

Robert Faust.

And Now, to-wit, Monday, February 25, 1974, beginning at 9:00 A.M., EDST, the trial in the above-captioned matter was continued before the Honorable Charles P. Greevy, President Judge, and a Jury, in Court Room No. 1, at the Lycoming County Court House, Williamsport, Penna., at which time the Defendant was present with his Counsel, and the following proceedings were had:

By The Court:

Proceed, Mr. Ertel.

ROBERT FAUST, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Robert Faust.

Q. Your occupation?

A. Owner of a service station.

Q. Sthat service station?

A. Poole's Service Station in South Williamsport, Poole's Sunoco.

Q. Did you have the occasion to have the tire changed on Kim Hubbard's vehicle?

A. Yes, Sir.

Q. Can you tell us approximately when that was?

A. It was on the 29th of October, I believe.

Q. What happened on that occasion, how did it come about?

Robert Faust.

A. Mr. Hubbard, that is Kim's Father called me up and said that Kim had a flat tire on his car, would I come up and change it because I had promised to put another tire on his car for him because this had gone bad because of excessive wear.

Q. Did you send somebody up?

A. I sent one of my helpers up to bring the tire down.

Q. Did he bring the tire and rim both?

A. He brought the tire and rim both and I proceeded to put a new tire on.

Q. What did you do with the old tire?

A. Put it alongside of the station.

Q. Did you subsequently turn that over to the State Police?

A. That is correct.

Q. Can you identify that tire?

A. I believe so, yes.

Q. I show you marked as Commonwealth's Exhibit No. 90, can you identify that as the tire?

A. That is the tire, Sir.

Q. How can you identify it?

A. Well, first of all I have, it is a Kelly-Springfield Mark 78 Tire, and I have the Federal registration numbers on it, we register each tire when we sell it.

Q. You register it to a particular individual?

A. Yes.

Q. And it was registered to Kim Hubbard?

Robert Faust.

Handwritten notes:
Circled '31' with 'S' above it.
Circled '6/14/51' with 'S' above it.
Circled 'Suspect'.

A. Yes.

Q. You compared that number with this tire?

A. Yes.

Q. It is the tire?

A. Yes.

Q. Cross examination.

By The Court:

Mr. Pierro?

CROSS EXAMINATION

By Mr. Pierro:

Q. Mr. Faust, how long was this particular tire laying outside of your garage before it was turned over to the Police?

A. Maybe a couple of hours.

Q. This tire known as Exhibit No. 90 you say was turned over to you on October 29th?

A. I believe it was the 29th, I am almost certain.

Q. Do you know when you sold this tire, that is Exhibit No. 90 to Kim Hubbard?

A. I am, approximately I sold a set of tires, I believe it is June.

Q. In June?

A. Yes.

Q. Does that sale in June include this Exhibit No. 90?

A. Yes.

Q. When you say you sold a set, does that mean four or two?

A. Four, Sir.

Robert Faust.

Q. But this is the tire that went bad and you exchanged or gave something like it for that?

A. That is correct, Sir.

Q. When you sold him these tires in June, were they all Kelly-Springfield's?

A. I believe they were, Sir. There is a possibility there might have been two recaps, I know two were Kelly-Springfields. Two new ones at least.

Q. Did this tire, Exhibit No. 90, come from a rear or front set?

A. That came from a front set.

Q. Is there anything unusual about Kelly-Springfield tires or are they mass manufactured?

A. They are mass manufactured.

Q. This type of tire would be common even in this area?

A. Yes.

Q. This type of size tire would be common?

A. Yes.

Q. As a matter of fact, as a dealer you probably can say that there may be hundreds or even thousands of similar tires in this area?

A. This is possible.

Q. However, this tire, Exhibit No. 90, obviously would be newer than the ones you sold in June unless it was a used tire? This Exhibit No. 90?

Robert Faust.

A. Is that the one that is worn, Sir?

Q. October 29th, I don't know, Mr. Faust, if it was worn or not, it is Exhibit No. 90, I suppose it is the one you removed.

A. The one I removed from the car was worn.

Q. This one hear?

A. Could I see that again, please?

Q. Sure, come right down and look?

A. Yes, Sir, that is the one I removed.

Q. This one in Court known as Exhibit No. 90 is the one you removed and it is the one that you sold sometime during June?

A. That is correct.

Q. We are now talking about October 29th when you got this particular tire known as Commonwealth's Exhibit No. 90?

A. Correct.

Q. It shows a great deal of wear, doesn't it, Mr. Faust?

A. Yes.

Q. There is hardly any tread on there, is there?

A. That is correct.

Q. Mr. Faust, when this particular tire, Exhibit No. 90, was turned over to you by one of your men, did you do anything to it like in particular wash it, clean it in any way?

A. No, Sir.

Q. So that whatever dirt may have had adhered to this particular tire, when you turned it over to the Police, you you turned it over to the Police the same way you got it from Kia

Robert Faust.

Hubbard's car, is that correct?

A. Except it was not on the rim.

Q. I am not talking about the rim, I am talking about whatever dirt there was on this tire?

A. That is correct.

Q. Whatever substance was on this tire, you turned it over in exactly the same way you got it from Kim Hubbard's car?

A. Yes.

Q. That is all.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Mr. Faust, Kelly-Springfield tires, are they original equipment tires or replacements?

A. Replacement tires.

Q. They don't come out as original equipment on any car?

A. No.

Q. No further questions.

RE-CROSS EXAMINATION

By Mr. Fierro:

Q. But they are common and mass manufactured, is that correct?

A. Yes.

Q. That is all.

Leon Krebs.

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

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Leon E. Krebs.

Q. Your occupation?

A. Pennsylvania State Policeman.

Q. For how long?

A. 12 years.

Q. Are you a Trooper?

A. Yes, I am.

Q. Are you assigned to the Crime Laboratory?

A. Yes, I am.

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

A. For the past two years.

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

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

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

A. Yes, it does.

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

A. At the Crime Laboratory, I would say approximately

Leon Krebs.

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10 to 12.

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

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

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

A. Yes, it did.

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

By Mr. Fierro:

Go ahead.

By The Court:

Proceed, Mr. Ertel.

By Mr. Ertel:

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

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

Q. Would you?

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

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

Leon Krebs.

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

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

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

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

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

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

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

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

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

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

A. Yes, I did.

Q. How did you get those?

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

Q. Did you examine those also?

A. Yes, I did.

Leon Krebs.

Q. Were those tires returned, to your knowledge?

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

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

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

Q. How did you go about doing this examination?

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

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

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accidental characteristics?

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

Q. Why?

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

Q. What do you mean?

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

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

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

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

A. Yes, I did.

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

By Mr. Fierro:

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

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state conclusions, only his opinions.

By The Court:

Reword your question.

By Mr. Ertel:

I believe a conclusion is an opinion.

Q. Give your opinion, please?

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

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

A. Yes.

Q. I am talking about the Environmental Resources?

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

Q. These were the Environmental Resources?

A. Yes.

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

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

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

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

By Mr. Fierro:

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

By Mr. Ertel:

Kelly-Springfields.

By Mr. Fierro:

By number.

By Mr. Ertel:

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

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

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

A. Yes, I did.

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

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

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

A. Yes, I did.

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

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

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

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

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

By The Court:

Yes, but you have to speak up.

By Mr. Ertel:

Q. Proceed?

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

Leon Krebs.

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

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

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

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

A. Yes.

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

A. Yes.

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

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

Q. Yes, which tire would it be?

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

Q. Did they compare, in your opinion?

A. Yes.

Q. What Exhibit was that, Officer?

A. That is Exhibit No. 88.

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

Leon Krebs.

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

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

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

A. Commonwealth's Exhibit No. 94.

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

A. Yes.

Q. That shows what you marked as point 3?

A. Yes.

Q. Can you show them point 4?

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

Q. Can you describe that?

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

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

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

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

A. Yes.

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

Leon Krebs.

Jury?

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

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

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

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

A. Yes, the wear patterns are similar.

Q. Can you show that to the Jury?

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

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

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

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

Leon Krebs.

A. Yes, I do.

(Commonwealth's Exhibit No. 109 marked.)

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

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

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

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

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

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

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

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

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

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

Q. Do they compare?

A. Yes, they do.

Q. Can you show that on the cast itself?

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

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

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A. Yes, Sir, I can.

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

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

Q. What is a wear bar?

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

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

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

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

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

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

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

Leon Krebs.

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

By The Court:

You have to speak up, Sir.

By Mr. Ertel:

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

A. Yes, we do.

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

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

Q. Now, where was the first one?

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

Q. How far apart are they on the cast?

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

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

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

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

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

Leon Krebs.

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

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

Q. Now, did you compare another tire?

A. Yes, Sir, I did.

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

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

A. Yes, Sir, I did.

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

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

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

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

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

A. Yes.

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

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

A. I listed nine points of comparison.

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

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

Q. Can you describe what it looks like?

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

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

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

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

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

Q. That corresponds to the mark on the cast?

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

Q. Is that sort of like a cut?

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

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

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of tread pattern?

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

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

That is correct.

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

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

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

A. Yes.

Q. What are points Nos. 2 and 3?

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

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

A. Here.

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

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

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

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

Q. They are in a triangular pattern?

A. They are.

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Q. Put your finger on them?

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

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

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

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

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

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

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

Q. No. 4, 5 and 7?

A. In sequence with this long cut.

Q. That would be No. 6?

A. Yes.

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

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

Q. No. 5?

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

Q. Point No. 6?

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

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

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

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

A. Here we have....

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

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

Leon Krebs.

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

A. Yes, I could.

Q. Did you find anymore points?

A. Yes, I did.

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

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

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

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

Q. What is point No. 9?

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

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

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

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

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

Q. Can you point out that wear bar?

Leon Krebs.

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

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

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

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

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

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

A. Yes, Sir.

By Mr. Fierro:

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

Leon Krebs.

By The Court:

Is that how you want your question to be asked?

By Mr. Ertel:

I made my question.

By The Court:

May I see Counsel?

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

By The Court:

The objection is sustained.

By Mr. Ertel:

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

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

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

A. That is correct.

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

Big Tire
Switch

Switch 89-T-92

Big Tire Switch

544.

Leon Krebs.

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

By Mr. Pierro:

To what tire does that particular Exhibit refer to?

By Mr. Ertel:

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

A. That is correct.

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

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

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

A. Yes, that is correct.

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

A. Yes, the wear patterns are similar.

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

Leon Krebs.

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

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

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

By Mr. Fierro:

What Exhibit No. is that?

By Mr. Ertel:

No. 92.

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

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

Q. All right, Officer, take the stand.

A. (Witness returned to stand.)

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

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

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

C. W. Ertel

Leon Krebs.

and 97?

A. Yes, I did examine these boots.

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

A. Yes, I did.

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

A. Yes, I did examine this cast.

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

A. Yes, I did.

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

A. Yes, I did.

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

A. Yes, I did examine this one too.

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

A. Yes.

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

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

Leon Krebs.

could be reached on my part.

By Mr. Fierro:

Please repeat those numbers again and could have made what?

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

By Mr. Fierro:

Q. Then you said what?

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

By Mr. Ertel:

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

A. Yes.

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

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

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

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

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have made this mark.

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

A. Yes, I did.

Q. Did you reach any definite conclusion on that?

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

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

A. Yes, I did.

Q. Do you have those with you?

A. Yes, I do.

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

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

A. That is correct.

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

A. Yes, I did.

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

A. Yes.

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

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

Leon Krebs.

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

A. Yes.

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

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

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

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

Q. Continue to show the Jury?

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

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

A. Yes.

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

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

Q. Continue to show the Jury?

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

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

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

Q. Is that based on unusual design?

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

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

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

Q. The left wing?

A. The left wing of the impression.

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

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

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

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

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

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

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

Leon Krebs.

Commonwealth's Exhibit No. 51?

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

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

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

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

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

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

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

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

A. Okay.

Q. Point them out here?

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

Leon Krebs.

Q. That shows up on the photograph also?

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

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

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

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

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

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

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

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

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

By Mr. Hierro:

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

By Mr. Ertel:

Do you have an objection?

Leon Krebs.

By The Court:

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

By Mr. Ertel:

Q. Exhibit No. 112 you were referring to?

By Mr. Fierro:

What part of Exhibit No. 112?

By Mr. Ertel:

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

By Mr. Fierro:

You didn't do it so well.

By The Court:

Now, just a minute, Gentlemen.

By Mr. Ertel:

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

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

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

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

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

A. That is correct.

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

Leon Krebs.

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

A. It would be the negative of this cast.

Q. All right?

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

Q. Thank you, Officer.

A. (Witness returned to stand.).

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

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

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

A. Yes.

Q. Did they compare?

A. They did compare, the measurements.

Q. Cross examination.

By The Court:

Mr. Fierro.

CROSS EXAMINATION

By Mr. Fierro:

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

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

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

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

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

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

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

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

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

A. No, I would not.

Q. You would not?

A. No.

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

A. Yes.

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

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

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

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

By Mr. Ertel:

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

(AT SIDE BAR.).

Leon Krebs.

By Mr. Ertel:

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

By The Court:

What was the statement?

By Mr. Ertel:

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

By Mr. Fierro:

I made it to my Client.

By Mr. Ertel:

I heard it distinctly.

By The Court:

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

By Mr. Fierro:

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

By The Court:

There is no need for that.

(END OF SIDE BAR.).

By The Court:

Read the question.

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

COE MANU

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

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

A. Yes, it is possible.

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

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

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

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

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

A. No, I don't.

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

A. Yes.

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

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

Krebs was... Hines boots...

Leon Krebs.

At this point they had no evidence which was

Q. That is out of your field?

A. Yes, Sir.

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

A. That is correct.

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

A. Yes.

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

A. Yes, I do.

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

By The Court:

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

A. Commonwealth's Exhibit No. 92,

By Mr. Pierro:

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

out of court

Leon Krebs.

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

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

A. Yes.

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

A. Yes.

Q. Well defined, aren't they?

A. Yes.

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

A. That is correct.

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

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

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

A. Yes, it appeared to be.

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

A. Would you rephrase that question? *

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

Leon Krebs.

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

A. You mean simultaneously?

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

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

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

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

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

* A. They could have been.

*and was not a line
before 1974 Toledo impression*

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

A. No, I can't.

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

A. Yes.

Leon Krebs.

Q. That is a sneaker-type mark?

A. It appears to be.

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

A. No, I was not.

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

A. I did not observe the scene at all.

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

A. That is correct.

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

A. No, I can't.

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

By Mr. Ertel:

I object to that question.

By Mr. Pierro:

I am asking if he knows a fact or merely stating

Leon Krebs.

an opinion.

By The Court:

Q. Do you understand the question?

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

By Mr. Fierro:

Q. Shoe?

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

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

By Mr. Ertel:

I object to that.

By The Court:

The objection is over ruled.

By Mr. Fierro:

Q. Isn't that correct?

A. My opinion....

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

By Mr. Ertel:

Let the man answer.

By The Court:

Q. Do you understand the question, Officer?

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

By Mr. Fierro:

I am not asking what his....

Leon Krebs.

By Mr. Ertel:

I object until he finishes the answer.

By The Court:

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

A. Would you rephrase your question, please?

By Mr. Fierro:

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

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

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

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

By The Court:

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

By Mr. Fierro:

Q. Proceed?

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

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

A. Yes.

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

Leon Krebs.

exacting, for example, as fingerprints?

A. Fingerprints is another field.

Q. Just answer the question?

A. Would you repeat it, please?

Q. Did you forget it?

By The Court:

Mr. Feese, read the question back.

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

A. Yes, they are.

*Answer about testimony **

By Mr. Fierro:

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

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

Q. Not evidential, evidentiary?

By Mr. Ertel:

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

By The Court:

Reword your question.

By Mr. Fierro:

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

Leon Krebs.

a fingerprint would?

By Mr. Ertel:

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

By The Court:

Q. Do you understand the question?

A. Yes.

Q. Do you feel qualified to answer?

A. Yes.

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

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

compare with answer on 565

By Mr. Fierro:

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

By Mr. Ertel:

Objection.

By The Court:

Q. Do you understand the question?

A. No.

Q. Be more specific.

By Mr. Fierro:

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

Leon Krebs.

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

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

A. I don't know.

Q. How was it made?

A. Apparently through wear or abuse.

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

A. That is correct, after it was made.

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

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

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

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

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

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

Leon Krebs.

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

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

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

By The Court:

Side Bar, Gentlemen.

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

By The Court:

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

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

(IN CHAMBERS.).

(Off-the-record discussion.).

By Mr. Ertel:

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

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

Leon Krebs.

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

Leon Krebs.

By The Court:

Is that the same in both?

By Mr. Ertel:

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

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

Leon Krebs.

By The Court:

Was that a fourth time?

By Mr. Ertel:

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

By Mr. Fierro:

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

By The Court:

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

By Mr. Ertel:

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

By Mr. Fierro:

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

Leon Krebs.

By Mr. Ertel:

I did say he saw the child.

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

By Mr. Fierro:

Are you going to prove otherwise?

By Mr. Ertel:

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

By Mr. Fierro:

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

By Mr. Ertel:

I think he said "Hello" directly to her.

By Mr. Fierro:

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

By Mr. Ertel:

We are not being deceptive.

By Mr. Fierro:

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

(Off-the-record discussion.)

(END OF IN CHAMBERS.)

HERE'S
OPPORTUNITY
AGAIN
LIKE
THE
THUMB
572.

Leon Krebs.

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

(Officer Leon Krebs returned to witness stand.)

By The Court:

Proceed, Mr. Fierro.

By Mr. Fierro:

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

A. In my opinion, they did not.

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

By Mr. Ertel:

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

By The Court:

Reword your question.

By Mr. Fierro:

Q. Now...

By The Court:

You may come to Side Bar if you care to.

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

By Mr. Fierro:

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

Leon Krebs.

that correct?

A. That is correct.

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

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

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

A. No, I do not.

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

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

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

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

Q. What?

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

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

A. That is correct.

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

A. No. 96 and 97.

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

A. That is correct.

Leon Krebs.

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

By Mr. Ertel:

I object to the question, nobody can conclude that.

By Mr. Fiero:

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

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

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

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

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

A. I am, Sir.

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

A. No, I couldn't.

By Mr. Ertel:

I object.

Leon Krebs.

By The Court:

Sustained.

By ^Mr. Fierro:

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

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

Q. Or whether they were different people?

A. I could not tell that.

Q. Either way you can't tell?

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

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

A. I can't tell that.

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

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eye to see it."?

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

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

A. It is significant enough to see.

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

A. The length and width and depth?

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

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

Q. You go ahead and pick?

A. Could I have the Exhibit back, please?

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

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

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

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

A. Yes, there were.

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

A. Yes, there were.

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

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

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

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you tend to forget?

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

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

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

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

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

By Mr. Ertel:

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

By The Court:

Q. Do you understand the question?

A. YES.

Q. You may answer?

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

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

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

Q. You don't recall?

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

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

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

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

A. I cannot recall that particular spot from memory.

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

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

Q. That is right.

By Mr. Ertel:

Identify that?

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

By ^Mr. Fierres:

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

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

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

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

A. Yes, it appears to be.

Q. You may resume the stand. .

A. (Witness returns to stand.).

By Mr. Fierro:

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

A. Yes. (Witness leaves stand.).

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

A. Yes.

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

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

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

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

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

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stand.

(Witness returns to stand.).

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

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

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

A. I don't know.

Q. Nobody told you that?

A. No, Sir.

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

A. In reference to which cast, Sir?

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

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

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

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tire making one cast?

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

Q. Just portions of it?

A. Yes.

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

A. That is correct.

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

A. For the most part, yes.

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

By Mr. Ertel:

We will stipulate they were. 28th Oct.

By Mr. Fierro:

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

By Mr. Ertel:

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

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

By Mr. Pierro:

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

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

Q. Yes?

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

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

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

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

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

By Mr. Ertel:

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

By Mr. Pierro:

He answered it, apparently he knew it.

By The Court:

Q. You understood the question?

A. I believe so, yes.

Q. I will permit it to stand.

By Mr. Pierro:

I have no further questions.

RE-DIRECT EXAMINATION

By Mr. Ertel:

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

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

By Mr. Pierro:

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

By Mr. Ertel:

He was asked this question on Cross Examination and

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

By The Court:

Q. Are you an expert on fingerprints?

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

By Mr. Piarre:

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

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

By Mr. Krtel:

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

A. Would you rephrase that again?

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

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

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

A. Yes, that is correct.

Leon Krebs.

Q. But that is the only difference?

A. That is correct.

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

A. Yes.

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

A. The 14th of February, 1974.

Q. Where?

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

Q. What occurred on that occasion?

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

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

By Mr. Pierre:

I object to that.

By The Court:

The Court can't see how it is material.

By Mr. Ertel:

Well, I can represent it at Side Bar.

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

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. How many hours did you take examining these casts

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and these boots and the tire imprints and the tires?

By Mr. Fierro:

That is improper re-direct.

By The Court:

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

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

By Mr. Ertel:

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

A. A portion of that cast, yes.

Q. Would you explain what you mean by that?

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

Q. Thank you, Officer. No further questions.

Leon Krebs.

RE-CROSS EXAMINATION

By Mr. Fierro:

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

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

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

A. Yes.

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

A. That is correct.

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

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

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

A. Cutlass or tires?

Q. Both actually?

A. I can assume they are.

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

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

A. Yes, they are.

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

By Mr. Ertel:

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

By Mr. Fierro:

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

By The Court:

Q. Do you understand the question?

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

By Mr. Fierro:

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

A. I really can't answer that.

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

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

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

A. That is correct.

Object
Kippie
Page 461
DAMAGED!
590.

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Q. How long have you been a Policeman?

A. 12 years.

Q. That is all.

By Mr. Ertel:

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

By Mr. Fierro:

I object to this.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. What is your purpose in being here?

By Mr. Fierro:

I object to that.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Have you lied on the stand?

By Mr. Fierro:

I object to that.

By The Court:

Sustained, that is for the Jury to decide.

By Mr. Ertel:

I have no further questions.

By Mr. Fierro:

Step down.

(Excused from witness stand.)

By Mr. Ertel:

We have to approach Side Bar now.

Sgt. Peterson.

(AT SIDE BAR.).

(Off-the-record discussion.).

By The Court:

As far as the statement made by the Mother, are you objecting to that?

By Mr. Fierro:

Yes.

By The Court:

The objection is sustained.

By The Court:

As far as the objection of three different, really two of the one, and one different story of the statements by the Defendant, you object to this?

By Mr. Fierro:

Yes.

By The Court:

That objection is over ruled.

(END OF SIDE BAR.).

SGT. EDWARD PETERSON, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Edward B. Peterson.

Q. Your occupation?

A. Pennsylvania State Police.

Q. How long?

A. 21 years.

Sgt. Peterson.

Q. What is your rate or rank?

A. Sgt.

Q. Officer Peterson, returning to October 31, 1973, did you have occasion to go to the home of the Hubbards'?

A. Yes, Sir, I did.

Q. Who accompanied you there, if anyone?

A. I was accompanied by Lieutenant Hynick.

Q. Describe what happened when you arrived at the Hubbard home?

A. We arrived at the Hubbard home, we talked with Mr. and Mrs. Hubbard briefly, general conversation and we were later joined approximately a half hour later at the home by yourself. The DA.

Q. Then what happened?

A. Then we had, I believe you asked at the time if Kim was there and they said he was at school.....

By Mr. Fierro:

I object to this.

By The Court:

Objection is sustained as far as the conversation.

By Mr. Ertel:

Q. Just leave out, unless Mr. Hubbard was there, just what happened?

By Mr. Fierro:

No, I object to that, he could be there and it still could be objectionable.

By The Court:

The objection is sustained, unless it was stated by the Defendant himself.

By Mr. Ertel:

Q. Describe the process that went on at that point?

By Mr. Fierro:

I object to that, what does that mean?

By The Court:

Q. Do you understand the question?

A. Yes, Sir.

Q. You may answer.

A. We talked generally to Mr. and Mrs. Hubbard and were there a short time and Kim Hubbard came to the home.

By Mr. Ertel:

Q. Then what happened?

A. Then we wanted to talk to.....

By Mr. Fierro:

I object to what they wanted to do.

By The Court:

Q. What did you do, Officer.

By Mr. Ertel:

Q. Was this stated in Kim's presence?

By Mr. Fierro:

I object to your leading the witness.

By The Court:

Sustained.

Sgt. Peterson.

By Mr. Ertel:

Q. What was stated in Kim's presence at that time?

By Mr. Fierro:

I object.

By The Court:

Sustained.

By Mr. Ertel:

Q. Describe what occurred?

By Mr. Fierro:

I object to this, it is vague and ambiguous and he tries to get it in the back door.

By The Court:

Q. You may answer, but no conversations unless they are by the Defendant.

A. We talked with the Defendant, Kim Hubbard.

By Mr. Ertel:

Q. Who did you talk to first, if anyone?

A. Mr. and Mrs. Hubbard.

Q. Separately?

A. Yes.

Q. Did you talk to Kim separately?

A. Yes.

Q. Who was present when Kim was talked to?

A. Lieutenant Hynick and yourself.

Q. Describe that conversation?

A. We talked to Kim Hubbard. He advised us he got up at approximately 1:00 in the morning on October 31st. He went down

Sgt. Peterson.

to the store and bought three packs of cigarettes.....

Q. When you say "in the morning"?

A. That is 1:00 P.M. in the afternoon he got up.

By Mr. Ertel:

Q. Proceed.

A. 1:00 P.M. in the afternoon. He went down to purchase three packs of cigarettes at the store, returned home, his Mother was going to wax the floor, so they could clean them and buff them, He went over to the, he advised us he went over to the Rent-All Service in Williamsport for the purpose of renting a buffer. On the way back from Williamsport he stopped at the Hum-Dinger, had a "Cosmo" and a soft drink, had a conversation with several friends in the Hum-Dinger and then returned home and his Mother was waxing the floor, and the floors were still wet, so he went out to work on his car. He said he worked on his car for awhile, came back in the house and his Mother was still waxing the floors, they were wet, so he went over to the Fifth Avenue Car Wash for the purpose of having his car washed. He said it took him approximately 25 minutes, five minutes over, five minutes back, he put three quarters in the machine, about five minutes for each quarter. On the way back from the Car Wash he stopped at the Hum-Dinger for the purpose of having a soft drink. He stated that he had a conversation with an individual by the name of Ard Stetts. They talked briefly and said they would meet later on down at the Hum-Dinger, later on that evening, and then stated that he went home.

Q. What happened then, if anything?

Sgt. Peterson.

A. He advised us he received a telephone call at approximately 4:45 - 4:50, the person calling was Mr. Jack Hill. Mr. Hill inquired as to Jennifer, and Kim Hubbard inquired from his Mother where Jennifer was and she said she left. Then he advised us towards dark, it was getting dark, his Mother asked him to drive around and see if he could locate Jennifer. He said he drove down towards the Humpty-Dumpty, down around the playground area, then he went down to the Hum-Dinger and then returned home.

Q. What did he say he did when he made that trip around?

A. Well, I asked him, he said he didn't really look for her, he just drove around, he went down to the Hum-Dinger and then came back home.

Q. What happened after that?

By The Court:

May I see Counsel?

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

By Mr. Ertel:

Q. What day were you inquiring about when he traced these activities?

A. We were talking about his activities and activities on October 19, 1973.

Q. At that time, what occurred next, if you recall?

By Mr. Pierro:

Not what occurred, you mean the conversation between him and the Defendant, otherwise I object.

Sgt. Peterson.

By Mr. Ertel:

Q. Both conversations and actions as referred to the Defendant?

A. In talking to Kim Hubbard, the Defendant, we asked him if he would voluntarily submit his shoes or footwear for examination, and he stated that he would.

Q. What happened then?

A. He went and got the shoes that we requested.

Q. What shoes were they?

A. Well, he brought, talking about a pair of boots.

Q. What did he bring first, what was the first object he brought?

A. If I recall, I believe it was a pair of sneakers.

Q. Then what?

A. Then what?

A. Then a pair of loafers.

Q. What happened about the loafers?

A. Well, then in discussing the loafers were, we learned that the loafers belonged to Mr. Hubbard.

By Mr. Pierro:

That statement I object to, we move that it be stricken and the Jury instructed to ignore it.

By Mr. Ertel:

Q. Did the Defendant tell you that is who they were, "Yes" or "No"?

A. I don't recall.

Sgt. Peterson.

By The Court:

The objection is sustained, strike it from the record.

By Mr. Ertel:

Q. Was it in the presence of the Defendant when you found out whose loafers they were? *Kim Hubbard was found*

A. Yes, Sir, I believe it was. *He was a sample of his own*

Q. Then what happened?

A. As I said before, we asked him if he would vountarily allow us to make an examination of the boots and also if we could voluntarily make an examination of his vehicle, which he agreed we could do.

Q. When did the boots come out?

A. They were brought down last.

Q. I show you marked as Commonwealth's Exhibit No. 96 and 97, and ask you if you can identify those boots?

A. Yes, Sir, I can.

Q. What are they?

A. They are Army combat boots.

Q. Did you obtain those?

A. Yes, Sir, I did.

Q. From whom?

A. They were set down at the table, I think they came from Kim Hubbard. *See page 558*

Q. After the boots were obtained, what happened next?

A. We talked to Kim Hubbard and he voluntarily agreed to go down to the South Williamsport Police Station with the Officers, which we did.

Sgt. Peterson.

Q. Was the car taken down?

A. Yes, Sir, it was.

Q. Did you have a second occasion to be present when Kim Hubbard was talking with the Police?

A. Yes, Sir, I did.

Q. When was that?

A. That was on November 1, 1973.

Q. Where was that?

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

Q. At that time was he advised of his rights?

A. Yes, Sir, he was.

Q. What if anything did he tell you there?

A. In talking with Kim Hubbard on that date, his conversation, or what he related to us was essentially the same as what he had told us on October 31st with one exception.

Q. What was that exception?

A. It had to do with when he came in contact with Ard Stetts on October 31st, he said he didn't talk with Ard that afternoon around 4:00, he said it was later on in the evening, he saw him at the Hum-Dinger.

Q. Did you have occasion to see him again?

A. Yes, Sir, I did.

Q. When was that?

A. This was on November 3rd, it was a Saturday at the Williamsport Police Station.

Sgt. Peterson.

Q. What occurred at that time?

A. It was about 2:30 that day, and I walked into the Council Chambers at South Williamsport, and the Defendant was there.

Q. Describe that conversation, if you will, please?

A. At that particular time in the Council Chambers, I had no conversation with the Defendant.

Q. What, if any, conversation did you hear the Defendant have with anyone else?

A. He had a conversation with, at that time with Lieutenant Hynick.

Q. What was that?

A. Lieutenant Hynick asked him would it be safe to assume that if his car was seen on October 19th, that he was driving it, and he said if his car was seen on October 19th that he was driving the car.

Q. Anything else?

A. He asked him if he was ever down in that particular area.

Q. What did he say?

A. He said "No."

Q. What are you talking about?

By Mr. Fierro:

Not not area what he was talking about, what Lieutenant Hynick was talking about and whether he specified.

By Mr. Ertel:

Q. What areas are being talked about, continue, give the conversation?

A. He was talking about the area of Sylvan Dell.

Q. What was the conversation about, if you recall?

A. Lieutenant Hynick asked the Defendant if had ever been down at that particular area, down the Sylvan Dell Road.

Q. What did he say?

A. He said no.

Q. Were you there from the beginning of the conversation, or was the conversation going on when you arrived?

A. It was going on when I arrived, I was there for a very short time.

Q. Then where did you, what happened after that?

A. I went over to the Chief's Office, the conversation I just talked about took place in Borough Council Chambers, I went over to the Chief's Office, which is separate. Corporal Barto was there and Kim Hubbard came over there, the Council Chambers.

Q. What happened there?

A. We were talking to Kim and at that time and I asked him about the mud on his car and in his car.

Q. What did he say?

A. He said, "What mud are you talking about?", and he got very excited and agitated.

By Mr. Pierro:

I object to that.

By The Court:

The objection is sustained.

*Witness tried to tell the
Police that he found it
in his car at Sylvan Dell*

Sgt. Peterson.

By Mr. Ertel:

Q. Did he raise his voice?

By Mr. Fierro:

I object to your leading the witness.

By Mr. Ertel:

Q. What, if anything, did he do with his voice, if anything?

By Mr. Fierro:

That is leading.

By The Court:

Be more specific in your answer, Sir, rather than a conclusion.

A. He became rather loud. He was excited, he was agitated at the question.

By Mr. Ertel:

Q. What occurred next?

By Mr. Fierro:

I move that the answer that he became excited and agitated be stricken.

By The Court:

Strike it from the record.

By Mr. Ertel:

Q. Describe his condition.

By Mr. Fierro:

I object to that.

By The Court:

Q. Do you understand the question?

Sgt. Peterson.

A. Yes.

Q. You may answer, but no conclusions, what you observed.

A. When I asked the question, he became very vocal and very loud.

By Mr. Ertel:

Q. What did he say, if anything?

A. At that particular time, after I asked him about the mud, Chief Smith came in his office and he said that Attorney Bonner was there to see Kim Hubbard and Kim said, "I want to tell you about the mud.", and I said, "No, I would rather you talk with Mr. Bonner before you discuss this with me any further.", and he left and had a conversation or discussion with Mr. Bonner.

Q. Did you ever have contact with the Defendant after that?

A. No, I did not.

Q. No further questions.

CROSS EXAMINATION

By Mr. Fierro:

Q. Now, Officer Peterson, you have been on the force about 20 years?

A. 21 years.

Q. And you know from your experience and your professional expertise that people do innocently make mistakes when they recount a story, don't you know that?

A. On occasion.

Q. As a matter of fact, you, a professional Officer of 21 years experience made a mistake just now in your own

Sgt. Peterson.

testimony, don't you recognize that?

A. No, Sir.

Q. You don't?

A. No.

Q. Well, one of the very first things you said, isn't it true, until the District Attorney asked you another question, when you said about the statement that was being made, you said that Kim Hubbard told you he got up at 1:00 A.M., and then you changed that to 1:00 P.M. after the District Attorney asked the question, do you remember that now?

A. Yes, Sir, I do.

Q. So you made a mistake testifying under oath, didn't you?

A. It was a mistake.

Q. Sure it was a mistake. In fact, even when you said 1:00 P.M. you also used the term 3:00 P.M. as well, didn't you?

A. If I recall, I said 1:00 P.M. in the afternoon.

Q. But it was different than 1:00 A.M., wasn't it?

A. Yes, Sir.

Q. So now won't you tell this Jury that even professionals like you make mistakes, let alone an ordinary human being, you recognize that?

A. Everyone makes mistakes.

Q. Sure they do, because you are here, aren't you, essentially to tell the Jury that Kim Hubbard in some variation or other changed his story, isn't that correct?

Sgt. Peterson.

A. No, Sir, it is not.

Q. It is not?

A. No.

Q. Well, you were talking about, for example, the difference between the conversation of October 31st, between that and November 1st, and your answer to the November 1st conversation with Kim or questioning, you said "No, that conversation was essentially the same as October 31st.", that the only thing Kim Hubbard changed was the time he saw Stetts?

A. That is correct.

Q. Then we are down to, I think the November 3rd conversation, is that correct? Those were the three you were involved in, true?

A. Yes.

Q. Of course, during one or more of these sessions the District Attorney was present, wasn't he?

A. Yes, Sir, he was.

Q. I am sure that he must have asked a bunch of questions, didn't he?

A. Yes, Sir, he did.

Q. He probably asked more questions than the rest of the people put together, didn't he?

A. No, he didn't.

Q. Now, are we down to November 3rd, which I believe is the last time, if the date is wrong tell me, is the last time that you were in Kim Hubbard's presence when he was being interrogated, is that correct?

Kim came into the waiting room to see me and I asked him Cop's name and he said you?
HEARD call 295-1111
AT 10:00 PM

Sgt. Peterson.

A. When I was in his presence on that particular date, yes, Sir.

Q. You were not present all of the time, as I understand it, you were in and out or somebody else came in and out?

A. No, he was already there when I arrived.

Q. He was there before you, and probably had been undergoing some questioning before you got there?

A. I don't know what took place before I got there.

Q. Now, in any case on November 3rd, you said, and I want you to be sure about this, that Lieutenant Hynick asked Kim Hubbard a question of, to this affect, whether he called him "Kim" or "Mr. Hubbard" does not matter, he said to Kim, "Now, if your car was being operated on October 19th, would you say that you are the only one who was driving that car?", and Kim said, "Yes, I would be the only one who was driving it.", is that correct?

A. Yes.

Q. You say Hynick asked that question?

A. Yes, Sir.

Q. Are you sure you are not mistaken about that?

A. No, I am not.

Q. You are not?

A. No.

Q. Of course, you did not hear either Barto testify or Hynick testify here, did you?

A. No, Sir, I did not.

Sgt. Peterson.

Q. If I tell you that Barto testified that he, Barto, asked that question, would you change your statement now?

By Mr. Ertel:

I object to the question, Corporal Barto has not testified.

By Mr. Pierro:

Q. I was ruffling through these papers to get his name.

By Mr. Ertel:

Corporal Houser advised him of his rights.

By Mr. Pierro:

Q. Corporal Houser, if I tell you Corporal Houser is the man who said he asked him that question, would you change your statement?

A. No, because of what I heard Lieutenant Hynick ask. In fact, he preceded his question by stating, "Do you mind if I ask you a few questions, Kim?". Now, what was asked by Corporal Houser prior to my getting there, I don't know, he may have asked the same question, I don't know that.

Q. Did you see Corporal Houser draw up a statement concerning the three questions he asked Kim Hubbard, did you see him do that?

A. Did I see him do what?

Q. Draw up a statement, you know, type it up and sign it concerning the three questions he asked Kim Hubbard?

A. I told you that I was not there at that time.

Q. Did you see him draw up a statement?

A. I was in the Council Room a brief period of time,

Sgt. Peterson.

then I went over to the Chief's Office, and I don't recall the conversation Corporal Houser had with the Defendant.

Q. Did you see Houser there?

A. Yes.

Q. Did you hear him ask any questions at all?

A. No, I didn't.

Q. Now, if I tell you that Lieutenant Hynick did not give any testimony as to who was driving Kim's car on October 19th, would you change your statement?

A. No, because I can only relate to you what I remember.

Q. What you saw and what you heard?

A. That is right.

Q. The October 31st conversation, I gather took place in the Hubbard home?

A. Yes, Sir, it did.

Q. The November 1st conversation took place in the Police Hall?

A. No, Sir.

Q. South Williamsport, I mean?

A. No, Sir.

Q. In his house again?

A. No, Sir.

Q. Where?

A. The State Police Barracks.

Q. The November 3rd conversation, was that the one in the South Williamsport Municipal Hall?

Sgt. Peterson.

A. Yes.

Q. We will call it the South Williamsport Police Hall,
for short.

By The Court:

Mr. Fierro, is your examination going to be
extensive?

By Mr. Fierro:

Yes.

By The Court:

We will recess for noon at this time. The Defendant
is excused. The Jury is excused. Court is recessed.

(Recessed at 12:10 P.M.).

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

(Sgt. Edward Peterson returned to the stand.).

By Mr. Fierro:

Q. Mr. Peterson, as I understand, on October 31st when
you were in the Hubbard house, when you did get to speak to Kim,
that somebody, and you can tell us who, warned him about his
rights, which you Police, and we Lawyers, know as the Miranda
Rights, isn't that right?

A. Yes.

Q. Who was that, was it you?

A. You mean was he given his rights at that time?

Q. By you?

A. May I answer the question, I said at that time
he was not given his rights.

Q. He was not?

Sgt. Peterson.

611.

He didn't AF, and because he didn't
A. No, Sir. He voluntarily surrendered.

He didn't AF, and because he didn't
Q. Well, it doesn't matter, you were asking questions?

Police didn't go into to do
A. The Defendant was not a suspect at that time.

Q. It doesn't matter, you were asking him questions

I said?

A. Right.

Q. That was a time when you asked him to turn over

his boots?

A. I said this was a voluntary surrender.

Q. My question was at that time you asked him to turn

over his boots?

A. Yes, I did.

Q. And he or somebody got the boots and gave them to you?

A. Right.

Q. Was it he, the Defendant?

A. Yes, it was.

Q. Those are the boots that have been identified

in evidence?

A. Yes.

Q. And you or somebody asked the Defendant if he would
not turn over his car?

A. Yes, Sir.

Q. And he voluntarily did that too?

A. Yes, he did.

Q. This was the same day?

A. Yes, Sir, it was.

Q. And that was the day you say that he was not

Sgt. Peterson.

read his rights because he was not a suspect?

A. From the Miranda ruling he was not a suspect, he was not in custody nor was he deprived from his freedom of acts in any significant way which is covered under Miranda.

Q. I am glad you are a student of the law. My only question is you did not read him his rights that day, did you?

A. No, I didn't.

Q. Nor did anybody else that you know of?

A. Yes, he was, I do know of somebody who read him his rights.

Q. Who?

A. Corporal Barto.

Q. When?

A. When we arrived at the South Williamsport Police Station.

Q. Was that before or after you got the boots and the car?

A. This was after.

Q. In other words, when you got the boots and the car, Kim Hubbard had not been given the Miranda rights, isn't that correct?

A. No, he wasn't.

Q. No, he had not?

A. He was not given his rights, it was not required.

Q. I am not asking you if it was required, I am asking you if it was done?

Sgt. Peterson.

A. I answered that, I said no he wasn't.

Q. Now, you wanted his boots and his car what for?

A. For examination purposes.

Q. For examination purposes, what for?

A. To make a comparison.

Q. With what?

A. With the casts that we had and also with the casts of the footprints we had. *DON'T SEND TO Lab. till let me see with*

*CHS'S TAKEN
F.W.
25-21*

Q. You wanted the boots and you wanted the car to make a determination whether those boots and that car could have been evidence concerning the crime?

A. Yes, Sir.

Q. (To The Court.). Your Honor, may we come to Side Bar?

By The Court:

Yes, Sir.

(AT SIDE BAR.).

By Mr. Fierro:

In view of the statements just made by this Officer, which I didn't know that he was going to make, no one having warned me in advance, I believe that his answers have effectively deprived the Defendant of his Constitutional Rights inasmuch as the boots and the automobile were surrendered without the Miranda warning, although the Officer admits they were taken into custody for the purpose of determining whether or not they could have been used as evidence concerning the crime in question, and I was not able to file a Motion to Suppress because I didn't know

*King's Rights
Violated*

Sgt. Peterson.

and was not aware that he was not given his Miranda rights until just now and I feel that under the law that this man's testimony should be heard on a Motion to Suppress, based upon what he said right now.

By Mr. Ertel:

Well, first, he was not a suspect until after the boots were compared. Number two, he did it voluntarily. Number three, we do have a voluntary statement signed by him surrendering the car and the boots, giving us the authority to take them and process them.

By The Court:

Your objection is over ruled, you are protected on the record.

By Mr. Fierro:

That voluntary statement he is talking about was signed afterwards.

By The Court:

I assume it was done at the time.

By Mr. Fierro:

No, signed after the boots and car were surrendered.

By Mr. Ertel:

He gave us the boots at his house, the boots were taken by Peterson. The boots were handed to us, they were taken to the Borough Hall at which time he, they asked the Defendant if he would voluntarily let us keep them, and he signed a thing, and he also signed the card at that time he was advised of his rights when he arrived at the Hall, not before.

Sgt. Peterson.

By The Court:

We discussed this area of testimony at the pre-trial, but I don't believe we discussed when he was informed of his rights at pre-trial.

By Mr. Ertel:

He said at that time that he assumed everything was all right, and he waived his rights.

By Mr. Pierro:

Until I heard this.

(Off-the-record discussion.)

(END OF SIDE BAR.)

By Mr. Pierro:

Q. Mr. Peterson, you made reference to Jack Hill, who was the Father of the dead girl, having called to the Hubbard house at quarter to five on October 19th, is this the statement that you got from Kim Hubbard?

A. Yes, Sir, he said he received a call at approximately 4:45 - 4:50.

Q. I said is this the statement you got from Kim Hubbard?

A. Yes.

Q. Did you check it out with Jack Hill?

A. Yes, we did.

Q. These boots that have been offered in evidence, they must have had more dirt on them when you got them on October 31st than what they appear to be like today? Wouldn't you say that is true?

NO RIGHT TO
hold Kim
ACEK
PRE-TRIAL

Sgt. Peterson.

A. Yes, Sir.

Q. What happened to all that dirt that was on those boots when you got them, did you scrape them off and preserve the mud and dirt for evidence?

A. No, Sir, I didn't.

Q. Who did, do you know?

A. I don't know. I had no control of the boots when once I took them down and turned them over to Trooper Fama who in turn gave them to our Custodial Officer, Corporal Houser, I had no further contact with the boots.

Q. The only thing you know there was a lot more mud and dirt on those boots when you got them than there is on them today?

A. I would say there was dirt on the boots, but not a lot.

Q. More than what is on them today?

A. I looked at them briefly around the sole, I didn't see the bottom of them or what was on them.

Q. How about the car, did you have anything to do with the mud and dirt that was on the inside of the car?

A. No, Sir, I assigned an Officer to process the car, I had nothing to do with the car itself, I assigned an Officer to process the car, I had nothing to do personally with the automobile.

Q. Did you look inside of the car when you took it into custody?

A. I didn't take it down.

Sgt. Peterson.

Q. Did you look at it when it got there, whenever that is?

A. Very briefly.

Q. Did you look inside?

A. Yes, I did.

Q. Did you see whether it was dirty, had dirt on the floor?

A. I didn't pay that much attention, because I was going to have the car processed, I was not going to do it myself.

Q. In any case, while this boy was being questioned, whatever you asked him to submit, particularly the boots and the car, he did so voluntarily?

A. Yes, Sir, but he was being interviewed, he was not being questioned.

Q. Let's put it this way, your way, he was being interviewed?

A. That is right.

Q. In your interview, he was being asked questions, is that correct?

A. In regards to his activities for that particular day.

Q. He was being asked questions, wasn't he?

A. Not in regards to particularly what he did, but in trying to get the stores to whatever, or what every one did in that particular household to try to find out when the little girl left the house, and if he had seen her and so on.

Sgt. Peterson.

Q. Well, in order to do that, you were asking him, Kim Hubbard, or somebody was in the team, you were asking questions, weren't you?

A. Yes, we were, we were talking with him.

Q. When you say talking to him, answer this specifically, were you or any member of that team asking him questions on October 31st?

A. On the 31st?

Q. Yes, we were talking with him, he was telling us what he did that particular day.

Q. I want to ask you this question, were you talking, were you asking him questions, not talking with him, were you asking him questions?

A. He was telling us what he did that particular day.

Q. Don't you know how to answer this question?

A. Yes, I do.

Q. Well, then answer it?

A. I just answered.

Q. Were you asking him questions?

A. He was telling us what he did that day.

Q. I said were you asking him questions?

A. He was not a suspect, he was not being questioned.

Q. (To The Court.). Your Honor, will you ask him to answer?

By The Court:

Q. The question was, did you ask him any questions?

Sgt. Peterson.

A. Yes, I did.

By Mr. Fierro:

Q. And Mr. Ertel, the District Attorney, was asking questions too, wasn't he?

A. Yes, he talked with him also.

Q. Answer this question, was Mr. Ertel asking him questions?

A. Yes, he was.

Q. That is all.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Officer Peterson, you were asked about this conversation and about trying to track Jennifer' activities on the 31st at the Hubbard home by questioning people, did the Defendant indicate he had seen her that day at all?

A. Yes, he did.

By Mr. Fierro:

He is repeating, this was brought out on direct.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. What, if anything, did he say about Jennifer Hill?

By Mr. Fierro:

That was already answered on direct.

Sgt. Peterson.

By The Court:

If it is different than what you have already testified to, you may answer.

Q. A. Yes, he told me he did see her on that particular day.

By Mr. Fierro:

Kim coming from Susan Duber home heard his own sister yell and he waved, not at her but at To Roth

That was not different and I move it be stricken.

By The Court:

I will permit it to stand.

By Mr. Fierro:

Your Honor, the District Attorney is repeating.

By Mr. Ertel:

Q. When?

A. He said he saw her after he got up and went down to get some cigarettes, he saw the kids playing in the field, playing football, there was an exchange of waves, he waved to the kids and the kids waived to him and that was the extent of it.

By Mr. Ertel:

Thank you.

RE-CROSS EXAMINATION

By Mr. Fierro:

Q. Now, this last statement of your's that Kim said he saw Jennifer along with other children playing in the field, is that correct?

A. Yes, Sir.

Q. And that he waved to these kids and these kids waved back, is that the statement that you made?

Sgt. Peterson.

A. Yes, Sir.

Q. There was nothing in your investigation that shows that Kim had any personal contact with Jennifer, is there?

A. No, I am only saying what he told me.

Q. Just answer the question?

A. No, Sir.

By Mr. Ertel:

I object to that.

By Mr. Fierro:

He didn't answer it, your Honor.

By The Court:

Proceed, Gentlemen, it is answered now.

By Mr. Fierro:

Q. Was there anything in Kim's statement to you or your investigation of October 31st that shows Kim had any personal contact with Jennifer?

By Mr. Ertel:

Objection.

By The Court:

Q. Do you understand the question?

A. Yes, Sir.

Q. You may answer?

A. The first part of it, he did relate he saw her that particular day. In regards to the investigation that disclosed that it did.

By Mr. Fierro:

Q. That it did?

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Sgt. Peterson.

A. Yes.

Q. Your investigation?

A. The investigation of the State Police.

Q. Mr. Peterson, don't you understand that I am asking you these questions, instead of the State Police, I would like you to answer these questions.

By Mr. Ertel:

He is asking for conclusion based upon investigation he got the answer and does not like it.

By Mr. Fierro

What is it that I don't like?

By The Court:

Gentlemen, just a minute.

By Mr. Fierro:

I will reask the question.

Q. Mr. Peterson, from what you learned on October 31st, first in talking to Kim, did Kim have any personal contact with Jennifer Hill, did he say so?

A. Other than, only other than what I told you.

Q. Repeat it?

A. That he saw her in a field and he waved to her and the kids waved back.

Q. Did he say he waved to her alone or just waved to the kids? *To his sister*

A. I said he waved to the kids in the field.

Q. And you also testified that he told you that

Sgt. Peterson.

the kids waved back, is that correct?

A. Yes, Sir.

Q. Did he say to you that he spoke to Jennifer Hill?

A. No, he didn't.

Q. Did he say to you that Jennifer Hill spoke to him?

A. No, he didn't.

Q. All right now you on October 31st, did you find out from your investigation, outside of what Kim may have told you, did Jennifer Hill speak to Kim?

A. Up until that point on the 31st?

Q. Yes?

A. Not to my knowledge.

Q. Did Kim speak to Jennifer?

A. I don't know. I can only relate what he told me.

Q. That is all you know?

A. That is what he told me.

By Mr. Ertel:

I object to the question, are you referring as to the October 31st cut-off date?

By Mr. Fierro:

His investigation, when he spoke to this man.

By Mr. Ertel:

You are only talking about the conversation....

By Mr. Fierro:

I will ask another question.

Q. Did you in any part of your investigation, I don't care when, can you bring to the attention of this Jury a witness

Sgt. Peterson. - Lieut. Hynick.

who will testify that Kim had personal contact with Jennifer Hill on October 19th, an eye witness?

A. No, I can't.

Q. And that is all.

By The Court:

Mr. Ertel?

By Mr. Ertel:

No further questions.

(Excused from witness stand.).

LIEUTENANT STEVEN HYNICK, previously sworn, recalled and testified as follows:

By Mr. Fierro:

I want an offer on this witness, your Honor.

By The Court:

Side Bar.

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

DIRECT EXAMINATION

By Mr. Ertel:

Q. Lieutenant Hynick, you previously have been sworn, is that correct?

A. Yes, Sir, I have.

Q. Lieutenant Hynick, on the 31st of October, 1973, in the company of Officer Peterson and myself, did you proceed to the Hubbard home?

A. Yes, Sir, I did.

Q. Would you describe what conversation you recall of having with the Defendant, Kim Hubbard, on that occasion?

Sgt. Peterson. - Lieut. Hynick.

who will testify that Kim had personal contact with Jennifer Hill on October 19th, an eye witness?

A. No, I can't.

Q. And that is all.

By The Court:

Mr. Ertel?

By Mr. Ertel:

No further questions.

(Excused from witness stand.).

LIEUTENANT STEVEN HYNICK, previously sworn, recalled and testified as follows:

By Mr. Pierro:

I want an offer on this witness, your Honor.

By The Court:

Side Bar.

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

DIRECT EXAMINATION

By Mr. Ertel:

Q. Lieutenant Hynick, you previously have been sworn, is that correct?

A. Yes, Sir, I have.

Q. Lieutenant Hynick, on the 31st of October, 1973, in the company of Officer Peterson and myself, did you proceed to the Hubbard home?

A. Yes, Sir, I did.

Q. Would you describe what conversation you recall of having with the Defendant, Kim Hubbard, on that occasion?

Lieut. Hynick.

A. Yes, Sir.

Q. Would you do so, please?

A. Kim told us he got up at 1:00 P.M. that afternoon, he left the house and he went to the store to buy three packs of cigarettes and on the way back from the store he went down the alley past the playground where he waved to his sister, Jennifer Hill, and ^(NIGHTLY BOY) some girls, and then went home. From there he went down to the Rent-All Service to pick up a buffer. On the way back to his home with the buffer, he stopped at the Hum-Dinger. He got a soft drink and a sandwich. From there he went home, and his Mother was applying some wax to the floor, and, well, he then went out to work on his car for about an hour. He came back into the house and the floors were still wet from the wax, so he went down to the car wash in Williamsport, and on the way back he again stopped at the Hum-Dinger, had a soft drink and he said he met one of his friends. He stayed there about 25 minutes and from there he went home where he helped his Mother to buff the floor.

Q. Did he tell you how long it took him to wash his car, do you recall?

A. No, the only thing I remember about washing his car, he said he deposited three quarters in the car wash.

Q. And after he went home, did he tell you what he did after that, what occurred?

A. You mean from the Hum-Dinger?

Q. Yes?

A. Yes, he started to help his Mother buffing the floors,

Lieut. Hynick.

and he heard the phone ring a couple of times, he answered the second call which was from the Hills and they were inquiring about Jennifer. While he talked on the phone, he told us, that he at no time did he shut off the buffer, he just kept on buffering and talking over the phone.

Q. All right, did he tell you what he did next?

A. Yes. Later on his Mother asked him to go out looking around for Jennifer. He said he drove up around the playgrounds and down the Humpty-Dumpty, down around the Hum-Dinger and he told us that he really didn't look for her and after that he came back home.

Q. Did he tell you how long he had been working on his car?

A. Yes, about an hour.

Q. After that what occurred after that story he told you, what occurred?

By Mr. Fiems:

What occurred or what he said, I would like to know which?

By The Court:

Reword your question.

By Mr. Ertel:

Q. I think the word "occurrence" would cover it, so he can talk about both.

By The Court:

Ask your question again.

By Mr. Ertel:

Q. After he completed telling the story of his activities

Lieut. Hynick.

for that day, what happened next with relation to Kim Hubbard?

By Mr. Fierro:

I object to that question, it is misleading and leading. This man did not say he completed his, completed telling his activities for the day.

By Mr. Ertel:

Q. What happened next after he told you that he really didn't look for her, he just drove around?

A. Later on he met at a friend, or met a friend who he identified as Stetts at the Ham-Dinger.

Q. What occurred in the home at that point?

A. Sir?

Q. What occurred next, what happened after he completed this story?

A. He showed us some shoes. The first pair that he showed us was a pair of loafers and then after that he brought a pair of sneakers and there was some, somebody mentioned the boots, so he went out and later on he brought the boots along.

Q. Who mentioned the boots?

A. Mr. Hubbard.

Q. When you say "Mr. Hubbard", who do you mean by that?

A. The Father of Kim.

Q. That is when the boots were produced?

A. Yes, Sir, they were.

Q. After the boots were produced, then what happened?

A. We made a visual examination of the boots and there

Lieut. Hynick.

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was some markings on the boots that looked similar to the marking on the plaster of Paris cast, that is when we asked for the boots so we could make a further examination of them.

Q. Was the car examined at that time?

A. No, Sir, the car was not examined right then and there.

Q. Was the car asked for?

A. Yes, Sir, it was.

Q. Was the car then taken to the City Hall or Borough Hall?

A. South Williamsport Borough Building.

Q. I believe you testified that you rode down in that car, is that correct?

A. Yes, Sir, that is right.

Q. Did you have the occasion to see Kim Hubbard after that?

A. Yes, Sir, on the 1st of November.

Q. Where was that?

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

Q. Did you speak with him there?

A. Yes, Sir.

Q. What occurred on that occasion?

A. He clarified part of his statement. On the 31st he told us that he talked to his friend Stetts at the Hum-Dinger, and at that time he told us he didn't see Stetts until that evening.

Lieut. Hynick.

did he say he first saw Stetts on the 31st or on the 1st?

A. On the 31st.

Q. What time did he tell you he saw Stetts on that day?

A. Around 4:00.

Q. On the 1st, what time did he tell you?

A. He corrected that statement, he said he saw him that evening, early that evening and not at 4:00.

Q. Did you have the occasion to see him again after that?

A. Yes, Sir, on the 3rd of November.

Q. What was your contact with him on that occasion?

A. That was at the Borough Building, I asked him several questions.

Q. Were you there when the interview began?

A. No, Sir, I came in a little late that day.

Q. Who was with you, if anyone?

A. Sgt. Peterson.

Q. Can you state what you asked at that time, or the questions that you heard answered or questioned?

A. Yes, Sir, I asked him if I could ask him a couple of questions. I asked him if he ever loaned his car out to anyone, and he said that he didn't. I asked him if he ever parked in a cornfield, and he said he didn't. I asked him if he knew where the body was found in the cornfield and he said he didn't until the night before, that some friend told him where the body was found. The next question I asked him if he could

out. Hynick.

ke me right then and there to the place in the cornfield
ere the body was found and he got up and didn't answer me and
ft the room.

Q. What happened after that, if anything?

A. Sgt. Peterson talked to him in the front office
the Borough Police Station.

Q. Were you present at that time?

A. In and out.

Q. You were not there the whole time?

A. No, Sir.

Q. Cross examination.

CROSS EXAMINATION

Mr. Pierro:

Q. Well, did you find any corn stalks in his car?

A. No, Sir, I didn't.

Q. You drove the car down, I guess the day of
tober 31st?

A. I was in the car and Kim drove the car down
myself.

Q. Did you see any corn stalks in the car?

A. No, Sir, I did not.

Q. You saw dirt in the car, didn't you?

A. Yes, Sir.

Q. Do you know if that dirt was submitted to the
Police Laboratory?

A. Yes, Sir.

Q. And I forget the man's name that, but you probably

Lieut. Hynick.

saw him out in the hall, the fellow that came up from Harrisburg?

A. Yes, that is correct.

Q. Now, you see these boots in evidence here, they were given to either you or another fellow or the District Attorney on October 31st?

A. That is right.

Q. Do you know what happened to the scrapings of mud and dirt off of that boots?

A. All I could say they were taken down to the State Police Lab. in Harrisburg.

Q. So we know that the dirt that was in the car, whatever that was, was turned over to the State Police Lab., and we know that the dirt from these boots were also turned over to the State Police Lab., isn't that true?

A. That is right.

Q. You are sure of that?

A. Yes, Sir.

Q. How about this call from the Hills to Kim, what did Kim tell you?

A. He answered the phone while he was buffing the floor and he talked to Mr. Hill personally and he told him that Jennifer didn't get home, so he hollered over to his Mother that it was Mr. Hill and he was getting concerned about Jennifer because she didn't get home.

Q. Lieutenant, I am sure that somebody asked, "Well, what time did you get that call from Jack Hill?", right?

A. Well, I don't remember if anybody asked him what

Lieut. Hynick.

time that call was or not.

Q. The reason I asked that, without taking up everybody's time, a Police Officer, somebody on behalf of the Commonwealth testified that that call came in at about quarter to five, now do you know from your investigation whether that is true?

A. All I could say at this time, it was somewhere around shortly after four, I don't know the exact time.

Q. Well, did you ever have the occasion to check with either Mr. or Mrs. Jack Hill as to when that call was placed to the Hubbard house on October 19th?

A. I personally didn't.

Q. Were you there when it was done?

A. Sgt. Peterson was there and interviewed them at the Hills'.

Q. And did the Hills, in fact, inform the Police that indeed the call was placed at around quarter to five on October 19th?

By Mr. Ertel:

We will produce Mr. Hill to testify to that, rather than get into hearsay.

By Mr. Fierro:

Why don't you let this man answer these questions?

By Mr. Ertel:

Because it is improper to ask for hearsay.

By Mr. Fierro:

The Judge didn't rule that way yet.

Lieut. Hynick.

By Mr. Ertel:

I object.

By Mr. Fierro:

I am trying to learn the extent of this, and the scope of this man's investigation and knowledge of this case.

By The Court:

The objection is sustained.

By Mr. Fierro:

Q. After you learned whatever you did from the Hills, did you go back to the Hubbards, did you confirm, especially with Kim, concerning what calls he received and what time they were received and with whom he spoke?

A. Sgt. Peterson did that, Sir.

Q. Were you present?

A. No, Sir.

Q. By the way, Lieutenant, were you present when the State Police Officer, whoever, took the mud from the, or the dirt let's call the dirt, debris from the inside of the car and put it into these sample bags?

A. I was in and out of the garage.

Q. Did you see who was doing that?

A. Yes, Sir.

Q. Who was it?

A. Trooper Gomb and Keppick, Trooper Keppick was present when this was going on.

Q. Did you see which Officer took the scrapings from these boots and put them in these envelopes?

Lieut. Hynick.

A. No, Sir, I did not.

By Mr. Ertel:

I object to that statement, because there is no evidence to that affect.

By The Court:

The question was answered, however.

By Mr. Fierro:

Q. Didn't you testify not more than five minutes ago that the mud from the boots and the car was turned over to the State Police Laboratory?

A. Yes, Sir, I did.

Q. That is what I thought.

By Mr. Ertel:

He didn't testify they were scraped.

By Mr. Fierro:

We don't need your comment.

By The Court:

If there is any objection, make it to the Court.

By Mr. Fierro:

Q. The District Attorney didn't like the word "scraped", but however it was obtained, it is your testimony that the mud from the boots and the car was turned over to the State Police Lab., isn't that correct?

A. The complete pair of boots were sent to the State Police Laboratory.

Q. I know that, that was not my question, this will be the third time I am asking it now, isn't it....

Lieut. Hynick.

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A. Then it would be my misunderstanding.

Q. You mean you had a misunderstanding what I asked you?

A. We are talking about the mud from the boots?

Q. And the car, didn't you testify that was turned over to the State Police Laboratory?

A. Yes. Can I add something to that?

Q. Sure, go ahead?

A. The mud that was on the boots intact were with everything that was there was sent to the Lab.

Q. Well, now I don't suppose you know that, that whatever dirt was on the boots and in the car was given to the State Police Lab. and was examined, do you know that?

A. Yes, Sir, I know it was examined.

Q. Of course, you were not here when the man testified about it, were you?

A. No, Sir, I was not.

Q. You were out somewhere, outside of this Court Room?

A. That is right.

Q. Now, what about Kim's activities, let's say beginning at 4:00 in the afternoon of October 19th, that you conducted an investigation concerning that, didn't you?

A. Yes, Sir, I was present most of the time.

Q. I don't merely mean in talking to Kim, I mean you conducted an investigation other than talking to Kim to find out what his activities were?

A. I didn't personally, it was my job so to see that

Lieut. Hynick. - Corporal Barto.

certain people were assigned to different phases of the investigation.

Q. That is all.

By Mr. Ertel:

Thankyou, Lieutenant.

(Excused from witness stand.)

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

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Ronald K. Barto.

Q. Your occupation?

A. Member of the Penna. State Police.

Q. How long have you been a State Policeman?

A. Seven years.

Q. Are you the Prosecutor in this case?

A. Yes, Sir, I am.

Q. That means by that you filed the charges?

A. Yes, Sir, I did.

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

A. Yes, Sir, I did.

Q. Where?

A. At the Pennsylvania State Police Barracks in Montoursville.

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

Lieut. Hynick. - Corporal Barto.

certain people were assigned to different phases of the investigation.

Q. That is all.

By Mr. Ertel:

Thank you, Lieutenant.

(Excused from witness stand.)

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Q. Are you the Prosecutor in this case?

A. Yes, Sir, I am.

Q. That means by that you filed the charges?

A. Yes, Sir, I did.

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

A. Yes, Sir, I did.

Q. Where?

A. At the Pennsylvania State Police Barracks in Montoursville.

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

Corporal Barto.

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

Q. Did you have him sign a rights card?

A. Yes, Sir, I did.

Q. Is there, or is that here?

A. I have it here, Sir.

(Commonwealth's Exhibit No. 113 marked.)

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

A. Yes, Sir.

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

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

Q. And what time was he warned?

A. 9:07 A.M.

Q. Did you write that on there?

A. No, Sir, Corporal Bezilla did.

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

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

Corporal Barto.

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

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

A. Yes, Sir, he did.

Q. What did he tell you he did?

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

Corporal Barto.

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

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

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

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

A. Yes, Sir, I did.

Q. When was that?

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

Q. Where was this?

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

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

A. Yes, Sir, I was.

Q. Who answered that phone?

A. Trooper Gomb.

Q. Who was the phone given to?

A. It was given to you.

Corporal Barto.

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

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

Q. What was that?

By Mr. Fierro:

I object.

By The Court:

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

By Mr. Ertel:

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

By The Court:

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

By Mr. Ertel:

That is why I am moving on.

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

A. Yes, Sir.

Q. What was that?

By Mr. Fierro:

Your Honor, I object.

By The Court:

The objection is sustained.

By Mr. Ertel:

May we approach Side Bar?

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

Corporal Barto.

By Mr. Ertel:

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

A. Yes, Sir, he did.

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

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

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

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

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

A. He was advised of his rights.

Q. Who advised him?

A. Corporal Houser.

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

A. Yes, Sir.

Q. Then what happened after that?

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

Corporal Barto.

a bunch of kids there and he waved to them.

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

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

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

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

Q. What happened then after this conversation?

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

Q. What did Lieutenant Hynick ask him?

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

Q. What happened?

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

Q. What happened next?

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

Corporal Barto.

Q. Did you go there?

A. Yes, Sir, I did.

Q. What happened there, if anything?

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

Q. What happened then?

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

Q. Did he say anything further than that?

A. Not that I recall, no, Sir.

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

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

Q. At what speed did you drive that?

A. Approximately 35 miles an hour.

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

Corporal Barto.

Nevel home to the scene?

A. I measured the distance in two different directions.

Q. Name the two different directions?

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

Q. Did you go another route?

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

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

A. No, Sir, I didn't.

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

A. Yes, Sir.

Corporal Barto.

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

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

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

A. Approximately nine or ten blocks.

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

A. Yes, Sir.

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

A. Yes, Sir, I did.

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

A. Yes, Sir, I did.

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

A. None.

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

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

Q. Yes?

Corporal Barto.

A. Yes, Sir, I did.

Q. What was that distance?

A. 127½ feet.

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

A. Yes, Sir.

Q. What was that distance?

A. 26 feet.

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

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

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

A. No, Sir.

Q. How about bulldozer cleat marks?

A. I could see those, yes, Sir.

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

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

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

Corporal Barto.

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

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

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

Q. Cross examination.

By The Court:

Mr. Pierro?

CROSS EXAMINATION

By Mr. Pierro:

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

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

Q. 1st of November, 1973?

A. Yes.

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

A. Yes, Sir.

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

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

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

Corporal Barto.

A. Yes, Sir.

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

A. No, Sir.

Q. What was it?

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

Q. What did he say he saw?

A. He did not say he saw anybody.

Q. Did he say he waved to anybody?

A. No, Sir, he didn't.

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

A. No, Sir, he didn't.

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

A. An hour and a half, Sir.

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

Corporal Barto.

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

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

Q. The one from the Hills?

A. Yes, Sir, from Jack Hill.

Q. From Jack Hill?

A. Yes, Sir.

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

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

Q. Who did he say answered it?

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

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

A. Are you referring to his residence?

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

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

Q. Then you were not at his house?

A. No, Sir.

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

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

Q. Did you ask him?

A. He told me.

Q. What did he tell you?

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

Q. But he said Jack Hill called?

A. Yes, Sir, he did.

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

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

Q. Did you ask him what Jack Hill said?

A. No, Sir, I didn't.

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

A. If he made the phone call?

Q. Yes?

A. Yes, Sir, I did.

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

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

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

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

Corporal Barto.

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

A. Yes, Sir.

Q. You got them in front of you?

A. No, Sir.

Q. What is that in front of you?

A. This is his rights card.

Q. Are you testifying from memory now?

A. Yes, Sir.

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

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

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

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

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

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

A. I asked him to sign the rights card.

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

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

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

Corporal Barto.

A. Yes, Sir.

Q. Why didn't you do it?

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

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

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

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

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

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

A. No, Sir, I didn't.

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

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

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

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

Q. Did you question him on the 16th?

A. I asked him questions, yes.

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

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

Q. Did you question him then?

Corporal Barto.

A. No, Sir, I didn't.

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

A. Yes, Sir.

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

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

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

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

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

A. No, Sir.

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

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

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

A. Nothing that I recall.

Q. Those are the only two items?

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

Mauro
Burt's
Cyan

Corporal Barto.

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

A. I thought it did.

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

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

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

A. I did not personally, no.

Q. Somebody must have?

A. Yes, Sir, it was checked out.

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

A. I spoke to one of the Mauro brothers.

Q. What else?

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

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

A. I spoke to Mrs. Nevel several times.

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

A. You want to know everybody I spoke to?

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

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

Corporal Barto.

Q. I want to know who those people are?

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

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

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

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

A. Yes, Sir.

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

A. Yes, Sir.

Q. Who is that witness?

A. Mrs. Nevel.

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

A. You mean an eye witness?

Q. Yes?

A. That is the only one I know of.

Q. That is Mrs. Nevel?

A. Yes, Sir.

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

A. Yes, Sir.

Q. Who is the witness?

A. Jack Hill.

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

5:00?

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

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

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

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

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

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

A. Yes, Sir.

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

A. Yes, Sir.

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

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

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

Corporal Barto.

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

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

A. No, Sir.

Q. You didn't?

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

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

By Mr. Ertel:

I object, he never crossed the bridge.

A. I didn't cross the bridge.

By Mr. Fierro:

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

A. You mean coming from Williamsport to South Williamsport?

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

A. Yes.

Q. It is heavy, isn't it?

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

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

Corporal Barto.

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

A. No, Sir.

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

A. No, Sir.

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

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

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

A. Right, that is what he told me.

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

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

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

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

Corporal Barto.

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

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

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

A. He was photographed and fingerprints.

By Mr. Fierro:

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

By The Court:

Answer the question, Officer?

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

By Mr. Ertel:

Q. No further questions.

Kim was saying "you got the wrong one"

RE-CROSS EXAMINATION

By Mr. Fierro:

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

A. No, what did he mean?

Q. Did you ask him?

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

Q. That is all.

away he was Hand cuffed

By Mr. Ertel:

That is all.

(Excused from witness stand.).

By The Court:

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

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

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

(IN CHAMBERS.).

By Mr. Ertel:

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

By The Court:

On what day?

By Mr. Ertel:

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

By The Court:

That was months before?

By Mr. Ertel:

This was in August.

By The Court:

On what theory?

By Mr. Ertel:

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

By The Court:

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

By Mr. Ertel:

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

By The Court:

Why don't you give me the works?

By Mr. Ertel:

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

By The Court:

Where from?

By Mr. Ertel:

Her home area in South Side. They went down the

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

By The Court:

Was he exposed at all?

By Mr. Fierro:

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

By The Court:

What is it that he substantially said?

By Mr. Fierro:

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

By Mr. Ertel:

The Sylvan Dell Road.

By Mr. Fierro:

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

By Mr. Ertel:

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

By The Court:

How old is she?

By Mr. Ertel:

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

By Mr. Fierro:

That is legal to have intercourse.

By Mr. Ertel:

It is not legal for oral sodomy. She refused.

The next two....

By The Court:

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

By Mr. Ertel:

My recollection they are under 16.

By Mr. Fierro:

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

By The Court:

I don't think so.

By Mr. Fierro:

For this case?

By Mr. Ertel:

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

By The Court:

That was when?

By Mr. Ertel:

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

By Mr. Fierro:

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

By Mr. Ertel:

I have to check on this other one.

By Mr. Fierro:

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

By Mr. Ertel:

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

witnesses.

By The Court:

Now, what is your purpose?

By Mr. Ertel:

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

By The Court:

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

(Off-the-record discussion.).

By The Court:

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

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

By Mr. Ertel:

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

By Mr. Fierro:

I will agree.

By The Court:

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

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

By Mr. Ertel:

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

Corporal Barto.

667.

purports to be a Rent-All Center receipt.

By The Court:

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

By Mr. Fierro:

Yes.

By The Court:

Proceed, Mr. Ertel.

By Mr. Ertel:

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

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

By Mr. Ertel to Corporal Barto:

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

A. Yes, Sir.

Q. What is it?

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

Q. Cross examination.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

By Mr. Ertel:

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

Barto.

By The Court:

They are admitted without objection.

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

By Mr. Ertel:

I call Officer Barto.

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

By Mr. Fierro:

Make an offer at Side Bar on the record.

(AT SIDE BAR.).

By Mr. Ertel:

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

By The Court:

What is Sampsell going to say on that?

By Mr. Ertel:

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

By Mr. Fierro:

I am missing this, Judge.

By The Court:

So am I.

By Mr. Fierro:

This man is up here to say something negative?

Corporal Barto.

By Mr. Ertel:

He is here to say something negative.

By The Court:

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

By Mr. Ertel:

We have the tape recording.

By The Court:

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

By The Court:

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

By The Court:

I will permit from his own recollection.

By Mr. Fierro:

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

By The Court:

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

By Mr. Ertel:

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

By The Court:

Cover this one.

(END OF SIDE BAR.).

Corporal Barto.

DIRECT EXAMINATION

By Mr. Ertel:

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

A. Yes, Sir.

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

A. Yes.

Q. Do you recall when?

A. The 13th of February, 1974.

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

By Mr. Fierro:

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

By The Court:

I will permit the answer to stand.

By Mr. Ertel:

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

A. Yes, Sir.

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

A. Yes, Sir.

Q. What did he say?

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

Corporal Barto.

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

Q. No further questions.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

By Mr. Fierro:

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

By The Court:

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

By Mr. Fierro:

That is correct.

By Mr. Fierro:

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

By The Court:

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

Trooper Richard Reitz.

By Mr. Fierro:

All right.

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

By Mr. Fierro:

Offer at Side Bar.

(AT SIDE BAR.).

By Mr. Ertel:

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

By Mr. Fierro:

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

By The Court:

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

By Mr. Fierro:

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

Captain Francis Ross.

Q. No further questions.

RE-CROSS EXAMINATION

By Mr. Fierro:

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

A. Hill.

Q. No relationship to the Jack Hill family?

A. Not that I know of.

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

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

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

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

Q. For that reason alone?

A. Yes.

Q. That is all.

(Excused from witness stand.)

Recalled

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

DIRECT EXAMINATION

By Mr. Ertel:

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

A. Yes, Sir, I did.

Corporal Barto.

Q. When was that?

A. January 11, 1974.

Q. Where did you interview him?

A. At the South Williamsport High School.

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

A. Yes, Sir, I did.

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

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

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

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

By Mr. Fierro:

That is not rebuttal, and I object to the question

Corporal Barto.

and answer.

By The Court:

It is not proper rebuttal.

By Mr. Ertel:

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

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

By Mr. Fierro:

That is not proper rebuttal.

By The Court:

The objection is over ruled.

By Mr. Ertel:

No further questions.

CROSS EXAMINATION

By Mr. Fierro:

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

A. Yes, Sir, he stated that.

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

A. Yes, Sir, after he hesitated.

Q. That is your interpretation that he hesitated?

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

Q. Likesometimes you have seen witnesses, including

Corporal Barto.

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

A. Somewhat, yes, Sir.

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

By Mr. Ertel:

I object.

By The Court:

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

By Mr. Fierro:

Yes.

A. Never told him he was a liar.

Q. You didn't?

A. No, Sir.

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

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

Q. Were you alone at the time?

A. No, Sir.

Q. Was there an Officer with you?

A. Yes.

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

By Mr. Ertel:

I object to that.

Corporal Barto.

By The Court:

Sustained.

By Mr. Pierro:

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

A. Not that I recall.

Q. You say not that you can recall?

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

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

A. Yes, Sir.

Q. He told you that his Uncle appeared on the scene before Kim, didn't he?

A. Yes, Sir.

Q. You probably asked him what time his Uncle came back and about his Uncle's activities, didn't you?

A. No, Sir.

Q. You didn't?

A. No, he told me that his Uncle had come before Kim, and so I went and talked to his Uncle.

Q. So what?

A. I went and talked to his Uncle, Mr. Forsberg.

Q. You learned from his Uncle about his activities, didn't you in connection with what Mike Grimes told you on that occasion?

A. I would like the question repeated.

Q. I will reask it. You went to Mr. Forsberg to check wi

Corporal Barto.

Mr. Forsberg concerning Mr. Forsberg's activities as they were related by Mike Grimes, isn't that true?

A. All Mike Grimes told me was....

Q. I didn't ask you what Mike Grimes told you, we already know that, I am asking you whether you checked with Mr. Forsberg?

A. I interviewed him as to his activities.

Q. You checked with him as to his activities?

A. Yes.

Q. You heard Mr. Forsberg in Court, didn't you?

A. Yes, Sir.

Q. He testified in Court the same way that he told you, when you checked him, didn't he, isn't that correct?

A. Yes, Sir, he did.

Q. That is all.

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Did Mike Grimes testify in Court the same way he told you?

A. No, Sir.

By Mr. Fierro:

About what? I object to that, otherwise it is not rebuttal.

By Mr. Ertel:

About his conversation on that day?

By The Court:

Q. Is there anything you have not related, Sir?

A. Not that I can recall.

Corporal Barto.

By Mr. Ertel:

Q. What were the inconsistencies?

By Mr. Fierro:

I object.

By The Court:

Sustained.

By Mr. Ertel:

Q . You were asked about the interview with Mike Grimes and Mr. Forsberg, what were the inconsistencies in, between their statements?

By Mr. Fierro:

I object to that, it has not been shown there was any.

By The Court:

The objection is sustained, you may make an offer at Side Bar, if you care to.

(AT SIDE BAR.).

By Mr. Ertel:

You opened the door.

By The Court:

Tell me?

By Mr. Ertel:

He is going to tell Forsberg drove right up in front of Grimes' car and there could not have been Kim Hubbard's car there during the time, he never saw it.

By The Court:

Who said that?

Corporal Barto.

By Mr. Ertel:

Forsberg pulled right up in front of the Grimes' car. Grimes said that Kim Hubbard's car was right in front of his car, and they couldn't have been the same way, both cars couldn't be in the same position.

By Mr. Fierro:

Wait a minute. Judge, if you recall, the Hubbard car was about 15 to 20 feet in front of the Grimes' car.

By The Court:

That is correct.

By Mr. Fierro:

That is what Grimes said, and that is what Mr. Forsberg said.

By The Court:

I thought they were substantially the same.

By Mr. Ertel:

Grimes did not relate the Forsberg car ever.

By The Court:

I am sure he did.

By Mr. Ertel:

Not to him.

By The Court:

He did on testimony.

By Mr. Fierro:

That is not an inconsistency, that might be an omission.

By The Court:

I don't think it is proper.

(END OF SIDE BAR.).

By The Court:

The objection is sustained.

By Mr. Ertel:

That is all, Officer.

By Mr. Fierro:

No questions.

TROOPER CHARLES FAMA, previously sworn, recalled and testified as follows:

By Mr. Fierro:

I would like to have a Side Bar.

(AT SIDE BAR.).

By Mr. Fierro:

Before, your Honor, there is a Side Bar offer, I would like to make an objection. The District Attorney is shuttling Officers constantly in this case. I don't know if he has a legal right to do so, but I think it is poor practice, and I think he has been harassing, in a sense, the Defendant, and he is playing the numbers game, and I don't like it and I object to it.

By Mr. Ertel:

I am not harassing anybody. This man was with Officer Barto and he is going to say they didn't bully him or anything else, they asked questions of Mike Grimes. You implied now that these people battered and would bully.

By Mr. Fierro:

That is not rebutting somebody's testimony.

By Mr. Fierro:

No objection.

(Commonwealth's Exhibit No. 115 admitted into evidence.)

JACK HILL, being duly sworn according to law,
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Jack Hill.

Q. Your occupation, Mr. Hill?

A. Laborer at Avco.

Q. Mr. Hill, returning to the 19th of October,
did you have occasion to be at work on that day?

A. Yes, I did.

Q. Did you come home in the late afternoon?

A. I came home a little after 4:00.

Q. Would you describe what you recall happening
on that day after that time, after you got home?

A. Well, my wife and I were sitting at the kitchen
table, we had coffee and we was going over what we were going to
get at the grocery store for the week, and I don't recall my
wife making a phone call, but my daughter had one, oh, my
daughter asked Jackie to make a phone call to Hubbards
to find out if Jennifer left.

By Mr. Fierro:

00254

Let's go over that question, please.

Jack Hill.

By Mr. Ertel:

Q. Describe what happened from the time you returned home which you said was sometime a little after four?

A. Right.

Q. Describe what happened, as you recall it?

A. We were sitting at the table drinking coffee, going over what we were going to get at the grocery store, and my daughter had called Hubbards to find out if Jennie had left.

Q. Were you there when that call was made?

A. Yes, Sir.

Q. All right?

A. My wife was getting ready to go to the store to get some groceries, and when she had left, I called Hubbards to find out, I was getting concerned, and I had called Hubbards to find out if Jennie was still there, or whether she was on her way home.

Q. Who did you talk to?

A. Kim answered the phone.

Q. Did you recognize his voice?

A. Yes, it did.

Q. Can you tell us approximately what time it was?

A. Around 5:00.

Q. What was the conversation, as you recall it?

A. I asked if Jennie had left, and he had called his Mom to ask her what time she had left.

Q. Did you hear a buffer running?

A. No, I did not.

Jack never talked to Ruth on 670.
Phone on Oct 19th!

Jack Hill.

Q. What happened after that?

A. Ruthie came to the phone and said that Jennie, she had seen Jennie leave, and that was about all that was said, then I went out. My wife had left to go to the store, before she went to the store she had circled around a couple of blocks away from home to see if she could find....

By Mr. Piarro:

We object to this.

By Mr. Ertel:

Q. You can't testify what your wife did not in your presence, did your wife return home?

A. Not at that time, no, I left the house, started walking Central Avenue to see if I could find Jennie. I run into my wife and daughter, I got in the car and my wife asked me what we should do, and I said, "Well, let's ride around a little bit.", so we started riding.

Q. Did you get out at any time?

A. No.

Q. Did you run into anyone that you recall?

A. Not that I recall, at that time I didn't.

Q. What happened after that?

A. We come back home to see if Jennie had showed up while we were gone, and she had not, so then I jumped back in the car and was riding around some more, and I think that, well, I don't know whether my wife called the Police at that time or not, I couldn't say for sure.

Q. Where did you go?

Jack Hill.

A. I rode Southern Avenue, the side streets, Central Avenue looking for my daughter.

Q. Did you see Kim Hubbard, to your recollection?

A. No, I didn't.

Q. What time did you stop searching, if you did?

A. It was later on in the night when I stopped looking.

Q. I am sorry, I didn't catch that?

A. I said it was later on in the night when I stopped looking.

Q. I show you marked as Commonwealth's Exhibit No. 48, and ask you if you can identify that?

A. Yes, Sir, that is my daughter.

Q. Did you identify your daughter after this incident?

A. Yes, I did.

Q. Did you identify her at the morgue as the girl in question?

A. Right.

Q. Which daughter is that?

A. Jennifer Hill.

Q. No further questions.

By The Court:

Mr. Ertel.

CROSS EXAMINATION

By Mr. Pierre:

Q. Mr. Hill, do you know what your daughter was wearing on October 19th, or did you leave for work before she got dressed?

Jack Hill.

How did Jack know in her testimony Jennifer was working on the 19th

A. I took my daughter to the Hubbards the day before.

Q. I am talking about October 19th, do you know what she was wearing on October 19th?

A. No, I don't, she was not at home.

Q. Well, the point is you didn't see her on October 19th at all, did you?

A. No, I didn't.

Q. I believe you left work at 3:30 that day, didn't you?

A. Yes, Sir.

Q. You got home, you say you got there a little after 4:00?

A. Right.

Q. Now, Mr. Barto, the Police Officer, who generally sit here, testified earlier this afternoon that while he was interviewing you that you told him that you called the Hubbard house and that you spoke to Kim Lee Hubbard, and that it was somewhere between 4:45 and 5:00 P.M., would that be correct?

A. No, it was around 5:00 when I called up there.

Q. Why do you say 5:00? *- Deena stated*

A. Because my Mother-in-law got home from work *4:45 - Both her & mother locked at clock*

right around 5:00, and I was on the phone when she came in the door.

Q. Do you know what time your Mother-in-law came home from work that day?

A. I just said she came home.

Q. What?

Jack Hill.

— A. I just said she came home at that time when I was on the phone and it was around 5:00.

— Q. Did you look at the clock?

— A. Not exactly, because she gets home around 5:00 just about all of the time.

— Q. Doesn't she ever get home before 5:00?

— A. She might, but not that much more than 5:00.

— Q. Well, are you saying, Mr. Hill, that if you made the statement to Officer Barto that you told him 4:45 to 5:00, then he was mistaken in the way he heard you?

— A. Possibly.

— Q. Of course, you know that time becomes very important in this matter, don't you?

— A. Yes.

— Q. Sure it does, and you know that 15 minutes becomes important in this matter, don't you?

— A. Yes.

— Q. But you are telling this Jury it was 5:00 even though you never looked at the clock, isn't that correct?

— A. I said it was around 5:00.

— Q. How about five minutes to five?

— A. It could have been, but it was around 5:00 when I called up there.

— Q. How about ten minutes to five, could it have been then?

— A. I am not sure.

— Q. Mr. Hill, I don't know if you did, and I don't want to say that you would have done anything wrong, but you were

Jack Hill.

— not in this room when your wife testified, were you?

— A. Yes, I was.

— Q. Okay. Did you hear all of your wife's testimony? Were you sitting here and heard it all?

— A. Yes, I was sitting here.

— Q. Did you hear your wife testify that "Jack called at 4:45 P.M."?

— By Mr. Ertel:

— I object, I think she said 4:45 to 4:50.

— By Mr. Pierro:

— I am asking the question, let him answer.

— By Mr. Ertel:

— I object.

— By The Court:

— The Court's recollection is she testified 4:45 to 4:50.

— By Mr. Pierro:

— I have 4:45, but I will make it 4:45 to 4:50, I will add the other five minutes.

— Q. Did you hear your wife testify that you called between 4:45 and 4:50?

— A. If I did, I don't recall what time she said.

— Q. In any case, you didn't look at a clock to determine the time, did you?

— A. No.

— Q. You are not saying that your wife was wrong about the time she said that you called, are you?

Jack Hill.

By Mr. Ertel:

I object.

By The Court:

The objection is sustained.

By Mr. Fierro:

_____ Q. Do you know what time your daughter called the Hubbards?

_____ A. No, I don't.

_____ Q. Do you have an idea of what time she called the Hubbards?

_____ A. No.

_____ Q. You were there, weren't you?

_____ A. Yes.

_____ Q. Were you there when your wife called the Hubbards?

_____ A. No, I had not gotten home from work yet.

_____ Q. Didn't you sometime that evening, you and your wife, that is, weren't both of you sometime that evening walking west on West Central Avenue towards the Hubbard house and come to, well, the next corner where they live, I think is Clinton, right?

_____ A. Yes.

_____ Q. Weren't you walking there with your wife?

_____ A. Yes.

_____ Q. And is that Clinton Street as you approach the Hubbard house from going from east to west?

_____ A. I think it is.

_____ Q. And on that corner, one of those four corners, didn't you talk to Mrs. Hubbard and Ruthie?

Jack Hill.

— A. Yes.

— Q. Did you see Kim?

— A. No, I didn't.

— Q. Did you see Kim anyother time that day or night?

— A. No, I didn't.

— Q. All you know is that you talked to him by telephone, and you do recognize his voice, don't you?

— A. Yes.

— Q. And you knew it was him somewhere between quarter of five and 5:00, you knew it was Kim who answered the phone, isn't that right?

— A. Yes.

that — Q. You saw Kim the next day too, didn't you, at your house?

A. Did I see him at my house?

Q. Yes?

A. No, I didn't.

Q. Well, I am not going to ask you if you heard he was there, but you didn't see him, were you there when Kim, his Mother, and Kim's girlfriend, and his sister brought some food to your house, were you there?

A. No.

Q. You were out somewhere?

A. Right.

— Q. Howard Street, where Mrs. Nevel said she saw your daughter at 4:30, is about, well it is about two blocks from Market Street, isn't it? If I am wrong, say so?

Jack Hill.

By Mr. Ertel:

I object to the question, until we establish where Mrs. Nevel lives.

By Mr. Pierro:

Howard Street is where she lives, she says.

By Mr. Ertel:

I object to that, he may not know.

By The Court:

Q. Do you understand the question, Sir?

A. Yes, I do, I was just trying to picture in my mind exactly where Howard Street was situated.

By Mr. Pierro:

Q. Maybe you don't know, and I am not that familiar, but I thought that Howard Street with reference to Market Street?

A. Howard Street with reference to Market Street, is two blocks between Howard and Market.

Q. What does the map show on that?

By Mr. Ertel:

According to Officer Barto, one block.

By Mr. Pierro:

I will stipulate to that, will you stipulate to that?

By Mr. Ertel:

Whatever the map shows, I will stipulate to.

By Mr. Pierro:

I wanted to ask him some questions about it, but apparently I can't on that one point.

Q. You don't know that Howard Street is one block from

Jack Hill.

Market Street?

_____ A. I always get Howard and George mixed up one way or the other.

_____ Q. Let's put it this way, just for the moment, I want you to assume that Howard Street is one block from Market Street. Now, as I understand it, and somebody showed it on the map, you live on Hastings Street?

A. Right.

Q. What number?

A. 553.

_____ Q. You know where West Central Avenue is?

A. Yes.

_____ Q. Now, if you take West Central Avenue and Market Street, that intersection, how far away do you live from that intersection?

_____ A. A block and a half.

Q. Now....

By Mr. Ertel:

I will stipulate that Howard Street is one block from Market Street.

By Mr. Pierro:

I agree.

_____ Q. Mr. Hill, did you on Saturday, October 20th, go with your wife and Garth to the Hill house...or excuse me, to the Hubbard house?

A. Yes.

_____ Q. While you were there, you sat at the table and had

Jack Hill.

coffee and cake or something?

_____ A. Yes.

_____ Q. Didn't you see Kim there that day?

_____ A. That day, yes.

_____ Q. In fact, didn't he help in serving coffee and cake?

_____ A. I don't recall if he did.

_____ Q. Now, when you saw him, since you said you recall seeing him, isn't it true he didn't have a shirt on, he was only in his undershirt? *Kim had on No shirt = Kim was bare from the belt up*

_____ A. I don't recall.

_____ Q. All right, you don't recall that. Do you recall seeing him close enough that you could identify him as being Kim Hubbard?

_____ A. Yes.

_____ Q. Did you see any marks on his face or hands?

_____ A. I didn't look at him that close.

_____ Q. All right, no further questions.

By The Court:

Mr. Ertel.

RE-DIRECT EXAMINATION

By Mr. Ertel:

_____ Q. Mr. Hubbard... Mr. Hill, I am sorry, do you remember where your other daughter was staying that day?

By Mr. Fierro:

_____ We object, it is irrelevant.

Jack Hill.

By The Court:

How is it material?

By Mr. Ertel:

It may or may not be.

By The Court:

You may answer.

By Mr. Ertel:

I will withdraw the question, and it might come up on rebuttal.

By Mr. Ertel:

Q. Have you ever seen your daughter in the Kim Hubbard vehicle?

By The Court:

Which daughter?

By Mr. Ertel:

Q. Jennifer?

A. He brought her home on occasion.

Q. No further questions.

By The Court:

Mr. PIERRE?

By Mr. Ertel:

I have one other question.

Q. Who was with them at that time?

A. Ruthie.

Q. No further questions.

RE-CROSS EXAMINATION

By Mr. Fierro:

Q. You never saw your daughter alone with Kim Lee Hubbard?

A. No.

Q. Now, Mr. Hill, isn't it true that you only ever saw Kim Lee Hubbard bring your daughter home once?

A. I am not sure.

Q. All right, you are not sure, but in any case Ruthie was along, is that correct?

A. Yes.

Q. That is all.

(Excused from witness stand.)

JESSIE BLOOM, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Jessie L. Bloom.

Q. Your occupation?

A. Secretary in an Insurance Office.

Q. What office?

A. Lloyd Strouse Insurance Office.

Q. How long have you been there?

A. 12 years.

Q. Do you know Kim Hubbard?

A. Yes, I did.

RE-CROSS EXAMINATION

By Mr. Fierro:

Q. You never saw your daughter alone with Kim Lee Hubbard?

A. No.

Q. Now, Mr. Hill, isn't it true that you only ever saw Kim Lee Hubbard bring your daughter home once?

A. I am not sure.

Q. All right, you are not sure, but in any case Ruthie was along, is that correct?

A. Yes.

Q. That is all.

(Excused from witness stand.)

JESSIE BLOOM, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Jessie L. Bloom.

Q. Your occupation?

A. Secretary in an Insurance Office.

Q. What office?

A. Lloyd Strouse Insurance Office.

Q. How long have you been there?

A. 12 years.

Q. Do you know Kim Hubbard?

A. Yes, I did.

Jessie Bloom.

Q. Did you have the occasion on the 19th of October, 1973, to see him in your office?

A. Yes, I did.

Q. I show you marked as Commonwealth's Exhibit No. 101 and ask you if you can identify that photostatic copy?

A. Yes, that is our receipt for his billing.

Q. Did you see him on that occasion?

A. Yes, I did.

Q. At approximately what time....didyou see him at the Lloyd Strouse Agency?

A. Yes.

Q. What time did you see him on that day?

A. Approximately 1:30 in the afternoon.

Q. Did you speak with him?

A. Yes.

Q. Did he pay anything to you?

A. He paid his premium.

Q. No further questions.

By Mr. Fierro:

No questions.

(Excused from the witness stand.)

INA BLACKBURN, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your name, please?

Jessie Bloom.

Q. Did you have the occasion on the 19th of October, 1973, to see him in your office?

A. Yes, I did.

Q. I show you marked as Commonwealth's Exhibit No. 101 and ask you if you can identify that photostatic copy?

A. Yes, that is our receipt for his billing.

Q. Did you see him on that occasion?

A. Yes, I did.

Q. At approximately what time....did you see him at the Lloyd Strouse Agency?

A. Yes.

Q. What time did you see him on that day?

A. Approximately 1:30 in the afternoon.

Q. Did you speak with him?

A. Yes.

Q. Did he pay anything to you?

A. He paid his premium.

Q. No further questions.

By Mr. Fierro:

No questions.

(Excused from the witness stand.)

INA BLACKBURN, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your name, please?

Ina Blackburn.

A. Ina Blackburn.

Q. Mrs. Blackburn, are you employed?

A. Yes.

Q. Where?

A. At the District Justice of the Peace in
Loyalsock Township.

Q. That is your son's office?

A. Yes.

Q. Mrs. Blackburn, do you know Kim Hubbard?

A. He was there one day to pay a fine.

Q. Do you know his face to recognize it?

A. I might recognize him.

Q. Is he in the Court Room?

A. Yes.

Q. Where is he?

A. Sitting right there. (Indicating to Defendant.).

Q. On the 19th of October did you see him?

A. Yes, I did.

Q. Where was he?

A. In our office.

Q. Can you give us an approximate time he was in there?

A. Between 3:35 to twenty minutes of four.

Q. Cross examination.

By The Court:

Mr. Fierro?

Ina Blackburn.

CROSS EXAMINATION

By Mr. Fierro:

Q. Mrs. Blackburn, we don't want this Jury to be prejudiced in any way, he paid a fine for a traffic violation?

A. Yes, he did.

Q. Now, do you mark the time that these people come in and pay these things, or stamp them in any way?

A. No, I don't.

Q. So that is a pretty busy office, Mrs. Blackburn, a lot of people come in and out?

A. Yes, but that afternoon there wasn't.

Q. What time do you say it was?

A. Between 3:35 and twenty minutes of four.

Q. Why do you say 3:35?

A. Because we had had a hearing scheduled at 3:00, the Trooper failed to show up, and we aited 15 minutes either, for either the Defendant or the Prosecutor, and at twenty minutes after three Ronnie told me to send her in the Court Room for the hearing, and she came out, I would say about twenty-five after three, and at about a minute or two after she left, a Trooper came in to file a Complaint, and after, when he came in we asked where the other Trooper was, and we talked a few minutes, and he gave me the Complaint to type up and I was at the typewriter typing when Mr. Hubbard came in.

Q. So you think it is around 3:35?

A. Yes.

Q. No further questions.

(Excused from witness stand.)

Ronald Blackburn.

RONALD A. BLACKBURN, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Ronald A. Blackburn.

Q. Your occupation?

A. District Magistrate.

Q. Your District Magistrate's Office is located where?

A. 2010 Northway Road.

Q. That is Loyalsock Township?

A. Right.

Q. Did you have the occasion on the 19th of October, 1973, to see the Defendant, Kim Hubbard?

A. Yes, I did.

Q. Can you recognize him?

A. Yes, Sir.

Q. Where is he?

A. Sitting next to Mr. Fierro there.

Q. And when did you see him, would you describe the circumstances under which you saw him?

A. Friday afternoon, it was sometime after 3:30 and sometime before ten minutes of four.

Q. Where was he when you saw him?

A. He was standing at the counter in my office paying a fine.

Q. Can you recall that specific occasion?

Nadine Askey.

A. Yes, I do.

Q. Thank you.

By Mr. Fierro:

No questions.

(Excused.).

NADINE ASKEY, being duly sworn according to law,
testified as follows:

By Mr. Fierro:

I want a Side Bar.

By Mr. Ertel:

May we have the Jury excused?

By The Court:

The Jury may take a recess.

(Side Bar consultation not made a part of the record.).

By The Court:

Bring the Jury back in.

(Jury returned to Court Room.).

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your name?

A. Nadine Askey.

Q. How old are you?

A. 15.

Q. Do you know Kim Hubbard?

A. Yes, I do.

Q. Returning to the 19th of October, 1973, did
you have the occasion to see him on that date?

Nadine Askey.

A. Yes, I do.

Q. Thank you.

By Mr. Pierro:

No questions.

(Excused.).

NADINE ASKEY, being duly sworn according to law,
testified as follows:

By Mr. Pierro:

I want a Side Bar.

By Mr. Ertel:

May we have the Jury excused?

By The Court:

The Jury may take a recess.

(Side Bar consultation not made a part of the record.).

By The Court:

Bring the Jury back in.

(Jury returned to Court Room.).

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your name?

A. Nadine Askey.

Q. How old are you?

A. 15.

Q. Do you know Kim Hubbard?

A. Yes, I do.

Q. Returning to the 19th of October, 1973, did
you have the occasion to see him on that date?

Nadine Askey.

A. Yes.

Q. Where did you see him?

A. At the Hum-Dinger.

Q. Approximately what time was it?

A. Approximately 3:20.

Q. In the afternoon?

A. Yes.

Q. Was he with anybody at that time, do you recall?

A. No.

Q. Was he with anybody?

A. No, he wasn't.

Q. You just saw him there, did you see him leave?

A. Yes.

Q. Where did he go, do you know?

A. Around the back.

By Mr. Fierro:

I object, unless she went with him it would be hearsay or unless he told her.

By The Court:

Q. Just from your own testimony, what did you observe him do when he left?

A. Walk around the back of the Hum-Dinger.

By Mr. Ertel:

Q. That is the last you saw of him?

A. Yes.

Q. That is all.

Nadine Askey.

By The Court:

Mr. Fierro?

CROSS EXAMINATION

By Mr. Fierro:

Q. Miss, do you know how long Kim was there, or give us an idea?

A. From the time I got there, five to ten minutes.

Q. Now, give us an idea what time he left?

A. About 3:30.

Q. About 3:30?

A. Yes.

Q. Did you look at a clock or something like that to establish this?

A. No, not really.

Q. All right, you mean you are guessing about the time?

A. I am taking from the time I got there from what I feel that was ten minutes.

Q. You think he left at 3:30, what time did you get there, I mean you?

A. About twenty after three.

Q. The reason I ask is a witness just testified that she saw him in their office around 3:35, which would be, of course, five minutes away from where you were, that is the Hum-Dinger to the District Justice of the Peace Office on Northway Road, and you are sure he left at around 3:30?

A. Yes.

Q. That is all.

*THIS girl was
NOT sure which day
she saw Kim Friday
or Saturday*

Nadine Askey. - Ard Stetts.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. How do you establish the time you arrived there?

A. Because I know I left from the house, which is about five minutes away from the Hum-Dinger at quarter after three.

Q. Whose house was that?

A. Nancy Miller's.

Q. No further questions.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

ARD O. STETTS, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Ard O. Stetts.

Q. Where do you live?

A. South Williamsport.

Q. How old are you?

A. 19.

Q. Do you have an occupation?

A. Yes, I do.

Q. What is that?

Nadine Askey. - Ard Stetts.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. How do you establish the time you arrived there?

A. Because I know I left from the house, which is about five minutes away from the Hum-Dinger at quarter after three.

Q. Whose house was that?

A. Nancy Miller's.

Q. No further questions.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

ARD O. STETTS, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Ard O. Stetts.

Q. Where do you live?

A. South Williamsport.

Q. How old are you?

A. 19.

Q. Do you have an occupation?

A. Yes, I do.

Q. What is that?

This boy testified that he didn't know what time he saw Kim because "he (Ard) doesn't know a watch"

Ard Stetts.

A. I work at Bethlehem Steel.

Q. Do you know the Defendant in this case, Kim Hubbard?

A. Yes, I do.

Q. Did you see him on the occasion on the 19th of October, 1973?

A. Yes, I did.

Q. Can you tell us when you first saw him on that date?

A. Right after I left the Hum-Dinger Restaurant over in South Side.

Q. Approximately what time was that?

A. After the hour of four o'clock, probably quarter after.

Q. Where did you see him?

A. On Bayard Street.

Q. Was he walking or driving or what?

A. Driving.

Q. What kind of car?

A. His own.

Q. Can you describe that car?

A. A green Oldsmobile.

Q. Did you see him, how long did you see him?

A. Long enough to stop, back up and say a few words and then we went on.

Q. When you say Bayard Street, between what streets was it? Bayard runs what, north and south?

A. East and west.

Q. Mr. Stetts, would you come down, please?

A. (Witness leaves stand.).

Q. Can you find Bayard Street there, please?

A. Right here.

By The Court:

Referring to what Exhibit?

By Mr. Ertel:

That is Exhibit No. 42.

Q. You pointed out Bayard Street, where on Bayard Street did you see him?

A. Where would be the Hum-Dinger?

Q. The Hum-Dinger is on Southern Avenue.

A. Right about here.

By The Court:

Identify where it is.

By Mr. Ertel:

Q. You are pointing to a location on Bayard Street between West Southern Avenue and Central Avenue, at the intersection of almost an alley and Bayard Street, is that right?

A. That is right.

By The Court:

Repeat that, Mr. Ertel.

By Mr. Ertel:

Q. I will try it again, I am going to put an "x" here, Mr. Stetts, see if I am correct, is that about where you say, give or take a little distance?

A. Yes, it is.

Ard Stetts.

Q. I am putting your name next to it, that location is about three-quarters of a block from West Southern Avenue and a quarter of block from Central Avenue on Bayard Street, almost at the intersection of an alley that crosses Bayard Street, is that fairly accurate?

A. Yes, it is.

Q. Which direction was he travelling?

A. Down Bayard Street, that would be north.

Q. In this direction towards the river?

A. Yes.

Q. In which direction were you going?

A. Towards the mountain.

Q. Take the stand.

A. (Witness returns to stand.).

Q. How do you establish the time, Mr. Stetts?

A. Because I didn't get there until after I left work, and the time was established by Bob Fries said he didn't get home to get his motorcycle, that is everybody left there at the same time just about to go up onto the power lines in South Side to ride, he said it was about twenty after four when he got his motorcycle.

Q. You are basing it on somebody else's statement, is that it?

A. That is about the size of it.

Q. In other words, you have no independent recollection?

A. No, I don't.

Q. No further questions.

Ard Stetts.

By The Court:

Mr. Fierro?

CROSS EXAMINATION

By Mr. Fierro:

Q. Mr. Stetts, what time did you leave work that day?

A. Probably, well it had to be 3:00, shortly after, a few minutes.

Q. And you were at the Hum-Dinger sometime that afternoon of October 19th?

A. I drove directly to there from work.

Q. You did?

A. Yes.

Q. Well, do you have an idea of how long you were there?

A. 40 minutes.

Q. 40 minutes?

A. Around that time, I can't say for sure.

Q. In other words, you are not sure about your time?

A. No, I am not.

Q. You had no reason to look at a watch or anything like that?

A. No.

Q. You were not concerned about the time, were you?

A. No.

Q. You see, when you said, for example, that you based your statement on, you mentioned a Bob Fries, is that his name?

A. Yes, it is.

Ard Stetts.

Q. You are saying to this Jury that your estimate of time was based upon what Bob Fries told you?

A. My estimate of time was, it had to be, because I didn't, I didn't look at a watch. All that I know that everybody left.

Q. And everybody left at a certain time?

A. No, everybody just decided to go up onto the power lines. Everybody, we just got in cars and headed home to get their bikes and left.

Q. When you say "everybody", whoever they are, you mean they left the Hum-Dinger to go home to get their bicycles or whatever it is, to go somewhere to go riding, is that right?

A. Right.

Q. But that "everybody" did not include Kim, did it?

A. No, it didn't.

Q. Now, do you have any idea what time you got home for supper or dinner, or whatever you might call it?

A. About ten of six.

Q. Now, did you go with the fellows to this area for your cycling?

A. Yes, I did, but I took my car.

Q. You are saying that Bob Fries told you?

A. He didn't tell me, I asked him.

Q. You asked him about the time?

A. Because I wasn't sure myself, because, like I said, I didn't check any watch.

Q. Just, now when you asked Bob Fries about the time,

Ard Stetts.

where were you and Bob Fries, like you asked him about the time, where were you? If I asked you the time now, you would say "In the Court Room.", where were you and Bob Fries when you asked him about the time?

A. At the Hum-Dinger, I think.

Q. You think at the Hum-Dinger, what time did he tell you it was?

A. He said it was twenty after four when he got home and got his motorcycle.

Q. He said it was twenty after four when he got home and got his motorcycle, well was it about twenty after four when you were moving, by the way you would be moving south on Bayard Street when you passed Kim, right?

A. Yes.

Q. You say that Kim was moving north, that is towards the river on Bayard, at the spot where the District Attorney marked it with an "X" and you were moving south at the same time then in your car?

A. Yes.

Q. Where he marked an "x" is where you say you both stopped and simply exchanged a few words?

A. Yes, it is.

Q. You think it could have been around 4:30 at that time?

A. It could have been about any time after 4:00.

Q. It could have been any time after 4:00?

A. Yes, it could have.

Q. It could have even been 4:30?

Ard Stetts.

A. It could even be 4:30, I have no recollection.

Q. It could even be quarter to five then?

A. I don't think it was that late.

Q. But it could be between 4:00 and 4:30?

A. Yes.

Q. And at that time you are sure Kim was moving north, let's say towards the Hum-Dinger, and you were moving away from it?

A. Yes.

Q. And you did see him, didn't you?

A. Yes.

Q. That is all.

By The Court:

Mr. Ertel?

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Mr. Stetts, prior to you talking to Mr. Fries, did you give another estimate of the time you saw him there?

A. Around, I said before five of four, ten of four.

Q. You had originally said that until you talked to Mr. Fries, is that right?

A. Yes, it is.

Q. No further questions.

RE-CROSS EXAMINATION

By Mr. Pierre:

Q. By the way, was there anyone in Kim's car?

A. No, there wasn't.

Q. Thank you, that is all.

(Excused from witness stand.)

JAMES M. BARR, being duly sworn according to law,
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. James Michael Barr.

Q. Where do you live, Mr. Barr?

A. 307 West Southern Avenue.

Q. Do you have an occupation?

A. Yes, I work for my Dad in the store.

Q. What is the store?

A. Barr's Hardware.

Q. Is your home right next to the store?

A. Yes, it is.

Q. Can you locate that on this Chart which is
Commonwealth's Exhibit No. 42, do you think?

A. (Witness leaves stand.).

Q. You say on West Southern Avenue?

A. Here is Curtin Street and here is Southern Avenue,
we live on the corner.

Q. Where is your house or business?

A. Right here.

Q. Are you on the side towards the mountain?

A. Yes.

Q. Now, I am putting an "X" and marking the word

Q. Thank you, that is all.

(Excused from witness stand.).

JAMES M. BARR, being duly sworn according to law,
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. James Michael Barr.

Q. Where do you live, Mr. Barr?

A. 307 West Southern Avenue.

Q. Do you have an occupation?

A. Yes, I work for my Dad in the store.

Q. What is the store?

A. Barr's Hardware.

Q. Is your home right next to the store?

A. Yes, it is.

Q. Can you locate that on this Chart which is
Commonwealth's Exhibit No. 42, do you think?

A. (Witness leaves stand.).

Q. You say on West Southern Avenue?

A. Here is Curtin Street and here is Southern Avenue,
we live on the corner.

Q. Where is your house or business?

A. Right here.

Q. Are you on the side towards the mountain?

A. Yes.

Q. Now, I am putting an "X" and marking the word

James Barr.

"Barr", is that where your store and house is located next to each other?

A. Yes. (Witness returned to stand.)

Q. Do you know the Defendant, Kim Hubbard?

A. Yes.

Q. Did you see him on the 19th of October?

A. Yes, if that is the day you are talking about.

Q. The day Jennifer Hill disappeared?

A. Yes, I saw him.

Q. That is the day school was off?

A. Yes.

Q. All right, can you tell us when you first saw him on that occasion, if you will?

A. Well, I was putting my brother's tapeplayer in because I quit work at 3:30, and he walked up to me and asked me where my brother was, and I said that he was in the house.

Q. What time approximately was that?

A. Somewhere around twenty, quarter of four, somewhere around there.

Q. Did he walk up or drive, do you know?

A. He drove.

Q. Do you recall what he was wearing?

A. No, I don't.

Q. Did you see him after that?

A. Yes, I was out there when he left and when Billy went to work.

James Barr.

Q. What time was that?

A. A couple of minutes before four.

Q. You saw him on that occasion again?

A. Yes, when he left.

Q. Which direction was he proceeding at that point when he left?

A. I don't know.

Q. You don't recall where his car was parked or where he went?

A. I can't say which way he went, so I won't say.

Q. What street was he parked on, do you recall?

A. Curtin Street.

Q. You don't recall if he went up towards the mountain or towards the river?

A. No.

Q. No further questions....excuse me. Did you have any conversation with him regarding a fine?

A. Well, I remember him saying something about he paid a fine that day, but I don't know, I can't say if it was on that day or not, that is why I won't say anything about it, because I don't know, I can't say for sure.

Q. Was that at the same time you saw him here?

A. It might have been, I don't know whether I saw him earlier or not, but I remember him saying he just paid a fine. I don't know if it was at that time or earlier in the day, because I see him off and on all of the time.

Q. That day?

James Barr.

A. Well, you know, every day, I see him all of the time.

Q. No further questions.

CROSS EXAMINATION

By Mr. Fierro:

Q. You say that you were working for your Dad that day and you got through at 3:30?

A. Right.

Q. Now, we want to be sure of this, most people know when they get through work, do you know exactly when you get through work?

A. Yes, I do.

Q. When?

A. 3:30.

Q. Was that your quitting time?

A. Yes, it was.

Q. Where did you go from there at 3:30?

A. Over to the house.

Q. Which is what, next door?

A. Next door.

Q. Was your brother there?

A. That, I don't know.

Q. Was Kim there?

A. No.

Q. Where did you see Kim?

A. I was in the back seat of Billy's car when he walked up, because I was putting his speakers in.

James Barr.

Q. Billy is your brother?

A. Right.

Q. Was this car parked out in front of your house or store?

A. House on Curtin Street.

Q. You are in the back seat of your brother's car doing something to it, right?

A. Right.

Q. And up walks Kim?

A. Right.

Q. You had a conversation with Kim about something?

A. Yes.

Q. And you learned that he paid a traffic ticket that day?

A. If that was the day, yes.

Q. Whether that was the day or not, are you sure that you saw him on October 19th?

A. Yes, I am.

Q. This is the day school is out and, of course, Jennifer disappeared?

A. That is right.

Q. Now, how long were you doing whatever you were doing to this car?

A. About 15 or 20 minutes.

Q. Was Kim there all during that time?

A. Yes, he was.

Q. You are sure of this?

James Barr.

A. I am positive, because he went in the house when I told him that Billy was in the house, or he went to get him, whether he went in or not, I don't know.

Q. Now, did you see Kim go into your house?

A. No, I didn't.

Q. Did you see him come out?

A. Whether he came out or not, I don't know whether he was in, I saw him leave, I don't know if he was in the house or standing on the porch.

Q. Well, whatever, did you see him let's say come from your house whether it is from the inside or from the porch?

A. Yes, I did.

Q. Did you see him come from your house?

A. Yes.

Q. Why do you fix the time at a couple of minutes to four?

A. Because Billy went to work, he had to walk right by me to go to work.

Q. Billy?

A. Yes.

Q. What time does Billy go to work?

A. 4:00 on the nose every day, 4:00 to 5:00 he works.

Q. You are sure you saw Billy go to work and Kim leave?

A. Yes.

Q. You are sure you saw Billy go to work and Kim leave?

A. Yes, because I was done putting it in then and I was not in the car, I was standing in the back of it.

James Barr.

Q. Did you have words with him, like "Good-bye", or anything else?

A. I don't know.

Q. You don't remember?

A. No.

Q. You don't even remember whether he got in his car and drove away?

A. No.

Q. You didn't pay any attention?

A. That is right.

Q. You were very familiar, were you not, with Kim's car?

A. Yes.

Q. You were familiar with the damage he had on the left side of his car?

A. I saw it.

Q. More than once you saw it?

A. I saw it, I don't know how many times I saw it.

Q. Well, can you describe to the Jury, describe it?

A. It seemed to me like somebody hit him or he.....

Q. The type of damage?

A. Well, it was right, I would say in the right front corner, it seemed like.

Q. Was it obvious, was it the type of damage that you couldn't miss seeing?

A. It depends on how you were looking at the car.

Q. I want to ask you again about the damage to the car

James Barr.

and think about it, to what side of the car was Kim's car damaged?

A. I couldn't say for sure.

Q. All right, that is good enough. As you were working on this car and talking to Kim, and as you saw Kim leave, were there anyother persons around that you can identify that might help in this matter?

A. Rick DeVito was with me.

Q. Rick DeVito?

A. Yes.

Q. Is that D e V i t o?

A. Yes.

Q. I show it as Richard?

A. Yes.

Q. Was he with you while you were fixing your brother's car?

A. Yes, he was, he was sitting in the front seat.

Q. Now, was he with you while, whatever conversation you had with Kim, he was there?

A. Yes.

Q. Do you know if Richard DeVito is in, not in this room, but in this building?

A. I don't see him in here, he most likely isn't.

Q. He most likely isn't, do you know where he lives?

A. Yes, I do.

Q. Where?

A. Up on the Pike.

Q. The Montgomery Pike?

A. Yes.

James Barr. - William Barr.

Q. Thank you, that is all.

By Mr. Ertel:

That is all.

(Excused from witness stand.).

WILLIAM C. BARR, being duly sworn according to law,
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. William C. Barr.

Q. Where do you live?

A. 307 West Southern Avenue.

Q. The boy that was just in here, is he your brother?

A. Yes.

Q. Is he older or younger?

A. Older.

Q. How old are you?

A. 16.

Q. Do you go to school?

A. Yes.

Q. Do you know Kim Hubbard?

A. Yes.

Q. Are you a friend of his?

A. Yes.

Q. Do you also work in your Father's hardware store?

A. Yes.

Q. Returning to the night of the 19th of October, 1973,

James Barr. - William Barr.

Q. Thank you, that is all.

By Mr. Ertel:

That is all.

(Excused from witness stand.).

WILLIAM C. BARR, being duly sworn according to law,
testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. William C. Barr.

Q. Where do you live?

A. 307 West Southern Avenue.

Q. The boy that was just in here, is he your brother?

A. Yes.

Q. Is he older or younger?

A. Older.

Q. How old are you?

A. 16.

Q. Do you go to school?

A. Yes.

Q. Do you know Kim Hubbard?

A. Yes.

Q. Are you a friend of his?

A. Yes.

Q. Do you also work in your Father's hardware store?

A. Yes.

Q. Returning to the night of the 19th of October, 1973,

William Barr.

the day you had off school, did you see Kim that day?

A. Yes.

Q. Where did you see him?

A. At my house.

Q. Approximately what time did you see him there?

A. Quarter of four to four.

Q. How do you place that time?

A. I had to work at 4:00.

Q. Did you get to work on time?

A. Yes.

Q. Do you recall what you discussed with Kim on that occasion at all?

A. Somewhat.

Q. What did you discuss?

By Mr. FierrO:

We object, unless it is relevant. I would like to come to Side Bar.

By The Court:

Offer at Side Bar.

(Side Bar consultation not made a part of the record.)

Q. How long were you with him on that occasion, do you recall?

A. 15 minutes.

Q. Do you recall seeing, did you leave with him from your house?

A. No.

Q. Did he leave before you or after you?

William Barr.

A. Before.

Q. Do you know if he was driving on that occasion?

A. Yes.

Q. What car did he have?

A. I can't....Oldsmobile.

Q. Do you recall what he had on?

A. No.

Q. No further questions.

By The Court:

Mr. Pierro.

CROSS EXAMINATION

By Mr. Pierro:

Q. Billy, you said you had to be at work at 4:00, of course where you had to work is right next door to you?

A. Yes.

Q. You have already testified that Kim was in your house, now what time do you think you left your house to go to work?

A. About two of four.

Q. About two minutes to four?

A. Right.

Q. What time do you think Kim left?

A. About the same time.

Q. I mean you didn't leave Kim behind in your house, did you?

A. No.

Q. Are you saying that Kim left when you say about the

same time, he either had to leave with you at two minutes of four or else he left a minute before you did?

A. That is right.

Q. And you are sure about the time?

A. Right.

Q. Did you look at the clock?

A. Yes.

Q. Is that because you had to go to work?

A. Yes.

Q. So that you can tell this Jury that you saw Kim Hubbard that day in your house until at least three minutes to 4:00?

A. Right.

Q. Thank you, that is all.

By Mr. Ertel:

Thank you.

(Excused from witness stand.).

By Mr. Ertel:

At this point we have run out of witnesses. We went a lot faster than we expected to go.

By The Court:

Do I understand the only remaining witness now is the one, the expert from Harrisburg?

By Mr. Ertel:

And the girl who will testify in conjunction with that expert and her Mother.

By The Court:

Is she available?

By Mr. Ertel:

No, Sir, I didn't expect any of these people to be called today.

By The Court:

Can we take care of the Exhibits that are not in evidence before the Jury leaves?

By Mr. Ertel:

Yes.

By The Court:

Would you do that at this time?

By Mr. Ertel:

I would offer in evidence Commonwealth's Exhibit No. 48, which is a picture of the young girl.

By The Court:

Mrs. Brower, it might be easier for you to tell us what is in evidence?

By Mrs. Jane Brower:

1, 2, 3, 4, 5, 6, 7, 8, 11.

By Mr. Ertel:

Exhibits Nos. 9 and 10 we offer in evidence. They are the tire track photographs.

By The Court:

Any objection?

By Mr. Pierro:

Was there some reason why at the time we didn't, because some of them were comparison, for comparison studies and they were not to go in.

*Judge
Napoli
Sh. St.
Evidence
1/2/51*

*Shaw
1/2/51*

By Mr. Ertel:

This is to show the tracks on the ground.

By Mr. Fierro:

I have no objection to them.

By The Court:

Exhibits Nos. 9 and 10 are all right.

(Commonwealth's Exhibits Nos. 9 and 10 admitted into evidence.)

By Mrs. Jane Brower:

Exhibits Nos. 11, 12, 13, 14, 15, 16 and 20.

By Mr. Ertel:

They were just marks, those she missed, of marks on the highway, I don't care if they go in.

By Mr. Fierro:

I don't want them in.

By Mr. Ertel:

We won't offer those.

By Mrs. Jane Brower:

No. 20 is in. No. 21 is a picture of two plaster castings.

By Mr. Fierro:

Let it in.

(Commonwealth's Exhibit No. 21 admitted into evidence.)

By Mr. Ertel:

No. 22 is a cast also.

cc. hat cast

By Mr. Fierro:

That is all right.

(Commonwealth's Exhibit No. 22 admitted into evidence.)

By Mrs. Jane Brower:

No. 22 is the scene at the gas store tanks.

By The Court:

Since we are early tonight, can we get all of these in numerical order than or that you can turn over to the Court Reporter.

By Mr. Ertel:

No. 22 is the scene, and he has no objection.

We offer 23, 24, 25, 26.

By Mr. Fierro:

No objection.

(Commonwealth's Exhibits Nos. 23, 24, 25 and 26 admitted into evidence.).

By Mrs. Jane Brower:

No. 27 is the aerial view of the storage tanks.

By Mr. Fierro:

Leave it in.

(Commonwealth's Exhibit No. 27 admitted into evidence.).

By Mrs. Jane Brower:

The next one is an aerial view.

By Mr. Fierro:

As she goes down, when I say "in", I mean there is no objection. Let it in.

(Commonwealth's Exhibit No. 28 admitted into evidence.).

By Mrs. Jane Brower:

No. 29 is the Arco Storage Tanks.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 29 admitted into evidence.).

By Mrs. Jane Brower:

No. 30 is a long shot view of the storage tanks.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 30 admitted into evidence.).

By Mrs. Jane Brower:

No. 31 is 8 x 10 view with dam in the background.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 31 admitted into evidence.).

By Mrs. Jane Brower:

No. 32 is 8 x 10 with tanks in background.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 32 admitted into evidence.).

By Mrs. Jane Brower:

No. 33 is aerial view of homes with tanks in background.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 33 admitted into evidence.).

By Mrs. Jane Brower:

No. 34 aerial view of homes, river in background.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 34 admitted into evidence.).

By Mrs. Jane Brower:

No. 35 is a blow-up of an aerial view.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 35 admitted into evidence.).

By Mrs. Jane Brower:

No. 36.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 36 admitted into evidence.).

By Mrs. Jane Brower:

No. 37, blow-up, tanks, fields.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 37 admitted into evidence.).

By Mrs. Jane Brower:

No. 38, Grit of October 14th.

By Mr. Fierro:

Out.

By The Court:

The objection is sustained to the paper.

By Mrs. Jane Brower:

No. 39, 1973 - 1974 South High Schedule.

By Mr. Fierro:

It was never introduced.

By Mrs. Jane Brower:

No. 40, Sunset table.

By Mr. Ertel:

Never offered.

By Mrs. Jane Brower:

No. 41 the weather forecast.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 41 admitted into evidence.)

By Mrs. Jane Brower:

No. 42 big drawing.

By Mr. Fierro:

In.

(Commonwealth's Exhibit No. 42 admitted into evidence.)

By Mrs. Jane Brower:

No. 43, 44 and 45 are maps.

By Mr. Ertel:

They were agreed to.

By Mr. Fierro:

All right.

(Commonwealth's Exhibits Nos. 43, 44 and 45 admitted into evidence.)

By Mrs. Jane Brower:

The black sneakers and white socks.

By Mr. Fierro:

The child's clothing now comes in.

By The Court:

You objected to those, the Court admitted those over

your objection. They are admitted.

(Commonwealth's Exhibit No. 46 admitted into evidence.)

By Mrs. Jane Brower:

No. 47, the blue jacket.

By Mr. Ertel:

The same thing.

By The Court:

It is admitted.

(Commonwealth's Exhibit No. 47 admitted into evidence.)

By Mrs. Jane Brower:

No. 48, the picture is in.

No. 49 is the Glick Shoe Bag.

By The Court:

The one that was at the scene was in, the other one the objection was sustained.

By Mrs. Jane Brower:

No. 50, 51, 52, 53, 54, 55 and 56 are in. No. 56 was the slide. No. 57 is a slide that is not in. No. 58 is a slide, and that is in. No. 59 was the corn stalks.

By Mr. Ertel:

We didn't offer those.

By Mrs. Jane Brower:

Then we have No. 60, 61, 62, 63, 64, 65, 66 and 67 are in. No. 68 are the ten plastic bottles with the fingernail scrapings.

By Mr. Ertel:

We will offer those.

By The Court:

That was taken at the Hospital from the body?

By Mr. Ertel:

Taken from the body and transmitted to the
Laboratory.

By Mr. Pierro:

I objected. You recall the reason for my objection,
the testimony of the Chemist.

By The Court:

The objection is sustained to these.

By Mr. Ertel:

May we approach side bar?

(AT SIDE BAR.).

By The Court:

The one that is questionable is the one that
was found in the car.

By Mr. Ertel:

That is the fingernail, not the scrapings.

(END OF SIDE BAR.).

By The Court:

The Court will permit in evidence No. 68 over the
objection of Defense Counsel.

(Commonwealth's Exhibit No. 68 admitted into evidence.).

By Mrs. Jane Brower:

No. 69 is the hair samples.

By Mr. Ertel:

We offered them and the Court over ruled us.

By The Court:

Yes, the objection there is sustained to the hair samples.

By Mrs. Jane Brower:

No. 70 is the public hair samples.

By Mr. Ertel:

We won't offer that.

By Mrs. Jane Brower:

No. 71 is part of the right middle fingernail.

By Mr. Ertel:

We don't offer that.

By Mrs. Jane Brower:

No. 72 is the mud sample the area of the right thigh.

By Mr. Ertel:

We offer that. That is the sample from underneath the body.

By The Court:

The objection is overruled.

(Commonwealth's Exhibit No. 72 admitted into evidence.).

By The Court:

No. 73 is admitted.

(Commonwealth's Exhibit No. 73 admitted into evidence.).

By Mr. Ertel:

No. 74 and 75 the Court sustained the objection to. No. 76 is the weed sample from under the victim's body, no probative value.

By Mrs. Jane Brower:

No. 77 is the soil from around the weed.

By Mr. Ertel:

We are not moving that.

By Mrs. Jane Brower:

No. 78 is out.

By Mrs. Jane Brower:

No. 79 is the small particles from groin of victim.

By Mr. Ertel:

Not offered.

By Mrs. Jane Brower:

No. 80 and 81 are admitted.

No. 82, 83, 84, 85 and 86 were objected to and sustained.

By Mrs. Jane Brower:

No. 87 are tires.

By The Court:

No. 87 is the left rear tire. No. 88 is the right rear. No. 89 the right front and No. 90 is the one taken off at Faust's.

By Mr. Fierro:

No. 90, if that is the one that the witness testified was put on on, taken off on October 29th and the new one was placed, I am not going to object to it.

By The Court:

They are admitted without objection.

(Commonwealth's Exhibits Nos. 87, 88, 89, 90 admitted into evidence.).

By Mrs. Jane Brower:

No. 91, 92, 93, and 94 are the castings.

By The Court:

They are in.

By Mr. Ertel:

95 was not offered. No. 96 and 97 are the boots.

By The Court:

Any objection?

By Mr. Fierro:

No objection.

By The Court:

They are in.

(Commonwealth's Exhibits Nos. 96 and 97 admitted into evidence.).

By The Court:

No. 98 is the dirt sample.

By Mr. Fierro:

I would like to have the sweeper bags put in and their contents.

By Mr. Ertel:

I will move the sweeper bag in.

By Mr. Fierro:

Did you offer them subject to a witness?

By Mr. Ertel:

If you want them in, I will put them in.

By Mr. Fierro:

If they will testify to that, we can't argue in front of the Jury about it.

By Mr. Ertel:

If you want them in, they are there.

By Mr. Fierro:

I want to know if the Lab. man made the examination of that?

By Mr. Ertel:

Yes.

By Mr. Fierro:

Bring him back and have him testify to that.

By Mr. Ertel:

You can, he is available to you.

I make the offer to you, the sweeper bag, and I will call the Chemist back if you want him.

By Mr. Fierro:

Call him back and if there is any value to them, I will make my decision, and if you don't want to call him back that is your business.

By The Court:

They won't go int.

By Mrs. Jane Brower:

We are now up to 98, a bag of dirt samples.

By Mr. Ertel:

I offer No. 98, 99 and 100, these are all sweepings.

By Mr. Fierro:

I object to it.

By The Court:

The objection is sustained.

By Mr. Ertel:

No. 101, that is a copy of the receipt from
Lloyd Strouse.

By The Court:

Any objection?

By Mr. Fierro:

We have our own and I want to compare it.

By The Court:

No. 101 is in.

(Commonwealth's Exhibit No. 101 admitted into evidence.)

No. 102 was already in.

By Mrs. Jane Brower:

No. 103 is the rights card with Mr. Houser's name
on it.

By The Court:

Any objection to that?

By Mr. Fierro:

No.

By The Court:

Admitted without objection.

(Commonwealth's Exhibit No. 103 admitted into evidence.)

By Mr. Ertel:

No. 104, 105, 106 are withdrawn.

By Mrs. Jane Brower:

No. 107 is the hair samples from clothing of victim.

By The Court:

Are you offering that

By Mr. Ertel:

No.

By The Court:

Withdrawn.

By Mr. Ertel:

Again, they are available.

By Mrs. Jane Brower:

No. 108 is the photo of tires.

By The Court:

Any objection to No. 108, 109 and 110?

By Mr. Fierro:

No.

By The Court:

They are admitted without objection.

(Commonwealth's Exhibits Nos. 108, 109 and 110 admitted into evidence.).

By Mrs. Jane Brower:

No. 111 is a photo of a shoe print.

By Mr. Fierro:

No objection.

By The Court:

Admitted without objection.

(Commonwealth's Exhibit No. 111 admitted into evidence.).

By Mrs. Jane Brower:

No. 112 is a photo of a shoe print.

By Mr. Fierro:

No objection.

By The Court:

Admitted.

(Commonwealth's Exhibit No. 112 admitted into evidence.).

By Mrs. Jane Brower:

No. 113 is the rights card signed by Barto.

By Mr. Fierro:

No objection.

(Commonwealth's Exhibit No. 113 admitted into evidence.).

By Mrs. Jane Brower:

No. 114 is the buffer receipt.

By The Court:

You will check on that tomorrow morning.

By Mrs. Jane Brower:

No. 115 is the helmet, and that was admitted.

By The Court:

The Defendant is excused and the Jury is excused.

Tomorrow morning we will not begin until 9:30 as I have

Motion Court at 9:00.

Court is recessed.

(Adjourned at 5:15 P.M., EDT.).

Susan Shellman.

And Now, to-wit, Tuesday, February 26, 1974, beginning at 9:35 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 Defendant was present with his Counsel and the following proceedings were had:

By The Court:

Proceed, Mr. Ertel.

SUSAN SHELLMAN, being duly sworn according to law, testified as follows:

By Mr. Pierro:

Offer.

(Side Bar consultation not made a part of the record.).

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Susan Shellman.

Q. Where do you live?

A. 809 Main Street, South Williamsport.

Q. Do you know the Defendant, Kim Hubbard?

A. Yes.

Q. Do you know Colleen Whitenight?

A. Yes.

Q. Do you know if Colleen Whitenight is the girlfriend of Kim Hubbard?