argue at this time. Is that your last one?

By Mr. Ertel:

Yes, Sir.

check  
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"Is this the same?"

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(Off-the-record discussion.).

(Jury entered Court Room at 9:45 A.M., EDST.).

(Doctor Earl R. Miller returned to witness stand.)

By Mr. Ertel:

Q. Doctor Miller, yesterday you were looking for a photograph, have you cleared that up in your mind as to which photograph you were looking for?

A. There was not one taken at the time, I recalled that there had been one taken.

Q. Now, I show you what is Photograph 11, can you identify that, please?

A. Yes, that shows taking a measurement of an imprint on the ground, lateral to the body at the level of the knee.

Q. Is that a fair representation of what you saw at that time?

A. Yes, Sir. That also shows my hand in there, as a matter of fact.

Q. I show you marked as ~~See Son Gazette Photo~~ Commonwealth's Exhibit No. 12, can you identify that, please?

A. Yes, Sir.

Q. This is what?

(A. This is a picture of the, of a fresh cast and imprint into the ground, which is at the, at the right shoulder level of the body. The body is not shown in this picture, the body has been removed.)

Q. Is that a fair representation of what you saw on that particular day?



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A. Yes, Sir.

Q. I show you marked as Commonwealth's Exhibit No. <sup>13</sup> 13, can you identify that?

A. Yes, this is a picture that was found, or I am sorry, this is a picture showing the stick that was found under the body and which we have used as a point of reference for multiple measurements and geographical location of imprints with the body after the body has been removed. This shows a ruler measuring an imprint that is next to and over the stick.

Q. Is that a fair representation of what you saw on that particular day?

A. Yes.

Q. I show you marked as Commonwealth's Exhibit No. 14, can you identify that, please?

A. This is a picture showing some vegetation and my arm and a rule, and I need another picture in order to localize it for the people.

Q. I show you Commonwealth's Exhibit No. 20, is that the one you wish to look at?

A. Yes.

Q. Can you identify that one, please?

A. Yes, this is a picture after the cast, plaster of Paris cast has been made of the representative footprint scene and it shows a stick which is again was under the body. It shows corn stalks which have been cut. In relationship then to your Exhibit No. 14, you can see the vegetation relating to the cast which was at the level and outside of the right shoulder.

*SAYS ON CAST in Photo 20 - says 2 imprints on 265*

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Q. And is that a fair representation, Commonwealth's Exhibit No. 14, of what you saw at that particular time?

A. Yes.

Q. We will come back to Commonwealth's Exhibit No. 20, so let's keep that out, please. I show you marked as Commonwealth's Exhibit No. 15, can you identify that, please?

A. Yes, this shows the rule measuring another imprint into the ground, and I can orient it with Photograph No. 11.

Q. Is that a fair representation of what you saw at that particular time?

A. Yes, Sir.

Q. Now, in relation to Photograph No. 11, can you orientate that as far as where the body was located?

A. The easiest thing to identify is the two big globs of dirt, the rectangular identification you can see, the lower one in the picture is just laterally and to the left of the left lower leg of the body. The other one is almost at the knee level, but is more lateral or more left to the left leg of the body. These two objects are easily identified.

Q. Are these a fair representation of what you saw on that day?

A. Yes.

Q. I show you marked as Commonwealth's Exhibit No. 16, can you identify that?

A. Yes, Sir.

Q. What is that?

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A. This shows the rule lying at the end of the stick and inside of the original cast, it was an imprint which was partially obscured by the victim while the victim was lying on the ground and at the right side of the victim.

Q. Was that a fair representation of what you saw on that particular day?

A. Yes, Sir.

Q. Now, turning to Commonwealth's Exhibit No.....

A. These, just by comment, Sir, these two films also on 16 and 12 show the plastic material that we put over some of these casts because it had started to rain.

Q. Now, turning to Commonwealth's Exhibit No. 20, can you identify that?

A. Yes, Sir, again shows the cardinal point, shows the stick which had not been moved, it shows the plaster which had been poured into the imprints. The picture was taken for orientation, for identification before these prints, before these casts were moved from the specific imprints.

Q. Is that a fair representation of what you saw at that particular time?

A. Yes, Sir.

Q. Now, turning to Commonwealth's Exhibits Nos. 1 through 8, can you re-look at those and tell us if they are a fair representation of what you saw on that particular day and identify each photograph if you do?

A. You wish me to identify them?

Q. Just identify the Commonwealth Exhibit Number and

(no plastic)  
Photo #11 is wet - Body Not Mv

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tell me if that is a fair representation of what you saw on that day?

A. No. 1 is the view taken from the path in the corn-<sup>1. AN 2</sup>field in relatively close proximity to the body. It shows specifically the legs and the clothing and sneakers around the ankles and the lower extremities.

Q. Incidentally, there is an object to the right of the body there which appears white in the photograph, can you identify that?

A. Yes, that was a part of a pair of pajamas.

Q. Is that a fair representation of what you saw prior to moving into the body?

A. Yes, Sir. No. 2 is the same scene a little bit farther towards the road. You can see the same objects, although the pajamas are more obscured by vegetation, corn and weeds. <sup>weeds</sup>

Q. Is that a fair representation of what you saw on <sup>Grass</sup> that day? <sup>on the edge of corn field</sup>

A. Yes, Sir.

Q. Go on?

<sup>switches Picture on Jury Page 310</sup>  
A. No. 3 shows the body with the jacket pulled down

over the torso and upper thighs and this picture was taken from the south side of the body and it shows a white object here which has the "Glick" name on it, and I know it to be a Glick shoe bag. If you, I know it to be a Glick shoe bag, if you look at it intently you can see grey on this black and white picture, you can see the grey stripes of the bag. <sup>BACK OF</sup>

Q. On the photograph that is black and white?

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A. Yes.

Q. Is that a fair representation of what you saw on that day?

A. Yes.

Q. Continue with No. 4, please?

A. No. 4 shows the same material as viewed from the other side of the body, namely the north side of the body and therefore you are seeing the detail of the right body. You can even see the Glick shoe bag above the body in the, in this picture, and the stripes are easier to see on this picture.

Q. Is that a fair representation of what you saw?

A. Yes, Sir. No. 5 shows the body with the jacket having been pulled down by myself, demonstrating that the right arm is still in the upper part of the sleeve of the jacket.

Q. Is that a fair representation of what you saw on that day?

A. Yes, Sir. <sup>Page 310 says he moved</sup> <sup>CONT. For To Show hand</sup> (No. 6) is the same, the body and jacket have not been moved, but this shows a picture from the other side of the body, namely the north side and it demonstrates that the hand is still in the upper part of the sleeve of the jacket.

Q. Is that a fair representation of what you saw on that day?

A. It is. No. 7 shows the body as we approached it from the east. The cardinal point of interest is that it shows the left shoulder being supported up off of the ground by a corn stalk which is pointed, I know it to be pointed to the east, in this picture it shows it pointing to the right. The significance

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being this demonstrates the position of which the body came against the corn stalk.

Q. Do you know that to be a fair representation of what you saw on that day?

A. Yes, Sir. The other point, if I may add, shows the left ear without an ear ring.

Q. All right?

A. The last picture you handed me, No. 8....

Q. Doctor, No. 7, was that a fair representation of what you saw?

A. It was. No. 8 shows the head from the, with the camera from the right side depicting the fact there is an ear ring in the right ear. It also shows my hand pulling the leaves of the corn stalk out of the way so you got a good view.

Q. Is that a fair representation of what you saw on that day?

A. Yes.

Q. (To The Court.). At this point, your Honor, we would like to offer in evidence these photographs and offer him for cross examination as to the photographs.

By The Court:

Mr. Fierro?

By Mr. Fierro:

I want to wait until he is through with this witness.

By The Court:

The Court is going to rule on the photographs at this

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time, if you desire to cross examine strictly on the photographs, I will permit it, Sir.

By Mr. Pierro:

No, I am going to wait until this witness is through, and you may rule as the Court sees fit.

By The Court:

As I understand now, Mr. Ertel, Nos. 1 and 2 have been admitted without objection of the Defense Counsel, and you are now offering for admission Nos. 3 through 16, is that correct?

By Mr. Ertel:

Nos. 9 and 10 are different objections, they are not photographs.

Page 709 Ertel says  
These are true  
Photographs

By The Court:

No. 9 and 10 I don't have on my list. What you are offering now, would you make it specific?

By Mr. Ertel:

It is Nos. 3 through 8, No. 20, 11, 12, 13, 14, 15 and 16.

By The Court:

These Exhibits are admitted into evidence over the objection of the Defense Counsel, and the Jury is specifically instructed in regards hereto, these photographs are admitted into evidence for the purpose of some showing the nature of the wounds received by the deceased, some showing the conditions of the scene of the alleged crime and others helping you to understand the testimony of the witnesses who have referred and will refer to

Check these numbers being received  
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them. The photographs of the deceased are not pleasant photographs to look at. You should not let them stir up your emotions to the prejudice of the Defendant. Your verdict must be based on a rational and fair consideration of all the evidence and not on passion or prejudice against the Defendant, the Commonwealth, or anyone else connected with this case. Those Exhibits are admitted into evidence.

By Mr. Ertel:

Q. Doctor Miller, if you will, can you take Photograph No. 20, which you have previously identified as the photograph of the casts, and can you arrange on the floor these objects and identify the objects as you go and then describe where the body was in relation to the cast?

A. Yes, Sir.

By The Court:

See that the objects are marked.

By Mr. Ertel:

They are marked.

By Mr. Fierro:

I would like to know what this experiment is and whether or not this man is qualified to conduct this experiment.

By The Court:

May I see Counsel at Side Bar? Might I state again, as I did in my opening remarks, that Counsel and I are required by law to take up certain matters out of your hearing. We may do this at the Bench, as we are doing now, or in my Chambers, or I shall ask you to leave so that we may do so in the Court Room.



This morning we did so in the Court Room while you were in the Deliberation Room. You should not concern yourself with any of these proceedings.

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

By Mr. Ertel:

Q. Doctor Miller, when you were there, will you describe the process you did in measuring and what happened as far as making of casts, can you go through that in detail?

A. Yes, Sir. As we first approached the body, coming from a wide area around the body, we were looking for footprints or disturbances in the ground. We found none until we got in the immediate vicinity of the body. At that time we attempted, or I attempted to make measurements of impressions. Some of these impressions were quite vague and ill-defined. The process of which this was done, was Trooper Houser had a pad of paper and was writing down, I was calling off measurements and roughly orientating them in relationship to the positions of the body, and Houser would call back the measurements to make sure he heard what I was saying. We took, Trooper Keppick and myself, made an imprint, made a cast of the first imprint which looked like it would be reproducible was outside of the lateral to the right shoulder. At that time we were aware that there were other prints partially obscured, particularly one to the right of the body, and obscured by the right arm, so that we could not make a print.

Q. Now, what do you mean by making a print?

*1. 4-11-68  
Miller  
Houser  
Keppick  
Ertel  
on 4-11-68  
403*

*Body parallel with rows*

A. Making a print is the pouring of wet plaster of Paris solution into the ground and dropping pieces of wire, such as a cut coat hanger into this mould on the top surface of it to give it reenforcing so it would not be broken in being handled and being extracted from the ground.

Q. Now, continue, please, with your narrative?

A. It become apparent there were other prints which we would be able to make impressions of with plaster of Paris after the body was moved. At that particular time, I spent more time looking at the body and the most obvious things of the body were the multiple petechiae around the eyes, the face, the tongue and on reflection of the eye lids in the conjunctival surfaces of the eye, that being the vascular covering of the eye ball. There was a particular arrangement, sor of linear arrangement of a row of petechiae on the left side of the neck.

(To me, petechiae in a localized area of the body such as the head and neck in a deceased person is indicative of a strangulation process, and it was at this time that the decision was made that we do, ~~we~~ not uncover the body or do anything more with the body until we secured the services of a consultant, a Forensic Pathologist.) At this stage of the game, with myself watching the footprints, making sure that the Troopers who were being used to pick up the body and remove it immediately to the east through the same row of corn, my job at that time was to safeguard that no Trooper stepped anywhere near in this vicinity and by supervision of having them pick up the body and move it, that was accomplished. We then went back, Trooper

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Keppick and myself, and he prepared the plaster of Paris and he poured it into the imprints on the ground. I dropped the reinforcing wire into them. We completed this through a total of six imprints, one of which is actually a casting of two imprints, so we eventually have a total of six casts. At that time we had a picture taking, which is specifically being No. 20, and is necessary for the orientation of where these casts came in relationship, the picture shows in relationship to the stick and the previous picture shows the relationship of the stick to the body, so I can identify the relationship of the cast to the body which has been removed.

Q. Now, Doctor, can you identify those casts, prints?

(A. Yes, Sir. I saw Trooper Keppick put his initials on them at that time.) → See Bill Nixon about hospital incident

Q. I show you marked as Commonwealth's Exhibit No. 50 and ask you if you can identify that in relation to the photograph and what it is? 274. 256-257-Photo 16

A. Yes, your Exhibit No. 50 is the first cast which was made which is and was outside and lateral to the right shoulder of the body. Poured before body was removed → 275 Right arm in way  
Page 276 HAS RIGHT SHOULDER ON CORN  
STALK

Q. Doctor, possibly it might be convenient for you to write the Commonwealth Exhibit No. on the photograph so the Jury would be able to understand which relates to which?

A. -Yes. (Marks photograph.).

Q. I show you marked as Commonwealth's Exhibit No. 51, and ask you if you can identify that?

A. Yes, that is the cast which actually is, has two

Doctor Miller.

imprints, and the first one at the lower part of the Picture No. 20.

Q. Where was that in relation to the body?

A. That was underneath the buttocks. We have, that has the deepest heel print of all of that we acquired, and another heel print going in the, or in a slightly diagonal angle to it. These heel prints we did not see until after the body was moved.

Q. Can you mark that on Commonwealth's Exhibit No. 20?

A. (Witness marks.).

Q. I show you marked as Commonwealth's Exhibit No. 52, can you locate that on Commonwealth's Exhibit No. 20?

A. Yes, Sir, that is the cast which was immediately at the end of the stick in No. 20. You can see it, the end of the stick is right underneath this corner of the cast and that is the one that we could partially see under the body under the right arm, and we made the cast after the body was removed, or moved.

Q. Can you mark that? Maybe you can write it right on the print itself?

A. Right over the white?

Q. Yes?

A. It will show better. Would you like me to put 50 and 51 over the white?

Q. Yes, I think it would show better. I show you marked as Commonwealth's Exhibit No. 53, and ask you if you can identify that?

A. Yes, Sir, this is the cast at the lower level of the stick in the picture of No. 20.

Q. Where would that be in relation to the body?

Doctor Miller.

A. Immediately to the left under the left lower abdomen. *Another Partially obscured Foot Print*

Q. I show you marked as Commonwealth's Exhibit No. 54, can you identify that?

A. Yes, Sir, that is the extension of a print above, immediately above the stick which was to the left of the body.

Q. And you marked that on Commonwealth's Exhibit No. 20 as you have the other ones?

A. Right, Sir.

Q. I show you marked as Commonwealth's Exhibit No. 55, can you identify that, please?

A. Yes, Sir, that is the uppermost cast as shown in the picture on Exhibit No. 20.

Q. You will mark that also?

A. Yes, Sir.

Q. Now, Doctor, the footprints as you observed them, in which direction was the toe pointed in relation to the heel, in relation to the body?

A. The toes were basically pointed towards the foot of the body, that is towards the west. *Check page 295*

Q. Where would the road be, the farm road be?

A. The toes are pointing towards the path through the cornfield.

Q. Now, Doctor, can you arrange these casts in a similar design on the floor, using the photograph and then layout where the body would be in relation to the cast?

A. Yes, Sir.

By The Court:

Now, Gentlemen, Side Bar.

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

By Mr. Ertel:

Q. Now, Doctor, would you come down, please?

By The Court:

Now, no conversations unless they are on the record.

By Mr. Ertel:

Yes, Sir.

(Witness leaves stand.).

By Mr. Fierro:

May I have Side Bar?

By The Court:

Members of the Jury, as I have stated to you this morning, there are matters that are required by law to take up out of your hearing. At this time I am asking that you leave the Court Room so that we may do so in the Court Room. (AT SIDE BAR.).

By Mr. Ertel:

All that we are going to do is put the photographs up that have been admitted, have him refer to the photographs and hand him the casts on the floor so he can relate the two, show where the body was on the ground as it relates to the photo.

By Mr. Fierro:

He is going to put some photographs on this stand.

Doctor Miller.

By Mr. Ertel:

I will put all of them, I will, I am not putting the body up.

By Mr. Fierro:

It does matter to me, what I am going to say he has some photographs up here on the pedestal which are going to be up in the air, so to speak, and then he is going to have these casts. Now, there is no relationship between what is on the ground and what is on these, on this pedestal. Of course, he can explain this is an experiment to do what, that he can't do on the stand?

By Mr. Ertel:

It shows the Jury exactly how the photographs relate to those prints and what is happening.

By Mr. Fierro:

He already said that on the stand, and he even identified photographs. It does not show the Jury exactly nothing, because the casts are on the floor of the Court Room and the photographs or some of them, are six feet up in the air.

By The Court:

Except this, I assume that just the cast by itself, unless they see the photograph with it, is probably not going to mean as much to them.

By Mr. Fierro:

Let it go.

By The Court:

What is the purpose of the demonstration?

Doctor Miller.

By Mr. Ertel:

The purpose of the demonstration is to layout the casts approximately in the same location they were in the day they were made, to show the footprints in relation to the location of the body. The measurements are approximately within an inch. He will describe where each one is and point to the one on the photograph, which is Commonwealth's Exhibit No. 5 and also relation to Commonwealth's Exhibit No. 20, which is the photograph when the cast was poured and after the body was removed, and he will probably use other photographs to relate those to the casts and show exactly where these footprints were in relation to the body.

By Mr. Fierro:

Well, we don't object to the casts being placed on the floor, but it seems to me that the Doctor can testify where these casts were relative to a particular photograph. In fact, he has already done so. Now, I don't know what No. 20....now, No. 20 apparently is characteristics of the various items that are now in, on the Court Room floor, is that correct?

By Mr. Ertel:

It is a picture of them.

By The Court:

Does the pointer have any significance?

By Mr. Ertel:

The pointer is the stick.

255  
Exhibit 20 is picture  
of ACST



Doctor Miller.

By Mr. Fierro:

Where is the stick?

By Mr. Ertel:

Probably in the cornfield. You mean do we have the stick? We don't have the stick.

By Mr. Fierro:

The stick that was under the body?

By Mr. Ertel:

We don't have that stick.

By Mr. Fierro:

Consequently I think, that is Exhibit No. 20, your Honor, upper righthand corner that is now a photographically depicted to the Jury what is now on the Court Room floor, and what then is the purpose of this Exhibit? He has the two photographs he can explain, which he has already done.

By The Court:

Is there any objection to the photograph at the bottom?

By Mr. Fierro:

I don't object to the photographs as such, I am going to object later on, although you admitted it, on the grounds that it is inflammable, but let me look at this bottom one, Judge.

By The Court:

What is the stick there?

By Mr. Ertel:

The same stick. The stick has not been moved.

Doctor Miller.

By Mr. Fierro:

The stick you were talking about under the body is shown in this photograph?

By Mr. Ertel:

Yes.

By The Court:

The other is the ruler you testified about?

By Mr. Ertel:

Yes.

By Mr. Fierro:

That is his ruler, that is something injected, that is not necessary for this purpose.

By Mr. Ertel:

Obviously we are missing something there, but the point is it shows the relationship of this cast so he can show it in relationship to this stick and where it was in relation to the body, because the stick is a reference point which is here and under the body.

By Mr. Fierro:

But the stick is shown in No. 20.

By The Court:

What other photographs do you want the Doctor....

By Mr. Ertel:

I think that is all we will have the Doctor refer to.

By The Court:

Anything further, Mr. Fierro?

Doctor Miller.

By Mr. Fierro:

Nothing further.

By The Court:

The objection is over ruled, you may bring the Jury back.

(Jury returned to Court Room.).

By The Court:

May I see Counsel?

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

By Mr. Ertel:

I would move into evidence Commonwealth's Exhibits nos. 50 through 55.

By The Court:

Those are the casts?

By Mr. Ertel:

Yes, Sir.

By The Court:

Any objection?

By Mr. Fierro:

Not if they are the casts.?

*Fierro is asking  
what they did  
NOW*

By The Court:

They are admitted.

(Commonwealth's Exhibits Nos. 50, 51, 52, 53, 54 and 55 admitted into evidence.).

By The Court:

The Jury is again instructed that the photographs and the casts are admitted for the purpose of showing the condition

Doctor Miller.

at the scene of the alleged crime and helping you to understand better the testimony of the witnesses who refer them, and I as I have also stated, the photograph of the victim is not a pleasant photograph to look at. You should not let it stir up your emotions or to the prejudice of the Defendant. Your verdict must be based on a rational and fair consideration of the evidence and not on passion or against the Defense, the Commonwealth or anybody connected with the case. Proceed.

By Mr. Ertel:

Q. Doctor Miller, will you, obviously on the floor are casts laid out with a pointer, can you explain what you have done in relation to these casts?

A. Yes, Sir. The crucial point in relationship of the picture to the casts is the stick.

By The Court:

The Jurors may stand up if they care to, in the back row.

By Mr. Ertel:

Q. We can move this up a little closer.

A. The stick we do not have, so we are substituting a pointer only as a characterization of the original scene. This again is the picture taken of the original scene after the plaster had been poured, before the plaster casts have been moved. In correlating the picture with the scene on the floor, you will note I testified that the one cast, namely which you identify, No. 50, here is this cast. It was poured before the plaster was moved, and that is what this picture is. This is No. 16,

Doctor Miller.

it shows my taking a measurement of an imprint on the ground, and this picture you notice shows the smoothness here in opposition to the roughness, to the pebble effect of the ground which I previously mentioned. We were unable to take the casting of this imprint with the body there, because of the position of the arm.

Q. The arm that you are referring to is on Commonwealth's Exhibit?

A. Commonwealth's Exhibit No. 5. This is the right arm of the victim. Subsequently, the body was picked up and removed in that direction in a linear manner and this then was casted. This was casted and we proceeded around casting these in this manner. This is the, the display of the casts are to show you the relative position of the casts in a representation of what this picture shows as a photograph.

Q. Now, Doctor, Commonwealth Exhibit No. 51, which is the cast which looks somewhat like an inverted "Y" to the Jury, where was that located in relation to the body as shown in Commonwealth's Exhibit No. 5?

A. You cannot see it in Exhibit No. 5 because it is right under the buttocks.

Q. And Commonwealth's Exhibit No. 52, where was that in relation to the body?

A. It is relatively under the right arm, lateral, parallel with the body.

Q. And Commonwealth's Exhibit No. 50 would be where?

266-5200-10T  
END OF STICK

what does that mean

Doctor Miller.

A. This is under the right shoulder, slightly laterally to the right shoulder.

Q. Could you see that, was the right shoulder on the ground when you got there?

A. The right shoulder is slightly raised above the ground because of the corn stalks. 242- LEFT shoulder OFF (G...)

Q. Which way were they bent, away from the head?

A. They were directly in the line of the head.

Q. Proceeding in the direction of the head?

A. In the direction of the head or as we would say anatomically with a cephalad direction.

Q. East or west?

A. That is pointing east.

Q. Now, Commonwealth's Exhibits Nos. 53, 54 and 55, where would they be located?

A. They are, 53, and 55 are over the stick, slightly separated, which is lateral to the body and it would be up in this position, under the shoulder going again toward the head or cephalad.

Q. Which way was the heel of the prints?

A. The...

Q. The back of the heel, which way was that located on these prints, can you show us that?

A. The prints, if you turn over the casts you will see the round part of the heel is pointing towards the head or east.

29 #5  
Q. The back of the shoe?

Doctor Miller.

Check 12 ver  
page 559  
about 277

see 289 First Paragraph

A. The back of the shoe is pointing eastward.

Q. Now, were there measurements taken of these prints except for one of them before they were cast?

A. We took measurements of indentations on the ground where ever we found them. When the body was moved, and we found the prints which this has made a cast of.....

Q. 51?

A. 51, particularly there are two heel prints under there, particularly one of them is very distinct, was sharply outlined and was the deeper imbedded into the ground than the other imprints. We spent particular attention to 51 and 52 because of the definition of these imprints at that time. There were other imprints we could not cast, and you have 55, is really a poor quality.

Q. And was 51 a good quality?

A. It is very good.

Q. Anything that was able to be cast, was it cast?

A. No, Sir, you could have cast the whole ground.

Q. I mean to get any kind of definition?

A. We cast everything we thought that would give us definition.

Q. Cross examination.

#### CROSS EXAMINATION

By Mr. Rierro:

I was hoping this would be a good time for a break.

By The Court:

The Court is willing to take the break at this

Doctor Miller.

time, this is time for the break anyway. The Defendant is excused. Everyone else remain seated. The Jury is excused. Court is recessed, for 15 minutes.

(Recessed at 10:30 A.M., EDST.)

(Reconvened at 10:50 A.M., EDST.).

(Doctor Earl R. Miller returned to witness stand.).

By Mr. Pierro:

Q. Doctor, you mentioned that in your examination of this area, long with the Troopers, that you found many other impressions but they were ill or poorly defined?

A. I found, yes, Sir, right in the immediate vicinity of the body.

Q. Well, when I say "you", I don't mean that you found them alone, maybe the Officers found some. I mean whatever knowledge you and the Officers working concurrently had is all right for you to express under this questioning. In what area surrounding the body, what was the extent of the area in which you found any impressions at all?

A. Oh, within two feet.

Q. Surrounding the body?

A. Basically laterally with the body. If you recall, this is in a corn field and the markings that I am talking about are within the confines of which would be basically four rows of corn.

Q. What were they, about 18 inches apart, these rows?  
Two feet apart?

A. I would imagine they are about two feet.

HAD TO SAY THAT BECAUSE  
HE SAID CORN ONLY 2 FT APART



Doctor Miller.

Q. You say four rows?

A. Would be the extreme extent.

Q. That is eight feet?

A. Yes.

Q. So these various impressions, the good ones and bad ones were within an area of eight feet?

A. The overwhelming majority of these impressions would have been within an area of three feet. *Contradiction of Previous Page 2*

Q. I am talking about all of them, I am trying to find out what the outside perimeter was whatever these impressions were, were they eight feet away?

A. They would be less than eight feet.

Q. You are the one that said four rows of corn?

A. What I am saying, if you look at the picture, for example, you will see this body lying in between two rows of corn, and just to the outside of those there were a couple ill-defined markings. Now, this would be within an area of two feet of that body.

Q. The extreme outside of the next row of corn which you have deduced to be the eight feet because of the judgment of the corn being two feet?

A. My judgment was less than that.

Q. Four rows of corn, two feet apart?

A. No, Sir.

Q. Let's forget it, let's go on, I want to know how many impressions you saw, good or bad?

A. I did not count all of the markings on the ground.

Doctor Miller.

Q. Give the Jury an idea, an estimate?

A. There perchance was maybe 10.

Q. What you did, of course, you and the Troopers, were you recovered the distinct impressions?

A. That is correct.

Q. You did not try to make a cast of what you call the ill-defined impressions?

A. That is correct.

Q. What did these ill-defined impressions look like?

A. Smooth, flattening surfaces of the ground.

Q. Smooth, flattening surfaces?

A. Yes.

Q. In what dimension, what size?

A. Oh, in dimensions maybe two, three inches in diameter, but the problem we had was measuring them because the edges were not definite, were not defined.

Q. How many impressions of foot prints were you able to see, defined well or otherwise?

A. Well, the ones that we, that was recognizable as footprints would be a total of seven.

Q. A total of seven? *only Took 6 casts*

A. Yes.

Q. Of which you made how many casts?

A. Six.

Q. What about the 7th one?

A. In the cast, in the biggest cast there are two very good footprints.

Doctor Miller.

Q. Those are the total of seven then?

A. Yes.

Q. Were these other indistinct impressions larger than two or three inches that you are talking about?

A. I really cannot testify, I do not recall.

Q. Do you know what they could have been made by?

A. You mean would I have an impression?

Q. Yes?

A. I would have the impression it was probably the sole of a foot.

Q. Probably the sole of a foot, all right, but they were smooth you say?

A. They were smooth ground surfaces.

Q. Now, from the road, how far from the private road into where the body laid, did you find the nearest footprint to the road?

A. I have trouble with the connotation of the word "private road".

Q. We are talking about this lane that runs between these corn fields?

A. As an ex-farm boy, I don't classify this as a road.

Q. Ex-farm boy or not?

A. This is merely an entrance to where somebody had driven down the corn.

Q. Ex-farm boy or not, I am talking about this lane between the cornfields, now will you answer the question?

A. Would you repeat the question?

Doctor Miller.

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Q. Sure. How far off of this lane did you find the nearest footprint?

A. Right at the vicinity of the body it was, the first one that I saw, and this would be approximately 15 feet in from the path.

*See page 224 Direct Lie Remember He came in from the head*  
Q. I am going to show you marked as Commonwealth's Exhibit No. 36, you recognize this photograph, there is an "x" marked here and it looks to be what, an indentation of the corn-field, that is where the corn was cut out, you can see that, can't you?

A. Yes.

*See San Gazette Picture OCT 29, Miller D.A. Kyrle Smith Hyman Stern*  
Q. Now, where I run my finger, this would be the private lane I am talking about, and this is Sylvan Dell Road, you recognize that?

A. Yes.

Q. Now, is what you are saying to the Jury that from this private lane to where the body was found, that the nearest footprint that you say was what, 15 feet from the edge of the lane?

A. I am estimating the body was in there approximately 15 feet, and the footprint was right around the immediate vicinity of the body.

Q. Are you estimating the nearest footprint to the edge of the lane was approximately 15 feet away from the lane?

A. Yes, Sir.

Q. Then, Doctor, you did not find any footprints from the edge of the lane until you first began approximately 15 feet away, is that correct?

Doctor Miller.

A. That is correct, but, you know, I did not approach it from that direction, I approached the body from the head.

Q. Well, if there is anything you want to change in your testimony of whether, as to the estimate of whether the footprints were 15 feet away from the edge of the lane or not?

A. I do not need to change anything, because I did not testify to that. I testified I came from the east and approached the victim's head, I was not over the terrain which you are saying.

Q. I am asking you, and I will ask you again, how close to the edge of the lane were the nearest footprints?

A. Approximately 15 feet, at the body.

Q. From the edge of the lane to where the footprints first begin, which is where the victim's feet were approximately?

A. Right.

Q. About 15 feet, is that correct?

A. That is correct.

Q. That is where you find the first footprints, is that correct?

A. That is where I saw the area of the indentations on the ground.

Q. So you saw no impressions or no footprints let's say from the edge of the lane to approximately ten feet towards the body?

A. I did not examine that area, I came from the east, I did not examine that area because I was in no way knowing that nobody had been over that terrain.

Compare Miller's  
Distances To Blake

284

Doctor Miller.

AND Hunsicker who found the body 4 FT. off

Q. Well, when you got to the body you could see that area, couldn't you?

See

Page 224

A. Yes.

Q. Well, could you see any footprints, let's say?

A. I did not see any footprint.

Q. You could not see any footprint let's say six feet away from the edge of the lane?

A. I did not examine that area.

Q. Whether you examined it, did you look at it?

A. A cursory look.

Q. When you looked....

A. I did not see anything.

Q. You did not see any footprints six feet away from the edge of the lane?

A. No.

check sun 9/22/27  
Picture Oct 29

Q. Do you know if any of the Officers saw and took impressions?

A. There were no impressions taken, whether anybody saw anything, I cannot testify.

Q. All you know is the only impressions that were taken, the nearest one to the edge of the lane were approximately 15 feet away from the edge of the lane, is that correct?

A. That is correct.

Q. You don't happen to know why there were no footprints from the edge of the lane to approximately 15 feet away, do you?

Doctor Miller.

A. I do not know why, I do not know if.

Q. Do you know if there were any marks leading from the edge of the lane to the body on the ground that indicated that the body was dragged?

A. No, Sir, I do not know.

Q. Did you see any such markings?

A. I did not.

Q. You did not?

A. I did not.

Q. You have a, been a Coroner for how long?

A. Almost 19 years.

Q. And involved as such in Police investigation work, correct?

A. Yes, Sir.

Q. So that if this body was dragged into that cornfield, Doctor, would there have been drag marks on the ground?

A. If her body were dragging against the ground there would have been.

Q. Did you see any such drag marks?

A. No, Sir.

Q. That indicates to you, does it not, that the body was carried?

A. Probably, yes, Sir.

Q. You assisted in the autopsy, I believe?

A. I observed, I did not assist.

Q. Did, do you know that the victim weighed around let's say 125 pounds, something like that?

OCT 29th After 5.30  
71 CATHEDRAL

Miller on 2.8 Td U.P.I.  
Girl was NOT Molested AT 11:00

Doctor Miller.

A. I believe it is 120 pounds.

Q. Now, you examined the soil in this area, you said some was granular, some was not, was it hard baked or comparatively soft?

A. Comparatively soft.

Ground quite  
Granular 2-4 5

Q. You know from your experience in this area of work that this 120 pound body being carried in that soft soil should leave some very good impressions, shouldn't it?

A. I think we have demonstrated that in that "Y" cast.

Q. Just answer the question, it should leave very good impressions, shouldn't it?

A. Yes, Sir.

Q. And if the body was carried from the edge of the lane and placed in the position where it was found, you surely would expect to find footprints from the edge of the lane, not leaping over 15 feet, but also covering that 15 feet, wouldn't you?

By Mr. Ertel:

I object to the question, it assumes a fact not in evidence. The fact is not in evidence that was soft soil from the edge of the lane to the point where the body was found.

By The Court:

Q. Do you understand the question?

A. Yes, Sir.

Q. Are you able to answer it?

A. I have no knowledge, I did not examine that lane.



Doctor Miller.

By The Court:

I will over rule the objection.

By Mr. Pierro:

*A while ago he gave it a cursory look now  
He didn't notice drag marks*

Q. I want you to assume, Doctor, that since you saw no drag marks on the ground in that area, that the body was carried by someone, and we know where you said you saw impressions and footprints, can you explain as one of the investigators on the scene why you did not find any markings like footprints leading from the edge of the lane covering the entire ground to where the body was found?

A. I think the answer is specifically that I related myself to the body, to the victim, and I did not go over the rest of the terrain.

Q. Maybe you didn't, but you said you looked, even though it was a cursory look?

A. Right, but what I consider a cursory look is not very accurate and not very yieldful.

Q. In other words, Doctor, you are not able to explain to this Jury, if there was, why there was an absence of footprints for a space of approximately 15 feet between the edge of the lane to where the girl's feet were, you cannot explain that, can you?

By Mr. Ertel:

I object.

By Mr. Pierro:

He was an Investigator there, he said he gave a cursory examination, he is involved in this matter assisting in making casts, and I want to probe his credibility.

Doctor Miller.

By The Court:

The objection is sustained to that question.

By Mr. Pierro:

Q. Well, do you know if anybody working with you made an investigation of this approximate 15 foot area between the lane and the feet of the victim, to determine whether there was any footprints there?

A. I do not know personally.

Q. Whether you know personally or not, do you know?

A. No.

Q. Did the Police Officers with you, do you know if they examined that area?

A. I know they were examining the surrounding area, I assume they examined that area. I hope they examined that area.

Q. Me too. Now, I think you testified that would be coming, if I get my distance right, coming from the east I think you said you made a round about approach and you came from the east towards the girl's head?

A. Yes, I approached around the south, back in towards the west from the east.

Q. Then you walked from east to west towards the girl's head?

A. At the end of that walk, yes.

Q. So that you saw no markings in that area until you got to the girl's body, is that correct?

A. That is correct.

Q. So that all of the markings that you saw, the

see heel prints

277 EAST 10  
289 EAST 100  
293 EAST 100

Doctor Miller.

289.

impressions that you saw on the ground were the ones that were made, well apparently come from off of this lane moving east, is that correct? *HEELS FACING EAST ON Page 277*

A. That would be a fair assumption.

Q. And that covers also that 15 feet of ground between the edge of the lane and the girl's feet, isn't that correct?

A. No, Sir, I cannot make any statement about that.

Q. All right....

A. I do not know.

Q. You know the stick that appears in at least Commonwealth's Exhibit (No. 13) across which you placed a ruler or yardstick, whatever it may be, why was...no, I will ask it this way, why did you, and I think you did, I will let you look at the photograph, did you place that yardstick across that stick that is in evidence? *Fiero New Picture  
From Sun-Gazette  
Keppie was holding ruler*

A. That is a ruled tape and I did, yes, Sir.

524  
Sun-Gazette  
Photo  
Oct 31,  
Q. You are the one that did it?

A. Yes, Sir.

Q. That is a rather large stick, isn't it, I mean the wooden bow that is pictured in there?

A. If you look at the rule you get the impression it is half to three-quarters of an inch in diameter.

Q. And about how long?

A. Approximately three and a half feet.

Q. When we say a stick, we don't mean your rule?

A. No, Sir.

Q. This stick, you say, was under Jennifer's body?

Doctor Miller.

A. Yes, Sir.

Q. Do you know if that stick was recovered by anybody?

A. I asked that it be recovered, I have been informed that it is not available.

Q. Who did you ask to recover it?

A. The Trooper at the scene as I departed.

Q. What is his name?

A. There were several Troopers there.

Q. Who did you ask? I mean did you ask a specific man or did you just....

A. I said it in general.

Q. To these Troopers, however?

A. Yes.

Q. You said, "I want you people to pick up this."?

A. Yes, in conjunction with the scene, the procurement of the corn stalks, some other material on the body was all taken off and identified by myself and handed over to the Troopers.

Q. As of today, as far as you know, that stick in Commonwealth's Exhibit No. 13 is not available?

A. That is correct.

Q. The one that was under Jennifer's body?

A. Yes. The last time I saw that stick would be depicted by Picture No. 20.

Q. Well, it is the same one in No. 13?

A. Yes, I am just talking in sequence of events.

Q. But it is the same one as No. 13?

*What took  
off the  
stick?*  
*Said in beginning of testimony  
He only took it off to show  
what it was like in sleeve  
now they*

Doctor Miller.

A. Yes.

Q. Well, Doctor, when you saw that stick which is shown in Commonwealth's Exhibit No. 13 did you notice whether or not it was broken, snapped at any place, like snapped in half, or whether it had twigs on it that were snapped or anything likethat?

A. I am not aware it did, I do not know.

Q. Well, to the best of your impression and even looking at this photograph, it does not appear as though that stick was damaged in any way, isn't that correct?

A. That is correct.

Q. When you say it was under Jennifer's body, under what part of her body?

A. Under her torso at the level of her umbilicus.

Q. I don't know what you said?

A. Belly button. It is under the abdomen, under her back at the level of her belly button.

Q. Do you know one thing I can't understand, Doctor, and you said it is there someplace, but without your coming down and uplifting one of those Exhibits, you said that there were some heel prints that appeared to be going in different directions, would you explain that?

A. Yes, you can visualize it by looking at the lower cast.

Q. First please explain it to me from there?

A. The lower cast in essence has the imprint as two imprints at approximately 80 degree angles from each other,

Doctor Miller.

one is running in one length and the other one is running almost opposite of it, if you look at the "Y". Now, you know, you are saying in essence the heels are towards the patient's head, the toes are pointing towards the Jurors, it was laid out, the way it was laid out here.

Q. Let's do this with reference to Jennifer's body, now the Jury already knows that her feet are towards the lane, her head is away from the lane?

A. Right.

Q. Is that correct?

A. That is correct.

Q. And lying perpendicular to the lane, running the same way the corn rows do?

A. That is correct. How is that possible?

Q. We have been told that yesterday.

A. Yes, Sir. Gleckwell & Houserger

Q. Now, these heel marks, let's take her feet, or where ever they were found, which way do these heel marks point, towards her head or away from it?

A. If you visualize the Jury as the lane, then they are looking at, first at the toe, the point of the toes are towards them and the heels are away from them. They are looking at the feet of the victim. Here Miller changes position at body

Q. The heel impressions you are talking about, did they indicate to you that they were walking away from the body?

A. No, Sir, not necessarily walking away from the body.

Q. Walking towards the body?

A. No, Sir.

Body position with reference to Jurors

Refer to Gleckwell & Houserger

292.

It is perpendicular

Corn rows perpendicular

Said so

Doctor Miller.

Q. Walking which way, with reference to the body?

A. The fact that the buttocks was right over that cast, right over those heel prints, the person that made those prints were walking backwards afrom the lane and dropped the body on the print after he made the print.

Q. What you are saying, of course that is your theory, what you are saying these heel prints is, all I am asking you about heel prints and toe prints if you found them?

A. The heel prints are more distinctive.

Q. The heel prints are facing which way, towards the feet or towards the head?

A. The round part of the heel is directed towards the head.

Q. That would mean then that it would appear that the feet were facing towards the lane?

A. The feet were pointed towards the lane, that is right.

Q. Because the round part of the heel is the back part of the heel, is that correct?

A. That is correct.

Q. The back part of the shoe?

A. Yes.

Q. So we will go back to this question again, the distinct heel marks that you are talking about appear on the ground as though they were walking away from the body and towards the lane, is that correct?

Doctor Miller.

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By Mr. Ertel:

I object...I will withdraw it.

By The Court:

Proceed.

A. I cannot accept your explanation inasmuch as the body was lying over the print, the person, the victim could not have been on the ground then the person walking away from it.

By Mr. Pierro:

Q. I am not asking you for your theory, I am asking you which way the prints on the ground are moving, and what direction?

A. You did not ask me that question, Sir.

Q. I didn't?

A. No, you asked me whether he was walking away from the victim. 277

Q. No, I said that the mark of the heel would indicate that the footprint is moving away from the body?

A. The mark of the heel indicates that the movement was parallel with the length of the body. Whether it was moving away or with the length of the body, I think is where I am having difficulty relating to you. I am visualizing this heel because of the depth as being placed with the person walking backwards.

Q. I am not asking you about a person walking backwards, in fact I will ask you right now, do you have any factual proof that a person was walking back towards in that field with Jennifer?



Doctor Miller.

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A. Factual proof, no.

Q. Do you?

A. No.

Q. Did you find any impressions of toe marks which would be the front part of the person's shoe?

A. We had impressions of the sole of the foot which were ill-defined.

Q. Could you, by looking at them, tell us in which direction they pointed?

A. If you allow me to make the supposition.....

Q. I don't want you to suppose, you saw these things on the ground and all I want you to say, Doctor, is if you could see these impressions distinctly enough of toe marks, just tell me which way they were pointed?

A. I do not know.

Q. Did you help remove the body?

A. I supervised the removal of the body, I did not lift the body.

Q. Where ever it was taken, did you go there?

A. Yes.

Q. Did you make an examination of this body before Doctor Catherman made an examination of the body?

A. At the immediate area where it was found, before it was moved.

Q. After it was moved, did you make a further examination?

A. No, Sir, not until after Doctor Catherman was there.

He did not DPT GOT

Doctor Miller.

Q. Did you, while the body was on the ground, examine the victim's hands?

A. I looked at them superficially, I did not make a minute examination.

Q. You are a Doctor, you looked?

A. Right.

Q. Did you ask the Police to scrape this girl's fingernails?

A. I did not ask the Police to scrape her nails.

Q. Do you know if it was done? IF Police Did

A. Yes, it was done. *Talk her body who did IT. AND when*

Q. Do you know the results, were the results made known to you?

A. I do not know the results.

Q. The Jury does know it was done though?

A. Yes.

Q. Now, you looked at this girl's hands, did you pay attention to her fingernails?

A. No, Sir, I did not.

Q. So you can't tell us whether or not there was any blood on her fingernails or under her fingernails?

A. There was no gross blood, I do not know whether there was microscopic blood.

Q. By "gross blood", explain what that means to me and the Jury?

A. "Gross blood" to me would be obvious, a big smear, spotted or clotted blood.

Q. It does not have to be that big for you to see it

Doctor Miller.

superficially especially as a Doctor you could see two or three drops on the back of the fingers?

By Mr. Ertel:

I object, he asked about four questions.

By Mr. Fierro:

Q. Couldn't you see two or three drops?

By The Court:

He is restricting it to one.

By Mr. Fierro:

Q. Couldn't you see, as a Doctor, if there were two or three drops of blood on her fingernails or on her fingers?

A. I saw nothing that made an impact on me. I looked at the body, I saw the petechias. I made the decision at that moment that I would have a consultant Forensic Pathologist examine the body, and I did not examine the hands or nails.

Q. I will ask you that question again, you said you looked at her hands?

A. I said I glanced at the hands.

Q. You glanced?

A. Yes.

Q. Now, I am asking you this, had there been even let's say several drops of blood on the girl's fingertips or on the back of her hand, wouldn't you, as a Doctor, have noticed?

A. Not the fingertips, because I did not examine the fingers. If it had been on the back of the hand, I think I probably would have noticed it.

Q. Did you see any blood on the back of her hand?

A. Not that I recall.

Doctor Miller.

Q. Did you look at the palm of her hands?

A. I did not.

Q. Now, I asked you about whether this girl's fingernails were scraped, and will you explain to the Jury why that is important in a case like this?

A. In a patient, a young girl found deceased with evidence of strangulation, one would assume that she would fight whoever was inflicting the strangulation upon her. It is routine to take specimens of the findings of the scrapings under the nails and attempt to, if you find something, to identify it as human, perchance blood, and if so if you can type the blood so you can have some identification from whom it might be secured.

Q. Thank you, Doctor. In other words, Doctor, isn't it true in your work, in this type of case, as you said you would assume that the victim, if the victim is normally healthy, would fight while she was being manually strangled?

A. That is an assumption.

Q. And you as a Coroner and Doctor, you know that this is true, isn't it?

A. It depends upon other factors.

Q. Yes, it may. I want you to assume that this victim was a normal, healthy girl of 120 pounds, now in the absence of anyother factor, wouldn't she generally, as you outlined, try to fight her opponent in order to protect her life?

By Mr. Ertel:

Objection. How can he assume that without anyother

Doctor Miller.

factos, what the conditions are, the circumstances under which it is being strangled.

By Mr. Fierro:

I gave him the question, he is an expert.

By The Court:

Q. Do you understand the question?

A. Yes, Sir.

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

A. I am having difficulty, because I do not wish to say something to make a wrong impression on the Jury.

If you make the assumption that the victim recognizes she is being attacked, that is one assumption, then she will start to fight early. If she is being attacked by a friend, she will not have that time sequence because of the hypoxic state, she will not be able to attack, to-wit, as you know on playgrounds one of the games is to take somebody and squeeze them around the chest until they pass out. These people do not fight. You are giving me so many variables, I don't know really how to answer your question.

By Mr. Fierro:

Q. Well, you know this girl was manually strangled?

A. Yes, Sir, but I don't know when she recognized it was an attempt to manually strangle her.

Q. Nobody knows that?

A. Correct.

Q. And I am asking you to assume, you are an expert, isn't it normal for a person who is being manually strangled that that person will try to save his or her life by trying to

Doctor Miller.

fight off the assailant?

A. The instinct of preservation is great, she would attempt someplace along the line, her capabilities would be determined by time and severity of the strangulation up to that point.

Q. But from the beginning of the strangulation until the person loses consciousness there is time, isn't there?

A. Correct.

Q. All right, now you know as a Coroner, I assume you had such cases, that generally where a person is manually strangled, that victim will succeed in inflicting some damage on the attacker, isn't that correct?

By Mr. Ertel:

I object to this, we are not talking about the general case, we are talking about this particular incident and this particular case.

By Mr. Fierro:

You can't talk about this particular case, he is an expert, your Honor, and I want to find out from him if this isn't true.

By The Court:

The objection is over ruled, you may answer?

A. I cannot answer to the word "succeed".

By Mr. Fierro:

Q. Inflict some damage?

A. I don't know about "succeed". Do some damage to the assailant, it is logical to assume the victim will struggle.

Doctor Miller.

It depends on the position she is being held, the clothing, the assailant, herself, the time factor, how strong she is and a lot of other factors. I can't answer your question.

By Mr. Fierro:

Q. I only asked you to say generally?

A. You say "usually succeed", and that takes away the generalities as far as I can understand.

Q. You know the weight of this victim. I assume you know from the autopsy she was living a normal, healthy girl?

A. Yes, Sir.

Q. Now, I don't know if you know the weight of the accused, you see him?

A. Yes.

Q. Now, if you assume that the victim and the accused, that if the accused were to try to manually strangle, would the victim in fighting off the attack, in your opinion, inflict some damage on the accused?

A. I do not know where the attack occurred.

Q. Nobody knows. I am only asking you a question as an expert, I am trying to find out from you, Doctor, isn't it true that this girl being strangled would somehow inflict damage on her assailant, for example scratching his hands, trying to get his hands away from her neck, or scratching his face, doing something like that?

A. But, Sir, all I can answer you is that I would make the assumption the self-preservation act, she would struggle. I do not know how the attack occurred. I do not know whether

Doctor Miller.

or not she had her arms entrapped by her side. I do not know so many variables I cannot answer your question.

Q. Well, let's assume her hands were not trapped, let's assume she was normal and healthy at the time she was being strangled, now will you answer the question?

By Mr. Ertel:

I object to the question, unless Mr. Fierro intends to follow up to establish the fact which he is asking the Doctor to assume?

By Mr. Fierro:

I am only asking him a hypothetical, your Honor.

By Mr. Ertel:

Then they have no relation to this case.

By Mr. Fierro:

This is a case of manual strangulation which he accused my client of.

By Mr. Ertel:

That is correct.

By Mr. Fierro:

I intend to show, your Honor, in defense, that the Defendant, of course, had no damage either physically or by clothing on him at any time during the time that the Commonwealth alleges that the killing occurred.

By Mr. Ertel:

I object to the statement that the hands were not entrapped, if Mr. Fierro intends to follow that up, I think....



Doctor Miller.

By The Court:

Q. Do you understand the question?

A. Yes.

Q. The objection is over ruled.

A. You know, I would go back to the law of self-preservation, I would assume this girl would struggle and if you know it was one to one relationship that she knew she was being attacked and she was free and everything, I would assume there would be some trauma inflicted to the attacker.

By Mr. Pierro:

Q. When you say "trauma"?

A. Injury.

Q. I don't understand some of these things, maybe somebody else does not....

A. Pardon?

Q. Some injury, you mean some injury would be inflicted upon the attacker?

A. Yes, Sir.

Q. And isn't it true that generally that injury would be towards the face and and the hands of the attacker?

A. Not if the girl does what she is taught to do.

Q. Meaning what?

A. She would kick him in the genitals.

Q. Depending upon what position she is?

A. Correct.

Q. What would she be doing with her hands?

A. I don't know.

Doctor Miller.

Q. You don't know she would be using her hands to try to....

A. What I am saying what we attempt to teach people is that to try to and to scratch with hands is really ineffective.

Q. But isn't that in most cases what is done by strangulation, a victim panics and they use their hands?

A. What I don't know is what this girl's training has been.

Q. But isn't this true generally?

By Mr. Ertel:

I object.

By The Court:

The objection to that question is sustained.

By Mr. Pierro:

Q. Now, if a victim has not been trained to kick somebody in the genitals, you, as Coroner, and as an expert in these matters, wouldn't that victim likely use her hands to inflict damage?

A. I would imagine, I am not sure she would use it to inflict damage, I think an untrained person would merely grab the hand and try to pull them away. In grabbing the hands and trying to pull them away she would not inflict any injury at all upon him.

Q. And she may inflict scratches upon him and get something under her fingernails?

A. If she were attacking him, I think she would scratch him or inflict damage, if she was merely trying to get his hands away from her neck, I am not sure, or I doubt seriously whether

Doctor Miller.

she would inflict scratch marks on him.

Q. What kind of marks would she inflict upon him?

A. It depends on her strength and placement of her fingers.

Q. We will go back to your other statement, she would inflict some trauma upon him?

A. Right, well I am incorporating the fact that I hope the young girls, they have been trained in everything else in life, I hope they have been trained to take care of themselves to ward off an attacker.

Q. Do you know when this girl died?

A. No, I do not know.

Q. I mean do you have a professional opinion?

A. Yes, Sir.

Q. When did she die?

A. The evening of October 19th.

Q. What time?

A. Between 4:00 and 6:00 P.M.

Q. How do you know that?

A. Because of stomach contents.

Q. How do you know when she ate what was in her stomach?

A. By information given to us from the Police Officers.

Q. Suppose the Police Officers told you that this girl ate whatever was in her stomach the next day, October 20th, how would you fix the time of death?

A. I would then, of course, use a different date.

Doctor Miller.

Q. You would use a different date?

A. Yes.

Q. So what you say is the time of death, I am not disputing, I am trying to find out how you fixed it....

A. I understand.

Q. What you are saying to the Jury is, "I am fixing the time of death on October 19th between 4:00 and 6:00 because somebody told me what she had to eat that day."?

A. That is correct.

Q. But we know, so far in this case, Doctor, that this girl was not seen alive after 4:30, I guess you know that too, don't you?

A. Yes, Sir.

Q. So if I asked you to assume that this girl was alive on Saturday, October 20th, and ate the same kind of food on Saturday, October 20th, that they, that she ate on Friday, the 19th, then you would have to change your time of death, wouldn't you?

A. Yes, Sir.

Q. What I don't understand in your testimony about this sport's jacket, whatever you called it?

A. Pea jacket.

Q. Something about at one point you moved it?

A. Yes, Sir.

Q. What did you do?

A. The jacket was more up over the chest, and I turned it downwards over her lap, or lower abdomen, to demonstrate the

Doctor Miller.

position of the right arm and hand still in the sleeve.

Q. This is what I want to know, when you came upon the body was she, when I say "wearing the jacket", was either or both of her arms in the sleeves of the jacket?

A. The left arm was completely out, the righthand and wrist was in the upper part of the right sleeve.

Q. In other words, she had one arm inside of the jacket and one was not?

A. She had one arm partially inside of the jacket.

Q. I don't know whether I have a picture here that might help that?

A. Yes, you do.

Q. Let me see, I will bring them up to you, Doctor, will you find for me which one shows the way she appeared when you first came upon her?

A. This would depict it, No. 7, this is taken from the east facing west, it shows two things, it shows the jacket which was thrown, or I am sorry.....

By Mr. Ertel: *interrupts AT A CONVENIENT MOMENT*  
May I interrupt for a moment, possibly we can put it on the blackboard, it does not help him to show Mr. Fierro. I think the Jury would like to see.

By Mr. Fierro:

At this point would you let me go on with this witness?

By The Court:

Yes.

Doctor Miller.

By Mr. Fierro:

Q. I am trying to find out something from.....

By The Court:

Proceed.

By Mr. Fierro:

Q. I am trying to find out about this jacket when you first came upon the body, and you say this Commonwealth's Exhibit No. 7 shows the jacket as you saw it when you came upon her, is that correct?

A. That is correct, it shows the upper end of the jacket, and Exhibit No. 4 shows the lower end of the jacket.

Q. (No. 4) also shows that is before you touched the jacket, the position of the clothing?

A. That is correct.

Q. When you first came upon the scene?

A. That is correct.

Q. This is No. 5, does this show?

A. This shows the jacket after I turned it down to demonstrate the position of the hand in the sleeve. There is one other film that is from the other side that shows it even better.

Q. But in any case, this No. 5 shows the body and clothing after you arranged, rearranged the clothing?

A. After I moved the jacket.

Q. That is rearranging the jacket?

A. Yes, Sir.

Q. That is what you did?

Doctor Miller.

A. Yes, Sir, I did not touch the sweat shirt or bra or anything of that sort.

Q. What sweat shirt?

A. The football jersey.

Q. You didn't touch that?

A. No, Sir.

Q. I don't see the bra in this picture?

A. Yes, you do, right over the right breast, pulled above the left breast.

Q. I am sorry, quite frankly I couldn't tell. What we are seeing in No. 5 is the bra is over the right breast, and it is, you can see her left breast, I believe that is?

A. That is correct.

Q. And it is not over her left breast?

A. The left breast is not contained in the bra.

Q. It is under the jersey though?

A. No, it is not.

Q. Where is it?

A. The jersey is going tangentially over the top of the left part of it.

Q. Where is the part of the bra?

A. It is up over the shoulder.

Q. Does it show in here?

A. No, it does not.

Q. How...

A. There is another view of the same picture looking from the right side of the body, this is No. 5 from the left side

Doctor Miller.

of the body.

By Mr. Ertel:

I will hand you Commonwealth's Exhibit No. 6.....

By Mr. Pierro:

No, you are not handing him anything, don't interfere with my cross examination.

By The Court:

This is Mr. Pierro's examination.

By Mr. Ertel:

I understand.

By The Court:

You furnished him all of the pictures in evidence that has been discussed?

By Mr. Ertel:

No, Sir, here is some more.

By Mr. Pierro:

Q. I am showing you marked as Commonwealth's Exhibit No. 3, does this show the position of the clothing untouched?

A. That is correct. *Shifting Pictures* *See Page 258*

Q. Doctor, I show you Commonwealth's Exhibit No. 6 which was brought up, I assume that this is the one shows the other side of the body after you had turned down the pea coat or jacket as you call it? *259. No 6 has not been moved*

A. That is correct, this is taken, the view was taken from the right side of the body and No. 5 was taken from the left side.

Q. Did you, Doctor, make an examination of this clothing?



Doctor Miller.

A. No, Sir, I did not.

Q. Well, while you were at the scene, did you look at it?

A. I looked at it.

Q. For example, let's take the bra, was it ripped?

A. I did not take the clothing off of the body.

Q. I didn't ask you that?

A. I did not see any evidence of it being ripped, I do not know whether it was ripped. To clarify what I am trying to say, the right cup, for example, was not ripped. Whether the back was ripped or strap was ripped, I did not examine that. I did not disrobe the body.

Q. Whatever clothing you did see on the body, including the pea jacket that you turned down, did you see any evidence of this clothing that was ripped, torn, destroyed or damaged in any way?

A. I do not recall seeing any torn clothing.

Q. At all?

A. At all.

Q. That is all, your Honor.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Doctor, when you determined you were going to get a Forensic Pathologist, what was his function to do as far as the examination of the body and your relation to him?

Doctor Miller.

A. When we secure the services of a Consultant, he takes over and he is responsible for the minute description, gross description of the body, that is what he sees originally. He is responsible for the continuation, the examination of the body orifices, any foreign matter say in the mouth or the vagina or whatever, he is responsible for the conducting of the autopsy, the interpretation of the gross findings, the examination of the slides which he will make from specimens taken from the body and the final preparation of the final autopsy report, conclusion.

Q. Does that include disrobing the body?

A. That includes disrobing the body. I do not disrobe the body I want him to have the benefit of seeing it as it was first there.

Q. Doctor, you were asked some questions as I recall concerning possible foot markings going to the body from the lane, and I believe you stated that you only looked at that superficially. Taking a look at Commonwealth's Exhibit No. 1 just briefly, can you tell whether there was soft dirt beyond the feet of the body toward the lane, or the farm road, or whatever you want to call it?

A. Exhibit No. 1 shows a lot of vegetation, which I mentioned earlier, weeds, corn stalks knocked down, and so forth, and on this picture there is no visible. I am not sure that is not a parallax.

Q. Parallax, distortion?

A. Right, I cannot testify.

*The above was  
cross-examined*

Doctor Miller.

Q. Look at Commonwealth's Exhibit No. 2, does that help you in any way?

A. No, just emphasizes what I am saying, there is so much vegetation, at least the immediate vicinity from the lane in a reasonable period of distance, and I cannot tell you because of the parallax of the camera which that is, but most of it is vegetation, I do not see dirt.

Q. Incidentally, you said approximately 15 feet from the edge of the lane, what do you mean by the lane?

A. Well, that is where I had difficulty, because the lane is an ill-defined something, and I don't know where the edge of it is.

AT REAR BODY LOCATION LANE DROPS  
ABOUT 12" DOWN INTO FIELD

Q. All right. Doctor, you were asked to make a great number of assumptions concerning the warding off or preservation of life of a person with an attacker, I think you said something about if a person knew the attacker there would be less inclination to struggle until a certain period approached, is that correct.

By Mr. Pierro:

I object to that, he is asking this man something outside of his expertise, he is asking him now to make a judgment which any human being can make.

By Mr. Ertel:

I believe this was asked on cross examination.

By The Court:

The objection is sustained, it is repetitious.

Doctor Miller.

By Mr. Ertel:

Q. Can you tell me what point, when that point is approached when a person might struggle, is there any way you can make that judgment?

A. No, Sir.

By Mr. Fierro:

I would like it to be restricted to hypothetical facts that the Commonwealth intends to produce in this case.

By Mr. Ertel:

I am basing it upon the fact the person knew the other person.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. All right, do you know if Kim Hubbard knew Jennifer Hill?

A. Do I know of my own knowledge?

Q. Or information you received?

A. I do not know of my own knowledge, I was told.

By Mr. Fierro:

It is conceded she knew him, I am objecting.

By The Court:

Sustained.

By Mr. Ertel:

I have no further questions.

By Mr. Fierro:

I have none.

Doctor Miller. - Doctor Catherman.

By The Court:

May I see Counsel?

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

DOCTOR ROBERT L. CATHERMAN, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. Doctor, state your full name?

A. Doctor Robert L. Catherman.

Q. Doctor Catherman, where are you located at the present time as far as business address?

A. My business address is the Office of the Medical Examiner for the City of Philadelphia, it is 321 University Avenue, Philadelphia, Penna.

Q. Doctor Catherman, will you tell the Jury your background and experience and training for the occupation which you presently have?

A. I am a graduate of the Williamsport Public School System, of Bucknell University in Lewisburg with a Degree of Bachelor of Science in Biology; from Temple University School of Medicine in Philadelphia with a Degree of Doctor of Medicine. I had then a one year rotating internship and two years of specialty training in the field of Anatomic Pathology here at the Williamsport Hospital. I then entered the U.S. Air Force and served for two years at the Armed Forces Institute of

Doctor Miller. - Doctor Catherman.

By The Court:

May I see Counsel?

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A. I am a graduate of the Williamsport Public School System, of Bucknell University in Lewisburg with a Degree of Bachelor of Science in Biology; from Temple University School of Medicine in Philadelphia with a Degree of Doctor of Medicine. I had then a one year rotating internship and two years of specialty training in the field of Anatomic Pathology here at the Williamsport Hospital. I then entered the U.S. Air Force and served for two years at the Armed Forces Institute of

Doctor Catherman.

Pathology in Washington, D.C. and upon my discharge there in the Fall of 1963 became an Assistant Medical Examiner for Metropolitan Dade County. Dade County is a large area surrounding Miami, Florida. I remained there until the end of June, 1967. The beginning of July, 1967, I became an Assistant Medical Examiner for the City of Philadelphia and in the Medical Examiner's Office there, and about two years ago became Deputy Medical Examiner. I am licensed to practice medicine in Florida and in Pennsylvania. I am certified by the American Board of Pathology in the field of Anatomic and Forensic Pathology and am currently working full time as a Forensic Pathologist Deputy Medical Examiner in Philadelphia.

Q. Doctor, when you say that you are a Diplomat, what does that mean?

A. Being certified in a specialty in medicine refers to the fact of a specialty, there are many specialties in the field of Medicine, and in each of the major specialties a group of individuals who are selected in that specialty are appointed to approve the credentials of various individuals practicing in that specialty throughout the country and on the basis of an examination and approval of training certify or do not certify you as a Diplomat in that specialty.

Q. Now, Doctor, I believe you have said you were certified in Forensic Pathology?

A. Yes.

Q. What is Forensic Pathology?

A. It is a sub-specialty of a yet greater specialty in

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medicine referred to as Pathology. Pathology is that part of medicine that examines the origin and cause of disease, or to put it another way, looks at abnormalities. It has three major divisions, Forensic, Anatomic and Clinical Pathology. Forensic Pathology is medical legal pathology and it is an evaluation or association between the discipline of law and the discipline of medicine. Perhaps more specific, it is the evaluation of the role of trauma or injury from whatever that cause may be on a normal individual, or an individual already suffering from some natural disease processes.

Q. Included in that is the determination of cause of death?

A. Yes.

Q. And time of death?

A. It encompasses time of death, cause of death, correlating circumstances, injury, correlates a number of observations made on the body at autopsy examination with a set of collective facts and circumstances surrounding the given individual's injury and/or death.

Q. You have said you have been with the office of the Medical Examiner both in Dade County, Florida and also the Medical Examiner's Office in Philadelphia, what is encompassed within your duties at those respective jobs?

A. Well, the basic duty was to determine the cause and with assistance, the manner of death in all cases that were judged Medical Examiner's jurisdiction and these cases include all of the deaths that are from other than natural disease., that



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is all known accidents, suicides, homicides, but not limited to them. They include the investigation of any sudden and unexpected or suspicious death, the deaths occurring in individuals under legal custody, that is in jail or prison, or in some other way under custody, of persons that might be dying of a condition that could pose a threat to the general public health, of persons dying with conditions or situations directly related with their employment. Certain deaths that occur in and about Doctors', Dentists offices, Hospitals where the treatment of that individual may have contributed to or caused the individual's death. There are perhaps others, but these are the general kind of cases which come under the classification of Medical Examiner's jurisdiction, and in all of judged to be his jurisdiction the basic responsibility is to, is the determination of cause and the manner of death.

Q. Now, Doctor, can you judge an approximation of how many these types of deaths you have participated in either investigating or related work?

A. Well, total number of cases is far in excess of the number of those which were examined in the sense of a complete autopsy and correlation of circumstances. If I take just the autopsy cases in Miami and in Philadelphia, it is approximately 3800. Total number of cases are many, many more than that, and involve investigation of cases that would not be as extensive as a complete autopsy examination.

Q. At this point, your Honor, we would offer Doctor Catherman as an expert in Forensic Pathology and offer him for cross examination.

By The Court:

Do you care to cross examine at this time,

Mr. Fierro?

By Mr. Fierro:

Not at this time and I doubt if I will ever.

By The Court:

Gentlemen, I assume now the matters that we talked about must be decided by the Court prior to going into any further examination, is that correct?

By Mr. Ertel:

I would think that would be appropriate.

By The Court:

Members of the Jury, there are certain matters again that must take place out of your hearing. We are going to recess now for the noon luncheon, but we will not begin at 1:15 as we usually do, but after I had an opportunity to meet with Counsel, and Counsel, would it be agreeable that we not meet now, but met at 1:15 in my office?

By Mr. Fierro:

Yes.

By Mr. Ertel:

Yes.

By The Court:

The Defendant is now excused. The Jury is now excused, and you will be advised by the Tipstaves and Court Bailiff.

(Recessed at 12:00 Noon, EDST.).

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

→ Ertel: own words  
"A picture is worth a  
1000 words"

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(IN CHAMBERS.).

By The Court:

Judge Nix  
Justice P.S. Court.

What I would like to decide first is whether or not I am going to permit Mr. Ertel to use the Exhibits which are the three slides which we viewed this morning outside of the presence of the Jury, and then if there is any further offer you desire, we will go into that, but let's take the three slides first.

By Mr. Ertel:

I think they are 56, 57 and 58.

(Off-the-record discussion.).

By Mr. Ertel:

I am quite willing to withdraw one.

By The Court:

That one was the one I was not going to permit it.

By Mr. Ertel:

There is nothing of great note on that one. We could cut off the breast portion or put a piece of tape over it.

By The Court:

You take that one back.

By Mr. Ertel:

The only purpose we are offering either of the Exhibits now are for the markings on the neck to show the strangulation marks and show the line of petechiae as the Doctor will explain, and he can point it out to the Jury, it will make it more vivid in his explanation. "Certainly, anybody can explain

what it is, but seeing it is an aid." We can, if necessary, take a piece of tape over the eyes and head so all you can see is the neck, if you want us to do that, so we can limit that all they see is generally the neck region?

By The Court:

Any objection?

By Mr. Pierro:

He has the rest of the face which is showing, in affect, a death mask. As I understand the law, a photograph is admissible when it tends to explain or is necessary for its' use by a witness, but if it tends to excite and may become inflammatory, it should be excluded if the witness does not need it. Now, in this case here is a Forensic Pathologist, and there are other photographs now in evidence that he can use, but particularly the slides, this Forensic Pathologist can tell this Jury what he found and can say how this girl died and where the marks are without showing this awful death mask.

By The Court:

Do you have a black and white photograph of what is shown on that first slide?

By Mr. Ertel:

Not to the degree that we can see it on a slide.

By The Court:

No. 2 you are withdrawing?

By Mr. Ertel:

Whatever one that is.

By The Court:

That is not the number, but it was the second one you showed us. Now, the back one?

By Mr. Ertel:

The back one, I can, if you want, I can cover it from the hair line and just to show the neck.

By Mr. Fierro:

If he does that on the third one, my argument prevails as to the first one. I will have no objection to the third if all he shows is the back of the neck.

By Mr. Ertel:

I said that I would do that on both photographs.

By Mr. Fierro:

On the first photograph, how can you do it?

By Mr. Ertel:

We need the scratch marks on the face.

By Mr. Fierro:

They are not important.

By Mr. Ertel:

Yes they are important.

By Mr. Fierro:

In what way?

By Mr. Ertel:

Those scratch marks, the lines of scratch marks he is going to explain how they came to be on the face. He has to show the direction and angle.

By Mr. Pierro:

Will you tell us how he will explain they came to be there?

By Mr. Ertel:

That was the final death throe of the person and she was reaching up to get the hands from her, in his opinion, they are her own marks.

No. 58 we can say from the lower lobe of the ear to the, right at the hair line, that would be the lower lobe of the ear, then to the hand underneath the shoulders, we could put a piece of tape across.

By The Court:

Well, as far as No. 57 is concerned the Court holds, although you indicated you would withdraw it, I will not permit that one.

By Mr. Ertel:

We will section off the other side of the face as long as we have the marks on the other one.

By The Court:

Now, you don't have a black and white of this?

By Mr. Ertel:

We have a black and white, but it don't show up.

By The Court:

Of that same photo?

By Mr. Ertel:

I don't think so, no, no.

By The Court:

Now, I think your objections are full enough on these two, on No. 56 and 58 I am holding that the probative value outweighs, the other one I said does not outweigh, I ruled the other one out because the probative value does not outweigh the risk of undue prejudice to the Defendant, and on these two I am holding that the probative value outweighs the risk of undue prejudice to the Defendant. I am going to let these two in.

Mr. Fierro, is there anything other, anything offer you want from Mr. Ertel concerning Catherman?

By Mr. Fierro:

No, I suspect I know what he will testify to. He just made a statement that he, Doctor Catherman, will testify in his opinion that the scratch marks were made by the girl in her death throes. Now, I object to that.

By The Court:

I thought he said the "death throes" was his own words. What is he going to testify to?

By Mr. Ertel:

That in his opinion they were caused by the girl trying to struggle.

By Mr. Fierro:

He would be guessing, this is a matter that somehow the Jury should be able to, by factual presentation, make its own conclusion. The District Attorney said he is going to testify that in his opinion the girl made scratch marks on her face, whether

it was in death throes or not, I am saying this man is Forensic Pathologist, that does not mean he is allowed to stand up and guess she scratched herself. Him saying "In my opinion she scratched herself.", without more is nothing more than, you don't have to be a Doctor to say that and he cannot possibly explain that, he can say "Yes, it could have happened.", but to say in his opinion she did, I think it is prejudicial unless Doctor Catherman is going to say he found under her fingernails her own skin and own blood, then I will withdraw the objection.

By Mr. Ertel:

He is not going to say that.

By Mr. Pierro:

Then I will object to that, he would be guessing.

By The Court:

Under the proper qualification, if he had an opinion, not guess or conjecture, the Court will over rule your objection, but make it on the record so it appears twice.

Anything else?

By Mr. Ertel:

That is all.

By The Court:

Anything else?

By Mr. Pierro:

No.

(RETURNED TO COURT ROOM AT 1:30 P.M., EDST.).

(Doctor Robert L. Catherman returned to stand.).



Dr. Catherman.

By The Court:

Proceed.

By Mr. Ertel:

Q. Doctor Catherman, you have already explained your background and qualifications. Did you have the occasion to examine the body of Jennifer Hill on or about October 29, 1973?

A. I did.

Q. Can you explain where you examined that body?

A. It was at the morgue at the Williamsport Hospital. I arrived in Williamsport sometime around 5:30 from the Philadelphia area on the afternoon of that date, and then began an autopsy examination really at ten minutes of six or 5:50 that afternoon.

Q. (To The Court.). Now, by stipulation, your Honor, we have entered into the record Commonwealth's Exhibit No. 41, that is the weather report.

By Mr. Fierro:

Yes.

By Mr. Ertel:

And again by stipulation with Mr. Fierro, he has agreed that I may read to the Jury the maximum temperatures for the dates of the 19th to the 28th, and also as to the precipitation which was no rain.

By The Court:

Any question, Sir?

By Mr. Fierro:

There was rain on the...

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By Mr. Ertel:

On the 28th there was rain.

By Mr. Pierro:

Beginning when?

By Mr. Ertel:

We will have to have testimony, but it is while the body was there.

By The Court:

So stipulated?

By Mr. Pierro:

Yes.

By The Court:

You may read them.

By Mr. Ertel:

This is an official Climatological Data for the Williamsport Airport. On the date of October 19th, the maximum temperature was 54; the minimum temperature was 33; the average was 44 and there was no rain or precipitation. On the 20th of October, the maximum temperature was 61; the minimum temperature was 47; average was 54; no rain or precipitation. The 21st the maximum was 58; minimum was 39; average 49; no rain or precipitation. The 22nd, 63 maximum; 35 minimum; average 49; no rain. The 23rd, 65 maximum, 35 minimum, average 50; no rain. The 24th, maximum 67; minimum, 38; average 53; no rain. The 25th, maximum 67; minimum 36; average 52; no rain. The 26th, maximum 69; minimum 35; average 52; no rain. The 27th, maximum 60; minimum 43;

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average, 52; no rain. The 28th, maximum 54; minimum 41; average 48, there was precipitation, water equivalent of .05.

Q. Doctor, would you describe briefly what you did in the autopsy as far as disrobing the victim and so on?

A. Upon the beginning of my examination I was shown the body of this decedent still partly clothed. I conducted an external examination of the body, describing what I saw in the way of clothing. Then, after the body was unclad, then the external findings of the surface of the body, and then the internal observations of the body cavities, that is the head, the chest and abdominal contents. I checked various specimens.

I was present and had various photographs of the body taken, that is at my direction by somebody else present at the autopsy. I collected materials or samples of blood and urine and other tissues for certain chemical and other toxicological studies, some blood for typing and material from the mouth, the anus and rectum and the vaginal areas for certain chemical studies as well as for preparation of some slides on which staining would be placed for examination principally for the presence or absence of sperms. After that I made a report of their examination, drew conclusions and prepared a final report with conclusions.

Q. Do you have that final report with you, Doctor?

A. Yes.

Q. May I have it?

A. Yes.

Q. Do you have a copy for Defense Counsel?

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A. Yes.

Q. Now, Doctor, when you disrobed the body, can you describe the garb of the individual as you disrobed the body?

A. Yes. When I first saw it, the body was partially clad in a jersey with a white numeral "33" on it, a white bra. This was all that was over the upper portion of the body, which was pushed up, elevated so that it was higher over the left shoulder than across the right side of the body, and the left breast was exposed, that is the bra was above the level of the left breast, it covered the right breast in the usual fashion. It was hooked in the back in the usual fashion. It was bare, that is the body was bare from that level down to the lower legs where there was a pair of blue denim type jeans that were sort of rolled down around the legs, a pair of multi-colored panties, a pair of socks and a pair of gym sneakers, tennis shoes.

Q. All right, now after you did that, Doctor, did you examine the neck area of the body?

A. Yes, in addition to the other external aspects of the body after the clothing were removed.

Q. And did you have photographs taken of the neck area?

A. Yes, in addition to other portions of the body.

Q. Doctor, at this point I am going to show....

By The Court:

Before you show those the Court wants to make a statement. The slides about to be shown are not pleasant slides to look at, and if anyone in the audience desires to leave, they

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may do so at this time. The Court instructs the jury that these slides are admitted into evidence for the purpose of showing the nature of the wounds received by the deceased, in helping you to understand the testimony of the Doctor who is now about to testify about them. They are not pleasant slides to look at, and you should not let them stir up your emotions to the prejudice of the Defendant. Your verdict must be based on a rational and fair consideration of all of the evidence and not on passion or prejudice against the Defendant, the Commonwealth, or anyone else connected with this case. You must not allow these slides to inflame your minds against the Defendant, nor must you allow any of them or any of the other Exhibits to inflame your mind against the Defendant. They are put into evidence only to aid you in the deliberations of this case and they will be available for you, some will be sent with you when you go to the Jury Room to deliberate on this case, and others will be available for you upon request. You may proceed, Sir.

By Mr. Ertel:

Q. Prior to the looking at those slides, Doctor, did you come to a conclusion as to the cause of the death?

A. Yes, after a thorough examination of both the external and internal indications of injury and the other findings in this body?

A. I did.

Q. What was that conclusion?

A. That the individual so named in this case, Jennifer Hill, died as a result of manual strangulation.

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Q. Now, Doctor, looking at the slide which is Commonwealth's Exhibit No. 58...maybe if I could have a little more light, looking at the slide No. 56, Doctor, can you explain what that shows in relation to your findings as far as manual strangulation is concerned....I beg your pardon, it is No. 58?

A. Commonwealth's Exhibit No. 58 depicts on the decedent's body on the back of the center of the neck and the back of the left side of the neck here, tiny little areas of scratch marks that are described as superficial abrasions, that is the reference to a scratching injury on the surface of the skin. These marks, which are similar somewhat to these, represent various pressure marks from the places where the body had rested on various objects. The dark colored scene here is a portion of the exposed area of the back which was not clothed which was resting against a fair amount of wet mud and dirt, which was observed at the first time the body was examined and then later washed clean by me. The significant findings on this photograph indicate on the back of the neck, in the center and to the left, superficial, described as slightly curvilinear, that is not exactly straight, short scratch marks, abrasion marks.

Q. Were you able to draw any conclusion from those abrasions or along with your other examination?

By Mr. Fierro:

I object to the word "conclusion", opinion would be correct.

By The Court:

Reword your question.

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By Mr. Ertel:

Q. Were you able to arrive at an opinion based upon these particular marks and your other examination?

A. Yes.

Q. What was that opinion?

A. That these represent marks associated with affects of an assailant's hands, most likely fingernail imprints.

Q. Could you tell me whether they were fingernail or thumbnail imprints?

A. No, I could not be certain of that.

Q. Are you completed with slide No. 58?

A. Yes.

Q. Slide No. 56, can you identify that, please?

A. This slide identified as Commonwealth's Exhibit No. 56 shows the front of the decedent's face and is particularly of importance because of the numerous tiny pinpoint indications of blood spots referred to as petechiae, they are tiny ruptured very small blood vessels which appear like little red spots of paint on the surface of the skin. These were visible on the head, above the level of the neck, and appear most concentrated about the skin of the upper and lower eyelids and the whites of the eyes, both the lids and the globe itself, as well as the skin of the face.

Q. What is it an indicia of?

A. Together with the other findings of the injuries on the front and back of the neck, the internal findings of bruising in the region of the voice box, they are supported and

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in my opinion indicated or indicative of manual strangulation with compression of the airway, obstruction of the blood returning from the head to the body , to a certain extent with obstruction with the blood going from the main body to the head.

But its' elevated pressure within the blood vessels of the skin and areas which I described as a result of compression of the blood flow coming back from the head to the body, along with the lack of oxygen that caused the damage to occur in the blood vessels and they rupture and as blood leaks out of them result in these tiny little pinpoint size.

Q. Doctor, right next to the right eye and I note on the Exhibit some marks, can you identify and tell us what they are?

A. These are additional, rather larger than those described by me on the back of the neck, areas of superficial, that is on the surface, scratching away of the skin, leaving behind a scratch mark or a brushburn appearance, which appears as these areas of reddish to brownish coloration.

Q. Doctor, other than the markings which you have described, and I don't believe you did describe them on the front of the neck, or did you?

A. They are not well shown on this Exhibit, but they were, there were markings on the front of the neck visible to to, from the outside, similar to those seen on the back of the center of the neck, together with some faint blueish discoloration in the form of bruising.

Q. Doctor, other than the markings you have shown, was



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there anyother evidence that you noted on thebody which was as a result of trauma?

A. Yes.

Q. Where was that?

A. Well, internally as I examined the area of the neck there were areas of bruising over the tip of the left submaxillary gland, one of the salivary glands that is underneath the left side of the jaw, the strap, as in an ordinary strap muscle. These are the flat groupings of muscles on the front of the voice box or larynx that go from the base of the tongue down to the top of the breastbone, the deeper layers of those on the front of the voice box had indication of bruising and the inside layer of the voice box itself, the larynx had indications of bruising on it.

Q. They were internally, were there anyother external marks on the body other than what you described, as a result of trauma?

A. There was other external marks that were associated with the affects of the injuries which I interpreted as being most likely post-mortem, that is occurring after death. There were a fair number of very superficial, again, on the surface, scrapings of the skin along the back and sides of the legs where they were near or in contact with the ground, associated with the dirt. There was some slipping away of the surface layers of the skin where the body was in contact with the dirt that was present over the back of the body, and these I interpreted as being changes occurring as a result of the interval

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of time from the time of death until I saw the body.

Q. Now, Doctor, you said you took some samples, can you tell us what exactly you did as far as samples? For instance, did you take finger scrapings?

A. The fingernail scrapings, along with other samples were taken in conjunction with me by Corporal Donald Houser, or Trooper House, I don't know if it is specifically Corporal, of the State Police, Montoursville Barracks. He was physically present at the time, and between the two of us we collected, he actually took possession of them rather than having them go from me to him, at the time the examination and their recovery was made.

Q. You took the scrapings and handed them to him?

A. They were taken as an automatic process, about the same time, in other words.

Q. Did you get any report as to those particular scrapings at all?

By Mr. Fierro:

Excuse me, I want to object, I don't know about his doing, getting a report, or whether he made the examination and report, I would like to know.

By The Court:

Yes, the objection is sustained.

By Mr. Ertel:

Q. Did you make any report of those findings?

A. No, not of those findings. Those were, the results from any analysis made on that material was to be handled in the

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taken from the mouth, vagina, or anus and rectum.

Q. What other tests did you provide, if any?

A. The blood was obtained and I did a grouping or typing on that. It showed her to have a Type "A" "RH" Positive blood. Certain other materials were taken by me, samples of tissues and submitted directly to Doctor Frederick Reiders, who is the Director of the Laboratory of the National Medical Services, Inc., a Toxicologic Laboratory in Willow Grove, Penna., for an analysis that he would conduct, looking for anything of abnormality that was present. I did not make a report of those studies. I have a receipt for the delivery of that material to Doctor Reiders.

Q. You do have a verbal report, is that correct?

A. Yes.

Q. What, if anything unusual was the result of the toxicology that you ordered?

By Mr. Fierro:

I object, I believe he is asking....

By The Court:

The objection will be sustained.

By Mr. Ertel:

Q. Did you also examine the stomach contents of the victim?

A. Yes. As a part of the examination which was conducted, I observed the amount of stomach content, and also examined it for the nature of that content, and some of that content was submitted as toxicologic specimen, some of it was

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examined initially by me at the time of my autopsy and subsequently back in Philadelphia under a more thorough examination under what is called a dissecting microscope, that is just to magnify its' condition a little bit, but not greatly. In, I found in the stomach content, portions of partially digested food, which I could identify as being bread or french fries or both, some fragments of lettuce and onion and potato. I found one grape skin, a grey, dark green intact grape skin, and also the pulp of the grape with some brownish seeds within it, somewhat digested but only partially so. The stomach contents had a somewhat oily appearance, that is it gave a sheen with droplets on the surface of the liquid and the material that made it up, and it also had, to my detection a slightly oily odor.

Q. Did you find any scraps of meat?

A. There were also small fragments of tannish, brown material which on initially examination could be fragments of meat which under the dissecting microscope are consistent with portions of digested meat.

Q. Now, Doctor, assuming the following facts, that this young lady had ingested a hoagie, some french fries, a milk shake, at somewhere in the vicinity of noon on the day she disappeared, and assume further she ate some grapes in the period of maybe two hours, two to three hours later, and further that she was last seen alive at the time of 4:30 in the afternoon, do you have an opinion as to the time of death of this girl?

A. Yes.

Doctor Catherman.

Q. What is that opinion?

A. That the death occurred on the day of disappearance and that the death probably occurred between when she was last seen alive and 6:00 perhaps 8:00 P.M. that evening, more likely to be between roughly when she was last seen alive and up until 6:00.

Q. Now, Doctor, you have also explained that there were some markings on the head as you showed in the Commonwealth Exhibit which was a slide, do you have an opinion as to what those markings were?

A. Yes.

Q. What were they?

A. Those markings, in my opinion.....

By Mr. Fierro:

Excuse me, I want to object to this. I would like to know specifically what markings the District Attorney is referring to.

By Mr. Ertel:

Q. Would you explain the markings you are referring to?

A. Yes, specifically there were two areas of markings which I found in my examination, one of which was referred to in the one of the two Commonwealth slides that were shown. These were on the right side of the temple of the body, across the right cheekbone area. Another grouping of very faint, but definite smaller, shorter, but in a line-type pattern, they were lengthy and narrower, across the left side of the jaw, are the ones to which I would address my opinion.

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Oblique  
= check  
Post mortem  
report

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Q. Very good, will you give us your opinion?

By Mr. Pierro:

I will object to that, unless the witness further establishes from a pathological basis why he has that opinion, rather than a judgment or his conclusion .

By The Court:

The objection is over ruled.

By Mr. Ertel:

Q. What were they?

A. They were, in my opinion, consistent with scratch markings and whether caused by the decedent in trying to extract an assailant's hands about her neck or by the assailant causing the manual strangulation, I could not say for certain.

Q. Which direction were the scratches?

A. They were, as we say in one instance, on the side of the right temple on the cheek and others were in somewhat oblique fashion across the left side of the jaw. That is oblique, not perpendicular, vertically, they were on a slant.

Q. Cross examination.

#### CROSS EXAMINATION

By Mr. Pierro:

Q. Doctor Catherman, I notice from your report that you just handed the District Attorney and I got a copy of it, Post-mortem, and I notice from your testimony, is this a correct statement, that in your examination of this girl you found no evidence of sexual molestation?

A. That is correct.

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Q. That is correct, isn't it?

A. Yes, Sir.

Q. All right, no evidence whatsoever, isn't that correct?

A. There was no indication of this girl having been sexually molested in the general lay understanding of that term.

Q. Well, in any understanding, can you tell us that this girl was sexually molested in any way?

A. Not unless you define for me what you mean by "sexually molested"?

Q. I don't know, we may have a different definition, you and I, and I am talking about the ordinary common language used every day by these people who are going to decide this case, did you as a Forensic Pathologist find any evidence that this girl was sexually molested?

A. There was no indication of that. My findings, however, do not exclude some kind, whatever that might be, of sexual molestation. I just didn't find any injury.

Q. Did you find in your report that there was any, that is what I would like to know?

A. I did not describe any injuries which would, I would relate to sexual molestation in that sense.

Q. Injury or not, is there anything in this report that you can show me that says that you, in your opinion, on examination, that you have an opinion that there was some sort of sexual assault upon this child?

A. No, Sir.

Doctor Catherman.

Q. Now, I am interested in your saying that the death occurred between 4:00 and 6:00 P.M. and then you put the limit as high as 8:00 P.M., didn't you?

A. Yes.

Q. Then you are not sure that it was 4:00, 5:00, 6:00, 7:00 or 8:00, are you?

A. No, Sir.

Q. In other words, this Jury, from your opinion, may decide that the death occurred at 8:00, couldn't they?

A. They could.

Q. All right, of course you have fixed the date of death as October 19th, which is the date this child disappeared, but you based that date, you fixed that date based upon what somebody told you, that is two things, somebody said to you, "Doctor Catherman, this girl disappeared October 19th around 4:30 in the afternoon and that this girl ate such and such that day.", and so you fixed the time of death using, among other things, those two items, isn't that correct?

A. Yes.

Q. So that, Doctor Catherman, if you had been told that this girl was still alive on October 20th, the next day, and ate substantially the same food, you would now have to say that you are going to change the date of her death, aren't you?

A. Yes, Sir.

Q. As a matter of fact, if we make it October 21st, you are going to change her date of death again, aren't you?

A. You could continue that up until about three to five



Doctor Catherman.

days prior to the 28th when I believe she was discovered, and I would say would, I would say it would be my opinion it would not be less than that time.

Q. But nevertheless, as you have just said it could be three to five days before she was discovered and she was discovered on the 28th and allegedly disappeared on the 19th?

A. That is correct.

Q. So we can take it up to as high as October 25th according to what you say?

A. 24th.

Q. All right, I will go with you on the 24th, so that if you, as a Pathologist, were told that this girl was still alive on the 24th and ate substantially the same food that was described, you would have to say that, in your opinion, her death could have occurred on that day at around 4:00 to 8:00 P.M., or any prior day from the time she disappeared, is that correct?

A. Yes.

Q. But you can't fix, what I am trying to get at, you can't fix the date?

A. No, Sir, I can't, not specifically. They only do that in "dime novels" or TV shows and the movies.

Q. They practice law like that in movies and we can't.

A. I wish I was able to, it would make my job easier.

Q. Now, Doctor, we come to this, this girl undoubtedly, and was, we accepted your opinion, was manually strangled, and that means, and we are not trying to say the Jury does not understand, but I want to be explicit, I don't care to carry this

Doctor Catherman.

on too much farther, but she was not strangled, for example, by the use of a rope or anyother mechanical instrument, she was strangled by the use of human hands?

A. That would be my opinion. The choice of that terminology is to exclude the other common form of strangulation which is referred to as ligature strangulation where the mode of strangulation is by some ligature, something that encircles the neck, commonly a piece of rope, a wire, coat hanger, whatever it might be.

Q. That is what you and I are now saying we are excluding?

A. That kind.

Q. Any mechanical thing whatsoever, you and are saying according to your opinion this girl was strangled by somebody's human hands alone and not by another instrument?

A. That is my opinion.

Q. That is all we are asking, what is your opinion. Did you find, Doctor, that this little girl had been, I will use the word, because I am not a Doctor, had been "doped", that is to say given some foreign substance to make, to render her unconscious?

A. This, there was no indication of any kind of "dope" present, based on my present understanding of the analysis that we, that were conducted on the tissue specimens submitted, let's put it that way.

Q. Did you find anything conducting your autopsy that showed this girl was given some sort of foreign substance that she

may have inhaled or ingested, however she got it into her body, that would have rendered her unconscious, this includes anything, alcohol "dope", whatever you can think of?

A. I did not observe any of those things either at the time of my autopsy. I know of none of these things being found on the analysis, however there are substances in this world that could have been present and not be detected in the normal fashion, but I think we are talking about the usual kind of things referred to as "dope"?

Q. Right?

A. There was none found.

Q. When I said "dope", I said alcohol or anything else?

A. I am including that.

Q. What I am trying to get out of you, as far as you know, in making your examination of this girl, you would have to give your opinion that this girl was not given anything to knock her out before she was strangled?

A. That would be my opinion.

Q. Now, I want to ask you something else, you examined this body minutely, I do know, did you see any evidence that this girl suffered a blow, a trauma of any form, which would knock her out before she was strangled?

A. No.

Q. What, would I be making a correct statement if I said that you, Doctor Catherman, would have to opinion, based upon your examination, that this girl was alive and well a split second before, whoever it was, began strangling her?

A. Yes.

Doctor Catherman.

Q. And I notice that you say here that she is five foot one and weighed between 120 and 125 pounds, is that correct?

A. Yes.

Q. You know you said in your report, and I won't look at it, correct me if I am wrong, that there was one or two finger-nails missing?

A. That is correct, there were.

Q. Do you know or should I look it up, from which hand... wait a minute the torn nails of the right ring and little fingers, is that correct?

A. Yes.

Q. Now, you said "little fingers", does that mean both little fingers?

A. No.

Q. You probably mean the plural of the right ring and little?

A. Correct.

Q. On the right hand?

A. Yes, Sir.

Q. The torn nails of the right ring and little fingers, are they the items, among others, that you gave to this Trooper?

A. No, Sir, that was an observation made among other observations at the time I did my external examination, I merely observed those nails on those two fingers showed an appearance different from the remaining nails on the same hand and the other hand. Now, what was given for comparison was the nail from the right middle finger.

Doctor Catherman.

Q. The what?

A. The right.

Q. The nail?

A. The right middle finger, the nail, I am sorry.

Q. I will go on, and it was the nail from the right middle finger that was given, among other specimens, to Tr ~~er~~ Houser, then what happened to the torn nails....excuse me, I will ask it that way, what happened to the torn nails of the right ring and little fingers, did you find the torn nails?

A. No, I did not.

Q. You didn't?

A. No.

Q. All you did was observe that they were torn?

A. I observed that they were irregular and ragged as though they had been torn away.

Q. Well, your report says "torn", isn't that your opinion?

A. I think that it says "As though they were torn away.", it was my opinion based upon their appearance that they were torn or broken away.

Q. I read, for example, number four under "External Evidence of Injury", you begin "The torn nails of the right ring and little fingers have, as have been described above...."?

A. Yes, referred to an earlier paragraph which gives the description in more detail.

Doctor Catherman.

Q. So I assume you believe, that is have a medical opinion, that the right ring and little fingers, those nails were ripped or torn or broken away in some violent fashion?

A. In some fashion.

Q. Well....

A. It usually does not take much violence to rip off a nail.

Q. It takes a little?

A. It takes some, yes.

Q. It was not done with a fingernail file or pair of scissors?

A. No, they were not cut nor filed.

Q. It was done, let's say, in an abnormal fashion?

A. Yes.

Q. For example, it could have been done by the girl struggling for her life, using her hands to try to dislodge in some way the attacker?

A. In fact, they could have been caused by her scratching her own neck.

Q. Could have been?

A. That is a possibility.

Q. And could have been caused by her trying to ward off the assailant, catching the nails in a part of his body or clothing or whoever that was, isn't that way one of the ways it could have happened?

A. That is another possibility.

Q. That is what you said before, you said that, for

Doctor Catherman.

example the scratches that you saw on her face could have been caused either by this girl herself or by her assailant, either way?

A. That is correct.

Q. The same with her torn nails, those nails could have been ripped off her fingers either because she was trying to attack or ward off her assailant or in the violence of her own struggles scratching herself, either way?

A. Yes.

By Mr. Ertel:

I object, there are other possibilities.

By Mr. Fierro:

Let him answer, he is an expert.

By The Court:

Over ruled.

By Mr. Fierro:

Q. Isn't that correct?

A. Yes, that is among the possibilities this could have occurred.

Q. That is what I am interested in, these two possibilities?

A. Yes, Sir.

Q. For example, are you, I will ask you this, to me it would sound a little bit silly, is it possible some animal could have come up and chewed them off?

A. That is a possibility, not likely in my opinion, but a possibility.

Doctor Catherman.

Q. That was to cover some of the other methods. Are the two possibilities that I asked you about, the most likely ones, let's put it that way?

A. In my opinion they would be.

Q. They are the most likely?

A. Yes.

Q. You have also said, Doctor, that you found, interpreted, and opined that the scratches or whatever you fellows in medicine call them, I call them scratches, the marks on the back of her neck, what do you call them?

A. I think fingernail scratches is good enough.

Q. I will call them fingernail scratches, I think you testified that the fingernail scratches on the back of this girl's neck were probably made by the assailant?

A. Yes, Sir.

Q. Isn't that correct?

A. Yes.

Q. That is your opinion?

A. These are now the specific short curved scratches that are different from those along the side of the right of the face and across the left side of the jaw.

Q. I am talking about the ones you described on the back of her neck?

A. The back of the center and the left side of the neck and also the front.

Q. Right?

A. Yes, those are the ones I am referring to that in association with the injuries underneath them are the fingernail



Doctor Catherman.

scratches.

Q. You said that in your opinion were made by the assailant?

A. Yes.

Q. So that assailant, whoever it was, would likely have gotten her skin and her blood under some of his fingernails, wouldn't he or she?

A. He might or might not, or she, he or she might or might not. There was no indication that these scratches drew blood in that sense of the fact there were scrapings of superficial skin.

Q. Let's talk about the superficial skin, you said there were scrapings that means something was taken off this body, I believe these fingernails, right?

A. That is what I mean by the scrapings of superficial skin.

Q. Whoever her assailant was, would have those scrapings of her skin underneath those nails, wouldn't he?

A. If they adhered to and stuck fast, yes.

Q. Well, as a Forensic Pathologist you know quite often in these manual strangulation cases that it is more likely the assailant will have such scrapings under the nails, isn't that true?

A. I would not say more likely, you put it on that basis, it is more likely than what?

Q. More likely than not?

A. I will say it is about equal that the assailant

Doctor Catherman.

and the victim have scrapings from the victim's skin under their fingernails.

Q. Do I catch it this way, that your present answer means that both of them, that is the victim and the assailant would likely have scrapings under their nails?

A. Of the victim's skin?

Q. Yes?

A. Yes.

Q. Both of them would?

A. Yes.

Q. Well, I am talking about the assailant, that means the assailant would too?

A. That is correct, but I am just saying it was not necessarily that he would have more so than.

Q. No, I am just trying to find out whether the assailant would more likely than not have?

A. More likely than not, yes.

Q. Thank you. Now, I don't know whether there were any prints of human hands on this girl's neck that could have been identified to that degree that they could have been matched or attempted matched, were there?

A. I do not know either, I saw none and to the best of my knowledge in my presence there were no attempts to identify any such prints in any way. I did not see any.

Q. Doctor, I would assume that as a Forensic Pathologist that you not only can opine, but you actually know in the course of your work, that any human being would, was alive and well and is

Doctor Catherman.

being manually strangled, will make some effort to protect themselves from death, wouldn't you say that is a fair statement?

A. Yes, I would.

Q. And that in the course of trying to protect, in this case herself, from death, that she would more likely than not, inflict some damage on the assailant?

A. No, I can't say that.

Q. You can't?

A. No.

Q. What would she be....

A. She might or might not. In my experience, the absence of injuries on a given assailant who has caused the death of a person by manual strangulation says nothing to me about the fact he couldn't have done it.

Q. I understand that, but you would not be surprised to learn that the person who manually strangled another, had upon the assailant's face or hands, marks inflicted upon that assailant by the victim, that would not surprise you, would it?

A. No, in fact I would want to know if this was the case.

Q. You would ask about that, wouldn't you?

A. Yes.

Q. The absence of it, that is some form of traumatic infliction upon an assailant in a manual strangulation case, the absence of that, while not necessarily conclusive to you as a Forensic Pathologist, would indicate something, wouldn't it?

Doctor Catherman.

A. Yes.

Q. What would it indicate to you, Doctor?

A. That he was not injured during the time that he attacked the individual, if he, in fact, did.

Q. That would be in and of itself an unusual circumstance?

A. No.

Q. No?

A. Not unusual circumstance, it would be an observation to take into consideration with among many other factors.

Q. Would you consider it unusual if these others, other factors were that the other person was well, alive and kicking, wouldn't you then opine that the victim should have done some sort of damage to the attacker?

A. Let me get it straight, that the victim was well, alive and kicking?

Q. A second before the strangulation began?

By Mr. Ertel:

I object to that, I don't know how he intends to allow that up.

By The Court:

Q. Do you understand the question?

A. I think in a hypothetical way I do.

Q. Do you feel qualified to answer?

A. Yes.

Q. The objection is over ruled.

Doctor Catherman.

A. That an injury could be sustained in that assailant which might not ever be detected, which such as many injuries that go undetected when you injure yourself by being bumped or inflicted against a blunt surface.

By Mr. Fierro:

Q. Is it unusual for a victim who is healthy and alive, let's say a split second before he, or she in this case, is being strangled, is it unusual for that victim in a struggle for life to try and take her hands and remove the assailant's hands or to try to push the assailant away, or to try to strike at the assailant's face, things of that nature, is that unusual?

A. I would say it would not be unusual.

Q. It would be the usual thing to do?

A. I can speculate that it would be, since I never saw something like this actually occur, I don't know with certainty.

Q. You would expect that is the usual thing for the victim to try to do?

A. Right.

Q. Doctor, are you the person who took the fingernail scrapings from underneath the deceased nails, do, did you do the actual scrapings yourself?

A. I think the physical act was done by me and Corporal Houser actually collected them as they were obtained. They were never in my possession as such, which then I gave to him by receipt. It was a direct transfer at my direction.

Doctor Catherman.

Q. You have not seen that since, have you?

A. No, I haven't.

Q. Now, without somebody telling you, if someone walked into this Court Room with fingernail scrapings, could you take those scrapings, go back to your Laboratory or whatever you did concerning Jennifer, and say "These are the same scrapings that I took.", can you do that?

A. Not if I was just shown a collection of scrapings, I would not be able to say that those are the precise scrapings which I took at sometime three months or so ago.

Q. You can't say that?

A. No.

Q. Now, I will put it this way, assuming that this Trooper Houser, whoever, comes into this Court and has these scrapings and I hand them to you and I say, "Doctor Catherman, I would like to have you positively identify that what the Trooper brought in here are the same scrapings that you took from Jennifer's nails.", independently of what he tells you, can you do that?

A. I would not be able to do that without his testimony that these were the ones he obtained in my presence and handled them there in such fashion.

Q. Without his testimony, can you scientifically do that?

A. I already said if you give them to be cold, just looking at them I would not be able to tell if they were her's or somebody else's.

Doctor Catherman.

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Check  
Houzeau's  
Testimony  
356.

Q. I mean by use of scientific or otherwise, I don't care, but not having the Corporal.....

By Mr. Ertel:

I object.

By The Court:

Over ruled.

A. No.

By Mr. Pierro:

Q. You can't do it, can you?

A. No.

Q. Doctor, I am showing you what has been marked as Commonwealth's Exhibit No. 3, and what this shows, and the only reason I am showing it to you, concerns the clothing of the child as she was found, and I simply want you to look at the clothing, do you recognize that?

A. No.

Q. You don't?

A. No, because this contains a coat which was not actually on the body, but lying over it. I seen this photograph before, but when I examined the body it was not a part of what I examined and described.

Q. So the coat shown in Commonwealth's Exhibit No. 3, when you received the body that coat was not on or did not accompany the body?

A. That is right.

Q. Commonwealth's Exhibit No. 6, Doctor, also shows a portion of the clothing on the decedent, and I want to tell you

Doctor Catherman.

so you won't be surprised, this item here is the inside of this pea jacket, somebody called it a pea jacket, you did not, of course, as you have already said, see that pea jacket when you saw the body, correct?

A. I examined it without that jacket.

Q. But take a look at this like a football jersey, which is also shown in Commonwealth's Exhibit No. 5, I am sure that was on the body when you saw it?

A. Yes.

Q. By the way....

A. Let me say this, that a jersey either identical to or this actual jersey was on, I don't see enough here to identify the number "33", it looks like a numeral "33".

Q. It is a "33", but that is not what, why I want to ask you any questions about it, I simply wanted to establish what you did or didn't see. Now, I take you back to Commonwealth's Exhibit No. 5, if you will look underneath this jersey, this white thing looks like a bra?

A. It is.

Q. It contains the girl's right breast?

A. The way which I first saw it.

Q. And that is the way you first saw it, isn't that correct?

A. Yes, it is also above the level of the left breast which I first saw it.

Q. It does not contain the left breast, is that correct?

A. Yes.



Doctor Catherman.

Q. Now, you said you disrobed or in assistance with others you disrobed the body?

A. Yes.

Q. You removed the bra?

A. Yes.

Q. And other articles of clothing?

A. The articles which I described.

Q. Oh, yes, not the jacket, we know that. Did you know, I mean did you notice that the bra was ripped, torn or damaged?

A. No.

Q. It was not, is that correct?

A. It is correct that it was not.

Q. Did you notice that the "T" shirt, or whatever you want to call it, that had the numeral on....

A. The jersey.

Q. We will call it whatever you say, did you notice that that item was ripped, torn or damaged in any way?

A. Only to the extent that it had some wet dirt staining on it, nothing, not otherwise damaged in any way.

Q. We are not worried, because it was laying near the ground, we are talking about some external force maybe like an animal or human being ripping or tearing or damaging the cloth, did you notice such damage to that jersey?

A. No.

Q. To the other items that the decedent was wearing, which I believe, which includes, I believe, she was wearing

sneakers, did you, Doctor, in examining the clothing as you disrobed the body find any evidence of any ripping, tearing or damage to the other items of apparel?

A. Yes.

Q. On what?

A. Wearing damage, particularly to the sneakers, otherwise they were not damaged in the sense that you are asking.

Q. Now, you know what I am asking, I want to know....

A. They were not torn, ripped or otherwise parted in any way, they showed some wearing damage.

Q. We are talking about the unusual say caused by some human agency through use of violence, you did not notice any such item to any item of clothing on this decedent, did you?

A. No.

Q. No further questions.

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Doctor, you were asked about your time of death, and asked you, asked if you were given the same set of circumstances this could be another day, taking that set of circumstances, if I were to tell you that on the day in question, the 19th,<sup>11</sup> and I eliminated the 4:30,<sup>4'</sup> she had a hoagie, french fries and milk shake for lunch and had those grapes in the early afternoon, would you be able to establish a time of death in relation to the time she ate, approximately?

A. Yes, approximately.

Doctor Catherman.

Q. Based on the stomach content, how much time would elapse between the time of eating and the time of death?

A. It would have been at least several hours, two to four hours, and probably not more than eight to ten hours depending upon the stress and general health or condition of the individual in that period of time.

Q. Let's put one more factor in, Doctor, she had this lunch, she had the grapes in the afternoon, she played football or kickball during the early afternoon hours up until approximately 3:30 in the afternoon, would that give you a better indication of time of death, could you approximate it closer just with those facts?

A. Just with those facts, it would be my opinion she died sometime late in the afternoon or evening of that day.

Q. So the time she was seen alive makes, the last time she was seen alive does not make any difference as far as the content is concerned?

A. No, I was basing it on the nature and type of stomach content that I observed in connection with the circumstances of the meal which she was last known to have eaten as you provided in the assumption of facts that I was given.

Q. Now, Doctor, how long does it normally take to digest food?

A. Well, the books tell you the stomach empties after an average meal and in from two to four hours, but being human, an individual, as we all are different, that somewhat varies from person to person, although the average is given to be

Doctor Catherman.

somewhere between two and a half to four hours or so. The finding of food partially digested in a stomach up to as much as four to six hours after it has been taken in would not be unusual, and under given conditions of illness, emotional stress, or other external factors acting upon a body might not be unusual for as much as twelve or even eighteen hours.

Q. Was the grape that you observed in the stomach in relation to the other food, was that less digested or more digested?

A. The grape I examined was in two parts, the pulp had come from the skin, that is it was parted from the skin. The skin was still as if I were to take a grape skin now and pop the pulp out of it. The pulp or content showed some degree of digestion, but was not to the extent that the other material was softened and digested.

Q. Now, incidentally, the digestive process, when does it end? Does it end at death?

A. Well, reasonably at death. There is no further digestion in the sense that is considered digestion following death.

Q. Doctor, now you were asked many questions about strangulation and reactions, how long does it take, can you describe the process of strangulation generally as to what it does and how long it takes?

By Mr. Fierro:

I would like to have that restricted to this victim. He made the autopsy.

Doctor Catherman.

By The Court:

See if he can do it to this victim first, in this particular case.

By Mr. Ertel:

Q. Can....

A. Yes, I could offer an opinion.

Q. Will you do so?

A. The process of manual strangulation, which is in my opinion is what occurred here, the process, is the process of compressing the neck and the structures within the neck and the principal structures involved are the airway, the blood vessels taking blood back to the body from the head, and those taking blood from the body to the head, as well as certain little pressure points of chemical and pressure receptors that occur along the major artery that is going up each side of the neck, with the constriction and compression of those structures, particularly with the closure of the airway, there is then lack of oxygen getting into the body system and as soon as that lack of oxygen is detected by the brain and its' use of oxygen, abnormality begins and that is in the form of loss of consciousness. It does not mean that the individual dies immediately at that point, but there is loss of consciousness. This would probably take a maximum of a minute or so, and then depending upon the duration of the compression, death as a result of further changes that take place, because of the restriction of blood to and from the head, pressure against these receptors that are both chemical and pressure sending other signals by way of nerves to the

Doctor Catherman.

heart and to the breathing senses, everything would stop or cease in the matter of several more minutes, and without any kind of attempt to recover or resuscitate, the individual would then, the death would then occur.

Q. Doctor, I note that you gave the maximum of a minute before unconsciousness, can you give us an approximation of a minute?

By Mr. Pierro:

I object to that statement, because the Doctor didn't say a maximum of a minute, he said a minute or so.

By Mr. Ertel:

I believe that is a correct restatement.

By The Court:

Reward your question.

By Mr. Ertel:

Q. You noted a minute, can you give us a range of time possibly from which the person may go unconscious?

By Mr. Pierro:

He didn't say a minute only.

By Mr. Ertel:

Q. I asked for a range of time, Doctor, as to the time person would go unconscious from application of strangulation by force?

A. I think within a minute or so and in here we can't be that absolute, because it does not begin at 30 and stop at 29, but purposes for discussion about 30 seconds to a minute and a half which would be 90 seconds, a minute or so.

Doctor Catherman.

Q. You were asked a question about broken fingernails and you were given two alternatives, as I recall either from trying to get the hands off of her throat or on the assailant, did you give any consideration to the fact this child was playing in the afternoon kickball and other physical activities?

A. Among other possibilities, some activities in the afternoon of the death could have resulted in the tearing of those nails.

Q. Were you able to specify the time for or an approximate time when those nails were torn?

A. No, I was not.

Q. Thank you, I have no further questions.

By Mr. Pierro:

I have nothing further.

By The Court:

May I see Counsel?

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

(Excused from witness stand.).

By The Court:

The Court will recess. The defendant is excused and the Jury is excused. Everyone else remain seated.  
Court is recessed.

(Recessed at 2:50 P.M. and reconvened at 3:15 P.M.)

By The Court:

Proceed, Mr. Ertel.

By Mr. Ertel:

Officer Houser.

Corporal Houser.

CORPORAL DONALD J. HOUSER, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Donald J. Houser.

Q. Your occupation?

A. I am a Corporal with the Pennsylvania State Police stationed at Montoursville.

Q. How long have you been a Corporal in the Pennsylvania State Police?

A. Approximately three years.

Q. How long have you been a State Trooper?

A. Approximately 17 years.

Q. Corporal Houser, in the investigation of this case did you have a particular role as the Property Officer and Custodian?

A. I did.

Q. Explain basically what your role is as Custodian or Property Officer?

A. I was mainly the Receiving Officer, we have a Custodial Officer who is in charge of all of the evidence at the Barracks. In this case it was my duty to receive the evidence, sign it in, and turn it over to a Custodial Officer.

Q. After you go to the Custodial Officer, did you remove the evidence then and transport it to various places like Laboratories and so forth?



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Q. After you go to the Custodial Officer, did you remove the evidence then and transport it to various places like Laboratories and so forth?

Corporal Houser.

A. Yes.

Q. Now, Officer, did, you did receive quite a numerous collection of items in this case, is that correct?

A. Yes, Sir.

Q. Do you have a report....

(Commonwealth's Exhibit No. 59 marked.).

Q. Now, I show you marked as Commonwealth's Exhibit No. 59, can you describe where you received them?

A. They are corn stalks, they were cut down immediately adjacent and around the body of the victim.

Q. Now.....

By Mr. Ertel:

Mr. Pierro will stipulate these are corn stalks cut at the scene and transported to the Barracks and numbered.

By Mr. Pierro:

And not otherwise, not having anyother evidentiary value.

By The Court:

That is on the record, that will save time.

By Mr. Pierro:

With the stipulation that they have no evidentiary value.

By The Court:

The Court understands.

By Mr. Ertel:

Why the body was not seen from the air.

By Mr. Pierro:

I will stipulate with you so the Jury don't have

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to carry them out, you can't see the body from the air because of the corn stalks.

By Mr. Ertel:

Q. What was the next thing on your list you exhibited?

A. Doctor Miller, upon arriving at the scene, <sup>Page 361</sup> we walked back to where the victim's body was lying in the corn field, and upon arriving, the Coroner, Trooper Keppick and I, we went approximately 20 to 30 feet south of the body. At this time we went in an eastward direction into the field and then when we got into the field approximately 20 to 30 feet, we went in a northerly direction. We were doing this for the purpose of to check out to see if there were anyother footprints in the cornfield.

Q. Did you find any?

A. No, Sir.

Q. How did you approach the body then?

A. We approached the body from the head.

Q. Now, after the approach to the body.....

It has been agreed basically the examination of the area that Doctor Miller testified examined the area, except for the distance from the roadway to the body, that particular area which Mr. Fierro would want to cross examine.

By Mr. Fierro:

I want to cross examine on that and one other point as to types of footprints and number, otherwise I stipulate and agree his testimony with regard to that is basically the same

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as Doctor Miller's.

By The Court:

The record so shows.

By Mr. Ertel:

Q. Just to clarify it, did you measure the distance off of the where, whether you call it "lane" or "road", farm road to the body?

A. I did not.

Q. Can you estimate that distance from the cartway where one would see the tire, normal tire marks on the road, on that cartway, do you have an estimate?

A. It would have to be a very rough estimate.

Q. What would that be?

A. Approximately 100 to 125 feet.

Q. No, I think you are going from the macadam surface to the body, where I am talking from the cartway. Looking here at Commonwealth's Exhibit No. 37, which is the cartway of the farm road, if you want to call it that, back to the location of the feet of the body off of the cartway, the actual place where one could think the tires would run, do you have an estimate of that distance?

A. To the feet of the victim?

Q. Yes? If you don't want to estimate it, that is all right?

A. I would rather not estimate.

Q. Can you describe the soil or conditions what was between the body and the roadway? Did you examine that area?

Corporal Houser.

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A. Grassy, weeds.

Q. Did you find the footprints that were cast, were there other footprints that you recall in the area?

A. Upon viewing the body, I went back out to the road to the lane, and at that point, which was my job, to take notes on measurements that Doctor Miller took.

Q. Did you see any footprint as you went back towards the road, to your recollection?

A. No, Sir.

Q. Now, rather than get into the notes, you made measurements where these prints were located, is that correct?

A. Yes.

Q. I think we are going to, by stipulation, go over that. Now, did you also go to the autopsy?

A. I did.

Q. Did you take certain items from the Doctor at the autopsy?

A. I did.

Q. All right, what items did you take from Doctor Catherman?

A. I took all of the victim's clothing.

Q. I show you marked as Commonwealth's Exhibit No. 47, can you identify that?

A. That is the jacket that was over the body of Jennifer Hill.

Q. Is that the same jacket that you observed at the scene?



Corporal Houser.

A. Yes, it is.

Q. Now...

(Commonwealth's Exhibit No. 60 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 60, can you identify that?

A. Yes, this is the bra that Jennifer Hill had on.

(Commonwealth's Exhibit No. 61 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 61, can you identify that?

A. Yes.

Q. What is that?

A. It is a blue and white football jersey with the number "33", it was taken from the body.

Q. I show you marked as Commonwealth's Exhibit No. 46, can you identify that?

A. Yes.

Q. What is it?

A. It is a pair of sneakers with the stockings inside of the sneakers that was taken off of the body.

(Commonwealth's Exhibit No. 62 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 62, and ask you if you can identify that?

A. This is a pair of panties, they are white with a green print on.

Q. Where were they taken from?

A. They were taken from around the ankle of the victim.

(Commonwealth's Exhibit No. 63 marked.).

Corporal Houser.

Q. I show you Commonwealth's Exhibit No. 63, can you identify that, please?

A. Yes, these are light blue trousers, it has a white webbed belt that were taken from around the ankles of the victim.

Q. That is where they were when you saw her on the 28th of October, 1973?

A. Yes, Sir.

(Commonwealth's Exhibit No. 64 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 64, can you identify that?

A. Yes, it is a pierced ear ring, gold with a red circle, it was taken from the right ear lobe of the victim by Doctor Catherman.

Q. Did you observe that on the victim at the scene?

A. I did.

(Commonwealth's Exhibit No. 65 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 65, can you identify that, please?

A. Yes, it is blue and white, with a flower print, pajama top that was picked up and turned over to me at the scene. It was approximately two and one-half feet south of the left ankle of the victim.

Q. I show you marked as Commonwealth's Exhibit No. 1 that has been admitted into evidence, can you identify that photograph?

A. Yes, Sir, it is on the right, right of the victim's feet.

Q. And the photographer was left looking at the feet?

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A. Yes.

(Commonwealth's Exhibit No. 66 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 66?

A. It is a Glick Shoe bag, it has been processed for fingerprints, and there is also containers of kernel corn in the bottom.

Q. When you received that, what was it like? Describe the condition at that time?

A. When I received the Glick Shoe bag that was approximately one foot south of the left hand of the victim, it was lying in the field. It was not disturbed, it was picked up by the strings and handled very gently. It was completely full, and at this time the contents were unknown. It was processed at a later date for fingerprints.

Q. You did not open that bag?

A. I did not. It was subsequently opened, in my view, at the State Police Lab. in Harrisburg.

Q. What was in the bag at that time?

A. The contents were removed, the first item on the top was a pajama bottom, light blue in color.

(Commonwealth's Exhibit No. 67 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 67, if you can identify the items there?

A. Yes, this was the contents of the bag, including the corn.

Q. Go ahead and describe the contents?

A. As the items were taken out of the bag, they came



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out in order. The pajama bottom, or light blue in color was the first item, which is this right here.

Q. Part of Commonwealth's Exhibit No. 67, I believe?

A. Yes.

Q. The next?

A. Item 2 that was taken out was blue jeans with red hearts on the knees, and the same material is around the bottom of the legs of the blue jeans.

Q. They were taken out second?

A. Yes.

Q. All right?

A. The third item were a pair of panties, which are orange, white and yellow in color with diamond shaped designs.

Q. Shown in Commonwealth's Exhibit No. 67?

A. Yes.

Q. Is that all?

A. Yes.

Q. How about the corn, where did that come from?

A. The corn was in the bottom of the Glick Shoe bag.

Q. Now, what has been marked as Commonwealth's Exhibit No. 66, and you said was a processed Glick Shoe bag, I show you marked as Commonwealth's Exhibit No. 49 and ask you if that is the same color, type and so on as that Glick Shoe bag?

A. Yes, this is a bag similar to that one.

Q. Now, while at the autopsy or examination of the body at the morgue, did you do other things as far as fingernail scrapings were concerned?

A. Yes, Sir.

Q. What did you do?

A. I took a series of colored photographs or slides.

Q. And some of those have been shown?

A. Yes.

Q. Let's go now to the next thing, what else did you do?

A. As Doctor Catherman was proceeding with the autopsy, he would hand me evidence which was placed in containers and logged.

Q. What evidence did he hand you other than the material, did he give you the fingernail scrapings?

A. Yes, he gave me fingernail scrapings from each finger on both hands.

(Commonwealth Exhibit No. 68 marked.).

Q. Without handing you all of the ten bottles, I will give you a sample bottle, which are Commonwealth's Exhibit No. 68, were they the fingernail scrapings which you received and subsequently transported to the Crime Laboratory?

A. They are.

Q. Would you explain how these fingernail scrapings are taken?

A. Doctor Catherman took these with scalpel and it is on the same procedure as cleaning your nails.

Q. It was dropped into a white tissue?

A. It was wiped onto.

Q. Then you put them in the bottles and transported them

Corporal Houser.

to the Laboratory?

A. Yes.

Q. What else did you receive from Doctor Catherman?

A. Hair samples.

(Commonwealth's Exhibit No. 69 marked.).

Q. I show you Commonwealth's Exhibit No. 69, can you identify that?

A. This is a hair sample from the head of the victim.

Q. And you, once again, received that at that autopsy and transported that to the Crime Laboratory for analysis?

A. Yes, I did.

Q. What other things did you obtain at the autopsy?

A. Pubic hair samples.

(Commonwealth's Exhibit No. 70 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 70, is that the hair sample you received?

A. This is a container it should be in, yes.

Q. Did you transport that to the Crime Laboratory?

A. I did.

Q. Did you also receive a part of fingernail at that autopsy?

A. I did.

(Commonwealth's Exhibit No. 71 marked.)

Q. I show you marked as Commonwealth's Exhibit No. 71 is that the fingernail you obtained?

A. That is the fingernail sample taken from the right

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middle finger of the victim.

Q. Once again, transported to the Crime Laboratory?

A. Yes.

(Commonwealth's Exhibit No. 72 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 72, and ask you if you obtained that?

A. Yes.

Q. What is that?

A. This is a soil sample that taken, that was taken from near the area of the victim's right thigh, this was taken at the scene.

Q. Was that transported also to the Crime Laboratory?

A. Yes, it was.

Q. When was that obtained?

A. It was obtained on the 28th of October.

(Commonwealth's Exhibit No. 73 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 73, and ask you if you can identify that?

A. This is a mud sample or dirt sample that was taken from under the body of the, underpart body of the victim.

Q. When was that taken, Officer?

A. This was taken off at the autopsy by Doctor Catherman.

Q. Was that also transported to the Crime Laboratory by you?

A. Yes, it was.

(Commonwealth's Exhibit No. 74 marked.).

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Q. I show you marked as Commonwealth's Exhibit No. 74, can you identify that?

A. Yes, these are two weeds or vegetation samples that were taken at the scene, they were taken from the area of where, just west of the body, the feet of the body.

Q. Towards the road, in other words?

A. Yes.

Q. Towards the lane?

A. Yes.

Q. All of these items that have been shown, did you transport them to the Crime Laboratory for analysis by the Crime Specialist?

A. Yes.

(Commonwealth's Exhibit No. 75 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 75, can you identify what that was?

A. It was a hair sample that was found under the victim's body.

(Commonwealth's Exhibit No. 76 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 76, can you identify that, please?

A. Yes, this is a weed or some type of vegetation that was found underneath the body of the victim. At the time it appeared as though it had a possible blood stain on it, that is why this was gathered.

(Commonwealth's Exhibit No. 77 marked.).

Q. I show you Commonwealth's Exhibit No. 77, can you



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Identify that?

A. Yes, this is some soil that was taken from immediately around the last exhibit, the weed, it is soil with possibly contain blood.

(Commonwealth Exhibits Nos. 78 and 79 marked.).

Q. I show you marked as Commonwealth Exhibit No. 78?

A. Yes, this is a weed or some type of vegetation that was taken from the ring on the right ring finger of the victim. It was taken on the 29th at the autopsy.

Q. Was that again the same true, that you transported all of this to the Crime Laboratory?

A. Yes.

Q. I show you marked as Commonwealth's Exhibit No. 79, can you identify that?

A. These are small brown particles removed from the groin area of the victim, they were removed by Doctor Miller and given to me.

Q. Transported to the Crime Laboratory again?

A. Yes.

(Commonwealth's Exhibit No. 80 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 80 and ask you if you can identify that particular object?

(A) Yes, it is a dirt sample taken from the left tire impression at the crime scene, it was collected by Corporal Earto and turned over to me.

Q. Did you transport that to the Crime Laboratory for analysis?

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A. I did.

Q. Can you tell us approximately where those tire marks were, or would you rather have Barto give that?

A. I would rather have another Officer that made the measurement tell you.

(Commonwealth's Exhibit No. 81 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 81, can you identify that, please?

A. It is also a dirt sample that was collected by Corporal Barto and turned over to me on the 29th of October

Q. Does that show where it was collected?

A. It does not.

Q. You were the Transporting Officer to the Crime Laboratory, is that correct?

A. Yes. On the rear of the evidence there is a description "Dirt sample taken from Dye-Tex Co.".

Q. Did you take that material to the Crime Lab. for analysis?

A. I did.

(Commonwealth's Exhibits Nos. 82, 83, 84, 85 and 86 marked.).

Q. Officer, I show you marked as Exhibits Nos. 82 through 86, can you identify those, and if you took those to the Crime Laboratory for analysis?

A. I can identify them, but I didn't take them to the Crime Lab., they were taken by Trooper Pama.

Q. What are they?

A. They were hair samples, the first one was Kim

Corporal Houser.

Lee Hubbard....

By Mr. Fierro:

Just a minute, I object to this, did he take the hair sample from Kim Lee Hubbard.

By Mr. Ertel:

I can go through every Officer, if you like, to identify each.

By Mr. Fierro:

So far with this mass of stuff I have not objected, but here is a man says he took a hair sample from Kim Lee Hubbard.

By Mr. Ertel:

He didn't say that.

By Mr. Fierro:

Then I don't want him to identify it.

By The Court:

The objection will be sustained, unless he was present when it was taken.

A. I was present when it was taken from Kim Lee Hubbard.

By Mr. Fierro:

Then I won't object if you were present.

By Mr. Ertel:

Q. Now, that is Commonwealth's Exhibit?

A. I was present when the hair sample was taken from Ard Stetts, which is No. 82. I was present when it was taken from Kim Lee Hubbard, No. 85.

Q. I show you marked as Commonwealth's Exhibits Nos. 35,



Corporal Houser

36 and 37, can you identify those, please?

A. 36 and 37 are aerial phobs taken in the area where the body was found.

Q. Did you take those?

A. I did.

Q. No. 35?

A. That is an aerial photo taken of South Williamsport, it includes the Hubbard home at the bottom of the photograph and at the top center of the photograph is the Sylvan Dell area, the tanks, the gas storage tanks.

Q. Did you take that photo?

A. I did.

(Commonwealth's Exhibit No. 87 marked.).

Q. Commonwealth's Exhibit No. 87, Corporal, I don't want to hand these up, would you come down here and identify them?

A. (Witness leaves stand.).

Q. I just marked an item as Commonwealth's Exhibit No. 87, can you identify this, please?

A. This is a left rear tire taken from an Oldsmobile sedan, Kim Lee Hubbard's vehicle, it was taken at the South Williamsport Borough Building at the garage in the back.

Q. Were you present when these were taken?

A. Yes, Sir, an employee from South Williamsport took them off and gave them to me as he was taking them off, his name is Mr. Merrick.

Q. That is Commonwealth's Exhibit No. 87, is that right?

A. Yes.

(Commonwealth's Exhibit No. 88 marked.)

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Q. Can you identify this, please?

A. This is the tire and rim that was taken from the right rear of the same vehicle at the same time.

Q. You mean the right rear tire taken from the right rear of the car?

A. Taken from the right rear of the car.

Q. You were present also?

A. I was.

(Commonwealth's Exhibit No. 89 marked.).

Q. I show you Commonwealth's Exhibit No. 89?

A. It is a right front tire and rim taken from the Oldsmobile sedan at the same time by Mr. Merrick.

Q. You were present?

A. I was.

(Commonwealth's Exhibit No. 90 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 90?

A. It is a black Kelly tire received from Robert Carl Foust at Poole's Service Station. The Receiving Officer was Trooper Gomb and he turned this over to me in person.

Q. Did you deliver all of those tires to the Crime Laboratory at Harrisburg?

A. I did.

Q. Officer, I don't want to belabor the point, but we have in this box in here, Commonwealth's Exhibits Nos. 50 through 55, which were foot casts, were you present when they were made?

A. I was.

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Q. Did you take custody of those?

A. I did at a previous date, the following day.

Q. Who did you get them from?

A. Trooper Keppick.

Q. Did you deliver them to the Laboratory?

A. I did.

(Commonwealth's Exhibit No. 91 marked.).

Q. Officer, I show you marked as Commonwealth's Exhibit No. 91, can you identify this, please?

A. It is a tire, or a cast, that I received from Trooper Keppick.

Q. Did you also transport that to the Crime Laboratory in Harrisburg?

A. I did.

Q. When did you receive that from Trooper Keppick?

A. I believe it was the following day.

Q. When you say "the following day", you mean the 29th?

A. Yes.

(Commonwealth's Exhibit No. 92 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 92, can you identify this, please?

A. It is also a cast that I received from Trooper Keppick at the same time.

Q. And again, did you transport that to the Crime Laboratory?

A. I did.

(Commonwealth's Exhibit No. 93 marked.).

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

A. It is also a tire cast that I received from Trooper Keppick.

Q. Did you also deliver this to the Crime Laboratory in Harrisburg?

A. I did.

(Commonwealth's Exhibit No. 94 marked.).

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

A. This is also a cast that I received from Trooper Keppick and it was transported to the Crime Lab. at Harrisburg.

Q. All at the same time, did you receive them?

A. Yes, they were transported on the 1st of November,

1973.

Q. Now, Officer Houser, did you have the occasion to be present at the time that the Defendant, Kim Hubbard was interviewed in this case?

A. I only saw Kim twice. The first time was with Chief Smith, I don't recall what date it was, we stopped in front of his home and Kim came across to the vehicle and talked to us a brief time, I don't recall what the conversation was. The second time was on the 3rd of November.

Q. Where was that?

A. I was at the, in the Council Room in the South Williamsport Borough, and Kim came in.

Q. Prior to Kim's arrival on November 3rd, were you a

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person who overheard a conversation with Mrs. Hubbard just prior to that? *A FROM THE UNIT'S DINING ROOM DURING THE SAME PERIOD*

A. I was.

Q. What was that conversation and who was involved?

By Mr. Fierro:

Your Honor, I object.

By The Court:

It will be sustained unless the Defendant was present.

By Mr. Ertel:

May we approach Side Bar?

By The Court:

Yes.

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

By The Court:

Proceed, Gentlemen, the objection is sustained.

By Mr. Ertel:

Q. Officer, turning now to the conversation when Kim Hubbard came into the South Williamsport Borough Hall Council Chambers, were you present?

A. I was.

Q. Approximately what time was that?

A. It was either afternoon or early evening, I don't recall the time. *About 2 P.M. in the afternoon*

Q. Would you state what occurred there?

By Mr. Fierro:

I object, are you asking what occurred or what was



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the conversation?

By Mr. Ertel:

The same thing.

By Mr. Fierro:

I would like to come to Side Bar on that.

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

By The Court:

Members of the Jury, again there is a matter I am required by law to take up with Counsel and rather than have you stay in the box, and rather than do it in the Court Room, the Court is going to recess and do it in its' Chambers. The Defendant is now excused. The Jury is now excused. (Recessed to Chambers at 4:10 P.M., EDTST.).

(IN CHAMBERS.).

By The Court:

An offer, Mr. Ertel.

By Mr. Ertel:

He advised the Defendant of his rights. The Defendant then said he wanted to clear up where he was on that day, that he told us a lie before. I am not verbatim, I am paraphrasing, that he had been on the Sylvan Dell Road, he had proceeded down from the Look-Out, now this is the thing you were going to have me eliminate, he had been up there, and I am not certain whether he smoked two "joints" or he was going up there to look for somebody to smoke two "joints". We had better get the report.

Corporal Houser.

By The Court:

I want that specific.

By Mr. Ertel:

Houser was only there for part of the conversation.

By The Court:

Why didn't you put the man on that was there for the full conversation?

By Mr. Ertel:

I would have, but then I would have to call Houser. There was about two or three independent conversations going on, that is the problem here.

By The Court:

What else do you think he heard?

By Mr. Ertel:

I am not sure if he told him at that time that nobody ever drove his car but him, that they were his boots and nobody ever had those boots but him.

(At this point Mr. Ertel receives report.).

By Mr. Ertel:

Now....

By The Court:

Start over since you have it in front of you and be specific.

By Mr. Ertel:

Well, he advised him of his rights, Officer asked Kim if anyother persons drive his car and he answered "No.", from the time the girl was missing to this day has anyone driven his

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car and the answer was "No.", and then that if his car was seen it was safe to assume he was driving it, and the answer was "Yes", and he also told him that he could leave at any time and didn't have to say, and then the other Officer went into the questioning. Now, I won't go into the other Officer's questioning with this Officer at this time.

By Mr. Fierro:

So far that is not objectionable, but that is not what he said at Side Bar.

By The Court:

That is right. Who is your next witness, is there anything we should face today?

By Mr. Ertel:

I forgot one other thing, he went to Rent-All Center and got a copy of a receipt, Houser did. We can bring in Brungard that Hubbard was there at 1:45 that day.

By Mr. Fierro:

We agree to that, we will produce that.

By The Court:

You will not make him bring up the man from the Rent-All?

By Mr. Fierro:

No, but, of course, I hope his time is the same as our's because my Client did go to his place and get a machine.

By The Court:

You will stipulate to that?



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By Mr. Fierro:

If it matches my receipt, I will stipulate to it.

By The Court:

Show him the receipt when you get it.

By Mr. Ertel:

That is about it.

By Mr. Fierro:

I will stipulate until I can get my receipt tomorrow morning.

By The Court:

Ordinarily if he wouldnot stipulate you would have to get the people from Rent-All.

By Mr. Ertel:

We would have to produce we got it there.

By Mr. Fierro:

If it matches my receipt that we have tomorrow it is fine.

By The Court:

Anything else?

By Mr. Ertel:

The time it takes at a normal pace from the Hubbards' to the Nevels'.

By The Court:

How about that?

By Mr. Fierro:

Who is going to say that?

By Mr. Ertel:

Houser, that he walked it.

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By Mr. Fierro:

Houser is going to say he walked from the Hubbards' to the Nevels, he walked this?

By Mr. Ertel:

Yes.

By Mr. Fierro:

The time it took him?

By Mr. Ertel:

Yes.

By Mr. Fierro:

I object to that, he can say the time it took for him, but what does that mean? I am going to object to it.

By The Court:

You can object any time that you want to.

By Mr. Ertel:

That is all. I will not offer him as to the other conversation.

(Reconvened in Court Room at 4:40 P.M., EDST.).

(Trooper Houser returned to stand.).

By Mr. Ertel:

(Commonwealth's Exhibit No. 95 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 95, can you identify that, please?

A. It is a sweeper bag.

Q. And how did that come into your possession?

A. It was given to me by Corporal Barto.

Q. Did you transport that to the Crime Laboratory?

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A. I did, on the 5th of November.

(Commonwealth's Exhibit Nos. 96 and 97 marked.).

Q. I show you marked as Commonwealth's Exhibit s Nos. 96 and 97, can you identify these, Corporal?

A. There is the evidence tag, one pair of high combat boots.

Q. Did they come into your custody?

A. They did.

Q. From whom?

A. Trooper Fama, they were collected by Sgt. Peterson.

Q. Did you transport those to the Crime Laboratory?

A. I did.

Q. When did you take them there?

A. They were taken by me to the Crime Laboratory, I would have to check with the report and the receipt that I got, I can't give you the exact date at this time.

Q. But you did deliver them to the Crime Laboratory?

A. Yes.

Q. Now....

(Commonwealth's Exhibit No. 98 marked.).

Q. I show you Commonwealth's Exhibit No. 98, and ask if you can identify that?

A. It is a bag of dirt samples, there is two samples within the bag, they were taken by Trooper Gomb, and transported by me to the Crime Laboratory.

Q. Did you receive them from Gomb?

A. I did.

Corporal Houser.

(Commonwealth's Exhibit No. 99 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 99?

A. There is an envelope containing five bags of mud or dirt samples, taken from the wheel wells or inside of the vehicle by Trooper Gomb, given to me and transported to the Crime Lab.

(Commonwealth's Exhibit No. 100 marked.).

Q. Can you identify that, please?

A. Yes, the contents of the envelope are a plastic package of loose, package of loose strands of hair removed from the front seat of the Oldsmobile of Hubbard's.

By Mr. Fierro:

I object to this, I don't want him reading something unless he personally did it.

By The Court:

You should look at it, Officer, don't take it from the tag. In fact, if you want the tags removed, I.....

By Mr. Ertel:

I would object to that, that is our identification.

By The Court:

Hereafter you can do it by number.

By Mr. Fierro:

I object to these things.

By The Court:

You are asking and he is only reading from the tag.

By Mr. Ertel:

Ye received it, but I will bring the person in that

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took it.

By The Court:

He is asking whether or not he knows what it is.

May I see Counsel?

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

By The Court:

Proceed, Gentlemen.

By Mr. Ertel:

Q. We were on Item 100, I believe, did you receive what is in that package, and would you examine it, and did you transport that to the Laboratory and from whom did you receive it?

A. It is an envelope that I received from Trooper Gomb and transported to the Crime Laboratory.

Q. Was the envelope sealed at the time?

A. Yes.

(Commonwealth's Exhibit No. 101 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 101, and ask you if you can identify that?

A. Yes, this is a copy of the receipt that I received from Lloyd Strouse Insurance Company at 1134 West Fourth Street.

Q. When did you receive that?

A. I received that personally from the Secretary.

By Mr. Pierro:

I have to object, I don't see its relevancy.

By The Court:

Come to Side Bar and state to Counsel and the Court



Corporal Houser.

why it is relevant. What you might do on items like that, you might take them to Mr. Fierro first and explain to him whether or not it is material and we don't have to come to Side Bar.

(Commonwealth's Exhibit No. 102 marked.).

By Mr. Ertel:

Q. I show you marked a combination of two items as 102, can you identify those, please?

A. They are a pair of sneakers and I received them from Trooper Gomb.

Q. Can you tell us when you received them?

A. On the 4th of November.

Q. Did you have the occasion to walk from the Hubbard home to the Nevel home from time to time?

A. I did, the 21st of November, 1973.

Q. And can you tell the Jury did you walk your normal pace as a man of your.....

By Mr. Fierro:

I object to this, it is not relevant, I don't think it is relevant to the Defendant how fast it took him to walk that distance.

By The Court:

What is the purpose?

By Mr. Ertel:

Only to give an estimate of what an average person and give the Jury what a child might do.

By Mr. Fierro:

I object to this, the Jury can't get from that how fast this child may have covered this distance on that day. I

Corporal Houser.

think that is a matter of determination that the Jury can arrive at by itself and through argument.

By The Court:

The Court will permit it, you may answer.

By Mr. Ertel:

Q. How long did it take you?

A. 13 minutes.

Q. Officer, I think before the break we were concerned with the 3rd of November, 1973, at Borough Hall, were you able to determine the time Kim Hubbard was there?

A. Yes, Sir.

Q. What time was it?

A. At 1:58 P.M.

Q. At that time did you talk to Kim Hubbard?

A. I did.

Q. What did you do in relation to Kim Hubbard and the conversation you had with him?

A. I advised him of his Constitutional Rights.

I read him the contents of this card, and Kim signed the card across the face.

By The Court:

Have that marked.

(Commonwealth's Exhibit No. 103 marked for identification.).

By Mr. Ertel:

Q. Commonwealth's Exhibit No. 103, can you identify the

A. Yes, Sir.

Q. What is it?

Corporal Houser.

A. It is a standard form advising the subject of his Constitutional Rights. On the reverse side of the form or card there is two questions.

Q. What are those questions?

A. "Do you understand these rights that I have explained to you? With these rights in mind, do you now wish to talk to us?"

Q. Did you get a response to those?

A. Yes.

Q. Is there a response written on the card?

A. Yes, there is.

Q. What, who wrote it?

A. Kim Hubbard.

Q. What is the response?

A. "Yes."

Q. Did he also sign the card?

A. He signed on the front, "Kim L. Hubbard".

Q. Is the time noted on there?

A. 1:58 .

Q. Who put that there?

A. I did.

Q. After you advised Mr. Hubbard of his rights, what, if any questions, did you ask him?

A. I asked him three questions.

Q. What were those questions and what were the responses?



Corporal Houser.

*Profess. Suspect?*  
↓

By Mr. Pierro:

I would like to have the record show that this Officer is reading from a document, he is not testifying from memory.

By The Court:

Officer, you testify from your own recollection first and if you have no independent recollection, then see that Mr. Pierro sees the sheets or you may see them regardless, Mr. Pierro.

By Mr. Pierro:

He just looked at them.

By The Court:

You may see them if you care to.

By Mr. Pierro:

I will if it is appropriate.

By The Court:

Show them to Mr. Pierro. You testify from your own recollection, if you have none you may refresh your recollection. You are entitled to see the entire paper.

By Mr. Pierro:

Why are you folding it?

By Mr. Ertel:

It is an interview with another man, it has nothing to do with this, but if you would like to look at it, you can any time that you like.

By The Court:

You are entitled to see the entire paper.

Corporal Houser.

By Mr. Ertel:

Q. What questions did you ask him?

A. I asked him if anyone other than himself drove his car and he said "No."

Q. What else did you ask him?

A. I asked him then would it be safe to assume on the 19th of October, would it be safe to assume he was driving his car, and he stated "Yes".

Q. Was there anyother question?

A. There was, but I don't recall what it is right at the present time.

Q. Do you have that written on your sheet?

A. Yes.

By The Court:

You may complete looking at that first, Mr.

Fierro.

By Mr. Fierro:

I don't want it shown to him, your Honor.

By The Court:

Q. You have no independent recollection of what the third question was?

A. No, Sir.

Q. Are these your notes?

A. Yes, Sir, these were typed immediately after he left.

Q. You may refresh your recollection, not read from it, just refresh your recollection, otherwise it will be past recollect-

Corporal Houser.

ion recorded if it does not refresh it.

By Mr. Ertel:

Q. What was the third question, if you recall?

A. "Then from the time that the girl was missing to date, has anyone else driven your car?", and the answer was "No.".

By Mr. Fierro:

I object, he previously stated that that is not the third question.

By The Court:

No, Sir.

By Mr. Ertel:

That is independent and different question.

By The Court:

By my notes it is different than the first.

By Mr. Ertel:

Q. What happened after you asked him those three questions?

A. I believe Kim left, left the building.

Q. You no longer talked to him at that point?

A. No, Sir.

Q. Cross examination.

#### CROSS EXAMINATION

By Mr. Fierro:

Q. I would like to see that sheet. Now, let's see, you said you asked him three questions and they are on this sheet?

Corporal Houser.

A. Yes, Sir.

Q. One of your answers to a question that you put to him you said was that if his car was driven and seen on October 19th that he would be the person who was driving it, is that the, that is the question you asked him you said and he answered you he said, "Yes, that would be true.", is that correct?

A. Yes.

Q. And you specifically said that one of those questions that you inserted the date, that "If your car was driven on October 19th, you would have been the person who drive it?" correct?

A. Yes.

Q. That is the question you asked him?

A. Yes.

Q. And you said the three questions are on this sheet, didn't you?

A. Yes.

Q. Will you show me on this sheet any question that you asked him about pertaining to October 19th?

A. There is no date as far as the October 19th. The question would be "From the time that the girl was missing..."

Q. Officer, didn't you testify that you asked him a question about if his car was driven on October 19th that he would be the one who drive it, you said that question was on this sheet, didn't you?

A. I did.

Corporal Houser.

Q. And it is not on that sheet, is it?

A. If I said this, I was in error.

Q. You were in error. Please let me have the sheet again. Now, I noticed when you were answering one of these questions you have a notebook opened in front of you, don't you?

A. Yes.

Q. And what you are looking at, does that contain also notes of this particular interview with Kim?

A. No, Sir, it does not.

Q. Okay. Are these the questions that you asked this boy that day?

A. Yes, Sir.

Q. I see that the District Attorney was present, correct, Chief Smith and Captain Ross and Trooper Jones, and I suppose Trooper Gomb, it just says "Gomb", and Corporal Barto and Lieutenant Hynick and Sgt. Peterson?

A. Yes, Sir.

Q. And you, now were all of you people questioning him?

A. No, Sir.

Q. Well, I mean one at a time?

A. No, Sir.

Q. Were you the only person that questioned him?

A. No, Sir.

Q. Well, then others were questioning him?

A. Others were asking questions yes, Sir.

Q. I Mean of Kim Hubbard, they were asking him?

A. Yes.

*Remember  
I remember  
Always  
questions  
at  
Kim's*



Corporal Houser.

Q. Were all of these people that I just mentioned, did they all take turns questioning Kim?

A. No, Sir.

Q. Several of them?

A. I would say approximately two.

Q. Approximately two?

A. Yes.

Q. Particularly the District Attorney?

A. Yes, Sir.

Q. Just a few questions, I don't know what number the Exhibit is, but you have an Exhibit that you said contains blue jeans with red hearts?

A. Yes, Sir.

Q. Are you saying that the blue jeans with the red hearts, that that piece of clothing was not on the victim's body when the victim was found?

A. That is correct.

Q. Well, the piece of jeans, dungarees, whatever they may be called, that was found on Jennifer's body, did it have red hearts on the knees?

A. No, Sir.

Q. It did not?

A. No, Sir.

Q. There was apparently between the feet, Jennifer's feet and the edge of this lane, this farm lane, there was approximately a 15 foot spread there, isn't there?

A. I didn't measure it, Sir.

Corporal Houser.

Q. You don't have to?

A. I would not think it would be 15 feet.

Q. What do you think it would be?

X A. Six to eight feet.

Q. Now, in that six to eight feet between the edge of the lane and where Jennifer's feet were, were there any footprints? *see Miller's Testimony*

A. I did not check this area, Sir.

Q. Well, you were there at the body?

A. I was standing out on the road or on the.... *Pat 263*

Q. How close did you get to the body, Corporal?

A. When, at one time the first approach in touching distance.

Q. How close did you get to the feet?

*Jennifer Moved*  
A. I assisted in moving the girl's body to the east.

Q. All right, well, then you were close enough, you were within a few feet, 10 feet to the edge of the lane, weren't you?

A. Yes, Sir.

Q. You were standing where the body was lying, because you helped move it, is that correct?

A. That is correct.

Q. Did you find any footprints between the girl's feet and the lane?

A. I did not observe any, Sir.

Q. You mean you didn't look?

Corporal Houser.

A. I didn't approach the body from this general direction.

Q. No matter which way you approached, you mean you didn't look where the girl's feet were?

A. Mr. Fierro....

Q. Just answer the question.

By Mr. Ertel:

I think he can answer the question, and I think that he is entitled to.

By Mr. Fierro:

I know he is entitled to, and I want him to answer the question.

By Mr. Ertel:

Why did you cut him off when he said, "Mr. Fierro"?

By Mr. Fierro:

I know my own name, I would just like to have an answer to the question.

By The Court:

Read the question.

(Official Reporter read question as follows: "Q. No matter which way you approached, you mean you didn't look where the girl's feet were?")

By The Court:

You can answer it "Yes" or "No"?

A. At what time, Mr. Fierro?

*He means at which scene*



Corporal Houser.

By Mr. Fierro:

Q. You pick the time?

By Mr. Ertel:

I object to the question.

By Mr. Fierro:

I want him to pick the time as to when he looked in the neighborhood of the girl's feet, I don't know what time that was, he said to me, "What time?", now you tell me?

A. At no time did I go from the girl's feet out to the lane, in that direction.

Q. I didn't ask you if you went there?

A. I didn't observe any.

Q. What I am trying to find out, and if you know, or if you can tell me who knows, I want to know whether anybody saw any footprints between the lane and the girl's feet, and you don't know that, do you?

A. No.

By Mr. Ertel:

I would be happy to stipulate that we have an Officer in the Court Room who examined that area.

By Mr. Fierro:

I would like to know what he knows about it too.

By The Court:

This is the witness on the stand.

By Mr. Fierro:

Q. How many times did you talk to Kim Hubbard?

A. My recollection is twice.

Corporal Houser.

Q. Once at Borough Hall?

A. Yes, Sir.

Q. Where was the other place?

A. Just east of Kim's home.

Q. You mean outside on the street?

A. Yes, Sir. Kim was sitting on the front porch of the house and Chief Smith and I drove by.

Q. Were you active in this investigation, that is to say other than what you testified to about collecting materials and transporting them to Harrisburg and the like? I am not interested in that custodial feature of your investigation, did you do anyother investigation, for example like going door to door or trying to find witnesses or things of that nature?

A. Yes, Sir, I did.

Q. Were you one of the Officers who were stopping cars showing a picture of a young man, with dark hair, around age 30, driving a light colored Pontiac, were you one of them?

A. Yes, Sir, I was.

Q. How many days did you do that?

By Mr. Ertel:

I object to this, it is totally irrelevant.

By Mr. Fierro:

Not too much, because we intend to show....

By The Court:

Do you expect to follow it up why it is material?

*Alfred  
Suspect*

Corporal Houser.

By Mr. Fierro:

We intend to show that the Commonwealth.....

By Mr. Ertel:

I object to this, may we have it at Side Bar?

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

By The Court:

Proceed, Mr. Fierro.

Q. Do you recall the question, Sir?

A. No, Sir.

Q. Read the question back?

(Official Reporter read question as follows: "Q. Were you one of the Officers who were stopping cars showing a picture of a young man, with dark hair, around age 30, driving a light colored Pontia, were you one of them?")

By The Court:

The objection is over ruled, you may answer?

A. Actual checking vehicles, stopping cars on the street, one day.

By Mr. Fierro:

Q. How many days did you do that?

A. Actual stopping, just one day.

Q. I assume that is a working day, like around eight hours?

A. No, Sir, only one time.

Q. What does that mean, "a time"?

A. Approximately an hour and a half.

Q. Did you do it at anyother time or is just that one

Corporal Houser.

day?

A. I didn't.

Q. Somebody else did?

A. Possibly.

Q. Don't you know?

A. No, Sir.

Q. Without mentioning names, do you know whose photograph you were showing?

A. I don't recall the name now, Sir.

Q. But you knew it at the time?

A. Yes, Sir.

Q. And you showed a photograph of a man about aged 30?

A. Yes, Sir.

Q. Dark hair?

A. Yes.

Q. Owned a light Pontiac?

A. Yes.

Q. How many people did you stop and show that photograph to?

A. I probably showed it to maybe 20 or 30 people.

Q. Now, did you stop and show people Kim Lee Hubbard's photograph?

A. No, Sir.

Q. Never?

A. No, Sir, not at that time.

Q. Well, when I say "never", you say "Not at that time.", I don't understand you?

Corporal Houser.

A. I didn't.

Q. You didn't, I am asking you did you ever show Kim Hubbard's photograph?

A. No.

Q. Now, outside of this one photograph of this man, age 30, did you show anyother photograph?

A. I didn't.

Q. Other people did, other Officers did that you know of?

A. I don't know.

Q. Were you one of the Officers in the course of your investigation that tried to find out where Kim Lee Hubbard may have been let's say between the hours of say 4:00 and 500?

A. Yes, Sir.

Q. Did you check the neighborhood?

A. Yes, Sir.

Q. That is where Kim lives?

A. Yes.

Q. Did you check next door to where Kim Lee lives, that would be on the north side of West Central Avenue and towards the east, that would be the Grimes' family, did you check there?

A. I didn't, Sir.

Q. You didn't?

A. No.

Q. What area were you checking?

A. I recall checking one home, which would have been on the northwest corner of the alley.

Q. Just the one home?



Corporal Houser.

A. In that area, yes, Sir, that is it.

Q. And in the course of your investigation, did you che to find out whether or not there were any cars similar to Kim Lee Hubbard's especially in the South Williamsport area? Did you?

A. I didn't, Sir.

Q. You didn't?

A. No.

Q. Do you know, Officer, whether or not there are cars exactly like Kim's, that is color and construction, model number and soforth in that area?

A. Well, I suppose there is.

Q. You suppose there?

A. I would imagine there is quite a few in the area.

Q. But how about some or even another one that is even damaged in a similar fashion?

By Mr. Ertel:

I object.

By Mr. Fierro:

I want to know if he knows through his investigation.

By The Court:

Q. Do you understand the question?

A. Yes, Sir.

Q. You may answer?

A. It would be highly unlikely.

By Mr. Fierro:

Q. It might be highly unlikely, but do you know such

Corporal Houser.

cars exist?

A. I have no actual knowledge.

X Q. You didn't assist, as I understand in the lifting of the various prints, did you?

A. No, Sir.

Q. How many tires did you take down to Harrisburg? You took more than four, didn't you?

A. Yes, Sir.

Q. I only see four here, how many did you take down to Harrisburg?

108 4.12 X A. I took some from a vehicle owned by the State, from the Environmental Resources.

Q. That is because there was some snow tire tracks in the area of the lane, the farm lane that we are talking about?

A. Yes, Sir.

Q. Did you examine that farm lane closely when you were over there, or didn't you?

A. I did not.

Q. That is all.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Officer, you said you took some other tires down to Harrisburg, would you describe how you took those down there?

A. I went to the Environmental Resources' Office and drove it, the Scout to Harrisburg, and I was there while they

Corporal Houser.

took them off of the vehicle in the garage and took them in to the Crime Laboratory.

Q. Were those tires put back on then?

A. They were brought back from Harrisburg and put back on the same vehicle at the State Police Garage in Montoursville.

Q. Were you present when that was done?

A. No, Sir, I was not.

Q. Now, Officer, you had a photograph, as Mr. Pierro pointed out, of an individual when you stopped some cars, can you tell us was that prior to the time the body was found?

A. Yes, Sir, it was.

Q. Officer, I hand you what is your report and you stated that there was something incorrect, are they verbatim questions on that report?

By Mr. Pierro:

I object to this.

By Mr. Ertel:

It is obvious, at this point I would introduce this and mark it as past recollection recorded, because he now does not have the absolute correct recollection of that and I would like to put those in for that purpose.

By The Court:

Any objection to the report going in?

By Mr. Pierro:

Yes.

By The Court:

That objection is sustained, but the other objection



Corporal Houser.

is over ruled. The question is are they verbatim questions on that report?

A. Are they questions I asked?

By Mr. Ertel:

Q. Yes?

A. Yes, Sir, the three questions are on here.

Q. Are they as nearly as you asked them at that time?

By Mr. Fierro:

I object to this, he is leading.

By The Court:

Refrain from leading your witness.

By Mr. Ertel:

Q. Would you look at that and refresh your recollection and testify as nearly as possible to what you asked Kim.....

By Mr. Fierro:

I object, we have gone over this.

By The Court:

The objection is over ruled.

By Mr. Ertel:

Q. Let's start with question number one.....

By Mr. Fierro:

Then I will renew my objection, he is going to start all over.

By The Court:

May I see Counsel?

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

By The Court:

The objection is over ruled, you may answer, Sir.

A. Well...

By Mr. Ertel:

Q. What was question number one?

By Mr. Pierro:

Your Honor, I object, first he must do it from his memory.

By The Court:

Q. You have no independent recollection specifically?

A. No, Sir.

Q. Now you may refresh your recollection and then give the answer, but not read from the paper.

By Mr. Pierro:

Your Honor, I object. Let the record show that this Officer did refresh his recollection at least twice, once when I showed it to him and once when the District Attorney showed it to him.

By The Court:

The Court understands that, Sir.

By Mr. Ertel:

Q. Number one, would you tell us what question number one was and what the response was?

A. "Has anyone ever driven....", just a minute until I gather myself. If anyother persons drive his car.

Q. What was his answer?

A. "No."

*Must proceed out!*

Corporal Houser.

Q. What was question number two?

A. "From the time the girl was missing until this date, has anyone driven your car?"

Q. The answer?

A. "No."

Q. What was question number three?

A. "Then if your car was seen, would it be safe to assume that you were driving it?"

Q. His answer?

A. "Yes."

Q. No further questions.

RE-CROSS EXAMINATION

By Mr. Pierro:

Q. Go all over it again, there is nothing in there about October 19th, is there?

A. No, Sir.

Q. But you said at one time there was, didn't you?

A. Yes, Sir.

Q. All right, by the way, I know that you have some other notes there, and you were asked about the time you were showing this photograph around, was that on West Central Avenue that you were showing this photograph of this young man, 30 years old, with a light Pontiac?

A. It was on the same street that Kim lives on.

Q. That is West Central Avenue?

A. Yes.

Q. Now, in your notes, did you keep some sort of log,

some sort of record as to when that was done?

A. No, Sir, I did not.

Q. You didn't do that?

A. No, Sir.

Q. Are you sure that it wasn't done after her body was found?

A. To my recollection, no.

Q. Your recollection of that is as good as your recollection as it was October 19th in that letter, is that right?

By Mr. Ertel:

Objection.

By The Court:

The objection is sustained.

By Mr. Pierro:

Nothing further.

By Mr. Ertel:

Thank you, Officer.

(Excused from witness stand.).

H. LUTHER DIEFFENBACHER, being duly sworn according to law, testified as follows:

By Mr. Pierro:

I would like to have an offer.

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

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. H. Luther Dieffenbacher.

some sort of record as to when that was done?

A. No, Sir, I did not.

Q. You didn't do that?

A. No, Sir.

Q. Are you sure that it wasn't done after her body was found?

A. To my recollection, no.

Q. Your recollection of that is as good as your recollection as it was October 19th in that letter, is that right?

By Mr. Ertel:

Objection.

By The Court:

The objection is sustained.

By Mr. Fierro:

Nothing further.

By Mr. Ertel:

Thank you, Officer.

(Excused from witness stand.).

H. LUTHER DIEFFENBACHER, being duly sworn according to law, testified as follows:

By Mr. Fierro:

I would like to have an offer.

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

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. H. Luther Dieffenbacher.

Dieffenbacher.

Q. Your occupation?

A. I am Supervisor for the Borough of Montoursville.

Q. What did you do previously?

A. I worked for Kremser Brothers' Contractors.

Q. What did you do for them?

A. I was Equipment Operator.

Q. On the 19th of October, 1973, did you have the occasion to be in the Sylvan Dell area?

A. Yes, I did.

Q. What were you doing in the Sylvan Dell area on that date?

A. I was running a bulldozer for the Atlantic Richfield at their Bulk Plant. *W/H?*

Q. That would be over in the Sylvan Dell area?

A. Right.

Q. Prior to the time you went to the Sylvan Dell area, where had you been with that bulldozer?

A. We moved the bulldozer from Dye-Tex in Montoursville over to the Sylvan Dell, over to the Atlantic-Richfield.

Q. Would you describe the type of soil or material you were working in at Dye-Tex?

A. We had a pit we were filling in at Dye-Tex, and we had a yellow clay material.

Q. Was it wet?

A. Very wet.

Q. And was there some of that material on your bulldozer when you went over to the Sylvan Dell area?

Dieffenbacher.

A. Yes, the bulldozer was, the tracks were loaded pretty good with this material and we wanted to go over there and wanted to get back before noon, so we just sort of loaded it up and took it over.

Q. You didn't clean it, in other words, before you went over?

A. No.

Q. Now, can you describe where you off-loaded that bulldozer on that day?

A. They have a regular right-of-way through the cornfield that we, where I unloaded it, I unloaded it on this right-of-way and walked it across the cornfield and up over the dike in back of the Bulk Plants.

Q. I show you identified as Commonwealth's Exhibit No. 27, which is the same as Commonwealth's Exhibit No. 37, can you describe, looking at that photograph, can you describe the road you used?

A. Yes.

Q. What road did you use?

A. We walked up this, this is the Sylvan Dell Road here, and I unloaded it right here and walked up this right-of-way, and right up over the dike and did some work.

Q. Now, you say you "walked", what you, what do you mean by "walked"?

A. Walked the machine, run the machine up, we unloaded it off of the trailer and ran the machine up there.

Q. You drove the machine up there?

Dieffenbacher.

A. Right.

Q. By "walk" you mean drive?

A. Correct.

Q. Now, what time approximately did you go over there?

A. Well, it was quite late in the morning, I would say it was after 10:00 probably by the time I got there, it was after 10:00.

Q. Now, as you went up that road was there any indication of travel over that roadway, could you look at the roadway, what was in the paths and so on?

A. I didn't notice anything, the roadway is nothing but a right-of-way across the field, and at that time it was, there was some grass in it, but I didn't notice any tracks in it, no, not fresh.

Q. Now, after you got done with your work over at the ARCO Bulk Tank there, what did you do after that?

A. Well, we came back to the point where I would load it back on the trailer.

Q. Were you still in the road, in the lane, the farm lane at that time?

A. Oh, yes.

Q. What did you do before you loaded that onto the trailer?

A. Well, we had moved the trailer off of the highway and taken it over to the area of the garage for Atlantic-Richfield and while I took, while I went back to the road I had the trailer brought back to me and while he was bringing it back I cleaned the



Dieffenbacher.

material off of the dozer. I cleaned the mud and stuff off of the tracks of the dozer.

Q. Where were you at that time?

(A) Close to the mouth of this right-of-way.

Q. And approximately what time did you leave there then that day?

A. Well, this had to be just about, just about 12:00, almost right around 12:00.

Q. No further questions.

CROSS EXAMINATION

By Mr. Pierro:

Q. What you are telling us you transported a load of wet clay-type soil over in that area and dumped it someplace, is that correct?

A. No.

Q. What did you bring over there?

A. We brought a bulldozer over to do some work.

Q. Well, wasn't there something about this bulldozer that had wet clay of some sort?

A. Yes, it did.

Q. On it?

A. Yes.

Q. And you going along the road you dropped some of it, dribbled some along the road, is that right?

A. Not really we, before I loaded it back on the trailer I cleaned it off in the lane, I cleaned the mud off of it and put it, before I put it back up on the deck of the trailer.

Dieffenbacher.

Q. Where did you clean this mud, you say the mouth of the lane?

A. Yes.

Q. Then any car or anyother vehicle that would go in and out of that lane would track it out on the road?

A. Possibly.

Q. It was a wet, clay-type you said?

A. Yes.

Q. That is all.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. When you say close to the mouth of the road, can you give us an approximation from the Sylvan Dell Road, about how far back you cleaned it?

A. Well, we would pull, we pulled the trailer in off of the berm of the road and then you lay blocks down on it to crawl up on the trailer, so I would say the length of the machine at least back off of the road, maybe 20 - 25 feet approximately.

Q. Thank you.

By Mr. Fierro:

Nothing further.

(Excused from stand.).

Brouse.

PAUL A. BROUSE, being duly sworn according to law,  
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

By Mr. Fierro:

Do you want to tell me?

By Mr. Ertel:

The same thing.

By Mr. Fierro:

Go ahead.

By Mr. Ertel:

Q. State your name?

A. Paul A. Brouse.

Q. Where do you live?

A. Montoursville, 211 Streibeigh Lane.

Q. What is your occupation?

A. I work for Kremser Brothers as an Equipment  
Operator.

Q. Returning to the 19th of October, 1973, did  
you have the occasion to be in the company of "Boots"  
Dieffenbacher and transporting a bulldozer?

A. I sure did.

Q. Where was that bulldozer prior to the time  
you transported it? Where were you initially on that day?

A. Down at Dye-Tax working.

Q. Was the soil down there wet, clay soil?

Brouse.

A. Yes, it was.

Q. And did you take that bulldozer over to the Sylvan Dell area?

A. Yes.

Q. And did you unload that bulldozer at the mouth of a farm road which went back to the ARCO Bulk Tank?

A. Yes.

Q. And what did you do after that?

A. I put the blocks down and I moved the trailer down to the Atlantic Refinery Plant.

Q. Did you operate the bulldozer at all?

A. No, I did not.

Q. Approximately at 11:45 to 12:00 Noon, did you come back around and pick up the bulldozer?

A. Yes.

Q. Did you see "Boots" Dieffenbacher clean the bulldozer?

A. No.

Q. Was the bulldozer cleaner when you got it back on the vehicle than it was when you took it off?

A. Yes.

Q. Did the dozer have a lot of mud on the tracks from the Dye-Tex job?

A. Yes.

Q. What time did you get back to Montoursville?

A. About 12:30.

Q. Thank you.

Brouse.

By The Court:

Mr. Fierro?

By Mr. Fierro:

Q. Did any of this mud as you were going down the Sylvan Dell Road, for example, the jolting of that vehicle knock some of it loose?

A. You mean onto the black-top, Sir?

Q. Yes?

A. Not that I could, I was not watching for that, no, it could have.

Q. It could have?

A. Sure it could have.

Q. Lots of times we see mud on a highway, it gets there because it comes off of some truck wheels or something, isn't that right?

A. That is right.

Q. Besides this thing you transported the dozer on, I don't know what you call it, I suppose it was a flat bed?

A. Low bed.

Q. With a lot of wheels?

A. Right.

Q. And you had to, where ever you got this dozer from, you had to bring this flat thing down there to get it, didn't you?

A. Yes, we did.

Q. To get onto the same kind of soil, as a matter of fact, right?

Brouse. - Kremser.

A. Well, there was probably some spilled on the road where we loaded it, yes.

Q. And I said where you got the dozer, you had to bring this flat bed transportation thing down there to where that soil was, you had to get some of that soil on all of them wheels, didn't you?

A. Right.

Q. That is all.

By Mr. Ertel:

No further questions.

(Excused from the witness stand.).

PAUL L. KREMSER, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Paul L. Kremser.

Q. Your occupation?

A. Contractor.

Q. How long have you been a contractor, Mr. Kremser?

A. 27 years.

Q. Is that basically earth moving?

A. Pardon?

Q. Is that basically the earth moving type?

A. Yes, Sir.

Q. Where is your place of occupation?

A. Montoursville.

Brouse. - Kremser.

A. Well, there was probably some spilled on the road where we loaded it, yes.

Q. And I said where you got the dozer, you had to bring this flat bed transportation thing down there to where that soil was, you had to get some of that soil on all of them wheels, didn't you?

A. Right.

Q. That is all.

By Mr. Ertel:

No further questions.

(Excused from the witness stand.).

PAUL L. KREMSER, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Paul L. Kremser.

Q. Your occupation?

A. Contractor.

Q. How long have you been a contractor, Mr. Kremser?

A. 27 years.

Q. Is that basically earth moving?

A. Pardon?

Q. Is that basically the earth moving type?

A. Yes, Sir.

Q. Where is your place of occupation?

A. Montoursville.

Kremser.

Q. Now, did you have a crew that did work at ARCo on October 19, 1973?

A. October 19th, that is right.

Q. You have the date book with you that shows that they were there?

A. Yes, Sir.

Q. That is your record?

A. Yes, Sir.

Q. Now, did you have occasion to ever be in that area, in the Sylvan Dell area to work with the dirt there?

A. Yes, Sir.

Q. Can you describe the type of dirt that is in the Sylvan Dell area?

By Mr. Pierro:

I object, unless this man is qualified as a soil expert, otherwise if it is something that can be determined by factual testimony, then it is up to the Jury. He has not been qualified as a soil expert.

By The Court:

First limit what area we are talking about?

By Mr. Ertel:

Q. Specifically the area in the ARCO Plant area and the Sylvan Dell area where the Bulk Plants are over there, do you know where that area is?

A. Yes.

Q. Have you worked the soil on occasions?

A. Yes.



Kremser.

Q. Have you been present when that has been done?

A. Yes, Sir.

By The Court:

Now establish the approximate date?

By Mr. Ertel:

Q. When was the last time you were over there?

A. We were over there twice last year, I was there, oh, probably <sup>5</sup>four months before the 19th and we did another small job.

By The Court:

The objection is over ruled, I will permit it.

By Mr. Ertel:

Q. What is the soil like there?

A. It is a sandy soil.

Q. Is it what you might call a crumbly soil?

A. No, it is sandy, loamy soil.

Q. Will you describe that, if you can?

A. Well, it is rock free, and a lack of clay, let's say. It is not the "gumbo" clay-type soil, and it is not the sand and gravel type soil that we might have at Montoursville.

Q. So your best description it is sandy-loamy soil, is that right?

A. Yes.

Q. Did you do a job down at Dye-Tex?

A. Yes, Sir.

Q. When was you doing that job? I can help you, if you look around the 18th or 19th of October?

Kremser.

A. Our dozer was there and finished the Dye-Tex job on the 19th of October.

Q. What was the Dye-Tex job, what was the problem there, what were you doing?

A. We had excavated an excavation approximately 40 by 60, and six foot deep, prior to this, like months before, and then the land owner wanted us to cover this hole back up again. The purpose of the excavation was to run some cooling water in this hole from the dye vats inside, it is Borough water coming out at Borough water pressure, it cools the vats, and then they wanted to put it in this hole, and the man that owns the ground wanted this hole covered up.

Q. What was the result of this when you put your bulldozer in there?

A. Well, we had an opportunity to get some dirt from the Sylvania Plant near Muncy, that is the Pennsdale area, and we got a thousand or so yards of dirt down there, and we hauled it up to the Dye-Tex Plant and filled this hole with this type soil.

Q. What type soil was it?

A. This was a very heavy, clay-type soil.

Q. That heavy, clay-type soil, what happened when it got in that particular hole with the water?

A. Well, it was nice and dry around there when we hauled the dirt in, but this pipe that was down at the bottom of this excavation, it was constantly being used to cool these vats, and since it was at Borough water pressure, approximately 45 pounds

Kremser.

it would come to the surface after we backfilled in this excavation, the water came to the surface and covered over this here clay-type soil and made a quagmire of mud.

Q. So when you drove your bulldozer in there, what would happen?

A. Well, it got on the tracks and stuck fast to everything.

Q. Now, that type mud that you put in there, that clay-type mud, you were not over in the Sylvan Dell area on the 19th, or were you?

(A. No, Sir.)

Q. Are you familiar with that clay-type mud soil as far as what it does when it dries?

A. I think I am qualified to say I would be, yes.

Q. Describe what it does as it dries?

A. Well, it stays mushy for some time, I would say maybe a day and a half, two days, depending on the consistency of the water in it and how much sunlight there is shining on it, and then after it gets pretty dry why it is what we might call bony, or if you step on it or drive on it, it would crack and crumble.

Q. If you drive on it during that period of time when it is still in the wet state, what happens from your observation?

A. If you drive on it.

Q. Drive a car through it?

A. You would have an imprint of a tire mark.

Q. That is all.

Kremser.

430.

By The Court:

Mr. Pierro.

CROSS EXAMINATION

By Mr. Pierro:

Q. Mr. Kremser, as you know, one of your flat bed trailers took this dozer over, whatever it was, over to this Sylvan Dell area on October 19th?

A. Yes, Sir.

Q. And you know that that flat bed trailer also had on the underpart of it and on the wheels the same type of red clay that you are talking about, because it had to go down to this area to get this tractor or dozer, right?

A. No, I would not be aware that that would be the case. We would not drive in this mud with this tractor and trailer because you would never get out of the mud if you drove in there with that tractor and trailer.

Q. You would not?

A. No.

Q. Well, remember making this statement that some of that dirt could have fallen off a flat bed trailer or the trucks while going back and forth to Sylvan Dell?

A. No, I don't believe I made that statement.

Q. You don't?

A. No.

Q. Well, this red, clay-type of stuff that is on this trailer, could some of that have fallen off this dozer or something as it was being transported?

A. I would imagine there would be this red type clay on

Kremser.

the flat bed trailer that would have jiggled off the bulldozer in unloading.

Q. There would be some of this stuff on the flat bed trailer as you are going along the road, some of it would jiggle off as you put it?

A. It might jiggle off out there on the black-top road. It is not impossible, but it would be very little quantity.

Q. There was a driver, man, I don't know if he was a driver or not who said that when this flat bed trailer went down to pick up the trailer, the man who just testified before you, said that that this flat bed trailer did get this red clay material on the wheels, are you disagreeing with what he said?

By Mr. Ertel:

I object to that, that is not what he said.

By Mr. Piero:

That is exactly what he said.

By Mr. Ertel:

He said it was possible.

By The Court:

The objection is sustained, reword your question.

By Mr. Pierro:

Q. Well, Mr. Kremser, is it possible this flat bed trailer when it went down to this factory, or whatever you called it, to pick up this dozer would have gotten some of this red clay material on it?

A. On its' wheels?

Kremser.

Q. Anywhere on it?

A. It is possible it got it on the deck when they loaded that machine, I would imagine some fell off on the floor of the trailer, yes, Sir.

Q. But how about on the wheels?

A. If some got on the wheels, I would imagine it certainly would have fallen off there.

Q. You are just imagining this?

A. I was not there.

Q. That is all, you were not there, no further questions.

By The Court:

Anything further?

By Mr. Ertel:

No, thank you.

(Excused from witness stand.).

By The Court:

The Court is going to adjourn. The Defendant may leave. The Jury may leave. Court is adjourned.

By Mr. Fierro:

If you want a rooting section.....

By The Court:

Just a minute, Gentlemen.

If there are any comments from the audience, the Court will clear the audience.

By Mr. Fierro:

That first row has been doing it all day.

By The Court:

That has not been called to the Court's attention.

Tomorrow the Court is going to convene at 9:30. The only door to the Court that will be open is the east, side door. The witnesses and family will identify themselves, and be admitted by the Sheriff, other than that it will be restricted to the capacity of the Court Room because there is nothing else in the Court House that will be open tomorrow except the Court Room. Court is adjourned.

(Adjourned at 6:00 P.M., EDT.).

Bittle.

And Now, to-wit, Saturday, February 23, 1974, beginning at 9:30 A.M., EDST, the trial in the above-captioned matter was continued before the Honorable Charles F. Greevy, President Judge, and a Jury, in Court Room No. 1, at the Lycoming County Court House, Williamsport, Penna., at which time and place the following proceedings were had:

By The Court:

Mr. Ertel.

By Mr. Ertel:

Richard Bittle.

By Mr. Pierro:

I want an offer, your Honor.

By The Court:

Talk to Mr. Ertel there a moment.

(Conference between Mr. Ertel and Mr. Pierro.).

By Mr. Pierro:

All right, your Honor.

RICHARD L. BITTLE, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Richard L. Bittle.

Q. Your occupation?

A. I am hired by the State Department of Environmental Resources.